Modernising Victoria's Planning Act

1.2 – SCOPE OF THE REVIEW

Do we need a new car or a major service?

A major service is the preferred option as the basic objectives, structure and processes of the Act are sound. As outlined below a range of processes and components of the Act need modernisation, adjustment or replacement.

4 – ARE THE OBJECTIVES OF PLANNING STILL RELEVANT?

There has been a push from Councillors and some members of the public for greater consideration of social issues in the Act.

Issues regarding housing affordability and heritage protection could be adequately dealt with via planning scheme?

PLANNING PERMITS

6.1

Is there a need to change the permit process to make it more responsive to the scale and complexity of a proposal?

Yes – A simplified process for 'minor' applications is warranted to assist in reducing the turnaround time for applications. Provided the responsible authority has discretion to reject applications that are incomplete or inadequately prepared (see below).

There would also be merit in applying different timelines for decision making based on the scale and complexity of the proposal. For instance some complex commercial and residential developments require the resolution of a variety of planning issues. It is not often that these issues are resolved within 60 statutory days.

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?

Yes – A 'short' process as proposed by Better Decisions Faster.

This could apply to applications for buildings/works under a single Overlay which require referral and for which no other approval (under a zone) is required.

While the above would provide more clarity, it should be noted that 'simple' applications such as those listed above are currently assessed quickly provided the correct information is submitted with the application.

What are the other options for streamlining applications?

Enure that applications can be rejected if all relevant information has not been received.

Clearly spelling out when certain types of development applications require notice, rather than relying on a material detriment test. This would also provide greater certainty for applicants.

Pre-certification has potential however strict standards would need to be set. Some private practitioners who submit applications fail to address basic requirements of the planning scheme.

6.2
Do the information requirements for making an application need to be changed to improve the quality of applications?
Yes- Poor quality applications are a constant cause for lengthy application times. Applications which do not include all the required information and hand drawn plans, which are not to scale are a constant problem.

In a number of cases landowners see the planning process as a negative process because it impinges on what they want to do on their land. As a result, they object to the cost of having properly drawn plans prepared and even obtaining a current title search. In these cases, regardless of how prescriptive the application form is, the quality of the application will not improve.

Despite this, there is potential for an improved application form or a number of forms which clearly specify the required information to be submitted with certain types of applications. This could make the process easier for mum and dad applicants who often submit applications of a small scale and of minimal complexity.

Should the responsible Authority have discretion to reject applications that are incomplete or inadequately prepared?
Yes – This is the only way that applications will meet the required standards. This will also reduce the amount of applications sit on planner's desks waiting on further information. While the statutory clock is not technically ticking, many applicants still see this as a period of inaction on the Council Planning Department's behalf.

Is a more comprehensive application form needed?
Possibly – An application form or forms which specify the standard of information which must be submitted with different types of applications could be useful. For example, mum and dad applicants, submitting an application for a dwelling extension cannot be expected to have enough understanding of the planning scheme to provide an assessment of the principle policies affecting the proposal. This would need to be done by a planning consultant and would add to the cost and time of submitting an application.

In some instances it would be appropriate to accept a lesser standard of information, particularly for less complex application such as those outlined above.

In this instance a separate application form may be more useful than a more comprehensive one. A more comprehensive form has the potential to add further confusion to the process.

Would a system of pre-lodgement certification by private practitioners be an effective way to improve the standard of permit applications?
Potentially – But again, this would add to the cost of planning applications. As outlined above strict standards would need to be set. Some private practitioners who submit applications fail to address basic requirements of the planning scheme.

6.3
Are streamlined notice requirements for certain types of applications required?
Yes – Providing a more certain and streamlined notice process would be of benefit to all parties. Equally, the level of notice required should reflect the potential for detriment.

The three classes of notification suggested would go a long way to addressing this. However, one issue still remains (see below)

Should the responsible authority have more discretion in deciding who should be notified, in what manner and how long should be allowed for submissions?
Yes – The Council assessing the application is in the best position to address who should be notified and for how long.

Despite this, if the material detriment test remains for certain types of applications, Councils will continue to undertake conservative notice practices to protect the Council from Section 87 reviews (i.e. notice was not given to a person who suffers a perceived material detriment from the approval of the application).

6.4
Should the term objection be changed to submission?
Yes – for the reasons outlined in the discussion paper. In particular:
- to be consistent with the terminology used in the planning scheme amendment process;
- to remove the adversarial component;
- to encourage support for applications; and
- to encourage suggestions that may not necessarily mean an objection to the proposal.

Should the responsible authority have a greater discretion to reject an objection?
Yes – the Council should be able to reject objections which are frivolous, vexatious or irrelevant to the application, but there should be clear guidelines so that consistent determinations can be made.

Should an objector be required to provide more specific information about how they might be affected by a proposal in their objection?
Yes – A 'Submission Form' should be prepared which specifically requests the 'submitter' to address how they would be materially affected by the proposal. It should also provide the opportunity for a submitter to give written support to an application.

6.5
How could the Act be changed to encourage the more effective and timely input of referral authority requirements in the permit process?
Investigate the use of a 'standard' set of referral authority conditions for various proposals, similar to those for a 2-lot subdivision where the applicant is responsible for negotiating conditions with a referral authority.

Alternatively, the Act needs to allow to the responsible authority to remove information that isn't relevant and/or change the wording of referral authority conditions to allow for

more relevant and enforceable conditions. The responsible authority should not have free range to change anything but there could be specific requirements that give consent to the responsible authority to undertake minor changes where conditions are deemed to be excessive or poorly written.

6.6

Should the Act set out a clear hierarchy of policy documents to be considered by a responsible authority?

Yes – Generally it is considered that a Policy contained within the planning scheme has greater relevance than those policies which sit 'outside' the planning scheme, but this needs to be clarified.

Should the Act provide for different decision-making considerations for different classes of applications?

Yes – At present, it is necessary to address all matters relevant to the proposal, regardless of the complexity of the application. By tailoring the scope of decision-making for different classes of application, a reduced time-frame could be achieved.

Are the times prescribed by regulation in which certain decisions should be made appropriate. Should other matters also have prescribed times?

Generally, the existing time frames are appropriate.

6.7

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

Yes – Many of the conditions on permits are included to address concerns raised in objections to planning applications. Submitters have an expectation that these conditions will be on-going and that they will not be irrelevant once the development is complete.

There is still no concrete statement that development permits can legally contain ongoing use conditions. Despite the fact that many Council issue development permits with use conditions.

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?

Yes – The cost of preparing and lodging a Section 173 Agreement on a title to secure development contributions is an additional impost on developers/landowners. Council should have the ability to secure payments for works or facilities which are a direct result of the development as a condition on the planning permit.

6.8

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?

Yes – The Council should be able to amend a permit issued at the direction of VCAT, except where the condition has been specifically included by VCAT or where VCAT has amended a condition which was originally included by the Council.

(e.g. If a Council includes a condition that 4 car spaces are to be provided for a development and VCAT then changes that particular condition to 6 car spaces, then the condition should only be amended by VCAT.
Conversely, if an applicant appeals the Council condition for 4 car spaces and VCAT disallows the appeal, then the Council could subsequently change the condition).

Should section 216 now be repealed?
Yes – Most affected Permits should have been acted upon by this time.

Should the Act set the principles for when the use of a secondary consent permit condition is appropriate?
Yes - As conditions which allow secondary consent might inadvertently trigger other matters for consideration – eg car parking.

Clear guidelines need to be established on what can be classed as a secondary consent and what would actually require a new permit or an amendment to a permit.

Is there a need to provide a process for seeking and recording secondary consent approvals?
Yes – A 'Request for Secondary Consent' form should be developed in order for an applicant to make a request to the Council. Once granted, the consents should be recorded on a Permit, in the same way an amendment to the Permit is recorded.

These requests will need to be assessed to determine whether the secondary consent requested has impact on any third parties, so notice provisions will need to be developed.

The regulations should include a prescribed fee for secondary consent.

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?
Yes – The new amendment process is a complex and timely assessment process. This process essentially requires the same assessment as a new application requires. There should be scope for Council's to process minor amendments to planning permits in a timely manner.

Guidelines should be established on what constitutes a 'minor' amendment.

6.9

Could a register of enforcement orders reduce non-compliance?
No – Many people who commit breach of the planning scheme are unaware they are doing so. These people are just as likely to be unaware of any proposed register.

Are there other changes that could make the enforcement process more effective?

There needs to be a more effective way to obtain Planning Infringement Notice (PINs) money from people instead of having to go to court to get the money. The matter should be able to be sent to a debt collector or even be taken to VCAT to get the money. PINs can be useless because of this fact and some Councils don't want to take the risk at Court. This then takes one form of action from the Council if it isn't prepared to go to court.

There also could be an increase to the units for PINs for body corporate. The current penalties are a small amount for some companies to pay. These companies are prepared to breach the scheme and take the risk of paying a PIN. If the amount of a PIN was higher for body corporate that may prevent some breaches of the Planning Scheme. The units for a natural person are appropriate.

Enforcement Officers need to be given consent to enter land without giving 2 clear days notice. If an officer could enter land immediately without consent from the owner/occupier better evidence could be obtained to take proper enforcement action.

Native Vegetation enforcement should be done by DSE, this could also be the case for giving approval for removal.

AMENDMENTS

7.2
What steps in the process should have a statutory time requirement and what would be a reasonable requirement to impose?
The amendment process is a lengthy process due to a number of matters including Council meeting cycles, poorly prepared requests for amendments, the preparation of statutory documentation required for the amendment, submissions and the need for panel hearings, etc.

However, like the Planning Permit process, there is potential for timelines to be imposed on actions within the process, e.g.

- Time for the Council to consider a request for an amendment, undertake a strategic assessment and advise the applicant whether it will proceed to seek authorisation – 28 days (note this time would only allow for written advice to the applicant, NOT for the time needed to then seek Council approval to seek authorisation-if required).
- Time for DPCD to authorise a request for an amendment – 21 days
- Time for approval of an amendment once it is submitted to the DPCD regional office – 28 days

What should happen if a time requirement is not met?
- Provision of revised timelines to all parties within 7 working days. Including explanation of why specified timeframes cannot be met.

7.3.
Is more guidance on the information that should accompany a request needed, and should this be in the Act?

Yes – Requests for amendments are submitted by individual landowners or by consultants on behalf of landowners and the quality of the documentation received varies greatly. In addition, not all amendment proponents liaise with the Council before an application is submitted.

Many of the delays in the amendment process are due to the poor quality of the documentation submitted with the initial amendment request, resulting in requests for further information before the Council is even able to properly assess the amendment request. Guidance should be provided on what documentation is required to accompany an amendment request in order to improve the quality of proposals, and in turn reduce the amount of time taken to prepare amendment.

It is often difficult to determine the full extent of the amendment request because of the poor standard of the supporting documentation (e.g. statutory documentation submitted is in the wrong format or incorrectly completed or not provided at all, details of the land affected by the amendment are not included, are not correct or are vague, plans do not correctly define boundaries of affected land, requirements of Ministerial Directions [eg Contaminated Land] are not addressed, etc.).

Should an amendment request form for proponents be introduced?
Yes – This will assist in improving the standard of documentation submitted.

A proforma request form should be developed which requires (as a minimum):

- A full description of all changes that are required to the Planning Scheme and the maps as part of the amendment (need to list changes to maps, overlays, schedules, etc);
- Full title details of all land affected (including current copies of Title);
- A Section which asks whether the applicant has addressed the requirements of:
  - Ministerial Direction 1 and provided a report which indicates that the land is suitable for the proposed sensitive use (if applicable)
  - Ministerial Direction 6 and provided a report, if the proposal includes a Low Density or Rural Residential rezoning.

Is a formal and independent process needed to assess refusals of amendment requests, or to decide unresolvable issues between a planning authority and the proponent? If so, how should this process work? Who should make the decision?
Yes – Independent Panel to consider:

- a report from the applicant outlining the request; and
- a strategic assessment of the proposal from the Council, outlining why the Council will not proceed with the application.

The Panel should consider the 2 reports and make a decision 'on the paper' rather than through a fully structured panel hearing.

7.4
Is more guidance or criteria about the role and purpose of the authorisation step required, and should this be in the Act?
Yes – The authorisation process has progressively evolved into a full assessment process whereby all amendment documentation needs to be prepared and submitted. This was not the intent of the process when it was initiated. If it is to retain its assessment function, then there should be changes to the approval process to compensate for this, especially where an amendment proceeds without submissions.

Should some types of amendments be exempted from this step? If so, which ones?
Yes – If the authorisation process is to revert back to a 'preliminary' assessment process, then minor amendments should be exempted from this step.

However, if the authorisation process becomes the detailed assessment stage, then all amendments should be authorised on the proviso that the authorisation process is the prime assessment phase of the amendment process and that once the amendment is adopted by the Council, approval is fast tracked

Is there an alternative way of achieving the objective of the authorisation process?
The assessment of an amendment request 'up front' has its merits as it can alleviate long delays when an amendment has been exhibited and errors or omissions are then found by DPCD when the amendment is submitted for approval. For this reason, a combined authorisation/assessment process before exhibition is beneficial.

However, as noted above if this process is to be adopted, then a fast tracked approval process (other than Certification) is required.

7.5

Is more guidance about how notice of a proposed amendment should be given needed? Should this guidance be included in the Act or the guidelines?
Yes – In Guidelines.

The requirement to give notice to any owner or occupier of land that the Council believes may be materially affected by an amendment will always be a subjective matter. The decision ultimately lies with the officer preparing the amendment documentation who has to make a decision on how widespread the notice should be given.

Although there is the option to seek exemption from notice in certain circumstances, many Councils prefer to undertake an extensive and costly notice process, rather than risk a challenge at VCAT.

Whilst the wording of the Act remains as it is and there are no guidelines to assist Councils on how to interpret the requirement, there will not be a consistent approach across the state to notification procedures and there will always be potential for VCAT challenges and delays with Panel hearings.

What changes would lead to more efficient and effective notice of amendment?
The outcomes of each amendment are different and therefore the affect of amendments on landowners (adjoining or otherwise) will differ accordingly.

Despite this, it may be worthwhile establishing criteria against which Councils can assess the potential for material detriment in various circumstances.

7.6

Should a planning authority be able to reject or disregard irrelevant submissions?
Yes – but with guidelines on what is classed as 'irrelevant', and a requirement for the Council to advise a submitter in writing that their submission has been determined as 'irrelevant' in accordance with the guidelines and will not be considered by the Council.

Should a structured form for making submissions be introduced?
Yes – At least to the extent of determining whether the submission is an outright objection to the amendment, whether the submitter is seeking certain changes to the amendment and would be happy for the amendment to proceed if the Council made these changes, or whether the submitter is supporting the amendment.

Often the submissions received to an amendment do not specify the grounds of objection, but rather just state that they object to the rezoning or in the case of a combined amendment/permit process, that they do not want the development to happen.

If a Submission Form is developed it should therefore include a section where the submitter describes how the amendment will materially affect them.

If a panel is established, should a planning authority be required to refer all submissions to the panel?
Yes (but) – Although there may only be one submission which is required to be referred to a Panel, all submissions seeking changes to the amendment and the Council's response to those submissions, need to be taken into consideration (but not determined upon) by the Panel in making its recommendation.

Where the Council has negotiated the withdrawal of an objection after agreeing to changes requested by a submitter, the Panel should be made aware of that change but not be required to make a recommendation on that submission (although it may wish to make a comment).

In addition, a number of the submissions received to an amendment are from Prescribed Ministers and relevant referral authorities who have no objection (and/or comment) to an amendment. The referral of these submissions to a Panel will further lengthen the time taken by a Panel to consider an amendment, with the possibility of additional Panel costs.

Should submissions which support an amendment have the same status as those submissions that object to or propose changes to an amendment?
Yes – Submissions in support of an amendment should have equal status to those objecting to an amendment.

Should a panel have the ability to review and make recommendations about the overall amendment proposal?
No – An amendment has been through a strategic assessment by Council Officers as part of the amendment preparation and through another 'assessment' process at the authorisation stage. A third assessment of the amendment is not warranted. The Panel recommendations should be limited to the submissions being considered.

Should the Act facilitate 'on the papers' panel hearings where appropriate?
Yes – In a number of instances, a single issue objection is received to an amendment. These objections could be successfully considered through detailed submissions with an 'on the papers' report by the Panel, rather than a conventional Panel Hearing.

Should all amendments be reviewed by an independent panel?
No – It is assumed that Council officers are sufficiently qualified and practised to undertake the amendment process. It is further assumed that if there are no objections to the amendment, which has been assessed and authorised by the DPCD, then that amendment has sufficient strategic justification to proceed.

7.7
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?
No -The Council should have the power to abandon an amendment, but not once a Panel has been established.

Should a right of review be available to proponents where a planning authority decides to abandon an amendment? Who should review and decide?

Yes – There should be a right of review when the Council decides to abandon an amendment. There is a lot of time and resources involved in submitting an application for an amendment. The proponent has the right to assume that the Council has determined that there is strategic justification for the amendment to proceed if the amendment reaches a stage of exhibition, and that there is a reasonable expectation that the Council will approve the amendment. However, there may be circumstances where submitters raise issues which have not been obvious to or known by the Council which may lead to an amendment being abandoned.

Given the costs to the applicant, there should be some form of independent review of the decision available. This could take the same form as the current Panel.

7.8
Is the opportunity for some amendments to be approved by the planning authority an effective means of reducing delay?
No - Not in its current form.

Is the requirement for an amendment to be certified by the Secretary of DPCD necessary before a planning authority can approve its amendment?
No – In its current form the Certification process merely adds another step to the approval process.

When an amendment is approved by the Minister it is sent straight to the Minister (via the regional office).

Where the Council is approving the amendment it has to be sent to the DPCD for certification, the DPCD certifies it and sends it back to the Council, then the Council sends it back to DPCD for approval. This effectively adds another step in the approval process, which in some cases takes the same time as approval by the Minister.

How could this step in the process be streamlined?
Delete the requirement for Certification and allow an amendment to be sent straight to DPCD for approval.

7.9
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?

The quantity and scope of documentation required for amendments can be a disincentive to preparing an amendment.

A 'fast track' protocol for simple amendments could be developed using the existing (or by updating) provisions of section 20(4) of the *Planning and Environment Act 1987*.

<u>OTHER MATTERS</u>

Pre-setting of Panels is not successful – previous experience with pre-set panel dates was a failure. After notice of the amendment was given (with the dates for a Panel hearing), the dates had to be re-set because the required notices were not sent out by Panels Vic. This was confusing for both the submitters and the Council.

It is also difficult to pre-determine how many submissions are likely to be received and the extent of investigation that is required into matters raised and therefore the number of days required for the hearing (and also how many panel members are likely to be required).

STATE SIGNIFICANT PROJECTS

There would be benefit in creating a specific planning process for the assessment of State-significant projects. Forming part of this would be criteria for clearly identifying projects of state significance.

The NSW model for major project assessment seems like to best model for assessing State-significant projects. The public consultation time would need to have a clearly defined end period to provide certainty for those involved in the process.

A Development Assessment Committee may be seen to provide a more neutral decision. This would need to be examined in more detail.

GOVERNANCE AND DECISION MAKING

A number of Council's throughout Victoria currently use trained non-professional officers to assess minor applications. This process generally works well where the delegated officer (signature) has adequate experience.

Not enough recognition is given to planners with a degree in a similar discipline, who have gained years of experience by working in the planning field.

9.1 Private Certification

The decision to allow privately certified planners to assess and decide on certain planning consent matters would be a difficult one. If it was to be allowed it would need to be for simple applications that could be fast tracked. An example would be applications that might only be triggered by an overlay and only require conditions from one referral authority.

9.2 Registration of Planners

A formal system for the registration of planning professionals should be introduced in Victoria. This should not only apply to people who have a PIA recognised degree but also to planners with a degree in a like discipline, who have say more than 5 year experience working in local government.

The level of decision making afforded should be based on experience as well as qualification (see above). This should be a matter for each local government municipality to decide.

OTHER OPPORTUNITIES

10.1 Section 173 Agreements

The options recommended by the 2004 expert group are appropriate.

10.3 Access to Planning Information and Privacy Issues

The amount of information to be made available and whether or not copies can be made needs to be spelt out clearly by the act.

This may also need to spell out what information can be provided, including copied at various stages of each process of the act.

Realistically, the Council should be able to provide a copy of anything that may be required to be submitted to VCAT as part of a practice note.

Planning authorities should be formally enabled to collect application data to use for such things as annual reporting.

10.4 Cash-in-lieu Schemes for Car Parking

The proposed system would help to simplify the process.

10.5 Interaction with Other Legislation

The P&E Act needs to reflect requirements in other acts such as the new Aboriginal Heritage Act. For example, if a Cultural Heritage Management Plan (CHMP) is required a planning permit can not be issued until the CHMP has been approved by Aboriginal Affairs Victoria.

10.6 Other Identified Issues

Should there be a schedule of fees for general enquiries, requiring planning advice. Some Councils charge for this advice, some charge a lot and others don’t charge at all. Should be the same across all the Councils in the state?