

24 April 2009

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

Dear Sir/Madam,

Re: Modernising Victoria's Planning Act

I refer to the recently released discussion paper seeking comments in relation to opportunities to improve the Planning and Environment Act and wish to advise as follows.

Section 1 About this review

Do we need a new car or a major service?

- The existing Act provides a good basis from which a number of improvements may be made. As result the industry requires that the Act undertake a service rather than a new Act entirely. Any improvements to the existing Act must remain consistent with the original language of the Act being clear and easy to understand.

Section 3 The Planning System and the Planning and Environment Act 1987

Is the role of legislation in a modern planning system substantially similar to that described in 1987?

- Yes, the 1987 speech articulates a system that provides for fairness and equality surrounding a structure system and most importantly provides an opportunity for community involvement.

Should the name of the Act better reflect the role of the Act in managing land development?

- Whilst the current Act does not facilitate social ethical discussions or consider the economic impact of land development proposals. It most certainly considers the natural and built environments.

The current name reflects the role of the current Act arrangements.

Is the principle that the planning system is about planning land still an appropriate starting point?

- Yes, land use and development is more easily regulated than social change. However land use and development regulation can influence and drive social change.

Have there been changes which suggest a different role for the planning system?

- No.

If so, what should that new role be?

- N/A

Should the scope of planning legislation be widened to include other matters?

- No, incorporating matters relating to social and economic implications as a result of use and development applications would further complicate an already subjective system.

If so, what should they be, and why and how do they need to be covered in legislation?

- N/A

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

Are the objectives of planning in Victoria still relevant?

- Yes, the existing objectives provide the overarching framework and as a result provide a sufficient basis for the more detailed issues to be embraced through State or Local Policy.

Are the objectives for Victoria's planning system still relevant?

- Yes, generally consistent with the above.

Is there a need to include more specific objectives about matters like culture, heritage or cultural heritage protection in the Act?

- Greater linkage between the Planning and Environment Act and Aboriginal Heritage Act so as to better define responsibilities associated with Aboriginal cultural heritage is required.

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?

- No, the Act should remain simple and non-complicated with these additional issues addressed via the State Policy and in practice notes.

6.1 One size fits all?

Is there a need to change the permit process to make it more responsive to the scale and complexity of a proposal?

- This is generally not a significant issue at Campaspe.

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?

- No the existing system seeks that all applications be processed in a timely manner, further capacity exists where applicant can seek comments from relevant authorities prior to making an application to assist in achieving a faster turn around time.

Most importantly the existing system needs to be applied as designed and the matters for which a permit is triggered be the only matters considered. Further that if notice of an application is specifically exempt then the Planning Authority should not choose under its own accord to give notice of the application.

What are the other options for streaming applications?

- Increased exemptions from the requirements of a permit or conditional exemptions e.g. if a dwelling is constructed 300mm above the 1% ARI flood level identified in an LSIO.

6.2 Lodging an application

Do the information requirements for making an application need to be changed to improve the quality of applications?

- Yes, more prescriptive application requirements that provide greater guidance to applicants about what information must accompany an application is critical.

Should the responsible authority have discretion to reject applications that are incomplete or inadequately prepared?

- Yes, particular when the basic application requirements have not been met.

Is a more comprehensive application form needed?

- No.

Would a system of pre-lodgement certification by private practitioners be an effective way to improve the standard of permit applications?

- Within smaller rural municipalities it is generally private planning practitioners are rare, and applications from planning practitioners are also rare. Most applications are made by Land Surveyors, Building Surveyors and land owners.

6.3 Notice of an application

Are streamlined notice requirements for certain types of applications required?

- No, the existing system which provides for planners discretion is more responsive to the local environment conditions.

Should the responsible authority have more discretion in deciding who should be notified, in what manner, and how long should be allowed for submissions?

- No, the existing system is appropriate as it only controls applications for Covenants and those made under section 96.

6.4 Objections

Should the term objection be changed to submission?

- An objection is a submission which is seeking a change or abandonment (refusal) of the application similar to the Planning Scheme Amendment process.

Should the responsible authority have a greater discretion to reject an objection?

- No

Should an objector be required to provide more specific information about how they might be affected by a proposal in their objection?

- Yes, as this may assist in these concerns being alleviated.

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?

- The issue is not the requirements of the Act with regard to referral response times but resources and training of referral agencies.

6.6 Making a decision

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

- No

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

- No

Are the times prescribed by regulation in which certain decisions should be made appropriate? Should other matters also have prescribed times?

- Generally times are appropriate, however this can depend upon the extent of delegation from Council.

6.7 Conditions

Does the ongoing life of conditions on a development permit need to be clarified?

- Yes, as this has and continues to cause confusion both amongst planners, developers and Councillors.

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, this would aid in reducing cost associated with DCP's and DCA's.

6.8 Amending a permit

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, however only those permits which confirm the Planning Authority's position that a permit should be issued. Not all permits issued at the direction of the tribunal.

Should section 216 now be repealed?

- Yes.

Should the Act set the principles for when the use of a secondary consent permit condition is appropriate?

- Yes

Is there a need to provide a process for seeking and recording secondary consent approvals?

- Yes

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?

- No, as this would be reverting to that only a minor amendment may be considered, similar to the old process.

6.9 Enforcement

Could a register of enforcement orders reduce non-compliance?

- It is considered unlikely that a register would reduce non-compliance however it would ensure the accountability of Councils to undertake consistent enforcement.

Are there other changes that could make the enforcement process more effective?

-

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?

- Statutory timeframes associated with the assessment of statutory applications seeks to ensure the timely consideration of piece meal development proposals. The implementation of timeframes associated with the consideration of planning scheme amendments serves no purpose. Further the establishment of such timeframes would be difficult to quantify given the varying degree and scale of such applications.

What should happen if a time requirement is not met?

- The matter be referred to the Minister for Planning. In which case the Minister may direct the Planning Authority to undertake some action or establish an independent Panel to review the matter (at the cost of the Minister).

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?

- The more guidance and assistance there is available to applicants the better the quality of applications. However this is reliant upon the information provided in the advisory and practice notes being constantly updated so that it maintains relevance and is consistent with DPCD's focus.

It is more appropriate that this information be provided as new or updated advisory or practice notes as these have the capacity to be updated and maintained more simply than if such information was located within the Act.

Should an amendment request form for proponents be introduced?

- Why, the information that such an application form could contain would generally be within the cover letter with the application or the planning report. Such an application form would simply create duplication.

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?

- It is understood that the authorisation process was introduced as applications which were either deficient or at odds with State Policy were being exhibited by the Planning Authorities. As such refusals by the Planning Authority to seek authorisation were and assembly still are rare.

Further are DPCD not the independent body which may provide guidance and assistance to the Planning Authority or applicant in this instance.

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?

- As outlined above the more guidance and assistance there is available to applicants and Planning Authorities with regard to the Ministers expectations the better. Similarly this information should be provided in advisory or practice notes, which have a simpler means of being updated.

Should some types of amendments be exempted from this step? If so, which ones?

- Exempting smaller clerical error amendments from the requirements of authorisations and other amendments namely those relating to rezoning land that is no longer in public ownership from a Public Use Zone where the replacement zone is clear, rezoning land in public ownership to a Public Use Zone, correction of an error in the ordinance or maps, and mapping amendments proposed in the interests of public safety which are support by the relevant emergency services authority, e.g. Wildfire Management Overlay, and Land Subject to Inundation Overlay and Floodway Overlay.

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?

- The existing Act provisions by not prescribing the extent of notice and not defining who may be 'materially affected' ensures that notice is given in a manner which is responsive to the application. As detailed in the discussion paper Planning Authorities are more likely than not to place significant investment in the giving of wide notice to minimise the likelihood of a defects in procedure action.

Guidelines could be established which seek to define who may be 'materially affected', such guidelines may identify issues which the Planning Authority are required to consider

when determining to what extent notice should be given. However the establishment of guidelines would not remove or even potentially lessen the likelihood of defects in procedure action at VCAT.

Further it could be difficult to further minimise this potential given that section 21(1) of the Act states *Any person may make a submission to the planning authority about an amendment of which notice has been given under section 19 or in accordance with a condition imposed under section 20(2)(b).*

Section 7.6 Submissions

Should a planning authority be able to reject or disregard irrelevant submissions?

- The Planning Authority should be able to disregard or reject irrelevant submissions. In particular submissions which seek to add land to an amendment or those which make general statements about the amendment process.

Should a structured form for making submissions be introduced?

- Yes, as this may encourage submissions which better address the planning consideration of the proposed amendment. However this may not reduce the pro-forma letters of objection or petitions in response to notice of amendments.

If a panel is established, should a planning authority be required to refer all submissions to the panel?

- No, a Planning Authority should not be required but only encouraged to refer all submissions. In particular if an amendment has been exhibited which involves a number of different and varying components (e.g. seeks to implement two or three different studies recommendations) where only one component of the amendment attracts submissions. This has the potential to restrict the Planning Authorities ability to split an amendment and seek Ministerial approval to that component for which no submissions objecting were received.

Should submissions which support an amendment have the same status as those submissions that object to or propose changes to an amendment?

- No particularly if the only submissions received are ones of support and as a result a Panel is then required. This would impose unrealistic costs upon Planning Authorities when undertaking planning scheme amendments.

Should a panel have the ability to review and make recommendations about the overall amendment proposal?

- Yes, however regard should be had to the answer to question 3 above when splitting amendments.

Should the Act facilitate 'on the papers' panel hearings where appropriate?

- Yes, 'on the papers' hearing assist in reducing costs associated with Panels which can be a determining factor for smaller rural municipalities when undertaking planning scheme amendments.

Should all amendments be reviewed by an independent panel?

- No, the added timeframe and work load to Council Planners and to planning panels Victoria makes this unrealistic. Further the costs associated with panel hearing are a restricting factor for smaller rural municipal Councils.

Section 7.7 Assessment and adoption

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?

- Planning Authorities should only have the ability to provide recommendations to the Minister for Planning seeking to abandon an amendment or part of an amendment only.

Should a right of review be available to proponents where a planning authority decides to abandon an amendment? Who should review and decide?

- No right of review should be available under the current arrangements as this can cause confusion and lead to action at the tribunal, see attached VCAT order. Should the Planning Authority be only able to make recommendation regarding whether an amendment should be abandoned then the Minister for Planning is the right of review.

Section 7.8 Approval

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

- The current system established which allows the Planning Authority to approve amendments is resource intensive and certainly no quicker than if the amendment was submitted for approval to the Minister. If DPCD seek to maintain control over what is approved (through the certification process) even if the Planning Authority has been given consent to approval the amendment this process can not be expedited.

Is the requirement for an amendment to be certified by the Secretary of DPCD necessary, before a planning authority can approve its amendment?

- Where the approval has been given for the Planning Authority to approve the amendment and the amendment is consistent with that exhibited and authorised documents there should be no requirement for further certification.

How could this step in the process be streamlined?

- Refer above.

7.9 Monitoring and review

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?

- Whilst requiring Planning Authorities to review their Planning Schemes every four years in line with the Council Plan rather than every three years. Provides more time for the implementation of any outcomes of the review via a Planning Scheme amendment. The implementation may take a further two or more years.

Priority through DPCD needs to be provided to the implementation of Planning Scheme reviews and recognition by DPCD that review documentation involves a substantial community communication and as a result is a costly and time consuming exercise.

This is further exacerbated by DPCD's changing direction in the importance of Local Policy and the role of the MSS within Planning Schemes.

Further consideration needs to be given to the cost implications of Panels associated with the implementation of reviews. In particular Section 13(2) of the *Planning and Environment (Fees) Regulations 2000* enables a Planning Authority or the Minister to waive or rebate the payment of a fee for an application for amendment to a planning scheme amongst others which *implement a general review of the planning scheme, is to implement a new use or development strategy, or is otherwise designed to upgrade and improve the scheme in the public interest.*

The waiver of such fees is traditionally rare and as a result these fees are a significant deterrent for smaller rural municipalities to undertake significant amendments.

Should you wish to discuss the above please do not hesitate to contact me on 5481 2267.

Yours faithfully,

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