Modernising Victoria’s Planning Act
Planning and Environment Amendment (General) Bill 2009

Commentary on the draft Bill

December 2009
Minister’s foreword

Victoria is currently experiencing unparalleled population growth and expansion. This growth presents major challenges and opportunities for all of us. A robust and responsive land use and development system is important to help us maintain and enhance the liveability and competitiveness of our State.

To respond to these challenges the Government engaged with local government, industry professionals, agencies and the community to develop a package of reforms that will modernise and improve the current planning system.

The proposed changes to the Planning and Environment Act 1987 (the Act) complement the Government’s broader initiatives to accommodate population change, provide economic growth, encourage sustainable development and enhance the liveability and commercial competitiveness of Victoria’s urban and rural communities.

This review of the Act has provided the opportunity to consider how the planning system can best meet these challenges, and the role of the Act in delivering the outcomes we want to see for the future. The Act needs to provide effective processes and mechanisms to achieve these outcomes – it is a means to an end, not an end in itself.

The proposals in the draft Bill have been developed from input from the many submissions and comments provided to the discussion paper and response papers released earlier this year. In releasing the draft version of the Planning and Environment Amendment (General) Bill 2009, and the accompanying commentary report, I would like to thank those who have contributed so far to this review.

I want the changes to the Act to put in place a planning system that will serve Victorians well, both now and into the future. I encourage your comments on the proposals.

JUSTIN MADDEN MLC
Minister for Planning
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Have your say

How do I make a submission?
Comments or submissions should be made by email or in writing. Please fill out and attach the coversheet on the next page to your submission (an electronic version is available at www.dpcd.vic.gov.au/planning for you to print or use with email submissions).

Submissions may be sent by:

- Email (preferred): PEActreview@dpcd.vic.gov.au
- Mail: Planning and Environment Act Review, Department of Planning and Community Development, GPO Box 2392, Melbourne Vic 3001
- Fax: (03) 9637 9498

Closing date
The closing date is Friday 12 February 2010.

Do you need help to make a submission?
If you require an interpreter or other help in making a submission please call Information Victoria on 1300 366 356 (local call cost) or TTY +61 3 9603 8806 (8.30am – 5.00pm Monday to Friday).

Important note about publication of submissions
Unless you clearly request confidentiality, submissions are public documents and may be accessed by any member of the public and may be published on the Department of Planning and Community Development website which is accessible worldwide. If you would like your submission not to be published, or you would like to request anonymity, you must clearly request this in your submission.

Only individuals may request confidentiality, not organisations.
Coversheet for a submission on the draft Planning and Environment Amendment (General) Bill 2009

Name
Organisation (if applicable)
Suburb or town

Position title (if applicable)
Postal address
Email

Please note privacy statement on the back of this coversheet.

Please tick the description that best describes you?

☐ General public
☐ Community-based organisation
☐ Local government – metropolitan
☐ Local government – rural
☐ Planning or development industry organisation
☐ Individual or company involved in the development industry
☐ Planning or development consultant
☐ Other (please specify)

Please tick the section your submission relates to:

☐ Chapter 1 The objectives of planning in Victoria
☐ Chapter 2 The amendment process
☐ Chapter 3 The permit process
☐ Chapter 4 State significant development
☐ Chapter 5 Other modernisation initiatives
☐ Other matters

When making a submission you are encouraged to specify the change to the Act you are responding to with the following information:

What is the issue?
What is the relevant Proposal in the Bill?
What is your comment or what should be changed and why?

Publication of Submissions: Unless you clearly request confidentiality, submissions are public documents and may be accessed by any member of the public and may be published on the Department of Planning and Community Development website which is accessible worldwide. Only individuals may request confidentiality, not organisations.

☐ I do not wish my submission to be published
☐ I wish my submission to be published anonymously
Publication of submissions

Unless you clearly request confidentiality, submissions are public documents and may be accessed by any member of the public and may be published on the Department of Planning and Community Development website which is accessible worldwide. If you would like your submission to not be published, or you would like to request anonymity, you must clearly request this in your submission.

Only individuals may request confidentiality, not organisations.
Introduction

The draft Planning and Environment Amendment (General) Bill 2009 sets out the proposed amendments to the Planning and Environment Act 1987 (the Act). The draft Bill gives stakeholders the opportunity to consider and comment on the detail of the proposed changes to the Act before the introduction of the Bill into Parliament.

The Commentary is designed to be read in conjunction with the draft Bill which is included in Part B. It provides a roadmap to the draft Bill and explains the proposed reforms.

The proposals of the draft Bill are cited through this document. Included with the proposal citation is a reference to the amended or new sections of the Act.

A reference to a proposal is a reference to a provision in the draft Bill, a reference to a section is a reference to a provision in the Act.

The Act sets out planning system processes, and establishes a head of power for the key instruments of the Victorian planning system, including the Planning and Environment Regulations 2005, the Victoria Planning Provisions (VPP) and planning schemes. Much of the key content of Victoria’s planning system is spelt out in these subordinate instruments and a range of consequential changes will also be required to these instruments to implement the changes proposed.

Consultation on the review

There has already been extensive consultation to identify, develop and refine the proposed reforms to the Act. The feedback so far has confirmed that the objectives, structure and processes of the Act are sound, but indicated that parts of the Act can be modernised to deliver improvements.

Inputs to the review so far included:

**EXPERT PANEL: August 2008**

An Expert Panel has provided advice to the Department about the review process.
### STAKEHOLDER WORKSHOPS: December 2008
Targeted stakeholder workshops identified opportunities to modernise the Act, and to explore its strengths and weaknesses.

### DISCUSSION PAPER: March 2009
Modernising Victoria’s Planning Act: A discussion paper on opportunities to improve the Planning and Environment Act 1987 set out a range of options for reform. Over 150 submissions were received with many constructive and valuable suggestions.

### WORKING GROUPS: May 2009
Ten working groups provided more detailed advice on options for reform.

### RESPONSE PAPERS: August 2009
Five papers were released in response to feedback to the discussion paper. These described the proposed reforms to the Act and provided an opportunity for further feedback.

### DRAFT BILL RELEASED FOR CONSULTATION: December 2009
The release of the draft Bill is a further opportunity for you to provide input to the Act review.
Key features of the draft Bill

The key changes to the Act proposed by the draft Bill are summarised below.

### THE OBJECTIVES OF PLANNING IN VICTORIA

**The current Act**

The objectives are regarded as important tools to support and guide both the content of the Victorian planning framework and decisions relating to land use and development in Victoria.

While the current objectives continue to remain relevant for planning in Victoria, they will benefit from restructuring and updating to address current and future challenges.

**The draft Bill proposes**

The objectives of planning in Victoria are updated to recognise the importance to planning of:

- equal consideration of social, economic and environmental factors in decision-making
- a healthy environment
- population and demographic change
- high quality and sustainable design
- the need to integrate planning for land use, transport and infrastructure.

### THE PLANNING SCHEME AMENDMENT PROCESS

**The current Act**

Currently there is one process for amendments to planning schemes and the Minister can exempt various steps in certain circumstances. 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.

See Chapter 1 for more details.

See Chapter 2 for more details.
The planning scheme amendment process continued...

The draft Bill proposes
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.

THE PLANNING PERMIT PROCESS

The current Act
The Act currently applies one process to all planning permit applications regardless of the scale, complexity and significance of a proposal.

The draft Bill proposes
Two separate processes are provided for the assessment of permit applications to more closely match the assessment and approval process with the potential impact of the proposal. The two processes are:
- Code assess – This process will apply to straightforward, low risk, low impact applications that can be quickly assessed against specified performance standards or assessment criteria set out in a planning scheme. Decisions must be made by the Chief Executive Officer of the Council, or their delegate.
- Merit assess – This is the current planning permit process, with some improvements. Decisions are made by the responsible authority, which may be either the Council or their delegate.
There is no clear mechanism or criteria to identify and consider State significant development. This creates uncertainty about how these developments should be dealt with and can result in proposals being 'called in' by the Minister part way through assessment.

A new process for the approval of State significant developments will be introduced.

Early identification of State significant development ensures the process of assessing and determining these proposals is clear and known in advance.

**STATE SIGNIFICANT DEVELOPMENT**

**The current Act**

There is no clear mechanism or criteria to identify and consider State significant development. This creates uncertainty about how these developments should be dealt with and can result in proposals being 'called in' by the Minister part way through assessment.

**The draft Bill**

A new process for the approval of State significant developments will be introduced.

Early identification of State significant development ensures the process of assessing and determining these proposals is clear and known in advance.

**OTHER MODERNISATION INITIATIVES**

The draft Bill proposes

1. Improvements to the operation of section 173 agreements, including ending and amending agreements.

2. Enabling a comprehensive monitoring and reporting requirement for all key decision makers in the planning system.

3. Facilitating e-Planning initiatives by enabling fees for application and amendment processes to contain a component to provide for the upkeep of electronic operating systems.

See Chapter 4 for more details.

See Chapter 5 for more details.
Modernising Victoria’s Planning Act

Part A – Commentary
The Proposal number is set out in the Table of Proposals at the front of the Bill. This references the sections of the Act that are being changed by the Proposal.
The objectives of planning in Victoria

The objectives set out in sections 4(1) and 4(2) of the Act provide high level guidance on the fundamental direction of planning in Victoria and the planning framework established by the Act. They are not designed to specify planning practice or set out Government policy. The detail of Government planning policy is articulated in the State Planning Policy Framework (SPPF) included in the Victoria Planning Provisions (VPP) and all planning schemes in Victoria.

Consideration of healthy environments, population and demographic change, design for high quality and sustainable design and the need to integrate planning for land use, transport and infrastructure are included. These additions strengthen planning for sustainable development to enhance the liveability and competitiveness of Victoria’s urban and rural communities.

### The objectives of planning in Victoria

<table>
<thead>
<tr>
<th>KEY CHANGES</th>
<th>DRAFT BILL</th>
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<td>A specific reference to balancing environmental, social and economic considerations in decision making, and related changes to sections 12 and 60</td>
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<td>New section 4(1)(c)</td>
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<td>Proposal 41(2)</td>
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<tr>
<td>A new reference to a healthy environment</td>
<td>Proposal 15(1)</td>
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<td>A new reference to high quality and sustainable design</td>
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<tr>
<td>A revised objective on cultural heritage significance</td>
<td>Proposal 15(1)</td>
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<td>A new reference to the need to integrate planning for land use, transport and infrastructure</td>
<td>Proposal 15(1)</td>
<td>New section 4(1)(f) and amended section 4(1)(i)</td>
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<td>Proposal 15(2)</td>
<td>New section 4(2)(ca)</td>
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What is proposed?

The amendments to the objectives of planning in Victoria include new references to a healthy environment, population and demographic change, transport and infrastructure, and recognition of the importance of high quality and sustainable design. The objectives will recognise that environmental, social and economic considerations need to be balanced in decision making. The objectives have also been reordered and updated for clarity and consistency.

Changes to section 4(1)

The proposed changes are outlined below (additions or relocations are in bold, deletions are in strikethrough):

4(1) The objectives of planning in Victoria are:

(a) to provide for the fair, orderly, [economic] and sustainable use, and development of land;

(b) to secure a pleasant, efficient, healthy and safe working, living and recreational environment for all people in Victoria;

(c to balance environmental, social and economic considerations, and respond to population and demographic changes, in decisions about the use and development of land;

(d) to balance the present and future interests of all Victorians;

(e) to achieve high quality and sustainable design in public and private places in Victoria;

(f) to integrate land use, transport and infrastructure to enable the co-ordinated provision of sustainable transport for the benefit of the community;

(g) to provide for the [protection of natural and man-made resources] maintenance of ecological processes and the protection of biological [genetic] diversity;

(h) to conserve and enhance those buildings, areas or other places which are of [scientific], aesthetic, archaeological, architectural, cultural, [hi]historical, scientific or social significance interest, or otherwise of special cultural value;
(a) to protect natural and man-made resources, infrastructure, utilities and other assets and enable the orderly provision and co-ordination of infrastructure, utilities and other facilities for the benefit of the community;

(b) to balance the present and future interests of all Victorians;

(i) to facilitate use and development of land in accordance with these objectives set out in paragraphs (a), (b), (c), (d), (e) and (f).

Balancing environmental, social and economic considerations in decision making, and related changes to sections 12 and 60

A specific objective to balance environmental, social and economic considerations in decision making about the use and development of land will be included in the objectives of planning in Victoria. This provides an express reference to the importance of environmental, social and economic considerations in decision making.

This will complement the objective of the planning framework in section 4(2)(d): to ensure that the effects on the environment are considered and provide for explicit consideration of social and economic effects when decisions are made about the use and development of land.

To reflect these changes, sections 12 and 60 of the Act are to be amended. The practical application of the section 4(2)(d) objective occurs in the preparation or amendment of a planning scheme under section 12(2)(b) and (c), and in the matters that a responsible authority considers when determining an application for a permit under section 60(1) and (1A).

These sections currently provide that significant environmental effects must be considered, and that social and economic effects may be considered by the relevant authority. The draft Bill provides that all of these significant effects must be considered by the decision maker.

The proposed changes are consistent with the goals of Growing Victoria Together, and proposal 11.02 of the SPPF that ‘seeks to ensure that the objectives of planning in Victoria are fostered through appropriate land use and development planning policies and practices which integrate relevant environmental, social and economic factors in the interests of net community benefit and sustainable development.’
A new reference to a healthy environment
Securing a healthy environment is an important overarching matter that affects all Victorians. Planning decisions about location and design of development can make a contribution to healthier environments, which in turn support Victoria’s liveability.

A new reference to population and demographic change
An explicit reference to population and demographic changes recognises the impact that these changes have on Victoria and the need for decisions on land use and development to be responsive to these challenges and opportunities.

A new reference to high quality and sustainable design
The provision of high quality and sustainable design in Victoria will contribute to a range of positive environmental, social and economic outcomes. The achievement of this objective will improve Victoria’s liveability.

A revised objective on cultural heritage significance
The current section 4(1)(d) will be aligned with the definition of cultural heritage significance in the Heritage Act 1995. The revised objective will include specific reference to architectural and cultural significance to better reflect the matters addressed by heritage practice in Victoria, and establish a stronger link between planning and heritage considerations.

New references to the need for integration of planning for land use, transport and infrastructure
Reference to the need to integrate planning for land use, transport and infrastructure are included in the objectives of planning to recognise that the provision and co-ordination of transport and infrastructure are important considerations in planning. The reference to infrastructure provides for a broader range of matters than just utilities and facilities. Its inclusion recognises that infrastructure can encompass a variety of physical and social services. The inclusion of transport recognises the need for an integrated approach to address land use and transport challenges.
Changes to section 4(2)

The draft Bill introduces a new objective of the planning framework to achieve an integrated approach to land use and transport planning:

(c) to ensure that land use planning and development, and transport planning, services and infrastructure are integrated.

What will be achieved?

The proposed changes will:

• ensure that the planning system is responsive to potential and emerging challenges
• improve the objectives as decision-making tools
• promote balanced consideration of significant environmental, social and economic effects.
Part 3 of the Act sets out the current procedure for amending planning schemes.

State and local government use the planning scheme amendment process to formally document and implement their strategic planning vision and to guide the use and development of land. It is integral to the implementation of State and local policy. The amendment process sometimes provides for particular proposals to use and develop land in the context of State and local policy.

The changes included in the draft Bill are designed to improve the efficiency, effectiveness and transparency of the amendment process.

The current amendment process

The proposed amendment processes

STREAMLINED PROCESS

STANDARD PROCESS

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### The planning scheme amendment process

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<th>KEY REFORMS</th>
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<td>Proposal 23</td>
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<td>Minister may authorise a person to undertake certain steps in the amendment process</td>
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<td>Decision by a planning authority</td>
<td>Proposals 30 – 34 and 53</td>
<td>Substitute sections 28, 29, 30(1)(a), 30(1)(b), 31(1) and 156(4)</td>
</tr>
<tr>
<td>Duties of a planning authority</td>
<td>Proposal 18</td>
<td>Section 12(2)(c)</td>
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<tr>
<td>Submissions to include reasons</td>
<td>Proposal 24</td>
<td>Amend section 21 by inserting a new &quot;(1A)&quot;</td>
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</table>

Modernising Victoria’s Planning Act | Commentary on the draft Bill
What is proposed?

A new streamlined amendment process

All planning scheme amendments currently follow the same process which in some cases creates inefficiency. While some steps can be shortened or omitted in certain circumstances to simplify the process, it is not always clear when this should occur. As a result, a significant amount of time and resources can be spent on preparing information and undertaking steps that are not necessary.

A streamlined process for amendments will be introduced to deal with corrections, technical changes, interim provisions, and amendments that give effect to changes where consultation has already occurred.

A streamlined and time-efficient process to deal with these matters will encourage planning authorities to pursue adjustments and improvements on a regular basis. These amendments are essential to keep planning schemes in good working order.

This process will also be used to make changes where assessment, review or consultation on the changes has already occurred, such as amendments to the VPP and amendments to implement a State significant development decision. It will also be used to apply interim provisions that support amendments being exhibited and considered under the standard amendment process, for example heritage protection.

The matters to which the streamlined process applies will be set out in the Regulations and are intended to include:

- corrections to anomalous provisions
- removal of redundant provisions
- changes to ensure provisions reflect the policy intent of the planning scheme
- amendments to the VPP
- the introduction of interim provisions.

Under the streamlined amendment process:

- Any person may ask the Minister to prepare an amendment where the proposed change meets the criteria included in the Regulations.
- The Minister will prepare the amendment.
The Minister may consult with the planning authority for the relevant planning scheme (this will not be necessary if the planning authority has requested the amendment).

The Minister will approve the amendment.

A notice regarding the approval of the amendment will be published in the Government Gazette and the amendment will be laid before Parliament in the normal way.

Sections 17, 18 and 19 of the Act do not apply in a streamlined amendment process, which means that the amendment is not exhibited and the submission and panel steps do not apply. A simplified explanatory report will be required.

**What will be achieved?**

The benefits of these changes include:

1. Technical changes and corrections to planning schemes will be easier and quicker. About one third of amendments currently dealt with will be able to be determined more efficiently.

2. There will be less work for councils to make simple changes to planning schemes to keep them up to date.

3. Changes that have already been considered and assessed under a separate process can be implemented quickly and efficiently.

4. Setting out the criteria for streamlined amendments in the Regulations will provide transparency and certainty.

**Minister may authorise a person to undertake specific procedural steps in the amendment process**

Currently, only a planning authority may prepare an amendment and carry out the procedural steps of giving notice, assessing submissions and referring submissions to a panel. The planning authority can be the Minister for Planning, the local council, or another Minister or public authority that has been authorised by the Minister for Planning.

Sometimes a proponent will request an amendment to change a planning scheme to facilitate a proposal. At present, if the council thinks the request has merit, it can agree to prepare the amendment and commit resources to processing the amendment. However, if the council does not have the time or resources, or does not consider the proposal to be a priority, the process might not start. Also, if the council decides not to...
support the request or refuses to prepare an amendment for any other reason, the only avenue available to a proponent is to ask the Minister to prepare the amendment.

Under the draft Bill, the Minister may authorise a proponent to prepare an amendment and carry out specific procedural steps in the process where the Minister decides that a proposal has merit. The specific requirements that apply to a person authorised to prepare a planning scheme amendment (referred to as an ‘authorised person’ in the draft Bill) are to be set out in a new schedule (Schedule 2) to be included in the Act. The Minister must consult with the local council before appointing an authorised person for an amendment.

The procedural steps that an authorised person may also be authorised to undertake include giving notice of the amendment, considering submissions, referring submissions to a panel and considering the panel report. After completing these steps, the authorised person must submit the amendment to the planning authority with a recommendation about whether or not the amendment should be approved.

An authorised person is not a planning authority and does not have the broader functions and powers of a planning authority. The role of an authorised person is only to carry out the initial steps that they have been authorised to carry out, so that a decision can be made by the planning authority. The planning authority must decide whether or not an amendment should be approved before it is submitted to the Minister.

The planning authority for the amendment will be decided by the Minister when appointing the authorised person for an amendment. It will usually be the council.

Any requirements that currently apply to a planning authority when preparing and processing an amendment will also apply to an authorised person, including to:

- prepare an explanatory report
- comply with the Minister’s directions under section 7
- have regard to the Minister’s directions under section 12
- submit an amendment to the Secretary for certification before exhibition
- carry out the notification and exhibition requirements specified by the Secretary as required by the Act
consider all submissions

refer all submissions which the authorised person does not agree with to a panel

consider the panel’s report before making a recommendation to the planning authority.

Other requirements that will apply to an authorised person include:

• An authorised person cannot prepare an amendment to change a State standard provision.

• A person can be authorised only for a specific amendment proposal.

• Authorisation may be given subject to conditions.

• Authorisation can be withdrawn at any time.

• The Minister will decide which steps an authorised person may carry out. An authorised person can only carry out those steps that the Minister authorises.

• The Secretary will decide which land owners and occupiers must be given notice of the amendment.

• Submissions about the amendment are to be made to the planning authority who will provide these to the authorised person.

• Where there is a panel hearing, the panel will provide an opportunity for the planning authority to be heard.

• The authorised person makes a recommendation to the planning authority which is the final step of their role as authorised person. The planning authority makes a recommendation to the Minister on the amendment in the same way as it would for amendments where there is no authorised person.

Amendment to be certified by the Secretary

Authorisation of an amendment

The requirement for an amendment to be authorised by the Minister has been retained. This step enables the Minister to ensure that a proposal is consistent with State policy and interests. It is an important mechanism for identifying and resolving key issues early in the process.
New procedures will be put in place to simplify the authorisation step and to clarify the information needed to support a request for authorisation. No legislative change is required to implement these improvements, as they will be addressed by amending existing practice notes and guidelines. A more detailed consideration of the form of the amendment will now be dealt with in the certification step.

**Certification of an amendment**

Planning schemes are subordinate legislation and affect the rights of individuals. It is important that amendments make proper use of the *Victoria Planning Provisions*, are technically correct, are written in a way that is unambiguous and that the explanatory report adequately addresses the Minister's Direction No. 11 Strategic Assessment of Amendments. Experience has shown that the quality of amendment drafting and documentation is variable and frequently needs to be changed or corrected. Poorly prepared amendment documentation can delay the process as it takes time to remedy problems and sometimes repeat steps. It can also lead to a legal challenge which causes delay, is costly and introduces uncertainty.

The draft Bill introduces the requirement for an amendment to be certified by the Secretary before it is exhibited. This step will ensure that an amendment is in an appropriate form for exhibition and will allow the Secretary to specify the date for a directions hearing and any public notice requirements.

Relocating the existing certification step from the end of the process to the beginning, enables the Department to check the quality of an amendment before it is exhibited, and ensure it complies with any conditions that were imposed by the Minister at authorisation. It also provides an opportunity for the planning authority or authorised person to obtain detailed feedback from the Department on the form of the amendment.

While this step will take some extra time at the start of the process, it:

- avoids time and resources being used later in the process to fix problems that would have been better dealt with before the amendment was exhibited
- reduces the risk of procedural challenges and the possibility of having to repeat steps.
Directions Panel

New Division 1A provides for the appointment and operation of a directions panel. Directions panels will be established by Planning Panels Victoria.

The proposal is for a directions hearing to be scheduled for every amendment when it is placed on exhibition. The date of the directions hearing will be set by the Secretary when an amendment is certified. The date will be included in the notice of preparation of the amendment.

The purpose of the directions hearing is to make arrangements for the panel hearing, confirm any changes to the amendment made in response to submissions, and confirm the withdrawal of any submission. The draft Bill provides that a directions hearing may be conducted by a person other than the panel that will be considering the submissions.

Presetting the directions hearing date assists the parties, their advocates, and councils to better prepare for the panel process, and ensure that panel hearings start without delay.

Remove approval of an amendment by a planning authority

The Minister’s power to authorise a planning authority to approve an amendment was introduced into the Act by the Planning and Environment (General Amendment) Act 2004. While the objective was to facilitate faster approval of certain amendments this objective has not been realised. Amendments and amendment documentation submitted to the Secretary for certification frequently need to be changed before they can be certified and approved. This is time consuming and a key reason why local government has shown only limited interest in this power. Significant time saving will be achieved by removing this process. Also, the streamlined amendment process is likely to apply to some of these classes of amendments which will achieve further time saving.

Decision by a planning authority

The proposal is to replace the powers of a planning authority to adopt or abandon an amendment with a power to make a recommendation to the Minister to approve or refuse an amendment. The planning authority is required to support or justify its recommendation to the Minister.
Currently a planning authority can abandon an amendment at any time without needing to justify the decision. This is a significant power that creates uncertainty even if it is not exercised on a regular basis. The decision to abandon should only be made if there are sound reasons for doing so.

If an amendment has been prepared at the request of a proponent there is no review of a decision by a planning authority to abandon the amendment. An authorised person makes a recommendation to the planning authority and if the abandonement power is not changed the planning authority could use this power to put an end to an amendment. Currently a proponent can request the Minister to prepare another amendment but this will involve delay and duplication in effort to prepare and process the amendment.

Consideration by planning authorities

Currently section 12(2) provides that a planning authority must consider environmental effects, and may consider social and economic effects. The difference has caused debate about whether the environmental effects of an amendment should be given more weight than its social and economic effects.

Section 12(2) will be amended so that a planning authority must give equal consideration to significant environmental, social and economic effects.

Submissions to include reasons

Submissions are regularly made that are not relevant to an amendment. The proposal is to encourage submissions that better inform the consideration of the amendment by requiring a person making a submission to state the reasons for the submission.

<table>
<thead>
<tr>
<th>DRAFT BILL</th>
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</thead>
<tbody>
<tr>
<td>Proposal 18</td>
<td>Amended section 12(2)(c)</td>
</tr>
<tr>
<td>Proposal 24</td>
<td>New section 21(1A)</td>
</tr>
</tbody>
</table>

Note: For further discussion on these changes see Chapter 1: The objectives of planning in Victoria.
The planning permit process

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 an objector.

There are about 50,000 permit applications lodged in Victoria each year, and each can involve councils, referral authorities, VCAT, proponents and members of the community. Given the number of permit applications made each year, improvements to the process will reduce the regulatory burden on local government, business and the community.

The planning permit process

<table>
<thead>
<tr>
<th>KEY REFORMS</th>
<th>DRAFT BILL</th>
<th>ACT</th>
</tr>
</thead>
<tbody>
<tr>
<td>Provide separate code assess and merit assess</td>
<td>Proposal 16(1)</td>
<td>New section 6(2)(hb)</td>
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<tr>
<td>processes for the assessment of applications</td>
<td>Proposal 16(2)</td>
<td>New sections 6(2)(kf) – (lg)</td>
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<tr>
<td>Proposal 19</td>
<td>Substituted section 13</td>
<td></td>
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<tr>
<td>Proposal 41(5)</td>
<td>New section 60(3A)</td>
<td></td>
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<tr>
<td>Proposal 45(2)</td>
<td>New section 84B(3)</td>
<td></td>
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<tr>
<td>Make the definition of a ‘permit’ clear and</td>
<td>Proposal 14</td>
<td>Amended section 3</td>
</tr>
<tr>
<td>consistent</td>
<td>Proposal 43(4)</td>
<td>Amended section 72(3)</td>
</tr>
<tr>
<td>Clarify the duties of a responsible authority</td>
<td>Proposal 20</td>
<td>New section 14(2)</td>
</tr>
<tr>
<td>Clarify the matters to be considered by the</td>
<td>Proposal 41(1)</td>
<td>Amended section 60(1)(e)</td>
</tr>
<tr>
<td>responsible authority</td>
<td>Proposal 41(2)</td>
<td>New section 60(1)(f)</td>
</tr>
<tr>
<td>Proposal 41(3)</td>
<td>Repealed section 60(1A)(a)</td>
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<tr>
<td>Proposal 41(4)</td>
<td>Substituted section 60(1A)(h)</td>
<td></td>
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<tr>
<td>Proposal 41(5)</td>
<td>New section 60(3A)</td>
<td></td>
</tr>
<tr>
<td>Clarify the conditions that can be put on a</td>
<td>Proposal 42(1)</td>
<td>Amended section 62(2)(a)</td>
</tr>
<tr>
<td>permit</td>
<td>Proposal 42(2)</td>
<td>New section 62(2)(h)</td>
</tr>
<tr>
<td>Proposal 42(3)</td>
<td>New section 62(3)</td>
<td></td>
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<tr>
<td>Proposal 42(4)</td>
<td>New sections 62(7) – (9)</td>
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</tr>
<tr>
<td>Clarify the process to amend a planning permit</td>
<td>Proposal 43(1)</td>
<td>Substituted section 72(2)(a)</td>
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<tr>
<td>Proposal 43(2)</td>
<td>Amended section 72(2)(b)</td>
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<tr>
<td>Proposal 43(3)</td>
<td>New sections 72(2)(c) – (d)</td>
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<tr>
<td>Proposal 43(4)</td>
<td>Substituted section 72(3)</td>
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<tr>
<td>Proposal 69</td>
<td>Repealed section 216</td>
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<tr>
<td>Proposal 70</td>
<td>New section 219</td>
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What is proposed?

Provide two processes for the assessment of applications

The draft Bill will enable a planning scheme to provide for two separate assessment processes for permit applications. The changes will ensure that the level of assessment of a permit application can be made proportional to the complexity and impact of the proposal.

The two assessment processes are:

• Code assess – a streamlined assessment against objective criteria.
• Merit assess – a more detailed assessment of merit or against policy.

The two assessment processes are summarised below.

The new permit processes

<table>
<thead>
<tr>
<th>Key Reforms</th>
<th>Draft Bill</th>
<th>Act</th>
</tr>
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<tbody>
<tr>
<td>Improve referral arrangements and introduce duties of a referral authority</td>
<td>Proposal 21 New section 14A</td>
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<tr>
<td>Proposal 37(1) Amended section 55(1)</td>
<td>Proposal 37(2) New section 55(3)</td>
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<tr>
<td>Proposal 38 New section 56(3A)</td>
<td>Proposal 39 New section 56A</td>
<td></td>
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<tr>
<td>Proposal 40 New section 57C(3)</td>
<td>Proposal 48 New section 94(2A)</td>
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<tr>
<td>Proposal 67 Amended section 197</td>
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</tbody>
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DRAFT BILL ACT
Proposal 16(1) A new section 6(2) (hb)
The code assess process

This is a streamlined assessment process for straightforward, low impact classes of applications that can be assessed against criteria set out in the planning scheme. Any new criteria will be introduced into planning schemes through an amendment, ensuring a transparent and consultative process before introduction.

The changes to section 6(2) of the Act enable the VPP and planning schemes to set out classes of applications that are code assess and the related code assess requirements and procedures.

Code assess applications will be limited to particular classes of use and development that are straightforward, consistent with policy, consistent with the zoning of the land, and have limited or no off-site impacts. Classes of applications will be determined in consultation with local government and will be set out in the VPP and planning schemes.

Section 6(2) will also be amended to allow the VPP and planning schemes to exempt all or some of the decision-making considerations set out in sections 60 and 84B(2).

The Chief Executive Officer (CEO) of the council will be the responsible authority for code assess applications. Planning schemes will be amended to specify the CEO as the responsible authority for code assess applications under the relevant planning scheme. As the assessment will be confined to objective criteria delegated decision making for code assess applications by relevant and technically qualified officers of the council will be encouraged. Reflecting a more streamlined process, the Regulations will be amended to prescribe a reduced statutory time period of 14 days for an applicant to seek a review to VCAT against the failure of the responsible authority to decide a code assess application.

Public notice or review of a code assess decision is not required, as the proposal’s compliance will be assessed against criteria that have been subject to community input. The applicant will however have the opportunity to seek a review of a decision that the proposal does not meet the criteria or of the conditions imposed. A simple process will be established at VCAT to determine these reviews.

The merit assess process

The merit assess process includes some improvements to the current permit application and review process. Reforms include improvements to the referrals process, clarification of permit conditions and the process to amend a permit.
Definition of ‘permit’

The draft Bill applies the definition of permit in section 72(3) to the whole of the Act. To give effect to this change the definition of permit will be included in section 3 and removed from section 72(3).

There has been some confusion about whether this definition applies only to permits being amended under Division 1A of Part 4, or whether this applies generally as a definition of a permit. This reform will clarify that a reference in any part of the Act to a permit includes any plans, drawings or other documents approved under a permit.

Duties of a responsible authority

The draft Bill introduces a requirement for responsible authorities, when carrying out any duty under this Act, to have regard to the Minister’s directions, including directions the Minister may make relating to the administration of planning schemes.

Matters to be considered by the responsible authority

Section 60(1) currently provides that significant environmental effects must be considered, and that social and economic effects may be considered by the relevant authority. All of these significant effects will now be required to be considered by the decision maker. This reflects the changes to the objectives of planning in section 4(1)(c) that seek to balance environmental, social and economic considerations in decision making on land use and development.
What conditions can be put on permits?

There is strong support to provide a clear distinction between finite and ongoing permit conditions. Case law has clarified that conditions for development can be ongoing and no change is required to the Act. However, other non-legislative changes will be pursued to improve the clarity of permit conditions.

The Regulations will be amended to change the structure of permits to include two categories of conditions: those conditions that apply while a development is being carried out and those conditions that have an ongoing life after the development is completed. This will make it clear which conditions apply on an ongoing basis.

The draft Bill amends section 14 and introduces a new section 14A(b) to require responsible authorities and referral authorities to have regard to Minister’s directions. This will enable the Minister to direct responsible authorities and referral authorities to use standard conditions for specific matters in particular circumstances. This will achieve certainty and clarity in what is required by a condition. The responsible authority will be able to add to these conditions for other relevant matters.

Section 62(2) will be amended to provide for a bond or guarantee to be established by a permit condition, removing the need for section 173 agreements to secure bonds and guarantees.

A new section 62(3) introduces the requirement that responsible authorities must not include permit conditions providing for secondary consent. (See below for more detail.)

Amendments to planning permits

The Planning and Environment (General Amendment) Act 2004 introduced Division 1A of Part 4 which provided for amendments to permits by responsible authorities. The purpose of this reform was to provide a standardised process for a responsible authority to consider an amendment to a permit. This did not apply to a permit issued at the direction of VCAT.

It is now proposed that any change to a permit, including any plans, drawings or other documents approved under a permit, be approved under the Division 1A amendments to permits process or by VCAT under section 87. This ensures that amendments to permits follow a structured decision-making process with amendments recorded on the permit and in the permit register. The process of a secondary consent outside of this legislated process will no longer be available.

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<th>DRAFT BILL</th>
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<tbody>
<tr>
<td>Proposals 20 and 21</td>
<td>New sections 14(2), 14A</td>
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<tr>
<td>Proposal 42</td>
<td>Amended section 62(2) and new sections 62(7) to (9)</td>
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</table>

Note: These changes support the initiatives relating to section 173 agreements that are included in Chapter 5: Other modernisation initiatives

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<tr>
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<tbody>
<tr>
<td>Proposal 42(3)</td>
<td>New section 62(3)</td>
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<tr>
<th>DRAFT BILL</th>
<th>ACT</th>
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<tbody>
<tr>
<td>Proposal 43(4)</td>
<td>Substituted section 72(3)</td>
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</table>

Note: These changes support the initiatives relating to section 173 agreements that are included in Chapter 5: Other modernisation initiatives
A new section 62(3) specifies that conditions must not provide for the amendment of a permit and that this includes any plans, drawings or other documents approved under the permit. Division 1A will be the mechanism for these changes.

A responsible authority should undertake this process in a time-efficient manner that is proportionate to the scale and complexity of the amendment. There should be no difference whether the decision would have been dealt with as a secondary consent decision or a Division 1A decision as now proposed.

There will continue to be circumstances where a permit condition can specify that the consent of the responsible authority or other authority is required, provided that this does not result in a change of the permit. This may include requests for further information, or details such as car park plans.

The fact that section 72 is not available to amend permits directed to be issued by VCAT is resource intensive for VCAT and can be disproportionate to the amendment requested. Section 72 is to be changed so that responsible authorities will be able to amend these permits except where VCAT has specified that the permit or part of the permit must not be amended by the responsible authority.
Summary of changes to amendments to planning permits

- A permit (including any plans, drawings or other documents approved under a permit) can only be amended under Division 1A or by VCAT.

- It will not be possible to amend plans, drawings or documents approved under a permit by secondary consent (this will include permits that are issued before this change is enacted). Division 1A amendment of permits process will need to be used.

- It will not be possible to include a condition on a permit that allows plans, drawings or other documents approved under a permit to be amended by secondary consent.

- The change will not affect the ability of responsible authorities to approve plans, drawings or documents for the first time to form part of the permit. Once these have been approved any change must be by Division 1A or VCAT.

- Permits issued by VCAT will be able to be amended by the responsible authority except where VCAT specifies that the permit or part of the permit cannot be amended by the responsible authority.

Referral authorities

Referral authorities play a significant role in the permit process. A recommendation by a referral authority can determine the outcome of an application and the final form of the proposal.

In recent years, referral authorities and State and local government have introduced a number of changes that have improved the referral processes in the planning permit system. Further improvements are proposed by the draft Bill.

What are the duties of a referral authority?

A new section 14A sets out the duties of a referral authority, in relation to a matter referred to them under the Act.

When the Act was introduced, all referral authorities were public bodies. Now a private corporation may be a referral authority where it is responsible for delivering or maintaining a public service or utility. Given this shift in recent decades, it is important that referral authorities, whether public or private, are clear about their duties under the Act.
The duties in section 14A are to:

- have regard to the objectives of planning in Victoria when considering the matter
- have regard to the Minister’s directions
- comply with the Act
- have regard to the planning scheme
- provide information and reports as required by the Regulations.

Expedition: section 197 to apply to referral authorities

Section 197 requires bodies involved in planning processes to undertake a required act, including forming opinions and making decisions, as promptly as is reasonably practicable. This section currently focuses on public bodies, but given that a number of referral authorities are private bodies the section will be amended to encompass all referral authorities, public or private.

Application to go to referral authority

Section 55(1) is amended to require the responsible authority to provide prescribed information with an application given to a referral authority. The prescribed information will specify why a permit is required and the relevant provisions of the planning scheme. Providing prescribed information with an application will improve the referral process by improving clarity, communication and timeliness.

The Regulations will be amended to prescribe the information to accompany the application.

Referral authority to provide a copy of its response, and any information requests, to the applicant

A referral authority will be required to advise an applicant of further information requirements, and their response to the referral, at the same time as notifying the responsible authority. This will improve communication within the referral process and speed up overall response times.

Referral authority to keep a register

Referral authorities will be required to maintain a register of referrals that records performance against statutory timeframes. The register will be required to be made available during office hours for any person to inspect free of charge.
What will be achieved?

- Provide for the assessment of permit applications proportional to the complexity and impact of a proposal.
- Provide for clarity on the definition of a permit.
- Provide for the operation of permit conditions on an ongoing basis.
- Ensure consistency for the process of amending a planning permit.
- Make the referral process more efficient and transparent.
Modernising Victoria's Planning Act | Commentary on the draft Bill
State significant development

Some projects have significant implications on the development of the State. Unlike some other States the Minister must usually make the decision on a State significant project. There is currently no criteria to identify a State significant project. This can create uncertainty and delay in determining which projects should be decided at the State level.

A new Division 2 to Part 9A of the Act is to be introduced that provides a proactive process for assessing State significant development where the decision is to be made by the Minister. The existing sections in Part 9A will be retained, as Division 1.

The proposed process aligns with the ‘impact assess’ track defined in the Leading Practice Model prepared by the national Development Assessment Forum (DAF) ([www.daf.gov.au](http://www.daf.gov.au)). The DAF ‘impact assess’ track is appropriate for the assessment of projects that have the potential for significant economic, social or environmental impacts.

The process will not affect the assessment and approval of specific types of projects, such as mining, which are already approved under other legislation, or major transport infrastructure which is subject to the Major Transport Projects Facilitation Act 2009.

The new process does not apply if:

- a permit is not required for the use or development under the planning scheme
- the use or development is in accordance with a permit already granted, or
- a section 16 order applies.

State significant development process

1. Project declared
2. Application scoped
3. Community and stakeholder engagement
4. Panel review and assessment
5. Decision by Minister
6. Statutory implementation
State significant development

<table>
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<tr>
<th>KEY REFORMS</th>
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<tbody>
<tr>
<td>STATE SIGNICANT DEVELOPMENT</td>
<td>Proposals 3, 4, 5 and 6</td>
<td>New Division 2 inserted in Part 9A</td>
</tr>
<tr>
<td>Minister can declare a project to be of State significance</td>
<td>New sections 201QB, 201QC, 201QD and 201QZC</td>
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<tr>
<td>Directions of the Minister for State significant development</td>
<td>New section 201QE</td>
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<tr>
<td>Application for approval for State significant development</td>
<td>New section 201QG</td>
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<tr>
<td>Preliminary consideration of application by Secretary</td>
<td>New sections 201QI, 201QJ</td>
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<tr>
<td>Notice of application and consultation</td>
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<tr>
<td>Submissions</td>
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<td>Panel</td>
<td>New sections 201QO – 201QR</td>
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<tr>
<td>Decision of Minister</td>
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<tr>
<td>Amendment of planning scheme for State significant development</td>
<td>New section 201QU</td>
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<tr>
<td>Permits for State significant development</td>
<td>New sections 201QV - 201QZA and 201QZC</td>
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<tr>
<td>Register to be kept by responsible authority</td>
<td>New section 201QZB</td>
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<tr>
<td>Register to be kept by Secretary</td>
<td>New section 201QZD</td>
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What is proposed?

The new process will provide for:

- The Minister to declare a use or development or class of use or development to be State significant development.
- The Secretary to set the requirements of an impact report to be prepared by the proponent and the community engagement strategy to be followed.
- Submissions to be made in response to consultation in accordance with the community engagement strategy.
- A panel to review the application and submissions. Where submissions have been received, the panel will provide an opportunity for any submitter to be heard.
- The panel to submit a report with recommendations to the Minister.
- The Minister to make the decision and give statutory effect to the decision.
Minister can declare a project to be of State significance

The draft Bill enables the Minister to declare a use or development, or a class of use or development to be State significant development. The declaration will be published in the Government Gazette.

In making a declaration, the Minister must provide notice to any other Minister, public authority, municipal council or person prescribed by the Regulations.

Once a project is declared a State significant development, the use or development cannot commence until approved under the new process.

Criteria for State significant development

The criteria for what is a State significant development will be detailed in guidelines or a Minister’s direction.

Directions of the Minister

The draft Bill enables the Minister to issue directions in relation to any matter relating to the operation of the State significant development process.

Exemption

The Minister will have the power to exempt, by notice in the Government Gazette, part of a State significant use or development from all or part of the requirements of the new process. This provides, where necessary, preliminary works to be carried out where these are required to assist the consideration of a State significant development.

Application for approval for State significant development

Once a project, or a class of use or development, is declared as State significant development, a proponent must apply to the Minister for approval to proceed. The application process is set out in Subdivision 2 (sections 201QG to QT). The application to the Minister must be made in accordance with the Regulations, and include any required information under relevant Minister’s directions.
Preliminary consideration of application by Secretary

Before public notice is given, the Secretary will conduct a preliminary consideration of the application, impact report and other supporting information. The Secretary can request further information and require the proponent to consult with any person or public authority. The Secretary can also require the proponent to provide impact assessment reports or other information to support the application. The preliminary consideration will ensure that the application is complete and that all required information is included and of an appropriate standard before consultation commences.

The impact report will include details of the use or development, relevant impact assessments, and studies. There is scope to have standardised impact report requirements for regularly occurring projects, such as a wind farm.

The Secretary must be satisfied that the application and information is satisfactory before notice requirements are specified by the Minister. Once the Secretary is satisfied the report addresses all relevant issues, a timetable for project assessment is determined, a case manager assigned, and the Minister specifies the notice requirements. The Secretary may publicly exhibit the impact report requirements and engagement strategy before signing it off, to ensure that all relevant matters have been included.

Notice of application and consultation

Community and stakeholder engagement is an important part of the assessment process, and the complete project description and impact assessment reports will ensure stakeholders can consider comprehensive and quality information about the proposed use or development.

A feature of this process is a commitment to an active community engagement and public enquiry process. This will ensure all views can be considered before a decision is made.

The Minister directs the required notice and consultation requirements, including the bodies or persons who the proponent must consult with. The timeframe for making submissions is decided by the Minister and must be for at least 14 days.
Community engagement must be carried out in accordance with the approved consultation strategy. The consultation strategy will be tailored to the needs of each project.

The process provides the opportunity for a proponent to respond to submissions and to clarify the matters for enquiry by the review panel.

**Submissions**

Any person will be able to make a submission to the Minister about the application. After the closing date for submissions the Minister will refer any submissions, with the application and the proponent’s report, to a panel for assessment. The Minister can also specify other matters to be considered by the panel.

**Panel**

The Minister, in all cases, will appoint a panel to assess the application and submissions. The panel will have an inquiry role and conduct public hearings to consider submissions. The application will be considered by a panel whether or not there are submissions. The panel will report its findings to the Minister, and make any recommendations it thinks fit.

**Decision of Minister**

Before making a decision, the Minister must have regard to the objectives of planning in Victoria, the VPP and any relevant planning scheme, any significant environmental, social or economic effects and the report of the panel.

The Minister must notify the proponent in writing of the decision to approve or not to approve the development. Part of the Minister’s decision includes whether a permit is to be granted, or an amendment to a planning scheme be approved, or both. The Minister must also publish a notice of the decision on the Department’s website.

The Minister’s decision will not be subject to review by VCAT.
Amending a planning scheme for a State significant development

If the Minister decides that an amendment of a planning scheme is required to give effect to the approval of a State significant development, sections 12(2) and 12(3) do not apply. Part 3, except for Divisions 1 and 2, will apply to the preparation and approval of a planning scheme amendment required to give effect to the Minister’s decision.

Permits for State significant development

The Minister may grant a permit to give effect to his decision to approve a State significant development. The standard permit processes (such as notice and referral) do not apply as these form part of the State significant assessment process.

If the Minister has decided under section 201QT to grant a permit for the State significant development, then the Minister must provide a copy of the permit to the responsible authority, and make a copy of the permit available at the Department’s office and website.

After the Minister issues the permit, the responsible authority under the planning scheme becomes the responsible authority for the administration and enforcement of the permit. This does not apply to any matters that the permit specifies that the Minister must do or approve to be done, any extension of time under section 69, and any correction under section 71(1). The Minister will also be the responsible authority for the amendment of the permit under section 201QY. Under section 201QY, the applicant may apply to the Minister to amend the permit.

Register to be kept by the responsible authority

The responsible authority must include the details of any permits granted for a State significant development, and any corrections or amendments to the permit in the section 49 register.

Register to be kept by Secretary

The Secretary must keep a register containing the prescribed information on the following matters arising from the State significant development process:

- all declarations
- all applications to the Minister
- all decisions made by the Minister about applications
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What will be achieved?

The process for assessment of a State significant development will ensure that the level of information, community engagement, assessment and review applied is proportionate to the significance of the development. Because these matters are of State significance the Minister will make the final decision.

Amending a permit for a State significant development

A person who is entitled to use or develop land in accordance with a permit issued for a State significant development may apply to the Minister to amend that permit. Notification requirements of section 52 of the Act apply. If a submission is made to an application to amend a permit, the Minister may refer it to a panel.

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<tr>
<th>Draft Bill</th>
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<tr>
<td>Proposal 6</td>
<td>New sections 201QY and 201QZ</td>
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- all permits issued
- all corrections and amendments made to permits.

The register must be made available during office hours for any person to inspect free of charge.
The draft Bill introduces a range of other improvements to the Act. These include reforms to the preparation and operation of section 173 agreements, the introduction of a comprehensive monitoring and reporting framework for Victoria’s planning system and enabling the Planning and Environment (Fees) Regulations 2000 to set out composite fees that will allow for resourcing of e-Planning initiatives. The draft Bill also makes a number of technical changes to the Act.

**Other modernisation initiatives**

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<th>KEY REFORMS</th>
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<td>Amended sections 173, 175, 177, 181(1) and new sections 178 – 178i, 182A – 184E; sections 179(1), 184(3) and 184(4) repealed</td>
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<tr>
<td>Introduction of monitoring and reporting</td>
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<td></td>
<td>Proposal 21</td>
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What is proposed?

Section 173 agreements
A number of changes are introduced to improve the operation of section 173 agreements including:

• removal of unnecessary processes and the involvement of the Minister
• provide for permit conditions to replace the need for agreements
• provide a right of review to VCAT
• declarations on interpretation by VCAT.

These reforms will improve clarity, reduce the regulatory burden by removing unnecessary processes and significantly reduce the reliance on agreements to achieve planning outcomes.

Minister’s involvement in agreements
The Minister’s involvement in ending and amending agreements, and the requirement that an agreement be lodged with the Minister are removed.

The current Act requires the Minister to be involved in the following:

• section 177(2) – agreeing to the ending of an agreement
• section 178 – agreeing to the amendment of an agreement
• section 179(1) – Minister must be given a copy of an agreement.

The involvement of the Minister in these processes is unnecessary as the Minister is not a party to most section 173 agreements, and creates an unnecessary administrative burden on all parties. Removing these requirements will not affect the efficient operation of agreements.

Registration of Agreement
Under section 181 of the Act a responsible authority may apply to the Registrar of Titles to register an agreement, on the property title (other than one relating to Crown land). This section gives discretion to the responsible authority to register the agreement. The subsequent sale or transfer of land that is subject to an unregistered agreement lacks transparency and can cause uncertainty about whether the subsequent owner is bound by the agreement.
The draft Bill requires all agreements to be registered on title, ensuring that the obligations of the agreement will bind future owners.

**Copy of agreement to be kept**

The responsible authority will no longer be required to lodge a copy of an agreement with the Minister under section 179(1). The responsible authority will continue to keep a copy of each agreement and any amendments to the agreement. Lodging agreements with the Minister serves no purpose as the agreements are available through the responsible authority and by registration on title.

**Amendment or ending of agreements**

Under the current section 177(2) an agreement may be ended wholly or in part by the responsible authority with approval of the Minister; or by agreement between the responsible authority and all persons who are bound by any covenant in the agreement. Under section 178, an agreement may, with the approval of the Minister, be amended by agreement between the responsible authority and all persons who are bound by any covenant in the agreement.

Currently, if a person wishes to end or amend an agreement, they must have the support of the responsible authority which in turn must proceed to obtain the agreement of all persons bound by the agreement, or if the agreement is being amended then also the approval of the Minister. This process can take considerable time and may stagnate if there is opposition or the responsible authority is reluctant to progress the proposal.

The draft Bill introduces a new process for responsible authorities to amend or end agreements similar to an application for a permit, including the giving of appropriate notice. The new process will enable a responsible authority or an individual to initiate the ending or amendment of an agreement where the approval of all persons bound by the agreement cannot be obtained.

The responsible authority can require the applicant to pay for the costs associated with notification, preparation, or lodgement of the agreement.
Application to VCAT in relation to disputes

An applicant seeking to end or amend an agreement may apply to VCAT if the responsible authority refuses. The applicant may also apply to VCAT if the responsible authority fails to give notice of the application, or make a decision within three months. An objector to an application to amend or end an agreement may also apply for a review to VCAT.

VCAT may either direct the responsible authority to amend or end the agreement, or determine that the agreement should not end or be amended.

Application by specified person for declaration

VCAT is provided with a new jurisdiction to interpret agreements. A specified person, as defined by section 148, will be able to apply to VCAT to make a determination on matters relating to the interpretation of an agreement. This will address disputes between parties on the meaning of certain requirements.

New parties to an agreement

The draft Bill provides that if land is divided, each of the new owners will be party to the one agreement with the responsible authority and any parties to the original agreement. The obligations under an agreement will be assigned to subsequent owners of separate holdings, providing for continuity of obligations under an agreement.

After an agreement has been entered into, parts of the land which are subject to the agreement may pass into separate ownership through subdivision or by sale of separate lots. This reform addresses the issue of whether after the division there is one agreement to which all new owners are a party to or whether there are several separate agreements between each new owner and the responsible authority.

Bonds and Guarantees

The draft Bill provides clarity about securing bonds and guarantees when the Minister is the responsible authority, or when the Minister is an additional party along with the responsible authority. Section 175 is amended to give effect to the original intention of the section by enabling the Minister to require a bond or guarantee from another party to an agreement, and preventing the Minister from being subject to a bond or guarantee.
Section 62(2) will be amended to provide for a bond or guarantee to be established by a permit condition, removing the need for section 173 agreements to secure bonds and guarantees.

Monitoring and reporting

Key stakeholders will be required to report on their planning activities annually. This is in line with the Victorian Auditor General’s Office (VAGO) recommendation of an annual review of planning functions to ensure compliance with the Act. The Minister, the Department, planning authorities, responsible authorities and referral authorities will be required to meet this obligation.

The introduction of an annual report will create consistency in reporting across the State, and ensure relevant data is gathered which will enable State and local governments to monitor strategic objectives and outcomes, and provide for continuous improvement to statutory processes.

The introduction of an effective monitoring and reporting framework for the planning system will be developed in partnership with local government and other stakeholders to ensure that requirements are not onerous, and that the framework results in real improvements to the planning system. The reporting requirements will reflect the work currently being undertaken by the Municipal Association of Victoria (MAV), in partnership with the Department, to improve local government planning processes.

e-Planning

Most councils rely on software to support their planning functions and both State and local government have invested heavily in systems to support planning and subdivision applications online, planning schemes and maps online, and planning permit application management and activity reporting and monitoring and reporting on the operation of the planning system.

Section 203(2) is to be amended to allow the Planning and Environment (Fees) Regulations 2000 provide for the prescription of composite fees that will include a component for the upkeep of electronic operating systems used to facilitate the consideration of planning permit applications and planning scheme amendments under the Act.
The continuing implementation of the e-Planning Roadmap will be supported by enabling forms and information to be submitted and transmitted in electronic as well as paper form. This will be addressed in subordinate instruments and applied systems.

**The review of planning and subdivision fees**

The Planning and Environment (Fees) Regulations 2000 and the Subdivision (Permit & Certification Fees) Regulations 2000 set fees for a number of planning services, such as making an application for a planning permit, obtaining a planning certificate or subdividing land. These regulations are due to expire in 2010.

The draft Bill introduces new processes, responsibilities and performance accountabilities that may necessitate new fees or have an impact on the fees structure.

The review of the planning and subdivision fees regulations will be extended for 12 months so that the new fee structure can integrate new or changed processes introduced by the Bill.

**Other technical changes**

Section 13 is amended to clarify that a person can be the responsible authority for an area of land or a type of use or development.

Section 83B is amended to provide VCAT with discretion to direct the applicant for a permit to give notice of an application for review.

Section 90(1)(d) is repealed to remove reference to the Minister as a party to a cancellation or amendment of a permit under review at VCAT.

A new section 24(d) and 97E(2A) is included to ensure that a panel provides the applicant a reasonable opportunity to be heard.

A new section 152 is included that applies some of the procedural requirements of a panel to an advisory committee.

Division 3 of part 9 is amended to clarify that the Minister has the same power as a responsible authority in purchasing land.
Appendix 1

Section 20A Amendments

Streamlined amendment process

s20A amendment criteria
The streamlined amendment process will apply to an amendment to the Victoria Planning Provisions or a planning scheme where the amendment includes only one or more of the following:

- The removal of a redundant provision.
- A change that is of a minor technical nature or a correction.
- The introduction of an interim provision, overlay or map change that is applied for a specified time while an equivalent change is being considered under the standard amendment process.
- A change that gives effect to provisions that have already been considered and decided through an alternative consultative process.

The matters to which the streamlined amendment process applies will be set out in the Regulations.

Removal of a redundant provision
This applies to an amendment that removes an expired, redundant or duplicated provision, and may include matters such as:

- Adjustment to the boundary of an overlay to remove the provision from the land, such as for land in a Flood Overlay where the land is no longer subject to flooding.
- Where evidence is provided that an Environmental audit Overlay is no longer required on an area of land.
- Removal of a Public Acquisition Overlay after the land has been acquired.
- Removal of a Road Closure Overlay after the road has been closed.
- Removal of a redundant referral or notice requirement where the relevant agency agrees.
- Removal of unnecessary or irrelevant reference material.

Minor technical correction
These may include matters such as:

- Correction of lot boundaries to align with the cadastral map base.
- Correction of an error or mistake in the provisions.
- Removal of a provision that duplicates another provision.
• Resolution of an inconsistency that is policy neutral.

• Rezoning land that is no longer in public ownership and the replacement zone is clear and not in dispute.

• Rezoning land in public ownership to a Public Use Zone.

• A plain English translation that does not change the effect of the provision.

• Identification of a place on the Heritage Register or the removal of a place no longer on the Heritage Register under the Heritage Act 1995. This would also apply to other similar application in a planning scheme to publish an approved registration under other legislation or approval process.

Who prepares and approves a s20A amendment?

Only the Minister for Planning can prepare and approve an amendment under section 20A of the Act. The amendment can be initiated by the Minister or at the request of any person. The Minister will consider a request against guidelines published to decide whether to prepare and approve an amendment.

This will be similar to the current arrangements and guidelines for s20(4) amendments.

The guidelines will also specify any information that needs to be provided with a request.

The Minister may undertake targeted consultation about the request. Where the request is made by a person other than the planning authority for the scheme (usually the council) the Minister will consult with the council. The Minister will also decide if it is necessary to consult with any other minister, department, agency or referral authority. This will not be required where the request includes support from council and relevant departments, agencies or referral authority.
Appendix 2

Initiating an amendment under Section 11

The draft Bill enables the Minister to allow an authorised person to carry out certain initial steps in the planning scheme amendment process where the planning authority has declined to or failed to progress a request for an amendment.

A person can seek to be authorised to initiate an amendment if the planning authority has refused to prepare the amendment, agreed to prepare the amendment but taken no action in a specified time or made no response in a specified time.

The authorised person is NOT a planning authority, but takes responsibility for carrying out any steps authorised by the Minister.

Q: What will the requirements be to seek authorisation under section 11?

A: A person seeking to initiate an amendment as an authorised person must have regard to any Minister’s directions or guideline for authorisation. The information that must be provided with a request will be set out in a Minister’s direction or guideline. It is expected that this will include matters such as:

- details of the land affected by the amendment
- details of the person’s interest in the land affected by the amendment
- details of the proposed changes to the planning scheme
- a description of consultation with the relevant planning authority, responsible authority, referral authorities and land owners about the proposed amendment
- details of any decision or advice from the planning authority relating to the amendment proposal
- a strategic assessment of the proposal against Minister’s direction No. 11 Strategic Assessment of Amendments.

Q. Does authorising a person to prepare an amendment make that person a planning authority?

A. No. An authorised person is not a planning authority and does not have the broader strategic planning functions of a planning authority. The council retains its role as the planning authority. The role of an authorised person is only to carry out the initial steps that he or she has been authorised to carry out, so that an amendment can be progressed to the point that a decision can be made by the planning authority.
• The requirements that apply to a planning authority when preparing an amendment, will also apply to an authorised person. That is, the authorised person must:
  — prepare an explanatory report
  — have regard to any Minister’s directions under section 12
  — comply with any Minister’s directions under section 7
  — submit an amendment to the Secretary of the Department of Planning and Community Development (Secretary) for certification
  — exhibit an amendment in accordance with the Act and any requirements specified by the Minister (at authorisation) or the Secretary (at certification)
  — consider all submissions
  — refer all submissions with which it does not agree to a panel
  — consider the panel’s report, before making a recommendation to the planning authority. The recommendation may be to approve the amendment with or without changes or to refuse the amendment.

Q. How can there be a guarantee that an authorised person will have the skills and expertise to carry out the relevant steps in the amendment process?
A. An amendment to a planning scheme is a change to subordinate legislation and must be undertaken in accordance with legal requirements of the Act. Failure in process has the risk of legal challenge to the validity of the amendment or a requirement to repeat steps or commencing the amendment again. This is currently the case in relation to a planning authority undertaking an amendment. Therefore the authorised person must ensure that the skills required to carry out these functions are applied. An authorised person takes the responsibility for the legal validity of the amendment, however the actual work of preparation is expected to be carried out by a planning consultant competent in the amendment process.

Q. Why does the authorised person get to consider submissions and the panel report?
A. This provides the authorised person with the opportunity to consider whether or not to change the amendment in response to submissions or the recommendations of the panel.

Q. What steps can be carried out by an authorised person?
A. An authorised person can only carry out the steps that the Minister authorises. The steps can include:
  • preparation of an amendment
  • notification of an amendment
  • consideration of submissions
  • panel process and consideration of the panel’s report and recommendation.
The Minister can authorise a person subject to conditions. If these conditions are not complied with, or if the authorised person fails to comply with a requirement of the Act:

- The Minister can revoke the authorisation, authorise the planning authority to carry out the steps instead, become the planning authority for the amendment and proceed to carry out the steps, or refuse the amendment.
- The Secretary of the Department will not certify the amendment, in which case the amendment cannot proceed.

Q. Does the authorised person have the final say to the Minister about an amendment?

A. No. An authorised person does not have the final say on the amendment. The planning authority must make a decision whether or not to support the amendment before it is submitted to the Minister for a decision.

Q. What is the role of the planning authority?

A. A person proposing to apply to the Minister for authorisation must firstly give the planning authority a reasonable opportunity to consider the amendment proposal.

- Before deciding a request, the Minister will consider the views of the planning authority on the proposal.
- The Minister may authorise a person subject to conditions, including conditions requested by the planning authority.
- Before certifying the amendment for exhibition, the Department may seek the views of the planning authority on the form of the amendment.
- Notice of the amendment must be given to the planning authority.
- The planning authority may make a submission on the amendment and will be given the opportunity to be heard by the panel.
- At the end of the process, the planning authority must decide whether or not to support the amendment. The planning authority can support the amendment with or without changes or choose to recommend that the amendment be refused.

Q. How is accountability and transparency in the amendment process protected?

A. Although a person may be authorised to carry out certain steps in the process, an amendment is under the control of publicly accountable decision-makers at all times:

- The person must be authorised by the Minister before the amendment is prepared.
- The amendment must be certified by the Secretary.
- The notice given of the amendment is decided by the Secretary.
• Submissions must be made to the planning authority in the normal way.
• The planning authority can make a submission.
• The planning authority makes the final recommendation to the Minister on the amendment.
• The Minister makes the final decision on the amendment.
• The amendment must be tabled in Parliament and can be revoked.
• If an authorised person fails to comply with a requirement in Part 3 of the Act, a person materially affected by that failure may refer the matter to VCAT for review (under section 39).
Appendix 3

Background reports

There has been a continuing program of planning system reform in Victoria. A number of previous reports and documents have informed the development of the draft Bill.

In particular, the following documents provide relevant background information:

- *A Leading Practice Model for Development Assessment in Australia* (Development Assessment Forum, 2005)
- *Reference Group on Decision-making Processes (the Whitney Committee) reports* (DSE, 2002)
- *Better Decisions Faster: Opportunities to improve the planning system in Victoria* (DSE, 2003)
- *Cutting red tape in planning: 15 recommended actions for a better Victorian planning system* (DSE, 2006)
- *Victoria’s Planning Framework for Land Use and Development* (Victorian Auditor-General, 2008)
Modernising Victoria’s Planning Act

Part B: Planning and Environment Amendment (General) Bill 2009
The Proposal number is set out in the Table of Proposals at the front of the Bill.

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### Modernising Victoria's Planning Act

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