

## **SUBMISSION BY BAW BAW SHIRE “MODERNISING VICTORIA’S PLANNING ACT”**

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### **SECTION 3.5**

#### **Questions**

- **What does planning mean for Victoria today?**

Planning in Victoria today means a system of managing the use and development of land along a pathway towards strategic community objectives for a perceived desirable future. This involves providing for and guiding new growth and change and protecting existing features we want to retain for the future. This necessarily involves the built and natural environments, lifestyle issues and economic considerations.

In Baw Baw Shire the role of planning is diverse, possibly more diverse than that of our metropolitan Councils as there is a strong push for environmental sustainability as it relates to both catchments and the protection of high quality agricultural land as well as land use and development for township planning. This encompasses balancing commercial growth whilst maintaining a rural feel to towns. In addition planning in the shire has much to do with minimising pressures from expanding community and residential and needs on productive rural land and important landscape vistas.

Small rural communities are developing communities and by in large do not face the same issues as established metropolitan communities in that sense.

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

It is fair to say that the modern planning system is similar to the Second Reading Speech delivered at the introduction to the current Act however increasingly the current Planning system is being pushed towards managing economic and environmental focus.

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

This is a difficult question as few planning terms adequately reflect the scope of the discipline. A name should not be changed for change sake. Planning and Environment is a fair description of the role of the Act however perhaps a reference to land use and development may be appropriate. Maybe the Tasmanian equivalent is close – the Land Use Planning and Approvals Act.

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

Planning is principally land based however as mentioned above. If you move away from this it would be virtually impossible to draw lines of responsibility between other areas of government. It is also about economic pressures not typically associated on a land or parcel based system but rather town or region based.

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

The planning system has evolved of recent time to incorporate the coordination of other legislation. For example, the management of timber harvesting and extractive industries previously under separately legislation is now woven tightly with planning legislation to the point that the previous governing legislation is almost redundant or perhaps overlaps so much that it is counterproductive and confusing to all stakeholders. The way this has occurred does raise issues. Where planning provides the connecting link for the bringing in of other disciplines so that a land use application addresses all appropriate considerations this is completely in accordance with the Act intent and logic. However the changes have also effected an off-loading of other governmental responsibilities onto the planning authority as in the Code of Forest Practices where the planning authority is expected to go beyond a approvals co-ordinating role and be responsible for administering the technical requirements that are beyond the role and function of planning.

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

Although planning is intrinsically a multiple disciplinary field, care should be taken increase the scope of the legislation. It is the Shire's opinion that increasing the scope of the legislation will be counterproductive to the objective of the *Better Decisions Faster* and *Cutting red tape* reports prepared by the State Government, i.e. streamlining of the planning process.

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

If anything, possibly planning legislation could be widened to place greater emphasis on the impact of land use and development on social and community infrastructure, housing affordability and transport matters to provide a stronger link between Federal and State Government policy and on-ground planning. This could be part of changes to strengthen this co-ordinating role. Formal referral obligations are addressed but informal referral to other government authorities and bodies on social, economic and land use issues not directly written into the legislation is ad hoc in terms of planners making the relevant approach and very so in getting a response.

- **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?**

As mentioned above it is possible that a stronger link between Federal and State government policy positions on key social and economic is needed to ensure that land use/development planning addresses current conditions experienced. For example – how does current land use planning legislation address housing affordability and provision of social infrastructure pressures other than bland references to broad policy statements in the SPPF's of Planning Schemes?

One bitter issue is the use of the Section 16 exemption by government departments, most particularly the Department of Education to destroy heritage listed buildings. Higher levels of government need to be able to override local planning controls but it should only be where it is a matter of state or federal significance and there needs to be a protocol process.

## **SECTION “ARE THE OBJECTIVES OF PLANNING IN VICTORIA STILL RELEVANT”**

### **Questions**

- **Are the objectives of planning in Victoria still relevant?**

The objectives are broad enough and have to scope to remain relevant in the current political climate. If you try to be too specific omissions will be recognised and given legal status as being deliberate.

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

As above.

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

These terms have always been interpreted broadly in land use planning and still remain relevant, however should a greater emphasis be placed on cultural matters, not just as they relate to Aboriginal cultural heritage as is the current emphasis but rather on the culture of individual communities?

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

As Above. It is noted that the cultural heritage protection in the Act is confusing at best with the results being that all stakeholders are unsure of how this fits into land use planning and what is expected in the consideration and consultation of cultural matters during the assessment of land use planning applications.

- **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?**

Only if the references were clear and concise and didn’t result in the provisions being used for individual agendas. For example, would reference to housing affordability give poor quality developments a leg up in the decision making process?

## **SECTION 6.1**

### **Questions**

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

How would a “minor” application be defined and would such necessarily negate the likelihood of any more controversial or complex issues arising?

Introducing changes to processes whereby there are alternative processes increases confusion amongst stakeholders and often increase mistrust between parties. The concept could be investigated but if a realistic mechanism is found it will probably still be a matter of it having negative as well as beneficial effects. Maybe if planning schemes had reasonably proscriptive controls the concept would work more effectively.

- **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?**

The “short” permit process shown in the document is unlikely to decrease decision times on applications in a “true” sense. Pre-certification merely means that time is spent with the applicant/application is prior to lodgement of plans as opposed to post lodgement of applications however the time spent itself is the same, so how does this achieve cutting red tape?

There may be issues with obtaining responses for referral authorities prior to applications being made for example –how would it ensured that the same information is made available to the referral authorities as Council receives? What if changes are made to the application post Council receiving the application, which would require re-referral of the information anyhow?

- **What are the other options for streaming applications?**

Reduced response time for referral authorities, clearer time by which Council’s must refer an application and reduced time Council has to request further information.

These changes may require Councils to ensure that their processes are tighter and more responsive to applicants and also ensure that Councils adequately staff their planning units.

## **SECTION 6.2**

### **Questions**

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

They need to be clearer and more concise. It should be a statutory requirement for basic level of information before an application can be received by Council. This is not only for Council but for people to whom notice is given. It is important for clear and correct information to be made available for viewing.

It is also noted that the changes made to Clause 54 (further information provisions) of the Act whereby a permit lapses if the further information is not provided within a given time is unreasonable on both Councils and consultants/professionals trying to track application progress to ensure that no applications lapse whilst information is being sought. There is no harm in applications not been acted on for some time particularly given that the “clock” stops on the request for further information and therefore timelines for assessing an application are not compromised. It is acknowledged that applications being dormant for some time may pose an issue if legislation/policy changes occur during the dormant period. Perhaps a better approach would be to have a sunset Clause for say. A year, after which is there has been no action on an application (and this may include returning of advertising if the Council requires the applicant

to do this) the application is deemed to lapse. There will be far fewer applications than that this would have the effect of reducing Council and consultants workloads.

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

It is difficult to see how Councils could reasonably reject an application as deficient unless there was a simple checklist the application failed on and this predominantly tied back to a clear requirement of the Act or scheme (no fee paid, no plans of a building, no landscape plan where the scheme required one etc). It could not apply else-wise as it could be subjective – one planner might reject an application when another would have accepted it – and this would be untenable and open to abuse.

Given the above; Yes, HOWEVER it is our experience at Baw Baw Shire that applications for minor works (even if minor is a very large shed!) are submitted by regular people or farmers who do not have the necessary expertise to prepare professional submissions nor is it considered reasonable to expect people to pay professional fees for plans and associated documentation for such works. In these cases, often the plans and documents submitted however are substandard and inadequate – the issue we have here (short of drawing the plans ourselves) is what to do? This issue probably needs to be addressed in this review.

If further information is required within the prescribed time the clock starts after receipt of the information in a satisfactory form, not when the application is lodged. (P&E Regs 31(2)(b)) If this circumstance was more prominently highlighted in council processes and to applicants it could assist this issue.

- **Is a more comprehensive application form needed?**

The application form has been drafted and redrafted many times. Although the form is not fool proof, the current form is more comprehensive than previous forms. It is Council's opinion that this should remain as is.

If it was decided that different processing should be applied to different applications (be they 'minor' or whatever) it may be that part of this process could involve a more complex application form to enable a quicker simpler planning process.

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

It is considered that this is yet another cost to applicants in an already expensive process and although developers of unit proposals, or businesses proposals worth a reasonable amount of money would expect and to some extent absorb these costs, expecting this for a farm shed (that may be worth \$10,000) after the applicant has paid the planning permit fee, and building permit fee and so on, it is probably unrealistic (and if a voluntary process, unlikely to happen anyway). If the pre-certification was shared between Council and private practitioners then you may end up with disparity between Council requirements and those requirements thought necessary by the private practitioner. It is also considered that private

practitioners may not have access to some information which may be necessary as part of the decision making process such as history on the site, neighbouring proposals etc.

### **SECTION 6.3**

#### **Questions**

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

Councils currently have some discretion as to the scale of notice required. For example, one application for a dwelling may require the application to send letters to adjoining neighbours only and a sign on site whereby an application for a subdivision may warrant Council to require to applicant to do the above plus a notice in the paper and increase the numbers of people to which registered mail is sent. This probably is sufficient. Developing a class 1,2 & 3 based approach is merely formalising what currently exists.

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

The Act allows for great Council discretion already whilst providing for the diplomatic process for this to be challenged which is considered to be adequate. It may be appropriate for a stronger definition of “material detriment” to measure the requirements for notice against.

Notwithstanding there should not be an automatic necessity to notify all adjoining owners and occupiers if the responsible authority decides that any person may be materially affected by an application. In some cases in rural areas this may mean having to notify a neighbour one kilometre away because another neighbour 20 metres away may be affected. Being required to notify persons materially affected should be sufficient.

### **SECTION 6.4**

#### **Questions**

- **Should the term objection be changed to submission?**

It is unclear how this will affect review rights under Section 82 of the Act. Often submissions can be supportive or make reference that the submitter does not want to object or take the matter further. A supporting or clearly not objecting submission does not trigger the need for a notice of decision in the case of an approval. The term “objection” makes it clear to the public the natural course that an objection will take. If the term is changed the changes should also reflect review rights and responsibilities of a submission. Also, will a “submission” that is not objection per se, hold up the application, i.e. if a submission is received does this mean the Council must still issue a Notice of Decision to Grant a Permit and thus have the mandatory 21 day period in which an appeal may be lodged? There would still need to be some clear differentiation.

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

No, this undermines the whole basis for review rights and the role of the Tribunal as a “peoples court”. The nature of planning is often subjective and further restrictions on public rights however minimal (or the lack of true planning ground) public concerns may seem, the concerns are important to the submitter in most cases and should not be dismissed readily. It must also be noted that it is very difficult to make judgements in most cases as to whether the objections are made in good faith. In reality an expanded process of rejection would likely not be able to be exercised to an extent that would have much impact.

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

Yes, this would require the objector to understand the meaning of “material detriment” as it applies to land use planning and also assist planning officers in understanding the nature of the submitters concerns. It is also likely to weed out vexatious objections.

The Tasmanian planning system has two types of planning permit processes. One for discretionary uses where the application is automatically required to be advertised and a permit can be refused, the other where a permit must issue, there is no advertising and planning authorities and referral authorities only have the say as to the conditions of approval. Maybe a similar structure might assist in some of the issues raised (without mandatory advertising).

## **SECTION 6.5**

### **Question**

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

Clearer understanding of referral authorities of what types of comments are appropriate to the trigger for the referral and tighter timeframes by which referral authorities must respond. It may also be appropriate for requests for extension of time for response by referral authorities to be removed. In our experience the only time a referral authority has requested an extension of time is a result of workload within these referral authorities – is it reasonable that understaffing within referral authorities should hold up application times?

Most issues arise from referral authorities not meeting time-lines, not following the processes in the Act, poor drafting of conditions etc and council’s not assisting with adequate information as to why the referral and what information is sought.

The referral authority process fails when what should be a referral authority technically isn’t. This is where a referral for expert advice is internal to the council. Why should a referral to Melbourne Water on a sewage treatment issue be a referral but a referral to an environmental health officer at the same council who is responsible for the Septic Tank Code on a sewage treatment issue not be a Section 55 referral? Why should a referral to VicRoads as the road authority for an arterial road under its control be different to a referral to council’s engineers as the road authority for an arterial road under its control?

## SECTION 6.6

### Questions

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

Yes, it is very confusing for both the responsible authorities and stakeholders to understand weight that should be applied to different policy documents.

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

No. Planning principles are the same regardless of the complexity of the proposal. It may well be that greater weight is applied to some considerations for more complex proposals but that is not to say that the considerations are irrelevant to others. The Planning Scheme gives Council's the opportunity to decide which decision guidelines are relevant to each proposal by use of the words "as appropriate" this is sufficient to allow some considerations to have more weight in some classes of applications than in others. Planning has been intended to provide consideration of all issues relevant to any proposal. It is doubtful that parameters could be written that still ensured this would be.

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

Yes. There is no reason (other than understaffing) which would suggest that applications cannot be dealt with by 60 days given that the clock stops at different intervals during the application process. If anything specification should be given for timeframes for dealing with other matters, for example endorsing plans where a permit condition requires submission of alternate plans, and for amendments to applications.

## SECTION 6.7

### Questions

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

Yes, this is a very confusing point. There have been some Tribunal decisions, which refer to this and to when a permit is "spent" however clarity of this within the Act would be welcomed.

- **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?**

Yes. Baw Baw Shire Council as a small rural Council does not necessarily have strategic framework to (what is now) legitimately require cash in lieu payments. The result of this is that developments can occur without reasonably providing or paying for facilities or works. For example, Council has been ordered by the Tribunal on two separate appeals that cash in lieu of car parking cannot be

requested in the absence of a car parking precinct plan however the time and resources to develop such a plan means that in the meantime there is an under provision of car parking for developments and no cash to pay for the construction of car spaces in Council revenue. The Tribunal has in cases been dogmatic stating no parking precinct plan, no cash-in-lieu without considering whether the parking requirement was justified or not and just approving the development without it. In many cases the cash-in-lieu option is desirable to the developer.

Referral authorities such a authorities providing service infrastructure are able to place conditions requiring agreements and payment of monies unhindered with no provisions to the effect in planning schemes (but sometimes strong powers under their own legislation.)

## **SECTION 6.8**

### **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?**

Only if appropriate wording could be framed and be effective to allow a minor amendment that did not change the effect of the Tribunal's decision and conditions. Council may apply the "slip rule" under section 71 but the concern would be that any power could not be abused to counter the Tribunal's decision. What remedy may be able to be sought by another party? It could open an area for disputation and orders of costs if a decision is made incorrectly by Council.

- **Should section 216 now be repealed?**

Yes, this is confusing and can be unfair to other stakeholders (whoa re not the applicant). Current Permits (that have not lapsed or are spent) issue pre 2005 should be minimal so this should not cause too many concerns for developers.

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

Yes. The secondary consent provisions are very general and there is a grey area as to when secondary consent becomes a separate application. There have been recent Tribunal Decisions about this however it would be simpler if these were specified in the Act.

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

Yes, particularly where there are objectors to a proposal. Currently it is difficult to track secondary consents as often it is merely written advice and no changes to the stamped plans, which, when looking at a permit issued some time ago, can be difficult to track.

- **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?**

Yes. A minor amendment should not be subject to the rigorous process a “normal” amendment would be subject to. It could be separately identified in the legislation and qualified in some way to ensure it didn’t change the effect of a decision and was “minor”. Alternately it might be decided that the one provision applied and the nature of the change determined the rigour of the process. A minor amendment without material detriment should not require notification even if there were objectors to the original application.

## **SECTION 6.9**

### **Questions**

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

Whilst is it not considered it would reduce non compliance, it would provide a good history when enforcement matters are heard at the Tribunal or beyond.

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

More effective penalties through the Magistrates Court. More advisory information for when to issue a PIN, Enforcement Order and interim enforcement order.

## **SECTION 7.2**

### **Questions**

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

- Time for minister to authorise amendments – 4 weeks
- Approval from minister to approve amendment – 2 months from Councils request
- Time for certification of an amendment where the planning authority is also the approval authority – 2 weeks

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

In regard to a request for authorisation, if the request is not determined within 4 weeks, then the amendment could be deemed to be authorised. The purpose of the authorisation process originally was to ensure that the proposed amendment was consistent with State Planning Policy. In this context, the authorisation process should not take a significant amount of assessment and therefore the expectation of a 4 week turnaround is not unreasonable. Any longer and it would be unnecessarily adding ‘red tape’ to the amendment process. Any glaring inconsistency with State Planning Policy should be fairly self evident generally.

The only issue here is the mechanism that officially makes the Council the planning authority. It could be that if the authorisation is not given within 4 weeks, the Council is deemed to be the planning authority. Currently the Minister for Planning has the power to call back an amendment from a Council. This is a safeguard if, for one reason or another, the default authorisation was for an inappropriate amendment.

In regard to a request for the Minister to approve an amendment, as there is no 'higher authority', there would appear to be little that could be done if the decision is not made within the 2 month timeframe. However, it may provide a more defined target for decisions to be made.

In regard to a request for certification, as the purpose of it is to ensure that the amendment documentation is drafted correctly, and this is important when modifying a statutory document (i.e. a Planning Scheme) then there does not appear to be an alternative if the Department does not certify it within the timeframe. However, as above, including a timeframe would provide a more defined target for the process to be undertaken.

## **SECTION 7.3**

### **Questions**

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

More guidance would be beneficial for a broader variety of potential proposals, such as exists for Rural Residential Development. However, the use of a Minister's Direction and Practice Note is probably the best mechanism to use to ensure the information is provided rather than including anything additional in the Act.

- **Should an amendment request form for proponents be introduced?**

The large variety of amendment types probably make developing a common application template impractical to be of any great benefit or use. With the planning permit application form, this only usually provides some basic standardised information, but most of it is provided as additional documentation. With an amendment, most of the information provided could not practically be included on an application form. The introduction of more information guidelines as mentioned in the previous question would be of more use.

- **Is a formal and independent process needed to assess refusals of amendment requests, or to decide unresolvable issues between a planning authority and the proponent? If so, how should this process work? Who should make the decision?**

With the current process, Council has almost full control of what changes are made to the planning provisions contained in its planning scheme, other than if the Minister for Planning undertakes a ministerial amendment.

Councils can receive numerous requests for amendments, many of which go nowhere. If there were some form of 'appeal' against Council's decision, then there could be a significant increase in workload, often dealing with matters which are clearly inappropriate or less important than many other amendment matters Council is trying to progress.

Potentially parties have an option to make a direct request to the Minister for an amendment to be prepared. The powers of the Minister, whilst being guided by the Practice Note, do allow for 'important' amendments to bypass the Council.

Unlike the planning permit process, which is essentially an administration of current regulations, the amendment process is about changing those regulations. There is no built in expectation that a proposal to change those regulations has to

be considered, whereas, with the permit process, if a proposal is permissible, then there is a legitimate expectation that the proposal will be properly and fairly considered.

## **SECTION 7.4 Questions**

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

There is a need for more guidance about what the purpose of the authorisation process is for all parties. The process started off as an assessment against State Planning Policy objectives but has morphed into a more general assessment which is not always consistently undertaken. Specific reference to the purpose would be useful in the Act, to make it clear to all parties, including Department officers, what is expected.

- **Should some types of amendments be exempted from this step? If so, which ones?**

This depends upon what the authorisation process is intending to achieve. If it is only to assess it against State Planning Policy, then a list of types of amendment where this is not relevant could be prepared, such as correction type amendments (private land in PCRZ etc). However, as the authorisation process is the trigger for a Council, or other authority, to be a planning authority, there would need to be a change to the Act to ensure that there is a clear trigger for when an authority becomes a planning authority. The authorisation process is also the process by which the 'approval authority' for the amendment is considered and determined.

Provided that the timeframe for the authorisation process to occur is tied down to a reasonable degree and there is guidance for the types of amendment that could be 'fast tracked', then changing the current arrangement could become more problematic and confusing. In essence therefore it would be better not to exempt amendment types from the authorisation process but to provide a more streamlined approach to dealing with the authorisation process for some types of amendment.

- **Is there an alternative way of achieving the objective of the authorisation process?**

Not known

## **SECTION 7.5 Questions**

- **Is more guidance about how notice of a proposed amendment should be given needed? Should this guidance be included in the Act or in guidelines?**

Not really.

- **What changes would lead to more efficient and effective notice of an amendment?**

Changing the notice period from one month to a more definitive timeframe such as 28 days or 4 weeks would be a minor improvement.

## **SECTION 7.6**

### **Questions**

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

It may be more appropriate if a Council could seek clarification or determination from a body, such as planning panels or VCAT regarding whether a submission is irrelevant. Whilst this would involve an additional process, in some cases it may be more time effective than going through a panel process. There would need to be some guidelines regarding what type of matters may be considered irrelevant. Leaving it to a Council to determine whether a submission is relevant or not would present significant risk of 'fairness' for third parties.

- **Should a structured form for making submissions be introduced?**

This would be beneficial for submitters and Council. Submitters often are unclear about exactly what is expected of them when lodging a submission. This may serve to help ensure that only relevant submissions are lodged and that, when they are, the issues of concern are provided more clearly.

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

Referring all submissions to a panel and the panel considering them in the context of the whole amendment would seem more appropriate in getting a fuller consideration of matters. As the panel does not make the decision, then Council still has the option to make their own recommendations to the Minister when seeking approval. However, there is some potential for this to make the workload for all parties involved in the panel process more onerous. In this context, whilst it may make more sense for all submissions to be referred, it does have the possibility of being less practical, having regard to workload.

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

Yes. In the context of the whole proposal, where the decision will be based upon balancing the positive and negative impacts, then clearly matters raised in support of an amendment have as important a role to play in balancing the issues as do matters which raise concerns. This does lend support to all submissions being referred to a panel for consideration as discussed in the previous question to enable the panel to better balance their response to the overall amendment proposal.

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

Again this would be a more sensible approach to proper consideration of the matters raised in submissions but would result in increased workload.

- **Should the Act facilitate ‘on the papers’ panel hearings where appropriate?**

This would be beneficial as an option, if all parties are agreeable. However, if a submitter were not agreeable, then denying them the opportunity to personally present to a panel would seem inconsistent with opportunities afforded parties in amendments with a number of issues or even the VCAT process.

- **Should all amendments be reviewed by an independent panel?**

No. The Department essentially provides a review process both through authorisation process (at a broad State Planning Policy level) and through the approvals process.

## **SECTION 7.7**

### **Questions**

- **Should a planning authority have the power to abandon an amendment at any time, after a panel has been established, or at no time? Should the Minister make this decision instead?**

As referred to in 7.3, as there is no built in expectation that a proposal to change the regulations contained in a Planning Scheme has to be considered, then there should be no expectation that an amendment should not be able to be abandoned at any time, if Council concludes that it is no longer appropriate.

This approach may not seem appropriate if a proponent has spent a lot of money progressing an amendment and a Council abandons it without presenting a good reason. However, it is a risk that a proponent takes. Maybe this risk should be highlighted more in the process such that proponents are more aware of it.

As mentioned previously, the amendment process and planning permit process are undertaken in different contexts, with one changing the rules and the other being an administration of the rules. If what is being proposed in a planning permit application essentially meets the rules, then a proponent has a legitimate expectation that their proposal be decided fairly. If what is being proposed is a change the rules, then there should be no expectation that the rules will be changed as a result of the request.

However, if a Council provides no good reason for abandoning an amendment, then there may be some basis for enabling a proponent to seek costs through VCAT or some similar body. In this case the decision would not be about whether the amendment should or should not have been abandoned but whether it was reasonable for the Council to have abandoned it without good reason, having ‘encouraged’ the proponent to go through the process to that stage, with its inherent costs.

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

Not a review of the decision to abandon but, as referred to above, a review of 'costs' if the amendment has been abandoned without good reason. If the proponent is aggrieved, as with any proposal which hasn't gone through the amendment process, then the proponent can approach the Minister for Planning, as the Planning Authority to prepare an amendment.

## **SECTION 7.8**

### **Questions**

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

This process doesn't generally appear to reduce delays in an amendment actually being approved but does provide greater certainty earlier on in the process about the outcome of the amendment. Essentially when Council adopts the amendment, all parties can assume the changes will happen. The certification process should merely be about ensuring the amendment documents are 'in order'. Given that they will have been checked previously by the Department at exhibition stage, then there shouldn't be any major or minor surprises at this stage.

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

Given the legal status of the Planning Scheme ordinance, it is appropriate there be a checking mechanism for the documentation being included in the scheme. It's the timeframe for certification that is more the issue.

- **How could this step in the process be streamlined?**

Departmental work priorities to ensure effectively administrative matters are dealt with quickly by staff with the relevant skills. e.g. it could be done by administrative staff rather than a regional planner.

## **SECTION 7.9**

### **Question**

- **Are the requirements for reviewing planning schemes adequate? Can they be improved in a way that makes the amendment of a planning scheme more efficient and effective?**

The requirement for planning schemes to be reviewed regularly is sound. However, the expectations of what is required in the 3 year review are still unclear and can lead to unnecessary work or can create a workload that undermines other strategic work that needs to be undertaken. The nature of the review should be left to each Council to determine. The Department should be able to generally monitor whether schemes are being reviewed or not through the amendments that come to them and through their role in liaising with Councils.

## **SECTION 8.2**

### **Questions**

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

Council agrees that this would result in a less reactive base than for a decision to be called in. Often decisions are called in at the last moment after political awareness is raised, often after much time and deliberation by Councils and other stakeholders. Care should be taken however that this process takes in public consultation and to ensure that this is not used as a method to bypass community input into proposals.

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

The difficulty will be the decision as to when an application falls within the requirements to be called in. Perhaps the use of more descriptive requirements for applications that are of state significance would be a good starting point. Appraise the process as to when an Environmental Effects Statement is required.

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

It is considered that developments to be called in should be directly tied back to state policy documents that are relevant to proposal as well as key indicators such as monetary value or environmental impact that triggers a state permit requirement.

- 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?

If there are guidelines defining a matter of State significance, which Council considered an application to fall under, it could be forwarded to a DAC which would presumably have the power to agree or disagree. Requests for call in on the same basis by other parties (including the Minister) could be considered by the Committee and decided. It is imagined the Minister could retain some powers but these would be curtailed by this independent appraisal body. The selection of the Committee members would need an open process. Likewise who processed the application and whether they were answerable to the Committee or the Minister would need to be determined.

## **SECTION 9**

### **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?**

The current CPP process is ineffective and tightly tied back to the PIA. A similar CPP registration governed by the planning equivalent to the Building Commission would have to be implemented as a watch dog service. Would the costs outweigh any benefits? It would seem the role of the private sector would only be relevant if the pre-lodgement certifications were to come into fore which Council has indicated above may not be the ideal scenario.

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

There would be likely to be huge legal implications and this would have to be supported by a municipal framework (like municipal building surveyors). Would this really address the issues of lack of planners and workload for Councils? Or would this compound the problem? The difference between a private building surveyor and a private planner is that the former for the most part is looking at recognised non-subjective, structural requirements and not political issues, and with limited community involvement.

## **SECTION 9.1 Questions**

- **Should a formal system for the registration of planning professionals be introduced in Victoria? If so, how would this system work and what should it apply to?**

There is no current standard by which a planner must meet before being able to make decisions other than internal authorisation however the planners are required to make significant decisions. However, given the shortage of planners the question must be asked as to whether this would only exacerbate the current understaffing concerns. In many cases the difficulty of employing planners results in unqualified staff who attain competency through supervision and experience over time and perform a vital role.

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

As above – although it makes sense that prescribed qualifications are required – what impact would this have on Councils already struggling for staff? Presumably a system would operate where certain decisions would only be made by those the organisation felt were competent, either through qualifications or experience or both. Decisions are able to be appealed.

## **SECTION 10.1 Questions**

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

Certainly eliminating the Minister from the Agreements would save time as this is currently a non-value adding measure.

Having Agreements under Public inspection is appropriate only when these agreements directly relate to a Planning Permit and then the question must be asked – if the content of the Agreement is available for viewing under the Planning Permit, then why would it be necessary to view the Agreement on its own?

Clarity about when an Agreement ends has not been of great concern in Baw Baw Shire however it is noted that various solicitors draft these sections of the Agreements differently and better clarification may assist both solicitors and Council preparing Agreements.

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

A standard agreement in the Planning Regulations to avoid current issues of Agreements being drafted differently by many different people.

## **SECTION 10.2**

### **Question**

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

## **SECTION 10.3**

### **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?**

The Planning Register should be made available as currently it is. Copies of applications should also be public (as it currently is) however there should be clearer parts of the Act referring to this as there is some conjecture by design professionals who see this as a breach of copyright.

The Planning Application form has postal and home addresses as well as phone numbers of applicants. This should not be made available to the public and perhaps should be listed separately to the main application form.

- **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?**

As above – it is of no relevance to the proposal who the applicant is or their personal details – this does not need to be made public.

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

Data relating directly to the types of proposals and value for statistical analysis is necessary for forecasting however this is possibly where this should end – there would be no value in people's personal details being collected.

## **SECTION 10.4**

### **Questions**

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

Yes. The current system is confusing and some issues have been raised earlier in this submission with respect to car parking cash payments and the difficulties in requesting car parking payment in the absence of car parking precinct plans. The system operated perfectly well previously due to appeal rights though there would need to be some provisions to set parameters to prevent abuse.

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

Not necessary.. Council's are able to manage this is systems are designed to take money for these purposes. A head of power possibly creates another process to confuse Council's ad developers.

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

Yes. Particularly with respect to "current developments cannot be expected to fix past problems". The only main concern is the point raised which specifies timeframes. This will be difficult to enforce and may result in compliance issues.

## **SECTION 10.5**

### **Question**

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

There are some concerns with the interaction of Liquor Licensing and the P & E Act. For example liquor licensing require permits from Council stating a permit is for a "liquor licence" where there is no such permit that can be issued by Council as the permit should perhaps be to "sell or consume liquor on site". Liquor licensing however will not accept such terminology which create difficulties. The ability to issue a Limited Licence which may operate much the hours of a general licence but without planning permission is a concern.

There is also disparity between Code of the Practice and planning scheme legislation. Applicants (and decision makers) often assume if an application meets the Code then it is deemed to meet planning decision guidelines which may have a different focus . The typical scenario is the Broiler industry where the proposals are often contrary to planning schemes however weight is given to Code which conflict with Planning Policy or not align with planning policy.

## **SECTION 10.6**

### **Question**

- **What other opportunities not discussed or listed in this paper would improve the operation of the Act?**

This paper is very comprehensive and covers most aspects of the Act that can be contentious.

The current shift towards requiring the specific 'words' in a scheme to enable consideration of any aspect (the same problem as with the Act referred to in paragraph 2 of Page 10 of the Paper) is an issue. This is particularly the case with VCAT - if an argument is put on a proposal VCAT often seems to want 'words' in the scheme to substantiate any merit to that argument. Planning cannot and should not be so legalistic and meticulous. Consideration of a planning issue starts with the broad objectives of planning set out in Section 4 of the Act. A case

should be sustainable if it falls within these objectives and is soundly based without there being specific words in the scheme to deal with the exact matter. This may not be a failing of the Act but it is a failing in the interpretation of the Act and the intent could be clarified to prevent this. The concept in a form is used in various clauses such as Clause 56 where standards are set but where objectives are still met these standards may be varied.