

Summary

In theory, the Victorian Planning regime allows Councils to create local policies that guide developments so that they are suitable for their local area, while retaining the overall strategic direction of State Planning Policies.

In practice this often doesn't happen, as there are many problems with the State Planning Policies (especially Melbourne 2030), with how local Policies are written (ie they are discretionary and thus optional for a developer to follow), with the interaction of State and Local policies, and with the use of VCAT.

Problems include –

State Policies

1. The most significant problem is that the Planning system is 'performance' based, ie each application is subjectively evaluated against Local and State Policies which are not mandatory. As a result, much of the Victorian Planning system can be regarded as 'optional' for developers. When this approach is then applied to poorly constructed State Planning Policies interacting with Local Planning Policies, inconsistent planning outcomes result
2. Melbourne 2030's "higher density everywhere" and Activity Centers have swamped Local Planning Policies, rendering them next to useless. They were theoretically intended to focus higher density development in activity centers while protecting low density residential areas in between from exploitation. But in the absence of effective controls, developers have often targeted the more lucrative "infill" sites in these residential zones
3. In addition, Melbourne 2030 was implemented back to front - ie it was developed by DSE and introduced by the State Government, without any of the structure plans and extra infrastructure it was predicated on being put in place first. Today, there are still no plans for a comprehensive metro-wide integrated mass transit rail system, and many structure plans are still not finished - and they only cover part of the area that Melbourne 2030 affects. So in many cases, it's the conceptual rhetoric of M2030 that's deciding planning decisions!
4. The State has failed to develop comprehensive planning policies in a number of critical areas such as mass transit, ESD and Disability Access – and has also refused to allow Councils to develop their own
5. VCAT is being used as a central planning authority which independently decides planning applications from scratch There is no appeal of their decision, and the consistency of decisions can vary considerably, depending on which Member hears the case.

6. Rescode 'techniques' are also treated as optional, with the exercise of discretion as to whether the (so-called mandatory) objectives have been met. Along with the other weaknesses above, this has fostered the "ambit claim" syndrome, where many development applications deliberately push the envelope. Rescode was supposed to contain minimum standards but in practice they are often being treated as average or maxima standards.
7. There is no major penalty for a developer not to apply for a planning permit. In many cases they retrospectively apply for one (if they are caught) and if they receive it (either at Council or VCAT) have not suffered a penalty! In the unlikely case that they do not receive a permit, it is very difficult and extremely rare for them to have to demolish the development.

Local Planning Policies -

8. As per the State Policies, they contain loose objectives - not what can (and can not) be done. Thus they are open to a wide range of subjective assessments.
9. They take too long to write, be approved by the Planning Minister, and be implemented. - typically 2 to 4 years
10. They are not allowed to contain topics that the State Government doesn't want, even if there is no matching State Policy! ie Disability Access.

These problems should be addressed by -

1. Allowing key State and Local Planning Policies to have mandatory (and explicit) conditions ie move away from a 'performance' (ie optional) approach to Planning.
2. Suspend Melbourne 2030 until it (or what replaces it) can be implemented properly. This includes transparently re-evaluating both the macro and micro-demographic projections it is based on, as well as freezing current activity center expansion until strong objective criteria are promulgated to guide their future sustainable development
3. Develop specific State Planning Policies in areas such as ESD and Disability Access.
4. Change the role of VCAT to that of process review only - ie, an oversight function for councils
5. Make all Rescode techniques mandatory minimum standards (including local variations).
6. Allow councils to quickly review their Local Policies and add mandatory minimum conditions.
7. Significant penalties need to be applied to retrospective permits, even if granted.

8. Change the process (and timelines) used to write Local Planning Policies. This would also be assisted by the DSE making 'template' policies available for councils to implement rapidly in common areas ie liquor licensing, built form, parking, etc.
9. Allow Councils to write Planning Policies in a wider range of areas, as long as they do not conflict with State Policy (though they could be more specific, set a higher standard, or contain additional requirements compared to their State counterparts).
10. Give Local Planning Policies a higher priority than a more general State Policy ie once a Local Policy has been approved (with due influence from the State Policies) it should then have a higher priority in the decision making for an individual development, as it is more specific to the area the development is in.
Note: This would stop Melbourne 2030's "Higher density is good" overriding all local policies – which was never the original idea of M2030!
- 11. The Planning & Environment Act is well and truly dated. "Band-aiding" should stop - the Act should be re-written, with major input from the community!**

This document will be expanded over the coming weeks to address these issues in more depth.

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