V I C T O R I A

Auditor-General
of Victoria

PERFORMANCE AUDIT REPORT No. 62

LAND USE AND DEVELOPMENT IN VICTORIA

The State's planning system

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The President
The Speaker
Parliament House
Melbourne Vic. 3002

Sir

Under the provisions of section 16 of the *Audit Act* 1994, I transmit the Auditor-General's Performance Audit Report No. 62, *Land use and development in Victoria: The State's planning system.*

Yours faithfully

J.W. CAMERON
Auditor-General

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Foreword

In these times of increased building activity in Victoria, there is an ever increasing requirement for planning processes for land use and development to be responsive to the needs of the community while protecting our amenity, heritage and environment.

With the combined value of private and public sector building work for 1998-99 amounting to around $9 billion, I am strongly of the belief that planning decision-making needs to be transparent and those responsible need to be fully accountable for their actions.

This Report provides an insight into the way in which the Department of Infrastructure, in supporting the Minister for Planning and Local Government, and a cross-section of 8 Councils administered their planning functions.

It is my view that in order for the Parliament and society to be assured that planning decisions are soundly based, there is a need for a far greater level of documentation to be maintained to support actions taken across a wide front.

It had been my intention, until I received legal advice which had been sought by the former Minister, to include within this Report an assurance to the Parliament and the community on whether the Minister, when making planning decisions of an administrative nature, gave due consideration to strategic and policy outcomes that were supported by appropriate documentation. Given these legal barriers, my comments in Part 4 of the Report have been limited to expressing views on the extent to which the processes applied by the Department supported the Minister in meeting his legislative responsibilities, and the adequacy of documentation made available to the Minister by the Department for decision-making purposes. In my opinion, it is a matter for the Parliament to decide whether, in those cases where a Minister has been given an extensive administrative role within legislation as distinct from a policy development role, the administrative actions should be subject to scrutiny by my Office on behalf of the Parliament. In such circumstances, public accountability would be greatly enhanced if the doubt cast over my legislative powers to provide assurances to Parliament on the operations of Government was clarified by the Parliament when changes to the Audit Act are next considered.

In terms of encouraging a forward looking approach towards enhancing planning processes and outcomes, the Report outlines a series of suggestions for improvement which should be seen as complementing those initiatives already underway.

J.W. CAMERON
Auditor-General

Part 1

Executive summary

Part 1.1

Overall audit conclusion

Background

1.1.1 In Victoria, planning for land use and development is principally controlled through the *Planning and Environment Act* 1987 and the Planning and Environment Regulations 1988. The objectives of the State's planning framework established under the Act provide a policy focus for the use and development of land within Victoria and seek to provide sound, strategic planning, co-ordinated action and policy integration in planning at the State, regional and municipal levels. The objectives also address the procedural basis for dealing with proposals for the use and development of land, i.e. the planning system.

1.1.2 Since 1993, the Government has made significant reforms to the State Planning System for land use and development in Victoria aimed at reducing administrative costs and improving efficiency. In August 1993, the Minister for Planning and Local Government signalled the need for a change to planning to better serve the community, stating many of the key stakeholders considered the system was too slow, complex, frustrating and inhibiting development. He also stated the system was perceived to emphasise procedures at the expense of outcomes and absorb too many resources in regulating land use.

1.1.3 In his August 1999 Statement *A Better Future for Victorians – Implementation, Integration and Innovation* the Minister stated, *"Planning is primarily a democratic process. The quality of planning decision-making is more often than not greatly improved by open and vibrant debate, and by active community participation in the planning process. Groups and individuals have already made a significant contribution to planning reform, and the Victorian Government will continue to nurture this involvement"*.

1.1.4 As planning decisions can have a substantial effect on people's lives and commercial developments, it is essential that appropriate documentation of planning considerations be maintained to enable the Parliament and the wider community to have confidence in the planning system.

The significance of planning

1.1.5 In recent years, planning for land use and development in Victoria has been the focus of substantial community, industry and media attention which has ranged from individual planning decisions through to the policy approach of the Government. Issues raised have been the delays in dealing with planning cases both in local councils and at the Victorian Civil and Administrative Tribunal, uncertainty of planning processes and planning outcomes and the extent of involvement of the Minister in determining individual planning applications.

1.1.6 Generally, planning activity has a close correlation with economic trends. This audit was conducted at a time of sustained economic growth and low interest rates, with consequent high levels of development in general and medium-density housing in particular. At the same time, all Councils examined had recorded significant increases in permit applications. This increase was accompanied by unprecedented demand by the community for closer involvement in the planning process at both the strategic and individual decision-making levels.

1.1.7 In recent times councils have also been required to restructure as a result of amalgamation processes and to implement the Government's major planning reforms during a period of significant financial constraint.

1.1.8 Given this background, I believe this audit, which was conducted in 8 Councils and the Department of Infrastructure to determine whether certain aspects of the statutory planning system were efficiently and effectively managed, will provide value to the Parliament, the planning fraternity and the general public in terms of improving the transparency of decision-making and planning processes.

Administrative support provided to the Minister

1.1.9 In view of the legal opinions that were sought by the former Minister, I have been constrained from reporting my findings on whether the Minister gave due consideration to strategic and policy outcomes when making planning decisions as part of the administrative process associated with the State's planning system.

1.1.10 Given these legal barriers, my comments have been limited in this Report to expressing views on the extent to which the processes applied by the Department supported the Minister in meeting his legislative responsibilities, and the adequacy of documentation made available to the Minister for decision-making purposes.

1.1.11 In my opinion, the actions of the Department in relation to processing planning scheme amendments and matters called-in enabled the Minister to technically fulfil his statutory planning responsibilities in a timely manner.

1.1.12 In terms of examining whether processes were clearly defined, open and fair, and enabled an acceptable level of accountability to be achieved, we looked for, but did not find, adequate documentation to support the basis of departmental advice to the Minister when deciding to:

- prepare amendments to planning schemes;
- grant or refuse requests for amendments;
- call-in permit applications and appeals;
- grant himself exemptions from notification requirements; and
- waive the collection of fees.

1.1.13 A special feature of the audit was the examination of 4 specific cases that were surrounded by a high degree of planning controversy, namely:

- No. 50 Big Pat's Creek Road, East Warburton;
- the Colosseum Hotel, West Heidelberg;
- the HMAS Lonsdale (South) site, Port Melbourne; and
- the Mornington Shopping Centre and Railway Gatehouse.

1.1.14 While the actions of the Department enabled the Minister to comply with the requirements of the Act, invariably the Department did not maintain supporting evidence to fully explain the basis for key advice provided to the Minister to undertake his legislative role.

Department's role in Statewide activities

1.1.15 Contrary to the intentions of the Government, Victoria does not yet have a system of co-ordinated and consistent planning schemes, as the timetable for implementing the reforms to the planning control component of the planning system has not been achieved. Implementation of new format planning schemes, which according to the Minister was to be completed by June 1997, has been extended to December 1999. At July 1999, only 41 councils (53 per cent) had completed implementation of their new planning schemes.

1.1.16 As a result of the delays in implementing the new schemes, realisation of the potential benefits, such as progress towards outcome-oriented decision-making, greater certainty in terms of land use and development, and more streamlined processes had been slower than anticipated. Development of a Statewide "big picture" of local strategic framework plans and policies, as envisaged by the Government, had also been delayed.

1.1.17 It was pleasing to find that the Department had been active in its endeavours to provide support to councils in their administration of the planning system. Various publications and training sessions provided detailed guidance on particular planning issues to facilitate a consistent approach by Councils. Day-to-day support was also provided by the Department's regional offices. These offices provided a range of planning services and worked closely with Councils to achieve a co-ordinated approach to addressing Statewide and regional outcomes. Nevertheless it was apparent that the Councils examined had mixed views on the timeliness and effectiveness of support provided by the metropolitan regional offices.

1.1.18 I support the Department's intention to establish a framework for measuring the performance of both the State's planning system as a whole and the Department's regional offices.

Council management of land use and development

1.1.19 With regard to the processing of planning scheme amendments and permits, Councils effectively complied with the majority of their legislative requirements.

1.1.20 In relation to planning scheme amendments and permits, decisions were made by the majority of Councils with due consideration of strategic and policy outcomes. These processes were facilitated by the consultative mechanisms put in place by the Councils.

1.1.21 I was, however, not satisfied with the adequacy of documentation maintained by some Councils in relation to:

- recording the content of discussions held with proponents prior to lodging amendment requests or applying for planning permits;
- the extent of prescribed information submitted by applicants at the time of lodging permit applications;
- justifying the parties deemed to be materially affected and to be notified of the decision to prepare the planning scheme amendment, as well as those who did not fall into this category;
- determining whether applications for permits may cause material detriment to other parties and the bases for their decisions whether or not to advertise;
- establishing the basis on which assessments were made of requests to amend planning schemes and applications for planning permits; and
- identifying which parties had been notified of planning scheme amendments once approved and whether the required steps had been taken to notify the public of decisions on amendments.

1.1.22 Due to the high volume of complaints received by Councils, enforcement activities were exclusively reactive to complaints, and checking of compliance with the planning scheme or permit conditions was not routinely undertaken by Councils.

1.1.23 In the majority of Councils, formal mechanisms for checking consistency between planning and building permits had not been developed. Consequently, the Councils were less likely to detect instances of unauthorised developments or where all or some conditions of permits had been ignored. There is a clear need for the Department of Infrastructure, the Building Control Commission and local councils to develop a system to ensure consistency between planning and building permits.

Appeals lodged with the Victorian Civil and Administrative Tribunal

1.1.24 Parties affected by planning decisions may appeal to the Victorian Civil and Administrative Tribunal. As part of the audit, it was intended to examine the hearings listing process at the Tribunal to assess whether it enabled planning appeals to be heard in a timely manner.

1.1.25 In May 1996, the Department of Justice obtained legal opinions from the Victorian Solicitor-General and the Victorian Government Solicitor. These opinions, together with a subsequent opinion of June 1996 from the Solicitor-General, indicated that the Auditor-General had no legislative power to conduct an audit and subsequently report any findings in relation to the functioning of a court. Following discussions with the Department of Justice, the Secretary formally advised in September 1998 that the Solicitor-General's legal advice of June 1996 applied with equal force to the Tribunal. As a result, I am not in a position to report on the Tribunal's hearings listing process.

1.1.26 I am pleased to report that all Councils examined met their legislative obligations relating to the appeals process. However, information obtained from 4 Councils revealed that over the past 2 years the average time taken between lodging an appeal with the Tribunal and the hearing of that appeal was 18 weeks, with a further 8 weeks from the hearing until the Tribunal's decision was announced. According to the Tribunal, by late June 1999, as a result of the introduction of a range of initiatives, most cases were heard and determined within 14 weeks of application, with waiting times now reduced to between 10 and 12 weeks for many cases.

Resource management within Councils

1.1.27 In examining resource management within Councils the following suggestions, if adopted, would improve the efficient and effective administration of the statutory planning system:

- integrate the statutory and strategic planning functions through amalgamation or improved co-ordination;
- monitor staff levels in conjunction with undetermined applications and amendments to assess whether staff numbers are sufficient to meet increasing workloads and enable processing to occur in a timely manner;
- implement a range of strategies to attract and retain experienced and qualified planning staff and to provide for the ongoing development of staff and councillors;
- establish a fee structure that recovers a higher proportion of the costs of planning processes, to reduce cross-subsidisation by other ratepayers; and
- remove any ambiguity in the regulations impacting on the collection of fees by councils.

Performance monitoring within councils

1.1.28 I commend the initiative taken by 2 Councils in developing indicators for measuring performance in relation to planning outcomes, customer satisfaction with service delivery, efficiency and process improvement.

1.1.29 In my view, the efficiency and effectiveness by which the statutory planning system is administered would be improved through a greater focus on the further development of indicators to measure the quality of service delivery and planning outcomes.

Part 1.2

Summary of major findings

ADMINISTRATIVE SUPPORT PROVIDED TO THE MINISTER Page 45

- After taking into account the particular circumstances surrounding the 36 planning scheme amendments examined, I am satisfied that the processing occurred within a satisfactory timeframe.

  Para. 4.36

- While not required to be documented under the legislation and as the quality of documentation varied, it was difficult to assess whether appropriate consideration had been given by planning officers to planning objectives and the environmental, social and economic effects of amendments at the preparation stage.

  Para. 4.41

- The feasibility of maintaining a record of the sources of all advice provided to the Minister on planning matters needs to be considered by the Department of Infrastructure.

  Para. 4.43

- Given that it was not evident whether the Department's criteria had been used to determine notification exemptions, the Department should periodically review the criteria used with a view to ensuring they remain relevant and appropriate.

  Paras 4.50 and 4.52

- Evidence existed to substantiate that an open and fair process had been followed where the Minister decided that the normal notification requirements would not apply.

  Para. 4.56

- Although advice provided to the Minister by the Department for approval of amendments gave consideration to relevant planning matters, as the quality of documentation supporting assessments varied, it was difficult to assess the nature and extent of that consideration.

  Para. 4.64

- The Department did not maintain documentation that supported the basis for the Minister's decisions to grant or refuse requests to amend planning schemes.

  Para. 4.66

- The Minister's decisions to call-in permit applications or appeals cited the legislative basis for such action. However, in the majority of cases the Department did not fully explain how the circumstances of the application or appeal met the legislative criteria for call-ins.

  Para 4.83 to 4.85

ADMINISTRATIVE SUPPORT PROVIDED TO THE MINISTER - *continued* **Page 45**

- In some cases, the call-in process and the establishment of advisory committees and panels resulted in the achievement of improved planning outcomes as the process provided the opportunity for a modified proposal to be negotiated between the parties.
  Para. 4.92

- In relation to the 4 case studies examined, there was a lack of documentation maintained by the Department to fully explain the basis of key advice provided to the Minister.
  Par.a 4.95

- Despite opposition, a significant change was made to the potential use and development of land at No. 50 Big Pat's Creek Road, East Warburton, but the basis of that decision was not documented, explained or made known to the affected parties by the Department.
  Para. 4.97

- The Victorian Civil and Administrative Tribunal reached completely different and opposing conclusions to those of the Minister and the Panel, even though each party had substantially the same material presented to it on which to base an opinion on the use and development of the Big Pat's Creek site.
  Para. 4.97

- Despite opposition from the Council and affected parties, the Minister approved an amendment that included a "destroyed by fire" exemption, which effectively enabled the development of a gaming venue on the site of the former Colosseum Hotel in West Heidelberg, destroyed by fire in September 1992.
  Para. 4.97

- While the actions of the Council to expedite the establishment of planning controls over the HMAS Lonsdale (South) Port Melbourne site prior to its transfer from the Commonwealth were well intentioned, a legal opinion deemed these actions to be invalid. This delayed the development of site specific controls by at least 18 months.
  Para. 4.97

- Until June 1997 when the Minister approved Amendment L51 in relation to the HMAS Lonsdale site, the public consultation processes were open and fair. The proposals were made available to the public and Council, and all parties were given the opportunity to make submissions on the various development proposals at each stage.
  Para. 4.97

- Amendment L51 allowed for buildings of up to 20 storeys in height on the HMAS Lonsdale site, enabled development of the site to take place subject to the satisfaction of the responsible authority, and established the Minister as the responsible authority.
  Para. 4.97

- Shortly after approval of Amendment L51, which had the potential to substantially increase the value of the HMAS Lonsdale site, the undeveloped site was sold.
  Para. 4.97

- We were unable to determine whether due consideration had been given to the legislative requirements at all stages as documentation held by the Department of meetings, advice to the Minister and negotiations on the HMAS Lonsdale development was inadequate.
  Para. 4.97

ADMINISTRATIVE SUPPORT PROVIDED TO THE MINISTER - *continued* **Page 45**

- The Department did not maintain adequate documentation to support its recommendation to the Minister that the height parameters for the tower on the HMAS Lonsdale site be established between 14 to 20 storeys.
  Para. 4.97
- Claims of invalid amendments and an illegally appointed advisory committee, and concerns regarding the Minister's non-acceptance of the Advisory Committee's recommendations for the HMAS Lonsdale site were unfounded.
  Para. 4.97
- The various planning scheme amendments associated with the Mornington Shopping Centre development were processed in accordance with the Act.
  Para. 4.97
- We were unable to conclude that due consideration of strategic and policy outcomes had been given at all stages of the Mornington Shopping Centre development as the departmental documentation made available to us of meetings and ministerial briefings was incomplete and did not explain the effect of proposed amendments.
  Para. 4.97
- With regard to the Mornington Shopping Centre development, the Department generally had not documented its advice to the Minister in relation to:
  - changing the definition of the floor area, which on face value, increased the retail floor space allowed to be developed on the site to accommodate the development plan; and
  - changing the number of car parking spaces.

  Para. 4.97
- The Council will be required to contribute a minimum of $305 000 for specified works, to purchase land and to meet all legal costs of the developer in connection with any legal challenge relating to the approved plan for the Mornington Shopping Centre development.
  Para. 4.97
- Notwithstanding that the Council received advice from Heritage Victoria of the nomination for the Mornington Railway Gatehouse to be listed on the Heritage Register, it was demolished prior to an assessment of the heritage merits of the building.
  Para. 4.97

DEPARTMENT'S ROLE IN STATEWIDE ACTIVITIES Page 75

- To ensure that the establishment of the Department's framework to measure the performance of the State's planning system is not unduly protracted, challenging but achievable milestones need to be set.

  Para. 5.15

- Until such time as all councils have introduced the new format planning schemes, Victoria will not have a system of co-ordinated and consistent planning schemes.

  Para. 5.27

- The Department's South-East and North-West Metropolitan Regional Offices did not have in place a performance measurement system to assess the extent to which they were achieving their stated aims.

  Para. 5.38

COUNCIL MANAGEMENT OF LAND USE AND DEVELOPMENT Page 87

- Although the Act does not prescribe a time limit for processing an amendment to a planning scheme, in most cases amendments were found to be processed within a reasonable timeframe.

  Para. 6.13

- The approaches adopted by Councils for notifying parties who may be materially affected by an amendment were inconsistent.

  Para. 6.27

- In 17 per cent of amendments processed, Councils had not maintained adequate documentation to support the approach to notifying affected parties.

  Para. 6.32

- The processes adopted by 5 Councils to assess amendments were generally satisfactory. In 2 of the other Councils relevant documents were not routinely addressed in reports which supported Council decisions. In the remaining Council, assessments were typically unstructured.

  Paras 6.35 to 6.39

- In 7 of the 8 Councils, the processes adopted for assessing amendments were fair and open and allowed affected parties to participate.

  Para. 6.43

- The time taken to process permit applications varied between Councils but was, in the majority of cases, within the statutory timeline of 60 days.

  Para. 6.65

- In 3 Councils, planning officers did not identify, at the time of receiving a permit application, whether the provisions in the planning scheme and applicable policies required a permit to be issued and whether additional information needed to be requested.

  Para. 6.77

- In relation to 26 per cent of permit applications processed, the prescribed information was not submitted at the time of lodgement.

  Para 6.77

COUNCIL MANAGEMENT OF LAND USE AND DEVELOPMENT - *continued* **Page 87**

- For 17 per cent of permit applications processed there was a lack of documentation to support the rationale for determining the parties to be notified.

  Para. 6.90

- While consultative processes with referral authorities were found to be satisfactory in the vast majority of permit applications examined, all 8 Councils failed to send copies of decisions to referral authorities.

  Paras 6.106 and 6.109

- In relation to the process of assessing permit applications, as discretionary referrals were not subject to the same timeframes applicable to referral authorities, response times were more variable.

  Paras 6.112 and 6.113

- Documentation held by Councils did not adequately illustrate whether permit applications were rigorously assessed in terms of the requirements of the planning controls and policies applicable to the application. Nineteen per cent of permit applications processed were in this category.

  Para. 6.115

- Processes applied in assessing permit applications were not consistent and varied in quality across Councils.

  Paras 6.117 and 6.118

- Only half of the Councils adequately documented factors taken into account when assessing permit applications.

  Para. 6.121

- Twenty-one per cent of planning officers' reports did not adequately address the relevant provisions of the planning scheme when assessing planning applications.

  Para. 6.122

- All Councils satisfactorily met their legislative obligations in relation to the appeals process and acted on decisions in a timely manner.

  Paras 6.151 and 6.153

- Enforcement activities were exclusively reactive to complaints, and regular checking of compliance with the planning scheme or permit conditions was not undertaken.

  Para. 6.156

- One service provider under compulsory competitive tendering arrangements failed to comply with the requirement to randomly check 10 per cent of all permits issued, while another had not inspected around 350 applications for compliance with permit conditions.

  Para. 6.157

- In 6 of the 8 Councils there were no formal mechanisms for checking consistency between building and planning permits. Councils maintain this responsibility rests with building surveyors.

  Para. 6.164

- In a substantial number of cases, the building permit and plans were not lodged within the required 7 days.

  Para. 6.164

- An effective quality assurance framework was not in place in Councils.

  Para. 6.170

RESOURCE MANAGEMENT WITHIN COUNCILS Page 129

- Strategic objectives in relation to land use and development were adequately defined by all Councils. More work needs to be undertaken by some Councils to develop detailed planning policies.

  Para. 7.11

- An integrated assessment process was not assisted in the 7 Councils where statutory and strategic planners were separated either geographically or in organisational terms.

  Para. 7.14

- In a number of Councils examined the level of permits received but not determined was high For example, in 3 of the Councils, undetermined applications at January 1999 were 500 (25 per cent of all applications received in 1998), 430 (21 per cent) and 420 (23 per cent).

  Para. 7.28

- Notwithstanding the increased workload of planning staff, only one Council had undertaken a formal analysis to ascertain whether staffing levels were adequate.

  Para. 7.31

- All Councils expressed concern about the level of staff turnover and the difficulty in maintaining a stable workforce. In one Council, 6 planners with 30 years combined experience resigned within a 6 month period.

  Para. 7.39

- The inability to retain or recruit experienced staff may have contributed to the examples of non-compliance with certain statutory requirements.

  Para. 7.42

- Although many of the Councils examined had provided only limited or no formal planning-related training to Councillors, various practices assisted Councillors in meeting their planning responsibilities.

  Para. 7.52

- Fees collected for processing permits and amendments covered as little as 25 per cent of the planning unit's operating costs in one Council to 40 per cent in another.

  Para. 7.59

- The Department of Infrastructure had commenced a review of the regulations to provide options for future setting of planning fees.

  Para. 7.60

- In relation to fees collectable for permit applications, the correct fee had not been raised for 28 per cent of applications processed. We estimated that revenue forgone in relation to the sample examined was at least $300 000.

  Para. 7.68

PERFORMANCE MONITORING WITHIN COUNCILS Page 145

- Only 2 Councils had developed a range of indicators that measured the quality of services and planning outcomes as well as the efficiency of the process.

  Para. 8.8

- While the Department's action in commencing the development of performance measures for the planning functions of local government is a positive initiative, the indicators were limited in that they did not adequately measure the quality or outcomes of planning processes.

  Para. 8.12

- The Department's indicators for measuring its performance in supporting the Minister in his role as planning and/or responsible authority were of limited use as they focused on activities rather than performance.

  Para. 8.20

- Due to the absence of comparative data relating to community satisfaction, Councils were unable to evaluate or report on the impact of competitive tendering arrangements, if any, on the quality of planning services.

  Para. 8.30

- While 3 of the 8 Councils had developed Customer Service Charters, none measured its performance in meeting the service standards.

  Para. 8.35

- Significant weaknesses were identified in relation to information systems used by 6 Councils which impacted on the completeness and accuracy of key planning data and the efficiency of management reporting processes.

  Para. 8.41

Part 1.3

Summary of suggestions for improvement

1.3.1 A large number of suggestions for improvement are contained throughout the Report. A listing of the applicable references is summarised in the following table.

SUMMARY OF SUGGESTIONS FOR IMPROVEMENT

Report reference	*Paragraph number*	*Suggestion*
Part 4. Administrative support provided to the Minister	4.20, 4.43	Require records of all submissions, reports and other advice used in the decision-making process to be maintained by the Department of Infrastructure.
	4.21	Implement effective documentation standards that address issues relating to planning outcomes.
	4.38	Address the purpose and effect of proposed amendments clearly and concisely in explanatory reports.
	4.52	Review criteria used in determining exemptions from notification requirements for amendments.
	4.57	Document the Department's advice to the Minister justifying exemptions from notification requirements for amendments.
	4.60	Implement a structured process to improve quality control over notice and exhibition processes undertaken by the Department.
	4.66	Maintain documentation within the Department to support the basis for Ministerial decisions to grant or refuse requests to amend planning schemes.
	4.72	Document reasons where fees have been waived by the Department.
	4.86	Implement departmental procedures to improve transparency and accountability in relation to call-in decisions.
	4.97	Develop procedures to cover a range of issues surrounding the transfer of land from the Commonwealth to the State planning jurisdiction.
	4.97	Develop an agreed approach and framework for redevelopment of sites on the inner Melbourne foreshore.

SUMMARY OF SUGGESTIONS FOR IMPROVEMENT - *continued*

Report reference	*Paragraph number*	*Suggestion*
	4.97	Review departmental processes for collecting fees relating to planning scheme amendments.
Part 5. Department's role in Statewide activities	5.2, 5.15	Set challenging but achievable milestones for completion of the framework to measure the performance of State's planning system.
	5.28	Continue to closely monitor the progress in implementing the new schemes.
	5.40	Establish a performance measurement framework within regional offices of the Department.
	5.41	Ensure regional office staff are adequately experienced and trained.
Part 6. Council management of land use and development	6.14	Categorise planning scheme amendments within councils and establish acceptable time limits for processing amendments for each category.
	6.18, 6.72, 6.73	Maintain an adequate record of discussions held with proponents or applicants prior to lodging amendments or applications.
	6.22	Adopt a more structured approach to the pre-lodgement and lodgement stages of amendment processing and develop relevant guidelines to assist staff.
	6.31	Issue bulletin to councils advising of any changes in government arrangements.
	6.33	Develop checklist of legislative notification requirements for amendments and record all parties notified.
	6.34	Define the legislative term "materially affected".
	6.40	Introduce a more structured process for assessing planning scheme amendments that provides a level of quality control based on the council's assessment of risk.
	6.40	Review organisational arrangements to maximise co-ordination between relevant staff.
	6.49	Maintain a register of planning scheme amendments in councils.
	6.51	Regularly check that planning schemes available at service counters are up-to-date.
	6.51	Develop a policy relating to notification of amendment decisions.
	6.67	Develop strategies aimed at minimising the length of time for those parts of the permit process not counted within the legislative limit of 60 days.
	6.71	Provide the most comprehensive package of information available at the pre-application stage.
	6.73	Prepare file notes relating to specific advice provided during pre-application meetings.
	6.81	Improve processes for lodging permit applications
	6.90	Clearly demonstrate whether permit applications may cause material detriment.
	6.95	Document on permit application file basis of decision whether to advertise.

SUMMARY OF SUGGESTIONS FOR IMPROVEMENT - *continued*

Report reference	*Paragraph number*	*Suggestion*
	6.110	Forward permit applications to referral authorities at the earliest possible time and, where necessary, provide any further information requested from applicants in a timely manner.
	6.110	Forward copies of notices of decisions to grant or refuse planning permits to relevant referral authorities.
	6.114	Guidelines and time limits to be developed for internal referrals.
	6.127	Develop report templates demonstrating matters taken into account by planning officers in decision-making.
	6.135	Assess risks to council and determine the appropriate involvement of Councillors in planning matters of a processing nature compared to higher level policy and strategic issues.
	6.138	Review delegation arrangements within councils.
	6.160	Improved enforcement activities to be implemented across councils.
	6.168	The Department of Infrastructure, the Building Control Commission and councils need to develop a system that provides a nexus between planning and building permits.
	6.168	Assess whether planning schemes adequately protect buildings of heritage interest to local communities.
	6.171	Establish quality assurance frameworks aimed at continuous improvement and at ensuring quality planning outcomes.
	6.178	Ensure effective records management systems and appropriate documentation standards are in place.
Part 7. Resource management within councils	7.18	Better co-ordinate statutory and strategic planning operations.
	7.35	Analyse workloads and work practices to determine optimum resource requirements.
	7.44	Consider a range of strategies to attract and retain experienced and qualified planning staff.
	7.49	Analyse staff training needs and continue commitment to training.
	7.55	Introduce a flexible training program for councillors.
	7.62	Establish a fee structure that recovers a higher proportion of costs of planning processes, if the Government is to apply a user-pays principle.
	7.66	Remove any ambiguity in the regulations impacting on the collection of fees by councils.
	7.67	Collect all fees legally due and document reasons for waiving fees.
	7.70	Improve fee collection practices.

SUMMARY OF SUGGESTIONS FOR IMPROVEMENT - *continued*

Report reference	*Paragraph number*	*Suggestion*
Part 8. Performance monitoring within councils	8.10, 8.13	Adopt various techniques to improve measurement of the quality of service and outcomes of the planning function.
	8.17	Establish targets against which actual performance can be compared.
	8.21	Enhance departmental indicators for measuring its performance in providing administrative support to the Minister.
	8.26	Ensure annual surveys cover representative samples of all users of planning services.
	8.33	Establish level of community satisfaction with planning services prior to entering into competitive tendering arrangements.
	8.38	Introduce Customer Service Charters.
	8.38	Report publicly results against service standards
	8.43	Improve systems for recording, monitoring and reporting statutory planning activities.
	8.47	Ensure service providers comply with the performance reporting requirements of service agreements.

❑ ***RESPONSE*** *provided by Acting Secretary, Department of Infrastructure*

At the outset, I should indicate that the Department will work with the local government community to identify:

- *process improvements that can be made;*
- *policies that can be clarified;*
- *how documentation can be enhanced, and*
- *how performance might be better measured across the planning system,*

as a result of matters raised in this Report. The Department will convene a Working Group, involving departmental officers and local government representatives, to address issues raised in the Report.

As the Report notes, in many areas work is already underway.

Department of Infrastructure support to the Minister

The Department notes that audit found the actions of the Department in supporting the Minister's role in statutory planning scheme amendments and matters "called in" enabled him to fulfil his legislative responsibilities. Also, there is no suggestion in the Report that there has been any breach of the Planning and Environment Act 1987 in respect of any planning permit or amendment processed by the Department. Further, audit finds that "… in considering whether to approve amendments, reports and other relevant documentation were made available by the Department to the Minister" (para. 4.64) and that "… audit was satisfied that an open and fair process had been followed where the Minister decided that the normal notification requirements would not apply" (para. 4.56).

It notes also that audit is of the view that the Department, in supporting the Minister, should maintain records of all submissions, reports and other advice used in making decisions (paras 4.20 and 4.43).

❑ ***RESPONSE*** *provided by Acting Secretary, Department of Infrastructure - continued*

The Department endeavours to ensure that all the material, which it receives in relation to a particular planning matter, is recorded on the relevant file. However, the Department does not necessarily have access to, or know of the nature of, all of the information or advice that a Minister may receive in Cabinet, from parliamentary colleagues, from advisers, from councils and councillors, or from other stakeholders in a particular planning matter. Such communications may take place in Cabinet, in private meetings or in other settings where the Department is not represented. It may take the form of electronic presentations, models, drawings or interactive discussions and "concept" diagrams. Material may also be confidential to project proponents.

The Minister may also direct the Department to proceed in a particular matter (or manner) of his own volition. The Minister may initiate a planning action or actions (such as a "call-in") on the basis of a broad range of information, advice or a request that he (or she) receives, with or without seeking advice from the Department.

Provided the Minister's actions conform to the requirements of the relevant legislation there is no basis upon which the Department can require the Minister to provide information or an explanation (over and above that required by relevant legislation) as to the reasons for his direction or decision.

For these reasons it may be impracticable for, for example, "the reasons for call-in decisions (to be) fully documented by the Department". The same situation may arise in other circumstances where the Minister makes a decision with the statutory planning framework. The Minister is accountable to Parliament, not the Department, for the exercise of his judgement in relation to such matters.

The current Government has indicated it will prepare guidelines that clearly define the scope and limits of Ministerial intervention in planning matters. The Department will refer audit's view on this matter to the Government in that context. The form and structure of departmental reports to the Minister in relation to planning matters (referred to in Part 4 of the Report) will also be reviewed in that context.

The Department is one of a number of parties involved with planning proposals that come before the Minister. It endeavours to ensure that processing of proposals is conducted fairly and managed efficiently and effectively. Whether this outcome is achieved depends on the attitudes, actions and conduct of all the parties involved in the process.

The planning process, by its nature, often involves conflict resolution. Parties may utilise planning processes to secure a desired commercial or social outcome not necessarily related to the planning merits of a particular proposal or the costs or benefits that might flow to the broader community from its approval or rejection. Participants in the process may choose to pursue legal remedies with little prospect of success, but with significant impacts in terms of cost and delay on other parties. The Department welcomes audit's recognition of this fact (para. 4.20) and of the impact this has on the type and extent of documentation that is prepared by the Department to support sensitive decisions.

The Department will take up the matter raised in Part 6 of the Report, regarding delays in lodging building permits with councils, with the Building Control Commission with a view to overcoming the situation identified by audit. It is presently the responsibility of councils to ensure consistency, however, the Department notes that there is no formal mechanism for checking this in 6 of the 8 councils examined by audit. Amendments to the Building Regulations and Act are being proposed to require the relevant building surveyor to ensure consistency with a relevant planning permit prior to the issue of a building permit.

❑ ***RESPONSE*** *provided by Acting Secretary, Department of Infrastructure - continued*

Operation of the Planning System by Councils

Audit finds that:

> *"… only around half of the Councils had adequately documented the various factors taken into account when assessing permits" (para. 6.121), and that*
>
> *in up to 19 per cent of cases "… documentation held by Councils did not adequately illustrate whether applications were rigorously assessed in terms of the requirements of the planning controls and policies applicable to the application"(para. 6.115).*

There may be a number of reasons for this situation. Councils and the Department may share the difficulties in documenting material relevant to planning decision-making referred to above. It may also reflect a general awareness of "policy" by decision-makers and/or the nature of "consensus decision-making" where the interests of those most directly involved are reconciled prior to decisions formally being made. Further analysis of the cases would be required to draw firm conclusions.

Implementation of a framework for measuring the performance of the State's Planning System is a high priority for the Department, however, this work requires a co-operative effort by all involved in the planning system. The Department does not wish to promote the notion of establishing legislative reporting requirements if this can be avoided.

Data on which performance assessments might be made is collected by councils and, as the Report points out, systems for managing data within councils are often inadequate. The Department will continue to work with councils and representative organisations to enhance the availability of information that will allow the performance of the planning system to be continually monitored. Better access to, and use of, information which should be kept in planning, building and sub-division registers, is critical. An Industry Working Group has been established to assist with this work.

Administrative support provided to the Minister

Amendments prepared by the Minister – matters considered by the Minister (paras 4.39 to 4.43).

This issue is addressed in the Department's general comment on this Report.

Examination of notification exemptions (paras 4.49 to 4.56).

The Department will review the criteria used in determining "exemptions from notice" requirements in the context of audit's observations and the Government's intention to publish guidelines in relation to the exercise of Ministerial discretions. See also the Department's general comments above.

Decision-making process (paras 4.61 to 4.66)

Some of the matters raised are addressed in the Department's general comments on this Report.

The Department's files are open to examination in accord with Freedom of Information legislation, by the Ombudsman and in accord with the relevant provisions of the Planning and Environment Act 1987.

In the light of this Report, the Department will review its documentation standards.

❑ ***RESPONSE*** *provided by Acting Secretary, Department of Infrastructure - continued*

Call-ins by the Minister (paras 4.73 to 4.92).

This issue is addressed in the Department's general comment on this Report.

Specific cases examined (paras 4.93 to 4.97).

This issue is addressed in the Department's general comment on this Report.

Council management of land use and development

Notification of parties affected by an amendment (paras 6.23 to 6.34).

The words "materially affected" requires local interpretation in the context of local building and land use patterns, geography, topography, road networks and other conditions. In this situation, it is not surprising that approaches adopted by councils are inconsistent. It is to be hoped they are appropriate in their local setting.

Department's role in Statewide activities

Subject to emerging priorities as a consequence of the change of government, and council timeframes for adopting new format planning schemes, the Department expects to see new planning schemes adopted in all municipalities over the next 3 months.

Resource management within councils

Structure of planning units (paras 7.12 to 7.18).

The Department strongly endorses audit's conclusion.

Fees for processing applications and amendments (paras 7.56 to 7.62).

A strong case can be made that in planning matters councils are exercising a "governance" function, not providing a "user-pays" service. Users of the planning system include parties other than the applicant.

Performance monitoring within councils

The Department agrees that a considerable amount of work needs to be done on performance measurement. This work needs to be a joint exercise involving the Department, councils and the broader planning community. A project team was established in mid-1999 to commence this work. A critical task is the establishment of systems to collect relevant data, to enable councils to monitor their own performance and to allow the Department or local government sector to produce comparative indicators.

❑ ***RESPONSE*** *provided by Chief Executive Officer, City of Casey*

Having reviewed the Report, I wish to advise that the Report generally reflects the views and issues raised by both Council officers and Councillors with the audit team. In particular, I would like to emphasise the importance of the following:

- *The introduction of user-pays fees to cover the full cost of Council in processing applications. Council's financial contribution to planning in most municipalities is provided in the areas of strategic planning, policy development and enforcement, as well as subsidising application fees, so some relief would be appropriate;*
- *The need to clarify Councils' entitlements to collect fees; and*
- *The role of the Department of Infrastructure being enhanced in the areas of council support to improve their responsiveness to planning issues raised by councils.*

Thank you for the opportunity to provide feedback on the Report. It highlights many issues of value to Council that will be taken on board to improve our operations. I would also like to congratulate your audit team from Audit Victoria for the professional and unimposing manner in which they conducted themselves.

❑ ***RESPONSE*** *provided by Chief Executive Officer, City of Melbourne*

In relation to the final Report, I advise that the Council generally agrees and is supportive of the key recommendations.

❑ ***RESPONSE*** *provided by Mayor, City of Port Phillip*

The City of Port Phillip welcomes the recent Report by Audit Victoria into the planning performance of selected local councils (including Port Phillip), the Department of Infrastructure and previous Minister for Planning. Port Phillip welcomes this Report because review, measurement and continuous improvement are important to any form of public administration and service to the community. Planning is a high profile service provided to the Victorian community by local councils and the comprehensive Report basically says that we're doing a good job in extremely difficult circumstances. The majority of councils audited demonstrated a process which was fair and open and allowed affected parties to participate.

The audit found that Victorian councils have done well during a period of rapid change following municipal amalgamations, a period of high economic growth and increasing community involvement in the planning process. It can certainly be said that councils have taken on the challenge of reform and improvement of services. The Report identifies areas for improvement by councils (such as notification in some cases, documentation, staff training, enforcement and assessment) and although performance is not even, many councils are already performing extremely well on these aspects. It will be important to put in place the necessary changes and measurements to achieve these opportunities for improvement.

❑ ***RESPONSE*** *provided by Mayor, City of Port Phillip - continued*

Finally, while the Report presents several findings for improvements to be addressed by local councils, it also provides an important opportunity for the Department of Infrastructure to review its role and modus operandi. The audit found that, while the Department has been active in its endeavours to provide support to councils, it needs to complete its work in implementing the new planning system and improve the consistency of its advice. However, Port Phillip considers that the major challenge for the Minister and the Department is to develop a true partnership with local councils in delivering planning services to the people of Victoria which meet their aspirations. This will require a further culture shift and a high level of co-operation with councils. The unexpected release by the former Minister and/or the Department of a document like "Gateway to the Bay" should be a thing of the past.

❑ ***RESPONSE*** *provided by Chief Executive Officer, City of Banyule*

I wish to advise that Council's Audit Committee considered the various components of the Audit at its meeting of November 26 1999.

Having considered the report I wish to advise that the report generally reflects the views and issues raised with and by officers during the course of the audit. In the Committees' view the conduct of the audit has assisted Council in pursuing continuous improvement in the planning area and the Committee was particularly pleased at the proactive work undertaken by staff in response to the report.

I would like to highlight a number of issues that Council has raised as concerns:

- *Fees payable by applicants are clearly inadequate to cover costs associated with planning permit processing, a matter which is further highlighted by the introduction of the new format planning scheme.*
- *Enforcement of the scheme and permits are an area of concern, particularly responsiveness and the level of fines imposed for breaches.*
- *The actions of the then Minister for Planning & Local Government in respect to the Colosseum Hotel at 318-320 Bell Street West Heidelberg. Council has previously expressed its concerns in respect to the Minister's action, which I note have been confirmed by your audit. Council has recently written to the new Minister requesting that he takes immediate action in rectifying the previous amendments to the planning scheme that provide permission and exemptions not normally available.*

I wish to take this opportunity of thanking you and Audit Victoria for the manner in which the audit was conducted.

❏ ***RESPONSE*** *provided by Chief Executive, City of Bayside*

Bayside was pleased to participate in the recent performance audit of the State Planning System. Your report is welcomed as it will inform the debate about planning and the way it is delivered in Victoria. Planning is currently an extremely topical issue and it is pleasing that the report finds that generally all the players are effectively meeting the challenges.

Local Government has undergone significant change in the past 5 years including municipal amalgamations, responding to the Government's planning reform process through the preparation of new format schemes, accommodating an upsurge in economic growth, and accommodating the involvement of an increasingly vocal and involved community. It is pleasing that the report has found that Councils have generally coped well in response to these pressures and changes.

There is always room for some improvement and the report provides a framework in which suggestions are able to be considered. We can learn from the experience of others, and the report's suggestions for improvement will be taken up.

One particular issue which I would like to raise is that of the role of the Department of Infrastructure and its relationship with local government. There is scope for the development of a greater sense of partnership, especially as we move to a more policy and strategic focused planning system.

Obviously there are issues raised in the report such as fee levels and remuneration for planning activities, on which more detailed and extensive comment could be made. However, I believe that this is better undertaken at a later date.

In general Bayside supports the findings and recommendations made in the report.

We would like to thank your Office for the initiative in undertaking this audit and providing the opportunity for input and comment at all stages. We look forward to participating in any future debate and discussion following the release of the report.

Finally my staff would like to place on record their thanks for the cooperative and supportive manner in which Audit Victoria and consultants undertook this study.

❏ ***RESPONSE*** *provided by Chief Executive Officer, Shire of Mornington Peninsula*

While the information is now historical, this Council was pleased to participate in the audit and appreciated the manner in which the audit was carried out.

The information and feedback provided enabled this Council to thoroughly review and enhance our internal processes.

The audit has therefore provided Council with a very useful starting point from which we will now be able to monitor our processes and ensure there is a process of continuous improvement.

Part 2

Background

VICTORIA'S PLANNING OBJECTIVES

2.1 Planning for land use and development in Victoria is principally controlled through the *Planning and Environment Act* 1987 and the Planning and Environment Regulations 1988. The State's planning objectives are specified in the Act and focus on ensuring the strategic and orderly use and development of land with regard to environmental, social, heritage and community interests.

2.2 The Act also establishes the framework within which the planning system, i.e. the system for dealing with proposals for land use and development operates. The objectives of the framework seek to provide strategic planning, co-ordinated action and policy integration at the State, regional and municipal levels and to address the procedural basis for the planning system.

PLANNING CONTROLS

2.3 Major legislative mechanisms within the planning framework for controlling the development or use of land are planning schemes and planning permits.

Planning schemes and planning scheme amendments

2.4 A planning scheme sets out the policies and requirements for the use, development and protection of land within the area to which the scheme applies. Each planning scheme consists of a number of zones that describe the land uses or developments allowed within the area, such as residential, industrial or rural uses. Zones are complemented by overlays that define specific characteristics such as land liable to flooding or heritage areas, and incorporate specific controls.

2.5 Planning schemes are dynamic documents that reflect the need for changing community attitudes and aspirations towards the development of land. The Act and Regulations provide for all matters concerning the preparation, exhibition and approval of planning schemes and subsequent amendments.

2.6 The planning schemes operating when the audit commenced are being progressively replaced by new format planning schemes. When this process is complete there will be approximately 80 planning schemes in Victoria.

Planning permits

2.7 Where specified in the planning scheme, a planning permit must be obtained before a proposed use or development of land may proceed. The Act and the Regulations address matters related to planning permits including statutory timelines for their processing, information to be supplied by applicants, notification requirements, permit approvals, appeals against decisions and processes and the powers of the Minister for Planning and Local Government.

KEY ROLES WITHIN THE SYSTEM

2.8 Key players within Victoria's planning system are:

- planning and responsible authorities;
- the Minister for Planning and Local Government;
- the Department of Infrastructure and its regional offices;
- panels appointed by the Minister, such as panels to review planning scheme amendments;
- advisory committees;
- the Victorian Civil and Administrative Tribunal; and
- referral authorities.

2.9 In addition, local communities play an important role in the planning system.

Planning and responsible authorities

2.10 The overall strategic context of land use and development for a particular area of the State, within the constraints of State planning policy, is set by the *planning authority* through the development and amendment of planning schemes.

2.11 Responsibility for the administration of the planning scheme including the processing of applications for planning permits and enforcement of the scheme and conditions of permits, lies with the *responsible authority*. In the majority of cases, the planning and/or responsible authority is the local council.

2.12 While the Act specifies the duties and powers of the authorities, the way in which those duties and powers are managed varies. For example, within some councils responsibility for approving planning permit applications may be largely delegated to council officers while in others, the councillors may retain substantial responsibility for such decisions.

Minister for Planning and Local Government

2.13 The Minister for Planning and Local Government has overall responsibility for the State's planning legislation and framework.

2.14 Under the Act, the Minister can appoint himself as planning and/or responsible authority and undertake all the applicable legislative functions. Currently, the Minister is the responsible authority and planning authority on a continuing basis for a number of specific areas including the Port of Melbourne, the State's alpine areas, French Island in Western Port Bay and significant development sites within the City of Melbourne.

2.15 In addition to these functions, the Minister has wide-ranging powers relating to granting exemptions from complying with legislative requirements, making directions to planning authorities and responsible authorities, establishing panels and advisory committees, approving planning scheme amendments, calling-in cases where there is an issue of State policy or intervening in order to expedite the process.

Department of Infrastructure

2.16 At the policy level, the planning framework is administered by the Department of Infrastructure. The Department, through its Head Office and 7 regional offices, also provides administrative support for the Minister in fulfilling his responsibilities under the Act.

2.17 The Head Office role is primarily focused on developing policy, strategies and guidelines, undertaking research and addressing higher level planning matters such as the Planning Reform Program which is discussed later in this Part of the Report. It is also involved at an operational level assisting the Minister in instances where he is the planning and/or responsible authority or where some other form of ministerial intervention has taken place.

2.18 Regional offices have a greater involvement in day-to-day planning matters including liaison with local government councils.

Panels and advisory committees

2.19 The Act requires the Minister to appoint a panel when requested to do so by a planning authority or responsible authority. Panel members are selected from a pool of independent experts from various planning related fields.

2.20 As provided for in the Act, a panel considers the details of a referred matter, including any submissions relating to the proposed amendment or permit, holds hearings and provides recommendations to the planning and/or responsible authority for its consideration, whether it be a local council or the Minister. The recommendations of a panel are not binding.

2.21 Advisory committees may be established by the Minister to provide advice on particular planning issues. As suggested by the title, the committees operate in an advisory capacity only. They may be established for a short period only, during which they provide advice to the Minister regarding specific planning applications, or on an ongoing basis as is the case of the Local Government and Planning Advisory Committee.

2.22 The net costs met by the Department for operating panels and advisory committees, after deducting amounts recouped from proponents of planning scheme amendments, were around $880 000, $900 000 and $1.3 million in each of the past 3 years.

Victorian Civil and Administrative Tribunal

2.23 The Victorian Civil and Administrative Tribunal was established on 1 July 1998 replacing several boards and tribunals including the Administrative Appeals Tribunal. Parties affected by the decisions of planning and/or responsible authorities or unhappy about the planning process may appeal to the Tribunal.

Referral authorities

2.24 The Act provides for planning permit applications to be forwarded to *referral authorities* whose interests may be affected by the granting of a permit authorising the use or development of land. These authorities can be any person, group, agency, public authority or any other body that a scheme specifies, or that are specified in the Act. Examples of a referral authority include the Environment Protection Authority, the Liquor Licensing Commission, catchment management authorities and utility companies.

PLANNING REFORM PROGRAM

Review of Victoria's planning system

2.25 A 1992 review of Victoria's planning system, undertaken by the Perrott Committee at the request of the Government, found that there was:

- a lack of vision for Victoria;
- a cumbersome and expensive development approvals system;
- fragmented local government which was not conducive to proper planning or achieving economies of scale;
- indecision concerning the redevelopment of central Melbourne due to the large number of organisations involved in decision-making and a lack of co-ordination between those organisations;
- no metropolitan-wide program to encourage urban consolidation on an integrated basis; and
- ineffective organisation for planning including an over-emphasis on local aspects of planning and development at a cost to the wider community.

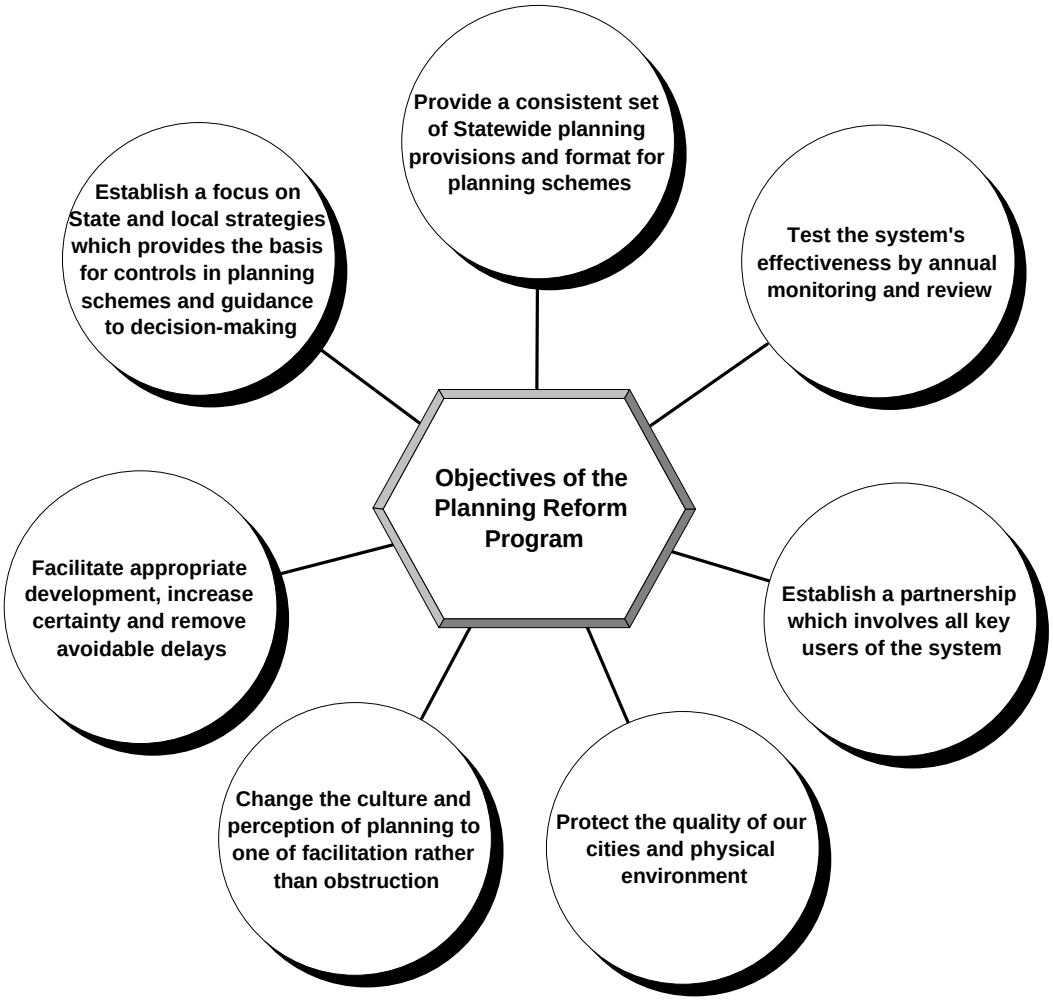
2.26 The Perrott Committee identified that potential investors often found that planning schemes were difficult to use and did not provide certainty about the likelihood of whether a proposal would be approved. The lack of a sound policy and strategic base for schemes and their inconsistency made it difficult to find a suitable location to develop. Once an application for approval had been made, it could often be a slow and expensive road to approval with no certainty at the end of it.

2.27 The Minister for Planning, in his August 1993 statement *Planning a Better Future for Victorians - New Directions For Development and Economic Growth*, referred to the inextricable link between planning, investment and job creation, and signalled the need for a change to planning to better serve the community. The Minister stated that the system was failing the community as it had become too complex and frustrating and had lost perspective on the critical or strategic issues facing Victoria in the 1990s and beyond.

2.28 He said the Department of Infrastructure would be taking action to address problems identified in relation to the categories of planning system reform, strategic planning, information and research, heritage conservation and organisational planning.

2.29 In 1993, the Minister announced a Planning Reform Program, the objectives of which are set out in Chart 2A.

CHART 2A
OBJECTIVES OF THE PLANNING REFORM PROGRAM



Part 3

Conduct of the audit

BASIS FOR UNDERTAKING THE AUDIT

3.1 My predecessor determined that there was a need for this audit to be undertaken on the grounds that planning was seen as:

- a key program that effects the whole community through the impact that it has on the environment, society and the economy; and
- a topical issue of public interest based on the large number of communications to my Office from the public.

3.2 We considered the audit would enhance accountability to the Parliament in terms of assessing the efficiency and effectiveness of a wide range of agencies responsible for implementing the Government's planning policies through the planning system.

3.3 As required under my legislation, the proposed audit was discussed in detail with the Public Accounts and Estimates Committee in 1997. The Committee unanimously supported the inclusion of the audit as a priority in the 1998 performance audit program of my Office.

AUDIT OBJECTIVES

3.4 The overall objective of the audit of Victoria's planning system for the development and use of land was to determine whether certain aspects of the statutory planning system had been efficiently and effectively managed. In particular, the audit examined whether:

- legislative requirements had been effectively complied with in relation to:
  - the processing of planning scheme amendments and planning permits;
  - cases called-in by the Minister for Planning and Local Government or where ministerial intervention had occurred in order to expedite the process; and
  - enforcement of planning schemes and planning permits;
- planning decisions made by Councils or the Minister for Planning and Local Government had been made with due consideration of strategic and policy outcomes and were supported by appropriate documentation;
- processes for assessing planning scheme amendments and permit applications had been clearly defined and were open, fair and efficient;
- the hearings listing process with regard to appeals lodged with the Victorian Civil and Administrative Tribunal enabled appeals to be heard in a timely manner;
- resource management and performance monitoring activities within Councils facilitated efficient and effective administration of the statutory planning system; and
- the Department of Infrastructure fulfilled its role of advising and supporting the Minister in respect of his roles as responsible authority and planning authority and in co-ordinating the State's planning system.

3.5 Due to the integral role that the Minister plays in the planning system, the Department recommended to my Office that the audit objectives be discussed with the Minister prior to their finalisation. Accordingly, detailed discussions were held with the Minister in late 1998. The objectives were agreed with both the Minister and senior departmental representatives prior to entering into an agreement with Audit Victoria to conduct the audit.

SCOPE OF THE AUDIT

3.6 The scope of the audit was designed to complement the objectives outlined in the Minister's *Statement of Intentions* of August 1993 in which he stated there was a need for:

- a strong partnership between State and local government and a process in which industry, planning professionals and the community are respected participants; and
- planning system reforms in relation to the development approvals component of the system to provide:
  - better planning schemes, i.e. simplified, more consistent schemes emphasising State and regional policy that removed unnecessary controls and facilitated desirable straightforward projects; and
  - better approvals procedures, i.e. more efficient and streamlined procedures to facilitate desirable projects of State importance, to encourage planning and responsible authorities to improve their performance and to establish a more efficient appeals system.

Areas covered

3.7 The scope of the audit encompassed an examination of the operations of the planning system, particularly in regard to planning controls, i.e. planning scheme amendments and planning permits. Four key aspects formed the basis of our audit, namely:

- statutory planning practice;
- resource management within local government;
- performance monitoring within local government; and
- the role of the Department of Infrastructure.

3.8 The audit also provided an update of the progress made towards implementing the new format planning schemes against the Government's established timetable. It did not include a detailed examination of the process of development, review and approval of the new format planning schemes under the Government's reform program, as implementation of the reform processes was ongoing at the time of the audit.

3.9 Audit examinations were conducted within the Department of Infrastructure and 8 local councils.

Agencies examined

Councils

3.10 Local councils examined to determine the efficiency and effectiveness of their respective statutory planning operations included:

- City of Banyule;
- City of Bayside;
- City of Casey;
- City of Greater Dandenong;
- City of Melbourne;
- Shire of Mornington Peninsula;
- City of Port Phillip; and
- Shire of Yarra Ranges.

3.11 The selection of councils examined was based on feedback received from within the local government sector, consideration of environmental, social and economic characteristics, and the spread of councils across the Department's regional areas.

Department of Infrastructure

3.12 Within the Department of Infrastructure, the audit examined:

- The adequacy of administrative support provided to the Minister in relation to discharging his legislative responsibilities under the *Planning and Environment Act* 1987, the *Planning Appeals Act* 1980 and the *Victorian Civil and Administrative Tribunal Act* 1998. The audit focused on statutory planning practice and, where necessary, considered certain aspects of the responsibilities of panels and advisory committees established by the Minister; and
- The Department's activities in overseeing statutory planning across the State including providing support to local government, monitoring the performance of planning and/or responsible authorities, performance reporting and addressing identified problems.

3.13 Examinations were undertaken at the Head Office of the Department and its metropolitan North-West and South-East Regional Offices.

3.14 In order to examine the Minister's statutory planning activities, the following 4 specific cases were selected for examination:

- No. 50 Big Pat's Creek Road, East Warburton;
- the former Colosseum Hotel site, West Heidelberg;
- the HMAS Lonsdale (South) site, Port Melbourne; and
- the Mornington Shopping Centre and Railway Gatehouse.

Period covered

3.15 Generally, the audit covered the period from 1996 to 1999. For the purpose of examining planning permits and planning scheme amendments, the sample was limited to those matters initiated between 1 July 1996 and 30 September 1998. Examinations of the samples included activities up to the date of the audit in each particular Council, which varied from April to June 1999.

Sampling methodology

3.16 In order to examine processes applied to dealing with planning scheme amendments and permits, we examined all planning scheme amendments and a random sample of 30 permit applications in each of the 8 Councils processed during the period covered by the audit.

3.17 The percentages obtained from the random sample of permit applications can be used to estimate the corresponding percentages of non-compliance in the entire population for the Councils audited. To assist in arriving at such estimates, 95 per cent confidence intervals have been computed in relation to the specific criteria tested and appear in Table 3A below. These intervals define the upper and lower limits for corresponding percentages of non-compliance across the 8 Councils, at a 95 per cent level of probability.

TABLE 3A
PERMIT APPLICATIONS
AT 95 PER CENT CONFIDENCE LEVELS

	Proportion of permit applications not meeting the criteria (%)				
Sample results	17*(a)*	19*(b)*	21*(c)*	26*(d)*	28*(e)*
Inference across 8 Councils examined -					
lower bound	12	14	16	21	22
upper bound	22	24	26	31	34

(a) Adequate documentation to support the rationale for determining the parties to be notified for permit applications (para. 6.90).

(b) Evidence to support that planning applications had been rigorously assessed in terms of planning controls and applicable policies (para. 6.115).

(c) Planning officers' reports address the relevant provisions of the planning scheme when assessing planning applications (para. 6.122).

(d) Prescribed information submitted at time of lodgement of permit applications (para. 6.77).

(e) Correct fees collected for processing permit applications (para. 7.68).

3.18 To illustrate how the Table can be used to infer total population percentages from the sample percentages, consider a 17 per cent level of non-compliance with a given criterion in the sample. By reference to the Table, it can be inferred that, within 95 per cent probability, the incidence of non-compliance with the criterion in the total population of permit applications processed across the 8 Councils during the period of audit, can be assumed to lie between a range of 12 and 22 per cent.

3.19 The sampling methodology applied in the examination of Ministerial planning scheme amendments processed within the Department is described in Part 4 of this Report.

Limitations to the audit scope

Role of the Minister for Planning and Local Government

3.20 Legal advice presented to me indicated that the Minister's actions could not be examined. While the Minister's actions had been subjected to audit, the advice precludes me from reporting the findings to the Parliament. Importantly, I could not report on the actions of the Minister in terms of whether:

- legislative requirements had been effectively complied with in relation to cases called-in or where Ministerial intervention had occurred to expedite the process; and
- planning decisions had been made with due consideration of strategic and policy outcomes, and were supported by appropriate documentation.

3.21 Given the restrictions as to what I can comment on, reporting on this part of the audit was limited to:

- the extent to which the processes applied by the Department assisted the Minister in meeting his legislative responsibilities; and
- the adequacy of information made available by the Department to the Minister and the documentation of advice received from other sources.

3.22 Further comment on this matter is included in Part 4 of this Report. Transcripts of the legal opinions sought by the former Minister for Planning and Local Government are contained in Appendix A.

Victorian Civil and Administrative Tribunal

3.23 The scope of the audit as originally planned included examining whether the hearings listing process with regard to appeals lodged with the Victorian Civil and Administrative Tribunal enabled appeals to be heard in a timely manner. However, legal opinions of the Victorian Solicitor-General and the Victorian Government Solicitor obtained by the Department of Justice in May 1996, and a subsequent opinion from the Solicitor-General, in relation to an earlier audit of the Children's Court of Victoria, indicated that the Auditor-General has no legislative power to conduct an audit and subsequently report any findings in relation to the functioning of a court.

3.24 Following discussions with the Department of Justice, the Secretary formally advised the Auditor-General in September 1998 that the Solicitor-General had confirmed that the legal advice of 19 June 1996 applied with equal force to the Victorian Civil and Administrative Tribunal and that as such there was no statutory authority for the inclusion of the Tribunal in the performance audit of the State's planning system. The Secretary indicated information available publicly in relation to the Tribunal was not subject to any limitation in terms of reporting.

3.25 The audit of the appeals process took account of the above position and was consequently limited to assessing whether the selected Councils had complied with their statutory requirements.

Public input sought

3.26 As part of the information gathering process, an advertisement was placed in the press, in April 1998, inviting comments from the public concerning their opinions in relation to Victoria's planning system. In addition, my staff held discussions with peak bodies such as the Master Builders' Association, the Royal Institute of Architects, the Property Council of Australia and the Municipal Association of Victoria as well as community groups. Feedback from these sources was taken into account in framing the objectives and scope of the audit.

Compliance with auditing standards

3.27 The audit was performed in accordance with Australian Auditing Standards applicable to performance audits and accordingly included such tests and other procedures considered necessary in the circumstances.

HIGH LEVEL CRITERIA

3.28 A number of important principles, central to the efficient and effective operation of the planning system, are set out below:

- planning decisions need to be adequately documented and be made on a timely basis;
- affected parties need to be given the opportunity to participate in the planning process by accessing relevant information and having the opportunity to make submissions or objections on the proposals;
- all objections or submissions from affected parties need to be considered when decisions are made;
- decisions need to be made with reference to clear strategic directions or policies and expert advice;
- decisions should be made by parties empowered with making such decisions;
- decision-makers must be accountable to all parties including the public for their decisions;
- avenues should exist for timely appeal of decisions; and
- decisions need to be enforced.

RESOURCING THE AUDIT

3.29 The conduct of the audit was undertaken by Audit Victoria under agreement with the Auditor-General.

3.30 Examinations of the statutory planning practices of local Councils and the Minister were undertaken under contract to Audit Victoria by Kullen Consulting Services, C.L McRobert Planning, Meredith Withers and Associates, John Bennett and Associates, Keaney Planning and Research Consultants and David Rae and Associates. Each of the contractors has suitable qualifications and extensive experience in local government planning.

3.31 Assistance in selecting the sample of planning permits and planning scheme amendments subjected to audit and analysing the results of the audit examination was provided to the audit team by Dr Jenni Rice, Senior Lecturer, Victoria University of Technology. Dr Rice holds a PhD (1985) in mathematical social psychology and has since 1976, taught statistics and research methods.

ASSISTANCE PROVIDED TO MY STAFF

3.32 Significant support and assistance was provided to my officers by the management and staff of the Department of Infrastructure, and the selected local councils. In the majority of Councils examined, discussions were held with Councillors in relation to their role in the operation of the planning system.

Part 4

Administrative support provided to the Minister

OVERVIEW

Role of the Department

4.1 The Minister for Planning and Local Government has overall responsibility for the State's planning legislation and framework.

4.2 At the time of the audit, the planning framework was administered by responsible authorities and planning authorities. While the Department of Infrastructure had no statutory role, its role at an operational level was to advise the Minister responsible for planning legislation and to assist the Minister in instances where he was the responsible and/or planning authority, or where some other form of ministerial intervention in planning matters had taken place. In exercising its role, the Department consulted with the planning community over a range of issues.

Administrative role of the Minister

4.3 Under the *Planning and Environment Act* 1987 the Minister has wide powers to:

- prepare and approve a planning scheme;
- prepare and approve an amendment to a planning scheme;
- exempt a planning authority or himself, while performing the role of a planning authority, from observing the public notification requirements for a proposed planning scheme amendment;
- intervene in a planning scheme amendment, thereby assuming the role of planning authority in respect of the amendment;
- call-in a planning permit application lodged with the responsible authority thereby assuming the role of the responsible authority in granting or refusing the permit;
- call-in or intervene in an application for a planning permit that is subject to appeal at the Victorian Civil and Administrative Tribunal and direct that the matter be determined by the Governor-in-Council; and
- make a recommendation to the Governor-in-Council in relation to applications for planning permits subject to appeal that have been called-in.

4.4 The Minister has the legislative power to appoint himself as a planning and/or responsible authority and in some areas of the State the Minister performs these roles on a continuing basis. In his capacities as planning and/or responsible authority, he undertakes all planning functions required under the legislation such as preparing, approving, administering and enforcing planning schemes and approving planning permits.

OVERVIEW - *continued*

4.5 As a result of exercising his powers to call-in or intervene in planning cases and to appoint himself as a planning and/or responsible authority, the planning responsibilities of councils are effectively transferred to the Minister. As a consequence, the Minister assumes an integral role in carrying out day-to-day operations within the State's planning system.

4.6 In carrying out his legislative responsibilities, the Minister can obtain advice from the Department and various other sources above and beyond that required in the relevant legislation. I recognise that there is no legislative requirement in the Act for the Minister to keep a record of the source of any advice he obtains or to document the rationale for his decisions.

4.7 The Minister's responsibilities, in a strict legal sense, are considered met if his decisions, for example, in relation to exemptions from notifications and call-ins are supported by documentation that merely includes direct quotes of the legislative criteria under which such actions may be taken.

4.8 According to the Department, *"the Minister's accountability is to Parliament and if additional requirements as to reasons for decisions are to be prescribed, this should be done by the Parliament"*.

4.9 In my opinion, in order to enhance open and transparent planning decision-making, there is a need for appropriate documentation to be maintained by the Department to assure stakeholders that the Minister has:

- justified his decisions of an administrative nature;
- maintained appropriate standards of:
    - integrity in terms of maintaining public trust by acting in the public interest; and
    - impartiality in treating all stakeholders fairly, basing actions and decisions on a consideration of all relevant facts while implementing government policy equitably;
- prevented patronage or favouritism by not using his position to obtain a private benefit for someone else; and
- acted with propriety and upheld high standards of ethical conduct.

Legal challenge placing constraints on reporting audit findings

4.10 It is not within my legislative power to question the merits of the policy objectives of the Government, nor has it been my practice to comment on existing legislation. Clearly, policy decisions or government policy directions of the Minister, as distinct from actions of an administrative nature, fall within the definition of policy objectives in the *Audit Act* 1994.

OVERVIEW - *continued*

4.11 In terms of auditing in the public interest, I found it necessary to examine certain key administrative actions of the Minister specified in the legislation and the appropriateness of advice and support provided by the Department to the Minister when undertaking his roles as planning and/or responsible authority and in co-ordinating the State's planning system.

4.12 In doing so, I was fully aware of various audit precedents where disputation occurred as to the boundaries of government policy. As an illustration, it is worth noting the following comments expressed by the former Auditor-General in Special Report 38, *Privatisation: An audit framework for the future* at paragraphs 1.7 and 1.9 :

> *"What constitutes government policy compared to instruments of policy or, in layman's terms, the processes to implement policy continues to be a contentious issue. In a letter to the then Premier, the Honourable J. Cain on 14 November 1989, I foreshadowed that the proposed legislative definition of government policy had the potential to create disputation rather than providing clarification of the audit mandate. In that letter I expressed the following views:*
>
> - *"the … legislation does not distinguish between policy and instruments of policy;*
> - *whether or not a specific issue is policy is determined by its nature and characteristics, rather than (its) source;*
> - *references … to budget papers and other documents are by themselves inconclusive in terms of providing guidance on what constitutes government policy; and*
> - *the reference to direction of a Minister provides an opportunity for management to avoid Parliamentary scrutiny by the simple device of channelling all administrative decisions by the agency through its Minister".*

4.13 In operating within my legislative mandate, I was able to reach conclusions as to whether the Minister's decisions of an administrative nature to approve planning scheme amendments, grant exemptions from the notification process and call-in or intervene in cases were soundly based.

4.14 It is with some regret that due to legal opinions (refer to Appendix A of this Report) presented to me, I have been constrained from reporting my findings on the basis that the administrative role undertaken by the Minister was considered to be outside my mandate because the Minister has not been defined as an "authority" within the Audit Act. Accordingly, I am not in a position to report on whether planning decisions of an administrative nature by the Minister were taken with due consideration to strategic and policy outcomes as required under the legislation and were supported by appropriate documentation.

OVERVIEW - *continued*

4.15 In my opinion, it is a matter for the Parliament to decide whether, in those cases where a Minister has been given an extensive administrative role within legislation as distinct from a policy development role, the administrative actions should be subject to scrutiny by my Office on behalf of the Parliament. It is my view that in such circumstances accountability would be greatly enhanced if the doubt cast over my legislative powers to provide assurances to the Parliament on the operations of the Government by opinions provided by the Department from the Solicitor-General and the Government Solicitor was addressed by the Parliament when changes to the Audit Act are next considered.

4.16 Given this contextual background and the restrictions as to what I can comment on, reporting in this Part of the Report has been limited to:

- the extent to which the processes applied by the Department assisted the Minister in meeting his legislative responsibilities; and
- the adequacy of information made available by the Department to the Minister and the documentation of advice received from other sources in relation to planning scheme amendments, planning permit applications and appeals called-in by the Minister, and 4 specific case studies.

Audit findings

4.17 Overall, I found that the actions of the Department in supporting the Minister's role in statutory planning in relation to planning scheme amendments and matters called-in enabled him to technically fulfil his legislative responsibilities. My specific conclusions are set out below:

- While the legislation does not prescribe a time limit for a planning authority to process a planning scheme amendment, the processing of amendments generally occurred within a satisfactory timeframe;
- Explanatory Reports accompanying proposals submitted by the Department to the Minister, in a number of cases, lacked detailed explanations as to the purpose or intention of the proposed amendment;
- In preparing amendments, as the quality of information varied it was difficult to assess the extent and nature of consideration given by planning officers to the environmental, social and economic effects and planning objectives;

OVERVIEW - *continued*

- There was no legislative requirement for documentation to be maintained by the Department substantiating the basis for the Minister granting himself an exemption from complying with the notification requirements for planning scheme amendments. While advised by the Department that criteria were applied in considering whether or not to invoke exemption provisions of the Act, there was no documentation to determine the extent to which the criteria had been applied. After assessment against criteria we established, I was satisfied that evidence existed within the Department to substantiate that an open and fair process had been followed for the planning scheme amendments examined;
- Documentation existed to indicate that advice provided to the Minister by departmental planning officers for approval of planning scheme amendments gave consideration to relevant planning matters including submissions, strategic policies and objectives, environmental considerations, and social and economic factors where relevant. Nevertheless, as the quality of documentation supporting the assessment of the relevant planning considerations varied, it was difficult to assess the nature and extent of that consideration. In addition, the Department did not maintain documentation surrounding the basis for the Minister's decisions to grant or refuse applications for planning scheme amendments;
- The Department failed to satisfactorily document the reasons for waiving fees amounting to approximately $7 000 in relation to 5 planning scheme amendments approved by the Minister;
- In the majority of cases where the Minister called-in permit applications and appeals, aside from quoting the legislative criteria, the Department did not maintain documentation to adequately support the decisions to call-in cases. In considering whether to grant or refuse permits, appropriate reports and other relevant documentation were made available by the Department to the Minister; and
- In some cases, the call-in process and the establishment of advisory committees and panels resulted in the achievement of improved planning outcomes as it provided the opportunity for a modified proposal to be negotiated between the parties.

4.18 The examination of the 4 specific cases revealed that invariably, apart from documentation that quoted the relevant technical criteria under the legislation, evidence was not maintained by the Department to fully explain the basis for key advice provided to the Minister to undertake his legislative role. For example, in relation to the Big Pat's Creek site, I would have expected that a full explanation of deliberations concerning an offer received by the Minister in November 1995. In this case, the landowner offered to transfer 24 hectares of land to the Department of Natural Resources and Environment if the local planning controls could be amended to allow subdivision of the remaining portion of the land into 4 lots ranging in area from 2.2 to 2.7 hectares. While the land was not transferred to the Department, the Minister agreed to prepare the amendments.

OVERVIEW - *continued*

Accountable and transparent decision-making

4.19 In contrast to the high level of accountability demanded of council officers, we found that a substantially lower standard was accepted at a departmental level in instances where similar roles were undertaken.

4.20 I am of the view that good management practice would require as a minimum that the Department in supporting the Minister maintain records of all submissions, reports and other advice obtained from a wide range of sources used in the decision-making process, particularly given the high degree of public scrutiny and debate surrounding planning issues and decisions. Furthermore, it would be reasonable to assume that the public would expect in the interests of fairness and to ensure that accountability is preserved, the rationale for decisions reached be fully transparent and adequately documented. However, in reaching this view, I recognise that in certain cases access to documentation by interested parties, for example, through freedom of information legislation, could have far reaching legal ramifications and might influence the type and extent of documentation that is prepared by the Department to support decisions on sensitive issues.

4.21 In this context, it is my view that the Department should implement effective documentation standards that address issues relating to planning outcomes. Specifically, such documentation standards should be aimed at ensuring:

- the processing of development proposals is conducted and managed efficiently and effectively;
- reports produced meet the needs of users, are soundly based and are fairly presented; and
- key procedures and principles established by the Department are consistently followed.

4.22 The adoption of such a system would:

- enhance accountability;
- engender the confidence of developers and the community in the planning system; and
- provide an assurance that the processes for assessing planning scheme amendments and call-ins are open and fair and lead to decisions that are soundly based.

INTRODUCTION

4.23 In order to examine the activities of the Department in supporting the Minister in his role in the State's planning system, various comments of a descriptive nature have been made throughout this Part of the Report concerning his responsibilities. It is important that such comments are not interpreted as a criticism of the actions of the Minister, but are seen as providing an appropriate context for examining the role of the Department.

AMENDMENTS PREPARED BY THE MINISTER

Background

4.24 As outlined in Part 2 of this Report, planning schemes provide the key framework for controlling the development or use of all private and public land in Victoria. From time-to-time, amendments to planning schemes are necessary to implement changes to policies and controls and might include:

- implementing new State, regional or local policies, such as an amendment which introduces the Government's urban consolidation policy;
- rezoning land to provide for a major new development, such as a food processing plant or a shopping centre;
- reserving land for a public purpose, or removing the reservation when it is no longer needed;
- setting administrative arrangements for the scheme, such as exempting classes of applications from the notification requirements, or setting out who is the responsible authority for issuing planning certificates; and
- correcting technical mistakes or anomalies in the planning scheme.

4.25 An amendment to a planning scheme is prepared by a planning authority as specified by the *Planning and Environment Act* 1987. In most cases the initiating planning authority is a local council, but it may be a public authority, the Minister administering the Act, another Minister, or anyone specified by the Minister under the Act. Those persons or authorities requesting an amendment to a planning scheme are known as "proponents".

4.26 When preparing an amendment, the planning authority must have regard to the processes for considering proposals to amend planning schemes, and preparing adopting and approving amendments that are set out in the Act.

4.27 Under the Act, the Minister may prepare an amendment to any provision of a planning scheme. Councils may also prepare amendments to planning schemes. Part 6 of this Report comments on planning scheme amendments prepared by councils. The statutory requirements for the preparation and approval of an amendment to a scheme encompass the following stages:

- preparation;
- exhibition of the proposed amendment and, unless an exemption has been granted, notification to affected parties; and
- adoption and approval.

4.28 The final stage of the amendment process is the publication of a Notice of Approval in the *Victoria Government Gazette* and the presentation of the Notice to the Parliament.

4.29 A random sample of 36 out of a total of 150 planning scheme amendments prepared within the Department between 1 July 1996 and 30 September 1998 relating to the 8 Councils selected for audit was examined. During this period, the Department prepared around 1 500 planning scheme amendments.

4.30 Twenty-five of the amendments in the sample resulted in changes to the planning controls applying to particular parcels of land. This enabled applications to be made for the use, development or subdivision of that land for purposes that were previously not allowed. Fifteen of these types of amendments were for major projects in the central area of the City of Melbourne.

4.31 The remaining 11 amendments related to such things as policy changes and included the introduction of planning controls over former Commonwealth land.

Timeliness of processing

4.32 The Act does not prescribe a time limit for a planning authority to process a planning scheme amendment. However, amendments automatically lapse if they have not been adopted by the planning authority within 2 years from the date notice of preparation of the amendment was published in the *Victoria Government Gazette.*

4.33 Under the Act, the Minister may direct a planning authority to take any steps in respect of an amendment to avoid further delay in the process. If the planning authority fails to take the required step within the specified time, the Minister may take that step and all other steps required to be undertaken.

4.34 We found that in 30 of the planning scheme amendments examined, the Minister formally agreed to their preparation on the same day as they were adopted and approved as evidenced by the Minister's signature on the relevant documentation. This resulted largely from the Minister's legislative powers that grant him exemptions from giving notice of amendments. In many of these cases, the Minister granted himself an exemption from the one month exhibition period. Amendments prepared by the Minister can be approved much more quickly than those which follow the usual notification process. Examples of such amendments are listed in Table 4A.

TABLE 4A
EXAMPLES OF MINISTERIAL PLANNING SCHEME AMENDMENTS PREPARED, ADOPTED AND APPROVED ON THE SAME DAY

- The amendment changed the planning controls which applied in the Business Park and Yarra Waters precincts in the Melbourne Docklands to facilitate the preferred development options.
- The amendment removed the local variations for the dimensions of car parking spaces which applied in Berwick to accord with the metropolitan standard. The Council supported the amendment after the Minister consulted it as provided by the Act.
- The amendment corrected drafting errors in the planning scheme identified during a Victorian Civil and Administrative Tribunal hearing on the development plan relating to land to be developed for a shopping centre.

4.35 In the other 6 amendments, the time taken for processing took up to 14 months. Factors affecting the lengthy timeframe were:

- appointment of an independent panel, the conduct of its hearings and preparation of the panel's report;
- consultation with councils by the Minister;
- re-notification of affected parties due to shortcomings in the initial notification procedures; and
- process of negotiation and consultation between Minister and proponents in order to achieve a revised proposal that more appropriately addressed the design objectives for the site.

4.36 In my opinion, taking into account the particular circumstances surrounding each of the 36 amendments examined, the processing of planning scheme amendments by the Department generally occurred within a satisfactory timeframe.

Preparation stage

4.37 Requests to the Minister to prepare amendments were usually made by legal or planning professionals representing property owners, and following discussions with Councils. In 4 cases examined, the Minister agreed to assume responsibility for preparing the amendments when requested by the proponents. In 2 of these cases, the Councils were willing to prepare the amendments and undertake the usual exhibition process. However, as the proponents considered the exhibition process unnecessary they approached the Minister directly. In the third case, the Council supported the amendment request but did not have the resources to prepare the amendment. In the other case, described in Table 4B, the Council did not support the amendment.

TABLE 4B
EXAMPLE OF A PLANNING SCHEME AMENDMENT
PREPARED BY THE MINISTER AFTER COUNCIL'S REFUSAL

The amendment changed the use and height controls which applied to a parcel of land to allow it to be used for serviced apartments.

In January 1997, the proponent requested the Council to amend the scheme to provide for a building 20 metres high, that is, 6.5 metres higher than allowed under the existing planning scheme, and build serviced apartments that were prohibited in that zone. The Council rejected the request as the amendment was at variance with the local policy.

The proponent approached the Minister who prepared the amendment and then appointed an Independent Panel to consider the development proposal, receive submissions and hold hearings. In its report dated 2 February 1998, the Panel concluded *"… the development was out of scale with the surrounding area; did not reflect the form of the existing buildings, the streetscape nor its neighbours. The building did not exhibit any benefits that can be traded off against the increased height."* The Panel considered that the proposed development should not be permitted to proceed.

In response to the Panel's report, the proponent prepared a revised development proposal which was circulated to all submitters and was supported by the Council. The Amendment, modified in accordance with the revised development proposal, was then approved by the Minister in August 1998.

Explanatory reports

4.38 Each proposed planning scheme amendment submitted by the Department to the Minister is accompanied by an explanatory report that explains the purpose or intent of the amendment. The explanatory report for a number of amendments lacked detailed explanations as to purpose and effect of the proposed amendment. It is important that the explanatory report addresses these matters in a clear and concise manner, so that interested parties can understand how they might be affected if the amendment is approved. Table 4C provides an illustration of these amendments.

TABLE 4C
EXAMPLE OF A PLANNING SCHEME AMENDMENT LACKING IN DETAILED EXPLANATIONS

In 1996 an amendment approved by the Minister for the development of a major football stadium established a requirement for construction of a sound-wall between 2 spectator stands to help allay fears about excessive noise, a contentious issue with residents at the time the buildings and works were approved. The Panel hearing submissions for the amendment recommended that a sound-wall be constructed to help to allay the residents' fears. The sound wall was not constructed.

In 1997, a further amendment relating to the development and use of a corporate entertainment facility at the stadium was requested by the proponent. The Council was formally requested to comment on the amendment as provided for in the Act and indicated that the sound-wall should be retained and constructed. The proponent's acoustic consultants advised that the sound-wall was not necessary to enable the Environment Protection Authority's requirements to be achieved.

The amendment request prepared by the proponent did not address the requirement to construct the sound-wall. The removal of the requirement to construct a sound-wall was not addressed in the explanatory report or the Notice of the Amendment prepared by the Department.

In March 1998, the Minister approved the amendment which removed the requirement for the sound-wall to be constructed.

Following approval of the amendment, the Minister received a number of letters of complaint.

Matters considered by the Minister

4.39 When preparing an amendment, the Minister must have regard for the following matters, which are set down in the Act:

- State, regional and local policies and strategic directions;
- significant effects the amendment might have on the environment; and
- the Minister's Directions.

4.40 Consideration may also be given to the social and economic effects of the amendment.

4.41 To assist the Minister in preparing amendments, the Department of Infrastructure investigates the planning merits of proposals and provides recommendations to the Minister. Information that supported departmental recommendations and substantiated the extent and nature of considerations given by its planning officers to the environmental, social and economic effects of the amendment and planning objectives was not required to be documented under the legislation. As the quality of that documentation varied, it was difficult to assess the extent and nature of consideration given by planning officers.

4.42 The Minister, in preparing planning scheme amendments, can take into account advice from a range of sources other than from the Department such as councils, independent panels, project proponents, objectors, Cabinet and Parliamentary colleagues, residents association organisations and associations including the National Trust and "Save Our Suburbs", and the Property Council of Australia. Our examination disclosed that the Department had not maintained a record of the source or details of such advice.

4.43 The Department needs to consider the feasibility of implementing a system that enables an independent record to be maintained of the sources of all advice provided to the Minister on planning matters.

Notification of parties affected by an amendment

Background

4.44 The Act details the notice requirements for amendments. In summary, the planning authority is required to give notice of its preparation of a planning scheme amendment to:

- prescribed Ministers and public authorities; and
- Ministers, public authorities, councils and owners and occupiers of land that may be materially affected by the amendment.

4.45 The legislation also requires a notice to be published in a local newspaper and the *Victoria Government Gazette*. The usual notice requirements include a one month exhibition period, during which time the planning authority may receive submissions about the amendment from those persons who oppose the proposal, as well as other interested parties. If submissions are received requesting a change to the amendment, the planning authority must decide whether to change or abandon the amendment or to refer the submissions to an independent panel.

4.46 The Minister has the power to:

- exempt a planning authority from certain notice requirements, and to impose conditions on that exemption *"… if the Minister considers that compliance with any of those requirements is not warranted or that the interests of Victoria or any part of Victoria make such an exemption appropriate"*;
- grant himself an exemption from all or any of the legislative notice requirements in respect of an amendment he prepares in his capacity as a planning authority, on the same basis that he exempts any other planning authority; and
- consult with the responsible authority or any other person before exercising the above exemption powers.

Supreme Court decisions

4.47 The power of the Minister to exempt himself from the notification requirements has been challenged in cases brought before the Supreme Court. The Court's decisions in *Mietta's Melbourne Hotel Limited v. Roper* (1988) 1 AATR 254, *Antoniou v. Roper* (1990) 4 AATR 158, and *Grollo Australia Pty Ltd v. Minister for Planning and Urban Growth* (1993) 1 VR 627 concluded that:

- it (the Court) may not review the opinion reached by the Minister as to whether an exemption is warranted; and
- in deciding whether to exempt himself or not, the Minister is not bound by the rules of natural justice.

4.48 In light of the Supreme Court decisions, we focused on examining the procedures adopted by the Department in providing administrative support to the Minister in undertaking his legislative role in terms of exempting planning authorities, including himself, from the notification requirements.

Examination of notification exemptions

4.49 We were advised by the Department that criteria established some 10 years ago, after the proclamation of the Act, are still applied when considering whether or not to invoke the exemption provisions of the Act as it is of the opinion they generally remain reasonable and appropriate. At that time, the Minister advised all councils that one or more of the following criteria needed to be substantiated before granting of an exemption would be considered:

- *Public interest* - the proposed change is of such a degree of importance that further public notification is neither warranted nor relevant. The matter will have been the subject of considerable publicity and the views of interested parties will be known;
- *Policy* - the proposed change implements explicit government policy;
- *Extreme urgency* - public or private interests would be significantly prejudiced if the proposed change was not approved forthwith;
- *Anomaly* - conflicting or unachievable provisions are removed or modified and where the valid intent is clearly evident;
- *Untenable situations* - the provisions are clearly unjust or in error;
- *Hardship* - a quick change is required in the case of genuine hardship or distressing circumstances which are not caused by poor business decisions; and
- *Triviality* - the planning effects are inconsequential and correct technical mistakes.

4.50 Notwithstanding the Department's advice, the extent to which these criteria had been applied by the Department, if at all, was not evident.

4.51 In response to our finding that these criteria had not been reviewed since the proclamation of the Act in 1988, the Department advised that given the time that has elapsed since their introduction, it may be appropriate to review them.

4.52 The Department should periodically review the criteria used in determining exemptions with a view to ensuring they remain relevant and appropriate.

Audit criteria

4.53 We considered that the above criteria were not suitable to assess whether the decision made impinged on an open and fair process and whether advice from the Department to the Minister gave due consideration to the legislative requirements, i.e. that an exemption from giving notice was warranted or that the interests of Victoria made an exemption appropriate. To achieve this objective, we developed the following criteria:

- the nature and the effect of the amendment. What does the amendment actually do?;
- *Why is an exemption from notice requested or required?* In respect of an amendment the Minister prepares in his capacity as a planning authority, have the tests for granting an exemption been clearly established as applicable in the particular case?;
- *Who will be affected by the amendment?* Will the amendment result in unreasonable material detriment to any person?; and
- *Have affected or interested parties had the opportunity to comment on the proposed amendment in an informal manner?* If so, was this opportunity a reasonable substitute for the Independent Panel process? Was there an opportunity for a second independent assessment of the amendment?

4.54 In relation to 4 of the 36 amendments examined, 2 followed the usual notice and exhibition process and the third was exempt from the notice requirements of the Planning and Environment Act in accordance with the *Casino Control Act* 1991. The fourth was a request to prepare an amendment which was refused by the Minister and therefore did not proceed beyond the request stage.

Open and fair process

4.55 For the remaining 32 amendments which included changes in government policies, corrections of drafting and map errors or rezoning of land or changes to height controls, the Minister granted himself an exemption. Such a high proportion may give an initial impression that local Councils and other parties affected by amendments were treated harshly by the Minister and without regard to due process. However, we found that in relation to the planning scheme amendments examined, although they had been exempted from the notification requirements, prior consultation had taken place with the relevant responsible authority and affected parties, where necessary.

4.56 Overall, using our criteria, evidence existed within the Department to substantiate that an open and fair process had been followed where the Minister decided that the normal notification requirements would not apply.

Lack of management trail to support the decision to exempt notifications

4.57 An *Exemption from Notice* form is signed by the Minister to formally document his decision to invoke the exemption provisions of the Act. We were satisfied that the notice form technically complied with the legislation to the extent that it mirrored the precise words in the Act. There was no legislative requirement for the planning basis of the Minister's decision to be fully documented or explained on the departmental file. However, in my opinion, there is a need for the Department in advising the Minister to explain *why* notification is not warranted or *how* the interests of Victoria make such an exemption appropriate and for such explanations to be documented.

Shortcomings in the notification and exhibition processes

4.58 Failure to follow the appropriate notice and exhibition procedures for an amendment could result in protracted delays through the extension of the submission period, recommencement of the notice and exhibition procedures or appeals to the Victorian Civil and Administrative Tribunal.

4.59 Of the 36 amendments examined, only 2, which both related to amendments to the Melbourne Planning Scheme where the Minister is the responsible authority, were subject to the usual notice requirements. In both cases, the following defects, which according to specialist advice could have brought into question the validity of the process, were observed:

- The first amendment related to a serviced apartment development in Carlton. Defects found in the notification and exhibition processes were as follows:
  - the notice of preparation of the amendment was not placed in the *Victoria Government Gazette*;
  - the prescribed authorities were not notified; and
  - the amendment was not available for inspection until after the exhibition period had commenced.

  These defects were subsequently rectified by the re-notification of the amendment which was arranged by the Department, and an extension of the period for interested parties to lodge submissions; and
- The second amendment related to a residential development which added 7 floors to a Flinders Gate building. Notices were hand-delivered to surrounding owners and occupiers on 22 November 1996 after the one month exhibition period had commenced on 7 November 1996. This defect did not result in the re-commencement of the notice and exhibition procedures.

4.60 The Department should consider implementing a structured process that would provide an improved level of quality control. Such a process should include completing a checklist with sign-off provisions for officers to ensure that all relevant requirements relating to notice and exhibition procedures are routinely addressed.

Decision-making process

4.61 In approving an amendment, 2 documents are usually provided by the Department to assist the Minister to assess the planning merits of the amendment and process it in accordance with the legislation. These documents comprise a detailed checklist summarising major issues and procedural matters and a planning officer's report.

4.62 In terms of the 2 documents prepared by the Department, the completeness of the checklists and the quality and accuracy of planning officers' reports varied. For example, in one instance the address of the land was incorrectly described in the *Notice of the Amendment* and in 2 instances the notice requirements were not completed before commencement of the exhibition period.

4.63 While most of the errors were relatively minor, they reflect poor attention to detail and a failure to check documentation at the appropriate level within the Department. Mistakes of this nature in documentation may have legal ramifications or create the need for further amendments.

4.64 In relation to the 36 amendments chosen for examination, we found that documentation existed to indicate that advice provided to the Minister by departmental planning officers for approval of planning scheme amendments gave consideration to submissions, strategic policies and objectives, environmental considerations and social and economic factors where appropriate. Nevertheless, as the quality of documentation supporting the assessment of the relevant planning considerations varied, it was difficult to assess the nature and extent of the consideration given to those matters by departmental officers.

4.65 However, in relation to the 4 case studies examined, which did not form part of the random sample, we found that there was a lack of documentation maintained by the Department to fully explain the basis of key advice provided to the Minister. Our findings in relation to the case studies are included later in this Part of the Report.

4.66 In addition, we found the Department did not maintain documentation that supported the basis for the Minister's decisions to grant or refuse requests to amend planning schemes. This is a key weakness that requires immediate attention given the increased involvement of the Minister in planning matters.

Fees payable for planning scheme amendments

4.67 Unless waived under the Planning and Environment (Fees) Regulations 1988 a fee is payable by the person seeking an amendment to a planning scheme for each stage of the amendment process. Fees payable for the various stages range from $700 to $1 410. Further comment on fees is included in Part 7 of this Report.

4.68 In relation to the 16 amendments for which fees had been charged, the amounts charged were in accordance with the Regulations and had been collected.

4.69 The Regulations allow the planning authority or the Minister to waive or rebate the payment of a fee for an amendment to a planning scheme if the planning authority or the Minister consider that the circumstances of any amendment are such that it would be unreasonable or undesirable to charge the prescribed fee. The Act specifies that a fee is not payable by a planning authority to itself.

4.70 In considering when to waive or rebate a fee, the matters to be taken into account include, but are not limited to, whether the amendment:

- is intended to implement State, regional or local policy;
- removes errors or anomalies;
- imposes no appreciable burden or a lesser burden than usual on the services provided by the planning authority;
- replaces an amendment that has been through the process and withdrawn;
- rewrites and restructures the scheme to make it more readily understood, without changing planning policy;
- implements a general review of the planning scheme, is to implement a new use or development strategy or is otherwise designed to upgrade and improve the scheme in the public interest;
- has been requested by a person or group standing to gain financial benefit from the approval or is otherwise intended to financially benefit an owner or group of owners; or
- combines more than one separate item into one amendment.

4.71 We found that fees were waived for 19 of the 35 amendments prepared by the Minister. In relation to 5 of these amendments, the Department failed to satisfactorily document reasons for waiving fees amounting to approximately $7 000. In relation to the remaining 14 amendments, the reasons for waiving the fees were in accordance with the Regulations.

4.72 The Department should document the reasons where fees have been waived in all cases.

❑ ***REPONSE*** *provided by the Acting Secretary, Department of Infrastructure*

These cases will be reviewed. Procedures are being established to ensure that monies due are collected or formal exemptions are obtained.

CALL-INS BY THE MINISTER

Background

4.73 The Minister is empowered, under the Act, to call-in and decide a planning permit application that has been lodged with a responsible authority. The Minister may direct the responsible authority to refer a planning permit application to him if it appears that:

- the application raises a major issue of policy and that the determination of the application may have a substantial effect on the achievement or development of planning objectives;
- the decision on the application has been unreasonably delayed to the disadvantage of the applicant; or
- the use or development to which the application relates is also required to be considered by the Minister under another Act or regulation and that consideration would be facilitated by the referral of the application to the Minister.

4.74 A responsible authority may also request the Minister to decide an application for a planning permit and if he agrees, the authority must refer the application to the Minister.

4.75 Where any objections or submissions are received by the Minister in relation to an application he has called-in or had referred to him under the Act, the application must be referred to a panel established by the Minister. The panel must give any person who made a submission or objection a reasonable opportunity to be heard, and report to the Minister. Although the recommendations of a panel are not binding on the Minister, before deciding on the application he must consider the panel's report, the planning scheme and any matters required under the Act.

4.76 Under the *Planning Appeals Act* 1980, repealed in June 1998, the Minister could direct the Registrar of the former Administrative Appeals Tribunal to refer an appeal to the Governor-in-Council for determination. In these cases, the determination by the Governor-in-Council was based on the recommendation of the Minister.

4.77 In June 1998, the *Victorian Civil and Administrative Tribunal Act* 1998 was proclaimed establishing the Victorian Civil and Administrative Tribunal and mirroring the referral provisions in the repealed legislation. The legislation requires the Minister to be satisfied that *"… the appeal raises a major issue of policy and that the determination of the appeal may have a substantial effect on the achievement or development of planning objectives"*.

4.78 Unlike call-ins made under the Planning and Environment Act, the process for consideration of call-ins under the Planning Appeals Act and the Victorian Civil and Administrative Tribunal Act is not set down in the legislation, and there is no requirement for the Minister to appoint an independent panel which can consider submissions or make recommendations for the Minister's further consideration.

Call-ins examined

4.79 According to the Department, in view of the number of planning permit applications made and appeals lodged across the State over the past few years, the level of Ministerial call-ins was very low. For example, for the period November 1992 to June 1999 planning appeals lodged with the Tribunal totalled around 15 000 of which the Minister called in 111. In relation to the 8 Councils examined, the Minister called-in 6 planning applications and 6 appeals under the relevant legislation between 1 July 1996 and 30 September 1998.

4.80 We examined the call-ins for the 8 Councils to assess the adequacy of documentation maintained by the Department to support the decisions to call-in cases and whether in considering granting or refusing permits, appropriate reports and other relevant documentation were made available by the Department to the Minister.

4.81 Permit applications called-in that were examined related to:

- 10 residential units and associated basement car parking;
- a 4 lot subdivision;
- refurbishment of an existing building and works to a cliff face;
- relocation of a loading bay at a shopping centre;
- establishment of a safe boat harbour; and
- demolition of heritage-graded buildings and the development of land for an education centre, comprising 3 academic buildings, serviced apartments and a multi-level underground car park.

4.82 Call-ins examined by us related to appeals for:

- 10 residential units and associated car parking;
- the construction of 3 residential units;
- waiving car parking requirements to enable the top floor of an existing building to be used for an office;
- development of a public car parking facility;
- subdivision of land into 8 lots and use of each lot for a house site and the gifting of part of the land to the Crown; and
- 5 very large promotional signs to be attached to an hotel on the city fringe.

Basis for call-ins of applications and appeals

4.83 We found that in each of the 6 permit applications examined, the Minister's decision to call-in the application was based on the legislative provision that the application *"… raised major issues of policy and its determination may have a substantial effect on the achievement or development of planning objectives"* or *"… that the decision on the application has been unnecessarily delayed to the disadvantage of the applicant"*.

4.84 The reasons for the Minister's decisions are not required by legislation to be documented, explained or made known to the affected parties. In relation to the Department's role of providing administrative support for the Minister, we found in the majority of cases that neither documentation held, nor letters issued, by the Department fully explained how the circumstances of the application met the legislative criteria for call-ins.

4.85 These findings were also applicable to appeals called-in by the Minister.

4.86 While it is acknowledged that there is no legislative requirement to provide an explanation or identify the reasons for the Minister's decision, we consider that in the interests of transparency and accountability, the reasons for call-in decisions should be fully documented by the Department, explained to the affected parties and available in the public domain.

❑ ***RESPONSE*** *provided by Mayor, City of Port Phillip*

Port Phillip is extremely concerned with the findings of the audit concerning the lack of evidence available to fully explain the basis for advice provided to the previous Minister for Planning where he called in key planning proposals. As the audit report points out, the public expects in the interests of fairness and accountability that the rationale for the Minister's decisions should have been fully transparent and adequately documented. Port Phillip has been critical of the decision making process followed by the former Minister concerning HMAS Lonsdale. This criticism has been borne out by the findings of the audit which found that it was difficult for audit to conclude that due consideration had been given to the matters required under the Act at all stages, as documentation held by the Department of meetings, Ministerial briefings, and negotiations with the proponent were inadequate.

Consideration of applications and appeals called-in

4.87 The Act states that after considering the report of the panel, if any, the relevant planning scheme and any specific matters to be considered under the Act, the Minister may:

- grant the permit;
- grant the permit subject to conditions; or
- refuse to grant the permit on any grounds the Minister thinks fit.

4.88 The Minister, as the responsible authority, must consider:

- all objections to the proposal;
- comments of a referral authority;
- any significant social, economic or environmental affects of the proposal;
- relevant strategic plans, policy statements, codes or guidelines; and
- any other relevant matter.

4.89 We found that a panel had been established where objections or submissions had been received in relation to applications called-in by the Minister under the Planning and Environment Act. In all cases, objections and submissions received by the Minister had been referred to the relevant panel for consideration.

4.90 Panel reports, the relevant planning schemes, strategic policies and advice on the matters to be considered were provided by the Department to the Minister for decision-making purposes.

4.91 In relation to call-ins of appeals, although not required under the applicable legislation, 3 of the cases had been referred to advisory committees by the Minister. These committees were established by the Minister to assess the planning merits of the proposal, consider written and oral submissions from affected parties and make recommendations. In one of the appeals, the Minister conducted a hearing with the affected parties and in the other 2 appeals he invited written submissions.

4.92 We established that in some cases, the call-in process and the establishment of advisory committees and panels resulted in the achievement of improved planning outcomes as the process provided the opportunity for a modified proposal to be negotiated between the parties.

SPECIFIC CASES EXAMINED

4.93 In order to examine in greater detail the actions of the Department in providing administrative support to the Minister, 4 specific case studies formed part of the audit. These cases, which were identified through public submissions received by my Office together with media monitoring related to Councils selected in the audit, are listed below:

- a 4 lot subdivision of No. 50 Big Pat's Creek Road, East Warburton;
- amending State planning policy to enable development of a gaming venue on the site formerly occupied by the Colosseum Hotel, West Heidelberg;
- rezoning of the HMAS Lonsdale (South) site in Port Melbourne, formerly owned by the Commonwealth Government, and the subsequent approval of a high-rise development on the site; and
- the development of the Mornington Shopping Centre and demolition of the Mornington Railway Gatehouse on the site.

4.94 With regard to the 4 case studies, we examined the circumstances of each case and the actions taken in relation to:

- amendments to Council Planning Schemes and, in one case, to the State's Planning Scheme as they relate to gaming provisions;
- exemptions from complying with certain legislative requirements such as the requirement to notify affected parties of proposed planning scheme amendments;
- processing of planning permits including the progress of a planning permit application through the Council and, in 2 cases, the Victorian Civil and Administrative Tribunal; and
- the adequacy of information made available by the Department to the Minister and the documentation of advice received from other sources.

4.95 Our examination revealed that the actions of the Department in supporting the Minister's role in statutory planning in relation to the 4 case studies enabled him to technically comply with his legislative responsibilities. Acknowledging this and the fact that there is no legislative requirement for the Department to document the rationale for the Minister's decisions, a common theme from each case study was that documentation held by the Department did not fully explain the basis for key advice provided to the Minister.

4.96 Considering the high magnitude of public scrutiny and debate surrounding planning issues, the absence of an adequate trail of decision making could call into question whether the processes for assessing development proposals are open and fair and lead to decisions that are soundly based.

4.97 The following observations were made in relation to each case:

No. 50 Big Pat's Creek Road, East Warburton

- Site-specific amendments to the Regional Strategy Plan and Planning Scheme were approved for a rural subdivision despite opposition by the Department of Natural Resources and Environment, several environmental groups and the Council's planning officer. This decision significantly changed the potential use and development of the land. Nevertheless, the basis of the decision was not fully documented, explained or made known to the parties affected by the decision, by the Department. The Department advised that departmental files and papers on this matter are available in accordance with the Freedom of Information protocols;
- There was a lack of documentation to support the actions of the Department in advising the Minister to:
  - Approve the amendments to the Regional Strategy Plan and the Planning Scheme in March 1996. In relation to this matter:
    - We were informed by the Department that a detailed report on the amendments to the Regional Strategy Plan and Planning Scheme was not prepared in this case. A letter issued by the Minister to a fellow parliamentarian stated that *"… the amendments were in the interest of this part of Victoria as it would enable the proper management and maintenance of an area of high value native vegetation that would most likely result from the sale of the site to owners in a position to care for the land";* and
    - A letter stating that the amendments were made *"… on the basis of personal hardship being experienced by the owner at the time and this was weighed against the planning considerations applying to that site"* was issued by the Minister to a concerned resident in November 1996. Justification for the amendments in terms of planning considerations was not documented by the Department;

  - Exempt himself from giving notice of the amendments. The Department advised that the requirement for the landowner to obtain Council approval for a planning permit would protect the public interest and that the separate public participation processes of exhibiting the amendment and then advertising the permit were not undertaken as this was considered to be a costly and time consuming duplication; and
  - Call-in the application. In this regard, the Department advised that at the time, a briefing would have been prepared for the Minister;
- Although we were advised by the Department that a briefing would have been prepared to assist the Minister in deciding whether the permit application should be called-in which transferred responsibility for the decision from the Council to the Minister, a copy of a briefing document was not held by the Department;
- We were satisfied that the Panel had considered all submissions at the hearing and its recommendations were made after due consideration of all relevant facts; and
- The case study illustrates the diversity of opinions in relation to planning matters in that the Victorian Civil and Administrative Tribunal's determination on the appeal differed from the recommendation made by the Panel to the Minister, even though each party based its opinion on substantially the same material. This situation reinforces the need for the basis of advice provided by the Department to the Minister to be adequately documented to withstand scrutiny.

The Colosseum Hotel, West Heidelberg

- The Council's long-standing opposition to the use of the development site for hotel gaming was based on its view that the development would have adverse social and economic effects upon the community with its high proportion of low income residents;
- Despite opposition from the Council and parties affected by the proposal, Amendment S70 that effectively changed a site's eligibility for gaming machines was approved. There was no documentation within the Department of the advice provided to the Minister for decision-making in relation to the particular site. The parties affected by the decision were not notified of the amendment. The amendment, relating to the highly sensitive issue of gaming in the community, specifically exempted development of a hotel with gaming facilities from compliance with the State's gaming policy which prohibited gaming facilities in strip shopping centres;
- The Department did not maintain documentation to support the advice received by the Minister in forming his decisions to:
  - approve Amendment S70 which provided various exemptions from prohibiting hotels or clubs to install gaming machines in existing and proposed hotels in strip shopping centres; and
  - exempt himself from giving notice of the amendment;

- The Minister's actions in granting himself an exemption from the notification requirements, which were in accordance with his legislative powers, removed the need for consultation with parties affected by the decision and the opportunity for them to provide input concerning the proposed amendments prior to formal approval of Amendment S70;
- The Department advised that:
  - *"… the Minister did not give notice to any affected person because the changes implemented Government policy for gaming machines and the interests of Victoria necessitated the exemption from notice";* and
  - all issues relating to gaming in strip shopping centres were already known by the Minister and a process of exhibition would not achieve any purpose;
- The introduction of Amendment S70 to the planning provisions and in particular, the "destroyed by fire exemption", specifically assisted the owner of the former Colosseum Hotel site; and
- The Department advised that, while this was a complex case involving changing policy and high profile gaming legislation, it considered that the Tribunal took longer than the Department would like to determine whether or not to grant a permit for an hotel on the site. The Tribunal took 6 months to issue its decision on the matter.

HMAS Lonsdale (South), Port Melbourne

- While the actions of the Council to expedite the establishment of planning controls over the site prior to the transfer of the site from the Commonwealth to private ownership were undertaken with the concurrence of the Minister and were well-intentioned, a subsequent legal opinion obtained by the Department deemed these actions to be invalid. This delayed the development of site-specific controls by at least 18 months;
- The legal opinion was not released to the Council or the public and was excluded from the documentation provided in response to a Freedom of Information request;
- Commencement of the consultation process and development of the March 1995 Plan prior to the transfer of ownership of the site raised the community expectation that the Plan would be adopted as the planning control for the site. However, as a consequence of the legal opinion, the Plan and a subsequent amendment proposed by the successful tenderer for the land, could not be given statutory force;
- The case demonstrated that in relation to the transfer of land from the Commonwealth to the State planning jurisdiction there is a need to:
  - establish formal arrangements between the Australian and the State Governments to enable the timely development of State planning controls for the use and development of land; and
  - ensure that the community is aware of the limitations of any land use or development proposals established through public consultation processes that commence prior to such transfers of land;

- Documents reviewed and interviews conducted by us demonstrated that the claims of invalid amendments and an illegally appointed advisory committee were unfounded;
- There was a lack of documentation on files held by the Department of meetings with the developer in refining and amending the development proposal. Therefore, we were unable to determine whether the Department, in preparing advice for the Minister, had considered all the matters required under the Planning and Environment Act;
- Up until the preparation and approval of Amendment L51, the public consultation processes were open and fair in that the proposals were made available to the public and Council, and all parties were given the opportunity to address the Advisory Committee and to make submissions to the Minister regarding their views on the various development proposals;
- Discussions between the Council and the developer reached agreement on a development proposal for the site except in relation to height, where the Council's negotiated position was 14 storeys and the developer's compromise was 18. The Council advised the Minister in June 1997 that, in the absence of a compromise between 14 and 18 storeys, Council resolved that its preference was 11 storeys;
- The Department did not maintain adequate documentation to support its recommendation to the Minister that the height parameters for the tower be established between 14 to 20 storeys. In the opinion of the Department, issues around height were well known and debated within the relevant community over a substantial period;
- Due to the lack of documentation of an assessment by the Department of the Advisory Committee's report, we could not determine the extent to which the Committee's recommendations were supported by the Department and the Minister. However, it was clear the Department disagreed with the Committee's recommendation on overshadowing and indicated that it should "not be considered an absolute condition for appropriate development on the site";
- Amendment L51 was approved by the Minister in June 1997, allowing consideration of buildings of up to 20 storeys in height and enabling development of the site to take place subject to the satisfaction of the responsible authority. The amendment established the Minister as the responsible authority for the site, as foreshadowed in the Department's January 1997 letter to the Council, because the Council could not agree to the developer's height requirement;
- Shortly after approval of Amendment L51, which had the potential to substantially increase the value of the site, the undeveloped site was sold;
- The process of the approval of the new owner's development plans in October 1998 was undertaken in accordance with the Act. The Council and persons who made submissions to the Minister were offered additional opportunities to comment on the plans prior to their approval. The matters contained in Amendment L51 were comprehensively addressed by the developer and assessed by the Department before approval was given;

- Concerns were raised in submissions received by my Office that the final development proposal approved by the Minister did not comply with the Committee's recommendations. Under the Act, the Minister is not obliged to accept the recommendations of an Advisory Committee;
- While fees were applicable for the approval of amendment L43, no fee was collected from the developer. This appears to be the Department's "normal practice" for ministerial amendments. There was no evidence on any of the departmental files of waiving the fees. Non-collection of fees was contrary to the Government's user-pays principle;
- The case study illustrates the divergence in policy views of a local Council and a State Government in relation to an issue such as the type of building development to be allowed around the Bay. Although the Council did provide to the Minister comprehensive comments and assessment, it clearly indicated its opposition to the type of proposal which was put forward by both developers; and
- We think there is a need for councils and the State Government to develop an agreed approach and framework for redevelopment of sites on the inner-Melbourne foreshore.

Mornington Shopping Centre and Railway Gatehouse

- From an examination of relevant files held by the Department of Infrastructure and discussions with staff, we were satisfied that the various planning scheme amendments associated with the Mornington Shopping Centre development were processed in accordance with the Act;
- The Department facilitated development of urban design objectives for the proposed shopping centre when the Council and the developer were negotiating an agreed development plan;
- Aside from this involvement, we were unable to conclude that due consideration of strategic and policy outcomes had been given at all other stages as the departmental documentation made available to us of meetings and ministerial briefings was incomplete and did not explain the effect of proposed amendments;
- Processes for assessing planning scheme Amendment L56 and the subsequent development plan were clearly defined and open, fair and efficient. The development plan was made available to the public and Council, and all interested parties were given the opportunity to address the plan and to make submissions to the Minister and the Victorian Civil and Administrative Tribunal;
- Amendment L83 allowed an alternative development plan to be prepared for the consideration of Council. The Department generally had not documented its advice to the Minister in relation to:
    - changing the definition of the floor area which, on face value, increased the retail floor space allowed to be developed on the site to accommodate the development plan; and
    - changing the number of car parking spaces;

- We found that the relevant fees were waived for Amendment L85. For all the other amendments, no evidence was found indicating whether action was taken to waive or collect the prescribed fees. The Department advised that its failure to collect the fees was an oversight. We consider the Department needs to review its processes for collecting fees relating to the processing of planning scheme amendments with a view to ensuring all revenue due is collected;
- Under the Heads of Agreement between the developer and the Council to resolve ongoing differences, the developer is to contribute a sum not exceeding $200 000 to defray the costs of construction of car parking and a plaza in relation to the shopping centre development. The Council will be required to contribute a minimum of $305 000 to the developer to carry out specified works and purchase land from the developer and to meet all legal costs the developer may incur or become liable for in connection with any legal challenge relating to the approved development plan; and
- Heritage Victoria considered demolition of the Gatehouse by the developer circumvented the due process of assessing the heritage value of the building. The Council assisted the developer in achieving this outcome by authorising the demolition. The Council's acknowledgement that its actions to allow demolition were an oversight demonstrate a lack of concern for the views of Heritage Victoria, local ratepayers and the preservation of the State's heritage.

4.98 A description of key events relating to the individual cases is contained in Appendix B of this Report.

❑ ***RESPONSE*** *provided by the Acting Secretary, Department of Infrastructure*

HMAS Lonsdale

The Department makes the following observations:

- *The Council's request and the Department's advice, conveyed to Council in December 1994 (and quoted in Appendix B of this Report) was that the amendment and guidelines should be made available for* ***informal*** *(emphasis added) public comment. It was not the intent of Council or the Department that this process substitute for a formal planning process at the appropriate time.*
- *Amendment L51 required the development to be in accordance with a plan to the satisfaction of the responsible authority. This approval was translated into a permit when the new format Port Phillip Planning Scheme was approved in October 1998. The permit was conditional, requiring the endorsement of plans. The plans were endorsed on 8 December 1998.*
- *Amendment L51 established height controls on the site for the first time.*
- *The substance of the legal opinion is contained in the May 1995 letter to the Council quoted in Appendix B of this Report.*
- *A considerable amount of work has been undertaken by the Department and Council in developing an agreed approach to development issues in this area. An Independent Panel is currently considering this work.*

- ***RESPONSE*** *provided by Mayor, City of Port Phillip*

  HMAS Lonsdale

  The audit found that "The Department did not maintain adequate documentation to support its recommendation to the Minister that the height parameters for the tower be established between 14 to 20 storeys".

  Our view is that this documentation does not exist because the decision to approve the tower building could not be justified. Both the local Council and the Minister's own Advisory Panel recommended against the 20 storey tower. This is clearly a case of the Minister following a particular agenda, contrary to good planning advice.

Part 5

The Department's role in Statewide activities

OVERVIEW

5.1 In addition to the provision of administrative support to the Minister in his role as a planning and/or responsible authority, the Department of Infrastructure is responsible for administering the State's planning system at the policy level. Most of the day-to-day services and advice to support councils is provided by the Department's 7 regional offices.

5.2 The Department is progressively developing a framework for measuring the performance of the State's planning system. In this regard it is important that it sets challenging but achievable milestones for establishing this framework so that meaningful data on the performance of the planning system is available on a timely basis for decision-making and continuous improvement.

5.3 It was disappointing to find that the former Government's reform program had fallen behind schedule whereby the position in July 1999 was that implementation of the new format planning schemes in almost half of the councils was 2 years overdue. As a consequence, Victoria does not yet have a system of co-ordinated and consistent planning schemes across the State. As such, councils and the Government are not well placed to identify issues and to monitor the implications of government policy at the local level or to provide more streamlined processes, outcome oriented decision-making and greater certainty in terms of land use and development.

5.4 I consider that the Department has been responsive to issues arising from the planning system, developing a range of information for the use of councils and the public.

5.5 We found the 8 councils had varying views on the timeliness and effectiveness of support provided by the Department's metropolitan regions. In order to facilitate assessments of the extent to which regional offices are meeting the needs of councils, they need to put in place a performance measurement framework, and undertake surveys of council satisfaction.

BACKGROUND

5.6 The Department of Infrastructure is responsible for the high level administration of the State's planning system. It has provided a broad strategic approach for planning and/or responsible authorities, and developed a consistent and integrated Statewide framework for land use planning that supports sustainable economic development. The Department also provides administrative support for the Minister's legislative role and on planning matters generally.

5.7 In the Minister's 1996 August Statement he referred to the Department's role as *"… a vital part of the process of integrating government sectors and agencies that are closely involved in urban development and the management of State assets"*.

MEASURING THE PERFORMANCE OF THE STATE'S PLANNING SYSTEM

Developments at a national level

5.8 Some work has been undertaken by certain State and Territory planning agencies to develop a performance measurement framework for State planning systems. After the Productivity Commission's 1997 review of performance indicators for councils, a project that examined the types of systems that were in place across each State and Territory for measuring the performance of their respective planning systems, was commenced in 1997 and completed in early 1998. This project was managed by the Department of Infrastructure on behalf of the National Planning Systems Performance Review Project. The project report concluded that the primary indicator for comparison of performance between States is *"the total time taken to process a planning application"*. It also provided a framework and some basic tools to assist further research by individual agencies.

5.9 Another review at the national level, known as *State of Play*, which was completed in mid-1998, has led to further work to identify examples of best practice. Examples found to date are currently under consideration by the Department.

Developments within Victoria

5.10 Within Victoria, the Department is looking to develop a performance measurement framework for the State's planning system as a whole. Certain core performance indicators will be developed for each council to use for annual reporting purposes. Councils will also report on their own specific indicators, which are discussed in detail in Part 8 of this Report. The information relating to the core indicators will be collated by the Department to give a system-wide result.

5.11 The first stage of the project pursued by the Department has been the publication of certain planning information including the number of council decisions on medium-density housing and the number of decisions taken to appeal. The next stages will involve developing indicators on the implementation of the State and local planning frameworks, the real costs of planning services and the impact of charges for various users of the planning system.

5.12 The new planning schemes in the process of implementation across the State will form the basis for developing Statewide indicators to measure performance against outcomes. Each new scheme will clearly outline the strategic direction for the municipality and intended outcomes. The Department is looking to develop appropriate indicators to link departmental objectives with planning outcomes.

5.13 In developing the performance measurement framework, the Department will also give attention to the adequacy of existing management information systems to generate complete, accurate and relevant data.

5.14 We acknowledge that the development and reporting of performance indicators is a relatively new and evolving process for the Department and individual councils. Information that needs to be collected should facilitate measuring whether planning processes are effective in meeting the high level policy objectives of the State's planning system.

5.15 We support the actions taken to date by the Department to establish a framework for measuring the performance of the State's planning system. To ensure that the establishment of the framework is not unduly protracted, it is important that the Department sets challenging but achievable milestones for completion of this project so that meaningful data on the performance of the planning system is available on a timely basis for decision-making and continuous improvement.

IMPLEMENTATION OF PLANNING REFORMS

Introduction of the new format planning schemes

5.16 In December 1996, as part of the reforms announced by the Minister, and following an 18 month pilot project with 5 Councils, the *Planning and Environment Act* 1987 was amended to include the Victoria Planning Provisions.

5.17 The Planning Provisions are designed to provide a consistent and co-ordinated basis for planning schemes in Victoria and a more strategic Statewide approach. The Planning Provisions comprise:

- the State Planning Policy Framework, which identifies the policies applicable to all land in Victoria;
- a suite of 25 zones and 19 overlays, from which each local council must select the necessary controls for the creation of a planning scheme to control land use and development within its municipality;
- a Local Planning Policy Framework including a Municipal Strategic Statement that provides a strategic base for a municipality's planning scheme consistent with the council's corporate plan and State planning policy; and
- local policies that illustrate how a council intends to use its discretion under the scheme to implement the Municipal Strategic Statement.

5.18 Following the introduction of the Planning Provisions, each council had commenced development of a new format planning scheme to replace its existing schemes. Prior to implementation, each of the new schemes must be reviewed by a panel and advisory committee established by the Minister, adopted by the council and approved by the Minister.

5.19 The most immediate impacts of the introduction of the Planning Provisions are:

- A consistent format for all planning schemes in the State;
- A reduction in the number of planning schemes within the State from 206 to 80 largely reflecting the reduction in the number of local councils;
- A reduction in the number of zones from 2 871 to 25. The smaller suite of zones will provide a broader zoning structure within which the planning permit will be the main development control tool;
- An expected reduction in the number of planning scheme amendments from more than 900 per annum to less than 200.

5.20 Planning schemes will be reviewed at least every 3 years with a view to keeping them dynamic and responsive to growth and innovation.

5.21 The former Government intended monitoring the effectiveness of the new system making improvements as required and envisaged progress would be made towards:

- more streamlined processes;
- better monitoring of the outcomes of the planning system;
- more outcome oriented decision-making;
- enhanced strategic planning and urban design;
- enhanced consultation and dispute resolution processes;
- strong incentives for "good practice" in planning;
- more use of electronic delivery systems; and
- more electronic integration of planning scheme data with other systems.

5.22 The Government considered that the new planning schemes would:

- make it possible to obtain a Statewide "big picture" of local strategic framework plans and policies;
- assist councils and the Government to identify issues and to monitor the implications of government policy at the local level; and
- facilitate State and local governments working in partnership to ensure integrated and co-ordinated outcomes and to be pro-active in establishing strategic directions and frameworks.

Timetable for implementation

5.23 The Minister's August 1996 statement *A Better Future For Victorians - The Framework in Place*, specified timelines for the development and implementation of reforms to the planning control component of the planning system. Details of the timelines are shown in Table 5A.

TABLE 5A
TIMETABLE FOR IMPLEMENTATION OF REFORMS

Phase	*Timeline*
Set up: including developing the program, finalising the 5 new format planning schemes for pilot testing and setting up the pilot program.	October - November 1995
Development: including pilot testing of the new format planning schemes, developing the State Policy Framework, outlining an implementation program for other councils, establishing monitoring and review mechanisms, and determining legislative changes required to introduce the new format.	January - November 1996
Implementation: focusing on the introduction of the new format schemes and system across the 73 non-pilot councils, following completion of strategic planning within each council.	January - June 1997
Post-implementation: assessing how the new system is progressing.	End of 1997

Source: Department of Infrastructure.

5.24 The Department indicated the introduction of planning reforms across councils is still a major priority that subsumes most of its planning resources. To assist in this regard, each council was required to produce a statement of intent which detailed the actual dates key stages of the process were to be completed. Progress made by councils in implementing the new schemes was closely monitored by the Department and progressively reported to the Government.

5.25 We determined that the timetable for implementing the reforms established by the Minister in August 1996 had not been achieved. According to the timetable, implementation was expected to be completed by June 1997 which contrasted with the position at July 1999 where only 41 councils (53 per cent) had put in place the new schemes. The Department now anticipates that all new format schemes will be in place by 31 December 1999.

5.26 According to the Department, factors contributing to the delay included:

- an underestimation of the magnitude of the task;
- the time taken by councils to deal with submissions;
- longer than anticipated panel hearing processes including the consideration by councils of panel reports; and
- changes to the Department's mapping software which had impacted on the availability of maps which formed an integral component of schemes.

5.27 Failure to achieve the deadline of 30 June 1997 means that Victoria does not yet have a system of co-ordinated and consistent planning schemes. Therefore realising the potential benefits of the reforms such as progress towards more streamlined processes, outcome oriented decision-making and greater certainty in terms of land use and development has been slower than anticipated.

5.28 The Department needs to continue to closely monitor the progress in implementing the new schemes with a view to ensuring its completion does not extend beyond 31 December 1999.

DEPARTMENTAL SUPPORT TO COUNCILS

Guidelines and publications issued by the Department

5.29 A range of information, aimed at supporting councils in administering the State planning system, has been developed by the Department and made available to councils and the public.

5.30 Planning practice notes and codes of practice are 2 examples of information developed by the Department to assist councils. These documents provide detailed guidance on particular issues relating to administering planning functions and the Act. The publications provide guidance for the more effective use of Victoria's planning system and encourage greater consistency and certainty in using the suite of new planning tools. The Department monitors letters sent to the Minister and issues raised in the media to assist in identifying areas of concern and where guidance in the form of practice notes needs to be developed.

5.31 Key stakeholders, including councils and industry groups, are involved in the process before new practice notes are issued, through the provision of comments on drafts or input during the initial developmental phase. New practice notes are provided to councils by the Department in both electronic and hardcopy formats. The Department may, if considered necessary, provide workshops to discuss the implications of new practice notes.

5.32 There are 3 types of planning practice notes namely, the *Victoria Planning Provisions Practice Notes*, the *Good Design Guide Practice Notes* and the *General Practice Notes*. Examples of planning issues where codes have been developed include:

- *Code of Practice, Piggeries, 1992;*
- *Victorian Code for Cattle Feedlots, August 1995;*
- *A Good Neighbour Code of Practice for a Circus or Carnival, October 1997;* and
- *A Code of Practice for Telecommunications Facilities in Victoria, March 1999.*

5.33 Ministerial Directions and a bi-monthly newsletter have been produced since May 1992 as a means of informing interested parties, including councils, of events, changes or any matters of importance relating to planning.

5.34 From time-to-time, information for example the publication titled *Your Street Your Say - Your Guide to Medium-Density Housing* has been distributed to households by the Minister. In the case of medium-density housing the information was produced to address concerns of residents that their amenity, privacy or the character of their neighbourhood would be disrupted by such developments. These concerns were particularly strong in established suburban areas where medium-density housing was often achieved through infill development, i.e. where existing suburban houses were demolished to make way for higher density forms of housing on the block, such as replacing a single house with 2 or 3 units.

Regional offices

5.35 Most of the day-to-day support for councils is provided by the Department's 7 regional offices. Two of these offices are located in the Melbourne metropolitan area, South-East (Burwood) and North-West (Sunshine) and 5 in the country, Northern (Bendigo), South-Western (Geelong), Western (Ballarat), Eastern (Traralgon) and North-Eastern (Benalla). These offices are co-located with Roads Corporation and the Office of Local Government regional offices.

5.36 Establishing regional offices has been a major activity of the Department as it is a means of bringing departmental support closer to councils. Regionalisation is designed to provide regional managers with autonomy to make decisions regarding support to councils and is aimed at establishing partnerships with councils.

5.37 Regional staff provide a range of services including statutory and strategic planning advice, project planning, advice on the role and function of local government, and have ready access to specialist advice relating to population trends and heritage matters.

5.38 We examined the operations of the 2 metropolitan regional offices in order to assess whether efficient and effective support has been provided to councils. Our findings are set out below:

- South-East Metropolitan region:
  - A range of activities had been undertaken by regional officers to ensure councils were fully informed of their responsibilities, changing developments and how to deal with particular planning issues;
  - As part of its role of servicing councils, regional officers were in contact with councils on a needs basis but endeavoured to have contact at least once a week;
  - While the office did not have in place a performance measurement system to assess the extent to which it was achieving its commitment to supporting councils, it advised that the establishment of a service agreement between the office and the Department was intended to address this shortcoming; and
  - The office was considering the use of surveys to stakeholders such as councils and industry groups, as well as undertaking focus groups, for assessing the level of satisfaction with the services provided; and
- North-West Metropolitan:
  - Staff were transferred to the office as part of the Department's restructure with little regard to the particular skills required for their new role;
  - Although some feedback was obtained on the office's performance through meetings with council Chief Executive Officers, it recognised the need for a performance measurement framework to better assess whether it was adequately meeting the needs of councils. In this regard, it is intended that customer satisfaction surveys will be introduced in 1999-2000;

- The office acknowledged that the pace of planning reform has been such that it was difficult to keep abreast of changes and that office staff were learning as the reforms were implemented by councils; and
- Each regional officer was expected to be visible at councils to address their needs. A key priority of the office had been to assist councils to develop and implement their new planning schemes.

5.39 In discussions with each of the Councils examined, it was apparent that they had mixed views on the timeliness and effectiveness of support provided by the Department's 2 metropolitan regional offices. Comments offered by Councils included that:

- excellent support was provided and although contact was on an as-needed basis, it was generally quite regular;
- appropriate training and seminars had been provided with respect to issues such as the *Good Design Guide* and other topics that had served to educate and inform participants;
- departmental staff were very helpful and communication was very good;
- due to a lack of understanding, situations arose where departmental staff failed to provide useful answers to questions;
- the issuing of guidelines by the Department could have been more timely; and
- the level of support provided for the interpretation of guidelines could be improved.

5.40 In order to facilitate assessment of the extent to which regional offices are adequately meeting the needs of councils, these offices need to establish a performance measurement framework that includes a survey of council satisfaction with the performance of the Department.

5.41 The offices also need to ensure that staff are adequately experienced and trained and have sufficient expertise to provide the necessary support for the councils in meeting their planning responsibilities.

❑ ***RESPONSE*** *provided by Acting Secretary, Department of Infrastructure*

The Audit reports on the shortage of experienced planning staff in Councils. The Department faces the same issues as councils in attracting and retaining experienced planning staff. The Department notes the 'mixed views' of councils as to the timeliness and effectiveness of support provided by the Department, but as is evidenced in this Report, councils also have 'mixed' capacities.

- ***RESPONSE*** *provided by Chief Executive Officer, City of Melbourne*

  Given the current planning responsibilities for the City of Melbourne, Council officers work closely on a day to day basis with the Department of Infrastructure officers. At this level a very good working relationship has been established and both Council and Departmental officers strive to assist one another in their performance of their respective planning duties.

  At a higher level in recent times the Council has been disappointed by the manner in which the Department has dealt with a number of major developments, in terms of the process adopted, the lack of consultation and the lack of support of policies in the Planning Scheme and the Municipal Strategic Statement, City Plan. A greater level of accountability as recommended by the audit report is strongly supported. Already new administrative arrangements are being negotiated with the Government and Department officers which will allow greater co-ordination, integration and consultation on significant development proposals and policy issues.

Part 6

Council management of land use and development

OVERVIEW

6.1 Planning schemes and planning permits are major mechanisms within the planning framework established by the *Planning and Environment Act* 1987 and the Planning and Environment Regulations 1988 for controlling the development or use of land. The Act and Regulations set out requirements for councils in relation to these mechanisms and for amending planning schemes.

6.2 In general, we found the Councils examined had performed their functions efficiently and effectively in that amendments and permit applications were processed in a timely manner and, in the vast majority of cases, in accordance with the legislative requirements. However, we identified that the elapsed time from the date of lodging a permit application to the date of granting a permit can be substantially higher than the legislative time limit of 60 days due to various factors that are not required to be counted.

6.3 Despite a lack of evidence to support the basis on which decisions on permit applications were made, our specialists concluded that after consideration of planning schemes, planning controls and objections, the decisions were generally appropriate. Nevertheless, it was disturbing to find that:

- 19 per cent of applications processed across the 8 Councils were not supported by evidence of a rigorous assessment in terms of the requirements of the planning controls and policies applicable;
- only 4 of the Councils examined adequately documented the factors taken into account when assessing permit applications; and
- across the 8 Councils, 21 per cent of reports prepared by planning officers to support the assessments did not adequately address the relevant provisions of the planning schemes.

6.4 We also found that:

- in 17 per cent of permit applications and 17 per cent of amendment requests processed across the 8 Councils, adequate documentation was not maintained to support the approach to notifying affected parties;
- in relation to 4 of the Councils, the average time taken over the past 2 years between the lodging of an appeal at the Victorian Civil and Administrative Tribunal to the date of hearing was 18 weeks;
- due to the volume of complaints received, enforcement activities were exclusively reactive to complaints and as such, regular checking of compliance with the planning scheme or permit conditions was unable to be undertaken;
- in a substantial number of cases, building permits and plans were not lodged with Councils within the required 7 days of issue and that in 6 of the 8 Councils there were no formal mechanisms for checking consistency between planning and building permits; and
- effective quality assurance processes were not in place in Councils.

OVERVIEW - *continued*

6.5 It is my view that the operations of councils would be enhanced if a range of suggestions that have arisen from the audit were implemented, including:

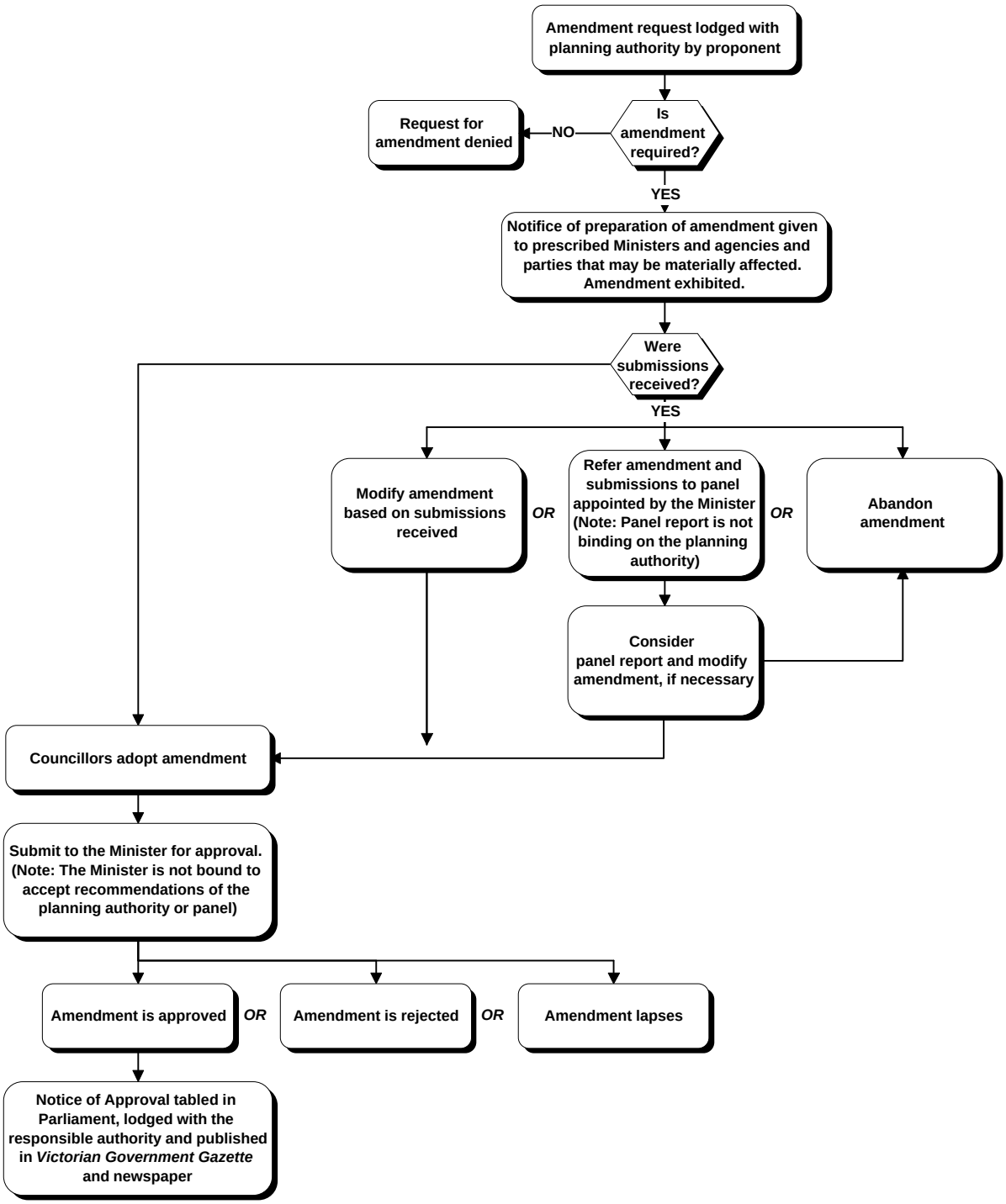
- establishing targets in the form of acceptable time limits for processing various categories of amendments;
- developing strategies aimed at minimising the length of time for those elements involved in processing permits that are not counted within the 60 day limit;
- maintaining an adequate record of pre-application discussions held between applicants and planning officers in order to facilitate further discussions, reduce delays in evaluating applications for amendments and permits, and minimise the risk of litigation;
- improving procedures involved in the lodgement process;
- developing a consistent definition for the legislative term "materially affected" and maintaining appropriate documentation to support the approach to notifying parties affected by the preparation of an amendment;
- documenting whether applications for permits may cause "material detriment" to other parties and the bases for their decisions whether or not to advertise;
- introducing a wide range of measures to predominantly enhance documentation standards in relation to decision-making;
- considering whether the extent of delegation of planning decisions to planning officers is appropriate;
- providing additional resources to the enforcement function to enable the checking of compliance with the planning scheme or permit conditions;
- notifying the Building Control Commission of building surveyors who are persistently late in lodging building permits;
- developing a system in conjunction with the Department of Infrastructure and the Building Control Commission to ensure consistency between planning and building permits;
- introducing quality assurance processes, from a risk and materiality perspective, particularly in relation to records management and documentation; and
- implementing quality control processes based on an assessment of risk, which should involve the completion of a checklist with sign-off provisions for officers to ensure that all significant requirements are systematically addressed.

PLANNING SCHEME AMENDMENTS

What are the key steps in processing a planning scheme amendment?

6.6 Chart 6A summarises the key steps involved in processing a planning scheme amendment.

CHART 6A
KEY STEPS IN THE PLANNING SCHEME AMENDMENT PROCESS



Audit process

6.7 An audit of planning scheme amendments was undertaken across 8 Councils and involved examining all requests for amendments initiated between 1 July 1996 and 30 September 1998. In the case of one Council, the period covered was for the 12 month operation of the new format planning scheme from 1 December 1997. The amendments examined totalled 138 and spanned a wide range of changes to planning schemes from rezoning of surplus public land to the introduction of strategic planning policies.

Timeliness of processing

6.8 As previously indicated in Part 4 of this Report, the Act does not prescribe a time limit for a planning authority to process a planning scheme amendment. Nevertheless, there are provisions which set timelines for notification procedures and consideration of reports provided by panels established by the Minister, and that provide for the Minister to intervene to expedite the amendment process. The Act requires an authority or the Minister to act as promptly as is reasonably practicable, so that loss or damage to any person from unreasonable or unnecessary delay is avoided.

6.9 Key factors that may affect the time taken to process an amendment include:

- the extent of research and preparation by a council prior to the initiation of any formal proceedings by the proponent;
- whether or not exemption from notice requirements was granted;
- the adequacy of procedures adopted by councils in processing a request for a planning scheme amendment;
- the level of community involvement and the consequent need for negotiation over the content of the amendment;
- the level of resources available within the council; and
- the reliability and sophistication of information systems used to record and process the request.

6.10 Many Councils stressed that their objective was not to process requests in the shortest possible time but to negotiate the best planning outcome in the interests of all parties in accordance with the legislative framework and within a reasonable timeframe. Due to the high level of community interest in planning, particularly where changes to policy or major development proposals were involved, public consultation and mediation were key factors that contributed to an increase in processing time. In pursuing their objectives, Councils aimed to:

- consistently address relevant State and local policy frameworks;
- maintain professional relationships with proponents and other affected parties throughout the process;
- produce reports that were soundly based and fairly presented; and
- consistently follow key procedures and principles set out in the Act.

6.11 Our examinations identified some delays in processing amendments. Although explanations were not documented, Councils advised us that such delays were typically due to:

- provision of inadequate information by proponents;
- inadequate responses to requests for further information necessary for evaluating proposals;
- extensive community consultation to negotiate outcomes acceptable to all parties; or
- the inability of proponents to fully understand how to advance the amendment.

6.12 In one Council, poor administrative procedures were a key factor contributing to delays.

6.13 Notwithstanding the differing nature and complexity of the amendments examined, we found that the processing of planning scheme amendments, in most cases, occurred within reasonable timeframes. Simple amendments, such as those correcting mistakes where exemptions from notice were given, were approved within one month. In contrast, amendments that made major changes to policy or facilitated major development proposals where substantial community input was required, or where major differences of views were apparent, took several months to process.

6.14 We recognise that the differing nature and complexity of planning scheme amendments make it difficult to develop valid and reliable performance indicators. However, in order to assess efficiency and to continually improve the timeliness of processing such amendments, councils should consider the need to categorise planning scheme amendments, for example, as “simple”, “typical” or “complex” and establish acceptable time limits for processing amendments in each of these categories.

Pre-lodgement stage

6.15 In considering amendment requests, Councils generally satisfied the legislative requirements in terms of examining whether amendment proposals were consistent with planning objectives, complied with Ministerial directions and were consistent with the Councils’ strategic objectives.

6.16 In 3 of the 8 Councils examined, the preparation of planning scheme amendments was enhanced through the adoption of various processes which included:

- encouraging and assisting proponents to discuss proposed amendments before submitting formal proposals;
- providing guidance on the type of information required for considering amendment requests, drawing attention to the need to comply with any Ministerial directions or codes and providing copies of background reports and plans; and
- commissioning expert advice, such as heritage consultants, to support proposals.

6.17 We found that discussions prior to lodgement of amendment requests were not consistently documented at 2 of the Councils examined. This shortcoming had particular significance given that one of these Councils processed a high volume of complex planning scheme amendments covering large-scale developments, and the other handled amendments involving major environmental and conservation issues extending over a wide region.

6.18 The absence of records of discussions between proponents and planning officers on critical issues has the potential to impede subsequent discussions of amendments between proponents, council officers and/or the Department. This matter needs to be addressed by councils.

Lodgement stage

6.19 In addition to the lack of documentation maintained by some Councils, one instance was observed where a Council failed to consider key information at the amendment request stage or subsequent stages of processing. In this case, the use of an *Environmental Audit overlay* to control land use on a former petrol station site was not considered until the oversight was raised by the Department when the amendment was submitted for the Minister's approval.

6.20 Only 2 Councils had developed suitable guidelines that clearly outlined the issues for consideration and information required at each stage for staff involved in processing amendments.

6.21 In addition, in one Council, which operated a relatively large planning section, requests for planning scheme amendments were not properly registered and amendments were filed in a haphazard manner.

6.22 A more structured approach to amendment processing needs to be adopted by councils for the pre-lodgement and lodgement stages to ensure that the appropriate action is taken, documentation maintained and that all actions are adequately monitored. Guidelines outlining the issues to be considered and information required should also be developed by councils to assist staff with the processing of amendments.

Notification of parties affected by an amendment

6.23 As indicated previously, the Act stipulates the parties who are to be notified of the preparation of a planning scheme amendment by the planning authority and the manner in which the notification is to occur. If an amendment affects a region or the whole State, an appropriate regional or Statewide newspaper should be used. In other cases, notification of the amendment is to be published in a newspaper circulating in the affected area. All notices must be published in the *Victoria Government Gazette.*

6.24 Notification of the preparation of planning scheme amendments can be a major task for councils where complex or wide-ranging amendments are involved. For example, in one particular case involving the introduction of a planning control over building and works, the Council involved delivered over 7 000 notices to landowners and occupiers.

6.25 Where a council has not complied with the procedural requirements, the matter can be referred to the Victorian Civil and Administrative Tribunal in accordance with the Act. The Tribunal may direct the council to take remedial action before the amendment can be adopted or approved, and may request the Minister to defer making a decision until such action is taken.

6.26 Table 6B details the parties required to be notified of a planning scheme amendment.

TABLE 6B
PERSONS TO BE NOTIFIED OF PREPARATION OF A PLANNING SCHEME AMENDMENT

- Every Minister, public authority and municipal council that the planning authority believes may be *materially affected*.
- Owners and occupiers of land that the authority believes may be *materially affected* by the amendment.
- Any Minister, public authority, municipal council or person prescribed in the Regulations.
- The Minister administering the *Land Act* 1958 if the amendment provides for the closure of a road wholly or partly on Crown land.

6.27 We found that Councils did not use a consistent definition of the term "materially affected" nor did they maintain appropriate documentation to support the basis for determining who was deemed to be materially affected by each amendment.

6.28 Given the high level of community awareness and sensitivity to the planning process, the absence of an adequate decision-making trail could result in parties materially affected by proposed amendments not provided the opportunity to support, oppose or seek changes to such amendments.

6.29 In the cases examined, we found no evidence of a challenge to any amendment by a person claiming that he or she should have been notified, but was not.

6.30 Table 6C illustrates a typical planning scheme amendment proposal and the parties that were notified of the application.

TABLE 6C
A TYPICAL AMENDMENT PROPOSAL ILLUSTRATING PARTIES THAT WERE NOTIFIED

The amendment proposed rezoning 2 lots from urban to commercial. The notice of preparation of the amendment was mailed to 55 adjacent/nearby owners and occupiers of land that could be *materially affected* by the amendment.

The following parties were also notified:

- Minister for Conservation and Land Management;
- Eastern Energy;
- the former Gas and Fuel Corporation;
- Yarra Valley Water Ltd.;
- Country Fire Authority;
- Telstra;
- Environment Protection Authority;
- Melbourne Water Corporation; and
- VicRoads.

6.31 Some concern was expressed by Councils that frequent changes in Ministerial responsibilities and public sector agencies made it difficult to keep abreast of current notification requirements. Based on these concerns, I am of the view that the Department of Infrastructure could provide a valuable service to councils by issuing a bulletin advising of any changes to government arrangements.

6.32 It was disappointing to find that in relation to 17 per cent of amendment requests processed, Councils had not maintained adequate documentation to support the approach to notifying affected parties.

6.33 Accountability within councils would be enhanced if they:

- developed a comprehensive checklist of the legislative notification requirements including relevant parties required to be notified of amendments, such as Ministers and authorities; and
- accurately recorded all parties notified.

6.34 In addition, the Department needs to develop a clear definition of the legislative term “materially affected” in order to facilitate a consistent approach by councils to notifying affected parties.

Decision-making process

Assessment

6.35 We determined that the assessment processes adopted by 5 of the 8 Councils audited were generally satisfactory. Recommendations by planning officers to Councillors regarding whether planning scheme amendments were to be adopted, were balanced and soundly based and had clearly considered:

- State, regional and local policies and strategic objectives;
- Ministerial Directions;
- all submissions received, including late submissions;

- advice of staff, experts and panels; and
- any responses from persons notified of the amendment.

6.36 One of the Councils with more complex cases had appointed a strategic planning co-ordinator to ensure close co-ordination between the relevant groups within the Council involved in processing amendments.

6.37 In another Council, which processed a large number of planning scheme amendments during the period covered, we were able to conclude that the relevant matters listed above had generally been considered. However, it was of concern that assessments of amendments at this Council were typically unstructured and reliant upon the accumulated knowledge of the particular planning officer. Specifically:

- assessment criteria had not been established or documented for any of the amendments we examined;
- the assessment process used by staff was "intuitive" rather than structured; and
- the extent of consideration given to the strategic objectives of the relevant schemes was inconsistent.

6.38 These shortcomings were compounded because staff involved in the assessment were situated in different locations of the Council.

6.39 We found that in the other 2 Councils, planning objectives, environmental, social and economic effects of the amendment, as well as Ministerial Directions, were not routinely addressed in reports prepared by planning officers. In these cases, some doubt exists as to whether decisions to adopt amendments gave due consideration to strategic and policy outcomes. Table 6D illustrates an example where relevant policy issues were not addressed as part of the process for assessing a planning scheme amendment.

TABLE 6D
EXAMPLE WHERE RELEVANT POLICY ISSUES WERE NOT CONSIDERED DURING ASSESSMENT

The amendment proposed rezoning 3 hectares of land from residential to retail. We found that the Council did not address:

- the Retail Planning Guidelines within the Regional Planning Policy which required consideration of a range of matters including economic and traffic effects; and
- a Local Policy which reinforced regional policy to consolidate existing retail centres.

File examination disclosed that the amendment was initiated by the Council in consultation with the Department of Infrastructure and processed to achieve an urban design objective. No mention was made in the Council planning officer's report of the potential economic impacts of the rezoning prior to exhibition of the amendment. Further, there was no apparent consideration of potential alternative zonings or the implications of retail use not being subject to a planning permit.

6.40 In order to enhance decision-making, Councils should:

- Introduce a more structured process to facilitate a consistent level of assessment for all scheme amendments and provide a level of quality control based on the council's assessment of risk. This process could include completing a checklist with sign-off provisions for officers to ensure that all significant requirements are systematically addressed; and
- Review organisational arrangements to ensure maximum coordination between all relevant staff, particularly when stationed at different locations.

Panel hearings

6.41 The Act enables a planning authority to refer submissions requesting a change to a proposed amendment to an independent panel for consideration and advice.

6.42 Of the amendments examined, very few had been referred to a panel. Where panel hearings were held, we found that the 8 Councils had provided the necessary assistance to panels and support to submitters. Council submissions to panels were considered to be thorough and addressed the relevant issues.

Open and fair amendment assessment process

6.43 In 7 of the 8 Councils audited, the processes adopted for assessing planning scheme amendments were fair and open, and allowed the affected parties to participate. These processes were facilitated by the consultative mechanisms put in place by the Councils. In the cases examined, there was no evidence of parties with vested interests participating in decision-making nor evidence of undue influence brought to bear on planning officers.

6.44 In the other Council, the absence of key information relating to proposed planning scheme amendments severely inhibited the completeness and accuracy of information available to affected parties.

Post-approval requirements

Background

6.45 The Act sets out procedures to be followed by planning authorities in notifying the public of decisions on amendments. Persons who believe they have been substantially or materially disadvantaged by a council's failure to notify them of a decision on an amendment may refer the matter to the Victorian Civil and Administrative Tribunal. However, an amendment once approved by the Minister cannot be invalidated by any failure to comply with parts of the Act relating to exhibition and notification, public submissions, adoption and approval of the amendment, and the panel process.

6.46 A Notice of Approval of a planning scheme amendment must be tabled in both Houses of Parliament within 10 days of approval by the Minister and must state whether the Minister has exempted the planning authority or himself from the notification or exhibition requirements. If exempted, the notice must address the nature of the exemption; notice given of the amendment, if any; whether the Minister consulted with the responsible authority before giving the exemption; and if so, a summary of the authority's recommendations in relation to the exemption. Either House of Parliament may revoke all or part of an amendment within 10 sitting days of its tabling.

Processes within Councils

6.47 Although processes were in place within Councils for notifying the relevant parties of decisions on amendments, notifications were not carried out in a consistent way. Apart from one Council, there was insufficient documentation to enable us to ascertain whether the relevant steps had been taken by Councils to notify the general public and affected parties of decisions on amendments.

6.48 Incorporation of a new amendment into a council's planning scheme so that a complete up-to-date copy of the scheme is available at the council for public access, is an important post-approval step. New amendments were not always included in the hard copy of the planning scheme retained at the counter for public viewing.

6.49 While we recognise that all schemes should contain a list of amendments, the public could be better served if councils maintained a register of amendments similar to that used for permits. The Department should consider formalising such a requirement.

6.50 Some examples of inadequate post-approval practices found at 7 of the 8 Councils are illustrated in Table 6E.

TABLE 6E
EXAMPLES OF INADEQUATE POST-APPROVAL PRACTICES AT THE COUNCILS

- *Availability of planning schemes to the public*. The planning scheme documentation made available to the public was poorly maintained and gave no confidence that it was accurate, reliable and incorporated the most recent amendments. As a result, incorrect information was likely to be provided to the public in response to an inquiry.
- *Notification of interested parties.* There was some inconsistency in one Council in relation to who was advised of decisions. Parties notified varied from amendment to amendment and in some cases included those originally notified of the proposed amendment, in others all submitters, and in others only those who objected to the amendment. Such inconsistency coud lead to the inadvertent omission of interested parties and agencies from notification of decisions.
- *Gazettal and newspaper notices*. The Act states that an amendment comes into operation when the notice of its approval is published in the *Victoria Government Gazette*. In a number of instances, copies of the relevant notices were not placed on file and therefore there was no record of the date of approval or of the notice published in the *Victoria Government Gazette*.

6.51 To strengthen accountability and increase the confidence of proponents and the community in the planning system, councils should:

- introduce a process to regularly check that planning schemes available at service counters are up-to-date; and
- develop a policy relating to notification of decisions and consistently apply it to all amendments.

PLANNING PERMITS

Background

6.52 Each planning scheme consists of a number of zones, overlays and other controls which specify requirements that apply to land use, subdivision, and the construction of buildings and works within the area covered by the scheme.

6.53 The Act and the Regulations address matters relating to planning permits including applicable statutory timelines, information to accompany applications, notification requirements, decision-making and appeals.

6.54 The entity responsible for administering the planning scheme, including making decisions on applications for permits, is known as the responsible authority. In most cases a local council is the responsible authority, but in some cases it may be the Minister for Planning and Local Government or some other person specified in the planning scheme.

6.55 Where specified in the planning scheme, a planning permit must be obtained from the responsible authority before a proposed land use or development may proceed. Councils are normally the first point of contact for permit applications.

6.56 The permit application process formally begins when an applicant lodges an application with the responsible authority describing the proposal, together with plans, other supporting information and the applicable fee. The Regulations prescribe the minimum information which must be provided by the applicant. Although not a legislative requirement, an applicant may benefit by discussing the proposal in detail with the authority before lodging an application.

6.57 With many applications the views of other agencies are required before the responsible authority can make a decision. Some of these agencies, defined in the Act as “referral authorities”, are identified in the planning scheme, others will depend on the nature of the proposal, the location and other factors.

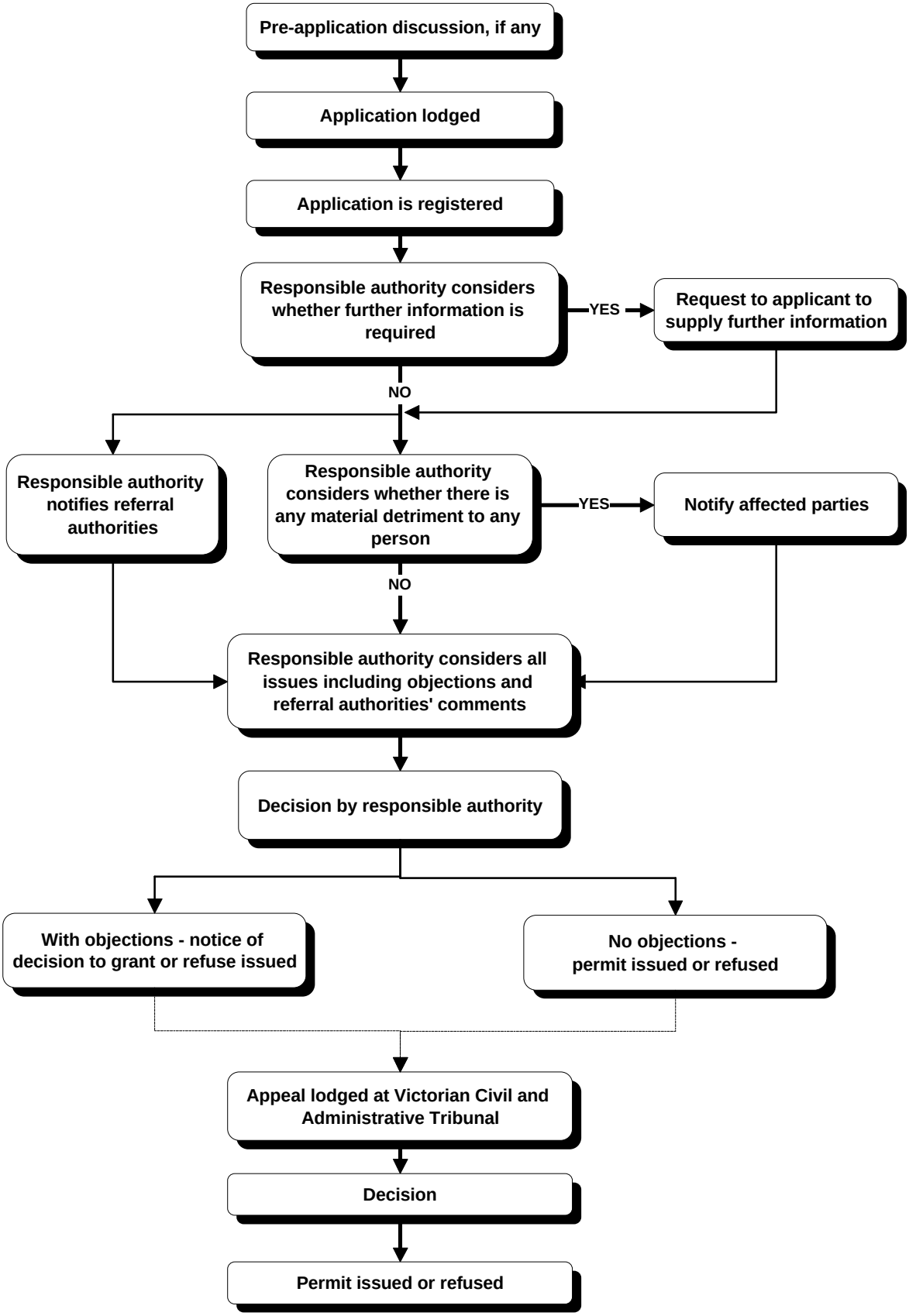
6.58 The responsible authority also has a duty to notify adjoining owners and occupiers and to give them an opportunity to comment on the application unless it decides that no material detriment to any person will be caused by the granting of a permit. Once the period for notifying affected parties, if required, has passed and the relevant time for the submission of objections by those parties or comments by referral authorities has elapsed, the responsible authority may decide the application.

Planning permit for the demolition of existing building and construction of 2 double storey dwellings.

6.59 Depending on the responsible authority's view and whether or not objections have been received, it will issue a permit, a notice of decision to grant a permit with conditions or a notice of refusal to grant a permit on any ground it thinks fit. The responsible authority must refuse the application if so directed by a referral authority and include any permit conditions requested by a referral authority. An applicant or objector can appeal to the Victorian Civil and Administrative Tribunal against the decision or the applicant can appeal against any proposed conditions of the permit.

6.60 Chart 6F summarises the steps involved in obtaining a planning permit.

CHART 6F
PLANNING PERMIT PROCESS



Audit process

6.61 An audit of planning permit applications was undertaken across the 8 Councils and involved examining a sample of 30 randomly selected applications at each Council lodged between 1 July 1996 and 30 September 1998. In the case of one Council, the period covered was for the 12 month operation of the new format planning scheme as from 1 December 1997.

6.62 The permit applications examined covered a wide range of developments and changes of land use including minor building works, erection of advertising signs, tree clearing, small subdivisions of land, and construction of shopping centres, convenience stores and multi-unit developments.

6.63 Our examinations focused on the practices followed by each Council in processing planning permit applications.

Timeliness of processing

6.64 Under the Act, the responsible authority is required to make a decision on a permit application within the prescribed time limit of 60 days. There are important rules set out in the Regulations regarding when the prescribed time begins, and when it stops. Specifically, the time starts when the application is lodged with the responsible authority. If within 28 days the authority asks for more information, the prescribed time does not start until such further information is received. The time stops when the authority directs an applicant to notify the affected parties of an application, and does not recommence until the last of the required notices is given. The time also stops in the event that the Minister grants a referral authority an extension of time to respond to the responsible authority.

6.65 The average time taken to process planning applications, from lodgement to notification of a decision to refuse or grant a permit, varied between Councils but was, in the majority of cases, within the statutory timeline of 60 days. Variations in processing time across Councils can be attributed to the:

- Different types of applications processed;
- Differing procedures adopted in processing applications, in particular the extent of community consultation;
- Varying levels of available resources;
- Adequacy of information systems used to record and process applications;
- Adequacy or otherwise of information provided by applicants; and
- Level of complexity of applications received. For example, evidence suggested that an application to erect signage usually took around 15 days to process whereas a medium-density housing proposal for 10 units took around 55 days due to the high degree of community consultation required.

6.66 Many Councils stressed that their aim was not to process applications in the shortest possible time, but rather to attempt to negotiate the best possible outcome, in the interests of all parties, in accordance with the legislative framework and within a reasonable timeframe. In this way, they consider the fundamental planning principles of physical quality, streetscape character and amenity can be achieved while at the same time reducing the likelihood of an appeal, thereby shortening the total processing time for all parties.

6.67 While we found that all Councils had processed the majority of permit applications within the statutory timeline, the elapsed time from lodging a permit application to granting of a permit can be substantially higher due to the periods of time for which the time stops and which are not required to be counted within the 60 day limit. As it is recognised that most of the processing time outside of the statutory days is not within a council's control, councils should consult with other parties involved in the planning system with a view to developing strategies aimed at minimising the length of time for those parts not counted within the limit.

- ***RESPONSE*** *provided by Chief Executive Officer, City of Casey*

  This recommendation would be difficult to implement fully by councils as much of the processing time outside of the statutory days is not within a council's control, e.g. applicant returning further information, undertaking advertising etc.

Pre-application stage

6.68 A council can minimise inconvenience and processing delays by encouraging an applicant to discuss a planning permit application with a planning officer before it is formally prepared and submitted. In this regard, it is helpful for councils to provide guidelines indicating the information required for common types of applications and in particular, drawing attention to any requirements of the planning scheme guidelines or local policies that need to be considered or complied with and any procedural requirements, such as the preferred scales for plans and the number of copies required.

6.69 We found that all of the Councils examined encouraged pre-application meetings and discussions to assist applicants to understand the potential issues underlying their application and to clarify the information required to support the application. Several Councils had developed useful guides covering issues such as medium-density housing, advertising signs, commercial developments and tree removal.

Brochures developed by a Council to provide guidance to an applicant when submitting planning permits.

6.70 Where a proposed development of land use has implications for other council functions, for example traffic management, drainage and recreation, it is important that these issues are drawn to the attention of the applicant at that early stage. The need for referral to other authorities should also be identified at that stage and contact points established.

6.71 Despite Councils actively encouraging pre-application discussions and developing standard forms to document this process, we found cases where details of such meetings were not systematically recorded. In another case, while a pre-application meeting was held, the applicant was not made aware that a charge of $75 000 would be levied for access across a Council tree reserve. This clearly demonstrates that councils should provide the most comprehensive package of information available at the pre-application stage.

6.72 While it is recognised that documentation of discussions during pre-application meetings is not a statutory requirement and it is not practicable to document each inquiry received by planning officers, the preparation of file notes relating to specific advice provided would assist officers responsible for subsequently evaluating the applications. Moreover, recording the information emanating from such discussions could reduce delays and the risk of litigation, if applicants disputed the matters discussed at the meetings at a later date.

6.73 We acknowledge the value of holding pre-application meetings and consider further benefits could flow to the councils by ensuring that the matters discussed are formally documented and retained.

Lodgement

6.74 Once a responsible authority has received an application it should:

- verify that the information required has been provided by the applicant;
- record the application in a register; and
- check the application against the scheme to determine if a permit is required or the proposal is prohibited.

6.75 We found that all Councils generally registered applications promptly. However, the registers maintained by 2 Councils contained the following shortcomings:

- Key dates were inadvertently deleted from the register as new dates were added; and
- Applications were at times recorded as received on dates subsequent to those on which they had been advertised or the dates decisions had been made on the applications. On a wider examination of one Council's permit register, we found that 32 applications were registered as received after advertisement, and 116 applications were registered as received after decisions on the applications had been made.

6.76 Both Councils recognised these shortcomings. One had recently rectified the problem by changing its computer registration system and the other was in the process of replacing its system.

6.77 The approach to checking applications at lodgement varied considerably across Councils. A major weakness in 3 Councils was the failure of planning officers to identify, at the time of receiving an application, whether the provisions in the planning scheme and applicable planning policies required a permit to be issued and whether any additional information needed to be requested to assist with the assessment. For 26 per cent of permit applications processed within the 8 Councils, the prescribed information was not submitted at the time of lodgement e.g. applications were incomplete in that they had not been signed by applicants, the owners' details were not recorded and certificates of title were not submitted. The failure to provide the prescribed information at the time of lodgement resulted in several instances where:

- Additional information was requested from the applicant at the same time as the applicant was directed to notify affected parties of the application. Consequently, potentially affected parties did not have all the necessary information relating to the proposed development;
- There were delays in requesting further information. For example, at one Council information was not sought on 2 applications until around 6 weeks after they were received;
- The scheme required specific information to be provided for consideration but this was not drawn to the attention of the applicant; and
- Information was requested but not provided and there was no indication of any follow-up with the applicant before the application was processed.

6.78 The above findings cast doubt over the quality of the decision-making in Councils especially where decisions were made based on incomplete information.

6.79 Several Councils included checklists on the file at the lodgement stage which required an officer to check that the:

- prescribed information had been provided;
- relevant fee had been paid;
- information required under the scheme had been provided; and
- relevant provisions of the scheme had been met.

6.80 In these Councils it was also common practice to acknowledge the application promptly and to identify a project officer. We support these examples of good practice.

6.81 All councils should:

- develop checklists as a means of substantiating that all relevant information required under the Regulations and the planning scheme for the application has been lodged;
- identify at the time of receiving an application whether a permit is required for the proposed development;
- nominate a specific officer to the applicant for ongoing contact;
- work with industry groups to assist applicants to provide better quality applications; and
- ensure the permit registers contain complete and accurate data.

Notification of affected parties

6.82 The Act requires notice of an application to be given to:

- any persons specified in the scheme;
- the owners and occupiers of properties adjoining the land to which the application applies;
- another municipal council if the application applies to or may materially affect land within its municipal district; and
- any other persons, if the responsible authority considers that the granting of the permit may cause *material detriment* to them.

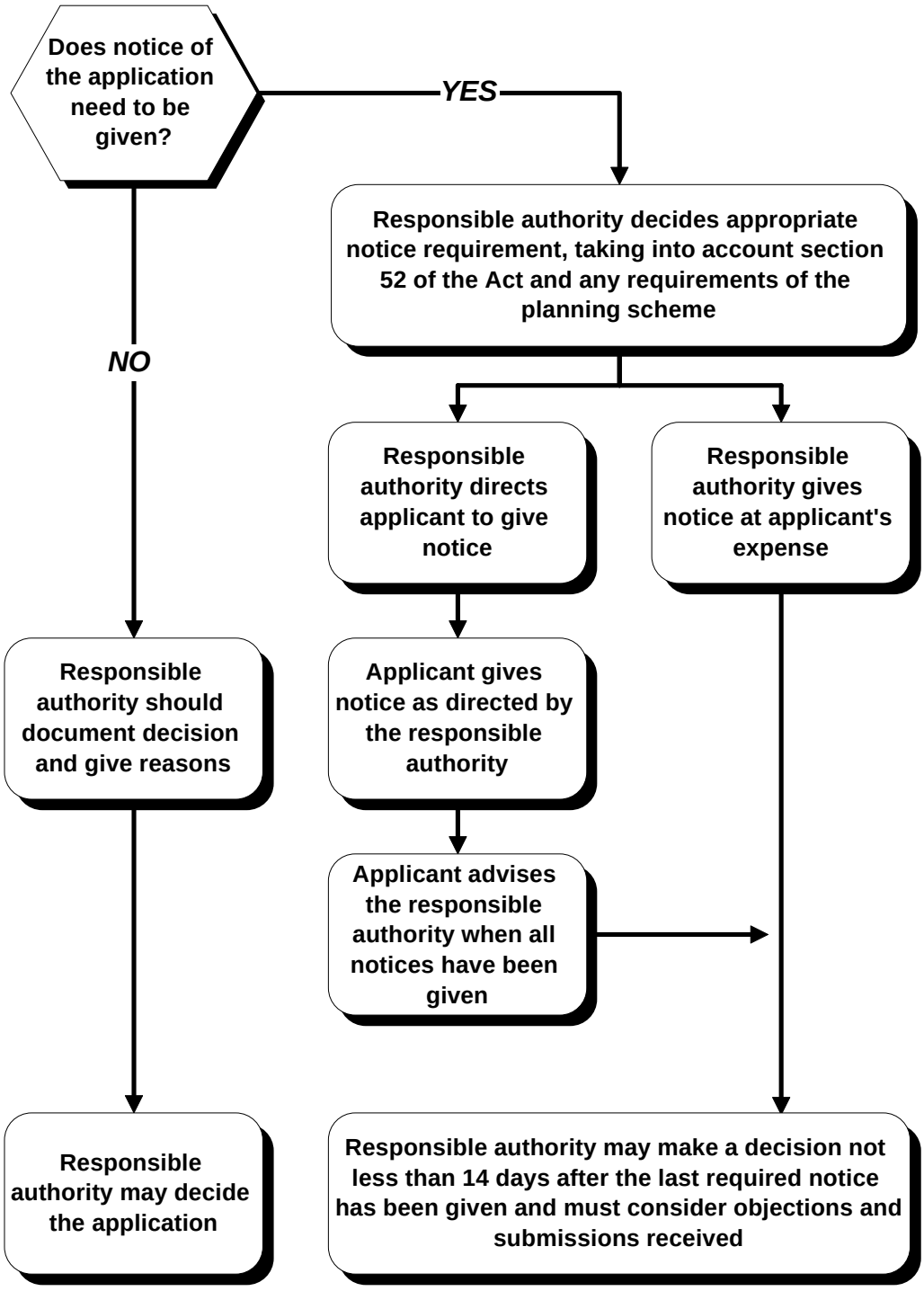
6.83 These requirements are removed if the responsible authority is satisfied that granting a permit would not cause “material detriment” to any person.

6.84 The Act does not specify matters to be taken into account by the responsible authority in deciding whether or not material detriment may be caused. However, in the view of specialists engaged on the audit, it should be possible to link detriment to specific matters such as restriction of access, visual intrusion, unreasonable noise and overshadowing.

6.85 The notification of affected parties is a very important stage in the permit process as it provides the opportunity for those persons notified to lodge objections.

6.86 The normal requirements for giving notice are outlined in Chart 6G.

CHART 6G
NOTIFICATION OF THE APPLICATION



6.87 The 3 most commonly used methods for giving notice of a permit application are through a:

- written notice to specified persons;
- sign erected on the land which is the subject of the application; and
- notice in a newspaper circulating in the area.

6.88 At one particular Council our examination revealed that of 30 applications that should have been advertised 8 were not. Some of these applications involved sites with histories of objections and in one case, even though a decision was made to advertise, the permit was issued without advertising.

6.89 The lack of attention to the notification requirements of the Act could lead to a request to the Victorian Civil and Administrative Tribunal to cancel or amend a permit.

6.90 We also found that in relation to 17 per cent of applications processed within the 8 Councils, adequate documentation was not maintained to support the approach to notifying affected parties. In this regard, it is important that officers clearly demonstrate that they have considered whether the proposal may cause material detriment and that this is documented on the application file.

6.91 In another Council, we found 3 cases where the decisions in relation to notifications were unduly delayed. The delays ranged from 2 weeks to 4 months with the latter situation not actioned until a letter of complaint was received from the applicant.

6.92 An example of good practice was identified in one Council where a form had been designed to assist an officer with delegated authority to make clear assessments of whether material detriment would be incurred as a result of the application and gave direction about the nature and extent of notice to be given in accordance the Act.

6.93 Another pleasing initiative observed at one of the 8 Councils was the introduction of an interpreter service which assisted applicants in understanding their rights and obligations.

6.94 With the exception of one Council already described, the major failures in notification processes were procedural, for example, the lack of a statement of reasons for non-notification or the lack of a specific document on file certifying that the required notification processes had been undertaken. Where Councils decided notification was required, they tended to notify a wider rather than narrower range of proponents.

6.95 Councils should ensure that the basis of a decision to advertise or not is fully documented on every permit file. The documentation should clearly indicate the nature and extent of the notice to be given and the reasons supporting such decisions.

Decision-making process

Assessment

6.96 In considering a permit application the responsible authority is required to address the general requirements of the Act and the specific issues defined in the relevant planning scheme. The Act requires that the responsible authority considers:

- "all objections or submissions that have been received up to the time of making a decision;
- any decision or comment of a referral authority; and
- any significant effects that the responsible authority considers the proposal may have on the environment or the environment may have on the use or development".

6.97 In addition, the responsible authority may consider any other relevant matter particularly:

- "any significant social or economic effects of the proposal; and
- any strategic plan, policy statement, code, guidelines or amendment adopted by the planning authority but not yet in force".

6.98 The planning scheme provides the detailed issues for consideration and these will vary according to the proposal and the relevant controls. For example, issues for consideration in relation to an application to clear native vegetation in a rural area will differ greatly from those to be considered for a medium-density housing application in inner Melbourne.

6.99 Council planning officers are responsible for preparing reports on applications that clearly identify the policy framework for the decisions, specific issues relating to sites and the reasons for supporting or refusing the applications.

Consideration of objections

6.100 Any person potentially affected by the granting of a permit may submit an objection to the responsible authority which must then consider any objections or submissions it receives before making a decision on the application. We found that 7 of the 8 Councils had adequate processes in place to ensure the names of all objectors were recorded and objections acknowledged in writing.

6.101 Due to concerns with the filing system of one Council, where objections can be lodged at any one of its 3 offices, we were not able to substantiate that all objections were recorded on the application file and therefore considered in decision-making. Significant ramifications could arise if a permit was issued without consideration of objections. For example, an objector could request that the Tribunal cancel or amend the permit on the grounds that a material mistake was made in granting the permit. In turn, this could result in the responsible authority having to pay compensation to the applicant if the permit was subsequently cancelled or amended.

6.102 Several Councils extensively used community consultation or mediation processes. These processes were most commonly used for medium-density housing applications with varying degrees of success. For example, in cases where only a few objections were raised and concerns about fencing or overlooking were clearly demonstrated, Councils reported that the sessions helped to clarify issues and led to solutions acceptable to all parties, thereby avoiding an appeal. With more complex and contentious issues, Councils reported concerns from both applicants and the community that the mediation and consultation processes added unnecessary time to processing applications. Reservations were also expressed regarding the conflicting roles of councillors and officers who chaired mediation meetings but were still responsible for decisions.

6.103 It is commendable that the Department of Infrastructure has initiated training courses in conflict resolution techniques which have had strong support from Councils.

Considering the interests of referral authorities

6.104 The Act provides for applications to be submitted to the referral authorities specified in the planning scheme. These are authorities whose interests may be particularly affected by the granting of a permit for land use and development. A responsible authority must comply with any directions from a referral authority if that authority requires a condition to be included in a permit or an application to be refused.

6.105 A referral authority is required to consider every application referred to it and, if it requires more information, respond to the responsible authority within 21 days from the date it receives the request. If it does not require additional information, it has 28 days from the date it receives the referral to provide comments to the responsible authority.

6.106 We formed the view that consultation with referral authorities by Councils was satisfactory in the vast majority of applications in that:

- Councils had correctly identified the relevant referral authorities and advised them within a reasonable time;
- the advice provided by referral authorities was clear and within prescribed time limits; and
- the conditions requested by the referral authorities were included in permits by the Councils.

6.107 However, a few instances were noted where:

- There were inconsistencies in identifying relevant referral authorities by Councils;
- The wording of the conditions attached by the referral authority was altered by the Council. We were advised by the Council that this was only intended to clarify the meaning;
- Applications were forwarded to referral authorities before additional information required from applicants was received by the Council;
- Contrary to the Act, copies of the approved permit were not forwarded to referral authorities by Councils; and
- Referral authorities' replies to Councils were late or did not arrive.

6.108 Where applications were sent to referral authorities before all information was received, there was the potential for added delays. Prompt notification to referral authorities assisted Councils in preparing to discuss the next steps in the process with applicants.

6.109 All 8 Councils breached the Act by failing to send copies of notices of decisions to grant or refuse planning permits to referral authorities.

6.110 We were satisfied that overall, Councils adequately considered the interests of referral authorities. In order to ensure that permits are processed efficiently and referral authorities provide advice based on all relevant information, councils should forward permit applications to referral authorities at the earliest possible time and, where necessary, provide any further information requested from applicants in a timely manner. In addition, copies of notices of decisions to grant or refuse planning permits need to be forwarded to relevant referral authorities.

Consideration of discretionary referrals

6.111 In addition to referral authorities specified in the planning scheme, a responsible authority may also seek the views of any other person or authority whose interests may be affected or whose views may help the authority make a decision on an application. For example, these may include the Department of Natural Resources and Environment on flora and fauna issues, or the Environment Protection Authority on contamination issues.

6.112 We found that as these referrals were not subject to legislative timeframes the response times were more varied than those of the other referral authorities.

6.113 We also established that Councils often required advice from other internal Council units such as engineering services, traffic operations, parks and health services. In some Councils, responses from these referral processes varied in quality and timing. In one Council, delays had been experienced as a result of an internal referral taking 71 days from the time information was requested to receipt of a response and several others where the process took more than 30 days.

6.114 Councils should develop guidelines for the provision of information in response to internal referrals and impose the same time limits as applicable to external authorities.

Consideration of planning schemes and policies

Identification of planning controls

6.115 We noted that 19 per cent of applications processed within the 8 Councils were not supported by evidence of a rigorous assessment in terms of the requirements of the planning controls and policies applicable. This is an undesirably high level of non-compliance. While the planning controls were sometimes identified, there was a lack of documentation to support that assessments gave due regard to the detailed requirements of the planning scheme. Specifically, we determined that there was insufficient evidence to indicate that reference was given by the Council planning officers to:

- whether or not the proposal required a permit;
- what particular controls were relevant for assessment of the application under the planning scheme; and
- the identification of the relevant State and local policy contexts.

6.116 In these cases, we concluded that planning officers processed applications in an "intuitive" rather than structured way. In other words, they relied on their professional knowledge and experience rather than setting out on the file a clear illustration of the matters for consideration under the planning scheme. Officers explained that workload pressures were such that fully detailed assessments were not practicable in all cases if timelines were to be met.

6.117 The processes used by Council planning officers in arriving at a recommendation on whether a permit be approved or refused were not consistent. In addition, in some cases the assessment process seemed to be based on the acceptance that a permit was required and then a general assessment by the officer on what was thought might be relevant, rather than on a detailed assessment of what was actually relevant under the planning scheme.

6.118 Because of the substantial workload of inner and middle suburban Councils arising from an increase in medium-density residential developments, assessments of applications varied considerably in quality. In 3 Councils, substantial checklists were in use to assist officers to assess applications against the Government's *Good Design Guide for Medium-Density Housing*. In these cases, full assessments were carried out.

6.119 In the other 5 Councils, similar but less structured assistance was available and the quality of their assessments ranged from good to poor. For example, in one case as the officer initially dealing with an application was replaced following completion of the checklist, the assessment was repeated on the basis that the first officer's assessment provided no indication of the calculations or reasoning behind the assessment.

6.120 Nevertheless, we also noted many applications where assessments by Council of permit applications resulted in improvements to multi-unit development proposals through, for example, providing increased parking, respecting the privacy of adjoining properties, separating windows from access ways, and relocating living rooms to capitalise on site layout.

6.121 Only half of the Councils examined adequately documented the various factors taken into account when assessing permit applications.

Planning officers' reports

6.122 Across the 8 Councils examined we identified that 21 per cent of planning officers' reports did not adequately address the relevant provisions of the Council's planning scheme.

6.123 We found several applications:

- in 4 Councils that contained inadequate or incomplete assessment reports with little or no reference to the particular planning policies considered by the Council officer; and
- where permits were issued without appropriate documentation in the form of:
  - an officer's report;
  - any assessment of the application;
  - any consideration of the need to notify affected parties; and
  - any information upon which to base a decision.

6.124 In one case where the Council was the landowner, the officer's report was not dated or signed and issues raised by an objector were not fully addressed in the report. The application was also processed much quicker than any other multi-unit development applications, taking only 17 days compared with the average time of around 55 days. There was clear evidence on file of pressure on officers to process the application expeditiously.

6.125 Table 6H details some examples in one Council where relevant planning scheme provisions or policies were omitted from reports prepared by planning officers.

TABLE 6H
EXAMPLES OF NON-CONSIDERATION OF PLANNING POLICIES

- One report relating to the extension of a factory, located in a General Industrial Zone, did not indicate whether or not the proposal satisfied the building height requirements and landscaping provisions.
- In 2 applications relating to an Industrial Zone, the Council's parking policy provisions were applied without acknowledgment of the higher area-specific parking requirements incorporated in the planning scheme.
- A permit was granted for lights to be erected in an existing Public Purpose Reservation which was vested in a public authority. However, buildings and works did not require a permit in these circumstances.
- Specific provisions of a Council's advertising policy/Code of Practice were not addressed, albeit that the report indicated that applications complied with the advertising policy. In 3 applications the pole signs did not meet policy setback requirements and the discrepancy was not noted or discussed. In another example a generalised statement suggested that the application complied with Council's petrol station policy but in fact it did not.

6.126 To ensure that thorough assessments were made of planning permit applications, one Council had developed a report template to be adhered to and which identified the issues to be covered in an officer's report.

6.127 Councils should use structured report templates which clearly demonstrate that the planner has considered the planning scheme, local policies, relevant guidelines, written objections and the results of any mediation or consultation meetings.

6.128 Despite the lack of documentary evidence to support the basis on which assessments were made, after consideration of the content of planning schemes, planning controls and objections, the planning specialists engaged on the audit concluded that decisions on permit applications examined were generally appropriate.

Delegation of decision-making responsibilities

6.129 Following an assessment of a permit application, a responsible authority has 3 options:

- grant the permit;
- grant the permit with conditions; or
- refuse the permit on any grounds it thinks fit.

Extent of delegation

6.130 All Councils had developed delegation policies that outlined the circumstances in which particular officer classifications were responsible for making decisions on planning applications. Table 6I shows the percentage of permit decisions delegated by Councillors to officers in 1997-98 for the 8 Councils examined.

TABLE 6I
DECISIONS DELEGATED BY COUNCILLORS
1997-98

Council	*Percentage of delegated permit decisions*
A	65
B	90
C	86
D	97
E	99
F	98
G	96
H	97

6.131 In 2 of the Councils where over 95 per cent of permit application decisions had been made under delegation, such delegation was approved on the basis that officers would bring applications of major significance or of a controversial nature to the attention of Councillors.

6.132 In relation to the Council where 86 per cent of decisions had been made by delegated officers, applications were required to be decided by Councillors where there were any objections, or where they involved Section 173 Agreements, i.e. agreements entered into by the responsible authority with landowners in the area. While this involved Councillors in dealing with a range of very detailed issues, we noticed that this Council had a very structured process in place and processed around 95 per cent of permits within the 60 days.

6.133 The Council with the lowest level of delegation required that all applications where there were objections, non-compliance with Council policy, or where a refusal was recommended, be referred to the Councillors. The majority of planning permit applications processed by this Council were for multi-unit developments, which generally attracted objections and required a full examination of each application's site analysis and design response against the Good Design Guide and Council's Residential Development Guidelines. The very high proportion of applications that were referred to Councillors for determination, compounded by the lack of delegation within the planning team, resulted in an increased workload for its statutory planning department in terms of servicing Councillors involved in decision-making.

6.134 The approach by this Council was in contrast with the approach espoused by the Minister for Planning and Local Government in his August 1996 Ministerial Statement. The Minister stated, *inter alia*, that Councillors have to shift their focus from the minutiae of day-to-day involvement in administration of council policy, program and operation and put a greater emphasis on developing corporate policies and strategies.

6.135 Councils need to ensure the volume of planning permit applications decided by Councillors is in line with an assessment of risk and enables Councillors to direct their attention to the higher level policy and strategic issues facing their municipalities. This may require ongoing assessment of delegations.

6.136 We found that permits were issued promptly after the Councillor's decisions, with all relevant parties, including the applicant and objectors, notified. The decisions consistently reflected the planning officers' reports and included any conditions attached by referral authorities.

Delegations without authority

6.137 In addition, we identified:

- that the Instrument of Delegation at one Council failed to meet the requirements of the Act in that the Council delegated decision-making to the Chief Executive Officer instead of the planning officers intended to exercise the delegation; and
- in another Council, it was disturbing that some reports and subsequent permits had been signed by officers with no decision-making power. In other cases reports were neither signed nor dated.

6.138 Councils should review their delegation arrangements to ensure:

- compliance with the Act;
- decisions are made in line with the delegated authority;
- a clear delegation policy is set; and
- Councillor's decision-making powers focus on issues of major significance.

REFERRALS TO THE VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

Background

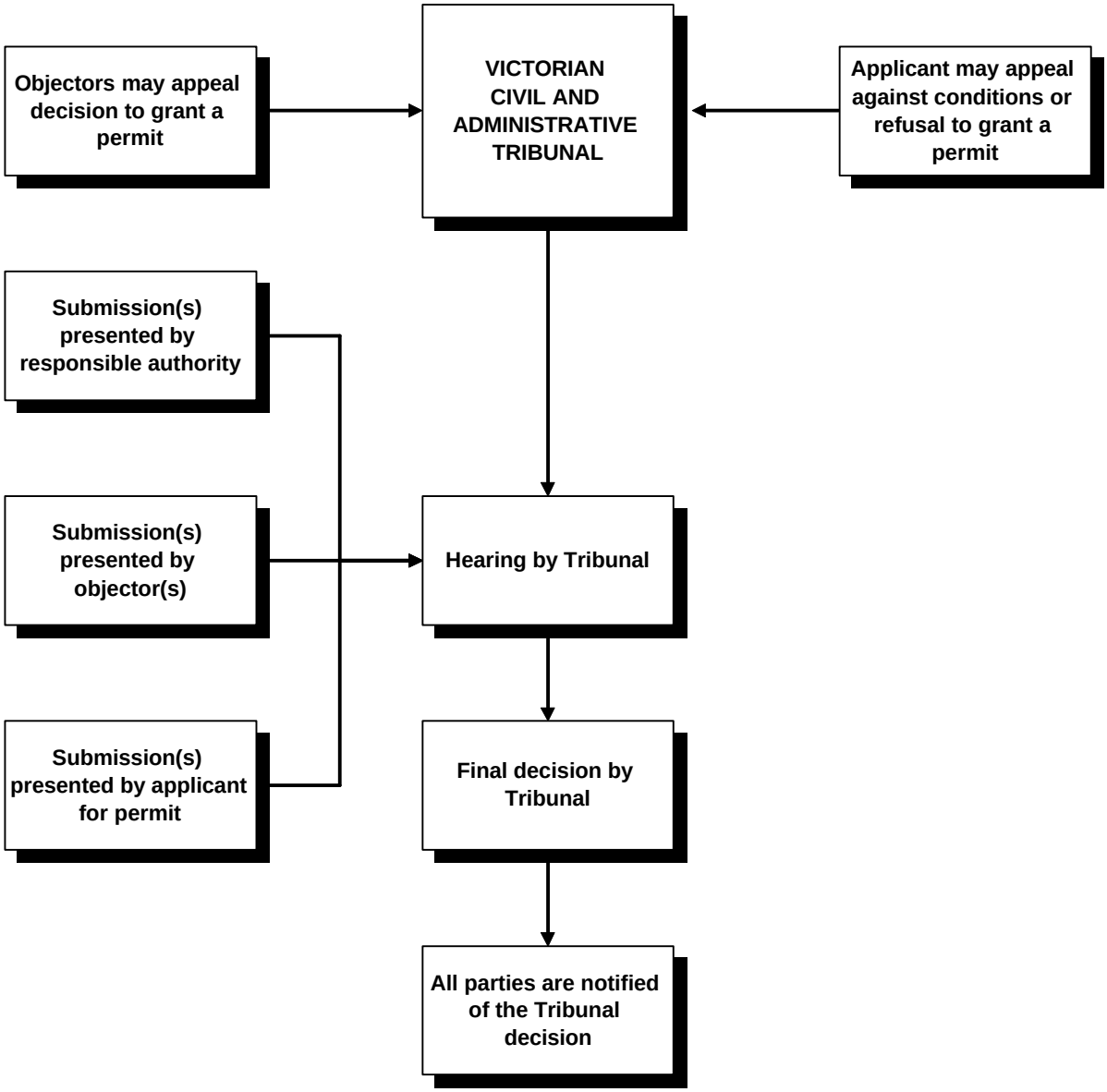
6.139 One of the objectives of the planning framework established by the Act is to provide an accessible process for the just and timely review of decisions without any unnecessary formality. Decisions made by a planning authority and the Minister on planning scheme amendments are not subject to review by the Victorian Civil and Administrative Tribunal. However, a person who is substantially or materially affected by a defect in procedure may under the Act refer the matter to the Tribunal for determination.

6.140 The Act also identifies the following matters which may lead an applicant for a planning permit or person affected by a permit to appeal to the Tribunal:

- failure to decide a permit application within the prescribed time;
- decision to grant a permit;
- requirement to give notice of an application;
- refusal to grant a permit; and
- dissatisfaction with the conditions of a permit.

6.141 Chart 6J illustrates the formal process available to objectors who appeal against a decision by a council to grant a permit, and applicants who appeal against conditions of a permit or refusal to grant a permit.

CHART 6J
APPEAL PROCESS BY OBJECTORS AND APPLICANTS



Limitation on the audit of the Tribunal

6.142 The scope of the audit included examining whether the hearing listing process, relating to appeals lodged with the Tribunal, enabled such appeals to be heard in a timely manner. However, legal opinions obtained by the Department of Justice from the Victorian Solicitor-General and the Victorian Government Solicitor in May 1996, and a subsequent opinion from the Solicitor-General, in relation to an audit of the Children's Court of Victoria, indicated that the Auditor-General has no legislative power to conduct an audit and subsequently report any findings in relation to the functioning of a court.

6.143 Following discussions with the Department of Justice, the Secretary formally advised the Auditor-General in September 1998 that the Solicitor-General's legal advice of 19 June 1996 "*applies with equal force to the Victorian Civil and Administrative Tribunal*" and that as such "*there is no statutory authority for the inclusion of that Tribunal in the proposed performance audit of the State Planning System*". Consequently, we were unable to determine whether the hearings listing process enabled appeals to be heard in a timely manner. During discussions, the Secretary indicated that any information available publicly in relation to the operations of the Tribunal was not subject to reporting restrictions.

6.144 Table 6K provides details of the number of planning appeals lodged with the Tribunal over the past 4 years.

TABLE 6K
NUMBER OF APPEALS LODGED WITH THE TRIBUNAL

Year	*No. of appeals*
1995	1 716
1996	1 809
1997	2 132
1998	2 815

Source: Victorian Civil and Administrative Tribunal

6.145 The Table indicates the number of appeals lodged with the Tribunal has increased by 64 per cent from 1 716 in 1995 to 2 815 in 1998.

6.146 As the Tribunal does not publicly report appeals waiting to be heard or not determined or delays, we were unable to quantify the volume of any backlog, the value of projects subject to appeal and the extent of delays.

6.147 Our analysis of information obtained from 4 of the Councils examined revealed that, over the past 2 years, the average time taken between lodging an appeal and the hearing was 18 weeks. It then took a further 8 weeks from the hearing until the Tribunal's final decision was available.

6.148 Based on appeals relating to cases in the 4 Councils, at the date of audit it took around 6 months to lodge, hear and hand down a decision on an appeal.

6.149 According to the Tribunal, by late June 1999 most cases were heard and determined within 14 weeks of application, with 38 per cent more cases finalised in 1998-99 than in the previous year. In recent times, waiting periods have reportedly reduced in many cases to between 10 and 12 weeks. In the opinion of the Tribunal, factors that have reduced delays included:

- Establishing a commercial list in October 1998 for cases exceeding $5 million in value that involve major commercial projects or those that have a substantial community element. A streamlined approach is adopted for these applications so that the community benefit of substantial investment in a worthy project would not be lost solely through delay;

- Increasing the case load of full-time members;
- Provision of additional resources; and
- Introducing case management initiatives such as the earlier exchange of material between parties and the use of mediation to resolve disputes.

6.150 Given the above-mentioned limitations to the scope of the audit, any further examination of the appeals process by us was restricted to an assessment of whether the 8 Councils had met their statutory obligations in a satisfactory manner.

❑ ***RESPONSE*** *provided by Mayor, City of Port Phillip*

The audit was prevented from reporting on the operation of the Victorian Civil and Administrative Tribunal because of a legal opinion obtained by the Department of Justice. This is unfortunate because it has not allowed for a review of how well the appeals system is serving the people of Victoria. While Port Phillip had every respect for VCAT and its members, it is important to review its workings and how well it achieves the principles outlined in the audit, central to the efficient and effective operation of the planning system. There have been substantial improvements achieved recently by VCAT to the time taken to hear and determine appeals. However, a current challenge is for appeals to be heard in the context of a policy based planning system and for decisions based on the Municipal Strategic Statements and local policy, not black letter law.

❑ ***RESPONSE*** *provided by Secretary, Department of Justice*

While the Auditor-General does not have authority to conduct performance audits of the Victorian Civil and Administrative Tribunal, the Tribunal has performance standards and controls in place to support its delivery of services to the community including:

- *the development of strategic plans and annual business plans (including detailed performance measures) for the services it delivers to the community of Victoria;*
- *regular reports to the Attorney-General on its operations and performance against plans;*
- *a comprehensive audit regime incorporating risk assessment, and regular and special audits of its administrative functions supported by the Department of Justice;*
- *participation in the audits of the annual financial statements of the Department of Justice conducted by the Auditor General under the Financial Management Act 1994 and the Audit Act 1994;*
- *the annual provision of performance data to enable benchmark comparisons between States and Territories; and*
- *annual reports to Parliament.*

The improved performance of the Tribunal noted by the Mayor, City of Port Phillip, has continued since the completion of the audit with the time from the lodgement to the hearing of appeals now often being 8 to 10 weeks with decisions generally produced within 4 weeks of the hearing".

Performance of Councils

6.151 In relation to the performance of their statutory obligations, we found that all Councils:

- provided the Tribunal with the required information;
- prepared and retained copies of their submissions to the Tribunal illustrating the Council's position on each appeal; and
- acted on the Tribunal's decisions in a timely manner.

6.152 One Council continued to facilitate negotiation between the applicant and objectors in an attempt to reach agreement on the proposal before the appeal was heard by the Tribunal.

6.153 We concluded all Councils satisfactorily met their legislative obligations relating to the appeals process.

ENFORCEMENT OF PLANNING CONTROLS

6.154 Any person who uses or develops land in contravention of, or fails to comply with, a planning scheme, a permit or an agreement under the Act is guilty of an offence. Unless specifically expressed in the Act, the maximum penalty is $4 000 for a first offence and up to $6 000 for a second or subsequent offence. Continuing contravention attracts a further penalty of $400 per day.

6.155 The Act provides a number of means of enforcing planning controls, including:

- Issue of a planning infringement notice by an authorised officer of a council where it is believed there has been a contravention of a planning scheme, permit condition or agreement. Penalties applicable are specified in the Act;
- Issue of an enforcement order by the Tribunal which may direct a person to cease or not commence a particular use or development of the land, maintain a building in accordance with the order or require the person to do certain things within a specified period; and
- Prosecution.

6.156 We found that while 7 of the 8 Councils employed an enforcement officer, due to the volume of complaints received, enforcement activities were exclusively reactive to complaints and regular checking of compliance with the planning scheme or planning permit conditions was not undertaken. Without regular compliance checking Councils could not provide an assurance that:

- developments had not been undertaken without obtaining permits; and
- all or some conditions on permits had not been ignored by applicants.

6.157 Specifically we found that:

- In one Council, the enforcement officer did not have delegated authority to issue planning infringement notices under the Act. This reduced the effectiveness of the enforcement activities in that, while the officer could inspect for compliance with planning controls, he could not issue infringement notices in the event that non-compliance was identified;

- In the Council where there was no dedicated enforcement officer, cases were investigated by a planning officer upon receiving written requests;
- In the same Council, in one case examined, a complaint relating to a developer who failed to obtain the necessary planning permit in relation to a heritage-listed building he planned to demolish, did not lead to a prosecution. The rationale for this decision was not documented; and
- In 2 of the other Councils where the statutory planning functions were provided through compulsory competitive tendering arrangements, one service provider was required under the contract to randomly check 10 per cent of all permits issued but had not done so. The other service provider had not inspected around 350 applications for compliance with permit conditions, although the contract required such inspections to be carried out. In relation to both Councils, there was no provision in the contracts to enable payments to providers to be reduced in the event that the contracted services were not provided.

6.158 All Councils stated that within the budgets available, additional resources could not be devoted to enforcement except at the expense of application processing.

6.159 Due to the wide-ranging legislative provisions that allow for enforcement orders, injunctions and penalties to be sought or imposed for breaches of the Act or for contraventions of schemes, permits or agreements, it is clear that enforcement is an important component of the planning system that should be given appropriate weight by councils. In light of this and based on our examinations, it is my view that the approach to enforcement taken by the 8 Councils is ineffective, a situation that will continue until a higher priority is afforded to the function within existing resource constraints or until additional resources are funded.

6.160 The situation could be improved by councils:

- considering, in conjunction with the Department of Infrastructure, the development of compliance procedures which place the onus on applicants to demonstrate compliance;
- conducting an education program to highlight town planning processes and associated obligations to the local community;
- conducting compliance audits of a random sample of permits;
- targeting compliance audits directly at contentious issues where there are consistent problems with the implementation of planning scheme requirements; and
- developing a protocol for dealing with complaints and documenting enforcement activities undertaken.

- ***RESPONSE*** *provided by Chief Executive Officer, City of Melbourne*

  The Council agrees that the enforcement function is an important component of the planning system. In support of this and in line with the report's comments Council has recently employed an enforcement officer. It is extremely important that planning officers work closely with the enforcement officer in order that the range of activities involved in this planning function are adequately co-ordinated. In respect to building permits Council has in place a process whereby all building permit plans are checked for compliance with approved planning plans. If a discrepancy is detected then the building surveyor is notified and asked to rectify the matter. This is recognised as a significant activity in the overall enforcement function.

- ***RESPONSE*** *provided by Mayor, City of Port Phillip*

  The audit found that enforcement of planning matters is reactive and ineffective. Enforcement is financially costly for Councils and local communities. The ineffectiveness is also, in part, due to the separation of planning and building approvals. Enforcement could be made more effective by requiring building surveyors to ensure that building approvals are consistent with all aspects of planning permits. Port Phillip has been actively seeking this reform since 1996. Also Port Phillip has pushed for the strengthening of Council's ability to prosecute and for higher fines for breaches.

NEXUS BETWEEN PLANNING PERMITS AND BUILDING PERMITS

6.161 In many cases where a planning permit relates to a construction or renovation project, after the permit is granted a building permit under the *Building Act* 1993 needs to be obtained before work may commence. It is important that the building and planning permits for a particular site are consistent, so that the development conforms with the outcome of the consultative planning process and the council's planning policies.

6.162 Building permits are required for certain demolitions and a planning permit is also required where demolition of a building, registered as having heritage status by Heritage Victoria or the local council, is planned. In order to protect heritage listed buildings or buildings considered to be of local significance, it is absolutely essential that decisions to issue building permits for demolitions are made only after due consideration is given to such matters.

6.163 The Building Act, which is administered by the Building Control Commission, provides for a building permit to be issued by a registered private or public sector building surveyor and, together with any plans, lodged with the relevant council within 7 days of issue.

6.164 We found that:

- While in many cases, the plans used for the building permit were the same as those for the planning permit with the addition of any necessary structural plans, formal mechanisms for checking consistency between building permits and planning permits had not been developed in 6 of the 8 Councils. In one of the other 2 Councils it was regular practice for the building surveyor to research the relevant planning permit prior to issuing a building permit. The other Council also checked the consistency between planning and building permits;
- In a substantial number of cases, the building permit and plans were not lodged with the relevant council within the required 7 days. This creates a significant problem because construction or demolition may be completed by the time the plans are lodged or there may be no plans on Council's files at all; and
- Councils were of the view that the responsibility for checking consistency rested with the building surveyors.

6.165 In recent years a number of cases have arisen where buildings, which were considered to be of heritage interest or of heritage significance by local communities, but were not protected from demolition by a planning scheme or listing under the Heritage Act, were either demolished or threatened with demolition.

6.166 Where there is a proposal to demolish a building the Victoria Building Regulations require that if a building surveyor forms an opinion that the building is of special interest, he/she must obtain and consider a report from Heritage Victoria before deciding whether or not to issue a permit to demolish. To clarify procedures on this issue and to ensure local councils were given the opportunity to provide input to that decision, the Building Control Commission issued a practice note in August 1998 which introduced an interim arrangement for building surveyors to ensure that they were properly informed of the status of buildings before making decisions. The note:

- recommended that the building surveyor seek advice on whether the property identified for demolition is listed in a heritage study from the relevant council;
- established a 15 business day period to be allowed by the building surveyor for the receipt of a response from the council; and
- stated that if the council advised that the building was listed under a heritage study, the building surveyor should consider the advice provided by the council when forming an opinion on whether a permit should be issued.

6.167 The note was to apply for a period of 12 months, while councils undertook the necessary steps to ensure that all buildings of heritage interest or significance were adequately protected by their planning schemes.

6.168 Councils should:

- work with the Department of Infrastructure and the Building Control Commission to develop a system to ensure consistency between planning and building permits;
- consider developing a system by which the council's planning unit is made aware of building permits when lodged with the council and plans are checked for consistency;
- notify the Building Control Commission of building surveyors who are persistently late in lodging permits; and
- assess whether their planning schemes adequately protect buildings considered to be of heritage interest or significance to their local communities.

❑ ***RESPONSE*** *provided by Chief Executive Officer, City of Casey*

This recommendation essentially proposes to impose the requirement on Council's planners who, it is acknowledged elsewhere in the report, are overworked and under resourced. In addition, at this stage in the process the proposal is usually fairly well progressed. I would recommend that consideration be given to the Building Surveyor responsible for issuing the permit be required under the Building Act to check for consistency with the endorsed planning plans.

QUALITY ASSURANCE PROCEDURES

6.169 It is important that councils promote high standards both in terms of the quality of services provided and the level of compliance with regulatory requirements. This is dependent, to some extent on the effectiveness of the quality assurance practices established. Quality assurance is also the key to achieving consistency. A sound quality assurance framework should include clear policy guidance, effective overview processes and clear documentation supporting the actions and decisions made.

6.170 We found that an effective quality assurance framework was not in place in Councils.

6.171 As part of ensuring quality planning outcomes and continuously improving planning operations, councils should establish quality assurance frameworks aimed at ensuring:

- That the processing of amendments and permits is efficient and effective;
- Professional relationships with proponents and other affected parties are maintained throughout the process;
- Reports produced meet the needs of users, are soundly based and are fairly presented; and
- Key procedures and principles established by the Council are consistently followed. In this regard, councils should consider developing comprehensive checklists that include sign-off provisions for every stage of the process.

RECORDS MANAGEMENT AND DOCUMENTATION STANDARDS

6.172 Records management is an important facet of a council's operations as it provides a means of ensuring the maintenance of complete and accurate documentation which is readily accessible for both internal and public scrutiny.

6.173 An effective accountability process requires the community to be provided with complete, understandable and reliable information on how a council carried out its activities and arrived at its decision. In this regard, documentation supporting conclusions and substantiating the extent and nature of work performed forms an important part of the council's records.

6.174 Work papers prepared by councils should be complete, accurate, clear, concise, legible, relevant, organised and easily reviewed. File documentation should stand alone without the need for further explanation and interpretation by the preparer. Relevant documentation could include copies of policies, procedural statements, legislation, correspondence, submissions, reports and details of analyses. In cases where the processing has involved interviews or physical observations, details of matters discussed or observed should also be carefully documented along with the date, time and purpose of the interview or inspection and names and positions of officers present.

6.175 In all 8 Councils, records management was an area that required improvement. Table 6L provides examples of poor record management at one Council which handled amendments involving major environmental and conservation issues extending over a wide region. These unsatisfactory practices were also evident to varying degrees at the other 7 Councils.

TABLE 6L
EXAMPLES OF POOR RECORD MANAGEMENT PRACTICES AT ONE COUNCIL

- There was no formalised method of registering and tracking planning scheme amendments.
- Difficulties were encountered in obtaining the 36 files required for our examination. Many were unavailable or were unable to be found. Parts of the files were made available but they did not reveal the complete history of the amendment.
- There were up to 5 layers of filing. Three of these related to the planning schemes that existed pre-amalgamation; the fourth, an "*informal*" layer had been adopted by some staff to keep track of an amendment request (presumably in frustration at the filing system); and the fifth, an electronic layer, was in the process of introduction. Because of these different layers and varying levels of complexity, it was not possible to be confident that all relevant material was in the one place, and on the appropriate file.
- In relation to one amendment, we were provided with 9 separate files none of which contained copies of the Council's report, a Council resolution or evidence that fees had been received.
- In another instance, the planning scheme amendment file for a New Year's Eve concert to be held on reserve land, consisted of only one page with one letter. The rest of the file, according to staff "*could be anywhere*".
- Documentation on files was rarely in logical order and evidence of action taken and correspondence were frequently missing.
- A file memorandum requested that an officer create a file albeit 4 months after Council had resolved to exhibit the amendment.
- Some file notes were not dated.
- On the Council meeting agenda on at least 2 occasions, matters which were listed as "scheme amendment" were not related to this issue at all.

6.176 In relation to the above examples, the specialist engaged on the audit concluded that:

> "*The file records system for planning scheme amendments is so haphazard that it has not been possible to accurately conduct the amendment audit with any degree of confidence. The prospects of any person accessing the full file of most scheme amendment requests are very remote.*"

6.177 Considering the high degree of public scrutiny and debate surrounding planning decisions, incomplete documentation raises serious questions about the appropriateness and transparency of planning decision-making.

6.178 Councils should ensure effective records management systems are in place which address quality assurance processes from a risk and materiality perspective, including incorporation of appropriate documentation standards. The presence of such systems would greatly enhance Council decision-making, strengthen accountability and engender the confidence of developers and the community in the reliability of the planning system.

Part 7

Resource management within councils

OVERVIEW

7.1 All Councils examined had adequately defined their strategic directions in relation to land use and development within their Corporate Plans and policy statements. More work needs to be undertaken in developing detailed planning policies.

7.2 In order to facilitate a totally integrated decision-making process that delivers enhanced strategic planning outcomes, councils should consider amalgamating their statutory and strategic planning units or, if amalgamation is not preferred, establishing a project team comprising both statutory and strategic planners to consider all major planning proposals.

7.3 We found that the reform of the local government sector during the past 2 decades has placed pressures on the level of resources and skills base of Council planning units. These pressures have been compounded by a dramatic increase in the amount of work associated with the processing of planning permit applications largely due to the increased focus on medium-density housing and greater community interest in planning matters. In the absence of suitable benchmarks, we were unable to draw firm conclusions on the adequacy of staffing levels. In order to determine the adequacy of staffing levels, councils need to analyse their workloads and work practices.

7.4 All councils have encountered difficulties in attracting and retaining experienced planning staff that may have contributed to non-compliance with certain statutory requirements. In order to recruit and retain staff, a number of initiatives were suggested to councils.

7.5 While most Councils had provided training opportunities to staff, we see a need for them to continue such training with a particular emphasis on the new policy-based planning processes. We found that 6 of the Councils examined had provided only limited or no formal planning-related training to Councillors, although there were several practices in place in some Councils to assist Councillors in undertaking their planning role. Due to the important governance role played by Councillors in the planning system, Councils should conduct a needs analysis for Councillors to ensure the provision of ongoing training programs focuses on enhancing their skills and knowledge. Councillors also expressed a desire for further training.

7.6 Fees were not collected in all instances due to varying interpretations and ambiguities in the 1988 fees regulations. In view of the value of revenue forgone, Councils should promote a policy of rigorously collecting all fees to which they are legally entitled and seek the Department of Infrastructure's assistance in removing any ambiguities impacting on fee collection during the current review of the regulations.

7.7 I am of the view that if the Government is to adopt a user-pays principle, fees payable by applicants for permits and planning scheme amendments should be set at a level which recovers a higher proportion of council costs and reduces the extent of cross-subsidisation of such costs by ratepayers.

STRATEGIC AND STATUTORY PLANNING FUNCTIONS

7.8 The *Planning and Environment Act* 1987 establishes the planning framework which requires a planning authority to *"provide sound strategic coordinated planning of the use and development of land in its area"*.

7.9 In order to meet the legislative mandate Councils are responsible for 2 major planning functions, namely:

- *strategic planning*, involving the development of local planning policies and their Municipal Strategic Statements which take into account:
  - the State planning policies such as Living Suburbs and Transporting Melbourne; and
  - regional policies such as urban planning, local character and amenity, medium-density housing, the environment, conservation and heritage; and
- *statutory planning*, which involves the administration of statutory planning controls, i.e. planning schemes and planning permits.

7.10 Following the 1995 council amalgamations, the newly-established councils, among other things, inherited the offices and staff of the pre-existing councils. As a consequence, in a number of amalgamated councils, their activities, including strategic and statutory planning, were carried out from separate offices within their expanded municipalities.

Examples of Municipal Strategic Statements developed by Councils.

7.11 We found that all Councils examined had adequately defined their strategic objectives within Corporate Plans and policy statements, such as the Municipal Strategic Statement, in relation to land use and development. However, in 2 Councils detailed operational policies covering planning matters such as those that relate to mixed use areas, retail centres, traffic and transport and industrial areas, had only been developed to a minor extent. We understand that all councils are in the process of developing detailed policies as part of their new format planning schemes.

STRUCTURE OF PLANNING UNITS

7.12 Interface between the strategic and statutory planning functions within councils is important to ensure that planning decisions in relation to planning scheme amendments and permits are in line with council land use policies and strategies.

7.13 Within the 8 Councils examined, we found that:

- the statutory and strategic planning functions of 7 of the Councils were segregated, with each function provided by a discrete unit; and
- the functions were integrated in the other Council.

7.14 In relation to the 7 Councils where the strategic and statutory planning units were not integrated, we determined that:

- in 5 cases, procedures to ensure adequate networking between the units were not in place;
- in 2 cases, the units were located at different Council offices, including one Council where the offices were 25 kilometres apart; and
- the in-house agreements under compulsory competitive tendering did not set out any interface requirements relating to interaction between the units.

7.15 An integrated assessment process was not assisted in those Councils where statutory and strategic planners were separated either geographically or in organisational terms. In these cases, strategic planning staff considered the “policy aspects” of proposals, but the statutory planning staff were required to carry out the notification and other “administrative” procedures.

7.16 We found that the Council with the integrated planning functions had regular interaction between the strategic and statutory planning staff through staff meetings and daily contact. This Council, which handled more complex cases, had appointed a strategic planning coordinator to ensure close coordination between the relevant groups within the Council involved in processing amendments.

7.17 Only one of the other Councils had attempted to co-ordinate its strategic and statutory planning functions. Staff from both units within this Council met regularly and some of the more complex applications were assigned to a project team comprising both a statutory and strategic planner.

7.18 In order to facilitate a totally integrated decision-making process and more strategic planning outcomes, councils should consider the following options:

- amalgamating their statutory and strategic planning units; or
- if amalgamation is not preferred, establishing a project team, comprising both statutory and strategic planners, to consider all major planning proposals.

❑ ***RESPONSE*** *provided by Chief Executive Officer, City of Melbourne*

The Council agrees that it is vital that the statutory planning functions and the strategic planning functions of a Council are closely related in order to ensure that the planning responsibilities are carried out in an efficient and effective manner. This integrated approach has been adopted by the City of Melbourne and the Development Planning Branch performs the statutory planning role as well as a local policy development and strategic role. The Council agrees that this approach assists in ensuring that planning decisions are consistent with Council's land use and development policies and enables more efficient monitoring of the decisions made.

STAFFING LEVELS OF COUNCIL PLANNING UNITS

Increased workload placed on councils

7.19 Since the beginning of the 1980s, local government has been significantly affected by a number of government policy initiatives including council amalgamations, rate-capping and compulsory competitive tendering. While these initiatives have been designed to achieve efficiency gains and provide benefits to ratepayers, implementation has led to pressures on the level of resources within councils.

7.20 In the context of planning, the increased emphasis on a strategic approach has significantly added to the workload of council planning officers.

7.21 In addition, in most of the Councils examined, the workload associated with the processing of planning permit applications had also increased dramatically due to a number of factors brought about by economic, demographic and social changes, particularly the increased incidence of medium-density housing.

7.22 Greater community interest and publicity in relation to planning issues across Melbourne, particularly following the emergence of community groups such as *"Save Our Suburbs"*, a coalition of planning pressure groups from across the metropolitan area, have led to increased pressures on council staff in the form of:

- more objections to proposed land use and developments from the public;
- more appeals against proposed land uses and developments forwarded for hearing to the Victorian Civil and Administrative Tribunal, resulted in council staff devoting more time to preparing for and attending hearings at the Tribunal; and
- the requirement for council staff to certify to the accuracy of the site analysis accompanying a permit application and therefore to spend more time inspecting sites, checking information provided and assisting applicants to prepare applications.

7.23 Councils hold the view that continual pressure has been placed on staff to meet their obligations under the Act, such as notifying affected parties and referral authorities, and making a decision on a permit application within the required timeframe of 60 days.

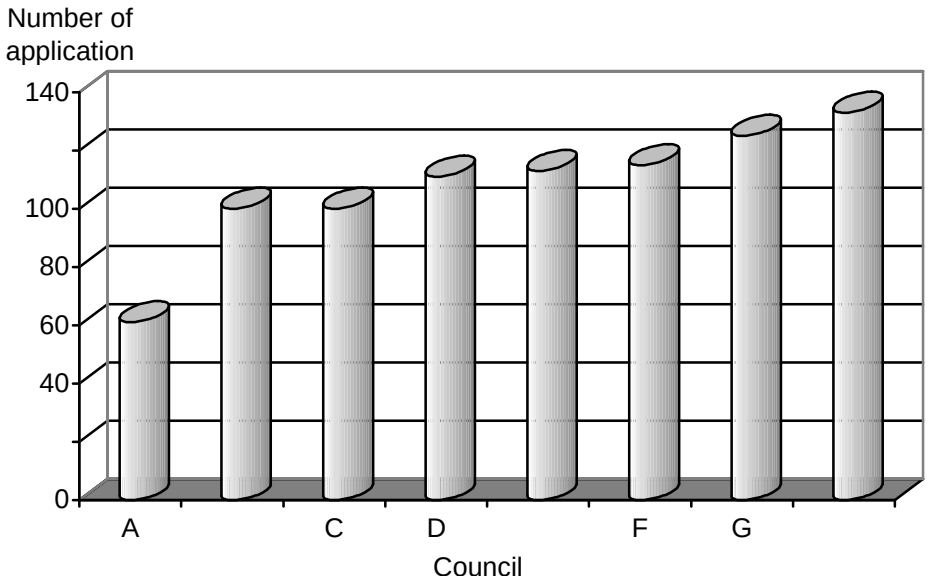
Assessing adequacy of staffing levels

7.24 Examples of indicators to assess the adequacy of staff levels within council planning units included the number of applications processed per planning officer and the number of permit applications received but not determined.

7.25 In regard to the first of these indicators, in 1997-98, the number of permit applications received by each of the Councils examined ranged from approximately 700 to around 2 000. This compared with a range of approximately 570 to 1 800 in 1995-96.

7.26 Chart 7B shows that the average number of planning permit applications processed per planning officer in 1997-98 in each of the Councils examined.

CHART 7B
APPLICATIONS PROCESSED PER PLANNING OFFICER, 1997-98



7.27 Due to the wide variation in the number of applications processed per person, on face value, the chart suggests that the staffing levels within the planning units of some Councils may not be appropriate.

7.28 In relation to the second indicator, i.e. the number of permits received by councils but not determined, in a number of the Councils examined, the level of undetermined permits was high. For example, in the 3 Councils which processed the highest number of applications per person, the incidence of undetermined applications at January 1999 was also the highest. Undetermined applications at these Councils were 500 (25 per cent of all applications received in 1998), 430 (21 per cent) and 420 (23 per cent). The level of undetermined applications suggests that staff levels might not be appropriate.

7.29 However, there are a number of factors discussed below, which need to be considered before attempting to arrive at a conclusion on the adequacy of staffing levels in planning units.

Data for analysis of staffing levels

7.30 The complexity and the number of applications and amendments received by the Council can have a significant impact on the number an officer can process. Other factors, which may impact on determining the adequacy of staffing levels, include the:

- skills and experience of planning staff;
- adequacy of information systems;
- extent of other duties undertaken by planning staff;
- identification of seasonal trends in lodgement of applications and amendments; and
- elapsed time during which applications and amendments have remained undetermined.

7.31 Notwithstanding the increased workload of planning officers, only one of the Councils examined had undertaken any formal analysis to ascertain whether staffing levels were adequate. The analysis resulted in the engagement of 2 additional planning officers.

7.32 However, in recognition of the high number of undetermined cases, one Council had employed additional staff and engaged an external provider to process applications. However, we were advised that these strategies had not been entirely successful due to the inability of the Council to attract experienced planning staff or external providers at a comparable cost.

7.33 In another Council a “strike team” was established to process applications outstanding for greater than 40 days. This involved setting up a team of temporary planning staff to deal with the backlog of applications.

7.34 In the absence of detailed data for analytical purposes, it was difficult to assess the relative efficiency of planning staff or the required staffing levels, as critical information such as the complexity of amendments and permits was not available at the Councils. Without this information and in the absence of suitable benchmarks, we were unable to draw firm conclusions on the adequacy of staffing levels.

7.35 While we appreciate the difficulty in collecting relevant data, there is a need for councils to undertake meaningful analysis of workloads and work practices to assist in determining optimum resource requirements. In capturing and analysing the data, consideration should be given to the factors which can contribute to the efficient and effective processing of planning applications and amendments, such as the complexity of proposals, and the skills and experience of staff.

STAFF QUALIFICATIONS, EXPERIENCE AND TRAINING

7.36 Staff responsible for the provision of planning services are required to possess technical skills in planning and a substantial knowledge of the Act, associated legislation and the planning policies of the State Government, the region in which the council is located and the council's own policies. Furthermore, as they are required to assess planning applications and provide both technical and general planning advice to applicants, it is important that staff possess skills in customer service, negotiating, conflict resolution, report writing and information technology.

7.37 It is important from a council's perspective to retain quality staff who have gained an in-depth knowledge of the local municipality.

Level of expertise

7.38 All staff responsible for statutory planning decisions within the 8 Councils were found to have appropriate tertiary qualifications and were eligible for membership of the Royal Australian Planning Institute, a national organisation representing qualified urban and regional planners. However, due to the relatively high turnover of planning staff and the difficulty in enticing experienced planners to fill vacancies, the level of inexperience within 5 of the Councils examined was assessed as high.

7.39 All Councils expressed concerns to us about the level of staff turnover and the difficulties experienced in maintaining a stable workforce. In one Council, 6 planners with 30 years combined experience resigned within a 6 month period resulting in a significant loss of intellectual capital. The Council found it difficult to recruit suitably experienced replacement staff. For example, it took the Council over 4 months to find a suitable replacement for one senior planning officer. Since completion of the audit, the other positions have been filled.

7.40 Common sentiments conveyed to us by statutory planning officers were that they were under-resourced, stressed due to the high degree of negotiation required with proponents and affected parties, and dissatisfied with the repetitive nature of their work resulting from the separation of the statutory and strategic planning functions. We were advised that these factors increased staff turnover and affected the ability to recruit planning staff.

7.41 We understand that the difficulty for Councils in retaining experienced staff can also be partly attributed to differentials in the level of salaries offered to local government planners compared with the private sector. Difficulties in recruiting can result from the limited availability of skilled and educated people with adequate experience who are willing to join local government instead of opting to work in the private sector.

7.42 The inability to retain or recruit experienced staff may have contributed to the examples of non-compliance with certain statutory requirements discussed in Part 6 of this Report.

7.43 The development of a *buddy system* whereby new starters were assigned to a more experienced planner to assist their development and provide on-the-job training was a positive measure taken by 2 Councils to address the inexperience of staff.

7.44 In order to attract and retain staff, councils should give greater consideration to:

- comparing classification structures, remuneration, work values and conditions of employment with those of the private sector with a view to exploring the potential for enhancing the conditions within the existing remuneration framework;
- exploring the potential for engaging experienced staff and capable former staff for short periods on a contractual basis; and
- monitoring staff morale through staff surveys with a view to promptly identifying and addressing any potential problems.

Training opportunities for planning staff

7.45 Poor and costly decisions can be made and non-compliance with statutory requirements may occur if the staff involved in the provision of planning services are not well trained. It was pleasing to find that in most Councils, staff had been provided with opportunities to attend relevant courses and seminars.

7.46 The range of professional development activities undertaken by planning staff included technical training on the application of the *Good Design Guide* to interpersonal training in areas such as conflict resolution and negotiation skills.

7.47 At one Council, several professional development strategies had been introduced including the appointment of a learning liaison officer within the planning unit with responsibility for providing assistance and advice to officers, and implementation of a key speaker program to provide authoritative commentary on a range of relevant planning issues.

7.48 Other findings arising from our examination of staff training and development activities included the following:

- In one Council, there was a lack of commitment to training in that it was limited and attendances at courses were governed by staff availability rather than on identified needs; and
- In another Council, there was a need for more training in relation to the information system used to register and report on permit applications. As staff had limited knowledge of using the information system, the preparation of monthly performance reports involved substantial manual reprocessing of data which impacted on the efficiency of reporting processes.

7.49 In implementing the new policy-based planning processes, councils need to continue their commitment to the provision of staff training. It is important that staff training is linked to a formal needs analysis that takes account of both individual and organisational requirements. Councils should also consider other strategies to develop the skills and knowledge of planning staff such as greater use of secondments between statutory planning and strategic planning functions.

❑ ***RESPONSE*** *provided by Chief Executive Officer, City of Melbourne*

In respect to training of planning officers the Council has developed and implemented a series of training programs over the last 2 years that have focused on the need to improve skills particularly in the area of heritage and urban design. Given the ever increasing importance of these issues in order to achieve the best possible urban and built form outcomes and to provide a high quality professional service to its clients, the need for ongoing training in all areas is considered essential. It is this Council's experience that the provision of relevant and innovative training opportunities increases the expertise and confidence of staff which in turn can have a positive impact on staff morale. This has been borne out in the staff satisfaction surveys undertaken.

TRAINING OF COUNCILLORS

7.50 Councillors perform an important governance role in strategic planning and policy development, interpreting officer reports on specific planning amendments and applications, making planning decisions and responding to representations from constituents. In August 1995 the Local Government Board released a report titled *The Roles and Functions of Councillors* which commented that, notwithstanding the importance of their role, professional development for Councillors *"has received little attention by councils in the past"* and *"only in recent years has the idea that councillors … would benefit from professional development gained any recognition. This is in marked contrast to the important emphasis on professional development for the profession and management"*.

7.51 The Board recommended that professional development for councillors be voluntary, with councils putting in place a flexible program, where each individual councillor would be free to select from the options on the basis of his or her needs, and strongly encouraged the delivery of professional development through annual programs.

7.52 We found that in many of the Councils examined, although councillors had been provided with limited or no formal planning-related training, there were several practices in place to assist them to carry out their planning role including:

- access to planning officers for discussions on new planning applications or amendment requests;
- briefing sessions on planning issues;
- involvement in mediation meetings between objectors and applicants or proponents; and
- establishment of a planning committee, comprised of councillors and planning officers, where officers provided authoritative advice.

7.53 One Council had established protocols for Councillors and staff to facilitate a productive partnership aimed at maximising the effectiveness of the planning process. These protocols included early warning systems to keep Councillors informed of pending applications of interest. Lists of new applications were circulated to Councillors on a weekly basis and briefings for Councillors were undertaken by staff on an ad-hoc basis. In addition, the Council provided ongoing training for Councillors to assist them in understanding planning matters.

7.54 Our discussions with Councillors at several Councils revealed they needed further training to assist them in their various roles. They also highlighted the importance of effective induction training for new Councillors.

7.55 Professional development for Councillors should be encouraged by Councils through conducting a needs analysis, with a view to introducing a flexible program of ongoing training whereby individual Councillors are free to select from options on the basis of their requirements. In determining the content of its professional development program, each council should consider the extent to which decision-making is delegated to staff and the risks associated with the sensitivity and complexity of the matters dealt with by Councillors.

FEES FOR PROCESSING APPLICATIONS AND AMENDMENTS

Background

7.56 Fees payable by applicants for permits and proponents of planning scheme amendments were prescribed within the Planning and Environment (Fees) Regulations 1988. These Regulations were revoked in February 1999 due to sunset provisions and replaced with an interim arrangement that allowed the existing fee structure to remain in place until October 1999.

7.57 When the Regulations were established in 1988, it was not intended that planning and/or responsible authorities would recover the full cost of providing planning services as the Government deemed that planning processes provided a level of public benefit. The Government considered that an applicant or proponent who received a planning service should also contribute to some of the planning costs for the processing of permits and planning scheme amendments.

7.58 Unless waived under the Regulations, fees payable by applicants for permit applications range from $70 for a small development to $14 120 for a large development. In relation to developments valued up to $5 000 no fee is payable. Table 7C shows the fees currently payable for each stage of the amendment process.

TABLE 7C
FEES PAYABLE FOR PROCESSING AMENDMENTS

Stages of the amendment process	*Amount payable (a)*
Consideration by the council (planning authority) of a request for amendment	$700
Consideration by the council of -	
less than 20 submissions	$700
more than 20 submissions	$1 410
Adopting and submitting amendment for approval	$700
Consideration by the Minister of request for approval and giving notice of the approval	*(b)* $700
Fee for panel hearing, where applicable	*(c)*

(a) For most stages, the fee is payable to the planning authority by the proponent.

(b) The fee is payable by the planning authority to the Minister.

(c) The planning authority must pay the fees or allowances of the Panel unless the Minister otherwise directs. The planning authority may ask the proponent to contribute to that amount.

Cost recovery

7.59 Our analysis of permit and planning scheme amendments for the 8 Councils revealed that fees received covered as little as 25 per cent of the planning unit's operating costs in one Council, to a high of 40 per cent in another.

7.60 In November 1998, the Department of Infrastructure commenced a review of the Regulations and options for future regulation of planning fees. The review was scheduled to be completed prior to October 1999. However, at the time of preparation of this Report, the review was still in progress. The first phase of the review involved collecting data on fees from 13 Councils. This was followed by public consultation and the release of a Regulatory Impact Statement outlining the major options and impact of the proposed fees regulations.

7.61 One Council's submission to the *Planning Fees Review Panel* indicated that it already achieved full cost recovery from those applications relating to major developments, but less than full cost recovery from minor developments even though a similar amount of work may have been involved in processing the application. For example, regardless of the size of the application, a council is still required in most cases to give notice of the application, consider objections, negotiate with the parties and prepare for and attend any appeal hearings. Some smaller-scale projects, while attracting a lesser fee, can take a substantial amount of time to consider due to pre-application consultation and negotiations with objectors. For example, in an application for a subdivision in one of the Councils we examined, an environmental planning consultant had been appointed to provide assistance in developing an appropriate design for a subdivision application, at a cost in the vicinity of $5 000. The fee charged by the Council, as provided for in the Regulations, was only $268.

7.62 If the Government is to apply a user-pays principle to the setting of fees for planning scheme amendments and permits, we consider that fees payable should cover a higher proportion of the costs incurred by councils in processing applications and amendments and eliminate cross-subsidisation by other ratepayers.

❑ ***RESPONSE*** *provided by Chief Executive Officer, City of Melbourne*

In respect to the issue of fees for planning applications and planning scheme amendments, the Council is strongly supportive of the need to increase fees and have advised the Department of Infrastructure of this in its submission to the review. However, Council is concerned with a user-pays system whereby all costs incurred are covered by the applicants. Ratepayers should, at least in part, pay for the provision of these sorts of services, including planning.

❑ ***RESPONSE*** *provided by Mayor, City of Port Phillip*

The audit touched on the review of planning fees now underway and the fact that the Councils audited were able to recoup only between 25 and 40 per cent of the operating costs of the planning permit system. The audit recommends that fees payable by applicants for permits and planning scheme amendments "… should cover a higher proportion of the cost incurred by councils in processing applications." Port Phillip agrees with full cost recovery and recommends that this point be taken up by the Department of Infrastructure in its review of fees.

Fee collection

Planning scheme amendments

7.63 Our examination of the fees raised by Councils in relation to planning scheme amendments revealed that fees were not collected in all instances due to:

- Varying interpretations of the 1988 Regulations and inconsistent collection practices adopted by Councils. For example, the wording of the Regulations was explicit in terms of the first 2 stages (council consideration of requests for amendments and of submissions), in indicating that the fee should be paid by the proponent. The wording where a fee was payable to the Minister for approving an amendment indicated that the fee was to be paid by the council but did not state whether the council could recover this fee from the proponent. Councils stated that they had received inconsistent advice from the Department on this issue; and
- Councils lacking a clear policy for fee collection, resulting in arbitrary decisions on fees payable. For example, in one Council, staff had decided that no fee would be charged unless the request was subsequently approved, notwithstanding that the Regulations required payment of this fee at the time the request was made.

7.64 Due to the different interpretation of the Regulations and the inconsistent advice from the Department, it was not possible to arrive at an exact calculation relating to the revenue forgone by Councils in respect of amendments lodged by applicants between 1 July 1996 and 30 September 1998. We found that in one particular Council fees payable to the Minister for approving the amendments were not recovered. We estimated that for the 30 amendments examined, if it is accepted that councils may recover the fee payable to the Minister, then the revenue forgone by that Council was around $21 000.

7.65 Given that processing planning scheme amendments is resource intensive involving consideration of proposals, resolution of opposing submissions and conducting appropriate consultations with other interested parties, the failure of Councils to collect all fees to which they are legitimately entitled should be of concern to ratepayers.

7.66 In assessing the processes entailed in fee collection, we formed the view that an outcome from the current review of the Regulations should be to remove any ambiguity impacting on the collection of fees by Councils by clarifying whether:

- a fee is collectable when amendment requests are withdrawn prior to consideration by council; and
- councils may recover from the proponent fees payable to the Minister associated with the submission of amendments.

7.67 In view of the potential for revenue to be forgone and the likely impact on Council resources and programs, I am also of the opinion that councils should promote a policy of rigorously collecting all fees to which they are legally entitled and adopt a practice of documenting reasons for waiving fees.

Permit applications

7.68 In relation to fees collectable for permit applications, we identified that the correct fee had not been collected for 28 per cent of applications processed. We estimated that revenue forgone in relation to the sample of applications examined was at least $300 000. It was evident that this particular problem often occurred where applications encompassed both changes to the use of the land and its redevelopment. Advice from the Department was that only the development component of the fee was collectable. Some Councils took the contrary view that if an application related to a combination of change of land use, redevelopment, subdivision, and varying easements or restrictions, the fee collectable was an accumulation of the fees for each particular aspect.

7.69 We also established that:

- In a number of instances the fee collected was incorrect as the planning officer had misconstrued the real nature of the application pursuant to the relevant planning controls. In one application for a subdivision of land the error amounted to $2 000;
- File documentation, including receipting, was inadequate; and
- The reasons for waiving fees were not always documented.

7.70 In order to improve the fee collection practices councils should:

- provide relevant training to planning officers;
- require reasons for waiving fees to be documented; and
- consider collecting fee revenue forgone and ensure that all fees are correctly raised and collected in future.

7.71 As was the case with the collection of fees for processing of planning scheme amendments, the Department needs to consider removing any ambiguities contained in the Regulations which impact on the collection of fees relating to permits.

- ***RESPONSE*** *provided by the Acting Secretary, Department of Infrastructure*

  In the absence of knowledge about the facts in each situation the Department cannot comment on assertions regarding alleged "inconsistent advice". It may be that the facts in each case were not the same. The Department will adopt Audit's recommendation.

Part 8

Performance monitoring within councils

OVERVIEW

8.1 The establishment of a sound performance measurement framework is essential to regularly measure achievements against policy objectives and develop strategies and targets aimed at continuous improvement. Performance indicators are a key part of a performance measurement framework. It is important that a mix of quantitative and qualitative performance indicators are identified early in the development of the framework, are few in number and remain stable as far as practical in the short to medium term. Performance indicators that measure the key result areas should be used for external reporting purposes, whereas those that measure achievement of sub-objectives have greater application for internal management reporting.

8.2 It was pleasing to find that 2 Councils had recently developed an excellent range of indicators addressing planning outcomes, customer satisfaction with service delivery, efficiency of the planning process and process improvement. This information provided a complete picture of how each Council's planning unit was performing in terms of its objectives, and consideration could be given to adopting these indicators for use across the local government sector.

8.3 In the remaining 6 Councils examined, performance indicators or other measures for assessing performance concentrated on quantitative indicators such as the number of planning permit applications received and processed and the number of applications that were the subject of appeal.

8.4 During 1998, the Department of Infrastructure produced a set of key performance indicators which included 7 indicators relating to the provision of planning services for use by local government. While the Department's initiative is seen as a positive step, we consider that these indicators were limited in that they only addressed certain aspects of the planning process, and suggest that further developmental work is needed.

8.5 Where councils conduct customer surveys on an annual basis to assess their level of satisfaction with the provision of planning services, they should ensure that the sample is sufficiently representative of all users of those services including non-ratepayers.

8.6 Customer Service Charters specifying a set of planning service standards to which councils commit had been developed in 3 of the Councils. I am of the view that all councils should introduce service charters and that their performance against the standards be measured and publicly reported.

❑ ***RESPONSE*** *provided by Chief Executive Officer, City of Melbourne*

Over the past 2 years Council's Development Planning Branch has developed and adopted comprehensive performance monitoring strategies, with a view to ensuring that continual review and improvement in the delivery of services is part of the culture of the Branch. The Council supports the techniques and qualitative indicators recommended in the report, most of which are already in place at the City of Melbourne.

DEVELOPMENT AND USE OF PERFORMANCE INDICATORS

Measuring the quality of service delivery and planning outcomes

8.7 In a planning sense, quality of service relates to customer satisfaction with the services provided by council planning staff as well as community satisfaction with land use and development, whereas outcomes generally relate to the impact of planning decisions on aspects such as physical quality, streetscape character, local amenity or the environment.

Local councils

8.8 As previously stated, 2 Councils had developed a range of indicators that measured the quality of services and planning outcomes, as well as the efficiency of the processes. Some of the techniques used by these Councils to compile data on the quality and efficiency of the processing of planning permit applications and planning scheme amendments included:

- Conducting file audits of a sample of permit applications and planning scheme amendments using a checklist to test for compliance with legislative requirements;
- Undertaking an annual review of a sample of completed land use or development proposals to measure the quality of the planning unit's work in terms of outcomes. This was achieved through a panel forum where representatives from a range of relevant disciplines including urban design professionals, provide advice to assess the quality of completed developments; and
- Conducting surveys of statutory planning staff to establish their satisfaction with the council's policies developed by the strategic planning unit and the level of support and communication they receive from that unit.

8.9 Some of the qualitative indicators used by one Council included:

- *Availability to public.* Level of client satisfaction with officer availability for public contact by telephone and in person, and to attend consultative meetings;
- *Pre-application advice.* Percentage of clients who are satisfied that pre-application advice on permit applications reflects issues in final decisions;
- *File audit.* Percentage of internally audited permit application files which satisfy the performance criteria;
- *Built form audit.* Percentage of permit applications where the built result is a quality result;

- *Client satisfaction.* Percentage of clients satisfied with the level of the planning unit's competence. Percentage of clients satisfied that the unit:
  - is fair in its decision-making and has respect for their concerns;
  - is action focused and consistent in the way it deals with its clients; and
  - provides easy access to assistance; and
- *Staff satisfaction*. Percentage of staff satisfied that:
  - there are sufficient resources to meet staff needs; and
  - the work environment is supportive.

8.10 We found that scope existed for the remaining 6 Councils to improve their approach to measuring the quality of service and outcomes of the planning function. All councils should consider adopting the techniques described above with a view to improving their approach to performance measurement.

Department of Infrastructure

8.11 In recognition of the need to assist councils in the development of a performance measurement framework, the Department of Infrastructure produced a set of key performance indicators during 1998. These quantitative indicators, which were to apply from the 1997-98 financial year, were produced with the input of 12 councils across Victoria and were intended to facilitate a basis for comparing the performance of councils across a range of functions and services. Table 8A describes the 7 performance indicators included in the suite of standard indicators.

TABLE 8A
QUANTITATIVE PERFORMANCE INDICATORS FOR PLANNING SERVICES

• Average time taken to process planning applications from lodgement to notification of intention to refuse or grant a permit.
• Percentage of planning permits processed by date advised to applicants at lodgement of an application.
• Number and percentage of planning permits decided during the year, under delegation by officers.
• Number and percentage of planning permits decided during the year by Council (i.e. Councillors).
• Number and percentage of planning permits decided through appeal.
• Percentage of Victorian Civil and Administrative Tribunal decisions which upheld Council decision to issue or refuse a permit.
• Cost per planning application.

Source: Department of Infrastructure.

8.12 We consider that the Department's action in commencing the development of performance indicators for the planning functions of local government was a positive initiative. However, the indicators were limited in that they only addressed certain aspects of the planning process. For example, they indicated how long it took and who made the decision, how many appeals were won and how much they cost, but did not address the quality of service delivery and outcomes of the process in terms of whether applicants were satisfied with council services and whether the councils' planning objectives were achieved.

8.13 We acknowledge that the suite of quantitative indicators developed by the Department is to be enhanced. As part of this ongoing process, it is suggested that further work is needed, particularly in terms of developing indicators to measure the quality of services and achievement of desired outcomes.

Local Approvals Review Program

8.14 Basic quantitative performance measures for processing of planning permits were developed in 1989 as part of an Australian Government initiative known as the *Local Approvals Review Program*. At that time, the indicators were considered to reflect best practice. The Program was designed to assist local councils to review and improve their decision-making processes and to identify points councils should measure in the planning permit approvals process.

8.15 The indicators focus on the efficiency of council decision making in terms of timeliness but also include critical components of the system outside a council's control. These indicators can be used by councils to identify delays caused by the applicant, referral authorities or a council's own internal processes.

8.16 Table 8B details the key success factors and a range of indicators for measuring council performance against these factors, for each key step in the process for approving permits. We emphasise that these performance indicators are suggestions only but are reproduced here to assist councils in developing their performance measurement frameworks.

TABLE 8B
PERFORMANCE INDICATORS DEVELOPED
BY THE LOCAL APPROVAL REVIEW PROGRAM

Key steps in permit approval process	*Performance indicator*
Pre-application Applications have an appreciably easier passage through the process where the applicant has spent time in discussion with council officers prior to submission or has received documentation of council requirements in published form. *Key Success Factors* • A high percentage of applications having pre-application. • Availability of quality policy documents and guidelines. • Well-trained staff at counter. • Use of submission requirement checklist.	% of applications provided with pre-application advice. % of approvals provided with pre-application advice. % of refusals provided with pre-application advice.
Application A preliminary check needs to be carried out on receipt to ascertain whether the proposal contains enough information to be considered. *Key Success Factors* • Minimum administrative time to be lost at this stage. • Minimum percentage of rejections due to inadequate applications. • Minimum time taken to identify additional information needs and convey to applicant.	• % of applications returned to applicant for essential information. • Time taken from lodging to registration. • Time taken from lodging to payment of fees. • Time taken from registration to identify and request further information. • Time taken by applicant to respond to request.

TABLE 8B
PERFORMANCE INDICATORS DEVELOPED
BY THE LOCAL APPROVAL REVIEW PROGRAM - *continued*

Key steps in permit approval process	*Performance indicator*
Consultation Relevant consultation with applicants, affected parties and referrals (internal and external) are fundamental tasks for good decision-making. *Key Success Factors* • Minimum time lost in advertising process. • Minimum time lost in referral process.	*Notification process* • Time taken from registration to decision on need for consultation. • Time taken for applicant/council to notify/consult. • Time taken for advertising process to be completed. *Internal referrals* • Time taken from registration to issue of request to internal departments. • Time taken for departments to respond. *External referrals* • Time taken from registration to issue of request to external agencies. • Time taken for agencies to respond. • % applications to which response received within statutory limit.
Assessment Consideration of all issues, Acts, Regulations, council strategies and local and State policies. *Key Success Factors* • Minimum time lost between end of consultation process and completion of assessment stage.	• Time taken from completion of consultation to completion of assessment report.

TABLE 8B
PERFORMANCE INDICATORS DEVELOPED
BY THE LOCAL APPROVAL REVIEW PROGRAM - *continued*

Key steps in permit approval process	*Performance indicator*
Decision The final decision on an application may be made by a council (officer using delegated powers or Councillors), or an appeal body. This needs to be identifiable in the system. In addition, the system needs to identify any time differences between the date of decision and the date applicants are notified, as this may be an area where administrative efficiencies can be made. *Key Success Factors* • Minimum time between completion of assessment report and statutory decision. • Minimum time between statutory decision and notifying applicants.	• Time taken between completion of assessment report and statutory decision. • Time taken between statutory decision and notifying applicants. • Time taken between council decision and lodging of appeal. • Time taken between lodging of appeals and hearing date. • Time between last day of hearing and issue of decision.
Enforcement Responsible authorities are required to enforce planning schemes and conditions of planning permits and ensure that all developments requiring permits have, in fact, obtained permits. *Key Success Factors* • A high percentage of developments comply with the requirements of the planning scheme and conditions on permits.	• Number of ongoing conditions followed-up by inspection. • Number of enforcement matters.

8.17 It is our view that Councils should establish targets, for example, desirable time bands, against which actual performance can be compared. Prior to collecting such information an evaluation should be undertaken to ensure the benefits derived outweigh the costs of collection.

The Minister as a planning and/or responsible authority

8.18 As mentioned previously, the Minister is empowered under the *Planning and Environment Act* 1987 to appoint himself as a planning and/or responsible authority to undertake all the applicable legislative functions relating to planning schemes and permits as those undertaken by a council. Administrative support for the Minister's statutory planning activities is provided by the Department.

8.19 In terms of the Department's role in supporting the Minister as a planning and/or responsible authority, we found that some performance indicators had been developed. These indicators measured outputs and throughputs such as the number of planning scheme amendments approved and exhibited by the Minister, the number of panels established by the Minister, the number of planning certificates issued by the Minister, and ministerial correspondence received and dispatched.

8.20 We consider that the indicators were of limited use primarily because they focused on activities rather than performance, and were inadequate for measuring the quality and outcomes of the administrative support functions provided by the Department for the Minister's statutory roles as a planning and/or responsible authority.

8.21 The Department should consider enhancing the indicators for measuring its performance in providing administrative support to the Minister. In this regard, the comments earlier in this Part of the Report on the development of performance indicators for councils should be considered.

Assessing satisfaction with planning services

8.22 Surveys are a very useful tool for determining whether customers are satisfied with council planning services and hence the quality of those services.

8.23 In 1998, a survey was undertaken by a research firm on behalf of the Department of Infrastructure. The firm surveyed a sample of ratepayers in each of the 78 local councils across the State to assess their satisfaction with the provision of a number of key local government functions, including town planning policy and approvals. Each council was subsequently provided with a copy of the survey results together with an individual report for use as a basis for future performance comparisons. However, factors such as the potential for unrepresentative results due to insufficient levels of responses from ratepayers who had used the planning services and the fact that other users of the planning system such as developers or residents of adjacent councils affected by the planning decisions were not surveyed, may limit the usefulness of the survey data.

8.24 Several of the Councils examined had been pro-active in gathering information on client satisfaction through customer surveys. In one Council, the feedback provided by survey respondents led to the planning unit initiating several minor improvements including the placement of a suggestion box at the public inquiries counter and installation of a dedicated "Hot Line" to provide the public with direct access to planning staff.

8.25 While it is pleasing to note that customer surveys have been used to assess and improve performance, only 3 of the Councils had linked the results of the surveys to performance indicators that measure customer satisfaction with the provision of planning services.

8.26 We recognise that annual surveys conducted by councils covered a range of services provided. However, in order to enhance the usefulness of information for assessing the quality of planning services, councils need to ensure the annual survey covers a sufficiently representative sample of all users of those services, including non-ratepayers affected by planning decisions. Alternatively, councils should consider the cost-effectiveness of periodically conducting separate surveys of users of planning services.

Services provided under compulsory competitive tendering arrangements

8.27 In line with the requirement under the *Local Government Act* 1989 for councils to subject service delivery to compulsory competitive tendering arrangements, 5 of the 8 Councils examined had awarded the contract for delivery of planning services to their existing planning unit. In 3 of these instances there was no competing tenderer. The remaining 3 councils had not subjected their planning functions to a competitive process.

Quality of services

8.28 In relation to the Government's expectation that compulsory competitive tendering would deliver better quality services for less cost, each of the 5 Councils which had subjected their planning services to these arrangements had undertaken surveys to assess community satisfaction with the quality of services. These Councils had endeavoured to closely monitor the quality of planning service delivery to the community.

8.29 Three of these Councils indicated that, based on the improvement in turnaround times of applications and a decrease in complaints, the quality of service had improved. Another Council informed us that the competitive tendering process was useful in terms of:

- formalising and documenting the requirements of the statutory planning function;
- identifying reporting requirements; and
- determining performance criteria.

8.30 However, due to the absence of comparative data relating to community satisfaction with service delivery prior to introducing the competitive tendering arrangements, the Councils were unable to evaluate or report on the impact, if any, on the quality of the services.

Cost of services

8.31 In relation to evaluating whether planning services were delivered for less cost, the Councils were unable to determine whether savings had been achieved as a result of competitive tendering, due to the absence of costing information for the period prior to the introduction of these arrangements.

8.32 Further, none of the Councils had separately identified the costs involved in contracting-out planning services including the costs of preparing in-house bids. One Council estimated that the total cost of introducing competitive tendering, including preparation of the specification and contract documents and legal fees, was around $50 000.

8.33 Prior to entering into competitive tendering arrangements, councils should establish the level of community satisfaction with planning services and the cost of providing those services. This information should provide baseline data against which performance under competitive tendering can be measured to determine the extent to which the quality of service delivery has improved and cost savings achieved. Accurate information on the cost of service delivery prior to the introduction of competition is also vital to evaluation of tenders.

Establishing customer service charters

8.34 The use of customer service charters has been embraced by a range of service industries such as electricity, water and transport as a means of providing statements of customer rights and service provider obligations and demonstrating a commitment to accountability for service delivery.

8.35 A customer service charter, setting out service standards in relation to planning services the council undertakes to meet, had been developed at 3 of the Councils examined. However, none of the 3 measured their performance in meeting the service standards in the charter.

8.36 A service charter in place at one Council, as illustrated in Table 8C, included a variety of commitments and customer rights.

TABLE 8C
EXTRACT FROM A SERVICE CHARTER

Planning Permit Applications
Service Charter

What you can expect of us:

- We will provide a personalised customer service to respond to your needs. This service will be provided at Service Centres in ... ...
- We will provide detailed advice on technical planning inquiries by appointment at all Service Centres. Simply call us on ... ...
- We value the information that you give us. Some information will be available to the public but we will take reasonable precautions to comply with copyright requirements and to prevent unauthorised access to personal information.
- We will nominate a person to take responsibility for your planning permit application, and we will keep you informed.
- We will respond in detail to all written customer inquiries about planning permit applications within 5 working days.
- We will achieve the following timeframes for key actions in the processing of applications:
    - After receiving an application, make a request for further information where required - within 10 working days;
    - Once all information is complete, give notice of the application and refer it to other agencies where required - within 10 working days;
    - Decide on applications - within 40 working days excluding the time taken to supply further information or the time taken by referral authorities to respond.

8.37 In addition, the service charter outlined a list of actions that members of the public could take in the event that they were not satisfied with the service standard.

8.38 The initiative in introducing customer service charters by the 3 Councils is commended and it is suggested that all councils consider taking similar action. In addition to developing such charters, it is important that councils measure their performance in meeting the service standards and consider reporting the results in their annual reports.

- ***RESPONSE*** *provided by Chief Executive Officer, City of Casey*

  The customer service charter for Casey's Planning Department reflects service standards in the in-house contract. Reporting requirements on the charters are annual. As the charters were only introduced in 1998-99 (i.e. at the time the audit was conducted) no report would have yet been available.

REPORTING PERFORMANCE

Information systems for monitoring and reporting on planning services

8.39 The efficient and effective management of planning processes requires councils to have information systems that provide timely, complete and accurate information to management to enable assessment of performance against both qualitative and quantitative performance criteria. Information systems should provide high level performance information to senior management and lower level operational data to line managers and staff involved in service delivery and for reporting purposes.

8.40 Information systems used by Councils for recording and tracking applications included in-house developed systems, and commercial software packages. They all reported problems in compatibility between the various products available and other mainframe systems.

8.41 While 2 Councils were found to have computerised systems that provided suitable information with which to measure performance, significant weaknesses identified during the audit in regard to the systems used in the remaining 6 Councils included:

- The preparation of monthly reports involved substantial manual reprocessing of data as the computerised system could not provide the information in the required format. This adversely impacted on the efficiency of reporting processes;
- Key dates, such as dates applications were received, were inadvertently deleted from the register or were incorrect; and
- A computer system did not have any inbuilt controls to ensure data accuracy.

8.42 We understand that action is in train in Councils to address the shortcomings with their existing information systems.

8.43 Councils, in association with the Department, should improve systems for recording, monitoring and reporting statutory planning activities.

Management reporting under competitive arrangements

8.44 Under the tendering arrangements, service providers enter into an agreement which, *inter alia*, sets out information required to be prepared for monitoring contractor performance.

8.45 In the 5 Councils where agreements had been established with in-house teams, we found that reporting in 2 Councils was focused on workload indicators such as the number of applications received and processed. Information on the quality of services provided and outcomes achieved by the statutory planning unit were not presented. In 2 Councils reporting did not conform with the requirements of the in-house agreement.

8.46 In the case of the City of Port Phillip, we were unable to assess whether reporting conformed with the requirements of the in-house agreement. This Council, which was in the process of re-tendering its planning services, refused to provide us with a copy of the agreement because it was considered by the Council to be commercially confidential.

8.47 Councils need to focus more attention on ensuring service providers comply with the performance reporting requirements of service agreements.

Appendix A

Legal opinions

LEGAL OPINION NO. 1

SOLICITOR-GENERAL FOR VICTORIA

MEMORANDUM

TO: THE HON JAN WADE, MP, ATTORNEY-GENERAL

FROM: DOUGLAS GRAHAM, QC, SOLICITOR-GENERAL

DATE: 19 APRIL 1999

SUBJECT: **AUDITOR-GENERAL – REVIEW OF THE PLANNING SYSTEM IN VICTORIA**

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1. In a Memorandum dated 6 April 1999 on this subject, I dealt with some issues arising from the terms of the *Audit Act* 1994 ("the Act") and amendments made to the Act by the *Audit (Amendment) Act* 1997. For convenience of reference, I shall re-capitulate the circumstances out of which the request to me for advice arises. In a document entitled "Performance Audit - Operation of Victoria's Planning System" dated December 1998 ("the audit proposal") in December 1998, the Victorian Auditor-General indicated the scope of a performance audit concerning Victoria's planning system which he proposed to undertake. The audit proposal was sent to the Department of Planning and Local Government (now the Department of Infrastructure). By letter dated 23 December 1998 to the Attorney-General, the Minister for Planning and Local Government ("the Minister") sought advice as to whether the terms of reference set out in the audit proposal, insofar as they relate to the review of Ministerial decisions, fall within the framework of the Auditor-General's authority. The matter was subsequently referred to me for my consideration.

2. Three of the areas to be examined in the course of the proposed performance audit as specified in the audit proposal require consideration. These are as follows:-

   (a) The actions of the Minister for Planning and Local Government and his delegates in relation to his responsibilities under the *Planning and Environment Act* 1987, the *Planning Appeals Act* 1980 and the *Victorian Civil and Administrative Tribunal Act* 1998. See paragraph 2, first point; paragraph 3.2; paragraph 4.1, especially under the heading "Legislative compliance" and the sub-heading "The Minister", and under the heading "Decision-making/assessment" and the sub-heading "The Minister".

   (b) Panels and advisory committees established under the *Planning and Environment Act* 1987. See paragraph 3.2.

   (c) The hearings listing process in respect of appeals lodged with the Victorian Civil and Administrative Tribunal in planning matters. See paragraph 2, fourth point and paragraph 3.4.

3. The powers of the Auditor-General in relation to the conduct of performance audits are contained in s.16 of the Act. At the time when the audit which I have been asked to consider commenced, s.16(1) provided as follows:-

   "16(1) Subject to sub-section (7), the Auditor-General may conduct or authorise Audit Victoria to conduct any audit he or she considers necessary to determine whether an authority is achieving its objectives effectively and doing so economically and efficiently and in compliance with all relevant Acts."

   By s.3, the word "authority" is defined to mean:-

   "(a) a department;

   (b) a public body."

By the same section the word "department" is defined as having the same meaning as in s. 4 of the *Public Sector Management and Employment Act* 1998. The expression "public body" is defined in s. 3 of the Act to mean:-

"(a) a public statutory authority; or
(b) a State owned enterprise within the meaning of the State Owned Enterprises Act 1992; or
(c) a corporation, all the shares in which are owned by or on behalf of the State, whether directly or indirectly; or
(d) a trustee of a trust of which the State is the principal beneficiary; or
(e) a person or a body prescribed for the purposes of this definition; or
(f) a municipal council; or
(g) a corporation, all the shares in which are owned by or on behalf of one or more municipal councils, whether directly or indirectly; or
(h) a trustee of a trust of which a municipal council is the principal beneficiary or of which several municipal councils are the principal beneficiaries; or
(i) a regional library under section 196 of the Local Government Act 1989."

4. Clearly the Minister, when acting pursuant to powers conferred upon him or her personally by the *Planning and Environment Act* 1987, the *Planning Appeals Act* 1980 or the *Victorian Civil and Administrative Tribunal Act* 1998 is not a "department" as defined in s. 3 of the Act. Equally, the Minister is not, in such circumstances, a "public body" within the meaning of that expression as defined by s. 3 of the Act. So far as the latter proposition is concerned, I note that the word "authority" and the expressions "public authority" and "public statutory authority" have been the subject of judicial consideration on many occasions. A very helpful and complete review of the authorities is to be found in the judgment of Hill J. sitting as a member of the Full Court of the Federal Court in Commissioner of Taxation v. Bank of Western Australia Limited; Commissioner of Taxation v. State Bank of New South Wales (1995), 61 FCR 407 at pp. 428-432. The other members of the Court, namely Wilcox J and Drummond J agreed with the judgment of Hill J. It should be noted that the definition of the expression "public body" in s. 3 of the Act is an exhaustive definition and if the Minister does not fall within any of the meanings assigned to that expression by any of the sub-paragraphs of the definition, then the Minister is not a "public body" even if, as a matter of the natural meaning of the expression, the Minister would otherwise fall within it. It follows, in my opinion, that the decisions and actions of the Minister which are proposed to be the subject of a performance audit under s. 16 of the Act fall outside of the scope of that section.

5. The power of the Minister under the *Planning and Environment Act* 1987 to appoint a panel arises under Division 1 of Part 8 of that Act, while the power of the Minister to appoint an advisory committee arises under Part 7 thereof. Since the Minister is not an "authority" within the meaning of the Act, it is clear that the action of the Minister in appointing a panel, in choosing the members of a panel, in determining whether or not to appoint an advisory committee, in choosing the members of an advisory committee and framing the terms of reference of such a committee lie outside the scope of a performance audit under s. 16 of the Act. On the other hand, the actions of the relevant Department in advising the Minister in relating to those matters and in setting up a panel or an advisory committee would be within the scope of that section.

6. I understand that the task of arranging the listing of planning appeals to be heard by the Victorian Civil and Administrative Tribunal is dealt with by officers of the Department of Justice. I also understand that the scope of the operations of the Auditor-General in relation to administrative activities within the courts and tribunals has been the subject of arrangements which were settled some time ago.

(signed)

DOUGLAS GRAHAM QC
Solicitor-General

LEGAL OPINION NO. 2

SOLICITOR-GENERAL FOR VICTORIA

MEMORANDUM

TO: THE HON JAN WADE, MP
ATTORNEY-GENERAL FOR VICTORIA

FROM: DOUGLAS GRAHAM, QC, SOLICITOR-GENERAL

DATE: 20 MAY 1999

SUBJECT: **AUDITOR-GENERAL – REVIEW OF THE PLANNING SYSTEM IN VICTORIA**

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1. In Memoranda dated 6 April and 19 April 1999 on this subject I dealt with a number of issues arising from a proposal by the Auditor-General to audit certain actions within the Department of Infrastructure. In a letter to you dated 17 May 1999 the Minister for Planning and Local Government suggests that it is not clear from my advice whether the action of the Minister in "calling in" a particular matter, and "Minister actions … in relation to call-ins or interventions under the *Planning and Environment Act* and the *Victorian Civil and Administrative Tribunal Act* are appropriate, efficient and effective" may be subject to review by the Auditor-General.

2. In paragraph 4 of my more recent Memorandum I indicated that the jurisdiction of the Auditor-General extended to any person or body which was "an authority" within the meaning of the *Audit Act* 1994, that the Minister was not "an authority" as defined and accordingly his actions which were proposed to be the subject of a performance audit under s. 16 of the *Audit Act* 1994 fell outside the scope of that section. What I stated there clearly includes Ministerial actions of the kind referred to in the Minister's recent letter.

3. In order to make the position entirely clear I will refer to the various statutory provisions which confer powers upon the Minister in respect of the decisions of responsible authorities under planning legislation and appeals under such legislation:

   (a) *Planning Appeals Act* 1980, s. 40(2) and s. 41(1) and (2).

   (b) *Planning and Environment Act* 1987, s. 97B and s. 97F.

   (c) *Victorian Civil and Administrative Tribunal Act* 1998, s. 39, s. 58 and schedule 1 clause 57, clause 58 and clause 59.

   In my view, the Minister's actions taken pursuant to the powers conferred by those provisions cannot be the subject of a performance audit under s. 16 of the *Audit Act* 1994 because they fall outside the scope of that section.

(signed)

DOUGLAS GRAHAM QC
Solicitor-General

LEGAL OPINION NO. 3

VICTORIAN GOVERNMENT SOLICITOR

21 September 1999

Memorandum for:

Mr Ronald C. Beazley
Victorian Government Solicitor

Audit Act 1994 ("the Act") s.16; performance audit of planning system; whether within scope of s. 16

1. By letter of instruction dated 1 September 1999 advice is requested on whether drafts of various sections of what is intended to be a performance audit report on the planning system are within the scope of s. 16 of the Act, which is the section that empowers the Auditor-General ("audit") to carry out audits of that description. In addition to the materials forwarded I have had the benefit of previous advice given by the Solicitor-General Douglas Graham Q.C. and comments from the instructing Department on particular passages in audit's draft.

2. Mr Graham has unambiguously advised, in terms with which, with respect, I agree, that actions by the Minister under the relevant planning legislation cannot be the subject of a s. 16 audit because that section extends only to authorities as defined in s. 3 of the Act and the Minister acting as such is not an authority as defined. It follows that anything in the draft materials that treats legislatively authorised Ministerial action as a proper object of s. 16 audit is beyond the scope of the section.

3. It is to be noted also that s. 16(6) excludes from the operation of the section any questioning of "the merits of policy objectives of the Government". Since a major purpose of legislation is the implementation of Government policy objectives, it follows that adverse comment by audit on the operation of an Act may well, albeit inadvertently, offend against this provision and thereby place itself beyond the scope of s. 16.

4. My understanding of the letter of instruction is that this advice is intended to cover the whole of the draft material forwarded and not just the particular points raised by the Department. I proceed accordingly, noting that although the Minister is not an authority, the Department is. This creates a need to distinguish for the present purpose between governmental policy objectives and departmental objectives.

5. The footers up to p. 20 of the draft report refer to "Operation of Victoria's Planning System" followed by "The Minister's Involvement in Statutory Planning". There is then a gap to p. 118 by which time the second title has changed to "Case Studies in Statutory Planning". From there on everything is under the case studies title until the materials run out on p. 162 but there are still plenty of references to the Minister. This suggests that not merely in chapter 5 is the Minister to be included in the audit but possibly also throughout the entire ultimate document.

6. The foregoing considerations suggest further that in this instance the subject matter of the performance audit has been entirely misconceived. If that subject matter is correctly described in the main title, "Operation of Victoria's Planning System" as from the draft material it appears to be, the audit is not about an authority. It is about an activity of government which encompasses Ministers, policy objectives expressed in statutory form and the associated activities of the Department and other bodies.

7. In my opinion such an inquiry goes far beyond the scope of s. 16 of the Act and indeed simply disregards the restrictions imposed by subsections (1) and (6). This is illustrated as well as anywhere by the heading "The Minister's Involvement in Statutory Planning" and the repeated observations by audit that the Minister has complied with the law but would have done better to give reasons.

8. As the Department in turn repeatedly points out, Government policy is expressed through the statute. If that does not require published reasons, that is a policy decision to leave it to the Minister whether he publishes reasons or not. For audit to comment on the Minister's actions, approvingly or not, is clearly beyond the scope of s. 16. The Minister is not an authority and implied disapproval of what audit apparently sees as an omission in the relevant Act goes to the merits of a Government policy objective.

9. Since in my view this audit is misconceived in the sense that the subject matter taken as a whole is clearly beyond the scope of s. 16 of the Act, the question perhaps arises whether some passages which might be argued in themselves to comply with the section can be preserved and severed from the rest. Such a course is in my opinion not open. The subject matter taken as an integrated whole is outside the scope of s. 16 and no useful or validating purpose is served by excising a collection of unintegrated excerpts. They would still not have the required character of a performance audit.

10. I should perhaps comment on the extensive collection of case studies. This purports to form the basis for a recommendation that departmental decision-making be improved. Were the audit directed, as s. 16(1) requires, to whether the Department is achieving its objectives, it may be that a proportion of this material would have relevance. It is however not presented in that context and also includes much reference to the Minister which can be understood as implying criticism of both the Minister and Government policy.

11. I note with some surprise from p. 154 para. 9.5.5 that audit seems to be aware of at least some of the limitations on his power to comment on the governmental process. On the face of things this is hard to reconcile with audit's apparent lack of understanding of s. 16 of the Act or the freedom with which inadmissible comment is made in the draft material. The heart of the difficulty seems to be a failure to appreciate the significance of the word "authority" and perhaps also "objectives" of an authority. It should be clearly understood that s. 16 does not permit audit to look into and comment upon any governmental activity that is thought to need inquiry.

12. I also find no indication in the draft materials of why audit thought it necessary to make this inquiry. This contrasts with the emphasis placed throughout on the desirability of reasons for Ministerial action. The explanation may of course lie in earlier documentation. I mention the point because the adequacy of audit's reasons for finding a performance audit necessary may on some occasion be of considerable importance.

(signed)

Dr Colin Howard Q.C.
General Counsel

Appendix B

Case studies

NUMBER 50 BIG PAT'S CREEK ROAD, EAST WARBURTON

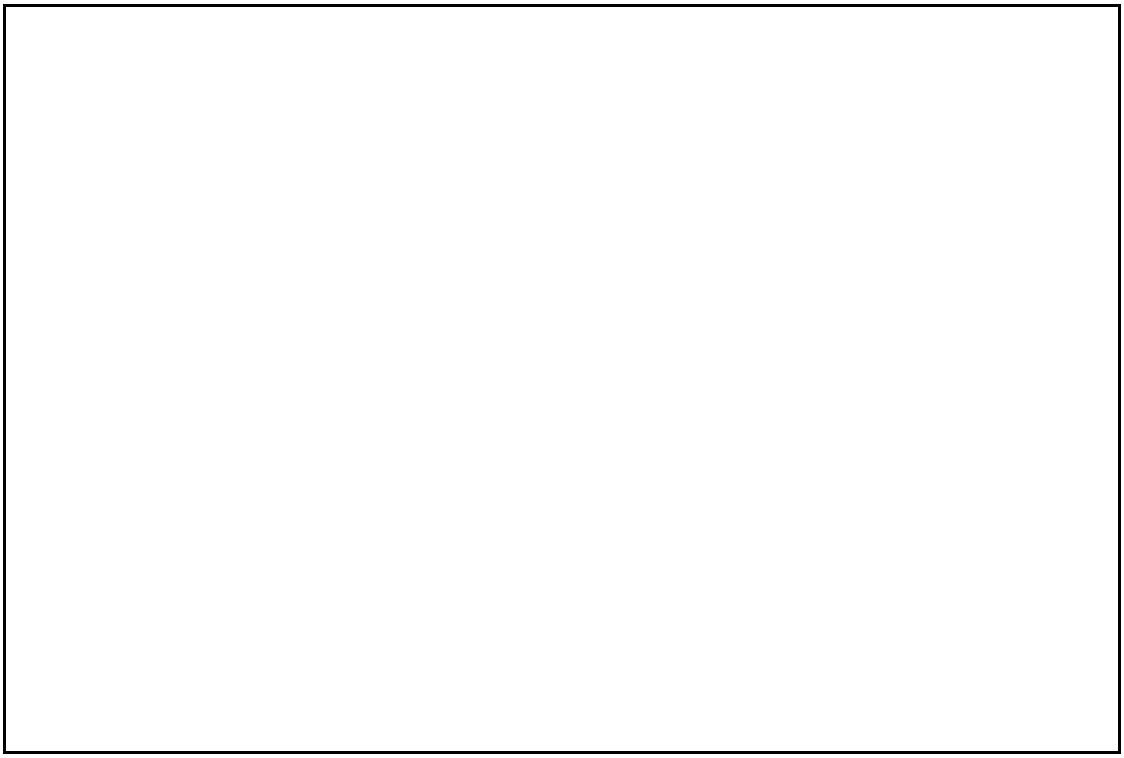
Number 50 Big Pat's Creek Road is located approximately 3 kilometres to the east of the rural township of Warburton around 60 kilometres east of Melbourne. The site is densely vegetated with re-growth timber and traversed by a stream known as Postman's Creek. It is surrounded predominantly by farming properties with a sprinkling of residential development to the east. Big Pat's Creek Road is a narrow road which winds around the site.

Planning in the Upper Yarra Valley and Dandenong Ranges region has been the subject of considerable public comment over the years. Concern over small subdivisions, the fragmentation of rural land and the degradation of a significant environmental asset led to the development, in 1982, of the Upper Yarra Valley Dandenong Ranges Regional Strategy Plan. According to the Regional Strategy Plan, there has been a long-standing view in the community that the region is fragile and only steady long-term application of stringent planning controls will prevent the loss of the region's most important environmental qualities. The Regional Strategy Plan requires that any further small lot subdivisions of land in the area, of which the Big Pat's Creek site forms part, should only be permitted in exceptional circumstances.

In 1996, the Minister for Planning and Local Government intervened to amend the Yarra Ranges Planning Scheme and the Regional Strategy Plan, to allow a 4 lot subdivision of environmentally sensitive land in East Warburton. Despite opposition from the Department of Natural Resources and Environment, several environmental groups and the Council's planning officer, the Minister replaced a zone under which a permit to subdivide could not be considered, with a planning scheme which allowed the subdivision, subject to the granting of a permit by the Council.

Following Council approval of a permit, an appeal was lodged against the decision by an objector, with the Victorian Civil and Administrative Tribunal. While the Tribunal was still considering the case, the landowner submitted a second application to the Council effectively overriding the application before the Tribunal.

In July 1997, the Minister again intervened by calling-in the new application which incorporated some minor changes to the one subject to appeal. In effect, this took the landowner's new application out of the hands of the responsible authority, the Council, and eliminated the possibility of a further appeal to the Tribunal.

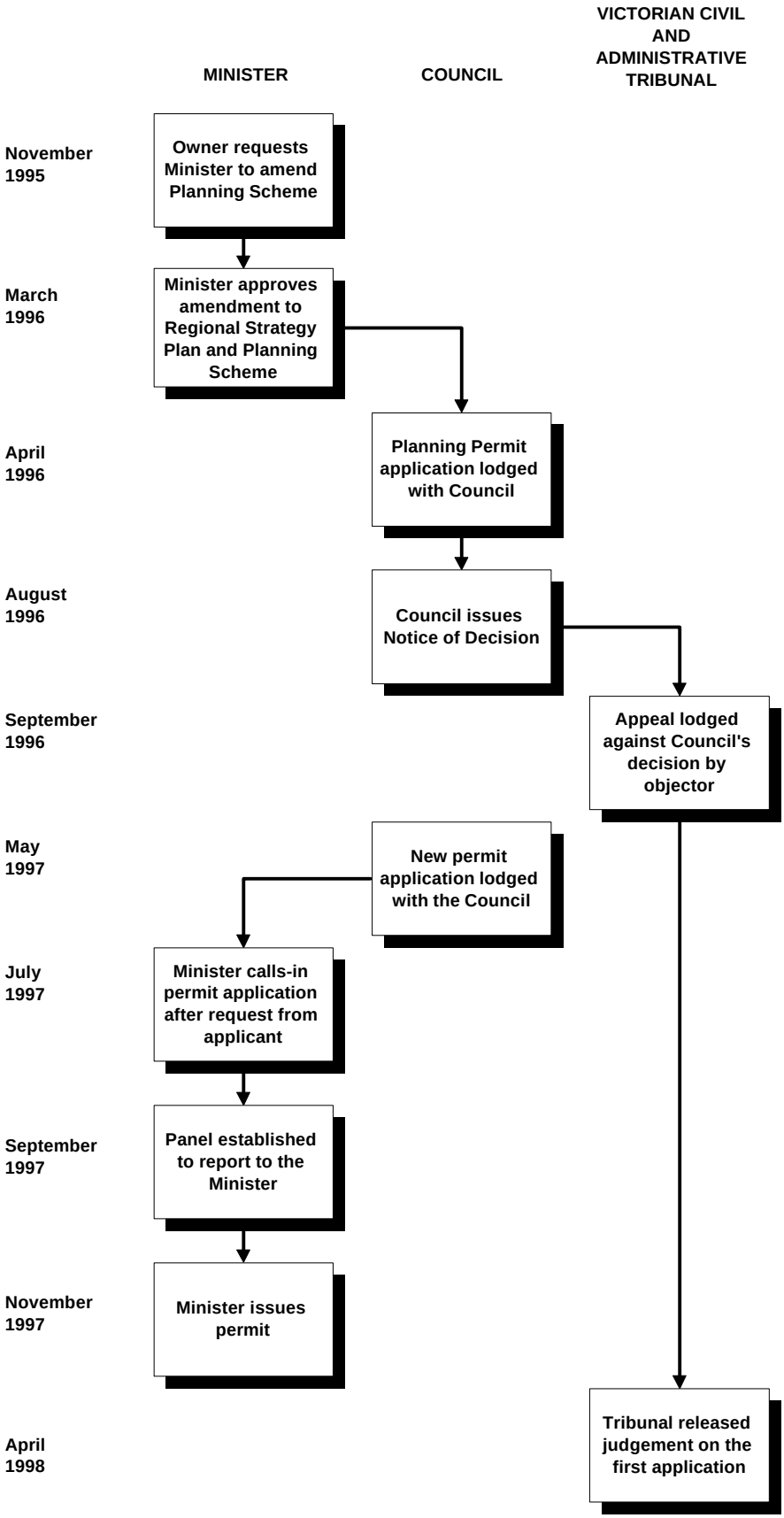


No. 50 Big Pat's Creek Rd, East Warburton.

Chronology of key events

The chronology of events, relevant to the permit application for the subdivision and the key parties is outlined in Table B1.

TABLE B1
CHRONOLOGY OF KEY EVENTS



What were the key events relating to the development?

Upper Yarra Valley Dandenong Ranges Regional Strategy Plan

Under the Regional Strategy Plan, the key strategic document governing the use and development of land in the region, the land at No. 50 Big Pat's Creek Road was also subject to a conservation policy, the objective of which was:

> *"… to protect and maintain native vegetation for its intrinsic value and for its value as a wildlife habitat, to protect landscape values and quality and to ensure that any land use is carried out in a manner compatible with the maintenance of water quality".*

Other relevant provisions within the Regional Strategy Plan relating to the permit application required that:

- the subdivision of land in the Rural Conservation Area conform to an average lot yield of one lot to each 40 hectares of site area, and have lot sizes between 30 to 70 hectares each; and
- any lot created by subdivision comprise land which has at least 40 per cent of its area that is not subject to significant slopes.

Yarra Ranges Planning Scheme

The objectives of the Yarra Ranges Planning Scheme are to:

- "… provide for rural uses and land management appropriate to the topography, vegetation and environmental quality of the zone, so as not to detrimentally affect these qualities; and
- encourage the suitable setting of houses and farm buildings compatible with efficient farming operations and landscape considerations".

The subject land was zoned *Rural 3*, which provided for a minimum lot size of 60 hectares.

Request to Minister to amend planning controls

Under the relevant planning controls of the Council applicable to the permit application, the proposed subdivision was clearly prohibited. In November 1995, the landowner wrote to the Minister offering to transfer 24 hectares of land to the Department of Natural Resources and Environment if the local planning controls could be amended to allow subdivision of the remaining portion of the land into 4 lots ranging in area from 2.2 to 2.7 hectares.

The Minister agreed to amend the planning controls.

Amendments to Planning Scheme and Regional Strategy Plan

In considering the amendments to the Planning Scheme and the Regional Strategy Plan, the Minister referred the request to the Council, the Department of Natural Resources and Environment, the Country Fire Authority and others.

The Council advised that it preferred the Minister to consider the amendments as the proposal involved the transfer of the land to the Crown. It also provided the Minister with copies of letters received from a number of environmental groups objecting to the proposed subdivision.

The Department of Natural Resources and Environment opposed the proposal stating that:

- it was inconsistent with planning objectives;
- the land was in a high fire risk area;
- it contravened government policy concerning small lot subdivision; and
- the high conservation value of the land would be best maintained and enhanced if it remained as a single allotment in private ownership.

The Country Fire Authority recommended appropriate steps that the landowner should follow to manage the fire risk.

Following consideration of these responses, and given the Council's unwillingness to prepare the amendments, the Minister decided to prepare and approve certain site-specific amendments to the Planning Scheme and the Regional Strategy Plan.

Amendment 89

In March 1996, the Minister approved Amendment 89 to the Regional Strategy Plan which provided an exemption which stated:

> *"… Big Pat's Creek Road, Warburton East, may be subdivided into 4 lots, comprising 3 lots fronting Big Pat's Creek Road, and a fourth lot each of which may be used for a single house, subject to the grant of a permit by the Responsible Authority"*, i.e. the Council.

Amendment L54

In March 1996, the Minister also approved Amendment L54 to the Planning Scheme which provided a site-specific exemption allowing for the proposed subdivision.

While the Minister's approval of the amendment did not specifically allow the subdivision to proceed, it enabled the owner to apply to the Council for a planning permit to subdivide the land thereby opening the way for the planning merits of the application to be tested by the Council.

In preparing the amendments to the Regional Strategy Plan and the Planning Scheme, in both cases the Minister exercised his powers under the Act to exempt himself from giving notice of Amendments 89 and L54 to affected parties.

Landowner's application for a permit to subdivide

Following the amendments to the Regional Strategy Plan and the Planning Scheme, in April 1996 the landowner lodged an application with the Council for a permit to subdivide the land into 3 lots, varying in size from 2.2 to 2.7 hectares, leaving a fourth lot of approximately 27 hectares.

The permit application was advertised by the Council and referred to the relevant authorities. One objection was received in response to the advertisement.

The Council subsequently determined to grant the permit for subdivision and issued a Notice of Decision in August 1996. In reaching its decision, the Council recognised the environmental significance of the land and worked within the parameters of the Planning Scheme as amended by the Minister. Conditions were included on the permit which addressed such matters as building, access, fire protection, effluent disposal, vegetation removal, land slope conditions, and wildlife corridors.

Appeal against approved permit

In September 1996, an appeal against the Council's decision to grant a permit was lodged by an objector with the Victorian Civil and Administrative Tribunal. The grounds of appeal were that:

- the proposed subdivision was prohibited and was inconsistent with planning policy and objectives;
- the proposal did not satisfy the mandatory slope requirements of the Planning Scheme and was therefore prohibited;
- access was dangerous;
- significant vegetation would be lost; and
- Postman's Creek would be polluted.

The appeal hearing commenced in December 1996 before the Tribunal. The appeal considered both the merits of the case and legal interpretations of certain aspects of Amendments L54 and 89. During the hearing it appeared that a legal dispute concerning the criteria for assessment of the proposed subdivision and specifically, whether the provisions in the Planning Scheme relating to land slope were applicable, was likely to be referred to the Supreme Court.

The Tribunal's determination on the appeal, outlined later in this case study, was handed down in April 1998.

Submission of new permit application

As the appeal was unlikely to be resolved within a reasonable period of time, in May 1997, the landowner lodged a new permit application with the Council which incorporated some minor changes from the permit under appeal at the Tribunal.

The new application to subdivide the land was referred to a number of referral authorities as required by the Act. Subject to the inclusion of certain conditions in the permit, none of the authorities objected.

In June 1997, in accordance with the Act, the application was advertised. The Council subsequently received 7 objections to the proposed subdivision, including one with 25 signatures stating that the proposal would:

- be contrary to the requirements of both the Planning Scheme and Regional Strategy Plan;
- result in the clearance of native vegetation, which was contrary to State Planning Policy thereby destroying the natural bushland environment;
- increase traffic hazards on Big Pat's Creek Road;
- restrict access to public land;
- result in the loss of flora and fauna;
- create pollution in the creek environs and affect water quality;
- set a precedent for further small lot subdivisions;
- cause servicing problems; and
- establish a fire risk.

Following a review of the objections the Council scheduled a consultative meeting between the objectors and the landowner in July 1997. This meeting was subsequently cancelled due to the Minister calling-in the application.

Call-in of the application by the Minister

In July 1997, the landowner requested the Minister to assume responsibility for assessing the revised application because, in his opinion, he had already been considerably disadvantaged by the delays in processing the original application before the Tribunal. He was concerned that it could take a considerable period before a decision was made on either application.

The Minister decided to call-in the application and as a result, the decision-making process on this local matter was transferred from the Council to the Minister.

Panel established by the Minister

The Minister established an independent Panel with planning and legal expertise. In September 1997, the Panel considered all written submissions and examined the wording of the amendments to the Planning Scheme and the Regional Strategy Plan. All objectors were provided with an opportunity to present their views.

At the Panel hearing the Council, which now comprised locally-elected councillors rather than Government-appointed Commissioners, opposed the permit application.

In October 1997, the Panel submitted its report to the Minister recommending that a permit be granted for the proposal. In reaching this decision, the Panel took into account the requirements of the Planning Scheme and Regional Strategy Plan, legal argument raised by objectors, and environmental, traffic and fire-related issues.

The Panel's recommendation, which was endorsed by the Department of Infrastructure, was the basis for the Minister's November 1997 decision to issue a permit for the subdivision.

Contrasting determination of the Victorian Civil and Administrative Tribunal

In March 1998, the landowner advised the Victorian Civil and Administrative Tribunal that he wished to withdraw the original application and that he consented to a determination that the appeal by objectors be allowed. However, the Tribunal indicated that since the planning merits of the application had been fully explored in December 1996, under the *Planning Appeals Act* 1980 it had an obligation to publish its own findings albeit that its decision was inconsequential due to the Minister having already determined the second application.

In April 1998, some 5 months after the Minister granted a permit for the landowner's second permit application, the Tribunal handed down its determination in relation to the appeal lodged with the Tribunal in September 1996 against the original permit application approved by the Council. The Tribunal stated that based on the evidence received, it would not have been prepared to agree to the granting of a permit for subdivision. In the Tribunal's view the proposed subdivision did not accord with the long-term strategic planning for the area stating that:

- While there was some rural residential development in Big Pat's Creek Road, it tended to be located further away from the site. Most of the immediate surrounding land seemed to be in relatively larger holdings;
- The site had significant light forest cover from boundary to boundary. Protection of indigenous vegetation was an important regional objective both for its intrinsic value and as a wildlife habitat;
- The steeply sloping land presented a barrier to sensible development. The slope controls of the Regional Strategy Plan were developed for good reason. Even given that the steepest land would be contained in the fourth lot, further development had the propensity to erode the land and cause turbidity problems in Postman's Creek;
- The site was located on a bend with a steep bank sweeping back from the road. Given the narrow road pavement, the access arrangements to the subdivision were poor;
- There was no reticulated water available to the site, a distinct problem given that the subject land was burned in the *Ash Wednesday* fires;
- There was no evidence before the Tribunal that the land was able to contain its own effluent without causing the pollution of Postman's Creek; and
- The subject site was remote from schools, shops, public transport and community facilities.

The Tribunal was highly critical of the Minister's decision to endorse the Panel's recommendation to approve the subdivision application. Part of the Tribunal's judgement stated that *"… it seems extraordinary that, at a time when planning authorities are being vigorously encouraged to pursue urban consolidation strategies with a view to containing the outward urban sprawl of the metropolis, an application which runs counter to State, Regional and Local Planning objectives would receive planning approval"*.

The Tribunal upheld the objector's appeal and directed that no permit be issued. However, the judgement was inconsequential as the Minister had already approved a permit for the landowner's second application in November 1997.

Current status

At the time of preparation of this Report the subdivision had not proceeded.

THE COLOSSEUM HOTEL, WEST HEIDELBERG

The Colosseum Hotel site is located within a strip shopping centre and opposite the Mall Shopping Centre, a convenience centre with some 50 shops, in the Melbourne suburb of West Heidelberg.

In November 1996, a permit application for the development of an hotel on the site was submitted to Council. While the application did not include a proposal to install gaming machines, existing gaming legislation permitted the installation of such machines without the need for a planning permit, provided that area did not exceed 25 per cent of the gross floor space of the premises where liquor may be consumed.

The likelihood of introducing gaming machines in the locality invoked considerable concern from both the Council and the community. These concerns centred on the loss of amenity to surrounding properties, security problems, the impact on shop trading and, given the increased gambling opportunities, potential social problems.

Following the issue of a *Notice of Refusal* by the Council, the landowner lodged an appeal against the decision with the Victorian Civil and Administrative Tribunal.

Chronology of key events

A chronology of key events, relevant to the application for site use and development of the hotel, is outlined in Table B2.

TABLE B2
CHRONOLOGY OF KEY EVENTS

Date	*Description of event*
September 1992	Colosseum Hotel destroyed by fire. Due to protracted negotiations with the insurance company, the site remained uncleared until mid-1996.
November 1996	Application by the landowner to use and develop the site for the construction of a new hotel, bottle shop, bistro and lounge lodged with the Council.
May 1997	Notice of Refusal issued by the Council stating that the development did not comply with the requirements of the Banyule Planning Scheme.
May 1997	Landowner lodged an appeal against the Council's decision.
September 1997	The appeal commenced in the Victorian Civil and Administrative Tribunal.
December 1997	Amendment S69 to the State section of the Planning Scheme came into operation specifically prohibiting installation of gaming machines in premises forming part of shopping complexes and in all strip shopping centres, other than in an existing hotel or club, or on which a permit for use and development for an hotel or club was in force.
March 1998	Appeal was allowed and the Council was directed to issue a permit for the purpose of an hotel and bottle shop subject to minor modifications to the site layout and design.
March 1998	Planning permit issued by Council.
June 1998	Amendment S70 to the State Planning Scheme prohibiting the establishment of new gaming venues in strip shopping centres unless certain exemptions applied, e.g. if the hotel had been destroyed by fire between 1 September 1992 and 16 June 1998, came into operation without public exhibition or consultation.
July 1998	The Council requested the Minister repeal the exemptions provided for under Amendment S70. The request was rejected.
February 1999	Landowner applied for a liquor licence. Council objected to granting of licence.
August 1999	The Liquor Licensing Commission conducted a hearing in relation to the application and objections.
November 1999	The Commission rejected the landowner's application for a liquor licence on 22 November 1999.
November 1999	Permit conditions amended by the Tribunal to extend development commencement date by a further 12 months.

What were the key issues relating to the development?

Victorian Civil and Administrative Tribunal decision

In May 1997, the landowner lodged an appeal with the Tribunal against the Council's May 1997 decision to refuse to grant a planning permit for the hotel redevelopment. The appeal was heard in September 1997 and the decision allowing the appeal by the owner was handed down in March 1998. The Tribunal granted the permit subject to the owner satisfying 43 conditions including traffic management requirements, compliance with the *Licensed Venue Operators' Code of Practice for Responsible Gaming* and the need for the development to be commenced within 2 years of the permit date and completed within 2 years of the date of project commencement to avoid expiration of the planning permit.

In November 1999, the Tribunal approved an amendment to the permit condition extending the development commencement date by a further 12 months.

Amendment S69

Between the appeal hearing in September 1997 and the Tribunal's determination in March 1998, the Minister, in line with the Government's policy of capping gaming machines at 27 500 until the year 2000, amended the planning controls and planning policy relating to the siting of new gaming venues through the introduction of Amendment S69. The key feature of the amendment was to specifically prohibit the installation of gaming machines in premises forming part of shopping complexes and in all strip shopping centres, other than in existing hotels or clubs.

The hotel and gaming industry was particularly critical of this amendment considering it "*restrictive*" as it removed *"… reasonable expectations about future opportunities for gaming in existing … and proposed hotels and clubs"*. In certain cases, the amendment was seen by the industry to remove the opportunity for existing businesses to acquire the means to compete, thereby jeopardising their members' current investments. The industry identified a number of key transitional cases, including the Colosseum Hotel, which were unduly disadvantaged as a result.

At the time of effecting Amendment S69, a further amendment was expected to be introduced by the Minister to lift the blanket prohibition on gaming machines in strip shopping centres and introduce a list of specific shopping centres where gaming machines would be prohibited.

Amendment S70

In June 1998, Amendment S70, relating to gaming machines in strip shopping centres, was approved by the Minister who exempted himself from giving notice of the amendment in accordance with the Act.

The amendment allowed the establishment of new gaming venues in strip shopping centres where any of the following situations applied:

- the hotel or club was in existence;
- a proposed hotel or club had been granted a planning permit and a liquor licence as at 16 June 1998; or
- a hotel or club had been destroyed by fire between 1 September 1992 and 16 June 1998.

In these cases, gaming machines could be installed provided that the area for gaming did not exceed 25 per cent of the gross floor space of the premises where liquor may be consumed.

Following the Minister's approval of the amendment, there was no planning impediment to the inclusion of gaming machines in any future development of the former Colosseum Hotel site. The hotel was destroyed by fire in September 1992 and was therefore exempt from the prohibition. The Council expressed concerns that the amendment was "*specifically designed*" to allow the hotel's development and at the lack of consultation with interested parties.

In July 1998 the Council requested the Minister repeal the exemptions provided for under the amendment. In rejecting the Council's request, the response indicated that the amendment allowed exemptions for other existing and proposed hotels. Specifically, the Minister stated that his decision was based upon:

- equity in that equivalent gaming machine exemptions apply to existing hotels;
- recognition of the Tribunal decision of March 1998 which addressed the issue of a gaming venue at the proposed hotel;
- consistency with other transitional cases; and
- the fact that other approvals would be required and therefore the Minister's approval of the amendment was not final in terms of whether gambling in the hotel proceeded.

Current status

At the time of preparing this Report development of the site had not commenced.

HMAS LONSDALE (SOUTH), PORT MELBOURNE

The HMAS Lonsdale (South) site is a former naval base located on reclaimed land on the Port Melbourne foreshore. The facility, which was decommissioned in 1992 became surplus to the needs of the Commonwealth Government.

The site of around 0.8 hectares is one of a number of disused industrial sites that has or will become available for redevelopment along the foreshore area.

Chronology of key events

A chronology of key events in relation to the site development appears in Table B3.

TABLE B3
CHRONOLOGY OF KEY EVENTS

Date	*Description of event*
1992	Site decommissioned as a naval base
August 1994	The Commonwealth Department of Defence sought assistance from the Council to devise suitable zoning and development guidelines for the site prior to its sale.
December 1994	The Council advised the Minister that design guidelines "*… have been developed which are largely to the satisfaction of Council, the Department of Defence and its appointed consultants*".
March 1995	A concept plan, known as the March 1995 Plan, was developed by the Council and the Department of Defence. This plan allowed for the development of the site for mixed uses (predominantly residential), with a multi-level development of 3, 8 and 11 storeys (14 metres, 26 metres and 35 metres, respectively, in height).
May 1995	A developer successfully tendered for the purchase of the site from the Department of Defence.
October 1995	The developer approached the Council with an alternative site development proposal which included buildings to a height of 80.8 metres (22 storeys). The alternative proposal resulted in the Council preparing planning scheme Amendment L16 that varied considerably from the March 1995 Plan.
November 1995	Council advised the Minister that it proposed to exhibit the new proposal.
December 1995 to February 1996	Proposal exhibited.
February 1996	Ownership of the land was transferred from the Australian Government to the developer, bringing the site under the jurisdiction of the State planning system.
March 1996	State Government appointed Commissioners were replaced by locally-elected councillors who expressed very different views about the proposed development.
May 1996	The Minister advised Council of a legal opinion that all steps necessary for amendment of a planning scheme must take place after the transfer of the land.
June 1996	The Minister appointed an Advisory Committee to consider the proposed development.

TABLE B3
CHRONOLOGY OF KEY EVENTS - *continued*

Date	*Description of event*
November 1996	The Committee recommended that the developer's proposal for the site not be approved and that a new design brief be written including limits on overshadowing of the promenade, building heights on the site and land uses. It recommended that any tower should be no higher than the 11 storey Sandridge Bay Tower, located on an adjacent site.
December 1996	Council endorsed the Committee's recommendations and resolved to abandon support for the proposed Amendment L16. In addition, the Council requested the Minister to approve a new planning scheme Amendment L43.
January 1997	The Minister approved the new amendment. It did not resolve the issues relating to the maximum height and density of development on the site.
June 1997	The Minister approved Amendment L51 which introduced specific urban design criteria for the site, in particular, allowing consideration of buildings up to 20 storeys in height. The amendment also established the Minister as the responsible authority.
January 1998	As a result of Commonwealth Foreign Investment Review Board concerns regarding environmental issues, proposed sale to the overseas developer fell through.
May 1998	The site was sold to another developer.
May 1998	The Minister was briefed by a firm of architects for the new owner on its plans for development of the site and invited the Opposition Spokesman on Planning, the Council's Mayor and other Council representatives to a subsequent briefing.
June 1998	The owner's architect submitted a site analysis and final design response to the Minister.
July 1998	The Minister invited interested parties who had made submissions to him during the previous stages, to meet with the architect.
August 1998	Council requested a meeting with the Minister to discuss the architect's proposal. The Minister did not consider a further meeting was necessary given that Councillors had previously declined an invitation to be briefed. The architect was instructed by the new owner to submit amended plans to the Minister which reduced the height of podium housing on the western side of the site to 5 storeys.
October 1998	The new format Port Phillip Planning Scheme, which enabled the development of buildings up to 20 storeys to be approved by the responsible authority through the planning permit process, came into operation.
October 1998	The Minister, as responsible authority, issued a planning permit that approved the development plans for the site.

What were the key issues relating to the development?

Sale of Commonwealth land

As Commonwealth land is outside the legal jurisdiction of the State, when land transfers from Commonwealth to private ownership it is necessary to bring that land under State planning controls. In advance of the sale of the HMAS Lonsdale (South) site, the Commonwealth sought to establish a local planning scheme for the site in order to provide some guidance for prospective purchasers on the site's future development potential and to secure a reasonable return from its disposal.

In assisting the Commonwealth the Council, as planning authority, sought a planning outcome that reasonably reflected the context of the site and community concerns and aspirations for the area.

Events preceding transfer of site to State jurisdiction

In examining the events preceding the transfer of the site to the State jurisdiction, we considered each of the key stages that were undertaken, i.e. development of:

- the March 1995 Plan; and
- Amendment L16.

Development of the March 1995 Plan

In December 1994, the Council wrote to the Minister seeking endorsement of the process it proposed to amend the local planning scheme to enable development of the site. The letter stated that:

> *"… as the site is presently owned by the Commonwealth Government, formal preparation and exhibition of an amendment to rezone the land cannot occur until the land is no longer held by the Commonwealth … Council at its meeting on 6 December 1994 resolved to give in-principle support to a Ministerial amendment to the Port Melbourne Planning Scheme, pursuant to section 20(4) of the Planning and Environment Act 1987, to enable the amendment to be effected upon transfer of the land into private ownership. In addition, Council resolved to adopt the proposed amendment and proposed guidelines for the purposes of conducting an informal exhibition and is seeking your endorsement of the proposed process …".*

The Department subsequently advised Council in December 1994 that this proposed course of action was acceptable, stating *"… it would be appropriate that the amendment and the guidelines should be made available for informal public comment in the manner proposed"*.

Following receipt of this advice, a consultation and exhibition process took place between the community, the Council and the Department of Defence. Following consideration of submissions, the Council revised and re-exhibited the proposed amendment. The process resulted in the development of a concept plan referred to as the March 1995 Plan which left the front part of the site facing the Bay as open space and provided for a multi-level development stepping back towards the rear of the site.

Despite general agreement with the March 1995 Plan, it was never given statutory force due to technical difficulties with the transfer of Commonwealth land to the State. In the absence of any planning restrictions, there was nothing to prevent potential bidders from proposing alternative developments for the site. However, the community's expectation was that future development would generally be in accordance with the March 1995 Plan.

Development of Amendment L16

In October 1995, the developer who had successfully tendered for the site, approached the Council with an alternative development proposal which varied considerably from the March 1995 Plan and included buildings up to a maximum height of 80.8 metres (22 storeys) on the site.

In November 1995, the Council advised the Minister that it proposed to exhibit the new proposal put forward by the developer. The Council also sought advice from the Minister on whether it could act on its own legal advice which stated that the Council could prepare and exhibit a formal planning scheme amendment, and that an independent panel could consider submissions, while the site was in Commonwealth Government ownership.

In the interim, the Council continued its consideration of the developer's proposal which resulted in the exhibition of Amendment L16 from December 1995 to February 1996. In February 1996, following consideration of submissions, the Council referred the amendment and submissions to the Minister requesting that he establish an independent panel. This coincided with the formal transfer of the land from the Commonwealth to the developer.

After obtaining legal advice from the Victorian Government Solicitor, the Minister responded to the Council in May 1996, addressing both the legal concerns raised by Council in November 1995 and its request for a panel to be appointed.

The Minister stated that:

> *"I have received advice from the Victorian Government Solicitor that no action is able to be taken under the Planning and Environment Act on land in Commonwealth ownership. That is, all the steps necessary for amendment of the planning scheme must be taken after transfer of the land. Decisions to prepare and exhibit the proposed amendment L16 were taken prior to transfer of the HMAS Lonsdale site. The validity of the proposed amendment and any request to appoint a panel may therefore be challenged.*
>
> *"To avoid further delay, I have therefore decided to refer the matter to an advisory committee for report to me on how the scheme should be amended … This will enable full assessment of the planning merits of the current proposal, including those concerns raised in Council's letter dated 5 March 1996 … All those who lodge submissions to Amendment L16 will be given the opportunity to be heard by the advisory committee".*

The legal advice was not released to the public or the Council, and was excluded from Freedom of Information requests.

In March 1996, the composition of the Council changed from Commissioners appointed by the Government to councillors elected by ratepayers. Subsequent to this change, the Council withdrew its request for a panel to be established and opted to enter into further negotiations with the developer.

Events subsequent to transfer of site to State jurisdiction

Key stages subsequent to the transfer of the site were:

- appointment and recommendations of an advisory committee;
- development of Amendment L43; and
- development of Amendment L51.

Appointment and recommendations of Advisory Committee

In June 1996, an Advisory Committee was appointed by the Minister. The Committee's terms of reference required it to:

- assess the planning merits of the developer's proposal, and in particular, a number of points raised by the Council;
- consider the submissions made to Amendment L16; and
- consider any other submissions received following establishment of the Committee.

In addressing the terms of reference, the Committee considered more than 850 submissions or objections, conducted hearings in September and October 1996, and undertook site inspections. The following points briefly summarise the significant concerns raised by objectors:

- *Overshadowing*: Concerns were expressed that the development would cause overshadowing of the foreshore promenade and beach to the detriment of people who use this foreshore for leisure and recreation;
- *Heritage issues*: The site is adjacent to Sandridge Bay Towers and offices of the Australian Institute of Valuers and Land Economists, both of which are protected from adverse affects from any new buildings, under the City of Port Phillip Planning Scheme. As the height of the Towers lent an extra quality to its heritage value, objectors believed that any new development on the site should be no higher than the Towers;
- *Loss of views*: Residents of the Towers were concerned about the loss of views from their apartments if the development proceeded;
- *Contamination*: The site was listed on the Environment Protection Authority's Register of Contaminated Sites. Given past experience with contaminated sites in the area, such as the former Bayside Development Project, objectors were concerned about the lack of information provided to the community and any dangers the contamination might present; and
- *Precedent*: Concerns were held that the development would set a precedent which would result in the transformation of the entire foreshore into an area of high-density development.

The Report of the Advisory Committee was subsequently forwarded to the Minister in November 1996 recommending that the developer's proposal for the site not be approved as the proposal:

- failed to adequately respond to key elements of the site analysis;
- did not adequately respond to statutory requirements of not adversely affecting the character and appearance of the listed heritage buildings on the adjoining site;
- caused unjustified overshadowing of the foreshore promenade and beach to the detriment of users of this foreshore for leisure and recreation; and
- had not demonstrated reasonable integration with the character of the area.

To assist Council and the developer in arriving at an acceptable development concept for the site, the Committee recommended that a new design brief be written including, but not necessarily limited to, certain design parameters which it specified.

After the Minister released the Committee's Report to the developer, the Council and the general public in December 1996, the Council advised the Minister that it endorsed the Committee's Report. The Council subsequently resolved to abandon Amendment L16.

Amendment L43

Following abandonment of Amendment L16, Council requested the Minister *"… to immediately prepare and approve without exhibition, an amendment to the Port Phillip Planning Scheme to include the subject land in a Residential 3 Zone, with a Potentially Contaminated Land Overlay"*. In January 1997, the Department advised the Council that the Minister had approved Amendment L43. The Department also stated that:

> *"Given the extensive public consultation already undertaken with this project, the Minister has ensured that the plans for use and development are to the satisfaction of Council. This will allow the Council and the developer to negotiate an appropriate development for the site generally in accordance with the Advisory Committee's report. The Minister requires that this matter now be finalised expeditiously and has indicated that should Council not be able to finalise its position on this matter within 90 days, he will consider appointing another responsible authority [presumably the Minister] for this site. Members of the Advisory Committee have indicated a willingness to be involved in resolving this matter, and the Department's Urban Design Consultant is also available. I urge Council to avail itself of his advice"*.

In terms of the status of the Advisory Committee's recommendations, the following statement was made by the Department in its letter to Council:

> *"You should note that the recommendation of the Advisory Committee that* [there be] *no overshadowing of the promenade and foreshore between 10.00 am and 4.00 pm on 21 June should not be considered an absolute condition for appropriate development of the site. The Government has yet to form a policy position on overshadowing issues and, as the Committee points out, the Coastal strategy is only a draft for public comment and has yet to advance through the approvals processes under the Coastal Management Act 1995"*.

Although the Council and the developer subsequently reached agreement on a development proposal for the site, they could not agree on the height of the buildings. In April 1997, the Department advised the Minister that the Council's position on height would undermine other gains negotiated with the developer such as pedestrian friendly activities on the ground floor, high quality design and finishes. The Department recommended:

> *"That due to the Council position that is inconsistent with the original Advisory Committee findings and the strategic nature of this site, the Minister may consider becoming planning authority for the site"*; and
>
> *"That the height parameters for the tower be established between 14-20 storeys based on the quality of design"*.

The Council subsequently attempted to explain its position on the proposal to the Minister in June 1997, stating that:

> "*During the negotiation process, many changes were proposed and accepted … The point at which negotiations broke down was finally on the question of height and the consequential overshadowing of the foreshore. On the question of height, Council's negotiated position was 14 and the developer's compromise was 18 storeys. At the end of 90 days, that gap had not been bridged and the developer indicated he would not come down from 18.*
>
> *"In the absence of a compromise between and 14 and 18, Council took a decision to state its preference of 11 storeys*".

As a result of this impasse, the Minister prepared Amendment L51 in June 1997.

Amendment L51

Amendment L51 introduced specific urban design criteria for the site, in particular, a provision to allow consideration of buildings up to 20 storeys in height and enabled development of the site to be undertaken subject to the satisfaction of the responsible authority. As foreshadowed in the Department's January 1997 letter to the Council, the amendment established the Minister as the responsible authority for the site because the Council could not agree to the height requirements (18 storeys) sought by the developer. The Minister adopted and approved the amendment without changes or exhibition in June 1997.

The approval of Amendment L51 changed the Port Phillip Planning Scheme and had the potential to significantly increase the value of the site.

At various times, in defence of his decision, the Minister stated that:

- he allowed 20 storeys because urban design advice he had received verbally, from an officer of the Department, had indicated that it was appropriate to do so;
- he had acted as he did because of the inappropriate behaviour of the Council; and
- a 20 storey development was necessary to pay for site decontamination.

Sale of land by developer

Shortly after approval of Amendment L51, the developer entered into a contract of sale for the site to an overseas buyer. As a result of Commonwealth Foreign Investment Review Board concerns regarding environmental issues, the proposed sale to the overseas developer fell through.

In May 1998 the developer successfully sold the undeveloped site.

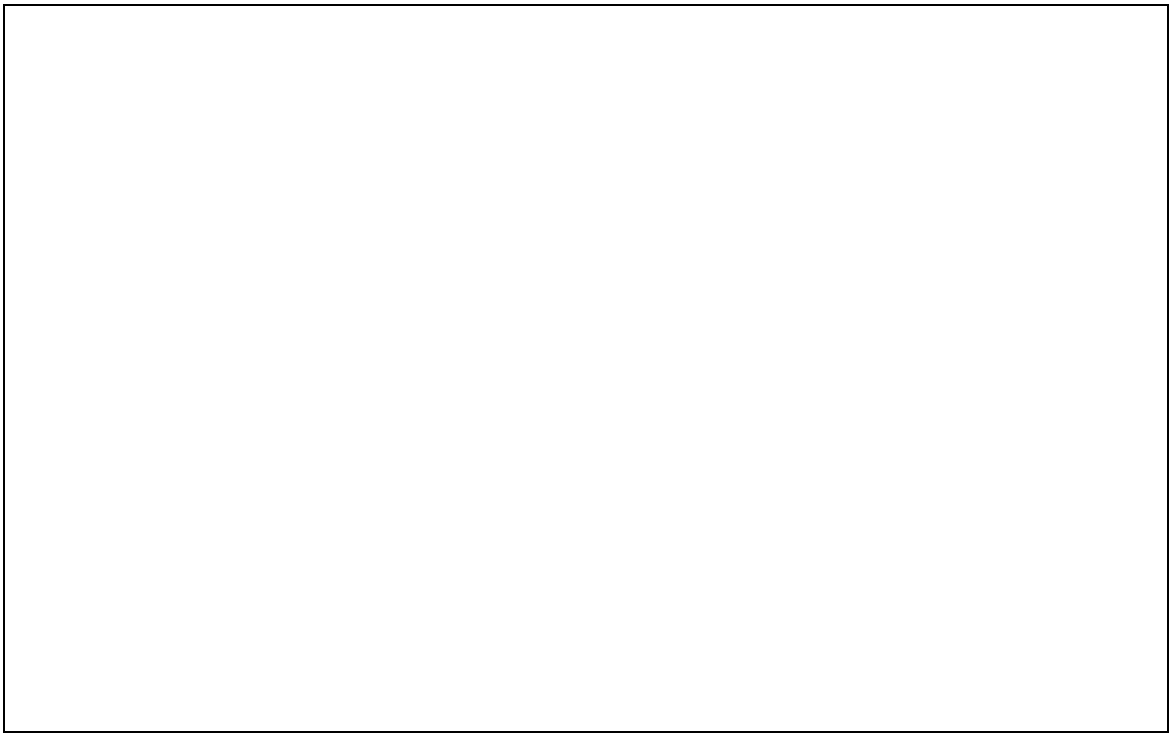
Approval of new owner's development plans

From May 1998 to July 1998, the Minister as the responsible authority liaised with the new owner's architect and provided opportunities for briefing of Council representatives. In August 1998, the Council requested a meeting with the Minister to discuss the proposed development. However, the Minister considered the meeting was not necessary given that his previous invitation to the Council for a briefing had been declined.

The Minister granted a planning permit for the new owner's development plans in October 1998, after submission of further plans by the architect which reduced the height of podium housing on the site.

Current status

At the time of preparation of this Report development of the site had not commenced. However, all apartments have been pre-sold.



Architect's drawing of the development for the HMAS Lonsdale (South) site.

MORNINGTON SHOPPING CENTRE AND RAILWAY GATEHOUSE

Since the early 1980s, the Council has been planning the development of a regional shopping centre at Mornington, a seaside resort around 60 kilometres south-east of Melbourne. The site of 3.44 hectares comprises:

- disused railway land (2.48 hectares) owned by a private developer; and
- Council land (0.96 hectares) used for car parking.

Chronology of key events

Table B4 presents a chronology of key events in relation to the site since 1988.

TABLE B4
CHRONOLOGY OF KEY EVENTS

Date	*Description of event*
1988	Disused railway land including the Railway Gatehouse purchased by a prospective developer from the State Government for a reported $4.7 million.
1994	The property was re-sold for a reported $1.2 million, a price substantially lower than 6 years earlier.
December 1994	An application for a shopping centre on disused railway and Council land, was lodged by the developer.
September 1995	Following consideration of the developer's proposal the Council prepared Amendment L56. The Council exhibited the amendment and around 870 objections and a petition with over 18 000 signatures were received by the Council to the proposed shopping centre development.
December 1995	The Council considered the submissions to Amendment L56 and refused to support the proposal in the form presented.
March 1996	The development proposal and submissions were referred to the Minister who established an independent Panel.
May 1996	The Panel recommended modifications to Amendment L56 to the Council. Although the Council did not support the Panel's position recommending 12 850 square metres of floor space, Council modified and adopted the amendment and referred it to the Minister for approval.
August 1996	The Minister approved a modified version of Amendment L56 limiting the floor space to 10 000 square metres compared with 12 850 in the Council's adopted amendment.
March 1997	The developer submitted a new development plan to the Council.
March 1997	Preliminary Agreement developed between the Council and the developer.
May 1997	The Council refused the development plan. The developer referred Council's refusal to the Victorian Civil and Administrative Tribunal.
June 1997	The development plan was withdrawn from the Tribunal by the developer.
August 1997	Amendment L83 prepared and approved by the Minister without exhibition. This amendment established the broad parameters for the development of the centre including car parking requirements.

TABLE B4
CHRONOLOGY OF KEY EVENTS - *continued*

Date	*Description of event*
September 1997	The developer lodged a further development plan with the Council.
December 1997	The developer again appealed to the Tribunal after the development plan was refused by the Council in the previous month.
March 1998	The Minister prepared and approved Amendments L85 and L86 without exhibition to address matters identified by the Tribunal during the appeal.
March 1998	A local resident nominated the Gatehouse, built around 1888, for inclusion in the Victorian Heritage Register. The house was owned by the developer by virtue of purchasing the railway land in 1994.
April 1998	Heritage Victoria wrote to both the developer and the Council advising that the property had been nominated for registration on the Heritage Register.
April 1998	A building surveyor employed by the Council issued a permit for demolition of the Gatehouse.
May 1998	The Gatehouse was demolished.
August 1998	The Tribunal directed the Council to approve the previously refused development plan and made various suggestions attaching a number of conditions to improve the integration of the new shopping centre with the existing centre.
December 1998	Development approved by the Council.
December 1998	Initially the Minister advised the Council that he was not willing to prepare Amendment L88. Subsequently, he advised that he was prepared to exempt the amendment from the notification requirements of the Act.
March 1999	Council and the developer signed a *Heads of Agreement* to resolve the development issues in relation to the new shopping centre.
April 1999	Construction was commenced at the development site. The site, comprising the former railway land together with proposed capital improvements thereon (to be completed in early 2000), was sold in advance of completion to another private developer for a reported sum of $29.4 million.

What were the key issues relating to the development?

Development of Amendment L56

In order to proceed with the development proposed in 1994, it was necessary for the Council's existing planning scheme to be amended. For this purpose, the Council prepared Amendment L56. This amendment established the broad parameters for the development of the centre including car parking requirements, and sought to increase the floor area from 10 000 to 12 850 square metres to accommodate the proposed development.

The Council exhibited the proposed amendment and about 870 submissions and a petition with over 18 000 signatures were received by the Council objecting to the proposed shopping centre development. The petition was signed by ratepayers, traders and tourists who primarily objected to the proposal on the grounds that it would destroy *"the character of Mornington's Main Street and environs forever"*. Key objections in the submissions included the following:

- The Council's Planning Scheme only allowed a maximum retail development of 10 000 square metres which contrasted with the developer's application for 12 850 square metres for gross leasable floor area;
- The provision of a proposed car park should not be allowed because the area was zoned for residential use to prevent the spread of the commercial centre beyond the ring road. All car parking requirements should be within the confines of the ring road;
- The location of the proposed car park would require pedestrians to cross a busy road;
- The proposed sale, lease or swap of the Council-owned land was not appropriate;
- The increase in car traffic to and from the proposed shopping centre would increase pollution levels and cause traffic problems; and
- The expected employment opportunities resulting from the proposal would not be realised because the construction jobs were only temporary and the permanent ones would only be part-time positions using low-paid teenagers.

As a substantial number of submissions were received by the Council during exhibition of Amendment L56 opposing the proposed development, the Council referred the amendment and the submissions to an independent Panel appointed by the Minister.

After considering written submissions and conducting a public hearing, the Panel made a number of recommendations in its report to the Council about the Amendment. The Council subsequently adopted Amendment L56 in a modified form and forwarded it to the Minister for approval. In August 1996 in approving the amendment, the Minister limited the floor area to 10 000 square metres.

In March 1997, a development plan for the proposed centre was submitted to the Council by the developer for approval. The Council invited public comment on the proposed plan which subsequently attracted a number of submissions objecting to the development.

After the Council refused to approve the development plan, in May 1997 the developer appealed this decision to the Victorian Civil and Administrative Tribunal. In an interim decision, the Tribunal ruled that it could not consider the development plan because the floor area exceeded the maximum allowed in the zone. The developer subsequently withdrew the development plan from the Tribunal in June 1997.

Development of Amendment L83

To enable consideration of the planning merits of the development plan, the Council's planning scheme needed to be amended to increase the maximum allowable floor area in the zone. For this purpose, the developer referred the matter to the Minister requesting him to prepare a new amendment, Amendment L83.

In considering the developer's request, the Minister consulted with the Council which advised him that the new amendment did not adequately address certain concerns, namely:

- changing the definition of the floor area to exclude office and storage areas represented an unacceptable method of increasing the floor space of the shopping centre; and
- to avoid a shortfall in car parking spaces, parking should be provided at the rate of 6 per 100 square metres of floor area, not 5.2 per 100 square metres.

Notwithstanding the Council's concerns, the Minister approved the amendment in August 1997 which allowed a floor area greater than the maximum allowed in the zone before the amendment was approved.

In considering the request from the developer to amend the Council's planning scheme, the Minister exempted himself from giving notice to other parties as he considered that compliance was not warranted or that the interests of Victoria made such an exemption appropriate. Although no notice of the amendment was given, the Minister consulted with the Council which did not agree with the exemption.

Development of Amendments L85 and L86

Following the Minister's approval of Amendment L83, in September 1997 the developer lodged with Council a further development plan encompassing a total area of 10 000 square metres of floor area, 799 car spaces, landscaping and other works. However, the Council refused to approve the plan. In December 1997 the developer referred the matter to the Tribunal.

In March 1998, the Minister initiated and approved, without exhibition, 2 further amendments to the Council's planning scheme, namely, L85 and L86. Amendment L85 was initiated to correct a mistake in the planning scheme relating to height controls that was identified at the Tribunal hearing in March 1998. Amendment L86 was prepared in response to questions which arose at the Tribunal hearing about the interpretation of clauses in the planning scheme relating to car parking spaces.

Following hearings between March and May 1998, the Tribunal made various suggestions attaching a number of conditions to the plan which, in its view, improved the integration of the new centre with the existing centre. On 4 August 1998, the Tribunal directed the Council to approve the September 1997 development plan, as amended by the Tribunal, which the Council had previously refused to endorse.

In the Tribunal's determination approving the revised development plan for the shopping centre, a Senior Member of the Tribunal commented on the Minister's willingness to amend the planning scheme during the course of the Hearing when technical legal deficiencies in the planning scheme were drawn to the attention of the Tribunal "… *in the course of 3 days of hearings perhaps gave an unfortunate impression of patching up the planning scheme as holes were found in it*".

The Member further stated it was:

> *"… fairer to regard these amendments as corrections or clarifications of the intended effect of the planning scheme. In effect, this mending of deficiencies, or arguable deficiencies in the wording of the planning scheme provisions was really seeking to ensure that a decision was made on the merits of the development proposal, and to prevent that decision being derailed by deficiencies in the drafting of those provisions." (Paragraphs 52 and 53 page 16 Tribunal Appeal No. 1997/85432)*

Exchange of the Council-owned land

In 1994, the developer lodged an application with the Council to develop a shopping centre which encompassed Council-owned land. This land had been provided to the Council by the traders in the existing strip shopping centre for the provision of car parking.

The development plan relied on the Council exchanging the land set aside for car parking with a parcel of land remote from the existing strip shopping centre, owned by the developer. The traders in the shopping centre expressed concern that the land they had given to the Council was to be exchanged for land that:

- had little direct benefit to them;
- provided alternative car parking in a less convenient location; and
- enabled the land formerly set aside for car parking to be used for speciality shops in competition with their businesses.

Following the Tribunals' Direction in August 1998, the developer decided to proceed with the Tribunal-approved development plan. However, the Council requested the developer to confine his development to the former railway land. The developer indicated that to do so would result in a loss to him of in excess of $2 million in terms of costs and expenses.

Based on past discussions between the developer and Council officers and certain documents, including provisions in the Planning Scheme and a March 1997 Preliminary Agreement, the developer claimed an agreement in principle for the development existed between his company and the former Council which provided for the exchange of land.

The Council decided to obtain legal advice on the merits of the developer's claim that an in principle agreement existed. Based on that advice, which indicated that the Council could be exposed to a potential liability if it continued to deny it made a statement agreeing to the development that encompassed both the developer's land and Council's land, the Council determined it would pursue a negotiated settlement rather than litigation.

The parties subsequently agreed to resolve their differences and signed a *Heads of Agreement* in March 1999 which provided for the developer to proceed with the proposed development. The Agreement provided for the containment of the shopping centre to the developer's land only, and the retention of the Council land for a public car park, plaza and access roads. This Agreement was an attempt to address a major concern of many of the objectors to the original proposal that the Council car parking area be retained.

Under the Heads of Agreement between the developer and the Council, the developer is to contribute a sum not exceeding $200 000 to defray the costs of construction of car parking and a plaza in relation to the shopping centre development. The Council will be required to contribute a minimum of $305 000 to the developer to carry out specified works and purchase land from the developer and to meet all legal costs the developer may incur or become liable for in connection with any legal challenge relating to the approved development plan

The main provisions of the Agreement require the Council to:

- Construct 272 car parking spaces and a plaza on the Council land. This may be funded by declaring and levying a special rate or special charge to defray the construction and related costs. The developer is to contribute to the special rate, not more than $10 000 per annum for a period up to 20 years, for a total sum not exceeding $200 000;
- Pay the developer a total of $195 000 to carry out specified works comprising:
    - $45 000 contribution to the public toilet fit-out;
    - $15 000 contribution for half the cost of an access aisle to the car park on the developer's land;
    - $105 000 for costs associated with confining the shopping centre development to the developer's land; and
    - $30 000 for additional landscaping costs;
- Purchase land from the developer for $70 000 to construct a roundabout and access road; and
- Bear all of the developer's legal costs associated with negotiating, settling and amending the Heads of Agreement and obtaining the approved development plan.

This Agreement was conditional upon the Minister preparing and approving Amendment L88 to facilitate the proposed development of the shopping centre. Details of this amendment are provided later in this case study.

Following the signing of the Heads of Agreement, the developer sold the land together with the proposed capital improvements for a reported sum of $29.4 million

Development of amendment L88

The Council requested that the Minister prepare Amendment L88 and exempt himself from the notification requirements of the Act. The Minister advised the Council on 4 December 1998 that he was not willing to prepare the amendment.

Following a further request from the Council, on 9 December 1998 the Minister indicated that he would be willing to grant the Council an exemption from certain notification requirements.

Current status

The development plan was approved in December 1998. At the time of preparation of this Report, construction had commenced.

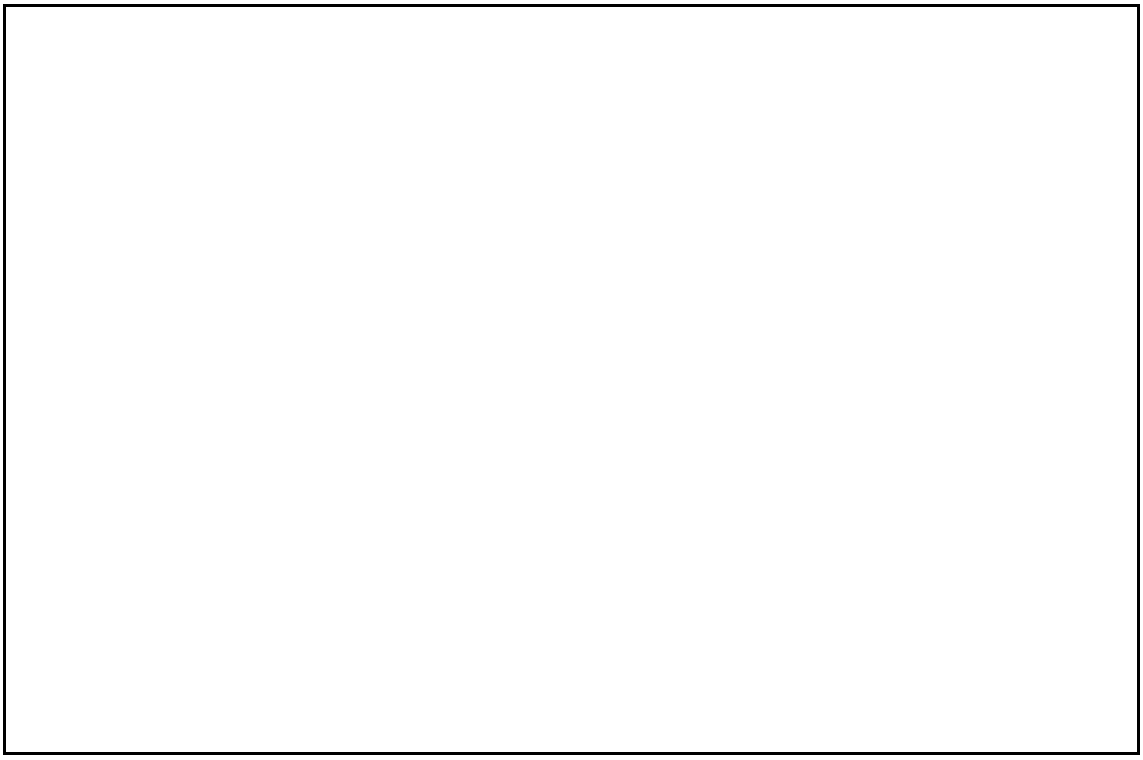
The planning controls proposed in Amendment L88 have now been incorporated in the Council's new format Planning Scheme which came into effect in May 1999.

Demolition of the Mornington Railway Gatehouse

The Mornington Railway Gatehouse was built around 1888 to accommodate railway staff who were responsible for maintaining the Mornington railway line infrastructure. In 1982, after the Mornington railway line was closed and the Gatehouse was vacated, it became occupied by squatters. A development company subsequently purchased the land and building from the State Government in 1988, intending to retain the building as part of a shopping centre development. After the company went into liquidation, a bank took possession of the property and subsequently sold it to a developer in 1994.

In March 1998, a local resident nominated the Gatehouse for inclusion in the Victorian Heritage Register. As reported in the 1994 Mornington Peninsula Shire Council Heritage Study:

> *"… the former Gatehouse was regionally significant because it represented a type of residence which was once widespread in the State but is now rare. It was the last railway building left from the opening period of the Mornington railway line".*



Railway Gatehouse prior to demolition.

On 15 April 1998, Heritage Victoria wrote to both the developer and the Council advising that the property had been nominated for registration on the Heritage Register. However, Heritage Victoria did not receive an acknowledgment from the developer of the receipt of this advice.

Notwithstanding Heritage Victoria's advice to the Council of the heritage nomination on 15 April 1998, 8 days later, at the request of the developer, a Council-employed building surveyor issued a building permit authorising the demolition of the Gatehouse. The demolition occurred on 29 May 1998 prior to Heritage Victoria undertaking an assessment of the heritage merits of the Gatehouse building.

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