

FRIENDS OF THE BOX-IRONBARK FORESTS (MOUNT ALEXANDER REGION) INC

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Statutory Planning Systems Reform
Department of Planning and Community Development
GPO Box 2392
Melbourne Vic 3001

Dear Sirs

Reference: Modernising Victoria's Planning Act

The Friends of the Box-Ironbark Forests (Mount Alexander Region) Inc. (FOBIF) welcomes this opportunity to comment on making improvements to the Planning and Environment Act 1987. FOBIF has made submissions to Planning Scheme amendments and has participated in many Panel Hearings and VCAT cases. Since our primary concern is the conservation of native vegetation on public and private land, these submissions have usually been on the impact of developments on the environment.

We will first deal with some major issues and then answer some of the questions raised in the discussion paper.

Climate Change

We believe a prime reason that the Planning & Environment Act needs to be reviewed is because it was written long before the effects of climate change became a focus of government. We would like to see in the **objectives of planning** (Section 4) the important role that land use planning can take to alleviate the serious effects that climate change is now having on the community.

February 7's catastrophic wildfires show the need for an objective of planning:

- *To provide safe residential development in both rural residential and peri-urban situations by designing for adequate buffer zones in high bushfire risk areas.*

Such an objective is particularly important as the CSIRO is predicting that the February 7 type catastrophic fire weather is going to become increasingly more frequent*.

As climate change effects take a greater toll on our native flora and fauna, threatened species and water resources we need the Act to focus more on these areas. We believe an essential objective of planning should be:

- *To provide for the protection of the natural environment, ecological processes and biodiversity.*

*Lucas, Hennessy, Mills, Bathols (2007), *Bushfire Weather in Southeast Australia: Trends and Projected Climate Change Impacts* (www.climateinstitute.org.au).

Third-Party Rights

We believe there is an increasing tendency for third party interests and contributions to be locked out of the planning process. We are finding an increasing use of Development Plan Overlays (DPO's) in planning scheme amendments, which then excludes the community from having any input into the Development Plans that follow. This use of DPO's occurs despite it being pointed out during the planning process that the Minister's Practice Note declares:

It should normally be applied to development proposals that are not likely to significantly affect third-party interests.

DPO's have recently been used with the C36 Amendment in Mount Alexander Shire and the C102 Amendment in the City of Greater Bendigo, where there was considerable community concern about the environmental impact of the development proposals.

We believe the Act should be modified so that third-party rights for a say in the planning process are promoted.

Third-Party Appeal Rights

We believe **Division 5 – Applications to Tribunals** should be widened to allow third-parties to seek a review of the findings of a Planning Panel. We have had instances in Central Victoria where planning panels have ignored or misinterpreted Ministerial Directions, Practice Notes and the Native Vegetation Management Framework. At present there is no recourse to correct these mistakes.

The most alarming recent example is where a Planning Panel Report (the C36 Amendment in Mount Alexander Shire) didn't consider the bushfire risks to a rural residential development in a forested area. This report was handed down a matter of days before the catastrophic events of February 7. The Planning Panel endorsed a proposal for a 44-lot housing estate in a heavily vegetated area near Maldon where 25 houses will be completely surrounded by forest. There was no consideration given to bushfire risk in the Planning Panel's deliberations. FOBIF has already written to the Minister requesting that a decision on this planning scheme amendment be delayed until after the Royal Commission report is available.

Third-parties need the right to correct such mistakes at a Tribunal.

Our comments on the numbered points in the Discussion Paper are:

1. Purpose of the review.

We are disappointed that matters relating to local policies, VPP's, planning schemes or VCAT are excluded from this review.

3. The planning system and the Act.

The name is still relevant and we wish the “environment” component to be retained. Every planning decision will inevitably have an impact on the physical (or natural) environment. Land will remain the focus of the planning process and the health of native vegetation and threatened species is inextricably linked to land. The natural environment should receive a greater priority in planning decisions since it affects everyone whereas social and economic factors usually only affect a sector of the community (sometimes a very small one).

4. The objectives of planning.

The objectives set out in the Act are still relevant provided the important additions and modifications outlined above are made. It is especially important to modify the wording of (b) to: *“to provide for the protection of the natural environment, ecological processes and biodiversity”*.

We would like the following point added to the objectives of planning:

- *To provide safe residential development in both rural residential and peri-urban situations by designing for adequate buffer zones in high bushfire risk areas.*

6. The permit process

It is difficult to discuss the permit process without referring to the planning scheme. For example, Section 52.17 dealing with native vegetation has had its range of exemptions from the need to obtain a permit extended during recent years to an extent that the objectives of the Act, specifically section 4(1)b, are no longer complied with. Councils, especially in rural areas, do not have the resources to accept more responsibility in the permit process.

7. Planning schemes

In general, we consider it desirable that all submissions should be placed before a panel and not only those referred to it by the planning authority. We also believe that a panel should have the ability to review and make recommendations about the overall amendment proposal. All amendments proposed should be reviewed by a panel.

10. Section 173 agreements

We agree in general with the options recommended by the 2004 expert group.

There are several issues on which we would like to comment which do not come under one of the identified headings:

(1) Councils, when identifying urban boundaries in their Planning Scheme, should be made to comply with these boundaries. There has been a tendency, especially in rural townships for the boundaries to be pushed outwards resulting in undesirable rezoning of farmland or bushland with the loss of agricultural production or native vegetation. One undesirable result has been the creation of strip developments following arterial roads connecting townships.

(2) The use of the Rural Living Zone (RLZ) in order to create larger residential blocks out of Farm Zone land was originally intended to allow rural living to be combined with small scale farming enterprise. In practice, it is usually attractive bushland rather than unproductive agricultural land which is rezoned in this way. The loss of vegetation and biodiversity is not sustainable in the areas we are familiar with. Inadequate consideration is being given to the adverse impact of residential development adjacent to State or National Parks and to the dangers of wildfires in any vegetated area.

(3) The application of Ministerial Direction no.6 is not being taken seriously. In one recent application for a planning scheme amendment, the issues of need, impact on water quality, wildfire danger and the requirements of the Native Vegetation Management Framework were either ignored completely or dismissed by the panel as being less relevant than the supposed benefits of the proposed development.

We would be happy to elaborate with specific examples of the various problems we have experienced with the planning process.

Yours sincerely,

Frank Panter,
Vice President