

Modernising Victoria's Planning Act

Scope of the review – a new car or a major service?	
Question	Moonee Valley's Response
Do we need a new car or a major service?	Council generally believes that the Act is not in need of radical overhaul. There is, however, capacity to contemporise the Act, reduce confusion and provide greater direction on planning matters.

The Planning System and the Planning and Environment Act 1987	
Question	Moonee Valley's Response
What does planning mean for Victoria today?	No comment
Is the role of legislation in a modern planning system substantially similar to that described in 1987?	No comment
Should the name of the Act better reflect the role of the Act in managing land development?	No comment
Is the principle that the planning system is about planning land still an appropriate starting point?	No comment
Have there been changes which suggest a different role for the planning system? If so, what should that new role be?	No comment
Should the scope of planning legislation be widened to include other matters?	No comment
If so, what should they be, and why and how do they need to be covered in legislation?	No comment
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?	Integration of land use and transport planning has the potential to address both climate change mitigation and adaptation and the provision of access and mobility to a growing population. As such, settlement strategies which integrate land use and transport need to be given high priority in State planning initiatives.

Are the objectives of planning in Victoria still relevant?	
Question	Moonee Valley's Response
Are the objectives of planning in Victoria still relevant?	Council believes the objectives contained within the Act remain relevant.
Are the objectives for Victoria's planning system still relevant?	As above.
Have significant words such as <i>environment</i> , <i>social</i> and <i>economic</i> changed in the way they relate to land use planning and, if so, how?	Council does not believe the meaning of these words have altered in relation to land use planning.
Is there a need to include more specific	No comment

<p>objectives about matters like culture, heritage or cultural heritage protection in the Act?</p>	
<p>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?</p>	<p>There is no specific objective in the Act related to planning for the optimum health and wellbeing of Victorians. Council believes the Act should explicitly recognise health and wellbeing to ensure these issues are firmly grounded within current planning legislation.</p> <p>Similarly, the concept of climate change is not captured within the objectives. Council is of the opinion that the importance of the planning system in addressing both mitigation and adaptation to climate change needs to be imbedded within the objectives of planning in the Act.</p>

The permit process One size fits all?

Question	Moonee Valley's Response
Is there a need to change the permit process to make it more responsive to the scale and complexity of a proposal?	Council believes one size does <i>not</i> fit all. There is a need to tailor assessment processes to suit the nature, size and complexity of the proposal to achieve more efficient processing of permit applications. This includes provisions for mandatory timelines be subject to a sliding scale so that they are commensurate to the complexity and scale of the proposal. In complex matters 60 days is insufficient, just as it is too long for many simple matters.
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 comment
What are the other options for streaming applications?	No comment

Lodging an application

Question	Moonee Valley's Response
Do the information requirements for making an application need to be changed to improve the quality of applications?	<p>Council receives poorly prepared permit applications on a regular basis and would welcome any initiatives which aim to mitigate this issue on the condition that the requirements were not overly onerous on a layperson lodging an application.</p> <p>The information required should be tailored to reflect different types of applications.</p>
Should the responsible authority have discretion to reject applications that are incomplete or inadequately prepared?	We support immediate rejection to avoid the ongoing delays with generation of requests for further information for those applications which are clearly sub-standard. However, this implies the use of additional resources in terms of staff thoroughly checking all applications at the time of lodgement.
Is a more comprehensive application form needed?	<p>For larger and more complex applications a more comprehensive application form may be beneficial.</p> <p>At present the planning system allows the layperson to submit applications, and attempts to increase complexity of applications will simply shift the burden to Council officers to assist such applicants. Any initiatives in this area need to be mindful of not adding a further drain to already taxed resources.</p>

Notice of an application	
Question	Moonee Valley's Response
Would a system of pre-lodgement certification by private practitioners be an effective way to improve the standard of permit applications?	<p>We would support pre-lodgement certification for the assessment of information only.</p> <p>The process should be optional for applicants, with a consistent approach across the State rather than Councils tailoring their own system.</p>
Are streamlined notice requirements for certain types of applications required?	Streamlined notice requirements for certain types of applications is supported but Council does not believe this needs to be imbedded in the Act as it can be achieved through the VPP's.
Should the responsible authority have more discretion in deciding who should be notified, in what manner, and how long should be allowed for submissions?	<p>There is scope for the Act to provide clearer guidance for determining what constitutes material detriment and therefore enable more targeted notice requirements.</p> <p>For large proposals, comprehensive notification is usually given. However, even in the case of wide notification, Council is still bound by a 14 day submission period. This is considered inadequate and it is suggested that the clock be stopped for a longer period, 4 weeks, commensurate to the extent of notification and scale of development.</p>
Objections	
Question	Moonee Valley's Response
Should the term objection be changed to submission?	Council would not be opposed to this proposal.
Should the responsible authority have a greater discretion to reject an objection?	<p>Council would support this on the condition that there were clear parameters in place to ascertain the grounds upon which objections could be rejected.</p> <p>At present Council, as Responsible Authority, may reject an objection which it considers has been made primarily to secure or maintain a direct or indirect commercial advantage for the objector. Council believes this ability to disregard objections of a certain nature could be extended to other irrelevant issues.</p> <p>There are a range of standard issues that are raised in objection letters that have no direct relationship to the proposed development or use or relate to matters not able to be considered through the planning process. Typical issues raised in objections that Council cannot usually consider through the planning permit process include impacts on property</p>

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	values, attracting 'undesirable' neighbours, noise associated with a residential use, damage to surrounding properties during construction and impact on health.
Should an objector be required to provide more specific information about how they might be affected by a proposal in their objection?	Council believes a standard template would be useful in terms of providing guidance to objectors.
Referrals	
Question	Moonee Valley's Response
How could the Act be changed to encourage the more effective and timely input of referral authority requirements in the permit process?	Council sees merit in proponents liaising directly with relevant Referral Authorities in the case of planning permit applications for subdivision, planning applications triggered by Special Building Overlays and applications for road openings on VicRoads' land.
Making a decision	
Question	Moonee Valley's Response
Should the Act set out a clear hierarchy of policy documents to be considered by a responsible authority?	There is a need to clarify the weight each policy document carries.
Should the Act provide for different decision-making considerations for different classes of applications?	No comment
Are the times prescribed by regulation in which certain decisions should be made appropriate? Should other matters also have prescribed times?	<p>Timeframes should align with the scale and nature of the proposed development or use. There are a range of complexities that require more time for assessment for larger projects. Lack of time can compromise Council's decision making and community consultation process.</p> <p>Council is currently involved in the assessment of an application which has the opportunity to involve a Priority Development Panel. While Council sees this as beneficial to the processing and consideration of the application there are currently no triggers to 'stop the clock'.</p>
Conditions	
Question	Moonee Valley's Response
Does the ongoing life of conditions on a development permit need to be clarified?	Yes. For example, those conditions relating to: landscaping requirements and exterior paint colours Council believes should not be perpetually binding on the subject property. A defined expiry date needs to be applied for these types 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?	Council would be supportive of this initiative on the condition that enforcement of payment/obligations was as effective as section 173 agreements or development contribution plans.

Amending a permit	
Question	Moonee Valley's Response
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?	No. Council is of the opinion that a permit issued at the direction of VCAT should continue to be amended by VCAT.
Should section 216 now be repealed?	No comment
Should the Act set the principles for when the use of a secondary consent permit condition is appropriate?	There is a need to clarify under what condition/s an amendment should be considered under section 72 or 87A of the Act as opposed to an assessment under secondary consent.
Is there a need to provide a process for seeking and recording secondary consent approvals?	No comment
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 this can be done?	Further explanation of what constitutes a 'minor' amendment would need to be provided to comment on this proposal.
Enforcement	
Question	Moonee Valley's Response
Could a register of enforcement orders reduce non-compliance?	No
Are there other changes that could make the enforcement process more effective?	No comment

Planning schemes and the amendment process	
The amendment process	
Question	Moonee Valley's Response
What steps in the process should have a statutory time requirement and what would be a reasonable requirement to impose?	Council considers that the two performance targets for amendments (1. decision on authorisation to prepare an amendment within 15 working days and 2. complete assessment of an adopted amendment and make a decision within 30 working days) should be formalised as timeframes prescribed under the Act. In the case of third party initiated amendments, statutory timeframes need to be set out for the relevant planning authority. Appropriate time frames would need to be commensurate to the nature, complexity and size of the proposed amendment.
What should happen if a time requirement is not met?	Deemed to be authorised/approved.
Requesting and preparing an amendment	
Question	Moonee Valley's Response
Is more guidance on the information that should accompany a request needed, and should this	Council believes further guidance is required and would support the inclusion of such requirements in

be in the Act?	the Act.
Should an amendment request form for proponents be introduced?	Yes. A standard request form in the template of an explanatory report and relevant practice notes is considered to be appropriate.
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?	<p>It is noted that there is currently no scope for a proponent to challenge a decision by the planning authority in relation to amendment requests.</p> <p>Despite this Council does not believe that the introduction of a review process is required as the number of amendment requests refused by Council is very low and typically those refused relate to amendments that are clearly contrary to State and Local Policy or are not based on sound strategic analysis and justification.</p>

Authorisation

Question	Moonee Valley's Response
Is more guidance or criteria about the role and purpose of the authorisation step required, and should this be in the Act?	<p>The introduction of authorisation was intended to ensure that the proposed amendment to a planning scheme is properly formatted, soundly based and consistent with State government policy. This should prevent amendments from being exhibited that have no chance of ever being approved by the Minister for Planning. It was also presumed that such a step in the process would facilitate more efficient and timely decision making at the approval stage. However, presently, the Minister signing off on an amendment before exhibition starts does not seem to be contributing to faster decisions. DPCD needs to ensure timely assessment and authorisation of proposed amendments if this additional step in the process is to be of any benefit. The Act makes no provision or requirement for DPCD to respond to these matters within specified timeframes.</p> <p>In addition, it is unclear what information Council is required to supply at the authorisation stage as the Practice Note does not list all the steps routinely requested by DPCD. Further clarification is required to set out the level of detail required and the matters DPCD are considering at this step of the process.</p> <p>Clarification is also needed to define what is considered a "substantial" change to an amendment after authorisation is granted.</p>
Should some types of amendments be exempted from this step? If so, which ones?	Amendments of a minor nature that are purely administrative (e.g. corrections) and do not involve policy changes (e.g. applying a heritage overlay over a single property) should not be required to go through the authorisation process.
Is there an alternative way of achieving the	No comment

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objective of the authorisation process?	
Exhibition	
Question	Moonee Valley's Response
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?	No comment
What changes would lead to more efficient and effective notice of an amendment?	Council believes there is scope to reduce exhibition time frames for simple amendments to two weeks and maintain the current one month period for more complex amendments.
Submissions	
Question	Moonee Valley's Response
Should a planning authority be able to reject or disregard irrelevant submissions?	As per Council's response regarding permit application objections, we would also support the ability to reject or disregard irrelevant submissions during the planning scheme amendment process. This would negate the need to refer an amendment to a panel on the grounds of irrelevant submissions. As an example Council was recently required to request a panel to consider a submission to the introduction of a heritage overlay on a single site. The basis of the submission was that the submitter was frustrated that the site/building had remained vacant for a number of years. Council attempted to engage with the submitter to explain the purpose of the amendment and address their concerns. The submitter did not want to withdraw the submission and subsequently Council was required to request a panel. Council incurred considerable resources and time going through a Panel process despite the submitter choosing not to present to the panel and the panel not addressing the grounds of the submission in its report.
Should a structured form for making submissions be introduced?	Council sees merit in this proposal.
If a panel is established, should a planning authority be required to refer all submissions to the panel?	Yes
Should submissions which support an amendment have the same status as those submissions that object to or propose changes to an amendment?	Agreed.
Should a panel have the ability to review and make recommendations about the overall amendment proposal?	Council believes a full review of an amendment proposal would provide a transparent assessment from which Councils can gain knowledge and apply to future assessments.
Should the Act facilitate 'on the papers' panel hearings where appropriate?	Council would support this proposal.

<p>Should all amendments be reviewed by an independent panel?</p>	<p>No. However Council does see merit in the review of certain types of amendments by an independent panel. There is currently a lack of transparency in processes and poorly explained decisions on behalf of the DPCD when considering amendments to planning schemes. This leads to an inability for Council, proponents and the general public to determine the reasons or logic behind these decisions, and therefore, learn from them.</p> <p>In the interest of transparency and knowledge sharing, Council suggests all decisions be accompanied by clearly articulated explanations to be published for public viewing.</p>
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Assessment and adoption

Question	Moonee Valley's Response
<p>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?</p>	<p>Council believes a responsible authority should have the power to abandon an amendment under certain circumstances. However where an independent panel has been appointed by the Minister to consider an amendment then any decision to abandon an amendment should vest with the Minister.</p>
<p>Should a right of review be available to proponents where a planning authority decides to abandon an amendment? Who should review and decide?</p>	<p>Initiating a planning scheme amendment can incur considerable expenses to a proponent. The lack of rights of review available if a Council decides to abandon an amendment particularly after an amendment has been through the public exhibition and panel process does not necessarily provide a proponent with a fair and equitable process. Under these circumstances in line with the above statement Council would support a change to the Act that vested the power to abandon an amendment after the appointment of a panel with the Minister.</p>

Approval

Question	Moonee Valley's Response
<p>Is the opportunity for some amendments to be approved by the planning authority an effective means of reducing delay?</p>	<p>There are no specific time savings achieved under the current system requiring certification prior to Council approval. Effectively once the Secretary certifies an amendment then the balance of the process is administrative and does not create an efficient process.</p>
<p>Is the requirement for an amendment to be certified by the Secretary of DPCD necessary, before a planning authority can approve its amendment?</p>	<p>Council believes this step negates any efficiency of delegation. This is further compounded by the fact that the Act does not require the Secretary of DPCD to respond within any specified time limit. The current certification process generates considerable duplication in document handling and is not an</p>

	efficient process.
How could this step in the process be streamlined?	No comment
Monitoring and review	
Question	Moonee Valley's Response
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?	Yes. Council believes the current review requirements are adequate.

State-significant projects Assessment process options	
Question	Moonee Valley's Response
Would there be benefits in creating a specific planning process for the assessment of State significant projects?	Council can see benefit in creating a specific planning process for the assessment of State significant projects. However, there is a need for clarification of the basis upon which matters are deemed to be of state significance and reasons for Ministerial or other intervention. Currently a range of projects seem to be able to be described as "State significant" with no consistency with how this is applied.
What process should be followed to make decisions and issue approvals for projects which are considered to be of State significance?	No comment
What is the most suitable process for evaluating and deciding State-significant projects?	No comment
Who can best decide these matters – should all decisions be made by the Minister or could some types of proposal be decided by a Development Assessment Committee?	No comment

Governance and decision-making	
Question	Moonee Valley's Response
Should there be more options for how decisions are made on permits, amendments or matters for review?	No comment
How should the options be tailored to more closely correspond with the level of assessment required for the proposal?	No comment
What decisions could be made by appropriately trained non-professional officers?	No comment
Private certification	
Question	Moonee Valley's Response
Should there be more opportunity for private sector involvement in planning processes in	No, Council does not believe there is benefit in this proposal.

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
Registration of planners	
Question	Moonee Valley's Response
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?	The introduction of a formal system for the registration of planning professionals is supported. However any introduction of such a scheme needs to ensure that it does not have a negative impact on the current shortage of planners by excluding planning practitioners who may not qualify to be registered or discourage people looking to enter the profession.
Should certain planning decisions be required to be informed or made by planning professionals with prescribed qualifications?	No comment

Other opportunities	
Section 173 agreements	
Question	Moonee Valley's Response
Are the options recommended by the 2004 expert group appropriate?	Council concedes that the use of section 173 agreements are costly, cumbersome and often employed to set out minor conditions on the use or development of the land. As such, Council generally agrees with the recommendations presented.
What else could be done to improve the operation of agreements?	Currently the responsible authority can cancel an agreement but only the Minister has the ability to amend an agreement under Section 178 of the Act. Council suggests that Section 178 should be amended to enable Council to amend an agreement with the approval of all persons who are bound by any covenant in the agreement.

Facilitating e-planning	
Question	Moonee Valley's Response
What aspects of the Act need to be adjusted to facilitate e-planning initiatives?	No comment

Access to planning information and privacy issues	
Question	Moonee Valley's Response
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?	No comment
What is the reasonable extent to which documents that contain personal information,	No comment

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?	No comment
Cash-in-lieu schemes for car parking	
Question	Moonee Valley's Response
Is a simplified system for securing cash-in-lieu payments for car parking needed?	Yes on the condition that it is clearly set out in policy how, and within what timeframes, the funds will be used.
Does the Act need to provide a fit-for-purpose head of power for this system to work?	No comment
Are the tests for this system as recommended by the Advisory Committee appropriate?	No comment
Interaction with other legislation	
Question	Moonee Valley's Response
Are there areas where the operation of the Act is in conflict or produces inefficiencies in the interaction with other legislation?	<p>There is scope for the Act to integrate aspects of the Aboriginal Heritage Act 2006. In particular, there is confusion, expense and delays associated with Cultural Heritage Management Plan requirements. At present, a planning permit cannot be issued where a Cultural Heritage Plan is required until the requirement is satisfied. The difficulty lies in the blanket approach to Plan requirements, rather than targeting specific areas known to contain artefacts. It is suggested that any land subject to a Cultural Heritage Management Plan be reflected in a specific zone/overlay.</p> <p>Similarly, the Airports Act 1996 specifies height restrictions that are not reflected in planning schemes. There is a need to integrate such restrictions in planning schemes to facilitate efficient planning application assessment.</p>
Other identified issues	
What other opportunities not discussed or listed in this paper would improve the operation of the Act?	<ul style="list-style-type: none"> • Disallow further amendments to plans once an appeal is lodged. This would restrict VCAT to reviewing the integrity of council application assessment processes, not duplicating council's function by conducting de novo hearing on the full planning merits of each case. • The Act should provide certainty for the assessment of land in two zones. Although VCAT has provided recommendations of how this scenario should be dealt with, the Act should formally explicate the requirements.

	<ul style="list-style-type: none">• Currently Section 94 of the Act makes the responsible authority liable to pay compensation where a permit is cancelled or amended under Division 3. Council strongly believes that the responsible authority should not be liable to pay compensation in all cases where a permit is cancelled or amended. As example there have been known cases where the cancellation or amendment of a permit has been a direct result of an error of a referral authority or other statutory body. In these circumstances the responsible authority should not be liable for compensation.
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