

Appendix 5: 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)

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

Submission to
Modernising Victoria's Planning Act

May 2009

Foreword

The Victorian Farmers Federation (VFF), Australia's largest state farmer organisation and the only recognised, consistent voice on issues affecting rural Victoria. Despite farming on only three percent of Australia's available agricultural land, Victorian's produce 30 per cent of the nation's agricultural product. The VFF represents the interests of our State's dairy, livestock, grains, horticulture, chicken meat, pigs and egg producers.

A handwritten signature in black ink, appearing to read 'S Ramsay', with a long horizontal flourish underneath.

Simon Ramsay
President

Introduction

Planning has a profound influence on the shape of the Victorian community and the profitability of businesses. Farming is generally a land based business and the capacity to manage a farm business in a profitable manner can be heavily influenced by planning decisions.

In many areas, particularly those surrounding population centres the expectations and perceptions of non farming residents on the type of landscapes and amenity that should be prevalent are not based on the realities of modern farming. This has led to planning decisions that has limited property rights and the ability to make a profit.

The use of land and planning decisions that are made will inevitably lead to some disagreements and to some extent create winners and losers. However the process must be fair and equitable, and not unreasonably impinge upon the rights of some fro the wider benefit without offsetting arrangements.

The application of the planning scheme as currently structured often does not result in the best outcomes for the State and is cumbersome to use. The processes that are applied in planning could be improved significantly including the use of private planning practitioners.

The VFF has reviewed the discussion paper and made comment on the questions that are of most relevance to the farm community.

Queries in regard to this submission should be directed to Executive Manager Policy, Graeme Ford.

3: The Planning System and the *Planning and Environment Act 1987*

Questions

- *What does planning mean for Victoria today?*
- *Is the role of legislation in a modern planning system substantially similar to that described in 1987?*
- *Should the name of the Act better reflect the role of the Act in managing land development?*
- *Is the principle that the planning system is about planning land still an appropriate starting point?*
- *Have there been changes which suggest a different role for the planning system?*
- *If so, what should that new role be?*
- *Should the scope of planning legislation be widened to include other matters?*
- *If so, what should they be, and why and how do they need to be covered in legislation?*
- *How should planning for land use and development interact with other aspects of planning – for example, planning for development of education and health facilities, provision of roads and transport?*

Planning by its nature leads to outcomes other than purely determining a particular use for a particular piece of land. Decisions on land use have long term implications for economic activity, population growth, environmental impacts, resource use and infrastructure demands.

In most cases planning decisions are made with regard to aspects of the above factors; however the planning decision itself can and will change the dynamics of these factors. So as well as planning being responsive, it causes changes in these factors and drives long term decisions down a particular pathway.

Planning should primarily be a tool to implement broader policies rather than being used to influence the policy direction and outcomes. For example if the State Government established a maximum population for the size of Melbourne, the planning decisions would be required to support this policy. It could be reasonably surmised that currently each individual shire takes decisions that they view are in the best interests of their local community or sections of the community rather than the broader state interest.

The role of planning within the State could be better clarified. It would seem that the current framework establishes planning as a mechanism to implement broader policy but also acts to establish policy at a local level. The attitudes taken in this respect can also be quite different within, and across shires. In some areas the incumbent residents attempt to prevent development to retain a certain amenity of the area while in other areas the push is for development to drive local economic growth.

The parts of the act dealing with municipal strategic statements for example do not specify, nor provide guidance on what factors should be considered in the development of the statement except in very broad terms. The parts of the Local Government Act dealing with Municipal Strategic Statement (MSS) does not provide clear guidance on what factors should lay a foundation for a MSS.

For these reason planning should not be viewed as simply as a decision to select one form of use over another. Planning has a strong deterministic effect on the shape of the Victorian community and the sustainability of the economy and the environment. These impacts are perhaps the greatest in the areas where competing interests are most evident – primarily in and around the population centres.

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

Questions

- *Are the objectives of planning in Victoria still relevant?*
- *Are the objectives for Victoria's planning system still relevant?*
- *Have significant words such as environment, social and economic changed in the way they relate to land use planning and, if so, how?*
- *Is there a need to include more specific objectives about matters like culture, heritage or cultural heritage protection in the Act?*
- *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?*

The current framework has not been very effective at informing and guiding the consistent implementation of planning decisions at the council level. This is not necessarily a function of the list of objectives but is related to the level of subjectivity that can be applied to the objectives.

Of course there is a balancing act on the hierarchy of competing interests. These interests could perhaps best be captured as three tiers;

1. the State wide community interest;
2. the local community interest and
3. the individual interest.

Attributing sufficient weight to each of these interests in a consistent manner across issues and across councils is difficult.

The essential problem is allowing sufficient flexibility to deal with the local and individual interests and specific circumstance whilst maintaining sufficient rigour to ensure consistency of decision making and due regard to the wider community interest. Adding additional factors into the planning scheme such as housing affordability and cultural heritage would not help resolve this fundamental problem.

The use of subjective terminology within the planning legislation should be minimised not expanded. Expanding the factors to be explicitly dealt with in the planning legislation would lead to more inconsistency across decisions makers and should be avoided.

6: The permit process

Questions

- *Is there a need to change the permit process to make it more responsive to the scale and complexity of a proposal?*
- *Should the Act provide for a 'short' permit process? If so, what should be the essential steps and requirements of this process? What kinds of applications could this process apply to?*
- *What are the other options for streaming applications?*

The planning permit process would be simpler and timelier if the guidance of decision making was more explicit. Guidance contained within the planning scheme around what is permissible in any particular area or planning zone should be as clear as reasonably possible.

The current zones in which the VFF membership is primarily concerned, as they are written at the moment, are relatively clear in intent and purpose. Problems arise when the inevitable attempts are made to circumvent the intent of the zones by applicants. Ensuring zoning requirements are clear and unambiguous will aid decision makers in dealing with permit applications.

In circumstances where the application fits clearly within the specifics of the planning scheme for the particular location there should be no reason to treat an application differently according to the scale of the proposal.

In very simple applications it should be possible to allow private practitioners to issue planning permits. In much the same way building permits are dealt with a suitably authorised and qualified planning professional could be empowered to issue planning permits that are for developments that are clearly allowable, have no objectors and have passed all the necessary referral tests. This would lighten the load on councils substantially and a move to the private sector should result in greater efficiency.

6.3 Notice of an application

Questions

- *Are streamlined notice requirements for certain types of applications required?*
- *Should the responsible authority have more discretion in deciding who should be notified, in what manner, and how long should be allowed for submissions?*

The VFF would support a simpler notification process however the circumstances where no notice is required should not be broad.

Where applications are required to comply with an incorporated instrument that deals with the off site impacts the notice requirement could be waived.

In most cases notice of adjoining landowners should be required as the minimum. As stated above, it is the ambiguity around a proposal fitting in with the planning scheme that should drive the complexity of the process not the scale of the proposal.

6.4 Objections

Questions

- Should the term objection be changed to submission?
- Should the responsible authority have a greater discretion to reject an objection?
- Should an objector be required to provide more specific information about how they might be affected by a proposal in their objection?

The VFF would support changing the terminology of objection to submission and allow the rejection of a submission if it did not address the pertinent issues. A key purpose of any submission should be to outline the impact of the proposal on the submitter.

6.5 Referrals

Question

- *How could the Act be changed to encourage the more effective and timely input of referral authority requirements in the permit process?*

Difficulties often arise when referral authorities are either not provided with sufficient information, do not have the resources or lack the experience to provide appropriate conditions. They often make conditions of a general nature as a safety first principle without taking into consideration the specific issues of an individual application. Councils are unwilling to challenge (and sometimes hide behind) the responsible authority even where they believe they are incorrect leaving the applicant faced with complying or VCAT. The ability for applicants to make direct submission to the responsible authority and liaise through the process would be beneficial.

If the conditions provided by a referral authority are contested by the proponent a capacity to resolve the deadlock in a less formal setting than VCAT would be a sensible option.

Referral authorities have responsibilities for particular factors affected by and affecting planning, presumably these responsibilities are taken seriously and a considered and balanced recommendation is provided back to the responsible authority. While an interim step, such as a planning mediator, between disagreement and VCAT may be helpful, consideration would need to be given to how effective it would be in negotiating an outcome.

Perhaps clearer direction to referral authorities on the factors to be balanced in arriving at a recommendation would provide more transparent decisions and ensure that the wider planning and policy factors are given appropriate weighting. Alternatively, the referral authority could be required to provide reasoning for a recommendation that covers the relevant factors to be considered in by the responsible authority, not just those of the referral authority.

6.6 Making a decision

Questions

- *Should the Act set out a clear hierarchy of policy documents to be considered by a responsible authority?*
- *Should the Act provide for different decision-making considerations for different classes of applications?*
- *Are the times prescribed by regulation in which certain decisions should be made appropriate? Should other matters also have prescribed times?*

The act should establish a hierarchy of policy documents to be considered. These should also give consideration not only to the planning policies but other higher level policies that are relevant in establishing the shape and direction of Victorian communities.

6.7 Conditions

Questions

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

Circumstances change over time and it is possible what was once a reasonable condition is no longer the case. It is reasonable for the landholder to have a capacity to seek the removal of a provision where the changed circumstances justify the removal of the original condition.

7.2 The amendment process

The amendment process is generally considered to be a robust one, however, the efficiency of the process could be improved.

The diagram on the next page outlines the main steps in the amendment process. Specific decisions must be made to advance the preparation, assessment, adoption and approval of an amendment. There is potential to improve the amendment process for each of these steps.

Unlike the permit process, there are few statutory timing requirements for the stages in the amendment process. In particular, should the planning authority be required to respond to an amendment request within a specified time? What should happen if it does not?

The VFF would support additional rigour in the amendment process. Overlays almost inevitably impact on the property rights of the landowners subject to the overlay. These impositions are often not clear nor transparent in their development and application.

Overlays are also used to drive particular outcomes that sections of the community other than those directly affected by an overlay desire. This situation results in small numbers of property owners bearing the costs of achieving a community aspiration.

A more rigorous process for the application of overlays in the planning scheme should be applied. An RIS type approach would be suitable as it would provide an opportunity for the full impact on residents affected by the overlay to be assessed and balanced against the wider community aspiration.

7.6 Submissions

Questions

- *Should a planning authority be able to reject or disregard irrelevant submissions?*
- *Should a structured form for making submissions be introduced?*
- *If a panel is established, should a planning authority be required to refer all submissions to the panel?*
- *Should submissions which support an amendment have the same status as those submissions that object to or propose changes to an amendment?*
- *Should a panel have the ability to review and make recommendations about the overall amendment proposal?*
- *Should the Act facilitate 'on the papers' panel hearings where appropriate?*
- *Should all amendments be reviewed by an independent panel?*

A planning authority should have the capacity to ignore irrelevant submissions and to treat form submissions with less regard than those individually prepared.

A template submission would assist lay people with less experience and skill make submission on matters that concern them increasing the equity in the planning system. It would also facilitate simpler processing at the planning authority. However other forms of submissions should not be excluded.

Submissions should have the same weight regardless of the support or objection to a planning proposal.

8.2 Assessment process options

Questions

- *Would there be benefits in creating a specific planning process for the assessment of State-significant projects?*
- *What process should be followed for deciding which projects which are of State significance?*
- *What is the most suitable process for evaluating and deciding State-significant projects?*
- *Who can best decide these matters – should all decisions be made by the Minister or could some proposals be decided by a Development Assessment Committee?*

The VFF is not opposed to a process that prevents state significant projects being held up for prolonged periods- more than 12 months. However the rights of affected individuals must be considered and where damage is incurred appropriate compensation should be provided.

9.1 Private certification

Questions

- *Should there be more opportunity for private sector involvement in planning processes in Victoria? What issues (such as probity issues) would need to be addressed?*
- *Should privately certified planners be able to assess and decide certain planning consent matters?*

The VFF supports the ability of private planners to deal with simple and non objected permit applications. The planning practitioner would be able to ensure the proposal was in compliance with the planning requirement conduct the advertising and issue the permit.

Where legitimate objections were received, or the council was concerned with the proposal the council would have the capacity to call in the decision.

This would help enormously in speeding up the application process as councils do not have the resources to deal with the number of applications they receive in a timely manner. As a result this system has the potential to provide an significant boost to the Victorian economy by accelerating development.