



**Modernising Victoria's Planning Act  
Submission on behalf of the City of Port Phillip  
1 May 2009**

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Planning & Environment Act 1987 | Review Discussion Paper 67

# Coversheet for a submission on the Planning and Environment Act Review

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

- General public
- Community-based organisation
- Local government
- Planning or development industry organisation
- Individual or company involved in the development industry
- Planning or development consultant
- Other, (please specify).....



# **Modernising Victoria's Planning Act Submission on behalf of the City of Port Phillip**

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## **Modernising Victoria's Planning Act:**

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

The City of Port Phillip welcomes the opportunity to comment on the discussion paper on ways to improve the Planning and Environment Act 1987.

Much has changed since the introduction of the Act in 1987 including that the planning system has become increasingly complex. Whilst the Act has stayed relevant, largely due to it being enabling legislation and although there have been a variety of operational improvements in order to streamline the planning process, a holistic review the Act is long overdue.

There is also a recognised need to simplify and streamline this legislative framework to ensure that it is in plain English and is easily understood.

### **Overall comments:**

This Council submits that the review of the existing Act should:

- Produce a focus on sustainability not just facilitation of development and the legitimacy of requirements around environmentally sustainable design.
- Not diminish the role of Local Government. In this regard, whilst clear State principles should be enshrined by the Act to protect State-wide objectives for the people of Victoria, it is local government that is in the best position to implement that vision at the local level through its understanding and representation of its local community and local areas.
- Provide more control over poor development and poor design outcomes rather than less.
- Increase certainty in the legislation.

## **Objectives of Planning in Victoria:**

Comment:

This Council believes that the objectives of Planning have changed since 1987 and any review of the Act should make specific reference to:

- Climate Change
- Environmentally Sustainable Design
- High quality architectural outcomes
- Affordable Housing
- High quality Urban Design outcomes.
- The need for Environmental Effects Statements.
- Cultural heritage
- Social Impact

The Act must do more than manage the development and use of land, it should prescribe a new approach to achieving a better environment and built form outcome. This, in our view, could be achieved by setting out specific statements with regards to each of these matters and the scope of the Act expanded to provide a head of power for these matters to be addressed at the local level by local planning authorities without the validity of decisions on these matters being challenged at appeal.

In our view, the term “environment” is now synonymous with “climate change” and “global warming”.

## **The permit process:**

The prescribed processes of the existing Act are considered basically sound. Council does not support any amendment which would dilute the ability of its community to participate in the process. Any fine-tuning of the process is best undertaken in the Planning Scheme by amendment, including addressing minimum requirements for the lodgement of planning permit applications, more efficient referral processes and any reduced notification requirements for minor applications.

Council sees merit in amending the Act to accommodate the variety of application types, and to assign specific provisions accordingly. An example for streamlining would be in relation to those applications where a permit is only required due to referral authority consent e.g. building in a Special Building Overlay, creation or alteration of access onto a Road Zone Category 1, etc.

Council is concerned that any pre-application certification not place the cost of planning permit applications beyond the reach of the vast majority of applicants in this municipality – local residents seeking to modernise the living spaces and extend their homes.

Council does not support the determination of any applications by privately certified planners. It is not considered appropriate that Council devolves its decision making role to private planners to decide on matters when they are likely to have limited knowledge of the locality, and the intent of local policy or the valued qualities of a neighbourhood’s character.

This Council does not support any strict rules being placed around the lodgement of objections. We consider that it is the local planners’ role to assess objections

received and the weight to be placed on each issue raised and that there should be no fetter on what an objector wishes to or is encouraged to express concern about.

Council supports any proposed amendment to the Act which would allow it to consider a Section 72 Amendment to a Planning permit issued by the Tribunal. It believes that the outcome that minor amendments to Planning Permits issued by the Tribunal must be referred back to the Tribunal was an unintended outcome of the new Amendment provisions.

Council believes that there is a need for a legislative framework under the Act for dealing with secondary consents.

The time period for decision on an application is currently 60 statutory (read as calendar) days. For more complex applications this can be difficult to achieve. Council supports the principle that the decision-making timeframe should relate to the complexity of what is being applied for. Council would accept a shorter timeframe for simple applications, provided a longer and more realistic timeframe is set for complex applications i.e. 90 Days. Alternatively, the regulations could simply be amended to be 60 "business" days consistent with VCAT Practice Note No.1 at Clause 11.

Section 62 and/or 68 of the Act need amendment to clarify that permit conditions of an ongoing nature do not expire on completion of development. What happens to ongoing permit conditions on a development following subdivision i.e. privacy screening, also requires clarification. The need for costly Section 173 Agreements to ensure on going requirements should be replaced by clear legislation.

Council also seeks the ability to 'stop the clock' if Council and the applicant agree, to enable on-going negotiations.

Clarification is required as to when the clock stops as consequence of the public notification process. The determination in *Groves v Moonee Valley CC, 2005, VCAT 1826 (2 September 2005)*, *Morris J* produced a result in which the time span was 5 days. A more practical point approach would be that the clock should stop until the last notice has been given for 14 clear days. Another convention is that Council's stop the clock until a statutory declaration is received stating that the notification process was undertaken correctly. The requirement for a statutory declaration and the practice of restarting the clock upon its receipt could be adopted by the Act

There also needs to be an opportunity to abandon applications if an applicant does not complete the public notification process. Situations have arisen where public notification has commenced via the posting of letters but an applicant has not erected an on site notice as required and abandoned an application during this process. Under s59 Council cannot decide on an application until 14 days have lapsed after the last of any notices of application have been given, thereby leaving the application in a state of limbo and not allowing for a decision on the application. A similar power should be available for applications where no action is taken, after a set period of time. Under current provisions a detailed report and the issuing of a Notice of Refusal for an idle application is still required.

Clarification is also needed as to when a permit includes plans and other endorsed/approved documentation. Section 72(3) is the only part of the Act that

extends the meaning to include secondary documentation. This is often an issue of dispute when someone wants to view a permit under s70. Council is aware of and follows the principles of DPCD's General Practice Note 'Improving Access to Planning' however legislative changes such as defining the term "Permit" in the Act would clarify this issue.

In addition, the Act should be updated to integrate other Acts of relevance to planning including Acts relating to Environmental Effects Statements, Cultural Heritage, Liquor Licensing, Contaminated land and Social Impact Statement.

### **Enforcement:**

Consideration should be given to include a Section in the Act that provides for three years statute of limitation to align with the Building Act 1993 No.126 and the Local Government Act 1989 No.11. Often compliance is progressed more effectively and efficiently when infringements are issued, as appropriate, and for more serious matters, prosecutions are the preferred course of action. The current one year statute of limitation often results in the only enforcement mechanism available being voluntary compliance, negotiation, retrospective application, or VCAT enforcement order.

Introduction of stop buildings and works powers through orders issued by Authorised Officers of the Responsible Authority should also include a specific offence provision within the Act similar to the Building Act 1993 No. 126.

Section 134 should be amended to provide immediate access powers for certain circumstances such as inspection of Licensed Premises without the need for consent or two clear days notice.

### **Planning Scheme Amendments:**

The Planning Scheme Amendment process is generally supported. Council supports changes to the amendment process that will make the process more streamlined, however Council does not support changes that will reduce its local autonomy and ability to make decisions affecting its local community.

Specific comments include:

- Timeframes should not be applied to the consideration of submissions or the consideration of Panel Reports as the appropriate time will vary depending on the nature and complexity of the Amendment and whether further adjustments are necessary.
- Formal consideration of an amendment request could be set at three months provided all relevant information and documentation is provided, and for submission of an adopted amendment to the Minister to approval, one month.
- Council does not support the opportunity to assess the refusal of an amendment request. Providing the option of an independent review of an Amendment request would encourage a large number of private amendment requests which would have adverse impact on Council resources and divert attention away from more important strategic work towards amendment requests based on private property advantage.
- Council supports the ability to abandon an amendment at any time in the process, if it is warranted. A right of review where a planning authority decides to abandon an amendment is not supported. Council considers this an important aspect of maintaining its local decision making autonomy.

- Clear guidelines are required in the Act to set out what matters are to be considered by the Department in the Authorisation process.
- Authorisation should not consider the suitability of the planning tool selected, however the Department should provide technical advice.
- Fix up and correction amendments should be exempted from the authorisation process.
- Greater guidance should be provided in the Act with regards to notification of amendments effecting an entire municipality or large section of it.
- Amendment documents notifying of an amendment should be written in plain English.
- Submissions to an amendment should identify how the submitter is affected and what changes they would like to see made to the amendment.
- The trigger for the need for a Panel should be refined and “on the papers” panel consideration should be available for simple matters where all parties agree.
- A Panel should consider all submissions and the amendment in its entirety, unless an amendment has been “spilt”.
- Clarification is required regarding the ability to “split” amendments to allow adoption of those parts not under contention.
- Council supports the ability to approve amendments with only a local impact as it supports local decision making and can streamline the process.
- The current certification process leads to doubling handling by the Council and should be refined. Where an amendment is consistent with the Authorisation requirements, the Council should be able to adopt and approve the amendment in one step and forward it to the Department.

### **State Significant Projects:**

Any process designed specifically for State significant projects should be open and transparent. The process must provide clarity around why a project is of “State Significance” and why it cannot be adequately considered by the local planning authority. It should not be a process which seeks to remove local planning authority involvement in order to facilitate development seeking to avoid the rules applied to everyone else. In legitimate processes for projects of truly State significance, the local authority should continue to have a place on the table and a role in the process.

### **Governance:**

Council suggests:

- There should be expanded opportunities for applications for review to be resolved “on the papers” where appropriate for improved efficiency on minor matters.
- Section 173 Agreement processes should be simplified and the requirement to send a copy to the Minister removed.