

Reference:

1 May 2009

Statutory Planning Systems Reform
Department of Planning and Community Development
GPO Box 2392
MELBOURNE VIC 3001

Dear Sir/Madam,

Re: Modernising Victoria's Planning Act

I refer to your request for submissions in relation to the discussion paper on opportunities to improve the Planning and Environment Act 1987 which was forwarded to Frankston City Council on 3 April 2009.

It is considered that the review of the Planning and Environment Act 1987 is well overdue, and this provides an opportunity for a holistic and complete review of the documents relevance in the consideration of strategic and statutory planning matters today.

Over the documents 20 year lifespan there has been numerous modifications made which in isolation have been for the better of the planning industry but have result in greater red tape and process difficulties to the overall planning process.

While this is a very positive starting point it is considered that review must go further than tinkering at the edges. This is an opportunity to ensure that the Planning and Environment Act will still be relevant for 20 more years.

Therefore the following points are made in relation to the key points outlined in discussion paper:

The Planning System and the Planning and Environment Act 1987

It is accepted that the Acts' focus on managing and regulating the use and development of land is appropriate, although it should be recognised in the objectives that there is a wider relationship with broader environmental, social and economic issues.

There may be merit in renaming the Act to recognise these broader considerations, but on the basis that the objectives are sufficiently comprehensive this is not a necessary imperative.

Are the objectives of planning in Victoria still relevant?

It is considered that the objectives and the expected influence that the Planning and Environment Act 1987 originally sought are still relevant today. The objectives set out a wide arching position on the socio economic, environmental, and cultural impacts on the community. It is considered that these founding objectives are still as relevant if not more so today.

However, it is considered that climate change is such a fundamental issue affecting contemporary planning that should be explicitly referred to in the objectives and can support subsequent requirements in the Act and subordinate requirements in relation to Sustainable Development and Environmentally Sustainable Development (ESD).

Planning processes established under the Act

The current permit process applies the same basic system to all applications irrespective of their complexity. The discussion paper suggests two alternative approaches to address this issue:

- i. short permit process; or alternatively
- ii. more permit process options within the existing planning structures.

Both options are appropriate and should be considered and implemented, however, it is important that the Act is amended to recognise that permit applications have varying levels of complexity.

Consideration should also be given to the introduction of a formal consultation process where there are objections. The formal consultation process could then be used at the discretion of Council/the Responsible Authority and the current planning 60 day "clock" could stop to allow for a formal consultation process.

The permit process

Lodging an application

The discussion paper suggests two options for addressing the issue of applications with insufficient information. It is considered that the responsible authority should have the capacity to reject or refuse an application that provides inadequate or poor quality information. The introduction of different permit processes (i.e. a short and long permit process) would enable applications to be linked to the most appropriate permit process depending on their complexity and completeness.

There is also the suggestion of an accreditation process for private planners and a formal pre-application process. This has been considered in the past and rejected by Frankston Council on the basis that it does not affect the time frame taken to obtain the relevant planning approval, it just relocates the existing processes into a pre application phase. Therefore such a model will not improve the overall timeframes for the permit process and will not improve the development outcomes.

While it is agreed that in certain instances the pre-application model can be successful it should not be a mandated requirement for Council's/the Responsible Authority to undertake.

Notice of an Application

There is a need to address the notification requirements as the current system results in unnecessary red tape for many apparently straightforward applications. It is considered that there should be more discretion for responsible authorities to decide when notification of an application is not required because of the minor nature of the proposal.

Either option to address the issue suggested in the discussion paper would be acceptable, such as “clauses” of applications in the Scheme, although there is a preference for changes to the Act.

Objections

The discussion paper suggests that objections could be changed to “submission” which may encourage more positive responses. It is considered that this will have little impact on the planning process and unlikely to be taken up by the community. Notwithstanding it is not a significant issue for Frankston, but change to a submission process would be acceptable nonetheless.

Referrals

The referrals process is working reasonably well for Frankston, although the quality of input from some referral authorities could be enhanced. Some streamlining may be able to be achieved as suggested in the discussion paper.

Making a Decision

As suggested in the discussion paper there is merit in linking the relevant considerations for assessing an application under Section 60 of the Act with the complexity of the application.

Conditions

The issue of conditions links with the issue of the ‘life of a permit’ which as indicated in the discussion paper has not been fully resolved despite many VCAT cases.

The issue of the life of a permit is a critical issue to Frankston and must be resolved. The Act must be changed to ensure that conditions can be ongoing even for development permits.

Amending a Permit

The process for amending a permit was improved in 2005 however two key issues have arisen for Frankston:

- i. There is a need for VCAT to be involved in amendments if the permit was determined by VCAT; and
- ii. There has been an increase in the use of secondary consent provisions and a broad interpretation of secondary consents by VCAT.

The amendments to the Act should address these issues with a defined process for secondary consents including criteria as suggested in the discussion paper.

Enforcement

Overall the enforcement system is working reasonably well and it is considered that there is no immediate need for significant change.

Planning schemes and the amendment process

The Minister for Planning often gives Council the responsibility of approving planning scheme amendments for local issues that are unlikely to have implications for State planning policy.

However, while the intention of this would appear to be logical and beneficial to the processing of amendment requests there are additional process requirements resulting from this responsibility which create unnecessary delays.

Furthermore, Council cannot approve an amendment until it has been certified by the Secretary for Planning. Thus, Council has limited authority in the approval process. The certification process requires an additional report to Council, resulting in unnecessary delays for minor amendments.

Having a longer approval process for minor amendments is at odds with 'cutting red tape'.

One of the greatest difficulties within the amendment process is the inefficiencies and time delays in getting many amendments approved by the State Government and DPCD. While there is a focus on the processes and time frames that Council must adhere to there is no accountability or responsibility on the State Government or DPCD in its processing of amendments. This has resulted in some amendments taking significant time to be approved. As such the Act should be amended place a similar requirement on DPCD and the State Government to consider and determine amendments.

Council has the ability to abandon an amendment at any time between exhibition and submission to the Minister for approval. The discussion paper asks whether the proponent should be able to have a decision to abandon reviewed or whether Council should make a recommendation to the Minister who would make the decision. Either of those options seems reasonable.

In circumstances where an Independent Panel is appointed to consider objecting submissions to a Planning scheme amendment and those submissions are withdrawn prior to the hearing, it would be reasonable for the Panel process to be terminated. That would enable Council to decide on the amendment without having to wait on and consider a Panel report.

State Significant Projects

The discussion paper suggests that there maybe a need for particular systems or processes to deal with state significant or location specific applications. One suggestion is the DAF and more specific to Frankston a DAC. These are independent Development Assessment Committees consisting of State and Local Government Representatives and planning experts whose role is to determine such

significant applications. Frankston has been identified as one of the Municipalities where a DAC will be implemented in the second phase of the State Governments role out where any significant application in the CAD would be determined by it not Council.

Notwithstanding the above, it is considered that the Council is adequately positioned to deal with significant applications with the Ministerial "call in" provisions available where the minister considers otherwise. The use of a DAF or a DAC is considered to be unnecessary and further confusing the Planning Process.

Governance and decision-making

It is considered that the current governance and decision making responsibilities are appropriate and operating well. There is no need for private certification of planners and in any case, there must first be an increase in the number of skilled and qualified planners before introducing a formal registration system. As stated previously, formal qualification will not improve either overall timeframes for the permit process or development outcomes.

Other opportunities

Section 173 Agreements

The discussion paper suggests a number of improvements to the operation and use of Section 173 Agreements. Whilst S.173 Agreements are an important part of the planning system, improvements in line with the discussion paper suggestions are supported.

Facilitation Planning

Frankston Council is now moving toward embracing systems and technologies which will improve the delivery of services to the community. The implementation of 'e-planning' and proactive changes to support improved e-planning is supported.

Access to Planning Information and Privacy Issues

It is considered that there should be broad access to planning information as the wider community has a key interest in planning.

Cash-in-lieu schemes for car parking

The discussion paper refers to the suggestions of the recent Advisory Committee reviewing car parking provisions, particularly with regard to cash-in-lieu schemes. Changes to the Act which would make it possible and simplify cash contribution schemes for car parking are strongly supported and considered an essential improvement to the Act.

Other identified issues - **Covenants**

There are a wide variety of minor issues not raised in the discussion paper. In particular, the need to review and reconsider the role of the Act in dealing with covenants should be reiterated in this submission. The current linking of covenants to the planning legislation is cumbersome and can lead to 'red tape' and inappropriately complex decision making. It is considered that this issue must be revisited.

In addition to the above identified matter/comments it is considered and emphasised that there is a need for “road testing” with local government any recommended changes to the Act arising from the review prior to their introduction.

It should also be noted that the limited timeframe provided for the consideration and preparation of this submissions was insufficient which has impacted on the ability to provide a detailed assessment and response to the document. It must be noted that this is a major review of the Planning and Environment Act and the first significant opportunity for a response to many propositions and suggestions. Therefore, it is disappointing that the DPCD has only provided such a short time to comment. The copy of the discussion paper was not received by Council until 6 April and the submission period includes the Easter and school holiday break.

Regards

**MATTHEW CRIPPS
PLANNING MANAGER**