

# 1 Executive summary

## 1.1 Introduction

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The Victorian planning system provides the legislative and administrative framework that regulates and manages the use and development of land in the state. The *Planning and Environment Act 1987* (the Act) outlines a number of planning objectives such as the fair, orderly, economic and sustainable use and development of land.

Planning schemes and planning permits are the major legislative mechanisms for controlling land use and development. Planning schemes are statutory documents that set out objectives, policies and provisions for the use and development of land in the area to which they apply (usually a municipality). Where a planning scheme requires it, a planning permit must be obtained to use or develop land for certain purposes. The Act and Regulations establish the timeframes and procedures to be followed in processing planning permit applications and amending planning schemes.

Under the Act, a *planning authority* is responsible for developing and amending a planning scheme, and for giving direction on how broader state planning policies will be implemented in the local context. A *responsible authority* administers the local planning scheme by processing and enforcing planning permits, and in achieving consistency with the planning scheme. These roles are performed by local councils in most cases.

The Minister for Planning has overall responsibility for the state's planning legislation and framework, and is both a planning and responsible authority for a number of designated areas throughout Victoria. The minister also authorises and approves amendments to planning schemes and reviews proposed developments that have state-wide policy implications.

The Department of Planning and Community Development (DPCD) manages the regulatory framework for land use planning, environment assessment and subdivisions of land. It also provides advice on planning policy, information on land use and development and administrative support to the minister.

Councils manage the day-to-day administration of local planning schemes through processing applications for planning permits and ensuring consistency with planning schemes. They also develop planning schemes and amend them as needed to reflect changes to policy or local circumstances. State-wide, there were around 49 600 planning permit applications lodged in 2006–07.

Victoria's planning system has been subject to continuous reform since the early 1990s. As part of these reforms, the Act was amended in 1996 to introduce the Victoria Planning Provisions (VPP) and establish new format planning schemes with a strategic and performance-driven focus to reduce administrative costs and increase efficiency of the planning system.

The VPP is a state-wide reference and statutory device used to construct planning schemes. It ensures that consistent provisions for controlling land use and development are maintained across Victoria, and that the structure and format of all planning schemes is the same. The Ministerial Direction on the Form and Content of Planning Schemes<sup>1</sup> requires that a planning scheme must include the following parts of the VPP:

- the State Planning Policy Framework, which details the state's policies for key land use and development activities
- the Local Planning Policy Framework consisting of a Municipal Strategic Statement and Local Planning Policies, which establish the local strategic policy context for a municipality and how broader state policies will be achieved in the local context
- key zones, overlays and other provisions that are relevant to giving effect to state and local policy frameworks chosen as needed from the VPP.

Following the introduction of the VPP, the new format planning schemes were progressively implemented across the state and were largely in place by 2000. The latest reforms (*Better Decisions Faster 2002–05* and *Cutting red tape in planning 2006*) have focused on opportunities to further improve the effectiveness and efficiency of planning processes. In early 2007 an expert working group was established in response to Action 10.2 of the *Cutting red tape in planning* report. The working group's *Making local policy stronger* report included five recommendations that have been accepted by the government.

The *February 2008 Annual Statement of Government Intentions* foreshadowed the review of the *Planning and Environment Act 1987*. It is anticipated the new Act will be presented to Parliament in 2009.

The objective of this audit was to assess the effectiveness, economy and efficiency of Victoria's planning framework for land use and development at the whole-of-state and local levels.

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<sup>1</sup> This direction applies to the form and content of all planning schemes prepared under Part 3 of the *Planning and Environment (Planning Schemes) Act 1996* and any amendment to those planning schemes.

The audit examined whether:

- *at the whole-of-state level:*
  - the key elements of planning schemes are clear and assist robust and consistent decision-making
  - adequate arrangements are in place to measure and report the performance of the state's planning framework.
- *at the local council level:*
  - the requisite policies and procedures are in place, including adequate quality-assurance arrangements to align council-level decisions with the *Planning and Environment Act 1987*, the State Planning Policy Framework and their own planning schemes
  - the processing of planning permit applications and planning scheme amendments complies with the Act and with their own planning schemes.

The audit examined the policies, procedures and activities of DPCD, Maribyrnong City Council, City of Boroondara, City of Casey, City of Greater Shepparton, Bass Coast Shire Council and Pyrenees Shire Council.

The audit scope did not extend to assessing the adequacy of specific planning decisions or the related activities of the Victorian Civil and Administrative Tribunal.

**While the results at the local government level relate directly to the councils we examined, the issues revealed are considered indicative of practices in other councils. In this context, the associated findings should be considered by all councils administering planning functions.**

## 1.2 Findings

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In line with the objectives of the audit, the findings are outlined below in terms of the:

- clarity and robustness of key elements of planning schemes
- adequacy of performance measurement and reporting arrangements
- level of council compliance with the Act and planning schemes, and adequacy of associated quality assurance arrangements.

### 1.2.1 Clarity and robustness of planning schemes

The major findings from the audit's examination of planning schemes were:

- The intended purpose and relationships between the key VPP components of planning schemes are transparent, logical and consistent with the objectives of the planning framework established under the Act.
- The underlying architecture of the VPP framework is sound, however, a number of challenges and issues associated with its implementation have emerged which are impeding the effective and efficient operation of planning schemes.

- Some elements of the new format planning schemes have become overly complex, are unclear and are not adequately achieving their original intent as established under the VPP (as identified by a ministerial working group) and need to be addressed.
- A series of actions designed to address these challenges and improve the operation of planning schemes have recently been established.

### 1.2.2 Adequacy of performance measurement and reporting

The major findings from audit's assessment of the adequacy of arrangements in place for measuring and reporting on the performance of the state's planning system were:

- Existing arrangements within DPCD do not allow for comprehensive measurement and monitoring of the overall performance of the planning system.
- DPCD should further develop these arrangements supported by a structured program of stakeholder engagement.
- Performance measurement arrangements have not been developed to assess the impact of changes to the legislative and regulatory framework designed to improve the effectiveness and efficiency of statutory processes. Consequently, it is unclear whether these changes have achieved their intended goals.
- DPCD has facilitated a number of targeted reviews of the VPP to improve their operation and achieve better planning outcomes in response both to wider government policy developments and to issues raised by stakeholders. However, these reviews have not been undertaken as part of an ongoing program of continuous review.
- DPCD has developed products, such as codes of practice, to assist councils in discharging their statutory obligations. Our assessment of a selection of these products is that they are of a high standard. However, based on our audit of councils, these products are under-promoted and underutilised.
- There are no performance standards in place for DPCD regions to measure the effectiveness and efficiency of advisory and statutory support services primarily provided to councils.
- Timeliness targets for the authorisation and assessment of planning scheme amendments are in place, however, the calculation of actual performance against the targets does not measure the total elapsed time to make a decision.

### 1.2.3 Compliance with the Act and planning schemes and adequacy of quality assurance

The major findings from the audit of selected councils in relation to the planning scheme amendments were:

- Amendments are often complex but the time taken to complete individual steps in the amendment process was excessive in some cases. The average time from initiation to publishing a notice of approval of the amendment in the Victorian Government Gazette across councils was nearly 22 months.
- Councils generally complied with the Act in considering amendment requests.
- Reports to councils should be more rigorous and transparent in terms of the justification for the amendment at the early consideration stage.
- Councils generally complied with the Act in relation to the administration of notification procedures for parties considered to be materially affected by the amendment. However, the basis upon which councils decided to notify these parties was neither transparent nor adequately documented.
- Assessments following exhibition of an amendment and decisions made by councils on how to proceed (i.e. adopt, modify or abandon an amendment) were sound in most cases. Council officer reports, however, did not include a thorough analysis of issues to assist consideration by councillors of the appropriate course of action to be taken.
- Councils generally complied with the Act in their use and administration of panel processes although some councils need to pay greater attention to meeting the 28-day statutory timeframe for the public release of panel reports.
- Councils complied with the Act in the adoption and submission of amendments to the minister in the vast majority of cases. However, poor file management in some councils meant they were unable to demonstrate whether there was full compliance in all cases.
- Fee collection was satisfactory in most cases however, some councils failed to record or collect all fees.

The major findings arising from the audit of selected councils in relation to planning permit applications were:

- The average statutory time taken to process applications across councils was 58 days and within the prescribed timeframe of 60 days.
- The total elapsed time to process applications, which is affected by events not required to be accounted for in the prescribed timeframe, was significantly higher in most cases (86 days on average). There is scope for councils to improve the efficiency of the process by developing strategies to reduce the time taken to manage events within the control of councils.
- Details of pre-application meetings were not systematically recorded. Consequently, it was difficult to determine the extent to which these meetings had occurred and whether they were effective in minimising delays.

- Councils did not adequately comply with the Act when amendments were made to applications before a council decision. In most cases, a new application form was not requested, the prescribed time to process the application was not restarted and the need to notify and refer the application to affected parties was not re-assessed.
- Most councils complied with the Act and the planning scheme in giving notice of an application where it was considered that there was material detriment to parties affected by the application. However, the rationale for decisions concerning detriment was neither transparent nor adequately documented in most cases.
- Councils appropriately forwarded applications to referral authorities, and conditions requested by these authorities were applied to permits by councils in accordance with the Act. However councils breached the Act by failing to send copies of decisions to referral authorities in most cases.
- In four of the six councils examined, the assessments did not give sufficient consideration to the Act or planning scheme. In 78 per cent of cases examined, officer reports did not give adequate consideration to matters specified in the Act, planning scheme or both.
- Considerable improvement in the quality assurance provided by senior council planning staff over the accuracy and processing of permit applications is required.

These findings require remedial action both at a local council level and, due to their extent and significance, at the state-wide level via a multi-pronged system-wide approach coordinated by DPCD in partnership with local government and key stakeholder groups. This approach should adopt the specific goal of raising the standard of statutory planning in councils and therefore the overall performance of Victoria's planning system.

## 1.3 Recommendations

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### Measuring the performance of the state's planning framework

- DPCD, in conjunction with stakeholders, should assume the lead role in developing a more comprehensive framework for measuring the performance of the state's planning system. The framework should include key performance indicators, targets and reporting arrangements for assessing:
  - the achievement of planning outcomes at the local and whole-of-state levels
  - the effectiveness and efficiency of key planning permit and planning scheme amendment processes, including the performance of councils and DPCD in the administration of those processes
  - the administrative impact on councils arising from their compliance with statutory processes and the extent to which implemented reforms have achieved their objectives and/or reduced such impacts

- the effectiveness of the full suite of VPP provisions for ensuring certainty and consistency in decision-making on an ongoing basis, including the degree to which any amendments made have improved the operation of the provisions
- the extent to which councils have fulfilled their obligations under the Act as planning and responsible authorities
- DPCD's overall performance in managing and supporting the state's planning framework (**Recommendation 4.1**).
- To support and complement the operation of the performance measurement framework, DPCD should also establish an ongoing program for obtaining stakeholder feedback on:
  - the operation of the Act and the VPP, and implementation of statutory processes, as a basis for identifying matters for further investigation and action in concert with results from the performance measurement framework
  - the timeliness and quality of DPCD's advisory and support services to stakeholders, so that any opportunities for improvement can be identified and pursued
  - any emerging issues or trends that require attention (**Recommendation 4.2**).
- DPCD should develop a comprehensive strategy with detailed timelines for the further development and implementation of the performance measurement framework (**Recommendation 4.3**).
- DPCD should review and revise the existing performance targets for the planning scheme amendment process so that they accurately reflect the elapsed time for decisions to be made on authorisations and approvals (**Recommendation 4.4**).

## Council management of the planning scheme amendment process

### Timeliness

- DPCD, in consultation with stakeholders, should review the planning scheme amendment process to:
  - identify optimal timeframes and practices for administering each major stage by all parties, taking into account the varying complexity of different amendments
  - develop relevant and appropriate key performance indicators for each major stage, including a system of public reporting against those indicators by councils and DPCD
  - establish mechanisms to enable action to be taken to address significant and/or consistent failures by relevant parties to meet key performance targets (**Recommendation 5.1**).

### Consideration of amendment requests

- Councils should make certain that they perform a comprehensive initial assessment of the amendment against all the requirements of Section 12 of the Act, and that this is clearly documented in reports to council (**Recommendation 5.2**).

- Councils should review their quality assurance processes and ensure that:
  - standard templates are used for reporting to council on proposed amendments so that adequate consideration is given to all relevant matters under Section 12 of the Act
  - records of all meetings/discussions with proponents and DPCD are appropriately documented so that an accurate history of the amendment is maintained and action items are addressed by all participants (**Recommendation 5.3**).

#### Notification

- DPCD, in consultation with councils, should develop a clear definition of the term 'materially affected', including guidelines for making determinations to facilitate consistency across councils (**Recommendation 5.4**).
- Councils should develop policies and standards for notification, including appropriate quality assurance procedures, so that there is a reasonable level of assurance that:
  - assessments of who is materially affected have been adequately undertaken, and appropriately documented
  - all parties that have made submissions are appropriately noted and considered (**Recommendation 5.5**).

#### Assessment following exhibition

- DPCD, in consultation with councils, should develop a standard report template so that the requirements of the Act, issues raised by submitters, and relevant planning scheme provisions are consistently and comprehensively discussed in council officer reports when assessing amendments following public exhibition (**Recommendation 5.6**).
- DPCD should assist councils to develop and implement procedures to require targeted, risk-based peer reviews of officer reports against defined standards before transmission to council, to provide assurance that all relevant matters have been included and comprehensively addressed, and that evidence of this is documented (**Recommendation 5.7**).

#### Panel hearings

- Councils should require that:
  - all relevant documentation associated with the panel process is accurately maintained on file
  - reports received from panels are made publicly available within statutory timeframes (**Recommendation 5.8**).

#### Adoption and submission to minister

- Councils should review their quality assurance arrangements to put in place appropriate measures whereby requirements arising from the adoption, submission to, and approval of amendments by the minister are properly addressed by council and that evidence of this is retained (**Recommendation 5.9**).

### Fees

- Councils should ensure that:
  - all relevant staff are made aware of the fee provisions within the Act and Regulations
  - proponents (where relevant) are clearly identified at the outset, and processes initiated to identify and collect relevant fees
  - effective controls are put in place for the timely invoicing and payment of relevant fees for key stages in the amendment process
  - appropriate procedures are put in place to facilitate prompt follow-up of outstanding payments
  - records and receipts of all payments received are accurately maintained on file (**Recommendation 5.10**).

### Council management of the planning permit process

#### Pre-application meetings

- Councils should review the adequacy of their pre-application procedures, and establish arrangements for systematically recording and documenting on file:
  - whether a pre-application meeting was conducted in respect of an individual application
  - the details as well as key actions arising from pre-application meetings with applicants (**Recommendation 6.1**).

#### Lodgement

- Councils should ensure that:
  - records for all key events associated with an application are accurately kept and recorded in the register
  - all requests for further information are carried out in accordance with the requirements of the Act, and that lapse dates are enforced
  - neighbourhood and site descriptions are provided where required and assessed by council to determine whether they meet the requirements of the planning scheme
  - the register of applications is maintained accurately in accordance with the requirements of Schedule 2 of the Regulations (**Recommendation 6.2**).
- Councils should review and, where necessary, strengthen their quality assurance processes so that:
  - applications submitted at lodgement are accurate and complete
  - all documents and plans are appropriately date-stamped and recorded on file
  - thorough preliminary assessments are conducted, checklists completed, and the outcomes communicated effectively to planners and recorded on file
  - further information requests are issued promptly, and addressed prior to giving notice (**Recommendation 6.3**).

#### Amendments before decision

- Councils should:
  - implement targeted training for staff to improve their understanding of the requirements associated with Sections 50, 50A and 57A of the Act
  - review and, where necessary, revise their quality assurance processes so that amendments to applications made before decision are reviewed for compliance with the Act and planning scheme (**Recommendation 6.4**).

#### Notification

- To facilitate consistency across councils DPCD, in consultation with councils, should identify the factors to be taken into account when assessing material detriment and develop guidelines for making such determinations (**Recommendation 6.5**).
- Councils should develop policies and standards for notification, including appropriate quality assurance procedures so that there is a reasonable level of assurance that:
  - assessments of material detriment have been adequately undertaken, and appropriately documented
  - notification decisions are made at the appropriate stage of the process, and are informed by a properly documented site inspection
  - notification decisions comply with the Act and the planning scheme
  - applicants have complied with their obligations (where relevant) in relation to the placement and maintenance of site notices (**Recommendation 6.6**).

#### Referral authorities

- Councils should:
  - implement training for staff to improve their understanding of the planning scheme provisions for referral
  - establish appropriate quality assurance procedures to make certain that applications are referred correctly and that copies of decisions are always forwarded to relevant referral authorities
  - review their internal referral processes and establish clear policies, procedures and standards to enable them to be carried out in a timely fashion (**Recommendation 6.7**).

#### Assessment

- Councils should review their internal assessment processes and make certain that staff have adequate knowledge to identify and consider all the relevant matters under the Act and planning scheme applicable to different types of applications (**Recommendation 6.8**).
- When assessing applications, councils should make certain that proper consideration is documented and given to all relevant:
  - matters under Section 60 of the Act
  - zone, overlay and other controls

- permit triggers
- state and local policy provisions (**Recommendation 6.9**).
- Councils should review their quality assurance procedures to make certain that:
  - appropriate report templates, incorporating guidelines and criteria for assessment, are developed and properly used by planning staff
  - oversight mechanisms are appropriate for providing a reasonable level of assurance that sufficient consideration is given to all relevant matters under the Act and planning scheme by assessing officers, and that this is properly documented and transparent to all parties (**Recommendation 6.10**).

#### State-wide approach to improving statutory planning in councils

- DPCD, in partnership with local government and key stakeholder groups, should develop and implement a multi-pronged strategy to improve the overall standard of statutory planning in councils. This strategy should consist of the following three actions:
  - amending the Regulations to prescribe the matters which, as a minimum, must be addressed in officer reports when making assessments and decisions on matters concerning planning permits and planning scheme amendments
  - training and accreditation for councils' planning officers, so that they have the minimum standard of knowledge and skills required to administer statutory planning functions. This should include management training for senior staff to enable them to effectively discharge their quality assurance responsibilities
  - annual external review of councils' management of planning functions to ascertain their level of compliance with the Act and planning scheme. The results of these reviews should be reported directly to council and the minister, and be made publicly available (**Recommendation 7.1**).

#### ***RESPONSE provided by the Secretary, Department of Planning and Community Development***

*It is pleasing that a key finding of the report is that the underlying architecture of Victoria's planning system is sound. I acknowledge that the Department of Planning and Community Development has an important role to oversight the operation and reform of the planning system. The department has initiated a continuing program of initiatives in this area and strongly supports a continuous improvement approach to the management of Victoria's planning system.*

*The department agrees in-principle with the recommendations in the report and will work closely with the local government sector and other key stakeholders to develop an agreed framework for an improved performance measurement and reporting regime as recommended in the report. The following broad comments are provided in addition to the detailed response to the recommendations that are included in parts 4, 5, 6 and 7 of this report.*

***RESPONSE provided by the Secretary, Department of Planning and Community Development - continued***

***Measuring the performance of the state's planning system***

The department is progressively developing new systems to address these issues. In particular, state-wide planning permit activity reporting is now operational and this is currently being expanded to include reporting on the timeliness of permit application decision-making and other matters.

***Council management of the planning scheme amendment process***

The department is currently undertaking an internal review of the amendment process to identify opportunities to further streamline the process. This will provide the opportunity to simplify and improve procedures and practices to ensure efficiency and facilitate compliance with statutory requirements. The findings of your report will provide valuable input into this review.

***Council management of the planning permit process***

As you acknowledge, Victoria has maintained a long standing program of continuous improvement of the planning system. While the local government sector will be primarily responsible for giving effect to these recommendations, the department will work co-operatively with the sector to achieve the outcomes sought by the recommendations.

***State-wide approach to improve statutory planning in councils***

The department will work with the local government sector and the broader planning industry towards improvement of overall standards in the industry. It is expected that further implementation of ePlanning in accordance with the ePlanning Roadmap will assist in this regard and will enable more sophisticated performance measurement in the future.

As you would be aware the Premier announced a major review of the Planning and Environment Act 1987 in his annual statement of government intentions in February. This review will provide further opportunities to streamline and simplify planning processes and to improve reporting and quality assurance opportunities. The recommendations included in the report will be an important input into this review.

