

Modernising Victoria's Planning Act

**Bass Coast Shire
Council Submission
May 2009**

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Introduction

Bass Coast Shire Council (Council) understands that the purpose of the review of the *Planning and Environment Act 1987 (the Act)* has been outlined by the Premier in the *2008 Statement of Government Intentions*. The review seeks to simplify and modernise the Act and submissions are sought from parties who utilise or interact with the legislation in order to achieve this outcome.

In order to consider changes to the Act a number of objectives have been set. It is hoped that these objectives will be utilised to review the recommendations of the Expert Panel and further down the track the performance of the new legislation.

The Shire continues to experience significant growth which is demonstrated by the number of planning permit applications lodged and the number of planning scheme amendments undertaken. In the 2007/2008 financial year 885 planning permit applications were lodged and Council is now processing Amendment C102 with approximately a further ten applications in the pre-amendment phase.

Council therefore appreciates that a review of the Act is timely and needs to address a number of issues including those detailed within the discussion paper *Modernising Victoria's Planning Act* (discussion paper).

Council has reviewed the draft submission prepared by the Municipal Association of Victoria and at a whole of system level endorses the submission. Council is particularly aware of the issue raised within the Municipal Association of Victoria regarding the current cost burden placed on Council in administering the planning function.

For Council the current revenue derived from fees only equates to 25 percent of the cost of providing the service. While some of the cost of service provision can clearly be attributed to Council's responsibility to develop policy and strategy, a significant component of the revenue versus cost deficit can be attributed to the fact that planning permit fees and planning scheme amendment fees simply do not cover the cost of assessment, exhibition, administration and decision making.

Council also strongly endorses the Municipal Association of Victoria submission with respect to the role of Local Government and the need for this to be appropriately reflected in the Act. Not only are Local Councils the third tier of Government, but in relation to land use planning, Councils are the principal service providers and policy developers.

Finally, it should also be noted that the position of Government, articulated via intervention into Council planning process, and administered by the Department of Planning and Community Development is heavily skewed in favour of the development industry to the detriment of community outcomes. While this trend has been ongoing for some time this has been further highlighted, and taken to a new level, in response to the current Global Financial Crisis. Over the past two months the Minister for Planning has 'called in', and made decisions on 10 planning matters that were being managed by Local Government.

The practice of ‘calling in’ may have merit in certain circumstances, but only if the Government also takes responsibility for providing an appropriate level of industry development. An accredited industry development program comprising a range of training and development programs could provide surety to Local Government and the community that where a matter is called in the proponent has undertaken the appropriate level of research and prepared documentation in relation to the proposal to ensure the probity of the process.

Currently the land use development industry in terms of investigating land suitable for rezoning is largely unregulated and primarily driven by profit, not the objectives of planning in Victoria.

Scope of the review – a new car or a major service?

1. Question

- Do we need a new car or a major service?

Response

- The discussion paper poses the question of scope in terms of a complete overhaul or an upgrade and suggests that the upgrade or major service is the preferred outcome. Council has some concerns as to whether this premise will ultimately have the result of ruling out new thinking and result in a tweaking of the *Act* rather than seek to comprehensively address the myriad of systemic issues causing blockages at the present time.

Is land still the focus?

2. Question

- Is use and development of land still the focus of the *Act*?

Response

- The *Act* sets out a framework for the management of land use and development via bodies (with rights, roles and responsibilities), instruments (regulations, Victorian Planning Provisions, planning schemes and Ministerial Directions) and processes (planning scheme amendments, permits, agreements, compensation and enforcement).
- The objectives of the *Act* bring into consideration a wider range of considerations in relation to land use and development, however many of these objectives are then not supported via the decisions of bodies, the directions contained within the instruments or the guidelines or legislative direction for undertaking the processes.
- The discussion paper clearly articulates on page 16 that a number of significant issues facing Victoria are not currently referenced in the *Act*; however it is posed that the existing objectives encompass these matters.
- As the objectives of the *Act* are not entirely supported this means that valid and necessary considerations can be excluded from consideration via submission of legal or expert evidence.
- Primarily it is matters such as housing affordability, and health and well being that form part of a holistic approach to land use and development that are not supported within the current structure of the legislation.
- It is also useful to reflect that the application of the *Act* and the interaction with the *Act* in relation to Transport planning has been largely ineffective over the life of the *Act*. This is clearly demonstrated by the fact that large areas of growth, particularly to the north and west of Melbourne, have advanced without effective road or public transport infrastructure.

What's in a name?

3. Question

- What does planning mean for Victoria today?

Response

- In the first decade of this century it appears that there has been a significant shift in the consciousness of the Australian public, primarily related to the acceptance of the range of thinking associated with environmentalist movement (encompassing climate change) that commenced in the middle of the previous century.
- This shift brings with it high expectations of what Government can achieve and how, and a broader understanding of the responsibilities of individuals and the community.
- In this context planning means the consideration of all social, economic, environmental and governance aspects of land use and development proposals with a view to ensure that the outcome does not outweigh the impact on any of these areas.

4. Question

- Is the role of legislation in a modern planning system substantially similar to that described in 1987?

Response

1. On balance it could be considered that the role is substantially similar, however it is our understanding of how matters interrelate and impact that has increased over the past two decades that means the interpretation of what was intended to be delivered in 1987 is now broader and more comprehensive than envisaged at the time.

5. Question

- Should the name of the Act better reflect the role of the Act in managing land development?

Response

- What's in a name?¹ In reflecting on this question this quote from Shakespeare provides some direction, as essentially the content and direction provided by the Act is the key matter, not the name of the Act. It would seem torturous or tricky to determine a name for the legislation that embraced the aspirations of the planning sector, developers and the community. On this basis it may be prudent to determine that the Act is the Planning Act, and that the direction contained within the Act clearly addresses all other aspects either directly or through subordinate instruments.

¹ Romeo and Juliet, William Shakespeare, 1594

6. Question

- Is the principle that the planning system is about planning land still an appropriate starting point?

Response

- Previously addressed (questions 2 to 4).

7. Question

- Have there been changes which suggest a different role for the planning system?

Response

- The discussion paper on page 12 articulates a number of factors that should be considered in the review and the items raised in response to questions 2 to 4 should also be considered.

8. Question

- If so, what should that new role be?

Response

- The planning system should effectively support a quadruple bottom line approach to assessment in accordance to the merits of the proposal being considered.

9. Question

- Should the scope of planning legislation be widened to include other matters?

Response

- The scope of the legislation should enable integrated assessment and bring to effect decision making under a range of legislation relevant to a proposal provided that the primary decision is with regard to land use and/or development.
- This would ensure that broader social, environmental, economic and governance considerations and requirements could be delivered through one process and effectively reduce the regulatory burden.

10. Question

- If so, what should they be, and why and how do they need to be covered in legislation?

Response

- Land use and/or development proposals can required a number of approvals including:
 - Coastal Management Act Consent;
 - Cultural Heritage Management Plan approval;

- Environment Protection Authority Approvals
 - Water Act permits;
 - Flora and Fauna Guarantee Act permits;
 - Gaming machines ;and
 - Liquor Licensing, etc.
- While it may not always be practicable or desirable to bring all approvals into one process, with appropriate guidelines consideration of these matters through one process or a combined process could be delivered through the *Act*.
 - Matters that are either currently not covered in the scope or are only just emerging include housing affordability and health and well being.
 - With respect to housing affordability it is probably not possible to utilise the *Act* alone to achieve increased levels of affordable and social housing across Victoria. However the *Act* could be strengthened and supported by an appropriate tool (articulated in the Victorian Planning Provisions) that would enable Responsible Authorities to determine outcomes in these areas through planning scheme amendments, large subdivision proposals or development applications.

11. Question

- 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?

Response

- Planning should be undertaken holistically and matters relating to community, education and health facilities, provision of services and transport are key ingredients if the outcome is to achieve sustainable and resilient communities.
- While the inclusion of these aspects may not require a legislative leg up, it is suggested that agreements and combined strategic planning could be instituted to improve the outcomes in these areas.

Are the objectives of planning in Victoria still relevant?

12. Question

- Are the objectives of planning in Victoria still relevant?

Response

- The objectives provide a clear understanding of what the *Act* sets out to achieve and remain relevant. As previously discussed it is the change in our understanding of how these objectives should be applied that has shifted.

- The main area that is not appropriately reflected in the objectives is social planning.
- It appears that where the objectives are not being effectively realised is due to the failure to develop tools within the Victorian Planning Provisions or policy within the State section of Planning Schemes to achieve the intended outcomes.
- The development of appropriate tools within the Victorian Planning Provisions could be utilised to achieve better outcomes in areas such as affordable and social housing.
- As detailed in the Municipal Association of Victoria submission the objectives could be reviewed to ensure that appropriate recognition is given to the role of Local Government in the planning process.

13. Question

- Are the objectives for Victoria's planning system still relevant?

Response

- The objectives for Victoria's planning system remain relevant and the response to question 12 above also applies to this question.

14. Question

- Have significant words such as *environment*, *social* and *economic* changed in the way they relate to land use planning and, if so, how?

Response

- As previously discussed the understanding of the meaning of these words has broadened, and also been further quantified by development of Government policy over the past decade.
- The expectation of the community is that consideration of proposals will occur within this broadened understanding, and not be packaged into a technical planning compartment.

15. Question

- Is there a need to include more specific objectives about matters like culture, heritage or cultural heritage protection in the Act?

Response

- The objectives clearly cover these matters, it is again the tools, processes and governing arrangements utilised to achieve the objective that could be reviewed in order to achieve better outcomes.

16. Question

- 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?

Response

- These matters should be included, however as discussed earlier it is more likely that the further development of appropriate tools will be more effective in achieving positive outcomes than tweaking the objectives.

Permits

17. Question

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

Response

- The current one size fits all process is not delivering effective outcomes. Assessment of a planning permit for a shed utilises the same process as for a multimillion dollar development (where the zoning provides for such a development).
- However the multimillion dollar development is likely to be submitted with a stack of reports half a metre high, which all require review and assessment.
- This means that the current process of decision within 60 days does not provide for the detailed review and assessment and can result in an increased level of applications proceeding to the Victorian Civil and Administrative Tribunal for failure to decide.
- This could be partially offset by the introduction of a formal pre-application process detailed in legislation. If a formal pre-application process accompanied by fees was included in legislation it could ensure that the proposal was appropriately refined prior to lodgement, therefore enabling decision making within the required time criteria.
- It should also be noted that depending on the delegation arrangements within Councils large applications are usually required to be formally decided at Council meetings. This increases the time prior to decision and costs to Council in decision making.

18. Question

- 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?

Response

- As discussed above a 'short' permit process is not the only option, formal pre-application processes could be utilised to provide a pathway for complex applications, and therefore free resources for the assessment of minor applications under the current provisions.
- If a 'short' process is to be considered as detailed in the discussion paper then it should be noted that while the process maybe shorter the costs could be higher. This is particularly with respect to the proposed on-site appeal.
- Council strongly supports the suggestion that the 'short' process include the ability for the responsible authority to refuse to accept an incomplete application. It is considered that the *Act* or a subordinate instrument should clearly articulate the criteria that the responsible authority can utilise to reject any application that is incomplete, not just those that may be subject to a new 'short' process.

19. Question

- What are the other options for streaming applications?

Response

- Suggestions for the review include:
 - a range of processes for assessment depending on the complexity of the application;
 - different decision making criteria for simple and complex applications;
 - different statutory timeframes dependent on complexity of applications; and
 - different application forms to acquire more information at lodgement (and reject inadequate applications).

Lodging an application

20. Question

- Do the information requirements for making an application need to be changed to improve the quality of applications?

Response

- In Council's experience it is clear that the current direction provided by the *Act*, the Department of Planning and Community Development and Local Government does not result in receipt of quality applications.
- A clear description of what is expected should be detailed within the regulations and supported by a subordinate instrument such as a Ministerial Direction.

- This should result in a clear understanding of the information requirements and reduce variability in the process between different State and Local Government bodies.

21. Question

- Should the responsible authority have discretion to reject applications that are incomplete or inadequately prepared?

Response

- The criteria to reject an incomplete application should be clearly articulated within the *Act* and supporting instruments.
- The fact that this matter is not clearly articulated enables both the development industry and Local Government to manipulate the system, this can be demonstrated where an incomplete application is quickly taken to the Victorian Civil and Administrative Tribunal for failure to decide. The intervening time between application to Victorian Civil and Administrative Tribunal and the hearing date is then utilised to further develop the application without the application of the principles of natural justice contained within the *Act*.

22. Question

- Is a more comprehensive application form needed?

Response

- The application form currently covers off the necessary areas but is poorly utilised by applicants.
- This could be addressed via an industry development program and the application of the measures suggested in response to question 20.

23. Question

- Would a system of pre-lodgement certification by private practitioners be an effective way to improve the standard of permit applications?

Response

- A pre-lodgement certification process is certainly one response to managing this aspect of the process, however a one size fits all approach is not the best way forward. The suggestion detailed in response to question 17 detailing a formal pre-application process for substantial applications should also be considered as part of any reform in this area.

Notice of an application

24. Question

- Are streamlined notice requirements for certain types of applications required?

Response

- Streamlined notice requirements could be considered if appropriate guidance is provided in the *Act* or subordinate instruments, such as the regulations.
- Material detriment can be broadly interpreted and encourages council's to be cautious in undertaking advertising of applications.
- If greater guidance or interpretation of the meaning of material detriment is provided then exemptions or streamlining could be provided for applications that comply with the planning scheme or are deemed to be simple.

25. Question

- Should the responsible authority have more discretion in deciding who should be notified, in what manner, and how long should be allowed for submissions?

Response

- If the suggestions detailed in response to question 24 above are considered and implemented then the scope for discretion by a responsible authority will be clear.

Objections

26. Question

- Should the term objection be changed to submission?

Response

- Essentially, this is a matter of interpretation; a change to submission may suggest that the reasons for being concerned about an application are more general. On the other hand, many members of the community do not like the retaliatory connotation of the word objection and are therefore discouraged from engaging in the planning process.
- This could be addressed by a greater focus from Government in supporting the community to understand the planning process. Either by training and seminars tailored to the public or funding Local Government to provide these at the local level.

27. Question

- Should the responsible authority have a greater discretion to reject an objection?

Response

- The current legislation provides little discretion and when put into practice there is no discretion.
- Where it is clear that the underlying nature of an objection is in relation to commercial advantage, the objection is generally dressed up in the Emperors New Clothes to appear as a genuine objection.

- This then causes councils to be cautious in the application of the Act, and consider these objections as valid. It is considered that this section of the Act or a subordinate instrument should be strengthened to enable greater discretion.
- There are also other matters that should be addressed such as when it is clear that under another form of legislation or jurisdiction the objection would be considered vexatious or frivolous.

28. Question

- Should an objector be required to provide more specific information about how they might be affected by a proposal in their objection?

Response

- The application of such a measure would need to be very carefully considered, due to the generally low level of knowledge and understanding of the planning system in the community; it could be construed as gate keeping for the purpose of private gain.

Referrals

29. Question

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

Response

- The current provisions within the Act are appropriate; however the application and understanding of the requirements are not necessarily well applied.
- This is an area of sector development that could be improved via an appropriate program delivered by the State Government. Action in this area would be supported by the original 'A Fairer Victoria' (2005) policy statement in Strategy 14 which articulated how the State Government would develop better ways of working together at the local and regional level.
- To date whilst the Regional Management Forums have been established there has been no demonstrable improvement in how Government departments, agencies and authorities work together with Local Government on management of the referral process.
- While improvement opportunities have been explored, they have not necessarily been given the appropriate weight by senior management to ensure they are effectively implemented.

Making a decision

30. Question

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

Response

- While the Act can certainly be strengthened in this area it is probably more suitably addressed via subordinate instruments.
- As previously articulated in response to various questions the need for the Act and subordinate instruments to clearly articulate the basis of assessment comparative to the proposal is a clear area for further consideration.

31. Question

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

Response

- Yes, as previously discussed this is an area that needs serious consideration and reform.

32. Question

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

Response

- No, as previously discussed this is an area that needs serious consideration and reform.

Conditions

33. Questions

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

Response

- The abundance of legal discussion, opinion and determination on this matter clearly demonstrates that this area needs to be reviewed and clarified.

34. Question

- 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?

Response

- The *Act* should provide clear guidance about how contributions can be simply applied by responsible authorities without the need for planning scheme amendments for development on non greenfield land.
- Any changes to the *Act* with this respect need to be clear and be supported by processes that are simple and transparent.
- The changes need to ensure that the contribution can be legally applied without review unless it is clear that there is no nexus between the contribution and the development.
- The *Act* should enable consideration of works or contributions that are not currently classified as 'public works' but as a result of the works a clear public benefit is achieved. These would include onsite drainage systems and construction standards for driveways.

Amending a permit

35. Question

- 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?

Response

- The process should allow for amendment by responsible authorities provided that the intent of what the permit allows for is not changed by the amendment.

36. Question

- Should section 216 now be repealed?

Response

- To improve consistent and reduce the burden of regulation it would advantageous to repeal this section.

37. Question

- Should the *Act* set the principles for when the use of a secondary consent permit condition is appropriate?

Response

- Again given the abundance of legal discussion, opinion and determination with regard to this issue the *Act* or subordinate instruments should be amended to provide greater clarification in this area.
- On this matter and many others the *Act* does not provide clear direction which enables the manipulation of outcomes via legal argument. This takes planning out of

the simple and understandable realm into the legalistic realm, which reduces the ability to achieve the objectives of planning in Victoria.

38. Question

- Is there a need to provide a process for seeking and recording secondary consent approvals?

Response

- The current provisions for amendment could be utilised or adjusted to provided greater clarification of process.

39. Question

- 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?

Response

- The management of amendments should be clarified, particularly with respect to amendments seeking revised conditions.
- The Act could provide greater clarification in this area and allow for a process that only requires notification of the amendment when it is clear that the removal or alteration of the condition/s would impact neighbouring landowners/residents or the community.

Enforcement

40. Question

- Could a register of enforcement orders reduce non-compliance?

Response

- Given that the discussion paper details little discussion regarding enforcement it is unclear what response this question is seeking. It would seem to be suggesting a 'blame and shame' approach in the absence of any development of guidelines, policy or direction.
- It is clear that the area of planning enforcement is in the development stage and the recent report of the Victorian Auditor General regarding the Enforcement of Planning Permits provided the first real direction regarding this matter.
- The review should consider this report and the need to provide greater sector development opportunities and guidance in planning enforcement.

41. Question

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

Response

- Essentially the review should be cognisant and respond to the review of the Victorian Auditor General and consider providing greater delegation or autonomy to responsible authorities in managing the enforcement role, whilst ensuring that the principles of natural justice are observed.

The amendment process

42. Question

- What steps in the process should have a statutory time requirement and what would be a reasonable requirement to impose?

Response

- As the current Act only articulates a timeframe in relation to when an amendment will lapse and there is no clear subordinate instrument that articulates what must be provided by an applicant when lodging an amendment this question appears to be posed in a policy vacuum.
- Legislating timeframes needs to be carefully considered as over recent years there has been a significant shortage of planning professionals. This means that legislating timeframes in the absence of a comprehensive strategy that seeks to raise the profile of the planning profession the implementation of timeframes could result in poor outcomes.
- In this respect it is suggested that a comprehensive career promotion strategy is developed as the first step towards the introduction of timeframes, such a strategy at a minimum would need to:
 - raise the profile of planning as a of degree choice to secondary students (years 10 to 12);
 - ensure that the curriculum content of degree courses includes all essential elements of the practice (including a unit on planning in the Local Government environment); and
 - promote planning as a career pathway.
- It is also important to provide clearer direction in relation to the documentation required to be provided at lodgement. This should be provided as both a regulation, such as the approach taken in the *Aboriginal Heritage Regulations 2007* and supported by clear guideline.
- Without these measures consideration of legislative timeframes is unjustifiable.

43. Question

- What should happen if a time requirement is not met?

Response

- See response to question 42 above.

Requesting and preparing an amendment

44. Question

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

Response

- See response to question 42 above.

45. Question

- Should an amendment request form for proponents be introduced?

Response

- As detailed in question 42 a further direction is required to ensure that lodged amendment requests include all information required. This measure would be well supported by a well designed form.
- Bass Coast Shire has implemented an informal application form for planning scheme amendments based on the existing practice notes and guidelines dealing with Strategic Assessment Guidelines – April 2008.

46. Question

- 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?

Response

- While there is no body of evidence provided detailing that planning authorities are refusing to proceed with amendments for reasons other than that the proposal has no strategic support, the principles of natural justice provide guidance that a right of review should be available.
- This process should be undertaken at the regional officer level in the Department of Planning and Community Development. This would provide independence but also incorporate familiarity with the strategic issues affecting the particular Local Government Authority.
- Published guidelines would need to be implemented to ensure that the review is undertaken in a transparent and effective manner.

Authorisation

47. Question

- Is more guidance or criteria about the role and purpose of the authorisation step required, and should this be in the Act?

Response

- Definitely, the current situation allows for decisions to refuse authorisation to be made without clear reasons being provided.
- In some instances this would appear to reflect that the staff of the Department of Planning and Community Development are unclear with regard to how to assess whether an amendment should be authorised.
- This is particularly apparent where an amendment under Section 20 of the Act is requested. The internal delegation of the Department of Planning and Community Development to staff appears to provide the opportunity for the decision under Section 20 to be made under delegation; however it is unclear as to the level of policy and procedure that underpins that delegation.

48. Question

- Should some types of amendments be exempted from this step? If so, which ones?

Response

- Procedural amendments such as 'fix-up' amendments should be managed as simple processes and not require authorisation or exhibition.
- These amendments could simply be managed in a similar way to submissions received in response to exhibition of Council documents, such as the Council Plan, and as articulated in Section 223 of the *Local Government Act 1989*.
- Straight rezoning requests that are within defined settlement boundaries, in accordance with incorporated Structure Plans, and supported by the strategic objectives of the Municipal Strategic Statement could also be candidates for exemption of the authorisation process.

49. Question

- Is there an alternative way of achieving the objective of the authorisation process?

Response

- As detailed in question 48 above in relation to procedural amendments.
- There needs to be a process if the current planning system is retained, so rather than invent a new process it would be preferable to undertake a major service of the current authorisation process. The aim of the major service would be to ensure clearer direction and eliminate duplication or regulatory burden.

- There may also be an opportunity to develop a checklist that would be filled out and submitted to the Department of Planning and Community Development, indicating compliance with the Strategic Assessment Guidelines.

Exhibition

50. Question

- Is more guidance about how notice of a proposed amendment should be given needed? Should this guidance be included in the Act or in guidelines?

Response

- Further guidance is warranted as the topic of notice is often discussed in Planning Panel reports. This level of guidance should be in the form of guidelines or a subordinate instrument, such as a Ministerial Direction, though there is probably scope to refine the wording within the *Act*.

51. Question

- What changes would lead to more efficient and effective notice of an amendment?

Response

- The ability to, as warranted, provide notice via electronic means, such as via e-mail and the World Wide Web.
- Council currently compiles databases of persons interested (with permission of the person) in strategic planning processes, whether it is a general or a specific interest.
- These databases could be utilised to direct the person to an online information repository where all the relevant documentation is held.
- This could then reduce the current limitations of providing hard copy information that does not always reproduce well and carries a significant administrative burden.
- In moving to this pathway it should be recognised that not all communities have equitable access to broadband internet connections and would need to be phased in over time.

Submissions

52. Question

- Should a planning authority be able to reject or disregard irrelevant submissions?

Response

- Similar to the planning permit process and as detailed in question 27, this discretion should be provided.

53. Question

- Should a structured form for making submissions be introduced?

Response

- It would be preferable that a structured form is provided, however the comments provided in response to question 28 are also relevant.

54. Question

- If a panel is established, should a planning authority be required to refer all submissions to the panel?

Response

- As detailed in question 51, those submissions that are rejected should not be required to be submitted to a panel.

55. Question

- Should submissions which support an amendment have the same status as those submissions that object to or propose changes to an amendment?

Response

- Only where it is clear that the party making the submission does not have a vested interest or conflict of interest. This guideline should also apply to submissions objecting to the proposal.

56. Question

- Should a panel have the ability to review and make recommendations about the overall amendment proposal?

Response

- Definitely as this is part of the benefit of the panel process. However, there should be a limitation that ensures that recommendations or discussion provided by the panel does not provide commentary on matters that have no relevance or impact on the matter being reviewed.

57. Question

- Should the Act facilitate 'on the papers' panel hearings where appropriate?

Response

- Yes, this can streamline the process considerably where there are only a few submissions.
- However this should also be supported by capacity development and support as some submitters may not have the capacity to actively engage in the written form.

58. Question

- Should all amendments be reviewed by an independent panel?

Response

- No, however, combined with the current provisions of the *Act* there should be the capacity for a responsible authority to refer an amendment that has not been subject to submissions but poses significant policy questions to review if required.

Assessment and adoption

59. Question

- 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?

Response

- This is a complex matter and requires considerable thought, there can be an assumption in the community that once a planning authority has decided to proceed with an amendment that this decision implies that the authority supports the amendment.
- In addressing this issue it is probably worth considering whether the *Act* or subordinate instruments should provide greater clarity or guidance regarding the decision to abandon an amendment.
- However, in any process it is possible that new information, policy or legislation may come to pass that means that the amendment should be abandoned, and to ensure that the process is not overly burdensome; the planning authority should be clearly empowered to end the process.
- If there is rationale for a review in this matter, the decision should be made by an independent body and the Minister is not always able to fulfil that role.

60. Question

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

Response

- Only under certain circumstances, and the comments provided in response to question 59 should be taken into account.

Approval

61. Question

- Is the opportunity for some amendments to be approved by the planning authority an effective means of reducing delay?

Response

- The process requires further refinement and the comments provided in relation to question 59 should be taken into account.
- This process does not currently provide any time saving. The certification process, and the additional handling by Council between adoption and approval has not reduced the time needed to process the amendment.

62. Question

- Is the requirement for an amendment to be certified by the Secretary of DPCD necessary, before a planning authority can approve its amendment?

Response

- Certification is essentially about ensuring that the amendment is in the prescribed form, and on this basis the role could be undertaken by the planning authority, Department of Planning and Community Development or a private business that has been accredited to provide the certification.

63. Question

- How could this step in the process be streamlined?

Response

- As detailed in question 62 above.

Monitoring and review

64. Question

- 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?

Response

- Reviewing the content of schemes is an important and relevant task; however, given that the current process of amending planning schemes can be lengthy, further thinking about how the review is undertaken and how the review can be utilised to set the agenda for future reviews should occur.

- If the agenda of the next review, including the evaluation criteria that will be utilised to assess the performance of the review, is set at the time of review, then it may be possible to streamline the process.
- Adopting this style of project management methodology could provide greater clarity about the purpose of the review and remove elements of duplication, or second bites of the cherry.

A proactive or reactive approach?

65. Question

- Would there be benefits in creating a specific planning process for the assessment of State- significant projects?

Response

- Providing greater transparency in this matter is warranted and therefore further thought on an appropriate model should occur.
- It would be important to develop key criteria for establishing what a State-significant project is. Current practices seem to only take into account the 'bigness' of the project, in that, they appear to be projects where the economic benefits of the project are potentially undermined by social or environmental concerns.
- A key matter for consideration is developing a model that still enables the relevant Local Council to be involved in the decision making process to ensure that the concerns and aspirations of their community are considered.
- It is also necessary to consider how the independence and separation of the process is managed. While the *Environmental Effects Act 1978* provides a process for assessment, the process can be influenced by Government decisions made outside of the *Environmental Effects Act 1978*, such as articulation of timeframes that impede on the decision making process.

66. Question

- What process should be followed for deciding which projects which are of State significance?

Response

- The steps articulated in the discussion paper under the New South Wales system provide for a starting point for developing a process.
- If the matter is of State significance then an independent panel should be a mandatory step.

67. Question

- What is the most suitable process for evaluating and deciding State-significant projects?

Response

- An independent panel.

68. Question

- 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?

Response

- Draft Guidelines that articulate how and who will make decisions should be developed and circulated for comment, this would enable the teasing out of the best form of the model.
- The decision making process should not exclude the relevant Local Council and this should be included within the legislation.

Governance and decision-making

69. Question

- Should there be more options for how decisions are made on permits, amendments or matters for review?

Response

- Yes, including best practice guidelines for delegation of decision making within State and Local Government.
- Comments previously in relation to this topic are also relevant to this section.

70. Question

- How should the options be tailored to more closely correspond with the level of assessment required for the proposal?

Response

- As detailed above.

71. Question

- What decisions could be made by appropriately trained non-professional officers?

Response

- Simple ResCode applications, such as two unit developments, where the land has been zoned in a way that reflects that an intensification of use will occur (Residential Zones Review – incremental or substantial change zones).

Private certification

72. Question

- 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?

Response

- The further involvement of the private sector in planning should only be considered if appropriately robust regulations are developed to govern the operation of the private sector, and that these regulations do not impose an additional unfunded burden on Local Government.
- The current role that Local Government plays in regulating the private building surveying sector is growing particularly with increases in episodes of non-compliance experienced due to 'boom market' or other economic factors.

73. Question

- Should privately certified planners be able to assess and decide certain planning consent matters?

Response

- Only if the matters detailed in question 72 are appropriately addressed.

Registration of planners

74. Question

- Should a formal system for the registration of planning professionals be introduced in Victoria? If so, how would this system work and what should it apply to?

Response

- Registration is commonly utilised to raise the profile and professional standing of a profession, as well as to provide surety to the customers utilising the system that the advice and work undertaken will be in accordance with all legislative and business requirements.
- On this basis the idea should be further explored, and if it is decided to proceed should apply equitably to planners working in the public and private sector.

- Consideration of how and when to implement a system of registration needs to be informed by the response to question 42.

75. Question

- Should certain planning decisions be required to be informed or made by planning professionals with prescribed qualifications?

Response

- To a certain extent this currently occurs through the provision of expert evidence at the Victorian Civil and Administrative Tribunal and at Planning Panels.
- The need to understand the cost burden and who pays the costs should be thoroughly explored prior to implementing any new provisions.

Section 173 agreements

76. Question

- Are the options recommended by the 2004 expert group appropriate?

Response

- The recommendations remain valid and should be implemented.

77. Question

- What else could be done to improve the operation of agreements?

Response

- Allow for electronic processing and lodgement.

Facilitating e-planning

78. Question

- What aspects of the Act need to be adjusted to facilitate e-planning initiatives?

Response

- The key issue will be how the *Act* determines the lodgement date, this needs to consider how an electronically lodged application can be considered as complete and that the appropriate fee has been paid.
- Privacy issues and what information is actually required to be available publically also need to be considered.

Access to planning information and privacy issues

79. Question

- What should be the obligations of planning and responsible authorities to provide access to relevant planning information and how should this information be made available?

Response

- As all levels of Government have implemented or are implementing electronic document management systems the *Act* should allow for the provision of information in electronic form to enable large numbers of physical files to be moved to long term storage.
- This will be greatly assisted as more and more applications are made in electronic form and could be facilitated by the location of computer terminals in Council customer service areas that allow for public viewing of documents.

80. Question

- What is the reasonable extent to which documents that contain personal information, such as the name of an applicant or an objector, should be publicly available?

Response

- The level of personal information available in planning applications is not required in order for the proposal to be assessed, however it is useful for ensuring that the land and proposal are appropriately identified and records can be maintained effectively.
- To ensure the privacy of members of the public who have reason to retain security of personal information, such as those escaping domestic violence, there should be provision in the *Act* or Regulations to allow for the information to be supplied but withheld from the public.
- Guidelines would need to be developed to ensure that the process is effectively and uniformly applied.

81. Question

- Should planning authorities or the Government be required or enabled to collect certain data, and for what purposes?

Response

- The current Planning Permit Activity Reporting system captures information that can be utilised for formation of policy, process or monitoring trends. The *Act* or Regulations may need to be changed to ensure that the personal information collected through this process is effectively managed from a security perspective.

Cash-in-lieu schemes for car parking

82. Question

- Is a simplified system for securing cash-in-lieu payments for car parking needed?

Response

- Yes, car parking assessment and consideration can involve substantial resources and create delays in the planning process.

83. Question

- Does the Act need to provide a fit-for-purpose head of power for this system to work?

Response

- The Act could be utilised to provide the guidance for a simplified system, however the drafting of the legislation and subordinate instruments would need to be informed by the complexity associated with the Development Contributions framework.
- If similar legislation and instruments are utilised then it is unlikely that the process will be simplified or reduce regulatory burden.

84. Question

- Are the tests for this system as recommended by the Advisory Committee appropriate?

Response

- Provided that the application of the tests is not entirely enclosed in legislative direction, as this would have a significant administrative burden and not allow for information such as cost to be readily indexed. A schedule to the regulations could be utilised as this process is far quicker.

Interaction with other legislation

85. Question

- Are there areas where the operation of the Act is in conflict or produces inefficiencies in the interaction with other legislation?

Response

- A review of the interaction between the Act and a number of other pieces of legislation with a view to where possible streamlining decision making is warranted. These include:
 - The Aboriginal Heritage Regulations 2007;
 - The Pipelines Act 2005;

- The Liquor Control Reform Act 1998;
 - The Extractive Industries Development Act 1995; and
 - The Gambling Regulation Act 2003.
- With respect to liquor licensing the provision provided within the planning scheme is simply a duplication of the licensing process and does not add any great value to the community. Essentially the limitations around decision making result in Council being a toothless tiger, the decision making guidelines should be reviewed to enable greater consideration of local issues or the section of the scheme removed.

Other identified issues

86. Question

- What other opportunities not discussed or listed in this paper would improve the operation of the Act?

Response

- A comprehensive sector development program needs to be implemented to improve outcomes; this program should be focused on the emerging participants in the industry (those currently in secondary and tertiary education), the development industry and the public sector (State and Local Government).
- As can be seen by the examples provided in the discussion paper and a tour of the Department of Planning and Community Development website the analysis of the planning system has been constant over the past decade, however little of this analysis has resulted in real change.
- It is recommended that through the review of the Act Government formulates a Planning Reform Strategy that articulates the priority actions and that funding is provided to implement those actions.