



Master Builders Association of Victoria

Submission - VicSmart: A New Planning Permit Process for Victoria

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A SIMPLER PLANNING PERMIT PROCESS

Master Builders welcomes the release of the discussion paper *VicSmart: A New Planning Permit Process for Victoria* as a first step toward a more streamlined permit process for straightforward planning applications across the State.

Victoria's overly complex planning system continues to act as a regulatory barrier and is a constant source of frustration for our members. Requiring a single process for assessment that is not proportional to the nature of the proposal, compounded by inconsistencies and delays in decision-making across municipal boundaries makes navigation of the system very difficult, and often requires the engagement of a consultant.

Planning delays affect the operations of the building industry in many ways. Uncertainty about when and what will ultimately receive planning approval regularly translates into the following additional business costs and inconveniences, including:

- Quoting and requoteing projects (multiplied by the number of builders tendering);
- Scheduling issues about commencement and how this will integrate with other contractual commitments;
- Scheduling issues with sub trades (eg. Carpenters, bricklayers and concreters);
- Servicing credit;
- Keeping labour on hand;
- Project redesign;
- Engaging consultants to assist in the application process; and
- Taxation (property, employment and local government rates and charges).

These economic inefficiencies are passed onto homebuyers, further inhibiting housing affordability and diminishing investment opportunities across the State. We need a planning system that enables investment and activity for the benefit of the community, rather than acting as an impediment.

Our members, many of whom are small businesses, have informed us of a range of delays they have experienced in the planning system including:

- 11 months for a decision to be made on a simple three unit sub-division in regional Victoria;
- Over 12 months and continuing for a two unit subdivision at a three unit site catering to elderly people looking to downsize to a larger sized unit on ground level only, despite no objections after advertising; and
- 14 months for two minor plan changes – the deletion of the carport and a slight wall reduction - to proceed through council and the Victorian Civil and Administrative Tribunal (VCAT).

These planning delays are supported by the then Department of Planning and Community Development's *Planning Permit Activity in Victoria Annual Report 2011/12* which found that only 63 per cent of the total 55,131 planning permit applications received were decided within the 60 day statutory time frame and an average of 127 days were required for a planning decision, a 3.9 per cent increase on 2010-11. The average planning permit takes almost four months to be assessed by a local council.

The Victorian Auditor-General's 2012 report *Performance Reporting by Local Government* and the Victorian Ombudsman's reports *Conflict of interest, poor governance and bullying at the City of Glen Eira Council* (2012), *Investigation into the alleged improper conduct of councillors at Brimbank City Council* (2009) and the current report investigating Darebin Council which has been referred to the Minister for Local Government reinforces broader issues surrounding the management and conduct of our councils, critical to the effectiveness of our planning system.

According to a report by Allens Consulting Group commissioned by the Victorian Competition and Efficiency Commission, the cost to businesses in Victoria arising from planning delays in 2009-10 alone was estimated to be \$183 million. This a significant cost burdening builders and homebuyers, at a time when our sector faces tough economic conditions, fuelled by weakening consumer demand and rising costs.

It is our community and economy that suffers in the process.

Our members have been advocating for straightforward, logical planning proposals to be dealt with through fast, simple processes and we support any system like VicSmart that acts as an express lane for minor planning applications.

However, we want to see greater moves toward the introduction of a privatised planning certification system, like South Australia, with greater opportunities for code assessed or as-of-right processes that would reduce the administrative burden on local councils.

We also want to see councils held more accountable for making timely and appropriate decisions, reducing the opportunities for the obfuscation that sees decisions made well beyond statutory time frames or not made at all. The Department must ensure adequate resources are dedicated at the implementation phase, to ensure VicSmart's success.

Further reforms would reduce the number of building activities requiring permits and dealing with permits in a more timely manner overall, to better support jobs and investment in the building and construction industry.

Radley de Silva
Chief Executive Officer

August 2013

OVERVIEW OF MASTER BUILDERS ASSOCIATION OF VICTORIA

The Master Builders Association of Victoria (“Master Builders”) is the peak body representing employers in Victoria’s building and construction industry. Our membership consists of more than 9,500 builders, subcontractors, manufacturers/suppliers and students. More than 50 per cent of our professional members are small businesses with an annual turnover of \$2 million or less.

Master Builders provides a range of services to members. Many of these would be cost prohibitive if not offered by a not-for-profit group that supports builders, particularly those in small businesses, including:

- Legal advice on matters such as preparing domestic building contracts and resolving building disputes;
- OHS advice, including delivering the Small Business OHS Consultancy Program in partnership with WorkSafe;
- Advice on the interpretation of building legislation and the technical provisions of the National Construction Code;
- Training services including Diploma, Certificate level and short courses designed to meet the needs of the various sectors within the industry;
- ALink, our go to support and advisory centre offering a range of services including placements, Industrial Relations and OHS advice for apprentices, apprenticeship service providers and those seeking a career in the building and construction industry to help reduce the attrition rate of apprentices and to raise the profile of the industry as a provider of rewarding career pathways;
- Our award-winning Virtual Office cloud-based system providing members access to services including e-contracts, e-permits and monitoring of CPD points;
- Assisting members in preparing applications to become registered builders.

Given our close contact on day-to-day basis with building businesses, from large to small, that deliver the homes, offices, warehouses, factories, workplaces, schools, hospitals, roads, transport and other social infrastructure for the metropolitan region, Master Builders is uniquely placed to comment on the issues raised in the *VicSmart – A New Planning Permit Process for Victoria* discussion paper.

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SUMMARY OF RECOMMENDATIONS

Recommendation 1	<p>Master Builders supports:</p> <ul style="list-style-type: none">i. the key features of VicSmart outlined in the discussion paper, including the twelve classes of application; andii. introducing new clauses into the Victoria Planning Provisions to implement the VicSmart planning provisions.
Recommendation 2	<p>Master Builders calls for the development of simplified, standardised checklists and other supporting tools by the Department of Transport, Planning and Local Infrastructure for permit applicants and council officers.</p>
Recommendation 3	<p>Master Builders calls for the development of a strong reporting regime to measure the impact of VicSmart on timelines and decisions in the broader planning system.</p>
Recommendation 4	<p>Master Builders calls on the State Government to:</p> <ul style="list-style-type: none">i. assist councils in addressing a shortage of qualified planning staff through adequate resourcing; andii. investigate the introduction of performance incentives or disincentives for underperforming local councils to encourage faster decision-making in the broader planning system.
Recommendation 5	<p>Master Builders calls for:</p> <ul style="list-style-type: none">i. An expedited VCAT appeals process for matters councils fail to decide within 10 business days;ii. Matters be heard by VCAT within four to six weeks to minimise delays;iii. Ensure decisions on VCAT matters are made at the hearing;iv. VCAT to supply applicants with a toolkit, to understand their requirements for having their VicSmart matter heard; andv. In the event VCAT is unable to meet these conditions, grant these applications automatic approval.
Recommendation 6	<p>Master Builders recommends further action by the State Government to improve the planning system through the introduction of:</p> <ul style="list-style-type: none">i. privatised planning certification; andii. 'as of right' processes.

KEY FEATURES OF VICSMART

Master Builders broadly supports the key features outlined in the VicSmart process including:

- The capacity to streamline approximately 8500 relevant planning applications per year;
- A shorter timeframe for determining relevant proposals - within 10 business days;
- Assessing relevant applications against specific pre-determined decision guidelines, giving councils and applicants more certainty about the information required and the matters considered in making a decision;
- Granting the power to Council Chief Executive Officers or their delegates to approve or refuse relevant permits to remove the politics from logical, straightforward applications;
- Having fewer steps in the permit process;
- Preventing councils from stopping the statutory clock to ask for further information ;
- Eliminating the need for external referrals;
- Exempting the applicant from advertising requirements;
- Removing the ability for third parties to have objection rights to these straightforward planning matters;
- Providing the applicant the right of review to VCAT, if they believe the decision guidelines were not met; and
- The twelve classes of application identified for inclusion under the relevant permit assessment process:
 1. Subdividing land to realign the common boundary between two lots (applies in residential, industrial and commercial zones, and the Capital City and Docklands Zones)
 2. Subdividing land into lots each containing an existing building or car parking space where the development has been approved under the planning scheme and has been completed in the past five years (applies in all residential zones excluding the low density residential zone - LDRZ, all industrial and commercial zones, and the Capital City and Docklands Zones)
 3. Subdividing land into two lots where the development on the land is approved under the planning scheme and the development has commenced (applies in all residential zones except the LDRZ, all industrial and commercial zones, and the Capital City and Docklands Zones)
 4. Constructing or extending a front fence within three metres of a street (applies in all residential zones except the LDRZ)
 5. Constructing a building or constructing/carrying out works with an estimated cost up to \$50,000 where the building and works are not within 30 metres of land (not a road), which is in a residential zone (applies in all industrial and commercial zones)
 6. Constructing a building, or constructing/carrying out works with an estimated cost up to \$50,000 (applies in the Capital City and Docklands Zones)
 7. Constructing a fence in an overlay (applies to the Environmental Significance Overlay, Significant Landscape Overlay, Design and Development Overlay)

8. Removing, destroying or lopping one tree (applies to the Environmental Significance Overlay, Vegetation Protection Overlay, Significant Landscape Overlay and Neighbourhood Character Overlay)
9. Subdividing land as in classes 1, 2 and 3 in this list, an application currently exempt from notice (other than a tennis court) or a solar energy facility attached to a dwelling in a Heritage Overlay
10. Subdividing land as in classes 1, 2 and 3 above and to construct a building or to carry out works in a Special Building Overlay
11. Displaying a sign if it is not within 30 metres of land which is in a residential zone, the sign is not internally illuminated, floodlit, electronic or animated and the total display size does not exceed 10 square metres (applies in all industrial and commercial zones, and the Capital City Zone and Docklands Zone)
12. Reducing or waiving the required number of car parking spaces (applies in all zones).

Master Builders also supports the introduction of new clauses 90/91/92/93/94/95 into the *Victoria Planning Provision* and all planning schemes to implement the VicSmart provisions, to set out the assessment process, classes of application, information requirements and decision guidelines for State and local applications.

Recommendation 1:	<p>Master Builders supports:</p> <ol style="list-style-type: none"> i. the key features of VicSmart outlined in the discussion paper, including the twelve classes of application; and ii. introducing new clauses into the Victoria Planning Provisions to implement the VicSmart planning provisions.
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SIMPLIFYING THE APPLICATION PROCESS

Whilst the VicSmart assessment process outlines three simple steps to a decision – ‘Submit, Assess and Decide’ – in order to assist council officers and applicants to meet the requirements outlined in the VicSmart process, Master Builders recommends the development of standardised checklists and other easy to use tools by the Department of Transport, Planning and Local Infrastructure to make the process even simpler and ensure consistency across municipal boundaries.

This information should be made available to applicants at the pre-application stage to help them ensure that they are meeting the information requirements and are aware of the decision guidelines so their application is eligible to be included for assessment.

Recommendation 2:	<p>Master Builders calls for the development of simplified, standardised checklists and other supporting tools by the Department of Transport, Planning and Local Infrastructure for use by permit applicants and council officers.</p>
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REPORTING

A strong reporting regime like the *Planning Permit Activity in Victoria Annual Report 2011/12* is required to measure the effectiveness of the VicSmart framework.

This needs to clearly articulate the impact the new process is having on timelines and decisions in the broader planning system, to ensure that further delays are not being added onto other planning applications not covered under VicSmart.

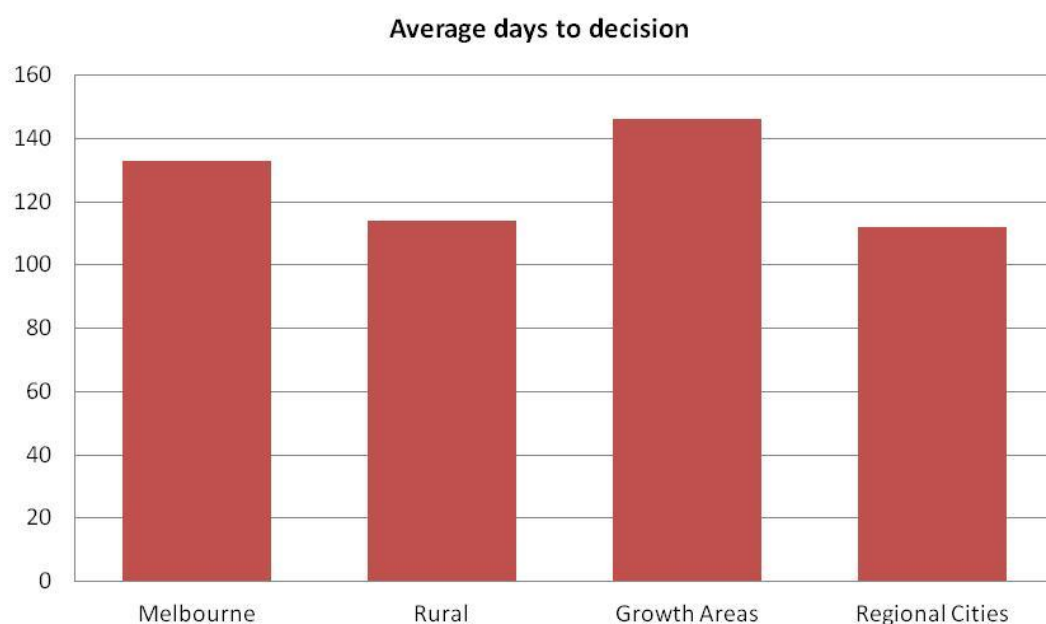
Recommendation 3:	Master Builders calls for the development of a strong reporting regime to measure the impact of VicSmart on timelines and decisions in the broader planning system.
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INCENTIVISING PERFORMANCE

Seeking planning approval in Victoria should be a relatively simple process. Unfortunately, for far too many builders, it is time consuming, unpredictable, unfair and costly.

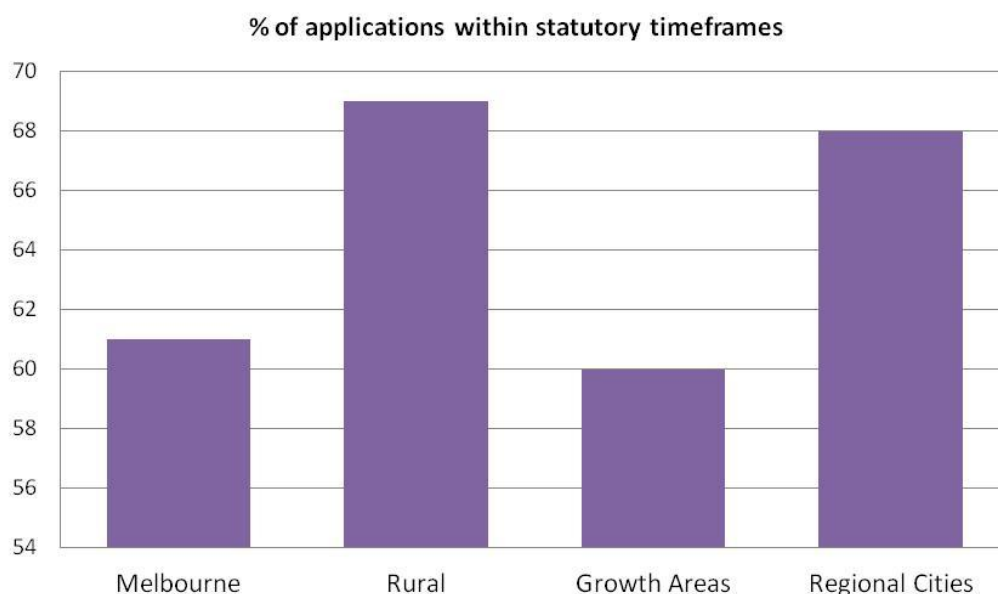
Planning delays continue to be cited as the most significant issue confronting our members, many of whom are small and medium size businesses, where cash flow represents enormous challenges and many councils simply fail to understand or acknowledge the financial issues that can arise from planning delays and indecision.

The Department of Transport, Planning and Local Infrastructure's (then Department of Planning and Community Development) *Planning Permit Activity in Victoria Annual Report 2011/12* demonstrates that across Victoria average turnaround times for decisions range from 133 gross days in the metropolitan region, 114 in rural areas, 146 in growth areas and 112 days in regional cities.



Source: *Planning Permit Activity in Victoria Annual Report 2011/12*

Decisions made within statutory timeframes in 2011/12 also vary from 60 per cent in the metropolitan region, 69 per cent in rural areas, 60 per cent in growth areas and 68 per cent in regional cities.



At the same time, the Department's own figures show that the costs of Victoria's planning system are increasing while the average number of days required to get a decision also rises. Councils are now charging more while also taking longer to make decisions.

Reforms of the planning system such as VicSmart and the implementation of new planning zones provides a key opportunity for action to be taken to ensure councils are making planning determinations in a more timely manner, not just for simple straightforward applications, but more broadly.

Currently, there is no system in place to either encourage councils to make timely decisions or to create disincentives to prevent excessive delays or failures to reach a decision at municipal levels. A shortage of qualified planning staff has been cited by councils as an obstacle to meeting statutory timeframes, particularly during peak periods. This must be addressed by the Department to ensure resourcing to implement VicSmart is adequate and minimises staff turnover.

Master Builders also recommends the introduction of a system for rewarding or penalising councils to ensure that planning permits are handled in an effective, timely manner, similar to the National Competition Payments system.

Recommendation 4:	<p>Master Builders calls on the State Government to:</p> <ul style="list-style-type: none"> i. assist councils in addressing a shortage of qualified planning staff through adequate resourcing; and ii. investigate the introduction of performance incentives or disincentives for underperforming local councils to encourage faster decision-making in the broader planning system.
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APPEALS TO VCAT

Master Builders understands that VCAT is looking to introduce a streamlined process to deal with VicSmart matters where councils have failed to make a determination within 10 business days, with decisions to be made at the hearing.

The slowdown in planning decisions being made within statutory timeframes, as reflected in the Department's own figures, has seen the percentage of applications subject to review at VCAT increasing in the metropolitan area to 9 per cent. This has resulted in the tribunal being involved in more planning applications than any single council in Victoria.

Involving VCAT at this stage of VicSmart matters will increase this further and be of limited benefit unless these matters can be heard in a relatively short time frame.

We believe this option could only be considered, if the following conditions can be met:

- An expedited VCAT appeals process for matters councils fail to decide within 10 business days or reject
- Any such matters to be heard within four to six weeks to minimise delays
- Ensure decisions on VCAT matters are made at the hearing; and
- VCAT to supply applicants with an easy-to-understand toolkit, outlining what is required of them to have their VicSmart matter heard at the tribunal.

In the event that VCAT is unable to meet these conditions, Master Builders recommends these applications receive automatic approval, rather than proceeding to VCAT.

Recommendation 5:	<p>Master Builders calls for:</p> <ol style="list-style-type: none">i. An expedited VCAT appeals process for matters councils fail to decide within 10 business days;ii. Matters be heard by VCAT within four to six weeks to minimise delays;iii. Ensure decisions on VCAT matters are made at the hearing;iv. VCAT to supply applicants with a toolkit, to understand their requirements for having their VicSmart matter heard; andv. In the event VCAT is unable to meet these conditions, grant these applications automatic approval.
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FURTHER REFORMS

Master Builders commends initiatives such as VicSmart and planning zones reform to address issues plaguing the planning system, however we need to see this taken further to consider the introduction of a privatised planning certification system with greater opportunities for code assessed or as-of-right processes that would reduce the administrative burden on local councils and reduce the number of building activities requiring permits overall.

Introduce privatised planning certification

Privatisation has been an effective measure for building surveying. Victoria's planning laws were changed in 1994 to allow private building surveyors, as well as council surveyors, to issue building permits, carry out statutory inspections and approve occupancy certificates for residential and commercial building projects. This has improved the timeliness and service provided to the building industry and its clients.

Other jurisdictions such as South Australia, New South Wales and Queensland have all set a precedent for private certification. South Australia for example, has a two tiered system for achieving development approval:

1. Building rules consent – the technical aspect of building the house has had private certification for many years and operates effectively; and
2. Planning approval - this achieved private certification earlier this year for applications under their new Residential Code. The outcomes of this for planning is too early to tell, but

Providing there is proper scrutiny over the process, this would offer little risk to the State Government to introduce.

As of right developments

Encouraging more efficient land use through multiple occupancy development in key areas, or 'infill development', has been identified as a key strategy to address the issue of limited availability of housing stock in established suburbs.

One of the most effective ways to achieve infill development is to create responsible 'as-of-right' development zones around principal activity centres and major public transport networks, with priority given to the construction of dual occupancy, low-rise town houses, apartments and other forms of medium density housing.

Master Builders recognises that a strong policy on as-of-right infill development zones is an area that is fraught with sensitivity, however removing red tape in the planning system is critical to reducing the cost of housing and encouraging efficient land use.

Recommendation 6:	Master Builders recommends further action by the State Government to improve the planning system through the introduction of: <ol style="list-style-type: none">i. privatised planning certification; andii. code assessed or 'as of right' processes.
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