

Modernising Victoria's Planning Act
A discussion paper on opportunities to improve the *Planning and Environment Act 1987*.

Submission from the Obesity Policy Coalition

The Obesity Policy Coalition (OPC) is a coalition between Cancer Council Victoria, Diabetes Australia – Victoria, VicHealth and the World Health Organization Collaborating Centre for Obesity Prevention at Deakin University. The OPC is concerned about the escalating rates of overweight and obesity in Australia, particularly in children.

We thank you for this opportunity to comment on your discussion paper 'Modernising Victoria's Planning Act: A discussion paper on opportunities to improve the Planning and Environment Act 1987' (Discussion Paper). Our submission aims to provide a brief overview of the problems of overweight and obesity in Victoria and the role that planning and the built and natural environments have in enabling people to live healthier and active lives. It then outlines the following specific recommendations to improve the *Planning and Environment Act 1987* (the Act):

- The Act should be seen as a tool to influence behavioural change
- A reference to health and wellbeing should be included in the objectives of the Act for planning in Victoria
- Health and wellbeing should be prioritised throughout the permit process
- Consideration should be given to establishing a health organisation as a 'referral authority'
- Consideration should be given to the use of Social/Health Impact Assessments
- Health impacts should be considered when assessing potential State-significant projects
- The Act should be aligned with health related legislation and policy
- The importance of protecting undeveloped land should be recognised
- Social and health research should be considered when reviewing planning schemes.

Our recommendations are intended to relate to the current Act or any new Act that may result from this consultation.

1 The problem of overweight and obesity in Victoria

The prevalence of overweight and obesity in Australia, including among children and adolescents, has reached alarming levels and continues to escalate.¹ In Victoria alone it has been estimated that almost half of all adults, and as many as one quarter of all children, are overweight or obese.² Men and women in lower socio-economic groups are more likely to be overweight and obese than those in higher socio-economic groups.³

Overweight and obesity have a significant impact upon health and wellbeing. Obese adults carry an increased risk of many chronic diseases, including type 2 diabetes, cardiovascular disease and some cancers.⁴ Children and adolescents who are overweight or obese are likely to suffer from a range of serious health and psychosocial problems, they are also more likely to become obese adults.⁵ In Victoria, it has been estimated that high body mass is responsible for 8% of the total burden of disease, the second leading cause after tobacco.⁶

The financial and non-financial costs of overweight and obesity are also significant. The total cost of obesity in Australia in 2008 was estimated to be \$58.2 billion (comprising \$8.3 billion in financial costs and \$49.9 billion in net costs of lost wellbeing).⁷ In Victoria alone, the estimated costs in 2008 were 14.4 billion.⁸ In the long term, it is expected that the economic costs of obesity across Australia will increase significantly, and possibly double, due to the rise in diabetes.⁹

No one intervention will combat the problem of obesity and overweight in Victoria. A comprehensive, multi-level collaborative strategy across government and other sectors, that addresses all of the environmental (social, physical and economic) determinants of unhealthy eating and physical inactivity, is required.¹⁰ It is widely recognised that one of the most crucial components of any comprehensive strategy aimed at combating obesity and overweight, will need to be improvements to the built and natural environment to make healthier choices easier choices.¹¹

2 The role of planning and the built and natural environment

It is well recognised that planning and the built and natural environment in which people live, work, learn, play and shop can either support or create a barrier to healthy and active living. For example, limited access to healthy food, increased availability of unhealthy foods (in particular processed and fast foods) and loss of agricultural land to urban development are all factors known to contribute to the consumption of unhealthy food.¹² Increased reliance on motor vehicles, lack of safe, well lit and well connected walking and cycling paths and a lack of well connected public transport options are all well known contributors to inadequate levels of physical activity among children and adults.¹³ Population growth and housing pressure, climate change and social isolation also impact upon public health and will provide challenges into the future.

It is widely recognised internationally¹⁴, by the Commonwealth government in Australia¹⁵ and within the Victorian state and local governments¹⁶ that planning has a key role to play in creating healthier and active communities by:

- Providing equitable, accessible and well-connected active transport options (such as walking and cycling) and decreasing motor vehicle dependence.
- Improving access to local services, workplaces, shops and other local destinations (i.e. open spaces and recreational facilities).
- Providing choice and access to a range of culturally appropriate and affordable food retail options (such as markets, community gardens, small shops and big chains).
- Developing an integrated, sustainable and well-connected public transport system.
- Preserving urban green spaces and protecting valuable agricultural land.
- Providing for mixed land usage.
- Providing local access to schools, employment and fostering economic development opportunities.
- Ensuring a range of housing options suited to particular lifestyles and circumstances.
- Ensuring the natural and built environments are safe and secure.
- Protecting air and water quality.
- Forging community bonds through opportunities for positive social interactions.
- Improving the quality and health of the natural environment and promoting more responsible natural resource management.
- Engaging communities in planning matters early in the planning process.

So far as is possible, no one should be disadvantaged by their surroundings and no one group should be healthier than another, simply by virtue of where they live. Enhancing access to opportunities in existing communities which facilitate healthy lifestyles will help 'level the playing field', especially in areas that have the poorest environmental qualities, and often already are home to the most disadvantaged communities. Through reducing physical and psychological barriers in the built environment, improvements to health and wellbeing may be experienced fairly and equitably by all Victorians.

3 Improving the Planning and Environment Act

The *Planning and Environment Act 1987* (the Act) provides the framework for planning in Victoria. It outlines various requirements and procedures and is enabling legislation for the development and implementation of sub-ordinate instruments that regulate land use and development on a day-to-day basis, such as the Victorian Planning Provisions (VPP), planning schemes, regulations and Ministerial Directions.

We are concerned that while the Victorian state government clearly, in principle, recognises the importance of planning for healthier communities (and the VPP and planning schemes contain some provisions for creating healthier communities) the enabling Act itself fails to recognise the need for health and wellbeing to be a priority, or a mandatory consideration, in planning and planning related decision-making.

To ensure that the protection and promotion of health and wellbeing is a key priority and where relevant, a mandatory consideration for planners and decision makers, we would make the following recommendations for modernising Victoria's planning legislation:

- The Act should be seen as a tool to influence behavioural change
- A reference to health and wellbeing should be included in the objectives of the Act for planning in Victoria
- Health and wellbeing should be prioritised throughout the permit process
- Consideration should be given to establishing a health organisation as a 'referral authority'
- Consideration should be given to the use of Social/Health Impact Assessments
- Health impacts should be considered when assessing potential State-significant projects
- The Act should be aligned with health related legislation and policy
- The importance of protecting undeveloped land should be recognised
- Social and health research should be considered when reviewing planning schemes

Each of these recommendations is discussed in detail below.

The Discussion Paper (p.13) also raises the question of whether the current Act should be upgraded or whether a whole new Act is required. We do not have a firm view in relation to this. Our recommendations below are intended to relate to the current Act or any new Act that may result from this consultation. We would, however, support the consideration of a new name for the Act (whether the current Act is upgraded or a whole new Act is introduced) to reflect that people, communities and their health and wellbeing should be put first in planning. For example, the Act could be named or re-named the *Planning for Communities Act*.

3.1 The Act should be seen as a tool to influence behavioral change.

The Discussion Paper (p.9) raises the question of whether planning and the Act should be seen as a tool to influence behavioural change.

In our view, it is extremely important that planning is recognised as a tool for influencing behaviour, as it is the primary system responsible for establishing the built environment and protecting the natural environment. By creating a planning system that is health-focused, and fair and equitable, all people can be influenced to make healthier decisions and improve their quality of life. The Act in particular, as the provider of the broader framework for planning in Victoria, should guide planners to prioritise health and wellbeing in all planning and planning related decisions. The Act should also be capable of responding to future challenges and delivering policy outcomes now and into the future.

3.2 A reference to health and wellbeing should be included in the objectives for planning

Whilst the Act does not define the detailed scope for planning, it does set the broad framework in the form of the objectives for planning in Victoria.¹⁷ These objectives, outlined in section 4 of the Act, are intended to shape the values enshrined in the VPP, and the detailed planning mechanisms that operate within the State. The Discussion Paper (p.15-16) raises the question of whether these objectives are still relevant and whether further objectives are required.

We are concerned that the current objectives of planning in Victoria are very broad and general in nature and do not explicitly recognise health and wellbeing, as a basis for, and essential objective of, planning and planning related decision making. Including health and wellbeing as an objective of planning in Victoria would legitimise and mandate health and wellbeing considerations in the planning system, as well as establishing a more health promoting decision making process. Objectives to promote and protect health and wellbeing could be fed into some of the current objectives of planning contained in section 4 of the Act (for example sections 4(1)(a) and 4(1)(c)). They could also be inserted into the current or any new Act as discrete objectives. For example, an objective of planning in Victoria could be stated to be:

“to promote and protect health and wellbeing in Victoria”

This objective would be consistent with the purpose of the *Public Health and Wellbeing Act 2008* (Vic), effective 1 January 2010.¹⁸

Subsequent to the review of the Act, and any changes that may arise as part of it, the VPP will need to be amended to reflect the changes. This will present a significant opportunity to establish major policy statements relating to health and wellbeing, ensuring people are put 'first' in planning and that the built and natural environment can support healthy and active communities, enabling healthier choices to be easier choices. Consideration should also be given to requiring planners and the planning industry to attend mandatory education/training on the promotion and protection of health and wellbeing (and the role of planning).

3.3 Health and wellbeing should be prioritised throughout the permit process.

Part 5 of the Discussion Paper (p. 19-28) raises the question of whether the permit process should be simplified for certain applications and whether some of the relevant considerations for planners and decision makers under the Act need to be clearer. In our view the language of the Act should be prescriptive and consistent. This is vital to ensure that any objective to protect and promote health and wellbeing is prioritised throughout the permit process, and is not undermined by other potentially inconsistent or discretionary provisions of the Act. Clear mandatory language should be used where appropriate.

For example, Section 60 of the Act currently identifies the matters that ‘must’ and ‘may’ be taken into account by decision makers when assessing applications for permits to use and develop land. Section 60(1)(b) requires that the objectives of planning in Victoria *must* be considered when deciding an application, however section 60(1A) then states that certain matters *may* be considered, such as any significant social and economic effects. Any discretionary language in section 60 of the Act should be removed where it has the capacity to be inconsistent with or undermine the necessary mandatory consideration of the objectives of planning in Victoria.

Similarly, in deciding whether notice of an application for a planning permit should be given (section 52 of the Act), and if so, to whom, explicit obligations to provide notice should apply where the granting of the planning permit may be detrimental to health and wellbeing.

We do not have a firm view in relation to whether certain processes and procedures should be simplified in the interest of more expedient planning related decision-making, however we would urge that the objectives of planning in Victoria remain mandatory considerations for any planning related decisions that have the capacity to impact the health and wellbeing of people and communities.

3.4 Consideration should be given to establishing a health organisation as a ‘referral authority’.

Under the current planning permit process, applications must be sent for comment to any referral authority identified in a planning scheme (generally if the application is of a kind that effects the referral authority’s interests).¹⁹ Current referral authorities include authorities within local councils such as engineering services, as well as external authorities such as VicRoads and Melbourne Water.

Subsequent to the review of the Act, we would encourage that consideration be given to establishing a unit within the Department of Human Services as a referral authority in certain circumstances. These circumstances may include major development proposals, large subdivisions, or specific types of development that are known to influence unhealthy behaviour (gambling premises, fast food outlets, out of centre development, etc.). This organisation may act to advise decision makers of the health implications of these applications, and to protect public health interests. The Planning Schemes (or indeed the Act) could identify the process and particular circumstances in which applications would be referred to this health authority.

3.5 Consideration should be given to the use of Social/Health Impact Assessments

We understand that within the current planning system, it can be difficult to get evidence regarding social and health impacts / benefits recognised or considered in the decision making process. Without this evidence being given genuine consideration, there is a risk that health outcomes may be compromised through ill-informed planning decisions. We believe that the Act should identify ways to ensure that social or health-related evidence is genuinely considered in the planning process.

One option would be for the Act to require the use of Social and Health Impact Assessments (SIA and HIA) as part of informing planning decisions. These are currently required to be considered in relation to new legislation, regulations and policy in the United Kingdom.²⁰ SIA and HIA have potential to measure both qualitative and quantitative impacts on society and better ensure that the long term effects of development decisions on the wider community are considered in the planning process.²¹ There are numerous methods for conducting SIA and HIA, and further investigation of these methods is recommended.²²

We recognise that it may not be appropriate to require SIA and HIA in all instances, and the Act could identify in what circumstances they would be required. For example, SIA and HIA might be used for large scale developments or community projects, applications for subdivision greater than a certain number of dwellings, large growth areas, or for certain uses deemed to have the potential for detrimental health impacts (e.g. fast food outlets). SIA and HIA could be used in both the permit application process and the planning scheme amendment process. The Act would also need to specify the process for undertaking them, who would conduct them (development proponent, the responsible authority, or an independent body?), and how they are to be funded.

3.6 Health impacts should be considered when assessing potential State-significant projects

The Act currently gives the Minister certain powers to ‘call in’ any application for a planning permit that raises a major issue of policy and may have a substantial effect on the achievement or development of planning objectives, i.e. matters of ‘State significance’.²³ As raised in Part 8 of the Discussion Paper (p.37 – 39), the Act does not, however, include any formal criteria for assessing which projects raise ‘major issues of policy’ or may have a ‘substantial effect’ on planning in Victoria.

The Discussion Paper suggests some approaches to make the criteria for identifying matters of State significance more transparent. It also suggests that that these matters could be dealt with under the Act or specified in planning schemes. We do not have a preference for which approach should be taken but feel it will be important that the assessment process consider health impacts both in the short and long term. This may include the use of SIA and HIA as described above.

We would also expect that projects that raise matters of State significance would be held to the highest and most stringent standards of assessment, rather than any simplified procedures designed to fast-tracking development through the planning process.

3.7 The Act should be aligned with health related legislation and policy

The relationship between the Act and other health related legislation and policy documents is currently unclear.

For example, while the Municipal Public Health Plans (MPHP) represent important health policy statements for local governments, they are not currently required to inform local planning schemes or be considered in the planning process. The MPHP often contain policy that overlaps with, or are to be addressed through, planning and design interventions. Accordingly, Planning Schemes should be aligned with MPHP to help consolidate health objectives and focus local policy actions. We would support consideration being given to the Act identifying a hierarchy of policy documents, including those that sit outside the planning scheme, to be considered in making land use decisions, and suggest that MPHP be included as part of this.

The Act should also be aligned with health related acts such as the *Public Health and Wellbeing Act 2008*, *Liquor Control Reform Act 1998* and *Transport Act 1983*. This would help to harmonise strategic objectives and achieve consistent and strong policy and health outcomes.

3.8 The importance of protecting undeveloped land should be recognised

We are concerned that the current Act does not sufficiently protect the interests of undeveloped land (parks, farmland and natural areas) from urban development. This land is critically important to public health as it provides space to grow food, places to recreate and enjoy nature and provides habitat to a range of important flora and fauna. Non-urban land is important at the edge of the city, but also within the city in the forms of parks, community gardens, or urban farms or forests. The loss of this land threatens access to healthy food, access to nature and recreation opportunities and undermines the broader self-sufficiency and resiliency of Victorian communities as a whole.

The true value of non-urban land is not considered in the planning process, and we believe that the disparity in economic value of land as the primary decision making criteria represents

a market failure that needs to be corrected through the planning system. We believe that the Act should be strengthened to reflect this position, and would suggest that the appropriate places to do so under the current Act might be Part 2 – Planning Schemes and Part 3AA – Metropolitan Green Wedge Protection. The strengthening of this legislation should include land outside of urban areas, but also identify the importance and value of non-urban land within urban areas to help justify land use decisions.

3.9 Social and health research should be considered when reviewing planning schemes

Section 12B of the Act specifies the requirements and process for monitoring and reviewing planning schemes. Social and health research and indicators can provide valuable information in assessing the impact of policy, and should be considered as part of this process. We would recommend that this aspect of the Act be strengthened to allow social and health research to be considered as part of the review of any planning scheme.

4 Conclusion

This review of Victoria's planning legislation presents a valuable opportunity to create a planning system that is forward looking, puts people first and can guide the development of healthier communities. While we acknowledge that changes to the Act will not address all health and planning issues, these changes will be essential if other improvements are to be made possible.

We thank you again for this opportunity to be involved in this review and look forward to the outcomes of your consultation. Please do not hesitate to contact Nicole Antonopoulos, Legal Policy Adviser to the Obesity Policy Coalition, on (03) 9635 5612 or by e-mail at nicole.antonopoulos@cancervic.org.au if you wish to discuss any of the issues raised in this submission or need any further information.

1 May 2009

References

- ¹ Australian Bureau of Statistics. *Overweight and Obesity in Adults*. 2004-05. Cat No 4719.0 Australian Bureau of Statistics, Canberra, 2008; Linacre S. *Overweight and Obesity*. Canberra, Australian Bureau of Statistics. 2007; Access Economics. *The growing cost of obesity in 2008*. August 2008. Canberra: Diabetes Australia.
- ² Victorian Department of Human Services. *Victorian Population Health Survey 2007*. October 2008. Available at http://www.health.vic.gov.au/healthstatus/vphs_current.htm; Swinburn, B. & Bell, C. (2003) *Results of a weight survey of primary school children in the Sentinel Site for Obesity Prevention*, Victoria, Melbourne: Deakin University; *The State of Victoria's Young People 2007*. Published by the Victorian Government Department of Education and Early Childhood Development and the Department of Planning and Community Development, Victoria, Australia.
- ³ Australian Institute of Health and Welfare. *Are all Australians gaining weight? Differentials in overweight and obesity among adults, 1989 – 90 to 2001*. Bulletin 2003. Available at <http://www.aihw.gov.au/publications/aus/bulletin11/bulletin11.pdf>
- ⁴ World Health Organization. *Obesity: Preventing and Managing the Global Epidemic. Report of a WHO Consultation*. WHO Technical Report Series no. 894. 2000, WHO: Geneva.
- ⁵ World Health Organisation. *Obesity: Preventing and Managing the Global Epidemic. Report of a WHO Consultation*. WHO Technical Report Series no. 894. 2000, WHO: Geneva; Must, A., & Strauss, R.S. Risks and consequences of childhood and adolescent obesity. *International Journal of Obesity Related Metabolic Disorder*, (1999) 23 Suppl 2, S2-11.
- ⁶ Department of Human Services. *Victorian Burden of Disease Study: Mortality and Morbidity in 2001*. Available at http://www.health.vic.gov.au/healthstatus/downloads/bod_2001a.pdf
- ⁷ Access Economics. *The growing cost of obesity in 2008*. August 2008. Canberra: Diabetes Australia.
- ⁸ Access Economics. *The growing cost of obesity in 2008*. August 2008. Canberra: Diabetes Australia
- ⁹ Department of Economic and Social Affairs. *World economic and social survey 2007. Development in an ageing world*. New York: United Nations; 2007. Vos T, Goss J, Begg S, Mann N. *Projection of health care expenditure by disease: a case study from Australia*. Brisbane: School of Population Health, University of Queensland; 2007.
- ¹⁰ World Health Organization 2008. Prevention and control of noncommunicable diseases: implementation of the global strategy. Available at: www.who.int/gb/ebwha/pdf_files/A61/A61_8-en.pdf; Story M, Kaphingst K, Robinson-O'Brien R, Glanz K. Creating Healthy Food and Eating Environments: Policy and Environmental Approaches. *Annual Rev. Public Health* 2008;29:253-72; Kavanagh A, Thornton L, Tattam A, Thomas L, Jolley D and Turrell G. *Place does matter for your health: A report of the Victorian Lifestyle and Neighbourhood Environment Study*. May 2007. University of Melbourne. Available at http://www.kcwh.unimelb.edu.au/data/assets/pdf_file/0005/55085/VicLanes_Report.pdf.
- ¹¹ World Health Organization 2008. Prevention and control of noncommunicable diseases: implementation of the global strategy. Available at: www.who.int/gb/ebwha/pdf_files/A61/A61_8-en.pdf
- ¹² Joint WHO/FAO Expert Consultation on Diet, Nutrition and the Prevention of Chronic Diseases (2002 : Geneva, Switzerland) *Diet, nutrition and the prevention of chronic diseases: report of a joint WHO/FAO expert consultation*, Geneva, 28 January -- 1 February 2002. Available at http://whqlibdoc.who.int/trs/WHO_TRS_916.pdf; Story M, Kaphingst K, Robinson-O'Brien R, Glanz K. Creating Healthy Food and Eating Environments: Policy and Environmental Approaches. *Annual Rev. Public Health* 2008;29:253-72.
- ¹³ Schoeppe, S. and M. Braubach, *Tackling Obesity by Creating Healthy Residential Environments*. 2007, WHO Europe. Available at <http://www.euro.who.int/document/e90593.pdf>; VicHealth. *How times have changed: Active transport literature review*. March 2009. Available at www.vichealth.vic.gov.au; Kavanagh A, Thornton L, Tattam A, Thomas L, Jolley D and Turrell G. *Place does matter for your health: A report of the Victorian Lifestyle and Neighbourhood Environment Study*. May 2007. University of Melbourne. Available at http://www.kcwh.unimelb.edu.au/data/assets/pdf_file/0005/55085/VicLanes_Report.pdf;
- ¹⁴ Schoeppe, S. and M. Braubach, *Tackling Obesity by Creating Healthy Residential Environments*. 2007, WHO Europe. Available at <http://www.euro.who.int/document/e90593.pdf>
- ¹⁵ National Preventative Health Taskforce. *Australia: The healthiest Country by 2020. A Discussion Paper prepared by the National Preventative Health Taskforce*. Australian Government 2008; National Preventative Health Taskforce. *Technical Report No 1. Obesity in Australia: a need for urgent action* Prepared for the National Preventative Health Taskforce by the Obesity Working Group. Australian Government 2008.

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- ¹⁶ Victorian State Government. *Planning for all of Melbourne: The Victorian Government response to the Melbourne 2030 Audit*. 2008. Available at <http://www.dse.vic.gov.au/DSE/nrenpl.nsf/LinkView/44CBF8AAC036C259CA25744A0011E500718331E8AB7D9987CA256D1900299B45>; Victorian Department of Premier and Cabinet. *2009 Statement of Government Intentions*. February 2009. Available at <http://www.premier.vic.gov.au/state-of-government-intentions/statement-of-government-intentions.html>; *Go for your life Think Tank: Victoria – reshaping how we live - Summary of the day's proceedings*. Friday, 18 April 2008. Available at <http://www.goforyourlife.vic.gov.au/>.
- ¹⁷ *Planning and Environment Act 1987* (Vic) s.4
- ¹⁸ *Public Health and Wellbeing Act 2008* (Vic) s.1
- ¹⁹ *Planning and Environment Act 1987* (Vic) s.55
- ²⁰ UK Department of Health. Health Impact Statements. Available at: http://www.dh.gov.uk/en/Publicationsandstatistics/Legislation/Healthassessment/DH_647
- ²¹ Lock K. Education and debate – Health impact assessment. *BMJ* 2000; 320:1395-1398.
- ²² Joffe M and Mindell J. A framework for the evidence base to support Health Impact Assessment. *Journal of Epidemiology and Community Health* 2002; 56:132-138
- ²³ *Planning and Environment Act 1987* (Vic) s.97B(a)