

Planning and Environment Amendment (Recognising Objectors) Act 2015

Planning Advisory Note | 63

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This advisory note provides guidance about the *Planning and Environment Amendment (Recognising Objectors) Act 2015*

The *Planning and Environment Amendment (Recognising Objectors) Act 2015* (amending Act) amends the *Planning and Environment Act 1987* (PE Act) to require responsible authorities and the Victorian Civil and Administrative Tribunal (VCAT) to consider the number of objectors to a permit application in considering whether a proposed use or development may have a significant social effect.

What is being amended?

Sections 60 and 84B(2) of the PE Act are being amended to insert an additional decision-making consideration that responsible authorities and VCAT must have regard to.

Section 60(1) sets out the matters that a responsible authority must consider before deciding on an application. These matters include the planning scheme, the objectives of the Act, all objections and any significant environmental, economic and social effects of the proposal.

Section 84B sets out the matters that VCAT must take into account in determining an application for review. These include matters the responsible authority is required to consider under section 60 as well as a number of specified planning considerations.

When do the amendments commence?

They commence operation on 12 October 2015.

Do transitional provisions apply?

No, so if a responsible authority has not decided an application, or VCAT has not determined an application for review, before the commencement date, the new decision-making consideration applies.

What does the new consideration require?

The new consideration is set out in sections 60(1B) and 84B(2)(jb) of the PE Act.

Under those sections, responsible authorities and VCAT **must (where appropriate) have regard to the number of objectors in considering whether the use or development may have a significant social effect.**

This must be considered before a final decision or determination on an application is made, together with all other relevant planning considerations.

Applying the new consideration

Planning decisions are essentially about the use, development and protection of land. Presently, responsible authorities and VCAT need to:

- assess the effects that a use or development may have
- determine which of those effects are relevant to the particular decision being made
- if a social effect is relevant, determine the significance of that effect
- balance any significant social effects with any other significant effects that the proposal may have
- integrate the range of policies and planning provisions relevant to the issues to be determined
- decide whether the proposal produces an acceptable planning outcome that is in the interests of net community benefit.

The amendments do not change this approach. Rather they aim to make clear that:

- the number of objectors may indicate a significant social effect of a proposal; and
- if so, the responsible authority and VCAT must have regard to that fact in considering whether the use or development may have that effect.

Determining a significant social effect

Social effects are not defined in the PE Act but typically include effects of a proposal on:¹

- the demand for or use of community facilities and services
- access to social and community facilities
- choice in housing, shopping, recreational and leisure services
- community safety and amenity

- the needs of particular groups in the community, such as the aged.

Whether a social effect is significant and relevant to the decision being made, is a matter that the responsible authority and VCAT must decide in the particular case, taking into account:²

- the aspects of the proposed use or development that require a permit
- the purpose of the permit requirement
- the planning scheme provisions that apply to the assessment of the application
- the causal connection between the social effect the proposed use or development
- the probability of the effect occurring and its likely consequences
- whether the community or an identifiable section of the community is affected (as distinct from individuals)
- the availability of objective facts or information that provide evidence of a likely social effect.

The fact that a large number of people have objected will not, by itself, establish that a proposal has a significant social effect. However, as held in *Stonnington City Council v Lend Lease Apartments (Armada) Pty Ltd*,³ the number of objections may be a relevant fact (together with other facts) that indicates that a proposal may have a significant social effect on the community.

For example, the number of objections may be indicative of the scale of a social effect on the community, the presence of a specific social need in the community, or the social significance of a site to the community.

Does the new consideration apply to all objections?

Most councils have a standard objection form, but it is not essential that this be used. Provided an objection is in writing, states the reasons for the objection and states how the objector would be affected by the granting of a permit, it may be considered under the new decision guideline.

1 *Minawood Pty Ltd v Bayside City Council* (Red Dot) [2009] VCAT 440 [35].

2 *Rutherford & Ors v Hume City Council* (Red Dot) [2014] VCAT 786 [50]–[55].

3 [2013] VSC 505 [68].

Nevertheless, care should be taken with objections that take the form of a petition or pro forma letter (where the same objection is printed or photocopied and signed by many people). It is important to ensure the objections are a genuine reflection of an anticipated social effect, rather than the views of a few objectors, and demonstrate how the objectors themselves would be affected by the granting of a permit.

‘Where appropriate’

The new consideration must be considered ‘where appropriate’.

Whether it is appropriate for the number of objectors to be taken into account in a particular case will be influenced by:

- what the objectors have said in their written objections about the proposed use or development
- whether the issues raised in the objections are relevant planning considerations and relate to the reasons why the proposal requires a permit
- whether the issues raised in the objections point to a detrimental effect on the community which is supported by evidence.

New consideration must be balanced with other considerations

The new consideration is one of a number of matters that responsible authorities and VCAT must consider under the PE Act.

Any social effects of a proposal considered by the responsible authority or VCAT to be significant must be balanced with any other significant effects of the proposal and assessed having regard to:

- the objectives of the PE Act
- the provisions of the planning scheme
- relevant policies and decision guidelines in the planning scheme
- other considerations in sections 60 and 84B of the PE Act.

Does this new consideration mean that a small number of objections will carry less weight?

No, because the relevance and significance of the issues raised by an objector will continue to influence how much weight (if any) is given to that objection.

An objection that specifically addresses the proposal and clearly and rationally describes how the objector would be affected will invariably carry more weight than an objection that raises issues in very general terms. Similarly, a few relevant objections will invariably outweigh a petition opposing a proposal on non-planning grounds or irrelevant planning grounds.

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