



Australian
Institute of
Architects

Australian Institute of Architects

Victorian Planning Provisions Review

**Submission to
Victorian Planning
System Ministerial
Advisory Committee**

August 2011

SUBMISSION BY

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PURPOSE

- This submission is made by the Australian Institute of Architects (the Institute) to the Victorian Planning System Ministerial Advisory Committee.
- At the time of this submission the Executive of the Institute is: Brian Zulaikha (National President), Shelley Penn (President-Elect), Karl Fender (Immediate Past President), Hamish Lyon and Paul Berkemeier.
- The Victorian Chapter Council is: Robert Puksand (President), Karl Fender (Immediate Past President), Jose Alfano, Ingrid Bakker, Tony Battersby, Callum Fraser, Chris Harty, John Henry, Thomas Jordan, Alex Nock, Wojciech Pluta and Shelley Roberts.
- Members of the Victorian Urban Design Policy Working Group who contributed to the development of this submission are: Stephen Axford, Jon Clements, Sarah Hobday-North, Rowan Opat, Ben Puddy, Robert Puksand, Ivan Rijavic, Simon Wallan and Dr Marcus White.
- The Chief Executive Officer is David Parken and the Victorian Chapter Manager is Alison Cleary.

INFORMATION

- ***Who is making this submission?***
 - The Australian Institute of Architects (the Institute) is an independent voluntary subscription-based member organisation with approximately 11,000 members, of which 2,500 are Victorian.
 - The Institute is the peak body representing architects in Australia.
 - Incorporated in 1929, the Institute is one of the 96 member associations of the International Union of Architects (UIA) and is represented on the International Practice Commission.



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Executive Summary

Whilst some aspects of the Victorian planning system are working well, this report identifies a number of areas requiring urgent attention. Any changes to the planning system or Victorian Planning Provisions stemming from this review need to enhance the coordination between levels of government and ensure that planning policy is applied consistently across Victoria.

Specific recommendations in this submission are:

2.2 The State Government should continue to provide easy access to digital copies of planning policies, maps and data via the web, and continually explore opportunities to extend public access where possible.

3.1 Victoria should continue to implement the Leading Practice Model for Development Assessment (DAF Model) and its recommendations for a planning system that provides for improved decision making in development assessment.

4.1 The objectives for planning in Victoria should be amended to include reference to high quality design as proposed in the 2009 draft Planning and Environment Bill, or similar;

4.2 The twelve principles of the Victorian Urban Design Charter should be included in the State Planning Policy Framework;

4.3 Urban planners should be supported in their promotion of design by measures such as Design Review Panels proposed by the Office of the Victorian Government Architect (OVGA) - extended to provide a review function for any public or private development proposal across the State;

4.5 DPCD in consultation with OVGA should develop an extensive list of exemplar projects of varying scales across all municipalities to be published on DPCD website.

5.1 Strategic planning and urban design must remain the primary techniques for actively defining the future form of urban areas;

5.2 The Institute does not support changes to the Urban Growth Boundary or expedited processes for fringe land release;

5.3 The Planning System should start from the premise of guiding development to where it is needed and away from sensitive areas;

5.4 Development controls should be defined through integrated plans expressed in terms of three-dimensional massing volumes;

5.5 As a priority, structure plans for activity centres need to be expressed in three dimensional form so that meaningful decisions can be made by a wider array of stakeholders.

6.1 Strengthen the role of strategic planning and increase the design resolution within strategic plans to simplify compliance and limit later grounds for objection or review;

6.2 Once the structure planning process sets development principles and performance measures, applications within this envelope ought to be granted as-of-right approval;

6.3 Third party objections should be lodged on a standardised form that constrains objections to issues of strategic plan compliance;

6.4 Where there are clearly defined objectives and tests contained within a structure plan, planning assessment requires professional expertise alone without the intervention of local councillors;

6.5 The Institute supports the creation of a single integrated and transparent planning authority for Melbourne projects of metropolitan significance, particularly within major transport corridors.

7.1 The environmental performance of the building fabric is best addressed through the building code and assessed by building surveyors as part of the building permit process, rather than as part of the planning process;

7.2 The establishment of solar “easements” should be investigated as a discretionary control available to councils in areas outside of activity centres and away from transport corridors;

7.3 The planning system can provide strong tools for planning authorities to promote and ensure sustainable communities and urban form, based on issues such as transport, accessibility, development densities and water management;

7.4 *The planning system must give priority to environmental considerations such as orientation, density and materials.*

8.1 Where a substantially intact and consistent streetscape has an existing character that can be defined in detail and is deemed worthy of protection, this should be the subject of a neighbourhood character overlay specifying the allowable limits of development and change;

8.2 Conversely, where neighbourhood character is inconsistent or poorly defined, general protection on the basis of character or style should not apply. If there is a desire to limit development, this should be addressed through an open strategic limitation balanced against state policy for densification;

8.3 References to existing and proposed building styles and character should be removed from Municipal Strategic Statements and ResCode;

8.4 The Institute strongly supports a revamp of the Heritage Overlays in the planning system to not include buildings which offer little or no contribution to a heritage streetscape;

8.6 Planning applicants should be able to engage an independent heritage advisor (from a list of approved Heritage Advisors formulated by DPCD) to assess the planning proposal prior to submitting an application.

9.1 A request for additional information should not set the planning clock back to day one without justification;

9.2 The current pre-approvals process could be formalised and strengthened by employing a two-stage approvals process, ensuring that senior planning staff give in-principle approval to a concept design before the final approval of the more detailed design.

1. Introduction

The Australian Institute of Architects (the Institute) continues to be highly supportive of the ongoing efforts of the Victorian Government to deliver improved processes and outcomes associated with the Planning system.

The Institute's primary concerns associated with the Planning system continue to be focused on the sentiment expressed by its members that the current development assessment system is not meeting efficiently expectations, resulting in lengthy delays, and additional compliance costs adding to the cost of development.

The Institute is an independent national member organisation with more than 11,000 members across Australia and overseas. 2,500 of these are based in Victoria. The Institute exists to advance the interests of members, their professional standards and contemporary practice, and expand and advocate the value of architects and architecture to the sustainable growth of our communities, economy and culture. The Institute actively works to maintain and improve the quality of our built environment by promoting better, responsible and environmental design.

This submission was produced by the Victorian Chapter of the Institute through contributions from the Institute's Urban Design Committee, Large Practice Forum and Small Practice Forum, after consulting more generally with the entire Victorian membership body. The document has also been benchmarked against the Institute's national urban design and planning policies and the Victorian Chapter has consulted with other state chapters to gain insights from other jurisdictions.

This submission will be structured according to a number of themes that have emerged during the consultation process. Under each there will be a short explanation of the issue as seen by members of the Institute as well as a more detailed discussion of the theme. One or more recommendations will conclude each theme. The recommendations form the executive summary at the head of this document.

2. The Victorian Planning System: What works well

The Victorian Planning Provisions are a very positive aspect of the planning system. The central coordination of planning ensures consistency across the entire state and allows practitioners to easily work between municipalities. The common approach to zoning ensures clarity and allows state policy to be applied in an understandable way relatively quickly.

The ease of access to information in digital form is strongly supported, and any initiatives that extend access should be supported. The centralised repository of planning policies on the DPCD website ensures that the most up-to-date information is always available and dependable. The mapping resources, both in web form and digital GIS formats set Victoria apart from other states and quickly help to explain the spatial relationships that are crucial to effective planning and design.

The operation of clauses 54, 55 and 56 (ResCode) work moderately well for small-scale, low-impact developments. The structure of objectives, standards and guidelines are clear and should continue to be a core element of the planning system, subject to some specific changes detailed in later sections of this submission. As a prescriptive adjunct to planning schemes, ResCode is an effective document in detailing acceptable outcomes. ResCode provides certainty in its requirements and the mechanisms for varying the requirements on merit, while somewhat involved, are effective.

Recommendations:

2.1 Whilst some aspects of the planning system are working well, there are many shortfalls that require urgent attention. Any changes to the planning system coming out of this review should enhance the coordination between levels of government and ensure that planning policy is applied consistently across Victoria.

2.2 The State Government should continue to provide easy access to digital copies of planning policies, maps and data via the web, and continually explore opportunities to extend public access where possible.

3. Streamlining Planning Assessment Processes

Issues:

- *The Planning Application/assessment process is too long*
- *The Planning Application Appeals (VCAT) process is too long*
- *Level of detail required for an application / incongruity between size of project and requirements for submission (multi-million dollar developments sometimes require less information than a \$100,000 residential extension, and are approved sooner)*
- *Extreme unpredictability of the process*
- *Clauses 54, 55 and 56 (ResCode) provides too much discretion for the responsible authority, particularly in developed areas, resulting in unnecessary disputes*
- *Third party objections should be limited to more specific planning issues or procedural errors*

Victorians need cities and towns that are sustainable and liveable. An effective and efficient planning approval system is crucial in avoiding wasted time and effort. Much of the Institute's concern with planning applications is the impact of wasted effort, and its cost to the community.

Overall, the current development assessment system is not working efficiently, resulting in lengthy delays and additional compliance costs adding to the cost of development eventually approved. The problems of an inefficient process are exacerbated by a lack of consistency between local government area planning schemes.

In 2005, the Development Assessment Forum — consisting of representatives from the three levels of government, the development industry and related professional associations, including the Institute — produced the *Leading Practice Model for Development Assessment (DAF Model)*, designed to promote efficient, effective and nationally-harmonised development assessment systems across Australia. The model is attached as Appendix 1.

We encourage the Victorian Government to continue to move toward the implementation and adoption of the DAF model. As one of the key stakeholders and contributors to the DAF process and Better Decisions Faster initiatives, the Institute has expressed the view that the planning system at its basis must deliver effective, timely, transparent and efficient outcomes.

Given this position, we also acknowledge the strength of the Current Performance Based Victorian Planning Provisions (VPPs) and the demonstrated advantages to innovation in design outcomes in Victoria since the introduction of the New Format Planning Schemes.

The Institute believes there is scope within the current Planning and Environment Act and the VPP System to accommodate the incorporation of the DAF assessment streams without requiring a complete overhaul of the Act.

The benefits of these changes to the system are seen as potentially significant and that based on the fact that the entire State will have a single **Integrated Development Assessment System** for all development applications.

In addition, the need for Planning Scheme Amendments associated with master planning, minor changes in land use and variation to local built-form controls have generally been all but eliminated as part of a separate process outside of the development application assessment.

The Institute is confident that Victoria could benefit substantially from the introduction of a uniform and standardised development assessment framework in the aid of providing for improved decision making.

Recommendations:

3.1 Victoria should introduce the Leading Practice Model for Development Assessment (DAF Model) as a uniform and standardised development assessment framework to provide for improved decision making.

4. Good Planning must include Good Design

Issues:

- *There is currently no specific objective in the Victorian Planning Provisions that promotes design quality;*
- *The term “Good Design” is used in a fragmented manner within the current planning system, but not defined;*
- *The design merits of planning applications are currently often assessed by individuals with limited design training;*
- *There are limited policy requirements for processes that support good design outcomes, such as design review panels.*

It is notable that the current objectives for planning in Victoria (as set out in Section 4 of the Planning and Environment Act) do not specifically refer to design quality. Architectural and urban design quality should be promoted and encouraged within planning assessment processes, and poor design must be challenged. The 2009 draft Planning and Environment Bill proposed more contemporary objectives for planning, referring to high quality design, sustainability and integrated planning. These have not yet been adopted.

While the Institute acknowledges the potential complexity of defining good design as part of a planning system, it is a necessary step to improve the current fragmented approach to design issues. The current fragmented approach reduces design to simple checkboxes. The Institute recognises design as a multidimensional activity that inherently requires synthesis between multiple, often competing, concerns, but this is not fully captured by the current planning system.

High level advice on design quality and the benefits of good design are available to State Government through the Office of the Victorian Government Architect (OVGA). This mechanism should be more directly incorporated into the VPP. The provisions of the Urban Design Charter is one notable example of a policy requiring stronger recognition.

Throughout the planning system, professionals who may not possess design qualifications are required to make *de facto* design decisions which have direct impact on applications. This reveals a need within the system to either identify specific roles for professionals with design training and continuous professional development to support these skills, or to provide support for planning professionals, for example through peer review processes such as the one proposed in the form of Design Review Panels. The Design Review Panel model proposed by Office of the Victorian Government Architect provides for a voluntary advisory service independent of the planning approvals process, similar to the design review function of the UK Commission for Architecture and the Built Environment (CABE). This Design Review Panel model could be extended to include private development applications and could potentially replace or offer an alternative to those being conducted at the municipal level.

DPCD, in consultation with OVGA, could develop an extensive list of exemplar projects of varying scales across all municipalities and which is then published on DPCD website. The website could encourage all participants in the planning process — individual applicants,

developers, planning consultants, planning officers — to review details provided of the projects and better understand the merits that gave them status as exemplars.

Recommendations:

4.1 The objectives for planning in Victoria should be amended to include reference to high quality design as proposed in the 2009 draft Planning and Environment Bill, or similar;

4.2 The twelve principles of the Victorian Urban Design Charter should be included in the State Planning Policy Framework;

4.3 Urban planners should be supported in their promotion of design by measures such as Design Review Panels proposed by the Office of the Victorian Government Architect (OVGA) - extended to provide a review function for any public or private development proposal across the State;

4.4 DPCD, in consultation with OVGA, should develop an extensive list of exemplar projects of varying scales across all municipalities to be published on DPCD website.

5. Planning for a Changing City

Issues:

- *The macro-scale urban form of metropolitan areas cannot be left to local interests or pure market forces;*
- *The planning system displays a bias towards greenfield developments in outlying areas, promoting the expansion of the city;*
- *The planning system poorly facilitates change because it is premised on a preventative framework, which is particularly apparent in the densification of traditionally low rise communities;*
- *Structure planning for intensified development is typically controlled through two-dimensional zone based maps, rather than three-dimensional volumes with support for diverse mixed uses.*

The planning system, more specifically strategic planning and urban design, plays a vital role in shaping the urban realm in the interests of the entire community. It is a proper function of planning to set processes for deciding where change is required, where limits should be placed on development and what controls are suitable for achieving the maximum benefit for the whole state. It is not sufficient to leave decisions with metropolitan and state-wide significance to individual developers and the market nor to local communities in isolation. The Institute recognises the need for urban design to guide the evolution of cities and towns in the public's long-term best interests while responding to cultural values and community expectations, as set out in the Institute's national urban design policy.

Currently the planning system provides extensive support for opening up residential land supply on the fringes of the metropolitan area. The Institute is concerned by moves to extend the Urban Growth Boundary and expedited processes for land release administered by the Growth Areas Authority. We believe the continued expansion of urban areas into their hinterlands is unsustainable. These growth areas usually have poor access to transport and community facilities, result in greater carbon emissions and resource use, and cause the loss of arable land which in the longer term potentially threatens food security.

In contrast, the current planning system provides comparatively less support for encouraging change in existing metropolitan areas. There are fewer and less effective policy tools at the disposal of government authorities to promote increased densities in areas with high levels of amenity and accessibility. To manage the city's growth, the current planning system has relied upon policy-based controls a restrictive control mechanism. It is predicated on a preventative framework designed to stop bad development rather than encourage good outcomes. This inevitably leads to least-worst outcomes rather than highest and best public and private benefit.

The planning system should start from the premise of guiding development to where it is needed and away from sensitive areas. This assessment needs to be made on a metropolitan-wide basis, balancing community desires and market demand with factors such as access to high quality transport and amenities, employment opportunities, heritage and

environmental values. The Institute supports the concept of three levels of change: go/no-go/incremental change. This will distinguish between areas requiring active coordinated support for intensification, areas that should be excluded from significant change and areas that will change slowly as opportunities emerge.

Instead of map-based zoning, controls for urban development should be integrated plans expressed in terms of three-dimensional massing volumes. It would be advantageous to effectively pre-design whole neighbourhoods and centres for allowable building heights, density and lot coverage. This would minimise the unpredictability of the process and more clearly communicate the intentions and benefits of planning strategies to the public, developers, practitioners and local authorities. As a priority, structure plans need to be expressed in three dimensional form so that meaningful decisions can be made by a wider array of stakeholders.

Recommendations:

5.1 Strategic planning and urban design must remain the primary techniques for actively defining the future form of urban areas

5.2 The Institute does not support changes to the Urban Growth Boundary or expedited processes for fringe land release.

5.3 The Planning System should start from the premise of guiding development to where it is needed and away from sensitive areas.

5.4 Development controls should be defined through integrated plans expressed in terms of three-dimensional massing volumes

5.5 As a priority, structure plans for activity centres need to be expressed in three dimensional form so that meaningful decisions can be made by a wider array of stakeholders.

6. Balancing state and local planning roles through integrated strategic planning

Issues:

- *Strategic plans often remain abstract or incomplete future visions, limiting stakeholder engagement and leading to contested planning processes;*
- *Planning decisions in some municipalities are based on local politics rather than good planning process or professional expertise;*
- *State policy development outcomes can be impeded by minor objections;*
- *The various planning authorities' roles and responsibilities are unclear and overlap, and no authority is responsible for state significant developments and corridors, necessitating ad hoc ministerial intervention;*

Everyone benefits from a clear and meaningful expression of the future vision for urban areas. The DAF Model calls for 'effective' policy development linked to objective rules and tests reflecting policy intentions, or, where not possible, supported by specific policy objectives and guidelines for decision makers. Strategic plans can provide a framework for development opportunities within nominated areas, however many plans are limited by their abstract nature. Many stake-holders in the planning process find these technical documents difficult to engage with. Highly contested development can be linked to this uncertainty, as each stakeholder interprets the vision to suit their own interests. To clearly define a shared vision, design resolution in strategic plans needs to be increased. Detailed meaningful strategic plans clarify development opportunities and community expectations, and simplify compliance and minimise later objections or review.

Local communities need to be more involved earlier in the planning process so their voice is incorporated at a stage where a significant vision can be set. Again, the DAF Model encompasses policies determined by elected representatives through consultation with the relevant community, but with the benefit of professional and expert advice. This also ensures communities can be made aware of state policies, particularly the need for densification in some areas. To achieve this, strategic plans need design resolution and visualisation using 3D representation, for example, to a level where meaningful discussions can occur, to move beyond unfounded fear of densification to discussions of potential benefit such as improved streetscapes, new community facilities and improved retail vitality.

Specific changes to the planning system are required to ensure the strategic planning process serves everyone. Once the negotiated structure planning process sets development principles and performance measures, planning applications fitting within this planning envelope could be granted as-of-right approval – the 'tracks' based assessment described in the DAF Model.

The current situation, where minor objections impede state policy supported developments, would be avoided. Appeals would be restricted to strategic plan compliance issues and be assessed by planning officers. A more comprehensive planning assessment and review of the relevant strategic plan — including community consultation as deemed relevant by the responsible authority — would be required if a planning applicant wished to exceed the limits set by a structure plan. Objections would be limited to specific comment on planning matters alone and how an application complies with the strategic plan. Applying a "form" standardised across all municipalities for all project types allows detached consideration of the *nature*, rather than just the *quantity*, of objections and minimises issues with little planning relevance to the project under assessment.

Planning approval needs to be depoliticised. As key local democratic representatives, councillors are a central part of setting the direction of municipal strategic plans but ought not make individual project approval decisions. When structure plans contain clearly defined tests and objectives, planning assessment requires professional expertise alone to apply the consistent policy and objective rules and tests the DAF Model envisages.

However, the concerns of local councils and communities must be balanced with the need for coordinated metropolitan-wide planning, which is currently a confusing array of authorities, state agencies, local government, priority development panels, GAA, URA, DPCD and the possibility of ministerial intervention. As metropolitan planning is significant to the whole state, it is fitting the state government be more directly involved with ensuring cross-jurisdictional coordination of corridors of development, such as transport corridors. The Institute supports the creation of a single integrated and transparent planning authority for significant metropolitan Melbourne projects, particularly within major transport corridors. This new authority would ideally incorporate the existing DPCD initiatives at activity centres, GAA, Priority Development Panel, URA and Melbourne CBD planning into a single Metropolitan Planning Authority.

The separation of agencies providing roads and public transport — with overlapping responsibilities and incomplete coordination — has contributed to inefficient planning of land use, transport and services across municipal boundaries, especially in growth areas and contested inner city transport nodes. Amalgamating a Metropolitan Planning Authority with VicRoads, VicTrack and the Public Transport Authority would ensure meaningful integrated transport and land use. The authority would require high level coordination with key government agencies such as Transport, BDI, DEECD and DSE and preferably report directly to the Minister. In identified, state significant areas, the authority would have a permit approval authority above (nominally) \$20 million in consultation with the respective Local Authority. Incorporating VicRoads and the URA gives this authority direct development capabilities and allows government investment to further the application of state policy. This authority would provide better coordination, consistency and transparency in metropolitan planning with a long-term development horizon in the interests of all Victorians.

Recommendations:

6.1 Strengthen the role of strategic planning and increase the design resolution within strategic plans to simplify compliance and limit later grounds for objection or review.

6.2 Once the structure planning process sets development principles and performance measures, applications within this envelope ought to be granted as-of-right approval;

6.3 Third party objections could be lodged on a standardised form that constrains objections to issues of strategic plan compliance;

6.4 Where there are clearly defined objectives and tests contained within a structure plan, planning assessment is properly a task requiring professional expertise only without the intervention of local councillors;

6.5 The Institute supports the creation of a single integrated and transparent planning authority for Melbourne projects of metropolitan significance, particularly within major transport corridors.

7. Planning for Environmental Sustainability

Issues:

- *Planning requirements for increased environmental sustainability of the building fabric are better addressed through the building code.*
- *Currently there is no recognition of existing or implied solar access rights for roof areas within the planning system.*
- *Strategic planning for densification is insufficiently aligned to environmental imperatives*
- *The planning system has insufficient mandatory requirements for the creation of environmentally sustainable urban form*

The Institute strongly supports initiatives to continuously improve the environmental performance of Australian buildings. We support the intentions of proactive councils in attempting to improve the performance of communities in their municipalities. However, to introduce ESD and energy requirements at planning stage to improve the performance of the individual buildings is not the most appropriate method of achieving this. VCAT has made clear that the impositions of standards for ESD requirements over and above the BCA requirements is 'lawful but not appropriate', and we agree. This generally requires additional work too early in the design process for it to be effective, and incurs additional fees that increase time and compliance costs.

It is important to avoid duplication of other statutory requirements, particularly the Building Code of Australia.

This points to the need to clearly define which sustainability requirements are best dealt with through building codes and those that need consideration during planning. Matters covered by other statutory requirements — BCA and Australian Standards — ought not be replicated in the planning permit assessment. The assessment of building performance is, and should be, the responsibility of building surveyors during the building permit process.

However, one key sustainability issue that does need to be addressed through the planning system is overshadowing. This is particularly a problem for solar thermal heating units and private photovoltaic energy generation, which both require direct sunlight year-round to operate. Currently there is no recognition of existing or implied solar access rights for roof areas within the planning system. Conversely, in recognising and protecting solar access careful consideration is needed to ensure adjoining properties are not unduly restrained from development potential. In areas outside of activity centres and away from transport corridors, (where other priorities are likely to outweigh solar access issues), the establishment of solar access rights could be investigated as a discretionary control available to councils. We note that the Victorian Law Reform Commission considered the concept of 'negative easements' similar to that of light easements for this purpose. It concluded that the legal concept of easement would not be adequate and that restrictive covenants would be better suited, but this requires the covenant to be placed by the owner of the subject land on the land before

transfer. The Commission recommended, as does the Institute, further consideration of the public planning framework for this purpose¹.

The planning system has a strong role to play in improving the environmental performance of metropolitan regions. There is an important role for local and state government in creating sustainable communities through improved coordination between infrastructure, land use and transport. The Green Building Council of Australia (of which the Institute is a member) has begun the process of defining a Green Star system applicable to communities, which can provide guidance about the range of initiatives that may form part of these statutory controls.

The strongest tools available to local government are those already clearly associated with the planning system. Some of these include:

- Encouraging higher residential and employment densities in locations with better non-car transport access and limit growth outside of these areas.
- In highly accessible areas, lowering the parking requirement for developments mandated in Clause 52.06, stipulating an upper limit for parking spaces rather than a minimum requirement and allowing zero space allocations in appropriate locations.
- Supporting higher density housing models (such as terraces, townhouses and units) that can offer a high quality of life as alternatives to the resource-intensive detached suburban housing model.
- Providing a better distribution of retail opportunities by encouraging mixed land uses, to limit the need for lengthy travel for everyday needs.
- Encouraging higher levels of pedestrian and cycle use by making green travel plans mandatory for all new significant developments and communities.
- Requiring rainwater retention on site to limit peak stormwater flows and encourage reuse.

Any of these planning system based initiatives can promote sustainable communities and urban form without needing to validate the building fabric's environmental performance in the early stages.

Recommendations:

7.1 The environmental performance of the building fabric is best addressed through the building code and assessed by building surveyors as part of the building permit process, rather than as part of the planning process;

7.2 The establishment of solar access rights should be investigated as a discretionary control available to councils in areas outside of activity centres and away from transport corridors;

7.3 The planning system can provide strong tools for planning authorities to promote and ensure sustainable communities and urban form, based on issues such as transport, accessibility, development densities and water management;

¹ Page 30, Victorian Law Reform Commission, Easements and Covenants: Final Report, December 2010, Victorian Government Printer

8. Protecting and Enhancing Places

Issues:

- *The application of heritage significance and neighbourhood character is neither consistent nor informed*
- *Neighbourhood Character within ResCode is a discretionary assessment. It is common for all parties in the planning process to differ in their assessment of neighbourhood character. There is no objective way to assess conformance to this guideline. This guideline results in poor design outcomes.*
- *The administration and interpretation of Neighbourhood Character within the planning system can be improved.*

The subjective assessment of Neighbourhood Character, Streetscape Context and Heritage Overlays generally cause the least predictable outcomes through the planning process. These matters need serious reconsideration to avoid discretionary interpretations. The subjective nature of interpreting proposed and existing building styles frustrates the process of good design.

The administration and interpretation of neighbourhood character within planning system must be improved. A clear distinction needs to be drawn between the protection of specific existing character of neighbourhoods and the more general and ill-defined protection that requires interpretation of a preferred future character by planning officers. Where a substantially intact and consistent streetscape has an existing character that can be defined in detail and is deemed worthy of protection by suitable planning processes, this should be the subject of a neighbourhood character overlay which specifies the extent of the neighbourhood and clearly stipulates the limits of development and change. In all other circumstances with no consistency or singular character, or the boundaries of a neighbourhood cannot be defined, development controls on the basis of building style should not apply. Too often neighbourhood character is used arbitrarily to restrict development on the basis of taste. When development is to be limited, this should be done transparently and directly.

The Institute believes that policies and funding — at all levels of government — are inadequately delivering the potential benefits to the broader community of heritage conservation initiatives. It is important that more rigour is applied to listing heritage buildings and places, and that adequate funding and resources are available to assist owners of important structures. The assessment of heritage significance can be inconsistent or ill-informed — buildings in some municipalities are listed as significant when buildings of similar periods and styles remain unprotected in other municipalities. Heritage overlays can protect relatively ordinary old buildings in a decrepit state at the expense of well-designed, appropriately scaled new buildings that provide much better private and public amenity.

The Institute strongly supports a revamp of the Heritage Overlays in the planning system to remove inconsistencies where they protect buildings offering little or no contribution to a heritage streetscape. Even where a building's heritage significance is recognised, the usefulness and long-term viability of the structure (physical and financial) remain important

considerations. Heritage overlay provisions must be changed from a preservation role to one that recognises possibilities for living heritage and ongoing use. These provisions must ensure that where buildings are not individually important they can be demolished if reputable feasibility studies show that retaining or repairing a building is not feasible, and that a proposed replacement building would be of a higher quality and provide better amenity than the existing building.

Councils are often under-resourced to deal with the assessment of applications involving heritage considerations. Many have only one Heritage Adviser in their planning department and some of them work part time. The heritage advisers often cause significant delays or inconsistency to the processing of applications due to lack of availability or through rushed assessments. We recommend planning applicants be able to engage independent heritage advisers (from a list of approved Heritage Advisers formulated by DPCD) to assess planning proposals prior to submission. The assessment would be binding, so long as it is consistent with the relevant provisions of the local planning scheme. This would speed the application process up significantly in heritage areas and would result in more appropriate and more predictable development outcomes. It would also avoid the circumstances where council heritage advisers overrule the decisions or opinions of council planning officers.

Recommendations:

8.1 Where a substantially intact and consistent streetscape has an existing character that can be defined in detail and is deemed worthy of protection, this should be the subject of a neighbourhood character overlay specifying the allowable limits of development and change;

8.2 Where neighbourhood character is inconsistent or poorly defined, general protection on the basis of character or style should not apply. If there is a desire to limit development, this could be addressed through an open strategic planning process balanced against state policy for densification;

8.3 References to existing and proposed building styles and character should be removed from Municipal Strategic Statements and ResCode;

8.4 The Institute strongly supports a revamp of the Heritage Overlays in the planning system to allow the demolition of buildings which are in a serious state of decay or buildings offer little or no contribution to a heritage streetscape;

8.5 ESD performance outcomes ought to weigh strongly in any consideration of retention of buildings, particularly dwellings;

8.6 Planning applicants could be able to engage an independent heritage advisor (from a list of approved Heritage Advisers formulated by DPCD) to assess the planning proposal prior to submitting an application.

9. Improving Communication

Issues:

- ***Communication with councils is often poor, with spurious requests for further information that appear to be designed to reset the statutory time limit for a decision***
- ***Councils are required to conduct pre-application processes but are currently not held accountable for their interpretations***
- ***Planning decisions vary from one planner to the next depending on the planners understanding of the scheme***

Many of the issues with the planning system experienced by architects relate to poor communication with planning officers. There are specific changes that will increase the efficiency and consistency of the process for members of the Institute.

Members have reported that it is common to get a request for further information on a planning application just before the 30 day statutory limit for a decision. Often this information is on the drawing or it can be inferred simply by referring to other drawings within the application. Some information is minor and a call to the architect or applicant and a quick note on the drawings would solve the problem. The Institute proposes that requests for information not set the planning clock back to day one unless the planning officer can justify why it should do so.

The current system of informal pre-application meetings tends to be ineffective because planning officer comment, when given, is non-binding.

A suggested solution is to establish a two stage system (similar to NSW) that gives in principle approval to a concept design, followed by final approval of a more detailed design. This may avoid wasting time and money on an application which is never going to get approved, and provide all parties involved with more predictability.

Recommendations:

9.1 A request for additional information ought not to set the planning clock back to day one without justification;

9.2 The current pre-approvals process could be formalised and strengthened by employing a two-stage approvals process, ensuring that senior planning staff give in-principle approval to a concept design before the final approval of the more detailed design.

11. Conclusion

Whilst some aspects of the planning system are working well — the online planning tools in particular — this submission identifies many areas requiring attention, and suggests possible solutions.

Any changes to the planning system coming out of this review need to ensure that the coordination between levels of government are improved, as well enabling the planning policy to be applied consistently and aim for well-designed built form.

In order for there to be good planning that will cater for the changing needs of the State of Victoria and the City of Melbourne, the system must include and recognise good design. To ensure an improvement in strategic planning, the balance between state and local planning powers needs to be clear and even.

Other key outcomes for this review need to focus on ensuring that planning assessment processes are streamlined, through the continued implementation of the DAF Model.

The Institute appreciates the opportunity to present this submission, and we welcome the chance to further explore these issues with the Panel.

Appendix A: *Leading Practice Model for Development Assessment*
(DAF model)

Attached seperately