

VICTORIA

Victorian
Auditor-General

Victoria's Planning Framework for Land Use and Development

Ordered to be printed

VICTORIAN
GOVERNMENT PRINTER
May 2008



Victorian Auditor-General's Office
Auditing in the Public Interest

The Hon. Robert Smith MLC
President
Legislative Council
Parliament House
Melbourne

The Hon. Jenny Lindell MP
Speaker
Legislative Assembly
Parliament House
Melbourne

Dear Presiding Officers

Under the provisions of section 16AB of the *Audit Act* 1994, I transmit my report on *Victoria's Planning Framework for Land Use and Development*, together with the *Planning Permit Application: Assessment Checklist* and *Planning Scheme Amendment: Assessment Checklist*.

Yours faithfully

A handwritten signature in black ink, appearing to read "DDR Pearson".

DDR PEARSON
Auditor-General

7 May 2008

Foreword

Planning decisions affect the lives of all Victorians. They can have a significant impact on local communities, the environment, key industries and the broader economy. Effective application and oversight of planning processes is essential for preventing inappropriate land use and development, and for enabling Parliament and the wider community to have confidence in the planning system. For these reasons, it is vital that planning decisions are evidence-based and supported by a transparent decision-making process that complies with the requirements of the *Planning and Environment Act 1987*.

This audit found that Victoria's framework for controlling land use and development is sound. However, some elements of planning schemes have become overly complex and unclear, and councils need to improve their overall management and oversight of associated statutory processes. DPCD, in consultation with some key stakeholders, has already taken action to address some of these issues.

The Victorian planning system has a long history of reform and continuous improvement. However, the absence of an overall framework for measuring the performance of the planning system as a whole presents a substantial challenge for DPCD's management of the system.

The audit identified a number of opportunities for improvement at the local council level. Principal among these is the need for councils to enhance the standard and rigour of their assessment of planning permit applications and the level of scrutiny by senior planning staff of planning activities. A state-wide approach, coordinated by DPCD in partnership with local councils and stakeholder groups, is needed to assist councils to improve their management of planning activities. I am pleased that DPCD has responded positively to the report's recommendations in this regard.

In concert with this audit report, I am also providing two good practice assessment checklists. These cover planning permit applications and planning scheme amendments. I am confident they will assist councils to improve their management of planning processes.



DDR PEARSON
Auditor-General

7 May 2008

Contents

Foreword	v
1. Executive summary	1
1.1 Introduction.....	1
1.2 Findings.....	3
1.3 Recommendations	6
2. Background	13
2.1 Purpose of the planning system	13
2.2 Framework of the planning system	13
2.3 Key players.....	14
2.4 Level of planning activity	16
2.5 Types of planning	17
2.6 Planning schemes	17
2.7 Planning permits.....	18
2.8 Audit of Victoria's planning framework for land use and development.....	19
3. Planning schemes as decision-making instruments	21
3.1 Introduction.....	22
3.2 The framework underpinning planning schemes	24
3.3 Factors impeding the implementation of the framework.....	28
3.4 Conclusion.....	34
4. Measuring the performance of the state's planning system.....	35
4.1 Introduction.....	37
4.2 Options for developing and managing a performance measurement framework.....	46
4.3 Stakeholder engagement	47
4.4 Conclusion.....	48
5. Council management of the planning scheme amendment process	51
5.1 Introduction.....	53
5.2 Planning scheme amendments.....	54
5.3 Conclusion.....	77

Contents

6. Council management of the planning permit process	79
6.1 Introduction.....	81
6.2 Planning permit applications	82
6.3 Conclusion.....	108
7. State-wide approach to improve statutory planning in councils.....	109
7.1 Introduction.....	110
7.2 Details of proposed approach	111
Appendix A. The government's five point priority action plan	15

1 Executive summary

1.1 Introduction

The Victorian planning system provides the legislative and administrative framework that regulates and manages the use and development of land in the state. The *Planning and Environment Act 1987* (the Act) outlines a number of planning objectives such as the fair, orderly, economic and sustainable use and development of land.

Planning schemes and planning permits are the major legislative mechanisms for controlling land use and development. Planning schemes are statutory documents that set out objectives, policies and provisions for the use and development of land in the area to which they apply (usually a municipality). Where a planning scheme requires it, a planning permit must be obtained to use or develop land for certain purposes. The Act and Regulations establish the timeframes and procedures to be followed in processing planning permit applications and amending planning schemes.

Under the Act, a *planning authority* is responsible for developing and amending a planning scheme, and for giving direction on how broader state planning policies will be implemented in the local context. A *responsible authority* administers the local planning scheme by processing and enforcing planning permits, and in achieving consistency with the planning scheme. These roles are performed by local councils in most cases.

The Minister for Planning has overall responsibility for the state's planning legislation and framework, and is both a planning and responsible authority for a number of designated areas throughout Victoria. The minister also authorises and approves amendments to planning schemes and reviews proposed developments that have state-wide policy implications.

The Department of Planning and Community Development (DPCD) manages the regulatory framework for land use planning, environment assessment and subdivisions of land. It also provides advice on planning policy, information on land use and development and administrative support to the minister.

Councils manage the day-to-day administration of local planning schemes through processing applications for planning permits and ensuring consistency with planning schemes. They also develop planning schemes and amend them as needed to reflect changes to policy or local circumstances. State-wide, there were around 49 600 planning permit applications lodged in 2006–07.

Victoria's planning system has been subject to continuous reform since the early 1990s. As part of these reforms, the Act was amended in 1996 to introduce the Victoria Planning Provisions (VPP) and establish new format planning schemes with a strategic and performance-driven focus to reduce administrative costs and increase efficiency of the planning system.

The VPP is a state-wide reference and statutory device used to construct planning schemes. It ensures that consistent provisions for controlling land use and development are maintained across Victoria, and that the structure and format of all planning schemes is the same. The Ministerial Direction on the Form and Content of Planning Schemes¹ requires that a planning scheme must include the following parts of the VPP:

- the State Planning Policy Framework, which details the state's policies for key land use and development activities
- the Local Planning Policy Framework consisting of a Municipal Strategic Statement and Local Planning Policies, which establish the local strategic policy context for a municipality and how broader state policies will be achieved in the local context
- key zones, overlays and other provisions that are relevant to giving effect to state and local policy frameworks chosen as needed from the VPP.

Following the introduction of the VPP, the new format planning schemes were progressively implemented across the state and were largely in place by 2000. The latest reforms (*Better Decisions Faster 2002–05* and *Cutting red tape in planning 2006*) have focused on opportunities to further improve the effectiveness and efficiency of planning processes. In early 2007 an expert working group was established in response to Action 10.2 of the *Cutting red tape in planning* report. The working group's *Making local policy stronger* report included five recommendations that have been accepted by the government.

The *February 2008 Annual Statement of Government Intentions* foreshadowed the review of the *Planning and Environment Act 1987*. It is anticipated the new Act will be presented to Parliament in 2009.

The objective of this audit was to assess the effectiveness, economy and efficiency of Victoria's planning framework for land use and development at the whole-of-state and local levels.

¹ This direction applies to the form and content of all planning schemes prepared under Part 3 of the *Planning and Environment (Planning Schemes) Act 1996* and any amendment to those planning schemes.

The audit examined whether:

- *at the whole-of-state level:*
 - the key elements of planning schemes are clear and assist robust and consistent decision-making
 - adequate arrangements are in place to measure and report the performance of the state's planning framework.
- *at the local council level:*
 - the requisite policies and procedures are in place, including adequate quality-assurance arrangements to align council-level decisions with the *Planning and Environment Act 1987*, the State Planning Policy Framework and their own planning schemes
 - the processing of planning permit applications and planning scheme amendments complies with the Act and with their own planning schemes.

The audit examined the policies, procedures and activities of DPCD, Maribyrnong City Council, City of Boroondara, City of Casey, City of Greater Shepparton, Bass Coast Shire Council and Pyrenees Shire Council.

The audit scope did not extend to assessing the adequacy of specific planning decisions or the related activities of the Victorian Civil and Administrative Tribunal.

While the results at the local government level relate directly to the councils we examined, the issues revealed are considered indicative of practices in other councils. In this context, the associated findings should be considered by all councils administering planning functions.

1.2 Findings

In line with the objectives of the audit, the findings are outlined below in terms of the:

- clarity and robustness of key elements of planning schemes
- adequacy of performance measurement and reporting arrangements
- level of council compliance with the Act and planning schemes, and adequacy of associated quality assurance arrangements.

1.2.1 Clarity and robustness of planning schemes

The major findings from the audit's examination of planning schemes were:

- The intended purpose and relationships between the key VPP components of planning schemes are transparent, logical and consistent with the objectives of the planning framework established under the Act.
- The underlying architecture of the VPP framework is sound, however, a number of challenges and issues associated with its implementation have emerged which are impeding the effective and efficient operation of planning schemes.

- Some elements of the new format planning schemes have become overly complex, are unclear and are not adequately achieving their original intent as established under the VPP (as identified by a ministerial working group) and need to be addressed.
- A series of actions designed to address these challenges and improve the operation of planning schemes have recently been established.

1.2.2 Adequacy of performance measurement and reporting

The major findings from audit's assessment of the adequacy of arrangements in place for measuring and reporting on the performance of the state's planning system were:

- Existing arrangements within DPCD do not allow for comprehensive measurement and monitoring of the overall performance of the planning system.
- DPCD should further develop these arrangements supported by a structured program of stakeholder engagement.
- Performance measurement arrangements have not been developed to assess the impact of changes to the legislative and regulatory framework designed to improve the effectiveness and efficiency of statutory processes. Consequently, it is unclear whether these changes have achieved their intended goals.
- DPCD has facilitated a number of targeted reviews of the VPP to improve their operation and achieve better planning outcomes in response both to wider government policy developments and to issues raised by stakeholders. However, these reviews have not been undertaken as part of an ongoing program of continuous review.
- DPCD has developed products, such as codes of practice, to assist councils in discharging their statutory obligations. Our assessment of a selection of these products is that they are of a high standard. However, based on our audit of councils, these products are under-promoted and underutilised.
- There are no performance standards in place for DPCD regions to measure the effectiveness and efficiency of advisory and statutory support services primarily provided to councils.
- Timeliness targets for the authorisation and assessment of planning scheme amendments are in place, however, the calculation of actual performance against the targets does not measure the total elapsed time to make a decision.

1.2.3 Compliance with the Act and planning schemes and adequacy of quality assurance

The major findings from the audit of selected councils in relation to the planning scheme amendments were:

- Amendments are often complex but the time taken to complete individual steps in the amendment process was excessive in some cases. The average time from initiation to publishing a notice of approval of the amendment in the Victorian Government Gazette across councils was nearly 22 months.
- Councils generally complied with the Act in considering amendment requests.
- Reports to councils should be more rigorous and transparent in terms of the justification for the amendment at the early consideration stage.
- Councils generally complied with the Act in relation to the administration of notification procedures for parties considered to be materially affected by the amendment. However, the basis upon which councils decided to notify these parties was neither transparent nor adequately documented.
- Assessments following exhibition of an amendment and decisions made by councils on how to proceed (i.e. adopt, modify or abandon an amendment) were sound in most cases. Council officer reports, however, did not include a thorough analysis of issues to assist consideration by councillors of the appropriate course of action to be taken.
- Councils generally complied with the Act in their use and administration of panel processes although some councils need to pay greater attention to meeting the 28-day statutory timeframe for the public release of panel reports.
- Councils complied with the Act in the adoption and submission of amendments to the minister in the vast majority of cases. However, poor file management in some councils meant they were unable to demonstrate whether there was full compliance in all cases.
- Fee collection was satisfactory in most cases however, some councils failed to record or collect all fees.

The major findings arising from the audit of selected councils in relation to planning permit applications were:

- The average statutory time taken to process applications across councils was 58 days and within the prescribed timeframe of 60 days.
- The total elapsed time to process applications, which is affected by events not required to be accounted for in the prescribed timeframe, was significantly higher in most cases (86 days on average). There is scope for councils to improve the efficiency of the process by developing strategies to reduce the time taken to manage events within the control of councils.
- Details of pre-application meetings were not systematically recorded. Consequently, it was difficult to determine the extent to which these meetings had occurred and whether they were effective in minimising delays.

- Councils did not adequately comply with the Act when amendments were made to applications before a council decision. In most cases, a new application form was not requested, the prescribed time to process the application was not restarted and the need to notify and refer the application to affected parties was not re-assessed.
- Most councils complied with the Act and the planning scheme in giving notice of an application where it was considered that there was material detriment to parties affected by the application. However, the rationale for decisions concerning detriment was neither transparent nor adequately documented in most cases.
- Councils appropriately forwarded applications to referral authorities, and conditions requested by these authorities were applied to permits by councils in accordance with the Act. However councils breached the Act by failing to send copies of decisions to referral authorities in most cases.
- In four of the six councils examined, the assessments did not give sufficient consideration to the Act or planning scheme. In 78 per cent of cases examined, officer reports did not give adequate consideration to matters specified in the Act, planning scheme or both.
- Considerable improvement in the quality assurance provided by senior council planning staff over the accuracy and processing of permit applications is required.

These findings require remedial action both at a local council level and, due to their extent and significance, at the state-wide level via a multi-pronged system-wide approach coordinated by DPCD in partnership with local government and key stakeholder groups. This approach should adopt the specific goal of raising the standard of statutory planning in councils and therefore the overall performance of Victoria's planning system.

1.3 Recommendations

Measuring the performance of the state's planning framework

- DPCD, in conjunction with stakeholders, should assume the lead role in developing a more comprehensive framework for measuring the performance of the state's planning system. The framework should include key performance indicators, targets and reporting arrangements for assessing:
 - the achievement of planning outcomes at the local and whole-of-state levels
 - the effectiveness and efficiency of key planning permit and planning scheme amendment processes, including the performance of councils and DPCD in the administration of those processes
 - the administrative impact on councils arising from their compliance with statutory processes and the extent to which implemented reforms have achieved their objectives and/or reduced such impacts

- the effectiveness of the full suite of VPP provisions for ensuring certainty and consistency in decision-making on an ongoing basis, including the degree to which any amendments made have improved the operation of the provisions
- the extent to which councils have fulfilled their obligations under the Act as planning and responsible authorities
- DPCD's overall performance in managing and supporting the state's planning framework (**Recommendation 4.1**).
- To support and complement the operation of the performance measurement framework, DPCD should also establish an ongoing program for obtaining stakeholder feedback on:
 - the operation of the Act and the VPP, and implementation of statutory processes, as a basis for identifying matters for further investigation and action in concert with results from the performance measurement framework
 - the timeliness and quality of DPCD's advisory and support services to stakeholders, so that any opportunities for improvement can be identified and pursued
 - any emerging issues or trends that require attention (**Recommendation 4.2**).
- DPCD should develop a comprehensive strategy with detailed timelines for the further development and implementation of the performance measurement framework (**Recommendation 4.3**).
- DPCD should review and revise the existing performance targets for the planning scheme amendment process so that they accurately reflect the elapsed time for decisions to be made on authorisations and approvals (**Recommendation 4.4**).

Council management of the planning scheme amendment process

Timeliness

- DPCD, in consultation with stakeholders, should review the planning scheme amendment process to:
 - identify optimal timeframes and practices for administering each major stage by all parties, taking into account the varying complexity of different amendments
 - develop relevant and appropriate key performance indicators for each major stage, including a system of public reporting against those indicators by councils and DPCD
 - establish mechanisms to enable action to be taken to address significant and/or consistent failures by relevant parties to meet key performance targets (**Recommendation 5.1**).

Consideration of amendment requests

- Councils should make certain that they perform a comprehensive initial assessment of the amendment against all the requirements of Section 12 of the Act, and that this is clearly documented in reports to council (**Recommendation 5.2**).

- Councils should review their quality assurance processes and ensure that:
 - standard templates are used for reporting to council on proposed amendments so that adequate consideration is given to all relevant matters under Section 12 of the Act
 - records of all meetings/discussions with proponents and DPCD are appropriately documented so that an accurate history of the amendment is maintained and action items are addressed by all participants (**Recommendation 5.3**).

Notification

- DPCD, in consultation with councils, should develop a clear definition of the term 'materially affected', including guidelines for making determinations to facilitate consistency across councils (**Recommendation 5.4**).
- Councils should develop policies and standards for notification, including appropriate quality assurance procedures, so that there is a reasonable level of assurance that:
 - assessments of who is materially affected have been adequately undertaken, and appropriately documented
 - all parties that have made submissions are appropriately noted and considered (**Recommendation 5.5**).

Assessment following exhibition

- DPCD, in consultation with councils, should develop a standard report template so that the requirements of the Act, issues raised by submitters, and relevant planning scheme provisions are consistently and comprehensively discussed in council officer reports when assessing amendments following public exhibition (**Recommendation 5.6**).
- DPCD should assist councils to develop and implement procedures to require targeted, risk-based peer reviews of officer reports against defined standards before transmission to council, to provide assurance that all relevant matters have been included and comprehensively addressed, and that evidence of this is documented (**Recommendation 5.7**).

Panel hearings

- Councils should require that:
 - all relevant documentation associated with the panel process is accurately maintained on file
 - reports received from panels are made publicly available within statutory timeframes (**Recommendation 5.8**).

Adoption and submission to minister

- Councils should review their quality assurance arrangements to put in place appropriate measures whereby requirements arising from the adoption, submission to, and approval of amendments by the minister are properly addressed by council and that evidence of this is retained (**Recommendation 5.9**).

Fees

- Councils should ensure that:
 - all relevant staff are made aware of the fee provisions within the Act and Regulations
 - proponents (where relevant) are clearly identified at the outset, and processes initiated to identify and collect relevant fees
 - effective controls are put in place for the timely invoicing and payment of relevant fees for key stages in the amendment process
 - appropriate procedures are put in place to facilitate prompt follow-up of outstanding payments
 - records and receipts of all payments received are accurately maintained on file (**Recommendation 5.10**).

Council management of the planning permit process

Pre-application meetings

- Councils should review the adequacy of their pre-application procedures, and establish arrangements for systematically recording and documenting on file:
 - whether a pre-application meeting was conducted in respect of an individual application
 - the details as well as key actions arising from pre-application meetings with applicants (**Recommendation 6.1**).

Lodgement

- Councils should ensure that:
 - records for all key events associated with an application are accurately kept and recorded in the register
 - all requests for further information are carried out in accordance with the requirements of the Act, and that lapse dates are enforced
 - neighbourhood and site descriptions are provided where required and assessed by council to determine whether they meet the requirements of the planning scheme
 - the register of applications is maintained accurately in accordance with the requirements of Schedule 2 of the Regulations (**Recommendation 6.2**).
- Councils should review and, where necessary, strengthen their quality assurance processes so that:
 - applications submitted at lodgement are accurate and complete
 - all documents and plans are appropriately date-stamped and recorded on file
 - thorough preliminary assessments are conducted, checklists completed, and the outcomes communicated effectively to planners and recorded on file
 - further information requests are issued promptly, and addressed prior to giving notice (**Recommendation 6.3**).

Amendments before decision

- Councils should:
 - implement targeted training for staff to improve their understanding of the requirements associated with Sections 50, 50A and 57A of the Act
 - review and, where necessary, revise their quality assurance processes so that amendments to applications made before decision are reviewed for compliance with the Act and planning scheme (**Recommendation 6.4**).

Notification

- To facilitate consistency across councils DPCD, in consultation with councils, should identify the factors to be taken into account when assessing material detriment and develop guidelines for making such determinations (**Recommendation 6.5**).
- Councils should develop policies and standards for notification, including appropriate quality assurance procedures so that there is a reasonable level of assurance that:
 - assessments of material detriment have been adequately undertaken, and appropriately documented
 - notification decisions are made at the appropriate stage of the process, and are informed by a properly documented site inspection
 - notification decisions comply with the Act and the planning scheme
 - applicants have complied with their obligations (where relevant) in relation to the placement and maintenance of site notices (**Recommendation 6.6**).

Referral authorities

- Councils should:
 - implement training for staff to improve their understanding of the planning scheme provisions for referral
 - establish appropriate quality assurance procedures to make certain that applications are referred correctly and that copies of decisions are always forwarded to relevant referral authorities
 - review their internal referral processes and establish clear policies, procedures and standards to enable them to be carried out in a timely fashion (**Recommendation 6.7**).

Assessment

- Councils should review their internal assessment processes and make certain that staff have adequate knowledge to identify and consider all the relevant matters under the Act and planning scheme applicable to different types of applications (**Recommendation 6.8**).
- When assessing applications, councils should make certain that proper consideration is documented and given to all relevant:
 - matters under Section 60 of the Act
 - zone, overlay and other controls

- permit triggers
- state and local policy provisions (**Recommendation 6.9**).
- Councils should review their quality assurance procedures to make certain that:
 - appropriate report templates, incorporating guidelines and criteria for assessment, are developed and properly used by planning staff
 - oversight mechanisms are appropriate for providing a reasonable level of assurance that sufficient consideration is given to all relevant matters under the Act and planning scheme by assessing officers, and that this is properly documented and transparent to all parties (**Recommendation 6.10**).

State-wide approach to improving statutory planning in councils

- DPCD, in partnership with local government and key stakeholder groups, should develop and implement a multi-pronged strategy to improve the overall standard of statutory planning in councils. This strategy should consist of the following three actions:
 - amending the Regulations to prescribe the matters which, as a minimum, must be addressed in officer reports when making assessments and decisions on matters concerning planning permits and planning scheme amendments
 - training and accreditation for councils' planning officers, so that they have the minimum standard of knowledge and skills required to administer statutory planning functions. This should include management training for senior staff to enable them to effectively discharge their quality assurance responsibilities
 - annual external review of councils' management of planning functions to ascertain their level of compliance with the Act and planning scheme. The results of these reviews should be reported directly to council and the minister, and be made publicly available (**Recommendation 7.1**).

RESPONSE provided by the Secretary, Department of Planning and Community Development

It is pleasing that a key finding of the report is that the underlying architecture of Victoria's planning system is sound. I acknowledge that the Department of Planning and Community Development has an important role to oversight the operation and reform of the planning system. The department has initiated a continuing program of initiatives in this area and strongly supports a continuous improvement approach to the management of Victoria's planning system.

The department agrees in-principle with the recommendations in the report and will work closely with the local government sector and other key stakeholders to develop an agreed framework for an improved performance measurement and reporting regime as recommended in the report. The following broad comments are provided in addition to the detailed response to the recommendations that are included in parts 4, 5, 6 and 7 of this report.

RESPONSE provided by the Secretary, Department of Planning and Community Development - continued

Measuring the performance of the state's planning system

The department is progressively developing new systems to address these issues. In particular, state-wide planning permit activity reporting is now operational and this is currently being expanded to include reporting on the timeliness of permit application decision-making and other matters.

Council management of the planning scheme amendment process

The department is currently undertaking an internal review of the amendment process to identify opportunities to further streamline the process. This will provide the opportunity to simplify and improve procedures and practices to ensure efficiency and facilitate compliance with statutory requirements. The findings of your report will provide valuable input into this review.

Council management of the planning permit process

As you acknowledge, Victoria has maintained a long standing program of continuous improvement of the planning system. While the local government sector will be primarily responsible for giving effect to these recommendations, the department will work co-operatively with the sector to achieve the outcomes sought by the recommendations.

State-wide approach to improve statutory planning in councils

The department will work with the local government sector and the broader planning industry towards improvement of overall standards in the industry. It is expected that further implementation of ePlanning in accordance with the ePlanning Roadmap will assist in this regard and will enable more sophisticated performance measurement in the future.

As you would be aware the Premier announced a major review of the Planning and Environment Act 1987 in his annual statement of government intentions in February. This review will provide further opportunities to streamline and simplify planning processes and to improve reporting and quality assurance opportunities. The recommendations included in the report will be an important input into this review.

2 Background

2.1 Purpose of the planning system

An effective planning system is vital for protecting the physical and cultural amenities of communities, natural resources and the environment, and for responding to development needs.

The Victorian planning system provides the legal and administrative framework to regulate and manage the use and development of land in the state. The broad purpose of the system is to define strategic policies and objectives at state and local levels and to control the use and development of land in ways consistent with those objectives.

The *Planning and Environment Act 1987* (the Act) outlines a number of objectives for land use and development in Victoria that focus on:

- providing for the fair, orderly, economic and sustainable use and development of land
- protecting natural resources and maintaining the ecological processes and genetic diversity
- securing safe and liveable urban and rural environments
- conserving and enhancing culturally or socially significant buildings or areas
- protecting and enabling the provision of public utilities
- facilitating development
- balancing the present and future interests of all Victorians.

2.2 Framework of the planning system

The Act and the *Planning and Environment Regulations 2005* (the Regulations) prescribe planning in Victoria for:

- land *use*—using land for a particular purpose, such as a dwelling or a shop
- land *development*—constructing, altering or demolishing a building or works, and subdividing or consolidating land.

The Act also establishes the framework of the Victorian planning system. This framework is the principal mechanism through which the state's broader planning objectives are achieved.

The Act sets out the objectives of the state's planning framework that aim to:

- ensure sound, strategic planning and coordinated action at state, regional and municipal levels
- establish a system of planning schemes based on municipal districts to be the principal way of setting out objectives, policies and controls for the use, development and protection of land
- facilitate development which achieves the state's planning objectives as well as planning objectives set up in planning schemes
- encourage the achievement of planning objectives through positive actions by responsible authorities and planning authorities
- provide for a single authority to issue permits for land use or development, and to coordinate the issue of permits with related approvals
- establish a clear procedure for amending planning schemes, with appropriate public participation in decision-making.

The principal statutory mechanisms controlling land use and development in Victoria are planning schemes and planning permits.

Planning schemes are statutory documents setting out objectives, policies and provisions for the use, development and protection of land in a given area. Planning permits are certificates allowing certain use or development to occur on a parcel of land. A planning permit may be required under a given planning scheme.

The timeframes and procedures for processing planning permit applications and amending planning schemes are outlined under the Act and Regulations.

2.3 Key players

Planning authorities develop and amend planning schemes to give direction on how broader state planning policies will be achieved or implemented in the local context. In most cases, the local council is the planning authority.

Responsible authorities manage the day-to-day administration of the local planning scheme. They consider and determine applications for planning permits, ensure consistency with the planning scheme and enforce conditions incorporated in planning permits. Responsible authorities are usually local councils.

The Minister for Planning has overall responsibility for the state's planning legislation and framework. The minister has powers to grant exemptions from complying with legislative requirements, make directions to planning and responsible authorities, approve planning scheme amendments, and review cases where there is an issue of state policy. The minister is also the planning authority and responsible authority on an ongoing basis for a number of designated areas throughout Victoria.

The Department of Planning and Community Development (DPCD) manages the regulatory framework for land use planning, environmental assessment and subdivisions of land, and provides advice on planning policy, urban design and strategic planning information on land development and forecasting. The department manages the ongoing development and maintenance of the Act, Regulations and the Victoria Planning Provisions on behalf of the Minister for Planning, and provides guidance to the sector in relation to planning issues. The department also supports the Minister for Planning to fulfil his or her responsibilities under the Act.

Councils undertake the roles of planning and responsible authorities, represent the interests of local communities, and respond to constituents' concerns.

The **Victorian Civil and Administrative Tribunal (VCAT)** deals with disputes relating to planning decisions. Parties aggrieved by the planning decisions of responsible authorities may appeal to VCAT for a review of the decision. VCAT is an independent review tribunal, and its decisions are legally binding.

Panels give independent advice to councils and the Minister for Planning on proposals and submissions. Panels also give submitters (usually opponents to a proposal) an opportunity to be heard in an independent forum. A panel is not a court of law. Planning Panels Victoria manages the conduct of individual panels which are appointed by the Minister for Planning under the Act and the *Environment Effects Act 1978*.

Advisory committees advise the relevant planning authority or responsible authority. They are generally established to consider site-specific proposals or general policy matters. The Priority Development Panel for instance provides advice to the Minister about how significant proposals can be best presented to facilitate approval.

Referral authorities advise on planning permit applications that potentially impact upon their operations. Referral authorities can be any person, group, agency, public authority and any other body that a planning scheme specifies. Commonly specified authorities include the EPA Victoria, DPCD, Liquor Licensing Commission, water catchment management authorities, VicRoads and Melbourne Water.

The **Growth Area Authority** guides sustainable development in Melbourne's five outer urban growth areas. It is an independent statutory body established by the Victorian Government in 2006, and works in partnership with local councils, developers and state government agencies. The authority aims to facilitate greater certainty, faster decisions and better coordination for all parties involved in the planning and development of Melbourne's growth areas.

2.4 Level of planning activity

The audit of councils as outlined in Parts 5 and 6 focused on an examination of the processes for planning permit applications and amendments to planning schemes. To provide a context for the council audits and as an indication of the level of planning activity in Victoria, the number of permit applications and amendments to planning schemes are outlined below.

The number of planning permit applications has progressively declined between 2004–05 and 2006–07 as shown in Figure 2A.

Figure 2A
Number of Planning Permit Applications

	2004–05	2005–06	2006–07
Victoria	53 260	50 667	49 587
Melbourne Metropolitan	33 271	32 117	31 289
Rural/Regional	19 989	18 550	18 298

Source: Department of Planning and Community Development.

In terms of amendments to planning schemes, the number of amendments is shown in Figure 2B.

Figure 2B
Number of approvals of Planning Scheme Amendments

Year	Number of approvals
2004–05	332
2005–06	432
2006–07	405

Source: Department of Planning and Community Development.

2.5 Types of planning

To give effect to planning objectives within the Act, there are broadly two types of planning: strategic planning and statutory planning.

Strategic planning provides the broad policy framework for specific land use and development activities across the state. It includes researching and formulating policies or strategies to implement goals and objectives relating to particular land uses or areas. Strategic planning also involves monitoring and evaluating the implications of the provisions on land use and development. Although preparing strategic plans and policies is not legally required, it is an essential function for good governance and is critical for managing growth and development.¹

The *Melbourne 2030* policy is the state's most significant strategic planning policy document. It contributes to the ten goals of the state's highest-level policy, *Growing Victoria Together*, by providing a strategic framework to manage metropolitan growth, improve liveability and maintain environmental and cultural assets.

Statutory planning refers to the tools, mechanisms and processes established by the Act for controlling land use and development.

Statutory planning includes developing and amending municipal planning schemes and processing applications for planning permits to give effect to state and local requirements.

2.6 Planning schemes

The Act provides for the planning scheme as a single instrument of planning control for any area. Each municipality in the state is covered by a planning scheme, which sets out policies and provisions for the use, development and protection of land.

The planning scheme is a legal document prepared by the planning authority and approved by the Minister for Planning.

The Act requires the responsible authority to maintain an up-to-date copy of the planning scheme, including all amendments, and to make it available for public inspection during office hours. The responsible authority also administers and enforces the planning scheme.

In most cases, the local council will act as both planning authority and responsible authority.

¹ *Victoria—A Planning Scorecard*, Planning Institute of Australia, Victorian Division, 2004, p.7.

Planning authorities may decide to amend planning schemes to achieve alignment with changing needs and directions in the local context. Amendments to planning schemes may have significant implications and affect the wider community because they can alter the way land can be used or developed and change the basis for future planning decisions. The process for amending a planning scheme is prescribed in the Act, and involves all the parties who may have an interest in the amendment, or may be affected by it. All amendments to planning schemes must be approved by the Minister for Planning.

The structure of municipal planning schemes is outlined in Part 3.

2.7 Planning permits

A planning permit is a legal document that allows a certain use, development or subdivision to occur on a particular parcel of land. It differs significantly from a building permit, which relates solely to the method of constructing a building or development.

A planning permit ensures that:

- land uses are appropriately located
- buildings and land uses do not conflict with each other
- the character of an area is not detrimentally affected
- development will not detrimentally affect the environment
- places of heritage significance are not detrimentally altered or demolished.

Planning permits relate to subdivisions, buildings and works, and may be specific to a person or operator. Permits are always subject to a time limit and expire under specified circumstances. The responsible authority may impose conditions when granting a permit.

Applications for planning permits are made to the responsible authority and are most commonly made to:

- construct, alter, demolish or paint a building
- start a business
- display a sign
- apply for a licence such as a second-hand dealer or liquor licence
- subdivide land
- clear native vegetation from land
- change the use of a property.

2.8 Audit of Victoria's planning framework for land use and development

2.8.1 Audit rationale

Planning decisions can have a significant impact on local communities, the environment, key industries and the broader economy. For this reason, it is important that they are evidence-based and supported by a clear and transparent decision-making process that complies with the requirements of the Act. Effective application and oversight of these processes is essential for preventing inappropriate land use and development, and for enabling Parliament and the wider community to have confidence in the planning system.

2.8.2 Audit objective

The broad objective of the audit was to assess the effectiveness, economy and efficiency of Victoria's planning framework for land use and development at the whole-of-state and local levels. To achieve this objective, the audit examined whether:

- *at the whole-of-state level:*
 - the key elements of planning schemes are clear and assist robust and consistent decision-making
 - adequate arrangements are in place to measure and report the performance of the state's planning framework.
- *at the local council level:*
 - the requisite policies and procedures are in place, including adequate quality assurance arrangements to align council-level decisions with the *Planning and Environment Act 1987*, the State Planning Policy Framework and their own planning schemes
 - the processing of planning permit applications and planning scheme amendments complies with the Act and with their own planning schemes.

2.8.3 Scope and method

To achieve the objective, the audit examined the policies, procedures and activities of DPCD and a sample of local councils; Maribyrnong City Council, City of Boroondara, City of Casey, City of Greater Shepparton, Bass Coast Shire Council and Pyrenees Shire Council. The audit scope did not extend to assessing the adequacy of specific planning decisions or the related activities of VCAT.

At each selected council, the audit examined a representative random sample of 20 planning permit applications and the last five planning scheme amendments that had been gazetted (i.e. a total of 120 planning applications and 30 planning scheme amendments across all councils).

Background

Selected files, including the associated planning practices of each council, were examined by planning consultants using a standard assessment tool. Prior to its use, this tool was piloted at a council not subject to audit examination.

The audit process at each council involved an entry meeting, followed by the conduct of assessments, and then an exit meeting with key staff to discuss relevant local findings and recommendations.

The audit was performed in accordance with the Australian auditing standards applicable to performance audits and included tests and procedures sufficient to enable audit conclusions to be reached.

Audit assistance

We appreciate the support and assistance provided by management and staff of the agencies covered by the audit.

Examinations at selected councils were performed by:

- Mr Campbell Watts, Ms Alisanne Green, and Mr Dale Young of GHD Pty Ltd
- Ms Sandra Rigo, Mr Travis Finlayson, and Ms Dijana Sarac of Hansen Partnership Pty Ltd
- Mr Trevor Ludeman of Project Planning & Development Pty Ltd
- Mr Michael Kirsch of KPLAN
- Mr Geoff Rundell and Mr Phillip McCutcheon of The Planning Group Pty Ltd.

Specialist advice and assistance to the audit team was also provided by:

- Mr Trevor Budge, Senior Lecturer, La Trobe University and Adjunct Professor RMIT University Melbourne
- Mr Mark Woodland, Strategic Planning Manager, Lend Lease Communities
- Mr Bruce Phillips, Director, City Development, City of Yarra
- Mr John Keaney, Keaney Planning
- Mr John Glossop, Glossop Town Planning Pty Ltd.

Cost of the audit

The total cost of the audit was \$530 000. This includes staff time, overheads, expert advice and printing.

3 Planning schemes as decision-making instruments

At a glance

Background

A planning scheme is a statutory document which sets out objectives, policies and provisions relating to the use, development, protection and conservation of land in the area to which it applies. In almost all cases, this is a municipality, of which there are 79 within Victoria.

Key findings

- The intended purpose and relationships between the key Victoria Planning Provisions (VPP) components of planning schemes are transparent, logical and consistent with the objectives of the planning framework established under the Act.
- There is a general consensus among stakeholders that the framework for controlling land use and development via the new format planning schemes established by the VPP is sound.
- There are however, a number of challenges and issues associated with the framework's implementation that impede the effective and efficient operation of planning schemes.

3.1 Introduction

3.1.1 What is a planning scheme?

Planning schemes are subordinate legislation established by the *Planning and Environment Act 1987*. They are the principal mechanism within the state's planning framework for controlling land use and development. A planning scheme sets out objectives, policies and provisions relating to the use, development, protection and conservation of land in the area to which it applies (usually a municipality). There are 82 planning schemes in Victoria, one for each of the 79 municipalities, and one for each of the three Victorian special planning areas (Alpine Resorts, Port of Melbourne, and French and Sandstone Islands).

With the exception of Commonwealth land and/or any exemptions granted by the Governor in Council, planning schemes apply to all:

- private and public land in Victoria
- Victorian Government ministers
- Victorian Government departments
- public authorities
- municipal councils.

Land controlled by a planning scheme can include areas covered by water (e.g. lakes), as well as any areas above and below ground (e.g. air rights and excavations).

Planning authorities and responsible authorities are the main entities responsible for managing and administering planning schemes under the Act. In most cases they are local councils.

3.1.2 Introduction of new format planning schemes

The structure and content of planning schemes was significantly revised following major reforms to the planning system introduced in the early 1990s. These reforms were largely driven by the outcomes of a review of the planning system undertaken by the Perrott Committee. This review found the planning system was cumbersome and inefficient with 206 separate planning schemes and over 26,000 pages of ordinance. In the Melbourne metropolitan area there were over 150 residential zones and 250 commercial and industrial zones.

As part of the reforms, the Act was amended in 1996 to introduce the Victoria Planning Provisions (VPP) and establish new format planning schemes with a strategic and performance-driven focus to reduce administrative costs and increase efficiency of the planning system. The new format planning schemes replaced the previous zone-based system. Following the introduction of the VPP, the new format planning schemes were progressively implemented across the state and were largely in place by 2000.

The emphasis of these reforms was to shift decision-making away from the prescriptive application of controls, to a more strategically-driven and policy based framework that focuses on outcomes. This was intended to be achieved by establishing:

- a clear policy basis for planning schemes, associated controls and decision-making
- consistent state-wide controls and provisions, with the ability for local discretion supported by a clear policy framework
- regular monitoring of system effectiveness.

As a result of these reforms, a set of principles emerged to support the focus and structure of the new format planning schemes. These are shown in Figure 3A below.

Figure 3A
Key principles: New format planning schemes

Principle	Description
Planning schemes have a policy focus	<ul style="list-style-type: none"> • Planning schemes clearly and concisely express a strategic vision and policy basis. • There is a logical progression from policy basis and requirements to the exercise of discretion in decision-making.
Planning schemes facilitate appropriate development	<ul style="list-style-type: none"> • Local provisions assist in exercising discretion. • Discretion must be wide rather than narrow. • The use of provisions which promote performance is encouraged.
Planning schemes are useable	<ul style="list-style-type: none"> • The requirements of planning schemes must be clear to users and easily identified from the planning scheme map. • State-wide provisions apply across Victoria. • Schemes should minimise site-specific provisions. • Overlays should identify specific local issues and associated requirements.
Provisions are consistent across the state	<ul style="list-style-type: none"> • A standard set of provisions to be applied across the state. • Similar provisions should be used for similar issues. • The permit is the principal instrument of development approval. • There can be no local variation to the state standard provisions. • Local provisions must not conflict with the state provisions. • There are only state-wide particular use and development provisions. • Each overlay has a state-wide provisions as the 'front end' with local requirements expressed as schedules. • Overlays may prescribe requirements which apply to development, but planning authorities cannot change the use provisions of the zone affecting the land.

Source: Department of Planning and Community Development.

The planning reform program of the 1990s aimed to achieve greater certainty, confidence and consistency in decision-making through the introduction of better planning schemes that:

- are supported by clearly articulated strategic directions and outcomes
- identify the key state and local strategies and policies, how they are linked, and how they can be implemented by other provisions in the scheme to achieve desired outcomes
- result in more streamlined and efficient processes for decision-making
- are reviewed regularly (currently every four years) to ensure they remain dynamic and responsive to changing community circumstances and innovation.

3.2 The framework underpinning planning schemes

3.2.1 The Victoria Planning Provisions

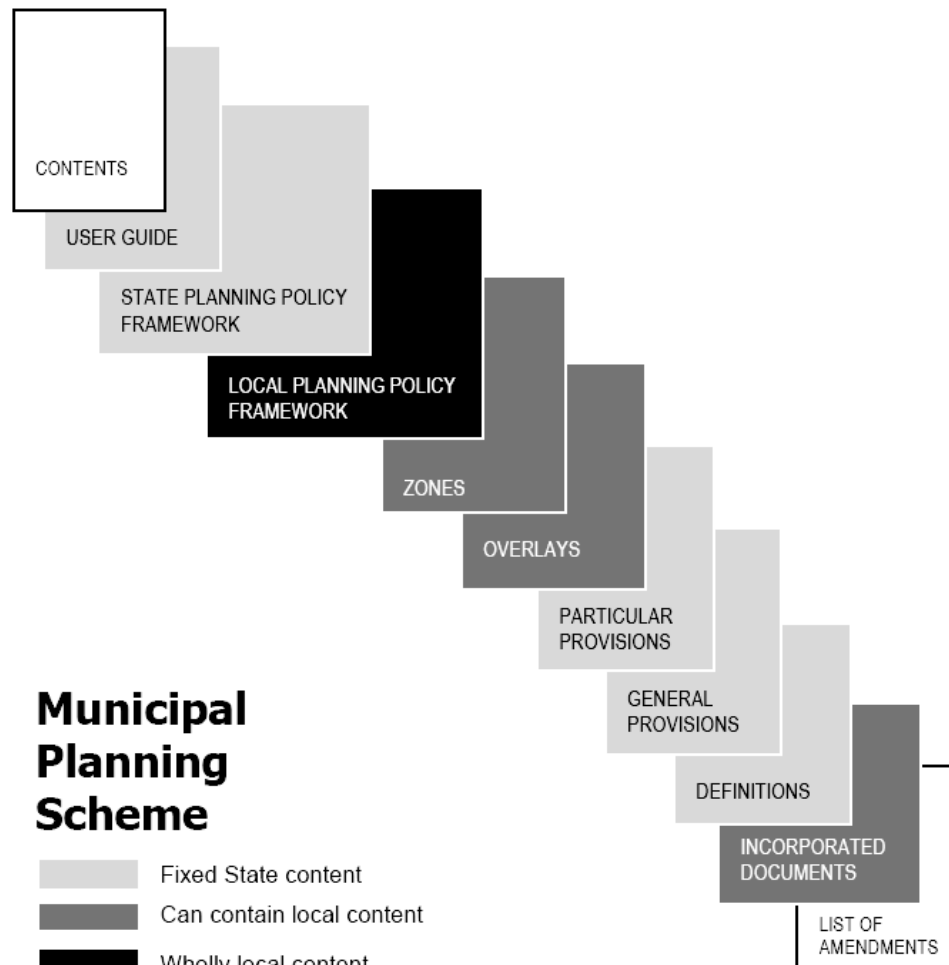
Each planning scheme is constructed by taking the VPP as the source template. The VPP aims to ensure that consistent provisions for controlling land use and development are maintained across Victoria, and that the structure and format of all planning schemes are the same.

Under the Act, the preparation of all planning schemes (including any amendment to a planning scheme), must comply with the Ministerial Direction on the Form and Content of Planning Schemes, and must not include any provision or control other than one selected from the VPP.

3.2.2 The key elements of a planning scheme

The Ministerial Direction on the Form and Content of Planning Schemes requires that a planning scheme must include the parts of the VPP shown in Figure 3B.

Figure 3B
Key elements of a planning scheme



Source: Department of Planning and Community Development.

A brief description of the main elements depicted in Figure 3B is provided below.

The State Planning Policy Framework (SPPF)

The SPPF comprises general principles for land use and development in Victoria and details the state's policies for key land use and development activities including settlement, environment, housing, economic development, infrastructure, and particular uses and development. The SPPF is the uppermost statement of planning policy in a planning scheme, second only to the objectives of the Act. Planning and responsible authorities must take account of and give effect to, the principles and policies contained in the SPPF to ensure integrated decision-making.

The Local Planning Policy Framework (LPPF)

The LPPF sets a local and regional strategic policy context for a municipality, and must operate consistently with the SPPF. Where possible, it must demonstrate how broader state planning policies will be achieved or implemented in a local context. It comprises the following components:

- a Municipal Strategic Statement—a concise statement of the key planning, land use and development objectives for the municipality and the strategies and actions for achieving the objectives. The Municipal Strategic Statement is developed by a responsible authority and:
 - is linked to the council corporate plan and supports the objectives of planning in Victoria to the extent that the SPPF is applicable to the municipality and local issues
 - provides the strategic basis for the application of the zones, overlays and particular provisions in the planning scheme and decision-making by the responsible authority
 - is reviewed periodically to ensure that it is dynamic and that the strategic direction is revised in response to the changing needs of the community.
- Local planning policies—these are guidelines on how the responsible authority will exercise discretion under the planning scheme controls. The purpose of local planning policies is to state what the responsible authority will do in specified circumstances or the responsible authority's expectation of what should happen. Local planning policies cannot override other VPP controls in the scheme, but can provide guidance on how to exercise discretion when reaching a decision.

Zones

The VPP contains standard zones, which can be used in all planning schemes as required. Zones are the primary decision-making tool in a planning scheme and control how land can be used in any given area (e.g. residential, industrial, business, etc). Zones establish the types of land uses that are either prohibited or permitted in the area covered by the zone and, if permitted, whether they require a planning permit or not.

When developing a planning scheme, a planning authority must choose the most appropriate zones from the VPP for implementing the SPPF and LPPF in the local context. As such, not all zones may be relevant to every planning scheme, and only those required to implement the strategic objectives of the scheme are chosen. New zones, or changes to the nature of existing zones can only be introduced by the minister through an amendment to the VPP. However, some of the standard zones have schedules to provide for local circumstances (see below for further information on schedules).

Overlays

An overlay may apply to a site or area in addition to the requirements of a zone. Both are equally important, however, unlike zones which control use, overlays mainly control how land can be developed and apply to a single issue or related set of issues (e.g. heritage, vegetation protection or flooding). The VPP contains standard overlays for use in all planning schemes state-wide as needed. Each planning scheme includes only those overlays required to implement strategy. Where more than one issue applies to land, multiple overlays can be used. As with zones, many overlays have schedules to specify local objectives and requirements.

Particular provisions

Particular provisions are specific prerequisites or planning provisions for a range of particular uses and developments, such as advertising signs and car parking. Particular provisions in planning schemes must be drawn from the VPP and applied consistently across the state. Unless specified otherwise, the particular provisions apply in addition to the requirements of a zone or overlay.

General provisions

These are operational requirements which are consistent across the state. This includes matters such as existing use rights, administrative provisions, ancillary activities and referral of applications.

Schedules

Schedules provide a means of including local content in planning schemes. They can be used to supplement or 'fine-tune' the basic provisions of a state-standard clause, zone or overlay, adapting it to local circumstances and, in this context, can assist in implementing objectives and strategies contained in the Municipal Strategic Statement.

Definitions

A set of consistent state-wide definitions is included in the VPP and apply in all schemes. Defined terms are separated into general terms, outdoor advertising terms and land use terms. Planning scheme terms have the ordinary meaning (as set out in the Macquarie Dictionary) unless they are defined differently in the scheme, the *Planning and Environment Act 1987*, or the *Interpretation of Legislation Act 1984*.

Incorporated documents

The Act allows certain documents (such as codes, strategies, guidelines etc.) that may inform or guide local decision-making to be incorporated in a planning scheme by reference, rather than by physically including them in the scheme. Documents formally incorporated into the scheme carry the same weight as other parts of the scheme and can only be changed through a planning scheme amendment.

List of amendments

This list includes all historical state and local amendments to the scheme and a brief description of each amendment. It is not a formal requirement under the ministerial direction, but is generally maintained as part of every scheme.

3.2.3 Soundness of the framework established by the VPP

Audit's examination of key planning scheme elements has found that the intended purpose and relationships between the key VPP components are transparent, logical and consistent with the objectives of the planning framework as established under the Act.

Further, based on advice from the audit's technical committee and through discussions with relevant peak-bodies and other planning professionals, audit has also found that there is a general consensus among stakeholders that the framework for controlling land use and development via the new format planning schemes established by the VPP is sound.

However, while there is general agreement on the soundness of the principles and underlying architecture of the VPP framework, a number of challenges and issues associated with the framework's implementation have emerged since its introduction. These are impeding the effective and efficient operation of the system and have been acknowledged by the government and minister.

A series of actions designed to improve the operation of planning schemes have been initiated.

3.3 Factors impeding the implementation of the framework

3.3.1 Background

One of the key findings from the *Cutting red tape in planning* review (the Carbines review) was that the structure and expression of the SPPF had changed little since its introduction, and could be made more effective and easier to apply to decision-making.

The Carbines review also found that there are differing views about the role and status of local policy in planning schemes and recommended that the minister consider making a formal statement clarifying its purpose and relationship to state policy to resolve the issue.

The review pointed to a number of submissions that called for an improvement in the relationship between the SPPF and LPPFs to give greater clarity about how state policy can be applied in local circumstances. It recommended developing options for improving the structure of the SPPF and its relationship to local policy, and regularly auditing (every four years) the SPPF to ensure its ongoing relevance to decision-making.

In response, the Minister for Planning appointed a working group to examine the role of local planning policy in decision-making, including its relationship to state policy. The working group's findings and recommendations were published in a report released in October 2007, along with the government's action plan designed to address the issues.

The working group found that:

- Victoria's statutory planning system, based on the VPP is a sound one—but needs refinement after 10 years
- planning schemes have become complex and confusing
- the system needs to deliver clarity and more certainty in decision-making
- there needs to be more direct implementation of local and state policy through control provisions of planning schemes including zones and overlays.

The working group's report identified a number of matters that present challenges to the ongoing effective operation of planning schemes and associated decision-making processes. In summary the key issues identified were that:

- the SPPF is too general and unspecific about how particular state planning objectives should be implemented at a local level
- the development and implementation of LPPF's by many councils is problematic, which in many cases have become complex, lengthy documents that overlap with other provisions
- key controls within planning schemes (i.e. zones) should be modified to provide greater certainty on required planning outcomes in different areas, and the circumstances when prescriptive rather than performance based provisions can be used.

These issues, including the government's action plan announced by the minister, are outlined further in the following sections.

3.3.2 The State Planning Policy Framework

As stated earlier, the SPPF contains a broad set of principles, policies and guidelines that must be taken into account and given effect by a planning and responsible authority when making a decision under a planning scheme.

The working group found that the general principles for planning within urban and rural areas and for managing growth and development within the SPPF are sound, but that they are often general, unspecific and provide limited guidance to councils on how they should be implemented in the local context. It also observed that the SPPF contained major gaps in that it does not sufficiently detail the state's planning policies on such issues as environmentally sustainable development and rural policy.

A significant issue highlighted by the working group was the lack of guidance provided by the SPPF to councils on such issues as the implementation of the government's major urban consolidation strategy *Melbourne 2030*, medium and higher density residential development, activity centre development, priorities for retail development and employment generation. The SPPF was found to contain mixed and often conflicting messages on the government priority to encourage the development of medium density housing.

The working group observed that state planning policy should progress from general statements to include more specific detailed targets, provisions and guidelines for how relevant state priorities and objectives should be implemented in different geographical locations. It also noted that this should be reflected and supported by the appropriate structure and geographical distribution of zones, which is not presently the case in metropolitan areas in relation to such issues as medium and high density housing development.

It was also noted that further work needs to be done to translate major state-wide strategies, already referenced within the SPPF (e.g. *Melbourne 2030*, growth area plans, regional strategies, etc.), into more targeted state planning policy directions. This would provide greater clarity and certainty to local government for converting these directions into local planning provisions.

The working group noted that the characteristics of the SPPF described above make it difficult for local government to develop their Municipal Strategic Statements and local planning policies, and that they were often left with the challenging task of interpreting the generic content of the SPPF and applying it at a local level.

3.3.3 The development and implementation of Local Planning Policy Frameworks

The working group found that there is confusion by local and state government, the community and the development sector about what is meant by 'local policy' in planning schemes, what it can achieve and how it should be used.

It also noted that many Municipal Strategic Statements and local planning policies within planning schemes were lengthy, complex documents with repetitive and overlapping provisions. This diminished their effectiveness in expressing and implementing local planning objectives. In some cases the working group observed that the LPPF exceeded 150 pages and reads as a complete planning scheme rather than a section of it.

Ongoing problems identified by the working group with the development of local planning policies in some cases included that they:

- restate the Municipal Strategic Statement or SPPF
- are a strategy instead of a guideline and therefore should be in the Municipal Strategic Statement
- describe requirements for planning applications, rather than guidelines for decision-making
- do not relate to the exercise of discretion in the scheme
- contain content that is better dealt with by another existing VPP tool.

The working group was also able to significantly reduce the size of a sample Local Policy Framework document from 150 pages down to 15 pages without losing its meaning or effectiveness. In so doing, it demonstrated substantial duplication, superfluous content and opportunities for replacing key sections with more appropriate zone and overlay provisions. The working group's analysis demonstrated that there is significant potential for streamlining the content of LPPF's within some existing schemes.

The working group noted that there is considerable misunderstanding about how policy can be used in a statutory sense to achieve planning objectives. While local planning policies are intended to act as guidelines on how discretion should or will be exercised under relevant planning controls, it was observed that in many cases they are being developed and used by councils as prescriptive planning controls rather than as guidelines, contrary to their purpose under the VPP.

Under the VPP, land use control is intended to be achieved through zone and overlay provisions, not policy. Local planning policies are guidelines and cannot override zoning provisions, overlays, other controls or state policies. The working group found that the proliferation of local policies and their misuse as controls has been driven by a perception that prescriptive provisions are discouraged under the performance based VPP system. Further guidance is needed from the department on when prescriptive versus performance based controls can be used.

The issues identified above led the working group to conclude that there is a 'disconnect' between the development of local planning policy and its implementation driven by councils' frustration over the inadequacy of some zones and overlays for achieving local strategies and objectives. This situation has led to some councils developing expansive local policies in an effort to compensate for perceived gaps in existing zone and overlay controls.

Other factors contributing to excessively long and overly complex LPPF's was the desire by some councils to ensure particular policy outcomes by duplicating them in various places within the scheme. The working group noted that this can occur because:

- existing zones and overlays do not adequately distinguish outcomes sought by local government in different areas

- of misguided perceptions that overlays need to be supported by a local planning policy
- of the generality of much of the content of the SPPF, and the desire by councils for more precision.

To address these issues, the working group suggested that consideration be given to revising the structure of the LPPF, by merging the Municipal Strategic Statement and local planning policies to form a single section (or clause) dealing with local policy, and where directions intended for guiding the exercise of discretion are clearly differentiated as 'policy guidelines'.

3.3.4 The link between planning controls and policies

As stated earlier, the working group found that there was a lack of alignment between metropolitan policy in the SPPF and the use and geographic distribution of relevant residential zones in the metropolitan area. This issue is a significant impediment to the effective implementation of the government's *Melbourne 2030* strategy. For example, the *Residential 2 Zone* is intended to encourage residential development at medium or higher densities, but presently, it is only applied in a small number of areas and mainly in the outer suburbs.

The working group observed that this zone is not currently used in the vibrant inner and middle ring centres, around public transport nodes or along major arterial roads with links to public transport, which *Melbourne 2030* identifies as the locations where such development should be encouraged. Instead, the *Residential 1 Zone*, which is normally intended to encourage development at a range of densities with a variety of dwellings, represents the VPP tool of choice for most councils in residential areas.

The reluctance by councils to use the *Residential 2 Zone* is based on the exemption that it affords from third party notice and review rights. Councils maintain that they will not use the *Residential 2 Zone* without such rights.

The working group also noted that while some councils proactively identify areas for substantial change, incremental change or minimal change in their LPPFs, the existing suite of zones does not complement or adequately support the achievement of these strategies. A key challenge to implementing the government's urban consolidation objectives is that the existing policies in the SPPF and suite of residential zones, do not clearly address how conflicts concerning the preservation of neighbourhood character can be resolved in areas earmarked for incremental or substantial change.

This lack of alignment within planning schemes has created uncertainty at the local government level, with many councils attempting to resolve the issue by developing complex and lengthy LPPFs to compensate for the gaps. The original intent of the VPP and new format planning schemes was for these issues to be addressed through appropriate planning controls (zones and overlays), clearly supported by state policy direction and local application.

The working group noted that it was likely that similar issues would apply to other zones, and suggested that the existing residential zones and other VPP provisions be reviewed and modified to provide more opportunity to express state and local policy outcomes.

3.3.5 The government's five-point priority action plan

The working group's five key recommendations to the minister were to:

- provide more certainty for councils by making it easier to implement policy through planning controls
- make the State Planning Policy Framework clearer about how it should be implemented at the local level
- progressively review planning schemes to clearly express state and local strategic intentions
- increase the effectiveness of local policy by simplifying the way it is presented in planning schemes
- clarify when prescriptive provisions can be used.

In his October 2007 statement on *Making Local Policy Stronger*, the minister stated that:

- the government accepted the working group's recommendations and has developed a program of actions to deliver clearer, simpler policy in planning schemes
- the government will work with local councils to make state and local policy stronger, more transparent and more effective
- the government will simplify local planning policies, reducing time and costs for councils, communities and developers
- the government will be more specific about how state policy is expected to be implemented at the local level
- councils will be given better controls to protect valued residential areas from inappropriate development and areas suitable for more intensive development will be more clearly identified
- there will be a stronger focus on the development of more livable new communities, on revitalising town centres in strategic locations and on respecting the character of our neighbourhoods.

The minister also announced the government's five-point priority action plan to be implemented by the end of 2008 in response to the working group's recommendations. The actions aim to:

1. Introduce new residential zones that better implement housing strategies to be facilitated by an expert group that will:
 - prepare a revised suite of residential zones and discussion paper for public consultation
 - consider submissions and recommend the final form of the residential zones for the minister's consideration.

2. Revise the SPPF to make it easier to apply at the local level by:
 - building on the work of the Carbines review including the preparation of a discussion paper with public consultation and recommendations by an expert group, coordinated by DPCD.
3. Establish a Planning Policy Technical Committee to:
 - advise on the new residential zones and review of the SPPF
 - oversee review of existing local policy
 - advise on implementation of new policy
 - advise on implementation and effectiveness of policy as part of planning scheme reviews.
4. Pilot the restructure of the Local Planning Policy Framework by:
 - establishing a pilot project to test options for a simplified local policy section in planning schemes that provides a better policy framework for decision makers.
5. Prepare new guidelines and procedures that make it easier to write, implement and review local policy in planning schemes. Under this action, DPCD will:
 - prepare a new planning scheme review procedure
 - update the audit kit for the review of planning schemes
 - develop guidelines to clarify when prescriptive rather than performance based provisions can be used
 - develop further improvements to overlays and other provisions to give more opportunity to express policy outcomes
 - use experience from actions 1-4 to inform future work and processes.

The government's five-point priority action plan including the timeframes for its implementation is shown in Appendix A, together with its relationship to the detailed actions recommended by the working group. Audit's view is that the government's proposed actions are commensurate with the range of issues raised by the working group.

3.4 Conclusion

The framework for controlling land use and development established by the VPP is sound. However, significant issues have emerged with the framework's implementation since its introduction 10 years ago to demonstrate that some elements of the new format planning schemes have become overly complex and unclear and do not adequately achieve their original intent as established under the VPP.

Audit supports the government's commitment and actions designed to address the issues identified by the ministerial working group on local policy, and notes that the effective operation of the planning system depends on the expeditious implementation of the government's actions in accordance with the established timeframes.

4 Measuring the performance of the state's planning system

At a glance

Background

The Department of Planning and Community and Development (DPCD) introduced the Planning Permit Activity Report (PPAR) in 2005 to provide information on the type and level of planning permit activity for each council across the state. The PPAR is currently being upgraded to provide additional information and to allow benchmarking between councils.

Key findings

- Existing arrangements within DPCD do not allow for comprehensive measurement and monitoring of the overall performance of the planning system. DPCD should further develop these arrangements supported by a structured program of stakeholder engagement.
- Performance measurement arrangements have not been developed to assess the impact of recent changes to the legislative and regulatory framework designed to improve the effectiveness and efficiency of statutory processes. These arrangements are required to determine the extent to which such changes are achieving their intended goals.
- There are no performance standards in place for DPCD regions to measure the effectiveness and efficiency of their advisory and statutory support services to councils.
- Timeliness targets for the authorisation and assessment of planning scheme amendments are in place however the calculation of actual performance does not measure the total elapsed time to make a decision.

At a glance – *continued*

Key recommendations

- DPCD, in conjunction with stakeholders, should assume the lead role in developing a more comprehensive framework for measuring the performance of the state's planning system. The framework should include key performance indicators, targets and reporting arrangements for assessing:
 - the achievement of planning outcomes at the local and whole-of-state levels
 - the effectiveness and efficiency of key planning permit and planning scheme amendment processes, including the performance of councils and DPCD in the administration of those processes
 - the administrative impact on councils arising from their compliance with statutory processes and the extent to which implemented reforms have achieved their objectives and/or reduced such impacts.
- DPCD should establish an ongoing program for obtaining stakeholder feedback to support and complement the operation of the performance measurement framework.
- DPCD should review and revise the existing performance targets for the planning scheme amendment process so that they accurately reflect the elapsed time for decisions to be made on authorisations and approvals.

4.1 Introduction

As the lead agency for planning in Victoria, the Department of Planning and Community Development (DPCD) plays a critical role in supporting the ongoing effective operation of the state's planning system. The department has two overarching responsibilities that are central to undertaking these functions. These are:

- monitoring and improving the overall performance of the state's planning system
- providing key state-wide planning services essential for maintaining and supporting the effective operation of the system.

While these are distinct responsibilities, they are not mutually exclusive as the quality of planning services delivered by the department can have an impact on the performance of the system as a whole.

In this context, effective arrangements within DPCD for measuring and monitoring its own performance, as well as that of the system, are essential for enabling it to initiate timely corrective actions to address emerging issues and to continue to introduce system improvements.

These arrangements are not specified in legislation however good governance suggests they should be established. In the context of the state's planning system, such arrangements are particularly important as councils are effectively operating under delegation from the minister through their appointment under the Act as planning and responsible authorities.

Existing approaches to performance measurement for each of the responsibility areas identified above are discussed in the following sections.

4.1.1 Monitoring and improving the overall performance of the planning system

As outlined in Part 3, the Victorian planning system has been subject to almost continuous review and improvement since the early 1990s.

The government has investigated and introduced a number of further reforms to the system through the *Reference Group on Decision-Making Processes* (the Whitney Committee), *Better Decisions Faster*, and *Cutting Red Tape in Planning* (the Carbines Review). These reviews were largely aimed at streamlining and improving the efficiency of the planning system.

A performance measurement system for the planning system should assess the:

- achievement of state and local planning outcomes
- success and take up of reforms
- extent to which councils are fulfilling their obligations under the Act
- effectiveness and efficiency of statutory processes underpinning the system.

These key areas of performance measurement are not currently addressed in departmental reporting arrangements. At a system level, the department's main ongoing program of performance monitoring revolves around the preparation and production of the Planning Permit Activity Report (PPAR). The PPAR was first introduced by the department in 2005 to increase its access to across the board planning information.

The focus of the PPAR is on providing quantitative information on the type and level of planning permit activity for each council. Reports have been prepared commencing from 2003–04. The introduction of the PPAR was a significant milestone in the oversight of Victoria's planning system as it provided for the first time information on the level and type of planning activity across the state.

DPCD has established a project team to upgrade PPAR to expand the range of measures available. This will include details on further information requests, notifications, objections, referrals, timeframes for decision-making, value of works applied for and fees collected.

These enhancements, when implemented, will represent a significant improvement on the range of information available to DPCD, councils and communities. In particular, they will:

- provide greater insights into the administration of the planning permit process by councils
- promote improved governance across the planning system and within councils
- enable comparisons and benchmarking between councils.

In addition to supplying data used to prepare the PPAR, each council reports on its own performance in managing their planning functions through the Best Value Program. This program was introduced by the government in 1999 through an amendment to the *Local Government Act 1989*, which replaced the previous government's system of compulsory competitive tendering with a set of Best Value principles. These principles are aimed at ensuring councils focus on continually improving services and are accountable and responsive to the needs of local communities.

We examined a sample of Best Value reports and found they contained useful information on the performance of planning departments in individual councils.

However, audit also noted that:

- there was a significant degree of variation between councils in terms of key performance indicators and performance assessment approaches used which limits the capacity for making comparisons between councils and introducing system-wide improvements based on these reports
- the measures used in reports generally focused on selected activities and outputs but did not address the achievement of local planning outcomes such as those articulated within municipal strategic statements.

Under the *Local Government Act* 1989, councils are required to report annually on their achievements against Best Value principles. DPCD does not centrally collect, analyse and report on this information at a whole-of-state level.

In addition, under Section 12B of the *Planning and Environment Act* 1987, councils must review their planning schemes to enhance their effectiveness and efficiency and report the findings of the review to the minister. These reviews are now conducted every four years. There is, however, no state-wide analysis of the results of these reviews.

Audit found that regions in some cases assist councils to enhance their performance as planning and responsible authorities. However, there is no systematic monitoring and reporting process in place to provide assurance that councils are fulfilling their obligations under the Act. The results of our audit of councils (refer to Part 6), revealed a high proportion of cases (78 per cent) where there was insufficient consideration of the planning scheme and/or the Act in the assessment of planning applications.

In Part 7 of this report, we have recommended that external reviews of councils' planning functions be undertaken (at least annually) to determine the level of compliance with the Act and the local planning scheme. The results of these reviews should be monitored and analysed on a state-wide basis by DPCD with appropriate action taken as required.

In summary, while DPCD is taking further steps to enhance its performance reporting through the upgrade of the PPAR, these arrangements do not currently allow for comprehensive measurement and monitoring of the overall performance of the planning system.

4.1.2 Key state-wide planning services for maintaining and supporting the system's operation

DPCD is responsible for providing a number of services that support the effective ongoing operation of the planning system. These include:

- managing the ongoing development and maintenance of the Act and Regulations
- managing the Victoria Planning Provisions (VPP)
- processing amendments to planning schemes
- providing advisory and statutory support services to councils and stakeholders
- supporting the minister's role as a planning and responsible authority.

The following sections discuss the arrangements within the department for assessing and monitoring its performance in delivering these services.

Managing the ongoing development and maintenance of the Act and Regulations

One of the prime responsibilities of DPCD is managing the ongoing development and maintenance of the Act and Regulations on behalf of the Minister for Planning.

Recommendations from major DPCD reforms of the planning system have led in some cases to changes to the Act. For example, as a result of the *Better Decisions Faster* initiative in 2004, the following changes to legislation were made in relation to the planning permit process:

- Section 54 of the Act was amended to enable a lapse date to be specified for all further information requests made by the responsibility authority within 28 days of an application being lodged. If the requested information is not provided by the specified date, then the application lapses and a new application needs to be lodged. The intended benefits of this legislative change are to:
 - remove outstanding applications that are not being actively pursued and therefore alleviate the administrative burden of councils in following up
 - promote the preparation of complete applications at the submission stage and the use of pre-lodgement certification processes.
- Section 72 of the Act was amended to enable persons to apply to a responsible authority to amend a permit. Under this provision, an application to amend a permit (which includes plans, drawings and other documents approved under permit) follows the same process as an application for a permit, including the requirements for giving notice and referral of the amended permit.
- This change was designed to address the fact that a number of councils reported that application plans often change between the issue of the permit and the commencement of the development, and that they often felt obliged to fully reassess the permit application as if it was a new application.
- As a result of this legislative amendment, full reassessment of a proposal is not required and attention can be focused only on the particular changes. The legislative amendment also established a formal process to be followed covering re-notification and referral (if necessary) in line with an initial application.

Another key change arising from *Better Decisions Faster* was the introduction of the requirement for the minister to authorise the preparation of an amendment to a planning scheme (Section 8A(3) of the Act applies). The intended benefit of this change was to enable councils to receive an early indication of whether there is sufficient justification for an amendment to proceed and if the proposed amendment is consistent with state policy, prior to committing substantial time and resources to its preparation.

In addition, Section 11 of the Act was amended to enable the minister to authorise a planning authority to approve an amendment. Before approving the amendment, the planning authority must have it certified by the secretary of the department. This change to the Act seeks to avoid unnecessary processing by councils and the minister for those amendments that have a local impact only.

The *February 2008 Annual Statement of Government Intentions* indicated that an expert panel would review the *Planning and Environment Act 1987* and report by the end of 2008. The new Act is expected to be presented to Parliament in 2009.

DPCD's approach to identifying the need for specific changes to legislation is through stakeholder feedback as part of periodic reforms. However, the time between reform initiatives can be substantial, and there is presently no formal mechanism in place within the department for systematically collecting, analysing and monitoring the views of stakeholders on an ongoing basis, or for evaluating the impact of the implementation of reforms and the operation of key statutory processes. Further attention should be directed to developing:

- a regular and structured approach to obtaining feedback from stakeholders such as peak bodies and councils on issues associated with the current operation of the Act as well as any emerging issues or trends that may require future legislative attention
- performance measures to assess the effectiveness and efficiency of statutory processes associated with the processing planning permit applications and amendments to planning schemes, the administrative impact on councils from administering these processes and the extent to which legislative changes are achieving their intended goals.

The Victoria Planning Provisions

In 1996 the *Planning and Environment Act 1987* was amended to include the VPP as part of the reform of the planning system. As discussed in Part 3 of this report, the VPP is a state-wide reference document used to construct planning schemes, and which aims to provide a consistent approach to planning across Victoria.

Under the Act, only the Minister for Planning or another minister, public authority or council authorised by the minister can prepare an amendment to the VPP. DPCD is responsible for managing the VPP on behalf of the minister. Amendments to the VPP are made as required to reflect changes in policy and practice. The department advised that the impetus for amendments can arise from:

- representations made by professional bodies and councils
- issues raised by planning panels during the assessment of planning scheme amendments
- periodic reform initiatives such as *Better Decisions Faster*
- comments in decisions handed down by the Victorian Civil and Administrative Tribunal.

Audit found that around five amendments are made to the VPP on average each year. These amendments can vary from straightforward updates to the more significant changes to the nature and operation of zones, overlays and other provisions.

DPCD's role is to provide advice to the minister on the need for a formal review of the operation of any state-wide standard provisions within the VPP. The minister, based on this advice or acting independently, may initiate a review normally through the establishment of an advisory committee. Following stakeholder consultation and an analysis of issues raised, these committees will make recommendations to the minister.

While there is evidence that targeted reviews of the VPP are undertaken in response to issues raised by external parties, there is an opportunity for a more proactive approach to be undertaken where the VPP is reviewed as part of an ongoing program of continuous review. For example, until recently, there has been no comprehensive review or action to improve the adequacy, clarity and effectiveness of the State Planning Policy Framework (SPPF) for guiding decision-making at a local level. As discussed in Part 3 of this report, the minister has recently initiated action designed to improve the operation of the SPPF and other components of the VPP.

Stakeholder views on the adequacy of the VPP are normally sought during the conduct of specific reviews. As mentioned previously, a program of regular stakeholder engagement, complemented by other evaluative techniques (e.g. case studies, evidence-based analyses of the causes and effects of identified issues) would enable a more thorough and pro-active approach to detecting and addressing issues as part of an ongoing program of continuous improvement.

Finally, there is a need to continually assess both the effectiveness of the full suite of the VPP and the degree to which any changes have improved their operation. This will help to ensure that the VPP remain relevant and facilitate certainty and consistency in decision-making.

Processing amendments to planning schemes

Under the Act, a municipal council as planning authority must obtain the minister's written authorisation to prepare a planning scheme amendment. The department provides advice and support to the minister through its metropolitan and regional offices.

After authorisation has been obtained, the council can proceed to prepare the amendment subject to any requirements imposed by the minister. The authorisation to approve an amendment is based on certification from the secretary of DPCD that an amendment is technically acceptable for approval by the planning authority.

The *Planning and Environment Act 1987* does not prescribe a time limit for the processing of a planning scheme amendment. However, during the Carbines Review, a number of stakeholders raised concerns about the long timelines and excessive documentation associated with the process.

In an effort to address this, the review made a number of recommendations. These included the establishment of performance targets for the amendment process and the development of protocols for pre-appointing panels to reduce the time between exhibition and panel consideration when it is known there will be submissions.

In response to these recommendations, DPCD has established protocols for the pre-appointment of panels, as well as performance targets for its processing of amendments. These targets are:

- in 80 per cent of cases, a decision on whether a council will be authorised to prepare an amendment will be made within 15 working days of the receipt of the

completed information request. In dealing with requests, DPCD will assess whether information accompanying the request for authorisation is sufficient. The commencement of the 15 days occurs only when a completed request is received

- in 80 per cent of cases, DPCD will complete the assessment of an authorised amendment so that a decision can be made within 30 days of the receipt of the amendment provided all appropriate documentation has been received.

The department actively monitors at least weekly its performance in relation to the achievement of these targets. The department's performance in meeting these targets has steadily improved and it is now consistently meeting or exceeding these targets.

However, the audit disclosed that the calculation of actual performance against the above performance targets only measures the time taken by staff to make a recommendation on an authorisation/approval request in most cases, not the elapsed time to make a decision. In several cases where the department met its 15 and 30 day targets, audit observed that the elapsed time taken to make a decision was substantially greater.

In summary, while the above performance targets measure some aspects of departmental activities, there is currently no measurement, monitoring and public reporting against:

- the total elapsed time taken by the department and councils to process amendments
- the effectiveness of key aspects of the process and, in particular, the degree to which changes to the process have achieved their intended objectives (e.g. the minister's authorisation to a planning authority to prepare an amendment)
- proportion of planning panels that are pre-appointed
- the number of requests for further information from DPCD to councils during the authorisation and approval stage
- the total cost of processing amendments including costs to councils and DPCD
- the elapsed time taken to complete key stages of the process including:
 - preparation and exhibition of amendments following authorisation
 - establishment of panels and completion of recommendations
 - the time taken by DPCD to request further information, and for councils to respond to these requests during the authorisation and approval stage.

Consideration should be given to categorising types of amendments based on their level of complexity, when setting timeliness targets for amendments to planning schemes. Factors that add to complexity are for example the number of submissions received and whether there was a panel hearing.

Advisory and statutory support services to councils and stakeholders

The department provides a wide range of guidance, advice and support services to councils and other stakeholders in relation to the state's planning system. These services are mainly provided through:

- guidelines and publications relating to key planning processes and the overall planning system
- the PLANET professional development program
- advisory and support services to councils.

Guidelines and publications

DPCD has produced guidelines and publications covering a wide range of topics aimed at planning professionals, councils and occasional users of the system. These include:

- practice notes, advisory notes and guides
- codes of practice and associated guidelines (e.g. A Code of Practice for Telecommunications Facilities in Victoria)
- policies and strategies (e.g. Great Ocean Road Region Strategy)
- fact sheets and brochures
- forms and templates
- newsletters and bulletins.

Advice from audit's technical experts is that the department's planning publications were generally of a high standard. On the other hand, the audit of councils revealed an underpromotion and underutilisation of these products in circumstances where some councils would have benefited from their use.

The PLANET professional development program

The central office of the department manages the PLANET professional development program with the support of the Municipal Association of Victoria (MAV). All programs are accredited by the Planning Institute of Australia (PIA) as part of an approved professional development program.

Structured training on a modular basis is delivered annually by experienced planning professionals. These programs incorporate a range of strategic and statutory planning issues. Training priorities are determined in consultation with the MAV, PIA and universities. The department advised that training priorities are adjusted to accommodate regulatory and legislative developments.

Advisory and support services to councils

DPCD's regional offices are the first point of contact for councils seeking information, advice and support from the department on strategic and statutory planning issues. Specifically, this includes assistance with streamlining and improving local planning schemes and processes as well as facilitating enhancements to strategic planning frameworks.

Approach to measuring DPCD's performance

The department measures user satisfaction with its guidelines and publications through online surveys, and the PLANET program is evaluated by participants. Data supplied by DPCD demonstrates a high level of satisfaction.

On the other hand, there is no formal performance measurement process in place for assessing the timeliness and quality of advisory and support services provided by DPCD regions to councils. Audit noted that regions, prior to the creation of DPCD, have been subject to considerable change over time and the department is in the process of clarifying their role. Following this, performance expectations and obligations should be formally defined at the outset such as through a service charter, or memorandum of understanding between a region and councils.

Supporting the minister's role as planning and responsible authority

Under the Act, the Minister for Planning can be appointed as a planning and responsible authority with all the relevant legislative powers normally accruing to a council. In assuming these roles, the minister can:

- prepare and approve a planning scheme for any municipal district or an amendment to a planning scheme
- intervene in a planning scheme amendment to expedite the process
- call-in and make determinations on planning permit applications yet to be decided by a responsible authority
- administer and enforce planning schemes including processing permit applications in those areas where the minister acts as the responsible authority on a continuing basis.

The minister is the responsible authority on an ongoing basis for a number of designated areas throughout Victoria. These include the Melbourne Planning Scheme where the development is in excess of a gross floor area of 25,000 square metres, the Melbourne Showgrounds, Flemington Racecourse and Melbourne Casino. The minister is also the responsible authority and planning authority for areas such as the:

- Melbourne Docklands area
- Port of Melbourne planning scheme
- Port Phillip planning scheme (Beacon Cove—Comprehensive Development Zone)
- Alpine Resorts planning scheme (Mt. Hotham, Falls Creek, Mt. Buller, Mt. Stirling, Mt. Baw Baw and Lake Mountain).

DPCD's metropolitan and regional offices assist the minister to undertake the above functions by providing support in terms of:

- processing and assessing planning permit applications in areas where the minister is the responsible authority. In undertaking this role, the department undertakes the normal statutory planning activities of a council

- advising the minister on call-ins or other ministerial interventions in planning matters
- managing the processing of ministerial correspondence
- reviewing and maintaining planning schemes for which the minister is the planning authority.

In 1999, the Minister for Planning introduced guidelines on the circumstances, principles and reporting arrangements that apply to ministerial powers to intervene in planning matters in order to strengthen the degree of accountability and transparency associated with these decisions. Since then, reasons for each of the minister's decisions are made available on DPCD's website and are also reported annually to Parliament.

In terms of assessing its performance in supporting the minister, the department mainly focuses on the timeliness measures for key activities such as the processing of:

- ministerial correspondence within time limits
- permit applications within statutory timelines.

There is the potential to broaden the current performance measurement framework to include monitoring and assessment of areas such as:

- client satisfaction with the quality and timeliness of the department's planning advice and services
- the effectiveness and efficiency of the department's administration of the permit process
- costs to applicants and the department per application processed.

4.2 Options for developing and managing a performance measurement framework

There are a number of approaches for assigning responsibility for developing, implementing and managing the introduction of a performance measurement framework. These are:

- the creation of a standing ministerial advisory committee under Section 151 of the *Planning and Environment Act 1987* made up of departmental, council and stakeholder representatives to develop and manage the framework on an ongoing basis. This committee would need to be supported administratively by the department
- assigning responsibility to the department as the lead agency for planning in Victoria. In this regard, the department has made an important start in the process with the current upgrade of PRAR
- having an advisory committee recommend on the development of the framework with the subsequent implementation and ongoing management resting with the department.

In some cases, gaps in performance measurement information can be addressed relatively quickly through mechanisms such as client surveys. However in other instances, more detailed system development is required to establish procedures, processes and systems for the collection, verification, collation and analysis of state-wide performance information. This will involve extensive consultation with councils.

The development of a performance measurement strategy to address the issues outlined above should involve:

- consideration of the resourcing and administrative implications associated with introducing performance measurement arrangements both from an initial development and ongoing management perspective
- the embedding of responsibility for performance monitoring and reporting in organisational and job arrangements
- the development of an endorsed program for the progressive roll out of performance measurement arrangements.

Stakeholders, either via a ministerial advisory committee or through a separate process, should be consulted in the identification of relevant and appropriate performance indicators and measures to ensure that they adequately and comprehensively address all critical aspects of the planning system.

4.3 Stakeholder engagement

Currently, the department consults with relevant peak bodies and councils as part of the introduction of periodic reforms to the system as well as having ad hoc meetings with key parties as required. Regions also have informal dialogue with relevant councils in terms of their provision of services and advice.

In conjunction with improvements to performance measurement arrangements as suggested above, the introduction of more regular round table forums for dialogue and feedback between the department and representatives of various stakeholders (e.g. councils, peak bodies and the community) would allow for discussion on:

- the current operation of the planning framework including areas and strategies for improvement
- how best to address emerging issues and trends.

While face-to-face discussion is important, there is also the potential to use other mechanisms such as ongoing surveys and focus groups to reach a broader audience to explore more specific issues such as the operation associated with parts of the Act, statutory processes and the VPP.

4.4 Conclusion

The department needs to further develop access to reliable and timely information on the performance of the state's planning system to assist it in discharging its responsibilities as the lead agency for overseeing land use planning in Victoria. In particular, this would allow continuous review and improvement of the planning system to proceed on a sound evidential basis. This should occur through two key initiatives; the development of a performance measurement framework and more regular and formal stakeholder engagement processes.

The development and management of a performance measurement framework in particular will be a significant undertaking with potential resource implications given the amount of information required to be collected, verified and analysed on an ongoing basis. However, the importance of land use planning to Victoria's current and future livability strongly suggests that the development of such an initiative should be a key priority.

Recommendations

- 4.1 DPCD, in conjunction with stakeholders, should assume the lead role in developing a more comprehensive framework for measuring the performance of the state's planning system. The framework should include key performance indicators, targets and reporting arrangements for assessing:
- the achievement of planning outcomes at the local and whole-of-state levels
 - the effectiveness and efficiency of key planning permit and planning scheme amendment processes, including the performance of councils and DPCD in the administration of those processes
 - the administrative impact on councils arising from their compliance with statutory processes and the extent to which implemented reforms have achieved their objectives and/or reduced such impacts
 - the effectiveness of the full suite of VPP provisions for ensuring certainty and consistency in decision-making on an ongoing basis, including the degree to which any amendments made have improved the operation of the provisions
 - the extent to which councils have fulfilled their obligations under the Act as planning and responsible authorities
 - DPCD's overall performance in managing and supporting the state's planning framework.

- 4.2 To support and complement the operation of the performance measurement framework, DPCD should also establish an ongoing program for obtaining stakeholder feedback on:
- the operation of the Act and the VPP, and implementation of statutory processes, as a basis for identifying matters for further investigation and action in concert with results from the performance measurement framework
 - the timeliness and quality of DPCD's advisory and support services to stakeholders, so that any opportunities for improvement can be identified and pursued
 - any emerging issues or trends that require attention.
- 4.3 DPCD should develop a comprehensive strategy with detailed timelines for the further development and implementation of the performance measurement framework.
- 4.4 DPCD should review and revise the existing performance targets for the planning scheme amendment process so that they accurately reflect the elapsed time for decisions to be made on authorisations and approvals.

RESPONSE provided by the Secretary, Department of Planning and Community Development

The recently announced review of the Planning and Environment Act 1987 provides the opportunity to respond to many of the recommendations detailed in the report. In addition, DPCD is currently expanding its ePlanning capabilities to establish more transparent and comprehensive monitoring of the Victorian planning system. The existing DPCD "Continuous Improvement Review Kit" and model reports for councils will be reviewed to incorporate issues raised by the audit.

Recommendation 4.1

This recommendation is supported.

A framework for measuring the performance of the planning system will be developed in consultation with local government, planning industry and the community. The implementation will be facilitated with the development of ePlanning capabilities. The Planning Permit Activity Report (PPAR) provides automated reporting on planning permit application performance. The Permit Applications Online project is currently under development and includes PPAR compatible reporting ability. As the system is further developed and rolled out, DPCD will identify opportunities to build in further monitoring of the system.

RESPONSE provided by the Secretary, Department of Planning and Community Development – continued

Recommendation 4.2

This recommendation is supported.

This is current practice with DPCD planning system reviews. DPCD will continue to explore additional opportunities for broader application of practices to consult with peak bodies and stakeholders through ePlanning e.g. the weekly electronic bulletin "Planning Matters" has been used to conduct electronic surveys of stakeholders on specific matters.

Recommendation 4.3

This recommendation is supported.

An enhanced performance management framework is a key component of the ePlanning strategy and will be progressed. Other initiatives will be developed.

Recommendation 4.4

This recommendation is supported.

The current review of the planning scheme amendment process will include a review of key performance indicators.



5 Council management of the planning scheme amendment process

At a glance

Background

Planning schemes control land use and development. A council must consider and ensure compliance with a number of relevant matters set out in the Act, Regulations and planning scheme when amending a planning scheme.

Key findings

- Amendments are often complex but the time taken to complete individual steps in the amendment process was excessive. The average time from initiation to gazettal across the six councils examined was nearly 22 months.
- Councils generally complied with the Act in considering amendment requests.
- Reports to councils should be more rigorous and transparent in terms of the justification for the amendment at the early consideration stage.
- Councils generally complied with the Act in relation to the administration of notification procedures for parties considered materially affected by the amendment. However, the basis upon which councils decided to notify these parties was not transparent or adequately documented.

Key recommendations

- The Department of Planning and Community Development (DPCD), in consultation with stakeholders, should review the planning scheme amendment process to:
 - identify optimal timeframes and practices for administering each major stage, taking into account the varying complexity of different amendments
 - develop relevant and appropriate key performance indicators for each major stage, including a system of public reporting against those indicators by councils and DPCD
 - establish mechanisms to enable action to be taken to address significant and/or consistent failures by relevant parties to meet key performance targets

At a glance – *continued*

Key recommendations - *continued*

- Councils should make certain that they perform a comprehensive initial assessment of the amendment against all the requirements of Section 12 of the Act, and that this is clearly documented in reports to council.
- DPCD, in consultation with councils, should develop a clear definition of the term 'materially affected', including guidelines for making determinations to facilitate consistency across councils.

5.1 Introduction

5.1.1 Background

Planning schemes are the major legislative mechanisms within the state's planning framework for controlling land use and development. When amending a planning scheme, a council as *planning authority* must consider and ensure compliance with a number of relevant matters set out in the Act, Regulations and planning scheme.

Adhering to these requirements is essential for avoiding unnecessary costs, delays, reviews by the Victorian Civil and Administrative Tribunal (VCAT), and for ensuring decisions made are open, fair and appropriate.

For these reasons, the actions of councils when administering these processes should be clearly documented and subject to internal review as part of an ongoing program of quality control and assurance. Decisions made should be evidence-based and supported by a transparent process that demonstrates compliance with all legislative and planning scheme requirements.

5.1.2 Audit of selected councils

The audit examined the planning processes of six councils to assess their compliance with the Act and their planning schemes in the processing of planning scheme amendments. The audit also assessed the adequacy of local quality assurance (QA) arrangements for ensuring compliance with these requirements.

At each council, the audit examined the last five gazetted planning scheme amendments for each council.

While the results relate directly to the councils we examined, the issues revealed are considered indicative of practices in other councils. In this context, the audit has identified a number of issues that should be considered by all councils administering planning functions.

5.2 Planning scheme amendments

5.2.1 The planning scheme amendment process

As outlined in Part 3 of this report, planning schemes are statutory documents that set out objectives, policies and provisions for the use and development of land in the area to which they apply (usually a municipality).

Planning schemes can be amended for various reasons, such as to reflect:

- new state, regional or local policies
- the rezoning of land to allow for uses currently prohibited under the scheme
- the introduction of new provisions to restrict certain uses or development in a sensitive location such as a heritage overlay
- changes made to the Victoria Planning Provisions (VPP)
- changes as a result of four yearly council reviews of planning schemes
- site specific amendments to cater for particular uses not covered by current zones
- the removal of redundant provisions or correction of technical mistakes.

Under the Act, a planning authority prepares an amendment to a planning scheme. In most cases, this would be a local council but it could also be the Minister for Planning, another minister or public authority authorised by the Minister for Planning.

Persons or other bodies requesting an amendment to a planning scheme are known as 'proponents'. A summary of the key stages in the planning scheme amendment process are shown below in Figure 5A.

Figure 5A
Outline of planning scheme amendment process



Source: Victorian Auditor-General's Office.

5.2.2 Timeliness of processing

Background

As stated in Part 4 of this report, the Act does not prescribe a timeframe for the processing of a planning scheme amendment. However, an amendment will automatically lapse if it is not adopted by a council within two years from when notice of the amendment was first published in the *Victorian Government Gazette* (unless an extension of time has been granted by the minister).

While there are no statutory timeframes for the overall process, the Act does establish timelines for the following events:

- **submissions:** the closing date for submissions following public exhibition of an amendment must not be less than one month from when notice was published in the gazette
- **panel reports:** a planning authority must make a panel report publicly available after 28 days of receiving it.

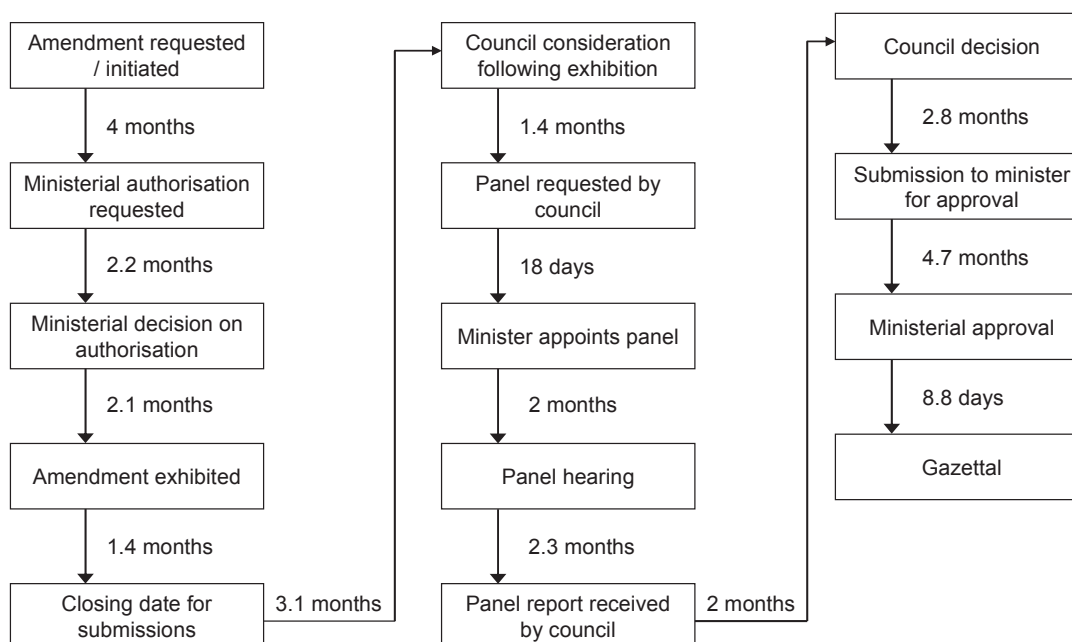
Under the Act, a planning authority or the minister must act promptly as is reasonably practicable, so that loss or damage to any person from unreasonable delay is avoided. The minister also has the power to expedite an amendment to a planning scheme under the Act and may direct a planning authority to take any steps necessary to avoid further delay. If the planning authority fails to undertake the required steps within the time specified by the minister, the minister can then take that step and all other steps required to be undertaken.

Findings

Across the six councils, the average time taken to process an amendment from initiation to gazettal took just under two years (i.e. 22 months). In some cases, however, it took substantially longer.

Figure 5B depicts the key steps in the amendment process and the average time taken to process each step across the 30 amendments examined by audit.

Figure 5B
Average timeframes for key process steps



Note: Data supplied by DPCD as at February 2008 across all panels that deal with planning scheme amendments disclosed that the average time between:

- request for panel and appointment was 10.5 days (maximum 31 days, minimum 1 day)
- appointment and directions hearing was 31.5 days (maximum 40 days, minimum 11 days)
- appointment and panel hearing was 72 days (maximum 123 days, minimum 43 days)
- panel hearing and report received by council was 49 days (maximum 83 days, minimum 13 days).

Source: Victorian Auditor-General's Office.

Figure 5B shows that average timeframes for processing planning scheme amendments are lengthy due partly to the time taken by the six councils examined by this audit and the ministerial approval process in some cases. The panel process, once initiated, also consumes a significant amount of time (approximately eight months on average from the time council resolves to request a panel, to council decision following receipt of the panel report).

As indicated in Part 4 of this report, existing performance indicators for planning scheme amendments only relate to some of the activities of the department and do not comprehensively address each stage of the process, including ministerial approval.

Notwithstanding these limitations, it should be noted that recent improvements in the time taken by the department to process authorisation and approval requests prior to forwarding to the minister for decision, may not be reflected in the above timeframes shown for ministerial decision-making.

Issues affecting timeliness

Audit found that the main factors that affected the time taken to process an amendment included:

- the extent of preliminary research and investigation undertaken prior to seeking the minister's authorisation to prepare the amendment
- whether or not an exemption from notice requirements has been granted by the minister
- the efficiency of council procedures and decision-making practices
- the level of resources available within the council to deal with the amendment
- the number, including nature of submissions received, and the extent of community consultation and negotiations required with objectors, land owners and proponents to resolve any concerns
- whether a panel hearing was required to consider submissions that sought a change to the amendment not accepted by council
- the overall complexity of the amendment.

As shown in Figure 5C below, audit found that amendments that take longer than 12 months to process were generally more complex.

Figure 5C
Incidence of key factors by average time taken to process amendment

Factor	Time to process amendment from initiation to gazettal	
	Less than or equal to 12 months	Greater than 12 months
Proportion of amendments exempt from notice provisions	20 per cent	13 per cent
Proportion of amendments where submissions were received following exhibition	60 per cent	87 per cent
Average number of submitters	2 submitters	15 submitters
Proportion of amendments that involved panel hearing	Nil	39 per cent
Proportion of amendments involving consultation with the community/objectors	20 per cent	48 per cent
Average months of preliminary investigation	1.8 months	3.6 months

Source: Victorian Auditor-General's Office.

Findings

At one council, audit found three cases where it took more than four years to process the amendment (i.e. 4.4 years, 5.3 years and 4.6 years). None of these amendments required ministerial authorisation because they had been initiated before May 2005 (when this requirement was introduced).

Audit found that the main factors influencing the time taken were significant delays in decision-making by the council and/or the minister. For example, following the close of advertising in each case, council took 95 days, 605 days and 319 days respectively to consider each amendment. A panel was also required in one case, and council took a further 244 days to make a decision following receipt of the panel report.

In another case, council adopted the amendment in late 2003, but submitted it to the minister for approval more than three years later in early 2007. Audit also found that significant delays were evident in securing ministerial approval for two of the amendments, which took 630 and 466 days respectively.

Extended timeframes for processing the amendment were also evident at another council in a further five cases (i.e. 2.2 years, 2.5 years, 1.7 years, 1.6 years and 1.3 years). Audit observed that the main reasons for the time taken included the comprehensive preliminary investigations undertaken by council in three cases (11 months, 17 months, and 8.4 months respectively), as well as the time taken to secure ministerial approval for four of the amendments (seven months each for two cases, and around three months each for a further two cases).

One of the cases examined was a straightforward corrections amendment that did not involve a panel hearing. Despite this, it took council three months to consider the amendment following the close of submissions, and an additional nine months to obtain ministerial approval.

5.2.3 Summary for timeliness

Amendments to planning schemes are often complex, demanding on a council's resources and can involve extensive negotiations with affected parties in order to achieve the best possible outcome for the community. For most councils this, rather than the time taken to finalise an amendment, is the primary objective.

While recognising this, it is evident that the timeframes for processing planning scheme amendments are significant, and in some cases excessive and unsatisfactory.

In the absence of statutory timeframes and comprehensive performance indicators for each stage of the process, it remains unclear whether the existing approaches to administering amendments to planning schemes represent the most effective and efficient use of the state's planning resources.

Recommendation

- 5.1 DPCD, in consultation with stakeholders, should review the planning scheme amendment process to:
- identify optimal timeframes and practices for administering each major stage by all parties, taking into account the varying complexity of different amendments
 - develop relevant and appropriate key performance indicators for each major stage, including a system of public reporting against those indicators by councils and DPCD
 - establish mechanisms to enable action to be taken to address significant and/or consistent failures by relevant parties to meet key performance targets.

RESPONSE provided by the Secretary, Department of Planning and Community Development

The department is currently reviewing the planning scheme amendment process including a revision to the practice note and standard documentation. This review takes into account aspects of the recommendations of the audit for the amendment process. The department will work with the local government sector including the Municipal Association of Victoria on a state-wide approach to implement issues raised by the audit. The impending review of the Planning and Environment Act will also provide an opportunity to explore changes to address the recommendations. A number of recommendations are directly the responsibility of local government. These will be discussed with the local government sector.

Recommendation 5.1

This recommendation is supported.

The current review of the planning scheme amendment process will include these issues.

5.2.4 Consideration of an amendment request

Background

An amendment to a planning scheme can be initiated by a council or requested by any person or external body normally referred to as a 'proponent'.

Under Section 8A of the Act, a planning authority must obtain the authorisation of the minister to prepare an amendment to a planning scheme. Prior to seeking authorisation, a council should perform a preliminary investigation to establish that the amendment is necessary and complies with the requirements of the Act.

When considering or preparing an amendment, a council must prepare an explanatory report and consider a number of matters listed under Section 12 of the Act. These include:

- the minister's directions
- the VPP
- any Municipal Strategic Statement, strategic plan, policy statement, code or guideline which forms part of the scheme
- any significant effects which the amendment might have on the environment, or the environment may have on any use or development proposed by the amendment
- any social and economic effects associated with the proposed amendment.

A report to council should also be prepared, clearly demonstrating a consideration of all the relevant issues, so as to enable it to make an informed decision on whether to support the amendment and seek the minister's authorisation.

When seeking authorisation to prepare an amendment, Section 8A(4) of the Act requires a planning authority to provide the following information to the minister:

- what the proposed amendment does, what land is affected by it, and why it is required
- how it implements the objectives of planning in Victoria
- how it addresses any environmental, social and economic effects
- how it complies with relevant minister's directions
- how it supports or implements the State Planning Policy Framework, Local Planning Policy Framework and Municipal Strategic Statement
- how it makes proper use of the VPP
- the known views of any relevant agency
- what impact it has on the resource/administrative costs of council.

A draft explanatory report in most cases will fulfil the above requirements. The minister may authorise the authority to prepare the amendment subject to any conditions, and must state whether the council is also authorised to approve it (following certification by the department), or if it should be resubmitted to minister for approval.

Findings

Audit found that all six councils generally complied with the Act in that they undertook a preliminary investigation of the strategic merits of each amendment request. Requests from proponents were generally accompanied by draft explanatory statements or reports supporting the strategic basis of the amendment. Also, reports to council assessing the merits of each amendment request were prepared by officers in almost all cases and were considered by council.

Councils sought and received ministerial authorisation to prepare the amendment in all cases where it was required. In 27 per cent of cases it was not required, as the amendment was initiated prior to May 2005 (when this requirement was introduced). In a further 27 per cent of cases, council was authorised by the minister to approve the amendment. In all cases, audit found that councils prepared and submitted all the prescribed information required by the minister to determine whether authorisation should be granted.

While all amendments generally complied with the requirements of the Act, our examinations revealed that the quality of reports to councillors about the strategic merits of the amendment varied. Specifically, audit observed that most officer reports (70 per cent) were very brief and did not adequately discuss or evaluate the extent of compliance of the amendment proposal with all relevant matters listed under the Act.

In many cases, audit found that councils relied heavily on draft explanatory reports prepared by proponents that were usually attached to officer reports to provide the strategic justification for the amendment request. However, the content of these reports was not evaluated or discussed in sufficient depth by council officers in their reports when making recommendations to council.

For example at one council, audit found that despite a request from council officers to a proponent to demonstrate that land was not contaminated and suitable for residential use (i.e. compliance with Ministerial Direction No. 1), the proponent's explanatory report did not conclude on this, and the issue was not discussed in the council report prepared by the officer supporting the amendment.

A report to council at a later stage of the process recommending adoption of the amendment indicates that the issue was subsequently addressed. However, audit found that there was no evidence to establish that council formed a view that Ministerial Direction No. 1 had been complied with at the time it decided to support the amendment.

Finally, audit also observed that in some councils there was a need to improve record keeping and filing practices to ensure that discussions with proponents and the department was documented, and the status of further information requested by council was tracked and followed up by officers.

Approaches to quality assurance

QA practices varied across councils and in most cases were limited, informal and largely unstructured. In all cases, explanatory report templates developed by the department were used, as required, to describe the amendment and its compliance with the Act when seeking ministerial authorisation.

Audit found that in three councils, there were no formal QA arrangements in place. In the remaining councils some checklists and peer review processes were evident, but these were not always effective in ensuring that reports to council gave adequate consideration to relevant matters under the Act. In most cases, there was a strong reliance on the experience and competence of local staff to ensure compliance without recourse to any structured QA process.

5.2.5 Summary for consideration of amendment requests

With respect to the consideration and preparation of amendments, all councils generally complied with the Act. However, there is a need for reports to council to include a more structured and rigorous approach to assessing amendment proposals at the early consideration stage.

When resolving to support an amendment and seek ministerial authorisation, a council requires adequate assurance that the amendment has a sound strategic basis and complies with all the requirements of the Act, including ministerial directions.

While these matters are generally discussed within draft explanatory reports often prepared by proponents, they should be more explicitly referenced/analysed within reports to council to ensure that they are considered by councillors when making decisions.

Across most councils, QA processes at the consideration stage were limited, and did not ensure that reports to council provided a reasonable level of assurance that the proposed amendment complies with all the requirements of the Act, including ministerial directions.

Recommendations

- 5.2 Councils should make certain that they perform a comprehensive initial assessment of the amendment against all the requirements of Section 12 of the Act, and that this is clearly documented within reports to council.
- 5.3 Councils should review their quality assurance processes and ensure that:
- standard templates are used for reporting to council on proposed amendments so that adequate consideration is given to all relevant matters under Section 12 of the Act
 - records of all meetings/discussions with proponents and DPCD are appropriately documented so that an accurate history of the amendment is maintained and action items have been addressed by all participants.

RESPONSE provided by the Secretary, Department of Planning and Community Development

Recommendation 5.2 and 5.3

These recommendations are noted.

5.2.6 Notification

Background

The public exhibition stage of the amendment process is designed to enable any person affected by a proposed amendment to have the opportunity to make a submission.

A planning authority is required under Section 17 of the Act to give copies of any amendment it prepares including the explanatory report and any other relevant document to:

- a municipal council, if the amendment applies to its municipal district
- the Minister for Planning
- any other person whom the minister specifies.

It is also required, under Section 19 of the Act, to give notice of its preparation of the amendment to the following persons:

- every minister, public authority and municipal council that it believes may be materially affected
- the owners and occupiers of land that it believes may be materially affected
- any minister, public authority, municipal council or person prescribed in the Regulations
- owners and occupiers of land benefited by a registered restrictive covenant, proposed to be removed or varied by the amendment
- the minister administering the *Land Act* 1958 if the amendment provides for the closure of a road wholly or partly on Crown land.

Notice must be given in a manner that is consistent with the requirements set out in the Regulations, and an authority must publish a notice of any amendment it prepares in a newspaper circulating in the area affected by amendment. It must also:

- cause notice of an amendment affecting a restrictive covenant to be given by placing a sign on the land affected by the amendment
- publish a notice of the preparation of the amendment in the *Victorian Government Gazette*
- set a closing date for submissions which must not be less than one month from the date notice is given in the *Victorian Government Gazette*.

Under Section 20 of the Act, the minister has the power to exempt an authority from any requirement to give notice, with the exception of giving notice to prescribed Ministers, and in those cases where the amendment affects land set aside for public purposes. The minister also has the authority to exempt him or herself from any of the notice requirements if the minister considers compliance with those requirements is not warranted.

When giving notice of an amendment, it is important for a planning authority to ensure that the requirements of the Act and Regulations have been fully satisfied. A failure to do so can lead to the process being challenged at VCAT, resulting in delays and increased costs for councils and proponents.

Findings

Notification

Audit found that notice of the preparation of an amendment was given by the planning authority in all instances where it was required. In five instances the minister had waived some of the notice requirements. The process followed was in compliance with the Act and Regulations in almost all cases. Specifically:

- owners and occupiers materially affected by the amendment were directly notified in almost all cases. In one instance, notice was published in the local newspaper instead as it was impractical to notify all owners individually. The process followed in this case was in accordance with the Act
- all prescribed ministers, authorities and persons were notified in all cases where required
- notice was published in the local newspaper in almost all instances where required (23 out of 25 cases). In two cases, audit was unable to determine if this had occurred, as there was no evidence on file
- notice was published in the *Victorian Government Gazette* in all cases as required
- the amendment was exhibited for at least one month, and the amendment documentation was prepared and made publicly available in accordance with the Regulations in all cases.

Although councils generally complied with the Act, the basis of decisions concerning who is 'materially affected' was neither transparent nor clearly documented in most cases. Audit observed that these decisions were usually determined arbitrarily by councils based on a rudimentary assessment of the proximity of persons to the area covered by the amendment.

Consideration of submissions

Section 22 of the Act requires a planning authority to consider all submissions received on or before the closing date specified when giving notice.

Audit found that submissions were received in 83 per cent of amendments that were advertised. However, in a small number of these cases (21 per cent), the number of submitters listed on file did not always equate with those referenced in officer reports. In these cases it was not clear if the issues raised by all submitters were considered by council.

In one case with four submissions but no objections, these were not sent to the minister as required by the Regulations. In this instance, the minister was advised that there were no objections only and the submissions were not discussed in the officer report. Officer reports should discuss the views of all submitters, not just those of objectors.

In instances where late submissions were received, audit found evidence that they were considered by councils in all cases as permitted under the Act.

Adequacy of quality assurance processes

Audit found that QA practices varied considerably across the six councils. In two councils there were no QA arrangements in place for the public exhibition stage. In the remaining four councils QA processes were largely informal, unsystematic and reliant on the vigilance of team leaders and coordinators to check the completion of key documentation and processes at the notification stage.

Within these councils, some checklists and/or process sheets were in place to ensure that required steps had been undertaken and that they complied with all requirements. However, these were not always adequate, consistently completed or effective in ensuring that the reasons for notice decisions were clearly documented, and that the views of all submitters were appropriately considered.

5.2.7 Summary for notification

Overall, councils generally complied with the Act in relation to their administration of notification procedures. However, the basis upon which councils decide to notify materially affected parties was not transparent or adequately documented in most cases.

Decisions about who is 'materially affected' by a proposed amendment are usually arbitrary, are made without reference to any established criteria or guidelines, and result in varying practices across councils. This situation creates the risk that some parties materially affected by a proposed amendment may not be afforded the opportunity to comment. The absence of adequate justification to support decisions made also creates the potential for a council to be challenged at VCAT.

While the overall level of compliance with notification requirements was high, there is a need to strengthen existing QA processes to ensure that the rationale underpinning notice decisions is soundly based and documented, and that the views of all submitters are properly taken into account.

Recommendations

- 5.4 DPCD, in consultation with councils, should develop a clear definition of the term 'materially affected', including guidelines for making determinations to facilitate consistency across councils.
- 5.5 Councils should develop policies and standards for notification, including appropriate quality assurance procedures, so that there is a reasonable level of assurance that:
 - assessments of who is materially affected have been adequately undertaken, and appropriately documented
 - all parties that have made submissions are appropriately noted and considered.

RESPONSE provided by the Secretary, Department of Planning and Community Development

Recommendations 5.4

This recommendation is supported in-principle.

The difficulties with this term are acknowledged. Other approaches to dealing with this issue in addition to providing a definition are possible and will be explored. Guidelines for the use of the improved method will be part of the package for the introduction of a revised approach.

Recommendation 5.5

This recommendation is noted.

DPCD will support local government to develop procedures to implement this recommendation and to ensure a consistent state-wide approach.

5.2.8 Assessment following ‘exhibition’

Background

Following the public notification stage, a report to council should be prepared recommending the course of action to be taken based on a consideration of all relevant matters and submissions received.

The report to council should consider any planning scheme controls relevant to the amendment (i.e. zones and overlays etc.) and the matters listed under Section 12 of the Act (see previous section on ‘Consideration of amendment request’).

The report should also demonstrate a consideration of the issues raised by all submitters (if any) as required by the Act, and present options including a recommended course of action that may include:

- modifying the amendment in accordance with changes sought by submitters
- referral to panel if changes sought by submitters are not supported by council
- abandoning the amendment
- adopting the amendment, and seeking the minister’s approval.

As indicated by the options available above, some proposed amendments may not eventuate as they can be abandoned by council following the public exhibition stage.

Findings

All of the councils we examined undertook strategic assessments of the amendments against the requirements of the Act, issues raised by submitters and the planning scheme. However, audit found that the detail of these assessments was usually documented in supplementary information (e.g. explanatory reports, amendment documentation, etc.) attached to officer reports recommending the action to be taken following the public exhibition stage.

Relevant matters contained in the attachments were not always comprehensively identified and considered in officer reports, but it was evident that these issues had generally been addressed in the supporting documentation. Specifically, audit observed that:

- zone and overlay issues relevant to the amendment were not identified or considered in 22 per cent of officer reports
- relevant issues under the Act were not identified and/or considered in 25 per cent of officer reports
- issues raised by some submitters were not considered in 26 per cent of officer reports
- in 43 per cent of reports to council, officer recommendations were not based on a consideration of the options listed in the background to this section.

Recommendations to council were not always adequately supported by a comprehensive analysis of relevant issues in the officer report. However, audit found that in most cases (64 per cent) they were soundly based after taking into account all matters addressed in the supporting attachments.

[Adequacy of quality assurance processes](#)

As with the notification stage, audit observed that QA practices varied across councils, which in most cases were largely informal, unsystematic and reliant on the vigilance of team leaders and coordinators to check officer reports and ensure that all relevant matters had been adequately addressed. Checklists and process sheets were in place at some councils and designed to ensure compliance with all requirements. However, these were not consistently completed or effective in most cases for ensuring that officer reports comprehensively addressed the requirements of the Act, the planning scheme and the views of all submitters.

[5.2.9 Summary for assessment following ‘exhibition’](#)

Assessments and decisions made by councils following exhibition were balanced and soundly based in most cases. Audit also found evidence that councils had considered:

- issues raised by submitters
- relevant planning scheme controls
- compliance with the requirements of the Act.

However, these matters were not always covered in sufficient depth within officer reports. Councils should provide a thorough analysis of these matters in reports so that due consideration can be given by councillors when deciding on the course of action to be taken following the exhibition stage.

While the amendments generally complied with the Act, there is a need to strengthen existing QA processes so that the rationale underpinning assessments within officer reports is transparent, soundly based and clearly documented, to fully inform councillors as part of the decision-making process.

Recommendations

- 5.6 DPCD, in consultation with councils, should develop a standard report template so that the requirements of the Act, issues raised by submitters, and relevant planning scheme provisions are consistently and comprehensively discussed in council officer reports when assessing amendments following public exhibition.
- 5.7 DPCD should assist councils to develop and implement procedures to require targeted, risk-based peer reviews of officer reports against defined standards before transmission to council, to provide assurance that all relevant matters have been included and comprehensively addressed, and that evidence of this is documented.

RESPONSE provided by the Secretary, Department of Planning and Community Development

Recommendation 5.6

This recommendation is supported.

The current review of the planning scheme amendment process will investigate options for a standard report template with the local government sector including the Municipal Association of Victoria.

Recommendation 5.7

This recommendation is supported.

DPCD will support local government to develop procedures to implement this recommendation and to ensure a consistent state-wide approach.

5.2.10 Panel hearings

Background

Submissions that seek a change to an amendment, not accepted by a planning authority, must be referred to a panel appointed by the minister under Section 23 of the Act (unless council decides to abandon the amendment).

A panel must give submitters an opportunity to be heard. It must also hear anyone else nominated by the minister or council. Under the Act, a council must provide secretarial and other support required by the panel. It should also write to submitters advising them of the venue, date and time of hearing, and include a 'Request to be Heard' form for completion by submitters wishing to be heard, as well as information about the panel process.

A council should also provide panel members with key documents required to carry out their functions, including copies of:

- the amendment and explanatory report
- submissions received
- the planning scheme (or relevant extracts)
- all relevant council reports/ strategic documents.

The Act empowers a panel to request any documents relevant to the amendment from council or any other party.

Following consideration of the matter, the panel must report its findings and recommendations to the council, who must then decide what action to take. A council is required under the Act to make the panel's report publicly available 28 days after receiving it.

Findings

Panel hearings were arranged in all instances where required (38 per cent of cases examined). In the cases where no panel was arranged, audit found that submitters either did not object, or concerns raised were addressed through consultation with council, or the amendment was modified and/or partly abandoned by councils.

In almost all instances where a panel was requested and held, audit found that all submitters were advised and notified accordingly by council (in one case there was insufficient evidence on file for audit to establish if this had occurred).

Audit also found that in all cases councils:

- provided submitters with a 'Request to be Heard' form and information about the panel process including details of hearing dates and times
- provided panel members with all necessary documentation and administrative support, and responded to all further information requests from panels where relevant.

In three out of five councils, panel reports were made public within 28 days of receipt as required under the Act. However, across two councils, a total of three isolated instances were observed where the council failed to release the reports within 28 days of receipt (39 days in one case, and 34 days in each of the remaining two cases). Audit found that panel reports were not generally released until a council resolved to make them public. In the cases described above, both councils breached the Act because of delays in decision-making.

Audit also found that with two councils there was a need to improve local filing processes as key information submitted to panels was not accurately maintained. At one council, copies of submissions made to the panel were not kept on file. At another, the date the panel was requested, including records of supplementary information submitted to it, were not documented.

Councils should make certain that accurate records of information submitted to panels are kept on file in the event they are required to respond to any external challenges to procedure.

Approaches to quality assurance

Although there are no formal QA arrangements in place within most councils in relation to panels, the process of referring amendments to panels is generally clear, and effectively supported by councils in most cases.

5.2.11 Summary for panel hearings

Overall, councils generally complied with the Act in their use and administration of panel processes. There is some indication, however, that councils need to pay greater attention to statutory timeframes for the public release of panel reports.

Recommendation

5.8 Councils should require that:

- all relevant documentation associated with the panel process is accurately maintained on file
- reports received from panels are made publicly available within statutory timeframes.

RESPONSE provided by the Secretary, Department of Planning and Community Development

Recommendation 5.8

This recommendation is noted.

Panel reports are published on the web by DPCD when they become publicly available.

5.2.12 Adoption and submission to minister

Background

Under Section 188(2)(a) of the Act, adoption of an amendment cannot be delegated, and must be made by resolution of full council. Also, an amendment can only be adopted by council if it hasn't lapsed. This will usually be the case if less than two years have elapsed from when notice of preparation of the amendment was first published in the *Victorian Government Gazette*.

Once adopted, the amendment must then be submitted to the minister for approval, or to the department for certification (if the council was authorised by the minister to approve it). The Act also requires that amendment documents be lodged with relevant authorities before notice of approval is published in the *Victorian Government Gazette*. Relevant authorities include:

- the responsible authority
- the municipal council to which the amendment applies (if not the responsible authority)
- any other person(s) specified by the minister.

Once approved, the minister must also publish a notice of the approval of an amendment in the *Victorian Government Gazette* and may also require a council to give notice. The Act also requires the minister to table a Notice of Approval of an amendment in both Houses of Parliament within 10 sitting days after it has been approved. The notice must state whether the minister has exempted the planning authority or himself or herself from any of the notification requirements set out in the Act.

Persons who believe that they have been substantially or materially affected by a failure of the minister, a planning authority, or panel to comply with the Act in relation to an amendment that has not yet been approved may refer the matter to VCAT. However, once approved, an amendment cannot be invalidated by any failure to comply with parts of the Act relating to exhibition and notification, public submissions, adoption and approval of the amendment, and the panel process.

Findings

Except for one case, all amendments that were examined by audit had been adopted by resolution of full council as required. In the case where this did not occur, audit found that the council breached the Act in that it delegated its authority to adopt the amendment and seek ministerial approval.

Audit observed that the council subsequently resolved to endorse the delegated decision, however, it had not yet adopted the amendment at the time it sought ministerial approval, and incorrectly advised the minister that it had. Discussions with council staff revealed that they were unaware that council had breached the Act.

In the overwhelming majority of cases, audit found that councils generally satisfied all the requirements of the Act when adopting and seeking ministerial approval for an amendment. None of the amendments we examined had lapsed at the time they were adopted, and in all cases were submitted to the minister for approval where required, and were approved accordingly. In five cases, council was authorised to approve the amendment and did so after it had been certified by the secretary of the department as required.

In most cases there was evidence on file that the amendment documentation was lodged with relevant authorities prior to gazettal as required (council was the relevant authority in most cases). However, audit found that there were a few isolated instances (i.e. five cases in total) where the absence of relevant details on file meant that it was unable to determine if this had occurred.

Audit observed that a notice of approval was published in the *Victorian Government Gazette* in all cases and that the minister required council to also give notice, usually in the local paper, in 26 cases out of the 30 cases we examined. In 65 per cent of these cases it was evident that this had occurred, however, in the remaining cases audit was unable to determine if this had occurred as there was no evidence or record on file.

5.2.13 Summary for adoption and submission to minister

All six councils complied with the Act in the adoption and submission of amendments to the minister in the vast majority of cases. While the overall level of compliance was generally high, it was not possible to ascertain the full level of compliance in all cases, due to shortcomings in local QA processes that led to deficiencies in file management practices in some councils.

While checklists and/or process sheets were in place in some councils to ensure that relevant steps had been undertaken, these were not always consistently completed or effective in ensuring full compliance.

These issues should be addressed by councils to ensure that adequate records are kept to provide a reasonable level of assurance that all relevant requirements have been met.

Recommendation

- 5.9 Councils should review quality assurance arrangements to put in place appropriate measures whereby requirements arising from the adoption, submission to, and approval of amendments by the minister are properly addressed by council and that evidence of this is retained.

RESPONSE provided by the Secretary, Department of Planning and Community Development

Recommendation 5.9

This recommendation is noted.

5.2.14 Fees

Background

The Regulations prescribe the fees that must be paid for different stages of the amendment process, unless they are waived or rebated by council or the minister. The fees are shown in Figure 5D below.

Figure 5D
Prescribed fees for planning scheme amendments by stage of process

Stage	Prescribed fee (\$)	Paid by	Paid to
Consideration of amendment request that involves submissions that do not seek a change to the amendment	700	Proponent	Council
Consideration of amendment request that involves submissions which seek a change to the amendment	700	Proponent	Council
Fee for panel hearing	(a)	(b)	Panel
Adoption of amendment by council and submission to minister for approval	460	Proponent	Council
Ministerial consideration of request to approve amendment	700	Proponent	minister

(a) Determined by minister

(b) Paid by council unless otherwise directed by minister. Council may ask the proponent to contribute.

Source: *Planning and Environment (Fees) Regulations 2000*.

Findings

The audit established that four out of the six councils generally complied with the fee Regulations, and had collected and/or paid all prescribed fees as required. However, in two councils, audit found that the collection of fees was problematic and not always in full compliance with the Regulations.

At one of these councils, evidence of fee payments was not adequately recorded on file, and information sourced from the council's finance system identified a number of instances where various fees were invoiced but not paid. Audit also found that the council does not generally recoup panel and advertising fees from proponents, and in one case had incorrectly forwarded fees to the minister for approval of the amendment, when the council was actually authorised to approve it.

Two amendments at the other council were initiated by the same proponent, but the council only sought and received fees equivalent to one amendment. The council was unaware that it had failed to charge the proponent for both amendments. In a separate case involving a different proponent, audit found that council failed to request payment from the proponent and there was no evidence payment was received.

While audit was able to establish in the remaining four councils that all prescribed fees had been paid by the completion of the process, it was evident their collection was not always prompt.

In some cases the amendment was permitted by council to proceed without the requisite fees being paid by proponents at the appropriate stage, and audit observed that evidence of payments made was neither consistently nor adequately maintained on file.

5.2.15 Summary for fees

Compliance with the fee Regulations, while mainly satisfactory, was not uniform across all councils. There is evidence that councils need to pay greater attention to the collection of fees as part of the amendment process.

Where the amendment has a proponent, the proponent should be identified at the amendment request stage and processes initiated to identify and collect fees. Councils should also ensure that relevant staff are made fully aware of the fee provisions within the Act and Regulations and that prompt action is taken to ensure that all relevant fees are paid and accurate records kept on file.

Noted deficiencies in fee collection were not addressed due to a general lack of formal QA procedures for this stage of the amendment process across most councils. This situation has contributed to gaps in fee collection and loss of revenue in some cases.

Recommendation

5.10 Councils should ensure that:

- all relevant staff are made aware of the fee provisions within the Act and Regulations
- proponents (where relevant) are clearly identified at the outset, and processes initiated to identify and collect relevant fees
- effective controls are put in place for the timely invoicing and payment of relevant fees for key stages in the amendment process
- appropriate procedures are put in place to facilitate prompt follow-up of outstanding payments
- records and receipts of all payments received are accurately maintained on file.

RESPONSE provided by the Secretary, Department of Planning and Community Development

Recommendation 5.10

This recommendation is noted.

5.3 Conclusion

Councils generally complied with the Act in the processing of planning scheme amendments. However, management of some aspects of the process requires further improvement.

Officer reports generally lacked sufficient evaluative comment and analysis, and clearer procedures and definitions are required for identifying parties affected by proposed amendments. The audit has also shown that QA arrangements are in need of substantial upgrading across most councils as they are often informal and unsystematic.

The major area of concern, however, was the time to finalise an amendment to a planning scheme. This was nearly two years. While acknowledging that some amendments to planning schemes are complex and require significant investigation and consultation with the community, the time taken to conclude some stages of the process was excessive. Optimal timeframes for key stages of the process should be identified taking into account the varying complexity of amendments. A system for monitoring and reporting of actual performance against these timeframes should also be put in place.

6 Council management of the planning permit process

At a glance

Background

A planning permit is a legal document that generally relates to the use and development of a specific parcel of land for certain purposes. Responsible authorities decide whether or not to grant a permit. When doing so, the Act and Regulations set out a number of procedures and considerations that must be observed.

Key findings

- In 78 per cent of cases examined, officer reports did not give adequate consideration to matters specified in the Act, the planning scheme or both.
- Most councils complied with the Act and the planning scheme in giving notice of an application where it was considered there was material detriment to parties affected by the application. However, the rationale for decisions concerning detriment was neither transparent nor adequately documented in most cases.
- Councils did not adequately comply with the Act when amendments were made to applications before a council decision. In most cases, a new application form was not requested, the prescribed time to process the application was not restarted and the need to notify and refer the application to affected parties was not re-assessed.

Key recommendations

- When assessing applications, councils should ensure that proper consideration is documented and given to all relevant:
 - matters under Section 60 of the Act
 - zone, overlay and other controls
 - permit triggers
 - state and local policy provisions.

At a glance – *continued*

Key recommendations - *continued*

- Councils should develop policies and standards for notification, including appropriate quality assurance procedures, so that there is a reasonable level of assurance that:
 - assessments of material detriment have been adequately undertaken, and appropriately documented
 - notification decisions are made at the appropriate stage of the process, and are informed by a properly documented site inspection
 - notification decisions comply with the Act and the planning scheme
 - applicants have complied with their obligations (where relevant) in relation to the placement and maintenance of site notices.
- To facilitate consistency across councils the Department of Planning and Community Development, in consultation with councils, should identify the factors to be taken into account when assessing material detriment and develop guidelines for making such determinations.
- Councils should:
 - implement targeted training for staff to improve their understanding of the requirements associated with Sections 50, 50A and 57A of the Act
 - review and, where necessary, revise their quality assurance procedures so that amendments to applications made before decision are reviewed for compliance with the Act and planning scheme.

6.1 Introduction

6.1.1 Background

Where specified in a planning scheme, a planning permit must be obtained to use or develop land for certain purposes. A planning permit is a legal document that generally relates to a specific parcel of land, and which expires within a defined time limit and/or under other circumstances that may be specified in the permit.

Responsible authorities normally decide whether or not to grant a permit. When doing so, the Act and Regulations set out a number of procedures and considerations that must be observed.

As with the processing of planning scheme amendments, proper administration of statutory procedures is essential for preventing inappropriate land use and development, for avoiding reviews by the Victorian Civil and Administrative Tribunal (VCAT), and for ensuring decisions made are open, fair and appropriate.

For these reasons, the actions of council officers when administering these processes should be clearly documented and subject to internal review as part of an ongoing program of quality control and assurance. Decisions made should be evidence-based and supported by a transparent process that demonstrates compliance with all legislative and planning scheme requirements.

Councils pointed to a number of factors that created difficulties for their ongoing management of the planning process. These are summarised as follows:

- the strong growth in development in recent years, particularly in some rural and regional areas, has significantly increased the workload pressures on already stretched resources. As a result, staff within some local planning departments do not have the time and capacity to effectively address all council and state government requirements
- most councils identified the difficulty of attracting and retaining qualified planners and the high proportion of inexperienced planners as major ongoing challenges that adversely affect the day-to-day operation of local planning units
- some councils identified the complexity of existing planning processes and the Victoria Planning Provisions, including the perceived lack of prescription in the performance based system, as key factors contributing to uncertainty in the decision-making process for both planners and the community
- the high level of interest and scrutiny of local planning and development proposals from council and members of the community in some areas, can often lead to numerous objections, appeals to VCAT and lengthy community consultation to resolve local concerns. Management of these processes can have significant resource implications and an adverse impact on the processing time of an application.

6.1.2 Audit of selected councils

The audit examined the planning processes of six councils to assess their compliance with the Act and their planning schemes in the processing of planning applications. The audit also assessed the adequacy of local quality assurance (QA) arrangements for ensuring compliance with these requirements.

At each council the audit examined a random sample of 20 planning applications lodged between 1 January 2006 and 30 June 2006. Files were chosen in each case to ensure that they were representative of the type of planning applications typically processed by each council.

While the results relate directly to the councils we examined, the issues revealed are considered indicative of practices in other councils. In this context, the audit has identified a number of issues that should be considered by all councils administering planning functions.

6.2 Planning permit applications

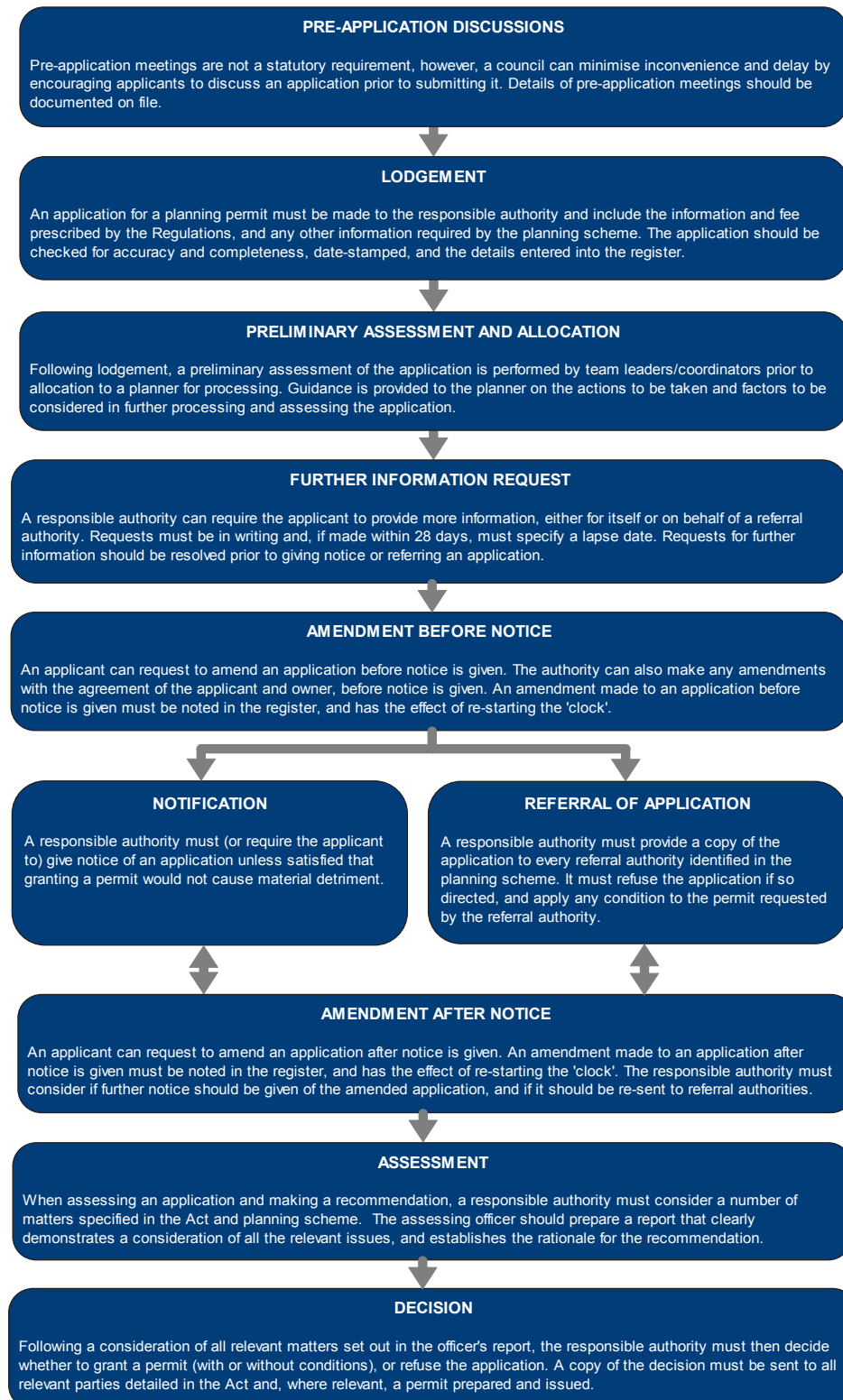
6.2.1 The planning permit process

The Act and Regulations establish the procedures and timeframes to be followed in the processing of planning permits. This includes:

- the information to be supplied by applicants
- notification and referral requirements
- processes for dealing with objections, making decisions and issuing permits
- processes for appealing against decisions
- the powers of the Minister for Planning in relation to applications.

A summary of the planning permit process is shown in Figure 6A, below.

Figure 6A
Outline of Planning Permit Process



Source: Victorian Auditor-General's Office.

The following sections discuss the results from the audit, which are broadly presented in terms of the major procedural steps followed by councils when processing permit applications.

6.2.2 Timeliness of processing

Background

Under the Act, there is no time limit for a responsible authority to make a decision on an application for a planning permit. However, if the responsible authority does not make a decision within the prescribed time of 60 days, an applicant may apply to VCAT for a review. It is important to note that a failure to meet the prescribed timeframe does not constitute a breach of the Act.

There are important rules set out in the Regulations regarding when the prescribed time for processing a planning application begins and when it stops. Specifically, the time starts when the application is lodged with the responsible authority, unless it seeks further information from the applicant within 28 days of lodgement. In this case, the prescribed time of 60 days begins on the day the requested information is received. If the requested information is not supplied by the date specified, then the application will lapse.

The prescribed time stops when the authority directs an applicant to notify parties affected by an application and does not recommence until the last of the required notices is given. The time also stops if the minister grants a referral authority an extension of time to respond to the responsible authority.

Findings

Overall, the average statutory time taken to process an application from lodgement to decision, across the 120 applications that we examined, was 58 days and within the timeframe prescribed by the regulations. However, the total elapsed time taken was significantly higher in most cases (86 days on average across the six councils) as it was affected by the events and associated periods of time that were not required to be counted within the prescribed timeframe. These events can include the:

- number of formal requests for further information which have the effect of restarting the prescribed timeframe, but extending the elapsed time
- time taken to issue a formal request for further information. The quicker this occurs following lodgement, the less impact this will have on the elapsed time
- time taken by council or an applicant to notify any materially affected parties.

Across our sample, the main issues that affected the prescribed and elapsed processing times for applications that took greater than 60 days were the long timeframes taken by councils to:

- request further information from applicants following lodgement
- refer an application to referral authorities
- receive comments from internal departments to which an application had been referred
- advertise an application following lodgement
- decide an application following the completion of notification and receipt of all responses from referral authorities.

Other factors included workload and availability of staffing resources as well as the general complexity of applications. These issues were common to the councils that took more than 60 days to decide applications.

6.2.3 Summary for timeliness

The audit results indicate that most councils process the majority of applications within the prescribed timeframe of 60 days. However, compliance with the 60 day timeframe is not the overriding imperative for councils and does not necessarily equate to a quality outcome.

While recognising this, our results suggest that there is scope for improving the efficiency of the process by developing strategies to reduce the time taken to manage key events within the control of council.

6.2.4 Pre-application meetings

Background

Pre-application meetings are not a statutory requirement, however, a council can minimise inconvenience and delay by encouraging applicants to discuss an application prior to submitting it. Planning officers can advise on:

- whether a permit is required and why
- the nature and amount of supporting information to be submitted by applicants
- any state and local policies or aspects of the Municipal Strategic Statement that should be addressed as part of the application
- any relevant guidelines, requirements or particular provisions (within the planning scheme) that may apply
- any referral authority that must be notified.

Details of pre-application meetings, including any associated issues raised by council, should be documented on file to enable the officer assessing the application to determine whether they were addressed by the applicant. Records of these meetings may also assist if any matters discussed are disputed by applicants at a later stage.

Findings

All of the councils examined encouraged applicants to seek pre-application meetings with local planning staff to discuss their applications, identify any issues and the information needed to support their application. Audit also observed that councils generally offered a wide range of pre-application information either over-the-counter, via the web or telephone that included:

- general guidance on the permit process
- application forms and checklists for information to be submitted for common application types
- details of fees required
- policies, guidelines and provisions applicable to specific uses or development (e.g. residential development, heritage considerations, advertising signs, car parking and subdivisions)
- advice on design issues related to specific applications.

Audit found that the details and outcomes of pre-application discussions with applicants were not systematically recorded on file. In around 87 per cent of the planning files examined, it was not possible to ascertain whether a pre-application meeting had been conducted. In the remaining 13 per cent of cases where it was evident that a pre-application discussion had taken place, file notes were not present in 33 per cent of those cases.

6.2.5 Summary for pre-application meetings

It is neither a statutory requirement nor practical for councils to document all minor inquiries made by applicants. However, the general absence of pre-application details from files means that it is not possible for the officer assessing the application to know whether such a meeting was held in most cases and if the applicant has addressed any issues previously raised by council. This situation creates the opportunities for inefficiency and duplication of effort.

Recommendation

- 6.1 Councils should review the adequacy of their pre-application procedures, and establish arrangements for systematically recording and documenting on file:
- whether a pre-application meeting was conducted in respect of an individual application
 - the details as well as key actions arising from pre-application meetings with applicants.

RESPONSE provided by the Secretary, Department of Planning and Community Development

The audit identified an overall good practice approach to the planning permit process and guidance to councils. DPCD will work with the local government sector including Municipal Association of Victoria to address these recommendations. A number of these guidelines and practices have been established by DPCD and included in the “Continuous Improvement Review Kit”, however, take-up of the kit has been inconsistent by councils. There is an opportunity to initiate a state-wide implementation program based on the kit and the VAGO checklist, working closely with the local government sector including the Municipal Association of Victoria.

Recommendation 6.1

This recommendation is noted.

6.2.6 Lodgement

Background

Under the Act an application for a planning permit must be made to the responsible authority and include the information prescribed by the Regulations. The application should also contain any other information required by the planning scheme. For example, some applications for residential developments must include a neighbourhood and site description, including information on how the proposed design responds to any neighbourhood character features.

In most cases a fee must be paid when an application is made. The fee payable for each class of application is prescribed in the *Planning and Environment (Fees) Regulations 2000*. The Act also requires a responsible authority to keep a register of all applications received in a format prescribed by the Regulations.

At the time of lodgement of an application, the responsible authority should check the application for accuracy and completeness, ensure that the correct fees are applied, place a date stamp on every page of all associated documents and plans and enter the details into the register. Date stamping of documents ensures there is clear differentiation between original and any amended plans that may be submitted later. It also ensures that the dates at which key events occurred is clear and that the statutory clock can be tracked accurately.

Council should check the application against the planning scheme provisions at an early stage, and advise the applicant quickly if no permit is required or if the proposal is prohibited.

Findings—information supplied at lodgement

Across the six councils, almost all the files examined by audit (90 per cent) contained the prescribed and other information required by the planning scheme to be processed. However, in 38 per cent of cases, applications were accepted by councils at lodgement without the required information. This demonstrates that there is a need to improve checking procedures within councils at the lodgement stage.

Common types of information missing from incomplete applications included:

- owner's details
- certificates of title
- covenant declarations
- copies of plans and/or key dimensions, levels and elevations, etc.
- details of the proposed use or development
- descriptions of existing conditions
- neighbourhood and site descriptions
- design responses.

In some cases the above information was provided at lodgement but was inadequate. In most cases the above information was subsequently sought through a further information request.

As stated earlier, some applications for residential developments must include a neighbourhood and site description, including information on how the proposed design responds to any neighbourhood character features. In these cases, the council must advise the applicant in writing (before a decision is made or notice is given) if the neighbourhood and site description is satisfactory and meets the requirements of the planning scheme.

Audit found that while most applicants supplied neighbourhood and site descriptions (where applicable) in accordance with the planning scheme, they were not provided in 20 per cent of cases where they were required. Also, in those cases where they were supplied, they were certified by four out of six councils in only 55 per cent of all cases.

In those cases where they were neither supplied nor certified by council, the applications were processed anyway contrary to proper procedure. This is a matter of concern as it demonstrates that most councils did not adequately consider and enforce relevant planning scheme provisions designed to protect neighbourhood character.

Findings—fees

Councils charged the correct application fees on lodgement in 88 per cent of cases where a fee was required. In those cases where an incorrect fee was applied, it was more likely to be lower than the prescribed fee.

The application fees were paid by applicants in almost all instances (96 per cent). There were only four cases where the fee was not collected and in two of those occasions it was waived.

Findings—receipting and registration

Following lodgement, all councils generally registered applications promptly, usually on day of receipt and sent acknowledgement letters to applicants within seven to ten days. However, in 27 per cent of files, application forms and associated plans were not date stamped. This makes it difficult to:

- determine when the application was received and if it has been entered correctly in the register
- clearly distinguish any amended plans or information submitted later from the original documentation
- determine when the prescribed time for processing the application commenced and to accurately track the number of statutory days taken.

Findings—register of applications

All councils kept a register of applications that was available to the public. In five out of six councils, the register did not adequately contain the information prescribed by the Regulations. Key issues were:

- amendments made to applications and/or permits were not systematically recorded
- inadequately maintained information (some information was out-of-date, inaccurate, incomplete, etc.)
- missing categories of prescribed information.

Findings—preliminary assessment and allocation

Most councils had procedures in place for appraising applications prior to allocation to a planner for processing. The process typically involves preliminary assessment of applications by team leaders and coordinators who generally meet on at least a weekly basis to check applications to determine:

- completeness and adequacy of supporting information
- reasons why a permit is required (permit triggers)
- planning scheme provisions that need to be considered
- if further information is required from applicants
- if notice should be given to affected parties and the referral authorities that should be notified.

All councils generally allocated files to planners in a timely fashion (usually within one week), however, established procedures were not always adequate or effectively applied. Audit found that there was no evidence that an application had been checked in 52 per cent of all files examined. In three out of six councils, the results of preliminary assessments, including subsequent advice to planners, was not adequately documented and/or systematically recorded on file.

In other cases, audit observed that inadequate or incorrect checklists were used resulting in:

- the reasons why a permit was needed not being adequately assessed in three councils
- some types of applications in one council being checked against irrelevant requirements
- the inability to adequately assess the accuracy and completeness of applications in another council.

Audit also found that, in one council, the quality of advice provided by coordinators to more junior planners was not sufficiently detailed or adequate. In another council, there was little evidence that planners exercised independent judgement following receipt of initial advice from team leaders/coordinators. In these cases planners simply followed the initial instructions from team leaders without independently investigating, verifying or identifying other requirements relevant to the application.

Findings—requests for further information

Under Section 54 of the Act, a responsible authority can require the applicant to provide more information about a proposal, either for itself or on behalf of a referral authority. Requests for further information under Section 54 must be in writing setting out the information to be provided.

If the request is made within the prescribed time of 28 days of receiving the application, the request must also specify a date by which the information must be received (i.e. a lapse date). An application lapses if the requested information is not provided by the date specified and cannot be processed or recommenced.

A request for further information made within the prescribed time of 28 days means the 'clock' is stopped. The 'clock' restarts from zero when a satisfactory response to the further information request is received by council. A request for further information can also be made after the prescribed time of 28 days, but does not stop/affect the clock and a lapse date cannot be specified in these cases.

Responsible authorities made a request for further information in 42 per cent of all the cases we examined. In most cases these requests were directly related to the adequacy of information supplied upfront by applicants. The incidence of further information requests was significantly higher in those cases where the prescribed or other information required by the planning scheme, was not supplied at lodgement. This indicates that there is potential for applicants and responsible authorities to reduce the elapsed time taken to process an application by ensuring that all the required information is supplied at lodgement.

For applicants this means taking advantage of pre-application procedures and the resources available at council to discuss the requirements for an application. In the case of responsible authorities, effective screening and checking procedures at the lodgement stage can assist in reducing the need for further information requests.

In all councils the majority of requests for further information were made within the prescribed time of 28 days. However, in 16 per cent of all cases it took longer than 28 days to make the request.

Audit found that in 14 per cent of cases where a request for further information was made, the requested information either was not received or was received too late and the application had lapsed. In all of these cases the council still processed the application, even though there is no discretion under the Act to do so.

Audit also observed that in most cases (67 per cent), the application was advertised after the requested information had been received. However, in 26 per cent of all cases where notice was given and a request for further information had been made, the application was advertised prior to receipt of the information (this occurred in five out of six councils). In these cases, affected parties did not have access to all of the information about the proposal.

While councils complied with the Act in most cases, the correct procedure for making further information requests was not always followed. In a number of isolated cases the following issues were observed:

- **informal requests**—there were four cases of informal requests (i.e. made verbally, by email or by fax) that did not make reference to Section 54 of the Act, and therefore did not have any legal force
- **inappropriate requests**—in one case a council suggested design changes to the applicant, but did not request further information. The applicant was incorrectly advised that processing of the application would stop until a response was received. In another case, multiple requests for further information were made. However, some of the information sought was not required to assess the application.

6.2.7 Summary for lodgement

All councils complied with the Act in most cases in relation to lodgement and associated processes. However, in a number of isolated instances, there were shortcomings in administrative practices and/or a lack of attention to the requirements of some aspects the Act or the planning scheme.

While most councils have processes in place for appraising applications following lodgement, these measures were not always effective in ensuring compliance with the Act, Regulations and the planning scheme. For example, the substantial proportion of incomplete applications accepted by responsible authorities points to a need for more effective scrutiny of applications at the time of lodgement.

Improvements in these practices should enhance the overall quality of information submitted by applicants, increase the degree of compliance with the Act and planning scheme as well as reduce the elapsed and prescribed time taken to process applications.

Recommendations

6.2 Councils should ensure that:

- records for all key events associated with an application are accurately kept and recorded in the register
- all requests for further information are carried out in accordance with the requirements of the Act, and that lapse dates are enforced
- neighbourhood and site descriptions are provided where required and assessed by council to determine whether they meet the requirements of the planning scheme
- the register of applications is maintained accurately in accordance with the requirements of Schedule 2 of the Regulations.

6.3 Councils should review and, where necessary, strengthen their quality assurance processes so that:

- applications submitted at lodgement are accurate and complete
- all documents and plans are appropriately date-stamped and recorded on file
- thorough preliminary assessments are conducted, checklists completed, and the outcomes communicated effectively to planners and recorded on file
- further information requests are issued promptly, and addressed prior to giving notice.

RESPONSE provided by the Secretary, Department of Planning and Community Development

Recommendation 6.2 and 6.3

These recommendations are noted.

6.2.8 Amending an application before a decision is made

Background

An applicant can ask a responsible authority to amend a lodged application before a decision is made (under Sections 50 and 57A of the Act). In these cases, a request for an amendment must be accompanied by:

- the prescribed fee
- any information required under the planning scheme
- information demonstrating that the owner of the land has been notified about the request (i.e. if applicant is not the owner).

The responsible authority can also make any amendments it thinks necessary to an application before notice is given with the agreement of the applicant and after notifying the owner under Section 50 of the Act. Any amendment made to an application before decision must be noted in the register.

An amendment to an application before a decision is made has the effect of stopping and resetting the statutory clock. For amendments initiated by the applicant (under Sections 50 and 57A) the 'clock' begins again on the day the amended application is received from the applicant. For those amendments initiated by the responsible authority, the 'clock' restarts on the day the applicant agreed to the amendment.

Findings

Amendments to applications were made before a council decision in 22 per cent of all files examined. In most of these cases the amendment was in response to suggestions or concerns about the proposal raised by council.

Audit found that, except for one case, all amendments were processed informally and therefore not in accordance with the Act. There was no evidence that councils required applicants to submit new application forms or fees in these cases. Also the amendments made in each instance were not recorded in the register as required, the statutory clock was not reset and the need to re-advertise the application was not formally assessed.

6.2.9 Summary—amending an application before a decision is made

Councils did not adequately comply with the Act in the processing of amendments to applications before a decision. This was largely due to a general lack of understanding of the requirements of Sections 50, 50A and 57A of the Act and to the failure of existing QA measures to detect and address the issues noted.

Recommendation

6.4 Councils should:

- implement targeted training for staff to improve their understanding of the requirements associated with Sections 50, 50A and 57A of the Act
- review and, where necessary, revise their quality assurance processes so that amendments to applications made before decisions are reviewed for compliance with the Act and planning scheme.

RESPONSE provided by the Secretary, Department of Planning and Community Development

Recommendation 6.4

This recommendation is noted.

DPCD operates the PLANET training and professional development program available to all users of the planning system. DPCD can assist councils to target specific areas such as this through the program.

6.2.10 Notification

Background

Under Section 52 of the Act, notice of an application must be given to:

- owners and occupiers of properties adjoining the land to which the application applies
- a municipal council if the application applies to, or may materially affect, land within its district
- any person to whom the planning scheme requires notice to be given
- the owners and occupiers of land affected by a restrictive covenant if the permit would affect the covenant
- any other person to whom the authority considers the grant of a permit may cause material detriment.

The onus is on the responsible authority to give notice or to require the applicant to give notice. Giving notice is not required if the responsible authority is satisfied that the grant of the permit would not cause material detriment to any person.

The Act does not specify the matters to be taken into account in deciding whether material detriment may be caused and each application needs to be considered on its merits. A planning scheme may also set out specific notice requirements or exempt certain types of applications from the requirement to give notice.

Notice may be given in any or all of the following ways:

- by placing a sign on the land concerned
- by publishing a notice in newspapers generally circulating in the area in which the land is situated
- by giving the notice personally or sending it by post
- in any other way the responsible authority considers appropriate.

The responsible authority may make a decision after 14 days have elapsed from when the last notice was given. The 'clock' stops running from the time the authority makes the requirement to give notice until the date on which the last notice was given.

A decision on whether or not notice should be given should be made early at the preliminary assessment stage and after an inspection of the site has been undertaken. Also, the reasons underpinning notification decisions should be clearly documented and supported by a careful consideration of the material detriment test.

In cases where the applicant is required to place a notice on site, the council should also request a statutory declaration from the applicant and confirm that this has been done by inspecting the site during the notice period.

Findings

Most councils gave notice of an application when it was considered that there was material detriment. However, practices varied considerably across councils and a number of deficiencies were identified. These are summarised below.

Inadequate assessment of material detriment and recording of reasons underpinning notification decisions

Audit found that at one council, the issue of material detriment was not generally assessed prior to giving notice and there was no record on file or in the delegate's report about why the decision to give notice had been made.

In another council, audit found that most applications were not notified (80 per cent), and in almost all of those cases (92 per cent), detriment was assessed poorly, at the end of the process and on the same day the permit was approved. This demonstrates that, at this council, the need to give notice and the issue of detriment was usually considered as an afterthought.

In a further two councils, forms designed to record the assessment of detriment were often not completed, were superficial and did not permit comprehensive recording of the reasons for notification decisions. Also, in four out of the six councils, audit found that in most cases notification decisions were not made following a site inspection.

Exemptions from notice being ignored

As stated earlier, a planning scheme may exempt certain types of applications from the requirement to give notice. However, audit observed that applications were notified in 34 per cent of all cases where the planning scheme provided for an exemption from this requirement.

In most cases this was an oversight and was due to a lack of understanding of or attention to the requirements of the planning scheme. At one council, an exemption from notice was regularly ignored despite criticism from VCAT. Giving notice when exempt can expose an application to unnecessary delays, objections, and to potential reviews at VCAT.

Incorrect application of notice provisions

In two councils, non-statutory comments or views were incorrectly sought from authorities using the notice provisions of the Act when the applications were actually exempt from notice.

When seeking non-statutory comments or views, standard correspondence should be used instead of references to Section 52 of the Act as this confers a right to object and appeal even though applications are exempt from notice.

No inspections of site notices

A statutory declaration was received by councils in almost all cases where an applicant was required to erect a sign on site. However in 96 per cent of cases where erection of a sign was required, audit found that there was no evidence on file that councils had verified that this had been done by inspecting the site during the notice period. In some cases, council officers stated that an inspection was carried out but that it had not been documented on file.

Inadequate documentation

In 61 per cent of cases where notice of the application was given, audit found that copies of exhibited plans were not maintained on file. As a result, it was not possible to determine in these cases whether affected parties had received all the relevant information.

Audit also found isolated instances of no date stamping of plans, notice letters or statutory declarations making it difficult in these cases to accurately determine the prescribed time taken to process the application and when decisions were (or should have been) made given the requirements set out in the Act.

Objections received, however, including details of objectors, were usually well documented and an acknowledgement letter was sent in most cases.

Adequacy of quality assurance processes

None of the councils we examined had notification policies or detailed guidelines in place to assist staff in determining when and how notice should be given. While all had systematic processes (e.g. checklists, forms, etc.) for assessing detriment, conducting site inspections and documenting notice decisions, these were not adequately applied or systematically checked/ enforced by senior planning staff in four of six councils.

6.2.11 Summary for notification

Most councils complied with the Act and the planning scheme in giving notice of an application where it was considered that there was material detriment. However, the rationale for decisions concerning detriment was not transparent or adequately documented in most cases.

The administration of notification procedures varied considerably across councils and was not always effective in avoiding non-compliance with the planning scheme and unnecessary instances of notification. This was largely due to shortcomings in local QA practices and the lack of understanding of notification processes by staff in some cases.

While all councils have QA processes in place, the extent of compliance issues noted indicates that in most councils these practices are largely informal, inconsistently applied and inadequate for providing a reasonable level of assurance that notification has been carried out in accordance with the Act and the planning scheme.

Recommendations

- 6.5 To facilitate consistency across councils DPCD, in consultation with councils, should identify the factors to be taken into account when assessing material detriment and develop guidelines for making such determinations.
- 6.6 Councils should develop policies and standards for notification, including appropriate quality assurance procedures so that there is a reasonable level of assurance that:
- assessments of material detriment have been adequately undertaken, and appropriately documented
 - notification decisions are made at the appropriate stage of the process, and are informed by a properly documented site inspection
 - notification decisions comply with the Act and the planning scheme
 - applicants have complied with their obligations (where relevant) in relation to the placement and maintenance of site notices.

RESPONSE provided by the Secretary, Department of Planning and Community Development

Recommendation 6.5

This recommendation is supported.

See comments to recommendation 5.4

Recommendation 6.6

This recommendation is noted.

See comments for recommendation 5.5.

6.2.12 Referral authorities

Background

Under Section 55 of the Act, a responsible authority must provide a copy of the application to every person/body that the planning scheme specifies as a referral authority, unless:

- the referral authority has already considered the proposal in the last three months and indicated that it does not object to the proposal
- the proposal satisfies, in the opinion of the responsible authority, conditions previously agreed in writing between the responsible authority and referral authority.

A referral authority cannot direct that a permit be issued. However, under Section 62 of the Act, the responsible authority must:

- refuse the application if so directed by the referral authority
- include any condition on the permit requested by the referral authority.

Under Section 66 of the Act, the responsible authority must give a referral authority a copy of its decision and a copy of any notices of its decision to grant or refuse a permit.

A referral authority has 28 days from receiving an application to provide comments to the responsible authority. It also has 21 days from the receipt of the application to tell the responsible authority if it needs more information. Timeframes for referral authority responses do not affect the statutory clock.

Findings

An application was required to be referred to an authority specified in the planning scheme in 22 per cent of all cases examined.

Most councils referred applications promptly, usually within seven to ten days on average. However, the time taken by one council was unsatisfactory (approximately 35 days on average), largely due to the inadequacy of information submitted at lodgement resulting in a high number of associated further information requests.

Overall, interactions between councils and referral authorities were satisfactory in the majority of cases. By way of illustration:

- all councils correctly identified the authority and referred the application in almost all cases (92 per cent)
- in most cases the advice provided by referral authorities was clear and within the prescribed timeframes (83 per cent)
- conditions requested by referral authorities were applied to permits in all cases by councils.

However, in 70 per cent of all cases, audit found that councils breached the Act by failing to send copies of decisions to referral authorities. The following isolated issues were also noted:

- in two councils, applications were unnecessarily referred in some cases when exempt from referral under the planning scheme
- one of these councils also referred some applications when the planning scheme clearly outlined the referral authority's requirements for approval. In these cases, council should have assessed the application against the requirements without referral
- at this council, correspondence to referral authorities did not adequately identify whether statutory or non-statutory advice was being sought and under which provision of the Act (i.e. Sections 52 or 55)
- in a small number of cases, responses from referral authorities were late and outside the prescribed timeframes.

Internal referrals

Councils often seek advice from internal units when assessing applications (e.g. heritage advisors, engineering services, parks and gardens, etc.). These referrals are not subject to the timeframes prescribed under the Act for external authorities, and there is no statutory obligation on the council to accept recommendations arising from internal referrals.

Audit found that an application was referred to an internal unit in 61 per cent of all cases examined. Most councils (five out of six) did not have a formal policy in place governing the internal referral process. However, four out of six had benchmarks in place for response times from internal units (14 days in all cases).

In most cases, the average time taken for a response from an internal unit exceeded the local benchmark of 14 days. In a number of cases there were significant delays. For three separate councils, the maximum elapsed days taken for a response from an internal referral was 190 days, 112 days and 79 days respectively which was largely due to workload pressures of other internal units.

In most cases comments made by internal referrals were well documented on file, and when conditions were recommended, they were considered by the planning officer in almost all instances.

Across all the files examined, the average elapsed time for responses from all internal referrals was 22.4 days and less than the 28 days normally allowed for statutory referrals. However, internal referral practices varied considerably between councils in terms of their effectiveness and efficiency. For example:

- across four councils, significant delays were observed in 26 per cent of instances where the response took more than 28 days. In 50 per cent of these cases, it took 50 days or more
- none of the councils actively monitored the time taken by internal referrals to respond or the achievement of benchmarks in place
- in one council, modifications were made to conditions supplied by internal units by the planner without adequate justification. While planners have the discretion to do this for internal referrals, the reasons for such actions should be clearly documented
- another council forwarded standard memos to all departments instead of targeting requests to the relevant business units.

6.2.13 Summary for referrals

Overall, councils adequately complied with the Act including planning scheme and addressed the interests of referral authorities in most cases. However, councils should ensure that all staff understand and correctly apply the planning scheme provisions for referrals, including exemptions from referral where relevant.

In addition, councils should endeavour to forward applications to referral authorities at the earliest possible time to minimise the elapsed and prescribed time taken to process the application. Copies of decisions must also be forwarded to all relevant referral authorities.

In most councils there is no structured framework for managing the internal referral process which has led to significant delays in some cases and ineffective practices.

Recommendation

6.7 Councils should:

- implement training for staff to improve their understanding of the planning scheme provisions for referral
- establish appropriate quality assurance procedures to make certain that applications are referred correctly and that copies of decisions are always forwarded to relevant referral authorities
- review internal referral processes and establish clear policies, procedures and standards to enable them to be carried out in a timely fashion.

RESPONSE provided by the Secretary, Department of Planning and Community Development

Recommendation 6.7

This recommendation is noted.

See comments for recommendation 6.4.

6.2.14 Assessment

Background

When assessing an application, an authority must consider a number of matters specified in the Act and planning scheme.

Key issues to be considered under the Act

Section 60 of the Act requires a responsible authority to consider:

- the relevant planning scheme
- the objectives of planning in Victoria
- all objections and submissions received up to the time of making a decision
- any decision or comment of a referral authority
- any significant effects the responsible authority considers the proposal may have on the environment or the environment may have on the use or development.

The Act also sets out a number of additional matters that may be considered where relevant. These include:

- any significant social or economic effects
- any approved regional strategy plan or adopted amendment
- any relevant state environment protection policy
- any other strategic plan, policy statement, code or guideline adopted by a minister, department, public authority or council
- any adopted amendment to the planning scheme not yet in force
- any other relevant matter.

Key issues to be considered under the planning scheme

The authority must also consider relevant planning scheme provisions when deciding an application. These include:

- the State Planning Policy Framework (SPPF) which sets out state planning policies applying to all land in Victoria
- the Local Planning Policy Framework (LPPF) which sets out local and regional planning policies relevant to specific areas in a municipality
- the decision guidelines of relevant planning scheme provisions (e.g. zones, overlays, etc.)
- any other relevant decision guideline or matter specified in the scheme.

In general, issues to be considered will vary depending on the purpose of the application and the specific planning scheme controls that apply to it.

Documenting the assessment

When assessing and making a recommendation on an application, a council officer should prepare a report that clearly demonstrates a consideration of all the relevant issues specified in the Act and planning scheme as a way of clearly establishing the rationale for the recommendation. Assessments should also be undertaken with the benefit of a visual inspection of the site so as to form an appropriate understanding of how an application affects an area.

Quality assurance principles

The report should be independently reviewed, for example by a more senior planner, prior to making a decision to ensure that all issues have been appropriately identified and considered by the assessing officer.

Ensuring that the decision to grant or refuse a permit is made by the delegated officer¹, and not the assessing officer is an important quality control measure that helps to ensure there is independent oversight and scrutiny of the quality and accuracy of the assessment.

¹ In some cases decisions can be made by council, or committee of council, depending on the nature of the application and instrument of delegation.

Findings

In four out of six councils, audit found that the assessment of planning applications in most cases did not demonstrate a sufficient consideration of the requirements of the Act or planning scheme.

This resulted in an unsatisfactory level of compliance across all the assessment reports we examined. That is:

- 64 per cent of reports did not adequately identify and consider relevant matters under the planning scheme
- 68 per cent of reports did not adequately identify and consider relevant matters under Section 60 of the Act
- overall, 78 per cent of reports did not give adequate consideration to the planning scheme, the Act or both.

Audit also observed that in most cases (61 per cent), there was no evidence on file that a site inspection had been undertaken to inform the assessment. However, council officers advised us in some cases that an inspection was carried out but that it had not been documented on file.

There was significant variation across councils in terms of the quality of officer reports and assessment practices. The main issues identified are summarised below.

No evidence of assessment reports being prepared or sufficiently completed in some cases

Audit found that an officer report assessing the application against the Act and planning scheme had been prepared in the vast majority of cases examined (92 per cent). However, in 8 per cent of cases across two councils a permit was approved/issued without evidence of a documented assessment having been prepared.

Officer reports based on templates that included standard criteria and guidelines for assessment were significantly more likely to give adequate consideration to relevant matters. However, audit found that only 51 per cent of reports examined were based on such templates.

In a further two councils, audit observed that officer reports were usually very brief and did not adequately demonstrate compliance with the Act and planning scheme when recommending applications be approved and permits issued. Audit found that further elaboration was needed in most cases.

Inadequate identification/consideration of relevant zone and overlay controls, and other provisions

In two councils, audit found that officer assessments and associated reports were generally poor and gave little or no attention to decision guidelines in relevant zones and overlays and often missed key clauses/provisions.

On the other hand, the quality of assessment reports at one metropolitan council were generally very good but audit still observed several instances where relevant zone and overlay decision guidelines in the planning scheme were not specifically addressed in reports.

Similarly, in a further two councils, in most cases decision guidelines within zoning provisions were not identified or considered and assessments of residential subdivision did not generally address the relevant planning scheme clause.

Inadequate description/ assessment of 'permit triggers'

For each application, the 'permit triggers' describe the reasons why a permit is required (e.g. use of land, development of land or use and development of land for a specified purpose). When assessing an application, it is important to correctly identify the permit triggers at an early stage to ensure that the right planning scheme provisions are considered and that irrelevant matters are not taken into account when determining whether or not a permit should be granted.

Audit found that at three councils, the permit triggers were not always correctly identified, clearly described or comprehensively assessed. In some cases where they were identified, they were not comprehensively assessed. For example, areas of non-compliance were normally identified and highlighted, but the extent of compliance with other trigger components was not discussed.

At a further two councils, the permit triggers were usually identified but not translated to the preamble of the permit as required by the Regulations, and in some cases were incorrect or inadequately assessed. This indicated officer confusion about the difference between 'use' and 'development' and which planning scheme permissions were relevant to the application.

Inadequate identification/consideration of relevant state and local policies

Audit found that around 48 per cent of officer reports did not clearly identify and consider relevant state and local policy provisions within the planning scheme.

At two councils, assessments usually did not refer to relevant planning scheme clauses such as local planning policies and clause 52 (particular provisions). In another council, one case was observed where the report on a subdivision application lacked sufficient detail and did not assess all policies relevant to the application. In a further two councils, the State Planning Policy Framework, Municipal Strategic Statement provisions, and local policies were usually identified in the report but were not generally assessed.

Inadequate description of permit conditions in officer reports

A responsible authority may decide to grant a permit with or without conditions. Conditions included on a permit may be invalid unless they are clearly expressed, relevant, reasonable and provide certainty on the actions required. This should be evident on the permit itself and the reasons for conditions should be clearly established in the officer report.

Audit found that in 39 per cent of permits/decisions examined (with conditions), the attached conditions were not an accurate translation of the final decision. At three of the six councils, there was never any translation from the assessment report to permit conditions. The rationale for conditions applied to permits was generally not discussed in these reports. Also, in these cases, audit observed that it was usually difficult to track why certain conditions were ultimately included on permits.

Unnecessary or inaccurate assessments

Audit identified a number of isolated cases of inappropriate assessments. At one council the wrong zone and permit triggers were identified resulting in the application being assessed against the wrong criteria.

At another council, the local engineering department imposed conditions relating to a use that was exempt from planning approval. Similarly, in a further two cases at this council, permits were issued for applications that also did not require planning approval. These issues demonstrate a lack of understanding of the requirements of the planning scheme by local staff.

Consideration of objections

Objections were received in 20 per cent of cases, and these were almost always identified and considered in the officer's report. Details of objectors were usually well documented and an acknowledgement letter was sent in most cases.

Processes for dealing with objections varied across councils and depended on the number and nature of objections received and the instrument of delegation. The most common methods for dealing with objections were officer discussion (36 per cent), council committee (27 per cent), formal mediation (23 per cent), and officer/councillor discussion (9 per cent). Council committee and formal mediation processes were more likely to be used in cases where there were multiple objections.

Most councils considered consultation meetings with objectors as helpful for resolving disputes.

Adequacy of quality assurance processes

In most cases, team leaders and planning coordinators were the primary mechanisms for reviewing the quality of officer reports and approving permits.

QA practices varied across the six councils and were inadequate in most cases for ensuring that officer reports gave adequate consideration to the requirements of the Act and planning scheme.

Some councils had checklists and templates in place to guide their assessments and preparation of reports and there is evidence that these improve the quality of reports when used. However, in many cases they were inadequate for ensuring that all relevant matters were considered or were inconsistently used and/or completed by staff.

One of the councils had developed a comprehensive range of checklists and report templates to guide the assessment process for different application types. While these were not always used consistently, the standard of reporting in this council was substantially higher than others.

6.2.15 Summary for assessment

Approaches to assessment varied considerably across councils and were not always informed by the proper identification and consideration of all relevant matters under the Act and planning scheme.

The results indicate that there is a need to improve the level of rigour and documentation of decision-making processes across councils, which in many cases appears to be intuitively driven, rather than based on a robust framework for assessment.

The audit has also shown that existing QA processes across most of the councils examined were largely inadequate for providing a reasonable level of assurance that assessments of planning applications are robust and in compliance with all requirements. This demonstrates that the level of scrutiny and attention paid by senior planning staff to the requirements of the Act and planning scheme, in their oversight role, needs to be improved.

Recommendations

- 6.8 Councils should review their internal assessment processes and make certain that staff have adequate knowledge to identify and consider all the relevant matters under the Act and planning scheme applicable to different types of applications.
- 6.9 When assessing applications, councils should make certain that proper consideration is documented and given to all relevant:
- matters under Section 60 of the Act
 - zone, overlay and other controls
 - permit triggers
 - state and local policy provisions.

6.10 Councils should review their quality assurance procedures to make certain that:

- appropriate report templates, incorporating guidelines and criteria for assessment, are developed and properly used by planning staff
- oversight mechanisms are appropriate for providing a reasonable level of assurance that sufficient consideration is given to all relevant matters under the Act and planning scheme by assessing officers and that this is properly documented and transparent to all parties.

RESPONSE provided by the Secretary, Department of Planning and Community Development

Recommendation 6.8, 6.9 and 6.10

These recommendations are noted.

6.2.16 Decision-making process

Background

This section examines the decision-making process employed by councils in terms of whether there was compliance with key aspects of the Act, Regulations and planning scheme. Planning decisions should be supported by a sound assessment of an application against the requirements in these instruments.

Once a decision has been made, the Act requires it to be forwarded to the applicant, relevant referral authorities and all objectors (if any). As stated earlier, if a permit or Notice of Decision (NOD) is issued, it must correctly describe all the permit triggers relevant to the application in the preamble.

Also, if conditions are included within a permit or NOD, they should be an accurate translation of the final decision documented in the officer's report. Finally, all decisions should be made in accordance with the instrument of delegation.

Findings

The audit of assessment practices has shown that, for most applications examined, there was inadequate evidence that decisions were based on a sufficiently robust assessment of the application against the requirements of the Act and planning scheme.

Applicants and objectors were notified of decisions in the vast majority of cases, however, copies of decisions were not forwarded to referral authorities in 70 per cent of all cases where this was required, contrary to the requirements of the Act.

Audit also found that almost half of all permits/decisions issued by councils (46 per cent), did not adequately describe what the permit allows, and in 39 per cent of permits/decisions examined (with conditions), the attached conditions were not an accurate translation of the final decision.

In most cases, decisions were made in accordance with the instrument of delegation and permits were issued by an officer independent of the assessment (usually by a senior planner or coordinator). Audit also observed that the vast majority of decisions (89 per cent) were made by officers under delegation.

However, in a small number of cases the instrument of delegation was not adequately followed or decisions were not properly executed. For example, at one council, the instrument of delegation requires that planning coordinators make decisions on giving notice. However, in practice, audit observed that these decisions were routinely made by planning officers largely due to a lack of staff awareness of the relevant delegations. Similarly, delegate reports at this council must be approved by managers/coordinators according to the instrument of delegation, but this did not occur in any files examined.

At one of the councils, audit found that the senior planner prepares reports and routinely issues permits without recourse to any other council officer. In this case, there was no independent quality control or oversight of the officer's actions. At a further two councils, audit was unable to determine who the approving officer was as this was not clearly indicated on the permits issued.

6.2.17 Summary for decision-making

A large number of issued permits did not correctly describe what the permit allows for (46 per cent). Many permits were issued for things that did not embrace everything that was applied for, and in some cases embraced things that were not applied for, or were issued for prohibited uses. This demonstrates that there is a significant level of misunderstanding across the audited councils about when a permit is required and why.

This situation is largely due to general deficiencies in the assessment of planning applications among most of the audited councils and to the absence of rigorous QA processes for ensuring compliance in most cases. Errors in the early assessment stage were not detected in many cases and were carried through to the issuing of incorrect permits.

The extent of the audit results across the six councils suggest that this is likely to be a system-wide issue that needs to be addressed by both councils and the department.

6.3 Conclusion

The number of council assessments that failed to demonstrate adequate consideration of the requirements of the Act and planning scheme was unacceptably high (78 per cent). Of particular concern was that nearly half of assessments failed to give adequate consideration to the relevant strategic and policy considerations in the planning scheme.

While the area of assessment and decision-making was of most concern, deficiencies in most other stages of the process were also evident.

General deficiencies in QA arrangements in most cases was a major factor contributing to the inadequate standard of planning permit assessments and the generally poor level of documentation covering other elements of the planning permit process.

7 State-wide approach to improve statutory planning in councils

At a glance

Background

The extent and significance of concerns relating to the processing of planning permit applications suggests that a multi-pronged system-wide approach, coordinated by the Department of Planning and Community Development (DPCD) and in partnership with local government and key stakeholder groups, is needed to raise the overall standard of statutory planning in councils.

Key recommendations

That DPCD, in partnership with local government and key stakeholder groups, develop and implement a multi-pronged strategy to improve the overall standard of statutory planning in councils. This strategy should consist of the following three actions:

- amending the Regulations to prescribe the matters which, as a minimum, must be addressed in officer reports when making assessments and decisions on matters concerning planning permits and planning scheme amendments
- training and accreditation for councils' planning officers so that they have the minimum standard of knowledge and skills required to administer statutory planning functions. This should include management training for senior staff to enable them to effectively discharge their quality assurance responsibilities
- annual external review of councils' management of planning functions to ascertain their level of compliance with the Act and planning scheme. The results of these reviews should be reported directly to council and the minister, and be made publicly available.

7.1 Introduction

In Parts 5 and 6 of this report, a range of issues were identified regarding the undertaking of statutory planning activities by councils in relation to the amendment of planning schemes and the processing of planning permit applications. A number of recommendations were made for action to be taken by individual councils.

The extent and significance of these issues, coupled with the range of challenges identified by councils themselves, suggests that a multi-pronged system-wide approach is needed to raise the overall standard of statutory planning in councils. This approach should be coordinated by the Department of Planning and Community Development (DPCD) in partnership with local government and key stakeholder groups.

The aims of this approach are to have in place:

- council planners who have attained minimum standards of knowledge, skills and the competencies required to effectively manage and administer the local planning scheme and achieve compliance with all legislative requirements
- minimum state-wide standards to be met by all councils for the assessment of planning permit applications and planning scheme amendments and that this is clearly demonstrated within officer reports
- rigorous quality assurance procedures within planning departments to ensure that the requirements of the planning scheme and the Act have been met and that senior officers responsible for overseeing key decisions have the requisite capabilities for effectively carrying out their quality assurance role
- external reporting arrangements to provide assurance to councillors, the local community and the Minister for Planning that each council has administered its planning responsibilities in accordance the Act, Regulations and the planning scheme.

The above approach is focused on putting in place some immediate strategies in response to concerns raised in this audit however these should complement rather than preclude any further developments by the planning profession and the education and training sector to raise overall professional standards.

7.2 Details of proposed approach

The following three-pronged strategy is proposed to strengthen statutory planning activities in councils.

Regulation

To facilitate greater consistency and rigour in the assessment of planning applications and planning scheme amendments by councils, the Regulations could be amended to prescribe the matters that, as a minimum, must be addressed in officer reports. As outlined earlier in this report, the high proportion of officer reports that failed to demonstrate sufficient consideration of the requirements of the planning scheme, the Act or both strongly supports the need for such an approach.

This approach would not limit a council's flexibility to include other matters as required, but would ensure that they must demonstrate that they have considered a critical minimum set of issues prior to making a decision. This approach can also draw upon the Model Officer Reports already developed by the department and would contribute to ensuring greater consistency and standardisation across councils when considering the same matters.

Training and accreditation

A comprehensive training strategy should be developed to address the knowledge gaps of some council officers observed by audit. The training program should consist of two components: back-to-basics training and management training. These are discussed further, below.

Back-to-basics training (Phase 1)

The minimum standards required by council planning officers to adequately discharge their duties should be identified and a corresponding training program developed in consultation with peak bodies such as the Municipal Association of Victoria and the Planning Institute of Australia.

Training for all planning officers across the state should progressively be conducted over time with participants required to demonstrate the achievement of those standards regardless of seniority and/or experience. There is an argument that the initial training should target team leaders and coordinators who have an oversight role over the statutory planning function.

The training program should also complement and support suggested amendments to the Regulations outlined above concerning assessment practices. Ideally the achievement of the minimum standards should be mandated through a system of accreditation for all staff responsible for administering the council's planning duties.

Management training (Phase 2)

The lack of effective quality assurance arrangements overseen by senior planning staff was a consistent theme emerging from the audit of councils.

Senior planning officers, who have successfully completed Phase 1 basic training, should undergo additional management training designed to equip them with the minimum knowledge, skills and capabilities required to effectively discharge their quality assurance responsibilities. Evidence of achievement of minimum standards (through a system of accreditation) should be required for all staff with quality assurance responsibilities.

External review

As stated in Part 4 of this report, there is currently no systematic and coordinated approach of providing the minister, Parliament and the wider community with assurance on the extent to which councils have fulfilled their obligations under the Act and satisfied the requirements of the planning scheme. The range of issues observed by audit indicates that such an approach:

- is likely to encourage councils to enhance their administration of planning functions
- is necessary to provide communities, the minister and Parliament with independent assurance that councils are focused on continuous improvement and have satisfactorily addressed all planning scheme and legislative requirements in the processing of planning permit applications and planning scheme amendments.

It is worthy of note that the standard of the work of councils in amending planning schemes was considerably higher than the processing of permit applications. In the former case, significant external oversight is provided by DPCD and panels at key stages in the process. On the other hand, the planning permit application process has no such external oversight mechanisms, except for the Victorian Civil and Administrative Tribunal (VCAT) appeals process. We also noted that of the councils examined in this audit, the one with the highest rate of appeals to VCAT was also the best performing council in terms of demonstrating compliance with the Act and its planning scheme. This strongly suggests that external scrutiny and reporting is an important contributing factor in lifting performance.

Some councils are already active in reviewing their own procedures as part of an ongoing program of continuous improvement, however, the range of issues observed by audit suggests that this practice is not occurring uniformly across all councils.

While such internally initiated programs are important, they should be complemented with an external periodic assessment of council's compliance with the Act and its local planning scheme. These results should be reported directly to the council and minister, and be made publicly available, for example, through the annual report and/or Best Value process.

To ensure the community continues to have confidence in the administration of planning functions by councils, these reviews should be performed at least annually by external consultants (engaged by each council) using common standards and criteria for the assessment. The frequency of reviews at particular councils should be guided by the council's level of performance as highlighted in the initial or most recent round of reviews. Other factors such as the significance and potential impact of issues identified should also be considered.

The assessment checklists developed by audit as companion documents to this report could be used as the basis for conducting these reviews.

Recommendation

- 7.1 DPCD, in partnership with local government and key stakeholder groups, should develop and implement a multi-pronged strategy to improve the overall standard of statutory planning in councils. This strategy should consist of the following three actions:
- amending the Regulations to prescribe the matters which, as a minimum, must be addressed in officer reports when making assessments and decisions on matters concerning planning permits and planning scheme amendments
 - training and accreditation for councils' planning officers so that they have the minimum standard of knowledge and skills required to administer statutory planning functions. This should include management training for senior staff to enable them to effectively discharge their quality assurance responsibilities
 - annual external review of councils' management of planning functions to ascertain their level of compliance with the Act and planning scheme. The results of these reviews should be reported directly to council and the minister, and be made publicly available.

RESPONSE provided by the Secretary, Department of Planning and Community Development

Recommendation 7.1

This recommendation is supported.

DPCD will explore opportunities for improvements identified in the report in consultation with the local government sector including the Municipal Association of Victoria and the broader planning industry. The DPCD "Continuous Improvement Review Kit" and VAGO checklist can assist implementation.

Appendix A.

The government's five point
priority action plan

Figure A1
The government's five point priority action plan

The Expert Working Group's recommendations		The Government's five point priority action plan			
		End 2007	Early 2008	Mid 2008	End 2008
1. Provide more certainty by making it easier to implement policy through planning controls	1.1 Revise the zones, overlays and particular provisions to provide more opportunity to express state and local policy outcomes. As a priority, review the residential zones and associated provisions.	1. Introduce new Residential Zones that better implement housing strategies (Delivers on Actions 1.1 & 3.1) Establish expert group to: <ul style="list-style-type: none">• Prepare a revised suite of residential zones and discussion paper for public consultation.• Consider submissions and recommend the final form of the residential zones for the Minister for Planning's consideration.	Expert group established	Consultation and consideration of submissions	Recommend final form of residential zones to Minister for Planning
			Draft residential zones prepared and released for consultation		
2. Make the State Planning Policy Framework clearer about how it should be implemented at the local level	2.1 Expedite the review of the State Planning Policy Framework recommended in Action 9 of <i>Cutting red tape in planning</i> . In particular, review the expression of state policy in the SPPF to give stronger guidance about how it is expected to be implemented.	2. Revise the State Planning Policy Framework to make it easier to apply (Delivers on Action 2.1) The Department of Planning and Community Development will coordinate an expert group to prepare a revised State Planning Policy Framework by the end of 2008. Their work will build upon Action 9 – <i>Cutting red tape in planning</i> and the survey of planning scheme users completed in 2007.	Expert group established	Discussion paper and revised structure released for consultation	Targeted workshops Recommended final form of State Planning Policy Framework to Minister for Planning
3. Progressively review planning schemes to clearly express state and local strategic intentions	3.1 Use zones, overlays and schedules rather than policy to control the use and development of land where appropriate. 3.2 Establish a Planning Policy Technical Committee with representation from local government, DSE, Planning Panels Victoria and VCAT to review quality and consistency in state and local policy implementation. The Committee would provide a joint approach to policy implementation and: <ul style="list-style-type: none">• Provide advice on the implementation of new policy.• Oversight the review of existing local policy.• Provide advice on policy implementation and effectiveness as part of the four year review of planning schemes	3. Establish a Planning Policy Technical Committee (Delivers on Actions 3.2 & 3.6) Establish a Planning Policy Technical Committee by the end of 2007 to: <ul style="list-style-type: none">• Provide advice to the working groups developing the new residential zones and reviewing the State Policy Planning Framework.• Oversee review of existing local policy.• Validate 'status quo' streamlining of existing local policy.• Provide advice on implementation of new policy.• Provide advice on policy implementation and effectiveness as part of the four year review of planning schemes.	Planning Policy Technical Committee established	Ongoing role	Ongoing role
					Ongoing role

Figure A1
The government's five point priority action plan - *continued*

The Expert Working Group's recommendations		The Government's five point priority action plan			
		End 2007	Early 2008	Mid 2008	End 2008
3. Continued	3.3 Make the requirement for the four year review of planning schemes more specific and structured to: <ul style="list-style-type: none"> • Focus on policy effectiveness and quality assurance. • Improve the implementation of state policy at the local level. • Improve the effectiveness of local policy implementation. 3.4 Establish, as a planning scheme review procedure, a pre-review meeting of DSE and local government officers to identify strategic planning priorities for the review. 3.5 Update the audit kit for the review of planning schemes to reflect the recommendations of the working group. 3.6 Integrate the review of existing local planning policy by expert teams already underway as a <i>Cutting red tape in planning</i> initiative.				
	4. Increase the effectiveness of local policy by simplifying the way it is presented in planning schemes	4.1 Pilot a restructure of clauses 20, 21, and 22 of planning schemes to produce a single simplified section that provides the 'local policy' section of the planning scheme, with a range of Councils. 4.2 Where direction is required in the restructured provision to guide the exercise of discretion under a planning control, the direction should be termed a 'policy guideline'.	4. Pilot restructure of the Local Policy Planning Framework (Delivers on Actions 4.1 & 4.2) Establish a pilot project to test options for a simplified local policy section that provides a better local policy framework for decision makers.	Identify and commence review with pilot councils	Pilots completed Evaluation of pilot outcomes and preferred way forward

Figure A1
The government's five point priority action plan - continued

The Expert Working Group's recommendations		The Government's five point priority action plan			
		End 2007	Early 2008	Mid 2008	End 2008
5. Clarify when prescriptive provisions can be used	5.1 Develop guidelines to clarify when prescriptive rather than performance based provisions are appropriate and how they should be expressed.	<p>5. Prepare new guidelines and procedures that that make it easier to write, implement and review local policy in planning schemes (Delivers on Actions 3.3, 3.4, 3.5 & 5.1)</p> <p>The Department of Planning and Community Development will:</p> <ul style="list-style-type: none"> • Prepare a new planning scheme review procedure. • Update the audit kit for the review of planning schemes. • Develop guidelines to clarify when prescriptive rather than performance based provisions can be used. • As part of the continuous review of the Victoria Planning Provisions and planning schemes, develop further improvements to overlays and other provisions to give more opportunity to express policy outcomes. • Use the experience from Actions 1-4 to inform future work and processes. 	Use information from Actions 1-4 to develop new guidelines, procedures, audit kit and other publications to assist planning scheme users.		
			Draft guidelines and updated audit kit released by mid 2008.		

Source: Department of Planning and Community Development.