Department of Sustainability and Environment

Government Response

to the National Competition Policy Review of Victoria's Planning and Environment Act 1987 and associated subordinate instruments

October 2004

Victoria
The Place To Be

1. Executive summary

Deacons and Tasman Economics on behalf of the Victorian Minister for Planning undertook a review of the *Planning and Environment Act 1987* and its subordinate legislation in accordance with Victorian Government commitments under National Competition Policy.

The review of Victorian planning legislation included the *Planning and Environment Act 1987*, the *Planning and Environment Regulations 1998*, the *Planning and Environment (Fees) Regulations 2000* and planning schemes.

The review found that generally, Victoria's planning legislation achieved its objectives in an efficient and effective manner, that the restrictions identified were in the public interest and that the legislation contributes to achieving a range of social, economic and environmental objectives that are recognised in the Competition Principles agreement, in particular:

- implementing policies relating to *ecologically sustainable development* (eg by controlling the removal of native vegetation);
- *social welfare and equity consideration* (eg by promoting activity centres in locations which are accessible to people without a car);
- *The efficient allocation of resources* (eg by coordinating infrastructure provision with new residential subdivision).

The review made fourteen recommendations aimed primarily at improving the manner in which the Act is administered to ensure that effectiveness and efficiency is improved and maintained.

Many of the recommendations coincide with current or planned work being undertaken by the Department of Sustainability and Environment as part of commitments to process improvements. The discussion paper *Better Decisions Faster*, launched by the Minister for Planning in August 2003 contains 30 recommendations for process improvements. Compliance with the National Competition Policy will not require major changes to the Act or subordinate instruments.

The Government's response to the review's recommendations is summarised below:

Recommendation No.	Recommendation	Government Response
Recommendation 1: **Amendments and permits database**	Develop and maintain a database providing information about planning scheme amendments and planning permit applications by type, number and nature of objections, number and type of appeals and number and type of successful appeals to assist the analysis of performance of the planning system.	Recommendation **supported.** ▪ Continue to provide the Amendment Tracking System for planning scheme amendments. ▪ Government has provided funding of $1.95 million to fund the development and implementation of a permit activity reporting system over the next 3 years. ▪ Government is funding the development and implementation of the SPEAR system for electronic lodgement of planning permit applications.
Recommendation 2: **Removing or modifying provisions to lessen its restrictiveness**	Review the following provisions to remove or lessen their restrictiveness: ▪ Monopoly rights of Planning and Responsible authorities ▪ Zoning controls ▪ Zoning and overlay controls do not closely reflect externalities. ▪ Activity centre provisions ▪ Home occupation provisions ▪ Section 173 Agreements ▪ Development contributions plan	Review completed· Recommendation **supported in part.** ▪ Monopoly rights of Planning and Responsible authorities **–supported in part - see** Recommendation 13 for full discussion. ▪ Zoning controls **– supported in principle.** Planning authorities will be encouraged to review planning provisions in accordance with NCP guidelines proposed in Recommendation 3. ▪ Zoning and overlay controls do not closely reflect externalities **– supported in principle.** Where restrictions do not achieve objectives of the Planning and Environment Act, or there are alternative ways to achieve the objectives (without restricting competition), the Government will encourage planning authorities to identify and review these in accordance with NCP guidelines proposed in Recommendation 3. ▪ .Activity centre provisions – **supported in principle – see** Recommendation 6 for full discussion ▪ Home occupation provisions – **supported in principle** -see Recommendation 10 for full discussion ▪ Section 173 agreements – **supported in** principle – see Recommendation 11 for full discussion. ▪ Development contribution plans – **supported in part.** A recent review has resulted in a proposal to introduce a system which is fairer, more transparent and accountable.

Recommendation No.	Recommendation	Government Response
Recommendation 3: **NCP guidelines and workshops**	Develop NCP guidelines and workshops to assist Planning and Responsible Authorities to implement planning policy which is consistent with NCP.	Recommendation **supported.** Development of NCP planning guidelines and training.
Recommendation 4: **Section 60 of Act**	Amend Section 60 of Act to require responsible authorities to: ▪ have regard to the objectives of planning; and ▪ consider social and economic effects of a use or development.	Recommendation **supported in part.** ▪ Amend s60 of Act to require responsible authorities to have regard to the objectives of planning. ▪ Highlight responsible authorities obligations under s60 in relation to social and economic effects in NCP guidelines proposed under Recommendation 3.
Recommendation 5: **Performance based provisions**	Where it is cost effective to do so, use performance based overlays and particular provisions in preference to potentially costly prescriptive criteria	Recommendation **supported in part.** Include advice to planning and responsible authorities on achieving the right balance between performance-based and prescriptive controls in NCP guidelines proposed in Recommendation 3.
Recommendation 6: **Activity centre controls**	Review restrictions on competition associated with activity centre controls by: ▪ Ensuring size of centre reduces risk of property monopoly ▪ Reviewing policy exceptions regularly to match consumer preferences ▪ Allowing businesses to locate outside centres	Recommendation **supported in principle.** Government to continue to review and implement new Activity centre policy.
Recommendation 7: **Consistent planning decisions**	Improve consistency of planning decisions concerning planning scheme amendments and permit applications (facilitated through NCP guidelines)	Recommendation **supported** Develop NCP guidelines as proposed under Recommendation 3 by end 2004. Develop new processes to improve consistency of planning decisions under *Better Decisions Faster* by 2004/2005.
Recommendation 8: **Planning policy and planning scheme control exemptions**	Ensure that exceptions to State Planning Policy and Local Planning Policy, zones, overlays and Particular provisions are consistent with NCP principles and objectives and are regularly reviewed to determine whether additional exceptions are appropriate	Recommendation **supported** Ensure the SPPF review is conducted in accordance with NCP principles and proposed NCP guidelines (as per Recommendation 3). Review the VPP Practice Notes "*The MSS and 3 year Review*" and "*Strategic Assessment Guidelines for Planning Scheme Amendments*" to address NCP principles.

Recommendation No.	Recommendation	Government Response
Recommendation 9: **Ministerial permit process**	Remove or narrow exemptions of land use or development by Responsible Authorities from Ministerial permit process	Recommendation **not supported.** Continue with appropriate checks and balances to ensure that competition and community benefits are not restricted. Remind responsible authorities about the need to maintain consistency, transparency and accountability when processing their own applications in NCP guidelines proposed in recommendation 3.
Recommendation 10: **Home occupation provisions**	Amend the Home Occupation provision to make it more consistent with performance criteria and ensure that exceptions reflect community preferences	Recommendation **supported in principle.** Continue with appropriate balance between performance and prescriptive provisions for home occupation provisions. Continue to ensure that exceptions reflect community preferences via review of Home Occupation Particular Provisions where required.
Recommendation 11: **Section 173 Agreements**	Reduce the costs associated with Section 173 Agreements	Recommendation **supported in principle.** Proceed with current review of S173 agreements under *Better Decisions Faster* to be completed by end 2004/2005.
Recommendation 12: **Economic objections**	Reduce costs associated with economic objections and encourage the use of existing provisions of the Act which intend to prevent economic objections. ▪ Issue guidelines about what is an appropriate economic objection. ▪ Amend s57(2A) to overcome a Supreme Court ruling that commercial objectors to planning permit applications must be given the opportunity of a hearing prior to rejecting their submissions. ▪ Amend Act to include provision similar to s57(2A) to enable a planning authority to reject similar economic objector submissions in relation to a planning scheme amendment. ▪ Raise awareness that objectors must demonstrate how they would be affected by the grant of a permit through guidelines proposed in Recommendation 3. If guidelines prove ineffective, amend Regulations to introduce proforma objection form. The same ought to be considered for planning scheme amendments.	Recommendation **supported in part.** ▪ Include advice about appropriate economic objections in NCP guidelines proposed in Recommendation 3. ▪ Amend s57(2A) - **not** supported. The benefits of the restrictions to the community as a whole outweigh the costs and the objectives of the Act can only be achieved by restricting competition. NCP guidelines proposed in Recommendation 3 to include advice to responsible authorities about impact of Supreme Court decision. ▪ Amend Act to include provision similar to s57(2A) for planning scheme amendments – **not supported.** The benefits of the restrictions to the community as a whole outweigh the costs and the objectives of the Act can only be achieved by restricting competition. NCP guidelines proposed in Recommendation 3 to include advice about appropriate economic objections to planning scheme amendments. ▪ Raise awareness that objectors must demonstrate how they would be affected by the grant of a permit in NCP guidelines proposed in Recommendation 3.

Recommendation No.	Recommendation	Government Response
Recommendation 13: **Monopoly of Planning and Responsible Authorities administrative functions**	Review Planning and Responsible Authorities monopoly on provision of administrative functions that may be performed by other parties at lowest cost	Recommendation **supported in part.** Continue work with MAV on *Continuous Improvement Program* and *Better Decisions Faster* to improve efficiency of planning functions and processes.
Recommendation 14: **Sunset clause in permits**	Consider introducing a sunset clause in permits for alternative uses where the likely community benefits associated with an alternative use will not outweigh the costs, and the alternative use generates a major negative externality	Recommendation **supported in principle.** Raise awareness of responsible authority powers under Section 62 (2) (c) through NCP guidelines proposed in Recommendation 3.

2. Introduction

This report provides the Victorian Government's response and proposed actions to the *National Competition Policy Review of Victoria's Planning and Environment Act 1987 and Associated Subordinate Instruments: Final Report* (January 2001).

The legislative review of the Victorian Planning and Environment Act 1987 and its associated subordinate instruments was carried out by Deacons Lawyers and Tasman Economics on behalf of the Minister for Planning.

The following report provides:

- a summary of the legislative review and its findings
- a summary of the Victorian planning system
- the Government response to the proposed recommendations
- A summary of Government actions.

Victoria has already begun a review of its planning processes with a view to gaining greater efficiencies. An expert committee established by the Minister for Planning, the Reference Group on Decision Making Processes (the Whitney Committee) has made a range of recommendations for process improvements. The Victorian Government has made a commitment to implement these recommendations. In August 2003, The Minister for Planning launched the discussion paper, *Better Decisions Faster* that contains 30 recommendations for process improvement. *Better Decisions Faster* includes all the process recommendations of the Whitney Committee. Recently, the Commonwealth Productivity Commission in its draft report into first home ownership said *Better Decisions Faster* is "well designed and focuses on the key issues. It could be emulated in other jurisdictions."

3. Scope of the review

Deacons and Tasman Economics on behalf of the Victorian Minister for Planning undertook the Victorian review of the *Planning and Environment Act 1987* and its subordinate legislation.

The review of Victorian planning legislation included the *Planning and Environment Act 1987*, the *Planning and Environment Regulations 1998*, the *Planning and Environment (Fees) Regulations 2000* and planning schemes.

The review was undertaken having regard to the Competition Principles Agreement principle that legislation (including subordinate legislation) should not restrict competition unless it can be demonstrated that:

- the benefits of the restriction to the community as a whole outweigh the costs; and
- The objectives of the legislation can only be achieved by restricting competition.

The review was conducted in accordance with the model for a semi-public review, as established in the *Guidelines for the Review of Legislative Restrictions on Competition* prepared by the Competition Policy Task Force, Cabinet Office, Victorian Department of Premier and Cabinet.

A discussion paper was released in August 2000 and fourteen submissions received. The Final Report was submitted in January 2001 and circulated to local government and other planning stakeholders for comment in November 2001.

4. Review findings and recommendations

In the context of the review, National Competition Policy is primarily concerned with ensuring that the objectives of planning are delivered in an efficient manner and that any restriction on competition is necessary and in the public interest.

Overall, the Review found that planning legislation contributes to achieving a range of social, economic and environmental objectives that are recognised in the Competition Principles agreement, in particular:

- implementing policies relating to *ecologically sustainable development* (eg by controlling the removal of native vegetation);
- *social welfare and equity consideration* (eg by promoting activity centres in locations which are accessible to people without a car);
- *The efficient allocation of resources* (eg by coordinating infrastructure provision with new residential subdivision).

The Review found that benefits associated with restrictions on competition contained in planning legislation include:

- reduction in negative externalities such as environmental damage and visual, noise, air or water pollution, or a reduction in health or safety risk or crime
- achievement of positive externalities such as conservation or improvement of environmental quality, improved landscape, conservation of culturally significant buildings and sites, creation of effective networks, or a health and safety benefit
- guaranteed or greater provision of public goods (eg public open space, parklands, roadside vegetation, bridges, most roads, drainage systems, public toilets, pavement and some community infrastructure such as public sporting complexes)
- ensuring that land is used for its most productive purpose
- greater certainty for landowners and/or investors
- increased efficiency in the provision and utilisation of infrastructure
- public amenity through orderly development
- Improved access to markets.

However the Final Report also identified the following elements of Victoria's planning legislation which restrict or potentially restrict competition:

- restrict entry of firms into markets (eg through zoning, overlays and activity centres policy);
- advantage some businesses over others (eg through permits or existing use rights and by granting a monopoly right for Responsible Authorities and Planning Authorities to undertake functions that may be efficiently provided by others);
- restrict prices or production levels (eg through Section 173 Agreements and Home Occupation Particular Provisions);
- restrict quality or location of goods and services (eg through building and site development standards and zoning);
- restrict the price and/or type of input used in production, including land (eg through zoning controls and Freeway Service Centre controls);
- restrict advertising and promotional activities (eg by regulating the size of certain classes of sign); and

- Impose transactions costs on businesses or households (eg through fees; cost in terms of time to prepare and process applications, objections and appeals; cost to hear appeals; and monitoring and enforcement costs).

The Report makes 14 recommendations for possible changes to the Victorian planning system to improve compliance with the National Competition Policy.

The 14 recommendations are:

1. The Victorian Government develop and maintain a database providing information in relation to the number of planning scheme amendments/planning permit applications by type, number of objections by type, number of appeals by type and number of successful appeals by type. It is considered that the systematic collection of this information would greatly assist future analysis of the performance of the Victorian Planning System.
2. Government should scrutinise identified provisions in the legislation *(comprising monopoly rights of planning and responsible authorities, zoning controls, activity centre provisions, home occupation and use of section 173 agreements)* and give careful consideration to either removing the restriction or modifying it to lessen its restrictiveness.
3. Planning specific NCP guidelines and workshops be implemented to assist planning and responsible authorities to ensure that the public benefit associated with any policy or other intervention outweighs costs. If guidelines and workshops of this kind are not effective, insert into the Act an overarching public benefit test.
4. Amend Section 60 to make it consistent with other parts of the Act (*to have regard to the objectives of planning in Victoria and to make it mandatory for a responsible authority to consider significant social and economic effects).*
5. Where it is cost effective to do so, use performance based overlays and particular provisions in preference to potentially costly prescriptive criteria.
6. Reduce costs associated with restrictions on competition under activity centre controls. (*By ensuring size of centre is sufficient to reduce risk of monopoly in the Land Use. Ensuring policy exceptions are reviewed and updated to match consumer preference. Consider inserting another exception allowing retail businesses to locate outside activity centres provided they are prepared to pay for any negative externalities they generate.*)
7. Improve consistency of planning decision concerning planning scheme amendments and permit applications *(facilitated through the use of planning specific NCP guidelines discussed under recommendation 3).*
8. Ensure that exceptions to particular SPPF and LPPF policies (including those relating to activity centres), zones, overlay and Particular Provisions are consistent with NCP principles and objectives and are regularly reviewed to determine whether additional exceptions are appropriate.
9. Remove or narrow exemptions of land use or development by Responsible Authorities from Ministerial permit process.
10. Amend the Home Occupation Particular Provision to make it more consistent with performance criteria and ensure that exceptions reflect community preferences.
11. Reduce the costs associated with section 173 Agreements. *(By amending Act so responsible authorities use agreements as last resort. Prevent the imposition of permit conditions for provision of services or facilities. Include a sunset provision. Objectors are consulted. Prohibit imposing price controls. Issue of guidelines as to appropriate use of agreements*).
12. Reduce costs associated with economic objections and lack of enforcement of existing provisions of the Act intended to prevent economic objections. *(By issuing guidelines about economic objections. Amend Act to overcome commercial objectors or submitters to planning scheme amendments being given a hearing prior to rejecting their submission. Raise awareness that objectors must demonstrate how they would be affected by the grant of the permit).*

13. Conduct a review to determine whether it is feasible to remove planning and responsible authority monopoly on provision of certain administrative functions that may be performed by other parties at lower cost. *(Including preparation of planning scheme amendments and the issue of certificates of compliance).*

14. Consider introducing a sunset clause in permits for alternative uses where the likely community benefits associated with an alternative use will not outweigh the costs, and the alternative use generates a major negative externality.

The Governments response to the above 14 recommendations is discussed in section 6 of this report and a summary of the Government actions in response to the Review is outlined in section 7.

5. Overview of the Victorian planning system

The Victorian planning system seeks to ensure that the objectives of planning (as set out in the *Planning and Environment Act 1987*) are fostered through appropriate land use and development planning policies and practices which integrate relevant environmental, social, and economic factors in the interests of net community benefit and sustainable development.

The Planning and Environment Act 1987

The objectives of planning in Victoria are set out in the *Planning and Environment Act 1987* (the Act). They are:

a) to provide for the fair, orderly, economic and sustainable use and development of land;

b) to provide for the protection of natural and man-made resources and the maintenance of ecological processes and genetic diversity;

c) to secure a pleasant, efficient and safe working, living and recreational environment for all Victorians and visitors to Victoria;

d) to conserve and enhance those buildings, areas or other places which are of scientific, aesthetic, architectural or historical interest, or otherwise of special cultural value;

e) to protect public utilities and other assets and enable the orderly provision and coordination of public utilities and other facilities for the benefit of the community;

f) to facilitate development in accordance with the objectives set out in paragraphs (a),(b),(c),(d) and (e);

g) To balance the present and future interests of all Victorians.

The purpose of the Act is to establish a framework for planning the use, development and protection of land in Victoria in the present and long-term interests of all Victorians.

The Act sets out procedures for preparing and amending the *Victoria Planning Provisions* (VPP) and planning schemes, obtaining permits under schemes, settling disputes, enforcing compliance with planning schemes, and other administrative procedures.

The Act provides for a single instrument of planning control, the planning scheme, which sets out the way land may be used or developed. The planning scheme is a legal document, prepared and approved under the Act.

Victoria Planning Provisions

The Victoria Planning Provisions (VPP) is a document containing a comprehensive set of planning provisions for Victoria. It is not a planning scheme and does not apply to any land. It is a statewide reference used, as required, to construct planning schemes. It is a statutory device to ensure that consistent provisions for various matters are maintained across Victoria and that the construction and layout of planning schemes is always the same.

In the simplest terms, the VPP is a template of standard state provisions from which a planning scheme must be constructed. The VPP is subject to continuing review in response to community preferences. As part of the review process, relevant stakeholders are consulted and improvements made where necessary.

The Planning Scheme

A planning scheme is a statutory document which sets out objectives, policies and provisions relating to the use, development, protection and conservation of land in the area to which it applies. A planning scheme regulates the use and development of land through planning provisions to achieve those objectives and policies.

There is a planning scheme for every municipality in Victoria.

The Act requires that a planning scheme, amongst other things, must seek to further the objectives of planning in Victoria within the area covered by the scheme.

This scheme consists of a written document and any maps plans or other documents incorporated in it. It contains-

- The objectives of planning in Victoria.
- Purposes of this planning scheme.
- The User Guide.
- A State Planning Policy Framework.
- A Local Planning Policy Framework.
- Zone and overlay provisions.
- Particular provisions.
- General provisions.
- Definitions.
- Incorporated documents

The *State Planning Policy Framework* covers strategic issues of State importance. It lists policies under six headings - settlement, environment, housing, economic development, infrastructure, and particular uses and development. Every planning scheme in Victoria contains this policy framework, which is identical in all schemes.

The *Local Planning Policy Framework* contains a municipal strategic statement and local planning policies. The framework identifies long term directions about land use and development in the municipality; presents a vision for its community and other stakeholders; and provides the rationale for the zone and overlay requirements and particular provisions in the scheme.

The State and Local Planning Policy Frameworks contain the long term directions and outcomes sought by the planning scheme. These are implemented through the Zone, Overlay and Particular Provisions requirements.

Zones

A zone controls land use and development. Each zone includes a description of its purpose and the requirements that apply regarding land use, subdivision and the construction and carrying out of buildings and works.

Each zone lists land uses in three sections:

Section 1 Uses that do not require a permit (commonly referred to as "as-of-right").

Section 2 Uses that require a permit.

Section 3 Uses that are prohibited.

Uses that are not specifically mentioned are covered by a reference to 'any other use'.

Note that the three sections refer to the *use* of land, not to the *development* of land.

Development of land includes the construction of a building, carrying out works (such as clearing vegetation), subdividing land or buildings, or displaying signs. The zones indicate whether a planning permit is required to construct a building or carry out works.

Overlays

Overlays affect subdivisions, buildings and works. They operate in addition to the zone requirements and can be applied to areas with particular environmental, landscape, heritage, built form, and land and site management issues.

Schedules

Schedules are used to identify the needs, circumstances and requirements of individual municipalities in specific circumstances. Together with the LPPF, schedules are the means of including local content in planning schemes. They can be used to supplement or 'fine-tune' the basic provisions of a State-standard clause, zone or overlay in a planning scheme, adapting it to local circumstances and locally defined objectives. Schedules can only be included in a planning scheme where allowed by the VPP.

Particular provisions

Other planning requirements may apply to particular uses or development. These may be advertising signs, car parking or specified types of use. Such requirements are listed under *Particular provisions.*

General provisions

The general provisions provide information on:

- The administration of this scheme.
- The operation of existing uses and land used for more than one use.
- Uses buildings, works, subdivisions and demolition not requiring a permit.
- Matters that Council must consider before deciding on a proposal under this scheme.

Definitions

Words used in this scheme have their common meaning unless they are defined in the scheme, the Planning and Environment Act or in other relevant legislation. The purpose of defining a word is to limit its meaning to a particular interpretation or to explain the meaning of a word or phrase peculiar to this scheme.

Incorporated Documents

Planning schemes may apply, adopt or incorporate any document that relates to the use, development or protection of land. This allows a link between the planning scheme and external documents that may inform the planning scheme, guide decision-making or affect the operation of the scheme. This includes a range of codes, strategies, guidelines, plans or similar documents.

Planning Reform Program

As a result of the planning reform program of the 1990s, a set of principles emerged which underpin the focus and structure of planning schemes. One of the key objectives of the planning reform program was to make planning more strategic and policy based.

The principles are:

- Planning schemes have a policy focus
- Planning schemes facilitate appropriate development
- Planning schemes are useable
- Provisions are consistent across the State

These principles are achieved through the introduction of the VPP under the *Planning and Environment (Planning Schemes) Act 1996.*

The Victorian Planning System is subject to constant review by the Department of Sustainability and Environment. Amendments are made to State standard provisions (VPP) in response to comments and submissions made by Councils, the land development industry and interested members of the community or at the initiative of the Department itself.

In addition a planning authority must:

- regularly review the provisions of the planning scheme for which it is the planning authority. Such a review may take place following the completion of a major strategy or policy, or when the MSS is being reviewed
- review its MSS at least once in every three years.

Decision Making

The structure of the Victorian planning system facilitates two broad areas of decision-making. The first area is preparation of planning schemes by the Planning Authority and approval by the Minister. The second decision area is the consideration of applications for permit by the Responsible Authority. There is opportunity to change the application to better meet planning standards and expectations and to control the off-site effects of the proposal by imposition of conditions of permit.

In both areas of decision, the decision-making process is subject to compliance with the Act.

The Planning Scheme Amendment Process

The process includes:

- Planning Authority notification of the preparation of a proposed amendment to all parties having an interest or likely to be "*materially affected*" by it;
- submissions (in support or objection) may be lodged with the Planning Authority by "*any person*";
- consideration of all submissions by the Planning Authority followed by a decision to:
  - change the amendment as requested by submitters; or
  - abandon the amendment; or
  - refer the submissions to an independent Panel appointed by the Minister;
- public hearing of submissions by the independent Panel;
- report (recommendations) by the independent Panel to the Planning Authority;
- consideration of the Panel report by the Planning Authority followed by either adoption or abandonment of the amendment;
- if adopted (with or without changes), submission of the amendment to the Minister who may direct further public notice, especially if changed; and
- decision of the Minister to approve the amendment with or without changes or refuse to approve it.

The Minister may exempt a Planning Authority from some of the requirements to give public notice of an amendment if he or she considers compliance is not warranted or that the interests of Victoria or any part of Victoria make such an exemption appropriate. The Minister may make such exemption conditional upon some alternative form of notice.

The Minister may also exempt himself or herself from complying with some or all of the requirements to give notice of an amendment that the Minister prepares if the Minister considers that compliance is not warranted or that the interests of Victoria or any part make such an exemption appropriate.

The Planning Permit Process

This includes:

- application in the prescribed form with any information required by the planning scheme
- directions by the Responsible Authority to give notice to owners and occupiers of adjoining land unless it is satisfied that the grant of a permit would not cause "*material detriment*" to any person
- directions by the Responsible Authority to give notice to any other persons if it considers that the grant of a permit may cause "*material detriment*" to them;
- referral to referral authorities (eg public utilities) who have power to require the imposition of conditions and a power of veto (subject to Applications for Review to the Tribunal by permit applicants);
- lodging of objections by interested persons, such as nearby residents
- consideration of the application by the Responsible Authority upon considerations specified in the Act or the planning scheme, including planning policy
- decision of the Responsible Authority to grant a permit or refuse the application upon stated grounds
- if the Responsible Authority decides to grant a permit upon conditions, those conditions must accord with proper planning principles and include any matters required by the planning scheme or a referral authority
- granting of a permit immediately if there are no objectors or if third party notice is not required to be given by the planning scheme. If objections have been lodged, no permit may be granted until the period allowed for objector appeals to the Tribunal has expired, and
- stipulation of time limits for the commencement of the permitted use or the commencement and completion of development on any granted permit. These may subsequently be extended at the discretion of the Responsible Authority. The rationale for this is to prevent permit holders relying on "old" permits, which are no longer consistent with contemporary planning controls.

Planning Appeals

Applications for Review to Victoria Civil and Administrative Tribunal include:

- appeals by permit applicants against refusal;
- appeals by permit applicants against failure of the Responsible Authority to grant a permit within the prescribed timeframe;
- appeals by permit applicants against conditions of permit imposed by the Responsible Authority (or referral authorities);
- appeals by permit applicants against refusal of the Responsible Authority to extend commencement/completion dates on a permit;
- appeals by objectors against the decision of the Responsible Authority to grant a permit (objector rights of appeal can be, and in the case of some zones and overlays in new planning schemes are, removed); and
- appeals by persons who were not objectors, but who claim to be "*affected*", may proceed with leave from the Tribunal.

In determining an Application for Review, the Tribunal must take into account or have regard to several matters, including:

- any relevant planning scheme
- the Objectives of Planning in Victoria
- any State Environment Protection Policy
- any amendment to a planning scheme which is adopted by the Planning Authority but not yet approved by the Minister; and
- any relevant planning agreement affecting the subject land.

These are in addition to any other matters that the Responsible Authority could properly have taken into account in making its decision.

Appeals by applicants for permit may be brought within 2 months of the decision of the Responsible Authority or at any time after expiry of the prescribed timeframe for decision in the case of appeals against failure to decide. Appeals by objectors and other third parties, however, must be brought within 21 days of the decision of the Responsible Authority.

Damages against frivolous objectors

The Act provides that the Tribunal may order a person who has brought proceedings before it vexatiously or frivolously or "*primarily to secure or maintain a direct or indirect commercial advantage for the person who brought the proceedings*" to pay loss or damage suffered by any other person as a result of such proceedings.

Planning Agreements ("Section 173 Agreements")

These may be entered into between the Responsible Authority, the owner of the subject land and any other party and can act as a form of restrictive covenant on Title. Section 173 Agreements are normally used for contributions towards the provision of community benefits, such as public open space and other community facilities.

6. Government Response to Recommendations

This section outlines recommendations made by the consultants, discusses the issues raised and provides the Government response and proposed action.

Responses to recommendations fall into the categories of *Recommendation Supported, Recommendation supported in principle, Recommendation supported in part* and *Recommendation not supported.* The rationale for use of these categories is outlined as follows:

Recommendation Supported: denotes support for the consultant's recommendation and recommended means of implementation.

Recommendation supported in principle: denotes support for the issue or problem identified but perhaps not with the suggested solution or means of implementing the solution. In this case, an alternative and more effective solution or method will be given.

Recommendation supported in part: denotes support for the recommendation where perhaps the issue is already being implemented or examined and further review is not necessary; or where recommendation consists of a number of parts and not all parts are supported.

Recommendation not supported: denotes rejection of the recommendation.

Where a recommendation has not been supported, the required two part public benefit test has been applied to ensure that provisions of the legislation do not restrict competition unless it can be demonstrated that:

- The benefits of the restrictions to the community as a whole outweigh the costs; and
- The objectives of the legislation can only be achieved by restricting competition.

Recommendation 1 – Amendment and permits database

The Victorian Government develop and maintain a database providing information in relation to the number of planning scheme amendments/planning permit applications by type, number of objections by type, number of appeals by type and number of successful appeals by type. It is considered that the systematic collection of this information would greatly assist future analysis of the performance of the Victorian Planning System.

Area of Restriction: Identifying costs and benefits associated with restrictions on competition

Summary of comments received:

- Councils currently maintain a register of permit applications, appeals, amendments etc. as required by the Act.
- A central database will be a duplication of a massive task.
- Significant administrative costs associated to data gathering.
- Will benefit local government through benchmarking.

Government Response: *Recommendation Supported*

DSE already maintains a record of all amendments to planning schemes and this is published on the internet. The Amendment Tracking System enables on-line access by local councils and others to information about amendments to planning schemes in Victoria. The planning scheme amendment process is being reviewed with a view to streamlining the process. The review is being carried out as

part of *Better Decisions Faster* (August 2003).

Information about planning permit applications, the Municipal Planning Registers, must be kept by every responsible authority in accordance with s 49 of the *Planning and Environment Act 1987* and Reg 18 of the *Planning and Environment Regulations 1998* . This register must be publicly available however its availability in electronic form is limited and there is currently no statewide summary or consolidation of the information available.

As part of *Better Decisions Faster*, a project has been initiated to establish regular program reporting on planning permit activity. The Government has provided funding of $1.95 million to fund the development and implementation of a permit activity reporting system over the next 3 years. The permit activity report will compile data about the permit process including numbers, types of applications and timeframes for decision-making and will be published on a regular basis. The project will allow for earlier indicators of the development industry to be published and will enable councils to benchmark themselves against the rest of the State.

The Municipal Planning Registers information will be available through the statewide SPEAR (Streamline Planning through Electronic Application and Referral) project – funding for which was recently approved and announced as part of the Treasurer's business statement.

Government Action:

- Continue to provide the Amendment Tracking System for planning scheme amendments.
- Government has provided funding of $1.95 million to fund the development and implementation of a permit activity reporting system over the next 3 years.
- Government is funding the development and implementation of the SPEAR system for electronic lodgement of planning permit applications.

Recommendation 2 – Removing or modifying provisions to lessen its restrictiveness

Government should scrutinise the identified provisions in the legislation (monopoly rights of responsible authorities; zoning and overlay controls; activity centre provisions; home occupation provisions; use of section 173 agreements; and development contribution plans) and give careful consideration to either removing the restriction or modifying it to lessen its restrictiveness.

Area of Restriction: Balancing costs and benefits associated with restrictions on competition

Summary of comments received:

- Ad hoc review of isolated aspects of legislation.
- Making the use of s173 agreements more transparent is generally supported.
- Generally changes to 'home occupation' provisions not supported.
- Making provisions more performance based not supported.

Government Response: *Recommendation supported in part*

Except for *zoning, overlay controls* and *development contribution plans*, all other issues covered by this recommendation are dealt with individually under other Recommendations.

In discussing Recommendation 2 (Executive Summary), the consultants stated that "*...it is possible to identify some situations where the costs associated with a legislated restriction may outweigh public benefits.*" Recommendation 2 is made in relation to the following instances where:

- *Responsible authorities are granted a monopoly right to undertake an administrative function even though there are other parties in the community who are able to provide the same service at lower cost.* - Recommendation **supported in part.**

  Some of these services are already out-sourced by councils or are currently under investigation as part of the DSE/MAV Continuous Improvement Program. See Recommendation 13 for full discussion.

- *Zoning controls prevent land from being put to a more productive use that is valued more highly by the community*– **Recommendation supported in principle.**

  Since the introduction of the Victoria Planning Provisions, zones are less restrictive and often allow a broad range of activities to occur. For example, the Residential 1 zone enables non-residential uses such as apiculture; bed and breakfast, carnival and circus to operate without a planning permit, subject to certain conditions. The planning system allows land zoning to be changed (rezoned) with strategic justification, where there is a more productive use that is valued more highly by the community.

  Appropriate zoning will address potential negative externalities and market failures. Benefits derived from zoning controls may include:

  - a reduction in negative externalities such as environmental damage and visual, noise, air or water pollution or a reduction in health or safety risk or crime
  - achievement of positive externalities such as conservation or improvement of environmental quality, improved landscape, conservation of culturally significant buildings and sites
  - protection of public goods such as open space, parklands, roadside vegetation, roads and some community infrastructure such as public sporting complexes.
  - Ensuring that land is used for its most productive purpose
  - Greater certainty for landowners, investors and the community generally
  - Increased efficiency in the provision and utilisation of infrastructure
  - Public amenity through orderly development and
  - Improved access to markets.

  Well-designed zoning controls achieve a balance between certainty and flexibility for applicants, developers and residents and introduce a level of consistency for the use and development of land in Victoria..

Some zoning restrictions implement objectives (a) to (e) (inclusive) of the legislation as they relate to:

- Negative externalities which may arise from co-location of incompatible uses, development without regard to the impact upon the community in general and over exploitation of land resources for development purposes.

- Market failure in the provision of health and safety and public goods, protection of historically or culturally significant buildings, places or artefacts beyond the level afforded by the market and provision of non-rival, non-excludable infrastructure that would otherwise not be provided by an unregulated market.

As per the response to Recommendation 8, the Government will encourage planning authorities to review zoning controls as part of mandatory reviews of Local Planning Policy Frameworks. Planning authorities will be encouraged to review planning provisions in accordance with NCP guidelines proposed in Recommendation 3.

- *Zoning and overlay controls do not closely reflect externalities (eg minimum floor space provisions)* – ***Recommendation supported in principle.***

  Some of the controls contained in zoning and overlay provisions are the only means of achieving objective (a) of the Planning and Environment Act. Where restrictions do not achieve objectives of the Planning and Environment Act, or there are alternative ways to achieve the objectives (without restricting competition), the Government will encourage planning authorities to identify and review these in accordance with NCP guidelines proposed in Recommendation 3.

- *Activity centre provisions allow landowners to acquire market power by constraining the supply of land available for retail activities* – **Recommendation supported in principle.**

  Current activity centres policy achieves social, economic and environmental benefits to the community. The Government is currently in the process of developing Out of Centre Retail Activity Assessment Criteria, which will assist in creating certainty about the conditions under which retailers can locate outside Activity Centres.. See Recommendation 6 for full discussion

- *Home occupation restrictions prevent the sale of goods sourced elsewhere, even if the sale of such goods would not impose negative externalities on adjacent land uses* – **Recommendation supported in principle.**

  Current controls on home occupation achieve a balance between prescription and performance based controls. See Recommendation 10 for full discussion.

- *Section 173 Agreements, that are not transparent, are not used as a mechanism of last resort, particularly those that prescribe the way in which a business may price or produce its goods or services* –**Recommendation supported in principle.**

  The function and application of Section 173 agreements is being reviewed under the *Better Decisions Faster* program. Work is currently underway to consult with stakeholders about existing problems and possible solutions. See Recommendation 11 for full discussion.

- *Development contributions plans and Section 173 Agreements are used to collect revenue to fund the provision of public goods if the tax or rate system is a more efficient revenue collection mechanism* – **Recommendation supported in part**

  The Government has recently completed a review of development contribution systems in Victoria. The review seeks to simplify the operation of the development contributions system. While the reformed system will continue to operate based on the key elements of the current system, substantial modifications will be made to make it operate more efficiently and effectively to meet the needs of all users.

  Infrastructure projects can be included in a DCP if they will be used by the future community of an area, including existing and new development. This means that new development does not have to

trigger the need for new infrastructure in its own right. It can only be charged in accordance with its projected share of usage.

It must be demonstrated that the new development to be levied is likely to use the infrastructure to be provided. New development should not be considered on an individual basis, but as part of the wider community that will use an infrastructure project. The wider community may also include existing development. This is all that is required to demonstrate 'nexus' to justify the application of the charge.

For the purposes of calculating levies in a DCP, the costs of infrastructure projects are shared amongst all the likely users. The likely users will include existing and future development. In this way, new development will not be charged for the whole cost of an infrastructure project that others will use and costs are distributed on a fair and equitable basis.

However, while the levy is calculated on the basis that all the users pay for the cost of the infrastructure, only new development can actually be charged the levy. Therefore, a DCP will rarely cover the full cost of providing the infrastructure.

The Department has prepared extensive guidelines outlining a detailed methodology for the preparation of a DCP.

The guidelines ensure that there is:

- no double charging
- no charging for recurrent costs
- fair cost apportionment requires that what is not collected from existing development and exempted uses cannot be collected from other uses that are required to pay the levy. So while the exempted land uses are included in the calculation of the levies because they are likely to use the infrastructure, they will not be required to pay. It follows that any funding shortfall will need to be made up from alternative funding sources, such as general rates and government grants.

The Government has accepted this methodology as being fair, transparent and accountable and will release new development contributions guidelines detailing this methodology.

Although the development contributions system will continue as a form of restriction, the identified restriction assists the implementation of: objective (a) of planning in Victoria which is to "*...provide for the fair, orderly, economic and sustainable use and development of land...*"; and objective (e) "*to... enable the orderly provision and coordination of public utilities and other facilities for the benefit of the community.*"

Government Action

1. Refer to Recommendations 13, 6, 10, and 11 for actions on Monopoly rights of planning and responsible authorities, Activity Centre provisions, Home Occupation provisions and Section 173 Agreements.
2. Implement the new Development Contributions Plans guidelines.

Recommendation 3 – NCP guidelines and workshops

Planning specific NCP guidelines and workshops be implemented to assist planning and responsible authorities to ensure that the public benefit associated with any policy or other intervention outweighs costs. If guidelines and workshops of this kind are not effective, insert into the Act an overarching public benefit test.

Area of Restriction: Potential for less restrictive alternatives

Summary of comments received:

- Generally support production of guidelines.
- Need to include other benefits such as social, environmental and community
- Planning system already incorporates public benefits test which are consistent with NCP.
- Support workshops and education program for better understanding of net pubic benefit.

Government Response: *Recommendation supported*

There is a need for broader information/understanding of NCP issues in planning. This recommendation could be implemented through the Department's Planning Practice Note series and PLANET professional development program.

NCP guidelines can be included in the Planning Practice Note Series. In this way, information can be given to responsible authorities and planning authorities (mostly councils) on how to implement NCP principles in carrying out responsibilities assigned to them under the Act. This could include deciding on planning permit applications, applying conditions on permits or preparing amendments to planning schemes. Preparation of guidelines for planning and responsible authorities is likely to be a more effective means of implementing this recommendation than introducing such a requirement in the Act. Training on the NCP guidelines can be provided to re-inforce this information as part of the Department's PLANET professional development program.

Government Action

1. Include NCP guidelines in DSE's Planning Practice Note series by end 2004. Amend existing planning practice notes from time to time, as required.
2. Develop NCP training to re-inforce the information proposed in *1.* above, through the PLANET program by end 2005.

Recommendation 4 – Section 60 of Act

Amend Section 60 to make it consistent with other parts of the Act (to require responsible authorities to have regard to the objectives of planning in Victoria and to make it mandatory for a responsible authority to consider significant social and economic effects).

Area of Restriction: Potential for less restrictive alternatives

Summary of comments received:

- Generally supportive of mandating consideration of social and economic effects.

Government Response: *Recommendation supported in part*

- *Amend Section 60 of the Act to make it consistent with s 84B(1)(b) which requires a Tribunal in determining an application for review, to have regard to the objectives of planning in Victoria specified in s 4(1) - **Recommendation supported***

  This recommendation is supported as it would introduce greater clarity and transparency to the requirements of responsible authorities. Currently, planning authorities are required under section 12(1)(a) to implement the objectives of planning in Victoria and planning schemes already incorporate these objectives in Clauses 11.02 and 11.03 of the State Planning Policy Framework. In carrying out their duties to administer and enforce planning schemes, responsible authorities already facilitate the implementation of the objectives of planning in Victoria. However, the recommended change to the Act would make this requirement more transparent.

  The recommendation is also consistent with the findings of the Whitney Committee which was set up to advise on improvements to the planning system. The Whitney Committee found that there is a lack of clarity as to the matters that the responsible authority and VCAT must consider when making a decision. The Committee expressed the view that the sections 60 and 84B "*...should be aligned so that there can be no dispute that a council and VCAT on review are required to give consideration to the same matters in coming to a decision.*" Its recommendation was to "*clarify and consolidate the matters that must be considered in Sections 60(1) and 84B of the Planning and Environment Act 1987 so that the requirements are the same.*" (Report 1 *Using and Interpreting Local Policy*, Reference Group on Decision-making Processes, September 2002).

- *Amend Section 60 (1) (b) to make it mandatory for a responsible authority to consider significant social and economic effects of a use or development for which the application is made, if the circumstances appear to so require. - **Recommendation supported in principle.***

  Currently, s 60 of the Act provides that "*before deciding on an application, the responsible authority ... must consider ... any significant effects which the responsible authority considers the use or development may have on the environment ... and ... if the circumstances appear to so require, may consider ... any significant social and economic effects of the use or development for which the application is made ...*'.

  This recommendation proposes an amendment to s 60 to provide that a responsible authority *must, if the circumstances so require,* consider any significant social and economic effects of the proposed use or development for which the application is made. The consultants felt that the current language could be interpreted as being permissive only and could allow subjectivity and inconsistency of approach.

  The recommended change is based on a misunderstanding of the meaning of section 60(1)(b). Under administrative law, the words "if the circumstances appear to so require" have the effect of requiring responsible authorities to consider these impacts (as relevant considerations) if, on objective assessment, there are likely to be significant social and economic effects. Use of the word "may" only has the effect of allowing responsible authorities to choose which impacts are relevant (ie choose from social and economic.)

  Although the recommended change could introduce greater transparency in interpreting section 60, the benefits of the change would be minor and are not likely to lead to significantly improved planning (or other) outcomes. In place of legislative change, NCP guidelines proposed under

Recommendation 3 could highlight responsible authorities obligations under section 60 in relation to social and economic effects and provide clarity on its interpretation. This would achieve an improved operational outcome without requiring legislative change.
Government Action. 1. Amend s60 of the Planning and Environment Act to align the requirements of responsible authorities and VCAT on review, in implementing the objectives of planning in Victoria. 2. Highlight responsible authorities obligations under s60 in relation to social and economic effects in NCP guidelines proposed under Recommendation 3.

Recommendation 5 – Performance based provisions

Where it is cost effective to do so, use performance based overlays and particular provisions in preference to potentially costly prescriptive criteria.

Area of Restriction: Potential for less restrictive alternatives

Summary of comments received:

- Performance based controls are open to interpretation which can lead to disputes, reviews and increased costs.
- Prescriptive controls are considered essential where the control determines whether or not a planning permit is required.
- Performance based controls are appropriate in assisting the exercise of discretion where a permit is required.
- Decision guidelines provide some flexibility and discretion.

Government Response: *Recommendation supported in part.*

The 'right' balance between performance and prescription is an ongoing issue in planning. The Government's election policy supported use of more prescriptive controls where this reduced confusion and supported clear policy outcomes. Generally the Victorian planning system is heavily weighted towards a strategically driven/performance based approach.

When the process of introducing new format planning schemes to Victoria commenced in 1996, the *Manual for the Victoria Planning Provisions* was issued to provide information and advice to planning authorities and others preparing or amending new format planning schemes. One of the stated principles for new format schemes is that "*new schemes will facilitate appropriate development*" and to this end, "*the use of performance based provisions is encouraged*". The Manual requires that there be a logical progression from statements of policy through to the exercise of discretion and that discretion must be wide rather than narrow. The permit is to be the principal instrument of development approval.

VPP overlays are, in the main, already performance-based, for example Clause 44.06 Wildfire Management Overlay which requires applicants to submit a statement which shows how the stated objectives and outcomes relating to water supply, access, buildings and works and vegetation are achieved. The VPP are subject to a continuous review and improvement program. As the requirements of users of the VPP change, stakeholders are consulted and improvements made where necessary.

VPP particular provisions eg for advertising signs and home occupation contain a mixture of prescriptive and performance provisions to assist responsible authorities in making a clear distinction between proposals which do not require a planning permit, those which require a planning permit and those which are prohibited. This ensures that councils can interpret their planning schemes quickly and easily and can provide clear advice to intending applicants. This benefits the community by introducing greater certainty. Councils can provide clear direction to potential applicants at the outset. This saves time and money for the applicant who is more likely to obtain planning approval and encounter less business costs by avoiding appeals/objections etc. Neighbouring residents and other affected members of the community also benefit with greater certainty about the types of proposals that will be entertained in certain areas.

A balance between performance and prescriptive controls assists to minimise negative externalities that may arise from co-location of incompatible land uses or development.

NCP guidelines proposed in Recommendation 3 can assist planning and responsible authorities to continue to use an appropriate balance between performance based and prescriptive controls.

Government Action

Include advice to planning and responsible authorities on achieving the right balance between performance-based and prescriptive controls in NCP guidelines proposed in Recommendation 3.

Recommendation 6 – Activity centre controls

Reduce costs associated with restrictions on competition under activity centre controls (by ensuring activity centres are of sufficient size to avoid landlord monopoly power; by reviewing policy exceptions regularly to match consumer preferences; and by allowing out-of-centre developments provided they pay for any negative externalities generated).

Area of Restriction: Potential for less restrictive alternatives

Summary of comments received:

- Paying for negative externalities presents more difficulties than it addresses.
- Need to retain activity centres for commercial and business purposes.
- Contrary to State and local policies.

Government Response - *Recommendation supported in principle*

The Government has just completed a strategic review of the existing planning provisions that relate to activity centres under *Melbourne 2030 Planning for Sustainable Growth (October 2002)*, the Government's 30 year land use and transport plan for Melbourne.

Activity centres provide the focus for services, employment and social interaction, they usually are well-served by public transport and they range in size and intensity of use from local neighbourhood strip centres to traditional universities and major regional malls. They are not just shopping centres, but are multi-functional.

The new strategies (which will soon be introduced into the planning schemes) relating to activity centres will address the above recommendation as follows:

- *ensuring that the size of each activity centre area is sufficient to reduce risk of landlords attaining monopoly power in the Land Use Market as this can stifle competition and innovation much more than if each activity centre is of sufficient size to allow strong rivalry* – ***Recommendation supported in principle.***

Melbourne 2030 provides a network approach to the planning and management of activity centres. This network will comprise a range of centres of varying size and function. The activity centres network will be expanded to include over 100 Principal and Major Activity Centres that will be the focus of growth and change over the next 30 years. With over 100 activity centres identified as locations of major change, there will be increased options for investment and for locating all types of activities. Supporting these centres will be around 900 Neighbourhood Activity Centres providing local services and facilities.

The network approach aims to provide a greater choice in the number and type of activity centres available for development and as well as certainty to the community about where new development is to be focussed.

Local councils, in partnership with the State Government, the community and other key stakeholders will be required to plan for the future growth and change of each activity centre within their municipality through structure planning. This process will include identifying the boundary of each activity centre and opportunities for new development, including sites for uses that require large land areas.

New activity centres that meet the requirements of Melbourne 2030 can also be created which will further reduce the risk of monopoly. In the Government response to submissions received regarding Melbourne 2030, the Government committed to reviewing the policy every five years.

- *ensuring that the list of policy exceptions is reviewed and updated regularly to match consumer preferences* – ***Recommendation supported in principle***

The existing State Planning Policy Framework, including Clause 17.01 Activity Centres and 17.02 Business, will be reviewed as part of the implementation of Melbourne 2030. This review is to occur after extensive community consultation across Victoria.

Melbourne 2030 contains important policies and initiatives that aim to broaden the base of activity

centres. A wider range of services, operating over longer hours, is encouraged.

Some out-of-centre developments have proven to have higher social, economic and environmental impacts compared with in-centre or edge-of-centre locations. Proposals for development or expansion of activities remote from activity centres will be discouraged where such locations would impose negative externalities (eg environmental consequences or traffic congestion) by giving preference to locations in or on the border of an existing activity centre. Out of centre proposals will be considered where it can be convincingly demonstrated that the proposed use or development is of net benefit to the community in the region served by the proposal.

Out-of-centre assessment criteria are being developed in consultation with stakeholders . These criteria will establish tests appropriate for out-of-centre proposals and identify the types of uses and development affected. These will be based on the specific out-of-centre assessment outcomes in Melbourne 2030.

Melbourne 2030 is a long term document that also needs to be dynamic and responsive. There is a commitment in Melbourne 2030 for it to be assessed against new or emerging trends with formal reviews every five years.

- *considering inserting another exception allowing retail businesses to locate outside activity centres provided they are prepared to pay for any negative externalities they generate (valued appropriately).* – ***Recommendation supported in principle***

Under the proposed out-of-centre development guidelines, retail proposals will be considered where it can be convincingly demonstrated that the proposed use or development is of net benefit to the community in the region served by the proposal. This means that proposals should seek to achieve all of the out-of-centre outcomes in Melbourne 2030.

These include:

- avoidance of unreasonable impacts on the economic viability or social and cultural vitality of existing or proposed centres in the network
- location on the public transport network and achieving a mode share similar to like uses that are located in activity centres
- locating in an existing cluster and improving the economic, social and environmental performance of that cluster.

New evaluation criteria will be developed against which proposals will be measured.

Overall, activity centres achieve the following social, economic and environmental benefits for the community:

- Improve the liveability of the area
- Increase opportunities for social interaction and provides a focus for the community
- Make a wide range of services and facilities more accessible to all
- Contribute to the economic competitiveness of the network of centres that provides wide community benefit
- Promote urban forms that minimise overall land and transport requirements
- Ensure more efficient use of land and provision of infrastructure
- Improve freight movement and business logistics
- Improve business and employment opportunities
- Encourage the development of urban transport systems that will limit pollution from fossil fuels and reduce greenhouse gas emissions.

Melbourne 2030 sets out social, economic and environmental performance criteria that should be met by activity centres. Activity centres are better able to meet these criteria than out-of-centre developments.

Activity centre policy is desirable to minimise negative externalities and address market failure, which may arise from unlimited expansion of activity centres, and out-of-centre developments.

Government Action

Government to continue to review and implement new Activity Centre policy.

Recommendation 7 – Consistent planning decisions

Improve consistency of planning decisions concerning planning scheme amendments and permit applications (facilitated through the use of planning specific NCP guidelines discussed under recommendation 3).

Area of Restriction: Potential for less restrictive alternatives

Summary of comments received:

- There are existing means in the current system to ensure consistency of decisions with the ability to review decisions.
- General support for issuing guidelines to assist decision-making – but should be under 'good planning practice' rather than through NCP.

Government Response: *Recommendation supported*

The development of NCP guidelines (as proposed in Recommendation 3) is supported.

As part of the recent review of planning processes under *Better Decisions Faster*, the Government is currently investigating other measures to improve consistency of planning decisions including:

- Standard reports for different types of applications clearly setting out the policy context and decision-making criteria.
- Model delegation guidelines to encourage decisions to be made at the most effective and efficient level.
- Introduction of guideline judgements for decision-making on particular matters to promote greater consistency.

These measures will adequately address issues raised in the recommendation.

Government Action

1. Develop NCP guidelines as proposed under Recommendation 3 by end 2004
2. Develop new processes to improve consistency of planning decisions under Better Decisions Faster by 2004/2005.

Recommendation 8 – Planning policy and planning scheme control exemptions

Ensure that exceptions to particular SPPF and LPPF policies (including those relating to activity centres), zones, overlays and Particular Provisions are consistent with NCP principles and objectives and are regularly reviewed to determine whether additional exceptions are appropriate.

Area of Restriction: Potential for less restrictive alternatives

Summary of comments received:

- MSS required to be reviewed every 3 years.
- No such review required for SPPF – may be appropriate to require.
- Review of policies should occur in a holistic context rather than being narrowed through NCP principles.

Government Response: *Recommendation supported*

The State Planning Policy Framework is to be reviewed within the next 12 months. In general, the SPPF does not contain exceptions as it sets out strategic directions, objectives and policies of the Victorian Government. The proposed review will ensure that the SPPF is more performance based and policy driven and can be conducted to ensure it conforms to NCP principles.

Similarly, Local Planning Policy Frameworks contain strategic directions for each municipality and are not subject to exceptions.

Currently there are a number of review processes set in place to ensure that planning schemes (including LPPFs) are regularly reviewed every three years and to ensure that proposed amendments to schemes are strategic and policy based and consistent with the principles and objectives of the Victorian planning system.

Two planning practice notes, *The MSS and 3 year review* and *Strategic Assessment Guidelines for Planning Scheme Amendments* assist planning authorities with mandatory reviews of their Local Planning Policy Frameworks and amendments. These practice notes are under review and will be amended to address NCP principles among other matters.

This together with NCP guidelines proposed under Recommendation 3 would address this issue adequately.

The recommendation in relation to zones has been answered in Recommendation 2 and in relation to overlays and particular provisions has been answered in Recommendation 5.

Government Action

1. Ensure the SPPF review is conducted in accordance with NCP principles and proposed NCP guidelines (as per Recommendation 3)
2. Review the VPP Practice Notes "*The MSS and 3 year review*" and "*Strategic Assessment Guidelines for Planning Scheme Amendments*" to address NCP principles.

Recommendation 9 – Ministerial permit process

Remove or narrow exemptions of land use or development by Responsible Authorities from Ministerial permit process.

Area of Restriction: Potential for less restrictive alternatives

Summary of comments received:

- Some support for the level of exemptions to be removed or narrowed.
- Current level of exemptions causes problems for councils where applications are contentious.
- This will create additional workload for Department.
- Will result in unnecessary permit applications to the Minister for Planning, increased costs to councils and increase in time delays.

If the council meets public interest tests then exemptions should still apply.

Government Response: *Recommendation not supported*

All councils are deemed as Responsible Authorities under the Planning and Environment Act. In some cases, a council might be the proponent for a facility or it might be the owner of land to be used by another party. Where a planning permit is required, Section 96(1) of the Act states that a responsible authority must apply to the Minister for any use or development it proposes.

This section also provides that planning schemes can exempt land, use or development from this requirement. In 1993 all classes of use and development were exempted, effectively meaning that responsible authorities are no longer required to apply to the Minister for a planning permit. Currently clause 67 of all schemes allows a responsible authority to apply to itself for a permit with a requirement that notice is first given to at least adjoining property owners. This ensures that responsible authorities follow the same process for their own applications as that followed for other applicants.

This procedure has raised little concern over the years and generally, the system appears to work satisfactorily. Responsible authorities now process all planning applications introducing greater certainty and consistency. Straightforward matters are settled at the responsible authority, while contested applications are eventually settled by VCAT. Any objector to an application has review rights at VCAT. Given third party review rights, there is no need to have applications where the responsible authority is the proponent, processed by the Minister. Appropriate checks and balances are in place through the review and notification processes to ensure that all applicants are treated equally.

The identified restriction presents a net benefit to the community by retaining consistency in the administration of the planning scheme and the way permits are handled. This provides greater certainty to the community and third parties who have an interest in the proposal (such as nearby residents). Details of these applications currently appear on the Municipal Planning Register that is available to be viewed by the public at council offices. This ensures transparency and accountability.

The identified restriction ensures that consistency, transparency and accountability are achieved in implementing objectives (a) (relating to the fair, orderly, economic and sustainable use and development of land) and (e) (relating to the protection and orderly provision of community infrastructure) of planning in Victoria and objective (f) of Victoria's planning framework which is to "...provide for a single authority to issue permits for land use or development..."(s4.(2)(f)). These objectives can only be achieved by restricting competition as they ensure that consistency, transparency and accountability are retained as part of the planning permit process.

NCP guidelines proposed in recommendation 3 could remind responsible authorities of the relevant legislative requirements and the need to maintain consistency, transparency and accountability when processing their own applications.

Government Action

Continue with appropriate checks and balances to ensure that competition and community benefits are not restricted. Remind responsible authorities about the need to maintain consistency, transparency and accountability when processing their own applications in NCP guidelines proposed in recommendation 3.

Recommendation 10 – Home occupation provisions

Amend the Home Occupation Particular Provision to make it more consistent with performance criteria and ensure that exceptions reflect community preferences.

Area of Restriction: Potential for less restrictive alternatives

Summary of comments received:

- Generally not supported – has potential to generate a significant impact if not properly controlled.
- Reasonable to consider home occupation on the same basis as other uses. If use satisfies specified requirements then no permit is required but if requirements are not met then a permit application should be considered.
- A review of provisions is appropriate but controls should continue to be prescriptive.

Government Response: *Recommendation supported in principle.*

The Victoria Planning Provisions give the use of *home occupation* an as-of-right status in all residential zones provided that the requirements set out in Clause 52.11 (Particular Provisions) are met. The Home Occupation Particular Provision is already sufficiently performance based. For example the purpose of the clause is "*To ensure that the amenity of the neighbourhood is not adversely affected by an occupation conducted in or from a dwelling.*" Performance-based requirements in Clause 52.11 are:

"*The occupation must not adversely affect the amenity of the neighbourhood in any way including:*

- *The appearance of any building, works or materials used.*
- *The parking of motor vehicles.*
- *The transporting of materials or goods to or from the dwelling.*
- *The hours of operation.*
- *Electrical interference.*
- *The storage of chemicals, gasses or other hazardous materials.*
- *Emissions from the site."*

The Home Occupation Particular Provision also allows certain proposals that fall just outside the requirements to become subject to permit rather than prohibited. These are then assessed against the decision guidelines. As discussed under Recommendation 5, even where performance criteria are able to be used, a certain amount of prescription is required to enable clear interpretation of the planning scheme as to whether a use is as-of-right, permit-required or prohibited.

The Home occupation provisions were updated with the introduction of the VPP and there has been little or no criticism about the reasonableness of the requirements. The current balance between performance and prescriptive controls works well. However, the Victoria Planning Provisions are subject to continuing review in response to community preferences. As the needs of those running home occupations change, stakeholders will be consulted and improvements made where necessary.

The consultants established, through a cost benefit matrix (see page 97 of the consultant's report), that on balance, the benefits associated with the home occupation provisions outweigh the costs. Their recommendation is targetted at reducing the cost side of the equation. (refer to Conclusion/ **Recommendation** on page 96 of consultant's report).

The current mix of performance and prescriptive provisions within the home occupation particular provisions, "frees up" the use of land for home occupation while provicing certainty to intending applicants and adjacent residents. It also ensures that councils interpret the provisions with clarity and certainty and enables prompt and accurate advice to be given to those intending to establish a home occupation business. The outcome also enables prevention of negative externalities arising from inappropriate location of home occupations.

Government Action

Continue with appropriate balance between performance and prescriptive provisions for home occupation provisions. Continue to ensure that exceptions reflect community preferences via review of Home Occupation Particular Provisions where required.

Recommendation 11 – Section 173 Agreements

Reduce the costs associated with section 173 agreements.

Area of Restriction: Potential for less restrictive alternatives

Summary of comments received:

- S173 agreements are generally seen has a useful tool to achieve certain outcomes.
- Generally support review of S173 agreements and development of guidelines.
- No support for objectors being included in the agreement preparation – increase cost and time and give objectors another round for dispute.
- Review dates preferred over sunset provisions – sunset provision not always required.

Government Response: *Recommendation supported in principle*

S173 of the *Planning and Environment Act* allows responsible authorities to enter into agreements with owners of land and other parties. These agreements can cover a wide range of issues, including the regulation or restriction of land. S173 agreements must be lodged with the Minister and registered on title. The review recommended that the Victorian Government:

- *amends the Act so that Responsible Authorities may only use Section 173 Agreements as a last resort, and accordingly must demonstrate that the purpose towards which the agreement is directed cannot be achieved by another means, for example, through appropriately worded permit conditions or development contributions plans;*
- *amends Section 62(6) of the Act to prevent the imposition of permit conditions requiring Section 173 Agreements for provision of services or facilities in relation to land development in circumstances where an approved development contributions plan covers the subject land;*
- *amends Section 177(1) of the Act so as to require a Responsible Authority to include a "sunset" provision in every Section 173 Agreement, to ensure that the agreement does not have a life beyond achievement of its intended purpose. Alternatively, amend the Act to require periodic review of Section 173 Agreements and for their complete or partial repeal if it is demonstrated that their purpose has been satisfied;*
- *amends the Act to require that any objectors to a planning permit application or submitters in respect of a planning scheme amendment that imposes a requirement for a Section 173 Agreement are consulted in respect of the contents of same prior to execution;*
- *amends the Act to prohibit Section 173 Agreements from imposing price controls; and*
- *through the Department of Infrastructure, issues educative guidelines to Responsible Authorities as to appropriate use of Section 173 Agreements. This could be included in the planning specific NCP guidelines discussed under Recommendation 3.*

Reviewing the function and application of Section 173 agreements is set out as Option K1 in *Better Decisions Faster: Opportunities to improve the planning system in Victoria* (August 2003). This document sets out proposals for improving aspects of the planning process. The review will embody matters raised in the recommendation.

Work is currently underway to consult with stakeholders about existing problems with the use of S173 agreements and possible solutions. Possible outcomes could include revisions to legislation, development of a practice note on use of section 173 agreements, or use of alternative controls. The outcome of the review will narrow the scope and application of s173 Agreements which is consistent with the thrust of this recommendation.

Government Action

Proceed with current review of s173 agreements under *Better Decisions Faster* to be completed by end 2004/2005.

Recommendation 12 – Economic objections

Reduce costs associated with economic objections and lack of enforcement of existing provisions of the Act intended to prevent economic objections.

Area of Restriction: Potential for less restrictive alternatives

Summary of comments received:

- Remove provision of Act which allows council to reject objections made on competition grounds
- Net community benefit requires an appreciation of all impacts

Government Response: *Recommendation supported in part.*

The review recommended that the Department consider the following:

- *Issuing guidelines which educate responsible authorities and parties seeking to lodge an objection as to what amounts to an appropriate economic objection and what opportunity for submissions ought to be given to prospective commercial objectors prior to rejecting their objection* – **Supported**

  It would be very difficult to define exactly what constitutes an "appropriate economic objection". However, guidance could be given to responsible authorities and potential objectors on how to distinguish between economic impacts on community interests and those relating to the private interest of a business. This can be done through NCP guidelines proposed in recommendation 3 and might have the effect of reducing the total number of economic objections received by responsible authorities.

- *Amending s57(2A) to overcome a Supreme Court ruling that commercial objectors must be given the opportunity of a hearing prior to rejecting their submissions* – **Not supported**

  S. 57(2A) of the Planning and Environment Act allows a responsible authority to reject an objection to a *planning permit application* "... which it considers has been made primarily to secure or maintain a direct or indirect commercial advantage for the objector."

  The Supreme Court decision is *No 2 Pitt Street Pty Ltd v. Wodonga Rural City Council 3 VPR 328*, in which the Supreme Court held that a responsible authority may not reject a commercial objection unless the potential objector has been given an opportunity to be heard. Although the act of giving objectors the opportunity of a hearing prior to rejecting their submission would be an extra step in the process, in reality it is not likely to add significantly to the time taken by responsible authorities to decide on applications. The Supreme Court decision re-inforces principles of natural justice. It would be inappropriate to use legislation to deny objectors their right to natural justice. Many objectives of planning and the planning framework set out in the Planning and Environment Act relate to the protection of natural justice.

  While it is not accepted that giving objectors the opportunity of a hearing significantly restricts competition, the required public benefit test will be applied. The identified restriction presents a net benefit to the community through the protection of the community's and individual's rights to natural justice. The recommendation is not likely to result in significant benefits from either a planning or competition point of view. The benefits of the restrictions to the community as a whole outweigh the costs.

  The objectives of the Planning and Environment Act relating to fair use and development of land (objective a) and balancing the present interests of all Victorians (objective g) can only be achieved by maintaining the existing situation and protecting an objectors right to natural justice.

  NCP guidelines proposed in recommendation 3 can address this issue to provide clarity to responsible authorities on the impact of the Supreme Court decision.

- *Amending the Act so that a provision similar to s57(2A) also applies to enable a planning authority to reject similar "economic objector" submissions in relation to a planning scheme amendment* – **Not supported**

  Currently, where a planning authority does not agree with a submission, the planning authority can refer the submission to a planning panel. If a similar provision to s57(2A) was introduced, this would enable the economic objection to be rejected outright and where the economic objection is the only submission, avoid the need to set up a planning panel. This would potentially reduce costs associated with economic objections. However, in reality, it would be rare that the only submission in relation to a planning scheme amendment were an economic objection. In practice s57(2A) is rarely used by responsible authorities because most 'commercially' driven objections are multi-faceted and object on valid planning grounds (*such as traffic, noise and amenity)* rather than on commercial grounds. It is likely that a planning panel would be set up to hear other submittors where the proposed amendment raises economic issues and the planning authority does not agree. The recommended change to the Act is not likely to result in significant planning or other benefits.

  In fact the recommended change would introduce the same natural justice issues raised in the Supreme Court decision above. The potential savings which might be achieved by the recommended change are likely to be small and at the expense of inviting drawn out litigation in relation to the appropriateness of decisions to reject particular submissions.

  While it is not accepted that the current situation of planning authorities having to refer economic objections to a panel significantly restricts competition, the required public benefit test will be applied. The identified restriction presents a net benefit to the community through avoiding restrictions of natural justice; potential litigation; and costly changes to legislation for very small improvements to planning and competition outcomes.

  The objectives of the legislation (relating to fair use and development of land (objective a) and objective (h) of the planning framework relating to appropriate public participation in decision making when amending planning schemes) can only be achieved by maintaining the existing situation and protecting an objectors right to be heard by the planning authority or a planning panel.

  NCP guidelines proposed in recommendation 3 could give guidance about appropriate economic objections to planning scheme amendments.

- *Taking steps to raise the awareness of responsible authorities and objectors of the requirement under the Act that objectors must demonstrate how they would be affected by the grant of the permit. This could be done in the guidelines referred to in Recommendation 3. If the guidelines prove ineffective, the Department should consider amending the Planning and Environment Regulations 1998 to introduce a pro-forma objection form that includes a requirement that the objector state how the grant of a permit would affect them. The same ought to be considered in respect of submissions in relation to planning scheme amendments.* – **Supported**

  NCP guidelines (proposed in recommendation 3) could help to raise awareness that objectors must demonstrate how they would be affected by the grant of a permit.

Government Action

Develop NCP guidelines as per Recommendation 3 to give guidance on appropriate economic objections for planning permit applications and planning scheme amendments; on the impact of the Supreme Court decision on responsible authorities powers under s57(2A); and to help raise awareness that objectors must demonstrate how they would be affected by the grant of a permit.

Recommendation 13 – Monopoly of planning and responsible authorities administrative functions

Conduct a review to determine whether it is feasible to remove planning and responsible authority monopoly on provision of certain administrative functions that may be performed by other parties at lower cost

Area of Restriction: Potential for less restrictive alternatives

Summary of comments received:

- Review to be limited to administrative functions which do not involve exercise of discretion or decision making by a planning or responsible authority
- May be difficult to allow competition in administrative aspects without diminishing public accountability for the policy component of planning decisions.
- Administrative functions are appropriately dealt with councils
- Matters such as notification and completeness of applications can be dealt with by other parties

Government Response: *Recommendation supported in part*

The review recommends that the Department examine functions of responsible and planning authorities which are essentially administrative including the preparation of planning scheme amendments and the issue of certificates of compliance with a view to assessing which, if any, of those functions could be performed by other parties, including private sector entities.

There are currently a number of practices where private parties can and do already carry out some of the administrative work required for planning applications or for planning scheme amendments.

Functions such as certificates of compliance, on the other hand, would not be suitable for outsourcing as these require legal interpretation of the planning scheme to certify that existing uses and developments comply or proposed uses and developments would comply with planning scheme requirements. Review of this interpretation is contestable at VCAT. The exercise of this power requires a decision about compliance with the planning scheme which falls within the functions of a responsible authority.

Administrative functions of responsible and planning authorities that are already commonly outsourced include:

- Preparation of planning scheme amendment documentation.
- Preparing and giving of notice of a planning application.
- Preparing officer reports of planning permit applications
- Preparing and presenting planning appeal submissions

Councils are currently able to (and do) outsource administrative activities such as preparation of planning scheme amendment documentation. Planning functions such as report writing for appeals and recommendations for decisions on planning permit applications are also commonly outsourced activities, however decisions on these are still made by Council or its delegate.

In the early 1990s, local government was required to call for tenders on a certain percentage of its services. This was undertaken to meet the requirements of the Compulsory Competitive Tendering policy which prevailed at the time. Tenders were invited for planning services at some councils under this policy.

A recent review of local government planners found that there was opportunity for many planning office functions to be carried out by 'para-professional' staff to make more efficient use of professional planners' time. Behavioural rather than legislative change is needed for this to become more widespread.

The service provider of certain responsible authority and planning authority administrative functions is not strictly within the jurisdiction of the Planning and Environment Act or its subordinate legislation. Nevertheless the Department and MAV under the Continuos Improvement Program *and Better Decisions Faster* are reviewing planning processes for planning permits and planning scheme amendments to improve the efficiency and effectiveness of the process components of the planning system.

Other areas are currently being investigated through the DSE/ MAV Continuous Improvement Program such as the *pre-certification* project where private planning consultants certify that an application is

complete and can proceed to advertising.

Government Action

Continue work with MAV on Continuous improvement program and *Better Decisions Faster* to improve efficiency of planning functions and processes.

Recommendation 14 – Sunset clause in permits

Consider introducing a sunset clause in permits for alternative uses where the likely community benefits associated with an alternative use will not outweigh the costs, and the alternative use generates a major negative externality.

Area of Restriction: Potential for less restrictive alternatives

Summary of comments received:

- Assist the removal of non-conforming uses.
- Inclusion of review dates rather than sunset clauses
- Why will a permit be issued?

Government Response: *Recommendation supported in principle*

This recommendation appears to be based on a misunderstanding of Clause 63.08 since an alternative use cannot be allowed if it is to generate a major negative externality. The second sentence in Clause 63.08 of the VPP states that "...The responsible authority must be satisfied that the use of the land for the alternative use will be less detrimental to the amenity of the locality."

However in the case where there might be difficulty in determining the exact magnitude of the impact of an alternative use, it is already possible under Section 62 (2) (c) of the Act for responsible authorities to put sunset clauses on planning permits where they feel this might be necessary. NCP guidelines proposed in Recommendation 3 could promote the use of these powers by responsible authorities where appropriate.

Government Action

Raise awareness of responsible authority powers under Section 62 (2) (c) through NCP guidelines proposed in Recommendation 3.

7. Summary of Government actions

In response to the consultant's recommendations, Government has committed to improving the manner in which the Act is administered to ensure that effectiveness and efficiency is improved and maintained and to ensure compliance with the National Competition Policy.

Many of the recommendations coincide with current or planned work being undertaken by the Department as part of ongoing continuous improvement of the planning system. The review will not require major changes to the Act or subordinate instruments, but is mainly directed to improvements in planning process.

The following is a summary of the actions proposed by Government in response to the National Competition Policy Review of Victoria's *Planning and Environment Act* 1987 and associated subordinate instruments.

- Continue to provide the Amendment Tracking System for planning scheme amendments.
- Government has provided funding of $1.95 million to fund the development and implementation of a permit activity reporting system over the next 3 years.
- Government is funding the development and implementation of the SPEAR system for electronic lodgement of planning permit applications.
- Implement the new Development Contributions Plans guidelines.
- Include NCP guidelines in DSE's Planning Practice Note series by end 2004. Amend existing planning practice notes from time to time, as required.
- Develop NCP training to re-inforce NCP guidelines, through the PLANET program by end 2005.
- Amend s60 of the Planning and Environment Act to align the requirements of responsible authorities and VCAT on review, in implementing the objectives of planning in Victoria.
- Highlight responsible authorities obligations under s60 in relation to social and economic effects in NCP guidelines proposed under Recommendation 3.
- Include advice to planning and responsible authorities on achieving the right balance between performance-based and prescriptive controls in NCP guidelines proposed in Recommendation 3.
- Government to continue to review and implement new Activity Centre policy.
- Develop NCP guidelines as proposed under Recommendation 3 by end 2004 to improve consistency of planning decisions.
- Develop new processes to improve consistency of planning decisions under *Better Decisions Faster* by 2004/2005.
- Ensure the SPPF review is conducted in accordance with NCP principles and proposed NCP guidelines (as per Recommendation 3)
- Review the VPP Practice Notes "*The MSS and 3 year review*" and "*Strategic Assessment Guidelines for Planning Scheme Amendments*" to address NCP principles.
- Continue with appropriate checks and balances to ensure that competition and community benefits are not restricted when responsible authorities process their own planning permit applications. Remind responsible authorities about the need to maintain consistency, transparency and accountability when processing their own applications in NCP guidelines proposed in recommendation 3.
- Continue with appropriate balance between performance and prescriptive provisions for Home Occupation Particular Provisions. Continue to ensure that exceptions reflect community preferences via review of Home Occupation Particular Provisions where required.
- Proceed with current review of s173 agreements under *Better Decisions Faster* to be completed by end 2004/2005.
- Develop NCP guidelines as per Recommendation 3 to give guidance on appropriate economic objections for planning permit applications and planning scheme amendments; on the impact of the Supreme Court decision on responsible authorities powers under s57(2A); and to help raise awareness that objectors must demonstrate how they would be affected by the grant of a permit.
- Continue work with MAV under Continuous improvement program and *Better Decisions Faster* to improve efficiency of planning functions and processes
- Raise awareness of responsible authority powers under Section 62 (2) (c) through NCP guidelines proposed in Recommendation 3.