

Modernising Victoria's Planning Act

UPDATE ON THE REVIEW OF THE PLANNING AND ENVIRONMENT ACT

The Victorian Department of Planning and Community Development (DPCD) last week released five response papers as part of the review of the *Planning and Environment Act 1987*. The papers set out the Government's proposed reforms of the Act. The papers were drafted in response to the issues and suggestions raised in public submissions to the discussion paper *Modernising Victoria's Planning Act* which was released in March this year.

The five response papers and the submissions to the discussion paper, including the EDO's submission, are available on DPCD's website: www.dpcd.vic.gov.au/planning.

The Government has indicated that the reforms will not result in a major overhaul of the Act but will address existing problems and 'streamline' some approval processes.

Some changes proposed that may be of particular interest are highlighted below.

UPDATE OF THE OBJECTIVES OF PLANNING IN VICTORIA

The Government proposes to broaden the objectives of planning in the Act to include:

- To balance environmental, social and economic considerations in decisions about the use and development of land; and
- To promote high quality and sustainable design of urban and built form in both the public and private realms.

Other notable amendments to the objectives include a reference to securing a healthy environment and a change in terminology from maintaining 'ecological processes' to maintaining 'ecological systems'.

The EDO's extensive submission to the discussion paper strongly emphasised the need for the objectives of the Act to include detailed reference to modern concepts such as the principles of ecologically sustainable development, accountability and enforcement. While the proposed changes incorporate the need to balance environmental, social and economic considerations, this does not equate to including principles of ecologically sustainable development. Key elements of ecologically sustainable development such as the precautionary principle will not be included in the objects of the Act.

STATE SIGNIFICANT MAJOR DEVELOPMENTS

The Government is proposing to introduce a new process to assess state significant developments via an 'impact assessment track'.¹ Criteria will set out the types of projects that are of 'state significance' based on the scale and nature of the development, the level of investment and the number of jobs created. Proposed state significant projects include developments in the Melbourne metropolitan area with a capital investment value of \$100M or more, any development requiring an Environmental Effects Statement (EES) under the *Environmental Effect Act 1978* and all renewable energy projects over 30mw (for more detail on the criteria see Response Paper 4). The process will require the proponent to prepare an impact assessment report as part of the application process. The Minister will appoint an expert panel to review the proposal, the impact report and public submissions received in the consultation process. The Minister's decision will be final with no further review to VCAT.

This process is not a substitute for the EES process. If the Minister determines that an EES is needed it is proposed that the consultation, submission and review panel EES process will be integrated with the proposed major development impact assessment process. The Minister's assessment of the EES will inform the decision under the proposed impact assessment process.

THE PLANNING SCHEME AMENDMENT PROCESS

The Government proposes to establish separate tracks for the assessment of 'technical' and 'standard' amendments to planning schemes. The Minister will make the final decision on all amendments.

Under the technical amendment track the amendment will not be exhibited and there will be no public submission or panel hearing process. Criteria for matters to be assessed and approved in the technical track are yet to be prepared by the Government.

Amendments other than technical amendments will largely follow the current process but with some specific differences. For example, it is proposed to introduce a new requirement for an amendment to be certified by the Secretary of DPCD before it is exhibited and the Act will be changed to require a submitter to state reasons for their submission and indicate whether or not he or she wishes to be heard by a panel. Performance targets for timeframes for certain steps in the process are also proposed.²

THE PERMIT PROCESS

DPCD are proposing to introduce two separate assessment tracks for permit applications as opposed to the single track that currently operates.

Applications that can be assessed against specified performance standards or assessment criteria set out in a planning scheme will follow the 'code assess track'. As the assessment is only against specified technical standards or criteria, the decision will be made directly by the responsible authority (usually a local council) and there will be no requirement for public notice or review of the decision. A reduced statutory time period of 14 days will apply to applications under the code assess track.

¹ The proposed new process will not affect assessment and approval processes for specific types of development such as mining, which are already provided with an approval process, under other legislation or major transport infrastructure, which is also proposed to be subject to specific legislation.

² This will be through amendment of existing practice notes and guidelines rather than changes to the Act.

Applications which do not fall within the code assess track will continue to follow the current permit application and review process now referred to as the 'merit assess track'.

FEEDBACK TO THE GOVERNMENT

The Department is seeking feedback on all the response papers. Formal submissions are not required and feed-back by email or writing is sufficient. Details of how you can provide your feedback and the relevant person that you can contact are included in each response paper.

The response paper proposals and any feedback received will inform the final proposed changes to the Act. We therefore encourage you to take this opportunity to raise any concerns you have with the proposals set out in the response papers.

An exposure draft Bill that sets out the proposed changes to the Act is expected to be released in late November. There will be opportunity for further comment on the detailed proposals at that stage, however in most cases public comments provided at the exposure draft stage do not result in significant amendments as the principles are already confirmed. Any concerns should therefore be raised with DPCD as soon as possible.

ABOUT THE ENVIRONMENT DEFENDERS OFFICE (VICTORIA) LTD

The Environment Defenders Office (Victoria) Ltd ('EDO') is a community legal centre specialising in public interest planning and environment law. Our mission is to support, empower and advocate for individuals and groups in Victoria who want to use the law and legal system to protect the environment. We are dedicated to a community that values and protects a healthy environment and support this vision through the provision of information, advocacy and advice.

In addition to Victorian-based activities, the EDO is a member of a national network of EDOs working collectively to protect Australia's environment through public interest environmental law.

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SEEK LEGAL ADVICE REGARDING SPECIFIC CASES

While all care has been taken in preparing this paper, it is not a substitute for legal advice in individual cases. For any specific questions, seek legal advice.

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