1.0 What Constitutes a Planning Permit Application?

Clause:1 often receives complaints from clients about the process they are forced to endure when applying for planning permits. Common concerns include:

- Inconsistent advice from separate Council planners prior to application;
- A lack of direct accountability from Council;
- Poor communication;
- The difficulty in getting commitment from Council;
- Excessive time required to determine an application.

A recent survey of Victorian architects and designers indicated that the time dedicated to planning permit applications had more than doubled over the previous three years.

Conversely Council Planning Officers will attest that the majority of delays they experience are associated with the processing of planning applications relate to:

- Poorly prepared, incomplete or inaccurate applications;
- Ill-conceived applications that do not appropriately consider the planning provisions affecting the site;
- The massive number of applications some municipalities receive;
- The lack of pre-application consultation undertaken by many applicants.

Regardless of the cause the evidence suggests permit applicants are spending more time and money attempting to acquire planning approval than ever before.

We at Clause: 1 commend any Responsible Authority making a genuine attempt to improve the currently woeful extent of delays associated with the processing of permit applications in many parts of the State. Well-run pre application meetings, robust levels of internal delegation, a fast tracking process for simple applications, for example, are methods that innovative Councils have used in the past to keep applications moving despite heavy workloads and high staff turnover.

However, a worrying trend towards certain Councils abusing their responsibilities in an attempt to resolve or disguise these problems is beginning to emerge. One such example was a standard list of 'demands' from a South Eastern municipality notorious for sluggish processing times. As regular applicants to this municipality, Clause 1 was advised that from 1st of July 2013, any application not accompanied by a list of 'compulsory items' would not be accepted. Presumably, an application that is not considered to be acceptable would be returned unstamped and would not be receipted or processed until Council became satisfied that the application was 'complete'.

The list of demands included a recent copy of title including all restrictions, a construction impact assessment of existing vegetation undertaken by a qualified arborist, (which appears to be required even if a site is not protected by a VPO, contains no trees or if no trees are proposed to be affected); an electronic version of all plans and documentation in PDF format. Importantly, it is acknowledged that Council may reasonably require some or all of this information in order to determine the application.

However, a robust *request for further information* (RFI) process is already in place and is mandated under Section 54 of the P&E Act. Section 54 sets out what can be requested, the timeframes involved for both Council and the applicant, and also includes the ability for an applicant to appeal to the Tribunal if unwarranted RFI material is sought by Council. In addition, the Section 79 timeframes that govern when an appeal against Council's 'failure to determine an application within the designated time' can be sought by an applicant are based around the date that the application was 'received' by Council. If Councils refuse to 'receive' applications, it clearly places applicants at a disadvantage in terms of accessing the provisions of Clause 79 and creates confusion about the date when the application was 'actually' lodged.

Back in *ML Design v Boroondara CC [2005] VCAT 2088*, we learned that an application for a planning permit requires only one item: An application form. In *ML Design,* Deputy President Gibson found anything else that the Council needs, including 'mandatory' items like the application fee, a certificate of title, plans and reports, can be sought through the Request for Further Information (RFI) process established at Section 54 of the P & E Act.

Once again, we stress that an attempt to speed up processing times by any Council is commendable. However, it is Clause:1's opinion that issuing demands that are contrary to the provisions of the Planning & Environment Act is unlawful, and unfairly disadvantages the applicant as well as diluting accountability for unreasonable demands for extra information not required as part of the planning permit process. It also hints at an attempt to disguise poor performance and application processing times by Council.

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Last updated 270913