

EASTERN REGION GROUP OF COUNCILS
SUBMISSION TO THE
PLANNING AND ENVIRONMENT ACT REVIEW

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Local government Submission

This is a draft submission to be confirmed by the Eastern Region Group of Councils.

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SUBMISSION BY THE EASTERN REGION GROUP OF COUNCILS TO THE REVIEW OF THE PLANNING AND ENVIRONMENT ACT 1987

The Eastern Region Group of Councils submitted a report to the Minister for Planning in late 2005 called "Planning for the future - Sustainable Solutions for Victoria: A report to the Minister for Planning by the Eastern Group of Councils" (August 2005). The report recommended a number of improvements to the planning system in Victoria with a particular focus on:

- (i) Reform of the Act;
- (ii) Interpretation of planning schemes and policy by VCAT;
- (iii) The role and functions of Advisory Committees under the Act;
- (iv) The role and function of DSE (now DPCD) and its relationship with local government; and
- (v) Fees and charges.

Since the report was submitted to the Minister there have been a number of minor incremental improvements to the planning system which address some of the recommendations. These incremental improvements have been facilitated by reviews such as 'Better Decisions Faster' and 'Cutting Red Tape'. However, the fundamental issues raised in the report predominantly remain and therefore the Eastern Region Group of Councils is endorsing and resubmitting the report as part of its submission to the current review of the Act.

In addition, the Eastern Region Group of Councils has reviewed the specific recommendations from the 2005 report in relation to changes to the Act and commented on whether the recommendations are still applicable. Where appropriate additional comment has been provided. Details are included within the attached table.

Finally, the Eastern Region Group of Councils would like to raise two key issues in relation to the review as follows:

1. The timeframe provided for Councils to comment on such a major review of the Act has been insufficient; and
2. It is vitally important that there is ongoing consultation with local government prior to finalising and implementing any changes to the Act arising from the review including road testing with local government.

Eastern Region Councils

Recommendations from Planning for the Future Report (August 2005)	Comment of Eastern Region Councils have regard to the current review of the Act (April 2009)
Reform of the Act Required	
8. The Group calls on the Bracks Government to comprehensively reform the Act to:	It is confirmed that a comprehensive review of the Act is required to address a number of concerns and issues, however, this does not require a fundamental change to the Victorian Planning System.
8.1 explicitly recognise and acknowledge the role of local government in the planning system in the same way that the Local Government Act and the Constitution acknowledge local government as a distinct tier of government;	Explicit recognition of Local Government remains necessary.
8.2 clarify and define the nature of the partnership arrangement that exists between the State Government and local government authorities in relation to planning matters;	Confirmed
8.3 acknowledge the increasing role played by local government working in partnership with the State Government to deliver planning objectives across the state such as urban consolidation and environmental sustainability;	The objectives of the Act should be reviewed as previously suggested with a particular focus on environmental sustainability. Concepts such as diversity, housing affordability and accessibility should also be considered for inclusion and reference in the Act. In addition, it should be clear that Council is the primary planning policy maker.
8.4 recognise that the relevant responsible authority is more than just “another party” in planning proceedings at VCAT;	In addition to a review of the P & E Act there should be a corresponding review of the VCAT Act to ensure that it is tied in with the P & E Act.
8.5 underline and make clear the role of policy, particularly local planning policy, to give greater guidance to the development	This recommendation should also include a statement or requirement that all planning controls (Zones, Overlays and Policies) have equal

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industry, residents and the VCAT;	weight. Further, the role of Council needs to be explicitly stated in light of the pending introduction of the Development Assessment Committees (DAC's). Any act changes required for DAC's should be recommended now rather than later.
8.6 end the current "one size fits all" approach to planning in Victoria to enable applications to be dealt with in different ways depending upon their nature, size, complexity and so on;	This should be supported by other recommendations relating to planning scheme amendment processes as well as permit requirements regarding timeframes (eg. 60 days) and notification (eg. material detriment). The Act should recognise that applications have varying complexity and the assessment systems and processor need to match the complexity. (Refer comments below regarding consultation, 'stop the clock', and notification).
8.7 ensure an end to the current system, where local government authorities are using valuable resources on what should be relatively minor and straightforward processes;	Confirmed
8.8 recognise the maturity of the planning system in Victoria and give the system greater flexibility to ensure that it can keep pace with the needs of local government, communities and the development industry; and	Agreed. Whilst the essence of the process involved in the planning system remain appropriate it is important that the Act recognises the increased complexity of the system and community expectations in relation to consultation.
8.9 ensure that the planning system is adequately defined and supported by the legislative provisions that apply and that legislative provisions do not "lag behind" the actual arrangements, partnerships and other relationships that occur in reality.	Confirmed
Planning Scheme Amendments	
8.10 Consideration needs to be given to streamlining the process for planning scheme amendments and to recognise that there	Authorisation has not added any substantive benefit. There should be a better way to ensure that State Government objectives /

Recommendations from Planning for the Future Report (August 2005)	Comment of Eastern Region Councils have regard to the current review of the Act (April 2009)
are a variety of different planning scheme amendments that occur, with varying degrees of complexity, requiring vastly different levels of scrutiny and process:	priorities are sourced and reflected in planning scheme amendments. Work by the Eastern Region has shown that targets set by the Minister for the provision of authorisation are not being met.
minor map/ordinance amendments to rectify anomalies;	It is suggested that this type of amendment does not require authorisation prior to exhibition
changes of zoning and/or imposition of the Public Acquisition Overlay or the like;	There is a need to have different notice requirements for the different types of amendments and in some cases such as to implement structure plans that have been through significant consultation should have a shorten exhibition period
implementation of structure plans, neighbourhood character studies, heritage studies and so on into planning schemes; and	Confirmed
14.4 major reviews of the MSS and local policies.	Confirmed. In addition the time frame for the review of schemes could be extended.
Restrictive Covenants	
46. The provisions of the Act dealing with restrictive covenants should be revisited to ensure that:	Confirmed. The discussion paper on the review of the Act does not discuss the issues associated with restrictive covenants adequately. The issues create major impacts on the planning processes for local government and cause angst in the community. The relationship of covenants to the P & E Act should be reconsidered as part of this review. Some Eastern Region Council's consider that the Act should be amended to remove any requirement for a planning permit and/or amendment to remove and/or vary a covenant. This is on the basis that covenants are private 'planning controls', which are not transparent and often contrary to adopted State and Local Planning Policy.

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46.1 they don't constrain the approval of minor buildings or works, or publicly desirable buildings and works that will have no impact on other properties or are of benefit to the community;	Confirmed
46.2 Councils are not obliged to take enforcement action, where a covenant has been breached because the responsible authority has been unable to issue a permit for what would normally be an acceptable outcome;	Confirmed
46.3 Council staff are not in a position where they have to interpret the meaning of covenants that are often poorly written and devised many years ago with intentions that don't relate to contemporary planning objectives and concepts; and	Confirmed
46.4 Councils are not required to undertake lengthy amendment or planning permit applications to remove covenants for straightforward matters that otherwise meet planning requirements and objectives.	Confirmed
Public Open Space Contributions	
49. At the moment, Councils are limited to levying public open space contributions only where a subdivision of land will occur. Consideration should be given to enabling public open space contributions to be levied where there will be an increased demand for public open space as a consequence of development other than subdivision, such a contribution to be linked to the intensity of the development to be undertaken.	Confirmed

Eastern Region Council Recommendations from Planning for the Future Report (August 2005)	Comment of Eastern Region Councils have regard to the current review of the Act (April 2009)
Notification Requirements	
<p>61. The Act should also provide the capacity for the responsible authority and a permit applicant to agree to 'stop the clock' for particular applications, to enable further discussions to be held without responsible authorities being under pressure to 'beat the clock'. There is currently no incentive for applicants to work with responsible authorities on substantial applications in a way that resolves the issues without needing to resort to VCAT. Publication of statistics on the number of failure appeals by Council suggests that the current regime leads to quick, rather than good decision making (see Appendix 5).</p>	<p>This is a high priority for local government. It is considered that the 28 days for Further Information is acceptable but the 60 day timeframes need to be based upon the complexity of the proposal.</p> <p>It is considered that the changes to further information and amendment of plans have improved matters, but have not dealt with the fundamental issue of the 60 day timeframe. The 'stop the clock' provisions need to be reviewed. This should include consideration of stopping the clock during formal consultation for more complex applications and during holiday periods. The data available for the fees review may be useful in analysing application complexity and timeframes.</p> <p>There is potential to consider including a provision that by agreeing to stop the clock during an agreed period or negotiation or similar, this prevents applicants agreeing to submit amended plans and instead lodging failure appeals.</p>
<p>reviewing the notification requirement in the Act to provide greater scope for responsible authorities to determine an application without notification (rather than a 'no material detriment' test, perhaps a 'minimal detriment' test could be considered or a 'will cause material detriment' rather than a 'may cause material detriment' test);</p>	<p>VCAT decisions have led to a conservative interpretation of 'no material detriment'. Perhaps an identifiable detriment rather than a potential detriment may be considered. It is noted that the risk of not advertising is too great. However, it is acknowledged and accepted that a fundamental strength of the Act is its third party provisions.</p> <p>There may also be merit in requiring Councils to undertake the notification process for all applications rather than involving the applicant. This would assist the accuracy and timelines in the process and could be subject to a formalised fee.</p>

Eastern Region Council Recommendations from Planning for the Future Report (August 2005)	Comment of Eastern Region Councils have regard to the current review of the Act (April 2009)
62.4 Enabling responsible authorities to disregard objections which relate to matters other than those which are relevant to the permit trigger.	This should be explicit in the Act. There should also be consideration given to enabling Councils to reject submissions to Amendments or consider minor submissions without the need for a formal panel hearing.
Advisory Committees under section 151 of the <i>Planning and Environment Act 1987</i>	
76. The current legislative provision for advisory committees does not enable this structure to work effectively, since, at the end of the day, advisory committees established under section 151 are empowered only to advise the Minister and not the Council.	Confirmed

Additional Items for Discussion regarding Review of the Act

Provision	Issue
Terms of Reference	Local Government has a key role in determining the terms of reference and scope of the review.
Objectives of Planning	Need to incorporate ESD and affordable housing principles.
Pre- application meetings	There does not appear to be a need for pre-application discussions to be written into the Act. However, there is an opportunity to include a formal consultation process.
Development Approvals Committees	<p>What is the reason for the DACs?</p> <p>What is it leading to in relation to other changes to the Act? They must be considered now rather than become a separate amendment. However, additional time is required for Local Government to provide input into the DAC process.</p>
Enforcement	There is a need for greater clarity as to the role of VCAT versus proceedings at the Magistrates Court.
Development Contributions	The processes and mechanisms have become far too complex and as a result are limited in their applications
Life of a permit	The question has not been resolved by VCAT and the Act should deal with it.
Role of VCAT	The capacity for review provided in the Act should specify that that review is about implementing the planning scheme rather than interpreting and 'having regard to'. The VCAT Act should also be reviewed so that VCAT are bound by the requirement of the P&E Act also.
Incomplete applications	There should be an ability for the responsible authority to formally reject incomplete applications.

