

# Reforming the Victorian Planning Provisions

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## Introduction

The National Trust of Australia (Victoria) appreciates the opportunity to respond to “Reforming the Victoria Planning Provisions: A discussion paper”, October 2017 (the Discussion Paper).

The National Trust of Australia (Victoria) is an independent not-for-profit organisation established in 1956 which represents 28,000 members across Victoria. The mission of the National Trust is “to inspire the community to appreciate, conserve and celebrate its diverse natural, cultural, social and Indigenous heritage”. We maintain a non-statutory Heritage Register of Significant Places, including buildings, trees and landscapes, and are included as a Referral Agent under the Significant Landscape Overlay provisions in several planning schemes across Victoria.

The National Trust is broadly supportive of the principles underpinning the Smart Planning process, and the intention to “simplify and realign the structure of the VPP while not fundamentally changing the basic operation of planning schemes”. However we are concerned at the lack of detail provided in the Discussion Paper regarding the proposed changes and how they would be implemented. We are also concerned that the proposals outlined in the Discussion Paper will have unintended adverse consequences, particularly in relation to the implementation of local policy, and the protection of our environmental and cultural heritage.

## Consultation

The National Trust has serious concerns about the lack of consultation with the broader community regarding the proposed changes, a concern which is shared by many of our members and supporters. To inform the preparation of this submission, our office contacted the Smart Planning Team seeking clarity regarding representation on the Advisory Group, and the Technical Advisory Groups who have been consulted as part of the Smart Planning project. We received the following response:

*The Advisory Group consists of key representatives from local government, state government and industry.*

*The program has three Technical Reference Groups, which serve as a testing ground for reform. They consist of local government planners, industry professionals (including planning consultants and development industry representatives) and state government and referral authority representatives.*

*In addition to this, we distributed an open online survey (through various planning publications, local government planning staff, industry peak bodies and referral authorities) which received 688 responses, sent a targeted questionnaire to planning authorities and peak industry bodies and re-examined recommendations from previous reviews of the planning system.<sup>1</sup>*

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<sup>1</sup> Felicity Watson pers. comm., 20 November 2017.

We understand that the Reform Advisory Group comprises representatives of:

- Municipal Association of Victoria
- Australian Institute of Architects
- Building Designers Association of Victoria
- Housing Industry of Victoria
- Master Builders Association of Victoria
- Planning Institute of Australia
- Property Council of Australia
- Urban Development Institute of Australia
- Victorian Planning and Environmental Law Association<sup>2</sup>

When further detail was requested from the Smart Planning Team regarding the range of expertise of government and industry representatives on the Technical Advisory Groups, no response was received.

Specifically, we note that according to the information provided, no community-based representatives are included in the reference group. This belies the significant impact that the operation of the Victorian Planning Provisions (VPPs) has on local residents and communities, and third parties impacted by planning proposals.

Similarly, the online survey does not appear to have been targeted to general users of the planning scheme, and the findings of the consultation have not been made publicly available, demonstrating a lack of transparency in the Smart Planning process.

### **Environmental and Cultural Heritage Issues**

The National Trust also submits concerns that there is no apparent representation on the Reform Advisory Group or Technical Advisory Groups from peak bodies for environmental or cultural heritage, weighting consultation towards development rather than the conservation management aspects of the VPPs. This is indicative of a broader issue in Victorian planning, which often privileges the facilitation of development over good heritage and conservation outcomes, and residents' rights. While we are strongly supportive of the proposed implementation of the recommendations of the 2007 Heritage Provisions Advisory Committee Final Report (2007), this is long overdue, and this ongoing delay has continued to threaten the future of our valuable heritage assets.

The withdrawal in recent years of state government funding for heritage studies and heritage advisory services has further threatened our heritage assets, with inconsistent approaches to identifying and managing cultural and environmental heritage being applied across different municipalities. Regional and rural councils remain at a particular disadvantage in terms of available funding for heritage. Gaps in heritage overlay schedules, which are often based on out-dated heritage studies, have been highlighted by increasing development pressures and state planning policies, leading to the losses of significant heritage places (recent examples include the London Hotel in Port Melbourne, and Greyhound Hotel in St Kilda). These issues

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<sup>2</sup> Discussion Paper, Appendix 3, p 70.

are exacerbated by provisions such as VicSmart which remove notification provisions and third party rights of appeal, relying on the accuracy of local overlay schedules, and the ability of planners to effectively assess applications under the decision guidelines relating to heritage places—decisions which require expertise in heritage assessment.

In recent years, outdated and inconsistent provisions have also led to an increase in requests for interim heritage overlay controls and Interim Protection Overlays—an inefficient process, which places an additional burden on local and state government resources.

The National Trust strongly advocates for state funding for local heritage advisory services and heritage studies to be restored during the transformative phases of the Smart Planning process, to ensure that heritage policies and heritage overlay schedules are comprehensive, clear, and up to date. In our view, a modest investment by the state government in local heritage planning would have a significant benefit in terms of achieving good planning outcomes, would increase efficiency in the planning process, and lead to a decrease in VCAT appeals. We note that recent investment in heritage by the state government such as the Living Heritage Program and the review of the *Heritage Act*, while welcome, has focused on heritage places of state significance, which comprise a relatively small proportion of Victoria's recognised heritage places.

## **Response to Proposed Changes**

### **Proposal 1: A simpler VPP structure with VicSmart assessment built in**

#### ***1.1 Restructure and reform the particular provisions***

#### ***1.2 Integrate VicSmart into appropriate particular provisions and overlay schedules***

#### ***1.3 Consolidate all administrative provisions***

Supported in principle.

### **Proposal 2: An integrated planning policy framework**

#### ***2.1: Integrate state, regional and local planning policy***

#### ***2.2: Simplify the Municipal Strategic Statement***

#### ***2.3: Expand policy themes***

#### ***2.4: Create a clearer and simpler structure for policy making***

#### ***2.5: Set new rules and guidelines for writing policy***

While we support the organisational integration of state, regional and local planning policies, we submit concerns that the integration of local policies into the proposed framework will have the effect of weakening local planning policies, particularly in relation to neighbourhood character. We do not support the further weakening of local planning policies in favour of state or regional policies. Care should be taken to ensure that appropriate controls and decision guidelines are included in Zone and Overlay provisions to enable policy objectives to be realised.

### ***Proposal 3: Assessment pathways for simple proposals***

#### ***3.1: Embed a VicSmart assessment pathway in appropriate particular provisions and overlay schedules***

#### ***3.2: Introduce new code-based assessment provisions for simple proposals to support small business, industry and homeowners***

The integration of VicSmart into appropriate provisions and overlay schedules is supported, however we strongly object to any broadening of the classes of applications which are eligible for VicSmart assessment under the Heritage or Significant Landscape Overlays. We submit that a greater degree of discretion and expertise should be exercised when assessing applications against the Decision Guidelines under these overlays. Furthermore, we argue that heritage and landscape overlays provide a community benefit, and that members of the community should therefore be included in planning decisions for these places through notice provisions and rights of appeal. We note that the assessment period under VicSmart also doesn't provide adequate time for internal referrals to be made to Council Heritage Advisors, who often work part time.

Recent adverse heritage outcomes for permit applications under Heritage Overlays include the decision of Glenelg Shire Council to permit the demolition of a historic bluestone wall in Portland, despite the fact that it was specified in the schedule to the Heritage Overlay. While VCAT Deputy President Helen Gibson ruled on appeal that the Council had acted beyond its powers in issuing the permit<sup>3</sup>, this significant heritage item has now been lost forever, demonstrating the significant risk inherent with streamlined planning processes which do not include notification or appeal rights.

We remain concerned that heritage places will continue to “fall through the cracks” in the absence of clear and up-to-date overlay schedules. We advocate for a comprehensive review of the performance of VicSmart for applications relating to places under the Heritage Overlay before any further extension of VicSmart is contemplated.

### ***Proposal 4: Smarter planning scheme drafting***

#### ***4.1: Create a new VPP user manual***

#### ***4.2: Establish a business unit dedicated to VPP and planning scheme amendment drafting***

#### ***4.3: Create an online Victorian planning library***

The creation of an online Victorian planning library is strongly supported. As well as including heritage citations informing the Heritage Overlay, we also advocate for all local Heritage Studies to be made available electronically. Currently, the availability of this information varies greatly between municipalities, however these documents provide useful information to guide planning decisions regarding cultural heritage places, as well as providing useful background information for the owners of heritage places

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<sup>3</sup> Portland Historic Building Restoration Committee Inc. v Glenelg SC (Red Dot) [2017] VCAT 519 (1 May 2017).

We also advocate for the development of a standardised approach to online planning information architecture across Local Government Area websites, to make information more accessible for users of the planning system.

The establishment of a business unit dedicated to VPP and Planning scheme amendment drafting is supported, however we also advocate for close consultation with local government and residents, as well as funding to be provided for Councils to implement the proposed changes, as this process moves forward.

***Proposal 5: Improve specific provisions***

***5.1 Improvements to specific provisions***

***5.2 Update the Definitions section of the VPP***

The broad aims of this proposal outlined in the Discussion Paper are supported, however we have significant concerns regarding the lack of detail provided. Comments with regard to specific provisions are provided in the table on pages 6 to 11.

ID. No. Overlays 13	Clause No. 42	Name Environmental and landscape overlays	Modification Review all environmental and landscape overlays having regard to the following:  a) Amend the head provision to relocate the 'Table of exemptions' to Clause 62.02- 3 and insert the following words "No permit is required to remove, destroy or lop vegetation to the minimum extent necessary if any of the exemptions listed in the Table to Clause 62.02-3 apply".  b) Increase opportunities for permit exemptions (such as associated with a single dwelling) by ensuring permit triggers are linked to the purpose of the control  c) Ensure consistency across all schedules.	Justification This change seeks to increase useability by ensuring that all permit exemptions related to vegetation are listed at Clause 62. This provides a central location and reduces lengthy provisions appearing multiple times, thus improving transparency and functionality of the VPP. Other reform suggestions seek to review the consistency between the structures of schedules, and apply a standard approach to the rationale of permit triggers to ensure they are adequately justified in their application.	National Trust Response We note that regional Landscape Assessment Studies were funded by DELWP in 2015, which were linked to the development of Regional Growth Plans. The areas assessed included all of Victoria not already covered in the Coastal Spaces study (2006) or South-West study (2013). These were Central Murray, Central Victoria, Lower Hume & High Country, Lower Murray, Upper Murray and Western Victoria. These studies only reached draft form, and we have been advised that there are no resources to finalise them as edits and changes are required. We advocate for these studies to be finalised and implemented, in order to strengthen the function of the SLO.
ID. No. Overlays 14	Clause No. 43.01	Name Heritage Overlay	Modification Review the Heritage Overlay having regard to the following:  a) Review the proposed reforms to the overlay as proposed by the Heritage Provisions Advisory Committee, such as clarifying	Justification These items of reform seek to improve the clarity of the Heritage Overlay and the public's understanding of heritage precincts, sites and buildings. This includes implementation of recommendations from the Heritage Provisions Advisory Committee Final Report	National Trust Response a) The implementation of the Heritage Provisions Advisory Committee Final Report (2007) is supported.  b) The clarification of definitions is supported.  c) The creation of new permit exemptions for "minor buildings and

			<p>whether the overlay recognises precinct-wide or site specific values</p> <p>b) Create consistency in use of words where a common meaning applies, such as ‘cultural significance’, ‘heritage value’, ‘heritage interest’ and so on</p> <p>c) Create a new permit exemption for minor buildings and works, which do not affect heritage values, such as small verandas and pergolas and maintenance and the minor upgrade of railway infrastructure. Consider limiting exemptions to non-contributory buildings</p> <p>d) Review the use of exemptions for certain minor buildings and works, such as those cited in Yarra and Moreland Council incorporated documents, to determine if these exemptions can be introduced more broadly across Victoria and made more transparent and accessible.</p>	<p>(2007), and exploring new opportunities for permit exemptions in inappropriate circumstances. In the context of the widespread application of the Heritage Overlay, these changes could result in far fewer permits for minor matters.</p>	<p>works, which do not affect heritage values”, is not supported, in the absence of a review of the use of existing exemptions, and the provision of further detail and consultation.</p> <p>d) A review of the use of exemptions for minor buildings and works is supported.</p>
<b>ID. No. Overlays 16</b>	<b>Clause No. 43.05</b>	<b>Name Neighbourhood Character Overlay</b>	<p><b>Modification</b></p> <p>Review the Neighbourhood Character Overlay having regard to the following:</p> <p>a) Examine the role and function of the Overlay in the context of the new Neighbourhood Residential Zone, and other VPP tools.</p>	<p><b>Justification</b></p> <p>The Neighbourhood Residential Zone has been applied widely, particularly within many of Melbourne’s inner and middle suburbs, to control development and particularly density. In doing so, the role of the Neighbourhood Character Overlay</p>	<p><b>National Trust Response</b></p> <p>While we support further examination of the role and function of the Neighbourhood Character Overlay (NCO), we do not support the removal of the NCO from the VPPs.</p> <p>While the NRZ has been applied in some municipalities as a mechanism</p>

				has been reduced, although its function in controlling demolition remains distinct. In this respect, review of the Neighbourhood Character Overlay is warranted to determine if it could be removed to simplify the VPP.	to protect neighbourhood character, the NCO can provide additional guidance and policies which are specific to the local context.  The NCO is also a useful tool to protect areas of significant character where the application of the Heritage Overlay or NRZ may not be appropriate.
<b>ID. No. Particular Provisions 37</b>	<b>Clause No. 52.37</b>	<b>Name Post Boxes and Dry Stone Walls</b>	<b>Modification</b> Review Post Boxes and Dry Stone Walls having regard to the following: a) Examine the feasibility of removing the provision, identifying historic post boxes and dry stone walls through mapping and protecting them through the Heritage Overlay.	<b>Justification</b> The purpose of this provision is to specifically conserve historic post boxes and dry stone walls. Because it is not mapped and is in an obscure location in the VPP, the provision is commonly overlooked, and does not appear on planning property reports. The protection and conservation of items of heritage value is generally managed under the Heritage Overlay and it is therefore considered that this overlay is better suited to this role. This would require mapping of historic post boxes and dry stone walls which would increase the transparency of the VPP. It would also improve understanding and compliance with this provision.	<b>National Trust Response</b> This proposal is supported, providing that significant post boxes and dry stone walls are assessed for inclusion in the Heritage Overlay prior to the removal of this provision.  A successful example of the protection of drystone walls under the Heritage Overlay can be seen in the Shire of Melton Planning Scheme Amendment C100, gazetted in 2016, which implemented the recommendations of the Melton Dry Stone Wall Study.
<b>ID. No. General Provisions 42</b>	<b>Clause No. 66</b>	<b>Name Referral and Notice Provisions</b>	<b>Modification</b>	<b>Justification</b> This reform seeks to clarify and bring consistency to referrals by limiting them to formal referrals only and	<b>National Trust Response</b> The removal of Referral Agencies from Referral and Notice provisions is not supported. When appropriately



			<p>Review Referral and Notice Provisions having regard to the following:</p> <p>a) Remove references to seeking the views and comments of referral authorities throughout the VPP and use formal processes of Clause 66 instead</p> <p>b) Review the classification of referral agencies as ‘recommending’ authorities or ‘determining’ authorities</p> <p>c) Encourage more standard agreements with agencies to reduce the need for referral for minor and low risk matters</p> <p>d) Make the Department of Economic Development, Jobs, Transport and Resources a referral authority for land near existing quarries.</p>	<p>moving away from informal referrals. It also seeks to remove unnecessary regulatory burden and streamline the referral process for appropriate application types through greater use of standard agreements.</p>	<p>identified in planning schemes, the advice of Referral Agencies can lead to better planning outcomes.</p> <p>For example, the inclusion of the National Trust of Australia (Victoria) as a Referral Agent for applications under the Significant Landscape Overlay in Mornington Peninsular Shire and the Shire of Yarra Ranges has resulted in more appropriate development outcomes in sensitive landscapes.</p>
<b>ID. No. Other 48</b>	<b>Clause No. N/A</b>	<b>Name Practice Notes</b>	<p><b>Modification</b></p> <p>Review Planning Practice Notes having regard to the following:</p> <p>a) Repackaging the extent of practice notes to make them easier to navigate. This includes introducing a new VPP manual to support planning authorities (and repositioning appropriate practice</p>	<p><b>Justification</b></p> <p>Repackaging the (now long) list of practice notes would improve readability and accessibility.</p> <p>In recent years, the practice of applying mandatory controls (as opposed to discretionary controls) has shifted following a series of high profile panel reports and planning</p>	<p><b>National Trust Response</b></p> <p>This proposal is supported. We note that the practice of applying discretionary controls, particularly with regard to height and setback, has the potential to result in adverse outcomes for heritage places and precincts. This should be taken into account in any update of Planning Practice Note 59.</p>

			<p>notes focused on implementing and writing provisions into the manual)</p> <p>b) Create a new Practice Note addressing advertising sign provisions, in particular outlining a mechanism by which councils can address concerns about the safety impact of signs on or near state-controlled roads where VicRoads is not a referral authority</p> <p>c) Update Planning Practice Note 59 – The Role of Mandatory Provisions in Planning Schemes - to reflect the circumstances when mandatory provisions should be applied.</p>	<p>scheme amendments. Updating the practice note to reflect government policy and to provide clearer guidance would remove a source of common confusion and uncertainty among applicants, councils and the community.</p>	
<b>ID. No. Other 49</b>	<b>Clause No. N/A</b>	<b>Name Technology and the availability of documents</b>	<p><b>Modification</b></p> <p>Review planning systems having regard to the following:</p> <p>a) Review processes for accessing planning applications and update Planning Practice Note 74 - Availability of planning documents - to encourage councils to make documents relating to permit applications available freely online via their website</p> <p>b) Provide a plain text version of planning schemes on 'Planning Schemes Online' to allow convenient 'copy and paste' into</p>	<p><b>Justification</b></p> <p>Visiting a council office to view a planning application file is an anachronism that acts as a barrier to participation in the planning process. Making applications available online would bring considerable transparency benefits and improve public confidence in the planning system, as well as reducing administrative burden for councils to service requests. Some councils already do this for major applications. The data should be made available for third parties, subject to privacy considerations, to create new and</p>	<p><b>National Trust Response</b></p> <p>This proposal is strongly supported. However provisions should be made to ensure that residents who are not computer literate, or do not have online access, are provided with support to access and navigate planning documents.</p>

			<p>reports, or deliver through HTML using PSIMS.</p>	<p>innovative online tools for the community.</p> <p>PDF-based planning scheme provisions, while suited to printing, are difficult to interact with, and make it difficult for council planners and applicants to undertake the common task of 'copying' and 'pasting' into reports. Making a plain text version of each planning scheme would be a simple but effective time saver for practitioners.</p>	
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