

Modernising Victoria's Planning Act

Questions	Responses
<u>Section 1.</u>	
a. Do we need a new car or a major service?	A Major Service. The principles and basis of the Act is good, just some of the procedures that require a review.
<u>Section 3.</u>	
a. What does planning mean for Victoria today?	Should respond to the balance of all the elements of the Triple Bottom Line and take the long term strategic view. This includes dealing with the relationships and synergies between economic, environmental and social issues. Should deal with the role of the community and the role of the individual in dealing with planning issues.
b. Is the role of legislation in a modern planning system substantially similar to that described in 1987?	Mostly. The Act has evolved over time as is evident by the introduction of the VPPs. Many of the add-ons could be integrated into the Act better, eg. Green Wedge legislation. Need to extend and integrate role of planning in placemaking including management of places (eg. Activity centres, Green wedges).
c. Should the name of the Act better reflect the role of the Act in managing land development?	Yes. The name identifies only the environment in addition to planning, but clearly the objectives for the Act encapsulate much more.
d. Is the principle that the planning system is about planning land still an appropriate starting point?	Yes. However the environmental attributes/resource bases of land should be more directly provided for as the basis for decision making.
e. Have there been changes which suggest a different role for the planning system?	Yes.
f. If so, what could that new role be?	The role of ESD, accessibility, placemaking and social

	<p>impact/benefit assessment in planning needs to be solidified. It is clear that design of these elements needs to be built in at a planning stage not tacked on to subsequent approvals. Need to better reflect the role that land plays in bringing together TBL issues/approach. This includes reflecting cumulative effects and wider community benefit/ detriment more explicitly.</p>
<p>g. Should the scope of planning legislation be widened to include other matters?</p>	<p>Yes.</p>
<p>h. If so, what should they be, and why and how do they need to be covered in the legislation?</p>	<p>Planning should attempt to deal with issues such as affordability, place making and sustainability to ensure decision better consideration of issues of natural resource management, cumulative effects and wider community benefit/ detriment.</p> <p>Filtering of the impact of covenants such that minor matters can be considered regardless of these constraints. For example in Park Orchards land is affected by a covenant which dictates that only one dwelling can be built and also that excavation associated with the foundations of a building cannot be considered. It is understood that this was to avoid the use of the land for brick making. The land in this area is sloping and has been developed with tiered gardens and excavations along driveways and the like. The Act now requires owners to seek variations to this covenant for these simple matters.</p> <p>The Act should be more integrated in relation to matters of land contamination and linkages to the EPA Act.</p>
<p>i. 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?</p>	<p>Fully integrated with a greater recognition of the Planning & Environment Act in other legislation to ensure this.</p>
<p><u>Section 4.</u></p>	

<p>a. Are the objectives of planning in Victoria still relevant?</p>	<p>Yes.</p> <p>Generally the objectives are relevant however the terminology needs to be updated.</p>
<p>b. Have significant words such as <i>environment</i>, <i>social</i> and <i>economic</i> changed in the way that they relate to land use planning and, if so, how?</p>	<p>Yes.</p> <p>ESD is now integral to most Activity Centres and commercial and residential high density development.</p> <p>Housing affordability and diversity are now all part of relevant Housing Strategies that guide implementation of housing policy in planning schemes.</p>
<p>c. Is there a need to include more specific objectives about matters like culture, heritage or cultural heritage protection in the Act?</p>	<p>Yes.</p> <p>Context has changed (eg. sustainability, social capital, placemaking) and definitions need to reflect interrelation and integration of terms in relation to impact on land.</p> <p>Definitions of what each of these constitutes should be included in the Act. A better understanding of the role of Cultural Heritage Management Plans and their impact on development is needed, eg. Should a permit include conditions to implement these where they exist?</p>
<p>e. 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>Yes, definitely.</p> <p>Definitions of these matters should be provided for either within the Act or within planning schemes to ensure their relevance and the matters are given extra weight.</p> <p>Matters include efficient use of water and recycling, solar energy, cheaper and more 'basic' housing.</p>
<p><u>Section 6.</u></p>	

<p>Part One</p> <p>a. Is there a need to change the permit process to make it more responsive to the scale and complexity of a proposal?</p>	<p>Yes.</p> <p>Particularly in relation to information required for assessment, extent of public notification if any and statutory time for a decision.</p>
<p>b. 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?</p>	<p>Yes.</p> <p>Pre-application certification is not preferred can just result in delays in assessing an application before it is formally submitted and therefore not in real terms speed up the process.</p> <p>The essential steps should include provision of minimum appropriate information and referral options in the case of Heritage or Environmental considerations. Exemption from public notification. Mandatory delegation to Council Officers for minor applications.</p> <p>Minor applications could be determined by cost of works, eg. Under \$10k or minor works (rainwater tanks over 4500lt).</p>
<p>c. What are the other options for streaming applications?</p>	<p>Removal of permit requirements for SBO, LSIO & EMO. In most cases these decisions are assessed based solely on the response of the relevant authority (Melbourne Water or CFA) and could be dealt with through the building regulations.</p>
<p>Part two</p> <p>a. Do the information requirements for making an application need to be changed to improve the quality of applications?</p>	<p>Yes.</p> <p>Some minimum application requirements could be set in the Act, with regards to either content and/or quality rather than reliance solely on Planning Schemes. Alternately the VPPs could include a component which specifies mandatory information for all applications based on either use, development or subdivision.</p> <p>Clarification of information needs for minor applications to avoid excessive information requirements.</p>

	The Act needs to respond to the emerging E-Planning drive. This would mean electronically provided information which may need to be in certain formats or scales for use.
b. Should the responsible authority have discretion to reject applications that are incomplete or inadequately prepared?	Yes. If the Act specifies minimum information we should be able to return applications that do not attempt to provide this.
c. Is a more comprehensive application form needed?	No.
d. Would a system of pre-lodgement certification by private practitioners be an effective way to improve the standard of permit applications?	Possibly, but it can result in lengthy delays before an application is lodged. There may also be difficulties dealing with local requirements.
Part three a. Are streamlined notice requirements for certain types of applications required?	Yes. Minor applications (as to be defined by the Act) should be always exempt from Notice and Appeal rights. Clarification regarding mandatory requirements for Major Applications, ie notice in the local paper.
b. Should the responsible authority have more discretion in deciding who should be notified, in what manner, and how long should be allowed for submission?	Yes. The directly adjoining properties can in many cases not be relevant, although notice is required to be served. This is more so the case for minor applications and applications in green wedge/rural areas where land size is larger. There is already sufficient discretion with regards to how long the

	advertising period can be.
Part four a. Should the term objection be changed to submission?	No. A submission infers a neutral response and the planning system is reactive and the process of notification focuses on negatives of a proposal. This in turn helps Council to respond in their decision making. If a supportive submission is received this can still be acknowledged but has no status for appeals.
b. Should the responsible authority have a greater discretion to reject an objection?	Yes. An objection should relate only to the consent being sought, eg. If an application meets the parking requirements of the planning scheme an objection based on car parking should not have to be assessed, or a relevant planning matter. Objections should not need to be written in planning technical terms to demonstrate this.
c. Should an objector be required to provide more specific information about how they might be affected by a proposal in their objection?	Yes. This is often provided for already in most objections but is not defined in the Act. An objection should include suggestions for changes to the plan to resolve the objection, if possible.

<p>Part five a. How could the act be changed to encourage the more effective and timely input of referral authority requirements in the permit process?</p>	<p>Removal of unnecessary planning provisions to the building permit stage – SBO etc.</p> <p>Mandatory pre-application consultation with relevant authorities.</p> <p>Specify minimum information requirements to be sent with a Section 55 referral.</p> <p>Amend the Act to state that if a referral response is out of time it cannot be considered.</p>
<p>Part 6 a. Should the Act set out a clear hierarchy of policy documents to be considered by a responsible authority?</p>	<p>The interests of all policies should be balanced, however in some instances, some policies may need to be given greater weight than others. This is a difficult call, as one would expect that the controls would clearly set out the hierarchies.</p>
<p>b. Should the Act provide for different decision-making considerations for different classes of applications?</p>	<p>Yes.</p> <p>More specific assessment of the specific trigger for permission for Minor Applications.</p>
<p>c. Are the times prescribed by regulation in which certain decisions should be made appropriate? Should other matters also have prescribed times?</p>	<p>No.</p> <p>Minor applications should be a lesser number of days than Major Applications.</p> <p>Major Application timelines should build in time for public consultation in a meaningful manner and refinement of design in response to officer concerns.</p> <p>Once an advertising direction is sent an Applicant should have to respond within a specified time period.</p>
<p>Part 7 a. Does the ongoing life of conditions on a development permit need to be clarified?</p>	<p>Yes.</p> <p>Whilst it is understood that conditions on a development permit may be ongoing there is no such clarity once the land is</p>

	<p>subdivided.</p> <p>Permits should not be ongoing in their restriction of matters which can subsequently be dealt with as of right under planning schemes. (eg. Secondary consent required to previous plans is not practical).</p>
<p>b. 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?</p>	<p>Yes.</p> <p>Particularly in the case where policy work has commenced for the introduction of a DCP or PPP which can then require cash contributions.</p>
<p>Part 8</p> <p>a. 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?</p>	<p>Yes.</p> <p>In all circumstances, as any request for change can go through effectively the same process in terms of notification as the original application.</p> <p>Perhaps the provisions could prescribe more clearly to whom notice must be given.</p>
<p>b. Should section 216 now be repealed?</p>	<p>Yes.</p> <p>These plans are generally dealt with under the secondary consent provisions of conditions anyway.</p>
<p>c. Should the Act set the principles for when the use of a secondary consent permit condition is appropriate?</p>	<p>Yes.</p> <p>Particularly if it is not proposed to more clearly define the ongoing nature of permits.</p> <p>Perhaps the ability to request minor changes could be built into the Act rather than the permit, so there is no automatic ongoing impact.</p>
<p>d. Is there a need to provide a process for seeking and recording secondary consent approvals?</p>	<p>No.</p> <p>Section 72 allows Council's to consider amenity impacts and therefore provides the option. Secondary consent should be a</p>

	minor matter and process.
e. 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. The fact that the notification and referral processes only relate to the amendment already simplifies this process.
Part 9 a. Could a register of enforcement orders reduce non-compliance?	Yes.
b. Are there other changes that could make the enforcement process more effective?	Yes. Review the legal process for seeking of an enforcement order. Review the requirements for information such as aerial photographs, and Google maps. Increase penalties for repeat offenders.
Section 7.	
Part one (7.2) a. What steps in the process should have a statutory time requirement and what would be a reasonable requirement to impose?	The requirement for authorisation and certification in the amendment process needs to be reviewed as these processes have added time. The requirement to advertise corrective amendments should be omitted. The current statutory time limits appear sound but there also needs to be time limits imposed on DPCD, in relation to authorisation and approval. This should be accompanied by putting resources in to meet any statutory time limits. Authorisation – 4 weeks Exhibition – 1 month

	<p>Approval – 2 months Panel Reporting process (6 weeks) Certification – 2-4 weeks (or less) The other reporting processes are very dependent on the Council Meeting timeframes. You miss a deadline and that pushes it out by an extra month.</p>
b. What should happen if a time requirement is not met?	<p>If authorisation is not determined on time, Council should be allowed to proceed with exhibition of an amendment. If approval/refusal of an amendment is not within 2 months, some reason for the delay and a new estimated time of approval should be provided. Setting limits for complex amendments is obviously problematic and timeframes may need to be varied to reflect this. Exhibition – it is reasonable to extend time-frames and no penalties should be applied.</p>
<p>Part two (7.3) a. Is more guidance on the information that should accompany a request needed, and should this be in the act?</p>	<p>More detail on an amendment request should be provided. The amount of information required should correspond with the complexity of the amendment. As a minimum a proponent should provide a report outlining the strategic justification for the amendment, an Explanatory Report, detailed maps and changes to schedules where appropriate. Guidance should be provided when additional expert reports are required, such as traffic management reports, economic analysis, social and ecological reports.</p>
b. Should an amendment request for proponents be introduced?	<p>Yes.</p> <p>It would require that a minimum level of detail should be provided including the fee. I don't think any preliminary work should be undertaken before the fee is paid.</p>

<p>c. Is a formal and independent process needed to assess refusals of amendment requests, or to decide, irresolvable issues between a planning authority and the proponent? If so, how should this process work? Who should make the decision?</p>	<p>Formal applications are currently considered by Council (perhaps this could be formalised). A proponent does have the option of approaching the Minister if Council does not support a proposal.</p> <p>An independent review at the beginning of the amendment process would require both Council and proponents to provide a lot of information up front. For many cases, the proposal may be inconsistent with State and local policy (e.g. subdivisions in the green wedge). It would be better to refuse the request early in the process rather than to waste Council and the proponent's resources required to debate the issues in a formal process. There is an opportunity now to review a decision through VCAT. A right to review cases outside of local and state policy should be denied. A review process following exhibition, as currently applies through the Planning Panel process is supported.</p> <p>Council should have the opportunity to abandon an amendment even if the Panel supports it or support an alternative recommendation to the Panel providing reasons are given. The current system works well.</p> <p>The Minister should only have the final say if there are matters of state policy or consistency issues.</p>
<p>Part three (7.4) a. Is more guidance or criteria about the role and purpose of the authorisation step required, and should this be in the Act?</p>	<p>Yes</p> <p>The advisory timeframes of the authorisation process are not being met. The authorisation process has greatly extended the timeframe of an amendment. Authorisation should only be required if there are changes to policy. All corrective amendments should not require authorisation or exhibition.</p> <p>The authorisation process has caused some confusion. It is our</p>

	<p>understanding that getting authorisation does not mean that DPCD necessarily supports the content/format of the amendment documentation. This needs to be clearly addressed and specified in the letter to Council. Further advice from DPCD in the format and content of amendments could also assist. There is considerable variation in the level of detailed documentation approved for authorisation, depending on the regional officer.</p>
<p>b. Should some types of amendments be exempted from this step? If so, which ones?</p>	<p>Corrective amendments and ones which do not change policy.</p>
<p>c. Is there an alternative way of achieving the objective of the authorisation process?</p>	<p>Authorisation stifles creativity in the planning system as a means of testing new solutions e.g. ESD. Council should have the ability to determine itself, whether an amendment complies with State or local policy. It is not known how many authorisation requests are refused by the Minister, however if it is very few, one questions whether the step is adding value to the process. It is certainly extending the approval timeframe.</p> <p>Another issue that has been raised is where at the Panel stage, the Panel indicates that the justification for the amendment is flawed (this has occurred with several heritage amendments), if this is not being identified at the authorisation stage, it would appear that the whole process is flawed. The panel process seems to provide a more thorough analysis of an amendment than the authorisation stage.</p> <p>For complex amendments, DPCD staff should perhaps, be able to call on a Panel to review the amendment documentation.</p>
<p>Part four (7.5) a. 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?</p>	<p>Notice of an amendment should not be needed for corrective amendments. The existing requirements are sufficient, however, the documentation should be less onerous.</p>

b. What changes would lead to more efficient and effective notice of an amendment?	The Explanatory Report should be easier to read and understood from a non technical point of view. There should be fewer documents required to prepare for the amendment.
Part five (7.6) a. Should a planning authority be able to reject or disregard irrelevant submissions?	Yes. Although this may raise issues of natural justice. Any submission made not on planning grounds should be able to be disregarded. Panels or DPCD should have the power to state that the submission is not relevant if Council is queried.
b. Should a structured form for making submissions be introduced?	Yes, this would guide those making submissions.
c. If a panel is established, should a planning authority be required to refer all submissions to the Panel?	Yes It avoids confusion about whether or not something is an objecting submission, however refer also to a) above.
d. Should submissions which support an amendment have the same status as those submissions that object to or propose changes to an amendment?	Yes although they are rarely received.
e. Should a panel have the ability to review and make recommendations about the overall amendment proposal?	Yes There has been some discussion regarding splitting of amendments where an objection only relates to part of the amendment. This has created some issues for Panels Victoria where that part of the amendment having been approved and not forming part of the Panel hearing often directly relates to that part before the Panel and yet the Panel is not able to make recommendations about the overall amendment (particularly heritage amendments). The Act should address this. Sometimes Council wants specific recommendations from the Panel about the process/ other aspects of the amendment not raised in submissions, to give greater support to these aspects in

	terms of submitting it to DPCD for approval.
f. Should the Act facilitate 'on the papers' panel hearings when appropriate?	Yes This is very important. Also the extent of duplication in needing to provide copies of documents should be reviewed.
g. Should all amendments be reviewed by an independent panel?	This could be used instead of authorization for amendments that are complex and change policy, but not for corrective or minor amendments.
Part six (7.7) a. 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?	Council should have the right to refuse an amendment at any time, however the proponent should have the right of review following submissions if the amendment is abandoned instead of a Panel being appointed. Decisions are sometimes based on community opposition. It may however lead to Councils refusing more proposals at the beginning of the process.
b. Should a right of review be available to proponents where a planning authority decides to abandon an amendment? Who should review and decide?	As above
Part seven (7.8) a. Is the opportunity for some amendments to be approved by the planning authority an effective means of reducing delay?	Not with the current process
b. Is the requirement for an amendment to be certified by the Secretary of DPCD necessary, before a planning authority can approve it's amendment?	No It lengthens the timeframe and is unnecessarily administrative by requiring Council to provide copies of documents that are sent to and from the DPCD.

c. How could this step in the process be streamlined?	Enable Council to adopt and approve the amendment at the same time. Certification by DPCD is then immediately followed by gazettal if documents are suitable. Avoids identical documents being sent to DPCD back to Council and back to DPCD (triple handling). The reality is that DPCD approves the final documents.
Part eight (7.9) a. 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?	There should be a consistent approach to monitoring and review. Councils undertake their own process and level of consultation and detail. There is no consistency. Councils should be trusted to undertake their own reviews without reporting to the Minister.
<u>Section 8.</u>	
a. Would there be benefits in creating a specific planning process for the assessment of State-significant projects?	Yes. There should be parameters around what constitutes a project of State Significance. Need to ensure that the process is independent of state government if it is about assessment of the project.
b. What process should be followed to make decisions and issue approvals for projects which are considered to be of State significance?	The process should be similar however the responsible authority may not be the Council. This would allow the Council to focus on its role as advocate for local impacts as a consequence of state significant projects. These projects should have greater in built notice requirements under the Act, which might include Municipalities adjoining such a proposal and might also be referred to different parts of an Agency, eg. Rather than referral to a local VicRoads Office referral may be to the Head Office.
c. What is the most suitable process for evaluating and deciding State-significant projects?	Economic, environmental and social impact particularly if the proposal caters for the needs of a region or the state as a whole, rather than just the local area.

d. 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?	A DAC could have a role in advising the Minister, but decisions should ultimately be the responsibility of the State directly and not a sub committee.
<u>Section 9.</u>	
Part one a. Should there be more options for how decisions are made on permits, amendments or matters for review?	No. A more rigorous assessment of what types of land uses and developments need permits would be more effective. Refer to previous comments regarding different types of applications and associated processes.
b. How should the options be tailored to more closely correspond with the level of assessment required for the proposal?	If more clarity is provided in relation to the information requirements for certain types of planning applications in the Act and/or Planning Scheme then this will take care of itself.
c. What decisions could be made by appropriately trained non-professional officers?	If the Act and Planning Scheme are clarified to make requirements more specific and quantifiable then non-professional officers could make decisions.
Part two a. 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?	Councils have had the opportunity to tender out their Planning Services. Most Councils are reluctant to do so because of the inherent discretionary decision making in planning. Probity would certainly be an issue as the planning profession is a small field. Planners who choose to specialise in Local Government should not be penalised nor seen as inferior to their private counterparts.
b. Should privately certified planners be able to assess and decide certain planning consent matters?	The subtleties of balancing competing interests may be lost, and would be problematic owing to issues of probity. It should be noted that in a related field, private Building Surveyors are still required to obtain Council consent for matters of discretion.

<p>Part three a. Should a formal system for the registration for planning professionals be introduced in Victoria? If so, how would this system and what should it apply to?</p>	<p>What would be the role of registration for planning professionals? Legislation does not change as rapidly as other professions which require certification, such as Accountants.</p> <p>The Act could provide more emphasis to planning as a profession, rather than requiring certification.</p>
<p>b. Should certain planning decisions be required to be informed or made by planning professionals with prescribed qualifications?</p>	<p>Most definitely. Council's indemnity would certainly be an issue if this was not the case.</p>
<p><u>Section 10.</u></p>	
<p>Part one a. Are the options recommended by the 2004 expert group appropriate?</p>	<p>Yes.</p> <p>The benefits of ongoing permit conditions are difficult to track whereas Section 173 Agreements are registered on the title forever.</p>
<p>b. What else could be done to improve the operation of agreements?</p>	<p>Develop a standard pro forma for Section 173 Agreements.</p>
<p>Part two a. What aspects of the Act need to be adjusted to facilitate e-planning initiatives?</p>	<p>Specific requirements of the format of data may be required.</p>
<p>Part three a. 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?</p>	<p>The role of the planning register is relevant.</p> <p>Planning Scheme Amendments are readily available online through the State Government. This could be extended to Planning Permits and Section 173 Agreements.</p>
<p>b. 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?</p>	<p>It is appropriate for letters of objection to contain personal information such as names and addresses. Managing additional information such as telephone numbers presents many issues, as this information is not strictly required to make an objection legitimate and may conflict with privacy legislation, however it is very useful for Council Officers to get in touch with objectors to</p>

	discuss their concerns.
c. Should planning authorities or the Government be required or enabled to collect certain data, and for what Purposes?	We support the PPAR system of data collection.
Part four a. Is a simplified system for securing cash-in-lieu payments for car parking needed?	Yes. A pro forma should be developed for monetary rates paid in lieu of car parking across the State. It should then fall to individual Councils to do strategic work if additional funding is required over and above the pro forma rates. Having pro forma rates would also assist in the indexing of inflation from year to year. This also applies to DCPs – off the shelf DCPs was promised but they don't seem to have been applied anywhere due to the difficulty of justifying them. The issue of updating DCPs in schedules in the planning scheme is also a problem.
b. Does the Act need to provide a fit-for-purpose head of power for this system to work?	Provided that there is a clear purpose then there shouldn't be a need for a fit-for-purpose head of power.
c. Are the tests for this system as recommended by the Advisory Committee appropriate?	No. A pro forma for all Activity Centres would be better. The Planning Scheme Amendment process needs to be more administrative and streamlined.

<p>Part five</p> <p>a. Are there areas where the operation of the Act is in conflict or produces inefficiencies in the interaction with other legislation?</p>	<p>Yes.</p> <ul style="list-style-type: none"> • Liquor licensing. • Gambling. • Prostitution Control Act. • EPA Act. <p>There needs to be more recognition of the role of planning in these pieces of legislation if these matters are to remain in the planning realm. Other areas to consider include the roles of the transport and water authorities and their various acts.</p>
<p>Part six</p> <p>a. What other opportunities not discussed or listed in this paper would improve the operation of the Act?</p>	<p>Section 96 – Permit and Amendment process does not work well. A detailed assessment of the planning permit is often lost in the panel process and planning permits are often discarded once the land is rezoned and a different application is made.</p> <p>Section 126 – Should include the contravention or breach of an enforcement order.</p>