

Firstly, Council would like to state that in general it supports the initiative to update the P&E Act to more accurately reflect the issues facing us now and into the future. However, Council would like to provide the following comments on a number of specific issues raised. These are discussed generally in the order in which they are raised in the discussion paper.

Firstly, it would seem short-sighted to structure the updated P&E Act in part around the 2008/09 global financial climate. An updated Act would presumably be intended to serve the objectives of planning in Victoria in the long term. Focusing on a relatively short-term event therefore seems to serve no purpose. In any event, amendments to the VPP's or planning schemes by the Minister offer the opportunity to respond to such events.

Including specific reference to issues such as housing affordability etc. (last dot point, p.16) would not assist in achieving policy objectives for these matters. Referring back to the Minister's Second Reading Speech, planning schemes are not the major expression of policy, they are the tools to implement policy. The Act only enables the tools to exist. A more appropriate method of achieving policy objectives would be amending the VPP's.

It is contended that the key to certainty and streamlining the system is allowing the RA more discretion in deciding who should be notified, in what manner and how long should be allowed for submissions (dot point 2, p.23). Further, an objector should be required to provide more specific information about how they might be affected by a proposal, which should also be linked to the relevant permit triggers and decision guidelines.

With regard to the last dot point on p.24 relating to referrals, provisions relating to referral authority input currently exist in the Act and planning schemes, however authorities in practice refuse to use it. It should be noted that VicRoads, NECMA and DSE all require applications to be lodged and referred before providing comments even when expressly requested by the proponent. A possible solution would perhaps be to make it mandatory for authorities to comment under these provisions.

The ongoing life of conditions on a development permit need to be clarified (first dot point, p.26), in order to spell out which conditions are of an ongoing nature.

With regard to the amendment process, a planning authority should be able to reject or disregard irrelevant submissions to an amendment. Many individuals become confused with regard to the intent and effect of a proposed amendment. If a submission can be dealt with by clarification of the issue with the submitter, it should not have to be brought before a Panel (if one is required). There could be a documentation of the process and the outcomes that can be brought to the Panel's attention. In the case of an amendment where there are only irrelevant submissions, the ability to disregard them will negate the need for a Panel, which is an expensive and time consuming addition to the process.

As would be beneficial for objections to planning permit applications, a structured form for making submissions should be introduced that encourages the submitter to clearly state why they are making a submission to the amendment and how the amendment will affect them/the environment etc., in order to discourage frivolous submissions. A planning authority should not be required to refer all submissions to a Panel, for the reasons stated above.

A panel should not have the ability to review and make recommendations about the overall amendment proposal. The function of the panel is to act as the 'umpire' to provide independent

advice in situations where issues cannot be resolved between Council and submitters. If the panel was able to review the entire amendment, it would again add delays and cost to the process.

The Act should facilitate ‘on the papers’ panel hearings where appropriate. If Council is required to continue referring all submissions to a panel, ‘on the papers’ hearings could reduce delays and cost. All amendments should not be reviewed by an independent panel, as this would disregard the recommendations of the ‘Cutting Red Tape’ initiative.

For local government, the costs generated by the panel process are onerous, and for the most part, borne solely by Council. Considering the panel process is one which is set in legislation, it would seem equitable for the process to be for the main part fee free (such as the VCAT process), or costs reduced. Working to reduce the overall length of the process should be a priority.

The introduction of some statutory processes into the amendment process such as a statutory application process may allow the process to run smoother and more quickly. However, this does not apply to appeal rights. Introducing appeal rights will create the expectation that the amendment will occur – depending on how hard one fights for it, and would go one step further towards undermining strong strategic planning.

A simple step to streamline the amendment process would be to eliminate the need for certification of the amendment by the Secretary of DPCD if the amendment has remained unchanged since the request for authorisation.

With regard to state-significant projects, the EES legislation caters to some degree in this regard, and there is potential to review this and other legislation such as the EID Act. Further justification would be required for separate legislation in this regard. Planning applications of state significance could fall into the EES process of criteria defined – see Particular Provisions for Extractive Industry as an example enabled by the VPP rather than the Act.

Regarding governance and decision making, the current location of the responsibility is appropriate. It would be inappropriate for any decisions to be made by non-professional officers, as accountability is required for any decisions made. The responsibility rests with the elected body, i.e. Council. Similarly, the proposal to change the Act to require certain planning decisions be informed by advice from outside Council creates governance and risk for Council.

The e-planning initiative has merit in attempting to make the process of applying for and receiving planning permits smoother, however it raises some issues for small rural Councils with a large land area and minimal resources. Sections of the Act that need modification to facilitate this process include notice, privacy and copies of objections.

Cash-in lieu schemes for car parking raise issues for local government including nexus, accountability and consistency. The process has to be transparent and fair. A simplified system is needed, with a fit-for-purpose head of power. The tests for this system as recommended by the Advisory Committee are appropriate for a new system.

To finish, an update to the Act is welcomed as an opportunity to ‘fine tune’ some issues that have come to light in the technological age we are in, and to provide clarity for some long standing issues such as the definition of what constitutes ‘material detriment’. Council would welcome the opportunity to discuss any of the above or provide further clarification or comment in relation to modernising Victoria’s Planning Act.