

Version No. 005
**Planning and Environment (Planning
Schemes) Act 1996**

No. 77 of 1996

Version incorporating amendments as at
22 June 2011

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The Parliament of Victoria enacts as follows:

PART 1—PRELIMINARY

1 Purpose

The main purpose of this Act is to amend the
Planning and Environment Act 1987—

- (a) to reform the structure of planning schemes;
- (b) to provide for the preparation of municipal strategic statements;
- (c) to provide for the making of Victoria Planning Provisions;
- (d) to provide a co-ordinated procedure for the issue of planning permits with the approval of related amendments to planning schemes.

2 Commencement

This Act comes into operation on the day on which it receives the Royal Assent.

3 Principal Act

No. 45/1987.

In this Act the **Planning and Environment Act 1987** is called the Principal Act.

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Pt 2 (Heading and ss 4–16) repealed by No. 29/2011 s. 3(Sch. 1 item 71).

S. 16A
inserted by
No. 77/2003
s. 8.

PART 3—TRANSITIONAL

16A Definition of Port of Melbourne Area

In this Part *Port of Melbourne Area* has the same meaning as it has in the **Planning and Environment Act 1987**.

17 Existing Act to continue to apply to existing schemes

Despite the amendment of the Principal Act by this Act, the Principal Act as in force immediately before the commencement of this Act continues to apply in relation to—

- (a) any planning scheme existing immediately before that commencement; and
- (b) any amendment to a planning scheme of which notice was given under section 19 of the Principal Act but which had not been approved before that commencement; and
- (c) any amendment to a planning scheme referred to in paragraph (a) prepared on or after that commencement.

18 Municipal councils to prepare new schemes

- (1) As soon as practicable after the commencement of this Act, each municipal council must prepare a planning scheme for its municipal district and for any area adjoining its municipal district for which it is a planning authority.
- (2) Subject to this Part, the Principal Act as amended by this Act and the regulations under the Principal Act apply to the preparation of a planning scheme under this section as if it were an amendment to a planning scheme and the municipal council were the planning authority.
- (3) Sections 96A to 96D do not apply in respect of a planning scheme prepared under this section.

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- (4) This section does not apply to any part of a municipal district that is within the Port of Melbourne Area.

S. 18(4)
inserted by
No. 77/2003
s. 9.

19 Municipal councils to prepare municipal strategic statements

- (1) The municipal council must prepare a municipal strategic statement for inclusion in the planning scheme prepared under section 18 on or before the date specified by the Minister in respect of that planning scheme.
- (2) If a municipal council has not prepared a municipal strategic statement for inclusion in a planning scheme on or before the date specified by the Minister under subsection (1), the Minister may prepare a municipal strategic statement for inclusion in that planning scheme.
- (3) Section 12A of the Principal Act as amended by this Act applies to the preparation of a municipal strategic statement under this section.

20 Submission of planning scheme for approval

- (1) The municipal council must submit a planning scheme prepared under section 18 to the Minister for approval under section 31 of the Principal Act on or before the date specified by the Minister in respect of that planning scheme.
- (2) If the municipal council does not submit a planning scheme by the date specified by the Minister, the Minister may prepare and approve a planning scheme for that municipal district.
- (3) The Principal Act (except sections 12(1)(a) and (e), 12(2), 12(3), Divisions 1 and 2 of Part 3 and section 39 and any regulations made for the purpose of those provisions) applies to the preparation and approval of a planning scheme by the Minister under subsection (2).

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- (4) A planning scheme approved under this section is deemed to be approved under the Principal Act.
 - (5) The municipal council must pay to the Crown the costs determined by the Governor in Council to be incurred by the Minister in preparing a planning scheme under this section for the council's municipal district.

21 Minister may prepare planning scheme

- (1) The Minister may prepare and approve a planning scheme under this Part for any part of Victoria outside a municipal district.
- (1A) The Minister may prepare and approve a planning scheme under this Part for the Port of Melbourne Area.
- (2) Subject to this Part, the Principal Act as amended by this Act and the regulations under the Principal Act apply to the preparation of a planning scheme under this section as if it were an amendment to a planning scheme and the Minister were the planning authority.
- (3) Sections 96A to 96D do not apply in respect of a planning scheme prepared under this section.

S. 21(1A)
inserted by
No. 77/2003
s. 10.

22 Validity of schemes

- (1) A planning scheme prepared under this Part and approved or purporting to have been approved is deemed to have been duly approved in accordance with all of the requirements of this Part and the Principal Act and to be valid and effective in all respects.
- (2) A planning scheme referred to in subsection (1) must not be called into question in any proceeding in any court or tribunal or in any proceeding by way of review under the Principal Act or this Part.
- (3) Nothing in this section applies to an amendment to a planning scheme referred to in subsection (1).

23 Issue of permits with schemes

(1) If—

- (a) a municipal council prepares a planning scheme under this Part for an area; and
- (b) the municipal council determines under section 96G(1)(c) of the Principal Act to recommend to the Minister that a permit be granted under Division 5 of Part 4 of the Principal Act—

the municipal council must give the owner and the occupier of land to which the proposed permit would apply at least 30 days notice of its intention to recommend to the Minister that a permit be granted under that Division in respect of the land.

- (2) The notice must be accompanied by a copy of the proposed permit.
- (3) The Principal Act applies in relation to a planning scheme prepared under this Part as if—
 - (a) in section 96E(1)(a) the words "as amended by the proposed amendment" were **omitted**; and
 - (b) for section 96G(1)(c) there were **substituted**—
 - "(c) the planning authority considers it appropriate that a permit be granted under this Division for any purpose for which the planning scheme would require a permit to be obtained."
- (4) Section 96I of the Principal Act applies in relation to a planning scheme prepared under this Part as if that section permitted the Minister—
 - (a) to grant a permit subject to any conditions the Minister thinks fit, if the Minister considers that it is appropriate that a permit

be granted under that section for any purpose for which the planning scheme would require the permit to be obtained; and

(b) to grant any permit under that section within 3 months after the date of approval of the planning scheme.

S. 23(5)
inserted by
No. 72/1998
s. 10.

(5) If, in relation to a planning scheme prepared under this Part, the Minister grants a permit under section 96I of the Principal Act for the use of land or the development and use of land for an extractive industry, the permit may specify that the permit expires if the use is discontinued for a period (being not less than 2 years) specified in the permit.

S. 23(6)
inserted by
No. 72/1998
s. 10.

(6) If a permit specifies a period for expiry in accordance with subsection (5)—
(a) the permit expires if the use is discontinued for the period specified in the permit; and
(b) sections 68(2)(b) and 68(3)(d) of the Principal Act do not apply to that permit.

24 Effect of new scheme

- (1) On the commencement of a new planning scheme prepared under this Part in respect of an area, any planning scheme in force in that area immediately before that commencement is revoked.
- (2) All acts matters or things of a continuing nature made, done or commenced under or in relation to a revoked scheme that could have been made, done or commenced under or in relation to the new planning scheme are to be taken, so far as relates to any period after the commencement of the new planning scheme, to have been made, done or commenced in relation to the new planning scheme.

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- (3) On and from the commencement of the new planning scheme—
- (a) all proceedings commenced by or against a responsible authority under or in relation to the revoked scheme may be continued by or against the responsible authority for the new planning scheme; and
 - (b) any arrangement, contract or agreement entered into by or on behalf of a responsible authority in relation to the revoked scheme that could be entered into under the Principal Act in relation to the new planning scheme may be enforced by or against the responsible authority for the new planning scheme; and
 - (c) all rights and liabilities existing under or in relation to the revoked scheme immediately before the commencement of the new planning scheme continue under or in relation to the new planning scheme, to the extent that the new planning scheme has provisions to the like effect as provisions of the revoked scheme, and may be enforced by or against—
 - (i) the Minister, if they were rights and liabilities of or enforceable against the Minister immediately before that commencement; or
 - (ii) the responsible authority for the new planning scheme, if they were rights and liabilities of or enforceable against the responsible authority under or in relation to the revoked scheme immediately before that commencement.
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25 Applications for permits

- (1) Any application for a permit in respect of land which was made under the Principal Act but which had not been decided before the commencement of a new planning scheme prepared under this Part and applying to that land must be decided in accordance with the provisions of the new planning scheme as in force at the date of the decision.
- (2) Subject to subsection (3), Part 4 of the Principal Act as amended by this Act applies to an application referred to in subsection (1) as if a reference in that Part to a planning scheme were a reference to the new planning scheme.
- (3) If notice had been given of an application under section 52 of the Principal Act before the commencement of the new planning scheme—
 - (a) any exemption in the new planning scheme from the giving of that notice does not apply; and
 - (b) any additional requirements for notice in the new planning scheme do not apply.

26 Appeals

- (1) If before the commencement of a new planning scheme prepared under this Part—
 - (a) the responsible authority had decided an application for a permit under the Principal Act in respect of land to which the new planning scheme applies; and
 - (b) an appeal against the decision had not been lodged before that commencement and the time for lodging had not expired; and

(c) an appeal is made to the Administrative Appeals Tribunal against that decision after that commencement—

the new planning scheme as in force at the date of the determination by the Tribunal applies to the hearing and determination of the appeal.

(2) If before the commencement of a new planning scheme prepared under this Part—

(a) the responsible authority had decided an application for a permit under the Principal Act in respect of land to which the new planning scheme applies; and

(b) an appeal had been lodged but not determined before that commencement—

the new planning scheme as in force at the date of the determination by the Tribunal applies to the hearing and determination of the appeal.

(3) If on an appeal referred to in this section, the Tribunal determines that a permit should be granted, the new planning scheme as in force for the time being applies to the grant of the permit and anything done under or in relation to the permit.

27 Supreme Court—limitation of jurisdiction

(1) It is the intention of section 22(2) to alter or vary section 85 of the **Constitution Act 1975**.

(2) Without limiting subsection (1), it is the intention of section 22(2) (to the extent that it applies to any planning scheme prepared and approved by the Minister under section 21(1A) for the Port of Melbourne Area) to alter or vary section 85 of the **Constitution Act 1975**.

S. 27
amended by
No. 77/2003
s. 11 (ILA
s. 39B(1)).

S. 27(2)
inserted by
No. 77/2003
s. 11.

ENDNOTES

1. General Information

Minister's second reading speech—

Legislative Assembly: 14 November 1996

Legislative Council: 10 December 1996

The long title for the Bill for this Act was "A Bill to amend the **Planning and Environment Act 1987** in relation to planning schemes and for other purposes."

Constitution Act 1975:

Section 85(5) statement:

Legislative Assembly: 14 November 1996

Legislative Council: 10 December 1996

Absolute majorities:

Legislative Assembly: 6 December 1996

Legislative Council: 11 December 1996

The **Planning and Environment (Planning Schemes) Act 1996** was assented to on 17 December 1996 and came into operation on 17 December 1996: section 2.

2. Table of Amendments

This Version incorporates amendments made to the **Planning and Environment (Planning Schemes) Act 1996** by Acts and subordinate instruments.

Planning and Environment (Amendment) Act 1998, No. 72/1998

Assent Date: 4.11.98
Commencement Date: S. 10 on 3.12.98: Government Gazette 26.11.98 p. 2851
Current State: This information relates only to the provision/s amending the **Planning and Environment (Planning Schemes) Act 1996**

Planning and Environment (Port of Melbourne) Act 2003, No. 77/2003

Assent Date: 21.10.03
Commencement Date: Ss 8–11 on 22.10.03: s. 2
Current State: This information relates only to the provision/s amending the **Planning and Environment (Planning Schemes) Act 1996**

Statute Law Revision Act 2011, No. 29/2011

Assent Date: 21.6.11
Commencement Date: S. 3(Sch. 1 item 71) on 22.6.11: s. 2(1)
Current State: This information relates only to the provision/s amending the **Planning and Environment (Planning Schemes) Act 1996**

Endnotes

3. Explanatory Details

No entries at date of publication.