

Greenfield Subdivision Permits

A MODEL APPROACH

MAY 2020



vpa
Victorian Planning Authority

streamlining
FOR
growth
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INTRODUCTION

ABOUT THIS DOCUMENT

This document's purpose is to achieve greater consistency in the structure and conditions of growth area subdivision permits to assist in streamlining approvals.

It supersedes *Growth Area Model Planning Permit Conditions: A Manual for Implementation* (GAA 2011). Similar to [Writing Planning Permits](#) (DSE, 2007), it is designed to aid decision making. Decision makers are encouraged to use this document to promote a level of consistency in the way planning permits are drafted and efficiently deliver on legislative objectives.

The document has been prepared to assist responsible authorities, referral authorities and industry professionals operating in Melbourne's growth areas with the drafting of planning permits and conditions.

THE SUBDIVISION PROCESS

It is critical to keep in mind that a subdivision permit answers to both the [Planning and Environment Act 1987](#) and the [Subdivision Act 1988](#). The granting of a subdivision permit demonstrates that a subdivision has met the relevant requirements of the planning scheme. However, unlike other permits, a subdivision permit also needs to inform, but not supplant, the subdivision procedures set out in Parts 2, 3 and 4 of the Subdivision Act.

The scope of conditions that a permit may include is broad as documented in Section 62 of the Planning & Environment Act. However, in a subdivision permit it is critical to ensure conditions logically and reasonably interact with the Subdivision Act provisions.

The Planning & Environment Act and the Subdivision Act are closely integrated. The two acts form part of cognate legislation enacted at the same time and each act depends upon the other for its operation. A subdivision permit should closely follow the subdivision process and be cognisant of how the Subdivision Act empowers planning schemes and planning permits for subdivision.

STRUCTURE OF THIS DOCUMENT

PART 1 sets out principles for permit structure and content as well as subdivision specific principles. The permit structure is strongly influenced by the structure of the Subdivision Act.

PART 2 addresses drafting conditions in each section of the permit. This chapter describes the requirements and considerations the permit should address at each milestone of the subdivision process. An explanation of each condition is also included.

PART 3 contains model permit conditions that may be used as they are or to assist in drafting standard conditions.

PART 1 PERMIT STRUCTURE & CONTENT	1.1 Condition principles
	1.2 Permit preamble
	1.3 Permit condition content
	1.4 Endorsed plans or approved plans
PART 2 CONDITIONS FOR EACH STAGE OF SUBDIVISION	2.1 Conditions to be satisfied before certification
	2.2 Conditions to be satisfied before works commence
	2.3 Conditions to be satisfied before statement of compliance
	2.4 Permit administration conditions
PART 3 A MODEL PERMIT CONDITION EXAMPLE	3.1 Conditions to be satisfied prior to certification of a plan under the <i>Subdivision Act 1988</i>
	3.2 Conditions to be satisfied prior to commencement of works
	3.3 Conditions to be satisfied prior to statement of compliance under the <i>Subdivision Act 1988</i>
	3.4 Permit administration conditions
	3.5 Planning permit checklist

MODEL AND STANDARD CONDITIONS

Councils administering these permits typically produce and use their own suite of *standard conditions*. This document doesn't seek to replace that practice. Rather, it seeks to document a common framework for how and when conditions are required, some consistent drafting standards and suggested *model conditions*.

It is recommended that councils regularly review and update their standard conditions in line with current practices (including these model conditions), Tribunal decisions and the condition drafting principles in [Writing Planning Permits](#) (DSE 2007).

This document applies to all authorities preparing permit conditions, whether they be a responsible authority or referral authority.

While this document does not include specific referral authority conditions, the guidance and principles should inform the drafting of conditions for referral authorities, as well as for responsible authorities.

WHAT IS NOT INCLUDED IN THIS DOCUMENT

This document does not contain a complete list of planning permit conditions or address any mandatory conditions such as:

- conditions that a planning scheme requires be imposed on a permit:
 - Urban Growth Zone schedule conditions; and
 - Clause 66 conditions.
- referral authority conditions.

PART 1:

PERMIT STRUCTURE & CONTENT

1.1 CONDITION VALIDITY

Planning conditions must be reasonably capable of being related to the implementation of the relevant planning policy. In this case planning policy is the regime created by the *Planning and Environment Act 1987* (including the planning scheme) and the *Subdivision Act 1988*.

Permit conditions must be certain and decision makers must consider whether conditions:

- Fairly and reasonably relate to the proposed development.
- Constitute reasonable requirements in the circumstances

1.2 PERMIT PREAMBLE

The permit preamble is a vital component of the planning permit and it is required by the prescribed Form 4 set out in the *Planning and Environment Regulations 2005*. Its role is to identify:

- the land to which the permit applies; and
- the primary permission(s) being granted.

In addition to identifying the land the permit applies to, the preamble should clearly refer to the primary permission(s) being granted.

When drafting a subdivision planning permit, the description following “what the permit allows” can be as simple as “Subdivision” or “Subdivision of the land”. It must also document any other primary permissions granted by the permit such as vegetation removal or a works permission required under an overlay.

In cases where staged subdivision is proposed the description “Staged subdivision of the land” is sometimes used to reflect the fact of intended staging.

It is generally inappropriate to specify the number of lots or ancillary elements such as landscaping, unless the scheme requires a primary permission for those activities, as these are addressed through approval of plans.

For further information on writing a preamble to a permit, consult Part 1 of *Writing Planning Permits*.

MODEL PREAMBLE FOR SUBDIVISION PERMIT

This permit allows the subdivision of the land [insert other permissions as required] generally in accordance with the plans endorsed under this permit and subject to the conditions set out in this permit.

Note:

Other permissions may also be allowed for in the permit and these need to be reflected in the permit preamble. These permissions may include (but are not limited to):

- removal of native vegetation;
- alteration to or creation of an access to a road in a Road Zone Category 1; and
- demolition of heritage buildings.

1.3 PERMIT CONDITION CONTENT

When a condition involves an action, it must address the following:

- **When** is it to be done?
- **What** is to be done?
- **Who** is to be satisfied?

1.3.1 WHEN IS IT TO BE DONE?

To ensure a condition is enforceable and to clearly articulate timing, the condition must provide clear guidance as to when it is to be satisfied.

Permit conditions related to a subdivision should be clearly directed at the whole of or the relevant stage of the subdivision and specify timing consistent with the Subdivision Act. For example:

- Before the Plan of Subdivision is certified under the *Subdivision Act 1988* for the first stage...
- Before commencement of works at each stage...
- Before a Statement of Compliance is issued under the *Subdivision Act 1988* at Stage 5...

Chapters 2 and 3 detail what is required at each of these stages of the subdivision process.

Conditions to be satisfied "before a Plan of Subdivision is lodged for registration..." or "before the lots are titled..." are not appropriate as the Subdivision Act does not give explicit power to require an action to be completed at this stage. Further, there is no ability for a council to recall or rescind a plan once it is certified or once Statement of Compliance is issued.

1.3.2 WHAT IS TO BE DONE?

The condition must clearly state what action is to be undertaken. This may include the preparation of a plan, works, entering an agreement or the payment of contributions.

Conditions should avoid a suite of standard requirements relating to the action. This will ensure permits are not overly burdened with conditions and minimises risk of conditions being contrary to legislation or conflicting with other permit requirements.

1.3.3 WHO IS TO BE SATISFIED?

The Subdivision Act refers to both the *responsible authority* and the *council*. While a council is usually also the responsible authority, be mindful to attribute the responsibility for approval and other tasks to the correct body. The council when acting in its original role has different obligations and powers to those it has when acting as a responsible authority. Most importantly, it is the council as the future owner of civil works, open space and associated land that is primarily involved in approvals of related matters under the Subdivision Act.

Section 1.3.4 of this document notes referral authority condition preparation. Further guidance on this can be found in [Planning Practice Note 54: Referral and Notice Provisions](#).

1.3.4 REFERRAL AUTHORITY MATTERS

Responsible authorities must engage with referral authorities in the consolidation of conditions to meet legislative requirements and ensure that the intent is met. It is good practice and encouraged that responsible authorities work with referral authorities to ensure conditions are consistently drafted, understood by all parties and duplication is minimised.

Section 62(1)(a) of the Planning & Environment Act requires the responsible authority to include any condition which the determining referral authority requires to be included. In addition, Section 62(1)(b) of the Planning & Environment Act specifies a responsible authority must not include additional conditions which conflict with any condition required by a determining referral authority.

Responsible authorities cannot re-word referral authority conditions without engagement with referral authorities and any conditions must reflect agreement by both authorities before it is included within a permit or decision.

Referral authorities should be guided by the principles of this document when preparing greenfield subdivision conditions. Referral authorities and councils should ensure their conditions do not duplicate or contradict the requirements of one another and are clear on who is responsible for their enforcement.

1.3.5 PROCEDURAL AND SUBSTANTIVE CONDITIONS

The primary content of the permit should be the substantive requirements relating to the design of the subdivision and associated restrictions on the plan of certification, as well as the civil works requirements of the various authorities.

1.3.6 AVOIDING DUPLICATING OTHER LEGISLATION

Permit conditions that duplicate requirements that are covered by other relevant legislation are not required. This includes the Subdivision Act and Planning & Environment Act. [Part 2](#) of this document includes a section titled “Existing legislation” which provides further guidance for avoiding duplication for each stage of the subdivision process.

1.4 ENDORSED PLANS OR APPROVED PLANS

The definition of a permit under section 3 of the Planning & Environment Act includes any plans, drawings or other document *approved* under a permit. Accordingly, the words *endorsed* or *approved* may be used interchangeably.

Authorities preparing conditions should consider the appropriateness of including a secondary consent mechanism to allow for an endorsed or approved plan to be amended without requiring an amendment under Section 72 of the Planning & Environment Act.

PART 2:

CONDITIONS FOR EACH STAGE OF SUBDIVISION

2.1 CONDITIONS TO BE SATISFIED BEFORE CERTIFICATION

Once the responsible authority has determined to issue a planning permit, the fundamental design of the subdivision should be complete, although some design adjustments may be addressed in an amended plan condition.

With the subdivision design settled, the first part of a permit should focus on documenting the intended subdivisional boundaries to achieve certification of the plan of subdivision.

2.1.1 OBJECTIVES

To accurately document and dimension the subdivision layout and any property, road and reserve boundaries.

To record any restrictions and agreements required under the permit and any other relevant easements and property rights.

2.1.2 AUTHORISING LEGISLATION

Section 62 of the *Planning and Environment Act 1987*.

Part 2 of the *Subdivision Act 1988*; in particular, sections 6(1) and 12 that authorise condition content.

2.1.3 CRITICAL OUTPUT

A certified plan of subdivision capable of lodgement with the Registrar of Titles.

2.1.4 REQUIREMENTS TO INFORM CRITICAL OUTPUT

A certified plan must address "...those requirements of the planning scheme and any permit that relate to the boundaries of roads, lots, common property and reserves and the form and content of the plan..." (Section 6(1) of the Subdivision Act) and easements and other rights (Section 12 of the Subdivision Act).

Only plans that inform those requirements should be required before certification. Smaller subdivisions that don't require new infrastructure may not require any further plans before certification. On larger complex subdivisions, plans before certification commonly include:

- Amended subdivision design plan and/or functional layout plan for specified areas;
- Landscape master plan to a conceptual/thematic level;
- Subdivision and housing design guidelines or building envelopes including any mandatory requirements of the scheme such as a Small Lot Housing Code restriction; and/or
- Any related requirements of a precinct structure plan or other strategic plan.

2.1.5 AVOID DUPLICATING EXISTING LEGISLATION

There are many commonly imposed conditions that are not wholly necessary to be included in the permit to obtain certification as existing legislation imposes requirements to be met and these should not be duplicated in permit conditions.

Relevant to certification, this includes conditions requiring referral of the certified plan to referral authorities (clause 66.01 of planning schemes).

Only those referrals a responsible authority considers necessary, and that are not required by the planning scheme, should be conditioned in the permit. See Section 8(1)(a) of the Subdivision Act.

2.1.6 THE CONDITIONS

The conditions listed at 2.1.6, 2.2.6 and 2.3.6 are written as stand-alone conditions. It is recommended to group conditions within a stage to avoid duplication. For example, the heading 'Requirements to be satisfied Prior to Certification of a Plan under the *Subdivision Act 1988*' would be followed by the list of conditions to be satisfied by this milestone.

AMENDED PLANS

1. Before the [plan of subdivision] is certified under the *Subdivision Act 1988*, amended plans to the satisfaction of the responsible authority must be endorsed by the responsible authority. The plans must be drawn to scale with dimensions. The plans must be generally in accordance with the plans submitted with the application [insert plan reference no./date/ prepared by] but modified to show:

- a. [Insert as appropriate]

Explanation

This condition requires amended plans to address any outstanding changes required on the master concept plan. Any changes requested in this condition should not be duplicated in the Functional Layout Plan conditions.

FUNCTIONAL LAYOUT PLAN

2. Before the plan of subdivision is certified under the *Subdivision Act 1988* at [each stage], or any other time agreed by the responsible authority, a functional layout plan for [identify specific infrastructure or matter to be described on the plan] must be submitted to and approved by the responsible authority. The functional layout plan must be drawn [insert format requirement]. The functional layout plan must be generally in accordance with the application plans but incorporate the following:

- a. [Insert as appropriate]
- b. Example: Stormwater asset – specify what is required to inform plan of subdivision for certification

Explanation

A functional layout plan should only be required where it will inform the plan that is to be certified by determining the boundaries of roads, lots, location of easements etc.

PUBLIC INFRASTRUCTURE PLAN

3. Before the [first plan of subdivision] is certified under the *Subdivision Act 1988*, a public infrastructure plan (PIP) must be submitted to and endorsed by the responsible authority. The PIP must include:

- a. [Insert as required]

Explanation

A public infrastructure plan is an application requirement in the Urban Growth Zone. The PIP will typically be endorsed. The PIP must include all the information specified in the Urban Growth Zone schedule. Council may request additional information be included on the plan to clarify and provide certainty of the requirements for the developer.

LANDSCAPE/STREET TREE MASTER PLAN

4. Before the [plan of subdivision] is certified under the *Subdivision Act 1988*, a landscape/street tree master plan (LMP/STMP) must be submitted to and endorsed by the responsible authority. The plans must be drawn to scale with dimensions. The plans must show:

- a. [Insert as required]

Explanation

The Victorian Civil and Administrative Tribunal (VCAT) (FSPG Communities Pty Ltd v Casey CC [2018] VCAT 1129) has found that the street tree master plan is to be provided prior to certification to ensure engineering plan and landscape plans “talk to each other”.

SCHEDULE OF INFRASTRUCTURE CONTRIBUTIONS/DEVELOPMENT CONTRIBUTIONS

5. Before the Certification of the Plan of Subdivision under the *Subdivision Act 1988* for each stage of the subdivision, a Schedule of [Infrastructure Contributions/Development Contributions] must be submitted to and approved by the responsible authority and must show:

- a. Stage
- b. NDA
- c. WIK
- d. [Insert as required]

Explanation

Council may request an Infrastructure Contributions Plan (ICP) or Development Contributions Plan (DCP) schedule prior to certification. This assists in forecasting any money that is to be received or credit to be refunded by the collecting agency.

SUBDIVISION ACCESS REQUIREMENT

6. Unless with the written consent of the responsible authority, before the [first plan of subdivision] is certified under the *Subdivision Act 1988*, the following works must be completed:
 - a. [Insert road description] from the subject site's entrance to [insert road description] road, identified as [insert ICP/DCP project description], must have reached a stage of practical completion to urban standards and provide a sealed road connection to [insert road description] to the satisfaction of the responsible authority and VicRoads.
 - b. The [insert intersection description], identified as [insert ICP/DCP project description], must have reached a stage of practical completion to the satisfaction of the responsible authority and VicRoads.

Explanation

The purpose of this condition is to facilitate appropriate subdivision access.

MEMORANDUM OF COMMON PROVISIONS

7. Before the plan of subdivision is certified under the *Subdivision Act 1988* [at each stage], or any other time agreed by the responsible authority, a Memorandum of Common Provisions must be prepared to the satisfaction of the responsible authority and must include:
 - a. [Insert as required]

Explanation

Memorandum of Common Provisions (MCP) are increasingly common and if MCP are not appropriately drafted they can include provisions that require informal approvals (i.e. approvals outside of the usual Planning & Environment Act approvals) from council. Accordingly, MCP should be assessed before the plan is certified.

2.2 CONDITIONS TO BE SATISFIED BEFORE WORKS COMMENCE

Once the plan has been certified several conditions are to be satisfied prior to works commencing. Once detailed engineering drawings have been approved, site/construction management plans are approved by relevant authorities and agreements have been entered into, the subdivision works can commence.

2.2.1 OBJECTIVES

To design civil works in accordance with authority standards.

To document site management practices consistent with authority standards.

2.2.2 AUTHORISING LEGISLATION

Section 62 of the *Planning and Environment Act 1987*.

Part 3 of the *Subdivision Act 1988*; notably sections 15(1) and 17.

2.2.3 CRITICAL OUTPUT

The construction of civil works.

To document procedures for reasonably maintaining the safety and amenity of areas affected by construction.

2.2.4 REQUIREMENTS TO INFORM CRITICAL OUTPUT

Under Section 17(1) of the Subdivision Act, works cannot commence on site until the plan has been certified, the engineering plan has been approved; and any agreement required by a responsible authority or a referral authority has been entered into.

2.2.5 AVOID DUPLICATING EXISTING LEGISLATION

Often conditions are placed in permits that duplicate existing legislation requirements that must be met prior to works commencing. This should be avoided. These include conditions that duplicate a head of power in legislation, e.g. the power to charge both an engineering plan checking fee and a supervision of works fee in accordance with the *Subdivision (Fees) Regulations 2016*, regulations 9 and 11.

In addition, for works construction, Section 16 of the Subdivision Act requires anyone constructing works to comply with the certified plan, approved engineering plan and any standards specified in the planning scheme or permit. Together with Section 15, this enables a council to require plan and specify works requirements in the permit. While Section 15 allows council to require production of an engineering plan without it being required by the permit, current practice is to require a 'construction plan' condition in the permit that contains the relevant works requirements.

Note:

Section 15 also allows any works requirements directly specified in the scheme to be implemented without needing to be reproduced in the permit.

2.2.6 THE CONDITIONS

SITE MANAGEMENT PLAN

8. Before the works commence for [each stage] a Site Management Plan must be submitted to and endorsed by the responsible authority. The Site Management Plan must:

a. [Insert as required]

Explanation

Commonly known as:

- Site Management Plan;
- Construction Management Plan;
- Site Environmental Management Plan; or
- Construction Environmental Management Plan.

The Site Management Plan (SMP) is to ensure adequate site construction and environmental management procedures are followed during subdivision works.

Only one management plan conditions should be provided on the permit. The SMP condition should consolidate any site/environmental management requirements from referral authorities and be clear who is responsible for its enforcement.

DETAILED LANDSCAPE PLAN

9. Before the works commence for [each stage], a detailed landscape plan for the stage must be submitted to and approved by the responsible authority. The landscape plan must be drawn [insert format requirement], must be consistent with any endorsed landscape master plan and must show:

a. [Insert as required]

Explanation

The detailed landscape plan is required to be provided prior to work commencing on the relevant stage as it will inform how the works are to be undertaken.

DETAILED CONSTRUCTION PLANS (ALSO KNOWN AS ENGINEERING DRAWINGS)

10. Before the works commence for [each stage], detailed construction plans must be submitted to and approved by the responsible authority. The detailed construction plans must be generally in accordance with the approved Functional Layout Plans, must be drawn [insert format requirement]. and must include:

a. [Insert as required]

Explanation

The detailed construction plan is required to be provided prior to work commencing on the relevant stage as it will inform how the works are to be undertaken.

SECTION 173 AGREEMENT FOR PIP, ICP AND/OR DCP/PUBLIC OPEN SPACE CONTRIBUTION

11. Before works commence at stage [stage of subdivision] or at another time agreed, the owner must enter into an agreement under Section 173 of the *Planning and Environment Act 1987* with the responsible authority which provides for:
- a. Insert PIP requirements
 - b. Insert DCP/ICP requirements
 - c. Insert land equalisation requirements (if applicable)
 - d. Insert 53.01 requirements (if applicable)
 - e. Any other S173 Agreement requirements

Applications must be made to the Registrar of Titles to register the Section 173 Agreement on the title to the land under Section 181 of the Act.

The landowner must pay the reasonable costs of the preparation, execution, registration and any future amendments of the Section 173 agreement.

Explanation

Council or a contributions plan may require a Section 197 Agreement to be entered into that implements the PIP and specifies the mechanisms for crediting the infrastructure, and any payments from any party to the agreement for any outstanding contribution or credit amount. A Section 173 Agreement is not a mandatory requirement and should only be included to address specifics that cannot be included within the permit.

It is recommended that an agreement be entered into before works commence. This is to ensure that when works are undertaken, they will be accepted.

Where multiple conditions require agreements, it is recommended that the conditions are consolidated. This will assist in ensuring there are no contradictions in the agreements and streamline the process for entering, compliance and ending the agreement. However, in some circumstances, separate agreements may be appropriate, such as where an agreement is required for both the management of construction of the subdivision / contributions and separately to impose ongoing obligations on future land owners.

2.3 CONDITIONS TO BE SATISFIED BEFORE STATEMENT OF COMPLIANCE

Once the works have been completed the outstanding permit conditions, including the submission of as constructed plans and payment of any levies, can be executed and Council must issue Statement of Compliance as soon as possible to allow for the registration of titles. The applicable referral authorities are also required to consent to the issuing of Statement of Compliance.

2.3.1 OBJECTIVES

- To achieve compliance with the works requirements of all relevant authorities
- To settle outstanding developer contributions e.g. open space, development or infrastructure

2.3.2 AUTHORIZING LEGISLATION

- Section 21 of the *Subdivision Act 1988*.

2.3.3 CRITICAL OUTPUT

- A Statement of Compliance
- Agreements to settle works requirements at another time

2.3.4 REQUIREMENTS TO INFORM CRITICAL OUTPUT

Under Section 21 of the Subdivision Act, a Statement of Compliance is to be issued by council as soon as possible once the applicant has provided the prescribed information, all requirements that relate to public works have been met or an agreement has been entered to secure compliance with those requirements (for example a bond).

The statement of compliance is the time for council to ensure compliance with public work-related conditions and requirements. This also includes additional considerations before the issue of the statement of compliance including the payment of any required levies.

The Subdivision Regulations do not currently prescribe any information that must accompany an application for Statement of Compliance.

2.3.5 AVOID DUPLICATING EXISTING LEGISLATION

There are many commonly imposed conditions that are not wholly necessary to go in the permit to obtain Statement of Compliance as existing legislation imposes requirements to be met and these should not be duplicated in permit conditions.

Relevant to Statement of Compliance, this includes requiring payment of Public Open Space Contribution which is required at Section 18A of the Subdivision Act.

In addition, in accordance with Section 16 of the Subdivision Act provided detailed landscape plans show how any reserve or land set aside for public open space or any tree reserve or similar is to be finished before being vested to the responsible authority, the conditions do not need to duplicate these requirements.

2.3.6 THE CONDITIONS

AS CONSTRUCTED PLANS

12. Before Statement of Compliance for [each stage], or any other time which the responsible authority agrees, 'as constructed plans' for road, drainage and landscape works must be submitted to the satisfaction of the responsible authority, must be drawn [insert format requirement] and must include:

a. [Insert as required]

Explanation

As constructed plans will be required for all works that are to be transferred in ownership including roads and reserves. Authorities may request particular file types to assist with their asset management.

Section 16 of the Subdivision Act requires that works must be carried out in accordance with the approved engineering plan, as such conditions duplicating this requirement are not necessary.

DEALING NUMBER FOR S173

13. Before Statement of Compliance for the [insert stage] of subdivision, or such other time which is agreed, a dealing number for the registration of the Section 173 Agreement [required at Condition X] must be provided to the responsible authority.

Explanation

If an agreement is being registered by the developer, the responsible authority may request a dealing number for the agreement to confirm that it will be registered on the title.

REVISED INFRASTRUCTURE/DEVELOPMENT CONTRIBUTIONS SCHEDULE

14. [At least X days] before Statement of Compliance is issued for [insert stage] of the subdivision, a revised Schedule of [Infrastructure Contributions/ Development Contributions] must be submitted and approved by the responsible authority.

Explanation

As the Development Contribution or Infrastructure Contributions (as the case may be) levy rates change, the collecting agency may require an updated schedule of contributions to reflect the applicable levy.

PAYMENT OF INFRASTRUCTURE/DEVELOPMENT CONTRIBUTIONS/PUBLIC OPEN SPACE CONTRIBUTIONS

15. Before Statement of Compliance for [each stage], or any other time agreed, the monetary component [and any land equalisation amount] of the [infrastructure contribution/development contribution] must be paid to the responsible authority in accordance with the provisions of the [Infrastructure Contributions Plan/Development Contribution Plan] for the land, in accordance with the [Section 173 agreement if applicable or] [after Certification of the relevant plan of subdivision but not more than 21 days prior to the issue of Statement of Compliance] in respect of that plan.

Explanation

The payment of any levies is appropriately required to be paid prior to Statement of Compliance at each stage, unless an agreement has been entered into for payment to be made at an alternative time.

16. Before Statement of Compliance is issued for each stage of subdivision, the landscaping works shown on the approved landscape plan for the stage must be completed to the satisfaction of the responsible authority, or bonded if agreed to in writing by the responsible authority. If the responsible authority agrees to bonding of outstanding works, a time by which the works must be completed will be specified by the responsible authority.

Explanation:

If agreed to by the responsible authority, landscaping works can be bonded and may not be required to be completed prior to Statement of Compliance.

2.4 PERMIT ADMINISTRATION CONDITIONS

It is recommended that the administrative permit conditions be grouped at the end of the permit. The following conditions have been identified as commonly used administrative conditions.

COMPLIANCE WITH PLANS AND SECONDARY CONSENT

- 17.** Development must be undertaken in accordance with the plans and/or documents endorsed under this permit and the plans and/or documents endorsed under this permit must not be altered or modified without the prior written consent of the responsible authority.

Explanation

This condition mandates that development must be undertaken in accordance with the endorsed plans and documents and facilitates minor changes under Secondary Consent without requiring an amendment under Section 72 Amendment of the Planning and Environment Act.

REQUIREMENTS OF SECTION 46GV (IMPOSITION OF INFRASTRUCTURE CONTRIBUTION) OF THE *PLANNING AND ENVIRONMENT ACT 1987*

- 18.** If the land to which this planning permit applies includes any Inner Public Purpose Land, that Inner Public Purpose Land must be provided to:
- a.** in the case of Inner Public Purpose Land required for a road, the development agency responsible for the use and development of the land for the road;
 - b.** in any other case, to the collecting agency – by:
 - i.** setting aside on a plan under the *Subdivision Act 1988* the Inner Public Purpose Land required for a road so as to vest in the development agency responsible for the use and development of that land as a road; and
 - ii.** setting aside on a plan under the *Subdivision Act 1988* any other Inner Public Purpose Land so as to vest in the collecting agency.

Any plan must be lodged for registration under Section 22 of the *Subdivision Act 1988* within the time specified in any other condition of this permit or if no condition is specified in this permit then by the time set out in any agreement entered into by the collecting agency, the applicant and/or the owner of the land.

Explanation

This condition, only applicable to land encumbered by the ICO and not the DCPO, is required to be included in accordance with Section 46GV (7) of the Planning and Environment Act.

TRANSFER OF PUBLIC LAND

19. Land required for community facilities, public open space or road widening must be transferred to or vested in the relevant responsible authority with any designation (e.g. road, reserve or lot) nominated by the responsible authority. No cost for effecting the transfer or vesting is to be borne by the responsible authority.

Explanation

This condition allows the responsible authority to nominate their preferred designation of land to be vested in their ownership and requires that the administrative costs for effecting the transfer are not borne by them.

STAGING

20. The subdivision must proceed in the order of stages shown on the endorsed plans unless otherwise agreed by the responsible authority.

Explanation

It is common practice for the staging to change over the course of the subdivision works. The permit should allow for staging to be flexible. Staging order should be clear for all stakeholders, and as such, any staging changes must be agreed to by the responsible authority.

MAINTENANCE OF LANDSCAPE WORKS

21. Unless otherwise agreed in writing by the responsible authority, the landscaping constructed in accordance with the endorsed approved landscape construction plans must be maintained to the satisfaction of the responsible authority, for a period [insert timeframe], following the granting of practical completion of landscape construction works.

Explanation

Section 17(4) of the *Subdivision Act 1988* requires that all the completed civil works are the responsibility of the applicant to maintain in good condition and repair for a period of three months, after which time it becomes the responsibility of council or the referral authority. However, Section 17(4) does not cover landscape works and as such this condition does not duplicate the Subdivision Act.

EXPIRY

22. This permit will expire if:
- a. The plan of subdivision for the first stage is not certified within [two years] of the date of the permit; or
 - b. The plan of subdivision for the last stage of the subdivision is not certified within [X years] of the date of this permit; or
 - c. The registration of the plan of subdivision for each stage is not completed within five years from the date of certification of that stage.

An extension to the expiry may be granted in accordance with Section 69 of the *Planning and Environment Act 1987*.

Explanation

The expiry condition is consistent with Section 68 of the *Planning and Environment Act 1987*. Although duplication, it is common practice to impose an expiry date on permits. In the absence of a stated expiry date, default expiry dates, it is five years for subdivision following certification of the plan of subdivision under the *Subdivision Act 1988*.

PART 3:

A MODEL PERMIT CONDITION EXAMPLE

The following is an example of a model permit, which includes conditions drafted using the principles described in this document.

3.1 CONDITIONS TO BE SATISFIED PRIOR TO CERTIFICATION OF A PLAN UNDER THE SUBDIVISION ACT 1988

1. Amended plans to the satisfaction of the responsible authority must be endorsed by the responsible authority. The plans must be drawn to scale with dimensions. The plans must be generally in accordance with the plans submitted with the application [insert plan reference no./date/ prepared by] but modified to show:
 - a. [Insert as appropriate]
2. A functional layout plan for [identify specific infrastructure or matter to be described on the plan] must be submitted to and approved by the responsible authority. The functional layout plan must be drawn [insert format requirement]. The functional layout plan must be generally in accordance with the application plans but incorporate the following:
 - a. [Insert as appropriate]
 - b. An example would be stormwater asset – and could specify what is required – be specific so it informs Certification
3. A Public Infrastructure Plan (PIP) must be submitted to and endorsed by the responsible authority. The PIP must include:
 - a. [Insert as appropriate]
4. A landscape master plan/street tree master plan (LMP/STMP) must be submitted to and endorsed by the responsible authority. The plans must be drawn to scale with dimensions. The plans must show:
 - a. [Insert as appropriate]
5. A Schedule of [Infrastructure Contributions/Development Contributions] must be submitted to and approved by the responsible authority and must show:
 - a. Stage
 - b. NDA
 - c. WIK
6. Housing Design Guidelines (HDG) must be submitted to and approved by the responsible authority. Once approved the HDG must form a restriction on title to all relevant lots to the satisfaction of the responsible authority. The HDG must include:
 - a. [Insert as appropriate]

3.2 CONDITIONS TO BE SATISFIED PRIOR TO COMMENCEMENT OF WORKS

7. A Site Management Plan must be submitted to and endorsed by the responsible authority. The Site Management Plan must:
 - a. [Insert as appropriate]
8. A detailed landscape plan must be submitted to and endorsed by the responsible authority. The landscape plan must be drawn [insert format requirement], must be consistent with any endorsed landscape master plan and must show:
 - a. [Insert as appropriate]
9. Construction plans must be generally in accordance with the approved Functional Layout Plans, must be drawn [insert format requirement], and must include:
 - a. [Insert as appropriate]
10. The owner must enter into an agreement under Section 173 of the *Planning and Environment Act 1987* with the responsible authority which provide/s for:
 - a. [Insert PIP requirements]
 - b. [Insert DCP/ICP requirements]
 - c. [Insert land equalisation requirements (if applicable)]
 - d. [Insert 52.01 requirements (if applicable)]
 - e. [Any other S173 Agreement requirements]

Application must be made to the Registrar of Titles to register the Section 173 Agreement on the title to the land under Section 181 of the Act.

The landowner must pay the reasonable costs of the preparation, execution, registration and any future amendments of the Section 173 agreement.

3.3 CONDITIONS TO BE SATISFIED PRIOR TO STATEMENT OF COMPLIANCE UNDER THE SUBDIVISION ACT 1988

11. 'As constructed plans' for road, drainage and landscape works must be submitted to the satisfaction of the responsible authority, must be drawn [insert format requirement], and must include a dealing number for the registration of the Section 173 Agreement [required at Condition x] must be provided to the responsible authority.
12. [At least 21 days] Before Statement of Compliance is issued for each stage of the subdivision, a revised Schedule of [Infrastructure Contributions/ Development Contributions] must be submitted and approved by the responsible authority.
13. The monetary component [and any land equalisation amount] of the infrastructure contribution/development contribution must be paid to the responsible authority in accordance with the provisions of the Infrastructure Contributions Plan/Development Contribution Plan for the land, in accordance with the [Section 173 agreement if applicable] or [after Certification of the relevant plan of subdivision but not more than 21 days prior to the issue of Statement of Compliance] in respect of that plan.

3.4 PERMIT ADMINISTRATION CONDITIONS

14. The plans and/or documents endorsed under this permit must not be altered or modified without the prior written consent of the responsible authority.
15. If the land to which this planning permit applies includes any Inner Public Purpose Land, that Inner Public Purpose Land must be provided to:
 - a. in the case of Inner Public Purpose Land required for a road, the development agency responsible for the use and development of the land for the road;
 - b. in any other case, to the collecting agency – by:
 - i. setting aside on a plan under the *Subdivision Act 1988* the Inner Public Purpose Land required for a road so as to vest in the development agency responsible for the use and development of that land as a road; and
 - ii. setting aside on a plan under the *Subdivision Act 1988* any other Inner Public Purpose Land so as to vest in the collecting agency.

Any plan must be lodged for registration under Section 22 of the *Subdivision Act 1988* within the time specified in any other condition of this permit or if no condition is specified in this permit then by the time set out in any agreement entered into by the collecting agency, the applicant and/or the owner of the land.

16. Land required for community facilities, public open space or road widening must be transferred to or vested in the relevant responsible authority with any designation (e.g. road, reserve or lot) nominated by the responsible authority. No cost for effecting the transfer or vesting is to be borne by the responsible authority.
17. The subdivision must proceed in the order of stages shown on the endorsed plans unless otherwise agreed by the responsible authority.
18. The landscaping constructed in accordance with the endorsed approved landscape construction plans must be maintained to the satisfaction of the responsible authority, for a period [insert timeframe], following the granting of practical completion of landscape construction works.
19. This permit will expire if:
 - a. The plan of subdivision for the first stage is not certified within [two years] of the date of the permit; or
 - b. The plan of subdivision for the last stage of the subdivision is not certified within [ten years] of the date of this permit; or
 - c. The registration of the plan of subdivision for each stage is not completed within five years from the date of certification of that stage.

3.5 PLANNING PERMIT CHECKLIST

1	The permit preamble includes all primary permissions.
2	The address of the land applies to all applicable property addresses.
3	The permit conditions clearly describe the permit-holder's obligations.
4	The permit conditions specify the time it is to be satisfied, including specifying the relevant stage of subdivision.
5	The permit conditions clearly identify who is to be satisfied.
6	The permit includes clear headings and subheadings to aid readability.
7	The permit conditions are ordered chronologically to reflect the subdivision process.
8	Administrative permit conditions are centralised.
9	Permit conditions do not reproduce procedural information documented in legislation and the planning scheme.
10	The permit conditions only require actions that are empowered by the legislation.
11	Where relevant, permit conditions allow for an appropriate degree of flexibility.

RESOURCES

Planning & Environment Act 1987

http://www.legislation.vic.gov.au/Domino/Web_Notes/LDMS/LTObject_Store/LTObjSt7.nsf/07c00f1b6c5c4afbca25776700219570/4d5c8a5d22cc9998ca257a3000028d7a/%24FILE/87-45aa102%20authorised.pdf

Planning & Environment Regulations 2005

[http://www.legislation.vic.gov.au/Domino/Web_Notes/LDMS/PubStatbook.nsf/b05145073fa2a882ca256da4001bc4e7/96c865efe690c6faca25700400242b77/\\$FILE/05-033sr.pdf](http://www.legislation.vic.gov.au/Domino/Web_Notes/LDMS/PubStatbook.nsf/b05145073fa2a882ca256da4001bc4e7/96c865efe690c6faca25700400242b77/$FILE/05-033sr.pdf)

Subdivision Act 1988

[http://www.legislation.vic.gov.au/Domino/Web_Notes/LDMS/LTObject_Store/LTObjSt5.nsf/DDE300B846EED9C7CA257616000A3571/4DE5957BD473E397CA25781B00180F22/\\$FILE/88-53aa065%20authorised.pdf](http://www.legislation.vic.gov.au/Domino/Web_Notes/LDMS/LTObject_Store/LTObjSt5.nsf/DDE300B846EED9C7CA257616000A3571/4DE5957BD473E397CA25781B00180F22/$FILE/88-53aa065%20authorised.pdf)

Greenfield Subdivision Permits

A MODEL APPROACH

MAY 2020

