



Planning and Environment Act Review

Submission to
Modernising Victoria's Planning Act

**Melbourne City Council
May 2009**

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Attachments:

1. Cover Letter
2. Planning Committee Report 5 May 2009

Note: the numbering in this submission relates to the discussion document "*Modernising Victoria's Planning Act*".

1. About this review

1.1 Purpose of the Review

Not applicable

1.2 Scope of the review- A new car or a major service?

Not applicable

2. About this discussion paper

2.1 Terminology

Not applicable

2.2 Expert panel

Not applicable

2.3 Workshops

Not applicable

2.4 Background Reports

Not applicable

3. The Planning System and the *Planning & Environment Act 1987*

3.1 The 1987 position: the introduction of the Act

Not applicable

3.2 The current position

Not applicable

3.3 Changes since 1987 in matters influencing planning

Not applicable

3.4 Is land still the focus?

No comment

3.5 What's in a name?

No comment

4. Are the Objectives of Planning in Victoria still relevant?

The objectives of planning in Victoria

The objectives of Planning in Victoria currently offer limited direction. It is not possible to facilitate the use of land or development that equally achieves all the objectives presented, as sought by Paragraph 4(1)(f), and it may be argued some of the objectives of planning in Victoria are in fact mutually exclusive. As such, achieving 'balance' between the objectives of planning in Victoria (Paragraph 4(1)(g)) is subjective. The interpretation of each objective can be shaped by different

stakeholder interests and priorities to result in very different outcomes regarded as balanced.

Generally, the objectives are vague and extremely broad in scope. Whilst they attempt to include the breadth of themes associated with 'good' planning this provides a dilemma as it is not possible to list all the objectives that planning in Victoria should aspire to achieve, nor possible to predict issues yet to emerge that planning will need to address.

Greater certainty is needed regarding terms and themes referred to in the objectives. For example what does *orderly*, *economic* and *sustainable* use of land mean? Definition of such terms would be useful to understand how these should be interpreted for accomplishment in the planning system. *Social* sustainability should be included along with economic and environmental sustainability. The role of the Planning Act in addressing the needs of all people should be stated explicitly.

Overall, a 'less is more' approach is advocated for the objectives.

The following alternatives are suggested for consideration in the review of the Act's Clause 4 Objectives:

- a) Removal of the objectives totally and instead reliance on a Clause 3 (Purpose of this Act) provision, similar to Queensland's *Integrated Planning Act 1997* and Western Australia's *Planning and Development Act 2005*.
- b) The condensation of objectives to a simplified strategic statement. For example, an all encompassing objective:

To provide for an efficient and effective land use planning system and to promote the sustainable use and development of land.

Clarification of key terms (such as sustainable and development) should be provided in the Act's definitions.

- c) If the objectives are to remain in their current form:
 - i) Reference to fundamental issues for planning in coming decades should be included. Specifically, climate change, affordability, infrastructure provision and health and well being must be acknowledged. Refer to Section 9 of this submission (Key Strategic Issues) for further discussion regarding these topics.
 - ii) Clause 4 (1)(a) and Clause 4 (1)(e) should provide for the 'strategic and sustainable,' rather than *orderly* development, use, provision or co-ordination of land.
 - iii) The objectives of planning should reflect a proactive approach for the planning system rather than simply to balance competing demands for the development and use of land. Overall a less regulatory approach and more emphasis on forward planning principles are needed.
 - iv) The definition of 'ecological sustainability' (or whatever term the Act uses to denote the principle of sustainable development) should be included in the Preliminary Definitions. This is needed to provide clarity and certainty concerning the interpretation and balance of competing objectives, and to ensure sustainability in planning as required by the Act.
 - v) The objectives currently refer to the protection of *public utilities*. It should be noted that most of these utilities are no longer in public ownership and careful consideration should be given to appropriate wording.

Objectives of the planning system in Victoria

The requirement that particular issues must be considered (e.g. effects on the environment), as required by Paragraph 4(2)(d), does not mandate that these issues are addressed or balanced in decisions and outcomes.

In addition, requiring explicit consideration of social and economic effects when decisions are made infers that these themes should be given greater consideration or weighting than effects on the environment.

5. The planning processes established under the Act

Not applicable

6. The permit process

6.1 One size fits all?

The current process for permits is sufficiently flexible to provide for applications of differing scale and complexity.

The City of Melbourne has implemented a “fast track” process for simple applications that do not require Notice to be given under Section 52. Generally processing times for such applications are under 20 calendar days.

The proposed model “short process” introduces a dual system with potentially unnecessary complications. The 7-day quasi appeal process is seen as being particularly problematic. The model does not encourage completeness of applications at lodgement to avoid the need for further information requests.

City of Melbourne would prefer to see a continuation of amending planning schemes to remove the need for permits for minor matters where there is no public benefit. There are additional matters that could be resolved “to the satisfaction of the Responsible Authority” rather than requiring a permit.

The option to submit referral authority comments with an application exists now and should be encouraged to allow for fast-tracking of applications requiring mandatory referrals.

It would be fairer for all parties if the Act was based on working days, not calendar days, to bring it into line with the VCAT Act and ensure that applicants and objectors (and the RA) are given adequate time when public holidays intervene.

The Act does not recognise retrospective applications for development carried out or uses commenced without a permit. Under these circumstances the applicant has no incentive to submit a complete application or cooperate in any way to facilitate a speedy decision. Often VCAT will not hear an Enforcement Order application until the respondent has been given the opportunity to have a retrospective application considered on its merits and respondents can abuse the system to delay the time before any decision can be made.

6.2 Lodging an application

The permit application form is too long and difficult. From a Council perspective the current form is not an improvement on the previous single page application form with instructions on the reverse. However, the Guidelines on how to complete form could be improved. Use of layman terms in the form and more prompt questions and tick boxes are recommended.

A more comprehensive application form would not address the issue of inadequate information with applications. The opportunity to request further information in writing with a lapse date is working well. It is transparent, gives the RA an opportunity to

build a relationship with any applicant finding the system difficult and ensures abandoned applications do not remain in the system.

Simple applications can be accepted and missing fees or information requested, without placing a burden on the applicant to provide unnecessary or irrelevant information.

Pre-lodgement certification is not supported because it adds more complexity. It could remove the ability of the RA to request information needed in local circumstances and reduce the transparency of the process.

The general public see Councils as more independent when assessing applications for permit where as a private certifier could have a different motivation in assessing applications pre-lodgement.

Electronic lodgements need to be dealt with in the Act, particularly the status of electronic signatures. There is an opportunity to tie electronic payment to electronic lodgement so that applications cannot be lodged without the correct fee.

6.3 Notice of application

The “material detriment” test should be changed to “substantial detriment”.

Councils need discretion in the giving of notice, to reflect the context and the potential impact of the application. Notice requirements should **not** be prescribed in legislation. Where streets are very wide, often there is no value in notifying properties opposite just additional administrative costs and time. In areas where there are multi-unit developments some parts of an adjoining development could front a different street where there is no impact at all.

S52 is reliant on case law. The word ‘adjoining’ is open to differing interpretations. The legislation needs to explain the scope and purpose of the notification, rather than relying on the term “adjoining”.

Notifying all adjoining owners and occupiers of land with a common boundary to the subject site leads to distortions and significant advertising costs for applicants where the abutting site is large or occupied by a high rise residential development. Responsible Authorities need the ability to be more selective in response to the particular development application.

In S57B, *Notice of an amended application*, the extent of notification can be limited to those who are actually affected by the permit amendment.

Provision could also be made for a streamlined dispute resolution/mediation at VCAT if Council and applicant disagree about extent of advertising.

The costs of notification in accordance with S52 can be very high in inner urban areas but there is no mechanism to ensure that Councils are reimbursed for the outlay in sending the notices before a decision is made.

The current 14-day period for submissions is reasonable because RAs can consider objections up until a decision is made. A longer period would disadvantage applicants in cases where there are no objections. In line with the comment above about the use of working days, rather than calendar days, a 10 working day provision would also be fair and equitable.

6.4 Objections

Council supports the change of the term “objection” to “submission” to encourage comments in support of proposals.

Councils need discretion to disregard objections with no substance or no relationship to the reasons why a permit is required (such as amenity objections in heritage areas). The onus should be on the submitter to demonstrate that they would be adversely affected in a material or substantial manner. Objections are currently received for applications which are exempt from advertising. The Act could be strengthened to remove opportunities to challenge the validity of an objection where the planning scheme clearly intends that an exemption should apply.

The Act should offer more incentive for applicants to formally amend a permit application after notice has been given under S52. This would re-start the clock and more accurately reflect the time required to reach a decision that is acceptable to all parties. Applicants often do not amend under Section 57A because the material detriment test based on the original application is onerous and is not directed only to those who would be affected by the amended application or who have already objected.

6.5 Referrals

Referral authority comments or conditions are often unrelated to the requirement for referral. There is no opportunity for negotiation on the conditions imposed and Referral authorities find it difficult to defend their 'refusals' at VCAT. The enforceability of conditions is sometimes an issue, but it is mandatory to include the conditions.

Referral authority requests for further information are usually received after the 28-day period for making a request under Section 54 and the clock cannot be stopped at that stage.

Where a planning scheme requires the RA to "seek the views of..." provision should be made for notice to be given to the referral authority under Section 52.

6.6 Making a decision

Planning schemes are the correct place for policy hierarchies, not the Act. Legislation could make a distinction between matters which should be considered and matters which must be applied. For example, mandatory height controls must be applied.

Different timelines based on classes of applications related to complexity are not supported because of the difficulty of prescribing which applications may require a longer time for a decision. Generally 60 calendar days, with allowances to stop the clock for further information, advertising and referrals, is sufficient. This is reflected in the low number of appeals against failure relative to the number of decisions which are over 60 days but result in the issue of a Notice of decision to grant or a permit.

There is support for the introduction of prescribed times to make a decision on applications to extend a permit (60 days) and for decisions on secondary consents (60 days).

6.7 Conditions

There is a need to clarify the ongoing life of conditions on permits.

The current legal opinion on subdivision is that the conditions cease on certification. It is the development that creates the demand for additional public open space but the power to levy contributions is only available through a permit for subdivision. There is a requirement for ongoing conditions without using 173 agreements (e.g. car parking lots which can only be used in certain way).

Developer Contributions Plans are difficult to implement and a simpler method of securing developer contributions is required (see Section 11). Section 173 agreements are valuable for this purpose.

6.8 Amending a permit

Section 72 can now be used for an amendment that amounts to a complete transformation of a proposal but is not available for even the most minor amendment to any permit issued at the direction of VCAT, including amendments to plans endorsed under the permit, or permits issued on the basis of Consent Orders. This results in inequities and delays. For example, an application to increase a front fence height by 200mm, which was not a matter in dispute at the VCAT review, took 4 months.

Administratively, discretion to amend a permit under Section 72 or to approve a secondary consent under the conditions of a permit is practical (and for VCAT permits it is essential).

Secondary consent decisions are based on case law tests, which should now be included in the Act. Section 216 should now be removed.

Although the dates and changes to all permits must be recorded on the permit, it is not apparent without reviewing the Council records which version of the permit is the latest and current. There is also a problem if an applicant obtains an amended permit for use (or use and development) and does not act on it or reapply to have the purpose and conditions changes again to match the original version, which has been superseded. The applicant should be able to rely on the original version because it has not been cancelled under Section 79.

It is also difficult where a purchaser of one unit in a development seeks an amendment under the original permit that affects only that unit. The Act does not specify the rights of other owners in such circumstances.

6.9 Enforcement

A register of enforcement orders would offer no practical benefit and would increase the administrative burden. Electronic systems now enable Councils to link enforcement cases to the property data base, if required.

Generally Part 6 of the Act is operating satisfactorily.

7. Planning schemes and the amendment process

7.1 The purpose of planning schemes

Not applicable

7.2 The amendment process

Refer to comments below.

7.3 Requesting and preparing an amendment

An amendment request form is not considered necessary as circumstances vary dramatically.

Information required to properly assess a request depends on the nature of the amendment. If guidance regarding this is provided it would need to address the wide range of circumstances in which an amendment may be required – circumstances vary significantly, for example, an amendment request may be to remove a setback or to rezone and redevelop a whole precinct or to increase the extent of an activity centre.

The introduction of a formal and independent process to assess refusals would increase the workload of the RA and are generally unnecessary as decisions are

made on the basis of strategy or policy that is reflected in the Municipal Strategic Statement and which has already gone through an extensive process.

7.4 Authorisation

The City of Melbourne does not support the authorisation process. Experience shows that it creates unnecessary delays and adds limited value.

The original intent of authorisation was to speed up the process and to ensure that proposed amendments did not conflict with State policy. The process has become a de facto approval process which is problematic because issues which should be debated openly in the context of a panel hearing are being determined by a single departmental officer.

Problems could be avoided if there was more guidance on the form and content of policy and other local provisions and on the rigour required from strategic studies. There is currently no consistency across DPCD with different officers favouring different formats.

Failing removal of the need for authorisation, there needs to be a statutory time requirement binding the Minister to approve requests for authorisation.

7.5 Exhibition

No comment.

7.6 Submissions

A planning authority should be able to disregard irrelevant submissions. Failing this the Act should provide for a simplified process to resolve these. The Act should provide for an 'on the papers' where appropriate – subject to the agreement of all parties.

The City of Melbourne does not agree that a structured form for submissions to Planning Scheme amendments would add a lot of value or simplify the process. Any structured form would have to be well designed to take into account the variety and complexity of issues subject to amendment as discussed above.

Once a Panel is established all submissions should be referred to ensure that the widest range of issues and factors is considered and debated.

The status of a submission generally depends on the veracity of the submission. No distinction should be made in this regard on the basis of whether it supports or opposes the amendment. It is the strength and relevance of the argument that matters.

Panels should be able to consider the whole amendment and make recommendations on the whole amendment and not just those aspects subject to review. This has the potential to improve the quality of the outcome.

It is not necessary for all amendments to be reviewed by an independent panel. This would add to the time and cost of the process and would not, in all circumstances, add value. However as discussed in paragraph 7.4 above there is a need for greater rigour/standards for strategic studies and other support work.

7.7 Assessment and adoption

Where the responsible authority is the proponent they should be able to abandon the amendment without any review. In some circumstances, for example where a panel recommends adoption and the planning authority decides to abandon the amendment, provision should be made to allow the proponent the opportunity to make a written submission to the Minister.

7.8 Approval

There needs to be a statutory time requirement for the Minister to authorise and approve planning scheme amendments.

Monitoring and review

No comment

8. State Significant Projects

8.1 A proactive or reactive approach?

It would add clarity to the planning system if criteria for a development being considered of “State Significance” were better defined in the Act and that the Minister gave reasons for considering a proposal to be of State Significance when calling in an application. It appears that many developments *called-in* by the Minister are not of true state significance but rather it is used as a mechanism to expedite development.

8.2 Assessment process options

Dual planning controls currently exist in the City of Melbourne wherein the Minister for Planning is the Responsible Authority for all major development over 25,000 square metres. The Council currently provides informal technical advice and comment through this process.

International best practice and options for reducing duplication and streamlining current processes in the City of Melbourne need to be explored in the context of in this review.

The City of Melbourne proposes a change to the responsible authority for buildings over 25,000m² in this municipality and suggests a system similar to the legislative framework for dealing with development applications in the City of Sydney using similar mechanisms to the Central Sydney Planning Committee.

The Central Sydney Planning Committee (CSPC) was established by the State Government in 1988 under the provisions of the City of Sydney Act 1988. There are seven members of the CSPC:

- i. The Lord Mayor of Sydney;
- ii. Two Councillors of the City of Sydney elected by the City Council;
- iii. Two senior State government employees appointed by the Minister, including the Director General or a Senior Executive Officer of the Department of Planning; and,
- iv. Two non-State or local government employees administering Part 4 of the EPA Act 1979 (Certification of Development) appointed by the Minister.

The CSPC exercises the functions of the City of Sydney with regards to the determination of major development applications or applications seeking to amend a development standard e.g. building height, unless delegated to Council to determine. Section 31 of the City of Sydney Act 1988 defines major development as:

- i. Development the estimated cost of which exceeds 50 million dollars; or,
- ii. Development the subject of a development application not complying with an environmental planning instrument that applies to the land concerned; or,
- iii. Development that the Minister administering Part 4 of the Planning Act has requested the Planning Committee to deal with.

9. Governance and decision-making

9.1 Private certification

Council does not support private certification and the private sector carrying out the responsibilities of the Responsible Authority under the Act.

Responsible Authority's may engage contract staff to assist authorised Council officers and use suitably qualified professionals as consultants or expert witnesses. These arrangements ensure that conflict of interest situations are avoided and elected officials can manage the delegation of their authority.

Matters requiring a purely technical assessment could be removed, through planning scheme amendments, from the permit process.

While private certification has been successful in the building industry it is submitted that decisions on planning matters are less straight forward and are open to far wider interpretation as the planning scheme is more performance based while building codes are very prescriptive.

9.2 Registration of planners

The suggestion of registration of planners is not supported. The Planning Institute of Australia currently operates a registration system of "Certified Practicing Planners" and it is unclear what additional value would be derived from including this in the Act.

10. Other Opportunities

10.1 Section 173 agreements

The recommendations from the 2004 expert group are still relevant and should be implemented. In particular the requirements involving the Minister for Planning should be removed.

Council would not support any legislative amendments which might limit the ability of Councils' to use section 173 Agreements in the broad planning context for which they are currently allowed. Council uses a model agreement and supports the introduction of such for general use to reduce costs for both owners and Councils.

Council does not object to an increase in the ability of VCAT to resolve disputes, such as when a particular agreement should end. An amendment to s177 of the Act could provide for this.

The City of Melbourne currently keeps a separate register of all s173 agreements and generally supports this recommendation.

An emerging issue relating to the increased number of agreements under s173 applying to land that is later subdivided is the need for an ability to end an agreement for the owner of a lot where the agreement ceases to apply.

10.2 Facilitating e-planning

The review of the Act should consider mandating the electronic lodgement of all development applications except for all but 'mums and dads' class of applicants.

The argument for this is supported by the time savings proven with SPEAR in subdivision and the problem solving capabilities particularly in terms of referrals processes.

In additional e-planning provides significant benefits for ease of access and transparency of processes through the extensive viewing of documentation offered around the clock.

10.3 Access to planning information and privacy issues

The City of Melbourne is concerned about privacy (and copyright) issues in light of the ongoing access to copies of permits and plans requested by members of the public.

Consideration should be given in the Act to limiting planning authorities' requirements to provide access to permit and planning file documentation only to the extent that such information is reasonably required in the context of current planning permit applications. Information relating to a specific current application needs to be made available for that purpose in all formats, including electronic, until such time as a decision is made. This would include details of objectors/ submitters. The availability of this information needs to be time-limited.

On-going access to Council planning records needs to be clarified, starting with what must be included in any electronic copy of a Planning Register. Access to copies of permits and plans must be limited to owners or their agents, because full disclosure raises issues of copyright and security, as well as privacy.

Data is frequently required to be collected by planning authorities for reporting reasons and direction on this should be included in the Act. However personal information should only be included in the data collected if such personal information is necessary for the purposes for which the data is collected.

10.4 Cash-in-lieu schemes for car parking

Experience in the inner Melbourne area shows that this provision is not an effective mechanism to deliver parking commensurate with need (and policy direction) in a timely or efficient manner due to its limited application (usually on a micro scale on a site by site basis), resulting in the collection of small amounts at sporadic intervals causing a significant time lag in the ultimate provision of parking spaces in the vicinity.

Other ways of achieving developer contributions and promoting sustainable transport options (such as a requirement for integrated transport plans) need to be explored in full and introduced for the inner area. (See comment in section 11)

10.5 Interaction with other legislation

Consistency of Terminology

There needs to be a consistent use of terminology / definitions between different Acts and the Planning Scheme to remove possible confusion and conflicts.

Encouraging Regional Planning

Recognition of the value of regional collaboration in planning at local government level (such as the IMAP model) should be incorporated in planning legislation. The Local Government Act should be amended to make it easier for local councils to have joint control. The IMAP group of Councils plan to make a submission regarding this.

Integrated Planning

The review provides an opportunity to improve the integration of various legislative provisions relating to land use and development. A whole of Government approach through an integrated legislative framework is supported.

Potentially the review could consider and make recommendations where there is overlap or confusion between various acts to achieve greater clarity and consistency.

For example the following areas could be better integrated with the Planning & Environment Act:

- ii. Managing Licensed Premises – P & E Act and Liquor Control Reform Act/Licensing Commission, Health Act
- iii. Managing Noise – P & E Act and Environment Protection Act – respective powers & controls and enforcement, SEPPs

Integrated transport planning, facilitating and promoting sustainable modes of travel (as envisaged in the Vic. Transport Plan) would also be more easily and effectively achieved through a whole of Government approach to planning.

There are also a number of areas where the Building Code of Australia and Victoria's planning legislation could be better integrated, particularly with regard to where responsibility should lie. Some elements of a development can be more effectively addressed at the planning permit stage rather than retrofitted when trying to meet building requirements (e.g. energy efficiency).

10.6 Other identified Issues

Delegation

Section 188 of the Planning & Environment Act only allows Council to delegate certain powers discretions and functions under the Act to an officer. There is no ability to, for example, delegate to the CEO certain powers etc and to then sub-delegate down to officers. Also the section 188 ability to delegate powers of the RA does not apply to the power of the RA to authorise officers. Thus, only the Council itself can authorise officers under the Planning Act.

This contrasts with section 99 of the Local Government Act which allows Council to delegate to the CEO who can then sub-delegate to officers, who can then appoint authorised officers under section 224 of the LGA.

Thus there is inconsistency between the two acts. This results in the more specific Planning Act prevailing over the more general LGA.

The *limited* ability to delegate powers discretions and functions under the Planning Act as detailed above makes delegations/authorisations process cumbersome for Council.

Vertical Zoning

The Act needs to recognise the vertical nature of our urban areas and provide mechanisms to differentiate land uses vertically.

Currently the "use" of land can only be applied in a very broad brushed one-dimensional level. The complexity of buildings and communities warrants a more sophisticated approach to their land use management and thus Council supports the need to recognise and facilitate vertical zoning.

Site consolidation

The Act needs to allow for bodies, other than VicUrban, to consolidate sites particularly in activity centres to facilitate redevelopment of built up areas. The Act could extend this power to the Minister which would assist in achieving Melbourne 2030 objectives of urban consolidation.

11. Key Strategic Issues

11.1 Climate change mitigation and adaptation

Climate change mitigation and adaptation will be fundamental challenges for all levels of government in coming decades. Victoria must significantly reduce carbon emissions and its ecological footprint (which are amongst the highest in the world), whilst accommodating significant population growth. In addition, Victoria's biophysical environment faces unprecedented climate risks and vulnerabilities that will need to be managed through climate change adaptation.

Addressing these challenges in a timely, effective and efficient manner is a significant challenge under current planning and related legislation. The review of the Act needs to carefully consider how to enable climate change mitigation and adaptation actions (and ecological sustainable planning principles), to ensure long term amenity, liveability and economic competitiveness rather than enabling mainly short sighted planning and objectives.

Whilst progress concerning greenhouse gas mitigation and climate adaptation issues has been marked by legislative provisions in a number of Acts, there is a need to clarify and coordinate planning powers through all relevant legislation, including the Building Act and Code and Environmental Effects Act.

The Act should also enable the planning system to encourage and facilitate new technologies and innovations for sustainability, particularly greenhouse gas reduction and climate adaptation innovations, in new and existing development as well as part of strategic planning activities.

There is currently a lack of scope for responsible authorities to achieve progress in emerging best practice and proven processes for ecologically sustainable development. For example, co-generation (localised energy generation) is best provided at a district or precinct level whereas development agreements, which under the current legislation might negotiate such infrastructure, are generally limited to single sites. Co-generation is widely utilised in Scandinavia and more recently the United Kingdom's new local planning framework has mandated co-generation as a strategic planning consideration.

Consideration also needs to be given to the issue of incentives / disincentives for the development industry to embrace compact city built form and transit oriented development rather than fringe growth. There needs to be potential to improve the cost-benefit ratio of developing activity centres and transport corridors to a reasonable density compared to low-density fringe development. Incentives might include reduced approval times, greater certainty (e.g. as-of-right development) or development bonuses.

Overall, it is considered the review of the Act should place greater emphasis on Ecologically Sustainable Development (ESD) principles in the planning system, particularly with regards to climate change mitigation (greenhouse gas reduction) and adaptation, and affirm these as priorities for planning in Victoria.

11.2 Delivering affordable housing

Effective tools and mechanisms are needed to deliver affordable housing on the ground (e.g. inclusionary zoning, effective and timely developer contributions (e.g. in kind etc).

The review of the Planning Act needs to recognise affordable living (not just housing) as one of the key issues planning in Victoria faces over the coming decades and ensure that legislative mechanisms facilitate the provision of such housing, or at least do not hinder affordability.

11.3 Health and well being

It is now widely accepted that there are strong links between the built environment, health and wellbeing. The built environment impacts upon opportunities to engage in physical activity and the way in which we participate in community life (Victorian Department of Human Services 2009). Urban planning links with physical and psychological health objectives include (DHS 2009):

- Active living through the provision of services and facilities that enable participation and physical activity including bicycle paths, footpaths, public transport integration, disability access and pedestrian crossings;
- Promotion and protection of health through housing and urban design that promote sense of place and community well being, access to and open space natural environments for recreation and transport infrastructure that reduces reliance on motor transport, and;
- Eating well through access to nutritious and affordable food.

Healthy planning principles are being increasingly intertwined in strategic planning policy and development assessment protocol throughout Australia and around the world (e.g. The London Plan, South East Queensland Regional Plan), including Melbourne 2030. The Planning and Environment Act must acknowledge health and well being as one of the principles necessary for the accomplishment of sound planning. This is needed to provide the Act is no longer lagging behind planning practice.

11.4 Safety

The introduction of CEPTED (Crime Prevention Through Environmental Design) principles into the planning system was a good initiative and the principle of safety should be reinforced in the Planning Act.

11.5 Funding and provision of infrastructure for growth

Effective tools and mechanisms to fund infrastructure (hard & soft) in a timely and effective manner is required. The current development contribution plan provisions are not an effective mechanism for the inner metropolitan area / built up environment as they do not deliver sufficient funding in a timely manner and are expensive to prepare and costly to administer – particularly in relation to the amount of funding they can deliver. The current development contributions mechanisms are reactionary, dependant upon a private developers timing. (See discussion below on Value Capture).

State infrastructure including public transport, health services, education and other community infrastructure does not currently keep pace with population growth. A whole of Government integrated planning approach would facilitate the better coordination of population growth with investment in and augmentation of infrastructure.

11.6 Value capture / Betterment

Value capture is an equitable mechanism for capturing a portion of the land value increase resulting from transformational public projects or site up-zoning (wind-fall profits) for the benefit of the wider community.

Transformational projects may include intensification in activity centres, new public transport or social infrastructure or the development of state significant precincts, such as a new train station in Parkville, E-Gate or Jolimont. There is currently a lack of capacity in the planning system to capture value to provide funding for social and transport infrastructure and community equity cornerstones such as affordable housing.

Value capture is increasingly being utilised in Europe and North America (e.g. recent New Jersey legislation), as well as being considered in other Australian states (e.g.

New South Wales) to recoup some of the financial benefits resulting from government planning actions to fund infrastructure or affordable housing.

There is no specific enabling provision in the Act to facilitate value capture. Section 6 of the Act (*What can a planning scheme provide for?*) sub-section (2)(h) or Sub-section 2(k) may be perceived to include potential for value capture:

A planning scheme may-

(h) require specified things to be done to the satisfaction of the responsible authority a Minister, public authority, municipal council or referral authority;

(k) provide that any use or development of land is conditional on an agreement being entered into with the responsible authority or a referral authority;

These clauses however provide that the utilisation of value capture is dependant on the initiative and limitations of each responsible authority and, for the latter, agreement with land owners on a case by case basis that may be undertaken confidentially. As such, in terms of value capture, the Act provides a context lacking effectiveness, consistency and transparency.

The current proposal to introduce an infrastructure contribution in the Growth Areas, the Growth Areas Infrastructure Contribution (GAIC), provides a model which could form the basis of value capture in the built up areas of Melbourne. It is proposed that all funds raised by the GAIC will be used to provide vital infrastructure.

As part of the review of the Act, provision should be made to enable effective and systematic value capture in the Victorian planning system. This would allow one off land value windfalls linked to government infrastructure investment or planning policy changes to be partially utilised for the benefit of the wider community such as to fund community or transport infrastructure or affordable housing.