



Coversheet for a submission on the Planning and Environment Act Review

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Which of the following best describes you?

Local government

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

Modernising Victoria's Planning Act

A Submission on behalf of East Gippsland Shire

Planning in the 21st Century and the Objectives of Planning in Victoria

Since 1987, the planning system in Victoria has been consistently used as a tool to respond to and address many emerging issues related to land use planning and development. Many agencies and sectors see opportunities to use the planning system to address a wide range of matters through the legislative framework offered by the *Planning and Environment Act 1987*. This is particularly evident in respect to a wide range of natural resource management and environmental issues, examples include a more comprehensive approach to the retention of native vegetation giving this issue much higher priority in the traditional planning framework and the proposition put by the *Green Paper on Biodiversity in a Time of Climate Change* that identified the planning system might be an appropriate framework to positively address biodiversity in Victoria.

Overtime changes to the VPP also reflect changing State Government Policy imperatives, with concepts such as affordability, sustainability, cultural heritage, net gain, climate change and sea level rise, urban design and public domain planning all having a much greater emphasis in policy and decision making.

Many of these terms are not directly mentioned in the Act, and while the objectives might be argued to be general enough to encompass many of these concepts, it would seem that the way the planning system operates today is quite different to the way things operated in 1987, and this has significant implications for Local Government as municipalities have inherited responsibility for implementation of a wide range of statewide policy initiatives through the planning system.

While there are many benefits associated with ensuring that the planning system provides an integrated assessment approach to the range of matters that might be encountered in decision making (especially when they are assessed at a local level), it needs to be acknowledged that the planning system is becoming more complex in response to a wider range of pressures and that as a result the emphasis has probably changed over time.

In addition, there has been increased emphasis on the time taken to process approvals, and it might be argued that there is a disconnect between seeking to increase matters for genuine consideration and seeking to minimize the time taken to do so.

It appears that there would be merit in examining the objectives of the Act and the operation of the legislation to ensure that we in fact have the focus right. If the Planning Act is genuinely about planning in the broadest sense, then we need to make sure that the matters covered by the Act processes are genuinely about planning and not simply about approvals and time taken.

It might also be argued that the introduction of new requirements dealing with climate change and the impacts of sea level rise herald the beginning of a new era in planning process. Not only will climate change and in particular sea level rise, require the development of a planning system that will need to be able to respond appropriately and quickly to new information and approaches as they develop, it may be that the permanence of land becomes questionable, as will concepts around the life of an approval and the permit system. These concepts, together with the lengthy timeframes that may be

associated with the actual physical impact of climate change and sea level rise, are going to be a significant challenge for the field of planning now and into the future.

It is also considered that the importance of locally driven community planning and place management approaches should be recognized by the planning system as an important contributor to the planning process as more and more communities are being encouraged to work together to determine their future and priorities for development. This concept needs to be understood as an important part of the way that Local Government now works with communities and it may be appropriate that this is reflected in the objectives for planning in Victoria.

While we have made comments in response to the range of detailed process issues raised in the discussion paper, and many of these suggestions will improve the way that the current system operates, we think that there is a need to examine the future role and function of the legislation and what we really want to achieve with the planning system in Victoria.

It is also considered that in addition to the discussion paper/submission process, there is a need for discussion about the bigger issues in the planning sector and that there is a need to incorporate and understand the views of regional municipalities and their issues as part of the review process. It is our experience that many busy and diverse regional municipalities, such as East Gippsland, inevitably have responsibilities for the full range of planning issues and matters, where as other municipalities may have a more narrow range of issues to be dealt with.

The Permit Process

One size fits all and the Short Permit Process

The planning system appears to adequately accommodate a variety of types of planning applications if managed well by planning officers. It does, however, require knowledge and skill to manage increasingly complex applications through the planning system.

It is considered that the introduction of a short permit process is unnecessary and may cause confusion or conflict if the “rules” developed to determine which applications are eligible for the shortened process are not clear. If a permit is genuinely required to be applied for and considered on its merits, then the current system is sufficiently flexible to allow applications to be processed in a timely way (this is especially the case if some of the other proposals addressed in the discussion paper and supported in this submission are incorporated into the current permit process).

It would appear that a more appropriate approach would be to direct energy at removing approvals from the planning system that do not require planning consideration and which are more appropriately treated as a technical process of development approval. This might be done by making more uses and development exempt from a permit requirement, but may also mean that some forms of technical approval are managed by a new/separate process. This could mean that appropriately trained non-planning officers (technical officers) could be used to deal with the more straightforward processes associated with the checking of plans or other elements for compliance. These approvals could be treated differently and dealt with by separate processes that might not be referred to as a planning permit.

If a Short Permit Process is approved, then consideration needs to be given to ensuring that processes are designed in a way that will operate effectively and equitably in rural areas. For example it is noted that the possible process involves a concept where an appeal hearing would be conducted

on site and a decision made on the spot in a short period of time. It may be difficult to ensure this level of service in rural and regional areas.

Consideration needs to be given to revising the statutory planning processing timeframes (determined by the time after which an applicant can appeal against failure to decide an application) having regard for the complexity of the system, especially if technical development approval processes are dealt with by a separate development approvals process.

Lodging an Application

The reality is that the requirements of the planning system make it quite challenging for a lay person to make a planning permit application these days, and we are not convinced that a more comprehensive application form will result in any improvement because for people to fill out the form correctly they first need to properly understand why they need a permit: we don't need to make the form any more daunting than it is already. It is essential to set out what the information requirements of particular applications are in either the Scheme or appropriate information notes so that officers can use this to guide applicants appropriately.

East Gippsland Shire currently rejects applications that do not meet the information requirements that are specified as requirements in the planning scheme which are mandatory (see Section 47(1)). Our experience is that it is applications that fail to meet minimum standards are very difficult and time consuming to manage through the planning process. We have found that this approach has been successful in improving the quality of applications made and this assists the overall processing of applications.

Given the limited access to planning professionals that often exists in regional areas we are not convinced that a process of pre-application certification would work well.

Notice of an Application

There should be the ability to determine notice requirements for different application types, both to streamline them where appropriate or to determine longer notice periods or circulation if the nature of the application warrants that approach.

The biggest challenge in respect to the current notice requirements stems from the fact that the Act requires that notice be given if anyone may be materially affected – often this results in notice being given because you simply don't want to take the risk that someone may in fact be affected. It may be that the basis on which this judgment must be exercised by officers requires clarification, or that there is greater guidance on what constitutes being materially affected. This is linked to comments made in respect to objections received.

Objections

The fact that affected people are advised that they can object, results in objections being received, rather than submissions that may be in support of a proposal and establishes a fairly one sided perspective when considering applications. While it might be attractive to change the term "objection", the reality is that we need to know whether someone does in fact object. If the terminology was to be changed, then we would still require those affected to indicate that they do object.

We consider that objectors to proposals should be required to demonstrate how they are affected. Applicants are required to demonstrate substantial justification for their proposals, and objectors

should be required to ensure that they document the reasons for their objection clearly and appropriately.

There are many situations where objections are received that do not address relevant grounds that can be considered by Council in the assessment of an application, and in these cases, Council should have the ability to reject an objection.

Referrals

East Gippsland Shire works closely with key referral authorities, however there are two key issues hindering the effective and efficient use of the referral system:

- Knowledge and experience of the referral agency staff about planning and the role that they have in the planning system. This can result in misunderstandings about the matters that are relevant for consideration, the inappropriate imposition of conditions or requirements, and subsequent confusion caused in resolving this type of misunderstanding. While it is appreciated that referral agencies provide specific expertise to the planning system, there needs to be improved education and understanding about how that expertise is best translated in to the planning system.
- Significant absences of referral agency staff for extended periods during events such as fires and associated recovery processes. In the case of East Gippsland, lengthy fire incidents have resulted in Department of Sustainability and Environment staff being away for long periods of time (both during the fire campaign and afterwards when leave is subsequently required to be taken), meaning that there is no timely way to obtain expert input to support decision making. While it is understood that in emergencies it is a case of all staff needing to be involved, delays caused have significant costs for approvals processes in East Gippsland. In emergency situations, there needs to be an alternative mechanism for ensuring that for those sectors of the community not affected by the emergency can continue to have approvals processed.

Approvals involving referral processes could be streamlined if applicants were required to demonstrate that there have been discussions with authorities prior to making their application – either through the production of the referral response, or something indicating that the authority is not opposed to the proposal (that is it is worthy of consideration having regard to their particular issues). This means that Council would not waste time processing applications that are not going to be supported. It would also be beneficial if there was the ability to have an applicant sign off on conditions required by a referral authority prior to approval, and where this is the case eliminate the option to take the matter to appeal.

Making a decision

It is considered that the current Act sections setting out matters that must and may be taken into account are appropriate.

It may be appropriate to specify different decision making considerations for different application classes, but it is unlikely that this would be able to be accommodated in the Act and would probably sit better in the VPP/Schemes. Care would need to be taken to ensure that professional officers can give consideration to all information that may be relevant to the particular proposal as there may be circumstances where it is impossible to be prescriptive about what should be considered.

Conditions

We agree that the ongoing life of conditions for development requires clarification.

We also agree that it would be appropriate to simplify processes associated with securing payments for works or facilities directly attributable to the development approved without needing to resort to a Section 173 Agreement including payments made in lieu of the provision of car parking on site.

Amending a Permit

We agree that processes associated with the amendment of permits requires review and improvement to ensure that we can make minor amendments to permits issued at the direction of VCAT and for those issued by Council. The current processes are unjustified for minor changes and corrections.

Clarification in respect to the use of secondary consents would be appropriate so that this can be applied consistently and requests appropriately recorded.

Enforcement

Suggestions for improving enforcement include:

- More substantial fines, especially where non-compliance is ongoing.
- Allow Council to issue a form of Enforcement Order for more straightforward situations – perhaps with some sign off from VCAT.
- Provide a simple system for securing a “Stop Work” while matters are investigated or compliance demonstrated as is the ability under the Building legislation.
- Establish a system of environmental or social funds where contributions are required to be made where, for example vegetation is removed, heritage buildings removed or altered, and there is no ability to rectify the breach at the site.

Planning Schemes and the Amendment Process

Requesting and preparing an amendment

The process of submitting a request for a planning scheme amendment is quite different to that of a permit. It is frequently a much more detailed and collaborative discussion in order to understand the issue, the strategic justification and the type of information required. We do not consider that an application form would be of assistance in this process. While it might be possible to specify some minimum standards for information to be submitted with any request, our experience is that it would be impossible to specify information required to support a request in any exhaustive way.

It is sometime since many of the Ministerial Directions guiding the preparation and justification of Planning Scheme Amendments have been reviewed, and there would be merit in assessing these and ensuring they are still relevant and that they are adding value to the amendment process.

Authorisation

It would be useful to undertake an examination of the operation of the authorisation process to determine what value it is adding to the planning system. East Gippsland Shire has never had authorisation refused because we work closely with our Regional Office to seek their views about proposals at an early stage. It would be interesting to understand whether many refusals are issued across the State as this should be some sort of performance measure in addition to the time taken to respond.

While some guidance or criteria about the role and purpose of authorisation might be useful, we consider that authorisation should be focused on assessment of State or Regional policy

considerations and that local policy alignment and justification should sit with Council as the Planning Authority.

Amendments that propose corrections or which constitute minor changes only should not be required to go through the authorization process.

Exhibition

Guidance on notice requirements, in the form of a Practice Note or guidelines may be useful in terms of application of best practice. The logistics of giving notice of exhibition of an amendment can be quite challenging given the need to publish notice in the Government Gazette to start the process officially. The reason for publication of a notice in the Gazette perhaps needs to be reviewed, as in a notification sense, it does not add much value to the process.

Submissions

As with comments in relation to objections previously, submitters, whether in objection or support of the proposal, should be required to specify how they are affected and Council should have the ability to reject submissions that do not address matters that are relevant to consideration of the merits of the proposal. We do not consider that the use of a structured submission form would necessarily assist submitters in ensuring a more comprehensive response.

Assessment and Adoption

It is not appropriate that all amendments be reviewed by an Independent Panel – this would be costly and time consuming. Where Council considers that there is merit in seeking an independent review then they should be able to elect to do this and it is likely that this would only happen for more major or complex proposals.

Where it is possible for an independent review to be carried out on the basis of the “papers” this should be considered as an option to reduce costs associated with the conduct of panel hearings, particularly in rural locations.

Where there is a panel hearing, it is our view that it is impossible for a panel not to review the merits of an amendment in their assessment of the submission – it not possible and not sensible and so it happens now. We consider this to be an appropriate and useful part of the process where a panel is required.

Council should always have the ability to abandon an amendment provided it can demonstrate that there is good reason why the proposal should not proceed having regard for the full range of information available including submissions received.

Approval

Approval of amendments by Planning Authorities would reduce delays and uncertainty about timeframes, especially if input is provided into the detailed form and content of the amendment at appropriate earlier stages to ensure an appropriate and consistent approach is followed. This would be especially easy for simple rezonings or other map changes.

Monitoring and Review

It is considered that the requirements are adequate, however there should be increased opportunities for sharing information, knowledge and experiences of review processes and management of these processes across municipalities so that we can improve the effectiveness and efficiency.

Governance and Decision Making

Decision Making Option

As indicated earlier those approvals that do not require planning consideration, but which are effectively a technical assessment, should be taken out of the planning permit system and dealt with by a separate process. It is not effective or efficient to be using professional planning staff to undertake these approvals functions. Private certifiers may be able to operate in this modified system, however we are not yet convinced that private certification will work well in regional areas.

Registration of Planners

This is a challenging issue, because on the one hand it is important to ensure that professional standards are upheld while at the same time struggling with a shortage of qualified planning officers. Regional areas in particular struggle to attract and retain qualified staff, and it is necessary to recruit and train staff, including Planning administration staff, to ensure that the responsibilities that we have are able to be effectively administered.

Registration would need to apply equally to both private practitioners as well as Government positions to ensure that the challenges Local Government already has in attracting planners is not made more difficult.

It would be beneficial to have more discussion about this issue to better understand how this might work and what the benefits and issues might be for the planning sector as a whole.

Alternative Dispute Resolution Mechanisms

It is considered that there is merit in examining options for new ways of resolving disputes that might be locally administered. If these are to be successful, they need to be credible processes that are used where there is a genuine basis on which to solve a dispute and which mean that if a resolution is achieved and documented, all parties abide by that and that there is no further avenue of appeal unless the outcomes are breached or not enforced.

Other Opportunities

Section 173 Agreements

Section 173 Agreements are being used more and more frequently and this is essentially setting up a costly and time consuming layer of control or approval that is sitting outside the planning framework.

It is considered that the recommendations of the expert group are generally appropriate. Consideration does need to be given to the appropriate use of Section 173 Agreements, particularly in respect to the fact that attachment to the title is a reliable way of highlighting the requirements to future purchasers, when a permit might not be.

It is considered that different requirements for the ending or amending of agreements needs to be examined and the rationale for those differences altered or better explained – for example the Minister is not required to be involved in ending an agreement, but must be if an agreement is to be amended.

Facilitating e-planning

It is considered that there should be an increased emphasis on e-planning initiatives, many of these do not require changes to the Act, as they are simply about continuing to support access to information, and improving processes associated with the assessment of applications.

However, it is considered that there is merit in specifying some mandatory requirements for the provision of relevant information to the Department to enable more effective monitoring of the effectiveness of the planning system in Victoria. While most Council's presently provide information, the requirement is not mandatory and not uniformly complied with and this makes the quality of the information gathered less reliable.

Interaction with other legislation

Aboriginal Heritage Act:

The operation of the requirements of the *Aboriginal Heritage Act 2006* in association with the Act needs to be examined.

Because the *Aboriginal Heritage Act 2006* operates essentially as a process where proponents are supported to determine themselves whether or not they trigger requirements, Council Planning officers can sometimes find themselves in quite a difficult position if there is uncertainty about this, or where we are not able to be convinced that the requirements have not been triggered. While there has been some effort put into developing processes that might provide Local Government with some protection in respect to this issue, we are not convinced that this is going to be effective if challenged and that some appropriate legislative measure needs to be developed to remove uncertainty about the requirements and their relationship to the Act.

Where an application lodged with Council requires the preparation and approval of a Cultural Heritage Management Plan (CHMP), and application cannot be approved until evidence of that approval has been received. Our experience is that the timeframes taken to resolve matters relating to the CHMP can be very time consuming, however although Council has no ability to influence this process, there is no ability to formally stop the processing "clock" until the plan is received. It would be appropriate to incorporate a mechanism to ensure that the days that elapse waiting for CHMP approval are not counted as approvals days as part of the planning process.

Building Act:

It is considered that more technical approval requirements could be transferred to the Building Act or variation of that process. There is a significant lack of understanding by the community generally about the roles of both planning and building legislation and consideration should be given to locating decision making processes that require planning consideration in the planning legislation and technical assessments for compliance in the Building controls.