

Changes to the planning scheme amendment process

Advisory Note

May 2005

This advisory note provides information and advice about the changes to the planning scheme amendment process under the *Planning and Environment Act 1987* as amended by the *Planning and Environment (General Amendment) Act 2004*. The advisory note covers:

- Changes to the planning scheme amendment process
- Authorisation to prepare an amendment
- Procedures for approval of an amendment
- What processes must be followed for the approval of an amendment by a planning authority
- What certification is
- When the changes come into effect
- How the changes will affect current planning scheme amendments
- How amendments in Green Wedge areas will be affected.

What are the changes to the planning scheme amendment process?

The process of preparing, exhibiting and adopting an amendment and the role of Planning Panels Victoria in considering and making recommendations on submissions has not changed.

The two changes arising from the legislation are that:

- At the beginning of the process, the Minister must authorise the preparation of any amendment.
- The Minister may also authorise a planning authority to approve an amendment. Before approving an amendment, the planning authority must have it certified by the Secretary, Department of Sustainability and Environment.

Authorisation to prepare an amendment

A council must obtain the authorisation of the Minister for Planning to prepare a planning scheme amendment.

There are three potential outcomes from the request:

- The proposed amendment is inconsistent with State policy or interests and will not be authorised to proceed.
- The proposed amendment may have an impact on State policy or interests but is authorised to proceed.

- The proposed amendment is of local significance only and is authorised to proceed.

In authorising the council as planning authority to prepare the amendment, the Minister will also indicate whether the planning authority can approve the amendment or whether it must be returned to the Minister for approval.

What information should accompany a request to prepare an amendment?

In applying to the Minister for authorisation to prepare a planning scheme amendment under section 9(2) of the *Planning and Environment Act 1987*, a municipal council must tell the Minister in writing:

- what land is affected by the proposed amendment
- what the proposed amendment does
- why the proposed amendment is required
- how the proposed amendment will implement the objectives of planning in Victoria
- how the proposed amendment will address any environmental effects and any relevant social and economic effects
- how the proposed amendment complies with any relevant Minister's directions
- how the proposed amendment supports or implements the State Planning Policy Framework and any adopted State policy
- how the proposed amendment supports or implements the Local Planning Policy Framework and specifically the Municipal Strategic Statement
- how the proposed amendment makes proper use of the *Victoria Planning Provisions*
- what impact the proposed new planning provisions will have on the resource and administrative costs of the responsible authority.

In many instances a draft explanatory report will fulfil the above information requirements. The council must also tell the Minister:

- Whether notice of the proposed amendment is intended to be given and the extent of the notice.

- Whether the council believes the proposed amendment is of local significance only and can be approved by the planning authority.

What are the procedures for approval of an amendment?

Once the planning authority has adopted the amendment, it must be approved by one of the following procedures:

- The adopted amendment is submitted to the Minister for Planning for approval under the current process.
- The amendment is approved by the planning authority after it is certified by the Secretary, Department of Sustainability and Environment.

What types of amendments may require the Minister's approval?

While all of the circumstances in which the Minister's approval may be required cannot be prescribed, the following criteria will usually be relevant. Whether:

- The amendment will be one of genuine State or regional significance. Such situations may include, for example, those:
 - where the amendment may have a substantial effect on achievement or development of State or regional planning or heritage objectives;
 - which raise a major issue of State or regional policy or public interest;
 - which could have significant effects beyond the immediate locality;
 - which relate to the use or development of land by the State or State agencies;
 - which may impact upon State owned or controlled land;
 - where State infrastructure is being provided.
- The amendment will introduce an interim provision or requirement.
- The amendment requires coordination to facilitate decision-making by more than one agency.

- The amendment affects a State standard provision.
- The amendment is in a Green Wedge area.

The Minister's approval is required for an amendment that is being considered concurrently with a permit application under Division 5, Part 4 of the Act (combined permit and amendment).

Ability for a planning authority to approve an amendment

If a planning authority is authorised to approve an amendment, the authority must first obtain 'certification' from the Secretary of the Department of Sustainability and Environment that the amendment is acceptable prior to the approval of the amendment by the planning authority.

Gazettal of all planning scheme amendments will continue to be carried out by the Minister.

What is the process for the approval of an amendment by a planning authority?

If a planning authority has been authorised to approve a planning scheme amendment, the process for approval is as follows:

- The planning authority resolves to adopt an amendment under section 29 of the Act in the same manner as for amendments to be submitted to the Minister for approval.
- The authority sends the amendment in full to the Secretary of the Department of Sustainability and Environment for certification. The amendment in full includes the:
 - Explanatory report
 - Instruction sheet
 - List of changes
 - Text of the amendment
 - Maps
 - Any document applied, adopted or incorporated in the amendment or associated section 173 agreement.

The planning authority cannot proceed until written certification from the Secretary is received.

- Once certification is obtained, the planning authority must decide whether to approve

the amendment in accordance with section 35B of the Act. The approval must be in the form certified.

- The planning authority must forward the approved amendment and a notice of the approval to the Minister. The Department will arrange for a notice of approval to be published in the *Government Gazette*.

What is certification?

'Certification' is written authority from the Secretary of the Department of Sustainability and Environment that an amendment is technically acceptable to be approved. Matters that will be considered at certification include the consistency of the amendment with:

- The proposed amendment authorised by the Minister and any requirements of the Minister's authorisation.
- The structure and content of the Victoria Planning Provisions and the planning scheme and compliance with any relevant Ministerial Direction.

Certification may require changes to the amendment. The amendment is then resubmitted for certification prior to approval.

When do the changes come into effect?

The changes to the planning scheme amendment process come into effect when the *Planning and Environment (General Amendment) Act 2004* is proclaimed.

What effect do the changes have on planning scheme amendments that have already commenced?

The changes to the planning scheme amendment process apply to all amendments unless notice of an amendment has been given under section 19 of the Act before the changes come into effect. Where notice has been given before this date, the current procedures apply.

How do the changes affect planning scheme amendments in Green Wedge areas?

A planning scheme amendment in a Green Wedge area already requires authorisation from the Minister for Planning and this will continue to be required.

This authorisation will be the same process as for other planning scheme amendments.

Certain amendments in Green Wedge areas will continue to require Parliamentary ratification. A planning authority cannot be authorised to approve these amendments.

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