



# Planning Scheme Amendment Guide

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# **INTRODUCTION**

The following information is provided as a guide for persons who wish to apply to have land rezoned, or some part of the Planning Scheme amended, for a particular purpose.

The Planning & Environment Act 1987 establishes the planning scheme amendment process which is neither a rapid nor a simple procedure. Nor can the end result be guaranteed because of the several different organisations and people that are involved in making decisions along the way.

Fees for the process are regulated under the Planning and Environment (Fees) Regulations 1988 and are set out in the "Fees" section of this document.

Intending applicants are advised to seek preliminary discussions with staff of this Unit, and then, if necessary, further professional town planning assistance when preparing their application so that any potential problems can be resolved early and the proposal given its best possible chance of success.

# **PRE-APPLICATION CONSULTATION**

Intending applicants should make an appointment with the Council's Strategic Implementation Unit to discuss their proposal before fully preparing and submitting their application.

Intending applicants should be aware that Council will not become involved in drawn out discussions and investigations as part of this pre-application stage.

The purpose of the pre-application consultation is to identify possible problems that would have to be addressed by the applicant and what information would need to be submitted with the application.

Council officers will provide an initial informal opinion on the proposal, without prejudice, which is subject to the provision of full information with the application and detailed assessment by Council and other bodies. While such opinion is not binding it does give the applicant an initial indication of Council's likely attitude to the proposal based on current legislation and Council policy.

It would be sufficient at this pre-application stage for the applicant to give a brief description of the proposal, what land is involved and general reasons as to why the applicant thinks the land should be rezoned. Obviously, the better the information provided the better the initial advice and opinion Council officers will be able to provide.

# APPLICATION

There is no special application form for an Amendment.

In order to ensure the integrity of our Corporate Records Management System, **ALL applications and supporting material should be submitted hardcopy and electronically.**

- We require Microsoft Word version of Amendment documentation so we can edit them if necessary;
- We require PDF copies of all of the reports accompanying the application, this should be optimised and suitable for lodgement on our website should public exhibition occur.
- We may need to split the documents up this is dependent on size so please ensure documents are not password protected or locked. It is preferable to submit all electronic documents on a CD.
- **Planning staff will advise how many hard copies will be required for referrals and exhibition .**

The application should contain the following:

- **Location** - plan showing the location of the land in relation to surrounding streets;
- **Property Description** - sufficient details to fully identify the property and its extent, e.g. title details or survey plan, street number, area and dimensions;
- **Site Conditions** - description or plan of existing use and development on the land including location of buildings, structures and access, any significant natural features (vegetation, wetlands, creeks, steep slopes, etc.), and any known heritage items (buildings, sites, artefacts, etc.);
- **Surrounding Development** - description or plan describing surrounding use and development and its relationship to the site.
- **Availability of Services** - whether reticulated water and sewerage, stormwater, etc., is available or could feasibly be made available if necessary;
- **Proposal** - clear and full explanation of what planning scheme amendment is requested and what use or development is consequently intended. Where a specific development or subdivision is intended conceptual plans should be included. Include copies of any correspondence indicating the attitude of any government agencies or other relevant bodies that have already been consulted;
- **Justification** – the onus is on the applicant to justify why the existing zoning is not appropriate and why the planning scheme should be changed. It is essential that all proposed amendments are consistent with the State and local planning policies as set out in the State Planning Policy Framework (SPPF) and Local Planning Policy Framework (LPPF) of the Planning Scheme (and if not whether the identified inconsistency can be justified by changes to the policies). The Explanatory Report accompanying every amendment must contain the strategic and policy justification for the proposal. The attached “Strategic Assessment Guidelines” prepared by Planning Panels Victoria should assist applicants in identifying the planning policy issues which need to be addressed in a Planning Scheme amendment application.

Any economic, social, environmental or community benefits should be indicated as well as how any perceived disadvantages can be overcome.

- **Documentation** – it is expected that all applications for a planning scheme amendment which involve substantial projects or which are submitted by professional consultants will be accompanied by draft amendment documentation as set out in the DPCDI VPP Practice Notes “Preparing the Documentation For A Planning Scheme Amendment”.

- **Amendment Application Fee - see the section on “Fees” following:**
- **Completed Acceptance of Cost Form** – This is required should the preparation of a Section 173 Agreement or the appointment of an Independent Panel to hear any objections be necessary, the costs are to be borne by the applicant.

The following additional information may need to be provided where appropriate and to varying degrees of detail depending on the particular proposal involved, and can be primarily established at the pre-application consultation stage:

- physical condition of the land (slope, drainage, vegetation, soil stability, etc.);
- environmental impact (noise, traffic, water and air pollution, flora and fauna, residential amenity, etc.);
- economic impact (effect on employment, infrastructure provision, tourism, retail hierarchy, etc.);
- social impact (entertainment, education and recreation opportunities, access to community services, etc.);
- details of any items of heritage value;
- details of any consultation with government agencies or other bodies relevant to the amendment whether in terms of their regulatory/licensing function, potential impact on their services or dependency of the proposal upon the provision of those services;
- draft Outline Development Plan - particularly where the co-ordination of the development of several properties is involved or the site is environmentally/design sensitive;
- draft Section 173 Agreement prepared under the Planning & Environment Act - particularly where guaranteeing the performance of certain actions/works is critical to the appropriateness of the amendment, where it would be unreasonable to require necessary but more detailed design/studies at the rezoning stage or where the actions/duties of one participant are dependent on the performance of certain actions by another participant.

In most cases a Section 173 Agreement will not be required. However, Council can assist in drafting a suitable Agreement at the applicant’s cost. An Agreement is a legal document, registered with the Land Titles Office, binding the owners to the covenants specified in the Agreement and must be available for inspection with the amendment when it is exhibited.

# **APPLICATION PROCESS**

Following submission of the application a preliminary assessment of the proposal will be made. Generally the application will be referred internally but not to other government agencies and bodies at this stage unless their input is particularly critical or important to the overall acceptability or feasibility of the proposal. Depending on the preliminary assessment additional or more detailed information may be requested from the applicant.

Council will then decide whether the application appears supportable and should proceed to exhibition or whether it cannot be supported due to it being contrary to adopted Council Policies or having no justification to warrant further consideration. If Council supports the exhibition of the amendment it is not to be assumed that Council necessarily fully supports the application. Council's decision only means that it has merit and should proceed further to allow public comment and more extensive referral to other agencies during the exhibition period. Council's decision as to whether to give full support to the application is only made AFTER the exhibition period. There is no automatic right to proceed to exhibition.

Following the exhibition of the Amendment, the Council considers all submissions and referral responses received and decides whether to adopt the amendment (and, if so, whether to incorporate any suggested changes) to abandon the amendment or to refer the submissions to a Panel.

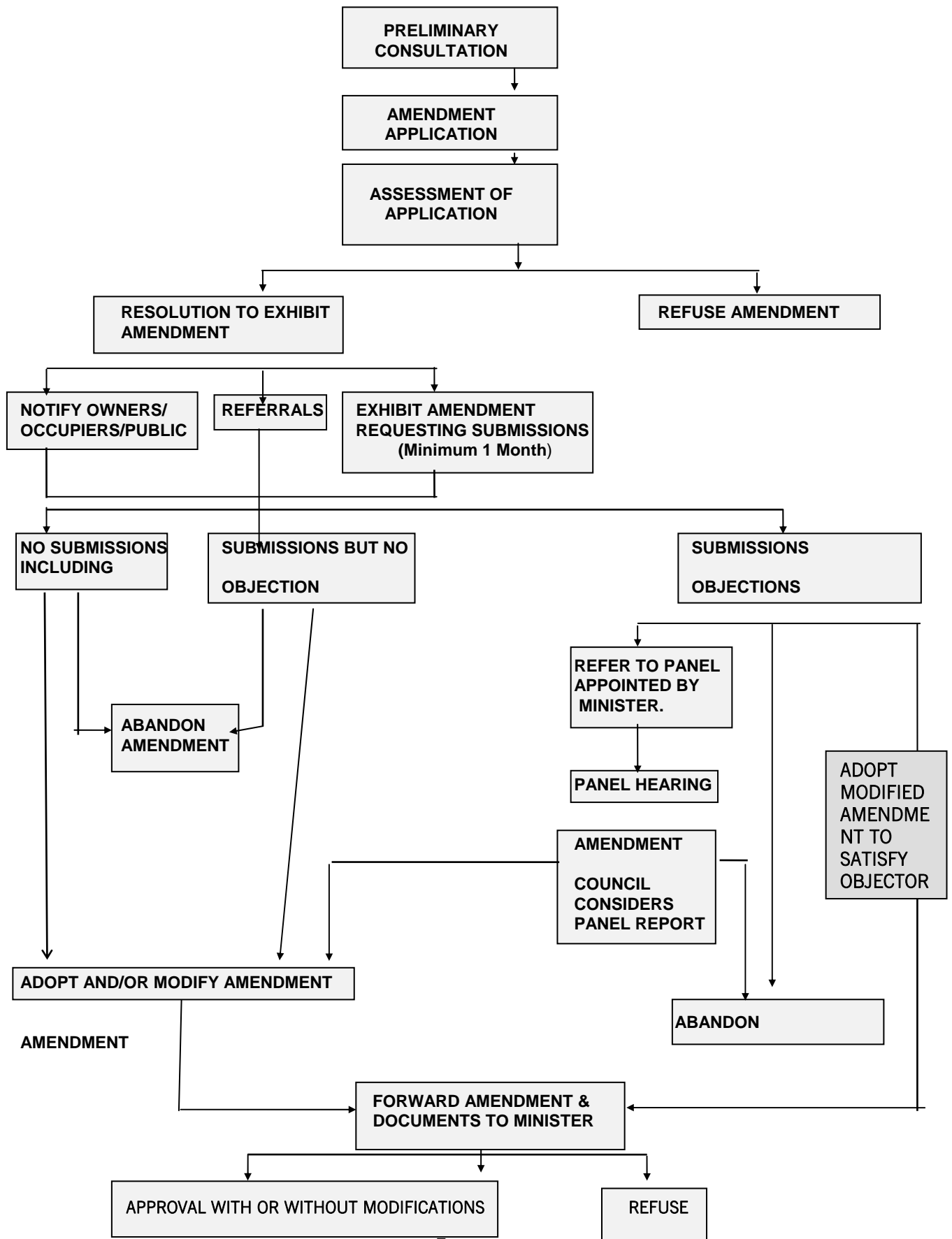
- If there are no objecting submissions and Council decides to adopt the amendment then it is forwarded to the Minister for Planning requesting approval. The Minister may approve, change or refuse it.
- If there are objecting submissions Council will, if possible and appropriate, negotiate a change to the proposed amendment which is acceptable to the proponent, the objector and the Council. If an objecting submission cannot be satisfactorily accommodated in the Amendment and Council decides to support the Amendment, then the submission must be referred to an Independent Panel (appointed by the Minister for Planning) for assessment. Fees apply for the consideration of submissions, and the proponent must pay all costs for a hearing by any Independent Panel.

The Panel convenes an informal hearing to examine the Amendment and the submissions received. The Council, applicant and submitters are invited to make verbal or written presentation to the Panel at the Hearing. The Panel will report back to the Council with its recommendations. As a result, the Council may decide to change the Amendment, adopt it unchanged or abandon it. Unless Council decides to abandon the proposal, the amendment is then sent to the Minister for Planning and Local Government requesting approval. The Minister may approve, change or refuse it.

- If Council abandons the amendment there are no appeal rights to the Victorian Civil and Administrative Tribunal and no refund of any fees.

The chart on the following page shows the basic scheme amendment process:

# SUMMARY OF AMENDMENT PROCESS



# **TIME**

The adequacy of information submitted with the application, the complexity of the proposal, the extent and nature of public submissions, the necessity for an Independent Panel, etc., all influence the length of time that it takes to make an amendment to the planning scheme. It is not a rapid or simple procedure and depends on input from several people and organisations apart from Council, e.g. Department of Sustainability and Environment, VicRoads, Barwon Water, etc.

For a reasonably straight forward amendment (with no objections) applicants should expect a minimum time of up to six months for the whole process. Where Section 173 Agreements have to be negotiated, Independent Panel hearings conducted or other government agency requirements satisfied, anywhere from one to six months **additional** time could be involved.

## **FEES (New Fees apply from 5 October 2009)**

Planning Scheme Amendment fees are set by the Minister under the Planning & Environment Act 1987. The fees apply at various stages in the process and are payable by the applicant. Council will not continue to process an amendment while the applicable fees are unpaid.

**Note: the new fees apply 5 Oct 2009.**

<b>Stage of Amendment Process</b>	<b>New Fees</b>
1. Lodgement of Amendment Application	\$798
2. Consideration of Submissions and if necessary referral to Panel, panel assistance and presentation	\$798
3. Adoption of Amendment	\$524
4. Consideration of Approval of Amendment (to Minister)	\$798

Additional fees could also apply depending on whether a Section 173 Agreement is required or an Independent Panel is appointed to consider any objections.

Independent Panel hearings can vary in complexity and length from a few hours to several days, the costs are significant.

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# PRACTICE NOTE:

Dept of Sustainability & Environment

## STRATEGIC ASSESSMENT GUIDELINES FOR PLANNING SCHEME AMENDMENTS

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### PURPOSE

The purpose of the Strategic Assessment Guidelines is to provide a consistent framework for the evaluation of a proposed planning scheme amendment and the outcomes it produces.

The guidelines should be used by:

- ◆ Proponents (including Council's) when formulating a proposal.
- ◆ The planning authority when considering a request to prepare an amendment.
- ◆ Any planning panel and advisory committee when considering an amendment.
- ◆ The planning authority when considering the final construction and adoption of an amendment.
- ◆ The Department of Sustainability and Environment when considering an amendment submitted to the Minister for approval.

### PRINCIPLES APPLYING TO PLANNING SCHEME AMENDMENTS

Key objectives for Victoria's planning scheme are to:

- ◆ Make planning more strategic and policy based.
- ◆ Make the reasons for planning policies and requirements and planning decisions more transparent.
- ◆ Ensure planning schemes are clear and useable.

These objectives equally apply to planning scheme amendments.

#### **Make planning more strategic and policy based.**

The foundation of each scheme is made up of two components – the State Planning Policy

Framework (SPPF) and the Local Planning Policy Framework (LPPF).

If the strategic focus of new schemes is to be maintained, it is essential that subsequent amendments do not undermine or ignore the planning policy framework in the scheme.

For this reason, an amendment should seek to implement the SPPF and LPPF of the planning scheme. Any specific proposal should support the policy framework.

#### **Make the reasons for planning policies and requirements and planning decisions more transparent.**

The strategic directions that have been developed for the State or a municipality should guide the application of appropriate planning tools from the Victoria Planning Provisions (VPP). As Section 12A of the Planning and Environment Act 1987 requires controls on the use and development of land in a planning scheme relate to the objectives and strategies set out in the Municipal Strategic Statement (MSS) for the municipality. It is therefore important when preparing an amendment to a planning scheme to ensure that there are clear linkages between the MSS and the application of zones, overlays, schedules and policies, and that links to the council's corporate plan are apparent.

#### **Ensure planning schemes are clear and usable.**

The VPP provide clarity and consistency for users of planning schemes through the use of standard planning provisions, which ensure that consistent provisions for various matters are maintained across Victoria.

To ensure planning schemes are clear and useable, a series of Planning Practice Notes has been prepared on the use of the VPP. Planning Practice Notes provide best practice guidance about the use and application of many VPP tools, explanation and guidance about statutory processes, and recommended structure and wording of statutory documents.

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## STRATEGIC ASSESSMENT GUIDELINES FOR PLANNING SCHEME AMENDMENTS

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### Matters to be considered

The broad issues to be considered in preparing and assessing an amendment or proposal are:

Is an amendment required?

What is the strategic basis for the amendment or proposal?

Have the requirements of the Act been considered?

Does the amendment or proposal support or implement the SPPF and LPPF?

What consequences will any proposed or necessary changes to the MSS or local planning policies have for other aspects of the policy framework?

Does the amendment make proper use of the VPP?

What is the outcome of the amendment or proposal in terms of the planning scheme's strategic directions, useability and transparency?

Planning Panels and Advisory Committees will report on these matters when considering an amendment or proposal. The Department of Sustainability and Environment will also address these matters when considering any amendment submitted to the Minister for approval.

In the context of evaluating these matters, the following issues should be addressed. If any issue is not relevant, this should be stated giving the reasons why.

#### 1. Is an amendment required?

Before starting to prepare an amendment, consider whether an amendment is necessary.

- ◆ Does the amendment repeat provisions already in the scheme? If so, what additional value will the amendment to the scheme provide?
- ◆ Is an amendment necessary? Are there other ways of achieving the desired outcome? (For example, can the matter be dealt with by other available council mechanisms such as a local law or as a

planning permit application?) If so, why is an amendment to the scheme the preferred approach?

#### 2. Strategic Justification

Every amendment should be strategically supported and should maintain or develop the strategic focus of the planning scheme.

What is the strategic basis for the amendment?

#### 3. Planning and Environment Act

Every amendment must meet the requirements of the Act including any Ministerial Directions under Section 7 and Section 12 of the Planning and Environment Act 1987.

- ◆ Does the amendment adequately address the environmental effects?
- ◆ Does the amendment adequately address the relevant social and economic effects?
- ◆ Does the amendment comply with the requirements of the Ministerial Direction on the form and Content of Planning Schemes?
- ◆ Do any other Minister's Directions apply to the amendment? If so, have they been complied with?
- ◆ Is the amendment accompanied by all of the information required by a Direction?

#### 4. State Planning Policy Framework

To ensure planning schemes further the objectives of planning in Victoria, planning authorities must take into account and give effect to the general principles and specific policies contained in the SPPF.

What aspects, if any of the SPPF are relevant?

Does the amendment or proposal support or give effect to the SPPF.

#### 5. Local Planning Policy Framework

The LPPF sets a local and regional strategic policy context for a municipality. It comprises the MSS and specific local planning policies.

If an amendment or proposal is at odds with the existing policy framework of the planning scheme, then the policy framework itself may

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## STRATEGIC ASSESSMENT GUIDELINES FOR PLANNING SCHEME AMENDMENTS

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require reassessment. If this leads to the conclusion that the LPPF itself needs amendment, then the implications of the change for the rest of the planning scheme will need to be considered.

It is not necessary to include references to specific proposals in the LPPF. The LPPF does not need to identify every project, but rather sets the policies and strategic objectives against which individual projects will be addressed.

### Municipal Strategic Statement

The MSS contains the strategic planning objectives of the council and the strategies employed to achieve them. As such, there should be a clear link between the objectives and outcomes sought by the MSS and the requirements applied in the scheme. When preparing an amendment to the planning scheme, the planning authority must take the MSS into account.

- ◆ How does the amendment or proposal seek to implement and or support the MSS?
- ◆ If the amendment or proposal does not support or implement the MSS, are any changes to the MSS proposed or necessary.
- ◆ What is the strategic basis for any change to the MSS.
- ◆ What effect will any change to the MSS have on the rest of the MSS.
  - Is the amendment consistent/inconsistent with strategic directions in the MSS?
  - What is the cumulative effect of this amendment and other amendments/proposals on the strategic directions in the MSS?
- ◆ Has there been any community consultation with respect to proposed changes to the MSS? What have been the outcomes?
- ◆ Does the change to the MSS address the format, content and language guidance in the VPP Practice Note *Format of Municipal Strategic Statements*?

### Local Planning Policy

A Local Planning Policy is one of the tools available for implementing objectives and

strategies in the MSS. A Local Planning Policy is a tool for day-to-day decision making in relation to a specific discretion in the planning scheme. It helps the responsible authority and other users of the scheme to understand how a particular discretion is likely to be exercised. When preparing amendments to the scheme, a planning authority must take the context of relevant local planning policies into account.

- ◆ What local planning policies will the amendment or proposal affect or be affected by?
- ◆ If the amendment introduces or changes a local planning policy, is this necessary? Or is the issue adequately covered by another planning tool or decision guideline?
- ◆ What is the strategic basis for any new or changed local planning policy?
- ◆ If the amendment introduces or changes a local planning policy, has the VPP Practise Note *Writing a Local Planning Policy* been followed?

In particular, does the local planning policy:

- Respond to a demonstrated need.
- Implement an objective or strategy in the MSS.
- Relate to a specific discretion or group of discretions in the scheme.
- Assist the responsible authority to make a decision.
- Assist any other person to understand whether a proposal is likely to be supported or not.
- Add to the other planning tools in the scheme, especially the relevant zone or overlay.
- Address the format, content and language guidance in this practice note?

### 6. Zones, overlays and schedules

Zones and overlays are used to implement the State and local strategic directions identified in the SPPF and LPPF and the application of requirements such as zones, overlays and local provisions must have a readily discernible basis in the SPPF or LPPF.

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### **STRATEGIC ASSESSMENT GUIDELINES FOR PLANNING SCHEME AMENDMENTS**

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In deciding the most appropriate VPP tool to best implement the strategic outcomes of the amendment, consideration should be given to the series of Planning Practice Notes that have been prepared on the use of the VPP. Practice Notes should be used where relevant to ensure consistency and best practice methodology in every amendment.

Does the amendment use the most appropriate VPP tool to achieve the strategic objective of the scheme (for example, is the right zone or overlay used)?

To what extent do local provisions adopt a performance based approach?

What Planning Practice Notes are relevant?

Is the amendment in accordance with any relevant Planning Practice Notes?

#### **7. Referral Authorities**

The creation of a new referral authority must be justified and consideration should be given to the need for new referrals of planning applications.

- ◆ Does the amendment contain new referral requirements?
- ◆ If so, does the referral authority support these requirements?
- ◆ What is the purpose of the referral?
- ◆ Are the referral arrangements performance based?
- ◆ Can this purpose be serviced by other means, for example mandatory notice under Section 52 (1) (c) of the Planning and Environment Act 1987, a mandatory condition on every permit under Section 62 (1) (a) or a decision guideline?

#### **8. Outcome of the Amendment**

What is the cumulative effect of this amendment and other amendments on the strategic directions of the planning scheme and on the usability and transparency of the planning scheme?

Are the amendment and the desired outcomes clear?

An up-to-date list of Planning Practice Notes and Ministerial Directions can be found at [www.dpcd.vic.gov.au/planning](http://www.dpcd.vic.gov.au/planning)