

## Discussion Paper

# Modernising Victoria's Planning Act

A discussion paper on opportunities to improve the *Planning and Environment Act 1987*

March 2009

### How do I make a submission?

A submission should be made in writing. There is no particular format you need to follow, however, it would help if you could:

- fill out and attach the form in Appendix 5 of this paper to your submission (an electronic form is available at [www.dpcd.vic.gov.au/planning](http://www.dpcd.vic.gov.au/planning) for use with e-mail submissions)
- use the questions in this paper to form the basis for your submission.

Written submissions may be sent by:

- Email (preferred): [PEActreview@dpcd.vic.gov.au](mailto:PEActreview@dpcd.vic.gov.au)
- **Mail:** Statutory Planning Systems Reform, Department of Planning and Community Development, GPO Box 2392, Melbourne Vic 3001
- **Fax:** (03) 9637 9498

You will receive an acknowledgement of your submission.

## 3: The Planning System and the *Planning and Environment Act 1987*

### What is the planning system?

In an overall review of the Act, it is important to consider some foundation principles behind the Act:

- What is the planning system about? It is valuable to consider the ambit or mandate of planning, as planning has the potential to impact on a wide range of matters. Should the limits of the planning system be delineated; for example can planning be seen as a tool to influence behavioural change or is this outside planning's mandate?

**Planning influences behavioural change when goals are accepted to be achievable.**

- What is the role of the Act in that system? Can the Act be a mechanism to achieve outcomes in areas covered by other legislation?

**The Act would be a good vehicle to achieve the goals of other legislation, especially where that legislation and its government department is specifically referred to.**

- Should the Act be more prescriptive about the scope and practice of planning?

**The Act should be more prescriptive where simple explanations can help with interpretation. However, prescription generally fails to improve a situation wherever the situation changes too quickly for adaptation of the Act (i.e. vastly improving technology) or unforeseen issues arise.**

### 3.1 The 1987 position

### 3.2 The current position

### 3.3 Changes since 1987 in matters influencing planning

### 3.4 Is land still the focus?

### 3.5 What's in a name?

The present Act was introduced to Parliament in 1987 by the Minister for Planning and Environment, for administration by the Ministry for Planning and Environment. To an extent, this explains the name of the Act.

The principle that planning schemes take account of matters concerning the natural (or biophysical) environment was well established by the former Town and Country Planning Act, and was continued into the new Act. While it is possible to understand "the environment" as including the social environment and economic environment as well as the biophysical environment, this is not usually the way the term is understood. The innovation which needed to be specifically stated in the Act in 1987 was the explicit provision that in regulating land use and development, schemes (and decisions under schemes) could take account of social and economic matters.

**The Act could be changed to refer to each type of environment, such as the "built environment", the "natural environment" or the "social environment".**

Planning is a wide-ranging activity that encompasses many issues. This review is an opportunity to take a fresh look at what planning means for Victoria today, and to perhaps consider a new name for the Act that conveys this.

#### Questions

- What does planning mean for Victoria today?

**For many Planners, it means educating people and trying to encourage developers to produce better outcomes for communities.**

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

**It is similar, but changes in the act could save quite a lot of aggravation by being more specific.**

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

**Yes, it would be nice for it to be named something more specific, such as The Land Use Act, to more clearly demonstrate what its administrators, being Land Use Planners do on a daily basis. We are also known as Town Planners (which is a rather old-fashioned title since we very rarely ever get the opportunity to plan whole towns anymore), Environmental Planners (which may infer planning the natural environment but there is precious little natural environment to plan in a settled area), and Development Planners (which may sound to a developer to be pro-development, rather than working to limit development, since it is unsustainable).**

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

**Yes.**

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

**There has been more community influence over the years. Planning is becoming more about development to benefit the community rather than to benefit the developer.**

- If so, what should that new role be?

**I think the role should be about the benefit to the end users of the development rather than the ease with which developers can profit. I'm talking about speeding up application times *and* improving their final outcomes.**

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

**It could be widened to better interact with other legislation, such as the F&F Act, the CaLP Act, and the EPBC Act.**

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

**It could also be used to better address issues such as affordable housing supply to provide shelter and economic stability for a larger portion of the general public; diverse layouts to meet the needs of the different ethnic groups that are growing within our communities; control over the internal environment of buildings as the climate changes outside; and improving our reliance on sustainable energy production techniques, such as the widespread use of solar panels.**

**It would be more efficient for, developers and Planners alike, to increase the amount of lower-cost and yet well-made housing by ensuring a portion of a new estate was to meet this criteria through development constraints, like developer contributions do now, rather than drawing up, passing, interpreting, and referring to other legislation.**

- 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?
  1. **Provide more support officers who would be willing to free up the time of the qualified officers by performing duties such as answering simple queries over the telephone, tidying up the filing room, and organising training.**
  2. **Limit the number of applications any one Planner can deal with at a time, so they can spend more time thinking “outside the square” and addressing the issues involved with more complex applications in a more proactive way and on a regular basis.**
  3. **Make internal referrals mandatory for local government Planners, especially to their Social Planners within the Community Development department, their Environmental Health Officers within the Environmental Health Unit, and their Team Leaders within their Aged Care department.**
  4. **Make it mandatory to capture an application at the feasibility stage of a major project and provide general guidance to Applicants in a written response that can be put on the computer filing system of applications for future reference by other Planners.**

## **4: Are the objectives of planning in Victoria still relevant?**

### **Questions**

- Are the objectives of planning in Victoria still relevant?

**Yes.**

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

**More than ever.**

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

**Yes, they are becoming more common ways of thinking, to provide better outcomes for end users.**

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

**Yes, MSSs should be updated to address these issues, overlays should be implemented to protect Aboriginal Heritage, and other legislation, such as the Aboriginal Heritage Act 2006 could be specifically referred to where necessary.**

**This could be a great opportunity to strengthen a Planners' ability to rely on guidance and enforcement under the variety of acts that influence Land Use Planning.**

- 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?

**These matters could help strengthen the goals of the P&E Act. To better address issues such as affordable housing supply would mean providing shelter and economic stability for a larger portion of the general public; more diverse dwelling layouts would meet the needs of the different ethnic groups that are growing within our communities; better control over the internal environment of buildings would help us weather climate change; and to improve our reliance on sustainable energy production techniques would reduce our reliance on less sustainable energy sources.**

**It would be more efficient for, developers and Planners alike, to increase the amount of lower-cost and yet well-made housing by ensuring a portion of a new estate was to meet this criteria through development constraints, like developer contributions do now, rather than drawing up, passing, interpreting, and referring to yet more legislation.**

## 5: Planning processes established under the Act

### 6: The permit process

#### 6.1 One size fits all?

##### Questions

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

**As we learn from past mistakes, there seems to be an increasing complexity around the average application. There is a need to tweak the application process to make things more efficient. It would be good to have the opportunity to refuse to accept an incomplete application. However, if you take away the ability to request further information within the application process, there will be the need to object to more applications. This is because a Planning Officer can only do one thing at a time. The number of applications an officer has at any one time can be in the order of 70 applications.**

**With more than 30 applicants, it is difficult to remember the specifics of the application without referring to the file. With more than 50 applications it becomes difficult to think clearly, a full day can become a string of interruptions and the Planner is lucky to get one decent response out the door. Largely due to the lack of officers to deal with the number of applications at many authorities, having over 70 applications happens on a fairly regular basis. The further information request option needs to be maintained, as it is often not possible to determine what information is missing in an application until it is being processed, rather than when it is first submitted under this sort of workload.**

I also don't agree with a site visit being necessary or a decision being made on the spot during an appeal. Applications can be complicated and Planners often need to discuss an application with others in order to make a fair decision. A site visit shouldn't be mandatory when the application information is clear and it is only the Applicant who is unhappy with the decision. In order to avoid situations where decisions are made before an appeal site visit and time is wasted, thereby effectively penalising a Planning Officer who may have made the right decision, decisions need to be reasoned out under less stressful situations. If further information is needed to be provided, it can usually be submitted in hard copy format, some sort of information that can be added to the file, so that when the file is audited, it is clear how the decision has been made in accordance with the legislation.

If a site visit were mandatory, as I understand it is being suggested in this section of this discussion paper, then planning departments would probably need to be doubled or tripled in their number of employees. Many Applicants complain with issues that are not relevant. As I see it, the real issue isn't the ability for the Applicant to change the decision at appeal but for the Planning Officer to have time to kindly educate the Applicant on which principles the decision was made.

- 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?

**It may not be until the application is being assessed when it can become more complicated.**

- What are the other options for streaming applications?

**More Planners and support officers with which to better share the workload.**

## 6.2 Lodging an application

### Questions

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

**Yes, an application form for each type of development would be more effective than a Planner trying to determine what is missing, considering how rushed the working environment is.**

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

**Yes.**

- Is a more comprehensive application form needed?

**Yes, an application checklist that addresses the information needed under each overlay or zone that applies to the site would be great. They could be divided into two sections of what is essential to submit and what is not essential to submit but may be necessary later or would help the Planner make a more informed decision.**

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

**No. That would be like outsourcing building surveys. Prices would increase for Applicants who would need to make that extra step. My experience has been that private practitioners aren't always that well informed, trained or motivated to make decisions for the greater good. I also think it would increase costs for rate payers, as it would draw more Council Planning Officers into private practice, thereby increasing wages at local governments since it would appear to be more lucrative and reliable income working for consulting firms than it is at present.**

**This sort of outsourcing has already happened for local government building departments. Standards haven't necessarily increased, as more people, and thereby wages paid, are included in the process. When something goes wrong, it can be difficult to trace the decision back to a company that has changed owners or private practitioners. It would also lead to greater feelings of powerlessness by public servants, as the decision has, basically, already been made by someone who is directly reliant on his or her customer's approval. I see applications on a regular basis in which a consultant has told an Applicant they would be allowed to do something that they would not be allowed to do.**

**This is not the way to ensure impartial decisions and improve the planning system.**

### **6.3 Notice of an application**

#### **Questions**

- Are streamlined notice requirements for certain types of applications required?
- Should the responsible authority have more discretion in deciding who should be notified, in what manner, and how long should be allowed for submissions?

**No, this would invite developers to push the subject. It is better for these decision-makers to be able to rely on legislation that is clear.**

### **6.4 Objections**

#### **Questions**

- Should the term objection be changed to submission?

**The word "object" is an adversarial term, that could enable feelings of offence, but it would make better sense to me to be known as a "refusal" rather than a "submission". A lot of people could mistake a "submission" to mean that the application will be passed if something minor is changed, rather than it not being passed for a major reason.**

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

**Yes, many are made with concerns that are outside "planning", as it is now.**

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

**Yes, this could help Applicants determine which are the most relevant issues.**

### **6.5 Referrals**

#### **Question**

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

**I'm not sure how the act could be changed but I have some ideas on how to improve the timeliness and accuracy of referral authority responses:**

**1. The number of telephone calls an officer receives in a day greatly impacts their ability to process applications. Administration support officers could screen calls to determine if the Applicant or Council officer is calling to determine the time remaining on an application or is providing further information to the application that is lodged.**

**2. There are too many of the unnecessary referrals and not enough of the necessary referrals to some referral authorities. To reduce the number of referrals, thereby increasing the quality of responses from referral authorities, there should be more**

training by the referral authority on which applications should be referred, and more agreements on which applications should not be referred.

3. Better training for referral authority officers on how to reply to referrals. The Council officer should be encouraged to ring the referral officer so they can explain how the decision was made to include that condition. This would give the referral authority officer an opportunity to explain, reassess, and possibly to correct their response.

4. It should be explained by the Council officer to the Applicant that the onus is on them to clearly provide all the information to the referral authority.

5. Overlay adjustments would reduce some unnecessary referrals for some authorities. More employees and a simpler amendment process may increase the ease with which scheme overlay information is updated for a property.

6. Allot of information is provided online. It would be good if more authorities had the time to explain this to Applicants. One way to provide this capacity would be to hire more Council officers.

## 6.6 Making a decision

### Questions

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

**Yes, this would help reduce Council and consultant workloads.**

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

**No, this would make the position of some officers seem less important and it would reduce the richness of the employment positions. Perhaps the answer would be to increase response timelines for more complex or larger-site referrals.**

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

**The timeline seems appropriate for most applications. However, the more telephone calls that are made/messages that are needed to be answered can slow a Planner to a near halt for days.**

## 6.7 Conditions

### Questions

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

**Yes, many Planners say the permit expires within the life of the permit. However, I understand that, in the eyes of the law, conditions are alive as long as they are valid or remain unaddressed. The longer life would be the more reliable one, as it would enable prohibitions to continue. For example, Melbourne Water has a condition that reads "The carport must remain open". This is to ensure the definition of a carport, rather than the construction, over time, of an enclosed structure, which is a garage. If the carport does not remain open, it becomes a garage, can block flows, and could increase flood damage on neighbouring properties. Therefore, this condition should remain for the life of the structure, with any incremental development requiring re-referral.**

- 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?

**Many Planners think that because of the complexity of the process of a S173 Agreement, they are only necessary for large-scale projects. However, it can be vitally important to have an agreement registered on the title where the issue remains unaddressed or ongoing, such as maintaining a flood wall for the sake of safety.**

**I thought it wasn't valid to place a condition using a S173 to collect fees. That would be a very expensive and time-consuming process. Allowing conditions to address the need for collecting fees would help make conditions more straight-forward and would reduce frustration.**

## **6.8 Amending a permit**

### **Questions**

- 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, for minor amendments.**

- Should section 216 now be repealed?
- Should the Act set the principles for when the use of a secondary consent permit condition is appropriate?

**No. The need for secondary consents are set by the Planner who is processing the application to deal with changing social environments and other conditions. They are also used sometimes when an application is unique. It would be too constraining to limit the ability for a Planner to request a secondary consent.**

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

**That would be helpful, especially one in which plans are noted. It would slow down the application process to do more data entry. However, it could also be a better use of government resources if some authorities could check in on what other authorities are requiring.**

- 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?

## **6.9 Enforcement**

# **7: Planning schemes and the amendment process**

## **7.1 The purpose of planning schemes**

## **7.2 The amendment process**

## **7.3 Requesting and preparing an amendment**

## **7.4 Authorisation**

## **7.5 Exhibition**

## **7.6 Submissions**

## **7.7 Assessment and adoption**

## 7.8 Approval

## 7.9 Monitoring and review

# 8: State-significant projects

## 8.1 A proactive or reactive approach?

## 8.2 Assessment process options

### Questions

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

**No, it would still take the same amount of time to gather the information and it is best to speak to the experts in that field, rather than some overriding body. That would put more pressure on Planners, probably seeing more of them leave the industry. It is a struggle at times to have consultants working on large projects, who don't submit detailed plans, like a regular referral. They don't understand why they have to apply for a planning permit, considering how they already have the government's support.**

**This can be very frustrating for Planners who have conditions that would apply, if the information were to be submitted. The penalty should be increased, to deter consultants from avoiding the planning system as much as possible, and submitting at the last minute on larger projects. If they want a quicker response, they can approach the various authorities at the feasibility stage.**

- What process should be followed for deciding which projects which are of State significance?
- What is the most suitable process for evaluating and deciding State-significant projects?
- 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?

# 9: Governance and decision-making

### Questions

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

**No, the system is sufficient. That would only further complicate a system that already works. In my five years of experience working within the Victoria Planning System, Planners are not being used effectively and there are still not enough people to actually do the work. This is why decisions take so long.**

- How should the options be tailored to more closely correspond with the level of assessment required for the proposal?
- What decisions could be made by appropriately trained non-professional officers?

**Non-professional officers would be used more effectively by supporting those who are professionally qualified to make decisions. They could play a vital role by answering telephone enquiries, entering jobs, managing hard copy and physical file databases, stamping plans, maintaining the state-wide government supported online application system, Spear, copying, scanning and organising jobs, and other general assistance to deal with the "hygiene factors" as they are known by Organisation Designers or Human Resource Managers. This would improve recognition of more qualified people, encouraging them to remain in the industry longer.**

## 9.1 Private certification

### Questions

- 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?

**No, outsourced building surveyors are already not complying with conditions. The more governments are removed from the process, the more difficult it becomes to catch the mistakes or negligence of non-government employees.**

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

**Not unless the insurance of new owners cover their poor decisions. The current system works, we just need more people to do the work. This issue of lack of employees can be covered by increasing computer automation, training managers on how to treat qualified professionals, and by hiring lower-cost non-professionals in a support role.**

## 9.2 Registration of Planners

### Questions

- Should a formal system for the registration of planning professionals be introduced in Victoria?

**Yes, as is done for our colleagues, the Environmental Health Officers. Planning is an important job. Acknowledging those with a relevant degree or equivalent would be a step to start improving a system in which many Planners are not qualified to practice. Encouraging the achievement of qualifications could also improve morale within the industry.**

- If so, how would this system work and what should it apply to?

**Qualified Planners should be registered on a database that is managed by the government since the Planning Institute of Australia (PIA) is not yet a professional body. However, PIA should continue to have input on which subjects are recognised at university, to allow those professionals to have automatic recognition and eligibility to become members, as is currently the case. An online database, like that maintained by Heritage Victoria, could be searched by anyone but maintained by the DPCD.**

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

**I see poor decisions made every day and no one is perfect. However, the more qualified professionals, those people who have had to work hard at university to get to where they are, seem to have the self-esteem to ask questions and gather information in order to make more informed decisions.**

## 10: Other opportunities

### 10.1 Section 173 agreements

#### Questions

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

**The options in this section seem to be good ones.**

**A way to improve the availability of S173s would be to increase information sharing between Planners and Applicants. The most easily-accessible database may be an online system, like that provided by the Austlii.**

**S173s should not be open to negotiation via VCAT since they must already be agreed to by the Applicant in order to become active. Furthermore, VCAT members are not necessarily professionals in the field of the case they are overseeing. This is a resource issue that cannot necessarily be addressed, since there are not enough professionals from specific fields in the industry. By preventing a second look at VCAT, this, in my view, would prevent possibly serious mistakes from happening.**

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

**Each authority could publish an estimated process, timeline and price on their website. This may aid a developer to estimate the possible impact on their development, should the authority require a S173 for a serious issue. However, it is better for the Planning System in Victoria to discourage S173s, since they are only brought in where a condition would not suffice and the issue is rather important.**

## **10.2 Facilitating e-planning**

### **Question**

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

**Some simple applications and those prepared by consultants could be mandatory to be submitted through Spear. An online check-box of attachments would ensure all the relevant information is provided, reduce the number of telephone calls from people checking the progress of their application, and reduce the amount of paper wasted on unnecessary print-outs.**

**The privacy and risk issue would be addressed by providing submitters with an application number to be able to check their application.**

## **10.3 Access to planning information and privacy issues**

### **Questions**

- 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?

**With high turnover rates, it is necessary to have jobs, and their decisions registered in a computer database. Provided the requestor for information has the application number or is known to be involved in the process, a copy of the decision could be provided to them.**

- 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?

**Specific information such as survey and design plans are owned by the producer and should be the sole holders of the information, until an Applicant pays them for this information. Once paid for, this information is owned by the Applicant, and therefore cannot be copied for another applicant.**

**There should be more protection for objectors. However, the acceptance of a submission should be on applicable grounds, and not based on the discord of personal relationships.**

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

**There is already a large amount of information collected in the day-to-day duties of a Planner and so I don't see the need to collect any extra information. Should the requestor of information not have the application number or be known to be involved with that application, a formal request for information can be made. However, I understand that applying for information through the Freedom of Information Act is a lengthy process. Perhaps the Applicant information should always be secured in the**

application, rather than just the consultant details, so when requests are made, it is clear who has the right to access this information.

#### **10.4 Cash-in-lieu schemes for car parking**

#### **10.5 Interaction with other legislation**

#### **10.6 Other identified issues**

### **Appendix 1: The state of play in other jurisdictions**

### **Appendix 2: An overview of the development of Victoria's planning legislation**

### **Appendix 3: Act technical issues**

### **Appendix 4: Auditor-General's recommendations**

### **Appendix 5: Coversheet for a submission on the Planning and Environment Act Review**

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

Planning or development industry organisation