

1 May 2009

Statutory Planning Systems Reform
Department of Planning and Community Development
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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)

On behalf of Wellington Shire Council I would like to thank you for the opportunity to make a submission on the Planning and Environment Act Review. Overall, it is considered that the Act serves its purpose so a “new car” is not needed however, a “service” would improve its performance.

Comments and suggestions are set out in the following table in response to various sections and questions as set out in the “*Modernising Victoria’s Planning Act*” Discussion Paper March 2009.

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Section	Question	Comments
1.2 Scope of the review	Do we need a new car or a major service?	Overall the Act serves its purpose so a new car is not needed however a “service” would improve its performance
3.4 What’s in a name?	Various	Whilst there is merit in renaming the Act to the Planning and Development Act, given that the emphasis is on managing land development, it is preferable that it retains its name as the Planning and Environment Act to continue to allow consideration to be given to environmental issues be it social, cultural or natural.
4 Are the objectives of planning still relevant?	Are the objectives of planning in Victoria still relevant?	There is benefit in the Act’s objectives recognising climate change and affordable housing but we do not agree with the suggestion that cultural heritage could also be given specific recognition as this is adequately addressed in separate legislation.
6. The permit process 6.1 One size fits all?	Should the Act provide a short permit process? etc	No. There is difficulty in trying to identify a short permit process through the Act. The issue with lengthy permit processes are generally a result of objections and review. The VPPs have dealt with these issues to some extent by exemptions from notice and review. This is where the scale and complexity can be identified and more “use and development” can be identified that is exempt from notice and review and perhaps the standard of information required to support an application. Whilst the short permit process is not supported, the concept of ‘on-site arbitration’ in the permit process is supported.
6.2 Lodging an application	Do the information requirements for lodging an application need to be changed	No, changes do not need to be made to the Act, as this is achieved in the VPPs (see above). Wellington Shire Council in 2007-08 had 22% of further information requested compared to 30% for the region (East Gippsland Shire had 47%) so it is not a significant issue for Wellington although there is room for improvement. The issue is the standard that each Council is willing to accept. Some

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		Councils are inflexible, requiring everything as set out in the VPPs regardless of the complexity of the proposal.
	Should the Responsible Authority have discretion to reject incomplete applications?	There would be a benefit in the Act providing this discretion and it would be up to individual Councils as to whether they choose to rely on it to reject applications.
	Is a more comprehensive application form needed?	No it is detailed enough and whilst planning consultants would be able to adapt to increased detail, it would make it more difficult for the one-off rural applicants or the “mum and dad” applicants who do not use or need a consultant to lodge their application on their behalf.
	Would a pre-lodgement certification be effective?	It is already voluntary and that is enough. It is not workable in rural areas where there are very few planning consultants and any system introduced in rural areas would create a monopoly for few consultants.
6.3 Notice of an application	Are streamlined notice requirements for certain types of applications required and should the RA have more discretion in deciding who should be notified etc	A streamlined notice requirement and more discretion for responsible authorities would be a good idea. There is benefit in the Act giving discretion about the form of notice to be given (i.e. it should not have to be to all adjoining owners and occupiers) and giving clear direction about when notice ‘must’ be given. The test for ‘material detriment’ also needs review or at least a definition (see comment at 10.6) to overcome the current ‘ambiguity’ with when notice needs to be given.
6.4 Objections	3 questions	Agree with all questions. Yes objections should be changed to submissions. Yes the responsible authority should have more discretion to reject an objection and yes an objector should be required to state how they are affected. If not able to demonstrate direct affect then the objection should be able to be rejected.
6.5 Referrals	More timely referral input	Perhaps a standard submission form for referral authorities, setting out permit conditions or objection grounds and reasons and how it relates to their area of jurisdiction could be introduced.

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6.6 Making a decision	3 questions	Existing prescribed times are considered adequate.
6.7 Conditions	2 questions	Strongly agree with both questions, particularly question 2. Council must have a clear statutory basis to 'easily' levy for required works or facilities and this should be provided for in the Act.
6.8 Amending a permit	5 questions	<p>The responsible authority should be able to amend a permit issued at the direction of VCAT, when the responsible authority is satisfied that there will be no increase in 'detriment' and where the amendment is consistent with the Planning Scheme.</p> <p>Section 216 should NOT be repealed as it provides for greater flexibility to amend 'old' permits/endorsed plans.</p> <p>There should not be provision for secondary consent in the Act.</p> <p>Introducing a need to record secondary consent approvals is not supported as it will add additional complexities – Council's own record keeping adequately tracks secondary consent approvals.</p>
6.9 Enforcement	Could a register of enforcement orders reduce non-compliance	It is not clear if this means it would be a publicly accessible register. If so, it could be available on the VCAT website if not already and this may be appropriate.
Planning Schemes and the Amendment process 7.2 Amendment process	Time requirements	Whilst there are issues with the timelines involved in processing an amendment and the internal timeline guidelines developed by the DPCD (e.g. for their responses to authorisation requests) has seen a slight improvement in processing times, it is preferable that the status quo remain. The amendment process is a lot more complex than a planning application process and often there are good reasons for the process to be protracted. The current approach does

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		retain flexibility, and if a time limit was placed on Councils to consider an amendment request, it would place significant pressure on Councils, particularly if a major amendment request is received. Time limits would only work if there was a review body and process and any such review process is not supported.
7.3 Requesting and preparing an amendment	3 questions	The amendment request form is a good idea, which should be linked to a requirement to respond to the 'Strategic Assessment Guidelines' Practice Note. There is no need for the Act to be amended to prescribe information requirements if the above process is followed. Council strongly argues against the suggestion that a formal review process be introduced for refusal of amendments/amendment requests. Councils need to be proactive in planning for their municipality and not get absorbed in review processes.
7.4 Authorisation	3 questions	Authorisation has led to further inefficiencies in the planning system and the later process of certification has been a significant failure. It is submitted that the authorisation process should be abandoned, and that Council's should have the ability to prepare amendments after consultation with DPCD and all amendments would be submitted to the Minister for approval as per the old regime. However, should the authorisation process not be abandoned, then our second preference would be to agree with first two questions and the second question should apply to corrective amendments at least. The authorisation process should only be a checklist process for clarity and certainty for all parties.
7.5 Exhibition	Guidance on notice Changes to lead to more efficient notice	The Act should specify what notice 'must' be given (e.g. prescribed Ministers), but also give Council greater discretion to exempt itself from requirements such as newspaper notices etc. Guidelines/a practice note should be prepared to help guide this discretion. Section 19(3) of the Act (or section

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		<p>19(5)) also needs to be reconsidered so there is greater flexibility with the timing of the gazette notice publication (i.e. it should not have to be the last notice given if there is an administrative error such as a newspaper notice not being published prior to the gazettal date).</p> <p>More efficient notice/processing of an amendment would also occur if the amendment paperwork was simplified (e.g. no requirement for list of changes, list of amendments etc) until the approval stage.</p> <p>Section 20(4) of the Act should also be amended to provide the Minister with greater discretion to rely on this section of the Act for minor/corrective amendments that Council wishes to progress.</p>
7.6 Submissions	7 questions	<p>Q1 Council strongly agrees that a Planning Authority should be able to reject submissions</p> <p>Q 2 It is agreed that a structured form should be introduced (Wellington Shire Council has developed a form which can be provided)</p> <p>Q3 All submissions should not have to be referred to a Panel.</p> <p>Q4 Yes</p> <p>Q5 No, the Panel's consideration should be generally limited to the submissions referred to it.</p> <p>Q6 Strongly agree.</p> <p>Q7 Definitely no.</p> <p>The Act also needs to be amended to overcome submissions made to an amendment which would effectively be a 'transformation' of the amendment (e.g. submissions requesting that land remote from the amendment site also be rezoned). Council should have the specific ability to disregard such submissions.</p>

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7.7 Assessment and adoption	2 questions	Council strongly argues for the retention of the current system (i.e. Council ability to abandon an amendment at any time without the right of review).
7.8 Approval	Is approval by planning authority effective Next 2 questions	It would be clearer if all amendments are approved by the Minister as certification has not worked as intended. Certification doesn't reduce delay at all it is ineffective
7.9 Monitoring and review	Are requirements for review adequate	The responsible authority requires some flexibility to timetable a review according to priorities and resources, however the review of the whole scheme rather than just MSS every 4 years is onerous and if it done properly every 4 years then another full review 4 years later is not required. Following a review, there is often a planning scheme amendment process and by the time it is in operation the next review may only be 2 years off. Perhaps full review every 8 years?
8. State-significant projects		No comments
9. Governance and decision making 9.1 Private certification	2 questions	Not supported as the current voluntary pre-lodgement certification is appropriate. See comments under 6.2
9.2 Registration of Planners	Should a formal system for registration of planners be introduced and should certain decisions be informed or made by planners with prescribed qualifications	No to both questions. It is not considered that there is an issue or need that would require planners to be professionally accredited. In any case this is not considered appropriate as it would lead to difficulties for rural councils to recruit staff, as often recruitment of "planners" is of those with relevant (not necessarily planning) tertiary qualifications and experience.
10.1 Section 173 Agreements	Questions regarding options to improve operation of agreements	All the dot point suggestions are agreed to.
10.2 Facilitating e-planning	What aspects of the Act may need to be adjusted to facilitate e-planning initiatives?	Councils facilitate e-planning initiatives where practicable without the Act needing to be changed.
10.3 Access to planning info and privacy issues	3 questions	In response to Q2 the personal information should only be made available while the application is being processed. Once completed, i.e. the permit has been issued, then the information e.g. name of the objector should be private as

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		there is no reason for this to be accessed at a later date by the public. No response to other 2 questions
10.4 Cash in lieu schemes for car parking	3 questions	Agree in principle to all 3
10.5 Interaction with other legislation	Any conflict with other legislation	No comment
10.6 Other issues	Other opportunities to improve the operation of the Act	Definitions: A definition of “material detriment” should be covered in the Act to state what it does and does not include. For instance to make it clear that it covers matters such as overlooking and overshadowing but not financial detriment.
		Section 39 of the Act (defects in procedure) needs to be amended to more explicitly specify the grounds of review to VCAT (e.g. in a similar manner to section 87 of the Act). The current section 39 reads to ‘broadly’, providing opportunity for unjustified appeal processes to be pursued.
		Development Contribution Plan requirements of the Act (Part 3B) need to be amended to provide greater flexibility for Council’s to levy required infrastructure contributions (social and physical) through section 173 agreements or via planning permit conditions. The current requirement for Development Contributions Plan preparation is too onerous, complex and resource intensive, particularly for rural/regional Council’s.