Submission to the Victorian Planning System Ministerial Advisory Committee

Review of the Victorian Planning System

August 2011
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INTRODUCTION

The Property Council and its members, as key users and stakeholders within the Victorian planning system, acknowledge that it has served Victoria well over the last two decades.

The property industry is the largest in Victoria and is estimated to have contributed approximately $36.9 billion in total to Victoria’s gross state product (GSP) in 2009-10 alone. This represents 12.2% of GSP for the 2009-10 year of a total of $301.4 billion.¹

However, currently there are problems with its implementation due to its complexity and lack of clarity. The planning system now faces new challenges associated with slowing economic productivity, a growing population and a need for new investment and increased workforce participation. Victoria’s growing population is impacting on employment opportunities, urban growth and development, and the provision of sustainable infrastructure, housing and transportation.

The Property Council continues to advocate the positives of growth in Victoria to government on behalf of the industry and the wider community. We believe that the Victorian Government has a responsibility to ensure that Victoria as a state is considered in its entirety when planning for growth.

The Property Council is of the view that increasingly, there is a significant mismatch between government, industry and community expectations of the consistency and outcomes of the planning process. We welcome the opportunity to contribute to the Victorian Coalition Government’s review of the planning system in Victoria and believe that the review is timely and an opportunity for the Victorian Government to demonstrate its commitment to ensuring Victoria has the right planning system to guide growth now and in the future.

The Property Council has identified four key areas for reform to the planning system in order to maintain and enhance the decision making at both the strategic and the operational levels.

Four key areas of reform:

- Planning Policy Framework
- Development Control
- Governance and Leadership
- Process

The Property Council’s recommendations within this submission are based on the following key principles which we believe are vital to the effectiveness of the Victorian planning system:

1. Clarity, consistency and simplicity.
2. A clear vision to inform future of planning and development relevant to geographic considerations and effective spatial perspectives.
3. Appropriate timelines within the planning system.
4. Identification of key targets to drive future growth and development.
5. Clarity of relationships between the different levels of policy to demonstrate how state policy is to inform regional and local policy; and how regional and local policy is to reinforce state policy.
6. Accountability at all levels of government in the planning process.

The Property Council looks forward to working with the Victorian Government as it delivers its commitment to increasing productivity in Victoria and undertakes this vital reform of the planning system.

Jennifer Cunich  
Executive Director, Victoria Division  
Property Council of Australia
SUMMARY OF RECOMMENDATIONS

1. PLANNING POLICY FRAMEWORK
1.1 Develop a holistic, sustainable and progressive planning vision for the state. The realisation of such a policy vision is a critical priority for the Victorian Government and must be achieved as part of the current planning reform process.
1.2 That the state policy planning framework (SPPF) be reviewed to focus on key elements in planning for Victoria's growth such as:
   - Provide a clear basis for the allocation of growth and geographic or spatial direction as to where major growth and investment should occur across the state.
   - Providing for employment opportunities in line with a clear economic development strategy.
   - Identifying and providing for human services requirements.
   - Ensuring efficient and timely infrastructure provision.
   - Planning for urban and environmental revitalisation.
   - Promoting sustainability initiatives.
1.3 Create a 'Regional' section within the Victorian Planning Provisions (VPP).
1.4 Formulate regional plans and policies for Victoria to ensure a balanced and sustainable pattern of growth and development across regions and for the entire state. The proposed new Metropolitan Melbourne Strategy would be one of these regional plans with high priority policies underpinning the strategy.
1.5 In reviewing the Victorian planning system, the option of a single planning authority to oversee and guide metropolitan and regional planning should be adopted as part of the best model.
1.6 Municipal Strategic Statements should be reviewed on a five-yearly cycle and councils must be adequately resourced to ensure this occurs.
1.7 Municipal Strategic Statement (MSS) should provide the local policy for each municipality. Each MSS should articulate the key issues, challenges, opportunities and initiatives for each municipality aligned with municipal targets for growth and development and where such growth is to be accommodated.
1.8 Local planning policies in their current form should be removed from planning schemes.
1.9 Specific local matters should be dealt with either within the MSS in overlays, or by means of incorporated documents (for example, structure plans and urban design framework plans).
1.10 That DPCD develop urban design guidelines to form the basis of a code assessment system which councils can implement. This will provide clear direction on where more intense development can and should occur and the design approach for such area.
1.11 That councils be required to justify areas where these urban design guidelines would not be appropriate and in so doing, provide a strategy that reinforces the state’s urban design vision.

2. DEVELOPMENT CONTROLS
2.1 That the Victorian Planning Provisions (VPPs) be streamlined and simplified.
2.2 That RESCODE be reviewed.
2.3 Introduce a system of code assessment as an option for planning permit applicants.
2.4 That the Victorian Government undertake a thorough rationalisation and simplification of overlays within the planning system to eliminate complexities and conflicts.
2.5 To ensure all overlays identify the key priorities in a specific area in terms of built form and environmental outcomes and that such overlays reflect state and regional objectives.

2.6 A system of code assessment must be introduced, as a matter of priority, for:

- single dwelling residential developments; and
- multi-unit residential developments.

2.7 That the Victorian Government explore opportunities for code assessment procedures for other types of development such as:

- industrial developments; and
- commercial developments.

2.8 That the Victorian Government introduce a planning certification system and amend legislation to facilitate this approach.

3. GOVERNANCE AND LEADERSHIP

3.1 That the role of DPCD is reviewed and appropriate structural and management changes be initiated to instil leadership and advocacy of state strategies and policies.

3.2 That DPCD accept accountability for delivery and implementation of Victoria’s planning system.

3.3 Review the Planning and Environment Act 1987 to expand upon the criteria available to the Minister for Planning in intervening on key projects at the state and regional levels.

3.4 Review the recent history of requests for Ministerial intervention to identify any pattern of systemic problems.

3.5 That Planning Panels Victoria be empowered to:

- Demonstrate stronger ownership of the process including requiring parties to justify and focus their submissions on the key issues early in the process.
- Challenge controversial issues such as the removal of native vegetation.
- Ensure consistency in advice.
- Offer opinion to the Minister on key issues needed to be addressed by DPCD.

3.6 That state and local government work together to develop a well-conceived and effective community information and awareness strategy to accompany the forthcoming reforms in the Victorian planning system.

3.7 That the Victorian Government works closely with peak industry bodies such as the Property Council and the Planning Institute of Australia to ensure consistent messages about planning are conveyed to the community and development industry.

3.8 That communication barriers at the local level be rectified to achieve a greater level of accessibility and transparency throughout administrative processes.

3.9 That the Planning and Environment Act 1987 be amended to require all councils to establish a development approvals committee providing for the independent assessment of applications against policy.

3.10 That the DAF Leading Practice model be adopted to ensure a planning system that is efficient, transparent, and provides certainty and fairness.

3.11 That the Victorian Government allocates funds for the implementation of the DAF Leading Practice Model.
3.12 The Victorian Government establish a single Victorian Planning Authority to manage the planning process and the overall implementation of key policy to ensure a coordinated approach across the whole of Victoria.

4. PROCESS

4.1 That the Victorian Government streamline the Planning Scheme Amendment process through introducing statutory timelines and procedures for all stages including:
   - Ministerial authorisation including delegated authorisation by Planning Panels Victoria
   - Public exhibition
   - Council reporting
   - Referral agency comments
   - Final reporting by Planning Panels Victoria
   - Ministerial decision

4.2 That Planning Panels Victoria be responsible to:
   - Review proposed Planning Scheme Amendments which have been rejected by council to assess the strategic merit of such an amendment and determine whether or not the amendment should proceed.
   - Conducting Practise Day Hearings through which Planning Panels Victoria should identify the key issues to be addressed by submitters and the timelines in which submissions will be received.

4.3 Administrative reform measures to increase productivity through the establishment of clear timelines and requirements that promote accountability from all parties must be considered as part of this review.

4.4 Introduce:
   - Clear, consistent and transparent timelines to be adhered to by all parties including for post-approval processes which must have strict timelines enforced for permit holders, councils and other stakeholders.
   - 'Deemed' provisions as used in other Australian states and territories as part of a broad system of Code Assessment.
   - An independent review function within the planning approvals process as per the DAF model.
   - Assessment of minor amendments 'on the papers' (or for example, amendments with three or fewer submitters) to streamline the process with the circulation of submissions and expert reports.

4.5 That criteria based on sound principles be established to guide Requests for Further Information to ensure that requests are not misused and have a clear nexus with relevant planning scheme provisions.

4.6 That a timeline of 10 business days be implemented to facilitate the speedy turnaround of Requests for Further Information.

4.7 That increased funding and resources be allocated to VCAT as a matter of priority.

4.8 That initiatives such as the Practice Court be considered more broadly, including the potential to hold hearings to identify key issues in advance of a matter being fully heard by VCAT.

4.9 That the submission process for simple cases heard at VCAT be reviewed and alternative functions such as the use of pre-submissions to determine key issues ahead of a case being heard be assessed in the context of improving productivity within planning processes.
4.10 That the Major Cases List be re-established on an ongoing basis and reviewed regularly to ensure that the criteria remain correct and reflective of the needs and challenges of both the market and the planning system.

4.11 That the Victorian Government ensure initiatives which simplify and streamline VCAT processes be continued on an ongoing basis, including the Major Cases List.

4.12 If the Major Cases List cannot be re-established, the Victorian Government must provide further resources for additional members and support staff for VCAT.

4.13 Where third party appeal rights remain, clearer criteria must be established to determine legal standing of a third party in the planning approval and VCAT processes.

4.14. That VCAT assess all applications through a triage-style process and review for:

- Scope for mediation.
- Reasonableness of grounds of third party appeals (to identify and minimise vexatious appeals).
- Demonstration of standing, for example, whether a party is potentially materially affected by the proposal or not. Applications that do demonstrate standing should be referred to a Practice day to give parties a chance to state their case in the interests of natural justice.

4.15 Minor applications should be dealt with ‘on the papers’ as per the UK system of the Planning Inspectorate.

4.16 That parties to applications for review be required to submit an outline of ‘matters in dispute’ to save time in hearings where the Planning Scheme provisions and other background material is presented. The hearing should simply focus on the matters in dispute where they can be agreed. Similarly, matters which are not in dispute should be outlined by the appellant for review by the respondent party or parties.

4.17 That the Victorian Government reviews the exemption from advertising and third party appeal rights across all zones and overlays.

4.18 That the negative impacts of third party appeal rights which include excessive uncertainty, delays and cost imposts, be combatted through the introduction of a clear, workable system of code assessment.
1. PLANNING POLICY FRAMEWORK

The management of growth is important for Melbourne’s future prosperity and requires effective leadership and decision making. Sustainable growth will provide more employment opportunities; much needed community infrastructure and more housing and lifestyle choices for all Victorians.

Due to the existing demographic structure and immigration, Victoria’s population will continue to grow to some six or seven million over the next 30 to 50 years.

The Property Council believes that Victoria is in need of a holistic, sustainable and progressive planning vision for the state. The realisation of such a policy vision is a critical priority for the Victorian Government and must be achieved as part of the current planning reform process.

Melbourne will continue to absorb the majority of Victoria's population growth and there needs to be a strong policy framework to guide this growth. Victoria’s regions will also play an important role. Without jobs people will not be attracted to Victoria’s regional centres and without services and amenities, businesses will not invest in those centres.

Planning policy and supporting strategies must provide for business investment and employment opportunities in Victoria’s regional centres as well as in the growth corridors of metropolitan Melbourne.

Property Council research titled Delivering on Melbourne’s Population Plan and released in 2011 demonstrated that there is a strong in consistency between the various levels of policy within Victoria and a severe lack of understanding at the state and local levels of government of the overall impact policy has on the state’s ability to accommodate its population needs. (Appendix A)

**Established Areas:** To deliver 316,000 addition dwellings in established areas over 20 years as identified in Melbourne @ 5 Million, the annual average 11,922 dwellings identified in the Regional Housing Statements for established areas must be increased to 13,960 addition dwellings per year.

**Growth Areas:** To deliver the additional 284,000 dwellings over 20 years identified in Melbourne @ 5 Million, the Regional Housing Statements annual average targets of 9,789 dwellings must be increased to 13,732 additional dwellings per year.

**Overall:** In order for Melbourne to achieve the Melbourne @ 5 Million targets of providing dwellings for 600,000 additional households over 20 years, it needs to add 46% to the 2006 stock of dwellings or 27,692 additional dwellings per year.

Policy within the Victorian planning system must set the vision and provide clear strategic direction as to what the Victorian Government wants to achieve. Both state and local policy should reflect and reinforce this vision with municipal strategic statements demonstrating the way in which regional and state policy is to be implemented at the local level.

Such a method will deliver a whole-of-government approach to future planning and development across the state, its regions and local municipalities.

**State-Wide Planning Policy**

The Property Council has identified a number of issues with the current state planning polices:

- They do not adequately provide a clear vision for Victoria.
- They do not adequately address and prioritise key issues such as:
- population growth;
- housing affordability;
- infrastructure investment;
- employment generation; and
- environmental sustainability.

- They do not provide a clear framework for the allocation of growth nor geographic or spatial direction as to where major growth and investment should occur across the state.

Recommendations:

1.1 Develop a holistic, sustainable and progressive planning vision for the state. The realisation of such a policy vision is a critical priority for the Victorian Government and must be achieved as part of the current planning reform process.

1.2 That the state policy planning framework (SPPF) be reviewed to focus on key elements in planning for Victoria’s growth such as:
   - Provide a clear basis for the allocation of growth and geographic or spatial direction as to where major growth and investment should occur across the state.
   - Providing for employment opportunities in line with a clear economic development strategy.
   - Identifying and providing for human services requirements.
   - Ensuring efficient and timely infrastructure provision.
   - Planning for urban and environmental revitalisation.
   - Promoting sustainability initiatives.

Regional Planning Policy

In managing and accommodating future growth and development the SPPF should also demonstrate a fundamental appreciation and promotion of the role of Victoria’s nine regions.

Sharing the benefits of growth and investment across the state should underpin the SPPF, securing Victoria as the premier state in terms of land use management, economic prosperity, regional development and capital city supremacy.

A regional approach to planning for Victoria will shift the policy framework from local to regional through the implementation of regional plans as part of the SPPF (refer to Diagram 1).

Recommendations:

1.3 Create a ‘Regional’ section within the Victorian Planning Provisions.

1.4 Formulate regional plans and policies for Victoria to ensure a balanced and sustainable pattern of growth and development across regions and for the entire state. The proposed new Metropolitan Melbourne Strategy would be one of these regional plans with high priority policies underpinning the strategy.

1.5 In reviewing the Victorian planning system, the option of a single planning authority to oversee and guide metropolitan and regional planning should be adopted as part of the best model.

Municipal Strategic Statements (MSS)

MSSs should provide the local content for strategic planning, whereas the regional planning policies should address policy issues relevant to the region regardless of municipal boundaries. This
recommended approach would remove the plethora of local planning policies that have been ‘bolted on’ to planning schemes and have become a major cause of confusion, complexity and uncertainty in the decision making process.

A full review of each MSS should take place as part of a five year cycle and councils should be fully resourced to ensure this occurs. MSSs should contain a minimum of historical context (two to four pages) sufficient only to provide a reference point for the implementation of local policy. The rest of an MSS should comprise specific local policy and action statements which are to guide discretion to achieve specific outcomes during the five year life of the MSS. Policies and action statements should be clear and spatially specific in their application.

Recommendations:

1.6 Municipal Strategic Statements should be reviewed on a five-yearly cycle and councils must be adequately resourced to ensure this occurs.

1.7 Municipal Strategic Statements should provide the local policy for each municipality. Each Municipal Strategic Statement should articulate the key issues, challenges, opportunities and initiatives for each municipality aligned with municipal targets for growth and development and where such growth is to be accommodated.

Local Planning Policies

There are currently too many local and municipal planning policies. Some municipal planning schemes have relatively few local planning policies. For example Moonee Valley has one and Banyule has five, other municipalities have at least 15 (Boroondara, Yarra and Manningham) and as an extreme example, Greater Geelong has 62 local planning policies.

The Property Council has identified the following issues to be addressed:

- The amount of detail in local planning policies has led to the inconsistent use and application of the planning system.
- MSSs are considered to be too long and wordy with limited prioritisation of strategies and lacking clear, succinct and concise visions for Victoria’s municipalities. MSSs currently demonstrate a severe disconnect between state and local government objectives.
- The proliferation of local policies reflects an inadequate robustness in the existing Decision Guidelines. Some local policies deal with matters such as Residential Development in Commercial Areas and Discretionary Uses in Residential Areas/Institutional Uses in Residential Zones, for example the Stonnington Planning Scheme, however, zone provisions and decision guidelines for zones should be adequate to address these matters.

Recommendation:

1.8 Local planning policies in their current form should be removed from planning schemes.

1.9 Specific local matters should be dealt with either within a Municipal Strategic Statement in overlays, or by means of incorporated documents (for example, structure plans and urban design framework plans).
Urban Design Vision – Delivering State Policy at the Local Level

It is the view of the Property Council that greater leadership through the use of stronger and more explicit policies at the local level would assist in translating state and regional policy objectives into positive tangible outcomes.

Urban design provides one such example. Victoria needs an urban design vision which articulates what can and should be achieved along transport corridors, at public transport nodes, in and around activity centres and on significant strategic sites and urban renewal precincts.

Whatever the detail, at the regional level the community would benefit from an urban design manual with drawings and detail for each of Victoria’s regions. This approach would assist the community in understanding the scale and form of development that is being encouraged by the state and regional urban design vision with the MSS providing the local context.

Once adopted there should be a code for development which would translate that urban design vision into reality. This ties in with the code assessment concept which is discussed further elsewhere in this submission.

Recommendation:

1.10 That DPCD develop urban design guidelines to form the basis of a code assessment system which councils can implement. This will provide clear direction on where more intense development can and should occur and the design approach for such area.

1.11 That councils be required to justify areas where these urban design guidelines would not be appropriate and in so doing, provide a strategy that reinforces the state’s urban design vision.

Preferred Planning Policy Framework for Victoria

Diagram 1 below sets out the Property Council’s preferred planning policy framework for Victoria.
2. DEVELOPMENT CONTROL

There is currently too many development controls utilised by the Victorian planning system including the Victorian Planning Provisions (VPPs), Rescode and a large number of overlays. Development controls should demonstrate a clear nexus between their purpose and policy implementation so they are outcome focussed.

The Property Council has identified a number of issues currently impairing the effective utilisation of development controls:

- The policy basis behind development controls is unclear. The objective of having policy drive the exercise of discretion is only effective if policy is clear. In many cases, controls cannot be referred back to a clear policy basis.
- There currently exists far too many controls making the system unnecessarily repetitive, complex and the system therefore invites inconsistency in application.

**Victorian Planning Provisions (VPPs)**

Whilst the concept of the VPPs as a generic suite of land use and development controls had merit when conceived in the late 1990s, the VPP documentation has gradually been extended to incorporate 853 pages (not including schedules) and, as a result, the planning system is now suffering from control overload and overkill. Flow on effects stifle good development, deter investment and encumber Victoria’s growth and well-being.

There is significant scope to improve the effectiveness of the VPPs in the delivery of strategic targets and policy objectives by:

- Developing both zone and overlay provisions to deliver on state government policies.
- Rationalising the number of overlays such as the overlays addressing environmental concerns.
- Encouraging innovation minimising complexity so as to provide a context in which planners are better equipped to achieve positive outcomes.

**Recommendation:**

2.1 That the Victorian Planning Provisions be streamlined and simplified.

**RESCODE**

The view of the Property Council is that elements of the planning system are currently far too detailed and in need of review. It is time to review the successes and failures of Rescode. Provisions such as the Overlooking Provision, provide an example of where the system is too prescriptive, is creating an inwardly focused way of living and not delivering on innovative design and social inclusion.

The Property Council believes there is ample scope for a code assessment approach to single and multi-dwelling development which respects the basic amenity of residents but offers a fast track system of approvals for those who choose such a path.

**Recommendations:**

2.2 That RESCODE be reviewed.

2.3 Introduce a system of code assessment as an option for planning permit applicants.
Overlays
Currently there exist too many overlays and schedules to overlays. Examples include the Yarra River corridor and the Mornington Peninsula with allotments having as many as five different environmental and built form type overlay schedules on any one parcel of land. There needs to be a rationalisation and simplification of overlays as often the controls for these overlays are either in conflict with one another, or are so complex that it is difficult to understand what can actually be done in terms of buildings and works.

Where there are multiple overlays applying to a particular landscape or environmental area (such as a creek valley or a geographic feature), these should be capable of being written into a single overlay reflecting multiple policy objectives.

Recommendations:
2.4 That the Victorian Government undertake a thorough rationalisation and simplification of overlays within the planning system to eliminate complexities and conflicts.

2.5 To ensure all overlays identify the key priorities in a specific area in terms of built form and environmental outcomes and that such overlays reflect state and regional objectives.

Code Assessment
The Property Council strongly supports the Victorian Government’s initiative of a code assessment system for residential development.

Code assessment would provide for the fast tracking of projects, assist in streamlining development assessment, simplify requirements and clarify the responsibilities of applicants. This would further free up local government planners to deal with policy matters and assess more complex applications which cannot be determined under a code assess approach.

The code assess approach should also be developed for other types of development and not just residential.

Recommendations:
2.6 A system of code assessment must be introduced, as a matter of priority, for:
   · single dwelling residential developments; and
   · multi-unit residential developments.

2.7 That the Victorian Government explore opportunities for code assessment procedures for other types of development such as:
   · industrial developments; and
   · commercial developments.

Certification of Planning Applications
The Property Council supports the concept of certification of particular types of land and development by accredited planning certifiers.

For example, if a code assess approach is adopted for single and multi-dwelling development, a planning certification system would facilitate the approval process and ensure a high level of technical assessment.
Recommendation:

2.8 That the Victorian Government introduce a planning certification system and amend legislation to facilitate this approach.
3. GOVERNANCE AND LEADERSHIP

The Property Council believes there should be greater leadership and accountability demonstrated by councils, government departments and agencies and other bodies with regard to planning decisions and the administration, interpretation and implementation of the Victorian planning system.

Role of the Department of Planning and Community Development (DPCD)

Members of the Property Council have expressed a number of concerns with the role of DPCD in the effective management and implementation of the Victorian planning system.

Some of the issues raised regarding DPCD’s role and capacity include:

- Strong leadership is currently lacking within DPCD and staff morale is low. Industry and the community rely on DPCD to provide policy leadership and advocate in a positive manner for the planning system. One of the failings of the implementation of Melbourne 2030 was the fact that DPCD failed to articulate a vision, particularly in relation to medium density housing.
- The role of DPCD, its internal culture and its own understanding of the role it should play within Victoria’s planning system is in need of vital reform.
- Often DPCD staff do not express an opinion on an issue or conversely, hold an opinion that has little foundation or justification.
- DPCD staff are frequently confused about their role when appearing at panels or VCAT. They avoid giving a view about the application of state policy to a project on the basis that they are somehow fettering the discretion of the Minister whether to approve an amendment. This negates DPCD’s role as the advocate of state policy, independent of the Minister’s statutory role.
- DPCD and other departments and agencies have a tendency to “sit on the fence” and rather than provide technical guidance and direction, as should be their role within the planning system.
- Concerns have been expressed about the existence of internal, unpublished planning guidelines being used by some DPCD staff in the decision making and planning approvals process. There are examples of planning scheme amendments that have been through exhaustive processes and comply with VPP published guidelines, being extensively changed by DPCD staff for no apparent reason undoing years of work.
- DPCD seem reluctant to take responsibility for planning scheme amendments as gazetted (there are frequent errors) and to respond to issues raised by Planning Panels Victoria and VCAT in hearings.
- There is no active interface between DPCD and the profession, limiting the application of lessons learnt through practical application (or misapplication) of policy and processes.

Recommendations:

3.1 That the role of DPCD is reviewed and appropriate structural and management changes be initiated to instil leadership and advocacy of state strategies and policies.

3.2 That DPCD accept accountability for delivery and implementation of Victoria’s planning system.

Ministerial Intervention

The Property Council acknowledges the sound and necessary role that ministerial intervention plays as part of the Victorian planning system in achieving efficient decision making. This is particularly the case when applied to key projects which impact on the economic prosperity of the state and/or a region.
There is scope to widen the criteria for ministerial intervention within the Planning and Environment Act 1987 that can facilitate significant projects demonstrating a regional or state-wide net community benefit.

Where necessary, ministerial intervention is warranted to overcome roadblocks in the system or overturn bad council decisions. Addressing the underlying problems within the planning process will reduce the frequency of ministerial intervention in this form.

Recommendations:

3.3 Review the Planning and Environment Act 1987 to expand upon the criteria available to the Minister for Planning in intervening on key projects at the state and regional levels.

3.4 Review the recent history of requests for Ministerial intervention to identify any pattern of systemic problems.

Planning Panels Victoria

Planning Panels Victoria plays a vital role in driving the system and ensuring the efficient and independent review of planning policy and planning controls. Too often, frivolous and irrelevant submissions and peripheral issues are allowed to infiltrate the process without being properly scrutinised at an early stage. There is an opportunity for Planning Panels Victoria to take a stronger role in identifying at the outset, the relevant issues and requiring parties to focus their submissions and expert evidence on these issues for the forthcoming hearing.

Planning Panels Victoria should demonstrate increased rigor in their assessment of Planning Scheme Amendments, Development Contributions Plans and other planning issues. Planning Panels Victoria should have confidence and be supported in challenging the views of government agencies on issues such as the removal of native vegetation and application of heritage overlays.

Planning Panels Victoria should not only advise the Minister on amendments to planning schemes but also offer advice on key issues arising from their deliberations that warrant departmental attention.

Recommendation:

3.5 That Planning Panels Victoria be empowered to:

- Demonstrate stronger ownership of the process including requiring parties to justify and focus their submissions on the key issues early in the process.

- Challenge controversial issues such as the removal of native vegetation.

- Ensure consistency in advice.

- Offer opinion to the Minister on key issues needed to be addressed by DPCD.

Communication, Education and Community Awareness

Information about the planning system is very accessible via the internet and has increased the ability of DCPD, councils and other agencies to communicate specific elements of the planning system through this technology and other mediums. The recently released PlanningVIC Planning Property Report mobile application is another step forward to improving accessibility and should be commended.

The Victorian Government, as well as local government, has a responsibility to ensure the broader community is better educated and informed with regards to the planning system. Positive messages should be promoted at a community level through council discussions and simple communication tools.

For example, the delivery of a new Metropolitan Melbourne Strategy will require a well-conceived public communication strategy to inform the community of the imperatives of growth and how
additional population and development is to be managed in the future. Managing population growth is a shared responsibility by all members of the community and the lack of community understanding and ownership of Melbourne 2030 was integral to the demise of this strategy and cannot happen again.

Communication should similarly be improved at local level. Planning applications on exhibition should be able to be accessed online with interested parties able to view supporting reports and drawings. Councils that charge for parties to be sent plans, rather than simply emailing material, are inadvertently putting in place barriers to accessing information.

**Recommendations:**

3.6 That state and local government work together to develop a well-conceived and effective community information and awareness strategy to accompany the forthcoming reforms in the Victorian planning system.

3.7 That the Victorian Government works closely with peak industry bodies such as the Property Council and the Planning Institute of Australia to ensure consistent messages about planning are conveyed to the community and development industry.

3.8 That communication barriers at the local level be rectified to achieve a greater level of accessibility and transparency throughout administrative processes.

**Local Governance and the DAF Model**

The Development Assessment Forum (DAF) Leading Practice Model has been designed to promote efficient, effective and nationally harmonised development assessment systems across Australia. This will deliver significant cost and time savings to a wide range of stakeholders in the creation, assessment, and determination of development applications. (Appendix B)

The Property Council’s understanding of the proposed Planning Referral Authorities, committed to by the Coalition Government, is that councils will have the ability to opt in or opt out of using them.

The role of local government can currently become conflicted where the information and advice of technical officers is overturned for political or other reasons. Such an approach undermines the integrity of the planning system and fosters poor staff morale within local councils.

The Property Council is of the view that the role of councillors should be to set policy and the role of council staff should be to make decisions against that policy, based on their technical expertise and knowledge.

The Municipal Strategic Statements should be used to define areas for development and should operate as one aspect of a truly integrated policy framework within councils and across regions.

The Property Council supports a mandated model for planning decision making.

The Coalition’s Plan for Planning outlined its intention to establish Planning Referral Authorities to assist local governments in planning decisions and to legislate that Development Assessment Committees are replaced by the proposed Planning Referral Authorities.

The view of the Property Council is that the Planning and Environment Act 1987 should be amended to require all councils to establish development approvals committees, either in the form of Planning Referral Authorities, or another form that complies with the Development Assessment Forum model.

This would greatly increase the productivity of councils, reduce timelines for development approvals and increase certainty within the planning system.

**Recommendations:**

3.9 That the Planning and Environment Act 1987 be amended to require all councils to establish a development approvals committee providing for the independent assessment of applications against policy.
3.10 That the DAF Leading Practice model be adopted to ensure a planning system that is efficient, transparent, and provides certainty and fairness.

3.11 That the Victorian Government allocates funds for the implementation of the DAF Leading Practice Model.

Victorian Planning Authority

The Property Council first advocated for the introduction of a Victorian Planning Authority in 2006. Since then a number of interested parties have discussed the concept of a body with the specific task of managing planning as a way of ensuring that there is a focus on Victoria as a whole.

The Property Council believes Victoria needs a body that is separated from the day-to-day political manoeuvrings and is focused on the long term delivery of a sustainable and efficient state. Planning decisions across Victoria are being delayed adding significant cost of building and development and deterring future investment.

A Victorian Planning Authority should focus on all areas of planning including:

- public transport;
- infrastructure;
- infill development; and
- urban renewal.

Delivering infrastructure in a timely manner, creating a competitive economic environment and encouraging appropriate development in infill areas are all part of implementing a strategic plan for Melbourne, the regions and Victoria.

The Property Council considers establishing a Victorian Planning Authority to be of the utmost importance. The delivery of Victorian Government policy and Melbourne's future liveability rests heavily on such a body being able to adequately and efficiently deliver the projects and infrastructure required to make the plan a reality.

The Coalition’s Plan for Planning outlines a broad range of governance initiatives in the planning and infrastructure sectors. On the surface, these initiatives are positive for Victoria and if achieved, will greatly benefit communities, industry and business alike.

The Property Council urges the Victorian Government to consider the interplay between the governance initiatives proposed and how these could best form a Victorian Planning Authority with the aim of delivering Victorian Government policy.

Recommendation:

3.12 The Victorian Government establish a single Victorian Planning Authority to manage the planning process and the overall implementation of key policy to ensure a coordinated approach across the whole of Victoria.
4. PROCESS

The planning process needs to achieve certainty, timeliness and consistency in the application of state and local policy. At the present time, this does not occur.

This is partly due to poorly drafted policy, slow decision making and decisions that are not consistent with policy.

Planning Scheme Amendments

The Property Council has identified the following issues with the planning scheme amendment process:

- DPCD seems to be confused about the process of ministerial authorisation. Is it a policy review or a VPP drafting assessment? Some authorisations take many months. The Property Council considers ministerial authorisation should occur within 28 days or be a deemed consent.

- The role of councils in the process currently does not provide certainty to other stakeholders and must be clarified. This undermines the credibility of the system and increases the cost and time spent reaching an outcome.

- The current planning scheme amendment process allows councils up to three opportunities to delay and/or abandon a proposed amendment. Councils often take the role of a determinant and not a participant, and currently have the power to abandon an amendment at any stage during that process. Councils are able to refuse to exhibit an amendment for which ministerial authorisation has been achieved.

- The Planning Scheme Amendment process is lacking set timelines for completion of procedures and this is resulting in councils taking inordinate amounts of time to move these amendments through the process.

- Amendments rejected by council are required to go through a hearing process. Too much time is being spent at hearings on issues which are a ‘no brainer’, when more important considerations should be the focus of discussion and intelligent debate.

The Property Council therefore, considers that the accountability for planning scheme amendment outcomes could be considerably improved by changes to the governance of the planning scheme amendment process. These changes should include:

- The Victorian Government to manage the process and councils to have a separate role as a party to the process.

- The governance provisions should specify set timelines and milestones for the completion of the amendment process for all parties involved.

If councils are to remain the gatekeeper to the planning scheme amendment process, an alternative approach needs to be developed. Proposals with strategic merit that are rejected by councils should be able to be reviewed by Planning Panels Victoria to determine whether or not there is strategic justification for the proposed amendment and hence it should proceed through due process regardless of local council opposition.

There is significant scope to streamline the Planning Scheme Amendment hearing process. Planning Panels Victoria has both the expertise and skills to determine the key issues to be addressed at any forthcoming hearing and to direct all parties to these issues as the main emphasis in submissions.

Directions hearings, which currently occur for most amendments, could be more actively used to sort out the issues with panels and give clearer directions as to matters to be addressed.
Recommendations:

4.1 That the Victorian Government streamline the Planning Scheme Amendment process through introducing statutory timelines and procedures for all stages including:

- Ministerial authorisation including delegated authorisation by Planning Panels Victoria
- Public exhibition
- Council reporting
- Referral agency comments
- Final reporting by Planning Panels Victoria
- Ministerial decision

4.2 That Planning Panels Victoria be responsible to:

- Review proposed Planning Scheme Amendments which have been rejected by council to assess the strategic merit of such an amendment and determine whether or not the amendment should proceed.
- Conducting Practise Day Hearings through which Planning Panels Victoria should identify the key issues to be addressed by submitters and the timelines in which submissions will be received.

Planning Approval Process

The view of the Property Council and the wider industry is that the planning approval process in Victoria is unnecessarily time consuming.

Research by the Productivity Commission released in May 2011, demonstrates that Victoria’s planning processing time is considerably longer than any other jurisdiction at an average of 124 days and median of 96 days in 2009-10.² (Appendix C)

Recommendations:

4.3 Administrative reform measures to increase productivity through the establishment of clear timelines and requirements that promote accountability from all parties must be considered as part of this review.

4.4 Introduce:

- Clear, consistent and transparent timelines to be adhered to by all parties including for post-approval processes which must have strict timelines enforced for permit holders, councils and other stakeholders.
- ‘Deemed’ provisions as used in other Australian states and territories as part of a broad system of Code Assessment.
- An independent review function within the planning approvals process as per the DAF model.
- Assessment of minor amendments ‘on the papers’ (or for example, amendments with three or fewer submitters) to streamline the process with the circulation of submissions and expert reports.

Requests for Further Information (RFI)

Current planning provisions specify that RFI should be made within 28 days of the responsible authority receiving the application.

Feedback from Property Council members consistently indicates that this function of the planning system is currently being abused by some local councils by way of:

- The nature of the information requested by local councils can be unwarranted and is often excessive leading to a severe impost in terms of cost and time to the applicant.
- The timeline available for local councils to seek further information under an RFI is excessive and often asked for at the end of the period which is sometimes extended to 49 days.

“Work expands to fill the time available” is the old saying. Frequently councils wait until the last few days of the statutory time to process an application and decide whether additional information is required. In order to improve practices and eliminate or reduce considerable delays to potential development as a result of these practices, councils should be required to streamline their handling of applications.

There should be a requirement that applications are registered within a reasonable time of receipt (for example, five days) and any further information is requested within a further five days.

In addition, requests for further information should be justified by demonstrating a clear nexus between the relevant planning scheme provisions and the information being requested.

Recommendations:

4.5 That criteria based on sound principles be established to guide Requests for Further Information to ensure that requests are not misused and have a clear nexus with relevant planning scheme provisions.

4.6 That a timeline of 10 business days be implemented to facilitate the speedy turnaround of Requests for Further Information.

Victorian Civil and Administrative Tribunal (VCAT)

The Property Council has long advocated for increased funding and resources to be allocated to VCAT. Without adequate funding and the right people employed to administer the functions of VCAT, the planning system will never operate at its full potential.

The Property Council believes VCAT’s Practice Court initiative is working well and provides a good example of recent initiatives that have sped up the planning approval review process.

Other key initiatives such as the Major Cases List have also assisted in reducing the time and cost burden associated with VCAT hearings. VCAT’s Major Cases List successfully demonstrated a practical mechanism for the reduction of administrative costs and the time taken for VCAT to hear major cases for planning developments worth more than $5 million. The introduction of the Major Cases List was hailed by those in the property, planning and legal industries as an enormous success.

Another initiative worth exploring, based on the United Kingdom’s planning system, is introducing assessment ‘on the papers’ for specific classes of applications. These could include small unit developments, single dwellings, a consideration solely of car parking provisions and certain heritage issues.

Recommendations:

4.7 That increased funding and resources be allocated to VCAT as a matter of priority.

4.8 That initiatives such as the Practice Court be considered more broadly, including the potential to hold hearings to identify key issues in advance of a matter being fully heard by VCAT.
4.9 That the submission process for simple cases heard at VCAT be reviewed and alternative functions such as the use of pre-submissions to determine key issues ahead of a case being heard be assessed in the context of improving productivity within planning processes.

4.10 That the Major Cases List be re-established on an ongoing basis and reviewed regularly to ensure that the criteria remain correct and reflective of the needs and challenges of both the market and the planning system.

4.11 That the Victorian Government ensure initiatives which simplify and streamline VCAT processes be continued on an ongoing basis, including the Major Cases List.

4.12 If the Major Cases List cannot be re-established, the Victorian Government must provide further resources for additional members and support staff for VCAT.

4.13 Where third party appeal rights remain, clearer criteria must be established to determine legal standing of a third party in the planning approval and VCAT processes.

4.14 That VCAT assess all applications through a triage-style process and review for:

· Scope for mediation.
· Reasonableness of grounds of third party appeals (to identify and minimise vexatious appeals).
· Demonstration of standing, for example, whether a party is potentially materially affected by the proposal or not. Applications that do demonstrate standing should be referred to a Practice day to give parties a chance to state their case in the interests of natural justice.

4.15 Minor applications should be dealt with ‘on the papers’ as per the UK system of the Planning Inspectorate.

4.16 That parties to applications for review be required to submit an outline of ‘matters in dispute’ to save time in hearings where the Planning Scheme provisions and other background material is presented. The hearing should simply focus on the matters in dispute where they can be agreed. Similarly, matters which are not in dispute should be outlined by the appellant for review by the respondent party or parties.

Third Party Appeal Rights

Victoria is the only state or territory in Australia with a broadly-based third party appeals system. There are many examples of inappropriate use of third party rights and the exercise of these rights on invalid or inappropriate grounds.

Despite provisions of the Planning and Environment Act 1987 requiring objectors to demonstrate how they are affected, this is not applied in practice. Councils do not effectively review objections to ensure that objectors comply with this requirement.

As a result of inappropriate use, the third party appeal rights process is widely regarded as dysfunctional and a systemic flaw. Any review of the planning system must examine, in detail, the time and cost impact, as well as the outcomes achieved, through the use of third party appeal rights in Victoria.

The introduction of code assessment would limit the number of objections allowable under the current planning framework and would overcome many of the issues associated with broad-based third party appeal rights.

Recommendations:

4.17 That the Victorian Government review the exemption from advertising and third party appeal rights across all zones and overlays.

4.18 That the negative impacts of third party appeal rights which include excessive uncertainty, delays and cost imposts, be combatted through the introduction of a clear, workable system of code assessment.
FURTHER INFORMATION

The Property Council looks forward to working with Ministerial Advisory Committee and the Victorian Government over the coming months and we would be pleased to discuss this submission further in detail and answer any questions the Committee may have.

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APPENDIX A

## APPENDIX C


### Table 7.9

<table>
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<th></th>
<th>2008-09</th>
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**Notes:**

- na not available.
- Figures for Queensland related to the 12 high-growth councils for which data is collected by the Department of Planning Infrastructure.
- Figures for Western Australia mainly relate to subdivision approvals by the Western Australian Planning Commission and do not include applications processed by local councils as that information was not collected.


### Table 7.11

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<th>Jurisdiction</th>
<th>Single Dwelling Residential</th>
<th>Multi-Unit Residential</th>
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**Notes:**

- Figures refer to DA times only and do not include Complying Development Certificates which have much shorter approval times. Data includes appeal times from a small number of councils. Final column is the weighted combination of component development types.
- The Victorian Department of Planning and Community Development3 conceded that median approval times were a more accurate representation of Victorian processing times because of the effect of outliers on average approval times. Examples of outliers were older completed applications being included in databases when updating computer systems by some councils and the incorporation of lengthy VCAT processing times in appeal times by some councils.
- Queensland figures relate to the 19 high-growth councils for which data is collected. Eleven of those 19 councils are included in the Commission’s benchmarking sample. Those eleven councils accounted for 66 per cent of the DA activity in the 19 high-growth councils.
- Total approval time based on 6 council survey responses. Component approval times based on 6 council survey responses and total approval time based on 6 council responses. Figures in first column refer to all residential developments. Total approval time based on 5 council survey responses. In the ACT, the DA approval clock starts once the application fee is paid following a completeness check of the application to determine whether all relevant information such as site plans have been supplied. Completeness checks look between 2 to 3 days on average in 2009-10. In other jurisdictions, the DA clock starts when the application is first submitted. ACTPLA does not collect DA data by use, rather the data is collected on either a merit or impact assessment back logs. The duration of appeal is not included in the approval times shown for the ACT. The duration of appeals is not included in the approval times shown for the ACT.  
- This is the weighted average of the individual development type components.

**Sources:** PC State and Territory Planning Agency Survey 2010 (unpublished); PC Local Government Survey 2010 (unpublished); PC estimates.