Victorian Planning System Ministerial Advisory Committee

Initial Report

December 2011

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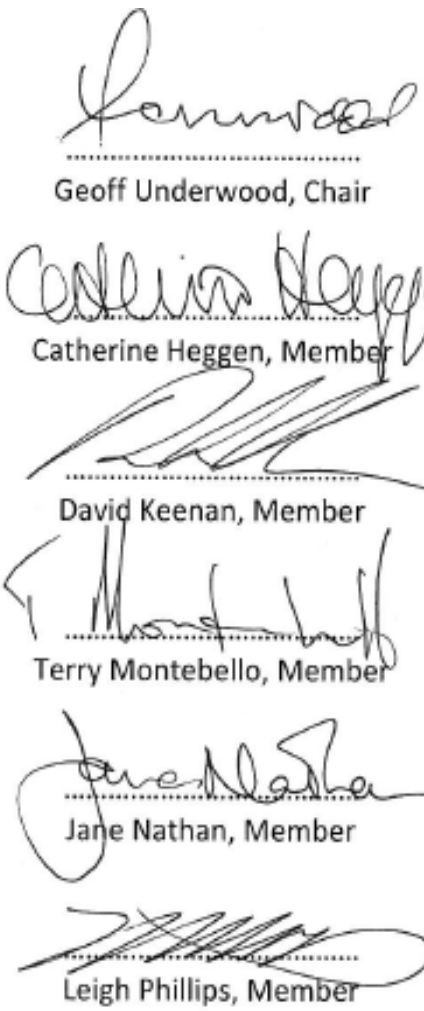

Geoff Underwood, Chair

Catherine Heggen, Member

David Keenan, Member

Terry Montebello, Member

Jane Nathan, Member

Leigh Phillips, Member

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List of Acronyms & Abbreviations

Acronyms and abbreviated terms used in this report include:

- Department of Planning and Community Development ('DPCD' or 'the Department')
- Development Contributions Plan (DCP)
- Environmentally Sustainable Development (ESD)
- Growth Areas Authority (GAA)
- Growth Areas Infrastructure Contribution (GAIC)
- Housing Industry of Australia (HIA)
- Local Planning Policy Framework (LPPF)
- Minister for Planning (the Minister)
- Municipal Association of Victoria (MAV)
- Municipal Strategic Statement (MSS)
- Native Vegetation Precinct Plan (NVPP)
- Planning and Environment Act 1987 (the Act)
- Planning and Environment Regulations 2005 (the Regulations)
- Planning and Environment Amendment (General) Bill - Exposure Draft 2009 (the Draft Exposure Bill)
- Planning Enforcement Officer Association (PEOA)
- Planning Panels Victoria (PPV)
- Planning Permit Activity Report (PPAR)
- Precinct Structure Plan (PSP)
- State Planning Policy Framework (SPPF)
- Urban Development Institute of Australia (UDIA)
- Victorian Civil and Administrative Tribunal ('VCAT' or 'the Tribunal')
- Victorian Law Reform Commission (VLRC)
- Victoria Planning Provisions (VPP)

Shortened terms for document references are identified in the references list at the back of this report.

1. Introduction

Victorians have a multitude of expectations of the planning system. At its simplest, the expectations are that it is fair, insightful and protects the values Victorians cherish.

The planning system in Victoria is vital to the economy. It regulates how land can be used and developed. At its most potent, it prohibits certain uses and forms of development, and allows other activities without the need for any approval.

This Committee has been asked by the Minister for Planning, Matthew Guy, to review the current Victorian planning system and make recommendations on how it can be improved. This review does not extend to an examination of the content of planning policy. Rather, it is about the operation and effectiveness of the machinery of the planning system. This is an important distinction.

It is imperative that the planning system works efficiently, facilitates timely and accountable decision making, produces high quality outcomes and regulates only when necessary.

It has been almost 25 years since the current fundamentals and components of the planning system were introduced. On its election in 2010, the Baillieu State Government announced that a new Metropolitan Strategy would be prepared. Processes are underway for the preparation of this new Metropolitan Strategy (including new growth corridor plans) and eight growth strategies for regional Victoria.

It is therefore timely that the planning system is reviewed. Among other things, it will ensure that these new high level strategies have the best chance of success.

The Committee encourages the Government and those preparing the Metropolitan and Regional Strategies to make big plans. It is reminded of the vision for Chicago, USA, by David Burnham (1846-1912) when he famously said:

> *"Make no little plans...aim high in hope and work, remembering that a noble logical diagram once recorded will never die, but long after we are gone will be a living thing, asserting itself with ever-growing insistency...Let your watchword be order and your beacon beauty. Think big."*

The Committee also notes two points in the 1929 Metropolitan Town Planning Commission report about the benefits of planning the future of Melbourne. The first statement is about the emphasis on a long term, comprehensive plan:

> *"The improvements in accordance with a definite plan may take many years to effect, and may, moreover, vary in minor details as experience and changing conditions dictate, but unless it be comprehensive in its scope it cannot develop efficiently."*

The second is a quote in the report attributed to John Burns, author of the English Town Planning Act, who said:

> *"What is our modest object? Comfort in the house: health in the home; dignity in our streets; space in our roads; and a lessening of the noises, the smoke, the smells, the advertisements, the nuisances that accompany a city that is without a plan, because its rulers are governors without ideas, and its citizens without hopeful outlook and imagination. Industry is the condition of a city's being; health, convenience and beauty the conditions of its well-being."*

The Committee thanks the Minister for Planning for the opportunity to review the planning system on behalf of the Victorian community. While acknowledging the challenge of the Terms of Reference, the Committee recognises the responsibilities of this opportunity.

The Committee is committed to making recommendations in the best interests of Victoria. In preparing this initial report, the Committee has valued hearing the views of all Victorians, not just those involved directly with the planning system.

The Committee was presented with a multitude of submissions with scores of diverse views. Many submittors enclosed material they had put to earlier reviews - and look for responses - while others stated that every opportunity must be taken to press for improvement and reform in case the system grinds to a halt under its own weight.

In shaping the task before the Committee, the Terms of Reference use the words 'review' and 'improve' as well as 'improving the planning system'. In this initial report, the Committee focuses on conveying the essence of submissions. The first task is to explain what has been said and what the Committee has drawn out of submissions. This is the primary purpose of this initial report.

On some key issues, the Committee goes further to express clear views and makes recommendations where it feels able to do so.

The Committee will deliver a final report in due course, outlining detailed recommendations on all matters raised in this initial report. The final report will be delivered to the Minister for Planning, who will then determine any further action.

The Committee wishes to thank everyone who helped deliver this initial report, particularly Jenny Dzomba, Senior Planner at the Department of Planning and Community Development.

2. Appointment and Terms of Reference

2.1 The Advisory Committee

The Victorian Planning System Ministerial Advisory Committee (the Committee) was appointed by the Minister for Planning on 14 June 2011 pursuant to section 151 of the Planning and Environment Act 1987 (the Act).

The Committee is comprised of the following members:

- Geoff Underwood (Chairperson)
- Catherine Heggen
- David Keenan
- Terry Montebello
- Jane Nathan
- Leigh Phillips

2.2 Terms of Reference

The Terms of Reference state that the purpose of the Committee is to:

> 3. *"...provide advice on ways of improving the planning system including the legislative base, the structure of planning schemes including the structure of state and local policy provisions, as well as regulations under the Planning and Environment Act 1987."*

The tasks of the Committee, as set out in the Terms of Reference, are to:

- *"Advise ways of improving the planning system, including the legislative base, the structure of planning schemes, including the structure of state and regional policy provisions, as well as regulations under the Planning and Environment Act 1987 and other relevant legislation.*
- *Categorise the range of comments and issues to allow for further assessment in light of Government planning policy.*
- *Prioritise the matters raised according to the frequency of raising and in light of Government planning policy.*
- *Advise the Government of the perceived efficiency of the planning system from the varied perspectives of the users.*
- *Recommend areas of further study that appear to be necessary and the preferred method for dealing with the issues arising."*

The Terms of Reference offer wide scope. The terms state:

> *"6. Consistent with the purpose of the review, the Committee is to address ways to improve the Victorian Planning System.*

7. *A focus should be on the functional operation of the provisions of the VPP and planning schemes. The review is not intended to directly review the content of specific planning policies or local planning scheme provisions. However, general observations and conclusions may be made where necessary.*

8. *In seeking to improve the operation and efficiency of provisions, the review should seek to ensure that provisions:*
   - *are properly aligned to policy objectives*
   - *do not impose unnecessary costs and delays because of their requirements.*

9. *A number of VPP provisions have already undergone or are currently undergoing detailed review. Previously reviewed matters or active reviews are not the focus of this review. However, where submissions are made that relate to these matters the Committee should address the submissions having regard to the other review projects, but need not revisit matters already covered. This review is intended to complement these other reviews by addressing additional matters so that, taken together, the VPP continues to be an effective planning instrument."*

The method by which the Committee was to undertake its task is also set out in the Terms of Reference. They state:

"The review is to be carried out in stages.

Step 1: Call for submissions

11. *The Committee is to seek submissions from any person who wishes to make a comment about improving the VPP and planning schemes. Submittors should be invited to identify their issue of concern and suggest options for improvement.*

Step 2: Analyse and prioritise the issues

12. *The Committee is to consider submissions received and inform itself as it sees fit as to the issues and the opportunities for improvement and identify and prioritise the issues and initiatives that the Government should consider.*

Step 3: Prepare a priorities and recommendations report

13. *The Committee must submit a report to the Minister that makes recommendations on the specified tasks.*

14. *The Committee may organise itself as it sees fit to carry out its tasks. The Committee may prepare discussion papers, conduct workshops, meet with stakeholders or persons with experience in other planning systems and take any other actions that assist it to inform itself about issues.*

15. *The Committee must provide submitters with at least 28 days to make a submission.*
16. *The Committee must provide an opportunity for municipalities to make a presentation to the Committee at least on a regional basis."*

The required outputs of the Committee are explained as follows:

"17. The Committee must produce a written report that summarises and responds to the specific tasks, including:
- *An analysis of issues raised in submissions or otherwise identified by the Committee.*
- *The recommended actions and priorities for responding to these issues.*
- *Recommendations for changes to any provisions, processes or other recommended actions where appropriate.*

18. *If necessary, the Committee may deliver its report in stages.*
19. *The report must include a list of stakeholders who made submissions and those who were otherwise consulted as part of the review.*
20. *The Committee may respond to submissions on a specific matter collectively rather than provide an individual response to each submission.*
21. *The recommendations report must be submitted to the Minister."*

3. Background

3.1 The Journey So Far

In the 25 years since the introduction of the Act there have been a number of milestones in the development of planning law and practice in Victoria. They include:

- The introduction of the 'Day 1 planning schemes' (February 1988);
- The release of the Perrot Committee's report (August 1993);
- The amalgamation of councils into 78 (now 79) municipalities (circa 1994);
- The introduction of the Victoria Planning Provisions (1996);
- The roll-out of the 'new format planning schemes' (circa 1999);
- The release of Melbourne 2030 (2002);
- The introduction of the Urban Growth Boundary (2002);
- Melbourne @ 5 Million (2008); and
- Delivering Melbourne's Newest Sustainable Suburbs (2009).

There have also been a range of cultural, economic, social and environmental factors which have changed or emerged since the advent of the Victoria Planning Provisions (VPP) based planning system and the Act. They include:

- A more informed community with a higher awareness of planning;
- A more risk averse / risk management environment;
- Broader ethnic composition of the population;
- Increased social and cultural heritage awareness (indigenous and European);
- Greater expectations for quicker planning decisions;
- A change in the demand for housing types, with a trend towards higher density living;
- Greater State and Local Government sensitivity to the electorate / more poll driven;
- Forensic scrutiny of decision making and increased expectations of governance;
- Fragile economic conditions;
- Globalised impacts on economic and financial decisions;
- Participation rates in and the increased casualisation of the workforce;
- A tighter fiscal environment;

- Decreasing housing affordability;
- Increased reliance on and expectations of technology;
- Greater access to information as a consequence of technology;
- The advent of the National Broadband Network; and
- Environmental awareness / sustainability / climate variability / energy efficiency issues.

There are three key reasons why it is timely to review the current planning systems:

1. The statutory framework within which the planning system operates is now a quarter of a century old, and is overburdened with a multitude of add-ons;
2. There have been significant changes to local, national and global conditions that affect people's lives; and
3. State Government is currently engaged in the formulation of a new Metropolitan Strategy for Melbourne as well as growth plans for regional Victoria in order to accommodate the consequences of change in the local, national and global environments. The introduction of these new strategies should ideally occur as part of any changes to the current planning system.

4. Consultation and Submissions

To inform itself on the issues and opportunities to improve the planning system, the Committee considered written submissions and met a number of stakeholders.

Consultation sessions were held between Committee members and a range of stakeholders, with over 130 individuals, groups, associations, peak bodies and local councils having met and made presentations to the Committee. Refer to **Appendix 1 – List of Consulted Parties**.

The call for formal submissions was undertaken in accordance with the Committee's Terms of Reference and devised to capture a wide audience. The call for submissions included:

- A notice published in the daily papers (the Age, Herald Sun, Australian & Weekly Times) together with the Victorian local papers between 21 and 27 July 2011. The full list of newspapers that gave notice of the call for submissions is included in **Appendix 2 - Newspaper Notice Coverage**.
- On 11 July 2011, a call for submissions was sent to all Victorian municipal councils and key interest groups, including various government, community and industry groups.
- Notice was given each week during the submission period in *Planning Matters* - the DPCD's weekly email subscriber alert service that provides new information on planning initiatives and amendments. (Subscribers include a range of key stakeholders, such as council planners, planning consultants, officers in statutory authorities and government departments, planning students, architects and surveyors).
- The Minister for Planning issued a Media Release on 14 July 2011 and his column in the August edition of PIA's Planning News publication also contained a call for submissions.
- The DPCD website included a dedicated webpage for the project with relevant information on the submission process. The same information was made available through Information Victoria for stakeholders without internet access.
- The Terms of Reference allowed a minimum of 28 days for submission lodgement. The Committee provided more than 28 days, agreeing to officially accept submissions until 31 August 2011. Late submissions were subsequently accepted up to 15 November 2011 to allow council staff to have their submission endorsed by the Council and to provide interest groups and others added time to coordinate their responses.

- The submission process adhered to privacy and accessibility obligations under the Information Privacy Act 2000 and the Disability Discrimination Act 1992.

A list of submittors is included in **Appendix 3 – List of Submittors**. Submissions have been made available on the DPCD website www.dpcd.vic.gov.au/systemreview.

4.1 The Approach of the Committee

The broad nature of the Terms of Reference made it necessary for the Committee to carefully consider how to proceed with the overall task and how to approach the first milestone in preparing this initial report.

Under the Terms of Reference, the Committee's first task was to prepare a report and prioritise matters raised during the process of receiving public submissions. The Committee has done this and later parts of this report summarise and prioritise the various submissions under key themes. The Committee also expresses clear views on certain matters and makes recommendations where it is able and appropriate to do so.

In considering the issues that have been raised, the Committee is mindful that it is not the first body to be given the task of reviewing the planning system in Victoria or more correctly, reviewing elements of the planning system in Victoria.

Since the introduction of the Act there have been many reviews. Some elements of those reviews have been implemented. The key reports prepared since the Act commenced include:

- The Perrott Committee Report (1993);
- Report of the Advisory Committee on the Victoria Planning Provisions (August 1997);
- Final Report - New Format Planning Schemes (April 1999);
- Whitney Reports 1, 2 and 3 (2002);
- Better Decisions Faster (August 2003);
- Cutting Red Tape in Planning (August 2006);
- Making Local Policy Stronger (June 2007); and
- Modernising Report (March 2009).

In addition to considering the numerous submissions received, the Committee also informed itself through consultative sessions with key stakeholders, briefings from peak groups and community organisations, conferences with

individuals and by reviewing the considerable research, insight and analysis carried out as part of previous reports.

The Committee is mindful that unlike most of the previous reports and reviews, its task identified in the Terms of Reference is much wider than reviewing a particular segment of the planning system.

The Committee has nevertheless been informed by those earlier reports which have helped the Committee frame its preliminary views about the planning system in Victoria and the areas that require further consideration and work.

As part of its broader tasks following this initial report, the Committee proposes that all previous reports should be assessed for relevance. Some past recommendations may be appropriate to implement as part of today's reform. It may also be appropriate to measure the benefit of past changes to the system.

As it is, many aspects of past reports are unresolved. Despite this, they make reasonable recommendations for change. The Committee considers that it is important to bring some finality to the work that has been done in those previous reports, including reporting on those matters that were not implemented.

4.2 Submissions

To help direct submittors to focus on matters under the Terms of Reference, the Committee drafted seven questions about the Victorian Planning System. The questions had the additional purposes of prompting attention to matters of interest and assisting interested parties in framing submissions to the Committee. The questions formed part of the material in the call for submissions. They are:

1. What is good about the system?
2. What works well and what doesn't?
3. What are the ways to fix the problems and improve the system?
4. How can the planning system be more effective and efficient?
5. How can the planning system be made easier to access and understand?
6. Is the present planning system right for Victoria?
7. Are the respective roles of State and Local Government in the planning system still appropriate?

Though these questions were never meant as headings for submissions, many submittors responded on each of the seven points as if they were guiding considerations.

An interesting outcome from the responses is that many submittors struggled to state what was good about the system, despite the proposition frequently put to the Committee; that the Victorian system was not 'broken'.

This is true of both submissions and oral presentations. For example, the Municipal Association of Victoria (MAV) (Submission No. 299) at page 13 of its submission stated:

> *"The MAV does not believe that there are major systemic issues with the planning system, but that operationally it is overly complex to administer and not effective in delivering outcomes that councils seek.*
>
> *Significant shifts are required in the oversight and governance of the planning system, its operation and the procedures used to administer the system for good planning outcomes to be achieved. For this to occur there needs to be a cultural shift within DPCD and allocation of clear accountability for the performance of the planning system."*

Louise Wolfers (Submission No. 323) compared the Victorian system to the New South Wales system and concludes:

> *"Our present model with a tiered approach for planning policy considerations at the State, MSS and LPP policy framework levels seems to work reasonably well and is relatively easy to understand the various levels of policy consideration."*

Notwithstanding, as the large number of submissions and the breadth of the calls for change attest, it is difficult to reconcile the criticisms of the Victorian Planning System with the two propositions that 'the system is not broken' and all that is required are 'significant shifts'.

The Victorian Planning and Environmental Law Association (Submission No. 541) focused on what it called 'the fundamentals of the system' which, it said 'are very strong'. The submission states:

- *"The statutory framework is generally very clear and readily understood;*
- *The concept of strategic planning leading statutory implementation is consistent with good planning;*
- *There is an appropriately high level of accessibility of the system to the community and ability for the community to participate in the planning process;*
- *All parties have access to independent dispute resolution bodies (in the form of VCAT and Planning Panels Victoria) in a way that is not overly legalistic and which provides fair process and healthy debate;*

- *Compared to other processes within the justice system, the planning system is relatively speedy and affordable.*

It is the Association's position that these fundamental aspects of the planning system must be at least maintained."

All these comments and more are duly noted by the Committee.

A total of 547 written submissions were received and considered by the Committee. By comparison, the current review of the New South Wales planning system records 328 submissions received.

Submissions to this review were received from individuals, organisations such as ratepayer groups and progress associations through to peak bodies and industry associations as well as from 66 of the 79 municipalities in Victoria.

That the submissions were wide ranging in nature was not surprising. Neither were the numerous submissions which reported unpleasant and frustrating personal experiences with the planning system.

A catalogue of submissions was kept to record the details of the submittors as well as the general issues that were raised in those submissions. To help the Committee, the submissions were categorised in themes and key words. This record is included in **Appendix 4 - Submissions - List of Issues**.

Although some individuals only submitted on one topic, others (such as councils, peak bodies and industry groups) submitted on multiple aspects of the planning system. Each aspect on which they commented has been recorded.

In considering submissions, the Committee endeavoured to respond to each of the substantive issues. But it has not been possible to respond to every query or comment made. In some instances, such as submissions seeking rewording of the State Planning Policy Framework, the Committee has not provided an individual response because a review of the actual content of policy (as distinct from the form in which it is presented) is not part of its Terms of Reference.

Similarly, the report does not deal with submissions advocating for changes to the VPP definitions or, in most instances, specific zone provisions. As a consequence, submissions that sought detailed variations to the VPP are not dealt with in this report. They include:

- Consideration of the definition of Medical centres
- The site qualification criteria for Places of worship
- Existing use rights
- The extent of existing controls, or the desirability of new controls for:

- advertising signs
- use of land for bed and breakfast premises
- brothels
- cafes
- caretaker residences
- disability access
- helicopters
- home occupation
- shipping containers
- telecommunication facilities
- waste management and rubbish bins.

These matters will be referred to the Department of Planning and Community Development (DPCD) for consideration.

Submissions were also received on subjects that are under review by other advisory committees. Those submissions will be redirected to those advisory committees or DPCD. The topics include submissions about contaminated land controls and development contributions (the Committee does refer to aspects of the development contributions system in Part 9.2 of this report).

While the Committee does not deal with the subject of Environmentally Sustainable Development (ESD), the Committee notes that there were many submissions which argued ESD considerations should be applied as part of the planning system. The Committee commends the submission from the Eastern Metropolitan Group of Councils:

> ***"Emerging issues – are they planning, building or something else?***
>
> *58. From time to time, issues emerge in the community which the planning system (either by the state or through local government authorities) seeks to acknowledge and address – two recent examples of such issues are disabled access and environmentally sustainable development. Local Government looks to State Government to take the lead in such cases, but from time to time where there is a perceived policy gap, local government will seek to fill that gap through development of local policies. These policies have not been well received at VCAT.*
>
> *59. The Group looks to the State to lead and drive important new emerging issues and not to leave a policy gap. The reason councils have, for instance, been driving an ESD agenda is because of a failure of state policy development. The State should continue to engage with local government authorities in relation to new and emerging issues and to communicate its work timetable so that councils (and in turn*

their constituents) can be satisfied that these kinds of issues will be adequately addressed in a timely manner."

The list of issues shows that the most frequently-raised topic relates to third party participation and review rights.

Though the Committee anticipated hearing about particular personal circumstances, it endeavoured to pre-empt those issues being raised by explaining that the task of the Committee was related to the planning system rather than particular outcomes of individuals involved in the planning system. That said, it is apparent to the Committee that in some cases, the lives of people had been taken over by ongoing planning experiences.

Some submittors believed that the Committee was a vehicle for them to make an opportunistic application of one type or another for their land. For example, some submittors believed the Committee offered an opportunity to rezone or subdivide land, to seek approval for development, to be able to conduct sports activities on their land or undertake numerous other activities. That is not the role of the Committee.

A number of submittors took the opportunity to state strong opinions on planning policy, current or past. For example, some advocated the removal of the State Government from planning, while others advocated the removal of Local Government. Others sought a return to a metropolitan planning authority's responsibility for the total administration of planning, in lieu of the involvement of Local or State Government.

Many submissions showed a great attention to detail. Some submittors expressed pessimism that submissions to previous reviews had seldom been acknowledged or resulted in any material improvements to the system. The Committee heard from a number of submittors who were cynical of the process and indicated they were suffering from 'review fatigue'.

Many submittors displayed support for the reform of the planning system. There are scores of submissions that fit this category. These in particular will help the Committee to make some of its recommendations. The Committee acknowledges the many well intentioned suggestions for reform, many of which were soundly based in experience, logic and reason and these have assisted the Committee. Nevertheless, while many submissions were interesting and some novel, not all should shape the future of the planning system in Victoria.

The consensus from the submissions is that a planning system needs to have the capacity to respond to change, as well as endeavouring to meet the often conflicting aspirations of the stakeholders within the system. Submissions highlighted key global and local influences that impact upon the decision

making processes. While there are common themes from the submissions that relate to how the current planning system could be improved (such as by using greater prescription rather than performance based measures), there are also submissions on the successful components of the planning system that operated before the introduction of the Act, and what lessons could be learnt from past experience.

5. Issues Raised in Submissions

5.1 Prioritising Issues

The Terms of Reference require the Committee to categorise the issues raised in submissions and to prioritise the issues.

The approach taken by the Committee was to classify the submissions into four key themes:

1. Leadership of planning in Victoria.
2. Architecture and structure of the planning system.
3. Administration of the planning system.
4. Processes within the planning system.

Within the context of the four key themes, the main issues that arise from submissions are as follows:

The leadership of planning in Victoria

- A Vision for Victoria.
- The role of the Minister.
- DPCD's planning role.
- Local Government's planning role.
- The role of the Victorian Civil and Administrative Tribunal (VCAT).
- The role of Planning Panels Victoria (PPV).
- The role of referral authorities.
- The role of other agencies in the planning system.

The architecture and structure of the planning system

- The Planning and Environment Act 1987.
- The Victoria Planning Provisions.
- The Municipal Strategic Statement.
- Local Planning Policy.

The administration of the planning system

- Planning fees and costs.
- Application fees for permits and amendments.
- Infrastructure charges by permit conditions.

- Restrictive covenants.
- Section 173 Agreements.
- The Victoria Planning Provisions with a particular emphasis on:
  - the structure of zones
  - the operation of overlays
  - performance based provisions versus prescriptive controls.
- Growth area planning and interface areas.
- Stakeholder engagement.
- Planning in regional and rural Victoria.

The processes within the planning system

- The planning permit process.
- The planning scheme amendment process.
- Enforcement of planning schemes, permits and agreements.

5.2 Expectations of the System

In effect, every submission can be said to have expressed an opinion on expectations of the Victorian Planning System. According to submissions, it is desirable that a planning system have features that include:

- Transparency.
- Certainty.
- Clarity of expression.
- Being fair and equitable to all parties.
- Being free from corruption.
- Adherence to the processes and rules.
- Efficient processes.
- Effective outcomes.
- Consistency in decisions.
- Timeliness.
- Prescribed timelines for actions and decision making.
- Relevant documents being freely available including on line.
- Allowing performance based outcomes.
- Being prescriptive in quantifiable elements.
- Having clear and identifiable lines of responsibility.

- Leadership from decision makers.
- Policy based decision making.
- Opportunities to participate in planning.
- Opportunities for independent review.
- Continuous monitoring and review of the system and its processes.

Submittors also made strong statements about the need for a positive culture within the planning system to overturn what was seen as a reactive, restrictive and process driven system that intimidated parties, particularly those participating for the first time.

Some submittors said that they encountered a culture often based on pre-established networks that follow well worn paths that create the impression of an 'old boys club'.

Some submittors considered that there is a lack of clarity about leadership and roles within the system. Many of the quoted submissions in other parts of this report illustrate this point.

Submissions suggest that the planning system should be built on a culture that generates:

- Respect for opposing views and opinions;
- Accountability where appropriate levels of responsibility are defined; and
- Outcomes rather than being process driven.

The Committee agrees that a culture of respect and accountability for people and processes within the system is essential.

Submissions called for a major change in the structures that direct planning at the state and local levels and the way the system operates. Submittors are looking for a system that embeds processes which are transparent, decision making which is accountable and outcomes which are more certain.

The Committee points to the desirability of creating a positive culture but cannot prescribe a culture. It is up to the leaders of the Victorian planning system at all levels to do so.

DLA Piper (Submission No. 310) states:

> *"There are a number of governance failings in the current structure, mostly related to the issues already raised regarding DPCD and the operation of council decision making.*
>
> *One of the systemic governance problems is the lack of consistency and erratic decision making within DPCD. On one hand, there is a failure to*

> *monitor and take accountability for many amendments and much policy. On the other hand there are examples where DPCD meddles for no apparent reason."*

In relation to the operation of the planning system, submissions argued that the planning system has become too cumbersome and difficult to use even for practitioners.

The Environment Defenders Office (Victoria) Ltd (Submission No. 369) states:

> *"The system is complex and confusing and it is difficult to understand the basis on which decisions will be made (due largely to the high level of discretion of decision-makers and the large number of incorporated documents)…".*

Similarly, Anthony Adams (Submission No. 523) states:

> *"The current Planning System lends itself to complexity, unnecessary disputation and increased numbers of VCAT appeals; methods to increase certainty and reduce these negative outcomes may include:*
>
> - *Ensure that the Planning System contains definitive prescriptions, with less reliance on 'performance based' measures*
> - *Ensure that the Planning System provides Local and State planning."*

Not only has the Act been added to and expanded, but the planning scheme has also been asked to control an increased range of issues. The proliferation of matters now located within the Clause 52 – Particular Provisions of the VPP is evidence of the widened expectations of what the planning system is now being asked to address. The Clause 52 matters range from cattle feed lots and bushfire provisions to car wash premises and crematoria - arguably these matters should belong elsewhere. Some matters in Clause 52 are already partly addressed under other legislation, such as licensed premises and gaming, causing duplication and confusion over the role of the participating jurisdictions.

The Committee compares the planning system to a once powerful computer that is now being asked to do too much. Though starting out as an advanced processor, the heavy workload being imposed on it takes its toll and the computer reaches a point that it is unable to cope; performing slowly and even occasionally crashing. In order to improve its operation and have it perform effectively and efficiently, the computer either needs to be unburdened of some of the tasks it is being asked to perform or it needs to be rebuilt.

This analogy is supported in the submission from the Urban Development Institute of Australia (Victoria) (Submission No.407) where it states:

> *"Victoria is sometimes said to have the best planning system in Australia, and is the system that most states benchmark themselves against. That said, developers look for a system that is timely, consistent and contains certainty. In a number of areas, Victoria's planning system fails all three of these criteria."*

The MAV submission puts forward ideas for a next generation planning system based on a set of principles whereby:

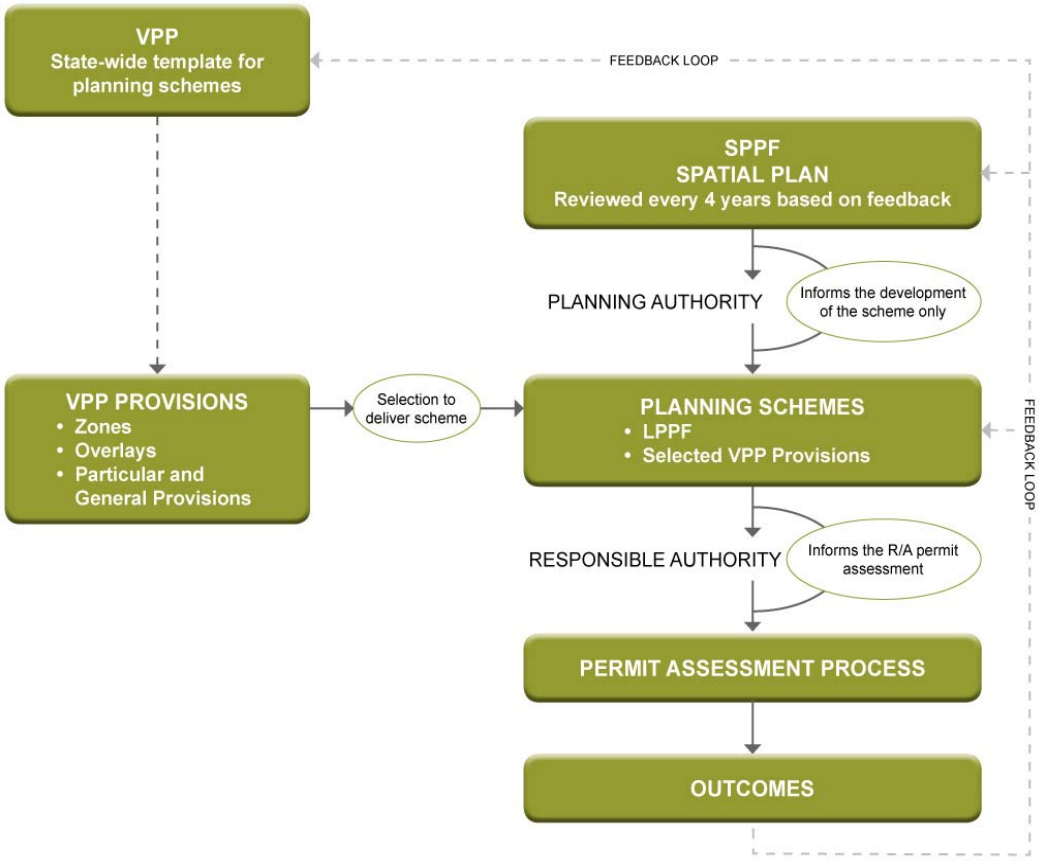
- System responsibilities are clearly allocated;
- There is a strong policy basis for decision making at State, regional and local levels;
- Business processes are aligned to risk, complexity and outcomes; and
- The system is monitored and accountable.

The MAV proposes an operational framework with the following elements:

- *"A stronger 'State' articulation of State Policy through spatially resolved maps and instructions for Planning Authorities that sits outside planning schemes. As well as a*
- *Subsequent review of State Policy every four years.*
- *Translation of relevant State Policy, by either Government or Planning Authorities, into planning schemes.*
- *Removal of the State Planning Policy Framework from planning schemes as it will no longer be needed in the assessment of planning permit decisions.*
- *Streaming of planning scheme amendments according to complexity.*
- *Planning authorities are responsible for the translation of State Policy objectives into planning schemes, guided as necessary by specific directions and/or instructions*
- *The State Planning Policy Framework (SPPF) be removed from planning schemes and act as a separate compendium of spatially resolved maps and instructions for planning authorities*
- *That State Policy be reviewed every four years, prior to the councils' statutory scheme review, to ensure it is updated and relevant for planning authorities*
- *Planning scheme amendments are 'triaged' by DPCD into streams with different process steps dependent on complexity and level of strategic resolution*
- *Responsible authorities need only consider the local translation of State Policy in their decisions not State Policy".*

The arrangement is represented in the following diagram.

FIGURE 1 - MAV's Proposed Planning System Operational Framework



Source: Page 15, MAV Submission - No. 299

The Housing Industry Association (HIA) (Submission No. 196) suggests ways to reform the planning system to reduce the number of planning permit applications and reduce the burden on the system. It states:

> *"In Victoria, delays and uncertainty in the planning system have been a key concern for the residential building industry for some time. An increase in the number of proposals requiring planning approval, a lack of experienced planning staff, high turnover rates in councils, lengthy referral processes that often add little value to built outcomes and the capacity for 'objections' all serve to stifle timely decision making.*
>
> *A substantial expansion in the scope and the stringency of planning scheme requirements has meant more planning permits for less significant works which is placing unnecessary burden on local government planning resources and slowing down the system.*
>
> *Layers of complexity have been added to planning schemes, frustrating applicants and generating very significant cost increases to HIA members and home buyers.*
>
> *A review of the Victorian Planning System should focus on the increased need for improvements in the efficiency and effectiveness of*

> *the planning system. It should look at freeing up planning resources so that planners can focus on more complex matters."*

Numerous submissions address the complexity of planning documents. One individual (Submission No. 263) writes:

> *"You'd have to be a masochist to read through all the relevant planning documents that theoretically need to be considered as part of a planning application. They're verbose, sloppy, repetitive, and have key information widely dispersed. Its time for talented editors and graphic designers to give at least Planning Schemes a makeover."*

As with any system, the central expectation should be about making it work to achieve what it is intended to achieve. For the Victorian Planning System, the central expectation is of a system that can perform efficiently and effectively.

Notwithstanding the strident expressions in some of the submissions and the extreme solutions being advocated by others, the Committee believes the implication in all these presentations is that major change is required.

5.3 Benchmarking the Planning System

Any good system should be constantly monitored and assessed to ensure it functions properly.

Over the past decade, reviews of the planning system have made improvements and changes for efficiency gains. As part of the Victorian Competition and Efficiency Commission Inquiry into Victoria's Tourism Industry in March 2011, the Commission examined planning regulation as an inhibitor on the industry and the Auditor General occasionally conducts studies into aspects of the system to ensure efficacy and efficiency.

Over the same period, a number of external reviews have also looked at the planning system either as a stand-alone system or as part of a broader national analysis. For example, the national Development Assessment Forum and the Commonwealth Productivity Commission examined and reported on the Victorian Planning System compared to other States and Territories.

Also of value is a report commissioned by the Local Government and Planning Minister's Council in 2008 entitled First National Report on Development Assessment Performance (South Australian Government, 2010). This report was prepared for the Council of Australian Governments (COAG) as an examination of regulatory reform, including development assessment.

The reports of COAG and the Productivity Commission contained useful data to compare the various systems operating in the States and Territories. While a direct comparison is not possible because of variations across the systems,

there are sufficient benchmarks on which to base reasonable conclusions about how successfully those systems operate.

The COAG review groups its work into three main themes: process, system and outcome performance.

The report states:

> *"It is expected that reporting against these Measures over time will allow jurisdictions to demonstrate the effect of reforms on their systems, and also to identify potential areas of new reform. It is recognised that development assessment systems, like many other regulatory systems, benefit from consistent monitoring and continuous improvement."*

The Productivity Commission review entitled Performance Benchmarking of Australian Regulation: Planning, Zoning and Development Assessment 2011, (the Productivity Commission Report) was intended to:

> *"identify among all governments in Australia those planning policies and practices that have proven particularly successful; indicate areas where further reform could be most beneficial; and provide a 2009-10 baseline for any future assessment of the performance of planning systems".*

The Productivity Commission Report states:

> *"The state and territory planning systems have also been subject to rolling reforms which are often not fully implemented or evaluated before being replaced with further reforms. City planning systems are characterised by 'objectives overload' including unresolved conflicting objectives, long time lags and difficult-to-correct planning mistakes. There is a significant risk that the systems' capacity to deliver on the objectives will deteriorate."*

The Productivity Commission Report showed that compared with other states and territories Victoria's planning system performed comparatively well with respect to the gap between the underlying demand and supply of dwellings; planning for major infrastructure; the cost of infrastructure charges and the flexibility of business zones.

However areas for improvement included Victoria's relatively low targets for infill development; the longest median approval time with the corresponding lowest permit application fees and community views about the effectiveness of council planning and of consultation generally.

The issue of community engagement in planning continues to be a problematic one in Victoria. This State has the most generous public notice and third party

review rights in Australia. However when it comes to benchmarks around community satisfaction about the performance of State and Local Government in relation to planning and the effectiveness of consultation, Victoria compares unfavourably with others that place less emphasis on third party involvement.

The underlying problem appears to be the different priorities of state and Local Governments and that of the community.

The Productivity Commission Report identifies that communities are principally focussed on issues like personal safety, public transport and congestion; while state planning policy focuses on matters such as population growth, increasing population densities and managing greenfield development.

Councils are required to straddle the policy imperatives of the State on one hand and their local communities on the other. The consequence of this mismatch in policy interest and emphasis coupled with wide public notice and third party review rights can be demonstrated in development approval statistics for planning permits.

The Victorian Government maintains and publishes an annual report on planning activity across the State. The most current available data at the time of writing this report is contained in the report Planning Permit Activity in Victoria 2009-10 (DPCD, 2010).

PPAR is produced from data submitted to the Department's automated Planning Permit Activity Reporting System (PPARS). All Victorian councils contribute to the collection of planning data by submitting a monthly electronic transfer of data.

According to the DPCD website where PPAR data is recorded, 55,874 planning applications were lodged in Victoria for the 2009-10 financial year. These comprised:

- 47,273 new planning applications (84% of total applications lodged);
- 8,499 applications to amend an existing permit (15% of total); and
- 91 combined permit applications, (where there is an associated planning scheme amendment).

Compared to 2008-09, as a percentage total, there was a 2.9% increase in new applications lodged.

In the 2009-10 period a total of 49,360 planning applications were decided of which 96% were permits issued and 4% were refusals. In total, 57% of all permits issued were associated with a residential use. Of all decided applications:

- 93% were made under delegated authority;

- 37% had further information requests issued;
- 37% were subject to public notice requirements;
- 29% were referred to referral authorities; and
- 15% had objections lodged.

On a statewide basis, the average time for a decision is approximately twice the statutory 60 day time limit for a decision.[1] Rural and regional Victoria make 71% of decisions within the statutory timeframe while metropolitan councils achieve only 61% within the statutory timeframe.

For the same time period the number of applications for review lodged at the Planning and Environment List of VCAT increased from 3,082 in 2008-09 to 3,326 in 2009-10. More recent data for the 2010-11 period confirms a total of 3,775 applications for review were lodged[2].

The average number of weeks for all matters to be decided at VCAT has increased from 20 weeks in 2008-09 to 21 weeks in 2009-10 to 22 weeks in 2010-11[3].

These statistics confirm an increased administrative load on the planning system that is resulting in delay in the planning permit process. This delay results in increased levels of cost, uncertainty and frustration to all participants in the system - private sector, councils and the community.

A municipality by municipality analysis provides interesting comparisons, but must be treated circumspectly. Situations between councils differ greatly in relation to resources, especially between metropolitan Melbourne councils and regional municipalities.

An analysis of the performance of each municipality is illuminating and sometimes surprising in that it discloses that certain councils perform efficiently even though they are maligned as poor performers.

Whether the perception that Victoria is performing well in comparison to other States and Territories is correct or not, the Committee thinks there is clearly room to improve the Victorian planning system.

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[1] 122 Average processing days for metropolitan councils. 107 for rural and regional councils. Average processing days are gross and include lapsed, withdrawn and permit not required applications. The median processing days are 82 and 59 respectively.

[2] VCAT annual reports 2009-08, 2009-10 and 2010-11

6. Preliminary Findings of the Committee

The Committee considers that the planning system in Victoria requires reform.

The Committee considers that in some respects, the planning system has strayed from its original purpose, intent and design and it is timely to consider whether the system remains 'fit for purpose'.

It is apparent from the submissions and the Committee's own experience, that the planning system is now very complex. There is a lack of ownership of the system, a lack of responsiveness to issues as they arise, a lack of alternate processes that recognise different types of applications or amendments, timelines are rarely adhered to and in other areas there are no timelines at all. Consequently, delays cause frustration and disappointment and sometimes disillusionment. Costs are higher through delay and as a result, there is an increasing propensity for ad hoc processes and interventions in the planning system to try to compensate for the perceived lack of timeliness in decision making.

In the next chapters of this initial report, the Committee discusses each of the four key themes by outlining the key issues raised by the submissions.

The Committee poses some questions intended for discussion and to set some direction for the next part of the Committee's task; to prepare a report containing its final recommendations.

The Committee's preliminary findings are set out below:

THE LEADERSHIP OF PLANNING IN VICTORIA

A Vision for Victoria (See Part 7.1)

The Committee strongly supports:

- The development of a Vision for Victoria that aligns the medium to long term planning and infrastructure needs of the State;
- The development of the Metropolitan Strategy and associated eight Regional Growth Plans; and
- An alignment of the Vision for Victoria, the Metropolitan Strategy and the eight Regional Growth Plans, and a spatial representation of their objectives.

The Role of the Minister (See Part 7.2)

The Committee believes that:

- It is important for the role of the Minister to be clearly defined to minimise the need for him or her to be involved in the day to day administration of the planning system; and
- The Ministerial Powers of Intervention in Planning and Heritage Matters Practice Note (November 2004) be reviewed to relieve the Minister of the day to day decision making.

DPCD's Planning Role (See Part 7.3)

The Committee considers that the role of DPCD should be reviewed and appropriate structural and management changes be made to instil a high standard of leadership and advocacy of state strategies and policies.

Local Government's Planning Role (See Part 7.4)

The Committee believes local councils must have a key role in the planning system and that:

- The number of times a council needs to make a decision in a planning scheme amendment process should be reviewed;
- The council's primary role in strategic planning should be given more emphasis. The focus should be the setting of strategic goals and objectives for a municipality;
- Encouragement should be given to establishing bodies that enable a council to delegate decision making powers on selected matters; and
- At the beginning of any four year term, and throughout the term, councillors should undertake training in the planning system.

The Role of VCAT (See Part 7.5)

The Committee considers:

- The role of an independent umpire is an essential part of the planning system;
- VCAT should be adequately resourced to reduce the current waiting time for all matters in the Planning and Environment List; and
- Action in response to other findings set out in this report (such as the proposal that seeks to stream permit applications) should result in fewer matters being referred to VCAT for determination.

The Role of Planning Panels Victoria (See Part 7.6)

The Committee supports the utilisation of the expertise within PPV for a wider purpose.

Changes to the role and operation of PPV should be considered. They include the potential for:

- PPV to critique amendments at an early stage in the planning scheme amendment process;
- PPV being more directive in their consideration of submissions at an early stage; and
- Converting panel recommendations to determinations.

The Role of Referral Authorities (See Part 7.7)

The Committee considers that referral authorities are one of the key leaders in the planning system and have a corresponding responsibility in the way that they participate in the planning process. Their performance should reflect this leadership role.

The Role of other Agencies in the Planning System (See Part 7.8)

The Committee considers that appropriate structural and management changes need to be made to foster improved relationships between the various bodies that lead and participate in the planning system.

THE ARCHITECTURE AND STRUCTURE OF THE PLANNING SYSTEM

The Planning and Environment Act 1987 (See Part 8.1)

The Committee considers that it is time to replace the current Act with a new Planning Act.

The Victoria Planning Provisions (See Part 8.2)

The Committee considers:

- The current state wide standardised structure of planning schemes is strongly supported; and
- There is a question whether the VPP, in its current form, continues to fulfil its intended purpose in an efficient and effective manner.

The matters that will be considered by the Committee in the next part of its work will include:

- Whether the current structure and composition of the VPP is appropriate?
- Are each of the components necessary?

- Are other components required?
- What are the principles for determining whether a matter belongs in the VPP; and in particular in Clause 52?
- Is it possible to avoid or reduce the multi layering of controls?
- Can certain elements be presented differently (ie. grouped or compacted) to make them more useable?

The Municipal Strategic Statement (See Part 8.3)

The Committee considers:

- It is time to comprehensively re-examine the MSS, its role, its function and its place within the planning scheme; and
- The development of the Metropolitan Strategy and the eight Regional Growth Plans may impact on forthcoming and ongoing MSS reviews.

Local Planning Policy (See Part 8.4)

The Committee questions the role of Clause 22 local policy and whether it should remain in its current form. Any reorganisation of Clause 22 has the capacity to affect the structure of the VPP and planning schemes.

THE ADMINISTRATION OF THE PLANNING SYSTEM IN VICTORIA

Permit Application Fees and Costs (See Part 9.1.1)

The Committee considers:

- The adequacy of the current schedule of application fees should be reviewed; and
- As part of the review of the fee schedule, the extent to which permit application fees can be used as a financial incentive or a penalty in the planning system to improve the processes, reward good practice and discourage poor practice by both responsible authorities, applicants and third party participants should be considered.

Planning Scheme Amendment Fees and Costs (See Part 9.1.3)

The Committee recommends a review of all stages in the amendment process to help reduce costs for all parties.

Enforcement Costs (See Part 9.1.4)

The Committee recommends consideration be given to resourcing and authorisation of enforcement officers enabling them to work across municipal boundaries.

Infrastructure Charges by Permit Conditions (See Part 9.2)

The Committee considers that the practice to secure infrastructure funding via permit condition needs further consideration. Specifically, should there be a return to the ability for a council to seek a contribution from a landowner for the cost of infrastructure where the cost of that infrastructure is to be shared by more than one developer without the need for a development contribution plan.

Restrictive Covenants (See Part 9.3)

The Committee considers that:

- As a first step, the legislative block (section 61(4) of the Act) to the grant of a planning permit until a restrictive covenant is varied should be removed; and
- It should further examine the recommendations of the Victorian Law Reform Commission in its report on easements and covenants (Final Report 22).

Section 173 Agreements (See Part 9.4)

The Committee considers the role and processes associated with section 173 agreements require further analysis, with the objective being to:

- Explain where agreements should and should not be used; and
- Streamline the processes associated with creating, amending and removing agreements.

Structure of Zones (See Part 9.5.1)

The Committee considers:

- The structure of zones warrant further consideration, including the possibility of allowing more local variations; and
- Given the widespread impact, some early consideration should be given to the review of the Farming Zone.

Operation of Overlays (See Part 9.5.2)

The Committee considers:

- The structure of permit triggers within overlays should be reviewed; and
- Multi-purpose overlays should be investigated with a view to reducing the need for layering.

Performance Based Provisions versus Prescriptive Controls (See Part 9.5.3)

The Committee considers that the current balance in the system favours flexibility and performance-based controls too heavily, to the detriment of certainty. This should be reviewed.

Growth Area Planning (See Part 9.6.1)

The Committee recommends:

- Growth area councils should be allowed to prepare a precinct structure plan in the first instance. The GAA should be the planning authority only where a growth area council requests it to do so or the council does not have the expertise or resources to complete the process;
- An evaluation of the precinct structure planning processes that have been finalised be undertaken to determine how effectively the PSP and planning permit process is being undertaken in the Urban Growth Zone; and
- There is a need for a mechanism to improve the delivery of infrastructure to match planning aspirations in growth areas.

Interface Councils (See Part 9.6.2)

The Committee considers:

- There is a need for funding and co-ordination mechanisms to improve the delivery of infrastructure to match planning aspirations in interface areas; and
- The scope of green wedge management plans should include a review of permitted land uses to ensure the achievement of strategic objectives.

Planning in Rural and Regional Victoria (See Part 9.8)

The Committee considers:

- Adequate resources should be directed to the preparation of the eight Regional Growth Plans; and
- A code of practice should be developed to exempt temporary events in the rural zones or the temporary event provision in Clause 62.03 should be extended to address private land.

THE PROCESSES WITHIN THE PLANNING SYSTEM IN VICTORIA

Assessment Streams for Permit Applications (See Part 10.1.1)

The Committee considers:

- A system of planning permit application streams be developed for different land use and or development categories. These streams should align with

revised notice provisions, referral authority procedures and adjusted timelines for decision making.

- A Code Assess process be developed and piloted in selected municipalities for a variety of buildings and/or works and/or nominated subdivision proposals.
- An audit of existing permit triggers in the planning scheme be undertaken to identify where permit triggers could be reduced.

Notice Requirements and Material Detriment (See Part 10.1.2)

The Committee considers that:

- Third party involvement in the planning process is an important component of Victoria's planning system.
- Third party rights are not unlimited and should be:
  - proportional to the scale and nature of the permission being sought; and
  - relevant to the exercise of discretion prescribed in the planning scheme.
- The potential to stream permit applications into different classes, namely Code Assess and Merit Assess processing paths, provides a basis to align notification requirements with each processing path.
- Notice requirements for different classes of land use and/or development should be prescribed by:
  - enabling the planning scheme to set out notice requirements for different classes of applications; and
  - legislative change to section 52 of the Act and to the Regulations.
- The current provisions of the Act which potentially expose councils to liability (such as section 94) for decisions relating to notice, or failing to give notice, should be reviewed as a consequence of any change to Section 52 of the Act.

Referral Processes (See Part 10.1.3)

The Committee considers that there is significant room for improvement in the current system of planning referrals, both at the time of a planning permit application and in respect of the subdivision process, including reviewing current practices and/or legislative requirements regarding:

- Timelines for responses to councils;
- Whether permit conditions or objections to a permit application by a Section 55 referral authority be considered as advisory or mandatory;
- The use of standard agreements for referrals; and
- Referral authority participation in the VCAT review process.

Request for Further Information (See Part 10.1.4)

The Committee concludes that increased efficiencies and reduced timelines for the processing of a permit application can be achieved by a suite of statutory and non-statutory measures. These measures will be investigated in the next stage of the Committee's work.

Amendments to Planning Permits (See Part 10.1.5)

The Committee considers that provisions in relation to secondary consent amendments to planning permits are unclear and should be reconsidered.

Planning Scheme Amendment Process (See Part 10.2)

The Committee recommends:

- That the planning scheme amendment process be streamed into different types of amendments along the lines of technical amendments, normal amendments and state significant amendments;
- A review of all steps in the amendment process with the aim of making the process more efficient;
- That the need for authorisation be reviewed or be subjected to strict time limits (not more than 10 business days) and if time limits are not met, the amendment is deemed to be authorised;
- That to qualify as a submittor, a person should at least be required to show how the amendment affects them;
- That a planning authority should be able to dismiss a submission if it considers it to be irrelevant or vexatious, subject to a right of review;
- Where submission issues are limited, the nature of a contested panel hearing should be geared towards that limited issue (this may involve a varied hearing process or a consideration of the matter on the papers);
- That the various decision points required of a council acting as a planning authority be reviewed so that once an amendment process commences (by exhibition), it must proceed through to at least a panel; and
- That further consideration be given to whether a panel's recommendations should be made to the planning authority or directly to the Minister.

Enforcement (See Part 10.3)

The Committee considers:

- All councils should provide a planning enforcement function within their municipality;

- Adequate funding should be made available at local and state level to employ regional enforcement officers, with an option for an officer to operate across municipal boundaries; and
- The powers of entry and inspection in the Planning and Environment Act 1987 should be modified to match the corresponding power under the Local Government Act.

7. Leadership of the Planning System

A number of the submissions discuss the leadership of and culture within the planning community in Victoria, including comments about the role of the Minister, DPCD and the State and Local Governments, and the need for greater vision and leadership.

7.1 A Vision for Victoria

Numerous submissions express the desire to see the development of a visionary strategy or some form of long-term strategic plan for Victoria which links planning, population and infrastructure. The Committee for Melbourne's (Submission No. 450) states:

> *"In order to influence and direct the character, configuration and services of the State as it grows there must be an assessment of the current state policy planning framework. A spatially focused long-term vision for Melbourne and its supporting regions must be developed to address:*
>
> - *The ultimate land size and physical shape of the city and its regions*
> - *Optimal population densities for the metropolitan and suburban residential areas*
> - *The identification of future transport corridors and other key city building infrastructure*
> - *The identification of employment corridors link to transport corridors*
> - *The location and character of central activity areas beyond the central business district.*
> - *Melbourne's role and interface with neighbouring regional cities and peri-urban areas."*

A recent newspaper article made the following observation on strategic planning in Australia:

> *"Even the time frame of strategic plans is similar. Planning documents for Sydney, Melbourne and Adelaide look out 25 years to 2036 while southeast Queensland and Perth work on a 20-year blueprint. Why don't strategic plans look 40 or even 50 years into the future? Why aren't we envisioning what our largest cities might look like in 2051? After all, the Australian Bureau of Statistics provides population projections to this year. Doesn't it make sense to be determining now*

where land needs to be quarantined for future housing, industry, transport and parklands?"[3]

The article made the further observation that:

"It was the Melbourne at 2030 plan, released in October 2002, that set the 21st century strategic planning agenda in Australia. All other current strategic plans followed the Victorians. I think it is Melbourne that is the intellectual stronghold of strategic planning in Australia. The planning agenda, vision horizon and key ratios that apply in that city end up being only moderately modified in later plans for other states.

And I suspect that Melbourne continues its lead in the national planning agenda with documents such as Delivering Melbourne's Newest Sustainable Communities. (Notice the word 'sustainable' inserted into the title. It wards off the evil spirits of negative public sentiment. If it's sustainable it's warm and cuddly.) Not only do the Victorians set the planning agenda, they also determine the politically correct language to use. If you are a developer seeking development approval in any part of metropolitan Australia, make sure you read and understand planning documentation coming out of Victoria. And make sure you use the language of the Victorians: insert the word sustainable into the title of your project. It has an oddly calming effect on the planning community."

The article observes that intellectual resources clearly exist in Victoria to develop a Vision for the State.

The development of the Metropolitan Strategy and the eight regional growth plans will contribute to developing this Vision for Victoria. However, it would seem more logical for these place specific strategies to take a lead from a Vision for Victoria so as to give expression to an overall strategic framework plan for the State.

The expression of such a Vision would benefit from a bipartisan commitment to a common goal. A strategy or vision that can be funded appropriately to deliver services and infrastructure for the longer term and provide certainty to those involved in the planning system, would be welcomed by the community, the development sector and all tiers of government.

The Vision for Victoria should be a document that provides leadership to the public and private sectors. It should indicate where investment in infrastructure will occur to meet the needs of the community and industry and

[3] Melbourne Sets Planning Agenda for Other Cities - The Australian , 3 March 2011

provide a level of assurance that orderly planning for Victoria is being undertaken.

The Bulky Goods Retailers Association (Submission No. 501) considers there is a need to substitute what remains of the Melbourne 2030 strategy:

> *"The BGRA believe there is a current lack of clear policy that informs the planning system particularly in relation to Retail (Retail Policy Review 2007) and the broader strategic growth framework for Melbourne (Melbourne 2030). This Policy uncertainty is critical to the future of Victoria and needs to be resolved as a priority of the State Government."*

This concern with Melbourne 2030 and the desire to create a new strategic plan for the State is not limited to the private sector. Community organisations such as Peninsula Speaks (Submission No. 518) advocate for:

> *"Replacement of Melbourne 2030 with a new metropolitan planning strategy for Melbourne."*

Local government is also seeking direction from the State to allow the development and implementation of both State and local policy. Moreland City Council (Submission No. 409), states:

> *"The Victorian planning system is currently operating inefficiently, delivering poor quality outcomes and as a result creating disillusion of planning within the community. One of the fundamental components of the Victorian planning system is a significant emphasis on policy based controls and decision making.*
>
> *As part of any changes to the system we should be striving for a planning system that places Victoria at the forefront of proactively addressing emerging land use and development issues and that provides a clear framework for our preferred future. A new State-wide blueprint for Victoria should include clear actions for implementation from State to local level. Include significant public engagement in the preparation of a State-wide plan and policy."*

The Committee believes that the Vision for Victoria should also provide the framework to guide infrastructure agencies in their planning to ensure the appropriate lead up times can be factored in to supply services to meet the needs for growth or consolidation.

The adoption of such a high order strategic plan would also provide direction to State Government departments, which often undertake individual departmental planning and function in silos.

Finally, establishing a Vision for Victoria would guide and inform planning undertaken by the other two tiers of Government; local and federal. If such a document could be implemented there is a real opportunity to co-ordinate funding streams for the effective delivery of services and infrastructure. This could then increase efficiency in the planning system and reduce negative sentiment from the community and development sectors.

Submissions refer to the lack of a spatial representation in Victoria's current planning system. The Municipal Association of Victoria's submission highlighted the need for greater spatial interpretation of the planning system to allow better ownership by councils and improved comprehension by communities.

The graphical expression of ideas can be extremely valuable in providing guidance to decision makers and other users of the planning system. Any spatial representations should start at the top, in a Vision for Victoria, then cascade down to a municipal level to provide a cohesive picture.

Many submissions highlight the issue that a greater degree of leadership is required from State Government in relation to the future planning of the State, so the development of a Vision for Victoria seems a logical improvement on how strategic planning is undertaken. The Victorian Planning and Environmental Law Association (VPELA) states in its submission:

> *"Members expressed a concern that currently there is an absence of clarity of Victoria's planning agenda.*
>
> *Government and Departmental leadership is crucial to the setting and implementation of Victoria's planning agenda. Some members of the Association have suggested that effective organisational change is required. That the tasks of managing State, regional and metropolitan growth require stability and the capacity to implement long term plans."*

KEY FINDINGS - A Vision for Victoria

The Committee strongly supports:

- The development of a Vision for Victoria that aligns the medium to long term planning and infrastructure needs of the State;
- The development of the Metropolitan Strategy and associated eight Regional Growth Plans; and
- An alignment of the Vision for Victoria, the Metropolitan Strategy and the eight Regional Growth Plans, and a spatial representation of their objectives.

7.2 The Role of the Minister

The role and powers of the Minister for Planning are set out in the Act. The Act allocates duties, tasks and responsibilities to the relevant Minister and casts him or her as the focal point and primary decision-maker under the system.

The Act gives a wide range of powers to the person holding office as the Minister for Planning. They include powers:

- That make the Minister the planning authority to make or amend the VPP and the planning schemes;
- That position the Minister as the person responsible for dealing with and deciding on certain planning permit applications;
- To administer and enforce the provisions of the Act;
- To give directions about the administration of the Act and therefore the system overall to government departments and agencies as well as other bodies including municipalities;
- To acquire land;
- To enter into agreements about the use of land; and
- To set and implement planning policy.

The Act has the responsible Minister as the 'head of the system' and puts the mandate in position to direct planning outcomes. The manner in which various ministers over time have carried out their responsibilities has drawn positive and negative commentary according to the standpoint of the commentator. The positive view is that the Minister has intervened to resolve disputes and reduce delays. The negative criticism historically is that successive Ministers have too much power and opportunity to act unilaterally when making a decision.

Numerous submissions argued that the role of the Minister needed to be changed. The reasons stated include:

- The politicisation of the role of the Minister in controversial matters;
- The need to transition the role of the Minister from operational matters to strategic issues; and
- The disempowerment of local decision makers and the exclusion of community input.

Nic Maclellan (Submission No. 494) states:

> *"Powers of the Minister and State Government Department should be clarified and codified.*

In our area of Brunswick, there is intense frustration at the way that the Department of Planning and successive Planning ministers can override local processes of consultation, negotiation and agreement."

In relation to Ministerial interventions, the City of Port Phillip (Submission No. 404) comments:

"In recent years, ministerial interventions have been driven by economics rather than by outcome and policy. Any process designed specifically for 'State significant' projects should be open and transparent. The process must clarify why a project is deemed to be of 'State significance' and why the local planning authority cannot adequately consider it.

It should not be a process that seeks to remove local planning authority involvement in order to facilitate development, thereby seeking to avoid the rules applied to everyone else. In legitimate processes for projects of true State significance the local authority should continue to have a place at the table and a role in the process.

The State Government should review the ministerial guidelines for intervention to ensure that decisions are consistent and protocols for interactions with Councils are outlined."

DLA Piper Australia made the following comments in relation to the Minister's role:

"There are three key structural issues which we consider need to be addressed as part of any reform.

The first is the need for some form of statutory separation between the Minister and the department. A key problem, which undermines much of the planning system, is the failure of the Department to take accountability for the operation of the system and a lack of leadership in policy implementation and the administration of the VPPs. Many officers in the department see themselves as an extension of the Minister and are either unwilling, unable or afraid to express a view independent of the Minister. There is a misunderstanding about the relationship between the Department's administrative roles and the statutory roles of the Minister.

The answer lies in either creating some form of statutory department independent of the Minister (akin to the old Town and Country Planning Board) or to create a statutory position such as the 'State Planner' at Deputy Secretary level who would have responsibility for the implementation and administration of the state planning system. This will allow officers of the department to advocate and accept accountability without the excuse that they were somehow fettering

> *the exercise of the Minister's discretion in relation to planning scheme amendments or policy, etc. The current situation is riddled with paralysis."*

The Blue Wedges Inc. group (Submission No. 380) also reflects the sentiment repeated in submissions about the role of the Minister in decision making:

> *"We urge the committee to take a bold and innovative approach to devising a new planning paradigm, which reduces opportunities for political influence in decision making...".*

Concerns were also raised about the ad hoc nature of approval processes, especially the use of ministerial powers without consultation. This lack of transparency undermines the integrity of the planning system, when what should be an exceptional circumstance (i.e. a ministerial amendment) becomes the norm. It should be noted however, that a significant proportion of ministerial amendments are undertaken at the request of another planning authority or are initiated by the Department.

Moonee Valley City Council (Submission No. 387) comments:

> *"Council believes that there should be more clarity around what circumstances the Minister can intervene in Planning matters. There is a need for clarification of the basis upon which matters are deemed to be 'of State significance and reasons for Ministerial or other intervention. Currently a range of projects seem to be able to be described as 'State significant' with no consistency with how this is applied.*
>
> *The process that the Minister undertakes when making decisions on planning matters is unclear. In particular the notice requirements are not articulated anywhere. It is believed that the Minister should be required to undertake notice of planning matters, particularly in the case where a matter is of State significance. The Act then needs to clarify how submissions are to be considered by the Minister."*

KEY FINDINGS - The Role of the Minister

The Committee believes that:

- It is important for the role of the Minister to be clearly defined to minimise the need for him or her to be involved in the day to day administration of the planning system; and
- The Ministerial Powers of Intervention in Planning and Heritage Matters Practice Note (November 2004) be reviewed to relieve the Minister of the day to day decision making.

7.3 DPCD's Planning Role

The Committee received many submissions that relate to the Department and overall planning. The Department's role is not only to be a custodian of the planning system, but also to provide leadership in relation to how the system is implemented and maintained.

> *"In 2007 the Government created the Department of Planning and Community Development to respond to the challenges of population growth and growth management by leading and supporting the development of liveable communities to help ensure Victorian communities are well planned and designed. A key focus of the Department has been greenfield and infill development, further integration of transport and land use planning, and improving the efficiency of Victoria's planning system."*[4]

The Property Council of Australia (Submission No. 311) states there is a need to:

> *"Develop a holistic, sustainable and progressive planning vision for the state. The realisation of such a policy vision is a critical priority for the Victorian Government and must be achieved as part of the current planning reform process.*
>
> *That the role of DPCD is reviewed and appropriate structural and management changes be initiated to instil leadership and advocacy of state strategies and policies."*

7.3.1 The Role and Structure of DPCD

The State's planning body is predominantly contained in one of six functional areas of DPCD that report to the Secretary of the Department - the Planning and Local Government Division. That division has four main streams that report to a Deputy Secretary:

- Local Government Victoria;
- Planning Policy and Reform;
- Planning Services and Urban Development; and
- Heritage Victoria.

Planning Panels Victoria reports directly to the Deputy Secretary. Planning functions within the Department are also contained in two other DPCD divisions. The group responsible for the preparation of the Metropolitan Strategy is located within the Strategic Policy, Research and Forecasting

[4] Source: Victorian Planning System Overview (Council of Australian Governments, August 2010)

Division, while planning functions in regional offices are located within the Community Development and Regional Delivery Division. This management arrangement is shown in Figure 2 above, with the planning functions highlighted in green.

FIGURE 2 - DPCD Organisational Structure

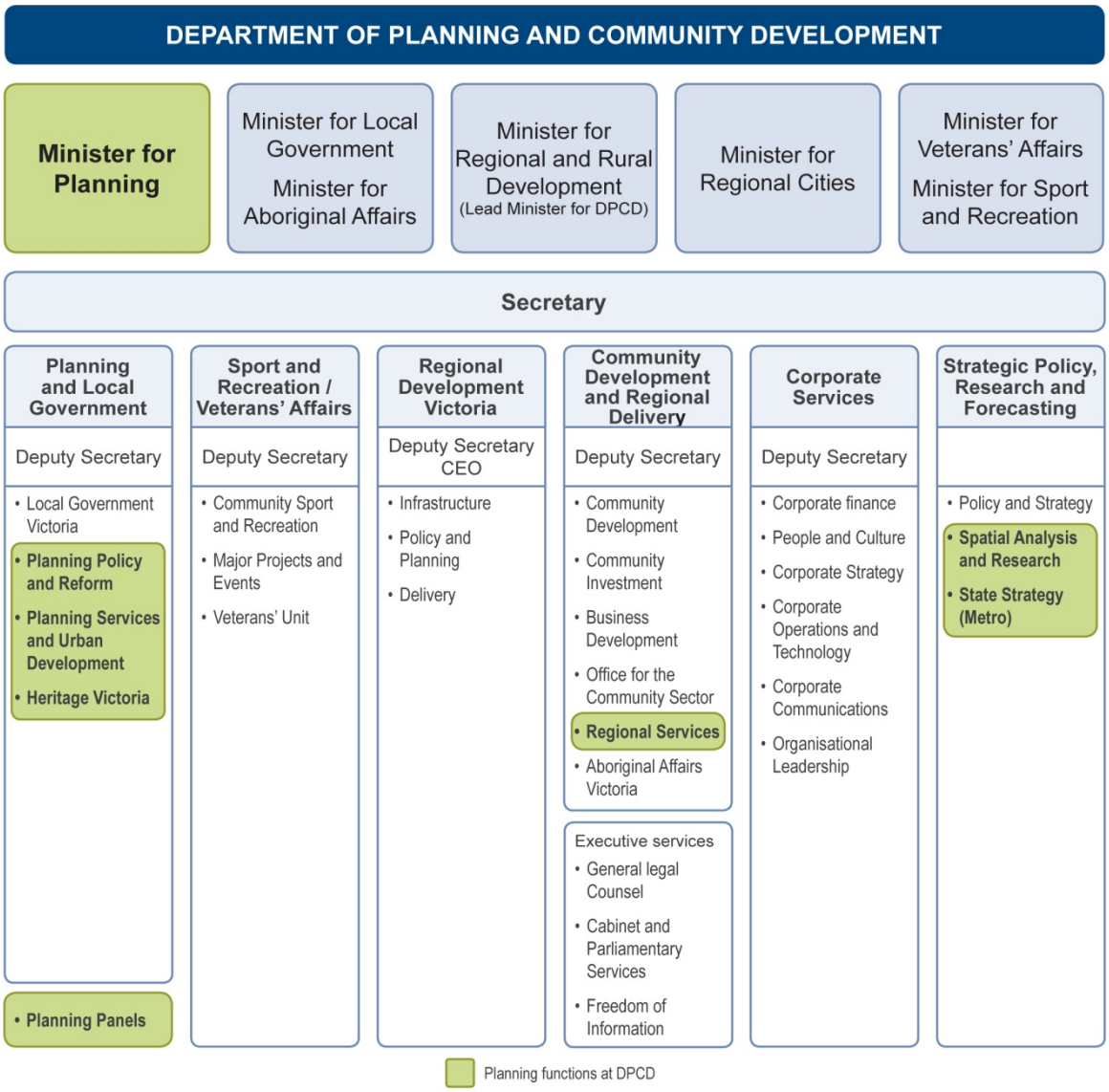
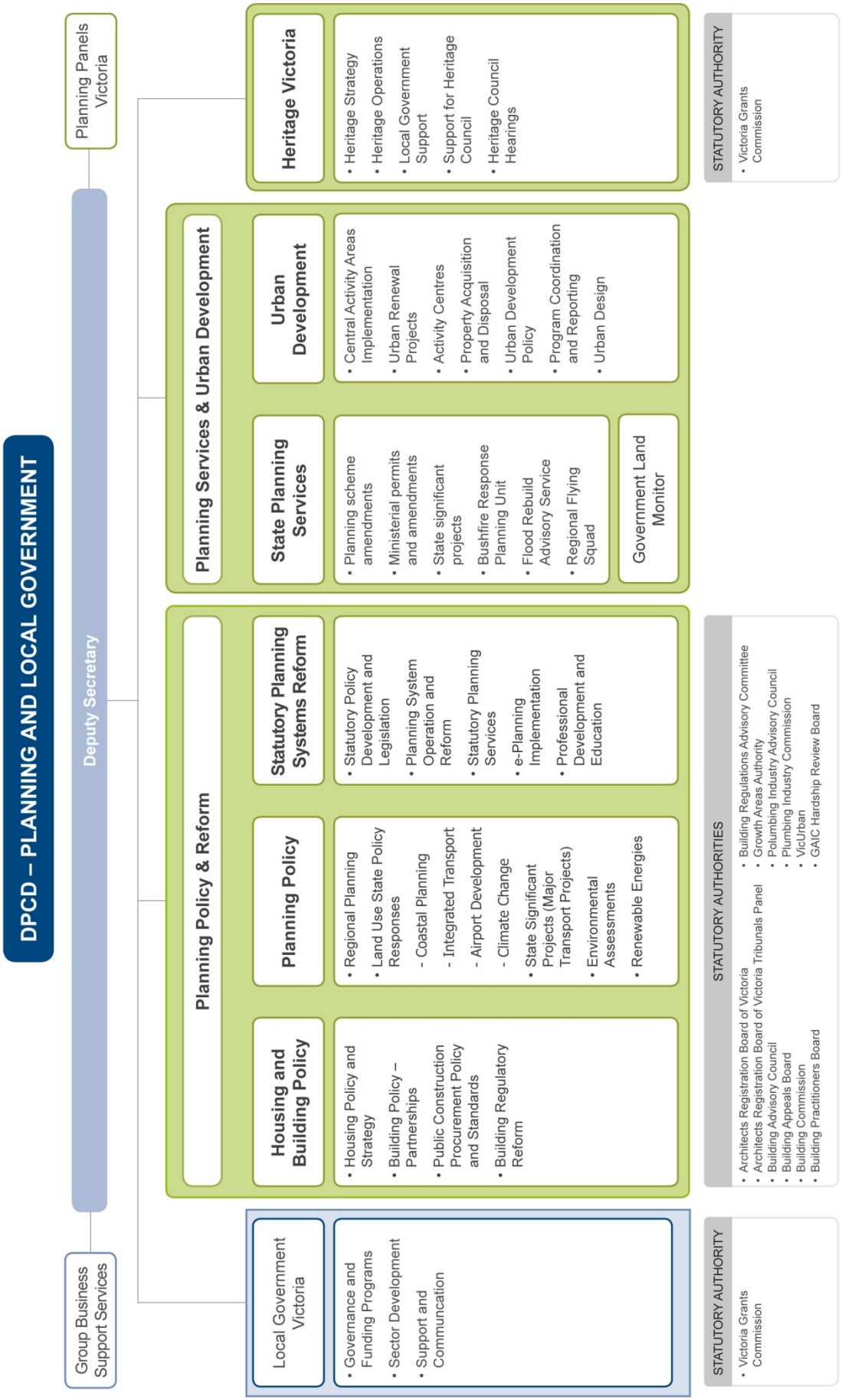


Figure 3 shows in more detail the areas of responsibility within the Planning and Local Government Division of DPCD. Under the Planning Policy and Reform Branch, the Statutory Planning Systems Reform Unit is custodian of the planning system and is responsible for maintaining and improving the VPP and the Act.

State Planning Services is responsible for metropolitan and regional planning scheme amendments and statutory approvals. It is the unit that prepares reports on amendments submitted for approval by a planning authority (usually a council) for consideration of the Minister or his or her delegate.

FIGURE 3 - DPCD Planning & Local Government Organisational Structure



State Planning Services is also responsible for preparing the majority of ministerial amendments. For the period June 2010 to July 2011, approximately 201 ministerial amendments under section 20(4) of the Act were approved. A further 259 amendments were subject to the normal public exhibition process.[5]

Planning and Local Government also covers 13 statutory authorities, such as the Growth Areas Authority, Building Commission, Plumbing Industry Advisory Council and the Architects Registration Board of Victoria.

The Department has regional offices across the State and a number of rural municipalities advised the Committee that they support DPCD's regional presence, as it provides planning advice and is a conduit into the DPCD head office in Melbourne.

As part of its consultations, the Committee met with various officers at all levels within the Department. It was keen to allow conversation to flow in an informal manner and to promote a frank exchange of views. These consultations were extremely useful.

At present, the DPCD has a number of different divisions. These divisions appear to be operating largely in silos. The Committee questions whether the current structure of the Department is the most appropriate to lead the planning system in its current form or in a revised form.

The Committee considers that the leadership role of the DPCD is central to the performance of the planning system, but has serious doubts about the leadership provided. While it might ultimately make a range of recommendations in relation to the planning system, the Committee is concerned that without strong leadership, any recommendations will fail to achieve their intended purpose. Consequently, the way the planning system is led by the DPCD is a key issue for the Committee.

7.3.2 Accountability and Structural Problems

Notwithstanding the elaborate organisational structure and resources of the Department, numerous submissions commented about the lack of leadership within the Department and a lack of transparency and accountability in relation to processes such as the planning scheme amendment process.

After meetings with both metropolitan and rural municipalities, the Committee formed the view that there was a general lack of understanding of the role and function of groups located in DPCD's Spring Street head office.

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[5] Planning Scheme Amendment Assessment & Decision - Monthly Report for September 2011 (DPCD)

The Municipal Association of Victoria (Submission No. 299) states:

> *"Although the Minister for Planning is ultimately responsible for the performance of the planning system in Victoria, it is very unclear how this accountability is ensured. Councils have raised concerns about the advice, support and requirements of DPCD, coupled with out-dated or inadequate practice notes and guidance materials, often drafted by other Departments.*
>
> *There are some fundamental organisational issues contributing to, or as a consequence of, the lack of ownership and accountability for the system and processes. DPCD is characterised by contradictory views about planning outcomes, relative roles and responsibilities and the advice provided to councils is inconsistent. There appear to be too many 'gatekeepers' without a cohesive Departmental view and a lack of feedback loops. This uncertainty is inefficient and creates unnecessary rework for councils.*
>
> *The leadership vacuum has seen Panels Victoria and VCAT assert authority and issues are dealt with case by case rather than systematically to build practice and improve consistency across the planning sector."*

The Property Council of Australia comments:

> *"Role of the Department of Planning and Community Development (DPCD)*
>
> *Members of the Property Council have expressed a number of concerns with the role of DPCD in the effective management and implementation of the Victorian planning system.*
>
> *Some of the issues raised regarding DPCD's role and capacity include:*
>
> - *Strong leadership is currently lacking within DPCD and staff morale is low. Industry and the community rely on DPCD to provide policy leadership and advocate in a positive manner for the planning system. One of the failings of the implementation of Melbourne 2030 was the fact that DPCD failed to articulate a vision, particularly in relation to medium density housing.*
> - *The role of DPCD, its internal culture and its own understanding of the role it should play within Victoria's planning system is in need of vital reform.*
> - *Often DPCD staff do not express an opinion on an issue or conversely, hold an opinion that has little foundation or justification.*
> - *DPCD staff are frequently confused about their role when appearing at panels or VCAT. They avoid giving a view about the*

application of state policy to a project on the basis that they are somehow fettering the discretion of the Minister whether to approve an amendment. This negates DPCD's role as the advocate of state policy, independent of the Minister's statutory role.

- *DPCD and other departments and agencies have a tendency to 'sit on the fence' and rather than provide technical guidance and direction, as should be their role within the planning system.*
- *Concerns have been expressed about the existence of internal, unpublished planning guidelines being used by some DPCD staff in the decision making and planning approvals process. There are examples of planning scheme amendments that have been through exhaustive processes and comply with VPP published guidelines, being extensively changed by DPCD staff for no apparent reason undoing years of work.*
- *DPCD seem reluctant to take responsibility for planning scheme amendments as gazetted (there are frequent errors) and to respond to issues raised by Planning Panels Victoria and VCAT in hearings.*
- *There is no active interface between DPCD and the profession, limiting the application of lessons learnt through practical application (or misapplication) of policy and processes."*

Throughout the consultation process it was obvious that the Department has very few key performance indicators that are reported on and which are accessible. Some of these key performance indicators can be found in State Government budget papers, however basic performance indicators are not available to the public or other agencies.

In submissions, there is generally positive feedback about the role of the regional offices of the Department. However it is clear from Departmental representatives in the regional areas that they do not have the budget or the mandate to undertake significant planning initiatives and give support to help implement those initiatives.

Those consulted also commented on the Departmental structure being too susceptible to changes of government and from changes by government. In the most recent change, State Government planning functions were absorbed into a large organisation in which planning is one of several functions handled in a broader DPCD. This reorganisation led to significant disruption in the administration of the planning system by removing key elements of what should comprise part of a distinct planning unit. In particular, the Strategic Policy and Research Division.

Some submissions noted that there is a silo mentality within the Department. This approach extends to its relationships with other government departments (such as the Department of Transport) and outside organisations such as with Local Government and referral authorities. A number of submissions comment on how difficult it is to understand what part of the planning section of DPCD one should approach with particular issues.

The Committee believes that the structure of the Department needs to be reviewed to ensure that appropriate levels of connectivity exist between its internal and external customers. This is important as the planning function of the Department impacts on every aspect of government, such as transport, recreation, employment and environment.

7.3.3 Maintaining the Planning System

Submissions emphasise the need for the Department to show greater leadership in the management of the planning system.

Rather than a program and culture of continual improvement, the Department tends to repair and patch parts of the system, often without fully solving the problem at hand. This approach has meant that as different issues have arisen over the past 15 years, no significant response has been made to mend or improve any fundamental aspect of the planning system.

Long standing problems often remain unresolved, as new issues arise with increased complexity and volume. For many stakeholders within the system what were once minor problems, have now become major hindrances. For example, a number of the submissions point to the lack of response to retail policy issues in Victoria, with the more recent review, that commenced in 2007, still not implemented or publicly reported. The failure to determine an appropriate retail strategy for the development of retail centres, has lead to an ad hoc approach to planning decisions that rely on clear direction.

Many of the submissions also make reference to the failure to come to a conclusion on other review projects such as the car parking provisions review, which is currently being reviewed again.

KEY FINDING - DPCD's Planning Role

The Committee considers that the role of DPCD should be reviewed and appropriate structural and management changes be made to instil a high standard of leadership and advocacy of state strategies and policies.

7.4 Local Government's Planning Role

The leadership role of local councils is vital in the current planning system. The Committee supports the role of local councils in undertaking strategic planning for their communities and their contribution to strategic planning at the regional level.

In the submissions, Local Government was criticised for the way it handles and carries out its role as the planning authority and the responsible authority.

7.4.1 Delegation of Decision Making Powers

Councillors are elected for four year terms. At the commencement of their term councillors are required to prepare a Council Plan that will outline the strategic objectives of the municipality for the four year term.

Upon commencing their term, apart from having to develop a Council Plan, councillors are suddenly expected to absorb a number of other key documents and policies. Some of these important documents include the Municipal Budget, the Strategic Resource Plan, the Municipal Health Plan and most importantly the Municipal Strategic Statement and associated Planning Scheme.

There is a great expectation placed on a person who may have been elected for the first time, often on a single issue, to obtain an immediate comprehension of the plethora of polices and strategies that have been developed by a municipality, with linkages into a similar number of State Government policies and objectives. This expectation is made greater by the requirement for that person to practically use the system and be involved in a complex decision making process upon election.

It is therefore not surprising that many councillors do not have knowledge of the MSS for their relevant municipality, let alone some of the more complex aspects of the planning controls. It may be unreasonable to expect a councillor to have a clear comprehension of such a complex system and associated structures.

A number of submittors suggest that the involvement of councillors in the planning permit process is unnecessary and without any obvious benefit and increases the time required to process an application.

Some submittors suggest that a system of centralised decision making, removing the need for councillors involvement in the decision making process, would create significant efficiencies within the planning system.

Some submissions question whether the current system that allows councillor intervention in day to day planning matters adds any value to the planning

system or potentially creates significant blockages within the system itself and leads to inconsistent decision making. For example, Submission No. 209 put forward by Stuart Strachan, makes the following observation:

> *"There is a lack of understanding, perhaps even a 'couldn't care less' attitude by Councillors, when they are in the role of an application review body. When they determine a planning application, on politically opportunistic grounds, the result may take decades before the land use fully returns to its intended strategic use."*

It is evident from the PPAR that there is currently a relatively high level of delegation in decision making. For instance, according to the latest statistics from the PPAR, 96% of applications are decided under delegation. Under the current Act, there is provision for a Development Assessment Committee Committee to be established and receive delegated authority to determine planning permit applications. This Committee notes that only one municipality has established a Development Assessment Committee to date.

The Committee also notes that the policy of the current government is to remove and dismantle the provisions relating to the Development Assessment Committee and to establish a Planning Referral Authority. Under this proposal there will be an ability for a council to delegate planning responsibilities to such a body for a part of the municipality or a class of applications.

However, under existing legislation there is significant scope for a council to devolve decision making powers to committees which they establish or to a senior officer. The Committee endorses the principle of delegated decision making.

The introduction of Code Assess and potentially the streaming of planning applications discussed in Part 10.1.1 of this report will increase efficiencies.

The PPAR identifies a range of performance benchmarks for planning permit activity across the State. However, there is also an added dimension to planning governance at the local level which is not borne out in the PPAR.

While there are likely to be reasonable differing opinions in relation to planning proposals, a number of submissions and even some council officers note that planning was too susceptible to local political influence. In some cases, councillors played to the gallery or made decisions focussing on a vocal group of individuals comprising a relatively small part of the community.

It is of course important not to tar all Local Government with the same brush. Overall, those submissions which comment on this issue sought a greater level of professionalism from councils and specifically from councillors. Perhaps for this reason, some submissions seek to remove planning powers from local councils, with a preference for these powers to be vested in a metropolitan

planning authority or a particular officer within council. Those responsible for the planning system at a local level should be mindful of such calls as they generally gain strength from the conduct of poor performers.

7.4.2 Local Government as Planning Authority

Local Government performs an integral function within the planning system as a planning authority. In its role as a planning authority, council has the dual role of setting the strategic direction through the Municipal Strategic Statement and amending, where necessary, this strategic direction through various planning scheme amendments.

The planning authority role of council is supported by some of the submissions and criticised by others. Many see councils as being well placed to deal with planning scheme amendments of a strategic nature. Criticism in relation to councils as a planning authority usually relates to the failure of council to maintain a regime of strategic planning or the failure of councils to deal with amendments in a timely manner.

In relation to the first criticism, a number of submissions have indicated that councils have not undertaken the necessary strategic planning to update their planning schemes with relevant studies, policies or structure plans. This criticism would appear to be valid, as many of the submissions put forward by councils themselves indicate that attempting to maintain an up to date suite of policies and strategies is almost impossible.

The Committee also heard from a number of councils that the review process for their MSS had not occurred since the original MSS's were developed over a decade ago. This is despite the Act requiring the MSS to be periodically reviewed.

The second comment in relation to Local Government's role as a planning authority is with regard to the time it takes to deal with an individual planning scheme amendment. The planning scheme amendment process is a laborious one.

Submittors argue that the length of this process is often extended out in the pre-exhibition period of time through the various reports, studies and additional work that is required by councils. This issue is highlighted by the submission put forward by the Appropriate Development for Boronia Group (Submission No. 201):

> *"The frustration experienced by Boronia residents over the lack of progress in the last five years is beyond belief."*

Further criticism is levelled at councils as a planning authority, when council goes through a planning scheme amendment and, at the end, upon receiving a

panel report, refuses to adopt the recommendations of the panel. This criticism about indefinite time frames and lack of consistency in the process is highlighted in the Urbis submission (Submission No. 216):

> *"The current Planning Scheme Amendment process is unclear for proponents, with little structure around timeframes or certainty around decision making processes. Industry concerns regarding the Planning Scheme Amendment process are well documented in the Modernising Victoria's Planning Act Response Paper 2 (2009). We concur with these issues, which can be summarised as follows:*
>
> - *The current process is lengthy with no statutory time frames.*
> - *The amendment can be abandoned by Council at any time.*
> - *There is no appeal process if the amendment is abandoned by Council.*
> - *The DPCD authorisation of the amendment can take considerable time and often focuses on details.*
> - *The same process applies for all amendments, regardless whether amendment is to correct a planning scheme anomaly or implement a broad strategic vision."*

It also may be argued that councils' role as a planning authority is directly impacted upon by the lack of direction coming from the Department in relation to state-wide policies.

7.4.3 Local Government as Responsible Authority

The role of Local Government as a responsible authority is discussed widely in submissions. The comments ranged from praise to criticism. Some councils were identified as being too political. Others were seen as pro-development or anti-development. The issue for this Committee however is the leadership role of Local Government. Some submittors noted that local councils have had to take a leadership role in certain areas where there has not been sufficient guidance provided at a state level. This is particularly so on issues such as sustainability, accessibility and climate change.

Some councils were singled out for showing leadership in improving the permit application processes. Glen Eira City Council and the City of Greater Dandenong were noted as councils that had taken an initiative in streamlining planning permit applications within the parameters of the current Act and planning scheme. From the Committee's own enquiries it was also apparent that Darebin City Council has also shown initiative in improving processes within current constraints.

A number of submittors commented on the desirability of having decision making at a local level by local representatives. Others submitted that decision making should be centralised into a metropolitan responsible authority.

Overall, the Committee endorses the role of councils as 'responsible authority', recognising the importance of administering and enforcing the planning scheme at a local level. The Committee considers this to be a fundamental part of the Victorian planning system that should not change. Rather, it is the way that planning applications are dealt with that needs to improve.

Local government has a critical leadership role in strategic planning for their communities and for efficiently and effectively administering their planning responsibilities.

The Committee believes that a reduction in the requirement for council to consider routine planning permit applications through a range of streamlining measures, will allow councils to focus on the important task of developing strategic planning policy.

KEY FINDINGS - Local Government's Planning Role

The Committee believes local councils have a key role in the planning system and that:

- The number of times a council needs to make a decision in a planning scheme amendment process should be reviewed;
- The council's primary role in strategic planning should be given more emphasis. The focus should be the setting of strategic goals and objectives for a municipality;
- Encouragement should be given to establishing bodies that enable a council to delegate decision making powers on selected matters; and
- At the beginning of any four year term, and throughout the term, councillors should undertake training in the planning system.

7.5 The Role of VCAT

VCAT was established under the Victorian Civil and Administrative Tribunal Act 1998. The Planning and Environment list forms part of VCAT. This list hears and decides applications by permit applicants, objectors and others in an informal manner and in a 'non court' environment. It allows a broad range of people whose interests are affected by a decision to participate in a hearing.

The Planning and Environment List hears and determines applications to review decisions made by Councils and other authorities; applications for enforcement orders, applications to cancel or amend permits and applications

for declarations relating to the use and/or development of land under the Planning and Environment Act 1987.

VCAT operates on the basis that each party to a proceeding bears its own costs. In this context it is an accessible forum to a wide range of stakeholders in the planning process.

The Planning and Environment List considered 3,326 matters in the year 2009-2010 and is under increasing pressure to maintain timely listing and hearing schedules.

VCAT is an essential component of Victoria's planning system.

Many submissions to the Committee addressed to the processes and associated costs and delays experienced once a matter is referred to VCAT.

While some submissions are complimentary of the independent role that VCAT plays, other submittors take issue with the adversarial environment, the use of legal practitioners and expert witnesses.

Supporters of VCAT, of which there are many, see VCAT as the only truly independent player in the planning process. For example, Ms Lesley Dalziel (Submission No. 162) expresses support for the operation of VCAT:

> *"The public right to protest and appeal adverse decisions must not be diminished. The appeal process through VCAT seems fair and is trusted by the community. It is important that the Panel is impartial and above corruption, for the community to maintain its trust. I have had only positive experience with and respect for VCAT and the appeal process."*

This opinion is replicated by submission of Friends of Mallacoota Incorporated (Submission No. 159) where the right to be heard and seek enforcement actions by an independent body is emphasised:

> *"Third Party rights are essential. Over the years our group and individual members have been involved in planning disputes at VCAT. It is essential that the public have recourse to bodies such as VCAT to challenge planning applications and decisions and have breaches of planning requirements enforced. It is important that this is not dependent on financial resources, and that there is no possibility of having to pay costs if a challenge is lost. The ability of the public to do this must be retained and strengthened."*

There is also support for VCAT and its operations put forward by the Local Government sector with the Victorian Local Governance Association stating (Submission No. 420):

> *"VCAT has its detractors, but its role as a review body more accessible than the court system is an important enabler of democratic participation and good governance in the planning system".*

This view of support for VCAT is echoed in the submission of Towong Shire Council (Submission No. 119):

> *"Council favours the retention of a planning tribunal for planning appeals and enforcement matters rather than a shift to a court based process. This will ensure greater access for all parties with less overall cost."*

There were contrary views. In the submission of Hobsons Bay City Council (Submission No. 229), probably more relevant to other aspects of the planning system rather than VCAT per se, it is suggested that too many matters are allowed to proceed to VCAT without appropriate levels of scrutiny or justification:

> *"the degree of access to VCAT by objectors and applicants requires revision with consideration of it being reduced. A review of the responsible authority's decision at VCAT should not be a 'second role of the dice', on a discretionary matter. Local government professionals are in a better position than VCAT members to make decisions on locally based discretionary matters."*

The view put forward by Hobsons Bay City Council, is reiterated in the submission of the Municipal Association of Victoria (Submission No. 299), in which it seeks to more clearly define the type of matters VCAT should be involved in:

> *"VCAT should limit scope of consideration to the application (& plans) at the time of council decision and only the issues that are in dispute."*

With the average waiting time for a matter to be heard at VCAT being between six and nine months, a number of submittors observe that the system is in need of either further resourcing or reform.

Mr Pin Zheng of Garden City Developments (Submission No. 270) identifies some of the issues encountered by his firm at VCAT and makes recommendations to improve the process, as well as commenting on the level of involvement VCAT should have in considering applications:

> *"The VCAT backlog needs to be addressed. Most VCAT cases we have been involved with do not involve legal issues, usually just traffic, design, privacy and building bulk issues. At VCAT it seems that the industry professionals (lawyers, planners, expert witnesses etc) feel compelled to analyse every issue in great detail. We believe this is unnecessary and a waste of resources for everyone involved. In fact*

we believe the review process could be conducted without hearings in 90% of cases. Perhaps a higher fee could be charged for those parties insisting on a hearing. Providing the 'reviewer' is independent of any of the parties involved, then we believe the development industry would embrace permit decision reviews that did not involve mandatory hearings."

Likewise, the Urbis Consulting Group (Submission No. 216), representing clients in the development sector noted:

"During the program of consultation we undertook prior to preparing this submission, we heard strong and consistent criticism of delays and lack of timely decision making associated with existing VCAT processes. Many of our clients had experienced high economic costs associated with listing and decision delays. It was also suggested that preliminary hearings could play more of a role in ascertaining main issues of contention, in order to streamline considerations at the full hearing stage.

We also consider that there is a lack of certainty around VCAT timeframes, particularly with the removal of dedicated funding from the Major Cases List. We firmly believe the Major Cases List funding should be re-implemented. It allowed a greater degree of clarity around timeframes for significant projects (worth $5M+), by enabling industry to bank on the timing certainty of a 16 week process. Based on the current waiting times, and uncertainty for large developments, the overwhelming majority of our major clients stated that they would support a 'User pays' VCAT system, provided that there is certainty around dates and timeframes for this service. We agree that a user pays system, if implemented correctly, could be an excellent alternative to the current VCAT system.

We are also strongly in favour of the retention of mediation services. The informal and cost effective service the mediation system plays is considered to be a huge asset to the system in terms of dispute resolution. VCAT mediation is an important service that should not be lost."

While both of these submissions highlighted some of the issues associated with VCAT and its associated processes, there is strong support for the retention of VCAT as an independent decision making authority within the planning system provided it is adequately resourced. This point is made clear in the City of Greater Geelong submission (No. 102):

"VCAT works well but needs better funding to use all members and avoid delays."

The Victorian Planning and Environmental Law Association (Submission No. 541) suggests that the recent piloting of the Major Cases List delivered significant efficiencies to the system. The association would appear to agree with the allocating of additional resources to VCAT to improve efficiency across the matters the Tribunal deals with:

> *"The Tribunal serves all of these functions with apparent resource constraints and when one considers the amount of money associated with the disputes come before VCAT; the Association suggests that the Advisory Committee consider whether additional resources should be allocated to VCAT. The Association suggests that if additional resources were given to VCAT, that criticisms associated with delay and the need for lists like Major Cases list would largely be overcome."*

The Committee considers that VCAT should be adequately resourced for the work it is required to undertake. However, the better way to relieve the congestion caused by long waiting times at VCAT is to relieve it of as much of its workload as is possible. In this regard, initiatives such as the introduction of a Code Assessment tool and identifying those uses and developments that should not require a planning permit has the potential to reduce the number of applications that are referred to the Tribunal. Similarly, the streaming of planning applications (discussed in Part 10.1.1 of this Report) should also remove part of the current 'failure to decide' workload of the Tribunal.

KEY FINDINGS - The Role of VCAT

The Committee considers:

- The role of an independent umpire is an essential part of the planning system;
- VCAT should be adequately resourced to reduce the current waiting time for all matters in the Planning and Environment List; and
- Action in response to other findings set out in this report (such as the proposal that seeks to stream permit applications) should result in fewer matters being referred to VCAT for determination.

7.6 The Role of Planning Panels Victoria

This section focuses on the role of Planning Panels Victoria rather than the planning scheme amendment process, which is dealt with in Part 10.2 of this report.

The role of PPV, the conduct of hearings and the way that PPV go about their tasks were the subject of many favourable submissions.

The Environment Defenders Office (Victoria) summed up the sentiment of most submissions. It states:

> *"People generally report a good experience of planning panels (open, consultative, expert based)...".*

Submissions from councils as well as individuals and groups compliment the relatively informal way that hearings are conducted and how comprehensively subject matter is dealt with by panels.

Negative comments are few among the 100 or so submissions that refer to the operation of PPV. The submissions that were critical are largely based on personal circumstances where the outcome was unfavourable to their position. However, one submittor (Submission No. 371) writes:

> *"At PPV we were made to feel as interlopers into what presented as an old boys club of planners."*

Submission 21 from another individual makes a similar comment:

> *"It is difficult for local residents who appear at a planning panel, representing themselves, when the Planning panel Chairperson and the Developers representative seem to know each other extremely well."*

The Committee notes that some submissions conveying critical comments do not develop a line of argument to substantiate the proposition. These include:

- Residents 3000 Incorporated (Submission No. 210) argue that panel decisions should not override the responsible authority;
- Planning Backlash Inc (Submission No. 427) consider that panels and Planning Committees should be scrapped;
- The Eaglemont Neighbourhood Conservation Association Inc. (Submission No. 421) urge the 'scrapping of undemocratic Panels and planning committees'.

Many municipalities, especially country councils, comment on the cost of panels, saying that costs are too high. Such comments came from Alpine Shire Council, La Trobe City Council, Campaspe Shire Council, Moorabool Shire Council, Mansfield Shire Council and Baw Baw Shire Council. Councils submitted a number of ways of reducing the costs of panels. They include:

- Having hearings 'on the papers' (that is, for PPV to consider submissions and report on a case without the need for a hearing with attendances of parties, including expensive advisors and so save);
- Requiring parties to focus their submissions, including expert evidence, and to pre-circulate material;

- The conduct of practice day hearings, through which PPV should identify the key issues to be addressed and direct timelines in which submissions will be received; and
- Panels to have the right to disregard submissions not based on planning grounds or submissions made for a commercial or vexatious motive. Moorabool Shire Council states:

> *"The compulsory requirement to conduct a planning panel, even when the submissions have no planning merit is onerous, time consuming and can be a financial block for the completion of planning scheme amendments. The planning panel process should be streamlined so that Councils have the ability to move through the amendment processes where submissions have no relevance to the Planning and Environment Act 1987 or where there are only a minimal number of submitters. State Government should enable local Councils to pursue planning scheme amendment which have received submissions but are of clear strategic relevance. Moorabool recommends that a process be put in place where a body such as Panels Victoria review the merit of an objection and determine whether a panel is required. Where doubt exists, the Panel should be empowered to dismiss an objection at a directions hearing for instance."*

The DLA Piper submission advocates for more a proactive approach from PPV ahead of a full hearing:

> *"...Panels taking a stronger role in sorting out issues in the lead up to hearings. Directions hearings are frequently mechanical procedures with no attempt to sort out the issues and force submitters to focus on the key issues. Panels should take a stronger role, if necessary with the Act being changed to make it clear that they have this role."*

Engaging PPV early in the amendment process would require legislative change to Part 8 of the Act which regulates the conduct of panels and to those sections of the Act in Part 3 that currently direct the responsibilities and activities of planning authorities.

Submissions noted that some proposed planning scheme amendments ignore previous panel reports and advice. Such instances raise the question whether participants in the planning system take sufficient note of the recommendations of PPV, especially in relation to policy development at the broad level. On this subject, one submittor (Submission No. 371) states:

> *"VCAT and Planning Panels Victoria must be required to have regard for relevant precedent.*
>
> *The fact that decision making at these bodies is so inconsistent as to be a lottery severely diminishes the regard with which they are held."*

Some submissions call for the expansion of the role and processes within Planning Panels Victoria.

The MAV encapsulates what other submissions also say:

> *"The Association submits that the planning scheme amendment process would be enhanced significantly if all amendments were overseen by a body with the skill-set of Planning Panels Victoria. The Association expects that if such oversight was provided, that over time, the length, level of repetition, level of unnecessary policy and areas of inconsistency in planning schemes would be reduced.*
>
> *In essence, what the Association is suggesting is that an 'end user' test be undertaken for all planning scheme amendments in Victoria. In addition, the Association suggests that Planning Panels be given a 'riding' function in each Planning Panel of reviewing the entire planning scheme amendment to deal with matters of drafting."*

Submittors comment that there was an accumulated wealth of knowledge in relation to state and local policy and experience within PPV that should be better utilised in the planning scheme amendment process.

Submissions were also made that the responsibility of PPV should be increased so that instead of making recommendations, their conclusions and 'recommendations' should be determinative. That is, where a panel now make recommendations about the passage of an amendment to the relevant planning authority and the relevant planning authority may or may not adopt the recommendations, the proposition is that the conclusions and recommendations of the panel must be accepted by and be binding on the planning authority.

The Environment Defenders Office (Victoria) Ltd writes:

> *"Decision-makers should be required to comply with panel recommendations, unless there is sound justification for not doing so, and only if reasons are given."*

Submittors noted the current legislated processes requiring recommendations followed by later consideration and adoption of a panel report by a planning authority added unnecessary delay to the time for dealing with amendments, they advocate for the removal of this step in the process.

Some submissions considered the outcome of panel hearings where planning policy was the issue, meant that PPV assumed a strong leadership role in the development or interpretation of policy.

The Committee is aware that over time PPV has been asked to consider major matters of public interest and as a result has shaped planning policy. Proposals

as diverse as lighting the Melbourne Cricket Ground, bay dredging, growth area planning via precinct structure plans, local policy and new planning schemes have been referred to panels and the outcomes have lead to the creation of policy by default.

The positive nature of submissions to the Committee endorses the manner in which PPV organises and conducts its business.

Submissions for enhancing the role of PPV include:

- the early engagement of panels prior to exhibition of an amendment to detect failings or lack of strategic support for a proposal that is likely to be rejected at panel stage;
- an opportunity for amendments to be vetted by an advisory division within PPV to critique and review the content;
- panels to be more directive in their early consideration of vexatious and irrelevant submissions;
- hearings on the papers where appropriate; and
- panel recommendations being determinative.

Submittors state that these types of changes would produce benefits, including a reduction in time taken for the processing of amendments, more efficient use of resources; and ultimately cost savings for all parties.

The Committee notes the various submissions to it and endorses in principle the idea of utilising the PPV 'pool of talent' for a wider purpose. The Committee stops short of advocating the adoption of all or any one of the suggestions at this stage because changes to the role of PPV may have flow on consequences other changes to the planning system.

KEY FINDINGS - The Role of Planning Panels Victoria

The Committee supports the utilisation of the expertise within PPV for a wider purpose.

Changes to the role and operation of PPV should be considered. They include the potential for:

- PPV to critique amendments at an early stage in the planning scheme amendment process;
- PPV being more directive in their consideration of submissions at an early stage; and
- Converting panel recommendations to determinations.

7.7 The Role of Referral Authorities

Referral authorities have an important role in the planning system and the achievement of an integrated decision making process for land use and development generally.

Section 55 of the Act requires an application to be referred to authorities specified in the scheme as referral authorities. The key objective of the referrals process is to provide authorities whose interests may be affected by the grant of a permit with the opportunity to ensure that a permit is not granted which would adversely affect the authority's responsibilities or assets. Referral authorities include VicRoads, Environment Protection Authority, Department of Sustainability and Environment, Country Fire Authority, various utility providers, catchment management authorities and others.

It is clear from submissions that the referral authorities value their role in being able to influence and comment on planning matters early in the planning process.

Coliban Water (Submission No. 37) notes:

> *"The referral system provides the water corporation with an effective opportunity to participate in the state planning system. This is critical as there is no other way to be involved at the planning stage of the development and influence land use and development. The effective management of risk in relation to our assets be they the natural environment of catchments that provide vital raw water supply used for drinking or physical assets such as water treatment plant, wastewater reclamation plants and the infrastructure required to deliver water supply and sewerage services to the community, relies on involvement through referrals."*

However, many council and private sector submittors expressed concern on the way the referral process currently operates particularly with respect to the performance of referral authorities regarding adherence to statutory timelines and the level of ownership and accountability taken by referral authorities regarding their particular requirements.

Referral authorities are given special status under the Act. They can mandate the refusal of an application for a planning permit. They can specify conditions which must be included in a planning permit and they can prevent the certification of a plan of subdivision by withholding their consent. This special status also imposes responsibilities on referral authorities that, on the basis of submissions, leaves considerable room for improvement.

Referral authorities attracted interest from many submissions and were submittors themselves to this review. Referral authority processes are discussed further in Section 10.1.3 of this report.

KEY FINDING - The Role of Referral Authorities

The Committee considers that referral authorities are one of the key leaders in the planning system and have a corresponding responsibility in the way that they participate in the planning process. Their performance should reflect this leadership role.

7.8 The Role of other Agencies in the Planning System

Some submittors suggest that DPCD, other departments, relevant agencies and referral authorities often appear to operate in isolation.

The poor connectivity between these various organisations becomes apparent in policy documents that reflect a poor integration of interdisciplinary policies. Implementation of a planning policy can often require policy alignment with and the co-operation and resources of other organisations.

An example is the relationship between the DPCD and the Department of Transport to implement integrated transport and land use policies. Greater interaction and cooperation between the various organisations is needed for better coordinated planning outcomes and policy implementation.

A number of submissions also comment on the separation between the department and some of the agencies directly associated with it, such as the Growth Areas Authority and Places Victoria.

The isolation and low connectivity apparent in DPCD's relationships is not unique to the DPCD. Many submissions and presentations stated that planning has become reactive, restrictive and process driven. This has occurred not just because of the lack of interaction and cooperation between organisations, but because of a lack of clarity and ownership of leadership roles and management responsibilities within the planning system generally.

Conversely, the Committee makes the observation that there appear to be few advantages in combining the planning functions of DPCD with other functions of the Department, due to limited operational synergies. For example, the planning functions are perhaps not best suited with the Office of Local Government, Aboriginal Affairs Victoria, the Veterans Unit and the other various community service functions that are undertaken under the broader spectrum of the Department.

The Committee met with the Victorian Government Architect, who expressed a desire to be more involved in planning decision making. While the Committee might see it as sensible to have the Victorian Government Architect or his or her office to comment on design issues, the Committee believes the role must be clearly articulated.

KEY FINDING - The Role of other Agencies in the Planning System

The Committee considers that appropriate structural and management changes need to be made to foster improved relationships between the various bodies that lead and participate in the planning system.

8. Architecture and Structure of the Planning System

8.1 The Planning and Environment Act 1987

The early Act was a fairly simple piece of legislation. However, over a period of 25 years, it been amended on 54 occasions and reprinted nine times. Its ambit has expanded from its original role and now the Act also implements other facets of Government policy on land use and development including development contributions, state infrastructure charges, the creation of the Growth Areas Authority, provisions on restrictive covenants, metropolitan green wedges, Melbourne Airport, Williamstown shipyard, Upper Yarra Valley and Dandenong Ranges Regional Strategy Plan, Development Assessment Committee's and state-significant projects.

On any analysis, the Act is now complex and puts the understanding of planning laws governing the planning system beyond the understanding of the ordinary person in the community. As Submission 62 notes:

> *"The planning system needs to be written in plain English, not 'planner speak' or 'legalese'."*

Even for planning and legal professionals, the Act is a challenging statute to understand.

The Committee considers that the Act is in need of 'modernisation' and also to the extent that it is possible, simplification. The objectives of Planning in Victoria set down in Section 4(1) of the Act should also be tested to ensure they remain relevant. The Committee considers it likely that as a result of its final recommendations there will be many changes required to the Act. Rather than make the current Act even more challenging to understand, it is time for a new 'Planning Act'.

KEY FINDING - The Planning and Environment Act 1987

The Committee considers that it is time to replace the current Act with a new Planning Act.

8.2 The Victoria Planning Provisions

The Victoria Planning Provisions (VPP) are established by section 4A of the Act. The VPP is a key element of the planning system. While the Act establishes the processes, the VPP contains the provisions to which the processes are applied.

Section 6(1) - 6(4A) of the Act outlines what the planning scheme for an area must contain and what it can do and what it cannot do.

Section 7 of the Act sets out the structure of planning schemes. It must specify state standard provisions and local provisions. The local provisions must include a Municipal Strategic Statement and any other provision which the Minister directs to be included in the planning scheme.

Ministerial Direction No 12 on the Form and Contents of a Planning Scheme explains what a planning scheme must contain. It provides that a planning scheme must comprise:

- State Planning Policy Framework (clauses 11 – 19);
- Municipal Strategic Statement (Clause 21);
- Local Planning Policy Framework (Clause 22);
- Zones (clauses 30 – 37);
- Overlays (clauses 40 – 45);
- Particular provisions (clauses 50 - 57);
- General provisions (clauses 60 - 67);
- Definitions (clauses 70 - 75); and
- Incorporated Documents (clauses 80 - 81).

The VPP was a considerable step forward when introduced into the planning system in 1997. The then Chief Panel Member, Mrs Helen Gibson in the Final Report - New Format Planning Schemes (April 1999) stated:

> *"The Philosophy of the VPP system*
>
> *2.1 Philosophy of Planning Reform*
>
> *Planning reform is a continuous process. The planning reform program over the past six years builds on past reforms.*
>
> *The past reforms include the work of the Building and Development Approvals Committee (BADAC) in the 1970's, which aimed to improve approval processes; and, the legislative and administrative reform through the 1980's.*
>
> *Legislative reform through the 1980's included consolidating legislation (e.g. Subdivision Act); removing obsolete legislation; and introducing new legislation (e.g. Planning and Environment Act). There was also significant reform to the organisation of government through this period, including the abolition of many quasi-government organisations (quangos).*
>
> *The planning reform, in the 1980's, essentially concentrated on legislation and did not fundamentally review sub-ordinate legislation, such as planning schemes.*

The introduction of the Planning and Environment Act in 1988 offered tremendous potential for innovation in planning schemes. This potential was not realised, largely because the existing schemes were 'rolled-over' to become new planning schemes under the Act. In fact, the system became more complex through actions, such as the splitting of the Melbourne Metropolitan Planning Scheme (MMPS) into around 50 individual municipal schemes. This resulted in a massive increase in the number of zones in the metropolitan area, with little thought as to whether differences in control were indeed necessary.

An underlying theme of all the reforms has been the achievement of micro-economic reform by reducing administrative costs and increasing efficiency. This is not a policy of any one government but sensible public administration.

With the election of the Kennett Government in 1992, the Government had a clear policy to create jobs and prosperity through:

- *Facilitating investment by substantially simplifying and clarifying the development approvals system; and*
- *Improving the organisation for planning to help decision making processes produce positive outcomes.*

The Government did not change the objectives of planning set out in Section 4 of the Planning and Environment Act but looked to how these objectives could be better achieved.

Shortly after the Government was elected, the Perrott Committee commissioned a series of projects to produce recommendations on reform of various aspects of the state's planning system, over six months from late 1992. These project teams reported directly to the committee rather than through the department structure and brought together staff and people from outside the department. This mix brought new ideas and a fresh look at the system.

Some of the findings of the Perrott Committee were that:

1. *The system was increasing in complexity both in the proliferation of zones and development approval instruments. There were 206 separate planning schemes and over 26,000 pages of ordinance. In the Melbourne metropolitan area alone there were over 150 residential zones and over 250 commercial and industrial zones.*
2. *Administration of the planning system was getting out of control. There were 4,871 separate amendments to planning schemes from 1988 to 1993 and over 42,000 development approval applications a year.*
3. *There was a lot of input for little output.*

4. *The focus was on running the system for its own sake rather than focussing on what the system was to achieve.*
5. *The outcome of the Perrott Committee's work was a series of recommendations to the Minister for Planning who announced details of the government's reform program in August 1993.*

There were two key planning reform objectives:

1. *Better planning schemes*
   - *a. facilitation and certainty*
   - *b. simplicity and consistency*
   - *c. fewer, more consistent, performance based zones*
2. *Better approvals procedures*
   - *a. permits as the usual form of planning approval*
   - *b. streamlined notice requirements for applications*
   - *c. new arrangements for objections*
   - *d. certainty for permitted development*
   - *e. better service by authorities*
   - *f. government facilitation of approvals*
   - *g. more efficient appeals system*
   - *h. changes to legislation*

This would be achieved by having:

- *a policy basis for planning schemes and decision making;*
- *consistent state-wide controls and provisions, with the ability for local discretion within an explicit policy context; and*
- *monitoring of system effectiveness.*

This system aimed to achieve the potential of the objectives of the Planning and Environment Act by concentrating on the outcomes the planning system is seeking to achieve, expressed through policy statements, rather than layers of control with unclear purposes.

The planning reform program therefore aims to achieve better processes through the introduction of better planning schemes. The emphasis on policy as the basis for controls should lead to thinking about the outcome rather than merely administering a control."

One of the common themes throughout the submissions was that the standardisation of the planning scheme was a good thing about Victoria's planning system. In fact, it was probably the most frequently identified aspect of the planning system that was considered to be a positive factor.

The Committee considers that the standardisation of the planning schemes is a highly desirable objective.

Another benefit of the current VPP system is that it is designed to be able to have appropriate 'add ons' and 'options' fitted to meet the needs and aspirations of the State or a municipality (though not so much a region). However, the ease with which this can be done (and is done) is one of the disadvantages of the VPP system as it has resulted in the fragmentation of the standardised system, with many variations between the different council planning schemes.

The structure also allows for permit triggers relevant to a parcel of land to be stipulated in more than one place in the planning scheme for a variety of matters that in years gone by were not regarded as planning issues. These permit triggers might be found in the zone or in several overlays or their schedules, through to the particular provisions and the general provisions.

Given the multiple locations that a permit trigger or other requirement can appear in a planning scheme, a vendor's statement (prepared under section 32 of the Sale of Land Act 1962 to be served on any person who wishes to purchase a property) will often not reveal all of the relevant provisions affecting a parcel of land for a potential purchaser.

In an example provided by the City of Melbourne, a development proposal occupied a page of text of planning scheme provisions outlining parts of the scheme that triggered the need for a planning permit.

As well as having to look for permit triggers in more than one location, decision guidelines are often found in numerous places. For example, relevant decision guidelines could be expected to be found in:

- The SPPF;
- the MSS;
- the decision guidelines of the zone;
- the decision guidelines of the overlay;
- the decision guidelines of any schedule to a zone or overlay;
- the Clause 22 local policies;
- any relevant particular provision;
- any relevant general provision; and
- any relevant incorporated document.

While there are many decision guidelines, it is not always the case that they are all considered. Given the multiplicity of decision guidelines there is a tendency by all participants to cherry pick aspects that suit their position.

Many submissions comment on the VPP. Moyne Shire Council (Submission No. 422) stated:

- *"VPP tools have expanded and are not considered to be 'fit for purpose' with councils having to find 'work arounds' such as using multiple overlays or varying ResCode through building controls...*
- *The VPP are confused in directing both the Responsible Authority and the Planning Authority*
- *Decision guidelines in various provisions are of highly varying utility."*

There are many unclear purposes expressed as objectives and strategies found within a multiplicity of provisions, including the state and local planning policy framework.

The VPP system has produced a series of planning schemes which contain multiple layers of control. The Committee notes that with more complex planning schemes, it is often difficult for even a professional planner (let alone someone unfamiliar with the scheme) to determine if a planning permit is required.

ISIS Planning (Submission No. 502) comments:

> *"...the Victorian planning system has become too complex. The system has become clogged with planning applications, many of which are unnecessary and do not achieve a net planning benefit."*

The complexity of the planning schemes seem to be beyond the understanding of the average person and elected representatives. This is unacceptable in any modern planning system.

It is interesting to compare the statistics that the Perrott Committee used in its report which sought to quantify the extent of the issue it was endeavouring to address.

However, to illustrate the point the Committee notes:

- The system is extremely complex;
- There are an increasing number of zones and overlays and associated schedules, with 32 VPP zones currently in place and 23 VPP overlays;
- Across the State there are 1579 different zone schedules, 2161 overlay schedules and 840 Clause 22 local policies, together with a host of incorporated and reference documents;

- There are now 82 planning schemes each with an average of 730 pages comprising approximately 60,000 pages in total, with the longest planning scheme being 1377 pages long;
- There are approximately 400 planning scheme amendments across the State per year; and
- There are in the order of 54,000 planning permit applications per year excluding secondary consents and section 72 applications to amend a permit - these later type of applications have not been counted but it is assumed that they would also run into many thousands of applications.

KEY FINDINGS - The Victoria Planning Provisions

The Committee considers:

- The current state wide standardised structure of planning schemes is strongly supported; and
- There is a question whether the VPP, in its current form, continues to fulfil its intended purpose in an efficient and effective manner.

The matters that will be considered by the Committee in the next part of its work will include:

- Whether the current structure and composition of the VPP is appropriate?
- Are each of the components necessary?
- Are other components required?
- What are the principles for determining whether a matter belongs in the VPP; and in particular in Clause 52?
- Is it possible to avoid or reduce the multi layering of controls?
- Can certain elements be presented differently (ie. grouped or compacted) to make them more useable?

In Part 9.5 of this report, the Committee looks at specific components of the VPP.

8.3 The Municipal Strategic Statement

Section 7(3) of the Act requires each planning scheme to include a Municipal Strategic Statement (MSS). Section 12A of the Act provides:

> *"12A (3) A municipal strategic statement must contain -*
>
> *a. the strategic planning, land use and development objectives of the planning authority; and*
>
> *b. the strategies for achieving the objectives; and*

c. *a general explanation of the relationship between those objectives and strategies and the controls on the use and development of land in the planning scheme; and*

d. *any other provision or matter which the Minister directs to be included in the municipal strategic statement."*

The current MSSs are prepared under this provision. Clause 20 of the VPP provides:

"20.01 Operation of the Municipal Strategic Statement

The Municipal Strategic Statement (MSS) is a concise statement of the key strategic planning, land use and development objectives for the municipality and the strategies and actions for achieving the objectives. It furthers the objectives of planning in Victoria to the extent that the State Planning Policy Framework is applicable to the municipality and local issues. It 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. The MSS provides an opportunity for an integrated approach to planning across all areas of council and should clearly express links to the corporate plan. The MSS is dynamic and enables community involvement in its ongoing review. The MSS will be built upon as responsible authorities develop and refine their strategic directions in response to the changing needs of the community. When preparing amendments to this scheme and before making decisions about permit applications, planning and responsible authorities must take the MSS into account."

Section 12B relates to the review of planning schemes. It provides:

1. *"A planning authority which is a municipal council must review its planning scheme -*

   a. *no later than one year after each date by which it is required to approve a Council Plan under section 125 of the Local Government Act 1989; or*

   b. *within such longer period as is determined by the Minister.*

2. *A planning authority which is a municipal council must also review its planning scheme at any other time that the Minister directs.*

3. *The objective of a review under this section is to enhance the effectiveness and efficiency of the planning scheme in achieving-*

   a. *the objectives of planning in Victoria; and*

   b. *the objectives of the planning framework established by this Act.*

4. *The review must evaluate the planning scheme to ensure that it-*

a. is consistent in form and content with the directions or guidelines issued by the Minister under section 7; and

b. sets out effectively the policy objectives for use and development of land in the area to which the planning scheme applies; and

c. makes effective use of State provisions and local provisions to give effect to State and local planning policy objectives.

5. On completion of a review under this section, the planning authority must without delay report the findings of the review to the Minister."

It should be noted that there is some support for the current format of Municipal Strategic Statements, as indicated by the comments in the Colac Otway Shire's submission (Submission No. 540):

"The significance of the Municipal Strategic Statement (MSS) and the ability to use the MSS to justify decisions on planning permits applications and to influence amendments to the planning scheme is supported by Council. Whilst there have been poor examples of complex and verbose MSSs in planning schemes, they provide a sound opportunity to express local policy directions and reflect local strategic planning outcomes."

Most submissions appear to be consistent in their view that Municipal Strategic Statements need to be reviewed in relation to their role and function in the planning system.

Issues relating to the review of the Municipal Strategic Statement are highlighted in the Shire of Melton's submission (No. 304):

"The Shire of Melton recently initiated a review of its Municipal Strategic Statement (MSS) which was incorporated in the Melton Planning Scheme in 1998. The review of the MSS highlights some of the problems facing Council's when updating its local content in its Planning Scheme.

Upon completion of the extensive review and re-write of the MSS (which is a lengthy and costly exercise for Council) a substantial change was made to the Urban Growth Boundary (UGB) which rendered the new MSS redundant. State and Local policy up to this time was that the Green Wedge physically separated Melton Township from Melton's Eastern Corridor (Caroline Springs / Burnside), and that the Wedge would be maintained and that the Melton Shire's growth would reflect this physical separation. The change to the UGB now envisages a continuous growth corridor out to Melton Township.

This highlights the length of time and administrative burden upon Council in reviewing its Scheme, and the lack of communication from State Government regarding an upcoming critical change of state policy affecting a local area. If Council had been made aware of the change of State policy early enough, the re-write of the MSS could have taken into consideration the change of approach by the State Government regarding the UGB.

Council is now needing to initiate a new review of the MSS, however it is wary of this given the impending review of the Green Wedge and Urban Growth Boundary, Metropolitan Development Strategy, and Developer Contributions, as all of these reviews will have substantial impacts on the MSS and its application. The cost and time burden experienced by Local Government in the reviewing of its Planning Scheme in the context of changing State policy direction should be acknowledged."

The submission from Melton Shire Council is supported by the City of Greater Geelong's submission (No. 102), which makes the following comments in regard to Municipal Strategic Statements:

"Four year reviews by Councils of Municipal Strategic Statements, which should coincide with four year Council election cycles, thereby allowing newly elected Councillors to review the MSS early in their elected term.

Major MSS reviews can take many years to complete. For example the MSS review by the CoGG, took 3 years which included 1 year of waiting approval from DPCD. There needs to be a more efficient process for such reviews and more support from DPCD."

Submissions by other parties comment on how the MSS is being used in practice. For example, the Shire of Mansfield (Submission No. 35) is concerned with the broad nature of the objectives outlined within the Statement:

"Focus must be placed back onto local policies to effectively guide local decision making, rather than replacing policies with broad statements in an MSS. MSS is, by nature, a strategic overview and is less useful when requiring detail on exercising discretion for day to day decisions."

Other submissions make comments and recommendations about the functionality and relevance of Municipal Strategic Statements, such as that put forward by the Property Council of Australia:

"MSSs should provide the local content for strategic planning, whereas the regional planning policies should address policy issues relevant to the region regardless of municipal boundaries. This recommended approach would remove the plethora of local planning policies that

have been 'bolted on' to planning schemes and have become a major cause of confusion, complexity and uncertainty in the decision making process.

A full review of each MSS should take place as part of a five year cycle and councils should be fully resourced to ensure this occurs. MSSs should contain a minimum of historical context (two to four pages) sufficient only to provide a reference point for the implementation of local policy. The rest of an MSS should comprise specific local policy and action statements which are to guide discretion to achieve specific outcomes during the five year life of the MSS. Policies and action statements should be clear and spatially specific in their application.

Recommendations:

Municipal Strategic Statements should be reviewed on a five-yearly cycle and councils must be adequately resourced to ensure this occurs.

Municipal Strategic Statements should provide the local policy for each municipality. Each Municipal Strategic Statement should articulate the key issues, challenges, opportunities and initiatives for each municipality aligned with municipal targets for growth and development and where such growth is to be accommodated."

The Committee considers that it is time to review the role, structure and content of the MSS. Specifically, a key question is whether the current structure of the MSS contributes in a positive way to better decision making or whether its role is more relevant to the content of the planning scheme. It is noted that in a recent VCAT case[6], the Tribunal commented:

"I have already mentioned that the first three grounds refer to or arise from cl 21.06-1 in the MSS. This clause, in the MSS, deals with land uses. It runs to nine pages. The MSS is constituted by clauses 21.01 to 21.13 inclusive. That is 13 different clauses containing varying numbers of pages. The MSS is supposed to be a brief overview, not an account of the local planning policy provisions. They are supposed to appear in cl 22. I was not referred to cl 22 in the current case. It seems that there will be a need, upon review of the MSS if not before, to revise it to fulfil its proper role allowing local policy provisions to appear in cl 22."

The Committee also questions how well the MSS does what is expected of it in Clause 20.01 of the planning scheme.

[6] Sanders v Bass Coast SC (2010) VCAT 782 (5 May 2010)

The Committee also considers that it is necessary to consider the relationship between the MSS and other statutory documents such as the Council Plan and other documents required under the Local Government Act 1989.

Many submittors comment on the high costs and time involved in reviewing the MSS regularly. Some Local Government submissions note that it is often necessary to dedicate at least one staff member to the task of reviewing the MSS and this process takes at least 12 months.

KEY FINDINGS - The Municipal Strategic Statement

The Committee considers:

- It is time to comprehensively re-examine the MSS, its role, its function and its place within the planning scheme; and
- The development of the Metropolitan Strategy and the eight Regional Growth Plans may impact on forthcoming and ongoing MSS reviews.

8.4 Local Planning Policy

Many submissions express concern about the limited weight given to local policy by decision makers, particularly the extent to which VCAT took account of local policy. For instance, the Malvern East Group (Submission No. 508) comments:

> *"As VCAT is not required to **implement** Local Policy, Members are not even obliged to give it more than token acknowledgement. All the effort that Councils and residents put into developing Local Policy is simply a waste of time and money if the applicant lodges an appeal..."*

Various council submittors share a similar view in relation to the weight VCAT gave to local policy. For example, the submission of Frankston City Council comments:

> *"VCAT has down-played the importance of local policy in its determinations, and / or given direction to interpretation. In heightening the importance of local policy, VCAT should be directed to give it due weight and consideration."*

The City of Glen Eira elaborates in its submission (Submission No. 100) with the following statement:

> *"The VCAT Act enables VCAT to simply consider policy. VCAT is not compelled to implement it. This situation undermines the importance of local policy in Council's decisions.*

Furthermore, it devalues the Council and community investment in creating these policies, and the approval given by the Minister for Planning."

The Committee considers that there is a lack of understanding about the role of local policy and its purpose. The confusion may well be caused by the way in which the planning scheme is drafted.

Clause 20 of the VPP states:

"20.02 Operation of the Local Planning Policies

Local Planning Policies are tools used to implement the objectives and strategies of the Municipal Strategic Statement. A Local Planning Policy (LPP) is a policy statement of intent or expectation. It states what the responsible authority will do in specified circumstances or the responsible authority's expectation of what should happen. The LPP gives the responsible authority an opportunity to state its view of a planning issue and its intentions for an area. An LPP provides guidance to decision making on a day to day basis. It can help the community to understand how the responsible authority will consider a proposal. The consistent application of policy over time should achieve a desired outcome. When preparing amendments to this scheme and before making decisions about permit applications, planning and responsible authorities must take the LPPs into account."

In the report of the Advisory Committee on the Victoria Planning Provisions, the following comments are made:

"Although the suites of zones and overlays in the VPP resemble those found within many current planning schemes, the fundamental difference is that they are intended simply to provide a framework within which decisions will be made according to an integrated set of policies contained either in the State Planning Policy Framework (SPPF) or the Local Planning Policy Framework (LPPF), which includes the Municipal Strategic Statement (MSS) and local planning policies. Much more than in the past, policy is expected to drive decision making. In this respect, the VPP are intended, in decision making terms, to be a means to an end, rather than an end in themselves. ...

The discretion which responsible authorities will exercise is much wider than hitherto, but the discretion entails an ability to say no, just as much as to say yes. Councils will have to be confident in the exercise of their discretion if they are to avoid claims of inconsistency in decision making or unacceptable outcomes. The only way they will achieve this is by developing, not only strong strategic plans, but local policies intended to guide day-to-day decision making in particular areas or

with respect to particular uses which are in accord with those strategic plans." (Underlining is the Committee's emphasis)

VCAT has commented on the role of policy. For example[7]:

"The role of local policies is to assist to guide the exercise of discretion. A local policy cannot prohibit, or effectively prohibit, a permit application."

In the Final Report - New Format Planning Schemes (April 1999), the then Chief Panel Member, Mrs Helen Gibson made the following important observations:

"The panels believe that unless policies are carefully monitored, they have the potential to undermine the intent of the planning reform program by becoming de facto zone controls. The emphasis will shift from what is permitted in the VPP zone to what is permitted under the Local Policy. They will be used as a prescriptive measure rather than as a means to establish a performance base. There will be the temptation to rely on local policies as proscribing the extent of discretion, in the interest of 'certainty', rather than always measuring a proposal against objectives. Alternatively, there will be the temptation to cast objectives themselves as prescriptions.

On the other hand, unless local policies are ascribed a legitimate role in guiding the exercise of discretion over use or development, there is little point in having them. Establishing the appropriate balance would be of critical importance during the initial stages of operating the new format planning schemes."

The Whitney Report[8] noted that:

"6.2 Certainty

Planning is not a precise science – the rapidly changing social and economic structures of society make planning systems based on precise and detailed regulatory controls too inflexible. The Victorian planning system is one in which decision making is underpinned by policy. It is a system that was introduced to maximise flexibility and, at the same time, facilitate good outcomes that would help to implement policy.

Experience with policy-based planning schemes is continually developing. Some stakeholders are still coming to grips with the task of writing, understanding and giving appropriate weight to policy."

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[7] Dinsbergs v South Gippsland SC (2011) VCAT 1452 (29 July 2011)

[8] Reference Group on Decision Making Processes - September 2002 Report No. 1

The Committee also notes that in a subsequent review of local policy the reference group on Making Local Policy Stronger, reported:

> *"The VPP intention was that where a planning objective cannot be implemented directly by a zone or overlay, a Local Planning Policy can be used. A Local Planning Policy is a statement of intent or expectation. It is a guideline not a control. It states either what the responsible authority will do in specified circumstances or what the responsible authority expects should happen. The consistent application of policy over time should achieve a desired outcome.*
>
> *The operation of Local Planning Policy has however become unclear over time. In many planning schemes, it has replaced other components of the planning scheme as the primary method of expressing strategic direction. This has led to a proliferation of local policy and confusion about how local planning policy should be used and what it can or should deliver. Ultimately this has led to considerable uncertainty within the planning system.*
>
> *To address this, Action 10 in the Cutting red tape in planning report (DSE August 2006) included a number of actions to make local policy stronger. To inform the implementation of these actions the Minister for Planning appointed a working group to:*
>
> - *Examine the role of local planning policy in decision making.*
> - *Develop local policy implementation principles.*
> - *Clarify the relationship between state and local policy.*
> - *Promote local policy that implements local and state planning policy objectives.*
> - *Inform a Ministerial statement on local policy.*
>
> *The working group included planners, local government representatives and officers of the Victorian Civil and Administrative Tribunal, Planning Panels Victoria and the Department of Sustainability and Environment. The working group heard submissions from the development industry and local government. In proposing significant changes to the application of the VPP, there was unanimity within the group. The working group considers that the VPP are basically sound and provide a good foundation for land use planning in Victoria. The strategically driven and primarily performance based nature of the system remain positive attributes of the Victorian planning system. In particular, the working group supports the following principles:*
>
> - *State policy must provide the overarching policy framework.*
> - *Local policies and provisions should provide the ability to deal with local objectives provided they are consistent with state and regional objectives and provisions.*

- *Local planning policy should provide guidance to discretionary decision making.*
- *However, after ten years of operation the application of some components of the VPP needs immediate clarification and action. The key issues are:*
  - *The development of voluminous local policies;*
  - *The need to clearly define and differentiate state and local interests;*
  - *The importance of effective policies and controls to deliver strategic outcomes at both state and local level;*
  - *The need to revise land use zones and overlays so that they better fit state and local strategic objectives; and*
  - *That DSE and local government must work in partnership to achieve the improvements to the planning system.*
- *The working group recommends the following Action Plan. The actions are complementary and will progressively make local policy stronger. This will be achieved by:*
  - *Ensuring the VPP tools are effective in delivering both state and local policy.*
  - *Clearly identifying when local planning policy frameworks and state planning policy frameworks operate.*
  - *Making local planning policy frameworks more focused, simpler and clearer.*
  - *Enabling prescription where appropriate by converting policy to zones, overlays and schedules where control rather than discretion is desirable.*

Implementation of the actions must be underpinned by a cooperative partnership between DSE and local government that promotes consistency and guides continuous improvement of the VPP."

Noting the submissions and taking into account the Committee's own experience, the Committee believes that consideration needs to be given to whether these reports have resulted in any meaningful changes or whether the vexed issue of local policy and its role in the planning system still remains. The Committee's preliminary view is that the issue is far from resolved.

The Committee questions whether the role that the Clause 22 local policy plays in the planning system is really necessary and if it is, whether the guidance provided by local policies is best expressed within a Clause 22 type environment or whether it could be better expressed and repositioned in the context of the current model of the planning scheme.

A number of submittors and previous reports suggest that other logical candidates for housing the local content or local guidance could be zones, overlays or particular provisions or perhaps new schedules to these provisions.

This would enable some local content to be set out not unlike that which occurs with some zones (Residential 1 Zone schedule) overlays (such as the Neighbourhood Character Overlay) and particular provisions such as the schedule within the gaming provisions that enables local content to be added.

KEY FINDING - Local Planning Policy

The Committee questions the role of the Clause 22 local policy and whether it should remain in its current form. Any reorganisation of Clause 22 has the capacity to affect the structure of the VPP and planning schemes.

9. The Administration of the Planning System

There are various facets of the planning system that are essential to how the planning system is administered. Some of the key issues that have been raised in the submissions include:

- Planning fees and costs;
- Infrastructure charges by permit conditions;
- Restrictive covenants;
- Section 173 agreements;
- The VPP with a particular emphasis on the structure and operation of zones and overlays;
- Growth area planning and interface areas;
- Stakeholder engagement; and
- Planning in rural and regional Victoria.

The Committee outlines the nature of the submissions regarding each of these issues below.

9.1 Planning Fees and Costs

There are significant financial costs associated with any planning system. Through submissions and presentations the Committee has heard from both proponents and responsible authorities as to the increasing cost of planning.

The preparation of a planning scheme and keeping it up to date through review and continuous improvement is costly. Planning studies and planning strategies have a significant ability to soak up funds. For example, it is not uncommon for a precinct structure planning exercise to cost in the order of $1 million for consultants and legal expertise.

The review of a MSS has been reported to cost in the order of $600,000 for a complex review. Lodging a permit application has costs associated with it. Councils are required to employ staff to consider those applications. Some applications require councils to seek external advice from consultants. Amendments to planning schemes are required to be based on sound strategic planning. Many of these costs are unavoidable.

The Committee identifies four areas in the submissions where particular concerns are expressed:

- Permit application fees and costs;
- Planning review fees and costs;

- Planning scheme amendments fees and costs; and
- Enforcement costs.

These are discussed below.

9.1.1 Permit Application Fees and Costs

Golden Plains Shire Council (Submission No. 172) states:

> *"**Application fees** - Council raises serious concerns regarding the existing fee structure and its impact on limited resources. It is estimated that the assessment of a recent application for an extractive industry proposal cost the Golden Plains Shire in the order of $30,000 to process. The estimated cost of development stated by the applicant (an existing quarry operator who already owned mobile plant and machinery) was no more than $100,000 and as a result the fee for the application was calculated as $855.00. A sum of $29,145 therefore came straight out of a planning budget which could have been better spent on any number of projects to directly benefit our communities.*
>
> *Complex applications typically require extensive community consultation in addition to expert technical and legal advice. Inevitably significant funds are then directed to a VCAT appeal as Officers are forced to defend a Council decision which already accurately reflects the objectives of State Policy.*
>
> *It is considered that by increasing fees for certain types of applications Responsible Authorities will be able to redirect funds to value-adding strategic planning projects or to the streamlining of internal assessment procedures."*

Many councils raise the issue of planning fees. Fees are currently prescribed by the Planning and Environment (Fees) Interim Regulations 2011 (SR No. 63 of 2011). Fees are not based on the cost of delivering the service of considering a planning permit application.

Fees generated through planning applications do not go close to covering the costs incurred by councils in relation to its statutory planning responsibilities. Councils submit that although it varies from council to council, planning application fees recoup little of the cost of running a statutory planning department. There is clearly a significant impost on a council in administering the statutory planning element of the planning system, even before taking into account the cost of any VCAT review or enforcement action.

It is not uncommon for a council to seek legal or expert advice on how to deal with a planning application. With the more complex applications, there are

significant costs incurred from the officer time spent in the assessment of an application.

The Committee was presented with interesting material in relation to the approach that exists in New Zealand which essentially involves a high level of cost recovery.

Some submittors note that the amount of supporting documentation required for a planning application requires many experts to be employed to prepare reports that have been requested by council. Many of the submissions suggest that these reports, such as green travel plans or community impact statements are reports that are above and beyond what is required in any planning application and often lack relevance to the application being considered.

Submissions received from permit applicants note that the holding costs associated with properties that are the subject of planning applications have the potential to become significant over extended periods of time.

KEY FINDINGS - Permit Application Fees and Costs

The Committee considers:

- The adequacy of the current schedule of application fees needs to be reviewed; and
- As part of the review of the fee schedule, the extent to which permit application fees can be used as a financial incentive or a penalty in the planning system to improve the processes, reward good practice and discourage poor practice by both responsible authorities, applicants and third party participants should be considered.

9.1.2 Planning Review Fees and Costs

Submittors also cite the increased costs of planning when a matter is the subject of review at VCAT. Submittors argue that the costs associated with time delays were high and argued for a speedier review system.

In relation to objectors participating in the planning application process, submissions note that the level of costs has increased. Objectors must factor in the time required to meet with council officers as well as potentially presenting their objection at council meetings. Objectors must then consider should they wish to take the matter further, the personal costs that might be incurred as part of the price of participation in the system.

The number of planning applications that become the subject of review at VCAT remains relatively high. Submittors comment that the process for dealing with these applications remains a significant financial hurdle for those

seeking to be involved in the planning system. It is arguable that an increase in fees may deter vexatious litigants from being involved in the process. However, the same increase in fees may in turn prohibit other members of the community seeking to utilise their third party appeal rights in the planning process.

9.1.3 Planning Scheme Amendment Fees and Costs

The planning scheme amendment process can be expensive for the council, proponents and submittors.

It was put to the Committee that the high cost of planning impacts on how up-to-date a planning scheme can be maintained.

Many councils indicate that the significant funds needed to undertake appropriate strategic planning and policy development are just not available and that the fees did not reflect the true cost of the work. The maximum fees that may be recouped by a council for an amendment under The Planning and Environment Regulations 2005 (the Regulations) is in the order of $2,918.

While larger councils in metropolitan Melbourne and country Victoria have the ability to spend significant amounts of money on policy development and implementation, medium and smaller councils are not in the same position.

From a regional Victoria perspective, some of the councils that presented to the Committee stated that the cost of planning is so prohibitive that in many situations strategic planning is not undertaken. This was especially made evident in the verbal submissions made to the Committee by the North East Planners Group.

Perhaps an extreme example, the Buloke Shire Council, in wanting to increase the supply of residential land in the town of Wycheproof is said to have been told by DPCD that it would be required to undertake a strategic assessment of land supply to justify a rezoning to produce about 20 lots. The Council has not proceeded because of the expense of doing so.

The Committee has also heard from smaller councils, where amounts of between $20,000 and $40,000 is often all that can be allocated in council budget to undertake complex strategic planning.

Even in a scenario where a council has had the opportunity to spend significant amounts of funds on the development of strategic information, it should be noted that many of the councils that presented to the Committee are unsure how funds will be secured to evaluate the success or otherwise of policies after they have been developed. In most situations the cost of review has not been forecast into future expenditure or resource allocation.

Costs also have a significant impact on proponents. The submission by Lascorp Development Group Pty Ltd (Submission No. 487) summarises the cost impacts from the proponent's perspective:

> *"The inherent uncertainty in the current amendment process invariably impacts on project viability, potentially resulting in significant cost implications to developers through holding costs, accrued interest, land tax, and rates."*

A proponent seeking to undertake a planning scheme amendment is required to prepare significant expert reports to validate an amendment. It is not uncommon that a proponent may spend in the order of $150,000 to $200,000 on documentation to support a planning scheme amendment.

The financial risks associated with planning scheme amendments including unspecified holding costs are significant. Submittors including industry groups are critical of the costs of an open ended process.

The costs and inconvenience to submittors is also raised as an issue for instance, the Nillumbik Ratepayers Association (Submission No.306) states that while there is no submittor charge to participate in a panel process compared to VCAT, the costs from a human resources point of view still remain. The group argues it is difficult for a member of the community to have the financial or human resources to adequately prepare for a panel hearing.

Submittors argue that the panel process is time-consuming from the perspective that the submittors must attend a number of council meetings as well as panel hearings, with panel hearings being held during work days and no financial recompense being available for those who choose to attend.

Presentations to the Committee from a number of groups, including the Environmental Defenders Office, indicate that more submittors are seeking to engage either legal representation or expert witnesses for a panel in order to participate equivalently, in a 'fight fire with fire' scenario, against representation used by professional participants.

Though there is no charge to make a submission to a panel or to appear at a panel hearing, there are potential costs should a submittor seek to have representation or utilise expert witnesses.

From the council perspective, where PPV recoup their costs from a planning authority, the expense of a hearing over many days and weeks costing upwards of $50,000 or $60,000 can be a drain on a council. Further indirect costs associated with council staff involvement hide the true costs of planning scheme amendments to councils.

Some councils have adopted a practice for proponent led planning scheme amendments; such that where an amendment is requested by a third party, before agreeing to place an amendment on exhibition, the third party must agree to pay all of the council's planning panel expenses which may be considerable.

The amount of human and financial resources that are involved in the planning scheme amendment process are significant. It is in the interests of all parties that the processes be reviewed.

KEY FINDING - Planning Scheme Amendment Fees and Costs

The Committee recommends a review of all stages in the amendment process to help reduce costs for all parties.

9.1.4 Enforcement Costs

The lack of resources and financial constraints are not only limited to strategic planning, but also to enforcement. Examples given to the Committee by the various organisations such as Loddon Shire, Swan Hill Rural City and Benalla Rural City councils indicate that enforcement is a significant issue.

The Committee was provided with a number of examples of enforcement process outcomes that exasperated enforcement officers. For example, in the Shire of Loddon a successful enforcement action that cost the council a significant amount of money in legal fees, resulted in the defendant paying a small amount off per week over a period of 20 years.

Benalla Rural City Council gave the example of a planning enforcement matter for which a $5,000 Penalty Infringement Notice was served on a local property owner when the enforcement action cost the council $30,000.

It is important not to react to the worst examples of any process. But for less well resourced councils to undertake enforcement action that may impose significant cost to the community makes enforcement less likely the next time action is necessary.

KEY FINDING - Enforcement Costs

The Committee recommends consideration be given to resourcing and authorisation of enforcement officers enabling them to work across municipal boundaries.

9.2 Infrastructure Charges by Permit Conditions

As well as the cost of processing applications and amendments in the planning system, other costs involve the provision of infrastructure for development facilitated by the planning system.

This is done at one of three levels: state infrastructure charges such as the Growth Areas Infrastructure Contribution, local level through a formalised Development Contribution Plan or on a one-off basis under planning permits.

The Committee acknowledges that a separate reference group is considering the issue of development contributions. The Committee does not propose to comment on the work in relation to development contribution plans.

The Committee does however, note comments made in relation to the current inability to impose requirements to contribute to the cost of infrastructure where the requirement arises under a planning permit application.

Sections 62(5) and 62(6) of the Act are the key provisions:

> *"(5) In deciding to grant a permit, the responsible authority may-*
>
> *(a) include a condition required to implement an approved development contributions plan; or*
>
> *(b) include a condition requiring specified works, services or facilities to be provided or paid for in accordance with an agreement under section 173; or*
>
> *(c) include a condition that specified works, services or facilities that the responsible authority considers necessary to be provided on or to the land or other land as a result of the grant of the permit be-*
>
> *(i) provided by the applicant; or*
>
> *(ii) paid for wholly by the applicant; or*
>
> *(iii) provided or paid for partly by the applicant where the remaining cost is to be met by any Minister, public authority or municipal council providing the works, services or facilities.*
>
> *(6) The responsible authority must not include in a permit a condition requiring a person to pay an amount for or provide works, services or facilities except-*
>
> *(a) in accordance with subsection (5) or section 46N; or*
>
> *(b) a condition that a planning scheme requires to be included as referred to in subsection (1)(a); or*

> *(c) a condition that a referral authority requires to be included as referred to in subsection (1)(a).”*

When only one person paying for infrastructure, a responsible authority can ask them to pay the full cost of that infrastructure. But where more than one person is being asked to pay, the same requirement would be unlawful.

For example, this prevents council sharing and allocating the cost of an infrastructure project to two or three land owners. The current need to prepare a development contribution plan for this scenario seems to require the council to first forecast the development (which is extremely difficult, if not unreasonable) and then, assuming it is possible to do so in the timeframe of a planning permit, prepare a development contribution plan. This is not possible.

KEY FINDING - Infrastructure Charges by Permit Conditions

The Committee considers that the practice to secure infrastructure funding via permit condition needs further consideration. Specifically, should there be a return to the ability for a council to seek a contribution from a landowner for the cost of infrastructure where the cost of that infrastructure is to be shared by more than one developer without the need for a development contribution plan.

9.3 Restrictive Covenants

Numerous submissions from individuals, organisations and councils raised a concern relating to the role of restrictive covenants in the planning system, or a concern about how restrictive covenants could be thwarted by planning permits.

Section 61(4) of the Act provides:

> *“(4) If the grant of a permit would authorise anything which would result in a breach of a registered restrictive covenant, the responsible authority must refuse to grant the permit unless a permit has been issued, or a decision made to grant a permit, to allow the removal or variation of the covenant.”*

This provision prevents a responsible authority from issuing a permit for a development which would be in breach of a restrictive covenant. The remedy for the applicant is to apply to vary or remove the restrictive covenant first and then apply for a planning permit. Consequently, a number of planning applications that are lodged with council arrive at a point where they are unable to be considered further.

But to reach this point, it is sometimes necessary for the council to seek legal advice on whether a proposed permit would result in a breach of a restrictive covenant. This is often a time consuming and expensive process and diverts resources from other applications.

Before the introduction of section 61(4), planning permits were being issued and developments were occurring in some cases in breach of a restrictive covenant. This caused considerable community angst at the time and the policy response of the Government was to amend the Act by introducing section 61(4).

In the recent report of the Victorian Law Reform Commission (VLRC) Easements and Covenants: Final Report 22, the VLRC recommends there be substantial changes made to the Act to end the relationship between restrictive covenants and the planning law. The VLRC recommends:

> *"38. We propose the following set of reforms to planning legislation and recommend further public consultation regarding their implementation:*
>
> *a. It should no longer be possible to remove a restrictive covenant by registration of a plan under section 23 of the Subdivision Act 1988 (Vic). Consequential amendments should be made to the Planning and Environment Act 1987 (Vic) and the Subdivision Act 1988 (Vic) to omit provisions that enable restrictive covenants to be removed or varied by or under a planning scheme.*
>
> *b. In determining an application for a planning permit, a responsible authority should not be expressly required to have regard to any restrictive covenant.*
>
> *c. The Planning and Environment Act 1987 (Vic) should provide that:*
>
> *i) The Victorian Planning Provisions may specify forms of use or development of land that cannot be prevented or restricted by a restrictive covenant.*
>
> *ii) A planning scheme may, in respect of a zone or a planning scheme area, specify forms of permitted use or development of land that cannot be prevented or restricted by a restrictive covenant.*
>
> *iii) A restrictive covenant is unenforceable to the extent it is inconsistent with such a specification.*
>
> *39. The Property Law Act 1958 (Vic) should be amended to clarify that a restrictive covenant that is inconsistent with any law is unenforceable to the extent that it is inconsistent."*

The series of reforms that the VLRC outlined would result in part, to a reversion back to the system which operated prior to the 2000 amendments to the Act. In fact the proposals would, if they were given effect, result in the planning schemes being able to 'neutralise' restrictive covenants without removing them or varying them.

The ability to have a say at a public process for landowners potentially affected would be by making a submission to the planning scheme amendment process and at a planning panel. The Committee is concerned about this, to the extent that planning panels generally do not comprise legal members. The adequacy of the forum is questionable.

Another suggestion put to the VLRC was that it should be possible to deal with the issue in another way which might include allowing a planning permit to be granted but not come into operation until the restrictive covenant is varied. This would merely require the repeal of section 61(4).

KEY FINDINGS - Restrictive Covenants

The Committee considers that:

- As a first step, the legislative block (section 61(4) of the Act) to the grant of a planning permit until a restrictive covenant is varied should be removed; and
- It should further examine the recommendations of the Victorian Law Reform Commission in its report on easements and covenants (Final Report 22).

9.4 Section 173 Agreements

Section 173 agreements have been the subject of considerable discussion through submissions and previous reports. The Modernising Report noted:

> *"10.1 Section 173 agreements*
>
> *Section 173 of the Act allows a responsible authority to enter into an agreement with an owner of land. These agreements are commonly known as section 173 agreements. A section 173 agreement may set out conditions or restrictions on the use or development of land, or seek to achieve other planning objectives in relation to land.*
>
> *These agreements are a very useful planning tool, but can be complex to administer, costly to prepare, and difficult to amend or end. There is also a growing perception that section 173 agreements are over-used and that, when linked to a development approval, they can be imposed rather than negotiated.*

In 2004, an expert group was appointed to identify options for improving the operation of section 173 agreements, including possible changes to the Act. It recommended legislation to streamline the process and structure of agreements and resolve underlying issues in the planning system that may be causing a greater use of agreements (see Review of section 173 Agreements, Discussion Paper (Mark Dwyer, 2004)). The options include:

- *amending the Act to ensure that an ongoing requirement to comply with conditions on development permits can be enforced; this could save time and cost*
- *amending the Act to ensure the power to impose conditions on a permit clearly includes the ability for permit conditions to require deposit of guarantees or bonds, to avoid the use for agreements solely for this purpose*
- *reducing or eliminating the involvement of the Minister in the agreements process except where necessary (for example, when the Minister is specifically involved in a particular agreement either as the responsible authority or as a party to the agreement)*
- *improving the availability of agreements for public inspection*
- *removing the requirement for agreements to be lodged with the Minister*
- *clarifying the requirements about when an agreement ends*
- *clarifying who are parties to an agreement where ownership of land has been separated, whether by subdivision or by sale of existing lots*
- *broadening the jurisdiction of VCAT to settle disputes relating to section 173 agreements."*

An article by Mr Mark Dwyer[9] noted the following:

"Although the use of section 173 agreements has been included within Better Decisions Faster for review, there is no suggestion that the system is fundamentally flawed. When used properly, section 173 agreements are a very useful planning tool, particularly where there are complex on-going obligations. The primary benefit of a section 173 agreement lies in the ability to bind an owner of land to covenants specified in the agreement (s.174) so that, when registered, the burden of those covenants runs with the land and binds future owners (s.182) and can be enforced by any person rather than just the contracting parties (s.114).

[9] Review of Section 173 Agreements Discussion Paper (Mark Dwyer, Freehills, May 2004)

> *Agreements can also impose positive obligations as well as restrictions. However, section 173 agreements can be complex and costly, and there is an increasing perception that section 173 agreements are being over-used as a planning device. The term 'agreement' is often a misnomer, as the requirement for many agreements is mandated by permit condition. When executed, agreements can be difficult to amend, particularly once the affected land has been subdivided. When registered on an owner's title, agreements can cause difficulties for developers in financing or obtaining mortgagee consent, or in the sale of the land where it is unclear to the future owner as to how or why they are bound by the agreement. The registration and administration of agreements also imposes resource constraints on the Land Registry."*

The Planning and Environment Amendment (General) Bill – Exposure Draft 2009 ('Draft Exposure Bill') included a set of provisions (from Section 178A onwards) which would have enabled applications to amend agreements to be made to a responsible authority, much like a planning permit. Decisions in relation to such applications could then be reviewed by the VCAT.

The question for the Committee is whether this would have achieved any efficiency in the planning system. While it would have made agreements easier to remove, does that help the planning system?

The ability for any person to seek the removal or variation of an agreement already exists. However, the parameters of this are limited. Section 184 of the Act enables an application to be made to the Tribunal in certain circumstances. This provision was most recently considered by the VCAT in *Sheradar Pty Ltd v Casey CC (includes Summary) (Red Dot) (2011) VCAT 1414 (18 July 2011)*:

> *"As Deputy President Dwyer said in New Dimension Homes Vic Pty Ltd v Frankston CC(30):*
>
> *(19) As I indicated in John Pernal Pty Ltd v Mornington Peninsula Shire Council (4), the test for the removal of a section 173 agreement (and the jurisdiction of this Tribunal under s 184 of the Planning and Environment Act 1987) is more limited than a simple planning 'merits' review. The very character of a section 173 agreement is its ability to be registered on the title to land over an extended period as an effective covenant to bind future successors in title to its obligations, and to achieve more broadly based planning objectives. In order to remove land from the operation of a section 173 agreement, in the absence of the consent of all parties to the agreement, an applicant must demonstrate more than a change of planning circumstances as might justify an amendment to a planning permit or a case for rezoning of land.*

There is no definitive test to determine when it will be inappropriate that an agreement should continue to apply to land. Clearly though, from the words of section 184(4)(b) , the Tribunal must have regard to any relevant permit. In this context, I consider it will also be relevant to have regard to the following factors:

- *When the permit was granted.*
- *What consideration the responsible authority (under section 60(1A)(i)) and the Tribunal (under section 84B(2)(h)) gave to the agreement when deciding to grant the permit.*
- *How does the permit affect obligations under the agreement or vice versa?*

Looking beyond any relevant permit, it is relevant to consider:

- *The age of the agreement and the context and circumstances surrounding the entry of the agreement.*
- *What were the original intent and obligations of the agreement?*
- *Whether circumstances have changed since the agreement was entered.*
- *Has the land and the owner had benefit from the agreement or do they continue to enjoy benefit from the agreement?*
- *What is the relationship between the benefits to the land and the owner of the agreement and any ongoing responsibilities or obligations under the agreement?*
- *What benefit would there be in maintaining the agreement?*
- *Should the land and/or the owner continue to accept the obligations under the agreement?"*

The Committee is also aware that many agreements are entered into as part of a negotiated outcome. It would be a concern if these negotiated outcomes were subject to the uncertainty of the prospect of parties applying to undo these negotiated outcomes.

In his very detailed submission to the Committee, Brian Johnson suggested a number of changes to the provisions of the Act dealing with agreements. The Committee considers that there are a number of suggestions made in his submission that are meritorious and would improve the section 173 agreement process. These include:

- Amending provisions regarding the ending of an agreement to remove the need for the Minister's consent unless the Minister is a party to the agreement; and
- Amending the requirements for creating an agreement to remove the need to lodge a copy of the agreement with the Minister for Planning.

The Committee will give more detailed consideration to further suggested changes in its report outlining final recommendations.

KEY FINDINGS - Section 173 Agreements

The Committee considers the role and processes associated with section 173 agreements require further analysis, with the objective being to:

- Explain where agreements should and should not be used; and
- Streamline the processes associated with creating, amending and removing agreements.

9.5 The Victoria Planning Provisions

9.5.1 Structure of Zones

There are 32 state standard zones in the VPP. This is an increase from the original number of zones introduced when the VPP first commenced. The creation of new zones such as the Activity Centre Zone, Green Wedge Zone, Urban Growth Zone, Priority Development Zone and the Rural Activity Zone reflect a perceived need for purpose-built zones to be used in the place of the normal suite of zones and overlays.

Zones generally comprise:

- Purposes;
- A table of uses;
- Specific provisions regarding use, development, subdivision and advertising;
- Decision guidelines; and
- Schedules.

While some zones allow and make provision for limited tailoring to particular circumstances mostly regarding floor space or lot size, generally zones cannot be altered from the standard format. While this is a desirable aspect of the zones, because it maintains state-wide consistency, it has created some issues (raised in submissions), especially in relation to the following:

- Rural areas where large areas are zoned Farming Zone, capturing a large number of uses which might demand a different approach in different rural areas; and
- The inability to schedule out land uses that a council thinks should not require a permit or should not be prohibited.

A number of submittors comment that while the standardisation of zones was a good thing, the lack of flexibility in the zones was a disadvantage. A

submittor with experience of the planning system in New Zealand notes that in that jurisdiction, the range of controls in a zone included a non-complying column which stopped short of prohibiting a land use. The rational was that, although the land use was not what the scheme envisaged, it could be considered subject to strict analysis as to compatibility. The South Australian system provides the same opportunity, subject to an exhaustive assessment process.

The Committee was often faced with submissions in relation to the Farming Zone and how it prohibited many forms of land use that ought to be considered as appropriate in some rural areas.

On a more general level, it was put to the Committee that in some areas of Victoria it might be appropriate to have certain activities prohibited, but in other areas within the same zone it was desirable that they at least be able to be considered. This issue was raised by rural municipalities in particular.

This could be achieved through either the introduction of further new zones and/or local variations to existing zones. This approach could allow:

- discretionary uses (Section 2) to be exempt from a permit requirement (Section 1); or
- prohibited uses (Section 3) to be discretionary (Section 2), subject to close scrutiny in the planning scheme amendment process.

An example raised by private submittors related to the prohibition on recreational motor sports in the Farming Zone. Steven Tjepkema (Submission No. 208) outlines how the change from the Rural Zone has impacted on the recreational vehicle-oriented events.

> *"Motorsport activity has been disallowed as a result of the change in the zoning from Rural to Farm Zone, as a result of a lack of events this year I have had to travel interstate... Virtually overnight, motorsport was essentially made a prohibited use."*

The Committee makes the observation that not all land zoned Farming Zone is suitable for farming. But large areas of Victoria are zoned Farming Zone and predicated on the basis that the primary purpose of the land is for agricultural production. This includes bushland where the majority of recreational vehicle events take place.

Originally under the VPP schemes, large parts of rural Victoria were zoned Rural Zone. Following Amendment VC24 to the VPP in June 2004, which introduced a new suite of zones for rural Victoria, local planning schemes were amended by replacing the Rural Zone with the Farming Zone. Land was rezoned under section 20(4) of the Act, essentially with no opportunity for public comment. The rezoning was not a neutral rezoning. In fact, the change

to the zoning had significant implications for many in rural areas of Victoria, with many issues being raised. It is somewhat disappointing that the issues have not been rectified.

This is borne out in many submissions of numerous councils, organisations, and individuals which raise concerns in relation to the restrictive nature of the Farming Zone compared to the previous Rural Zone.

The Pyrenees Shire Council (Submission No.483) suggest a loosening of the Farming Zone provisions to make a number of uses including industrial use more accessible in this zone. It acknowledges the need to make a change in a way that does not open up the full panoply of uses and abuse the zone.

The Pyrenees Shire Council states:

> *"Uses such as 'Industry' are currently prohibited under the Farming zone provisions, which were previously a discretionary use under the former Rural Zone that it replaced. In particular, the Council requests that an amendment be made to the current Farming Zone provisions to provide discretionary power for consideration of a limited range of Industrial uses. Such a change would provide farmers with the ability to undertake supplementary 'light' industrial enterprises that could generate local employment opportunities and income within regional areas, without impacting on the ability for their land to be effectively used for a bone fide agricultural purpose. Limitations could be provided on the size and types of industrial uses that could be undertaken, so as to minimise amenity impacts and to ensure that the industry can be effectively serviced."*

If one were to go down this path, there would be a need to introduce provisions that ensured that the use did not become anything more than a small scale exception to an industrial use establishing in an industrially zoned area. Criteria could include land area, number of employees, and the imposition of the 'in conjunction with' test.

Another submission by Pyrenees Shire Council suggests using the home occupation provisions to enable other things to be done in the zone. For example:

> *"As an alternative to the options presented above (although not the preferred one), consideration could be given to introducing a schedule into the current Clause 52.11 (Home Occupation Provisions) that could be tailored to local requirements and provide the flexibility to increase the maximum allowable gross floor area (currently limited to 100 sq.) and the number of people that could be employed as part of the home occupation within certain zones."*

The Committee does not necessarily agree with the proposal, but the submission highlights how rigid certain zones provisions are. The Committee believes that consideration should be given to whether it is possible to draft some of the more broadly used zones, such as the Farming Zone, in a manner that provides more flexibility in what is permitted while maintaining a standardised format.

In the context of the Farming Zone, the range of land uses that may be appropriate in some areas within the zone may not be appropriate in other parts of the zone.

The same issue was also raised in the context of the Township Zone. The submission of Pyrenees Council notes:

> *"4. Township Zone*
>
> *The Pyrenees Shire area currently includes a number of small rural townships that are located principally within the Township Zone, which is designed to cater and provide for a range of residential, commercial and industrial land uses. Under the current suite of allowable uses provided for by this zone, an industry is only permitted to be approved in circumstances where it is not listed within Clause 52.10 (Uses with Adverse Amenity Potential). Council believes that the current controls on Industrial uses is overly restrictive, and prevents Councils from allowing uses such as bakeries, joineries, panel beaters and a range of other uses that should reasonably be able to be considered within the townships concerned. It is recommended that the current Township Zone provisions were amended to provide Councils with discretionary powers to be able to consider a range of the low impact uses listed within Clause 52.10 (i.e. with buffer distances of less than 100 metres).*
>
> *Without adjustments of this type and those advocated in Section 3.1 above, the only areas within the Shire where an industry (almost of any type) can be established are the Council-sponsored industrial estates in Avoca and Beaufort. This situation is having serious impacts on the economic and social development of other smaller townships throughout the Shire".*

KEY FINDINGS - Structure of Zones

The Committee considers:

- The structure of zones warrant further consideration, including the possibility of allowing more local variations; and
- Given the widespread impact, some early consideration should be given to the review of the Farming Zone.

9.5.2 Operation of Overlays

One of the key issues with the planning system is the extent of 'permit required' development. Submissions contend that some matters addressed in planning overlays could be more appropriately handled under other jurisdictions and that some permit trigger issues simply stem from the construct of the overlays.

In Submission No. 196, HIA comments:

> *"There are instances where planning permits are only required for single dwellings because of an overlay to address a technical issue that could be dealt with by the building regulatory framework.*
>
> *The need to obtain planning permit for what is a technical requirement necessitates local councils to use resources that could be better employed on planning issues.*
>
> *There are a number of opportunities to exempt development from the planning system by removing or redrafting planning scheme overlays.*
>
> *In the case of the Special Building Overlay and Land Subject to Inundation Overlay, these controls commonly require that the finished floor level is above the designated flood level set by the relevant authority. These flood risk matters can be adequately dealt with through the Building Regulation 802 for Designated Flood Areas. Mapping of the flood areas can remain in the planning scheme to provide information to landowners of the risk, however the planning permit trigger could be removed as the floor level will be addressed at the building permit stage.*
>
> *If there is an overlay and a planning permit is required, a simpler assessment tool could be used, such as the Self Assess or Code Assess Track proposed by the Development Assessment Forum's Leading Practice Model.*
>
> *A Self Assess Track could involve the issue of a standard consent provided standard criteria are met. In the case of a Wildfire Management Overlay this would include ensuring vegetation management, water supply, access and construction requirements are met."*

The VPP response to exempting development from the need for a planning permit rests essentially in two places:

- Clause 62.01 and 62.02 of the scheme, which applies general exemptions against any requirement in the scheme; and
- Provisions within certain overlays that enable a schedule to 'switch off' the permit requirement in particular circumstances.

The submission from Stephen Rowley (Submission No. 256) challenges conventional thinking. To ensure that the full flavour of the submission is conveyed, the Committee sets out the relevant part of the submission in full:

> *"The desire to ensure that permit triggers were kept out of the hands of Councils seems to have been paramount when drafting the VPP, and nowhere is this more obvious (and more detrimental) than in the structure of the overlays. The 'activating' permit trigger clause is placed in the front (state) part of the overlays, and all the schedule can do is exempt things back out. This back to front structure maintains the polite fiction that the 'real' control is in the State-controlled VPP section, but in practice this is just a contrivance.*
>
> *This causes a number of problems. Firstly, the controls become circuitously worded and much easier for lay people to misread. The control is needlessly dispersed through two separate clauses and its meaning is distorted by the unfortunate backwards wording used in the schedule to the overlay, where the emphasis is on what doesn't need a permit.*
>
> *This isn't just an issue of clarity, however; the workload ramifications of this structure wide are difficult to overstate, as they create an inherent structural bias towards over-regulation. In practice, buildings and works controls default to 'on' catching virtually everything. This has meant that efforts to reduce the burden of the system have focussed on trying to expand the exemption provisions within overlays and Clause 62. Those efforts are welcome, but we will always be playing catch up until the 'permit for everything' bias of the VPP is reversed.*
>
> *If schedules actually included the permit triggering clause, the question of what developments really warrant a permit would inevitably be more front and centre when those controls went through the amendment process. At the moment, it's too easy for the question of what permits will be triggered by a control to recede in importance when new overlays are considered by councils, panels and the Minister. An 'opt-in' permit trigger system would hopefully cause more consideration before new overlays introduced sweeping needs for permits, by forcing more consideration of what does need a permit rather than putting together ad-hoc lists of what doesn't.*
>
> *I appreciate that implementing this change would be complex. Presumably it would require a state wide flipping of the controls to meaning neutral equivalents, with the real benefits following after that as incoming controls were better worded and the old catch all controls were gradually rolled back. It would be worth the effort, though; the*

number of meaningless buildings and works permits taken out of the system by such a change would be enormous."

The submission raises interesting issues which should be considered further by the Committee.

The second aspect in relation to overlays is the way that they are layered. It seems to be the case that unlike some of the available zones, there is no multi-purpose overlay that is able to outline several basis of requirements for the need for a buildings and works permit or a vegetation removal permit.

Consequently, multiple overlays are applied to land making the permit triggers and decision guidelines dispersed. It is not uncommon in some municipalities to have more than five overlays apply to one parcel of land.

For example, a property in Nelson Street, Shoreham is encumbered with the following overlays:

- Design And Development Overlay (DDO);
- Environmental Significance Overlay (ESO);
- Significant Landscape Overlay (SLO x2 schedules);
- Vegetation Protection Overlay (VPO);
- Wildfire Management Overlay (WMO); and
- Heritage Overlay (HO).

This overburdening of controls results in a complex decision making process and in turn, frustrations through subsequent delays and confusion. In the Committee's own experience, this is not uncommon.

The Committee considers that this aspect of the VPP requires further consideration, particularly in relation to comparably themed provisions with similar permit triggers and requirements, such as the ESO, VPO and SLO.

KEY FINDINGS - Operation of Overlays

The Committee considers:

- The structure of permit triggers within overlays should be reviewed; and
- Multi-purpose overlays should be investigated with a view to reducing the need for layering.

9.5.3 Performance Based Provisions versus Prescriptive Controls

One of the key issues raised in many submissions was the vagueness of objectives and uncertainty in the way many provisions both within the zones

and overlays and policy provisions have been drafted. Many submissions sought a higher level of certainty and the use of more prescription. On the other hand, many submissions sought higher levels of flexibility, rather than what has been interpreted as the prescriptive nature of ResCode.

One of the principles behind the VPP was the desire to ensure that planning schemes are strategically based. A matter raised with the Committee is whether the level of objective-based planning in the scheme and decision guidelines which are drafted with flexibility in mind is appropriate.

The submission from Stephen Rowley makes the following observations:

> *"Instead of scheme controls weighing competing imperatives and giving direction as to the way planners should respond, the scheme becomes a catalogue of competing objectives which different decision makers will inevitably weight differently. This causes considerable regulatory burden, erodes confidence in the planning system, and leads to inconsistent outcomes…*
>
> *We need to move from a situation where strategic planning is seen as essentially a high level objective setting operation, and rethink the way we undertake strategic planning so that it is what it should be; the codification of spatial solutions to achieve poly objectives.*
>
> *There are number of ways to go about this. Firstly there needs to be a cultural shift around how scheme controls are written. Performance-based controls have become almost an article of faith, with use of more prescriptive standards in local controls seen as something pursued by poor planners at renegade Councils. There needs to be more recognition that prescription tools such as mandatory height controls, when properly justified, are of considerable value in providing certainty and achieving consistent outcomes.*
>
> *There also needs to be greater recognition that true 'performance based' controls are not vague. A true performance based control might be something like the following:*
>
> - *"A building shall not overshadow more than 40% of the adjacent park at 2pm on 22 September."*
>
> *Such a control allows flexibility in how the performance outcome is achieved, but it is still tangible and measurable. In Victoria, we have tended to understand performance based to mean something much vaguer like these:*
>
> - *Ensure that development does not adversely affect the significance of heritage places.*
> - *Ensure signs do not contribute to excessive visual clutter or visual disorder.*

- *Ensure the social and economic impacts of the location of gaming machines are considered.*
- *Each of these objectives (taken from the purpose of a VPP clause) is accompanied by equally vague decision guidelines. The culture needs to shift to one in which mandatory controls and true performance based controls are the preferred methods of articulating policy, when they can be formulated, with vague 'objective based' controls such as currently the norm used only as a fall back option."*

In the Whitney Report, the reference group noted:

> *"The Reference Group considers that, in seeking to introduce a more flexible system to cope with these changes, the pendulum has swung too far and that the level of flexibility outweighs the desirable degree of certainty which is sought by the development industry, the community and their elected representatives."*

and recommended;

> *"The current balance in the system has gone too far in favour of flexibility and performance-based controls to the detriment of certainty and this should be reviewed."*

The Making Local Policy Stronger reference group discussed the issue of prescription, as follows:

> *"Prescriptive controls tend to be absolute. Through detailed standards or land use zone controls development either fits or doesn't. Performance based planning provisions define outcomes to be achieved and guidelines for development – there is some flexibility in decision making. Presently the VPP are a mixture of both prescription and performance with more emphasis on the latter. Many matters considered in planning decisions cannot be readily prescribed. Social and economic needs, the cost of housing, the ability of younger and older people to live or remain in areas over their life cycle, and the development of local employment opportunities are important considerations. Planning also should allow for innovation; for instance environmentally sustainable development principles demand new approaches to building design and water-cycle management. <u>There must be a balance between prescriptive provisions and performance based provisions that allow for variation and innovation.</u> Despite the objectives of the VPP for a performance based approach, there have been, and continue to be, many requests from councils to introduce prescriptive provisions. However, there has been no guidance from DSE on when prescriptive provisions may be appropriate. Some Panel reports have considered this matter. The Panel report on Queenscliff*

> *C7 in particular argues that a number of tests should be applied when considering whether prescriptive provisions are appropriate.*
>
> *It is appropriate that guidelines are developed which assist stakeholders determine when prescriptive provisions are appropriate'.*
>
> ***Finding**: Guidelines should be developed to assist planning authorities determine when prescriptive or mandatory provisions are appropriate and how they should be expressed."* (Underlining is this Committee's emphasis)

Consequently, the Making Local Policy Stronger report recommended:

> *"5. Clarify when prescriptive provisions can be used.*
>
> *Develop guidelines to clarify when prescriptive rather than performance based provisions are appropriate and how they should be expressed."*

The Committee considers that further thought needs to be given to the manner in which provisions within the planning schemes are drafted. This may include a review of the September 2010 DPCD Practice Note on Making Local Policy. The Practice Note provides guidance on the preparation of local policies. In part, it states:

> *"Use zones and overlays to deliver the policy objective where possible.*
>
> *Where possible, the use of schedules to zones, overlays or particular provisions should be used instead of local policies to express local policy objectives."*

However, the Practice Note finishes with the following:

> *"An LPP should be written with a performance-based approach in mind rather than a prescriptive one. This is more than simply avoiding the use of 'must' or removing references to numbers. It means there is a clear and logical progression from policy basis to objectives, to the policy itself and the criteria against which proposals will be assessed."*

Another Practice Note on Writing Schedules states that "changes should be enabling rather than prescriptive."

The Committee questions whether the current Practice Notes are consistent with the findings of the earlier reports.

KEY FINDING - Performance Based Provisions versus Prescriptive Controls

The Committee considers that the current balance in the system favours flexibility and performance-based controls too heavily, to the detriment of certainty. This should be reviewed.

9.6 Growth Area Planning and Interface Areas

9.6.1 Growth Area Planning

A number of submissions raise issues directly associated with Growth area planning occurring within and on the edges of the Urban Growth Boundary.

Growth area planning has changed over the last few years. Previously, growth areas were largely planned on the basis of rezoning of rural land to an appropriate urban zone such as the Residential 1 Zone or an Industrial Zone. This was generally coupled with a Development Contribution Plan Overlay and a Development Plan Overlay.

Large areas of Melbourne's outer and interface areas were developed on the basis of this model. The old model also involved the preparation of outline development plans or structure plans which in turn led to the preparation of more detailed development plans for parts of the growth area prior to the granting of planning permits for subdivision.

The Urban Growth Zone (UGZ) first came into effect in June 2008, through Amendment VC48 to the VPP and planning schemes. The UGZ has been applied to most undeveloped urban land inside the Urban Growth Boundary. This zone was not applied to areas that were already in a Township Zone which has created 'island communities' uninvolved in the precinct planning process, such as Beveridge and Kalkallo.

The UGZ is a purpose built zone which comprises two parts; Part A applies while there is no precinct structure plan incorporated for the land and Part B applies when a precinct structure plan is incorporated.

The Part A provisions resemble the Farming Zone except that they allow certain 'pioneer' uses to be considered provided the responsible authority is satisfied that the granting of a permit would not be prejudicial to the preparation of a precinct structure plan.

The precinct structure plan (PSP) replaced local structure plans as the primary tool for planning in greenfield areas. The PSP is a document which is required to address seven elements relating to the establishment of an urban area. Once finalised, it is incorporated into the scheme and operates under the UGZ. Planning permits must be generally in accordance with a PSP and implement any conditions or requirements set out in the schedule to the UGZ and having regard to very recent changes, any conditions or requirements set out in the PSP.

The implementation of a PSP is usually accompanied by two other incorporated documents, namely a Development Contributions Plan (DCP) and a Native Vegetation Precinct Plan (NVPP).

There have been numerous panel hearings which have considered the implementation of PSPs, DCPs and the NVPPs. While there have been varying degrees of difficulty in the various plans, a key feature of these PSP hearings has been:

- Concerns over the drafting of provisions;
- Concerns over the level of infrastructure costs and specifications;
- Concerns about the issue of Native Vegetation and Offsets; and
- Concerns over the staging of development.

Not surprisingly, some of these hearings were more efficient than others. However, in all cases parties seem to get frustrated at what they regarded as the higher levels of detail that seemed to occupy the preparation of the various plans.

Nevertheless, once the various amendments are put in place, the issue of planning permits is a relatively straight forward exercise with third party exemptions in place and most information requirements set out in the various amendment documents which in turn leads to streamlined applications.

The Growth Areas Authority (GAA) was established in 2006 as part of the Victorian Government's plan for outer urban development. The GAA is an independent statutory body with a broad, facilitative role to help create greater certainty, faster decisions and better coordination for all parties involved in planning and development of Melbourne's growth areas. The GAA reports directly to the Minister for Planning.

The goals of the GAA are to:

- Develop communities in growth areas that are socially, environmentally and economically sustainable;
- Work with industry and local councils to ensure economic, employment and housing priorities are achieved in Melbourne's five growth areas; and
- Improve the operation of regulatory and administrative processes over time to reduce costs and increase efficiencies for developers and local councils.

The GAA has acted as the planning authority for a number of PSP amendments. There has been tension between the GAA acting as the planning authority and councils, whose municipal areas were being planned by an independent organisation. Some councils also expressed concerns about DCPs being put in place without adequate consultation with those councils, notwithstanding the significant financial implications to the local councils.

Concerns have been put forward by some councils that the GAA is not the most suitable organisation to be undertaking the role of the planning authority. For example, Hume City Council (Submission No.401) considers councils are best placed to undertake this role:

> *"Councils have closer links with the community, a better awareness of the social and geographical characteristics of the area, and will be ultimately responsible for the ongoing maintenance and administration of the Precinct Structure Plans."*

Consistent with comments made within the Hume City Council submission are those comments made by Casey City Council (Submission No. 281) which highlights the role of Local Government in the precinct structure planning process:

> *"the importance of Local Government in growth area planning. Local Government has demonstrated in the past the ability and expertise to manage growth area planning. By applying local knowledge and considering community input, officers believe this can help shape a better, smarter plan and create vibrant new future communities. The development contributions process also requires review to ensure new communicates are well served by required infrastructure (transport, open space and community facilities). It is critical that if retained this is driven from Local Government as custodians of Development Contributions Plans. The Growth Areas Authority (GAA) has been useful in this process however Local Government is best placed to ensure a seamless development process from planning to implementation is fostered."*

The GAA has a significant number of precinct structure plans underway at present. In the majority of cases the GAA has taken on board the role of planning authority. Many of the PSPs are being introduced by a process which by-passes the normal planning scheme amendment processes under section 20(4) of the Act. While some informal consultation takes place in this process, there is no opportunity for independent review. This is ostensibly because of the concern about delays in the processing of the planning scheme amendments.

Another concern expressed by growth area councils is that Growth Area Corridor Plans were still under preparation while PSPs were progressing at a rapid rate. Consequently, some PSPs are being undertaken in isolation in the absence of an overall framework.

Wyndham City Council (Submission No. 348) expresses the concern that:

> *"While Precent Structure Plans continue to be prepared at haste, Growth Area Framework Plans, which should set key regional and*

> *municipal infrastructure targets, are relatively sluggish in their preparation. The risk, again, is that decisions made at the precinct level will undermine aspirations still being determined in the crucial realm of the Growth Area Framework Plan."*

The Committee notes that draft corridor growth plans have been announced recently and there is an informal consultation period which is in place before these are finalised.

The Committee heard submissions from Urbis (Submission No. 216), the Property Council of Australia (Submission No. 311) and the Urban Development Institute of Australia (Submission No. 407) that the precinct structure planning process needs further streamlining. The UDIA submission states:

> *"Precinct structure plans are expensive to prepare and maintain, complex, inflexible and bring forward too much detail too early in the development process. They take a long time to prepare and their approval is often the outcome of a cumbersome and protracted process. Development Contributions Plans are burdened with the same issues as PSPs."*

It is submitted by these groups that there should be no need for a precinct structure plan if the Growth Area Framework Plan (now called the Corridor Growth Plan) has been completed to a satisfactory level. These submittors believe that in many situations the need for a precinct structure plan should be redundant and more emphasis should be placed on the Growth Area Corridor Plan or a plan similar to an Outline Development Plan.

After the completion of the higher order plan some submittors argue that proponents should be directed through the development process via planning application process. Supporting this view, the UDIA makes the following recommendations:

- Introduce a hierarchy that goes from the Growth Area Framework Plan to a Co-ordination Overlay then to a planning permit;
- Introduce a Specialist Advisory Body to resolve disputes over co-ordination plans; and
- Make the GAA the responsible authority for further amendments in major and principal activity centres and refer unresolved submissions to the Specialist Advisory Board.

Growth area councils do not all share this view and again seek a greater involvement of councils in the development of the planning tools for the growth areas. The Committee considers that to prepare a full cost recovery DCP, it is necessary to have a level of detail that is reflected in PSPs.

Submittors state that regardless of the hierarchy of the planning documentation required in the growth areas, there is a common belief that there is little co-ordinated planning going into infrastructure in the growth areas. This is reiterated in the submission of the Interface Councils (Submission No. 88).

It is clear that there appears to be genuine support for the orderly and timely planning of the growth areas. There are other arguments such as those put forward by Moreland City Council (Submission No. 409) and Yarra City Council (Submission No. 426) that support urban consolidation and higher density development within existing urban zones to lessen the footprint of urban growth and expansion.

The Committee also received and heard a number of submissions that referred to the Growth Areas Infrastructure Contribution and how it may be expended in the future. The Committee notes that there was uncertainty in the submissions as to how funds from the Growth Area Infrastructure Contributions (GAIC) will be allocated. It also notes that the in-kind methodology of satisfying GAIC creates some uncertainty in relation to what infrastructure is to be developed in the growth areas.

Casey City Council and Melton Shire Council highlight in their verbal submissions that they remained confused as to the role of the DPCD in planning for the growth areas, and add that the Infrastructure Working Groups that had been facilitated by the GAA to co-ordinate the needs and requirements of all government agencies had not come close to achieving a 'whole of government' approach. This view is endorsed by representatives from the Mitchell Shire Council and Hume City Council. The Casey City Council submission makes the following observation:

> *"It is considered that there is a role to play for the State Government and the GAA to continue to pursue cross government involvement in high order matters relating to growth area planning. It is important to develop a map for growth to understand what State infrastructure will be required. The existing infrastructure gaps need to be addressed before planning for more growth that will compound the problem. This is essential in relation to transport movement networks, planning for jobs and community and recreation facilities. Unfortunately the whole of government approach to planning for infrastructure and services has not been progressed as one may have expected by a central planning agency. This is still a weakness of the Government and is affecting infrastructure and service delivery to new growth area communities."*

Councils and the development sector are not the only two groups of stakeholders to make comments concerning growth area planning. Within the

submission of Parks and Leisure Australia (Submission No. 495) there are a number of comments that relate to the provision of open space and the issues associated with maintenance.

This request from a peak body for higher order strategic planning to be undertaken in relation to community and recreational infrastructure is important as it represents a desire to seek to install best practice in the growth areas based on sustainability and accessibility.

The submission from Yarra Valley Water (Submission No. 255) seeks greater clarity provided around future development by planning for both potable and recycled water systems. The Yarra Valley Water submission indicates that with a greater horizon for strategic planning outcomes, 50 years rather than 20 years, better outcomes for the communities can be achieved through the use of recycled water. The submission notes that this outcome was not achieved with the recent Greenvale Precinct Structure Plan.

An anonymous submittor suggests the removal of the requirement for a precinct structure plan in the process to bring land to market, rather arguing that land designated for growth should be zoned up front (once identified in a long term growth plan) and that the development of the land should be at the discretion of the responsible authority's assessment of the developer to supply a minimum level of infrastructure and services to be delivered to the area. The submission suggests that these matters should be dealt with at the permit stage, rather than through a time consuming and often expensive precinct structure plan.

The Committee considers that there has been a benefit in a lead agency co-ordinating planning of the growth areas. However, submittors close to the process with firsthand knowledge of its operation have presented varying views about the performance of the GAA in this regard.

Submittors also argue that there should be opportunities for precinct structure plans to be prepared by parties (councils) other than the GAA. The Committee sees merit in opening the preparation of precinct structure plans to councils. The Committee considers there are two reasons for this approach:

- The GAA has a large workload before it with the preparation of precinct structure plans. Even with the best of intentions, it will be years before they are completed. The need for planning certainty and land supply make it more urgent than the 'delay' that might otherwise apply.
- It is important that expertise continues to reside within councils to avoid the loss of skills in the administration of growth area planning as well as the implementation of Development Contribution Plans. The Committee thinks that councils would be better at implementing the various growth area

provisions if they were involved in putting them in place in the first instance.

With the existing levels of experience within growth area councils, which varies from council to council, and the need to ensure that there is no drain of those skills away from Local Government, it is essential that those councils that are able to undertake growth area planning be allowed to do so albeit if sought, with the guidance and assistance of the GAA.

The Committee considers that the GAA in a revised form should primarily be responsible for:

- Undertaking growth area planning in those council areas which do not have the resources to do so or are unwilling to enter that area of regulation; and
- Providing assistance to those growth area councils that do have the resources and are able to undertake growth area planning.

KEY FINDINGS - Growth Area Planning

The Committee recommends:

- Growth area councils should be allowed to prepare a precinct structure plan in the first instance. The GAA should be the planning authority only where a growth area council requests it to do so or the council does not have the expertise or resources to complete the process;
- An evaluation of the precinct structure planning processes that have been finalised be undertaken to determine how effectively the PSP and planning permit process is being undertaken in the Urban Growth Zone; and
- There is a need for funding and co-ordination mechanisms to improve the delivery of infrastructure to match planning aspirations in growth areas.

9.6.2 Interface Councils

The Interface Councils comprise the Cardinia, Casey, Hume, Melton, Mitchell, Mornington Peninsula, Nillumbik, Whittlesea, Wyndham and Yarra Ranges municipalities. They usually contain about 30% urban development and about 70% non-urban. Due to their proximity to Melbourne, a significant amount of Melbourne's future growth is planned in these municipalities.

The Interface Councils made a presentation to the Committee in relation to some of the issues faced due to the growth pressures of those municipalities.

The Interface Councils submit that the level of developer contributions was in fact well short of what is anticipated to be required to deliver not only the

infrastructure for these communities in the future, but also some of the associated services.

The Interface Councils indicate that there was a significant lack of policy direction, especially in relation to employment and investment opportunities within the interface areas.

The Interface Councils' representatives spoke about issues of creating sustainable development within the green wedges. This included facilitating agribusiness activities and their associated uses such as hospitality venues which are often limited by the provisions of the green wedge.

The Shire of Yarra Ranges (Submission No. 473) comments on the restrictions that apply to the land zoned Green Wedge:

> *"There are some principles of rural land use which deserve attention at a State policy level and modification to the Victoria Planning Provisions, namely:*
>
> - *the degree to which value-adding or 'agri-tourism' activities not currently permitted by planning controls should be reviewed. This includes providing greater opportunity and clarity in the planning scheme for farm gate sales of locally grown and produced products. This would help rural producers achieve greater income diversity and boost tourism opportunities for primary producers beyond the viticultural industry.*
> - *provision should be made for accommodation associated with ecological values in addition to existing uses such as agriculture, outdoor recreation facility, rural industry, or winery. This modification to the Green Wedge zones (Green Wedge Zone, Green Wedge A Zone and Rural Conservation Zone) would provide an opportunity for landholders to establish accommodation in conjunction with the natural environment and reduce the potential for pressure on landholders to compromise the ecological values of their properties by introducing agricultural or commercial uses in order to justify an application for tourism development.*
> - *the need to establish a planning framework for the opportunity to consider programmed events and festivals which currently fall under 'Place of assembly' and are consequently prohibited under the current Green wedge planning provisions."*

Representatives of the Interface Councils argued strongly for the establishment of an Interface Infrastructure Fund. It was argued that this should be put into place in a similar manner to the Regional Growth Fund that has been established for other areas.

KEY FINDINGS – Interface Councils

The Committee considers:

- There is a need for funding and co-ordination mechanisms to improve the delivery of infrastructure to match planning aspirations in interface areas; and
- The scope of green wedge management plans should include a review of permitted land uses to ensure the achievement of strategic objectives.

9.7 Stakeholder Engagement

Stakeholder engagement and third party participation in the planning process is a highly valued aspect of the planning system. Carlotta Quinlan (Submission No. 120) makes the following comments in relation to 'what's good about the system?':

> *"Third party rights of objection and appeal. This is crucial to a healthy democratic society. Even if the result is not a complete win for the objector, a compromise is usually reached and the objector at least feels that his concerns have been heard.*
>
> *Planning schemes for individual areas prepared through a meaningful consultation process between local government and residents. These produce a better outcome for the community and the city as a whole.*
>
> *The ability to discuss concerns regarding planning proposals with a local planning officer. This is important and far more effective and satisfactory than dealing with a voice on the phone with no idea of the local situation."*

The Environment Defenders Office (Victoria) (Submission No. 369) states:

> *"Community participation through third party rights is greatly valued and seen as essential for the integrity of the system and the balancing of community views against those of developers."*

This part of the report focuses on stakeholder engagement; Part 10.1.2 concentrates on third party rights.

Through both the submissions and presentations made to the Committee, it is clear that there are significant issues relating to stakeholder engagement and the way it is managed and undertaken. Many submittors to the Committee indicate significant failures in the area by State Government, councils, statutory authorities and proponents.

Submittors make different points on this subject, with some stating that invitations to become involved in community consultation were not always

genuine, that outcomes are often predetermined and that a lack of information deprived individuals the chance to participate in a process. Other submittors argue that the removal of third party rights in the Residential 2 Zone and the diminution of rights to have a say under development plans and other overlay provisions restrict involvement to an undesirable degree.

The Bacchus Marsh Community Land Group (Submission No. 411) states:

> *"The BMCLG supports a planning system that:...respects the rights of communities to have a say in planning decisions that could affect them...".*

The group goes further in urging what it said this 'panel' (meaning this Committee) should consider. It states that the Committee:

> *"needs to review the ways in which communities are currently notified and involved in planning scheme amendments including re-zoning.*
>
> *The Panel needs to review the way Councils are currently required to advertise their intentions to rezone land and how communities are currently notified and involved in changes to land zoning.*
>
> *The Panel needs to identify processes that ensure Councils understand and respect aspirations of the community.*
>
> *The Panel needs to identify ways to educate the community in planning matters. For example, could the Environmental Defender's Office run workshops designed to demystify Council planning processes, and help residents understand where to access information about property they plan to buy, plus how to understand and monitor planning decisions that may adversely affect their property."*

The Ballarat Residents and Ratepayers Association Incorporated (Submission No. 105) states:

> *"Residents are often unaware of planning and development issues because they are not actively looking for these and as such often miss advertisements placed by Councils announcing proposals. In addition, in Ballarat at least, if the issue may be regarded as unpopular, minimal effort is placed by Council to inform people about the proposal, which reduces potential controversy arising until the decision is passed, rendering it too late for action."*

The Bellbrae Residents Association Inc. (Submission No. 411) states:

> *"While the Shire does seek and accept community involvement and input into the public stages of its planning processes, the measurable influence of that involvement and input is minimal. Is there a timing issue comment is typically called in late in a project after lots of money*

and time spent, hence little gets changed? Planning appears to be done by Government and developers with public comment, not input.

The lack of a genuine response or real and timely debate about important planning matters has led to Shire community polarisation on sensitive issues, to a general unwillingness for people to become involved and real doubts about the value of local deliberations and the Shire's freedom or willingness to act. Unsurprisingly, much time and resources have been wasted due primarily to these factors."

The Beaumaris Conservation Society Inc. (Submission No. 485) states:

"It is difficult for residents, especially residents in full-time employment or elderly residents, to view plans for development proposals as these plans are not published on the Council's website and it is difficult to attend the Council offices during business hours to view plans.

Furthermore, it is often difficult to locate the relevant planner by phone to arrange for plans to be posted."

The Friends of Fullarton Community Group (Submission No. 516) states:

"The community's right to object to developments and participate in the planning process – both at local Council level and at VCAT – must be maintained. This right should be enshrined in state legislation.

Planning documentation needs to be freely available to allow the public genuine access to relevant information and all processes must allow for public participation. Our experience was that the 150-page subdivision proposal was only available for viewing at the Council offices (one hard copy only) during business hours (effectively, on 10 days only) and also at the local library (another hard copy), which was open only half-time. This limited access to documentation was entirely inappropriate for the number of people interested in the proposal. The Council did not make the proposal available as a pdf file on their website. Such electronic access should be mandated."

The thrust of the quoted submissions and many more is that community consultation is treasured, but that the standard of documents put out to the community are difficult to interpret and often inadequate.

This is also true for the various mechanisms used to consult with the community and the timeframes involved, especially with planning scheme amendment proposals extending over a lengthy period. Some submittors argue that the community consultation process is not inclusive and made difficult by having to attend to matters during business hours only.

Similar to the Bacchus Marsh Community Land Group, other submittors bemoan the lack of community education in relation to planning and its aims

and objectives. Some submittors urge that DPCD should provide assistance to interested parties to help in the understanding of issues.

In contrast, developers indicate that the community consultation process in many instances is too onerous. A number of submissions were put to the Committee that indicate one of the major holdups in the system is the level of community consultation that must be undertaken as well as vexatious submissions made by persons who have little connection to the planning matter at hand. This is said to occur with permit applications and planning scheme amendments.

The HIA highlights the ability of individuals to impact on the delivery of product to the market place, through the various mechanisms within the system:

> *"HIA members projects are often delayed significantly and politicised when community groups form and prepare pro forma for people to use as objections, even when a person is not directly affected by the proposal. The word 'objection' is adversarial and should be replaced by 'submission'."*

The Ballarat Residents and Ratepayers Association Incorporated comment on the inability to learn of planning proposals. The same theme is adopted by resident submittors of the Melbourne central activities area. In their presentation to the Committee, members of inner city resident groups argue that they should have a say in development proposals rather than being counted out of the process by the zone or overlay provisions.

Community engagement is vital to confidence in the planning system. As a principle, if the community is removed from the formal permit application process, it should only be where the provisions are certain and specific.

In relation to planning scheme amendments and given the nature of the process, the Committee does not see the same scope for limiting third party involvement provided the submission is relevant and not vexatious.

The Friends of Fullarton Community Group seeks:

> *"More equitable access to development proposal documentation should be mandated, especially via the internet."*

The Committee agrees that equitable access to information is essential but stops short of mandating how it is to be provided. The Committee is mindful that with the advent of the National Broadband Network, new capabilities will become available.

The Committee endorses the use of the internet and the electronic transfer of information as one aspect of a comprehensive community engagement

strategy. Furthermore, all applications for planning permits where notice is required, as well as planning scheme amendments, should be available to view on the internet as well as being available to view over the counter. Similarly, all incorporated documents and section 173 agreements which have been entered into should be accessible on the internet.

The Committee is aware of the comprehensive nature of the material on the DPCD website. Submissions made reference to the extent of available information including the most recent creation of an electronic application that allows remote access to property information. In one submission, after complimenting DPCD, the submittor is then critical of the degree of difficulty required to search through the material.

Stakeholder engagement is more than merely placing information on the internet. All players in the planning system need to engage in a comprehensive programme of stakeholder engagement. This may include community forums and other methods of direct involvement.

The Committee is aware of the availability of the Spear model for lodging some planning permit applications and encourages further expansion of that system. It is also aware of on line tracking systems used by some municipalities with planning permit applications; broader use of on line systems is encouraged.

The Committee understands there is much information about systems that exist and about operations that use connectivity and interactive communications.

The Committee recommends the investigation of innovative ideas in the field of digital information from those making and designing the instruments and the architecture, to those testing viability of use to determine how such systems can be applied to planning. The Committee sees the availability and use of broadband as assisting with online applications and information access across all agencies, such as speeding the exchange of information to referral authorities.

9.8 Planning in Rural and Regional Victoria

A number of rural and regional municipalities raised issues that are specific to undertaking both strategic and statutory planning in regional Victoria.

It is clear to the Committee that there are differences in how planning is undertaken in rural and regional areas compared to metropolitan Melbourne. Hepburn Shire submission (Submission No. 503) states:

> *"Melbourne centric concepts don't work well in regional areas, 'one size fits all' doesn't work in all areas."*

The view put forward by Hepburn Shire is supported by other municipalities, such as Baw Baw Shire (Submission No. 536):

> *"There is a strong metropolitan-centric focus of policy in the Victorian Planning Provisions, which flows through to planning schemes across the State, much of this does not take into account the needs and requirements of rural Victoria. This metropolitan focus particularly poorly deals with demands placed upon Councils in the peri-urban fringe of metropolitan Melbourne. Rural Councils such as Baw Baw have limited capacity to plan for and fund the road, transport, engineering, utility and community infrastructure required to service the rapidly growing populations overspilling from the metropolitan growth boundary."*

Many of the submissions made by those in rural and regional areas focus on making the regions a better place for people to move to and increase population to support infrastructure. The submission by Shire of Gannawarra (Submission No. 388) notes:

> *"State initiatives are needed to provide appropriate policy settings, including through planning schemes and regional strategies, to provide assistance to improve infrastructure where needed, and to sponsor publicity to promote opportunities and break down the 'Melbourne only' mindset."*

The Committee was briefed on the progress of the eight Regional Growth Plans and considers that this approach to regional planning will differentiate key aspects of planning in rural and regional areas.

The Committee also notes the Government's commitment to the establishment of the Peri Urban Unit and a 'flying squad' both of which may also improve aspects of regional planning.

Many of the councils located outside of Metropolitan Melbourne deal with both the regional office and the metropolitan office of DPCD. While there is good support for the functions and services that are undertaken by the regional offices, there appears to be some frustration with how matters are dealt with once matters are referred to the metropolitan office.

The Shire of Yarriambiack, (Submission No. 465) notes the following in relation to the role of the regional DPCD office, which is sometimes superseded by the authority and influence of the metropolitan office:

> *"Many regional areas cannot or are unwilling to make decisions, give guidance or advice without first seeking approval from the Melbourne office. Many regional staff are unable assist or obtain a response from*

> *other areas of DPCD, due to the structure and the complexity of the structure."*

Warrnambool City Council (Submission No. 375) notes that the skills and expertise required by a council to deal with complex planning applications or amendments is significant. When asked for a possible solution to this lack of resources and expertise, Warrnambool City Council made the following comments:

> *"Provide more support to rural and regional Councils. Rural councils with multiple issues, small rate base and large asset gap cannot afford to do flood studies, biodiversity studies, land suitability studies, heritage studies etc. They often do not have the staff capacity for strategic planning or enforcement; however the planning system places the responsibility on local Councils."*

A number of councils also submit that the planning scheme amendment processes in regional areas can take in excess of four or five years. This being the case, many planning practitioners have found that planning scheme amendments which were once considered relevant, quickly lose their relevance as a council goes through a change of personnel or as a result of Local Government elections and ongoing staff changes.

The difficulty in putting together developer contribution plans and key strategic documents provides a challenging environment for strategic planners in a rural and regional area.

Regional strategic planners indicated that the majority of the councils work hard with developers and the community to achieve growth outcomes.

As noted in Part 9.5.1 there have been contrasting views in relation to how the Farming Zone is operating.

It is apparent to the Committee, through the various submissions and presentations, that what is 'productive agricultural' land remains a contentious issue. It is also apparent that the blanket use of the Farming Zone is not meeting the expectations of the communities living and working in these areas.

Of particular importance is the concept of highly productive agriculture land and whether this concept is connected to the size of the property or the actual activity that takes place on the land.

Consistent comments were that the use of Whole Farm Management Plans was not adding value to the planning process or delivering better outcomes for rural land.

There were a number of submissions that focussed on the restrictions that have eliminated the opportunity to run events on private land in rural areas. This has included major 4WD competitions and other sporting events. This is touched on elsewhere in the report.

Some of the comments, oral and written, indicate a need for State Government departments to better share information on land productivity and capacity. This would help councils in making better decisions in relation to how land can be developed in the longer term and inform the community of the planning process.

Additional concerns have been raised about the role of referral authorities, especially in relation to Catchment Management Authorities and the role of water wholesalers.

KEY FINDINGS - Planning in Rural and Regional Victoria

The Committee considers:

- Adequate resources should be directed to the preparation of the eight Regional Growth Plans; and
- A code of practice should be developed to exempt temporary events in the rural zones or the temporary event provision in Clause 62.03 should be extended to address private land.

10. The Processes within the Planning System

There are two key processes within the planning system that give effect to planning policy and allow the delivery and achievement of the objectives of planning in Victoria as set down in Part 4(i) of the Act. These two key processes are the:

- planning permit process; and
- planning scheme amendment process.

An overview of the submissions received on each process and the prioritisation of the issues raised are discussed in the following parts of this report.

10.1 The Planning Permit Process

The underlying concerns at the core of many of the submissions addressing the permit application process relate to the increased administrative burden borne by councils which have competing demands on their financial resources and the increased costs to the private sector as a consequence of delay and uncertainty.

Community groups and some individuals are also concerned about what they perceived as the uncertainty designed into planning controls and planning policy. These submittors want to maintain the opportunity to be involved in the planning permit process and retain existing third party rights.

The Modernising Report examined the role and significance of the current planning system's permit process at Part 6 of that report and noted:

> *"The planning permit process is a significant part of the overall planning system, and is generally the point at which the wider community participates in the planning process as either an applicant or as objector. The impact of the process is reflected in the number of permit applications, around 50,000 each year in Victoria, with seven per cent of all applications being reviewed by VCAT. This represents a significant workload for councils, referral authorities, VCAT and other parties involved in the process. The current permit process could be improved to reduce the regulatory burden on government, business and the community."*

Planning schemes regulate the use and development of land by requiring that certain types of use or development can only be carried out if a planning permit is granted.

A zone or overlay principally allows for three process outcomes, namely:

- Allow a particular use or development 'as of right', often subject to certain conditions being met;
- Require the grant of a permit with or without conditions; or
- Prohibit a particular use or development from occurring.

Section 47 of the Act sets down the requirements of a planning permit application, including that the application must be:

- Made to the responsible authority in accordance with the regulations;
- Accompanied by the prescribed fee; and
- Accompanied by the information required by the planning scheme.

Once a permit application is lodged with a responsible authority, next steps can include a request by the responsible authority for further information (Section 54), referral of the application to a referral authority specified in the planning scheme (Section 55) and the requirement of the applicant to give notice of the application, unless the responsible authority is satisfied that the grant of a permit would not cause material detriment to any person (Section 52).

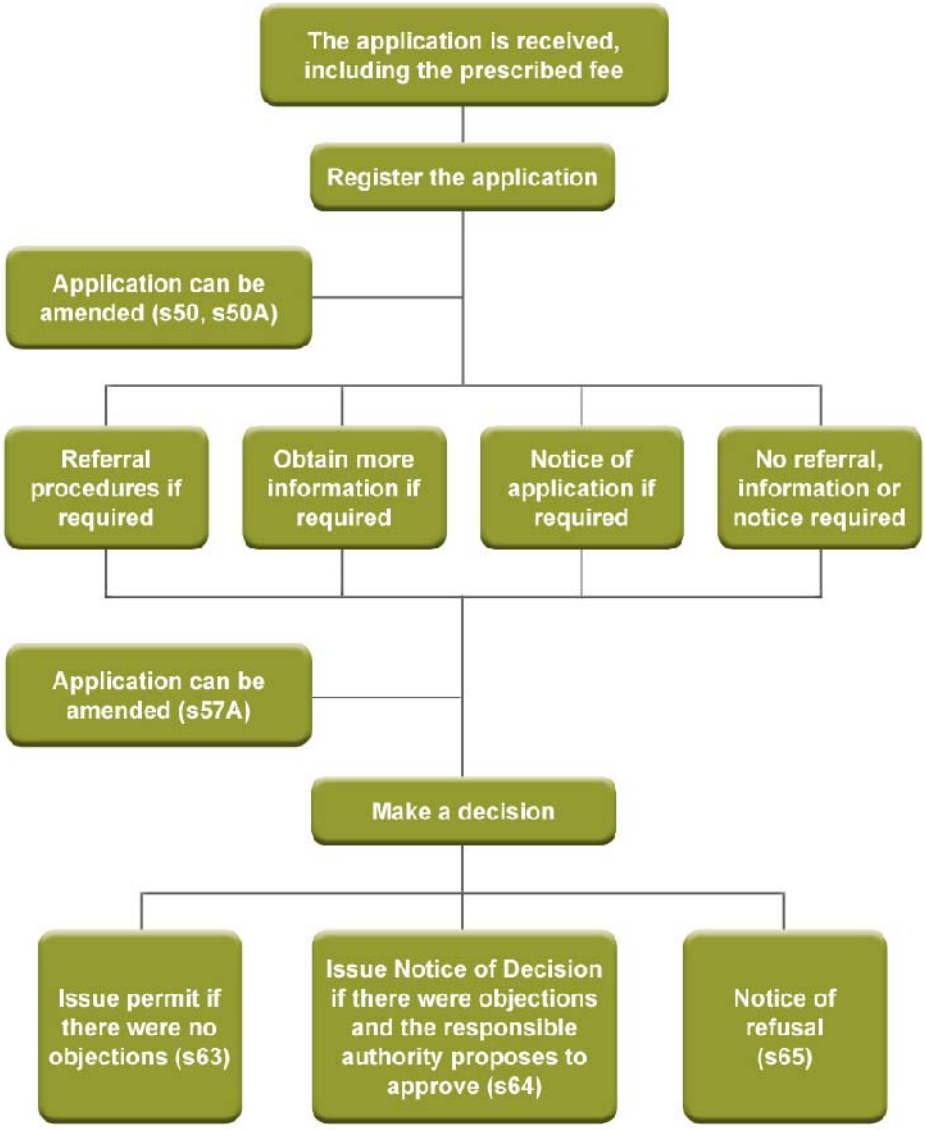
Following the consideration of a range of matters including the relevant planning scheme provisions, the objectives of planning in Victoria, any referral advice and any objections to the application; the responsible authority may decide to do one of three things namely; to grant a permit where there are no objections (Section 63), issue a Notice of Decision where there are objections and the responsible authority proposes to approve the application (Section 64), or issue a notice of refusal (Section 65).

The Act provides for the potential to amend planning permits in certain circumstances (Sections 72, 87 and 87A).

Division 2 of the Act then addresses the avenues of appeal to VCAT that different participants in the process may pursue in seeking to review a decision, the failure to make a decision within the prescribed 60 day timeline or a particular requirement of the responsible authority.

Figure 4 shows the key elements of the current planning permit process.

FIGURE 4 - The Planning Permit Process



Source: Page 20, Modernising Report

The issues raised in the submissions surrounding the planning permit process fall under the following key themes:

- The appropriateness of a single stream process;
- Notice requirements and material detriment;
- Referral processes;
- The adequacy of the information accompanying a permit application, and requests for further information; and
- Amendments to planning permits.

10.1.1 The Appropriateness of a Single Stream Process

A number of councils, industry groups, professional practitioners and individuals consider that the current 'one size fits all' permit process needed to be changed to allow more than one stream. They believe this arrangement could more capably reflect the scale and complexity of a use and/or development proposal and its likely impact with the relevant process, time and expertise required to assess the application.

As part of its investigations, the Committee received submissions and presentations on the South Australian and New Zealand planning systems. While there are a number of differences between those systems, what they do have in common is a development approvals process that streams different classes of statutory consents and then aligns these different classes with a defined scope of public notification. The statutory timeframe within which a responsible authority is required to make a decision is also tailored to reflect the different paths a particular application will take.

The submission of the Eastern Region Group of Councils (Submission No. 491) reflects the suggestions of a number of submittors in this regard, and notes that:

> *"38. The last released report on planning permit activity in Victoria showed that at a state level there had been an increase of 3% in planning permit applications (new applications and amendments) and that 65% of all applications were decided within statutory timeframes.*
>
> *39. This shows the nature of the workload being imposed on councils and the extent to which the 60 day allocation fails to be sufficient for a large number of applications[10]. Many councils have introduced their own informal mechanisms to deliver quick outcomes for some planning applications, however these are not supported by the legislation and are really a matter for each individual council to provide or not provide.*
>
> *40. It seems clear that there are essentially 3 categories of planning applications considered by councils:*
>
> - *straightforward applications not requiring notification, unlikely to be controversial and easily able to be dealt with inside of 60 days;*

[10] Noting that the average gross days to decision was 117 days and the median gross days to decision was 73 days – Planning Permit Activity Report 2009-10.

- *applications that require notification and assessment by council officers and which are able to be dealt with in 60 days (or thereabouts);*
- *complex applications that require notification, that are likely to be highly controversial and have a high degree of community scrutiny and/or applications with a high degree of complexity and/or a large number of expert reports or the like to be considered.*

The planning system should be sufficiently flexible to provide streams that deal with each of these types of applications (with suitable adjustments for fees) and suitable timeframes."

Similarly, the City of Brimbank (Submission No. 103) comments:

"Changes to the planning system are required to allow planning and responsible authorities to focus resources and effort on matters of importance. The planning system must be able to differentiate more clearly between procedural matters and those that are strategically important and have potential for significant impact. Code assessment and deemed to comply arrangements in the planning system could be facilitated allowing resources and effort to be allocated to applications with complex strategic issues."

The Modernising Report also notes the following:

"'6.1 One size fits all?

The Act currently provides for only one permit process to be applied to all applications, regardless of the scale, complexity or significance of the proposal. While the Act provides that different steps in the permit process such as notification and referral may or may not apply to an application, most applications follow the same process.

Process requirements for applications that involve little or no consideration of policy, or only require testing against mainly technical criteria, can be made unnecessarily complex.

A new 'short' permit process could allow identified types of applications to undergo a streamlined permit process. To implement any new 'short' process it will be necessary to:

define the process itself – this is a matter for legislation; and

define the classes of matters which may be determined under the new process in planning schemes, in terms of the 'permit triggers' in the planning scheme which establish that a particular project requires a permit."

In contrast, the Macedon Ranges Residents Association Inc (Submission No. 413) states in its submission that:

> *"Our Association does not support the Act providing for a short permit application process. This would have a variety of implications across the State, and we have no confidence these have been sufficiently considered, especially implications for rural areas. Questions of propriety and accountability also arise. At the moment there is one rule for all, so everyone knows exactly what to expect."*

The Committee notes that the planning scheme already provides what is in effect a shorter permit process because some permit triggers are exempt from notice and third party rights, such as certain buildings and works in the Heritage Overlay, Special Building Overlay, Wildfire Management Overlay and Land Subject to Inundation Overlay. Certain categories of signage and buildings and works in business and industrial zones also exempt notice and third party review rights.

There are other types of use and development controls, such as a Development Plan Overlay, Activity Centre Zone or Urban Growth Zone, where the impact of the development outcome at a strategic level has already been examined through a public review process. These existing zones and overlay controls already provide for subsequent permit applications to be exempt from notice and third party review rights.

In this context, the Committee believes there are procedural and public policy benefits to codify existing practice and introduce via legislative change, different types of permit application processes that more appropriately align with the scale and potential amenity impact of these proposals.

The principle of 'streaming' permit applications to better fit the process with the scale and complexity of the proposal has been considered in previous reviews of parts of the planning system. Better Decisions Faster, DAF, Cutting Red Tape in Planning, and Modernising Reports all canvassed the principle of different processing paths and tailored public notice requirements for different classes of permit applications. Most submissions to the Committee on this matter also support this approach.

The Committee considers that there continues to be strong supporting argument for streaming planning permit processes in order to address issues raised in submissions from councils, the community and private sector on the financial and human costs associated with uncertainty caused by the current one size fits all permit process.

The two planning permit streams recommended by previous reviews are 'Code Assess' and 'Merit Assess'. While both streams have been discussed

conceptually in the above reviews and reports, the scope of these were not formulated or tested. The lack of detail around these processes has generated a degree of apprehension in the wider community. For example, Banyule Planning Network (Submission No. 530) comments:

> *"We are opposed to Code Assess as it takes away the opportunity to object to developments that are in appropriate. To agree to this system we, the residents, would have to have complete control over establishing the guidelines and these guidelines would have to be totally clear and not be in anyway subjective..."*

The Committee notes these concerns and agrees that Code Assess criteria should be developed through community consultation on quantitative measures which do not already exist in planning schemes.

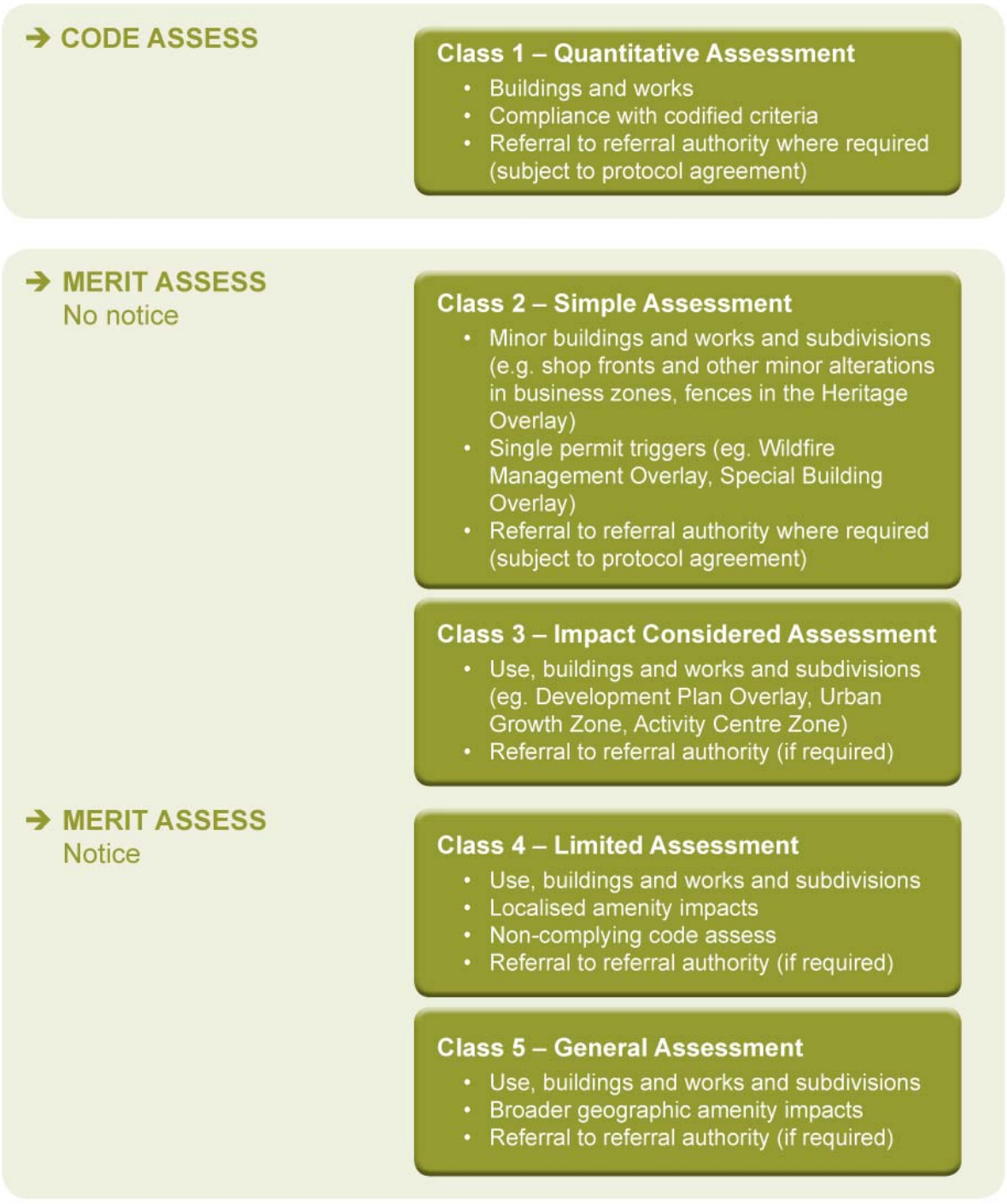
A number of council submissions considered that, rather than introduce a Code Assess stream (or as well as a Code Assess stream), the red tape and delays from the increasing number of permit applications in the system could be reduced by removing the number of permit triggers in planning schemes.

The Committee believes that an audit of planning schemes should be undertaken to identify where permit triggers could be removed. In Part 9.5.2 of this report, the Committee also comments on how overlays for example might be modified to reduce unintended permit triggers.

Many submissions from councils suggest formalising different processing paths for different types of permit applications. Accordingly, the Committee has considered how such an approach might operate to advance this proposal. In doing so, other process matters also need to be considered, such as when and to what extent it is appropriate to give notice of applications, and how to improve the referral process of permit applications. These matters are discussed in the following Parts 10.1.2 and 10.1.3.

Creating a two stream approach; a Code Assess stream and a Merit Assess stream, may be one way to organise classes of use and/or buildings and works, or subdivision. This approach is illustrated in Figure 5.

FIGURE 5 - Code and Merit Assess Streams



The different assessment streams illustrated in Figure 5 are:

- **Code Assess - Class 1 Quantitative Assessment**: A proposal in this class must meet all of the quantitative criteria.
- **Merit Assess - No Notice - Classes 2 and 3:** There are two classes of applications within this merit assessment stream. These two classes would be exempt from notice and third party review rights. In many cases, this exemption already exists in the planning scheme.
  - **Class 2 Simple Assessment**: This class of application could encompass proposals for minor buildings and works such as shopfront alteration, vegetation removal, the construction of a fence in a Heritage Overlay and also permit triggers that arise under a technical single purpose overlay such as the Special Building Overlay or the Wildfire Management Overlay.
  - **Class 3 Impact Considered Assessment**: This class of application could encompass any use and/or development proposal that is already exempt from notice and review provisions of the planning scheme (eg. Development Plan Overlay, Urban Growth Zone or an Activity Centre Zone).
- **Merit Assess - Notice - Classes 4 and 5:** There are two classes of applications in this Merit Assess stream. These two classes of applications would be subject to notice and third party review rights.
  - **Class 4 Limited Assessment**: This class of application may include non-complying Code Assess applications or proposals where any potential impact relates to localised amenity consequences only.
  - **Class 5 General Assessment**: This class of application would encompass proposals with potential for wider geographic impact.

The Committee considers that the Code Assess stream should relate to buildings and/or works applications and not land use applications. Code Assess applications could cater for proposals of variable scale, however in all instances the proposal would need to comply with clear quantitative criteria. A proposal that complies with these provisions would be exempt from notice requirements. A reduced statutory decision time frame would also follow.

Where a judgement is required to be made by a decision maker on a qualitative objective or a particular design outcome, then the Code Assess approach is unsuitable and the Merit Assess stream is the appropriate processing path.

The Committee emphasises that the streamed permit process outlined in this report should be progressed via careful testing with councils and the community. The Committee suggests developing and implementing a pilot program across various municipalities.

This approach is also one recently adopted by the New South Wales' Department of Planning and Infrastructure and Local Government Association, who have jointly launched a housing code for certain classes of residential development entitled NSW Housing Code – A Guide to Complying Development. In this Code, when a building meets all of the pre-determined numerical standards, a 10 day approval process is envisaged - in effect, a Code Assess approach. The NSW Housing Code is currently being trialled in selected municipalities.

KEY FINDINGS – Assessment Streams for Permit Applications

The Committee considers that:

- A system of planning permit application streams should be developed for different land use and or development categories. These streams should align with revised notice provisions, referral authority procedures and adjusted timelines for decision making.
- A Code Assess process be developed and piloted in selected municipalities for a variety of buildings and/or works and/or nominated subdivision proposals.
- An audit of existing permit triggers in the planning scheme be undertaken to identify where permit triggers could be reduced.

10.1.2 Notice Requirements and Material Detriment

The requirements for giving notice of an application are set out in Section 52 of the Act. A planning scheme can set out classes of application that are exempt from all or any of the requirements of Section 52(1), except covenant removal. Examples of this technique include the Design and Development Overlay and the Activity Centre Zone where certain buildings and works are exempt from notice and third party review rights. There is a different approach between planning authorities as to how they utilise these provisions.

Many submissions seek to protect the existing potential to participate in the planning process achieved via the existing notification requirements. The current provisions of the Act require that notice of an application must be given unless the responsible authority is satisfied that the grant of a permit would not cause material detriment to any person.

The current provisions of the Act which potentially expose councils to liability (such as section 94) for decisions relating to notice, or failing to give notice, function to discourage councils from limiting the extent of notice of application.

Third party involvement in the planning process is an important part of Victoria's planning system.

In a paper titled Third Party Participation in the Planning Permit Process[11] prepared in 2005 by the then President of VCAT, former Justice, Stuart Morris QC, described three reasons in support of third party rights, namely:

- The opportunity for citizens to have their say on a particular proposal tends to improve the quality of governance.
- Third party involvement often leads to better planning decisions by way of more detailed evaluation through the appeal process, and
- Third party rights discourage corrupt behaviour between developers and Local Government.

The author goes on to note however that third party rights should be responsibly exercised. The Committee agrees with this observation.

Rachel Otts (Submission No. 267) writes in support of third party rights as follows:

> *"I'll begin by expressing a positive, and my relief at the ability to have the local Government planning decisions and decisions on the Planning and Environment Act independently assessed at VCAT. I feel that having third party rights are important to our system and should be maintained and supported. The third party rights are of great value to the integrity of our planning system to uphold our planning laws. Although I wish for consistency of the planning scheme and Planning and Environment Act at a local level, the third party rights provide that consistency to the planning system and is beneficial when the local system fails."*

Other submissions consider that the notification procedures that underpinned third party involvement should not be unlimited but be designed to better reflect the scale and likely impact and consequence of the use or development permission being sought. The City of Melbourne (Submission No. 383) notes:

> *"The existing system of virtually unfettered third party notice and review rights is considered to be too generous. Full third party rights to notice and appeal are particular strong medicine. Far more of the consultation in planning should be upfront through strategic planning and structure planning processes.*

[11] A paper presented at a conference on "Environmental Sustainability the Community and Legal Advocacy" conducted by Victoria University, 2005.

At present we are seeing a one at a time challenge to development, no matter how silly or no matter the cost to developers or Councils. Approximately two thirds of VCAT case load relates to matters of residential amenity. Huge energy and resources are being put into obtaining permits for little things...

...It is suggested that the review could examine a system similar to that in the UK where different third party rights are applicable in different circumstances, as follows:

- *No notice or appeal;*
- *Notice but no appeal; and*
- *Notice and appeal.*

It is suggested in areas where proper strategic and structure planning processes have been undertaken it might be adequate to notify surrounding property owners so that they may comment on matters of detail, but for there to be no right of appeal.

Full third party notice and appeal should be applied like vegemite – sparingly, and only in special locations."

The Eastern Region Group of Councils (Submission No. 491) notes:

*"**Third party involvement in the planning system***

29. *The Group considers that one of the valuable aspects of the current Victorian planning system is the extent to which it involves the local community in many aspects of planning decision making including for planning scheme amendments and planning permit applications.*

30. *The Group does not consider that this ought to be fundamentally changed, but rather that there should be consideration given to the tests provided for in the Act about the nature of the notice that has been given. In this regard, it should be noted that section 52 of the Act has never been comprehensively reviewed and continues to provide a convoluted test (relating to material detriment) to determine whether notice is required to be given in a bid to provide for a simpler, more effective notice provision that ensures those who are likely to be affected by a particular proposal receive notice, without extending such notice more widely than is worthwhile and useful.*

31. *In this regard, the Group has observed that both in objections before Council and at VCAT, community members participate in the planning process who do not live proximate to the subject site, are unlikely to be directly affected by the proposal and who make objections to council and/or submissions to VCAT which are*

unlikely to make any impact in relation to the ultimate decision making and which do not relate to the relevant planning permit trigger.

32. Consideration should be given to:

32.1 requiring objectors to better demonstrate that their objections to council are soundly based and within the ambit of permit discretion and to give councils a clearer ability to disregard objections outside the ambit of discretion in a similar way to the mechanism provided for objections made to secure a commercial advantage; and/or

32.2 requiring objectors to provide more evidence to demonstrate that they should have sufficient standing to participate in VCAT proceedings (and particularly bring such proceedings against a Council decision to grant a permit). This could involve a review of the VCAT format for the consideration of objections; and/or

32.3 requiring a closer relationship between planning permit triggers and the nature of objections."

The Committee considers that third party involvement in the planning process is an important component of Victoria's planning system. Clearly third party involvement adds to the processing time for applications. This outcome should not of itself be considered a symptom of malaise in the planning system. However third party rights are not unlimited, rather they should be exercised responsibly having regard to the potential impact arising from a proposal. The Committee considers that third party involvement in the planning system should be proportional to the scale and nature of the permission being sought; and relevant to the exercise of discretion prescribed in the planning scheme.

The Committee considers that the potential to stream permit applications into different classes namely Code Assess or Merit Assess provides a basis to align notification requirements with each path.

At one end of the spectrum the Class 1 Code Assess stream would be exempted from notice and third party review rights because the assessment criteria are quantitative and have been developed with community input and review. The Class 4 Limited Assessment stream could be aligned with a reduced scope of notice to reflect the more limited nature of potential material detriment. At the other end of the spectrum, the Class 5 General Assessment stream could have notice requirements determined at the discretion of the Responsible Authority. Existing third party review rights would be retained in the Class 4 Limited Assessment and Class 5 General Assessment streams.

The current provisions of the Act which potentially expose councils to liability (such as section 94) for decisions relating to notice, or failing to give notice, should be reviewed as a consequence of the changes.

The effect of these changes is to remove the need for the responsible authority to make a judgement about the potential for material detriment in most types of applications.

KEY FINDINGS - Notice Requirements and Material Detriment

The Committee considers that:

- Third party involvement in the planning process is an important component of Victoria's planning system.
- Third party rights are not unlimited and should be:
  - proportional to the scale and nature of the permission being sought; and
  - relevant to the exercise of discretion prescribed in the planning scheme.
- The potential to stream permit applications into different classes, namely Code Assess and Merit Assess processing paths, provides a basis to align notification requirements with each processing path.
- Notice requirements for different classes of land use and/or development should be prescribed by:
  - enabling the planning scheme to set out notice requirements for different classes of applications; and
  - legislative change to section 52 of the Act and to the Regulations.
- The current provisions of the Act which potentially expose councils to liability (such as section 94) for decisions relating to notice, or failing to give notice, should be reviewed as a consequence of any change to Section 52 of the Act.

10.1.3 Referral Processes

Referral processes are an important part of the planning system.

Many submissions to this review including those from referral authorities suggest the need for change in the current referral practices.

Section 55 of the Act requires that a permit application be referred to those authorities specified in Clause 66 of the scheme as a referral authority.

Planning schemes provide that an application does not need to be referred if in the opinion of the responsible authority the proposal satisfies requirements or conditions previously agreed in writing with the referral authority. In practice however, these agreements or protocols have not been well utilised.

After receiving the referral authority's comments, the responsible authority must refuse the application if a referral authority objects to the grant of a permit or include any condition of the permit requested by the referral authority.

After receiving an application, a referral authority has 28 days to provide comment or direction to the responsible authority.

A number of submittors criticised the performance of referral authorities in responding to referrals within the statutory timeframe, causing delays to the processing of applications and frustrating applicants. Submittors also observed that the failure of some referral authorities to attend and substantiate their required permit conditions at a VCAT hearing undermined the imposition and validity of conditions in the first place, often leaving councils to defend the position of the referral authority.

The submission of Cardinia Shire Council (Submission No. 200) is typical of the concerns expressed about the performance of referral authorities and the dilemma imposed by conflicting requirements by more than one referral authority to an application. This submission notes:

> *"The Act should make it clear what happens if no response is received from a referral authority. Should it be presumed therefore that they do not object or have no conditions. Applicants should be able to obtain referral authority responses prior to lodgement of an application. The Act should allow for pre agreement conditions between Responsible Authorities and referral authorities, this will reduce time frames for permit applications Councils should have the ability to have regard to the comments of a referral authority and not be bound by them; this will allow council to form a balanced view on the advice received from referral authorities. For example Council may support an application on the basis of its benefits to the community through employment and sustainable land use, but Vic Roads may object to access to the site.*
>
> *Councils should be able to weigh up the competing views of each of the referral authorities to determine if an application should be supported, rather than having to refuse the application because of the views of one referral authority.*
>
> *In addition, Council should be able to disregarding suggested permit conditions that it considers to be inappropriate to impose on the subject application. The Act should have regard to issues where referral authorities provide conflicting advice. A co-ordinating point or RA involvement could be useful. E.g. CFA requiring vegetation removal for fire prevention and DSE requiring retention of native vegetation. Require a referral authority when it refuses to grant consent to the*

issue of a planning permit to participate in a conciliation or VCAT process when requested by the responsible authority."

Contrastingly, the views of referral authorities with respect to the planning permit process are typified in the submission of South East Water (Submission No. 195), as follows:

"If a responsible authority has not received a response from a referral authority under Section 56 of the Act within the prescribed time, currently the responsible authority can assume that we have no comment to make. Referrals can go missing and may not be received by the referral authority. There could also be a communication problem with sending or receiving the response. To improve the process, if the responsible authority does not receive the response it should be a requirement under the Act or in a Department practice note for the officer to first make direct contact with the referral authority to obtain a response. Our records show that we respond to 100% of planning referrals within the prescribed time and don't believe our conditions should be discarded if there is a communication issue...

Under Section 62 (1) (a) of the Act, the responsible authority is required to include the conditions of the relevant referral authority. This section should also include that the responsible authority should not change the wording of the condition (without the referral authority's consent), as it could potentially change the meaning of the condition. Unfortunately, South East Water has noticed that our conditions have been changed by some Councils."

The City of Maribyrnong (Submission No. 72) also notes that an amendment to a permit may impact on a requirement of a referral authority and put its own challenges:

"Consideration needs to be given to the process of amending applications, and how this may interact with prior approvals from referral authorities and statutory timeframes."

Some submissions commented on the number of referrals that are required for planning matters in rural and regional areas. It may be that through a more standardised approach to these referrals, delays could be reduced. Goulburn Murray Water (Submission No. 367) suggests efficiencies could be achieved by:

"Requiring referral authorities and Local Government to minimise referrals through scheduling out referrals and nominating an appropriate referral authority."

The Committee believes there is considerable room for improvement in the way that the current system of planning referrals is undertaken with respect to planning permit applications and the certification of plans of subdivision.

The Modernising Report made the following recommendations that address many of the issues identified by submittors to this review. The recommendations propose:

- A standard referral form to be used by the responsible authority to refer an application to a referral authority. This form will specify why a permit is required and what provision of the planning scheme is relevant to the consideration of the referral authority. This will support electronic delivery of the referral process.
- Referral agreements between referral authorities and the responsible authority to be included in planning schemes in the same way as incorporated documents. This will provide transparency and encourage adoption of these arrangements.
- Any requests for information and the decision of the referral authority to be sent concurrently to the applicant and responsible authority to help improve response times.
- Referral authorities to maintain a register of referrals that records performance against statutory timeframes, report annually to the Minister on the operation and performance of their referral function and advise the Minister of any change that should be made to the referral requirements to improve performance.

The Committee supports the recommendations of the Modernising Report.

KEY FINDINGS - Referral Processes

The Committee considers that there is significant room for improvement in the current system of planning referrals, both at the time of a planning permit application and in respect of the subdivision process, including reviewing current practices and/or legislative requirements regarding:

- Timelines for responses to councils;
- Whether permit conditions or objections to a permit application by a Section 55 referral authority be considered as advisory or mandatory;
- The use of standard agreements for referrals; and
- Referral authority participation in the VCAT review process.

10.1.4 Request for Further Information

A number of council submissions and presentations to the Committee commented on the frequency with which permit applications are lodged with inadequate information to provide for an assessment of a proposal against the planning scheme. This leads to a Request for Further Information pursuant to

Section 54 of the Act which stops the '60 day clock' for processing a permit application.

Submissions from councils indicate that the quality of planning applications often requires planning officers to seek additional information and details via a Request for Further Information.

The Mornington Peninsula Shire Council (Submission No. 517) states:

> *"One of the common points for improved efficiency is to improve the standard of applications and to ensure that the necessary information is provided. In this context it is recommended that Council's should be able to reject applications as being inadequate, even if this decision is open to appeal.*
>
> *It is also recommended that the period for the request of further information (under Section 54) be extended to 40 days, without extension of the total period for determination. Registration and initial assessment, discussion and internal referrals often need to occur before an appropriate request for further information can be compiled."*

Similar views were expressed in the submission of the City of Darebin (Submission no. 471), as follows:

> *"There should be a stronger process to return application that are lodged on an incomplete basis. Further requirements need to be specified and referred to in the scheme and legislation to ensure that a higher percentage of applications are lodged without the need for a further information request. As an example Darebin regularly receives applications for unit development that excludes the lodgement of details such as elevation plans. Under the regulations the applications lodged without elevation plans have to be accepted and this wastes time and resources."*

The City of Boroondara (Submission No. 356), the Shire of Glenelg (Submission No. 100) and the Shire of Wellington (Submission No. 239) suggest that the Act and Regulations should be amended to allow Councils to reject an application that is not considered to provide for at least the minimum application requirements. These submissions consider this would substantially reduce both processing times and resources required to check and re-check the resubmitted application documents.

In turn, a number of submissions from the users of the system commented on the timing of a Request for Further Information and the often extensive list of further information required much of which appeared to go way beyond the information necessary to allow an assessment of the proposal against the relevant planning scheme requirements.

Miller Merrigan (Submission No. 325) makes the following comment:

> *"**Frivolous further information requests***
>
> *It is very common for Council planners to issue further information requests regardless of the quality of applications. Presumably this is done to 'manage' workloads and not fall outside of statutory time limits but in effect the practice results in undue delays, cost and frustration for permit applicants."*

One individual (Submission No. 63) outlines a recent experience as a planning consultant engaged to undertake audits of Council permit application files on behalf of the Victorian Auditor General. The submission notes:

> *"Local government will complain that applications are far more complex than they were 24 years ago when the Act was re-written (although the 60 days was in the T&C Planning Act) and that this time should be extended. This is not the case.*
>
> *Further the requirements of the VPPs would require most modest applications for say a three dwelling development to contain:*
>
> - *Architectural plans, streetscape, rendered perspectives*
> - *Feature survey of the existing conditions with contours to AHD*
> - *Arborist report*
> - *Traffic report*
> - *Landscape plans*
> - *Drainage plans*
> - *Planning submissions*
>   - *opportunities and constraints;*
>   - *clause 55 assessment;*
>   - *neighbourhood character assessment (usually under local policy)*
>   - *overlay(s)*
> - *Aerial photos from Google/Near Map of site and surrounds*
> - *All up cost of $20,000.*
>
> *The above list of documents reveals however that planning applications have never been more comprehensive, yet officers will still require information, unrelated to their assessment.*
>
> *There are numerous VCAT cases on this issue, but the culture of local government is certainly not one of facilitation. In fact given this level of information provided decisions should be made faster not slower. Most modest applications (ie. 3 dwellings) for medium density development take 6 months."*

The submission from Murray Projects Pty Ltd (No. 59) notes that:

> *"the vast majority of applications are deemed incomplete and a further information request generated. The trivial items requested range from clarification on fence heights to a distance on scaled plans. A further information letter can often add several months to an application."*

The Modernising Report canvassed three options to clarify and improve the quality of information provided as part of a planning permit application, namely:

- Provide the ability for a responsible authority to reject an application if it is incomplete;
- Introduce a new comprehensive application form that includes more detailed description and analysis of the permission being sought; and
- Establish a system of accreditation of private planners to provide pre lodgement certification of applications.

The City of Glen Eira (Submission No. 118) outlines the systems in place in that municipality to streamline the process for lodging planning permit applications which included a pre-certification process. A subsequent presentation to the Committee from representatives of the City of Glen Eira advised the Committee that this pre certification program works well.

This view contrasts with that of the City of Melbourne:

> *"A more comprehensive application form would not address the issue of inadequate information with applications. The opportunity to request further information in writing with a lapse date is working well. It is transparent, gives the RA an opportunity to build a relationship with any applicant finding the system difficult and ensures abandoned applications do not remain in the system. Simple applications can be accepted and missing fees or information requested, without planning a burden on the applicant to provide unnecessary or irrelevant information. Pre-lodgement certification is not supported because it adds more complexity. It could remove the ability of the RA to request information needed in local circumstances and reduce the transparency of the process."*

The City of Melbourne submission is typical of the concerns raised by other submittors on the issues of a revised application form, pre-lodgement certification and the potential to 'not accept' applications.

There are clearly opposing views on each of the three options presented in the Modernising Report.

This Committee is reluctant to conclude at this stage that the way to solve the problem of inadequately detailed planning permit applications and the consequential requests for further information is simply to provide for a

council to 'not accept' an application or to endorse a formalised pre-lodgement certification process.

The solution is more likely to be found in a combination of practices and actions that might also include improved and formalised pre application processes such as the formal recording of council officer advice and its provision to potential applicants with specific reference to what is expected in any subsequent permit application.

The potential for a council to not accept a permit application with insufficient information should only be contemplated where there are clear, standardised specifications universally available to all applicants about what should be included in a permit application.

KEY FINDING - Request for Further Information

The Committee concludes that increased efficiencies and reduced timelines for the processing of a permit application can be achieved by a suite of statutory and non-statutory measures. These measures will be investigated in the next stage of the Committee's work.

10.1.5 Amendments to Planning Permits

Numerous submissions raised the issue of amendments to planning permits.

There are a number of ways that a planning permit can be amended. They are:

- Section 71 (slip rule to correct mistakes);
- Section 72 (minor amendments);
- Section 87 (amendment or cancellation of a permit);
- Section 87A (Amendment of permit issued by VCAT); and
- Secondary consent contained within a planning permit condition.

Overall, there is widespread concern about the inconsistency in the application of methods to amend a planning permit and how this impacts on the transparency of the planning system. As summarised by the City of Stonnington (Submission No. 537):

> *"Consistency should be sought in the various mechanisms available to review a decision i.e. between secondary consent, Section 72 and Section 87. The test is different in each case."*

Section 72 of the Act states that:

> *"A person who is entitled to use or develop land in accordance with a permit may apply to the responsible authority for an amendment to the permit."*

Section 72 excludes a permit issued at the direction of the Tribunal from this option to amend a permit. This section specifies that *a "reference to a permit includes any plans, drawings or other documents approved under a permit"*.

The City of Melbourne outlines concerns that are shared by other submittors as follows:

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

When a permit has been issued at the direction of VCAT, the current system requires that secondary consents then be endorsed by VCAT who is the responsible authority. There was general widespread criticism of this process due to its cost and time burdening effect. Typical responses from councils include:

Maribyrnong City Council (Submission No. 72):

> *"A responsible authority should have the ability to amend a permit issued at the direction of VCAT… particularly for minor amendments, [the current process is] unnecessarily time consuming."*

Glen Eira City Council (Submission No. 118):

> *"…this is unnecessarily time consuming for all parties.[The proposed solution is to] amend the Planning and Environment Act to allow for VCAT directed permits to be amended by a Responsible Authority in all circumstances."*

Cardinia Shire Council (Submission No. 200):

> *"For minor changes to the permit or plans especially where there are no objectors, council should be able to amend a permit issued by VCAT."*

Furthermore, such opinions extended into the private sector, with the UDIA (Submission No. 407) noting:

> *"A responsible authority should have the power to amend a condition issued at the direction of the Victorian Civil and Administrative Tribunal (VCAT)."*

A number of submissions also address the use of the secondary consent process usually expressed as permit condition as follows:

> *"The building and works authorised by this permit must not be amended in any way without written consent of the responsible authority."*

Overall, there was support for the purpose of secondary consents in providing a "*fast track minor amendments to permits that do not result in any material detriment*" (Towong Shire Council, Submission No. 119).

The issues raised about the use of secondary consents allowed under a permit relate to the lack of clarity on the scope of change permitted, lack of consistency between councils on when the use of secondary consent processes are acceptable and the lack of timelines for the consideration of plans submitted for endorsement under the secondary consent permit condition.

Submissions relating to the scope of secondary consent amendments are typified by:

Maribyrnong City Council:

> *"The scope of amendments allowable under secondary consent also needs to be clarified, either through the Act or through a separate guideline."*

Kingston City Council (Submission No. 154):

> *"The existing 'secondary consent' provisions have increasingly developed a culture whereby…a 'right first time' attitude is increasingly less important…This has in some instances reduced community confidence in the Planning Application process."*

City of Casey (Submission No. 281):

> *"Secondary consent should only be available if the change is minor, does not increase floor area or number of dwellings for example and when it relates to a permit issued where there were no objectors."*

Master Builders Association Victoria (Submission No. 297):

> *"There are no clearly defined processes, criteria and or timeframes for secondary consents."*

Issues raised in relation to timelines are expressed in further submissions.

City of Melbourne (Submission No. 383):

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

Urbis (Submission No. 216):

> *"Timeframes for 'post approval' processes (such as secondary consent …) are unclear, and in our experience often take longer to resolve than what might reasonably be anticipated – sometimes as long as the original permit application timeline."*

The lack of consistency of when the secondary consent method is appropriate is also raised as a concern. The Housing Industry of Australia notes:

> *"Each local council has its own approach when dealing with secondary consents for minor amendments to a design without having to formally apply to amend a planning permit. [An option is to] produce state-wide consistent requirements for secondary consent. Guidance should provide greater clarity and consistency regarding fees, timeframes and information requirements."*

These concerns are also held by the Master Builders Association Victoria:

> *"Also councils vary widely in their interpretation of whether an applicant can apply under section 87 or section 72."*

The Modernising Report addressed the issues of secondary consent and notes:

> *"**Process for secondary consents***
>
> *A permit condition may provide that some future or further changes be carried out to the satisfaction of the responsible authority or not carried out except with the further consent of the responsible authority. These consent requirements are often called 'secondary consents' and they provide a way of making minor changes to plans or other aspects of a permit. However, there is no defined process for considering a secondary consent request, or defined criteria for when this type of consent should be used.*
>
> ***Registration of secondary consents***
>
> *While an amendment to a permit must be notated on the permit and recorded in the planning register, there are no equivalent requirements for secondary consents. It is not necessarily evident on the face of a permit whether any secondary consents have been given, or which is the relevant current endorsed plan."*

The Modernising Report poses the question:

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

Outside the five mechanisms to amend a planning permit, an issue raised by HIA adds another layer of uncertainty:

> *"There is ambiguity regarding whether it is necessary to amend a permit or apply for a new permit in some cases… For example, in most typical residential situations, there is a planning permit exemption for landscaping, pergolas, decks and verandahs where certain conditions are met. However, this exemption is negated if a planning permit has been issued for the site along with endorsed plans for the dwelling and landscaping. HIA members report lengthy delays in building projects to seek amendments to permits that would otherwise be exempt under Clause 62 of the Victorian Planning Provisions."*

The Committee considers that the ability to expeditiously amend plans and permits is an important part of the existing planning system and a method to enable this process to occur is essential. The question is whether the current methods of doing this are clear.

The Committee is determined to find a better way.

KEY FINDING - Amendments to Planning Permits

The Committee considers provisions relating to secondary consent amendments to planning permits are unclear and should be reconsidered.

10.2 Planning Scheme Amendment Process

In prescribing what a planning scheme can provide for, section 6 of the Planning and Environment Act 1987 sets out the purpose and content of planning schemes. Section 6 states:

> *"6 What can a planning scheme provide for?*
>
> *(1) A planning scheme for an area—*
>
> *(a) must seek to further the objectives of planning in Victoria within the area covered by the scheme; and*
>
> *(aa) must contain a municipal strategic statement, if the scheme applies to the whole or part of a municipal district; and*
>
> *(b) may make any provision which relates to the use, development, protection or conservation of any land in the area."*

Other provisions of section 6 stipulate the content of schemes as well as how and where planning schemes apply.

Section 6 establishes all planning schemes as statutory documents which set out objectives, policies and provisions relating to the use, development, protection and conservation of land in the area to which they apply.

Section 8A(1) of the Act makes a municipal council the planning authority for any planning scheme in force in its municipal district. Acting as planning authority, councils usually prepare the documents for any amendment to a planning scheme. Part 3 of the Act sets out the process for making and amending planning schemes. That process includes public exhibition, the right to make a submission and an independent panel assessment process.

The DPCD website describes the planning scheme amendment process in this way:

> *"Before an amendment can be prepared it must be authorised by the Minister for Planning. The Minister may also authorise a planning authority to approve an amendment after certification by the Secretary of the Department of Planning and Community Development.*
>
> *An amendment to the scheme involves consultation with all the parties who may have an interest in the amendment, or may be affected by it. Usually, an amendment is placed on public exhibition for at least one month.*
>
> *If there are submissions which cannot be resolved by the planning authority, the Minister for Planning will appoint an independent panel to consider submissions if the proposed amendment is to proceed. When it receives the report from the panel, the planning authority must either adopt the amendment, abandon the amendment or adopt the amendment with changes.*
>
> *An amendment becomes part of the planning scheme when it is approved by the Minister and notice is given in the Victoria Government Gazette. In instances where both a permit and an amendment are required, the Act makes provision for a combined permit and amendment process."*

The website summarises the steps in the planning scheme amendments process as:

- Step 1: Requesting an amendment;
- Step 2: Authorisation;
- Step 3: Preparation;
- Step 4: Exhibition;
- Step 5: Submissions, panels & Advisory Committees;
- Step 6: Adoption; and
- Step 7: Approval.

The process is shown diagrammatically in Figure 6.

The planning scheme amendment process was a major focus of submissions. More than 100 submissions commented on aspects of the process. These range from the extent of reports and information to be provided with a request for an amendment, to the various steps in the process, time taken for approval by the Minister for Planning and the review process applied by DPCD.

Each step of the process was criticised, as much from councils as industry groups and individuals.

The Committee is not the first to examine the planning scheme amendment process. Recent reviews include the 2010 Planning Act Review Working Group chaired by Mr Ian Robins and Modernising the Planning Act project in 2009.

Submissions indicate that there is frustration with the planning scheme amendment process. The Modernising Report comments at Page 29 that:

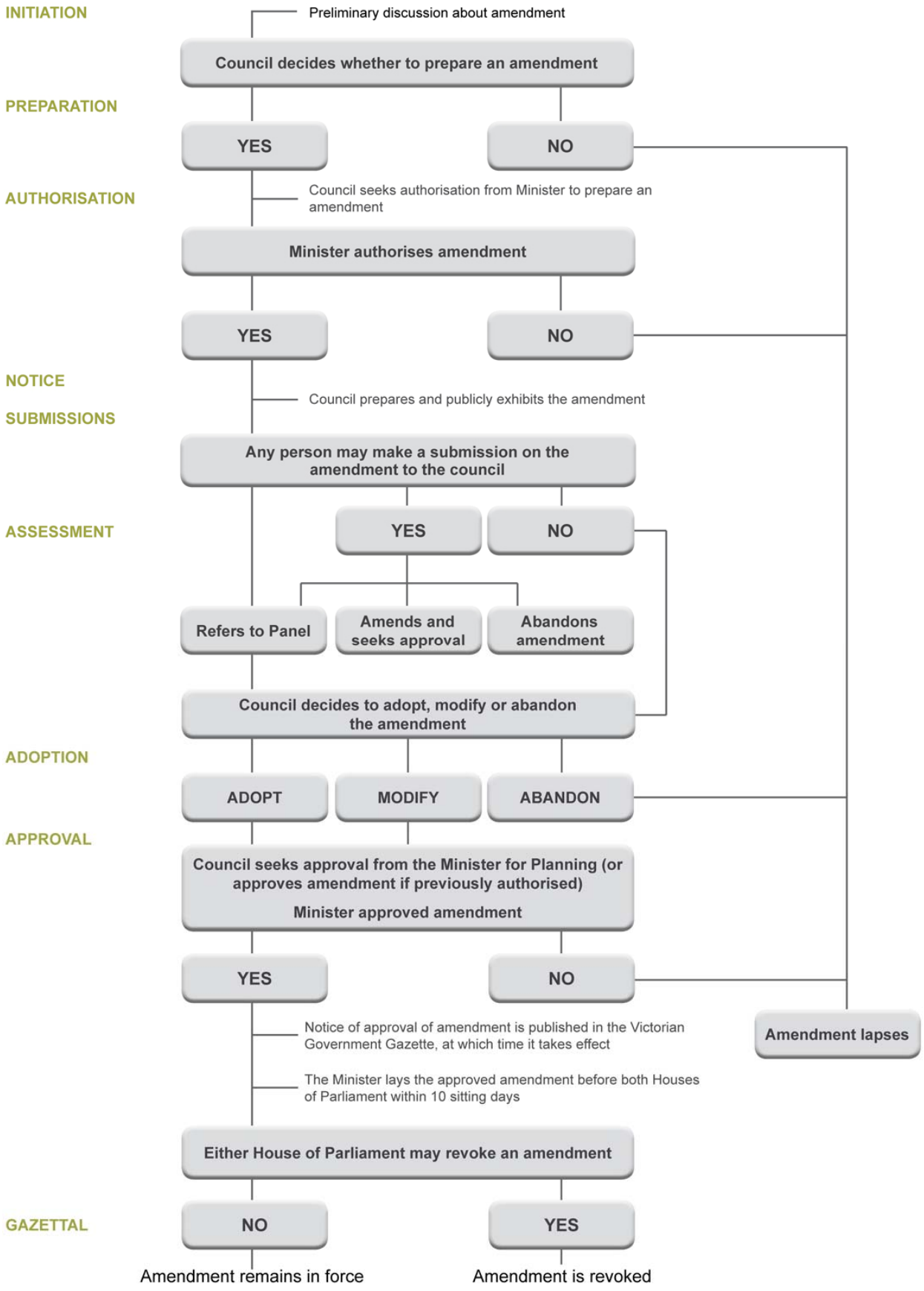
> *"The amendment process is generally considered to be a robust one, however, the efficiency of the process could be improved."*

There is no shortage of suggestions from submittors about methods to improve the efficiency of the process. In this report, the Committee identifies the issues raised in the submissions and the ensuing need for more detailed consideration of some of these issues.

The discussion below begins with extracts from a submission by Lascorp Development Group Pty Ltd (Lascorp). In its comprehensive submission, Lascorp covers many aspects of the planning scheme amendment process.

Lascorp identifies itself as a retail developer who regularly seeks land rezonings to facilitate supermarket or retail development.

FIGURE 6 - Planning Scheme Amendment Process



Source: Page 31, Modernising Report

The submission expresses the company's frustration with the system and offers some solutions:

> *"The Planning Scheme Amendment process perhaps best demonstrates how the current planning process is consistently frustrating opportunities for major investment and development that meets proven need to be delivered.*
>
> *Lascorp seeks a guaranteed and statutorily-based recourse to a higher authority in instances where a local authority is procrastinating or unreasonably refuses to put forward an amendment, and a more timely process for proposals that are consistent with state government and council policy.*
>
> *Lascorp concurs with the range of industry concerns surrounding the Planning Scheme Amendment Process, as identified in the 2009 Modernising Victoria's Planning Act Response Paper No. 2. In particular, the lack of statutory timeframes associated with the amendment process, Councils' power of veto, and the lack of an appeal process to contest this should it occur, create a lot of uncertainty for proponents. Whilst the ongoing role of DPCD in authorising amendments is supported, the absence of statutory timeframes extends also to this aspect of the amendment process. Finally, the 'one size fits all' approach to Planning Scheme Amendments means all amendment proposals, from administrative 'corrections' to Planning Schemes to proposals with a broad, strategic impact, are treated in the same way...*
>
> *There are areas where some reform could be considered, to streamline and add certainty to the amendment process. To this end, Lascorp supports the implementation of the Planning and Environment Act Review recommendations proposing revisions to the existing Council-led amendment process, which propose:*
>
> - *Providing the Minister for Planning with powers to authorise any person to prepare an amendment;*
> - *The pre-setting of a date for the Directions Hearing at the time of exhibition;*
> - *Bringing forward the certification step to the beginning of the amendment process, to ensure that all amendments are in an appropriate form at the outset;*
> - *Giving the Minister sole power to abandon amendments, as well as remaining responsible for approving the Amendment, with the Council role being to provide a recommendation to the Minister on the amendment proposed;*
> - *Amending the Act to allow an authorised person to apply to VCAT for a review of a defect in procedure; and*

- *A range of performance measures to be applied to the standard amendment process, to improve timeliness.*

The initiative to introduce a streamlined Planning Scheme Amendment procedure for the processing of minor or technical amendments is also supported."

These solutions are supported entirely or in part by other submittors including:

- Industry groups including the Property Council of Australia (Submission No. 311), the Master Builders Association (Submission No. 297), the HIA (Submission No. 196), the Urban Development Institute of Australia (Submission No. 407);
- Individual submittors including McGauran Giannini Soon Architects Pty Ltd (Submission No. 444), F. R. Perry & Associates Pty Ltd (Submission No. 456), Fiona Ogilvy-O'Donnell (Submission No. 187); and
- Councils including Wellington Shire Council (Submission No. 239), Hobsons Bay City Council (Submission No. 229), The City of Greater Dandenong (Submission 351) and Cardinia Shire Council (Submission No. 200).

The Wellington Shire Council (Submission No. 239) states:

"Critical to any future planning reform is the need to simplify the Planning Scheme amendment process and provide greater discretion for Council to amend/update its Planning Scheme. Recent initiatives such as the certification of Planning Scheme amendments and the need to obtain authorisation of a Planning Scheme amendment have provided little benefit. The consideration and referral of submissions to an Independent Planning Panel (e.g. where only one submission is received to a previously tested issue) also requires review. Alternative processes, such as the establishment of Practice Day type hearings should be used to quickly deliberate on the validity/response to submissions. Further, when Independent Planning Panels are genuinely warranted to test the merits, the scope of Panel deliberation needs to be more clearly defined to ensure that Independent Planning Panel recommendations are relevant and achievable, Councils should also have greater discretion to promptly amend its Planning Scheme where it is implementing an adopted strategic plan/policy which has already been through a robust public process."

The Hobsons Bay City Council (Submission No.229) states:

"Generally, there is a lack of ownership and transparency of the planning scheme amendment process by the DPCD. There is a need to introduce and/or reinforce timelines associated with the consideration of planning scheme amendments in the Act particularly when planning scheme amendments are with the Minister for Planning for

consideration (e.g. for authorisation and/or approval). If timelines are not met by DPCD, an avenue of appeal should be open to the Council. Often it is the Minister for Planning or DPCD that are calling in amendments because it is believed the Council has taken too long however there is no avenue for the Council to do this when authorisation or approval of an amendment takes months to be finally approved."

The Greater Dandenong City Council (Submission No.351) states:

"Council generally agrees in principle with the proposal to streamline the planning scheme amendment process by introducing a two-track system enabling technical amendments to be expedited without needing to go through most of the time-consuming steps in the amendment process - such as public exhibition, the consideration of submissions, the panel hearing process, etc that amendments introducing policy should still be required to follow."

The Cardinia Shire Council (Submission No.200) suggests:

"A statutory time frame of 3-6 months could be imposed on the Planning Authority to determine whether or not to prepare an amendment. If the Planning Authority does not make a decision within the prescribed time the proponent should be able to go to the Minister for Planning, as is currently the case."

The Cardinia Shire Council also suggests creating three classes of amendments and proposes different tailored approaches to procedures. The proposition is to create three classes of amendments:

1. Procedural – to apply to the correction of anomalies, removal of redundant provisions, or minor policy neutral amendments;
2. Standard – to apply to amendments which have no significant policy implications; and
3. Significant – to apply to significant policy changes, amendments with significant policy implications or major development proposals.

Among many council submissions were those opposed to any proposal allowing the authorisation of private individuals to prepare a planning scheme amendment. This topic was among the issues considered by the Robins Working Group. The Committee does not advocate such a change.

The submission from the Mornington Peninsula Shire Council (Submission No.517) is typical of those who oppose the idea:

"Private authorisation, particularly if combined with the removal of the power of Council's to abandon amendments, would essentially place

local government on the sidelines in the key process for plan making. It would potentially result in centralisation of decision making, and the associated risk of a 'one size fits all' approach.

Such provisions would enable private interests to drive the planning agenda, with local government placed in a reactive position, leaving fewer resources to address Council priorities."

The Mornington Peninsula Shire Council also opposes the idea that there should be a right of review if a planning authority refuses to prepare an amendment:

"The argument that there should be an automatic appeal mechanism against Council refusal of amendments undermines the legitimate claim of local government to be a planning authority able to make (final) decisions and be accountable within its own jurisdiction. The change represents an unjustified reduction in the role of Local Government."

Macedon Ranges Residents' Association Inc. (Submission No. 413) states:

"In the Association's view the current amendment process and the Panels' system works well, and it would work even better if the Department of Planning and Community Development could be relied upon to provide consistently high standards of objective planning expertise and quality control.

There should be no weakening or 'improving' of amendment processes. Scheme amendments change legislation (subservient legislation) and there must be full disclosure and justification for this.

The Association supports Councils retaining the authority to refuse an amendment request, and retaining existing timeframes for amendments."

Knox City Council (Submission No. 423) is succinct in its statement about retaining its powers to determine amendments:

"…the current processes to amend a planning scheme are too lengthy and costly", but argued that *"to maintain the integrity of the role of Planning Authority, Council must retain power to commence, modify and abandon Planning Scheme Amendments."*

A different view is put by KLM Spatial (Submission No. 259):

"It is our view that the amendments are best dealt with by The Minister and not councils for several reasons:

- *Amendments need the permission of the minister to proceed in the first place*

- *Decisions on zoning should be made by the Minister to reflect government policy e.g. Melbourne 2030 and Melbourne @ 5 million.*
- *Local councils are too heavily influenced by parochial issues rather than implementing planning policy*
- *There are no review rights so that council decisions are beyond scrutiny and contest.*
- *Objectors can thwart a worthy proposal which may benefit the environment and many Victorians."*

The Committee notes that the Draft Exposure Bill following the Modernising Report proposed changes to the amendment process because:

> *"The current amendment process can take too long (particularly for technical amendments), and is uncertain, the quality of amendment documentation is variable, and some steps in the amendment process can be improved."*

The Exposure Draft proposed:

> *"Separate 'streamlined' and 'standard' planning scheme amendment processes are provided for the assessment of amendments. These processes are designed to improve efficiency by enabling an amendment to be streamed into a process that better reflects the nature of the change proposed by the amendment.*
>
> *Changes include:*
>
> - *The Minister for Planning will be able to authorise a person to prepare an amendment and carry out certain procedural steps in the standard amendment process.*
> - *The Secretary of the Department will certify the quality of amendments before exhibition.*
> - *The date for a directions hearing will be set at the time of exhibition.*
> - *An amendment can only be approved or refused by the Minister on recommendation from the planning authority."*

These submissions represent the divergent views presented by scores of submittors. Irrespective of the lack of unanimity, taken together they provide considerable argument to rethink the planning scheme amendment process.

Below are extracts from particular submissions about the steps in the amendment process, which make a case for review.

10.2.1 Step 1: Requesting an amendment

> *"**Who can prepare or amend a planning scheme?***
>
> *An amendment may be prepared by any planning authority as specified by the Act. A planning authority is any Minister or agency that has been authorised by the Minister for Planning to prepare amendments. In most cases, the initiating planning authority would be a local council, but it may be another Minister. Sections 8, 8A, 9, 10 and 11 of the Act set out who is authorised as a planning authority to prepare and approve an amendment.*
>
> *Anyone can ask a planning authority to prepare an amendment. If you do, you must be able to demonstrate to the planning authority (usually the council) adequate justification as to why an amendment should be prepared. Council will have to be certain that the amendment has planning merit and is consistent with the future strategic directions for the municipality. The Department's Planning Practice Note – Strategic Assessment Guidelines for Planning Scheme Amendments sets out the matters that council should consider before amending its planning scheme.*
>
> *There is wide scope for scheme amendments, which may consist of a small change to one provision, or major changes or a substitution. Steps for preparing an amendment are set out in detail in the Act.*
>
> *Changes to the planning scheme may be made by both the Minister for Planning and the local council."*
>
> Source: DPCD website

The Modernising Report dealt with requesting and preparing an amendment. The report states:

> *"The Act does not formally define the steps to prepare an amendment, nor how a planning authority should consider a request for an amendment before putting it on public exhibition.*
>
> *While it is good practice for a proponent to discuss their proposal with the planning authority so that any known issues can be addressed before a request for an amendment is made, there is no requirement to do so.*
>
> *The quality and amount of information that accompanies an amendment request can vary significantly.*
>
> *Amendment proposals which have not been discussed with the planning authority are more likely to attract requests for further information before the merits of the proposal can be reasonably assessed. Inadequately prepared proposals can take up valuable planning authority resources and add time to the amendment process.*

Options for improving this step of the process include:

- *providing more guidance on the information that should be included in an amendment request to improve the quality of proposals*
- *introducing an amendment request form for use by private proponents which requires a comprehensive description and preliminary assessment of the proposal."*

There are times when a planning authority decides to refuse a request for an amendment, or chooses to make no decision because there are unresolvable differences between it and the proponent. At present, there is no way for a proponent to seek a review of a refusal, or to obtain an independent assessment on how these differences should be decided. A formal mechanism for this could be introduced, however it must be recognised that the process for 'changing the rules' is a governance process which is different from a review of 'whether the rules have been complied with', as occurs at VCAT.

The Committee is aware that the Robins Working Group received submissions and considered the proposal for an independent body to review disputes between the proponent and the council about a request for an amendment or the processing of an amendment. No recommendation of the Working Group has been made public.

Numerous submissions argue for this right of review if a planning authority refuses or fails to act on a request for an amendment. The submissions express mixed preferences for the review to be considered at VCAT, Planning Panels Victoria or a Standing Advisory Committee.

The Committee considers that the entire planning scheme amendment process requires reform. The Committee is confident that efficiencies in the process can be found and will consider whether there should be a right of review.

10.2.2 Step 2: Authorisation

Page 33 of the Modernising Report considered the authorisation process. It states:

> *"There is concern that the original purpose of the authorisation step – to provide an initial assessment of the strategic merits of a proposed amendment – has become a detailed assessment of the amendment. Clearer guidance about the purpose of this step, as well as the provision for simple amendments (amendments not involving policy issues, or amendments to correct mistakes) to be exempted from this step, may help to improve the overall efficiency of the process."*

The Mornington Peninsula Shire Council submission states:

> *"There is a need to clarify the purpose of Ministerial authorisation prior to the exhibition of amendments. If it is simply an administrative 'rubber stamp' then there is little value in retaining authorisation. However it is considered that there would be real value in authorisation if it is used to confirm consistency with State policy and to assess indicate that the proposed amendment is not opposed in principle or at least to flag issues of concern to DPCD, possibly for consideration by any future panel."*

The Hume City Council (Submission No. 401) took a similar view. It states:

> *"The amendment process could be further streamlined by removing the Minister's power to authorise Council to approve an amendment. In practice this provision has failed to achieve its intended efficiency gains, and has instead resulted in further reporting requirements."*

Other submissions relay concerns at the amount of time taken for authorisation.

The Committee recommends that the procedures for the consideration of a request for authorisation should be reviewed with a view to narrowing the matters addressed and the time for responding with approval or otherwise.

10.2.3 Step 3: Preparation

> *"This stage covers the preliminary investigation, strategic assessment, consultation with relevant parties including DPCD's regional office and the preparation of the amendment documentation."*
>
> Source - DPCD website

Council and proponent submittors raise concern over the level of strategic justification often required for an amendment. Smaller regional councils with low budgets often cannot fund the required strategic analysis to undertake small rezoning amendments, let alone major municipal strategic planning projects.

Studies required to establish a strategic basis for an amendment include documents such as traffic management studies, cultural and heritage studies, flora and fauna studies, engineering studies and social and economic impact studies. The costs for a council or proponent can be high (costs are discussed in greater detail in Part 9.1.3 of this report).

From a proponent's perspective, this work is undertaken at his or her own risk, knowing that at any point in time, the council may request additional studies to be undertaken prior to the draft amendment being placed on exhibition.

The proponent is in fact involved in a process to which there are no defined criteria as to the completeness of their amendment request.

Also relevant is the involvement of other agencies who act as referral authorities. In this stage of the process, planning authorities advise a range of bodies about the preparation of an amendment. This allows for the assessment of any impact a proposal may have on say the demand for services or for schools or transport considerations. Catchment Management Authorities are particularly concerned to be aware of proposals that relate to change in land status within their areas of responsibility.

Goulburn Murray Water (Submission No. 367) comments not only on the desirability of being informed about amendments but also on other aspects of mooted changes to process. The authority states:

> *"The proposal to streamline the planning scheme amendment process is supported however fails to recognise that significant delays in the process rest with the Department rather than the Responsible Authority.*
>
> *The idea that response times apply to referral authorities should be equally applied to the Department and the lack of a response in a required timeframe (28 days) should be deemed to be authorised.*
>
> *The current methodology of involving referral authorities in the formative stage of the amendment (pre-application) is sound and often exposes serious shortcomings in the proposed amendment."*

10.2.4 Step 4: Exhibition

The lack of reference to the exhibition phase of the planning scheme amendment process suggests that this is not a contentious step. There are however submissions that argue there ought to be different exhibition periods for amendments that have different effects. The Cardinia Shire Council submission is noteworthy in this respect.[12]

The Committee notes there has been a significant use of section 20(4) of the Act for amendments that would have normally been dealt with under the standard process. The Committee thinks that this is symptomatic of a frustration with the current processes and timelines involved in exhibition and panel processes. The Committee considers that the increased reliance of section 20(4) is undesirable.

[12] See Page 6 (Submission No. 200).

10.2.5 Step 5: Submissions, Panels & Advisory Committees

This step covers the submission process, and the consideration of submissions by Planning Panels Victoria.

This report examines issues surrounding the role of PPV in Part 7.6. In that part, the Committee discusses possible changes to the extent of responsibilities of PPV.

There were submissions that made criticism of the panel process. For example, some submittors refer to the daunting experience of confronting experienced practitioners in hearings. Overall, however the submissions focus on improving panel practices for speedier outcomes and efficiency gains.

Some of the submittors support the idea presented on Page 34 of the Modernising Report about dealing differently with submissions to avoid hearings. That report states:

> *"The principles of natural justice require that parties be given the opportunity to be heard by a panel, but this does not always require a public hearing. It may be sufficient in many instances to simply give parties the opportunity to make submissions in writing, or to comment in writing on the submissions made by others. Being 'heard' does not necessarily require being heard orally in person in all instances."*

10.2.6 Step 6: Adoption

This step covers the requirement of the planning authority to consider the recommendations of a panel report and the necessary decision whether to adopt or abandon an amendment.

Submissions on this step of the amendment process focus on two aspects:

- the right of the planning authority to abandon an amendment of its own volition; and
- the timeliness of this step.

As noted earlier, some submissions argue that a planning authority ought not be able to abandon an amendment without consultation with the proponent. Contrary submissions argue that it is the prerogative of planning authorities to act as they choose.

Under the Act, if a planning authority proposes not to accept the recommendation of a panel, it must advise the Minister for Planning in writing of its reasons. However, the Act does not rule out a planning authority from abandoning an amendment - a step that may be more than simply not accepting recommendations.

10.2.7 Step 7: Approval

> *"This stage covers the submitting of the amendment to the Minister for Planning for approval and the minister's consideration and decision, or approval of an amendment by a planning authority, once it has been certified by DPCD."*
>
> Source: DPCD website

This stage was the subject of strong criticism in many submissions. Submittors, mostly councils, make the criticism that amendments disappeared into a black hole when lodged with DPCD for approval. There are no statistics available to allow the Committee to judge the truth of the situation. While DPCD maintains statistics on the number of amendments it deals with, there is no data on the length of time taken for approval. Moreland City Council's submission (No.409) suggests that clear timeframes should be established for decision making by the DPCD.

A common grievance of planning authorities and proponents looking for a speedy conclusion to an already long amendment process, is that they are told that "the amendment is sitting on the Minister's desk waiting for a signature". To avoid that situation and to speed the process, the Committee recommends reviewing internal procedures for dealing with amendments lodged for approval, with an aim for prompt decisions.

The Committee recommends that formal timelines are established, as Hume City Council (Submission No.401) suggests:

> *"Council supports the introduction of statutory timeframes for each of the key steps in the planning scheme amendment process. Specific timeframes should be developed for all parts of the process, whether it relates to Council or State Government actions."*

An individual submittor, Geoff Alexander (Submission No.114), offers a possible approach to help remedy delays with amendments:

> *"The Planning Scheme amendments process averages approximately two years, however the process is typically not so intricate as to justify this length of time. One way to address this would be for Councils and the DPCD to submit to each other a monthly progress report (potentially just a paragraph long) on any movements that have been made on any C amendments that they currently have since the time of the last report. This will help to prevent amendments from getting lost somewhere in the bureaucratic gauntlet that they typically need to run through before being approved. Similar systems could be applied to other areas of planning where progress is slow."*

More general concerns with the planning scheme amendment process are raised in submissions, such as:

- The costs of planning to the council and the broader community;
- The deterrent to strategic planning in rural municipalities given the need to meet strategic planning guidelines;
- The drain on council resources to undertake amendments both as a council initiated proposal and at the request of another party;
- The expense and workload issues that result from preparations for a contested panel hearing; and
- The low level of fees that a council can collect for a planning scheme amendment.

These issues are summed up in the submission by the Planning Institute of Australia (Submission No.443) which conveys the concern of planners themselves about:

> *"various aspects of the planning scheme amendment process, particularly its slowness, Ministerial powers and prohibitive costs to Council."*

The Committee acknowledges that there are competing views about desirable changes to the planning scheme amendment process. However, the Committee sees change as essential to improve efficiency for the benefit of all parties. The primary finding of the Committee is that there is an urgent need to determine a more efficient planning scheme amendment process.

The Committee also considers that the planning scheme amendment process may be impacted by the Committee's final recommendations regarding the leadership of the planning system and the roles of the various participants.

KEY FINDINGS - Planning Scheme Amendment Process

The Committee recommends:

- That the planning scheme amendment process be streamed into different types of amendments along the lines of technical amendments, normal amendments and state significant amendments;
- A review of all steps in the amendment process with the aim of making the process more efficient;
- That the need for authorisation be reviewed or be subjected to strict time limits (not more than 10 business days) and if time limits are not met, the amendment is deemed to be authorised;
- That to qualify as a submittor, a person should at least be required to show

how the amendment affects them;

- That a planning authority should be able to dismiss a submission if it considers it to be irrelevant or vexatious, subject to a right of review;
- Where submission issues are limited, the nature of a contested panel hearing should be geared towards that limited issue (this may involve a varied hearing process or a consideration of the matter on the papers);
- That the various decision points required of a council acting as a planning authority be reviewed so that once an amendment process commences (by exhibition), it must proceed through to at least a panel; and
- That further consideration be given to whether a panel's recommendations should be made to the planning authority or directly to the Minister.

10.3 Enforcement

There is little point in making improvements to the front end of the planning system only to potentially see it let down at the back end. Compliance and enforcement are therefore key issues.

If it is important to ensure that there are processes to encourage good planning outcomes at the commencement of an application, it is equally important to ensure the conditions carefully inserted in approved permits are complied with, and if not, that they are enforced.

In a number of submissions and through its consultation processes, the Committee heard of a lack of resources for enforcement. Councils and the Planning Enforcement Officer Association's (PEOA) (Submission No. 14) states that this is especially the case in rural and regional municipalities.

For example, according to the PEOA, most of the approximately 19 municipalities out of the 79 in Victoria that do not possess a dedicated planning enforcement officer are rural municipalities.

The ability to effectively enforce planning schemes, planning permits and agreements is integral to the efficient operation of the planning system. In the absence of enforcement, the planning system stands to be abused and would lose credibility. Generally, the municipal council is responsible for the enforcement of the planning scheme. Even where the Minister makes themself the responsible authority, enforcement functions invariably remain with the council.

Under the Act, there are generally four types of enforcement options:

- A Planning Infringement Notice under the Act (Section 130);
- A prosecution for an offence committed under the Act (Section 126);

- An enforcement order seeking compliance with the planning scheme, permit or agreement; and
- An application to cancel a planning permit for a persistent breach of permit conditions.

The range of options is intended to enable a measured response to the nature of the breach of the planning scheme, planning permit or section 173 agreements.

Initiating any type of enforcement action is a serious matter. It alleges that the person or the respondent has breached the scheme and committed an offence contrary to law. The penalties for breach of a planning scheme, permit or agreement are not insubstantial. The maximum penalties are 1,200 penalty units[13] and 60 penalty units per day for a continuing offence.

The PEOA submission (No. 14) is comprehensive if not overenthusiastic on certain enforcement related issues. The PEAO essentially seeks a greater recognition of the role of enforcement by recommending that:

- the State Government set indicators and give enforcement a higher priority in promoting planning;
- responsible Authorities should be obligated to spend a higher proportion of their budget on enforcement and the development of suitable indicators; and
- responsible authorities should be obligated under the Act to employ a planning enforcement officer.

Other issues raised by the PEOA deal with difficulties faced by enforcement officers in undertaking their tasks, including the:

- high degree of proof required for establishing a breach of the law;
- different notice provisions required to access a property under the Planning and Environment Act and the Local Government Act; and
- alternative jurisdictions for taking action that vary between VCAT and the Magistrates Court with attendant levels of proof and punishment.

It is clear that additional planning resources need to be made available to councils to undertake enforcement. This is particularly the case in smaller councils and extremely pressing in rural and regional areas. In many councils it is not uncommon for the town planner to be a multi-skilled person who wears multiple hats, including that of enforcement officer.

[13] At the time of writing this report, under the Monetary Units Act 2004, 1 penalty unit in Victoria was equivalent to $122.14

Practical examples were put forward to the Committee from rural and regional councils such as the shires of Loddon and Gannawarra and the Swan Hill Rural City councils. These examples indicate that enforcement is an activity that at this stage is beyond the financial capacity of some organisations.

The Shire of Murrindindi (Submission No. 365) states:

> *"Enforcement issues are time consuming, expensive and politically difficult for local government to administer. Recommended enforcement procedures may vary. Any procedures and guidance that may be provided to local government will be of assistance, e.g. standard procedures and letters. The DPCD / MAV should consider a scheme to establish and share resources for local government to administer enforcement matters."*

The role of enforcement is a key part of the planning system and requires appropriate levels of resources and professional expertise to be allocated to its ongoing maintenance.

The Committee considers that the planning system should assist the enforcement functions of a council. One way of enabling this might be to enable councils to pool enforcement resources where they elect to do so. With the advent of Regional Growth Plans and a more regional approach to planning, the Committee considers that rural and regional councils in particular will start to think more about partnerships, and it may be that regional associations could be established to enable pooling of certain resources like enforcement officers.

The Committee considers that there should be the opportunity to undertake regional enforcement in the same way regional planning is currently undertaken. The Committee therefore considers it important to investigate changes to the Act that may facilitate this.

KEY FINDINGS - Enforcement

The Committee considers:

- All councils should provide a planning enforcement function within their municipality;
- Adequate funding should be made available at local and state level to employ regional enforcement officers, with an option for an officer to operate across municipal boundaries; and
- The powers of entry and inspection in the Planning and Environment Act 1987 should be modified to match the corresponding power under the Local Government Act.

List of References

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Better Decisions Faster - Opportunities to Improve the Planning System in Victoria - Discussion Paper, (Department of Sustainability and Environment, August 2003) **- 'The Better Decisions Faster Report'**

Creating a Sustainable and Equitable Planning System – Position Paper (Environmental Defenders Office, 2011)

Cutting Red Tape in Planning (Department of Sustainability and Environment, August 2006)

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Report 1: Using and Interpreting Local Policy (Reference Group on Decision making Processes, September 2002) **- *'The Whitney Report 1'***

Report 2: Substitution and Amendment of Plans (Reference Group on Decision making Processes, November 2002) **- *'The Whitney Report 2'***

Report 3: Enforcement Measures (Reference Group on Decision making Processes, November 2002) **- *'The Whitney Report 3'***

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Small Lot Housing Code Standards (Growth Areas Authority, August 2011)

The Housing We'd Choose (Grattan Institute, June 2011)

The Value of Urban Design (Commission for Architecture and the Built Environment, 2001)

Third Party Appeals Against Works Approval: A Personal Journey (VCAT, 2004)

Third Party Participation in the Planning Permit Process (VCAT, 2005)

Towards a New Development Model for Housing Regeneration in Greyfield Residential Precincts (Australian Housing and Urban Research Institute, July 2011)

Unlocking Victorian Tourism - Draft Report (Victorian Competition and Efficiency Commission, 2011)

Appendix 1

List of Consulted Parties

Business / Industry Group	
• Aldi Supermarket	Andrew Starr Brent Crockford Matthew Houlihan
• Civil Contractors Federation	Claude Cullino - CEO
• Committee for Melbourne	Andrew McLeod - CEO Nathan Stribley
• DLA Piper	Mark Bartley - Partner Sophie McGuinness & others
• Housing Industry Association	Fiona Nield Emily Waters
• Latrobe Vision	Craig Adams Lochlin Wall Matthew Curtain
• Maddocks - Client Session	Maria Marshall - Maddocks Local Government CEO's & Directors
• Master Builders Association Victoria	Brian Welch - CEO Monika Sarder
• Planning Enforcement Officers Associations	Rhett English Pat Dunne
• Planning Institute Australia	Steven Dunn - President James Larmour-Reid - Head Sub-Committee Stuart Worn - Executive Officer
• Planning Institute Australia	PIA members
• Property Council of Australia	Bryce Moore Roz Hansen Brendan Rogers Danni Addison
• Royal Australian Institute of Architects	Ben Puddy Alison Cleary Penny Barnes - City of Melbourne Steve Axford Robert Pucksand John Clements Jack O'Sullivan Sarah Hobday-North Simon Wollan Ivan Rijavic
• Thorney Properties[#]*	Alan Millar
• Urban Development Institute of Australia	UDIA Planning Committee
• Victorian Civil Construction Industry Alliance	Bob Seiffert - Independent Chair & members
• Victorian Local Governance	Maree McPherson - CEO

Association	Cr Heinz Krutz Darren Ray
• Victorian Planning & Environmental Law Association	Adrian Finanzio - Vice President
• Victorian Planning & Environmental Law Association	VPELA Members
• Woolworths Ltd	Chris Raywood - Senior Development Manager, Supermarkets Mark Delaney - Development Manager, Home Improvements Jonathon Fetterplace – Director Urbis
Planning Consultant	
• Contour Planning	Directors: Andrew Biacsi, Vaughan Connor, Robert Kelderman, Shayne Linke, Marco Negri and Andrew Rodda Associates: Melinda Catlow, Tania Curwood, John Haysey, Tim Mc-Bride and Lisa Stubbs
• Ellen Hogan & Associates	Ellen Hogan
• Keaney Planning	John Keaney
• Perry Planning	Frank Perry - Director, Perry Planning Malcolm Jack - Principal Planner, Perry Planning
• Urbis – Client Session	Sarah Emons – Director Urbis Johnathan Fetterplace – Director Urbis Industry representatives from McDonalds, Colonial First State, Aldi and other
Community Group or Representative	
• EastEnders Inc. • Residents Rights • Residents 3000 • Regency Towers Owners	Alison Parr & others
• Environment Defenders Office (Victoria)	Nicola Rivers Elizabeth McKinnon
• Nillumbik Ratepayers Association	Brian Murray & others
• Planning Backlash*	Mary Drost - Convenor Planning Backlash Inc. Ann Reid - President of Malvern East Group Christine Pruneau - of Macedon Ranges Residents Association
• Save our Suburbs	Ian Wood - President Ann Birrell - Committee Member
• Speak Up For Spring Creek[#]	David Bell
• Uniting Care	Marie Lakos Andrew Gray
• Yarra Riverkeepers Association	Ian Penrose
Local Government & Associated Organisations	
• Ararat Rural City Council	Neil Manning - Manager Planning and Development
• Ballarat City Council	Damien Drew - Manager Strategic Planning David Wilson - Senior Statutory Planner
• Bayside City Council	Shiran Wickramasinghe – Director City Strategy Matt Kelleher – Manager Urban Strategy
• Brimbank City Council	Kristen Gilbert - Manager City Planning

	Alison O'Connor - Coordinator City Planning Stuart Menzies - Manager City Strategy Lorraine Harrison - Coordinator City Strategy
• Corangamite Shire Council	Ian Gibb - Director of Sustainable Development
• Darebin City Council	Darren Rudd - City Development Manager Vige Satkunarajah - Principle Strategic Planner Projects
• East Gippsland Shire Council	Kate Nelson - Director Planning & Community
• Eastern Metropolitan Group of Councils	Mal Baker - Greater Dandenong Director Devel/t Services Scott Walker - Banyule Director, City Devel/t Simon McMillan - Banyule CEO Julie Reid - Whitehorse General Manager City Devel/t Noelene Duff - Whitehorse CEO
• Eastern Region Group of Councils	Julie Reid – Whitehorse General Manager City Development Scott Walker – Banyule Director City Development Peter Panagakos – Monash Acting Director City Development
• Gannawarra Shire Council	Rosanne Kava - CEO Sylvester Tan - Manager Planning David Johnston - Consultant Planner
• Glen Eira City Council	Andrew Newton - CEO Jeff Akehurst - Director City Development
• Glenelg Shire Council	Syd Deam - Group Manager Planning & Economic Devel/t
• Golden Plains Shire	Laura Wilks - Acting Planning Team Leader Tim Waller - Acting Development Manager
• Greater Bendigo City Council	Nick Byrne - Manager Strategy Ross Douglas - Manager Planning
• Greater Geelong City Council	Peter Smith - Coordinator Strategic Implementation
• Greater Shepparton City Council	Braydon Aitken - Team Leader Statutory Planning
• Inner South Metro. Mayors Forum (ISMMF) - *Bayside City Council* - *City of Boroondara* - *City of Glen Eira* - *City of Kingston* - *City of Melbourne* - *City of Port Phillip* - *City of Stonnington* - *City of Yarra*	ISMMF Mayors and council officers
• Interface Councils - *Cardinia Shire Council* - *City of Casey* - *Melton Shire Council* - *Mornington Peninsula Shire* - *Nillumbik Shire Council*	 Cr George Blenkhorn (Mayor) Tracey Parker - Manager Planning Policy & Projects Kathryn Seirlis - Acting Manager Strategic Development Matthew Milbourne - Senior Strategic Planner Cr David Gibb Chad Griffiths, Manager Strategic and Economic Planning

	Jeremy Livingston, Manager Planning Services
- *City of Whittlesea*	Michelle Breslin - Project Manager Strategic Planning and Design
- *Wyndham City Council*	Tom Walsh - Acting Manager Town Planning James McGregor - Planning Projects Coordinator
• Kingston City Council	Rachel Hornsby Jonathan Guttmann Ian Nice Sarah Capenerhurst
• Latrobe City Council	Chris Wightman - Manager City Planning Joel Templar - Coordinator Statutory Planning Jason Pullman - Coordinator Strategic Planning
• Local Government Professionals Inc	Nick Foa President Margaret Abbey Jane Homewood
• Loddon Shire Council	John McLinden - Chief Executive Officer Ian McLauchlan - Director Operations Bryan McEwan - Director Community & Economy Tyson Sutton - Manager Planning & Local Laws
• Maribyrnong City Council	Adam Parker - Acting Coordinator Strategic Planning
• Maroondah City Council	Phillip Turner – Director City Development Grant Meyer – Manager of Integrated Planning
• Melbourne City Council	Councillor Forum
• Melbourne City Council	Angela Meinke - Manager Planning and Building David Mayes - Manager Strategic Planning Karen Bayly - Planning Projects Coordinator Robyn Hellman - Team Leader Local Policy Krista Milne - Manager Sustainability
• Melbourne City Council - City Design	Rob Adams - Director of City Design
• Moorabool Shire Council	Gavin Alford - Manager, Strategic & Sustainable Development
• Moreland City Council	Roger Collins
• Mornington Peninsula Shire Council	Stephen Chapple - Director Sustainable Environment Angela Hughes - Manager Statutory Planning
• Municipal Association Victoria	Liz Johnstone - Manager Planning Policy and Projects
• Murrindindi Shire Council	Matt Parsons
• North East Planners Forum:	
- *DPCD*	Nick Vlahandreas - Alpine Manager Development services and amenities
- *City of Wodonga*	Liz Rankin - Team Leader, Planning Matt Taylor - Team Leader, Economic Development
- *Moira Shire Council*	Peter Stenhouse - Statutory Planning Co-Ordinator
- *Strathbogie Shire Council*	Phil Howard - Group Manager Sustainable Development
- *Benalla Rural City*	Nilesh Singh - Manager Infrastructure and Development
- *Rural City of Wangaratta*	Michelle Grainger - Manager Planning and Customer Service
• Northern Grampians Shire	Justine Linley - CEO

	Jim Nolan - Director of Infrastructure & Environment Mark Marziale - Manager Planning and Building
• Port Phillip City Council	Sue Wilkinson - General Manager Environment and Planning
• Pyrenees Shire Council	Chris Hall - Senior Town Planner
• South Gippsland Shire Council	Paul Stampton - Manager Strategic Planning and Development Craig Lyon - Strategic Planning Coordinator Ken Griffiths - Senior Strategic Planning Officer
• Swan Hill Rural City Council	Michael Beasy - Planning Officer
• Warrnambool City Council	Kirsty Miller - Manager, City Strategy & Development Lisa Gervasoni - Coordinator City Strategy Glenn Reddick - Coordinator City Development
• West Wimmera Shire Council	Cr Eveline Van Breugel Cr Ron Hawkins Colin Mibus - GM Infastructure Development Works
• Yarra City Council	Alison Clarke - Mayor Cr Joshua Funder Vivien Williamson
State Government / Other Government Agency	
• Department of Business and Innovation - Investment Project Facilitation	John Myer John Panozzo
• Department of Human Services	Kate Kraft - VicUrban Patsy Prendergast - DHS
• Department of Planning and Community Development	
- *Secretary*	Andrew Tongue
- *Planning Policy and Reform*	John Ginivan
- *State Planning Services*	Jane Monk
- *Strategic Policy Research and Forecasting*	Jeff Gilmore
- *Statutory Planning Systems Reform*	Peter Allen Sarah McDonald
- *Planning Policy*	John Phillips
- *Urban Development*	David Hodge
- *Metropolitan and Regional Planning*	Metropolitan and Regional Planning Managers
• Department of Premier and Cabinet - Senior Planning Advisor	David Vorchheimer
• Environmental Protection Authority	John Merritt - CEO Stuart McConnell - Director of Knowledge, Standards and Assessment
• Goulburn-Murray Water	Neil Repacholi - Section Leader Statutory Planning
• Growth Areas Authority	Peter Seamer - CEO Mark Woodland
• Heritage Victoria	Geoff Austin - Manager Local Government Services Tracy Avery - Acting ED Heritage Victoria
• Local Government Victoria - Infrastructure Standards Committee	Ian Robins - Independent Chair Angelo D'Costa Mark Varmalis

	Claude Cullino Mark Whalen Jon Griffin Michael Mc Glade John Bryce
• Melbourne Fire Brigade (MFB)	Brian Hardy – MFB Trisha Bryce - The Planning Group
• Minister for Planning's Office	Daniel Parsons - Advisor Marc Boxer - Advisor
• Office of the Victorian Government Architect	Geoff London
• Planning Panels Victoria - Senior Members	Kathy Mitchell - Chief Panel Member Jenny Moles - Senior Member Mark Marsden - Senior Member Lester Townsend - Senior Member
• Planning Panels Victoria	Sessional Members
• South Australian Department of Planning and Local Government	Anita Allen - Team Leader, Policy Reform John Hanlon - Deputy Chief Executive
• VicRoads	Bill Hronopolous Frank Berra Kate Anderson
• Victorian Civil and Administrative Tribunal	Mark Dwyer - VCAT - Deputy President Administrative Division Helen Gibson - VCAT - Deputy President P & E List
• VicUrban	Sam Sangster - Acting CEO Rob Vines Matt Foubel
Members of Parliament	
• Minister for Planning	Matthew Guy
• Shadow Minister for Planning	Brian Tee
• Parliamentary Secretary for Regional Development	Damien Drum
Other	
• The Brethren	Richard Kelsey Atholl Williams
• Individuals	Geoff Philips Michelle Potter
• Individual	Bill Chandler
• Individual	Geoffrey Gordon
• Individual^	Justin Ryan
• Individual	Esther Caspi & Peter Caspi
• Individual	Gila Schnapp
• Living Victoria Ministerial Advisory Council	Mike Waller - LVMAC Chair Libby Sampson Marcus Spiller

• Mountain Bay Pty Ltd	Brian Johnstone
• Students & Young Planners	James Aldred - UDIA / Brown Consulting Gareth Hately - PIA / MAV Tina Ngu - PIA / Planisphere Ryan Thomas - PIA / DPCD Rupert Dance - PIA / David Lock Associates Lisa Stubbs - VPELA / Contour Simon Gilbertson - VPELA / Tract Andrew Kerr - City of Boroondara Yilong Shi - SGS
• University Representatives	Nigel Flanigan - Melbourne University Bob Birrell - Monash University Michael Buxton - RMIT University Nigel Cousins - Swinburne University

Member declared a potential conflict of interest and stood aside from the consultation session:

Geoff Underwood

* Leigh Phillips

^ Terry Montebello

Appendix 2

Newspaper Notice Coverage

- The Age: Sat, 23 July 2011
- The Australian: Sat, 23 July 2011
- Herald Sun: Sat, 23 July 2011
- Australian Financial Review: Thu, 21 July 2011
- Weekly Times: Wed, 27 July 2011
- Albury Border Mail: Sat, 23 July 2011
- Ballarat Courier: Sat, 23 July 2011
- Bendigo Advertiser: Sat, 23 July 2011
- Shepparton News: Sat, 23 July 2011
- Mildura Sunraysia Daily: Sat, 23 July 2011
- LaTrobe Valley Express: Mon, 25 July 2011
- Warrnambool Standard: Sat, 23 July 2011
- Geelong Advertiser: Sat, 23 July 2011
- Geelong Independent: Fri, 22 July 2011
- Dandenong Star: Thu, 21 July 2011
- Ferntree Gully Belgrave Mail: Tue, 26 July 2011
- Monbulk Yarra Ranges Trader Mail: Tue, 26 July 2011
- Upper Yarra Mail / Healesville: Tue, 26 July 2011
- Star - Sunshine, Ardeer, Albion: Tue, 26 July 2011
- Star - St. Albans, Deer Park, Caroline Springs: Tue, 26 July 2011
- Star - Keilor, Taylors Lakes, Sydenham: Tue, 26 July 2011
- Star - Footscray, Yarraville, Braybrook: Tue, 26 July 2011
- Star - Williamstown, Altona, Laverton: Tue, 26 July 2011
- Star - Werribee, Hoppers: Tue, 26 July 2011
- Star - Hume / Roxburg Park / Craigieburn: Tue, 26 July 2011
- Star - Wallan/Kilmore/Broadford: Tue, 26 July 2011
- Whittlesea/Mernda/Doreen Star: Tue, 26 July 2011
- Leader - all 29 NP w/c: Mon, 25 July 2011
- Leader - all 4 Gloss w/c: Mon, 25 July 2011

Appendix 3

List of Submittors

Submittors listed below have been generally categorised according to how they identified themselves from the categories provided in the standard cover sheet form required to be completed with all submissions.

A total of 547 submissions were lodged. Those submittors that nominated to maintain anonymity are not listed.

Individuals

1	Randall Todd
5	Dylan Pedersen
6	William Clancy
8	Colin Charles Clarke
9	Richard N. Kelsey
10	Peter Newton
11	William Lord
17	Raymond H Luscombe
21	Armstrong Barry
24	George Wright
26	Neil Kerby
30	Janice and Perry Crosswhite
39	Simon Parsons
40	Evelyn Bell
41	Detlef Scheel
43	Neil Green
46	Peter Flavio
48	Nick Thieberger
52	Leslie & Kerryn Clark
55	Heath McDonough
68	Geoffrey Gordon
69	Geoffrey Cochrane
70	Greg Johnson
71	Gavin Ronan
74	Hans Tracksdorf
75	Graeme Hauser
77	Chris Otto
81	Rosemary Barrell
82	Len Rayner
91	Alison Walpole
104	Rosemary Aitken
106	Anika Van Hulsen
107	William Wallace
109	Jim Mensforth
110	Susan Howard
115	Robert Nelson
116	John Peter Laverack
120	Carlota Quinlan
121	A.R.W Sutherland
123	Gordon Hamilton
126	Terence Frawley
130	Gavin Moodie
133	Robert and Maureen Pitts
134	Helmut and Doris Trepka
141	Kylie Quinn
142	Daryl Cox
148	Greg Bailey
150	Thomas A. Dumaresq
152	Maurice Schinkel
162	Lesley Ann Dalziel
164	Albert M. Slawinski
165	Kevin Mason
169	Craig Turner
170	Pat Krebs
171	Bronwyn Hattam
173	Joyce Welsh

184 Ann Birrell
185 Kevin Stoneman
186 Anne Stoneman
187 Fiona Ogilvy-O'Donnell
197 Warwick Horsfall
199 Trent McCarthy
202 Tony Aitken
207 Stuart Stratchan
208 Steven Tjepkema
209 Warwick Leeson
211 John Howard
218 Sharon Turner
219 Julie Skeyhill
225 Peter Brown
226 Jennifer Tromp
228 Graham Jolly
233 Geoff Phillips
237 Frank Whelan
240 Bernie Franke
251 Peter Allen
263 Richard Smith
267 Rachel Ots
274 Peter Yates
275 Peter Thomson
282 Andrea Roubin
284 Darren O'Hagan
289 Deborah Newbound
290 Neil Rankine
293 Naill Baird
301 Megan Schutz
305 M Knight
307 Martin Deagan
308 Frank Hart
313 Martin Boyer
319 Margaret Johnson
330 Barbara Dawson
331 A E King
332 Albert Leckie
340 Kathleen Mathews-Ward
341 Kathleen Tecoma
344 Ron Stoneman
345 Jim Stoneman
355 D & C Bennett
359 Lidija Marson
360 Kathie Marsan
373 Jodie Shields
374 Joanna Stanley
382 Jennifer Watt
406 Neil Gale
408 Rowan Harrison
417 Helene Robson
418 Ellen Hogan
424 Greg Mcacmillan
436 Angela Kearns
463 David Tetley
466 Barbara Champion
472 Colin Wallace
477 Christina Rennick
481 Christian John Fengler
482 Sally Draper
494 Nic Maclellan
498 Brian Kavanagh
499 Nina Earl
504 Barbara Hall
512 Andrew Lack
514 Andrew Bean
523 Anthony Adams
529 Kath Dumesny
534 Liz Burton
543 John & Beverley Cook
545 Richard Peterson
546 Brian and Judith Magree

Community Based Organisations

23 Australian Environment Foundation

29 Mordialloc Beaumaris Conservation League Inc

42 Callignee Hall Incorporation

49 Port Campbell Community Group Inc.

57 Melbourne Heritage Action

58 Blackburn Village Residents' Group Inc.

66 Coronet Bay Ratepayers & Residents Assoc

67 Toorak Village Residents Action Group

79 Croydon Conservation Society

95 Ballarat Rovers Motorcycle Club

105 Ballarat Residents and Ratepayers Association Inc

108 Wattle Glen Residents' Association

113 Land Owners Rights Association Inc.

117 Eltham Gateway Action Group

157 Save Bastion Point Campaign

159 Friends of Mallacoota Inc

176 Boroondara Residents Action Group

183 Save Our Suburbs Inc (VIC)

201 Appropriate Development for Boronia

205 Bend of Islands Conservation Association

210 Residents 3000 Inc

213 Cross Country Drivers Association

214 Global Foundation for Sustainable Communities

223 Friends of the Koalas Inc

238 Barwon Heads Association

250 Victorian National Parks Association

258 Future 3000

268 Round the Bend Conservation Co-operate Ltd

276 Sporting Motor Cycle Club Inc

285 National Trust of Australia (Vic)

306 Nillumbik Ratepayers Association

318 South Grovedale Community Action Group

320 Green Wedge Protection Group

352 West of Elgar Resident's Association Inc

358 Appropriate Development for Boronia Group

361 Healesville Environment Watch Inc

368 Speak Up For Spring Creek

369 Environment Defenders Office (Victoria) Ltd

376 Eltham Valley Preservation Group

380 Blue Wedges Inc

384 Frankston Beach Association

390 Collingwood Historical Society Inc

393 Kensington Association

394 Yarra Riverkeeper Association Inc

400 Yarra River Alliance Inc

411 Bacchus Marsh Community Land Group

413 Macedon Ranges Residents Association Inc

414 Bicycle Victoria

421 Eaglemont Neighbourhood Conservation Association Inc

427 Planning Backlash Inc

430 Bellbrae Residents Association Inc

433 North and West Melbourne Association

437 Friends of Nillumbik Inc

438 Friends of Merri Creek

439 Frankston Environmental Friends Network

440 Flemington Association Inc

446 Wintringham Housing Limited

448 Moreland Energy Foundation

452 Campaspe Concerned Citizens Inc

454 Friends of Banyule

459 Drysdale & Clifton Springs Community Association
462 Friends of Wallace Reserve (Inc)
474 Queenscliffe Community Association
485 Beaumaris Conservation Society Incorporated
508 Malvern East Group
513 Green Wedges Coalition
516 Friends of Fullarton Community Group
518 Peninsula Speaks Inc
526 Action Sweetwater Creek Inc
530 Collingwood and Abbotsford Residents Association
539 Banyule Planning Network

Local Government - Metropolitan

72 Maribynong City Council
84 Nillumbik Shire Council
103 Brimbank City Council
118 Glen Eira City Council
154 City of Kingston
158 Bayside City Council
200 Cardinia Shire Council
215 Banyule City Council
229 Hobsons Bay Council
252 City of Monash
281 City of Casey
304 Shire of Melton
348 Wyndham City Council
351 Greater Dandenong Council
353 City of Whittlesea
356 Boroondara City Council
383 City of Melbourne
387 Moonee Valley City Council
401 Hume City Council
404 Port Phillip City Council
409 Moreland City Council
423 Knox City Council
426 City of Yarra
428 Maroonhdah City Council
441 Manningham City Council
442 Frankston City Council
467 City of Greater Dandenong
471 City of Darebin
473 Yarra Ranges Council
484 City of Whitehorse
517 Mornington Peninsula Shire Council
537 City of Stonnington

Local Government - Regional

35 Mansfield Shire Council
90 Mount Alexander Shire Council
100 Glenelg Shire Council
101 Mitchell Shire Council
102 City of Greater Geelong
119 Towong Shire Council
172 Golden Plains Shire Council
206 West Wimmera Shire Council
222 East Gippsland Shire Council
239 Wellington Shire Council
249 Alpine Shire Council
265 Strathbogie Shire Council
269 Moira Shire Council
338 Gannawarra Shire Council
342 Macedon Rangers Shire Council
354 Indigo Shire Council
365 Murrindindi Shire Council
372 Latrobe City Council
375 Warrnambool City Council
391 Shire of Campaspe
395 Corangamite Shire
405 Ararat Rural City Council

410 Swan Hill Rural City Council
419 Bass Coast Shire Council
422 Moyne Shire Council
465 Yarriambiack Shire Council
469 City of Ballarat
483 Pyrenees Shire
492 Surf Coast Shire
500 Greater Shepparton City Council
503 Hepburn Shire Council
506 Moorabool Shire Council
511 Mildura Rural City Council
525 Rural City of Wangaratta
533 City of Greater Bendigo
536 Baw Baw Shire Council
540 Colac Otway Shire Council

Local Government - Other

88 Interface Councils
175 LGPro
291 Council Alliance for a Sustainable Built Environment
299 Municipal Association of Victoria
385 Inner South Metropolitan Mayors' Forum
420 Victorian Local Governance Association
491 Eastern Metropolitan Group of Councils

Planning or Development Industry Organisation

2 Latrobe Vision
3 Wind Farm Developments Pty Ltd
14 Planning Enforcement Officers Association
36 Australian Institute of Building Surveyors
53 Harland & Langenbacher P/L as Planright surveying
87 Association of Consulting Architects
180 Arup Pty Ltd
196 Housing Industry Association
203 Breese Pitt Dixon Pty Ltd
204 Meinhardt Infrastructure and Environment
212 Western Coastal Board
216 Urbis Pty Ltd
221 Terminals
235 SGS Economics & Planning
243 Ratio Consultants Pty Ltd
246 Taylors Development Strategies
260 Cement Concrete & Aggregates Australia
270 Gardencity Australia Pty Ltd
277 PLN Planning
278 Greenway Hirst Page Pty Ltd
288 Nicholas Day Architects
297 Master Builders Association of Victoria
300 Team Four Wheel Drive Management
311 Property Council of Victoria
325 Millar Merrigan
326 Tomkinson Group
329 Tract Consultants
339 Green Building Council of Australia
357 Consult Australia
367 Goulburn-Murray Water
377 IOM Pty Ltd
388 Stockland
396 The Planning Group
402 Metricon - Dual Occ. Solutions
407 Urban Development Institute of Australia
412 Mesh

425 Dennis Family Corporation P/L
429 Building Association of Victoria
443 Planning Institute of Australia - Victorian Division
444 McGauran Giannini
453 Design Drawing Studio
456 FR Perry + Associates Pty Ltd
475 The Planning Group Australia
476 Lend Lease
479 Crystal Group
480 The GPT Group
501 Bulky Goods Retailers Association Limited
509 Australand
519 Australian Institute of Architects
524 Australian Institute of Landscape Architects
541 Victorian Planning & Environmental Law Association

Individuals Involved in the Planning or Development Industries

38 Andrew Ferris (Andrew Ferris Drafting & Design Pty Ltd)
59 Grant Young (Murray Projects Pty Ltd)
60 Ben Guy (Urban Circus)
114 Geoff Alexander
129 Andrew Cruickshank
139 Matt Gorman (Big Picture Urban Rural)
190 Roger Harvey
192 Jennifer Jones (SMEC Urban)
244 Richard Bisinella (Bisinella Developments P/L)
256 Stephen Rowley
257 Ronald Rogers
259 Roger Green (KLM Spatial)
266 Raelene Lister
279 Peter Dowling
287 Nigel Flannigan
323 Louise Wolfers
434 Geoff Alexander
502 Bev Merrett - Isis Planning
520 Alan Miller (Thorney Properties Pty Ltd)
521 Alan March

Government Organisation or Statutory Body

37 Coliban Water
189 Melbourne Water Corporation
195 South East Water Limited
255 Yarra Valley Water
298 Metropolitan Waste Management Group
312 Department of Sustainability and Environment
343 Heritage Council
347 Port of Melbourne Corporation
350 Goulburn Broken Catchment management Authority
381 Environment Protection Authority Victoria
447 Victoria Coastal Council

Other

31 Mountain Bay Pty Ltd (Brian Johnstone)
64 Gratten Institute
73 Ray Hamill P/L
76 National Heart Foundation of Australia (Victoria)

80 Strata Community Australia (Vic)

86 JP Just Properties International Pty Ltd

94 Choppair Helicopters P/L

97 Parisienne Basket Shoes Pty Ltd

122 Law Institute of Victoria

147 Nillumbik North Greens

151 Victorian Limestone Producers Association Inc.

177 Papapetrou Rice Architecture

182 Regency Towers Owners Corporation

193 Citypower Pty and Powercorp Australia Ltd

224 Catholic Archdiocese of Melbourne

230 Catholic Education Office Melbourne

242 Aged and Community Care Victoria

247 IDM Group

261 Centre for Independently-owned Retail Research

262 AFL Victoria

264 Bunnings Group Limited

272 WestWind Energy P/L

273 Mobil Refining Australia

295 The Guild of Air Pilots and Air Navigators (Australia Region)

296 Mountain-Top Experience

302 Minerals Council of Australia

309 Catholic Diocese of Sale

310 DLA Piper

316 Uniting Care Harrison

333 Aldi Stores

334 Pacific Hydro

335 The Australian Housing and Urban Research Institute

362 The Australian Greens Victoria Animals Working Group

370 iDispose Bin Hire

389 Civil Contractors Federation

392 Victorian Farmers Federation

397 Federation of Community Legal Centres Victoria

398 ISPT Super Property

399 Woolworths Limited

445 Enza Angelucci Architects

450 Committee for Melbourne

457 Centre One Pty Ltd

468 H. Aumann & Sons

470 Yarra Valley Helicopter Services

490 Tourism & Transport Forum

493 Construction Material Processors Association Inc

495 Play Australia

538 Civil Contractors Federation

542 Genazzano FCC College

544 Good Old Days Working Farm Inc

547 Cathedral Radiology as High St X-ray

Appendix 4

Submissions - List of Issues

THEME	TOPICS	SUBMISSIONS
Architecture of the planning system	***COMMENTS**: Submissions about best practice may be discussed throughout this section.*	• International/interstate system (4) • Planning system – transparency (14) • Certainty – planning and development (4)
	Planning and Environment Act 1987 • Objectives of planning in Victoria • Act length and scope • Part 3A, 3C and 3D * other matters categorised below	• Objectives of planning in Victoria & triple bottom line considerations (22) • Planning and Environment Act 1987 (52) • Existing use rights (2)
	Relationship between the planning and other legislation • Subdivision Act 1988 • Local Government Act 1989 • VCAT Act 1998 • Transport Integration Act 2010 • Environmental Effects Act 1978 • Commonwealth legislation	• Planning system – scope and relationship to other systems/legislation (63) • Building permit system and local laws (26) • Environmental impact assessment (EIA or EES) (9) • Cth relations (including airports, Cth Acts and policies) (7) • Privacy laws (3) • Telecommunication facilities (3)
	Planning schemes and VPP • SPPF • LPPF – MSS and local policies • Zones • Overlays • Other provisions • Discretion vs. Prescription (including code assess)	• Planning schemes – content (including definitions) (50) • Planning schemes – too much/not enough direction (10) • Planning schemes – links between objectives and controls (9) • Planning schemes – discretionary and performance based provisions (88) • Policy – SPPF/State (73) • Policy – LPPF, MSS and local policy (58) • Local variations to State provisions (2) • Zones – general (incl new zones (41) • Zones – Residential Zones (29) • Zones – rural zones (including tenement provisions) (29) • Zones – the Farming Zone (16) • Zones – urban interface zone/urban growth zone (12) • Zones – Activity Centre Zone (6) • Zones – SUZ (3) • ResCode – general (40) • Overlay/overlays (46) • Overlays – development plan overlays (8) • Car parking and vehicle access incl bicycle parking (37) • Buffers - including Clause 52.10 (25) • Gaming & licensed premises (12) • Planning schemes – incorporated and reference documents (12) • Helicopters (Clause 52.15) (5)

	Operation of the planning system • Deregulation • Monitoring and review • Duplication and controls • Regulatory burden • Links between objectives and controls/provisions	• De-regulation of planning (4) • Planning system – monitoring and review/performance measures (23) • Duplication of controls/regulatory burden (14) • Planning system – general structure/VPP (47) • Planning system useability, complexity and language (78)
Planning Process	***COMMENTS**: Submissions about costs, timeframes and best practice (international and interstate) may be discussed throughout this section.*	• Costs of participating in planning/planning fees (87) • Timeframes (inc applications, endorsed plans, amendments) (83) • International/interstate system (4) • Planning system – transparency (14) • Certainty – planning and development (4)
	Amendments • Amendment development and design • Authorisation • Exhibition and community engagement • Planning panels • Decision and approval	• Amendment - process (69) • Amendments – exhibition, adoption and approval (15) • Amendments (submissions and panel triggers (11) • Amendments – combined permits and applications (4) • Amendments – authorisation (32)
	Planning permits • Application requirements and RFI • Notice (and review) • Assessment • Amending plans • Decision • Permit conditions, covenants and S173 agreements • Enforcement	• Covenants and 173 agreements (58) • Development contributions (45) • Permit conditions (31) • Code assess/deemed to comply/streamlining/fast tracking (84) • Permit applications – application process and assessment (inc DACs and PRAs) (71) • Permit applications – information/application requirements & FRI (48) • Planning permits – secondary consent/endorsed plans etc (15) • Permit applications – pre-lodgement certification (14) • Permit applications – pre-application meetings and processes (13) • Planning permits – amending/cancel/etc • Planning enforcement – options, processes and resources (61) • Permit exemptions – incl. Minor applications and emergency facilities (21)
	Review (VCAT) • Mediation processes • Amending plans • Hearings (including weight given to local policy) • Decision	• VCAT – general (112) • VCAT – hearing processes (37) • VCAT – weight given to local policy/decisions (25) • Legal/witness representation in planning processes (17) • VCAT – timeframes (13) • VCAT – mediation processes (11)
	Community engagement and empowerment	• Notice and review/community engagement (inc material detriment) (188)

		• Local influence and empowerment – policy weight, council, community (101) • Social considerations incl. social impact assessments (5)
Participants in planning		
	Roles (existing, modified or new) within planning • Minister • DPCD • Councils • Referral authorities • Third parties • Other government agencies (e.g. VicRoads, GAA) • New roles (e.g. Office of the Victorian Planner)	• Referrals/authorities (including internal referral and written agreements) (66) • Ministerial intervention, other powers (79) • Political involvement in planning (45) • Council/other resourcing (54) • Customer service – council (9) • Conflict of interest – councillors (2) • DPCD – incl general responsibilities (42) • DPCD project implementation (reviews) (36) • Planning panels (38) • Planning panels – implementation of recommendations (3) • Regional planning authority/state planner/metro authority (18) • Urban renewal organisation (3) • State design review panel/committee (4)
	Relationships between different participants	• State and local government relationships/powers (104)
	Educating and supporting participants • Marketing planning • Professional accreditation • Community • Councillors	• Education and awareness of planning – community, councillors, new planners (62) • Online resources • Accreditation and education of planners/enforcement officers (30) • Practice notes, best practice guidance and user manuals (27)
Land use and development	*(NOTE: Submissions in this category are often outside the scope of the terms of reference due to policy focus.)*	
	• Overlooking • Overshadowing • Setbacks and bulk • Heritage • Car parking • Waste management • ResCode • Urban design • Water • Telecommunication facilities • Tourism • Helicopters • Wind energy • Temporary events • Advertising signs • Brothels • Disability access and mobility • ESD • Vegetation and native vegetation • Housing	• Urban consolidation/increased densities/infill development/MDH (69) • Subdivision and block sizes (29) • Setbacks, wall height and building mass (21) • Building heights (17) • Development – quality and amenity of new dwellings (12) • Overshadowing/solar access (12) • Development – over 4 storeys (8) • Overlooking (7) • Development – impacts on existing amenity (6) • Major/State significant projects (27) • Construction/development sites (current and future) (2) • Transferrable development rights (2) • Land assembly (1) • Neighbourhood character (59) • Heritage (34) • Cultural heritage (13)

	• Retail
	• Land and disaster management
	  - Bushfire and flooding
	  - Climate change
	  - Erosion, salinity etc.
	• Farming, including health and food security
	• Places of worship
	• Ancillary uses
	• Shipping containers
		• Urban design (inc safe design, design excellence & active frontages) (31)
		• Activity areas/centre (29)
		• Public open space (28)
		• Site coverage (2)
		• ESD/ecological sustainability/environment/biodiversity (112)
		• Retail – including shop, out-of-centre, floorspace caps (10)
		• Brothels (1)
		• Ancillary (1)
		• Place of worship (1)
		• Specific site issues (71)
		• Advertising signs (6)
		• Shipping containers (1)
		• Temporary events (4)
		• Motorsport in the Farming Zone (12)
		• Disability access and mobility (2)

Policy and strategic planning	*(NOTE: Submissions in this category are often outside the scope of the terms of reference due to policy focus.)*	
	• Metropolitan strategy • Regional plans • Public open space • Social considerations • Green wedges • UGB/growth/sprawl • Affordable housing and land values • Employment • Activity areas	• Regional/rural/peri-urban planning (37) • Policy – regional (31) • Strategic/long-term planning (23) • Policy – Metropolitan Strategy (22) • Decentralisation (6) • Communities – building communities (1) • Growth areas/UGB/planning for outer growth/sprawl (77) • Transport – current PT and roads network/policy/traffic (40) • Infrastructure and community facilities (54) • Tourism (4) • Farming, including value added products and activities (17) • Wind energy facilities (3) • Employment – incl local and rural (4) • Land/disaster management – flooding, bushfires, erosion, salinity (47) • Climate change including costal planning (29) • Housing – affordable/social (24) • Housing – general/supply and demand (16) • Housing – in rural areas (5) • Caretaker residence (3) • Housing – serviced apartments (2) • Bed and breakfast (1) • Home occupation (1) • Housing and aged care (1) • Housing – shared (1)

	• Land values/house prices (1) • Green wedges • Vegetation/native vegetation (57) • Water – portable water/water supplies • Contamination (3) • Waste management (3) • Health and food security (7)