



**Municipal Association of Victoria**  
**Planning and Environment Act Review**  
**Exposure Draft**

Draft Submission

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*The MAV can provide this publication in an alternative format upon request, including large print, Braille and audio.*

*This document has been prepared by the MAV after discussion with MAV members, who have also been consulted on its contents.*

*The MAV is the statutory peak body for local government in Victoria, representing all municipalities.*

*While this paper aims to broadly reflect the views of local government in Victoria, it does not purport to reflect the exact views of individual councils. This Submission has been endorsed by the MAV Management Committee.*

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DRAFT for Comment

## 1 Executive Summary

Despite the review of the Planning and Environment Act presenting an important opportunity for local government in Victoria, the MAV does not support the reforms proposed in the Exposure draft unless some aspects of reform are abandoned and significant changes are made and agreed with local government.

The review process undertaken by the Department of Planning and Community Development (DPCD) was extensive, inclusive and provided a number of mechanisms for broad involvement by users and administrators of the planning system. However, despite the process of expert input, facilitated workshops, concurrent working groups on a number of issues, the taking of submissions and release of discussion and response papers, the Exposure draft fails to acknowledge and strengthen local government's roles in planning, creates risk and uncertainty for local government and has failed to take into account many local government submitters' strong views.

Councils do not have sufficient confidence that a compelling case for such significant reform has been made and that the benefits to planning outcomes in Victoria justify the inherent risks contained in the Exposure draft proposals.

The cumulative effect of these reform proposals - particularly when considered alongside Development Assessment Committees (DACs), social housing and schools stimulus package processes, new Activity Centre zone, Growth Area Infrastructure Charge (GAIC) and Urban Growth Boundary (UGB) expansion, and the increased use of Ministerial call-in powers - is towards a more centralized and directive system, potentially reduced third party involvement, providing unnecessarily for private interests and a weakening of local government's role.

The Exposure draft weakens, fetters and confuses the fundamental role of local government as a Planning and Responsible authority and does not align with government's previously stated position.

The 2006 Labor election platform - of planning in partnership with local communities and supporting local government - does not accord with the Exposure draft. It stated the need to work with local government to improve planning and that "...clearly the power of local planning decisions rest in the hands of local government. Councils are democratically elected and best placed to reflect the aspirations of their communities."

The reforms proposed rely heavily on the drafting of further regulations, the intent being carried forward by the Department over time and consistent implementation by councils. Although regulations are not drafted until legislation is final, councils are concerned that the detail of the regulations are not available and as such present a risk. Councils have expressed little confidence that the Department will carry forward the intent of agreed reforms over time or enable councils to provide early input to the development of regulations and procedures.

The timelines and development of a toolkit, guidance manual and training by the Department of Health to support councils consistently implement reforms to the Public Health and Wellbeing Act 2008 presents a useful precedent.

The evidence base and analysis has not been sufficient to justify the substantial reforms proposed. It remains unclear that the interventions will address known problems or blockages, and that the desired outcomes will be achieved.

## 2 Our understanding of the context and drivers for reform

The planning system in Victoria relies heavily on local government investment, administration and strategic oversight. The alignment of Planning Schemes with the Council Plan, Municipal health plan, Infrastructure plan and community plan is a cornerstone of integrated local area planning and of our democratic processes.

Planning is a critical part of council activities and contributes actively to sustainability objectives, economic development, heritage and environmental conservation, as well as guiding development for long-term community benefit and the achievement of strategic objectives.

In many planning matters local government requires support, resources and to collaborate with State Government to effectively implement, responsibly administer and address issues for a sustainable future. Planning is often complex and controversial and generates high levels of community involvement.

Despite the commitment to continuous improvement by both State and local government, numerous reviews have strengthened calls for legislative review, first recommended in the Cutting Red Tape in Planning 'Carbines Report' in 2006 and forming part of the State Government's Statement of Government Intentions in 2009 (see table below).

More recently the Council of Australian Governments (COAG) processes are driving reform related to planning for cities, housing, and integrated transport and infrastructure planning with increased regulation likely where performance is perceived as poor.

The Local Government and Planning Ministerial Council (LGPMC) has completed actions on the development of national performance measures for development assessment; national planning system principles; a road map for electronic development assessment (eDA); harmonising code-based development assessments for single residential dwellings; and measuring the benefits of planning reform using the above projects as pilots.

Additionally, LGPMC has committed to produce the first national development assessment performance report and to extend code-based assessment to residential multi-unit and commercial and industrial buildings.

These initiatives are reported to COAG through the Business Regulation and Competition Working Group which indicates the importance placed by Government on the contribution of efficient planning systems to housing affordability and economic growth.

It is acknowledged that the political and operating environment has changed significantly since 2006, due to the global economic downturn and subsequent stimulus package, population growing faster than anticipated and the 2009 bushfires.

It is also acknowledged that these factors call for a proactive response and that the planning system must be efficient, effective and provide for greater transparency, certainty and accountability. There has been increased intervention and direct delivery of local projects by the State Government which is accepted as an interim response to the economic downturn, which has had both positive and negative impacts for councils and communities.

A successful partnership approach by State and local government is essential to ensure improvements to the efficiency of the planning system and planning outcomes in this state.

There are three distinct aspects which collectively influence planning system performance and land use and development outcomes for Victoria's future liveability, competitiveness and sustainability. They are the legislative and regulatory framework; the VPP, including the State and Local planning policy frameworks and the operational performance and culture of government and the private sector.

This review only relates to the first aspect and the MAV cautions that all elements are equally critical and should be dealt with concurrently. Significant improvements are possible and have been demonstrated without relying upon legislative change.

The MAV in 2009 initiated with councils and DPCD a Planning Process Improvement Program to improve system performance, consistency and accountability, and which will be central to the implementation of any agreed reforms.

Previous legislative reform, such as to require authorisation of a Planning Scheme Amendment by the Minister for Planning, were well intended but have failed in their implementation.

Councils willingly and constructively support these planning system objectives, however the changes proposed are likely to create uncertainty and risk, a greater administrative burden and are overly focussed on process and not outcome focussed.

### **3.2 Planning Legislation Reform**

*The Government's review of the Planning and Environment Act 1987 focuses on administrative measures and simplifying procedures. In the past 20 years, there have been significant social, environmental and economic changes that have implications for the planning system. The Government wants to ensure the Act responds to contemporary planning issues and simplifies the current laws and language.*

*The review of this Act is part of the Government's broader agenda to manage growth and protect liveability. The review also responds to the recommendation in the Cutting Red Tape in Planning report to restructure the State Planning Policy Framework.*

*An expert panel appointed in October 2008 will work closely with Government agencies and stakeholders. A discussion paper developed with ideas and options for the amendment of the Act will form the basis of ongoing development.*

*Main elements:*

- *improvement of the system to provide greater certainty and efficiency in planning processes;*
- *improvement of the Act to more effectively meet Victoria's planning challenges into the future;*
- *modernisation of the language in the Act; and*
- *issues arising from the Blueprint for Regional Growth concerning planning for regional areas (see section 13.3).*

*Related process:*

- *The release of the discussion paper will be followed by consultation with stakeholders, including the planning profession, local government, the development industry and the broader community.*

*Existing legislation in this area:*

- *Planning and Environment Act 1987.*

*Responsible Ministers: Planning; Community Development.*

State Government's Statement of Government Intentions in 2009.

<http://www.premier.vic.gov.au/home-mainmenu-1/5890.html?task=view>

### 3 Local Government Input to the Review

The local government sector has strongly supported the need for reform and to continually improve the planning system in Victoria through legislative and regulatory reform, policy review and operational improvements. Councils have been active contributors to the Act review process.

The MAV provided early input to the review and provided the Department with relevant State Council resolutions; previous MAV submissions; the October 2006 MAV Planning Position Statement and council views and independently commissioned reports (such as the Eastern Region Group of Council's report "Planning for the future - Sustainable Solutions for Victoria". (August 2005)

Despite increasing costs and complexity, local government remains committed to its role as a responsible authority and planning authority. The MAV has advocated for a strengthened partnership approach with State Government through a Memorandum of Understanding (MoU) or protocol<sup>1</sup>.

Councils seek recognitions of their role in planning, increased weight for local planning policy in the decision-making process and are concerned about the erosion of local planning powers and reduced opportunities for third party involvement in planning decision making. Many aspects of the Development Assessment Forum (DAF) Leading Practice model are implemented in Victoria however councils are concerned about any unilateral application of the "separation of roles" principle, whereby elected councils would only be responsible for the development of planning policies, and independent bodies (panels) responsible for assessing planning applications.

In Victoria most single dwellings do not require a planning permit and over 90% of permit applications are assessed under delegation to officers, making this largely implemented.

The sector continues to seek:

- a) Acknowledgement of increasing role played by local government to deliver planning objectives such as urban consolidation and environmental sustainability
- b) A joint local government / DPCD working group with responsibility for recommending changes to the planning system and operational processes
- c) Streamlining the development and strengthening the role of local planning policy
- d) A more tailored local and regional response to strategic issues and regional capacity
- e) A fair contribution by the State to the cost of statutory planning on the basis that councils are administering state policies and controls.

MAV Planning Position Statement October 2006

This submission was circulated twice to councils for comment – an early draft response was circulated in December and formed the basis for a council workshop on 19 January. The paper was finalised after the workshop and recirculated to councils for final comment which **will be** considered by the MAV Management Committee on 5 February.

<sup>1</sup> MAV Planning Position Statement October 2006

[http://www.mav.asn.au/CA256C320013CB4B/Lookup/MAV\\_Planning\\_Position\\_Final\\_October\\_2006/\\$file/MAV%20Planning%20Position%20Final%20October%202006.pdf](http://www.mav.asn.au/CA256C320013CB4B/Lookup/MAV_Planning_Position_Final_October_2006/$file/MAV%20Planning%20Position%20Final%20October%202006.pdf)

## 4 Response to Exposure Draft by key areas of reform

This section outlines the local government position on the proposed changes to the Planning and Environment Act and, where possible, draws on council data and comments. A detailed response to the Exposure draft is in Attachment 1.

### 4.1 The Objectives of Planning

The key changes are:

- Maintain broad objectives.
- New explicit reference to environmental, social and economic considerations.
- Inclusion of a new reference to a 'healthy' environment.
- Inclusion of a new objective to promote 'high quality and sustainable design'.
- Strengthened alignment between the objectives and the definition of *cultural heritage significance* in the *Heritage Act 1995*.
- Equal weight to be given to environmental, social and economic considerations in amendment and permit decisions.

The changes to objectives of the Act has raised questions about the need to refer to climate change, health and other issues or policy related initiatives.

The changes proposed and use of contemporary language is appropriate and the concept of modernising the objectives of the Act is supported taking into account the intent behind the proposed changes.

Councils have expressed concern that there may be unintended consequences as legal interpretation evolves and as such further legal advice should be sought and guidance material prepared to ensure the changes do not result in a 'downgrading' of environmental considerations or other unintended consequences.

### 4.2 The Amendment process

The key changes are:

- Proposes a new fast track 'technical' amendment process for straightforward changes such as corrections, updates and interim controls.
- Proposes changing the current standard process to:
  - clarify the authorisation step;
  - improve quality control through earlier certification of an amendment; and
  - enable the Minister to allow a party other than a planning authority to progress initial stages of an amendment under limited circumstances.

MAV analysis of council amendment data indicates:

- In general, amendments take around 50 weeks from receipt to finalization.
- Amendments without panels average 360 days from authorisation request to gazettal.
- Amendments with panels average 580 days from authorisation request to gazettal.
- Only 3% of amendments were refused, Ministerial approval took 50% longer than council with average authorisation time being eight weeks.
- The low rate of refusals calls into question the value of this process.
- The time taken to issue the refusal is 21 weeks on average.
- on average, there are two steps per handover and there are about 180 steps (88 handovers).

- 34% of steps are value adding.

Significant changes are proposed to the planning scheme amendment process, notably the introduction of a Technical Amendment Track and the ability to authorise an individual to progress an amendment.

#### *Technical Amendment Track*

The Technical Amendment track is a useful initiative formalizing the fast track process introduced as part of the 'cutting red tape' planning reform. It is important that councils are able to identify the types of amendments (to be prescribed in regulation) able to be dealt with in this way as it precludes public exhibition and panel processes.

Local government supports the concept, however, some additional commitments are needed on scope and process.

#### *Authorising a person to initiate an amendment*

There is serious concern about this proposal which is likely to have significant and unplanned workload implications for councils. The changes may lead to an amendment to a Planning Scheme without the support of the Planning Authority which is a significant change. The implications of this have not been properly considered. Councils' role as a Planning Authority is further diminished by removing the power to abandon or change an amendment after receiving the panel report, which is replaced with a power to make a recommendation to the Minister for Planning.

The Ministerial guidelines that outline circumstances for authorising a person to administer an amendment should be released concurrently with the Bill. A requirement for the Minister to consult with the relevant planning authority prior to deciding on an amendment under section 20 of the Act should be included.

It is unclear about minimum requirements to obtain authorisation and whether the council, Department or Minister will be the planning authority in these cases. There is no clarity about the role of council, if any, regarding exhibition, managing or making submissions, attending directions hearings or panels, responding to public queries, and timeframes required are difficult for other than well prepared, policy compliant amendment proposals.

This proposal is a fundamental change to the responsibility for planning scheme amendments. It gives substantially more power to the Minister and raises more questions than it answers. The proposal will result in councils having no ownership of their planning scheme and removes some of the checks and balances necessary to the system.

The Department has failed to demonstrate an evidence base for this proposal. Further to this many of the administrative improvements could be addressed in alternative ways.

### **4.3 The permit process**

The key changes are:

- Proposes a 'code assess' process for the assessment and approval of 'low risk/low impact' proposals.
- Proposes improvements to the current 'merit track' permit process.
- Proposes to improve the link between the impact of a proposal and the extent of notification necessary by changing the decision from a negative / passive approach (...will not cause detriment) to an active one (...may cause detriment).

Analysis of council and Planning Permit Activity Reporting (PARS) data indicates:

- The current statutory planning process has room for improvement.
- Applications are generally treated the same, but scale and scope vary widely.
- 40% of current activities are valued added.
- There is an average of 2.6 activities per handover indicating a high potential for errors in transmitting information from one person to another.
- Most steps are sequential, not concurrent.
- IT Departments tend to give planning a low priority.
- 39% use enabling technology.
- While 64% applications are processed inside the notional 60 Statutory days, there is a long tail of slower decisions.
- Delegated decisions are more likely to be made in time.
- Refusals are half as likely to be made in time.
- Delegated decisions are less likely to be appealed to VCAT.
- Refusals are more likely to be appealed and reversed; and
- VCAT hearings are time consuming and costly.

#### *Code Assess*

The changes proposed are useful in starting to tailor the process to the nature and impacts of the proposal. This reflects the practice of many councils for minor matters currently and is consistent with the DAF Leading Practice model. Requiring code assess matters to be dealt with by a prescribed officer is unnecessary and does not address any identified problem. Again this signals a fundamental shift from delegation to a council to a more prescriptive approach.

A change to the Act is not needed to introduce code assess, which can be done through existing planning schemes. The MAV planning process improvement project has shown that it is difficult to identify types of application and that it is better to tailor responses to local circumstances and specify outcome sought.

#### *Secondary Consents*

Councils have previously advised of the inflexibility of the new amendment provisions and the usefulness of secondary consents. The proposed changes are likely to result in an increased workload for councils and applicants and works against streamlining.

It is unclear how the removal of secondary consents will work for operational conditions and management plans.

#### *Referral Authorities*

The changes to the duties and processes relating to referral authorities are generally supported regarding new duties; expedition obligations; responsible authority to give prescribed information about permit triggers; register of referrals; annual reports to Minister for Planning and compensation payable if permit cancelled or amended for 'material mistake' made by referral authority.

Although the onus is on the referral authority to provide their response/information to applicants, it is considered that this is likely to add confusion and create pressure for councils, and should not be done until the end of the process.

#### 4.4 State significant major development

The key changes are:

- Proposes a more certain process for the identification, assessment and approval of projects of state significance.
- Major developments of state significance will be clearly identified by setting criteria in advance, giving certainty about:
  - how these developments will be assessed.
  - the Minister's role to approve these projects.

The response paper discusses a new process for the assessment of state significant projects which may be scheme amendment or permits, which will be prescribed by regulation.

The process provides for community and stakeholder engagement after the application is lodged and there are no appeal rights or rights to challenge the panel process although panel hearings are held. There are no timelines or obligation for the panel report to be made public.

As part of the impact assessment track, the process requires an impact assessment report as part of the application process. In addition, an expert assessment panel will consider the views of other parties before a decision is made. As part of this process the parties should be provided with reasons as to why their submissions/views have or have not influenced change, the same way councils must acknowledge amendment submissions.

##### *The criteria for state significant major development*

The criteria for state significant major development do not include any environmental impacts or relevant social impacts.

##### *The proposed assessment process*

Timeframes are not clearly specified in the process and should provide for consultation with the affected council(s) prior to public engagement.

##### *Issuing of permits*

There is significant concern about this proposal. The responsible authority plays no part in the decision making but is then asked to bear the time and expense of administering and enforcing any permits issued. This is an unreasonable burden and is currently problematic with wind farms compliance.

Local government would like to see the processes for the Minister to be as clear and transparent as those required of councils.

#### 4.5 Other modernisation initiatives

The key changes are:

- Proposes modernising the Act to:
  - Fix practical problems with the operation of s.173 agreements.
  - Provide for annual reporting against specified performance criteria for all the main government parties (Minister, DPCD, planning authority, responsible authority and referral authority).
  - Facilitate the introduction of e-planning to reduce administrative workload and improve the process quality.

Most of the changes to the s.173 agreements and to other miscellaneous matters are supported or have qualified support, however changes to VCAT's role ultimately limit the ability of a council to enter into an agreement with another party and are not supported.

The requirement for an annual report is unnecessary as councils already prepare one and respond to many other reporting requirements. Councils also submit monthly planning permit activity and are required to undertake a 4 year review of planning schemes and processes.

DRAFT for Comment

## 5 Conclusions

Performance in planning processes and timeframes are hampered by external pressures with many influences outside the direct control of councils.

The local government sector recognizes and supports the need to continually improve the operation of the Planning system and the challenges of a growing population and economic downturn.

Councils confidence in the process has been greatly reduced due to the apparent disregard for their submissions, particularly regarding changes to planning scheme amendment processes raised in submissions to the discussion paper and response papers.

There are few advantages for councils in the proposed changes, and significant risks. It is unfortunate that a strong evidence base was not developed and that the opportunity to address long standing issues (such as covenants) or to create more meaningful change in the form of better integration with other Acts was not taken.

As many of the reforms relate to administrative matters, it is questionable that legislation is required, and the lack of a commitment to review the Victoria Planning Provisions (VPP) is seen to be a failure of the process to deliver positive change.

Despite the review of the Planning and Environment Act presenting an important opportunity for local government in Victoria, the MAV does not support the reforms proposed in the Exposure draft unless some aspects of reform are abandoned and significant changes are made and agreed with local government.

Councils do not have sufficient confidence that a compelling case for such significant reform has been made and that the benefits to planning outcomes in Victoria justify the inherent risks contained in the Exposure draft proposals.

The cumulative effect of these reform proposals is for a more centralized and directive system, potentially reduced third party involvement, providing unnecessarily for private interests and a weakening of local government's role.

The reforms proposed rely heavily on the drafting of further regulations, the intent being carried forward by the Department over time and consistent implementation by councils. Although regulations are not drafted until legislation is final, councils are concerned that the detail of the regulations are not available and as such present a risk. Councils have expressed little confidence that the Department will carry forward the intent of agreed reforms over time or enable councils to provide early input to the development of regulations and procedures.

The timelines and development of a toolkit, guidance manual and training by the Department of Health to support councils consistently implement reforms to the Public Health and Wellbeing Act 2008 presents a useful precedent.

The evidence base and analysis has not been sufficient to justify the substantial reforms proposed. It remains unclear that the interventions will address known problems or blockages, and that the desired outcomes will be achieved.

## 6 Attachment 1 Detailed response to the Exposure Draft.

Proposed change	Support	Do not support unless..	Do not support	Comment
<b>1. Objectives</b>				
<b>Modification to objectives</b>				<p>The local government sector supports the concept of modernising the objectives of the Act and the intent behind the proposed changes.</p> <p>However, there is some concern that 'environmental' considerations may be downgraded in decision making and local government would like to:</p> <ul style="list-style-type: none"> <li>• Better understand the legal implications of the proposed changes.</li> <li>• Discuss with Government the likely implications.</li> <li>• Ensure that advice and guidance material are provided to assist the implementation of any changes to the objectives.</li> </ul>
<b>2. Planning scheme amendment process</b>				
<b>'Streamlined' amendment process</b>				<p>Local government supports the concept, however some additional commitments are needed.</p> <p>A streamlined process should:</p> <ul style="list-style-type: none"> <li>• Ensure the flow-on rezoning proposals arising from structure planning are included in this process.</li> <li>• Be appropriately resourced – also allocated for the DPCD administration of this process.</li> <li>• Facilitate information flow and consultation with councils during the administration of an amendment.</li> <li>• Be based on procedures that are developed in consultation with local government.</li> <li>• Include monitored and publically reported timeframes for the administration of the process by DPCD .</li> </ul>
<b>'Authorised' person to undertake procedural steps</b>		<i>Council consent required for a person</i>		<p><b>This proposal is a fundamental change to the responsibility for planning scheme amendments.</b> It gives substantially more power to the Minister and raises more questions than it answers. The proposal will result in</p>

Proposed change	Support	Do not support unless..	Do not support	Comment
		<i>to be authorised?</i>		<p>councils having no ownership of their planning scheme and removes some of the checks and balances necessary to the system.</p> <p>The Department has failed to demonstrate an evidence base for this proposal. Further to this many of the administrative improvements could be addressed in alternative ways.</p> <p>There exists currently the fall back mechanism of approaching the Minister if a council does not agree to prepare an amendment which is appropriate.</p> <p>The local government sector has substantial concerns about:</p> <ul style="list-style-type: none"> <li>• Who is driving the proposed changes?</li> <li>• Whether the proposed changes would have any effect in redcing timelines given the same steps are involved?</li> <li>• Who will be permitted to prepare an amendment that changes the Municipal Strategic Statement?</li> <li>• What authority the 'authorised person' has to make commitments on behalf of council when attempting to resolve submissions?</li> <li>• What controls will be in place to manage the actions of 'authorised persons'?</li> <li>• Whether liability would still reside with council?</li> <li>• What binding obligations an amendment may create for a council?</li> </ul>
<b>Authorisation</b>				<p>Councils have previously indicated that authorisation adds substantially to the timeframe of an amendment with little benefit added.</p> <p>If the process must remain then procedures should be developed and instances identified where authorisation is not required, what information is required to be submitted and timeframes set for a decision. A 7 day – 'deemed to be authorised" process may be worth pursuing.</p>
<b>Certification</b>				<p>Quality control could be done more efficiently by the development of templates and other quality control mechanisms such as training and support.</p>

Proposed change	Support	Do not support unless..	Do not support	Comment
Directions panel				It has not been demonstrated that a directions panel is necessary for every panel and it is considered that the proposal will unnecessarily delay amendments.
Removal of planning authority's ability to approve an amendment				<p><b>This is a fundamental change of significant concern.</b></p> <p>The proposal represents a clear erosion of Councils' role and ability to abandon an amendment lost.</p>
Modification of planning authority power to ability to 'recommend' to the Minister rather than approve, adopt or abandon				<p>This proposal in combination with the other amendment proposals results in a diminution of powers of councils.</p> <p>DPCD has presented no real evidence that there is a fundamental problem with councils abandoning amendments inappropriately – poor practice is the exception rather than the norm.</p>
Consideration by a planning authority				<p>With the introduction of new objectives and modification to this section, guidelines, developed with sector, on the consideration of social, environmental and economic effects are critical.</p> <p>There needs to be clarification about what can be considered an irrelevant submission.</p>
Submission to include reasons				This proposal goes part of the way to addressing concerns about submissions but it does not give planning authorities the ability to disregard irrelevant submissions not related directly to the amendment.
<b>3. Planning permits</b>				
Two permit processes				<p>A change to the Act is not needed to introduce code assess as this can be done through existing planning schemes. If it is considered that there are more matters that can fall into this category then they should be exempted from the need for permit with conditions.</p> <p>No detail is yet provided about what might be a code assess application and this should be identified taking existing council practice into account.</p> <p>The process improvement project has shown that it is difficult to identify types of application and that it is better to focus on the path the application will follow to judge appropriate timeframes for decision. Current IT-systems would need investment if this proposal were to be</p>

Proposed change	Support	Do not support unless..	Do not support	Comment
				<p>implemented.</p> <p>“Minor matters are already “fast-tracked” by councils under delegation. The need to specify an officer responsible is over regulation.</p>
<b>Definition of a permit</b>				Likely to add clarity.
<b>New power for Minister to give responsible authorities and referral authorities directions</b>				<p>Provided the power is used appropriately this may be useful to councils and referral authorities where there are particularly difficult types of applications or issues.</p> <p>Regulations and/or procedures must be transparent and developed with local government.</p>
<b>Matters to be considered</b>				With the introduction of new objectives and modification to this section, guidelines on the consideration of social, environmental and economic effects are critical.
<b>Two categories of conditions</b>				The two categories of conditions will assist both councils and applicants.
<b>Standard conditions</b>				<p>Provided the power is used appropriately standard conditions guidelines may be useful to councils.</p> <p>Useful if guidelines not legislation. If mandatory this proposal fails to recognise details of place and local context.</p>
<b>No secondary consents</b>				<p>Councils have previously advised of the inflexibility of the new amendment provisions and the usefulness of secondary consents.</p> <p>It is likely that more amendments rather than secondary consents will result in an increased workload for councils.</p> <p>If the proposed changes are introduced a lot of work will be required to make sure councils have correct procedures in place for amendments to permits and their systems will have be modified.</p> <p>It is unclear how the removal of secondary consents will work for operational conditions and management plans? Needs to be backed up by a simplified amendment process or alternatively a formal process for secondary consents with criteria. This proposal works against ‘streamlining’.</p>

Proposed change	Support	Do not support unless..	Do not support	Comment
Ability for RA to amend VCAT permits except where stated				
<b>4. Referral authorities</b>				
Sect. 197 to apply to referral authorities				This proposal is logical. Standard conditions could be helpful here.
Prescribed information to be provided to referral authorities				It would be useful to have a template developed by DPCD in place to ensure implementation is consistent.
Copy of referral authority response to applicant				Although the onus for the copy to the applicant falls on the referral authority it is likely to add confusion and create pressure for councils, unless provided at end process.  Sometimes negotiation is required with referral authorities before it is appropriate to issue a permit.
Register of referrals				This proposal is welcomed and long overdue.
Monitoring and reporting of referrals				There should also be a requirement to publish the material in the same way as councils are required.  Could also apply to standard agreements.
Referral authorities liable for compensation				Referral authorities should also be required to defend decisions at VCAT and be responsible for the enforcement of the conditions they put on.
<b>5. State significant projects</b>				
Minister to declare State significant projects				This proposal needs further refinement as it can apply to any particular site or class of development.  However, provided the power is used appropriately a section for state significant development may be useful. Clear and transparent criteria are however are required and should be agreed with local government.
Criteria to be established				The criteria should be developed with local government prior to any legislative change.

Proposed change	Support	Do not support unless..	Do not support	Comment
Directions from Minister				
Exemption from process				This may be appropriate at times but clear and transparent criteria need to exist about when this might be utilised.
Process for approval				<p>The process does not allow for consultation with local government and should be amended to provide for consultation, over a reasonable timeframe, with the RA.</p> <p>Consideration should also be given to revoking the Section 16 order and considering consequential amendments to other Acts such as the Pipelines Act now that this process exists within the planning system.</p> <p>A documented process is required and reasons should be mandatory.</p>
Preliminary considerations				
Notice and consultation				The material is not explicit about seeking the advice of the relevant council and should be.
Submissions				
Panel				More detail is required to comment.
Decision of Minister				<p>The advice of the RA is important to a good decision and will raise critical local issues to be resolved.</p> <p>Careful consideration should be given to equity in process if there is no ability to appeal the Minister's decision.</p>
Amendment of planning scheme				There is some concern that this proposal may allow prohibited uses for specific projects.
Planning permit to be issued				There is significant concern about this proposal. The responsible authority plays no part in the decision making but is then asked to bear the time and expense of administering and enforcing any permits issued. This is an unreasonable burden (currently the case with wind farms).
Register kept by responsible authority				<p>Local government would like to see the processes for the Minister to be as clear and transparent as those required of councils.</p> <p>The decisions made by the Minister should not be buried in a council's register. These records should be kept in a</p>

Proposed change	Support	Do not support unless..	Do not support	Comment
				separate register maintained by the Secretary.
<b>Register kept by Secretary</b>				The Secretary should keep a separate register.
<b>Amendment of permit</b>				Should be the same amendment process councils must administer under section 72
<b>6. Section 173's</b>				
<b>Reduction in Minister's involvement in section 173's</b>				
<b>Removal of requirement to give a copy to Minister</b>				
<b>New process for amending or ending a section 173 agreement</b>				Clear procedures will be necessary to ensure this new process is consistently implemented
<b>Application to VCAT to resolve disputes</b>				Agreements should just be subject to negotiation between parties bound by the agreements.
<b>Ability to seek declaration at VCAT on matters of interpretation</b>				
<b>New parties to an agreement when land subdivided</b>				It is unclear from this proposal what the implications might be for the subdivision process. This should be clarified in procedures before introduced.
<b>Bonds and guarantees required by the Minister</b>				VCAT has previously criticised councils from using bonds and guarantees. The Act should provide for both councils and the Minister to require bonds or guarantees.
<b>7. Miscellaneous</b>				
<b>Annual reporting of planning activities</b>				An annual report requirement appears to be a bureaucratic response – councils already prepares one as well as responding to a large amount of other reporting requirements.

Proposed change	Support	Do not support unless..	Do not support	Comment
				Councils are also required to undertake a 4 year review of planning schemes and processes.
<b>E-planning – fees to include component for upkeep of e-systems</b>				<p>Fees currently do not recover costs. IT systems are an increasing component of costs to councils.</p> <p>It is not clear that a fee is really required nor who will collect and receive fee – can it not be part of the fee?</p>
<b>Clarity that a person can be a responsible authority</b>				<p>Not sure what instances this is intended to apply. Clarification is sought before any comment can be made. Seems to open a lot of doors without any debate in the planning community.</p>
<b>VCAT to require applicant to give notice of appeal</b>				
<b>Removal of Minister as a party to the cancellation or amendment of a permit at VCAT</b>				
<b>Panel to provide reasonable opportunity to be heard</b>				Doesn't have to be legislation to ensure this happens.
<b>Some of the same requirements of a panel to apply to an advisory committee</b>				
<b>Minister has same power to purchase land as a RA</b>				Needs clarity and transparency; also justice and market value.