

## Environment and Planning - Client Alert

15 April 2010

### MODERNISING VICTORIA'S PLANNING ACT

The Victorian Government recently released an exposure draft for its proposed *Planning and Environment Amendment (General) Bill 2009* (Bill) setting out a number of changes to 'modernise' the *Planning and Environment Act 1987* (Act). The proposed changes to the Act have potential implications for developers, infrastructure and energy projects, local and state government, advisers and town planners.

Potential changes include:

- the objectives of the Act
- the process for amendments
- the permit application process
- to introduce a new State Significant Development process; and
- Section 173 Agreement processes

#### Objectives

The objectives of the Act are proposed to be restructured and updated. Major inclusions are in response to environmental and health concerns, population growth and demographic changes as well as a focus on enhancing liveability and competitiveness of communities, and include:

- achievement of high quality and sustainable design
- securing a healthy environment
- the consideration and balancing of significant environmental, social and economic effects
- integration of planning for land use, transport and infrastructure

#### Planning scheme amendments

The Bill proposes the introduction of two 'tracks' for different classes of amendments:

- *Streamlined track*: a prescribed class of specified amendments that deal with minor or technical changes and corrections. Exhibition, notice, submissions and panel hearing processes will not apply to these amendments. It is understood that the criteria for the classes will be set out in the Regulations
- *Standard track*: for substantive amendments

A further proposal is for the Minister to be able to authorise 'any person' to prepare the amendment. The criteria as to who can be an authorised person will be set out in Ministerial guidelines.

#### Permit process

The Bill seeks to establish two separate permit application processes:

- *Code assessed track* for permit applications to be considered based on defined codes and standards. It is proposed that Council CEO's (and their delegates) be the responsible authority for such applications, with limited public notice and review rights to VCAT. It is understood that the criteria for which types of applications may fall into this category is intended to be set out in the Victoria Planning Provisions
- *Merit assessed track* for permit applications with substantively similar processes to the current process

It is also proposed to remove secondary consents and establish separate permit conditions which are finite (ie while a development is being carried out) versus ongoing (ie those that have an ongoing application - the detail in relation to such permit conditions is to be set out in Ministerial directions).

## State significant development (SSD)

It is proposed to introduce changes to the Act for SSD projects. The criteria for which types of projects might qualify has not been finalised but draft criteria was set out in the Department of Planning and Community Development's (DPCD) Response Paper for SSD which included considerations as to the value of the development; the creation of employment opportunities; renewable energy output and whether an Environmental Effects Statement is required. Any decision by the Minister in respect of SSD will not be subject to review at VCAT.

## Section 173 agreements

Major changes include:

- removal of Ministerial involvement in initial agreements and amendments to agreements
- variation or ending of an agreement following a statutory process similar to planning permit applications, including notice to materially affected parties and opportunities for applicant/objector reviews to VCAT against the decision of the responsible authority

## Miscellaneous changes

Other proposed changes include:

- the ability to include a permit condition in a 'VCAT permit' to allow it to be amended by the Council
- explicit clarification in the Act to provide that a bond or guarantee can be secured by an agreement required by permit condition
- the Minister, DPCD and planning and referral authorities are to prepare annual reports on planning activities
- development and improvement of electronic operating systems requiring information, forms and documentation, to be available and submittable online – 'e-planning'

## Summary

Attempts to 'modernise' the Act and create more streamlined and efficient processes are welcomed, however a balance needs to be struck in terms of not compromising the quality of decision making.

It is understood that the proposal to remove secondary consents received considerable criticism, generally on the basis that those changes had the potential for significant practical implications with limited or no real discernable benefit. There have also been concerns raised in relation to the absence of criteria for the proposed *code assess* applications, streamlined amendments and what might be chosen as SSD, and therefore how these aspects of the reforms can be properly considered by the community without the full details.

The Bill is only an exposure draft at this point and so the final form of the Bill and content of the proposed changes may differ to that which has been presented in the exposure draft. It is understood that public submissions on the proposed changes, which closed on 12 February 2010, are currently being considered prior to the introduction of the Bill into Parliament, which we understand may occur by the middle of 2010.

We will continue to monitor these developments and keep you updated.



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