FILE NOTE

PREPARED BY :
SUBJECT : **Review of the Planning and Environment Act 1987**
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DPCD is seeking submissions on the issues and options for improving the Planning and Environment Act. The closing date for submissions is Friday, 1st May 2009. All publications received will be published in full on the DPCD website. Email submissions are preferred to the following address: PEActreview@dpcd.vic.gov.au

In considering changes to the Act, the objectives will be to:
Ä Ensure that the Act provides a suitable framework to deliver policy outcomes of the future
Ä Enable the planning system to better respond to the challenges of the future
Ä Reduce regulatory burden
Ä Increase efficiency, effectiveness, certainty and transparency
Ä Improve the speed and quality of decision –making
Ä Deliver mechanisms that help to balance policy objectives in decision-making
Ä Facilitate the transition to electronic planning systems

In order to frame a response on such a large and diverse topic I have taken the approach to provide a response on the questions in the Review Discussion Paper.

Section 3 – Planning today

- **What does planning mean for Victoria today?**
  An essential element in determining the future of our community and our catchment.
- **Is the role of legislation in a modern planning system substantially similar to that** described in 1987?
  Much more critical given the current issues facing our communities.
- **Should the name of the Act better reflect the role of the Act in managing land development?**
  Does the Act purport to mange Land Development or provide for a system to control and regulate development across our catchment in the interests of diverse healthy landscapes and healthy vibrant communities?
- **Is the principle that the planning system is about planning land still an appropriate starting point?**
  This is still about planning land use and development however it is for the sustainable protection of the greater community good both now and into the future. These are at local/individual property level and at the regional or catchment level.
- **Have there been changes which suggest a different role for the planning system?**
  Response not provided at this time
- **If so, what should that new role be?**
  Response not provided at this time.
- **Should the scope of planning legislation be widened to include other matters?**

The scope should be widened to recognise other legislation with critical links such as the *Water Act, 1989*. It should also provide greater recognition of key government policies and directions on both a state and national level.

- **If so, what should they be, and why and how do they need to be covered in legislation?**
- For example, the *Water Act* relates to waterways, wetlands and water across land and currently the only mandatory referral to a water Authority such as a CMA or Rural Water Authority is if there is a Flood Overlay or a Special Supply Catchment.
- This in short may mean that a Planning Authority permits an activity, through a planning application, which may not have the required authorisation under the Water Act from the relevant Authority. In regional Victoria this is an increasing issue with water and waterways becoming more valued than ever before.
- Developments and redevelopments can affect water quality, a critical issue for downstream users, locally for potable water and regionally/nationally where the effects of high nutrients are frequently demonstrated with algal blooms in major streams and waterways.
- **How should planning for land use and development interact with other aspects of planning – for example, planning for development of education and health facilities, provision of roads and transport?**
  As smoothly and efficiently as possible. Planning horizons for such aspects should be integrated with all land use development and should be as flexible as possible to accommodate unknown future development options and issues.

Section 4 – Planning Objectives

- **Are the objectives of planning in Victoria still relevant?**
  The objectives of planning in Victoria as set out in section 4(1) of the Act are still considered relevant.
- **Are the objectives for Victoria's planning system still relevant?**
  Section 4(2) sets out the objectives of the planning system established under the Act and they are still considered relevant.
- **Have significant words such as *environment*, *social* and *economic* changed in the way they relate to land use planning and, if so, how?**
  Yes – off site impacts on the environment may be at a global scale e.g. greenhouse gas, at a national scale – ie downstream impacts on the nationally significant Murray River system.
- **Is there a need to include more specific objectives about matters like culture, heritage or cultural heritage protection in the Act?**
  There would be benefits to include more specific objectives, however this would then result in a need to be more specific about other matters like catchment health, rivers and wetlands, or biodiversity.
- **Would including specific reference to issues such as housing affordability, climate change, and health and wellbeing assist in achieving the policy objectives for these matters? What are the matters that should be included**?
  Response not provided at this time.

Section 6.1– Permit Process

- **Is there a need to change the permit process to make it more responsive to the scale and complexity of a proposal?**
  There is a need to change the permit process to make it more response to the scale and complexity of a proposal. Currently it is more response to the 'squeaky wheel' and to applications that encourage growth (jobs and rates), at the expense of other more noble objectives of planning.
- **Should the Act provide for a 'short' permit process? If so, what should be the essential steps and requirements of this process? What kinds of applications could this process apply to?**
  Yes – for very simple applications that have been signed off/endorsed by legislatively approved or registered practitioners. That is, their accreditation is used to carry some of the risks of inappropriate applications and associated developments.
- **What are the other options for streaming applications?**
  Really simply measures such as:
  - Ä A check box form for the applicant to ensure all the required information has been provided.
  - Ä Having a planning officer ensure that all the essential information is completed/attached before the applicant is allowed to lodge the application – the delay for most applications is a result of insufficient information.
  - Ä A dedicated front desk planning officer at every council to assist planning applicants. This should not be a rotated position the idea is to have consistency for people and someone who has very good communication skills who can explain the critical information about zones, overlays, local planning policy and application requirements.
  - Ä Having a computer with printer set up in council foyers with free access to planning schemes on line, property maps, and council's website. To facilitate access in communities where internet speed may vary and where internet cafes may not exist.

<u>Section 6.2 – Lodging a Planning permit</u>

- **Do the information requirements for making an application need to be changed to improve the quality of applications?**
  There is currently not a lot of information for applicants to know what to do or what is information is required. Information is available on the internet if you know what you are looking for and where to find it. I would argue that there is a lot more information available for the Planning Authorities but minimal information available for applicants.
  There would also be significant benefit in having application prepared by suitably qualified practitioners.
  The application process would benefit being more comprehensive with a detailed description of the proposal and the permission being sought, and a thorough assessment by the applicant of the principal policies affecting the proposal, however the general citizen does not know or understand the requirements and does not know where or how to find out. A combination of measures is needed including the points suggested above under Permit Process.
- **Should the responsible authority have discretion to reject applications that are incomplete or inadequately prepared?**
  Rather than reject applications, responsible authorities should **<u>not accept</u>** applications that are incomplete. This would save more time than rejecting

applications as it eliminates the need to register the application, check the application and then provide a response.

The responsible authority should be placing the onus on the applicant to ensure that the application is of a suitable standard, prior to the application being lodged.

- **Is a more comprehensive application form needed?**
  Yes – with provision for signing off of the application by a suitably qualified practitioner or responsible authority planning officer to provide pre-lodgement certification of the application. This would assist in ensuring that information is prepared to the required standard before the application is lodged. The responsible authority would be able to focus its resources on assessing the application, rather than on ensuring that the necessary information is provided.
- **Would a system of pre-lodgement certification by private practitioners be an effective way to improve the standard of permit applications**
  Yes – see accredited auditor processes under the Environment Protection Act 1970
  However, it is imperative that any new system does not impose an undue financial burden on individuals undertaking small low impact developments. Don't make the system too hard, or too expensive.

<u>Section 6.3– Notice of Application</u>

- **Are streamlined notice requirements for certain types of applications required?**
  Yes – Class 1should be a state-wide standard where responsible authorities should list all their applications on their website as a minimum level of notification.
  Class 2: should be adjoining owners and occupiers, as well as those thought to be directly impacted (aesthetic views, increased traffic, etc)
  Class 3: should be a general notification as considered appropriate by the responsible authority.
- **Should the responsible authority have more discretion in deciding who should be notified, in what manner, and how long should be allowed for submissions?**
  Yes – however, as a back up, the minimum notification requirements should not decided by the responsible authority.

<u>Section 6.4 – Objections</u>

- **Should the term objection be changed to submission?**
  Sometimes submissions are made that would justify an objection however it may not be the responsibility of the person or statutory responsibility of the authority providing the response to object. Responsible planning authorities when referring applications generally indicate a recommended response of "do not object" or "object", or, "would not object subject to the inclusion of the following conditions.
  There is little information provided to indicate the required structure of an objection.
- **Should the responsible authority have a greater discretion to reject an objection?**
  No, all objections should be treated equally based on the provisions and objectives of the planning system.
- **Should an objector be required to provide more specific information about how they might be affected by a proposal in their objection?**
  Yes provided that the content is linked to the proposal.

Section 6.5 - Referrals

- **How could the Act be changed to encourage the more effective and timely input of referral authority requirements in the permit process?**

  There is a perception that referral authorities can significantly delay the planning process. However, prior to this directing any change of the system and audit of this process would be strongly welcomed.

  As a referral authority the CMA often receives calls from planning applicants distressed that their application is taking so long and that the council has told them that they are waiting on a response from the referral agency. What the applicant is often not advised is that the application has only just been referred and that there are statutory response times. It is also not uncommon to have applications faxed/emailed through in part as the planning authority has failed/forgotten to refer an application and due to their oversight they require it to be addressed urgently.

  In relation to conditions, it is frequent for the CMA to receive notice of applications under section 52. These are generally responded to with comments for the responsible planning authority to consider or as part of their assessment of the application, or as conditions that may be of benefit to include if a permit is issued. Unfortunately, these recommendations are often copied verbatim into planning permits under the heading of Catchment Management Authority Conditions. Had the recommendations come from a applicant's neighbour it is unlikely that they would be added in this way to the permit. Not only are these responses not worded to be conditions, they are often not enforceable, and they are provided to Council to use in their assessment and decision making. It is most critical that the responsible planning authorities accurately note recommendations and comments from conditions and utilise them accordingly.

  In practice a responsible authority is already likely to take a pragmatic approach to this issue when considering the matters set out in section 60. However, in the same way that there may be benefits in streaming the permit process to be responsive to the complexity of a proposal, there may be benefits in tailoring the scope of decision-making considerations in the Act to the impact and complexity of proposals.

  The Act also allows for the time in which certain actions or decisions must be made to be prescribed by regulation.

  Another prime example is the number of subdivision planning applications sent to referral authorities when a cultural heritage assessment has not even been submitted. As the outcomes could impact of the layout, alignment, or any number of activities on the site, it is frustrating being requested to comment on or assess an application, when the applicant hasn't undertaken one of the essential application requirements, and council by referring the application are inadvertently supporting this poor practice.

Section 6.6 – Making a decision

- **Should the Act set out a clear hierarchy of policy documents to be considered by a responsible authority?**

  Yes – this would require the responsible authorities to have knowledge of the documents and help government articulate its policy priorities.

- **Should the Act provide for different decision-making considerations for different classes of applications?**

Yes – complex and high risk issues need complex decision-making processes.

- **Are the times prescribed by regulation in which certain decisions should be made appropriate? Should other matters also have prescribed times?**
  In general the prescribed decision times are appropriate, although they are unfortunately almost always extended due to lack of essential or supporting information being provided. That being said, more complex and high risk issues would be of benefit to have increased response times, such as subdivisions over say 50lots or 250 lots.
  Other matters that prescribed times would provide some rigour in process to include a response time for responsible authorities to:
  - act on reported planning breaches.
  - act of permit conditions breaches.
  - provide a copy of the issued planning permit for section 55 referral authorities.

<u>Section 6.7 – Conditions</u>

- **Does the ongoing life of conditions on a development permit need to be clarified?**
  Yes – and enforced by an independent authority
- **Should the Act provide the ability for payments for works or facilities that arise directly from development to be dealt with in permit conditions, without the need for a section 173 agreement or a development contributions plan?**
  No. This would not be appropriate as it would provide a funding source, that the responsible authority could directly benefit from and that they regulate.
  Section 173 Agreements are a vital tool to protect the community, referral agencies and to ensure that future purchasers are truly “informed purchasers”.

<u>Section 6.8 – Amending a Permit</u>

- **Should the process provided for in section 72 allow for a responsible authority to amend a permit issued at the direction of VCAT, and in what circumstances?**
  Yes, if:
  - Ä The direction contravenes other legislation,
  - Ä The application is amended and there are changes or new conditions required of a responsible authority and or referral authority based on the amendments.
  - Ä The conditions are not clear or enforceable.
- **Should section 216 now be repealed?**
  Yes if it resolves confusion.
- **Should the Act set the principles for when the use of a secondary consent permit condition is appropriate?**
  Secondary consent is used on almost every permit by the responsible authority and certainly requires a set of principles for how this should be undertaken. While it has significant merit to assist development, allows for staging of subdivisions, ensure permit is approved prior to investing in detailed design and other costs, it also provides a loop hole for detail to be provided later, which is not then seen for example by the referral agencies. There should be a clear process around secondary consent that reflects the process of the primary consent.
- **Is there a need to provide a process for seeking and recording secondary consent approvals?**

Yes, this is critical. There is no process to follow up what has been provided after the planning permit is issued, unless there is a trigger such as a certification of a plan or statement of compliance as required for subdivisions.

Section 6.9 - Enforcement

- **Could a register of enforcement orders reduce non-compliance?**
  Yes – it will also give an indication as to the level of enforcement, as currently enforcement action is too slow or is simply not undertaken.
- **Are there other changes that could make the enforcement process more effective?**
  Yes - Mandating a level of performance and resourcing. It is also critical to make it independent to the approval authority eg 'auditor' type role. As sadly it is not infrequent that sites in breach of planning approval have some type of joint venture with the responsible authority.

Section 7.2 - The amendment process

- **What steps in the process should have a statutory time requirement and what would be a reasonable requirement to impose?**
  Response not provided at this time.
- **What should happen if a time requirement is not met?**
  Response not provided at this time.

Section 7.3 - Requesting and preparing an amendment

- **Is more guidance on the information that should accompany a request needed, and should this be in the Act?**
  Response not provided at this time.
- **Should an amendment request form for proponents be introduced?**
  Response not provided at this time.
- **Is a formal and independent process needed to assess refusals of amendment requests, or to decide unresolvable issues between a planning authority and the proponent? If so, how should this process work? Who should make the decision**?
  Response not provided at this time.

Section 7.4 - Authorisation

- **Is more guidance or criteria about the role and purpose of the authorisation step required, and should this be in the Act?**
  Response not provided at this time.

  Should some types of amendments be exempted from this step? If so, which ones?
  Response not provided at this time.
  Is there an alternative way of achieving the objective of the authorisation process?
  Response not provided at this time.

Section 7.5 - Exhibition

- **Is more guidance about how notice of a proposed amendment should be given needed? Should this guidance be included in the Act or in guidelines?**
  Yes, effective notice is not widely given in some rural areas.
- **What changes would lead to more efficient and effective notice of an amendment**?
  Providing some minimum requirements for providing notice.

<u>**Section 7.6 - Submissions**</u>

- **Should a planning authority be able to reject or disregard irrelevant submissions?**
  Reject no, disregard irrelevant yes provided this is documented.
- **Should a structured form for making submissions be introduced?**
  Yes – this may guide submission onto areas that are able to be influenced and allows for them to be more easily managed and considered.
- **If a panel is established, should a planning authority be required to refer all submissions to the panel?**
  Yes. All information is important.
- **Should submissions which support an amendment have the same status as those submissions that object to or propose changes to an amendment?**
  No – submission content relevance should be on a case by case basis.
- **Should a panel have the ability to review and make recommendations about the overall amendment proposal?**
  Yes – these recommendations should then be used for input into reviews such as this.
- **Should the Act facilitate 'on the papers' panel hearings where appropriate?**
  For minor matters detailed submissions could be in writing and the panel could consider these matters and prepare a report 'on the papers' without a formal public hearing subject to the panel being able to verify the content of the submissions and seek clarification as required..
- **Should all amendments be reviewed by an independent panel?**
  Yes – independent review will add rigour to the process.

<u>**Section 7.7 Assessment and Adoption**</u>

- **Should a planning authority have the power to abandon an amendment at any time, after a panel has been established, or at no time? Should the Minister make this decision instead?**
  A planning authority should have the power to abandon an amendment subject to support from all people who made submissions, however the responsible Minister should be able to make this decision at any time.
- **Should a right of review be available to proponents where a planning authority decides to abandon an amendment? Who should review and decide?**
  A right of review should be available as part of an open and transparent process, and it should be undertaken by an independent panel or the Minister.

<u>**Section 7.8 -Approval**</u>

- **Is the opportunity for some amendments to be approved by the planning authority an effective means of reducing delay?**

No – this could be seen to create a 'loop hole' and removes transparency from the process.

- **Is the requirement for an amendment to be certified by the Secretary of DPCD necessary, before a planning authority can approve its amendment?**
  Yes – this will provide for a certain level of rigor.
- **How could this step in the process be streamlined?**
  Accreditation of suitable qualified practitioners to sign off on amendments.

<u>Section 7.9 - Monitoring and review</u>

- **Are the requirements for reviewing planning schemes adequate? Can they be improved in a way that makes the amendment of a planning scheme more efficient and effective?**
  The current requirements are not adequate. There is no accountability for the responsible authority to reviewing it's schemes, and no penalties if they do not. This means that if the review is not a priority for the responsible authority, then the review is not undertaken and there are no ramifications. There needs to be a greater incentive or introduction of penalties, to ensure that this important part of the process occurs.

<u>Section 8 – State Significant Projects</u>

- **Would there be benefits in creating a specific planning process for the assessment of State- significant projects?**
  There would be benefit to this approach. Significant projects are often beyond the day to day scope and expertise of rural responsible authorities. These projects then get managed from Melbourne and as there is often no clear process for communicating, reporting, review or monitoring these projects once they are initially approved it is frequently the good will of the applicant with the key stakeholders that keeps communication open. An example of this is the AGL Hydro, Bogong Power Station.
- **What process should be followed for deciding which projects which are of State significance?**
  State Significant Projects would be projects that are a potential risk to or are in the interest of all Victorians. State Significant Projects should still meet the objectives of the Act as well as provide net benefit to <u>all</u> Victorians. It should be recognised that just because a project is costly does not mean it provides benefit or is significant to the state.
- **What is the most suitable process for evaluating and deciding State-significant projects?**
  The process should be consistent and it should be based on the Planning and Environment Act. However due to the often complex nature of significant projects the evaluating and recommendation process could be complex, ultimately the final decision for a state project under the Act should rest with the Minister.
- **Who can best decide these matters – should all decisions be made by the Minister or could some proposals be decided by a Development Assessment Committee?**
  As a state significant project, decision on matters should rest with the Minister.
  A development assessment committee could be seen as a pro-development group. Alternatively, a state assessment panel could provide recommendations to the minister, this panel could select members as required from a list of endorsed qualified professionals, providing a diverse mix of expertise suitable to the project

proposal ensuring state projects are assessed with appropriate rigour, in the interest of all Victorians.

Section 9 Governance and decision-making

- **Should there be more options for how decisions are made on permits, amendments or matters for review?**
  Response not provided at this time.
  How should the options be tailored to more closely correspond with the level of assessment required for the proposal?
  Response not provided at this time.
  What decisions could be made by appropriately trained non-professional officers?
  Preplanning check for minimum requirements, recommendations, & auditing.

Section 9.1 Private certification

- **Should there be more opportunity for private sector involvement in planning processes in Victoria? What issues (such as probity issues) would need to be addressed?**
  Yes. As this currently occurs under the accredited auditor processes under the Environment Protection Act 1970 the same process could be followed without re-inventing the wheel.
- **Should privately certified planners be able to assess and decide certain planning consent matters?**
  Yes

Section 9.2 Registration of planners

- **Should a formal system for the registration of planning professionals be introduced in Victoria? If so, how would this system work and what should it apply to?**
  Yes. Again refer to the system under the Environment Protection Act.
- **Should certain planning decisions be required to be informed or made by planning professionals with prescribed qualifications?**
  Yes. This ensures a minimum standard for those undertaking the work and doesn't devalue the role of planning officers. It also enhances professional status and responsibility, demonstrates commitment to high standards and ethical conduct and continuous improvement.

Section 10.1 Section 173 agreements

- **Are the options recommended by the 2004 expert group appropriate?**
  The following recommendations are considered appropriate:
  - Ä amending the Act to ensure that an ongoing requirement to comply with conditions on development permits can be enforced; this could save time and cost
  - Ä amending the Act to ensure the power to impose conditions on a permit clearly includes the ability for permit conditions to require deposit of guarantees or bonds, to avoid the use for agreements solely for this purpose
  - Ä reducing or eliminating the involvement of the Minister in the agreements process except where necessary (for example, when the Minister is

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specifically involved in a particular agreement either as the responsible authority or as a party to the agreement)

- Ä improving the availability of agreements for public inspection
- Ä removing the requirement for agreements to be lodged with the Minister
- Ä clarifying the requirements about when an agreement ends
- Ä clarifying who are parties to an agreement where ownership of land has been separated, whether by subdivision or by sale of existing lots
- Ä broadening the jurisdiction of VCAT to settle disputes relating to section 173 agreements.

- **What else could be done to improve the operation of agreements?**
  Response not provided at this time.

Section 10.2 Facilitating e-planning

- **What aspects of the Act need to be adjusted to facilitate e-planning initiatives?**
  The Act should not require amendment for e-planning initiatives as these are system initiatives and should not be mandatory or in legislation. It should also be noted that in rural areas access to high quality internet is not always available.

Section 10.3 Access to planning information and privacy issues

- **What should be the obligations of planning and responsible authorities to provide access to relevant planning information and how should this information be made available?**
  For access to general planning information a combination of measures is needed and these should be made available at all offices of the responsible authority that are open to the public:
  - Ä A dedicated front desk planning officer at every council to assist planning applicants. This should not be a rotated position the idea is to have consistency for people and someone who has very good communication skills who can explain the critical information about zones, overlays, local planning policy and application requirements.
  - Ä Having a computer with printer set up in council foyers with free access to planning schemes on line, property maps, and council's website. To facilitate access in communities where internet speed may vary and where internet cafes may not exist.

  More specifically notification of all lodged applications should on the responsible Authority's website. Access to this information should be based on the criteria of classes as addressed in section 6.3, or by written request detailing an acceptable reason. Commercial in confidence material, and privacy issues, should be treated in the same way as currently or in line with freedom of information requests.
- **What is the reasonable extent to which documents that contains personal information, such as the name of an applicant or an objector, should be publicly available?**
  If the applicant/objector consents to their details being public there is no problem, if it is requested to be withheld there should be no problem with this being withheld, provided the responsible authority has all the contact details and personal information that they need, there is no need to be disclosed this to others. However all conflicts of interest should be disclosed.
- **Should planning authorities or the Government be required or enabled to collect certain data, and for what purposes?**

Detail of the application and any response must be kept and recorded to ensure consistency, equity and efficiency. If data is created/provided as part of an application that may assist future applications of the same nature or at the same location it should not be unreasonable for the relevant generic, non commercial/private, information to be collected.

Section 10.4 Cash-in-lieu schemes for car parking

- **Is a simplified system for securing cash-in-lieu payments for car parking needed?**
  Response not provided at this time.
  Does the Act need to provide a fit-for-purpose head of power for this system to work?
  Response not provided at this time.
  Are the tests for this system as recommended by the Advisory Committee appropriate?
  Response not provided at this time.

Section 10.5 Interaction with other legislation

- **Are there areas where the operation of the Act is in conflict or produces inefficiencies in the interaction with other legislation?**

Of particular relevance to CMAs is the interaction of the Act with the Water Act 1989, and the Heritage Rivers Act 1992. As waterways traverse all forms of developed and undeveloped land and the interactions between land and water are complex in that connections are lateral across floodplains and wetlands, longitudinal along valleys, and vertical from riparian vegetation through to underground aquifers. While the Victorian Planning Provisions clause ***15.01 Protection of catchments, waterways and groundwater***, refers to the protection and, where possible, restoration of catchments, waterways, water bodies, groundwater, and the marine environment it fails to link to the primary legislation for this being the Victorian Water Act, 1989. Furthermore, a licence or permit is required under the Water Act, or by-laws under this Act, to under take any works in on or over a waterway. This is quite an important missing link as many planning applications involve access crossings, services, stormwater outlets, storages, in on or over waterways and there is no statutory trigger under the current system that requires a trigger to the responsible authority (CMA, Rural Water Authority or Melbourne Water). This can leave the planning applicant undertaking authorised works on a waterway, or two conflicting permits, or a stalemate with one permit issued and not the other. It would be recommended that the process is reviewed for a statutory referral for planning applications that involve works in on or over waterways. This could remove the need to obtain a second permit under different legislation and would ensure that any issues are resolved prior to a permit being issued.

Section 10.6 Other identified issues

- **What other opportunities not discussed or listed in this paper would improve the operation of the Act?**
  - Capability resourcing of Local Government Planners.
  - Referral authorities should be provided will the complete set of documents relating to planning amendments and permit applications.
  - Mandatory involvement of local government planners in Regional Catchment Strategy review.

- Regular mandatory independent auditing of local government planning permits and processes.
- A system should be put in place where any planning decisions not endorsed by planning staff but endorsed by the local government council, are required to be independently reviewed prior to the permit being issued.