

6 May 2009

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Planning and Environment Act Review
Statutory Planning Systems Reform
Retail Policy Review
Department of Planning and Community Development
GPO Box 2392
MELBOURNE 3001

Dear Sir/Madam

**MODERNISING VICTORIA'S PLANNING ACT (PLANNING AND ENVIRONMENT ACT
REVIEW)**
YOUR REF PL-PL/04/0326

The City of Stonnington encourages and supports a review of the Planning and Environment Act.

Attached is Council's written submission to the review, which was adopted by Council on 4 May 2009. Council further wishes to express concern with the recent intervention of the Minister into the local decision making processes, as this decision making deviates from the established practice and process that sees local Councils determine applications and if required, VCAT arbitrating appeals.

If you have any inquiries relating to this matter, please contact Harry Polydorou - Project Planner on (03) 8290 3587 or email hpolydor@stonnington.vic.gov.au

Yours sincerely



Stuart Draffin
Acting Manager Strategic Planning

Att

Coversheet for a submission on the Planning and Environment Act Review

Name: **Harry Polydorou**

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Organisation (if applicable): **City of Stonnington**

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Position title (if applicable): **Project Planner**

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Which of the following best describes you? (please mark)

- General public
- Community-based organisation
- Local government**
- Planning or development industry organisation
- Individual or company involved in the development industry
- Planning or development consultant
- Other, (please specify).....

Please note the section on "Publication of submissions" on page 2.

Modernising Victoria's Planning Act (Planning & Environment Act Review)

Submission by City of Stonnington (April 2009)

1.0 INTRODUCTION

The City of Stonnington welcomes the review of the Planning and Environment Act and believes that the Act currently serves well, however some amendments could be made to improve function and efficiency.

Every year Victoria produces more than 40 million tonnes of greenhouse gas into the atmosphere. Per capita, that makes Victoria one of the world's worst polluters. Planning in Victoria today should consider environmental issues that are associated with and arise from land use and development planning. Such issues include climate change, sustainable living, sustainable transport, etc. Planning also means managing the regulatory framework and providing advice on planning policy, urban design and strategic planning, as well as information on land development and forecasting.

A prerequisite for achieving sustainability is for land use planning and development to interact with other aspects of planning. The concept of an integrated and streamlined development assessment system and an integrated whole of government approach to land use and infrastructure planning may in practice be too complicated as an efficient system. Philosophically, however, federal and state legislation should define and embrace fundamental aspects of planning, such as transport planning requirements, as part of broader assessments.

2.0 RESPONSE TO KEY QUESTIONS RAISED AS PART OF THE MODERNISING VICTORIA'S PLANNING ACT DISCUSSION PAPER

The permit process

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

There is merit to changing the permit process so that it is more responsive to the scale and complexity of proposals. Some planning applications are minor and do not require advertising and/or referrals, and a processing time of within 60 days of lodgement (as required by the Act) may be considered onerous and excessive for the applicant. However, more complex applications cannot be reasonably assessed by Council within 60 days, and such applications tend to be appealed under a failure of the Responsible Authority to determine the application in the statutory timeframe prior to the Council either given the opportunity to further negotiate an outcome, or to form a decision. Complex planning applications required a number of internal and external referrals, notice/advertising and most call for an informal planning application conference to discuss and mediate issues raised during the process. Furthermore, many complex applications are delegated to Council for a decision, and Council meetings are typically held fortnightly which add to pressure against time when working within a 60 day processing time.

Planning applications could potentially be rated in terms of their complexity and a nominated assessment timeframe responsive to the scale and complexity of a proposal. However, such a system could go against the aim of this review as it could potentially add another layer of complexity to the classification and administrative operation of the permit process.

- 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?

There is merit in investigating a short permit process. However, a longer permit process should also be considered simultaneously for more complex proposals.

- What are the other options for streamlining applications?

Other options for streamlining applications could include the applicant receiving advice from relevant referral authorities prior to the lodgement of an application. However, applicants who are unfamiliar with the planning process may find it confusing or may not know that a referral is required.

Furthermore, certainty would need to be provided from the referral authority that the same plans are then lodged with Council.

Lodging an application

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

Information requirements for making a planning permit application must be changed as part of this review, as the current requirements do not allow for a reasonable level of information to practically commence an assessment of the proposal. Greater certainty and stringent clear direction will provide for a more transparent, efficient, and effective lodgement process.

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

Council should be able to reject applications that are incomplete or inadequate if a clear and transparent system is in place to outline application requirements.

Furthermore, the Act should allow for Councils to subtract an administration fee from the application fee if the lodged planning application needs to be returned, if it does not meet the application requirements of the Act and Planning Scheme.

- Is a more comprehensive application form needed?

A more comprehensive application form is considered unnecessary.

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

The City of Stonnington believes that a pre-lodgement certification system by private practitioners must not be considered for planning applications. Such a system would present a number of issues which could jeopardise the integrity of planning within an area and within the industry. A number of issues arise when considering pre-lodgement certification including a lack in consistency, the increased potential in conflict of interest and associated risk and the generation of expectation from the applicant. The building industry is in fact a good example of how such a system fails.

A number of Councils have trialed pre-certification systems and have not adopted the use of the system due to the number of evident potential issues raised during the process (Glen Eira).

Notice of an application

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

The Act needs to provide for greater clarification and a clear, transparent definition on the statutory clock start and stop times in relation to notice. For example if a Statutory declaration is not received in relation to notice etc.

Furthermore, as the Act lacks a clear definition of statutory start and stop times, the opportunity for inconsistency increases between Council's and at VCAT.

The *cutting red tape* suggestion to establish a three class notification system will further complicate the system and be at odds with the objectives of this review. New Zealand currently has in place a notification class system and this has proven to cause many issues, and is therefore currently under review. Furthermore, this may possibly lead to applications being split so to avoid notification of certain elements/stages of a building (i.e. earthworks, basements etc).

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

The responsible authority currently has sufficient discretion in deciding who should be notified, however, a specific timeframe could be nominated to clearly direct when a submission must be lodged by, as the current legislation allows for a submission up until a permit is issued. Furthermore, current legislation requires all adjoining and adjacent land owners/occupiers to be notified if the responsible authority decides to advertise purely due to one property potentially being affected by the proposal. Therefore greater flexibility is required to eliminate the need for excessive and unnecessary notice.

Objections

- Should the term objection be changed to submission?

The term 'objection' is clear from an administrative perspective. A change is not considered necessary or required.

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

The Responsible Authority should be provided with discretion and clear direction to reject an objection if the objection is not applicable. For example, overlooking concerns raised when an application is triggered by the Heritage Overlay and is therefore not subjected to a rescode assessment.

However, such discretion does come with risk. One possible method to overcome this risk is if Council dismisses the objection, then that objection could be subject to appeal at a prompt VCAT hearing for consideration.

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

It is felt that objectors currently tend to provide specific information on how they will be affected and Councils tend to provide guiding documents/information to assist objectors of the process etc.

Referrals

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

The Act may not be the most suitable mechanism to encourage a more effective and timely input from referral authorities. However, a review of the current operational process may be required to facilitate a more efficient system.

Furthermore, this review could look into allowing applicants to obtain a response from referral authorities prior to the lodgement of an application. E-planning initiatives may also substantially contribute to efficiency, particularly with subdivision applications.

Making a decision

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

The Act does not need to be altered to clearly set out a hierarchy of policy documents, as this is the responsibility of the Responsible Authority.

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

The Act should provide for different decision-making consideration for different classes of applications, particularly if the Act is amended to allow a varied process for a minor/major permit process.

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

As discussed above, simpler applications could be potentially processed within 60 days and more complex proposals require more statutory time for consideration. It is also important to note that each Council has a different deed of delegation which relates to the type of application which can be assessed by Council officers versus Council. More complex applications are usually referred to Council for decision making and this requires a greater amount of time to prepare reports and list the items for what is usually a fortnightly meeting.

Furthermore, there are currently no timelines specified in the Act to require the assessment of plans to comply/satisfy conditions of a permit issued.

Conditions

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

The review of the Act is a definitive and timely opportunity to provide clarification on the ongoing life of conditions on permits.

- 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?

The Act could potentially provide opportunities for allowing conditions which require payments that directly relate to the development. This may alleviate unnecessary administrative time, cost and complications on title. However, permit conditions must also be made stronger to alleviate any potential legal issues that may arise from such conditions.

Furthermore, the management of 173 agreements may also require review to ensure that sunset clauses are utilised to enable a 173 Agreement to expire (if suitable).

Amending a permit

- 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?

The review of the Act is a timely opportunity to address the urgent concerns/issues associated with section 72 amendments. A possible process to address efficiency and complexity could be that VCAT is notified by the Responsible Authority of Council's position on the amendment, and if VCAT are not satisfied this decision can be thereafter challenged. This would allow for a more timely and efficient amendment process for permits issued by VCAT.

Furthermore, this process could eliminate amendments to VCAT permits which are sought under secondary consent (which are clearly not secondary consent) however challenged as being a secondary consent matter in an attempt to avoid VCAT.

- Should section 216 now be repealed?

Yes, section 216 should be repealed.

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

The Act should provide for a greater level of clarity and direction with respect to secondary consent permit conditions.

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

There is a need for providing a process for seeking and recording secondary consent approvals. However, if the Act is amended to review Section 72 amendments as discussed above this could allow the Responsible Authority to amend permits and therefore alleviate the use of secondary consents.

- 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?

The currently system is working adequately and is considered to be simple and effective.

Enforcement

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

Such a register would be considered irrelevant to the main aim of reducing non-compliance and tightening up current systems in place.

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

The enforcement process is not considered to work efficiently and effectively and it therefore can potentially not be taken seriously. The Act needs to be firm as enforcement is a resource intensive process which is lengthy and difficult.

The following amendments to the Act could potentially make the enforcement process more effective:

- Increase in penalty units under section 130 to potentially deter a breach of the Act. This is of particular concern with major projects as the penalty units are relatively minor in comparison to the scale and cost of the project.
- Remove the possibility of applying for a retrospective permit and require that the land be restored to its former condition prior to lodging a planning permit application for the proposal. Awareness of this flaw in the Act does not deter breach for illegal use and development of land. This would align the Planning

and Environment Act with the current building regulations (see building manager).

- Potentially introduce a retrospective permit application fee which is substantially above the normal application fee (as some applications don't even require a fee) to deter a breach of the Act above and beyond the issue of a penalty unit.
- Reduce discretion available to the Magistrates Court to reduce and decrease penalties issued by the Responsible Authority.

Planning schemes and the amendment process

The amendment process

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

In the State Government's report *Cutting red tape in planning* (August 2006), the Government committed to action to reduce amendment timeframes and documentation. There is potential to reduce timelines for authorisation of amendments and any subsequent approval of amendments.

The Ministerial authorisation phase of planning scheme amendments could potentially involve a timeframe for different classes of amendments (as one amendment could potentially involve x number of items etc). However, it may be seen more reasonable to only place a timeline on minor based amendments.

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

Dependent on the request and the amendment in question, if authorisation is not received, the amendment can proceed to the notice phase and if the Minister thereafter declines authorisation to proceed, it must be done prior to the close of submissions to ensure a Panel is not called.

Requesting and preparing an amendment

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

More guidance would be useful for external applicants, however, this information could form part of a practice note. The Act currently only specifies requirements of information for exhibition and notice of amendments. Similar information is usually requested by the Minister as part of the authorisation phase. If a time line is placed for Ministerial authorisation, greater certainty may be required by the Minister for the level of information which forms part of an authorisation request. The Act could request more certainty/clarity on what information needs to accompany the lodgement of a request. However, this information is more suitable for a practice note.

- Should an amendment request form for proponents be introduced?

A letter template is currently available online and is considered sufficient.

- 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?

The proponent has the ability to seek the Minister to consider an amendment as an independent body to take on the request.

If a review process is introduced this may encourage requests which may undermine the Responsible Authorities role to consider if the proposal has adequate strategic justification and net community benefit.

Authorisation

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

The Act should detail the purpose of the authorisation phase to ensure that the authorisation step provides an initial assessment of the strategic merits of a proposed amendment rather than a detailed assessment. This will relate to the level of information required and also timelines that form part of an authorisation phase if implemented.

- Should some types of amendments be exempted from this step? If so, which ones? &
- Is there an alternative way of achieving the objective of the authorisation process?

Rather than exempting certain types of amendments from authorisation, perhaps greater clarity could be provided on what type of amendments fall outside the grant of authorisation.

Exhibition

- 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?

Section 17 of the Act is considered to be fairly clear in terms of notice. However, greater clarification could be provided on when a sign on the site/s affected by the amendment is considered necessary.

Submissions

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

The current system requires a Panel to be called even if the submission is irrelevant to the amendment. Costs and preparation time associated with a Panel process is onerous. The planning authority could be provided with the ability to disregard irrelevant submissions, however, clear direction needs to be specified on when this could and could not apply.

- Should a structured form for making submissions be introduced?

It is not considered necessary to put together a structured form for making a submission. Councils usually provides a template/submission form as part of the notice of an amendment as a guide to submitters. However, such forms are not mandatory and should not be mandatory.

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

The Panel process is a timely opportunity to consider all submissions received. If the responsible authority addresses a submitter's concern by changing the amendment in

the manner requested, the Panel could purely note this change and ensure the change does not conflict with any other part of the amendment.

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

Submissions of support must not be directed to a Panel if opposing submission are not received. However if a Panel is required to consider opposing submission, submissions of support should have the same right to be heard at the Panel Hearing.

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

Yes, the Panel should consider the amendment in its entirety and offer any recommendations which could possibly improve the quality of the amendment. However, if a recommendation is options (i.e. format etc) this should be clearly noted as 'optional change'.

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

The Act could facilitate a purely paper based review of certain amendments, however a clear definition of when this could apply would be required.

- Should all amendments be reviewed by an independent panel?

No, if all amendments were to be reviewed by an independent panel this would cause an unreasonable use of resources and cost to the community. This would also further complicate the system and be at odds with the purpose of this review.

Assessment and adoption

- 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?

The Responsible Authority should have the power to abandon an amendment at any time.

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

A review process is not considered necessary as the proponent has the ability to approach the Minister directly. However, the proponent and any submitter could be given the opportunity to make a submission in writing to the Minister if the planning authority's recommendation is to abandon the amendment.

Approval

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

The authorisation to approve amendments is an effective means of reducing some processing time for minor amendments.

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

This step does not assist in reducing time and complexity.

- How could this step in the process be streamlined?

Unless the structure of the process is altered, streamlining this step could be difficult. Certification is deemed as an important step and opportunity for DPCD to review the amendment prior to gazettal.

Monitoring and review

- 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?

A review of the planning scheme is resource intensive process and a Council plan usually runs for a four year period. Perhaps the Act can specify that it must be commenced within one year and completed within two years, and that an extension can be granted by the Minister if required.

State-significant projects

Assessment process options

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

If a planning process for State significant projects is established, clear guidelines need be provided. If such guidelines are in place this process is less likely to be criticised and it will provide greater certainty to Councils and the community. A recent example is the Hilton Hotel on Wellington Parade, where the Minister approved the application on the grounds that the hotel was required for the Commonwealth Games, however, Council sought to refuse the application and the Hotel was never built.

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

State wide projects should align with visionary documents produced by the State Government and Council.

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

There is a wide range of options for deciding upon state significant projects due to the wide range of technical experience available in the industry. A professional/design review panel could be established, similar to the Commission for Architecture and Built Environment set up by the UK government as an advisory body. However, this advisory group has a broader role and is funded and acts as a research and resource group which also educates the professional industry, including the introduction of technical guidelines etc.

- 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?

An independent technical committee should be utilised to ensure that a professional assessment of the proposals free of political influence. The office of the Victorian Government Architect should be involved in State significant projects.

Governance and decision-making

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

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

No further options are deemed necessary.

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

No decisions should be made by non-professional officers, particularly those within the private industry.

Private certification

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

The opportunity for private sector involvement in planning should not be provided. The issues this presents have been discussed above and Council believes they cannot be overcome/addressed.

Registration of planners

- 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?

A formal system in Victoria could prove useful, however implementing this system could prove to be difficult.

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

A system which could look into the complexity of an application and marry this with a suitably trained professional could be further investigated. Furthermore, on-going accreditation and training could be further considered to ensure professionals maintain up to date with any professional development in the industry.

Other opportunities

Section 173 agreements

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

The main issues with 173 agreements are not associated with legislation. However, the internal processing and management of Agreement within Councils and the legal industry could improve.

Facilitating e-planning

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

The main area of the Act to facilitate e-planning would be the referral process. However, the challenges of a paperless office continue as large plans are usually required as part of the planning process.

Access to planning information and privacy issues

- 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?

The Act needs to be updated to consider the ramifications of current systems used to relay information, such as the Internet.

- 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?

The status quo should be retained as the current process is adequate.

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

Planning authorities and the Government should be entitled to collect statistics for demographic purposes, such as monitoring growth which are directly related to land use planning.

Cash-in-lieu schemes for car parking

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

This system is currently onerous as studies are required to determine an appropriate rate, and few municipalities have a cash-in-lieu system in place.

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

Currently a 173 agreement is used to instigate payments. The Act could provide a fit-for-purpose power for this system and remove the need for a 173 agreement to instigate the condition.

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

The tests identified in the Advisory Committee's review of the parking provision in the Victorian Planning Provisions are considered satisfactory. However, the tests may be difficult to execute, such as a realistic estimate of development potential in a large area such as an Activity Centre if structure planning investigations have not commenced.

Interaction with other legislation

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

There is none of particular importance.

3.0 CONCLUSION

The Planning and Environment Act is critical to the functionality of existing and future land use and development.

Based on the above, the City of Stonnington's key submissions are :

The Permit Process

- Minor applications can be processed with a timeframe of less than 60 days. However, more complex applications cannot be reasonably assessed within 60 days.
- There is merit in investigating a short permit process. However, a longer permit process should also be considered simultaneously for more complex proposals.
- Information requirements for making a planning permit application must be clarified and tightened as part of this review.
- A Council should be able to reject a planning application that is incomplete or inadequate, provided a clear and transparent system is in place to outline application requirements.
- A pre-lodgement certification system by private practitioners must not be considered in the planning industry.
- applications model should be further explored.
- In relation to notice of a planning application, the Act needs to provide for greater clarification and a clear, transparent definition on the statutory clock 'start' and 'stop' times.
- A three-class classification system for notification will further complicate the planning process and be at odds with the objectives of the review.
- A specific timeframe should be required to clearly direct when an objection to a planning permit must be lodged.
- The Responsible Authority should be provided with discretion and clear direction to reject an objection, if the objection is not applicable.
- No timelines are specified in the Act to require the assessment of plans to comply/satisfy conditions of a permit once issued.
- The review of the Act is a timely opportunity to address the urgent concerns/issues associated with section 72 amendments involving VCAT.
- The Act should provide for a greater level of clarity and direction with respect to secondary consent permit conditions.
- The enforcement process is not considered to work efficiently and effectively.

Planning Scheme Amendments

- There is potential to reduce timelines during the authorisation phase of amendments.
- The authorisation phase of planning scheme amendments could potentially involve a time frame for different classes of amendment requests.
- The Act could detail the purpose of the authorisation phase to ensure that it provides only an initial assessment of the strategic merits of a proposed amendment rather than a detailed assessment.
- Rather than exempting certain types of amendments from authorisation, perhaps greater clarity could be provided on what type of amendments fall outside the grant of authorisation.
- Submissions of support must not be directed to a panel if opposing submission are not received.
- Only amendments that have opposing submissions should be reviewed by an independent panel, rather than all amendments.
- The Responsible Authority should have the power to abandon an amendment at any time.

Other

- If a planning process for State significant projects is established, clear guidelines need to be provided.
- An independent technical committee could be utilised to assess State significant projects to ensure that a professional assessment of the proposal is undertaken, one which is free of political influence.