

Planning and Environment Bill

EXPLANATORY MEMORANDUM

PART 1—PRELIMINARY

Clause 1 states the purpose of the Act.

Clause 2 provides for commencement.

Clause 3 contains definitions.

PART 2—PLANNING SCHEMES

Clause 4 sets out the planning schemes to which the Act applies.

Clause 5 states the general objectives of planning schemes.

Clause 6 contains provisions that may be included in a planning scheme.

Clause 7 provides that a planning scheme may consist of a State section, a regional section and a local section.

Clause 8 provides certain persons with certain powers to prepare and amend planning schemes.

Clause 9 makes those persons set out in clause 10 planning authorities for the purpose of this Act.

Clause 10 contains a list of regional planning authorities for the purpose of this Act.

Clause 11 authorises certain persons who may prepare amendments to planning schemes.

Clause 12 states the duties and powers of planning authorities.

Clause 13 makes provision for the administration and enforcement of planning schemes by responsible authorities.

Clause 14 states the duties of a responsible authority.

Clause 15 makes provisions in respect of planning schemes where there is a change in municipal boundaries.

Clause 16 provides for the application of a planning scheme to public authorities and municipal councils.

PART 3—AMENDMENT OF PLANNING SCHEMES

Division 1—Exhibition and Notice of Amendment

Clause 17 states that copies of planning schemes amendments and agreements if any must be given to certain persons.

Clause 18 provides for the inspection of amendments and agreements by any person free of charge.

Clause 19 provides that a planning authority must give notice of the preparation of an amendment to certain persons and publish the notice in a newspaper and the *Government Gazette*, further provides that the notices must be in accordance with the regulations and also provides for failure to give notice.

Clause 20 provides that a planning authority may apply to the Minister for exemption from any of the requirements of clause 19 and further provides that the Minister may exempt himself from any of the requirements of clauses 17, 18 and 19.

Division 2—Public Submissions about an Amendment

Clause 21 states that any person may make a submission about an amendment of which notice has been given under clause 19.

Clause 22 states that a planning authority must consider all submissions and makes provision for late submissions.

Clause 23 provides for decisions the planning authority may provide about submissions.

Clause 24 makes provision for submissions that the planning authority submits to a panel.

Clause 25 provides that the panel must report its findings to the planning authority.

Clause 26 states that the panel's report must be made available, at the office of the planning authority, for inspection by any person free of charge.

Clause 27 provides that the planning authority must consider the panel's report.

Clause 28 states that the planning authority must advise the Minister in writing if it decides to abandon the amendment.

Division 3—Adoption and Approval of Amendment

Clause 29 provides that the planning authority may adopt the amendment or part of the amendment with or without changes.

Clause 30 provides that in certain circumstances an amendment or part of an amendment will lapse.

Clause 31 states that a planning authority must submit an adopted amendment, together with the prescribed information, to the Minister.

Clause 32 states that the Minister may direct the planning authority to give more notice.

Clause 33 provides that the Minister may direct the planning authority to give notice of any change to the amendment and may specify the manner and form of such notice.

Clause 34 provides that the Minister may allow any person affected by a change to an amendment to make a submission and further provides that the submission may be referred to a panel for consideration and report to the Minister.

Clause 35 provides for approval by the Minister of an amendment or part of an amendment.

Clause 36 provides that the Minister and the planning authority must publish a notice of approval.

Clause 37 makes provision for the commencement of an amendment.

Clause 38 provides that a notice of approval of every amendment must be laid before each House of Parliament within a certain time and that an amendment may be revoked by a resolution passed by each House of Parliament.

Clause 39 makes provision for actions by affected persons and the validity of amendments in respect of failure to comply with certain provisions of the Act.

Division 4—Availability of Approved Amendments and Schemes

Clause 40 provides for the lodging of copies of every approved amendment to a planning scheme.

Clause 41 states that lodged copies must be available at the place of lodgement for inspection by any person free of charge until the end of two months after the amendment comes into operation.

Clause 42 provides that certain persons must keep up to date copies of planning schemes available for inspection.

Division 5—Special Provisions

Clause 43 provides that unalienated Crown land forming part of a closed road must vest in the Minister administering the *Land Act 1958* and further provides that the Minister may sell the land.

Clause 44 provides for the vesting of other land forming part of a road closed by an amendment and for its disposal.

Clause 45 maintains the rights of public authorities and municipal councils in respect of easements over closed roads unless the planning scheme provides otherwise.

Clause 46 states that the effect of a planning scheme on land reserved under the *Crown Land (Reserves) Act 1978* does not operate until the reservation of that land is revoked.

Clause 47 provides for planning schemes to be amended to implement coastal management plans.

PART 4—YARRA DEVELOPMENT

Clauses 48 to 63 re-enact with amendments Part IIIF of the *Town and Country Planning Act 1961*.

PART 5—PERMITS

Division 1—Permits Required by Planning Schemes

Clause 64 makes provision for permit applications.

Clause 65 provides for certain procedures if the applicant is not the owner.

Clause 66 states that the responsible authority must keep a register of applications.

Clause 67 provides for changes to be made to applications.

Clause 68 states that the responsible authority must make copies of any application available for inspection by any person free of charge.

Clause 69 makes provision for the giving of notice of permit applications.

Clause 70 provides that the responsible authority may require the applicant to give the notice.

Clause 71 states that the responsible authority may require the applicant to provide more information before dealing further with the application.

Clause 72 states that the responsible authority must give a copy of an application to every relevant referral authority.

Clause 73 sets out the action required of a referral authority on receipt of an application.

Clause 74 makes provision for any person to object to the grant of a permit.

Clause 75 states that the responsible authority must consider all applications for a permit.

Clause 76 provides for the time after which a decision may be made.

Clause 77 contains the matters that must or may be considered by the responsible authority before deciding on an application.

Clause 78 sets out the options available to a responsible authority in respect of its decision on an application.

Clause 79 provides for conditions on permits.

Clause 80 provides for the issue of a permit if no one has objected.

Clause 81 sets out the procedures to be followed by the responsible authority in relation to the grant of a permit where there are objections.

Clause 82 provides for the giving of a notice of refusal setting out the grounds for refusal.

Clause 83 states that the responsible authority must give each relevant referral authority a copy of any permit and any notice under clause 81 or 82.

Clause 84 makes provision for the time at which a permit operates.

Clause 85 makes provision for the time at which a permit expires.

Clause 86 provides that the life of a permit may, in certain circumstances, be extended.

Clause 87 states that the responsible authority must make a copy of every permit it issues, available for inspection.

Clause 88 makes provision for the correction of mistakes in a permit.

Clauses 89 to 93 contain provisions for the amendment of permits including request for amendment, decision of the responsible authority, notice of decision, amendment of the permit register and effect of the amendment.

Division 2—Appeals to the Planning Appeals Board

Clause 94 provides that an applicant may appeal against a decision to refuse.

Clause 95 provides for appeals against requirements.

Clause 96 provides for appeals against failure to grant.

Clause 97 provides for appeals against conditions on permits.

Clause 98 provides for appeals relating to extensions of time.

Clause 99 sets out appeal provisions relating to objectors.

Clause 100 provides that in certain circumstances, a referral authority and the responsible authority shall be respondents to an appeal.

Clause 101 makes provision for the determination by the responsible authority of an application, after an appeal has been lodged.

Clause 102 sets out the various decision options available to the Board when making a determination.

Clause 103 provides for the Board to hear disputes in relation to satisfaction of permit conditions.

Division 3—Cancellation and Amendment of Permits

Clause 104 sets out the grounds on which certain persons may ask the Planning Appeals Board to cancel or amend a permit.

Clause 105 provides limitations on the power to cancel or amend permits.

Clause 106 provides that in certain circumstances, any person may ask the responsible authority to cancel or amend a permit.

Clause 107 provides that the Board must give certain persons a reasonable opportunity to be heard.

Clause 108 provides for the determination by the Board of a request under clause 104.

Clause 109 provides for notice to be given of the cancellation or amendment of a permit.

Clause 110 provides for stop notices where a request has been made for cancellation or amendment of a permit.

Clause 111 provides for compensation in certain circumstances.

Division 4—Provisions relating to Responsible Authorities

Clause 112 sets out the procedure to be followed by a responsible authority or a person other than the responsible authority before carrying out any use or development on land owned by the responsible authority for which a permit is required.

Division 5—Extractive Industry

Clause 113 sets out the procedure to be followed by any person requiring a permit for an extractive industry and by the responsible authority in its consideration of the application.

PART 6—COMPENSATION

Clause 114 provides that the owner or occupier of land is entitled to claim compensation from the planning authority or responsible authority for financial loss in certain circumstances.

Clause 115 states when a right or liability for compensation arises.

Clause 116 the amount of compensation payable under clause 114 in respect of a residence may be increased by an amount to compensate the claimant for intangible and non-financial disadvantages. This amount must not exceed the amount prescribed for the purposes of section 44 of the *Land Acquisition and Compensation Act 1986*. All relevant circumstances must be taken into account in assessing the amount payable including those cited in sub-clause (3).

Clause 117 if compensation is payable under clause 114, there is an entitlement to claim legal, valuation or professional expenses reasonably incurred in preparing and submitting the claim.

Clause 118 in determining compensation to be paid under this Part, regard must be had to compensation already paid or payable.

Clause 119 if a claim under clause 114 or 123 is less than the specified minimum, it may be rejected.

Clause 120 compensation payable under clause 114 or 123 must not exceed the specified maximum.

Clause 121 applies Parts 10 and 11 and section 37 of the *Land Acquisition and Compensation Act 1986* to the determination of compensation under this Part.

Clause 122 the owner of land may in certain circumstances claim compensation under clause 114 after the sale of the land (loss on sale).

Clause 123 provides that the owner of land is entitled to claim compensation within two years for the removal or lapsing of a reservation.

Clause 124 specifies certain persons who are not eligible to claim compensation under this Part.

Clause 125 provides for a Minister, a public authority or referral authority to be liable for compensation in certain circumstances.

Clause 126 requires any person who has paid compensation under this Act or a corresponding Act to lodge a statement with the Registrar of Titles or the Registrar-General and for any entries to be made which are necessary to bring the statement to the notice of anyone searching the title to the land. Entries made must be cancelled on request.

Clause 127 provides that the amount of compensation paid under this Part in respect of land as a result of a reservation or a proposed reservation, and set out in a statement lodged under clause 126, may be recovered from the present owner of the land in specified circumstances.

Clause 128 provides that where another person acquires land in respect of which a person has lodged a statement under clause 126, the second person must reimburse the first person for compensation paid. A public authority or municipal council is empowered to pay any amount it is required to pay under this clause.

Clause 129 the Minister administering the *Land Acquisition and Compensation Act 1986* may declare land to be proposed to be reserved for public purposes.

PART 7—ENFORCEMENT AND LEGAL PROCEEDINGS

Division 1—Enforcement Orders

Clause 130 a responsible authority may make an enforcement order if it considers a use or development contravenes or will contravene the Act, a planning scheme, a condition of a permit or an agreement. It may serve the order on one or more of the specified persons, and may make the order on its own initiative or on the written application of any person.

Clause 131 the order must specify the contravening use or development and any other prescribed information. It may direct the person on whom it is served to stop or not to start the use or development, to maintain a building in accordance with the order, or to do specified things including restoring the land.

Clause 132 a person on whom an enforcement order is served may appeal to the Planning Appeals Board and the order is suspended when an appeal is lodged until a date which the Board determines, or the appeal is withdrawn.

Clause 133 any applicant for an enforcement order may appeal to the Board against the responsible authority's refusal to make the order or its failure to decide on the application within one month.

Clause 134 the Board must give specified parties a reasonable opportunity to be heard at an appeal.

Clause 135 the Board, after hearing an appeal may confirm, amend or cancel the order, or make a new order.

Clause 136 any person may apply to the Board in an urgent case for an enforcement order. The responsible authority may apply to the Board for an order against any person upon whom it has served an order, if an appeal has been lodged. After considering specified matters, the Board may make an order. It must give any person affected by an order made in the absence of one or more parties a reasonable opportunity to be heard. It may then continue, amend or cancel the order.

Clause 137 the responsible authority may cancel an order it has made, and, with the consent of the Board, any order the Board has made or confirmed.

Clause 138 provides for offences where enforcement orders are not complied with.

Clause 139 the responsible authority, or with the consent of the Board any other person, may carry out work required by an order which was not carried out within the specified period, and recover the costs of the work from the person in default. Any building may be sold or other materials salvaged in carrying out the work, and applied towards payment of expenses.

Clause 140 any enforcement order served on an owner or occupier is binding on every subsequent owner or occupier.

Clause 141 a responsible authority or any other person may apply to any court of competent jurisdiction for an injunction.

Division 2—Offences and Penalties

Clause 142 provides for offences for contravening schemes, permits or agreements.

Clause 143 specifies general penalties.

Clause 144 provides for certain personal liability for offences by corporations.

Clause 145 if an offence has been prosecuted by a responsible authority, penalties recovered must be paid to it.

Clause 146 provides that an authorised officer of a responsible authority may serve a planning infringement notice for a prescribed offence in relation to use or development. The notice must state the offence and the prescribed penalty, not exceeding 2 penalty units.

Clause 147 the responsible authority may withdraw an infringement notice and must refund any penalty paid before the notice is withdrawn.

Clause 148 provides for payment of penalties shown on infringement notices and prosecution for non-payment.

Division 3—Powers of Entry

Clause 149 specifies the persons who are authorised to enter land.

Clause 150 before entering, an authorised person must get the consent of the occupier or give two days notice.

Clause 151 specifies the powers of authorised persons.

Clause 152 requires members of the police force, on request, to assist an authorised officer of a responsible authority to execute powers to enter land.

Clause 153 makes obstruction of an authorised person or a member of the police force an offence; Penalty is 5 penalty units.

Clause 154 a person is not entitled to take legal proceedings in respect of an entry on land or other action done under this Division.

Division 4—Evidence and Notices

Clause 155 provides for evidence in legal proceedings that a person is the occupier or owner of land.

Clause 156 provides for proof in proceedings under the Act of the existence and contents of a planning scheme or amendment.

Clause 157 provides for evidence in legal proceedings in respect of planning scheme provisions and permits.

Clause 158 provides for evidence in legal proceedings in respect of agreements.

Clause 159 until evidence is given to the contrary, no proof is required in proceedings of specified matters relating to the constitution and procedures of a planning authority or a responsible authority.

Clause 160 provides for evidence of minutes.

Clause 161 specifies how notices and orders are to be given or served by a planning authority or a responsible authority.

Clause 162 makes provision for copies of planning schemes and amendments.

Clause 163 contains provisions for the giving, serving or publishing of any notice or document, the keeping of documents at the Minister's office, and the interpretation of certain references where the Minister is the planning authority or the responsible authority and the interpretation of references to authorised officers.

Division 5—Review of Decisions

Clause 164 any person affected by a decision of or failure to decide by a planning authority may refer that decision or failure to the Planning Appeals Board for review.

PART 8—ADVISORY COMMITTEES

Clause 165 allows the Minister to establish advisory committees.

Clause 166 enables the Minister to establish the Westernport Regional Planning and Co-ordination Committee.

PART 9—PANELS

Clause 167 states that the Minister must appoint a panel where submissions are referred to a panel.

Clause 168 provides that a panel may consist of one or three persons.

Clause 169 provides that the Minister must appoint a chairperson where a panel consists of three persons.

Clause 170 makes provision for fees and allowances in respect of panels.

Clause 171 specifies provisions to apply to panels of three members.

Clause 172 requires planning authorities to assist panels.

Clause 173 authorises a panel to give directions about hearings.

Clause 174 provides that hearings must be in public except where the panel is satisfied that the submission is of a confidential nature.

Clause 175 sets out the general procedure to be followed by a panel when hearing submissions.

Clause 176 makes provision for certain persons to be heard.

Clause 177 provides that a person who makes a submission need not appear in person and that the panel must consider the submission.

Clause 178 permits a panel to hear, in certain circumstances, two or more submissions together.

Clause 179 authorises adjournment of panels.

Clause 180 provides that a panel may continue to hear submissions despite irregularities or defects in the preparation of a planning scheme or amendment.

Clause 181 states that a panel may regulate its own proceedings.

Clause 182 provides that a panel may take any relevant material into account.

Clause 183 specifies certain offences in respect of panels.

Clause 184 provides immunity to panel members from any action arising out of the conduct of a hearing.

PART 10—ADMINISTRATION

Division 1—General Powers

Clause 185 specifies the powers of a responsible authority.

Clause 186 provides that the Minister or a responsible authority may acquire land compulsorily if they believe it would assist the better planning and development of an area. The *Land Acquisition and Compensation Act 1986* is to apply.

Division 2—Agreements

Clause 187 allows for a responsible authority to enter into an agreement.

Clause 188 provides for the form and contents of that agreement.

Clause 189 allows the agreement to include a bond or guarantee provision to ensure that the owner of the land carries out the agreement.

Clause 190 an agreement may provide for a time on which the agreement comes into effect.

Clause 191 an agreement may provide when the agreement is at an end.

Clause 192 identifies how an agreement can be amended.

Clause 193 states that a copy of the agreement is to be lodged at the office of the Minister and the responsible authority must keep a copy at its office for inspection by any person.

Clause 194 states that an agreement must not breach a planning scheme or a permit.

Clause 195 provides that a responsible authority may apply to the Registrar of Titles to register an agreement, or to the Registrar-General to register a memorial of the agreement.

Clause 196 provides for any covenant in an agreement to run with the land, and the responsible authority may enforce the covenant.

Clause 197 requires that a responsible authority inform the Registrar of Titles or the Registrar-General of the ending of or amendment to an agreement.

Clause 198 provides grounds on which an owner of land may apply to the Planning Appeals Board to amend a proposed agreement. The Board may approve the proposed agreement with or without amendment.

Division 3—Powers of Minister

Clause 199 enables the Minister for Local Government to inquire into a municipal council in its exercise or performance of powers, discretions or functions as a planning authority or responsible authority.

Clause 200 the Minister must give a council an opportunity to be heard in an inquiry, and may appoint a person or persons to hear the council and report and make recommendations to the Minister.

Clause 201 provides that the Minister may direct a municipal council to exercise a power or discretion or perform a function as a planning authority or responsible authority.

Clause 202 provides that where a municipal council does not comply with the Minister's direction, the Minister for Planning and Environment may give any further direction or that Minister may exercise the power or discretion or perform the function or authorise any other person to do so.

Clause 203 the Minister for Local Government may order a municipal council to pay the expenses incurred by the relevant Minister or authorised person under clause 202.

Clause 204 provides that the municipal council, and every member or officer of the council must assist or obey the relevant Minister in exercising powers under clause 202.

Clause 205 provides that each Minister has standing to maintain proceedings where a council fails to comply with a direction to the satisfaction of the Minister.

Clause 206 states that this Division does not affect any other proceeding or remedy against or liability of a council or municipality.

Division 4—Delegation

Clause 207 allows the Minister to delegate powers discretions or functions to the Secretary for Planning and Environment, a committee of officers or any officer of the Ministry.

Clause 208 allows the Secretary to delegate powers discretions or functions to officers except those specified.

Clause 209 allows a planning authority or a responsible authority to delegate any of its powers discretions or functions under the Act, except those specified, to a Committee or an officer of the Authority. Specific provision is made in relation to the Alpine Resorts Commission.

Clause 210 allows the Minister to delegate by instrument to an advisory committee or regional planning authority any of his or her powers discretions and functions under a planning scheme in relation to specified permits. Notice of the delegation must be published in the *Government Gazette*.

Clause 211 allows the Minister to delegate by instrument any of his or her powers discretions or functions as a responsible authority to any other responsible authority or the

council of a municipality. Notice of the delegation must be published in the *Government Gazette*.

Division 5—Hearings

Clause 212 a planning authority or a responsible authority may nominate a committee of two or more persons to hear any person.

Clause 213 the committee may include a member of the authority.

Clause 214 a person who has a right to be heard may appear in person or be represented.

Clause 215 sets out the functions of the committee to hear, report and make recommendations to the authority.

Clause 216 provides that a hearing by a committee under this Division is as if it were a hearing by the planning or responsible authority.

Clause 217 provides that fees and allowances must be paid to members of the committee other than an officer or full-time member of a planning authority or responsible authority.

Division 6—Planning Certificates

Clause 218 any person may apply to the responsible authority or the person nominated in the planning scheme for a planning certificate. The application must be accompanied by the prescribed fee.

Clause 219 a responsible authority or nominated person must send the applicant a planning certificate in the prescribed form, setting out the prescribed information about the effect of the relevant planning scheme on the land at the date of the certificate. The certificate must be signed.

Clause 220 provides that a planning certificate is conclusive proof of certain matters. Any person who suffers loss because of an error or mis-statement in the certificate may recover damages for that loss.

Clause 221 if a planning certificate states that the land is reserved for public purposes and the certificate does not indicate the provisions of the planning scheme which would have applied if the land had not been reserved, the applicant may apply for the purpose of valuing the land for the purpose of compensation, to the responsible authority or the nominated person for a declaration setting out the provisions which would have applied to the land if it had not been reserved. The application must be in the prescribed form and accompanied by the prescribed fee. If the authority fails to make a declaration in the prescribed time, the applicant may refer the matter to the Minister, who may make the declaration. Any declaration is to be treated as forming part of the planning certificate for the purposes of clause 220.

PART 11—REGULATIONS

Clause 222 enables the Governor in Council to make regulations.

Clause 223 enables the Governor in Council to make regulations prescribing fees.

PART 12—REPEALS, TRANSITIONAL AND SAVINGS

Clause 224 provides that the Minister may by order published in the *Government Gazette* declare the planning schemes to which the Act applies. The Minister may declare that any statement of planning policy, planning scheme, interim development order, or

order under section 32 (5) of the *Town and Country Planning Act 1961*, in force, forms part of a declared planning scheme.

Clause 225 provides that on the commencement of an item in the Schedule the Act referred to in the item is amended or repealed to the extent specified in the item.

Clause 226 is a general savings provision.

Clause 227 revokes all orders under section 32 (5) of the *Town and Country Planning Act 1961* and all planning schemes and interim development orders under that Act, and all by-laws under section 197 (1) (a) of the *Local Government Act 1958* in force immediately before the commencement of item 125 of the Schedule. Continuing provisions are included in clause 224 in respect of declared schemes and orders. This clause also saves concept plans in force under Part III F of the *Town and Country Planning Act 1961*.

Clause 228 provides that all permits in force under the *Town and Country Planning Act 1961* before the commencement of item 125 of the Schedule continue in force. This clause also makes provision for the cancellation and expiry of those permits in certain circumstances.

Clause 229 states that any application for a permit made under the *Town and Country Planning Act 1961* which had not been determined or notice of which had not been given before the commencement of item 125 of the Schedule must comply with Part 5 of this Act. Any other application for a permit made under the *Town and Country Planning Act 1961* may be determined as if this Act had not come into operation; upon determination this Act applies to notice of and appeals from the determination as if it were a determination under Part 5.

Clause 230 provides that all appeals lodged under the *Town and Country Planning Act 1961* before the commencement of item 125 of the Schedule may be heard and determined by the Board under that Act as if this Act had not come into operation. If the Board determines a permit should be granted, this Act applies to the grant and anything done in relation to the permit.

Schedule

Sets out the extent of amendments or repeals of other Acts.