
Submission

Modernising Victoria's Planning Act

A discussion paper on opportunities to improve the *Planning and Environment Act 1987*

March 2009

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Which of the following best describes you? (please tick)

General public

Community-based organisation

Local government **Yes**

Planning or development industry organisation

Individual or company involved in the development industry

Planning or development consultant

Other, (please specify)

Please note the section on "Publication of submissions" on page 2.

Discussion Paper

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How do I make a submission?

A submission should be made in writing. There is no particular format you need to follow, however, it would help if you could:

- fill out and attach the form in Appendix 5 of this paper to your submission (an electronic form is available at www.dpcd.vic.gov.au/planning for use with e-mail submissions)
- use the questions in this paper to form the basis for your submission.

Written submissions may be sent by:

- Email (preferred): PEActreview@dpcd.vic.gov.au
- **Mail:** Statutory Planning Systems Reform, Department of Planning and Community Development, GPO Box 2392, Melbourne Vic 3001
- **Fax:** (03) 9637 9498

You will receive an acknowledgement of your submission.

Closing date

The closing date for submissions is **Friday, 1 May 2009**.

Do you need help in making a submission?

If you require an interpreter or other help in making a submission please call Information Victoria on 1300 366 356 (local call cost) or TTY +61 3 9603 8806 (8.30am – 5.00pm Monday to Friday).

Publication of submissions

All submissions received will be published in full on the DPCD website. If you do not wish to have your submission or personal information published, please advise DPCD in writing stating your reasons. Please be aware that the ultimate discretion whether to publish or not on the DPCD website rests with DPCD. Access to any unpublished submissions may still be granted pursuant to the provisions of the *Freedom of Information Act 1982*.

Surf Coast Submission

Surf Coast has utilised the questions posed in the Discussion Paper to respond to particular matters pertinent to the organisation. Surf Coast's comments are in ***bold italic***.

1: About this review

Question

- Do we need a new car or a major service?
 - ***From a broad perspective the objectives of the Act are still considered to be very relevant, although some minor revision may be necessary. Initial thoughts would be that the preparation of a new Act is not warranted given that it would probably constitute, to a large extent, a rewrite of the existing Act.***

3: The Planning System and the P & E Act 1987

Questions

- What does planning mean for Victoria today?
- Is the role of legislation in a modern planning system substantially similar to that described in 1987?
- Should the name of the Act better reflect the role of the Act in managing land development?
- Is the principle that the planning system is about planning land still an appropriate starting point?
- Have there been changes which suggest a different role for the planning system?
- If so, what should that new role be?
- Should the scope of planning legislation be widened to include other matters?
- If so, what should they be, and why and how do they need to be covered in legislation?
- 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?
 - ***Land use planning often involves planning new residential development for large population increases. There needs to be much better links between all of these types of planning in the early stages. State and local governments (and any other bodies responsible for physical and community infrastructure) need to work together to plan for population growth. Whilst this may currently be reasonably addressed in the metropolitan setting, there is much needed doing to better address this in regional areas.***

4: Are the objectives of planning in Victoria still relevant?

Questions

- Are the objectives of planning in Victoria still relevant?
 - ***The broad objectives are still very relevant, although the wording of some may need to be revised, and it may be that new objectives are considered worthy of inclusion.***
 - ***The public utilities objective is a little confusing. How is this implemented through the planning scheme?***

- ***Should there be a hierarchy of importance? This could help clarify decision making.***
- Have significant words such as *environment*, *social* and *economic* changed in the way they relate to land use planning and, if so, how?
- Is there a need to include more specific objectives about matters like culture, heritage or cultural heritage protection in the Act?
 - ***Should there be a tie to the Cultural Heritage Act?***
- 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?
 - ***Once you start getting specific, who decides which issues are important enough for inclusion?***
 - ***Should detail be left to the VPPs and planning schemes?***
 - ***Will all municipalities have the same goals in relation to these issues?***

6: The permit process

6.1 One size fits all?

Questions

- Is there a need to change the permit process to make it more responsive to the scale and complexity of a proposal?
 - ***Yes. Minor applications often tend to take lengthy times to process simply because they are being considered by the one person at the same time as complex proposals. There is currently no “fair” way to expedite simple proposals.***
- 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?
- What are the other options for streaming applications?

6.2 Lodging an application

Questions

- Do the information requirements for making an application need to be changed to improve the quality of applications?
 - ***The application requirements for planning applications are continually getting more complex and detailed. Questions need to be asked as to whether this is leading to better outcomes at a broad level or just more paperwork.***
- Should the responsible authority have discretion to reject applications that are incomplete or inadequately prepared?
 - ***Yes, but there needs to be clear guidance at State level as to what is appropriate. This could lead to some Councils setting overly onerous requirements.***
- Is a more comprehensive application form needed?
 - ***No. Need a way to ensure it is properly filled in.***

- Would a system of pre-lodgement certification by private practitioners be an effective way to improve the standard of permit applications?
 - ***This was trialled by Surf Coast Shire Council. It did not prove to be effective in terms of improving application standards or improving timelines for considering applications. In a municipality where the majority of development applications tend to be smaller scale, the cost of this process is a huge deterrent to applicants.***

6.3 Notice of an application

Questions

- Are streamlined notice requirements for certain types of applications required?
 - ***Yes. There should be more certainty and direction provided. Notification should clearly indicate why a planning permit is required – hence what objections can be considered.***
- Should the responsible authority have more discretion in deciding who should be notified, in what manner, and how long should be allowed for submissions?
 - ***Change to covenant notification should be limited to those that benefit through direct notification.***
 - ***Should be a time cut off for receiving objections.***

6.4 Objections

Questions

- Should the term objection be changed to submission?
 - ***No, the general public like to be clear about what is happening with a planning proposal and the term “submission” is not transparent.***
- Should the responsible authority have a greater discretion to reject an objection?
 - ***Yes, supported by legislation. ie if the objection is outside the reason for requiring a permit.***
- Should an objector be required to provide more specific information about how they might be affected by a proposal in their objection?
 - ***Yes, this will help in considering the objection and improving the decision making process and outcome.***

6.5 Referrals

Question

- How could the Act be changed to encourage the more effective and timely input of referral authority requirements in the permit process?
 - ***Clarification on further information requests – timelines and circumstances.***

6.6 Making a decision

Questions

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

- **Refer to comments on hierarchy of objectives. A hierarchy system should help to achieve greater consistency in decision making.**
- Should the Act provide for different decision-making considerations for different classes of applications?
 - **Best dealt with in planning schemes.**
- Are the times prescribed by regulation in which certain decisions should be made appropriate? Should other matters also have prescribed times?
 - **No. There should also be different time requirements based on the level of complexity of applications.**
 - **Failure to decide timeline should be reworded to put emphasis on the ability to appeal.**
 - **Question the need for the longer (60 day) time for an applicant to appeal a decision (compared with an objector's 21 days).**
 - **Further information requests from referral authorities need to be coordinated with further information requests from responsible authorities. This would save the applicant time and money in terms of getting new plans drawn up.**

6.7 Conditions

Questions

- Does the ongoing life of conditions on a development permit need to be clarified?
 - **Yes. There should be an ability to register permits with ongoing conditions on title to make future owners aware of conditions.**
- 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?
 - **Yes.**

6.8 Amending a permit

Questions

- 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?
- Should section 216 now be repealed?
- Should the Act set the principles for when the use of a secondary consent permit condition is appropriate?
- Is there a need to provide a process for seeking and recording secondary consent approvals?
- Should the section 72 process be simplified in the case of 'minor' amendments to avoid what in some cases amounts to a full permit process, and how can this be done?
 - **Need a single clear and simple process for dealing with these issues under the Act.**

6.9 Enforcement

Questions

- Could a register of enforcement orders reduce non-compliance?
- Are there other changes that could make the enforcement process more effective?
 - ***Current process is too slow and cumbersome. Process is too soft on non-compliers.***

7: Planning schemes and the amendment process

7.2 The amendment process

Questions

- What steps in the process should have a statutory time requirement and what would be a reasonable requirement to impose?
- What should happen if a time requirement is not met?
 - ***Amending a planning scheme is too important a process to apply statutory time requirements. It is more important to ensure that the process and outcomes are optimum rather than mandating specific time requirements.***

7.3 Requesting and preparing an amendment

Questions

- Is more guidance on the information that should accompany a request needed, and should this be in the Act?
 - ***There should be more statutory guidance so that developers realise certain requirements are mandatory upfront.***
- Should an amendment request form for proponents be introduced?
 - ***This should certainly be investigated.***
- 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?
 - ***No, Council is best placed to decide. No other body should have the power (other than the existing power of the Minister) to override Council's decision making process and responsibility on local policy.***

7.4 Authorisation

Questions

- Is more guidance or criteria about the role and purpose of the authorisation step required, and should this be in the Act?
 - ***Yes. This process currently can take 6 months or longer with little or no communication from DCPD as to the reason for the delay. This sort of timeline is unacceptable.***
- Should some types of amendments be exempted from this step? If so, which ones?
 - ***Yes, if possible to identify amendments that clearly have no State ramifications.***
- Is there an alternative way of achieving the objective of the authorisation process?

- ***The authorisation process has appeared to have got out of hand and is causing added lengthy delays in the amendment process for little benefit. At the very minimum, there should be a statutory response time failing which the amendment may proceed to exhibition. There should also be clearer guidelines on the role and purpose and the information requirements to suit on strategic alignment. This need not be in the Act but should at least be clarified through a Ministerial Direction.***

7.5 Exhibition

Questions

- 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?
- What changes would lead to more efficient and effective notice of an amendment?

7.6 Submissions

Questions

- Should a planning authority be able to reject or disregard irrelevant submissions?
 - ***Possible referral to Panel for decision (on the papers decision).***
- Should a structured form for making submissions be introduced?
- If a panel is established, should a planning authority be required to refer all submissions to the panel?
- Should submissions which support an amendment have the same status as those submissions that object to or propose changes to an amendment?
- Should a panel have the ability to review and make recommendations about the overall amendment proposal?
 - ***Within reason, however the main emphasis should be on dealing with the submissions.***
- Should the Act facilitate 'on the papers' panel hearings where appropriate?
 - **Yes**
- Should all amendments be reviewed by an independent panel?
 - **No.**

7.7 Assessment and adoption

Questions

- 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?
 - ***Yes, 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?
 - ***No – refer 7.2.***

7.8 Approval

Questions

- Is the opportunity for some amendments to be approved by the planning authority an effective means of reducing delay?
- Is the requirement for an amendment to be certified by the Secretary of DPCD necessary, before a planning authority can approve its amendment?
- How could this step in the process be streamlined?
 - ***The current system, in the experience of our Council, has resulted in no time savings (possibly longer time process), with the same information requirements to be provided as if the amendment were to be approved by the Minister, and increased document/information exchange in relation to minor administrative corrections required prior to approval***
 - ***Probably need to consider eliminating the need for the Secretary of DPCD to certify an amendment if this process is to effect time savings.***

7.9 Monitoring and review

Question

- 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?
 - ***A full review should only be required not less than every 5 years. Planning schemes are continuously evolving through amendments and do not need overhauls every 3 years.***

8: State-significant projects

Questions

- Would there be benefits in creating a specific planning process for the assessment of State-significant projects?
- What process should be followed for deciding which projects which are of State significance?
- What is the most suitable process for evaluating and deciding State-significant projects?
- 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?

9: Governance and decision-making

Questions

- Should there be more options for how decisions are made on permits, amendments or matters for review?
- How should the options be tailored to more closely correspond with the level of assessment required for the proposal?
- What decisions could be made by appropriately trained non-professional officers?
 - ***Does this mean administrative officers?***

9.1 Private certification

Questions

- 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?
- Should privately certified planners be able to assess and decide certain planning consent matters?
 - **No. Problems around accountability and probity.**

9.2 Registration of planners

Questions

- 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?
 - **Has merit - worth further investigation.**
- Should certain planning decisions be required to be informed or made by planning professionals with prescribed qualifications?

10: Other opportunities

10.1 Section 173 agreements

Questions

- Are the options recommended by the 2004 expert group appropriate?
 - **Yes**
- What else could be done to improve the operation of agreements?

10.2 Facilitating e-planning

Question

- What aspects of the Act need to be adjusted to facilitate e-planning initiatives?

10.3 Access to planning information and privacy issues

Questions

- 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?
- What is the reasonable extent to which documents that contain personal information, such as the name of an applicant or an objector, should be publicly available?
- Should planning authorities or the Government be required or enabled to collect certain data, and for what purposes?

10.4 Cash-in-lieu schemes for car parking

Questions

- Is a simplified system for securing cash-in-lieu payments for car parking needed?
- Does the Act need to provide a fit-for-purpose head of power for this system to work?
- Are the tests for this system as recommended by the Advisory Committee appropriate?

- *The schedule to Clause 52.06-6 provides a system for securing cash-in-lieu payments for car parking. Why is further legislation deemed necessary?*

10.5 Interaction with other legislation

Question

- Are there areas where the operation of the Act is in conflict or produces inefficiencies in the interaction with other legislation?
 - *There should be restrictions on the ability for covenants to be placed on land that is in conflict with the aspirations of State or local policy contained in planning schemes.*
 - *Should be able to issue a permit that conflicts with a covenant.*
 - *Planning schemes should not be the mechanism for removal of covenants.*
 - *Why should planning decisions be delayed pending approvals under other Acts? (eg Coastal Management Act etc). Alternatively, legislate to prevent a planning application from being submitted until all other approvals are obtained.*
 - *Shouldn't need a planning permit for liquor licences. The result of the current system is to duplicate the process and increase red tape.*

10.6 Other identified issues

Question

- What other opportunities not discussed or listed in this paper would improve the operation of the Act?