



City of Port Phillip

Subdivision Guideline

**Adopted by Council in February 2000
(amended October, 2002)**

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Introduction

The subdivision of land clearly creates a change of status of the land, enhances its value and also sets some future development rights.

The implications of a proposed subdivision must therefore be thoroughly explored at this stage so that implications of the likely end use of the land are considered and also so that the 'grain' of the subdivision and the ultimate development and land use suits the locality.

Council need to assess any proposed subdivisions in this context as once the land is subdivided it is committed and expectations of the owner from an 'in principle' point of view have been set.

Subdivision approval runs with the land and the approval therefore carries with any sale and subsequent owner for the life of the planning permit.

Council must have particular regard to how the subdivision will effect neighbours and its strategic directions prior to issuing approval.

Purpose

The purpose of this policy is to provide a consistent approach and application of Council discretion. It provides an outline of Council expectations and how it will consider subdivision applications.

Legislative basis

The Planning and Environment Act 1987 provides the procedure for the assessment of applications for planning permits to subdivide land or buildings.

The Subdivision Act 1988 provides the basis for the assessment of the 'Plan of Subdivision'.

Referral of subdivision proposals to Service Authorities occurs both at:

- the Planning application stage to ensure that services are available to the site, and if not, so that conditions of approval can be imposed and also
- at the Plan of Subdivision stage to enable referral authorities to check that the final details are correct before the matter is presented to the titles Office for production of titles.

Council expectations

The following section provides a statement of Port Phillip Council expectations in respect to the subdivision of land and buildings.

Lot size and dimensions (the ‘grain’)

The lot size and dimensions, or ‘grain’ (frontage and depth), of a proposed subdivision is very important as it is an integral part of the urban character of an area.

The frontage is particularly important as it interfaces with the public area and is clearly obvious to a passerby. Council will expect that the proposed lot size will be similar to that of the surrounding area in order to assist in maintaining the urban character to the streetscape (*that is, through lot size and ultimate building bulk*).

This streetscape area is a public space and is a key contributor to the amenity of the area and needs to be respected.

Cultural and heritage significance

Some parts of the City include areas of cultural and heritage significance which are an important element of the urban fabric of Port Phillip.

Council will consider these aspects in the assessment of any subdivision proposals to such places.

Criteria for determination of appropriate subdivision boundaries

General

In the subdivision of existing buildings the appropriate boundary lines shall be obvious. the subdivision boundaries shall then follow the existing building alignments but caution must occur to make sure that required egress or access points do not traverse fire exits or cause other matters to be infringed.

Residential

In the case of the subdivision of vacant land or rear yards the following shall be used to determine appropriate boundary lines:

- the size of the lot (noting that lots under 500 m² require a planning permit and those greater than do not)
- the location of trees worthy of retention (trees should be located to the side of lots and not in a position that will be an obvious placement of buildings later on)
- the placement of other buildings (to create sufficient separation for daylight and privacy for instance)

- the enablement of adequate carparking for the development with suitable access to the dwelling it serves (this shall have regard to keeping the same allocation of carparking as that of the original dwelling such as that which existed in the rear yard)
- other features of the land that are noteworthy

Commercial

Carparking areas and allocation shall be a key determinant in the layout of the subdivision for commercial and industrial premises. That is, should one landuse be a lower carparking generator than another then the apportionment of carspaces should be determined accordingly. Council will need to make a judgement whether the carparking rate is acceptable or not as part of its planning discretion.

Criteria for refusing planning applications for subdivision

Should the proposal not comply with the fundamental aspects of this policy it is likely that the proposal will be refused unless the required changes can reasonably be made through conditions.

For the subdivision of existing buildings inadequate parking or allocation of site parking will be a particular focus of Council - this is on the basis that for a residential premises an owner occupied building overall will most likely have more carparking demand than a rented premises. Should inadequate parking be available it will then impact on kerbside parking availability and possible congestion in the street.

Carparking overview

Carparking is at a premium in the City due to its inner City location with many sites having no on site carparking. This causes, in many areas of the City particularly around St Kilda Hill, very congested local streets.

Other areas of the City are experiencing very substantial development such as Port Melbourne and Council is actively seeking to avoid future congestion in these streets as the development occurs.

Apportionment of carspaces in the subdivision of a proposed development

Under ResCode and Council's Neighbourhood Planning Policies visitor carspaces will be required and these need to be shown as common property and unencumbered areas (generally not used for tandem arrangement).

These spaces shall remain in body corporate ownership.

Carspaces in a residential development shall only be provided for the purpose of that development (unless a clear surplus of spaces is available which can be sold to nearby owners or occupiers).

On site carspaces shall be apportioned in the following priority:

- 3 + bedroom units
- 2 bedroom units
- 1 bedroom units

No Resident Parking Permits to be issued

Council needs to carefully manage the supply and demand of on street parking supply.

In September, 2002 Council resolved to not issue resident or visitor parking permits under the Local Government Act to owners or occupiers irrespective of the level of off street parking provided for the following situations:

This applies to all planning permit application which increase the number of residences on each lot lodged on or after 1 October, 2002. The exceptions to this rule are:

1. Where pre application meetings occurred with Council prior to 27 September, 2002 that did not indicate this situation was pending
2. Where the site is effected by heritage controls which prevent the adequate provision for parking of vehicles on site, and / or
3. Where the site is located in a street where the on street parking controls included 'permit zone' parking restrictions on both sides of the street
4. Other areas as agreed to by Council.

NB. Visitor permit eligibility may be considered for exceptional circumstances.

In this regard Council will attach a note to the Planning Permit indicating that no owner or occupier will be able to apply for a 'resident or visitor parking permit'. This will also be placed on the Land Information Certificate (LIC) issued for the site as a means of forewarning people.

For landuse / development applications that provide insufficient parking the note shall read as follows:

Note: Please note that Port Phillip Council, under the Local Government Act, will not issue 'resident or visitor parking permits' to any owner of occupier in the current development for this development / landuse.

See below for specific requirements for residential and commercial / industrial premises.

Subdivision of existing *residential* buildings

Where it is proposed to subdivide an existing unit development, and it is considered acceptable to do so, carparking shall be apportioned to the units. This shall occur so that all units have at least 1 on site carspace, or where there are insufficient spaces to apportion, the single bedroom units shall not be allocated any carspace in preference to the 3 and 2 bedroom units.

For large unit developments that are now proposed to be subdivided (for instance, 15 or more), visitor spaces shall also be provided on the basis of 1 visitor space for each 5 units. These will be provided out of the existing number of spaces on site which will obviously make less carspaces available for the units.

In this instance, some units shall be provided with no carspace and it shall be the single bed units that initially have no carspace apportioned and then 2 bedroom units as required. In Council's opinion this will assist in the provision of some cheaper housing as no carspace allocated normally means a less expensive purchase.

Any additional carspaces provided for the purpose of the subdivision shall not cause the deletion of other necessary facilities on the site such as refuse areas or open space.

Where the carparking apportionment is less than the policy position of Council it shall be recorded in Council systems that no resident parking permits shall be issued for the development - this will be administered by Council's traffic and parking section.

For the subdivision of existing buildings that have insufficient parking on site the note attached to the Planning permit shall read:

Note: Please note that Port Phillip Council will not issue 'resident parking permits' to any owner or occupier in the current development for this subdivision. This is because the subdivision does not provide a carparking lot for each of the residential lots created on this plan of subdivision

An alternative is that only the lots with no parking can get a parking permit - in this case the note should be described in this manner.

Note: Please note that Port Phillip Council will not issue 'resident parking permits' to any owner or occupier in the current development for this subdivision other than units x,y and z. This is because the subdivision does not provide a carparking lot for each of the residential lots created on this plan of subdivision and it is only those lots that do not have an onsite carspace shall be eligible for a parking permit.

Subdivision of larger residential lot into 2 lots

For any proposed subdivision of the rear yard of traditional dwelling lots the number of carspaces associated with the original dwelling shall be retained for that dwelling (or new one) and the new lot shall also be self sufficient in parking.

In this regard, development plans of the rear lot are required so that judgements can be made on carparking numbers, workability and layout. Should the owner not be the developer then a building envelope approach may be acceptable subject to the other provisions of this guideline being met.

Subdivision of proposed residential buildings

In the case of the subdivision of proposed but approved buildings the landuse and development aspects of the design will have already been assessed at the planning permit stage.

This process will have also set the carparking provision for the site.

The subdivision assessment shall ensure that the Plan of Subdivision allocates the parking as shown in the landuse / development approval. In this manner the approvals are consistent which will follow through to the issue of titles.

Subdivision of existing commercial buildings

Where it is proposed to subdivide an existing commercial building, Council will closely assess the parking supply against the expected demand.

Should insufficient carparking be provided the application may be refused on the basis that the proposal would have inadequate parking for the use proposed and have a detrimental impact on the parking availability in the street network.

Where it is considered acceptable to subdivide the building, carparking shall be apportioned to the commercial / industrial units.

All units shall be allocated carparking based on the following equation:

- the number of spaces available less visitor spaces and then an average applied

The purpose is so that an adequate number of visitor spaces are allocated and dedicated for that purpose.

An example illustrates:

30 commercial units
65 existing carspaces

Visitor spaces deemed appropriate (say 5 spaces)

Available carspaces for distribution is 60 spaces

Therefore, 30 commercial units and 60 spaces available for distribution

Average carspace per tenancy is 2

The subdivision plan and certified plan shall clearly show and delineate these spaces and the visitor spaces shall be shown as common property under the control of the body corporate.

Any additional carspaces provided for the purpose of the subdivision shall not cause the deletion of other necessary facilities on the site such as refuse areas or open space.

Subdivision of proposed commercial buildings

In the case of the subdivision of proposed but approved commercial / industrial buildings the landuse and development aspects of the design will have already been assessed.

This process will have also set the carparking provision for the site including visitor parking areas.

The subdivision assessment shall ensure that the Plan of Subdivision allocates the parking as shown in the landuse / development approval. In this manner the approvals are consistent which will follow through to the issue of titles.

Subdivision of vacant *residential* land

Being an inner City area many dwellings are close together and abutting properties deserve to know what and how a proposal may impact on them before the subdivision is approved which is providing status and increased value to the land.

Equally, Council will need to inform itself to make similar judgements on behalf of neighbours.

The lot size and dimensions ('grain' size) is an important element that will be considered for vacant lot subdivision.

Buildings and subdivision shall be assessed together

Where buildings are proposed on vacant land or lots the likely subdivision of land and the proposed buildings shall be proposed together so that Council can determine the matter holistically. This enables wall placement and amenity issues to be considered properly.

This includes the subdivision of a house lot which divides the lot into 2 lots and separates the rear yard from the front of the lot.

In this regard buildings on **all** boundaries shall comply with ResCode or Vic Code 1 as if the lot had been subdivided.

Council consider it far more appropriate to have a development plan proposed with the subdivision so that both it and the subdivision proposal can be advertised to neighbours so that all parties can make an informed judgement.

Building Envelope plans

In some instances where development approval has not proceeded the subdivision application it may be acceptable for building envelope plans to be submitted to show the proposed constraints on the development of the new lot.

These building envelopes will show constraints both in general layout form and also height envelopes, that restrict the development potential of the lot. These will only be entertained if the proposed development plan cannot be determined because the end user is not known.

In these instances the following restrictions shall be placed on the Plan of Subdivisions:

- Max site coverage to be permitted
- Min setbacks from all boundaries
- A note indicating that the building envelope is the extreme boundaries of the building but that the overall site coverage of the site is further restricted to that shown in the legend
- Carparking areas and driveways
- Trees to be retained
- any other feature which is appropriate to manage the overall development

It is noted that lots over 500 m2 in area will not require further planning permission and these imposed constraints are therefore critical to ensure some management of the development of the lot.

Subdivision of vacant commercial / industrial land

Commercial land may be subdivided without the development plans in place - however Council will require the submission of urban design guidelines as part of the submitted proposal.

This shall cover matters such as:

- urban design
- building controls including setbacks (both min and max to promote some orderly layout of buildings)
- carparking rates
- loading bay provisions
- landscaping requirements
- integrated signage proposals
- approval processes
- other relevant matters

In this manner the overall development of the vacant land will have coherency and processes will be known in advance by purchasers. This will result in smoother and improved process than simply if lots are sold with no overall design parameters.

Airspace

A subdivision of land generally has no upper or lower limit of the ownership of airspace.

However, the subdivision of a building contains lots which are generally defined by an upper and lower limit and common property.

Council expect that, in general terms, the external building fabric will define the 'boundaries' of the upper and lower limit of each of the lots. This is logical in that it is largely the building (and associated lots) that is being subdivided and not the subterranean or airspace.

Subdivision of airspace

Council is aware, however, that some applicants will seek to create a lot(s) above the building (that is beyond the building line or roof).

Council does not encourage separately disposable lots above a building as that only creates the expectation of development potential when it has not been assessed from a planning perspective.

However if an applicant seeks to pursue this arrangement Council will require a building envelope where applicable so as to effectively gauge the scale of the possible building. This plan will then be advertised and then assessed against the Planning Scheme requirements and this guideline.

Subdivision with no upper limits

Council generally does not encourage subdivision of buildings with no upper limits as this also creates the expectation of development potential or the possibility of works occurring on the roof area that was not anticipated by the Council or the community.

Where an applicant does propose a subdivision of buildings with no upper limit Council will consider whether this is appropriate and may impose a note on the permit indicating that planning approval would be required for future buildings and works.

Open Space contribution

The subdivision of land enables Council to consider the acceptance of land up to 5 % of the site area or in lieu of land a resort and recreation fee for the purchase of land elsewhere or the capital improvement of existing public open space.

Council will use the tests under Section 18 of the Subdivision Act 1988 and its Open Space Strategy to determine the appropriate percentage as land or cash contribution to the open space reserve account.

In instances where the land is:

- over 2,000 m² or
- abuts existing public open space

the Planning Committee of the Council will determine whether it wishes to accept land or cash contribution to the reserve fund. This is because with a land parcel size of 2,000 m² or greater, the land contribution may be appropriate (over 100 m²) as a park or as an addition to an existing portion of open space land.

For land under 2,000 m² in area and where it does not abut an existing park officers acting under delegated authority and using the provisions of the Subdivision Act, Councils Open Space Strategy and also Victorian Civil and Administrative Appeals Tribunal case law will make informed judgements regarding the appropriate open space contribution.

For subdivision of large developments (ie over 2,000 m²) that already have planning approval for the development / landuse, officers will determine the subdivision proposal as it is simply the division of a known product with no substantive issues other than the open space contribution. In these instances the open space contribution shall be set consistent with the recommendations of the Open Space Strategy.

Quantum of cash contribution for Open Space

The following decision path shall be used in determining the open space cash contribution in accordance with the tests of the Subdivision Act, the Open Space Strategy and Victorian Civil and Administrative Appeals Tribunal case law:

Subdivision Officer

- up to \$ 25,000

Manager, Planning and Building Services

- up to \$75,000

Director, City Development

- up to \$100,000

Chief Executive officer

- up to \$150,000

Over \$150,000

- the matter is to be reported to the Planning Committee

Note: The scheduled amounts above are based on what the full 5 % contribution would be for the particular application.

Development contributions

Should the subdivision be significant and have impact on Council services a development contribution may be imposed to offset this impact. This shall be determined on the basis of the nexus between the subdivision and the impact that would be created.

Reference also needs to be made to any Council development contribution strategy or policy.

Council will allocate the contribution to a specific account so that the contribution and its expenditure can be clearly traced.

Statement of Compliance requirements

Prior to the issue of a Statement of Compliance Council will require all outstanding requirements and payments to be completed.

Council will also require that buildings be at a stage of practical completion to ensure that the building is compliant with the planning approval.

Should an applicant seek an earlier release of the statement of compliance an applicant may seek to enter into a Section 173 Agreement under the Planning and Environment Act with the Council to covenant that the development will fully comply with the relevant planning permit.

Removal or variance of covenants / other restrictions

Covenants or restrictions (including easements) in favour of other lot holders in the Plan of Subdivision shall be advertised at minimum to those people that benefit from the restriction.

This process may involve a covenant or an easement that creates restrictions on a property in favour of other lots.

The proposed removal of a restriction (eg covenant / easement) will be considered a very sensitive issue by Council and the legislative basis requires Council to consider 'any perceived' detriment or financial loss to any beneficiary.

In this regard to be able to make informed decisions Council requires development plans to be submitted with any proposal to remove a covenant - in this manner all effected parties can make a judgement on the proposal and advise Council of that position.

Council will then be in the best position to make a balanced and proper planning judgement on the proposal and the need to remove or vary a covenant or any other restrictions to facilitate a good development or landuse.

Advertising of Proposals to subdivide vacant land

Proposals for subdivision of vacant areas of land shall be advertised to abutting property owners and occupiers so that they may participate in the planning process

A public notice on the site may also be appropriate and will be determined by officers. This requirement shall not be carried out where an exemption exists in the Port Phillip Planning Scheme for advertising.

The advertising judgement by officers will be made in accordance with the tests outlined in the Practice Note for advertising planning proposals.

