1. EXECUTIVE SUMMARY

The Victorian Division of the Urban Development Institute of Australia (UDIA Victoria) is a non-profit advocacy, research and educational organisation supported by a membership of land use and property development organisations, across the private sector and Victoria's public service. We are committed to working with both industry and Government to deliver housing, infrastructure and liveable communities for all Victorians.

UDIA Victoria welcomes the opportunity to be involved in, and respond to, the Review into Victoria's Building and Planning Approvals Process and Early Building Works Infrastructure. We consider this review both timely and necessary.

The planning permit system established under the *Planning and Environment Act 1987* (the Act) has become increasingly complex as a result of multiple amendments to the Act and planning schemes in a context of unprecedented pressure and development in Victoria.

To assist the Commissioner's inquiry, our submissions focus on four streams applicable to the scope of review. These are matters arising under:

- Growth Area Infrastructure Contribution (GAIC);
- Processing of permit applications and post permit delays;
- Statutory and non-statutory referral processes; and
- Connections.

Under these four streams, we examine the issues and provide recommendations and where appropriate, background information or case studies to provide additional context for the issue. We have focused on the higher order issues that can more readily be remedied in the short to medium terms and which have the potential to yield significant results.

We have been deliberately measured and considered in the recommendations to the key issues. A summary of these recommendations is outlined below.

2. SUMMARY OF RECOMMENDATIONS

2.1. Short term/ immediate actions

Issue Stream – Growth Area Infrastructure Contribution

1. Staff resourcing dedicated to processing of SPAs and SPA amendments could be expanded. Given the importance of SPAs to a development in the growth corridors, it is important sufficient staff are resourced and trained so SPA applications (and amendments) are processed in a timely manner. We respectfully suggest 4 weeks (20 business days) is sufficient time assuming the right amount of resourcing.

2. The matters requiring a SPA amendment should be reduced to free up resources for SPA applications – i.e. minor amendments should not require an amendment application – see below for detail.

3. The VPA has changed its 'payment due date' policy in the past few months to allow a payment due date to be the last day in the financial year in which a SOC is expected for a stage to minimise SPA amendment applications relating to payment due dates only. This policy can be expanded to allow a developer to notify the VPA if an expected SOC for a stage is delayed beyond the end of the financial year – in which case that payment due date can be paid in the following financial year without requiring an amendment application (this should only be allowed to occur once for each stages' payment due date and can be effected by way of a notification email to the SRO by 1 June of the relevant financial year).

4. An amendment should not be required in the following circumstances:

    - the area of an approved stage is split in 2 (e.g. approved stage 7 is split into stages 7A and 7B for delivery) provided all the GAIC for that stage (i.e. all the GAIC for approved stage 7) is paid by the due date; and

    - the areas of a title not subject to GAIC (i.e. SUZ or RCZ zoned land) should be able to be subdivided without needing a SPA amendment given this land is not subject to GAIC as long as any area being subdivided in the plan that is subject to GAIC is paid in accordance with the SPA.

5. The VPA could prepare and issue a public guideline setting out the above policies to provide developers with certainty as to when a SPA amendment is or is not required, as it could result in significant delays if a developer needs to seek VPA guidance on an ad hoc basis. This will also use up VPA resources better directed at processing SPAs.

6. The VPA guideline could also confirm the VPA current practice of allowing a balance lot after a stage is registered to be in the form of multiple super lots – e.g. the stage 1 plan registers stage

1 lots and 3 super lots A, B and C for example (rather than one balance lot A). This allows greater flexibility to developers and does not impact the timing of GAIC payments under an approved development plan.

7. The VPA policy may require a SPA to lapse if the SOC does not trigger GAIC by a certain time – given GAIC rates increase each year.

8. A solution to this issue is if a SPA is expected to lapse because the SOC for stage 1 will be delayed beyond the end of financial year, the developer should be able to notify the VPA and a new SPA is issued based on the GAIC rates for the following financial year and a payment due date at the end of the following financial year.

9. This will avoid making a new application and undertaking the entire process when the only change is the GAIC rates and first payment date.

10. Given the calculation of interest is a mechanical process and is based on the 10 year bond rate and balance of GAIC owing under a SPA, it should be relatively straightforward for the SRO to fully automate this process. It should not be dissimilar to the SRO's online duty calculator automatically calculating duty payable after entering a number of variables.

11. This online 'interest calculator' can be automated with an 'approved form' where a developer can simply calculate the interest automatically, pay this to the SRO and then upload the receipt of payment, the approved SPA and details of the stage paid together with the plan requiring G2 and G3 notices.

12. The SRO can then undertake a final check of the approved form before issuing G2 and G3 notices. We consider this could reasonably all be done within 5 business days rather than the current 4-8 week timeframe.

14. There are many other approved online forms for other GAIC processes so there should not be any reason why there cannot be one for the interest calculation and G2 and G3 process.

Issue Stream - Processing of Permit Applications and Post-Permit Delays

1. Prepare a checklist for classes of permit applications setting out the essential information in order to properly determine the permit application. This has the potential to avoid requesting further information or the extent of information by a council and ultimately assist in faster decision making.

2. Fully digitise the planning permit application and assessment process and provide technological support as part of the planning permit application process. This will increase the transparency of the assessment process and ensure statutory and non-statutory referral comments are available in real time thereby enabling the permit applicant to understand and respond to the comments more quickly. SPEAR provides a useful precedent for a fully digitised permit

application process, however we recommend the platform have the capacity to be remotely accessed from anywhere.

3. Establish a body of technical specialists including planners, traffic engineers, acoustic engineers, civil engineers (and the like) that councils can use to assess permit applications on their behalf as well as to certify post-permit subdivision plans and functional layout plans. We suggest this should be aligned with a new categorisation of planning permit applications into high value/ state significant, medium, and low value/ small.

   We recommend the following:

   - all state significant permit applications should be assessed by this body;
   - for all other applications:
     a. permit applicants can elect to have their permit application assessed by this body (with or without an additional fee);
     b. councils can elect to delegate planning permit applications to the body.

   We wish to be clear the purpose of this body is to expedite the planning permit assessment process and to ensure highly skilled professionals are assessing the substance of permit application and preparing the Delegate report. The ultimate decision about the permit application should remain with council. The intent is not to take the decision away from council but to provide expert assistance to councils where it is required or for councils that are under-resourced.

   This could be implemented in a number of ways:

   - establish this group within the Victorian Planning Authority;
   - establish an Office of Victorian Planner; or
   - establish an independent accredited panel of experts.

4. Provide ongoing training and mentoring to planning decision makers to assist them in properly identifying what further information is required in a timely manner before council advances the processing of the permit application and undertakes notice in order to upskill planners and build capacity across the team.

5. Prepare a Planning Practice Note to assist and guide planning decision makers and applicants in understanding the nature of information reasonably expected to be lodged with permit applications depending on the scale and type of planning permit application. We envisage it would be useful for any such guideline to address various categories or classes of use and development such as applications for subdivision in greenfield areas, applications for development in urban renewal areas or in infill environments. We say categories or classes given the same issues and matters Council is required to consider generally arise in similar types of development.

6. Prepare a Planning Practice Note for councils setting out and adopting a best practice approach to circulating draft permit conditions to the permit applicant at a reasonable time before Council formally determines whether or not to grant permit.

7. Prepare and review precedent or standard conditions to ensure conditions are uniform, consistent and appropriately imposed on any permit.

8. Provide ongoing education to councils about the form and content of permit conditions to ensure permit conditions are lawful, enforceable, reasonable and appropriate in the particular circumstance.

9. Provide ongoing education and supervision to decision makers to ensure timely, consistent, robust and transparent decision making when certifying plans and approving engineering plans including specifications for works required under the permit (or the planning scheme).

10. Provide ongoing education, mentoring and supervision to decision makers to ensure they are exercising their power under section 21 of the *Subdivision Act 1988* diligently, responsibly and in a timely manner.

11. Apply clear and consistent bonding rules for non-essential items (e.g. landscaping) to minimise Statement of Compliance/ settlement delays at the completion of a subdivision.

12. Introduce a Post Permit Approval List under the Planning and Environment List. The list would exclusively hear and determine post permit approval disputes arising under the *Subdivision Act 1988* (or the *Planning and Environment Act 1987*). The intent is the Tribunal will hear and determine these types of disputes expeditiously without the significant delay currently experienced by the developer industry having consequential adverse cost implications.

Issue Stream – Statutory and Non-Statutory Referrals

1. Prepare a Planning Practice Note for councils requiring non-statutory referral responses (whether they be internally or externally obtained) to be completed within 28 days of lodging the permit application with council and preferably before council undertakes notice of the permit application.

2. Fully digitise the planning permit application and assessment process and provide technological support as part of the planning permit application process. Please refer to details as noted above.

3. Introduce performance frameworks for referral authorities against the statutory timelines for responding to a referral.

4. Require ongoing reporting and monitoring against the performance framework.

5. Introduce incentives for good performers and disincentives for poor performers.

6. Streamline and reduce overall referrals by removing the small projects. For example, in many cases a simple two lot subdivision adjacent to a road managed by VicRoads should not require a referral to VicRoads and standard crossover design(s) could be applied to the new crossover.

7. Provide initial and ongoing education, training, mentoring and supervision building capacity for better and faster decision-making. Capacity building should also address a cultural and organisational shift to understand a core business of an authority includes acting as a referral authority in the planning permit process and ensure this role is discharged responsibly and efficiently.

8. Provide additional and/or dedicated resources including technological support.

9. Prepare and review appropriate precedent or standard conditions specifically for each of the relevant referral authorities to ensure conditions are appropriately imposed on any permit.

10. Provide ongoing education to referral authorities about the form and content of permit conditions to ensure they are lawful, enforceable, reasonable and appropriate in the particular circumstance.

Issue Stream – Connections

1. Citipower nominate a staff member to act as a client liaison so there is a single point of contact within Citipower.

2. Abolish the practice of providing "Rough Order of Cost" for works such as power undergrounding in favour of the distribution company providing an offer for works directly to the developer/builder up front.

3. The timeframe for works should include road management consent and soil testing. This must be organised and considered up front so that delays to works are avoided.

4. The following timeframes be enforced with respect to energy connections to brownfield development sites as set out on page 39.

5. Introduce a rating system for designers so better designers are prioritised.

6. In general, the Powercor internal review of processes has yielded results:

   a. In our view this process can be applied to other power companies (Ausnet and Jemena); and
   b. The improvements since the ESC Review need to be maintained, and built on, in the future.

7. The audit guidelines should clearly state what is in scope and what is out of scope of the audit. For example, a crack in a footpath should not be the cause of a fail during an audit given the footpath is not an asset a power company is responsible for.

8. Amend the Electricity Distribution Code to incorporate timelines and financial penalties for Underground Residential Distribution customers.

9. Broaden the scope of contestable services to enable increased use of accredited third-party resources.

10. Establish a standardised manual for designers and auditors, supported by ongoing training and new technology.

11. Introduce a sample auditing system to streamline the design and construction processes.

12. Prevent mid-stream (post-offer) changes to rules to ensure that projects that have already commenced construction are audited under the same rules that they were designed to meet.

2.2. Long term reform pathway

Issue Stream – Connections

1. Implement a standardised, regulated and transparent process with a transition phase to accompany any change in standards introduced by electricity businesses.

2. Introduce regulatory timeframes, enforced by financial penalties.

3. CONTENTS

4. CONTEXT

4.1. The Legislative Context – *The Planning and Environment Act 1987*

The planning and environment regime established under the *Planning and Environment Act 1987* and local planning schemes is increasingly complex. A significant part of this complexity is the frameworks for development contributions, GAIC and otherwise managing large scale growth, urban renewal and change in a time of unprecedented development. In this context, the broader development and planning community must together manage population growth, contribute to the economy and jobs, create affordable and accessible housing, improve transport, connect to communities and respond to climate change.

The way in which the planning regime interacts with other legislative frameworks affecting development in Victoria, including the *Subdivision Act 1988*, the *Aboriginal Heritage Act 2006*, the *Heritage Act 2007* and the *Environment Protection Act 1970* (to name but a few) also increases the complexity and regulatory burden on decision makers and the development industry.

In this complex legal environment, council decision makers are required to consider a range of disciplines and highly technical issues including advice from informal internal and external experts and statutory referral authorities when making decisions to grant a permit.

The culture of a council organisation and the ability of the individual planner (and planning team) to effectively communicate with each other, coordinate with other arms of the council, and communicate with the development industry more broadly varies significantly. This frequently adversely impacts the quality of decision making, the level of transparency of decision making, responsiveness in the decision making process and timeliness and the willingness on the part of decision makers to meaningfully negotiate with the development industry as part of an iterative and dynamic process.

Generally, there is also a lack of sufficient understanding on the part of councils about the drivers and imperatives facing the development industry. In this respect, there is often a disconnect between those who are exercising duties under the planning framework for the public benefit and those who are ultimately implementing and delivering development in Victoria. Much can be done to improve council's understanding about the development process and financing. UDIA Victoria already offers training that could readily be adapted or expanded for ongoing training to council officers.

Across the board, there is a shortage of planners with the appropriate skillset and expertise to make robust decisions. Planners operate in organisational cultures varying enormously and the degree to which they are supported, supervised, mentored and educated contributes to and influences the quality of decision making and the timeliness of decision making affecting the capability, performance and capacity of the relevant council.

In this context, there is a great deal of scope to improve the operation of the planning system to ensure both the process and outcomes are delivered in an efficient, timely, and responsible manner.

UDIA Victoria seeks to ensure development and investment progresses in a streamlined and efficient manner, with greater certainty and transparency about both the process and the outcome. Ultimately, UDIA Victoria seeks to ensure better and faster decision-making.

4.2. Housing Policy Context

A range of policy changes introduced by the State Government over the past few years have directly impacted on the supply of new dwellings. In particular, the Victorian Government policy framework for affordable housing – Homes for Victorians: Affordability, Access and Choice – was introduced in March 2017 with the intention of securing a supply of affordable housing as the State's population grows. The stated aim of Homes for Victorians is to give every Victorian every opportunity to find a home, and to ensure housing accommodates population growth by facilitating the construction of more than 50,000 new dwellings each year.

While UDIA Victoria supports the stated intention, and aims, of this important policy, we raised significant concerns at the time regarding the longer-term impacts of changes to the taxing of purchasers of new dwellings. Of particular concern was, and remains, removing off the plan stamp duty concessions for investors which was intended to fund the tax exemption for first home buyers.

While this approach offers a significant benefit for some, it does so at a significant cost to the rental and apartment markets. As these markets provide the bulk of affordable housing options, the medium and long-term outcomes of this policy are likely to conflict with its stated objectives.

Specifically, we noted at the time that we anticipated the impacts on the residential development market would include a retreat in investors which would lead to a decrease in the supply of new dwellings available for purchase and rent, a less affordable rental market, and a reduction in the overall contribution of the residential construction sector to the Victorian economy, especially jobs.

There is now evidence that this initiative, combined with other policy interventions and an overall tightening of availability of project and retail finance for residential projects, has had the perverse outcome of contributing to the reduction in the pipeline of new dwelling supply which will result in a lower supply of new dwellings in the coming two to three years.

4.3. Financial Market Context

4.3.1. Changes to Policy and Regulation

There have been significant and wide ranging changes to policy and regulation since April 2016 which have directly impacted on confidence in the housing and urban development markets and the ability of Australian and international buyers to acquire either project or retail finance for residential products.

These changes include the following:

- Restriction of lending to foreign property buyers without a domestic income by Australian banks.
- In some cases, the adoption of stricter lending policies by banks has reduced the level of construction funding available to the industry.
- The Australian Prudential Regulation Authority's (APRA) introduction of strict limits on interest-only loans with a loan-to-value ratio above 80 percent in addition to strong scrutiny of interest-only lending for loan-to-value ratios above 90 percent. This has primarily impacted investment loans as these are more commonly interest-only loans.
- APRA issued instructions to Authorised Deposit-taking Institutions to limit their exposure to interest-only loans to 30% of new residential loans (however this was removed in December 2018).
- Removal of the stamp duty concessions for investors purchasing dwellings off-the-plan by the Victorian Government.
- Introduction and increase of stamp duty and land tax surcharges on foreign purchasers of Victorian residential property.
- Introduction of the Annual Vacancy Fee for foreign investors by the Victorian and federal governments.
- The introduction of a New Dwelling Exemption Certificate, and a 50 percent cap on the sale of new apartments to foreign investors which was introduced in the 2017 Federal Budget.
- Decreased height allowances and constraining built form controls introduced through the Melbourne Planning Scheme Amendment C270 in 23 November 2016.
- Uncertainty regarding the planning controls, planning processes and government investment in Melbourne's urban renewal precincts including the Fishermans Bend Urban Renewal Area.
- The May 2019 Victorian State Budget outlined increases to the foreign purchaser stamp duty and absentee land tax surcharges as follows:
    - Land tax absentee owner surcharge will increase from 1.5% to 2%.

  - Stamp duty surcharge will increase from 7% to 8% effective from 1 July 2019.
- June 2019 APRA reduced the 7.25% serviceability calculation to around 5.75%.

Industry feedback strongly indicates that the combined impact of these changes had had a swift impact on the feasibility of projects and contributed to the reduction in the pipeline of new dwelling supply. This is demonstrated in the decline in delivery of new housing to market, including a forecast 92 percent fall in building approvals for dwellings in central Melbourne (*UDIA RDI Half yearly Update*, October 2018), and a 62 percent decline new residential lot sales for the year (Research 4 presentation, May 2019).

Further, the result of this decline in activity has already been felt by the State Government in the form of a $5.2 billion dollar stamp duty write down in the State Budget released last week.

4.3.2. Changes to the Taxing of Economic Entitlements

The *State Taxation Acts Amendment Bill* 2019 (the Bill) received Royal Assent on 18 June 2019. The Bill included significant amendments to the application of economic entitlements to Development Agreements (DAs) which will have a significant impact on the residential development sector.

While the State Government maintains the changes are a response to the 2016 Victorian Supreme Court decision in *BPG Caulfield v the State Revenue Office*, UDIA Victoria considers the changes go far beyond what was required to address the problems raised by this case.

We maintain development agreements are not a duty avoidance tool and play a legitimate role in the market in the efficient and cost effective procurement of development sites that are difficult to value, or have uncertain development potential.

Key issues with the amended economic entitlement provisions include the following:

- The tax will be upfront. Stamp duty will be collected when a development agreement is executed, at a time when the value of the land is unproven, and the prospect of profit or sale proceeds is often many years away.
- Following on from this, paying stamp duty up front will have significant impacts on the Internal Rate of Return of projects. Initial estimates of this impact indicate it could add 10.7 per cent to the sale price of a residential lot in a greenfield development. This will impact land affordability or developers funding early enabling infrastructure (or likely both).
- The tax will be imposed on a legal agreement recording a transaction that may never happen. For example, if land in a Greenfield area does not have a PSP applied, the underlying project covered by the development agreement will not proceed. Nevertheless, tax will have been paid on that development agreement with no consideration of what will actually happen to the land in the future.

- The tax will not reflect actual outcomes on the land. It will be assessed and paid on a hypothetical economic model of what might happen to the land, not what will actually happen as this is unknown at the time stamp duty must be paid.
- The amendments will, in some cases, trigger payment of stamp duty twice for a single development. In this situation, a developer would purchase an infill site for an apartment development. As part of the funding sourcing for the project, the developer enters into a development joint venture with an investor such as a super fund. The super fund, as part of a return for providing equity and/ or debt funding for the project would be entitled to a share of the development profits. If this transaction is considered an economic entitlement, then it will result in a second round of stamp duty being paid for this site for the same development.

In our view this amendment will impact on the delivery of residential land to market and ultimately housing affordability. The new housing market provides entry points for home buyers in both the infill and greenfield markets.

The amendment is estimated to increase the price of a greenfield residential lot by 10.7 percent. The estimated increase to the lot price is more than the first home buyer stamp duty exemption, so that even with the stamp duty exemption, first home buyers are likely to be worse off.

As previously noted, the residential development market is already under significant pressure from tighter lending standards and a range of policy changes to housing over the past few years. Against this backdrop, population growth remains historically high and underlying demand is strong.

4.1. Summary

For all the reasons we set out above, there are many barriers to achieving a more robust planning regime with better and faster decision making. We examine the key issues frequently identified by the development industry and provide our recommendations to improve the process and outcomes and ultimately ensure better and faster decision making.

5. DISCUSSION OF KEY ISSUES

5.1. Issue Stream - Growth Area Infrastructure Contribution

UDIA Victoria considers there are a number of unnecessary delays in the processing of the Growth Area Infrastructure Contribution (GAIC) by the Victorian Planning Authority (VPA) and the State Revenue Office (SRO).

In this section, we set out the nature of these delays and offer suggested ways in which the process can be improved based on past experience with the system. We also provide a flow chart showing the various stages of a residential development requiring VPA or SRO administration for ease of reference.

5.1.1. VPA GAIC Administration

Description of issue - Processing times

The VPA handles the following GAIC administration:

- Staged Payment Arrangement (SPA) applications to approve the staged payment of GAIC after the trigger (with a minimum 30% upfront payment required); and
- an amendment to SPA applications – for example, if the approved staging of GAIC requires an amendment as a result of changes to the development staging plan.

We set out the issues encountered with the VPA administration of SPA applications (and amendment applications). The first issue experienced is the processing times. Generally the issues are:

- SPA applications can take anywhere between 8 to 12 weeks for the VPA to process. In some cases applications have taken more than 5 months.
- SPA amendment applications have also taken just as long to process even where the amendment relates to only a relatively minor change, such as a payment date or a small number of changes in the development stages.
- Given developers need a SPA approved before they can obtain a Statement of Compliance (SOC) and registration, such delays have a significant impact on a development timeline. This is particularly the case where other planning processes to obtain the SOC are already undertaken and the SPA is the only part delaying progress.

- The delays with SPA amendments can have an even greater impact given once stages have commenced, the development moves fairly quickly so any further delays cost time and money.

- There is a cost of funds for a developer for any delay as a result of delays in SPA processing. This may also result in not meeting financial year end deadlines and, ultimately, will result in delayed completing a development and higher costs of housing stock.

Recommendations

1. Staff resourcing dedicated to processing of SPAs and SPA amendments could be expanded. Given the importance of SPAs to a development in the growth corridors, it is important sufficient staff are resourced and trained so SPA applications (and amendments) are processed in a timely manner. We respectfully suggest 4 weeks (20 business days) is sufficient time assuming the right amount of resourcing.

2. The matters requiring a SPA amendment should be reduced to free up resources for SPA applications – i.e. minor amendments should not require an amendment application – see below for detail.

Description of issue - Matters requiring SPA Amendments

1. If the timing, amount, or shape of development stages is changed post SPA approval, an amendment will be required if:

    - the subdivision area associated with a payment varies by more than 0.5ha;

    - the area of an approved stage is split in 2 (e.g. approved stage 7 is split into stages 7A and 7B for delivery);

    - the number of stages in the development is increased (i.e. new stages are introduced);

    - a developer wishes to subdivide part of the title not within the 'contribution area' for GAIC and is not shown in the approved SPA; or

    - the timing of the stage is after the approved 'payment due date'.

2. Minor amendments currently requiring a SPA amendment application should not be required – see recommendations below.

3. SPA amendments take up resourcing of the VPA which could be better spent focusing on initial SPA applications and SPA amendments more substantial in nature.

Recommendations

5. The VPA has changed its 'payment due date' policy in the past few months to allow a payment due date to be the last day in the financial year in which a SOC is expected for a stage to minimise SPA amendment applications relating to payment due dates only.

6. We think this is a positive change in policy. Having said that, this policy can be expanded to allow a developer to notify the VPA if an expected SOC for a stage is delayed beyond the end of the financial year – in which case that payment due date can be paid in the following financial year without requiring an amendment application (this should only be allowed to occur once for each stages' payment due date and can be effected by way of a notification email to the SRO by 1 June of the relevant financial year).

7. An amendment should not be required in the following circumstances:

   - the area of an approved stage is split in 2 (e.g. approved stage 7 is split into stages 7A and 7B for delivery) provided all the GAIC for that stage (i.e. all the GAIC for approved stage 7) is paid by the due date; and

   - the areas of a title not subject to GAIC (i.e. SUZ or RCZ zoned land) should be able to be subdivided without needing a SPA amendment given this land is not subject to GAIC as long as any area being subdivided in the plan that is subject to GAIC is paid in accordance with the SPA.

7. The VPA could prepare and issue a public guideline setting out the above policies to provide developers with certainty as to when a SPA amendment is or is not required, as it could result in significant delays if a developer needs to seek VPA guidance on an ad hoc basis. This will also use up VPA resources better directed at processing SPAs.

8. The VPA guideline could also confirm the VPA current practice of allowing a balance lot after a stage is registered to be in the form of multiple super lots – e.g. the stage 1 plan registers stage 1 lots and 3 super lots A, B and C for example (rather than one balance lot A). This allows greater flexibility to developers and does not impact the timing of GAIC payments under an approved development plan.

Description of issue - SPA Lapsing if GAIC not triggered by the end of the financial year

The issues are a SPA is generally approved before GAIC is triggered for a title (e.g. GAIC is generally triggered by issuing a SOC being for the first development stage – stage 1 for example). However, if a SOC for stage 1 is not obtained by the end of the financial year in which the SOC is expected, the SPA will lapse and a new application needs to be applied. The new application can take just as long as the initial application – i.e. 12 weeks plus.

Recommendations

7. The VPA policy may require a SPA to lapse if the SOC does not trigger GAIC by a certain time – given GAIC rates increase each year.

8. A solution to this issue is if a SPA is expected to lapse because the SOC for stage 1 will be delayed beyond the end of financial year, the developer should be able to notify the VPA and a new SPA is issued based on the GAIC rates for the following financial year and a payment due date at the end of the following financial year.

9. This will avoid making a new application and undertaking the entire process when the only change is the GAIC rates and first payment date.

5.1.2. SRO GAIC Administration

The GAIC administration the SRO handles includes:

- GAIC deferral applications when a property is acquired and GAIC is deferred;
- Excluded subdivision applications for plans for excluded subdivisions (e.g. school site);
- Request to the SRO for the interest component of a GAIC payment under an approved SPA; and
- Requests for a G2 and G3 notices for a plan of subdivision once GAIC is paid.

Description of issue – Interest Calculation Requests and G2 and G3 Requests

The issues are:

- The balance of GAIC payable under a SPA accrues interest on a daily basis at the 10 year bond rate.
- After the VPA approve the staged payment of GAIC is approved in a SPA, a developer cannot pay GAIC for a stage until it has requested the interest component from the SRO (as the balance of the accrued interest must be paid before clearing each stage).
- The interest request is informal (i.e. no approved form) and is made via an email to the SRO and attaching the approved SPA to the email and proposing one or more payment dates.
- The SRO GAIC team then manually calculates the interest amount and emails the developer.

- This manual process can take up to 4 weeks each time a developer wants to pay a stage. This results in some developers paying a higher estimate of the interest component to keep things moving. This is clearly undesirable.

- Once GAIC is paid, a developer needs to manually email the SRO a copy of the plan of subdivision requiring a G2 and G3 notice which the SRO then needs to match to the SPA and prepare G2 and G3 notices to send to the developer.

- The G2 and G3 notice can take a further 2-4 weeks resulting in a process for each stage up to 6- 8 weeks in total.

Recommendations

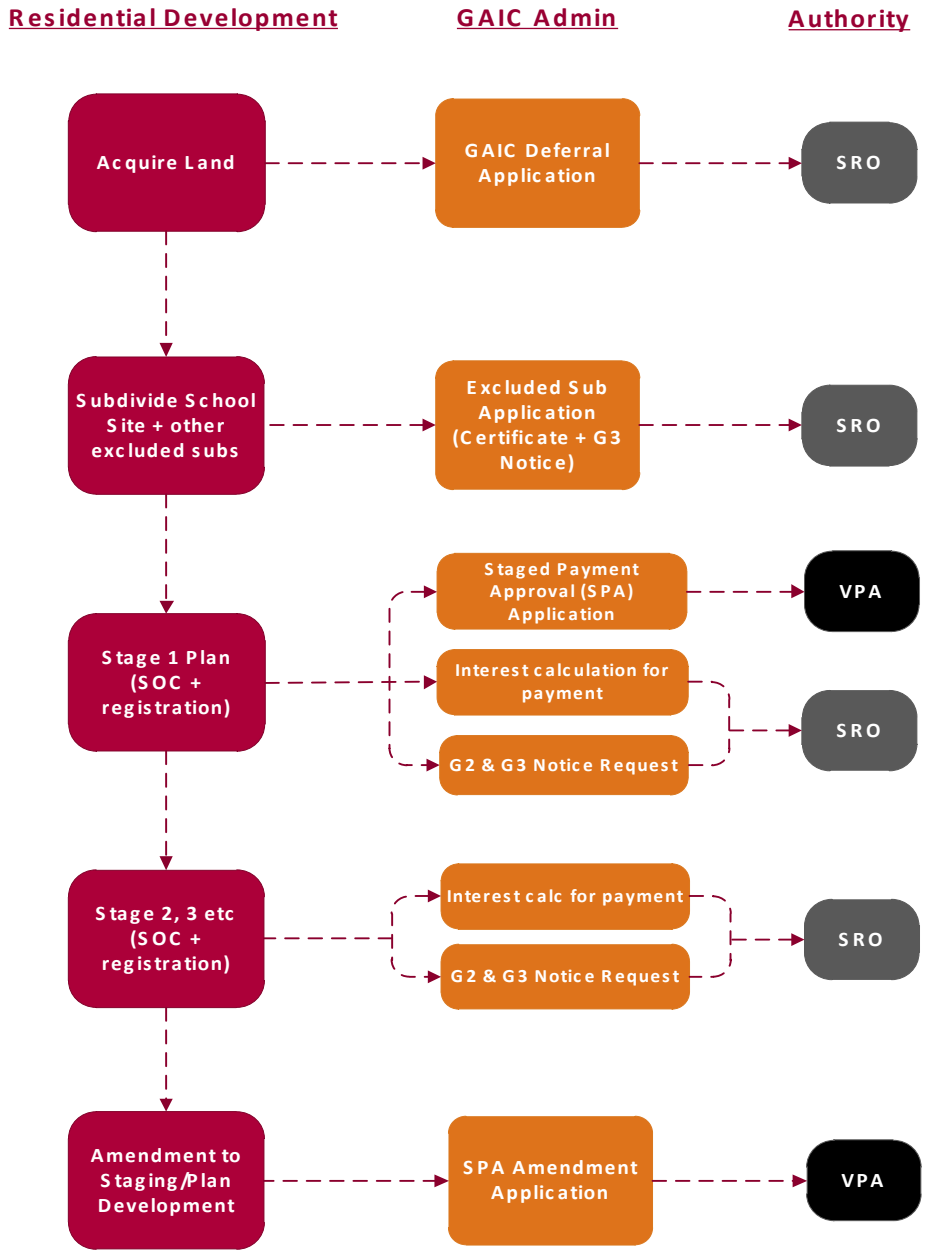
1. Given the calculation of interest is a mechanical process and is based on the 10 year bond rate and balance of GAIC owing under a SPA, it should be relatively straightforward for the SRO to fully automate this process.

2. It should not be dissimilar to the SRO's online duty calculator which automatically calculates duty payable after entering a number of variables.

3. This online 'interest calculator' can be automated with an 'approved form' where a developer can simply calculate the interest automatically, pay this to the SRO and then upload the receipt of payment, the approved SPA and details of the stage paid together with the plan requiring G2 and G3 notices.

4. The SRO can then undertake a final check of the approved form before issuing G2 and G3 notices. We consider this could reasonably all be done within 5 business days rather than the current 4-8 week timeframe.

5. There are many other approved online forms for other GAIC processes so there should not be any reason why there cannot be one for the interest calculation and G2 and G3 process.


Residential Development
GAIC Admin
Authority
Acquire Land
GAIC Deferral Application
SRO
Subdivide School Site + other excluded subs
Excluded Sub Application (Certificate + G3 Notice)
SRO
Stage 1 Plan (SOC + registration)
Staged Payment Approval (SPA) Application
VPA
Interest calculation for payment
G2 & G3 Notice Request
SRO
Stage 2, 3 etc (SOC + registration)
Interest calc for payment
G2 & G3 Notice Request
SRO
Amendment to Staging/Plan Development
SPA Amendment Application
VPA

5.2. Issue Stream – Processing of Permit Applications and Post Permit Delays

5.2.1. Requests for Further Information

Description of issue

It is not uncommon for a council, acting as the responsible authority to make multiple requests for further information (RFI) as part of assessing a permit application. This can be overly and unreasonably burdensome on the permit applicant both in terms of financial costs and time delays.

There are a number of issues at play. We consider council's making multiple RFI to be the result of either (or both):

- Council officers not asking for the right information at the right time or insufficient information in order to properly assess the merits of the particular proposal.
- Council officers request too much and unnecessary information not required in order for the planning officer to properly assess the merits of the proposal.

In our view, there is a rationale and need to strengthen and improve council's processing of a permit application at the stage where it requests further information. While acknowledging our recommendations below can be implemented in the relatively short term, implementing the recommendations also importantly assists in the longer term in building capacity and strengthening decision making by ensuring a responsible authority is making RFI's in a reasonable way, transparently, consistently and confined to information relevant to the matters the responsible authority must determine.

To assist councils and developers providing sufficient information at the time the permit application is lodged with council (so as to avoid the need for a RFI and consequential further time delays), we consider there is some value in developing a checklist for classes of development setting out the types of information that a council will need to properly assess the merits of the permit application. While useful, it should replace independent professional judgment.

Recommendations

Short term/ immediate actions:

1. Provide ongoing training and mentoring to planning decision makers to assist them in properly identifying what further information is required in a timely manner before council advances the processing of the permit application and undertakes notice in order to upskill planners and build capacity across the team.

2. Prepare a Planning Practice Note to assist and guide planning decision makers and applicants in understanding the nature of information reasonably expected to be lodged with permit applications depending on the scale and type of planning permit application. We envisage it would be useful for any such guideline to address various categories or classes of use and development such as applications for subdivision in greenfield areas, applications for development in urban renewal areas or in infill environments. We say categories or classes given the same issues and matters council is required to consider generally arise in similar types of development.
3. Prepare a checklist for classes of permit applications setting out the essential information in order to properly determine the permit application. This has the potential to avoid requesting further information or the extent of information by a council and ultimately assist in faster decision making.

Long term reform pathway:

4. As above.

Background

Council, acting at the responsible authority can require a permit applicant to provide more information about a planning proposal, either for itself or on behalf of a referral authority. Council exercises this power under section 54 of the *Planning and Environment Act 1987*.

In *Calodoukis v Moreland CC*[1], the Tribunal observed the following principles relating to the operation of section 54 of the *Planning and Environment Act 1987*:

- The purpose of the power in s 54 is to enable a responsible authority to properly deal with a permit application – e.g. to clarify the application, or to overcome a deficiency in the application that prevents the responsible authority from understanding or resolving a key issue raised by the application that need to be assessed before a decision can be made.
- The further information required must relate to the potential planning impacts of the development or use proposed in the application, and the matters that the responsible authority must consider before making a decision on that application.
- Importantly, the further information required must be proportionate to the scale and nature of the proposal, and the issues to be assessed.
- A requirement under s 54 must be a bona fide request for information. It should not be used to delay an application, or to effectively seek changes to the application. Nor should it seek generic information not directly related to the particular application under consideration, or

[1] 3 [2010] VCAT 498 at [4].

information that would ordinarily be required only after a decision to grant a permit had been made – e.g. by way of a subsequent permit condition.

5.2.1. Delays with Assessing Planning Permit Applications

Description of issue

Planning permit applications for residential development in both established areas and greenfield areas typically take 12-24 months to assess, despite the statutory requirement being 60 days.

In our view this is an unnecessary regulatory burden, it contributes to significant development costs, it acts as a brake on the economy, and delays the delivery of new dwellings to the market.

We consider this to be a combination of lack of resourcing within councils to assess a permit application within the statutory timeframe as well as issues relating to statutory and non-statutory referrals processes (these will be discussed separately below).

Recommendations

Short term/ immediate actions:

13. Prepare a checklist for classes of permit applications setting out the essential information in order to properly determine the permit application. This has the potential to avoid requesting further information or the extent of information by a council and ultimately assist in faster decision making.
14. Fully digitise the planning permit application and assessment process and provide technological support as part of the planning permit application process. This will increase the transparency of the assessment process and ensure statutory and non-statutory referral comments are available in real time thereby enabling the permit applicant to understand and respond to the comments more quickly. SPEAR provides a useful precedent for a fully digitised permit application process, however we recommend the platform has the capacity to be remotely accessed from anywhere.
15. Establish a body of technical specialists including planners, traffic engineers, acoustic engineers, civil engineers (and the like) that councils can use to assess permit applications on their behalf as well as to certify post-permit subdivision plans and functional layout plans.
    We suggest this should be aligned with a new categorisation of planning permit applications into high value/ state significant, medium, and low value/ small.
    We recommend the following:
    - all state significant permit applications should be assessed by this body; and
    - for all other applications:
        a. permit applicants can elect to have their permit application assessed by this body (with or without an additional fee);

b. councils can elect to delegate planning permit applications to the body.

We wish to be clear the purpose of this body is to expedite the planning permit assessment process and to ensure highly skilled professionals are assessing the substance of permit application and preparing the Delegate report. The ultimate decision about the permit application should remain with council. The intent is not to take the decision away from council but to provide expert assistance to councils where it is required or for councils that are under-resourced.

This could be implemented in a number of ways, such as:

- establish this group within the Victorian Planning Authority;
- establish an Office of Victorian Planner; or
- establish an independent accredited panel of experts.

Long term reform pathway (legislation):

1. Nil

5.2.2. Drafting Permit Conditions

Description of issue

A significant issue is the form and substance of permit conditions imposed by a council when determining to grant a permit.

Permits are more than simply conditions. Permits are subordinate legislation and run with the land to which they apply. They are intended for any person to read and understand and not be overly technical or legalistic. The objective of drafting permit conditions is for each condition to valid and lawful, clearly and precisely written, and enforceable.

Too often council imposes conditions on a permit that are vague, uncertain, or where the requirement cannot be understood or implemented, or where the substance of the condition is unreasonable and lacking in merit. There is a fundamental lack of skill and understanding when imposing conditions, the source of power to impose the condition, and the form and content in which the condition should take.

UDIA Victoria considers the meaningful long term solution to this lack of skillset and understanding is providing ongoing training to planners and planning decision makers about drafting permit conditions together with training on utilising plain English.

However, UDIA Victoria also considers there is great scope for the process to be improved and provide a means to collaborate and negotiate with council about the substance of permit conditions at the point council prepares draft permit conditions. To ensure better and faster decision making, councils should be required to provide a permit applicant with a set of draft permit conditions and an opportunity to respond to or negotiate alternative or revised permit conditions with council within a reasonable time, say 14 days. This creates an important space for negotiating and achieving good planning outcomes and avoids contradictory, unreasonable or unachievable requirements. It also avoids potential disputes about the lawfulness or merits of permit conditions at the Tribunal. In all, collaborating with the developer at the point the permit conditions are ready to be finalised makes good sense and represents best practice.

Recommendations

Short term/ immediate actions:

1. Prepare a Planning Practice Note for councils setting out and adopting a best practice approach to circulating draft permit conditions to the permit applicant at a reasonable time before council formally determines whether or not to grant permit.
2. Prepare and review precedent or standard conditions to ensure conditions are uniform, consistent and appropriately imposed on any permit.
3. Provide ongoing education to councils about the form and content of permit conditions to ensure permit conditions are lawful, enforceable, reasonable and appropriate in the particular circumstance.
4. Fully digitise the planning permit application and assessment process and provide technological support as part of the planning permit application process. This will increase the transparency of the assessment process and ensure statutory and non-statutory referral comments are available in real time thereby enabling the permit applicant to understand and respond to the comments more quickly. SPEAR provides a useful precedent for a fully digitised permit application process, however we recommend the platform has the capacity to be remotely accessed from anywhere.

Long term reform pathway (legislation):

5. Not required.

5.2.3. Post Planning Permit – Delays with Council Certifying a Subdivision Plan

Description of issue

A significant and often underestimated duty and function on a council is approving a range of documents after the permit is granted but before a council can issue a Statement of Compliance. Approving this range of documents is complex as it involves council considering matters by other arms of local government, namely the subdivision officer and engineers (but not exclusively). Furthermore, it is complex because assessing the adequacy of these documents also involve reasonably technical and detailed engineering specifications and information that is not required and therefore not before the responsible authority (when determining to grant the planning permit).

After the responsible authority grants the planning permit for subdivision, the subdivision plan must be certified, the engineer functional layout design approved, and the engineering detailed design plans approved before council can issue the Statement of Compliance and consequently new titles created.

The industry experience bears out the process to achieve certification of a plan of subdivision is fraught with administrative delays, difficulties, lack of understanding and lack of appropriate resources. The administrative process under the *Subdivision Act 1988* is also often unacceptably slow in obtaining the requisite approval, sometimes lacking in transparency and accountability when it certifies or re-certifies plans of subdivision following completing civil engineering works.

Importantly, while there are prescribed timelines for decision-making and an appeal process established under the *Subdivision Act 1988*, it is rare for a developer to pursue resolution at the Tribunal where a dispute arises. This is because the cost in time to the developer (putting aside the cost in financial terms) is so significant the developer cannot afford the time thrown away in waiting for an outcome at the Tribunal.

Recommendations

Short term/ immediate actions:

1. Establish a body of planning and other technical specialists to assist Council's in assessing subdivision plans and engineering layout plans (and the like) as part of the post planning permit statutory process or otherwise improve resourcing to Council's (and referral authorities) in order to comply with the statutory framework established under the *Subdivision Act 1988* in a timely and responsible manner. Further details of this recommendation are included under Delays with Assessing Planning Permit Applications.
2. Provide ongoing education and supervision to decision makers to ensure timely, consistent, robust and transparent decision making when certifying plans and approving engineering plans including specifications for works required under the permit (or the planning scheme).

3. See recommendation below by providing a fast track pathway at VCAT to expeditiously resolve issues arising under the *Subdivision Act 1988* relating to certifying plans and approving engineering documentation (and the like).

Long term reform pathway (legislation):

4. Nil.

Background

It is important to set out the statutory framework established under the *Subdivision Act 1988*. One of the purposes of the *Subdivision Act 1988* is to provide a procedure for the subdivision and consolidation of land in Victoria. In providing these procedures, the *Subdivision Act 1988* confers certain obligations on the relevant council, referral authorities and an applicant.

A council 'wears various hats in the subdivision process'. For example, in accordance with different parts of the *Subdivision Act 1988*, a council can be acting as the council of the municipal district (in respect of most things it does under the *Subdivision Act 1988*) or a responsible authority under the *Planning and Environment Act 1987*.

Part 2 of the *Subdivision Act 1988* is concerned with certifying plans of subdivision. This part requires a council to certify a plan if certain conditions are met or refuse to certify a plan if those conditions are not met (see section 6). The council must also refer a plan to a referral authority unless certain requirements are met (see section 7). Section 11 contemplates amending certified plans following certification and provides for a council to re-certify an amended plan or certify a new plan on the applicant applying to amend.

Part 3 of the *Subdivision Act 1988* sets out the statutory requirements for plans and, among other things, sets out the procedures for works required by or for a council or referral authority to provide roads or public utility services to land which are the responsibility of that council or authority (referred to as 'works' in this part of the *Subdivision Act 1988*). There are several requirements relating to the carrying out of 'works'. Most relevantly, the *Subdivision Act 1988* sets out that:

- a council or referral authority may require an applicant to submit engineering plans that must then be approved by the council or referral authority within the prescribed time (section 15);
- any person who 'constructs works' must comply with the certified plan, the approved engineering plan (presumably only if one is required in accordance with section 15) and the standards specified in the planning scheme or permit (section 16); and
- a person must not start works until the plan is certified, the engineering plan is approved and any agreement required by a responsible authority or a referral authority has been entered into (section 17(1)).

Section 17(2) of the *Subdivision Act 1988* enables a council or a referral authority to appoint a person to supervise the construction of the works (and charge a fee for this supervision) as well as entering into an agreement with an owner or applicant deferring certain works until after registration (among other things). The applicant is responsible for maintaining the completed works in good condition and repair for a period after completion, after which time the council or a relevant referral authority becomes responsible for maintaining the works (see ss 17(4) and (5)).

Part 6 of the *Subdivision Act 1988* specifies a number of matters in respect of which applications may be made to the Victorian Civil and Administrative Tribunal, including an application:

- concerning a dispute arising under the *Subdivision Act 1988* or the *Subdivision (Procedures) Regulations 2011* (see s 39(1));
- concerning a decision or failure on the part of a council (or a referral authority) to do certain things under the *Subdivision Act 1988* including certify or re-certify a plan or approve an engineering plan (see s 40(1)); and
- for a declaration concerning any matter that could form the subject of an application to the Tribunal other than an application under s 39 (see s 41(1)).

5.2.4. Post Planning Permit – Delays Issuing the Statement of Compliance for a Subdivision

Description of issue

As noted above, a significant duty and function on a council is approving a range of documents after the permit is granted but before a council can issue a Statement of Compliance.

Industry experience indicates that this part of the post-planning permit process is also fraught with administrative delays, difficulties, lack of understanding and lack of appropriate resources. The administrative process under the *Subdivision Act 1988* is also often unacceptably slow in obtaining the requisite approval, sometimes lacking in transparency and accountability when it certifies or re-certifies plans of subdivision following completing civil engineering works.

While the process is and should be iterative in order to arrive on a set of engineering or civil works drawing and specifications that are appropriate, the process can also be frustrating and inflexible. Decision makers in local government can and frequently take unreasonable positions or have no sense of timeliness. There is also an absence of sufficient resources, both technological and human and skills and experience to deal with the volume of documents needing to be certified or approved before council can issue the Statement of Compliance.

This process can take over 12 months. Where there are long delays, in some cases this is due to the complexity of the matters at hand. However, the process is often also frustrated by unnecessary disputes between the applicant and a council or with external referral authority regarding the precise

nature and details of the engineering design plans to be approved. Here, there is great opportunity for Councils to become more efficient in its procedures and practices when making decisions under the *Subdivision Act 1988*.

Similar to the process for certifying a plan of subdivision, there are prescribed timelines for decision-making and an appeal process established under the *Subdivision Act 1988*. However it is rare for a developer to pursue resolution at the Tribunal where a dispute arises because the cost in time to the developer is so significant the developer cannot afford the time lost in waiting for an outcome at the Tribunal.

Industry experience demonstrates a further issue whereby council officers can sometimes withhold issuing the Statement of Compliance (SOC) even where, most relevantly, the specified matters in section 21 are satisfied.

In these circumstances, it is both unlawful and an abuse of power on the part of a council to withhold a Statement of Compliance where the section 21 matters are satisfied.

The delay in time and consequential costs to the developer in not obtaining a Statement of Compliance in a timely manner can be significant.

While council's decision to withhold issuing the Statement of Compliance is appealable to the Victorian Civil and Administrative Tribunal, developers rarely apply to review a council's decision to withhold a Statement of Compliance. This is for reason the delay in waiting for a Tribunal hearing to hear and determine the matter is a further resource and cost burden and most importantly a further delay in time having consequential adverse cost implications in delivering development in Victoria. Put simply, the developer does not have the luxury of time to apply to the Tribunal to review a council's conduct to withhold the Statement of Compliance.

Recommendations

Short term/ immediate actions:

1. Provide ongoing education, mentoring and supervision to decision makers to ensure they are exercising their power under section 21 of the *Subdivision Act 1988* diligently, responsibly and in a timely manner.
2. See recommendation below by providing a fast track pathway at VCAT to resolve expeditiously issues arising under section 21 of the *Subdivision Act 1988* relating to issuing Statements of Compliance.
3. Apply clear and consistent bonding rules for non-essential items (e.g. landscaping) to minimise SOC/settlement delays at the completion of a subdivision.

Long term reform pathway:

4. Not required.

Background

Section 21 of the *Subdivision Act 1988* imposes a positive obligation on a council to issue a Statement of Compliance provided the specified matters in that section are satisfied. Once these matters are satisfied, Council must issue a Statement of Compliance for the approved subdivision or, in the case of a staged subdivision, for the relevant stage.

Council has no discretion but to issue the Statement of Compliance where the specified matters in section 21 are satisfied.

5.2.1. Post Planning Permit – Delays at the Victorian Civil and Administrative Tribunal

Description of issue

While UDIA Victoria appreciates the issue of the Victorian Civil and Administrative Tribunal's (VCAT) business is outside the ambit of the review of the review into Victoria's building and planning approvals process and early building works infrastructure, it would be remiss of UDIA Victoria to not outline this idea in light of our recommendations above.

Presently, if a dispute arises when council exercises its power under the *Subdivision Act 1988*, for example, approval of engineering plans, there is a right to review council's refusal to approve the plan or its failure to approve the plan within 30 days of their submission to approve the documents to VCAT.

The difficultly for the development industry is there is no fast track system at the Tribunal to hear and determine any appeals brought by a developer against a council decision or a council failure to make a decision under the *Subdivision Act 1988* within the prescribed time.

In practice, the Tribunal allocates such matters in its ordinary list or its Majors Cases list under the Planning and Environment List. There are delays of up to six to eight months before the matter is brought on for a hearing. This is a significant length of time such that a developer is effectively precluded from participating in and obtaining fast accessible justice at VCAT and the timely resolution of these types of confined disputes.

The problem is particularly acute in the growth areas where time is of the essence in the subdivision and development process. In the growth areas, and due to the PSP process, any dispute with a council (or a referral authority) about certifying plans or approving engineering drawings (and the like) do not

involve third parties. With the absence of third-party involvement, the UDIA Victoria considers an expeditious resolution to any dispute at the Tribunal ought be facilitated.

Accordingly, we strongly recommend creating a fast track system at the Tribunal where there is no opportunity for third party involvement. The process should aim for a compulsory conference no later than two to four weeks from the date of applying to the Tribunal for a review of a council's decision or failure to make a decision in the prescribed time. Importantly, the compulsory conference mechanism now well established as part of alternative dispute resolution at the Tribunal will be an important and effective method to bring the parties together and negotiate the substance of the dispute in a without prejudice and robust environment facilitated by a mediator. UDIA Victoria considers the ability to have a matter listed in a compulsory conference within two to four weeks of lodging at the Tribunal of itself might prove to be a powerful incentive to more efficient and robust decision making by a council.

Recommendations

Short term/ immediate actions:

1. Introduce a Post Permit Approval List under the Planning and Environment List. The list would exclusively hear and determine post permit approval disputes arising under the *Subdivision Act 1988* (or the *Planning and Environment Act 1987*). The intent is the Tribunal will hear and determine these types of disputes expeditiously without the significant delay currently experienced by the developer industry having consequential adverse cost implications.

Long term reform pathway:

2. Not required.

5.3. Issue Stream – Statutory and Non-Statutory Referral Processes

5.3.1. Non-Statutory Referral Processes

Description of issue

As part of council's assessing a planning permit application, the planning officer will typically refer the permit application to various internal departments within council (or external specialist consultants) inviting comment relating to the area or expertise. Typically, such informal comments (whether obtained internally or externally) relate to heritage, urban design, traffic engineering, acoustic engineering, drainage engineering, wind and the like.

There is no consistent method or practice in which a council undertakes this important informative and informal process. In many cases, the informal referral process is not transparent in so far Council does not inform the developer who it has obtained comments from, or provide those comments, which often results in additional delays in assessing the permit application. There are no statutory timelines requiring a response within a prescribed timeframe. Additionally, some councils are unwilling to provide the internal referral comments to the permit applicant while the permit application is being assessed or are provided in the officer's report in summary form and which is not generally made available to the permit applicant until close to the decision.

Further, there is no formal or best practice guide for local councils to follow when referring applications internally to council departments or external experts for comments and advice.

UDIA Victoria considers there is a real need for councils to adopt a best practice approach and standard when obtaining internal and informal comments from their advisors. At the very least, such comments should be made available in full and as soon as possible after being obtained. This gives the permit applicant a meaningful opportunity to respond to the issues raised and potentially revise the plans and proposal before council. Where council does not make available comments at all or they are made available too late in the process for the permit applicant to respond (either by providing further information or amending plans), the planning system suffers. A lack of transparency about decision-making results in adverse costs and time delays for the permit applicant. It also reduces confidence in the quality and robustness of decision-making.

Every effort should also be made to establish a more agile and open means of communication between council and the permit applicant during this process. UDIA Victoria considers a more effective and efficient form of communication ought be facilitated and supported by investment in technology to assist councils to become more collaborative, communicative and effective. Existing technological and traditional bureaucratic approaches to decision-making result in slower and less robust decision-making.

A further issue revolves around the timing of the informal comments. An efficiency is secured when council obtains internal referral comments and provides them to the permit applicant before council concludes giving notice of the permit application under section 52 of the *Planning and Environment Act 1987*.

An anecdotal example of this issue relates to new crossovers. After Council undertook advertising, council sought comment from its traffic engineer. In this particular case, the traffic engineer recommended extending a proposed crossover splay. The result of extending the crossover impacted a street tree not previously proposed to be impacted and which the particular council did not support removing. The outcome was the permit applicant was required to amend the permit application formally under section 57A. The statutory clock reset itself to day one and council required the amended permit application undergo notice for another 14 days. Ultimately, this created a delay of over a month before council determined to grant the permit and it created an additional 60 statutory days for council to assess the amended permit application. Decision makers should be working towards avoiding these types of delays.

UDIA Victoria considers a best practice approach when obtaining non-statutory referral comments will result in faster and better decision making. At the very least, UDIA Victoria advocates that:

- Council provide informal referral comments electronically (and preferably on a digital platform or application) to the permit applicant as soon as reasonable practicable after obtaining the comments.
- Council provide collectively the informal referral comments to the permit applicant within sufficient time remaining for the permit applicant to meaningfully respond to the issues raised. This could realistically be done within a 28 day timeframe from the date the permit application is lodged with council.

Recommendations

Short term/ immediate actions:

1. Prepare a Planning Practice Note for councils requiring non-statutory referral responses (whether they be internally or externally obtained) to be completed within 28 days of lodging the permit application with council and preferably before council undertakes notice of the permit application.
2. Fully digitise the planning permit application and assessment process and provide technological support as part of the planning permit application process. This will increase the transparency of the assessment process and ensure statutory and non-statutory referral comments are available in real time thereby enabling the permit applicant to understand and respond to the comments more quickly. SPEAR provides a useful precedent for a fully digitised permit application process, however we recommend the platform have the capacity to be remotely accessed from anywhere.

Long term reform pathway (legislation):

6. Not required.

Background

Case study

The UDIA Victoria is aware of example where a council granted a permit with a condition requiring a ramp gradient to a basement car park to be altered. However, the ramp gradient conflicted with a condition imposed by Melbourne Water specifying a mandatory finished floor level for the basement. The outcome of the conditions meant the required change in the ramp gradient resulted in cars 'bottoming' as they moved down the ramp. The particular council refused to amend the permit condition without an application to amend the permit (and a fee). It took the council approximately a further three months to approve the amendment to the permit condition.

5.3.2. Statutory Referral Processes

Description of issue

The referral of a planning permit application to statutory referral authorities often delays the planning permit assessment process and decision making. There are a range of separate issues contributing to these delays, including:

- Council officers who are unwilling to hold external referral authorities to the 28 day statutory timeframe for assessment. Where this timeline is exceeded, our members note the council officer will not progress assessing the permit application until it receives the referral authority's comments.
- Referral authorities routinely taking longer than 28 days to respond.
- Referral authorities are suspected of using the RFI process to restart the statutory clock.
- Although we have found it difficult to provide evidence, there is a strong sense in the industry that some referral authorities do not treat with priority the referral process and regularly fail to meet the referral timelines established under the *Planning and Environment Act 1987*. In part, this lack of responsiveness is as a result of the statutory body not viewing planning as part of their core function.
- Council officers are known to erroneously invite an authority to comment under section 55 where the body is neither a recommending or determining referral authority. In some cases, council may be giving notice to the agency under section 52 as an adjoining land owner. In these circumstances, any comments from the authority are simply that of a third party and should not be treated as a referral authority's comments. Councils otherwise should not be inviting comments from authorities unless a good planning reason supports this.

In our view there is also duplication of engagement with referral authorities and that there is scope to reduce this. The Precinct Structure Planning (PSP) process carries out thorough engagement with referral authorities who have a stake in the PSP area. The planning permit assessment process often duplicates this engagement, creating delays and inefficiencies.

Recommendations

Short term/ immediate actions:

1. Introduce performance frameworks for referral authorities against the statutory timelines for responding to a referral.
2. Require ongoing reporting and monitoring against the performance framework.
3. Introduce incentives for good performers and disincentives for poor performers.
4. Streamline and reduce overall referrals by removing the small projects. For example, in many cases a simple two lot subdivision adjacent to a road managed by VicRoads should not require a referral to VicRoads and standard crossover design(s) could be applied to the new crossover.

Long term reform pathway (legislation):

5. Not required.

5.3.3. Referral Authorities

Description of issue

Section 14A of the *Planning and Environment Act 1987* sets out the duties of a referral authority. Among other things, a referral authority must comply with the *Planning and Environment Act 1987.*

Under section 56 of the *Planning and Environment Act 1987*, a referral authority (whether it be recommending or determining) must consider permit applications referred to it by a responsible authority and indicate whether it objects to the grant of a permit, does not object subject to imposing conditions on the permit or objects to the grant of a permit on specified grounds.

In real terms, the conduct, responsiveness and quality of participation and decision making by a referral authority having regard to its duties and functions under the *Planning and Environment Act 1987* varies enormously from one referral authority to another. There is no exemplar.

Industry experience bears out there are issues with:

- The quality of planning permit assessments by referral authorities where there is insufficient rigour or inadequate understanding.
- A lack of resources specifically allocated to assess permit applications.
- A lack of requisite skills and experience.
- A lack of adequate tools to the assess the issues.
- A lack of understanding about the important role the referral authorities play in assisting councils to make timely and robust planning decisions when granting a planning permit. There is a meaningful lack of understanding about the consequences of delays or inconsistent decision-making or insufficiently robust decision making.

Recommendations

Short term/ immediate actions:

1. Initial and ongoing education, training, mentoring and supervision building capacity for better and faster decision-making.
2. Capacity building should also address a cultural and organisational shift to understand a core business of an authority includes acting as a referral authority in the planning permit process and ensure this role is discharged responsibly and efficiently.
3. Additional and/or dedicated resources including technological support.

4. Digistise the planning permit application process to ensure accountability and transparency of decision making. This should include the process undertaken by referral authorities.
5. Implement ways in which to measure performance by referral authorities and report on performance.

Long term reform pathway (legislation):

6. Not required.

5.3.4. Referral Authority Conditions on Permit

Description of issue

It is essential permit conditions are drafted clearly and precisely in order for the obligation to be enforceable. In this context, it is common for permit conditions to be vague, uncertain, lacking in sufficient detail as to the precise nature of the obligation[2], conflicting or inconsistent with other permit conditions or other legislative obligations.

A further critical issue with the content of permit conditions is the timing or trigger in which the substantive obligation needs to be performed. There is a significant cost and delay to the developer where a referral authority requires works to be done unnecessarily early in the delivery of the development.

For example, it is not uncommon for referral authorities to impose conditions on a planning permit requiring certain works to be completed before the development allowed under the permit starts. This often results in out of sequence works or duplication of works with significant and unnecessary up-front costs incurred by the development industry.

Broadly speaking, referral authorities lack sufficient understanding of both the form and content of permit conditions and their important role in securing, on the one hand, certainty that certain works will be carried out and completed, but on the other hand, provide sufficient flexibility to facilitate the developer to undertake the works in the right and proper sequence.

Where unreasonable permit conditions are imposed, and where negotiation with the referral authority is exhausted, the only avenue available to a developer to remedy the timing or content of an unreasonable permit condition is applying to the Tribunal to review the disputed condition. Such

[2] That is, who performs the obligation, what is the nature of the obligation, when is the obligation to be performed, by what time does the obligation need to be performed, and in what manner is the obligation to be performed, standard etc.

applications for review impose significant further delays and adverse cost consequences that are unnecessary and often avoidable.

There is much needed education and capacity building on the part of persons exercising duties and obligations in the referral process to ensure permit conditions are appropriate drafted, lawful, reasonable and merits based.

Recommendations

Short term/ immediate actions:

1. Prepare and review appropriate precedent or standard conditions specifically for each of the relevant referral authorities to ensure conditions are appropriately imposed on any permit.
2. Provide ongoing education to referral authorities about the form and content of permit conditions to ensure they are lawful, enforceable, reasonable and appropriate in the particular circumstance.

Long term reform pathway:

3. Not required.

5.4. Issue Stream – Connections

5.4.1. Gas – Greenfield Developments

Description of issue

UDIA Victoria understands that Ausnet has restricted the number of stages that are permitted to be under construction simultaneously for the connection of the gas supply infrastructure.

We understand Ausnet has an undocumented policy that only two stages can be under construction simultaneously and that no further stages will be programmed until the first stage is 'live' with gas (which is done at the end of a stage).

This is an unnecessary restriction causing significant delays and costs and we fail to see the public policy benefit of this approach.

In the specific example we understand this approach is likely to delay some development stages by 12 months or more because six stages had been programmed for concurrent development.

We are not aware whether this issue is localised (or even site specific) or a policy adopted more broadly. Either way, it is representative of the types of challenges a developer experiences.

We understand Ausnet's rationale it to prevent damage to their assets during construction. To overcome this legitimate concern, the developer offered bonds and cash guarantees but Ausnet has declined this offer indicating they do not wish to take on the administrative burden. More importantly, the undocumented policy and its impact was not clear to the developer, not reflected in the relevant permit conditions, nor is it reflected on service offers. More could be done to properly document the staging attitude by Ausnet to improve efficiency without risking damage to Ausnet's assets. Ultimately, the impact is the delays may cause pre-sales losses.

Recommendations

Short term/ immediate actions:

1. Prepare and review appropriate precedent or standard conditions specifically for each of the relevant referral authorities to ensure conditions are appropriately imposed on any permit.
2. Provide ongoing education to referral authorities about the form and content of permit conditions to ensure they are lawful, enforceable, reasonable and appropriate in the particular circumstance.

Long term reform pathway:

3. Not required.

5.4.2. Electricity - Infill Developments

UDIA Victoria prepared a comprehensive submission to the Essential Services Commission Review (ESC Review) carried out in 2018 titled *ESC Enquiry Into Electricity Connections – Brownfield Sites,* September 2018. Many of the issues and recommendations outlined in this submission remain relevant. For the purpose of this submission, the September 2018 ESC submission is attached with an August 2019 update to highlight what has changed and which issues remain. Please refer to this attachment for details of these issues. For ease of reference, the recommendations are included below.

Recommendations

Short term/ immediate actions:

1. Citipower nominate a staff member to act as a client liaison so there is a single point of contact within Citipower.

2. UDIA Victoria recommends the practice of providing "Rough Order of Cost" for works such as power undergrounding should be disallowed in favour of the distribution company providing an offer for works directly to the developer/builder up front.
3. The timeframe for works should include road management consent and soil testing. This must be organised and considered up front so that delays to works are avoided.
4. The following timeframes be enforced with respect to energy connections to brownfield development sites:

Action required	Timeframe for response
Simple abolishment	3 weeks from application
Complex abolishment	3 weeks for offer 3 weeks for design 4 weeks for works
Sub-station abolishment	4 weeks for offer 6 weeks for design 8 weeks for works
Overhead alterations and/or undergrounding of power	3 weeks for offer 3 weeks for design 4 weeks for works
Street light removal	3 weeks for offer 3 weeks for design 4 weeks for works
Temporary power	3 weeks for offer 3 weeks for design 4 weeks for works
Sub-station design and/or new power office	4 weeks for offer 6 weeks for design 6 weeks for works (including underground cable connections and transformer installation

Long term reform pathway:

4. Not required.

5.4.3. Electricity - Greenfield Developments

UDIA Victoria prepared a comprehensive submission to the Essential Services Commission Review carried out in 2018 titled *ESC Enquiry Into Electricity Connections – Timely Electricity Connections for New Developments,* June 2018. Many of the issues and recommendations outlined in this submission remain relevant. For the purpose of this submission, the ESC submission is attached with an August 2019 update to highlight what has changed and which issues remain. Please refer to this attachment for details of these issues. For ease of reference, the recommendations are included below.

Recommendations

Short term/ immediate actions:

1. Introduce a rating system for designers so better designers are prioritised.
2. In general, the Powercor internal review of processes has yielded results:
    a. in our view this process can be applied to other power companies (Ausnet and Jemena); and
    b. the improvements since the ESC Review need to be maintained, and built on, in the future.
3. The audit guidelines should clearly state what is in scope and what is out of scope of the audit. For example, a crack in a footpath should not be the cause of a fail during an audit given the footpath is not an asset a power company is responsible for.
4. Amend the Electricity Distribution Code to incorporate timelines and financial penalties for Underground Residential Distribution customers.
5. Broaden the scope of contestable services to enable increased use of accredited third-party resources.
6. Establish a standardised manual for designers and auditors, supported by ongoing training and new technology.
7. Introduce a sample auditing system to streamline the design and construction processes.
8. Prevent mid-stream (post-offer) changes to rules to ensure that projects that have already commenced construction are audited under the same rules that they were designed to meet.

Long term reform pathway (legislation):

9. Implement a standardised, regulated and transparent process with a transition phase to accompany any change in standards introduced by electricity businesses.
10. Introduce regulatory timeframes, enforced by financial penalties.

6. ATTACHMENTS

Attachment 1:

Update August 2019 - UDIA submission – *ESC Enquiry Into Electricity Connections – Brownfield Sites*, September 2018

Attachment 2:

Update August 2019 - UDIA submission – *ESC Enquiry Into Electricity Connections - Timely Electricity Connections for New Development*, June 2018