

2. Amendments

2.1. Amending a planning scheme

2.1.1 Who can amend a planning scheme?

PEA ss. 8A, 9, 11

A municipal council must obtain the consent of the Minister for Planning to prepare an amendment. The Minister may also authorise another Minister or a public authority to prepare an amendment.

A council, Minister or public authority who is authorised to prepare an amendment may also be authorised by the Minister to approve the amendment.

PEA s. 10(3)

Only the Minister can prepare an amendment setting out the classes of land and use or development exempted from section 96(1) or (2) of the Act (under which the Minister decides permit applications for land owned or controlled by a responsible authority).

PEA s. 201C

The Act makes special provision for the Minister to amend a planning scheme following the restructuring of municipal boundaries.

2.1.2 Where must a planning scheme amendment be available for inspection?

PEA s. 18

The Minister and any council that is given a copy of a proposed amendment under section 17 of the Act, must make the amendment available for public inspection. Exhibited amendments can also be viewed online on the DSE planning web page.

2.2 Proposals for planning scheme amendments

2.2.1 Why a planning scheme amendment may be required

There are many reasons why a planning scheme may need to be amended. Some of the more common reasons are:

- to enhance or implement the strategic vision of a scheme
- to implement new state, regional or local policy
- to update the scheme
- to correct mistakes
- to allow some use or development currently prohibited to take place
- to restrict use or development in a sensitive location

- to set aside land for acquisition for a public purpose, or to remove such a reservation when it is no longer needed in the scheme
- to authorise the removal or variation of a restriction on title (for example, a restrictive covenant)
- to incorporate changes made to the *Victoria Planning Provisions* (VPP).

PEA ss. 21(3), 22(3),
23(3), 25(3)

A planning scheme amendment can be initiated by a municipal council or a council can respond to a request for an amendment. Any person or body can make a request for a planning scheme amendment.

A planning scheme amendment cannot amend the terms of the VPP.

2.2.2 How can a planning scheme amendment be requested?

PEA ss. 203(1)(c); PE
(Fees) Regs r. 6(1)

The Act does not include a procedure to apply for an amendment to a scheme, but it is a well-established practice that people can request a council to prepare an amendment. The Act allows a fee to be prescribed for amendments to planning schemes. The prescribed fee must accompany a request. The council must then obtain the Minister's authorisation to prepare and exhibit the amendment.

Before a formal request is made, any proposal for an amendment should be discussed with the council to determine:

- whether the amendment is necessary or if there are other ways of achieving the desired outcome
- whether the amendment will be considered to help to implement the objectives of the Act, the State Planning Policy Framework (SPPF) and the Local Planning Policy Framework (LPPF)
- the level of information the authority would require to enable it to evaluate the request
- the appropriate form of amendment to achieve the objectives sought
- the authority's requirements for documentation of the amendment
- the likelihood of an amendment being supported.

PEA s. 12(2)

A person contemplating asking for an amendment should consider (as far as is relevant in the circumstances) all the matters a council as planning authority would need to consider and then make sure that all the information is provided to the council.

The level of information needed will vary depending on the complexity and extent of the proposal.

Whatever the proposal, a key factor that should influence the likelihood of an amendment being supported, is the degree to which the proposal implements the SPPF and the vision, objectives and strategies of the Municipal Strategic Statement (MSS) applying to the area.

If a panel is appointed to consider an amendment, the council as planning authority will be required to address specific issues in its submission to the panel. These issues, which are set out later in this section, should be considered by council at the time of considering a request.

It is important for the person proposing an amendment to recognise that they are asking a council to act legislatively and to begin a process to change the law (that is, the planning scheme) about how land may be used and developed. This is quite different from making a decision in accordance with a planning scheme about an application for a particular proposal.

There is no right of review of a council's decision not to support preparation of an amendment. Therefore it is important for a proponent to address potential adverse issues and demonstrate how they might be overcome (or what mitigating circumstances may apply) before making a formal request. The proponent will generally need to demonstrate some public benefit (or, at least, that there will be negligible public disbenefit) if the amendment is made.

A council can either require the proponent of an amendment to prepare the necessary formal documents or can prepare them in-house (possibly at the proponent's cost). This is a specialised area and the costs could be quite significant, especially if complex maps are required.

PEA s. 156(4); PE
(Fees) Regs r. 6

If the Minister authorises preparation of the amendment and the council as planning authority agrees to place the amendment on exhibition, further fees will be payable for later stages in the process. If a panel is required to consider submissions, panel fees will also need to be paid.

If a request for an amendment is directed to a council and the council is not prepared to request the Minister to authorise preparation of an amendment, the person seeking the amendment can ask the Minister to amend the scheme. This is a separate action, not an appeal. The person making the request will be required to pay fees in the same way as fees are payable for making a request to a council. Similar issues to those set out above need to be considered when asking the Minister to amend a scheme.

A request to the Minister must be in writing and must identify the basis on which the Minister should be the planning authority for the amendment, addressing the criteria set out in the Planning Practice Note *Ministerial Powers of Intervention in Planning and Heritage Matters*.

2.2.3 What is the process for preparing an amendment?

Figure 2.1 summarises the amendment process. Figure 2.2 gives more detail of the steps in requesting authorisation from the Minister and preparing an amendment for exhibition.

PEA ss. 8A

A municipal council must obtain the Minister's written authorisation to prepare an amendment. Once authorisation is granted, the council may then proceed, as planning authority to prepare the amendment, subject to any requirements imposed by the Minister, and put it on public exhibition.

Details of the public exhibition stage are set out in Section 2.4 of this chapter.

Figure 2.1: Outline of the planning scheme amendment process

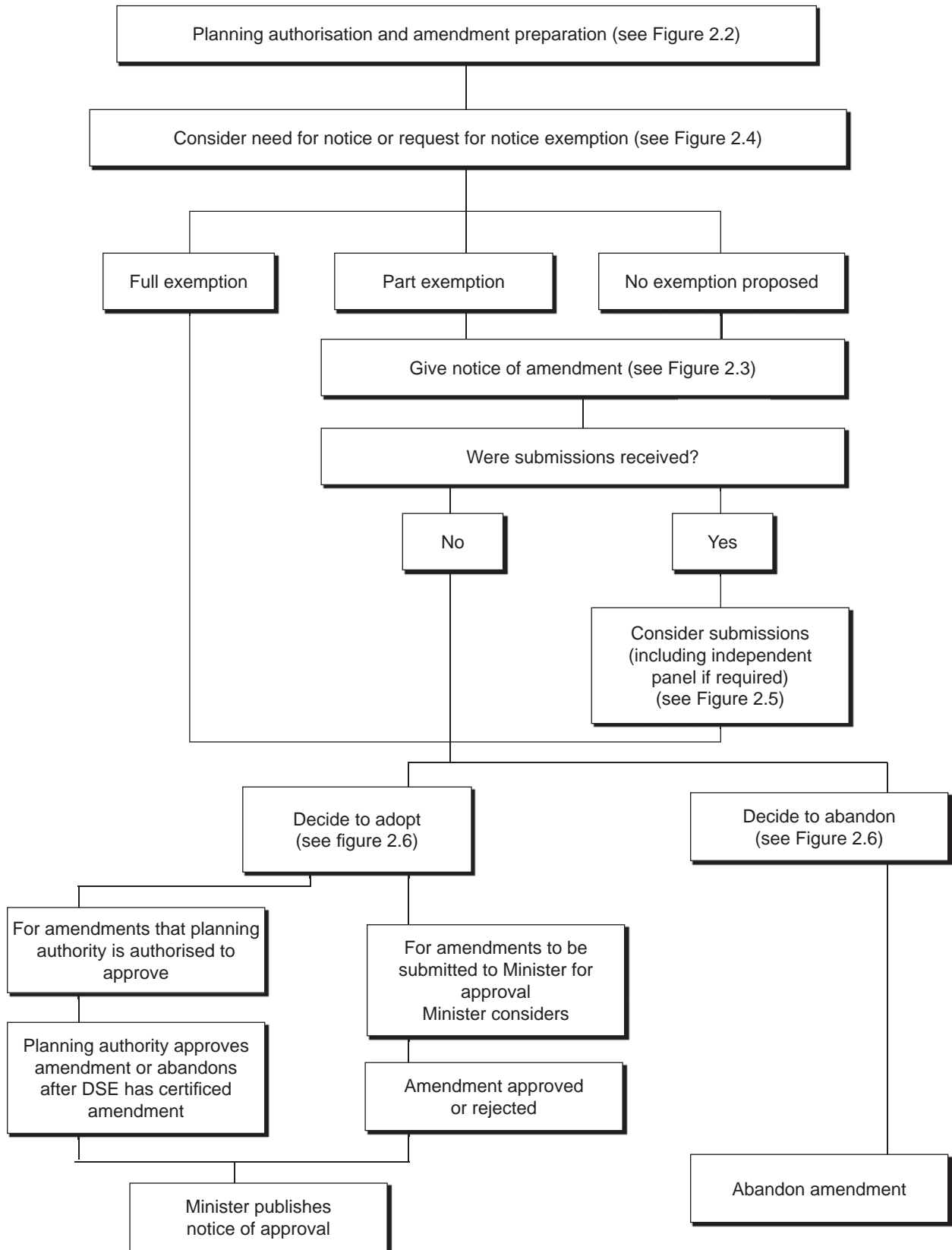
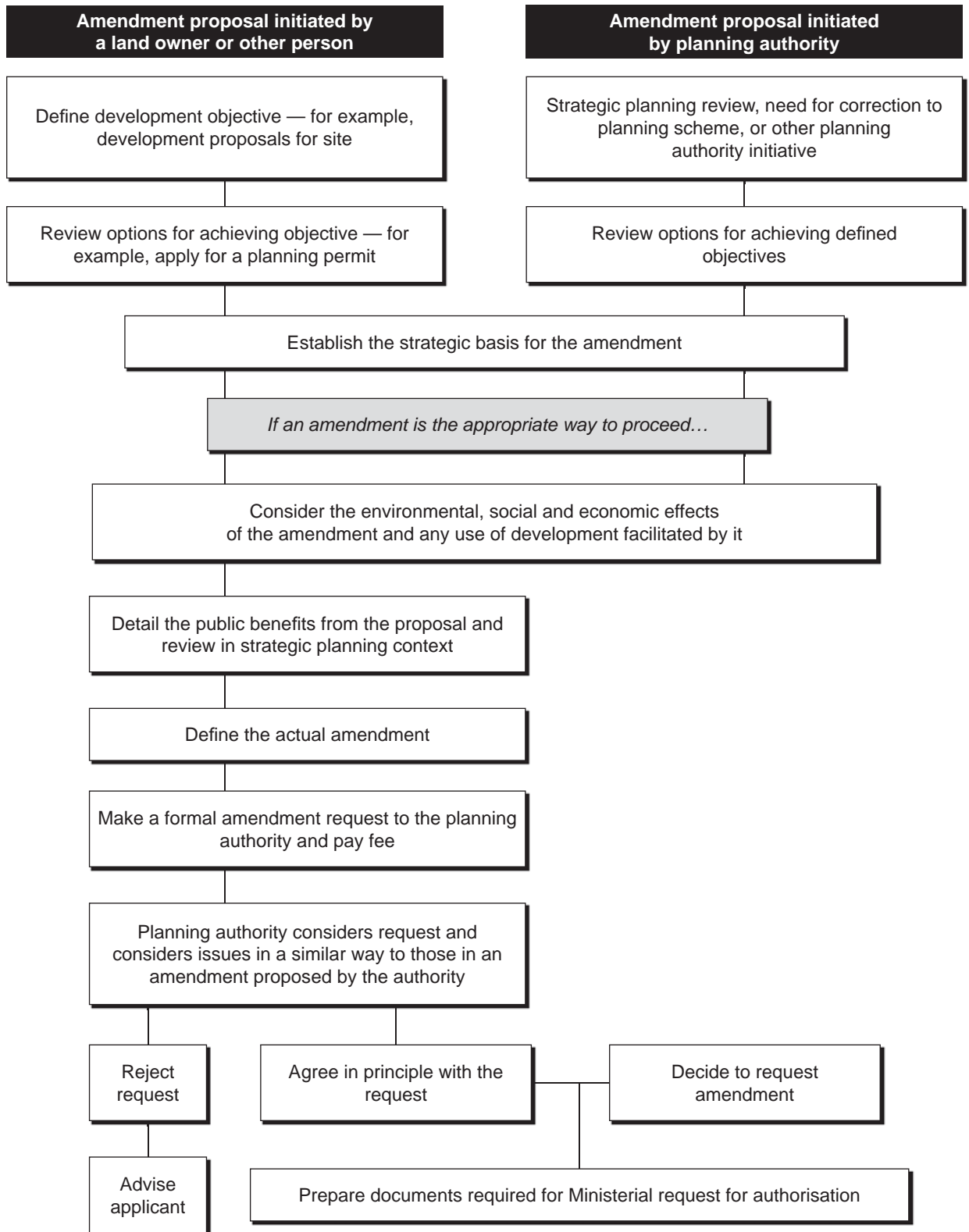


Figure 2.2: Planning review and amendment preparation



2.3 Preparing a planning scheme amendment

2.3.1 Preliminary investigation

Before applying for the Minister's authorisation to prepare an amendment, the subject area or issue must be thoroughly investigated. In particular, a council must be sure about what is to be achieved and the implications of making the proposed change:

- Is it something which can feasibly be achieved by changes to land use regulation?
- Are there alternative ways of achieving it?
- Is a scheme amendment the only, or the best way of achieving it?
- Will the amendment achieve the planning vision, objectives and strategies applying to the area?
- What is the implication of doing nothing?

In preparing an amendment request, proponents and the council should consider the Planning Practice Note *Strategic Assessment Guidelines for Planning Scheme Amendments*.

A council may require the proponent to submit:

- any technical reports or audits required by a Ministerial Direction
- supplementary expert reports addressing potential environmental effects on the environment or any significant effects the environment (or surrounding area) might have on any use or development.

To ensure efficient use of resources and to smooth the passage of a proposed amendment, early consultation with the relevant regional office of the Department is desirable. This enables queries about the scheme or amendment procedures, principles and format to be resolved and may avoid the need to make changes to the amendment at a later stage.

2.3.2 Principles for preparing a planning scheme amendment

After the council has determined to support an amendment request, the information required by the Minister for authorisation should be prepared. At this early stage there are several fundamental principles to consider. Specifically any amendment:

- should help to implement SPPF objectives
- should help to implement LPPF objectives
- must comply with any relevant Minister's direction
- should make proper use of the VPP.

The amendment should help to implement SPPF objectives

An amendment should not seek to change the planning scheme in a manner that conflicts with the SPPF. Some clauses in the SPPF contain specific policies and guidelines to which an amendment must conform.

The amendment should help to implement LPPF objectives

An amendment is an opportunity to implement or fine-tune the strategies contained in the Local Planning Policy Framework (LPPF). The LPPF (MSS and local policies) should provide a strategic justification for the amendment. An amendment must not conflict with objectives of the LPPF.

If the amendment does not seek to implement the LPPF in some way, the planning authority should consider whether the LPPF needs to be changed and the impact of doing so. Is there a strategic basis for the change?

PEA ss. 7(5), 12(2)(a),
46M(1)

The amendment must comply with any relevant Minister's direction

When drafting an amendment, any Minister's directions relating to the subject matter of the amendment or the form and content of the planning scheme must be followed.

Minister's directions under section 12 of the Act set out the matters and specific requirements which a planning authority must consider when preparing a planning scheme or amendment. Ministerial Direction No. 11 is relevant to all amendments as it sets out the matters that must be included in an explanatory report which must accompany an amendment.

PEA s. 7(5)

The *Ministerial Direction on the Form and Content of Planning Schemes* sets out directions on the presentation, form and content of an amendment, which a planning authority must comply with.

Minister's directions in relation to the preparation and content of development contributions plans are issued under section 46M of the Act.

Failure to comply with a direction could result in the Minister's refusal to authorise the preparation of the amendment.

The amendment should make proper use of the VPP

The amendment should use the appropriate VPP tool to achieve the strategic outcomes sought. (For example, is the appropriate zone or overlay used?) Refer to the relevant VPP Practice Notes for further advice.

Strategic Assessment Guidelines

The General Planning Practice Note *Strategic Assessment Guidelines for Planning Scheme Amendments* should be used in formulating amendment requests and in all later stages of the amendment process.

2.3.3 Seeking the Minister's authorisation

PEA s. 8A(4)

In applying to the Minister for authorisation to prepare an amendment, the council must provide the information required by the Minister as follows:

- what land is affected by the proposed amendment
- what the proposed amendment does
- why the proposed amendment is required
- how the proposed amendment will implement the objectives of planning in Victoria
- how the proposed amendment will address any environmental effects and any relevant social and economic effects
- how the proposed amendment complies with any relevant Minister's directions
- how the proposed amendment supports or implements the State Planning Policy Framework and any adopted State policy

- how the proposed amendment supports or implements the Local Planning Policy Framework and specifically the Municipal Strategic Statement
- how the proposed amendment makes proper use of the VPP
- the known views of any relevant agency
- what impact the proposed new planning provisions will have on the resource and administrative costs of the responsible authority.

In most instances a draft explanatory report will fulfil the above information requirements. The planning authority must also tell the Minister:

- Whether notice of the proposed amendment is intended to be given and the extent of the notice.
- Whether the planning authority believes the proposed amendment is of local significance only and can be approved by the planning authority.

2.3.4 What is the outcome of the Minister's authorisation?

PEA s. 8A(6)

The Minister may authorise the preparation of an amendment subject to any conditions the Minister wishes to impose, including conditions relating to the giving of notice of the amendment.

If the amendment is inconsistent with State policy or interests the Minister will not authorise the preparation of an amendment.

The authorisation of the preparation of the amendment is not an indication of whether or not the amendment will ultimately be approved by the Minister.

Ability for a planning authority to approve an amendment

PEA s. 11

In authorising the preparation of an amendment, the Minister must state whether the council as planning authority is authorised to approve the amendment or whether it must be submitted to the Minister for approval.

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

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

If a planning authority is authorised to approve an amendment, the authority must first obtain 'certification' from the Secretary of the Department of Planning and Community Development.

PEA s. 11(4)

The Minister cannot authorise a planning authority to approve an amendment to a metropolitan fringe planning scheme which requires ratification by Parliament or an amendment that is to be considered concurrently with an application for a permit under Division 5 of Part 4 (combined amendment and permit process).

PEA s. 11(2), 11(3)

The Minister, any time before notice of the approval of the amendment is published in the *Government Gazette* under section 36, may, in writing, withdraw an authorisation to approve an amendment.

If this occurs, an amendment can only be approved if it is submitted to the Minister. Any approval of an amendment by a planning authority is of no effect.

2.3.5 Preparing the amendment

Once the amendment has been authorised, the council can complete preparation of the amendment. In some cases, a draft amendment may have already been prepared because of the need to provide an appropriate level of advice to obtain the Minister's authorisation. In other cases, drafting of the amendment may take place after authorisation is obtained.

The Act provides that as part of the process of preparing an amendment, certain matters must be considered. These issues will already have been addressed in the information required by the Minister as part of the request for authorisation.

The Act states that a planning authority must:

PEA s. 12(1)(e)

- prepare an explanatory report

PEA s. 12(2)(a)

- have regard to the Minister's directions

PEA s. 12(2)(aa)

- have regard to the VPP

PEA s. 12(2)(ab)

- have regard to any MSS, strategic plan, policy statement, code or guideline which form part of the scheme

PEA s. 12(2)(b)

- consider significant effects on the environment
- consider significant effects the environment might have on any use or development.

A planning authority may:

PEA s. 12(2)(c)

- consider social and economic effects

PEA s. 12(3)(a)

- carry out studies and commission reports

PEA s. 12(3)(c)

- take other steps as appropriate, including consultation with other persons or authorities.

A planning authority should also consider whether the amendment might authorise anything that would result in the breach of a registered restrictive covenant. If it will, the planning authority may wish to consider extending the content of the amendment so that it provides for the removal or variation of the registered restrictive covenant. Otherwise, a planning permit application that is made as a result of the planning scheme being amended, may be required to be refused under section 61(4) of the Act.

2.3.6 Drafting an amendment

When drafting an amendment, there are several fundamental principles to bear in mind.

The amendment should not duplicate other provisions in the scheme

When drafting an amendment, the other provisions (zones, overlays, particular provisions and general provisions) applying to the issue or area should be considered. If they contain controls that already meet the planning authority's objectives for the issue or area, the amendment should not duplicate these.

The amendment should avoid introducing site-specific provisions

Detailed and complex site-specific provisions are discouraged. If a planning authority's objectives can be achieved by applying a combination of the standard zones and overlays, with appropriate support from the MSS and local planning policies (LPPs), this should be used instead.

Using site-specific provisions to avoid the need for a planning permit is also not appropriate. The planning permit is the preferred form of development approval. If a planning authority believes that there would be benefit in expediting the exhibition and consideration of a use or development, it can agree to combine the planning scheme amendment and permit process (see Section 2.10 of this chapter for further details).

The amendment should be clear and accurate

Because the planning scheme is subordinate legislation, which affects the property rights of those in the area, it must be clear and accurate.

If the amendment involves adding or changing a local provision, it should be drafted using plain English principles. Plain English is a way of writing that makes the meaning clear to as many readers as possible. Refer to Chapter 9 for more detailed advice.

Particular care is required with the use of words and terms that are intended to have a particular meaning. Where a term is already defined in the planning scheme or legislation, that term and definition must be used. Terms not defined in the planning scheme or legislation take their ordinary meanings. Always check that the dictionary meaning matches what is intended to be achieved.

For specific guidance on how a LPP and schedule should be written, refer to the Planning Practice Note *Writing a Local Planning Policy* and the Planning Practice Note *Writing Schedules*.

The amendment should achieve what is intended

Care is required when deciding what changes are to be made by amending the planning scheme. Imprecise drafting or the selection of inappropriate provisions can lead to the planning authority's intentions not being achieved. It can also cause confusion and delay during the consideration of submissions, and lead to expensive actions before the Victorian Civil and Administrative Tribunal (VCAT) and courts.

2.3.7 The amendment documentation

In preparing an amendment to a planning scheme, a planning authority must prepare:

PEA s. 12(1)(e)

- a 'list of changes to planning scheme' table
- an explanatory report, as required by the Act
- an amendment instruction sheet which is the front page of the amendment and contains the instructions for executing the amendment
- any new and replacement clauses which form attachments to the amendment instruction sheet
- planning scheme maps (if applicable) which also form attachments to the amendment instruction sheet.

The 'list of changes to planning scheme' table

The 'list of changes to planning scheme' table is the detailed record of all the changes to the planning scheme made by the amendment. It records in a table format:

- the number of each clause and map changed
- exact details of changes to the scheme maps (where practical)
- exact details of the changes to the text
- a brief comment or explanation about the reason for the change.

While this table does not form part of the amendment and is not a requirement of the Act, it nevertheless provides a structured way of documenting the details of all changes to a planning scheme. It also aids in the drafting of the explanatory report and amendment instruction sheet, as well as being a useful record of the amendment, which should be kept on file. It will be referred to throughout the amendment process and should be made available if requested by the public. This table should be prepared first.

The list of changes to planning scheme table is not a statutory document. If there are inconsistencies between it and the amendment instruction sheet and attachments, the latter prevail.

PEA ss. 12(1)(e),
12(2)(a)

The explanatory report

The explanatory report is a key element of the amendment and must be compiled in accordance with the requirements of Ministerial Direction No 11. This Direction requires the planning authority to evaluate and include in the explanatory report a discussion about how the amendment addresses the following strategic considerations:

- Why is an amendment required?
- How does the amendment implement the objectives of planning in Victoria?
- How does the amendment address any environmental effects?
- How does the amendment address any relevant social and economic effects?
- Does the amendment comply with the requirements of any other Minister's Direction applicable to the amendment?
- How does the amendment support or implement the State Planning Policy Framework and any adopted State policy?
- How does the amendment support or implement the Local Planning Policy Framework, and specifically the Municipal Strategic Statement?
- Does the amendment make proper use of the *Victoria Planning Provisions*?
- How does the amendment address the views of any relevant agency?

The explanatory report must also assess the impact of the new planning provisions on the resource and administration costs of the responsible authority.

The complexity of an amendment will influence the detail and length of the report. It should be accurate, brief, and as clear and concise as possible. It may include maps or photographs showing the existing condition of the affected land.

The amendment instruction sheet

The amendment instruction sheet contains the instructions for executing the amendment. For example, if an amendment amends an existing schedule, the amendment instruction sheet would give the instruction to substitute the amended schedule in place of the existing schedule in accordance with an attached document.

The instructions in the amendment instruction sheet do not contain the detailed text changes recorded in the list of changes to planning scheme table. They merely give the instruction to delete, insert or replace a document (usually a clause or sub-clause) in the text with a new document (in the form shown on an attached document).

The amendment instruction sheet is prepared after the explanatory report and list of changes to planning scheme table have been prepared.

The attached documents

Planning schemes need to be thought of as a collection of documents either derived from the VPP or specifically created as local provisions. Each sub-clause in the LPPF and each zone, overlay and schedule is a separate document. A planning scheme amendment adds, changes or deletes a document in a scheme.

The attached documents are whole replacement documents which incorporate the detailed changes recorded in the list of changes to planning scheme table and are the documents referred to in the amendment instruction sheet. If an amendment is approved by the Minister, the attached documents become replacement planning scheme pages to be inserted into the planning scheme.

More detailed information about the amendment documentation is provided in the online guideline *Preparing the Documentation for a Planning Scheme Amendment* which can be viewed from the Department's website www.dpcd.vic.gov.au/planning.

Planning scheme amendment maps

Amendments which involve making changes to a planning scheme map will require the preparation of one or more amendment maps. An amendment map shows the part of the planning scheme map being changed and the proposed change. Amendment maps should generally be produced at A4 size, although A3 may sometimes be appropriate. The Department provides a free service to planning authorities in the preparation of amendment maps. All enquires should be directed to the appropriate Regional Office.

2.3.8 Identifying amendments

There are three types of amendment:

- an amendment to the VPP only - a 'V' amendment
- an amendment to the VPP and one or more planning schemes - a 'VC' amendment
- an amendment to a planning scheme only - a 'C' amendment.

Each amendment is identified by an amendment number, for example, V1, VC1 or C1. In the case of a V and VC amendment, the amendment number is allocated by the Department. In the case of a C amendment, the number is allocated by the municipality whether or not it is the planning authority.

2.4 The public exhibition stage

2.4.1 The importance of following statutory procedures

Once a planning authority decides to proceed with a proposed amendment to the stage of public exhibition, detailed requirements of the Act come into play. These are the formal processes which bring about a change to the scheme affecting use and development rights. These are designed to ensure that any person who may be affected by a proposed amendment (either as the owner or occupier of land which is to be the subject of changed planning scheme provisions) or who may be affected by changes on other land, is aware of the proposal and has the opportunity to make submissions about the proposal.

PEA s. 39

It is important that the requirements of the Act and the Planning and Environment Regulations 2005 (the Regulations) be followed very carefully. Failure to do so can lead to procedural challenges at VCAT by those seeking to protect rights or to otherwise oppose proposals. Such challenges will inevitably lead to delays in considering the merits of an amendment and add to the authority's costs. It is much better to take extra care in ensuring that these steps are followed correctly the first time, than to risk such challenges and the possibility of being directed to repeat steps which were not followed correctly.

2.4.2 Who must receive copies of an amendment?

PEA s. 17(1)

When an amendment is prepared, the planning authority must give copies to:

- a council where the amendment applies within its area
- the Minister
- anyone else specified by the Minister.

The copies and notice of gazettal date should be sent before the first notice of amendment is given under section 19 of the Act, so that agencies can have information ready for public inspection.

The copy of the amendment and notice of gazettal date to the Minister should be sent electronically via the relevant regional office of the Department. This information should be sent not less than 10 working days before notice of the amendment appears in the *Government Gazette*.

PEA s. 20

Copies must be sent as outlined, even if exemption from the notification procedures is being sought (see Section 2.4.6 of this chapter). A planning authority, other than the Minister, cannot be exempted from this requirement.

PEA s. 17

Each copy of an amendment must be accompanied by a copy of:

- the explanatory report
- any document relating or referred to, or incorporated in the amendment, such as a code or strategy plan
- any agreement entered into under section 173 if the agreement, or part of it, will not come into operation fully unless the amendment comes into operation.

PEA ss. 19, 20

The planning authority must then either give notice that it has prepared an amendment or seek the Minister's exemption from all or part of this process. (If sections 17 and 19 require a copy and notice to go to the same authority, it may be convenient for these to be sent simultaneously.)

The notice requirements are summarised in Figure 2.3.

2.4.3 Where must copies be available for inspection?

PEA s. 18

The planning authority, the council and the Minister must make an amendment (together with its accompanying documents) available for public inspection until it is approved or lapses.

Information about the progress of an amendment can be found on the Department's web site.

2.4.4 How is notice of an amendment given?

PEA s. 19(1), (2), (3);
PE Regs r. 8

Notice of preparation of an amendment must be given to the individuals and bodies listed in section 19(1) of the Act and published in a newspaper circulating in the affected area. If an amendment affects a region or the whole State, an appropriate regional or Statewide newspaper should be used. Notice must then be published in the *Government Gazette*. This can be on the same day as the last of the other notices and needs to be arranged in advance to allow enough time for the notice to be published on the chosen date.

PEA s. 19(4); PE Regs
r. 9

The notice must:

- give the title of the amendment (for example Amendment C1)
- include a brief description of the effect of the amendment
- indicate by general description (for example by map) the land affected
- state where the amendment can be inspected
- give the name and address of the planning authority for the receipt of submissions
- include the last date for submissions.

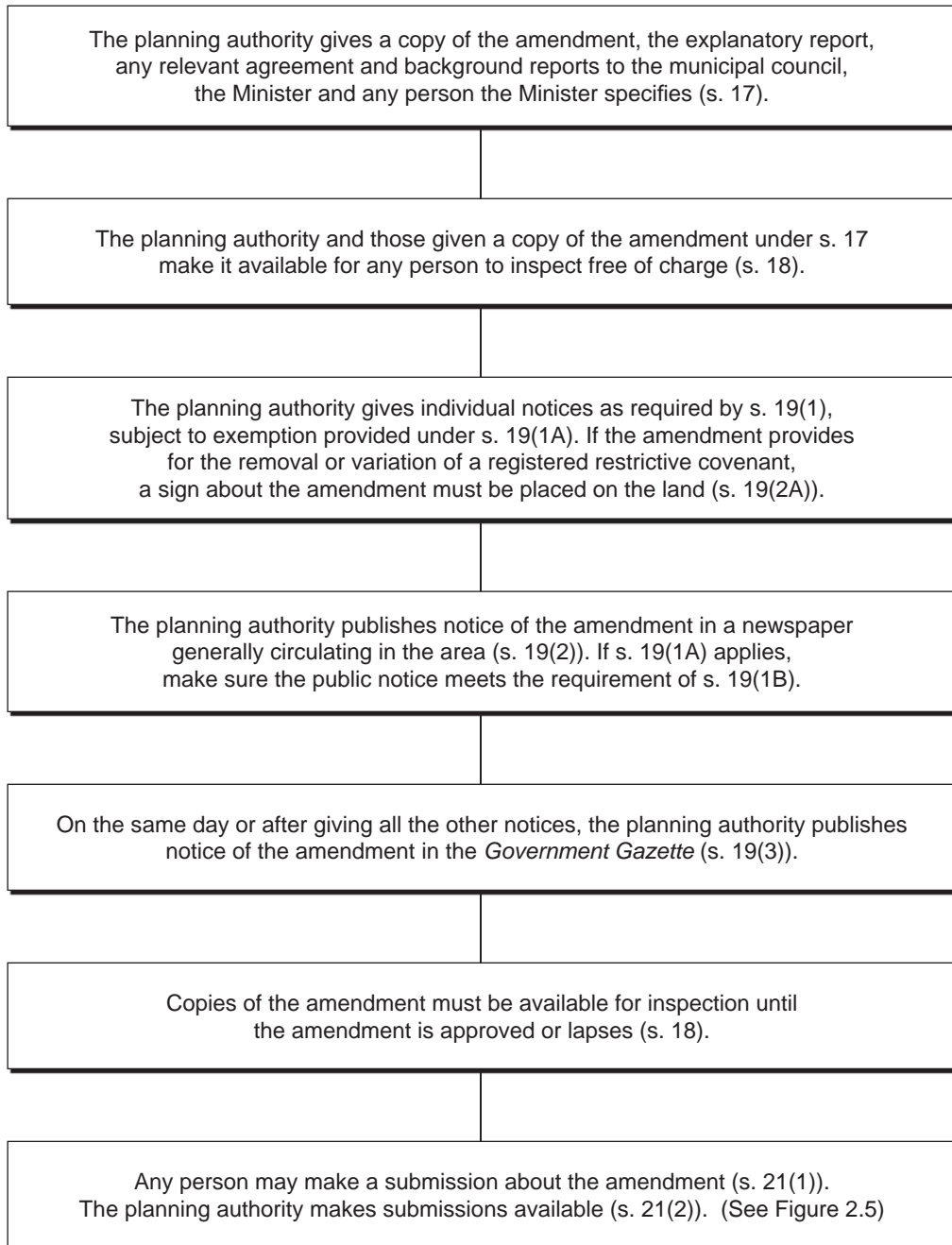
PEA s. 19(4)(b)

The closing date for submissions must be not less than one (calendar) month after the date the notice is published in the *Government Gazette*. This means that if a notice is published in the *Government Gazette* on 4 September, the closing date for submissions must not be before 4 October or, if this day falls on a weekend, the following working day. This period of public exhibition is intended to enable interested or affected parties to consider changes to existing controls and to prepare and lodge submissions.

The requirement to give notice under section 19(1) of the Act includes reference to public authorities and municipal councils that may be materially affected. This might include local bodies such as water and sewerage boards, the Environment Protection Authority and, in many cases, adjoining municipalities. Section 19(1) also refers to notice being given to owners and occupiers of land materially affected. This would include anyone whose land is subject to changed controls under the amendment and might include owners and occupiers of adjoining or nearby land.

In each case, a planning authority must form an opinion as to whether or not the proposed amendment materially affects any person or body, and what notice should be given under section 19(1)(a) and (b). This should be carefully recorded and included in documentation required to accompany the submission of an adopted amendment for the Minister's approval.

Figure 2.3: Giving notice of an amendment



PEA s. 19(1)(c); PE
Regs r. 8

A planning authority is also required under section 19(1)(c) of the Act to give notice of the preparation of an amendment to any Minister, public authority, council or person prescribed by the Regulations.

Regulation 8 requires that the following bodies be notified:

- any council if it is not the planning authority and the amendment affects land within the municipality
- the Minister administering the *Conservation, Forests and Lands Act 1987*; and
- the Minister administering the *Catchment and Land Protection Act 1994*; and
- the Minister administering the *Sustainable Forests (Timber) Act 2004*; and
- the Minister administering the *Mineral Resources (Sustainable Development) Act 1990*; and
- the Minister administering the *Extractive Industries Development Act 1995*; and
- the Minister administering the *Pipelines Act 1967*.

Notice should be given to these Ministers and to any other Ministers likely to be affected.

The administrative arrangements for the responsibility of Acts of Parliament change from time to time. The standing Order of the Governor in Council setting out the current administrative arrangements should be checked to determine the prescribed Ministers.

PEA s. 19(7)

Other steps can be taken to alert people to an amendment. These could include additional notices in the same or other newspapers, a media release, radio and television news stories, displays in public places, notices on the land (where an individual site is involved), public meetings and the like. How extensive these steps are will depend on how important or wide-ranging the effect of the amendment is likely to be.

A planning authority must make an individual decision for each amendment. When in doubt, it is best to give additional notice.

PEA s. 32

The Minister may, in any case, require additional notification to be given after an amendment has been adopted. Early consultation with the relevant regional office of the Department on the extent of notice for a particular amendment should reduce the likelihood that this has to be done.

2.4.5 Environment Effects Statements and amendments

EEA s. 9(2)

If a proposal requires an amendment and an Environment Effects Statement (EES), and the Minister invites members of the public to make submissions on the EES, it is important to coordinate the respective exhibition phases to help the public make submissions and reduce the approval-time process. A single joint notice should be prepared in consultation with and to the satisfaction of the Department's regional office and Chief Environment Assessment Officer.

The notice should state that both documents are available for inspection at the same places, that submissions should be made to the address provided, that a submission to one document will be considered as a submission to both and that the final date for receipt of submissions is the same for both documents.

These arrangements are to apply unless:

- The Minister sets down other procedures to be followed
- The person requesting the amendment decides to pursue the EES procedure before deciding on a favoured alternative. In this case, a planning authority will be asked to prepare an amendment for a favoured alternative after the Minister makes an assessment of the environmental effects.

For more information, contact the relevant regional office of the Department.

2.4.6 Exemption from giving notice

There are three situations in which a planning authority may be exempted from all or part of the normal notice requirements for an amendment:

- PEA s. 19(1A) ■ if the number of owners or occupiers affected makes it impractical for the planning authority to notify them
- PEA s. 20(1), (2), (3) ■ if the Minister exempts a planning authority from part of the notice requirements
- PEA s. 20(4) ■ if the Minister, as the planning authority for the amendment, exempts himself or herself from all or part of the notice requirements.

Processes related to exemption from notice for certain amendments are set out in Figure 2.4.

Large number of owners or occupiers

PEA ss. 19(1)(b),
19(1A), (1B)

A planning authority is not required to give notice of an amendment to the owners and occupiers of affected land if the number of such owners or occupiers makes it impractical to notify them all individually. In the situation that individual notice is not given, the authority must take reasonable steps to ensure public knowledge of the amendment. Such steps might involve extra display notices in local newspapers, news items, or a sign on a site proposed for development.

PEA s. 19(1C)

A planning authority must not use section 19(1A) of the Act to avoid giving individual notice to the owner of land proposed to be reserved for acquisition for a public purpose, or affected by the proposed closure of a road which gives access to that land.

Section 19(1A) cannot be used to avoid giving notice to owners and occupiers of land benefited by a registered restrictive covenant, if the amendment provides for the removal or variation of the covenant.

PEA ss. 31(2), 32

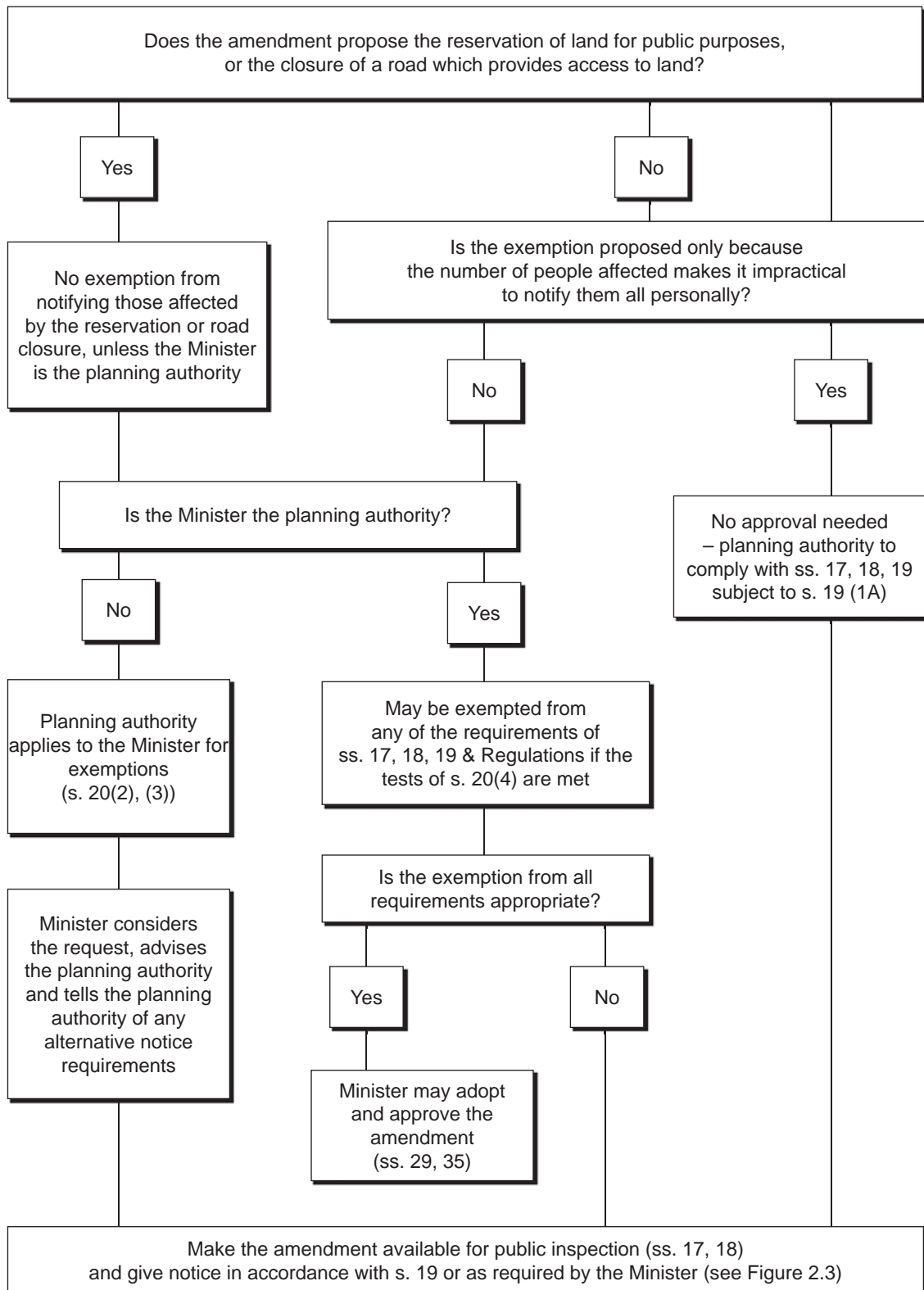
A planning authority does not need approval from the Minister before deciding to use section 19(1A). However, in submitting the amendment for approval, it must tell the Minister and give details of the steps taken to ensure knowledge of the amendment. If at this stage the Minister thinks the notice was in any way inadequate, the Minister might require that more notice be given. To avoid the inevitable cost and delay ensuing from this, planning authorities should confer with the relevant regional office of the Department if it is proposed to use this procedure. This procedure does not apply to an amendment if a planning authority is authorised under section 11 to approve that amendment.

Exemption from notice for a planning authority other than the Minister

PEA s. 20(2), (4)

The Minister may grant an exemption from the requirements relating to notice about an amendment if the Minister considers that compliance with any of those requirements is not warranted, or that the interests of Victoria, or any part of Victoria, make such an exemption appropriate. This applies whether the Minister, or another person, is the planning authority.

Figure 2.4: Exemption from notice



PEA s. 20(1)

If a planning authority, other than the Minister, wishes to be exempted from the requirements of section 19 of the Act or from the Regulations, it must apply to the Minister, preferably with copies of the amendment. This application should be in the form of a letter that:

- clearly identifies the name of the amendment
- gives a summary of the effect of the proposed amendment
- identifies owners and occupiers the planning authority believes may be materially affected by the amendment under section 19(1)(a), if any
- sets out the requirement(s) from which an exemption is being sought
- identifies the basis on which an exemption should be granted
- briefly describes any consultation undertaken prior to the request being made.

PEA s. 20(3)

There are some notice requirements from which a planning authority other than the Minister cannot be exempted. These notice requirements are:

PEA s. 20(3)(a)

- to the owner of land proposed to be reserved for acquisition for a public purpose or affected by the closure of a road which gives access to that land

PEA s. 20(3)(b)

- to any Minister prescribed in the Regulations

PEA s. 20(3)(ba)

- if the amendment proposes a change to provisions relating to land set aside or reserved as public open space

PEA s. 20(3)(c)

- to the Minister administering the *Land Act 1958* if the amendment provides for the closure of a road wholly or partly on Crown land.

PEA s. 20(5)

The Minister can consult the responsible authority or any other person before giving an exemption and may grant the exemption outright or with conditions, for instance, that some other form of notice be given.

The Minister must decide on the exemption request before any notice is given under section 19 of the Act.

Exemption from notice where the Minister is the planning authority

PEA s. 20(4)

The Minister can also exempt himself or herself from any of the requirements of sections 17, 18 and 19 of the Act and the Regulations.

The Minister must be the planning authority for the amendment to exercise this power.

Some of the circumstances in which the Minister may consider exercising this power include when:

- the matter is one of genuine State or regional significance
- the amendment will give effect to an outcome where the issues have been reasonably considered and the views of affected parties are known
- the amendment proposes the introduction of an interim provision or requirement and, substantially, the same provision or requirement is also subject to a separate process of review
- the amendment raises issues of fairness or public interest.

As an overriding consideration, this power will only be used if the circumstances meet the legislative tests set out in section 20(4) of the Act.

If a person, planning authority or responsible authority (other than the Minister) proposes the use of this power, the proposal must be made in writing and must identify the basis on which the power should be used, addressing the criteria set out in the Planning Practice Note *Ministerial Powers of Intervention in Planning and Heritage Matters*.

PEA s. 20(5)

The Minister can consult the responsible authority or any other person before giving himself or herself an exemption.

2.4.7 Making a submission

PEA ss. 21, 21A

Any person may make a submission to the planning authority about an amendment if notice of that amendment has been given. A submission may support, oppose, or seek changes to an amendment. A submission must not request a change to the terms of any State-standard provision to be included in a planning scheme by the amendment. A submission can, however, request that a State-standard provision be included in or deleted from the scheme.

There are no specific requirements about the form a submission must take, but it should do the following:

- clearly identify the amendment it refers to, by citing the amendment number
- set out the submitter's views on the amendment (for example why the submitter supports or opposes the amendment and how the amendment will materially affect the submitter). Where appropriate, the submission should respond to the specific strategic planning basis for the amendment, or clearly set out the relevant planning considerations upon which the submitter's view is based
- set out what the submitter would like the planning authority to do (for example abandon the proposal completely, exclude certain land from its effect, include additional conditions on a proposed use or approve the amendment as exhibited)
- give the submitter's name and address and phone and facsimile numbers for contact during office hours.

PEA s. 21A

In the case of a submission made jointly by a number of people, the submission should nominate one person as the group's representative for notices and representation at a panel hearing.

PEA s. 21(2)

The planning authority must make a copy of any submission available for any person to inspect.

Victoria's *Information Privacy Act 2000* sets standards for the collection and handling of personal information. More information can be obtained from the Privacy Victoria website, www.privacy.vic.gov.au.

The Planning Practice Note *Improving Access to Planning Documents* gives further advice about making available copies of planning documents relating to planning applications and planning scheme amendments.

A person making a submission should ensure that it is received by the planning authority before the advertised closing date for submissions.

2.4.8 Late submissions

PEA s. 22(2)

It is important that submissions be lodged within the public exhibition period. However, a planning authority may consider a submission received after the period stated in the notice. It should do so if there are good reasons for it being late, and must do so if directed by the Minister. If the authority has not advanced very far in its considerations and a submission is received shortly after the closing date, it is normal for it to be considered. A request for consideration of a late submission should be made in a letter to the planning authority or, if the person is seeking a direction from the Minister that a submission be considered, to the Minister. Any such request must clearly identify the amendment referred to and, in the case of a request to the Minister, the planning authority for the amendment.

Generally a direction will be given only when there is reasonable time for the planning authority to consider the submission before a panel hearing. A direction is likely to be given in the following circumstances:

- if reasons are given for the late submission
- the submission raises a major issue of policy
- the submission is received less than a week after the closing of the exhibition period
- the request for consideration of a late submission was made before the planning authority had begun its deliberations
- if there is to be a panel hearing, that there is enough time before the hearing begins for the planning authority to consider the submission and form an opinion
- the submission was late owing to postal delays or exceptional circumstances beyond the control of the person lodging it.

2.4.9 What must be decided about submissions?

The process for considering submissions about an amendment is summarised in Figure 2.5.

PEA s. 22, 23

A planning authority must consider each submission. In the case of submissions which request a change to the amendment, it must either change the amendment as requested, or refer the submission to a panel. It may abandon the amendment or the part of it affected by the submission.

PEA s. 22(3), (4)

A planning authority must not consider a submission which requests a change to the terms of a VPP provision. It can, however, consider a submission which requests that a VPP provision be included in or deleted from the scheme.

PEA s. 21A

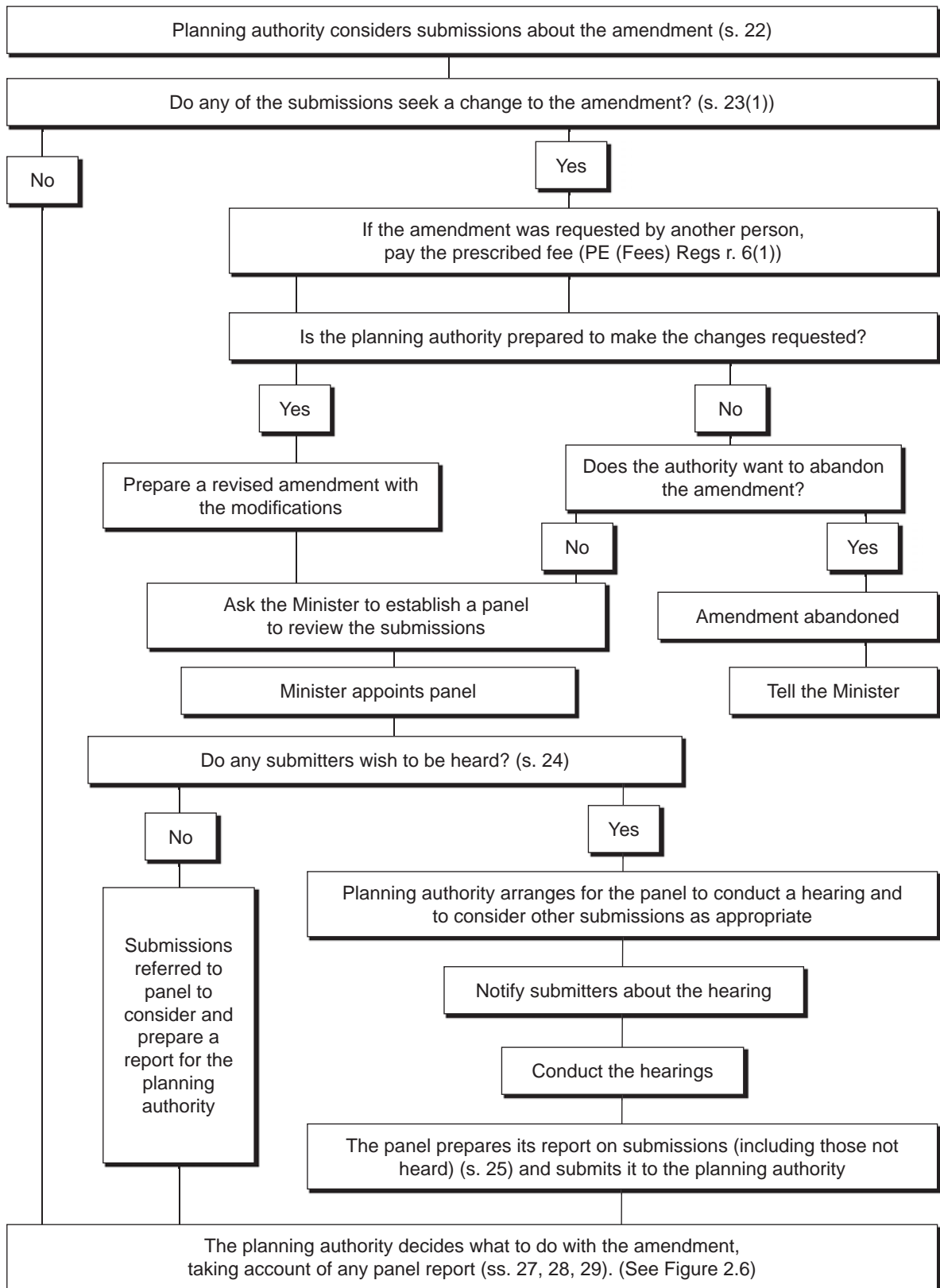
In the case of joint submissions, section 21A of the Act allows for notices to be sent to one of the signatories on a petition.

PEA s. 191

To help a planning authority clarify submissions and make decisions on them, an informal hearing of those who made submissions can be arranged and a committee appointed for this purpose.

If the authority refers submissions it does not accept to a panel, it should ask the Minister as soon as possible to establish that panel.

Figure 2.5: Considering submissions about an amendment



There are no specific requirements for making a request to the Minister to appoint a panel, but the request must be in writing and should:

- state the name of the proponent
- describe the purpose and effect of the amendment
- list the notices given at the public exhibition stage
- state the total number of submissions
- state the number of submissions being referred to the panel (including late submissions) and
- list in point form the main issues raised.

The request should be accompanied by:

- a copy of the exhibited amendment
- a copy of the explanatory report
- a copy of all submissions and
- a copy of the council report and resolution documenting the reasons for referring any submissions to a panel.

PE (Fees) Regs r.
6(1), (2)

If the amendment is one which was requested by another person, an additional fee is payable to the planning authority for considering submissions which seek a change to the amendment. The current Planning and Environment (Fees) Regulations (the Fees Regulations) should be checked to determine the fees payable.

2.4.10 Panel hearings

PEA s. 153

Submissions which seek a change to the amendment and are not accepted by the planning authority must be referred to an independent panel appointed by the Minister. In most instances, although the Minister is responsible for appointing a panel, the panel members are chosen independently by Planning Panels Victoria. It is important to remember that the basic role of a panel is to:

- give submitters an opportunity to be heard in an independent forum and in an informal, non-judicial manner. A panel is not a court of law
- give independent advice to the planning authority and the Minister about an amendment and about submissions referred to it. A panel makes a recommendation to the planning authority. It does not formally decide whether the amendment is to be approved.

PEA s. 154

A panel may consist of one or more persons.

PEA ss. 22, 23

A panel will not be required if all submissions requesting changes are accepted and the amendment is changed accordingly, or the amendment is abandoned. Otherwise, a panel will be required.

PEA s. 24

A panel must give anyone who has made a submission referred to it an opportunity to be heard. It must also hear anyone the Minister or the planning authority directs it to hear. This could be someone who supports the amendment (without change) or the person who sought it. The views of these people may be helpful to a panel. If one or more people wish to be heard, a hearing must be conducted. Even if a person does not wish to be heard, the panel must still consider their submission.

PEA s. 161	As well as hearing submissions, a panel may inform itself on any matter as it sees fit and without notice to anyone making a submission.
PEA s. 151	<p>In some cases, a panel may also be established as an advisory committee under section 151 of the Act to consider and report on additional planning matters which relate to the amendment.</p> <p>The hearing venue, date and time will be arranged by the panel in conjunction with the planning authority. The planning authority should write to submitters about these details and enclose a 'Request to be Heard' form to be completed by submitters wishing to be heard. It should enclose with the form a copy of the Department's brochure <i>What is a Panel?</i></p> <p>This brochure provides answers to common questions about panel procedures and is particularly helpful for anyone attending a panel hearing for the first time. The submitters should usually be given at least one week for the form to be returned and at least three weeks notice of the hearing date so that oral and written submissions can be prepared.</p>
PEA s. 156(3), (4)	The Minister directs planning authorities to pay fees and allowances on a case by case basis. It is normal practice for a direction to be given. If a planning authority believes there is good reason why a direction to pay the costs should not be given, it should ask that no direction be given, or that a direction to meet only some of the costs be given.
PEA s. 156(4)	If a planning authority has been directed to pay the fees and allowances it can ask any person who has requested the amendment to contribute to the cost. A refusal to contribute could lead to the abandonment of the amendment by the planning authority.
PEA s. 158	<p>How should a planning authority help a panel before a hearing?</p> <p>The planning authority must give a panel secretarial and other assistance before, during and after a hearing.</p> <p>As soon as a panel is appointed, the planning authority should give each member of the panel the following documents:</p> <ul style="list-style-type: none"> ■ a copy of the amendment, explanatory report and any documents referred to in the amendment. Even if the authority has decided to allow some of the submissions and make changes to the amendment, it should give the panel members the amendment as exhibited (which shows the basis upon which submissions have been made) together with a note of the changes which have already been agreed) ■ a copy of all submissions referred to the panel (including late submissions) ■ a copy of all other submissions (including those requesting changes agreed to by the planning authority) which resulted in the amendment being changed ■ a copy of (or access to) the planning scheme ■ a copy of any reports that may help the panel. <p>The panel will prepare a draft hearing timetable showing submitters to be heard on any given day. The order of submitters may be based on items within the amendment or on topics of the submissions. The timetable should include the expected time for presentation of submissions. A copy of the timetable should be given to each submitter who wishes to be heard. Submitters should be invited to attend all presentations.</p>

Directions hearings

A panel can hold a 'directions hearing' before any submissions are heard so that preliminary matters can be decided. A panel usually tries to give reasonable notice of a directions hearing, which may be held one or more weeks before the panel hearing, depending on circumstances.

Alternatively, the panel can give directions at the start of the panel hearing. Any person who fails to comply with these directions can be refused their opportunity to be heard.

Setting up the hearing venue

The planning authority's choice of venue should be discussed with the chairperson and is usually based on the number of people involved. If only a few people wish to be heard, a conference room with everyone sitting around a table (and the panel at one end) is usually suitable.

There must be room to spread out papers and plans. The needs of people with disabilities who may be attending the hearing should also be considered.

Larger hearings will need larger rooms and either one large table or separate tables for the panel (check with the chairperson). Separate tables may be required for the planning authority, the Department (if to be heard), the person requesting the amendment (if applicable), submitters with legal representation, witnesses (if any) and other submitters.

The planning authority should also:

- provide a photocopier or access to one
- provide a public address system if the audience is unlikely to hear those making submissions (remember that speakers may have their backs to the audience and some audience members may have hearing difficulties)
- provide microphones for the chairperson and those at tables at the hearing if a public address system is to be used
- place a large notice board (and pins) near the panel table, and attach any existing and proposed planning scheme maps or documents referred to in the amendment
- provide a room to which the panel may retire.

At the hearing

A panel can regulate its own proceedings.

A hearing is conducted in an informal manner. People are encouraged to represent themselves. If a submitter is to be represented by another person, that person must have written authority to do so. People not wishing to present a submission at the hearing are still welcome to attend.

If a submitter wants to have a witness inform the panel, the panel can decide if there should be any cross-examination of that witness. Submitters are not cross-examined but may be asked questions by the panel to clarify their submission.

Usually the procedure is as follows:

- the chairperson commences the hearing, describes the amendment and introduces the members of the panel
- the chairperson decides the order in which the submitters will speak, usually set out in a timetable

- an officer of the planning authority outlines the background to and purpose of the amendment, what changes (if any) are proposed to the amendment as a result of considering submissions, and the planning authority's attitude to the referred submissions
- if the council or the responsible authority is not the planning authority, a representative of the council or responsible authority outlines its view of the amendment
- if someone asked the planning authority to prepare the amendment (the proponent), that person explains the request and may introduce evidence to support the request
- submitters are heard in the order set out in the timetable or decided by the chairperson.

Typically, the panel will give the proponent for the amendment a right of reply on matters raised by submitters. Submitters may ask questions about the amendment and the panel may ask the planning authority (or someone else) to answer them.

PEA s. 165

The panel can adjourn the hearing to other dates if it considers this necessary and may inspect relevant sites.

PEA s. 166

A failure to give proper notice of an amendment, or to comply with any other requirement of the Act in relation to preparing the amendment, does not prevent a panel from hearing and considering any submissions referred to it and making its report and recommendations. On these occasions the panel report may include a recommendation that certain things be done, or that further notice be given.

PEA s. 168

In reporting on the amendment, the panel can take into account any matter it thinks relevant.

Presentation of submissions to the panel

Submitters should:

- refer to their main arguments in their oral submission and make it as brief as possible, particularly if the matters have been covered in their written submission
- avoid repeating points made by previous speakers
- ensure that the submission relates to the matters under discussion, is based on fact and relates to planning matters
- provide the panel at the hearing with copies of documents referred to in the submission
- if possible, use visual aids such as photographs and plans to highlight the main points.

A copy of all written submissions and reports referred to in the submission should be given to each panel member, the planning authority and (if relevant) the council and the proponent. One spare copy should also be provided. As a general rule, six copies should be adequate.

2.4.11 What issues does a panel need to consider?

The key function of a panel is to consider the issues raised in submissions. When considering an amendment a panel will address:

- the merits of the amendment
- the issues raised in submissions
- the strategic context and implications of the amendment
- the matters identified in the Planning Practice Note *Strategic Assessment Guidelines for Planning Scheme Amendments*
- any other relevant matters.

To assist the panel in considering these issues, the following matters should be specifically addressed by the planning authority in its submission to the panel, and commented on by the panel in its report.

Descriptive

- What does the amendment propose to do?
- If land is affected by the amendment, where is it located? What does it look like? Who owns it?
- Is the land affected by any specific locational, architectural, environmental, topographic, servicing, social or other features, or constraints which require a special planning response?
- What existing planning provisions apply to the land or the proposal?
- If the amendment has been modified, what are the modifications?

Strategic

- What aspects (if any) of the SPPF are relevant?
- How does the amendment respond to the SPPF? Is it consistent?
- How does the amendment accord with the MSS or seek to implement its strategies?
- If the amendment does not accord with the MSS or seek to implement it in some way, is it proposed to change the MSS?
- What is the strategic basis for any change to the MSS being sought?
- What effect will any change to the MSS have on the rest of the MSS, either in its own right or cumulatively with other changes that may have been made to the MSS or other amendments?
- What LPPs will the amendment affect or be affected by?

Statutory

- Is the form of the amendment appropriate? Will it achieve the desired result?
- Is the form and content of any LPP consistent with the advice given in the Planning Practice Note *Writing a Local Planning Policy*?
- 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 and, if so, have these been complied with?

- What notice was given of the amendment?
- How many submissions were received and from whom? What issues do they raise?

If any of the matters are not relevant, this should be stated and the reasons why, rather than the matter simply being ignored.

2.4.12 Considering the panel's report on submissions

PEA ss. 25, 27

The panel must report its findings to the planning authority and, except as noted below, can make any recommendations it thinks fit. The planning authority must consider the report, decide what alterations should be made to the amendment and whether to adopt or abandon it.

PEA ss. 25(3), 25A

A panel must not recommend that an amendment be adopted with changes to the terms of a State-standard provision. A panel may, however, recommend to the Minister that an amendment be prepared to the VPP, where the Minister is not the planning authority for the amendment.

Most reports by a one-person panel would be submitted within one month of the hearing finishing and no longer than two months in complex matters heard by a panel of more than one person.

PEA s. 27(2)

The Minister can exempt an authority from the need to consider a report from a panel, if the panel has not reported within six months from its appointment, or within three months from the completion of its hearings.

PEA s. 26

A panel's report must be made public 28 days after receipt by the planning authority, or earlier if the planning authority has made a decision about the amendment. The planning authority can make the report available for inspection before this if it wishes.

PEA s. 31; PE Regs r. 10(e)

If a planning authority decides not to accept a panel's recommendation, it must give its reasons for this in its report to the Minister. This does not apply to an amendment if a planning authority is authorised under section 11 to approve that amendment.

2.4.13 Abandonment or lapsing of an amendment

PEA ss. 28, 30

The planning authority may decide to abandon the amendment (or part of it). If so, the Minister must be notified so that a notice can be published in the *Government Gazette*.

Planning authorities must remember that, under section 19(3) of the Act, amendments automatically lapse if they have not been adopted within two years from the date the notice of exhibition was published in the *Government Gazette*. The two-year period may be extended by the Minister. Requests for extension should be made at least one month before the expiry date. An extension cannot be granted after the amendment has lapsed.

2.5 The amendment adoption stage

The process for adopting or abandoning an amendment is summarised in Figure 2.6.

PEA s. 29

After complying with the requirements of the giving of notice and submission stages, a planning authority can adopt an amendment, or part of it, with or without changes. Changes may be made as a result of the authority's initial consideration of submissions, the panel's recommendations, or for other reasons considered relevant.

If an amendment is adopted in part, with other parts to be resolved later, the amendment should be split and each part (Parts 1, 2, 3 and so on) progressively adopted as outstanding issues are resolved.

PEA s. 188(2)(a)

Adoption or abandonment of an amendment cannot be delegated to officers. It must be by resolution of the planning authority and recorded in its minutes or reports. A copy of the resolution, or evidence of it (such as an endorsed stamp) should be attached to the adopted amendment.

PE (Fees) Regs, r. 6(3)

If the amendment was requested by another person, the planning authority can charge a fee for adopting it and submitting it for approval. Refer to the current Fees Regulations to check the fee payable.

2.6 The amendment approval stage

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

- the adopted amendment is submitted to the Minister for Planning for approval (see 2.6.1 – 2.6.5)
- the amendment is approved by the planning authority after it is certified by the Secretary, Department of Planning and Community Development (see 2.6.6).

2.6.1 Amendments to be submitted to the Minister for approval

PEA s. 31

The planning authority should endorse the adopted amendment (this may take the form of a stamp or statement identifying the amendment) with the prescribed information and submit it electronically to the Minister via the regional office of the Department for approval.

PE Regs r. 10

The request for approval must be accompanied by the following prescribed information:

- the reasons for the amendment
- a list of notices given at the public exhibition stage and a summary of action taken at this time
- copies of submissions received on the amendment
- the report of the panel, if appointed, and reasons why its recommendations were not adopted (if applicable)
- a report on submissions not referred to a panel
- a description of, and reasons for, changes made to the amendment before adoption
- the fee to be paid.

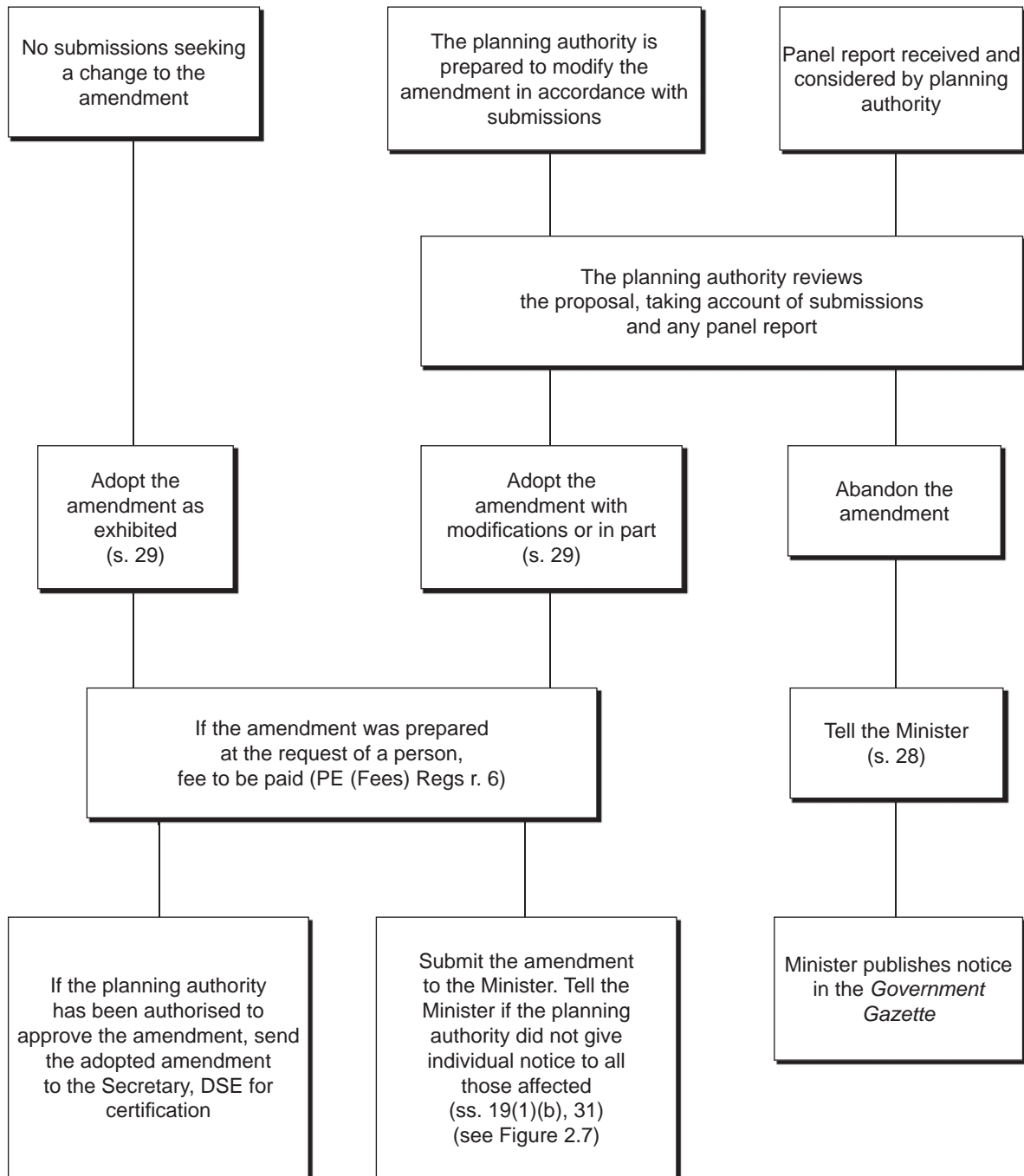
PE (Fees) Regs r. 6(4)

The planning authority should also address the matters set out in the Planning Practice Note *Strategic Assessment Guidelines for Planning Scheme Amendments* in its request for approval.

PEA s. 31(2)

If the planning authority decided in accordance with section 19(1A) of the Act not to give notice to all owners and occupiers, the planning authority must inform the Minister of this and send details of steps which were taken to ensure people were aware of the proposal.

Figure 2.6: Adopting or abandoning an amendment



Any other supporting information (letters, reports, plans, photos and so on) may be provided to further amplify 'why', 'where' and 'how' changes are being proposed. Department officers will examine all this information and report the amendment to the Minister. Inadequate information will cause delays in the processing of a proposed amendment.

PEA s. 19(5)

A partial failure to give notice does not prevent a planning authority from adopting and submitting an amendment, but this will be considered by the Minister who can require that further notice be given.

PEA s. 60(1A)(h)

An amendment which has been adopted by the planning authority but not yet approved by the Minister should be considered by a responsible authority before it makes a decision about a permit application, if the circumstances make it appropriate to do so.

2.6.2 The Minister's consideration of an amendment

The Minister's consideration of an amendment submitted by a planning authority is summarised in Figure 2.7a.

2.6.3 The Minister's approval of an amendment

PEA s. 35(1)

The Minister can approve the amendment, or part of it, with or without changes and subject to conditions.

PEA s. 35(4)(a),
35(4)(b); PE Regs r. 11

If proposed amendments unreasonably prejudice the objectives or operations of prescribed government departments or public authorities, the Minister may need to consult with another Minister and obtain his or her consent before approving an amendment. The Minister may need to consult with the Minister administering the *Road Management Act 2004* if the amendment provides for the closure of a freeway or an arterial road.

A planning authority will be advised of the Minister's approval of an amendment, how notice of its approval is to be given and (if so directed by the Minister) where copies of it must be lodged.

2.6.4 Refusing an amendment

PEA ss. 30(2),
35(1)(b)

The Minister can refuse to approve an amendment. If the Minister refuses to approve an amendment, a notice and date of lapsing of the amendment must be published in the *Government Gazette*.

2.6.5 Can additional notice of an amendment be required?

PEA s. 32

If the initial notice is considered inadequate, the Minister can defer making a final decision on the amendment and direct a planning authority to give additional notice and go through the process of considering submissions, appointing a panel, adoption and submission again.

PEA ss. 33, 34

The Minister can also direct a planning authority to give notice of any changes it has made to the amendment after exhibition, and of any changes the Minister proposes to make. The Minister can specify what form that notice will take and can refer submissions to a panel (which the Minister appoints) before making a final decision.

2.6.6 Approval of amendments by a planning authority (see Figure 2.7b)

Certification

PEA s. 35A(2)

If a council as planning authority has been authorised under section 11 of the Act to approve an amendment and has adopted the amendment under section 29, the planning authority must not approve the amendment unless the amendment has been certified by the Secretary of the Department of Planning and Community Development as being in the appropriate form.

What is Certification?

PEA s. 35A(3)

Certification is in the form of written advice from DSE that an amendment is technically acceptable to be approved. Matters that are considered at certification include the consistency of the amendment with:

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

Certification may require changes to the amendment. If this occurs the amendment must be resubmitted for certification prior to approval.

What documents are required for certification?

The authority sends the amendment in full for certification. The amendment in full includes the:

- Explanatory report
- Instruction sheet
- List of changes
- Text of the amendment
- Maps
- Any document applied, adopted or incorporated in the amendment or associated 173 agreement.

PEA ss. 30(1)(c),
35B(1)

Once certification is obtained the planning authority must decide whether to approve or abandon the amendment. The approval must be in accordance with the certification.

If the planning authority decides to abandon the amendment, it must notify the Minister. The amendment lapses and the Minister publishes a notice of lapsing in the *Government Gazette*.

PEA s. 5B(2),35(B)(3);
Regs r. 12

The planning authority must give to the Minister a copy of the approved amendment and any prescribed documents. These are the explanatory report, any document applied, adopted or incorporated in the amendment and any accompanying section 173 agreement.

The planning authority must also send a copy of the notice of approval of the amendment with the prescribed information which includes details of the amendment, the date of authorisation, the date of approval and the places where the amendment may be inspected.

Figure 2.7: Approving an amendment

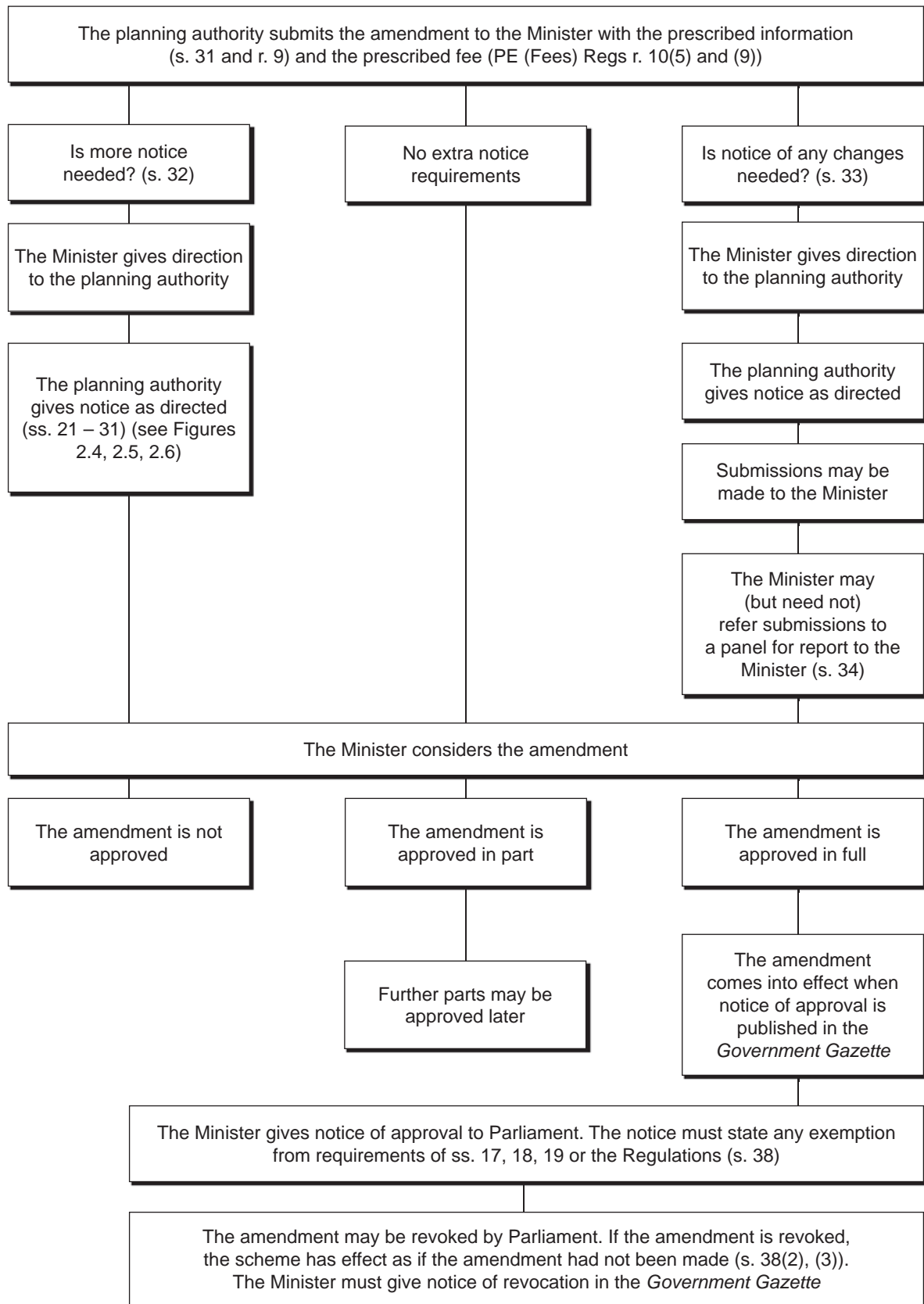
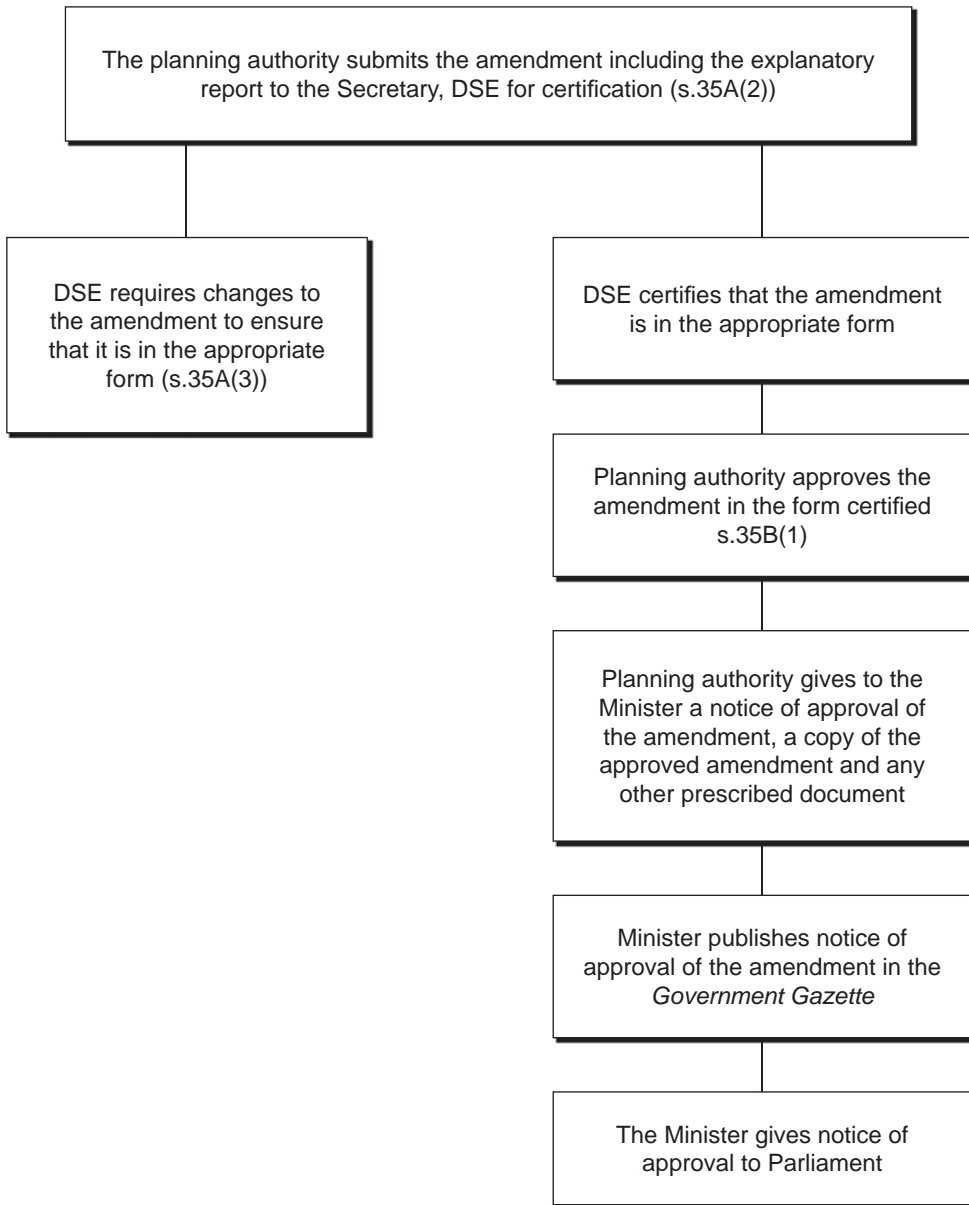


Figure 2.7b: Approval of an amendment by the planning authority



Note: The Minister may withdraw planning authority's authorisation at any time prior to the gazettal of the amendment (s.11(2)).

2.6.7 How is notification of an approved amendment given?

PEA s. 36

The Minister publishes notice of approval of an amendment in the *Government Gazette*. This includes amendments approved by a planning authority. The Minister will also advise a planning authority what further notification of the amendment's approval is required. This is usually the publication of a notice in a local newspaper. The planning authority should promptly advise the Minister that the required notice has been given.

Lodging of amendments by the Minister or the planning authority

PEA s. 40(3); PE Regs r. 14

If the Minister approves an amendment, the Minister, or if the Minister directs, the planning authority, must lodge the prescribed documents and a copy of the approved amendment with the responsible authority, the council, (if it is not the responsible authority) and any other person specified by the Minister.

If the planning authority approves an amendment, the planning authority must lodge the prescribed documents and a copy of the approved amendment with the responsible authority, the council, (if it is not the responsible authority) and any other person specified by the Minister. If the council is the planning authority and the responsible authority, then the council is the only authority that requires a lodged copy.

PEA s. 40(2)

The lodging process must be completed before the notice of approval is published in the *Government Gazette*. If a planning authority is required to carry out the lodging process, it should promptly advise the Minister in writing when this has been done.

2.6.8 Who keeps a copy?

PEA ss. 41, 42

A copy of an approved amendment and an up-to-date copy of the affected planning scheme must be kept by the Minister, the responsible authority and the council (if it is not the responsible authority). A copy of the amendment must also be kept by the planning authority. When the planning authority is also the responsible authority, only one copy of the approved amendment and updated planning scheme need be kept. Any person can inspect these documents during office hours free of charge.

2.7 Defects in procedure

PEA s. 39

A person who is substantially or materially disadvantaged by a failure to comply with the procedural requirements for an amendment can refer the matter to VCAT by lodging a notice with the Registrar.

This must be initiated before an amendment is approved and within one month of the person taking such action becoming aware of the failure.

Although VCAT cannot change or substitute a decision if it finds the procedures have not been properly followed, it can require that remedial action take place before the amendment can be adopted or approved.

2.8 Revocation of an amendment

PEA s. 38(1), (2)
PE Regs r. 13

All or part of an approved amendment may be revoked by either House of the Parliament within 10 sitting days after notice of the approval of the amendment has been laid before that House. The notice of approval must be in the prescribed form and must be given by the Minister within 10 sitting days of the amendment being approved.

PEA s. 38(3), (4)

If an amendment is revoked, the scheme has effect as if the amendment had not been made. Notice of the revocation of part or all of an amendment must be published in the *Government Gazette*.

2.9 Ratification of amendments

2.9.1 Which amendments require ratification?

PEA s. 46AF

Under s46AF of the Act, the following amendments require ratification after they are approved by the Minister:

1. an amendment to a metropolitan fringe planning scheme that amends or inserts an urban growth boundary; or
2. an amendment that has the effect of altering or removing the controls over the subdivision of any green wedge land to allow for the land to be subdivided into more lots or into smaller lots than allowed for in the scheme.

PEA ss.46AA, 46AB,
46AC

The terms 'metropolitan fringe planning scheme', 'urban growth boundary' and 'green wedge' are defined in the Act. The provisions were included in the Act in 2003 to safeguard Melbourne's green wedges and protect rural areas from inappropriate development.

2.9.2 Procedure for ratification

PEA s. 46AH

After the Minister has approved the amendment, the amendment is not gazetted. The Minister, instead, must cause the amendment to be laid before each House of Parliament within seven sitting days after the Minister's approval of the amendment.

PEA s. 46AG

The amendment does not take effect unless ratified within 10 sitting days after it is laid before Parliament.

2.9.3 Ratification of a combined amendment and permit

PEA s. 46AH

If a permit has been granted under s96I in respect of an amendment that requires ratification, the Minister must ensure that the same process applies and the permit must also be laid before each House of Parliament at the same time as the amendment.

2.9.4 When does a ratified amendment commence?

PEA s. 46AI, 46AJ

After an amendment is ratified, the Minister must publish a notice of ratification in the *Government Gazette*. The amendment comes into operation on the date the notice is published in the Gazette or any later date specified in the notice. It is lodged in the normal way under s40 of the Act.

2.9.5 When does an amendment lapse?

PEA s. 46AK

An amendment that has not been ratified by Parliament within the specified time lapses on the day immediately after the last day on which it could have been ratified. The Minister must publish a notice in the *Government Gazette* setting out the date on which the amendment lapsed. This Gazette notice is conclusive proof of the date on which the amendment lapsed.

2.10 Amendments in special circumstances

2.10.1 Amendments to reserve land for public purposes

Land can be reserved for a public purpose because it is intended to acquire it in the immediate future. The land can also be reserved because it will be required for public purposes at some future time and it is necessary to ensure that changes to the use and development of the land do not prejudice the purpose for which it is to be acquired.

In the VPP, the Public Acquisition Overlay (PAO) is the tool used to identify land reserved for a public purpose.

In preparing an amendment to apply the PAO, a planning authority should keep several important points in mind:

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- In administering the *Land Acquisition and Compensation Act 1986* or any Act or regulation dealing with land acquisition or compensation, any land included in a PAO is reserved for a public purpose.

PEA ss. 19, 20

- Reserving land is a serious step towards depriving the present owners and occupiers of that land. It is important that owners and occupiers of land to be reserved be fully informed at all stages.

PEA ss. 19, 20

- The planning authority must give notice to the owners and occupiers of affected land under section 19(1A) the Act (refer section 19(1C)). Failure to give the necessary notices to an owner is fatal to an amendment process (refer section 19(6)). The Minister cannot exempt a planning authority (other than the Minister) from the requirement to give notice to the owner of land to be reserved (refer section 20(3)).

PEA ss. 98(1), 109

- The schedule to the PAO requires that the acquiring authority and the reason for acquiring the land be specified. Before giving notice of an amendment to include land in a PAO, the planning authority should ensure that the acquiring authority (which may or may not be the planning authority) is prepared to meet any compensation claims that may arise.

2.10.2 Rezoning of potentially contaminated land

PEA s. 12(2)(b)

The purpose of *Ministerial Direction No. 1 Potentially Contaminated Land* is 'to ensure that potentially contaminated land is suitable for a use which is proposed to be allowed under an amendment to a planning scheme and which could be significantly adversely affected by any contamination'.

Clause 4 of the Direction sets the key requirement:

- '4. In preparing an amendment which would have the effect of allowing (whether or not subject to the grant of a permit) potentially contaminated land to be used for a sensitive use, agriculture or public open space, a planning authority must satisfy itself that the environmental conditions of that land are or will be suitable for that use.'

Clause 3 defines potentially contaminated land as land used or known to have been used for industry, mining or the storage of chemicals, gas, wastes or liquid fuel (if not ancillary to another use of the land). Sensitive use is defined to mean a residential use, a child care centre, a pre-school centre or a primary school.

Clause 5 states that the requirement for sensitive uses under Clause 4 can be met in two broad ways:

1. Action before giving notice of the amendment

A planning authority can ensure that a certificate of environmental audit has been issued for the land. If the amendment allows a sensitive use in accordance with plans included or referred to in the amendment, a planning authority can ensure that an environmental auditor appointed under the *Environment Protection Act 1970* has made a statement that the environmental conditions are suitable for the sensitive use in accordance with those plans.

2. Action after approval of the amendment

In limited circumstances it may be appropriate to defer the requirements of Direction No 1 for an environmental audit until the site is developed. This requirement should only be deferred if testing of the land before notice is given is difficult or inappropriate (for example the rezoning involves multiple sites in separate ownership). Refer to the Explanatory Statement attached to Ministerial Direction No 1. The mechanism for deferring the requirement for an audit is the application of the EAO.

Planning staff should seek advice from the Department if there is doubt about how a particular situation should be addressed before amendments are prepared.

Direction No. 1 allows the Minister to grant an exemption (with or without conditions) from the need to comply with the Direction in relation to a particular amendment. The Minister must consult with the Environment Protection Authority. If a planning authority intends to seek an exemption it should first contact the Department.

Consult *Ministerial Direction No. 1 Potentially Contaminated Land*, dated 27 September 2001 for the specific requirements of the Direction.

The General Practice Note, *Potentially Contaminated Land*, June 2005, provides guidance about how to identify potentially contaminated land, the appropriate level of assessment of contamination for an amendment or planning permit and the application of the Environmental Audit Overlay.

2.10.3 Amendments relating to notice requirements

PEA s. 6(2)(kc), (kd)

A planning scheme can set out classes of applications for permits exempted wholly or in part from section 52(1) of the Act (requirement to give notice of an application) and set out notice requirements, if any, to apply in place of those requirements. The scheme can also set out classes of applications where decisions are exempted from sections 64(1), (2) and (3) (notice of decision to be given to objectors), and section 82(1) (objector may apply for a review to VCAT against a decision to grant a permit).

PEA s. 6(2)(i), (j)

There are no particular requirements about the types of applications which can be exempted. A planning authority should note the objectives of the planning framework, 'to ensure that those affected by proposals for the use, development or protection of land or changes in planning policy or requirements receive appropriate notice', and 'to provide an accessible process for just and timely review of decisions without unnecessary formality'.

Exemption provisions can apply to a class of use or development generally (wherever it occurs) or a class could be more closely defined to relate to a specific zone or locality. An exemption class could also be related to a specific set of planning controls (such as development which is in accordance with a detailed plan incorporated in the scheme). Classes can be defined in whatever way appropriate to the outcome being sought.

In planning schemes, exemption provisions typically apply to a class of use or development and can either be a State-standard provision or a local provision inserted in a schedule to a zone or overlay. If the exemption provision is a VPP provision it can only be amended by amending the VPP. If the exemption provision is a local provision to be inserted in a schedule, care must be taken when drafting the exemption to ensure that it only exempts classes of applications defined by its 'parent provision'. For example, the schedule to the Design and Development Overlay cannot be used to exempt an application for use from the notice, decision and review requirements of the Act, because its 'parent provisions' only control buildings and works. The Special Use Zone however, contains 'parent provisions' that enable its schedule to address use and development. The key to drafting exemptions is to read the 'parent provision' carefully to identify those parts of it which define the scope of the exemption and to ensure that the schedule responds to those requirements.

An exemption relates only to the clause in which it is included. If some other part of the planning scheme also requires a planning permit to be obtained, the exemption will not apply to that.

Unless a local provision in a planning scheme is very clear in defining classes of application exempted from the requirements of the parent provision, or in defining alternative requirements, there will be costly and time-consuming disputes about objection and appeal rights. These can take the form of action at VCAT to cancel or amend a permit on the ground that a person believes they should have been given notice but were not. Court action may also be possible.

As in any other form of amendment, the likelihood of disputes both in relation to the amendment and the later administration of the scheme, will be minimised by clear, precise statutory drafting.

2.10.4 Amendments to vary or remove a restriction on title

PEA ss. 6(2)(g), (ga),
(gb), 6A

A planning scheme can regulate or provide for the creation, variation or removal of easements or restrictions under section 23 of the *Subdivision Act 1988* and related matters.

An amendment to this effect authorises a plan to be certified and lodged at the Land Titles Office varying or removing the specified restriction. It is important that the amendment to authorise this be in a legally effective form.

The appropriate location in a planning scheme to insert provisions relating to easements, restrictions and reserves is the schedule to Clause 52.02.

PEA s. 19(1)(ca), (2A)

If the effect of an amendment would be to remove or vary a registered restrictive covenant, notice of the amendment must be given to the owners and occupiers of land benefited by the covenant and a sign about the amendment must be placed on the land.

PEA s. 19(1A)

Giving notice of an amendment in alternative ways if the 'number of owners and occupiers affected makes it impractical to notify them all individually' (section 19(1A)) does not apply to an amendment to remove or vary a registered restrictive covenant.

2.10.5 Amendments to control demolition

Section 29A of the *Building Act 1993* requires that certain building applications involving demolition be referred to the responsible authority for report and consent. The requirements for a responsible authority in responding to such referrals are set out in the section on building permit applications for demolition of buildings.

If a planning permit is not required for the demolition, and the responsible authority considers that a planning permit should be required for the proposed demolition, the planning authority can:

- prepare an amendment which in effect directs that a permit is required to carry out the demolition, and ask the Minister for an exemption from certain notice requirements, in accordance with section 20(1) of the Act; or
- make a request to the Minister to prepare an amendment to the effect that a permit is required to carry out the demolition, and for the Minister to exempt himself or herself from certain requirements in preparing that amendment, in accordance with section 20(4) of the Act.

If such a request is made within the prescribed time, which is 15 working days starting from the day the application for demolition is received, the responsible authority must give notice to the building surveyor to suspend consideration of the building permit application.

Either request should be submitted to the Minister through the regional office of the Department. The request should include a draft of the amendment proposed and be quite clear whether it is a request by the planning authority for exemption from notice, or a request to the Minister to make the amendment.

A request to the Minister to prepare an amendment should take account of the Planning Practice Note *Ministerial Powers of Intervention in Planning and Heritage Matters*. It should also be accompanied by the prescribed fee for requesting a planning authority to make an amendment. These requirements do not apply to a planning authority seeking exemption from giving notice of an amendment. Nevertheless, the reasons why such exemption should be given will need to be clearly set out in the request.

2.11 The combined amendment and permit process

PEA s. 96A(1), (2)	To avoid the necessity for a two-stage process where a planning proposal requires both an amendment to a planning scheme and a planning permit, Division 5 in Part 4 of the Act makes provision for a combined amendment and permit process. This process allows a planning authority, if requested to do so by a person, to simultaneously prepare and give notice of a proposed amendment to a scheme and give notice of an application for a permit.
PEA s. 96A(5)	<p>The combined amendment and permit process must not be used after notice of the proposed scheme amendment has been given under section 19 of the Act. However, in certain circumstances, a panel or the planning authority can still recommend that a permit be granted as part of an amendment process even if it was not applied for at the time of exhibition of the amendment.</p> <p>The combined process should not be used for proposals for which a planning permit application can be made under the current provisions of the planning scheme.</p>
PEA s. 96A(3)	Under the combined process, a permit application can be for any purpose for which the planning scheme, as amended, will require a permit to be obtained. This includes a use, development or any other purpose which may be prohibited under the existing scheme.
PEA s. 96M	<p>Where the combined process is used, the component of the process relating to the permit application is dealt with in similar fashion to the amendment, and is quite different to the normal permit process under Divisions 1 and 2 in Part 4 of the Act. In particular:</p> <ul style="list-style-type: none">■ there are no formal referral requirements■ the requirements for giving notice of the application are different■ the Minister makes the final decision about whether a permit is granted, with no further right of review.

2.11.1 Overview of the combined amendment and permit application process

PEA ss. 96A (1), (2), (6), 96C, 96G	The planning authority is the authority responsible for preparing an amendment and considering an application under the combined amendment and permit process. It is responsible for accepting and registering the application, amending it (if necessary), exhibiting the amendment and proposed permit (if applicable) and complying with all other requirements of the Act leading up to and including making a recommendation to the Minister about whether the amendment should be adopted and a permit granted.
PEA s. 96I(1)	The Minister is responsible for deciding whether or not a permit should be granted, with or without changes and subject to conditions.
PEA s. 96N	If a permit is granted, the responsible authority under the planning scheme becomes the responsible authority for the permit.

Making a request

PEA s. 96A(4); PE
Regs r. 38

The permit application must be in the prescribed form and accompanied by the prescribed fee, together with any information required by the planning scheme. It must be completed and signed in accordance with the requirements of section 48 of the Act.

PEA s. 96A(4)(c)

If the permit application affects land subject to a registered restrictive covenant, a copy of the covenant must accompany the application. If the application is for a permit to allow the removal or variation of a registered restrictive covenant or if the grant of the permit would allow anything which would breach a covenant, the application must also be accompanied by:

PEA s. 96A(4)(d)

- information clearly identifying each lot benefited by the registered restrictive covenant; and
- any information required by the regulations.

PE (Fees) Regs r. 6(1)

The amendment request must also be accompanied by the prescribed fee.

Considering a request to combine the amendment and permit process

The procedure for considering a request to combine the amendment and permit process under Division 5, is the same as for an amendment under Part 3 of the Act, which is set out in the section in the guide on 'How can a planning scheme amendment be requested?'

There is no right of review of a planning authority's decision not to combine the preparation of an amendment with the consideration of a permit application. It is therefore important for the applicant/proponent to discuss any issues with the planning authority before making a formal request.

PEA s. 96A(6)

If a planning authority agrees to combine the amendment and permit process, the requirements of sections 49, 50 and 50A in relation to registering and making changes to the permit application apply.

Public exhibition

PEA s. 96A(6)(b)

Except in relation to giving notice, the requirements for the exhibition, consideration of public submissions, adoption and approval of an amendment prepared under Parts 3 and 5 of the Act, apply to the combined amendment and permit process as if the permit application were a planning scheme amendment. These requirements are described in detail in the section on the public exhibition stage of the amendment process.

PEA s. 96C(10)

Notice of a combined permit application and amendment must be given in accordance with the requirements of section 96C, and not section 19. Under section 96C notice must include:

PEA s. 96C(1)(a)

- Notice to every Minister, public authority and council the planning authority believes could be materially affected by the amendment.

PEA s. 96C(1)(b)

- Notice to the owners and occupiers of land who could be materially affected by the amendment or application.

PEA s. 96C(1)(c); PE
Regs r. 40

- Notice to any Minister, public authority, council and person prescribed by the regulations.

PEA s. 96C(1)(d)

- Notice to the Minister administering the *Land Act 1958*, if the amendment provides for the closure of a road wholly or partly on Crown land.

PEA s. 96C(1)(e)

- Notice to the responsible authority, if it is not the planning authority.

PEA s. 96C(1)(f)

- Notice to the owners and occupiers of land adjoining the site to which the permit application applies.

- PEA s. 96C(1)(g)
 - Notice to the owners and occupiers of land benefited by a registered restrictive covenant if the amendment or the permit would allow the variation or removal of the covenant, or anything allowed by the permit would be in breach of the covenant. An owner for this purpose excludes an owner to be registered as a proprietor of an estate in fee simple.
- PEA s. 96C(2)
 - A notice in a newspaper circulating in the affected area.
- PEA s. 96C(2A), (2B)
 - If the amendment would allow the variation or removal of a registered restrictive covenant, a sign on the land which is the subject of the amendment. The sign must state where a copy of the proposed permit may be inspected.
- PEA s. 96C(3)
 - A notice published in the *Government Gazette*, which can be on the same day as the last of the other notices.

PEA s. 96C(3),(4); PE Regs r. 39

The notice must be in the prescribed form and accompanied by an explanatory report on the background to and reasons for the amendment and the application. The notice must include the last date for submissions - which must be not less than one month after the date the notice is published in the *Government Gazette*.

PEA s. 96M

Any specific requirements for notice or referral of a particular type or class of application set out in a planning scheme do not apply to an application made under the combined amendment and permit process. However, when deciding what notice should be given under section 96C, a planning authority should consider whether the interests of any individual or body that would normally receive notice of (or be a referral authority for) a permit application under Part 3 of the Act could be affected.

In each case, the planning authority should take care in forming an opinion about what notice should be given and to whom and ensure that this is carefully recorded.

Nor should the fact that the matter is controversial be taken as a conclusive test that a person may be materially affected. Careful judgement of the situation by the planning authority is necessary.

PEA s. 96C(9)

The applicant for a permit under this Division must pay the cost of any notice of the amendment and permit application.

Can a combined amendment and permit application be exempted from notice?

PEA s. 96B(1)

Under section 96C of the Act, a planning authority cannot exempt itself from the requirement to give individual notice of an amendment where the number of owners and occupiers affected makes it impractical to do so. However, the Minister can grant an exemption from this, or any other requirement relating to notice, if the Minister considers that an exemption is warranted. The steps that a planning authority should follow, if it wishes to be exempted from notification, are described in the part on exemption from giving notice in this section.

PEA ss. 20(3), 96B(1)

The Minister cannot grant an exemption from giving individual notice to the owner of land proposed to be reserved for acquisition for a public purpose, or land affected by the proposed closure of a road which gives access to that land.

PEA s. 96C(6)

Failure to give notice to a land owner affected by a proposed reservation or a road closure will mean that the amendment cannot be adopted and a permit cannot be issued.

When does the proposed permit need to be prepared?

PEA s. 96C(8)

A copy of the proposed permit must be given to all persons and individuals who receive a notice of amendment and the application.

The proposed permit must be in the prescribed form.

While it is not a requirement of the Act, where a planning authority has formed an opinion about whether it is likely to grant a permit and what the conditions of the permit should be, it should make a copy of the proposed permit available at the same time the amendment and application are exhibited.

Giving a copy of the proposed permit to the relevant persons and individuals at the same time the notice of amendment and application is given, enables affected people to make submissions about the general change to the scheme, the specific application and the draft permit and conditions.

If a planning authority has any doubts about what should be included in the permit and the extent to which it can be easily understood and enforced, consultation with the responsible authority (if it is not the planning authority) should occur.

Under Division 5 of the Act, there are no referral authorities to whom a copy of the application must be given. However, if a planning authority considers that an individual or body who would normally be a referral authority under Part 4 of the Act could be affected by the proposal, or if it considers that specific conditions may need to be included on the proposed permit to address their particular interests, it should consider consulting with and giving notice to that individual or body.

The proposed permit should contain any conditions that the planning scheme requires that it include.

The Act does not specify what matters can be taken into account by the planning authority in deciding whether a person or body could be materially affected by an amendment and application under this Division. Each proposal must be considered on its merits. As a basic rule, it should be possible to link the effect to specific matters such as restriction of access, visual intrusion, unreasonable noise or overshadowing. General terms such as 'amenity' and 'nuisance' are not specific enough.

The Minister can grant a permit under this Division subject to any conditions the Minister thinks fit. Early consultation with the relevant regional office of the Department regarding the nature of conditions contained in a proposed permit should reduce the potential for different or additional conditions to be included on a permit granted by the Minister.

2.11.2 Considering submissions

The process for making and considering submissions to a combined amendment and application under Division 5 is the same as for an amendment prepared under Part 3 of the Act.

If a planning authority receives a submission which seeks a change to a proposed permit, it must make a decision about the submission as if it were seeking a change to the amendment.

For more information about this, see Section 2.4.7.

2.11.3 Panel hearing

If a panel is appointed to consider submissions, it must give the applicant and any other person specified in section 24 of the Act an opportunity to be heard.

If a panel recommends that an amendment or part of an amendment be adopted, with or without changes, it can also recommend that a permit be granted for any purpose for which the amended planning scheme would require a permit to be obtained (with or without conditions). This applies even if the panel was appointed to consider submissions to amendments prepared under Part 3, and not under the combined process in Division 5.

PEA s. 96E(2) The permit recommended by the panel could be for a purpose which was applied for and for which notice of the proposed permit was given under section 96C (if applicable). It could also be for an entirely new purpose for which no application under this Division was made.

PEA s. 96F The planning authority must consider the panel's report before deciding whether to recommend that a permit be granted.

2.11.4 Making a decision

PEA s. 96G(1), (2) After complying with the requirements of giving notice and following the submission stages, a planning authority may decide to recommend to the Minister that a permit be granted with or without changes. This decision can only be made if the amendment, or the part of the amendment to which the permit applies, has been adopted first.

PEA s. 96G(1)(c) A planning authority can recommend to the Minister that a permit be granted once the scheme is amended, if it considers it appropriate to do so as a result of changes made to the amendment. This applies even if no application has previously been made under section 96A of the Act.

PEA s. 96H(1) The recommendation and proposed permit must be submitted to the Minister at the same time as the adopted amendment is submitted, with additional copies for lodging after approval. The recommendation, amendment and permit should be accompanied by the prescribed information and information set out in the section on amendment adoption.

PEA ss. 28, 96B(1), 96G(4) The planning authority can decide to abandon the amendment or refuse to recommend that a permit be granted. If so, the proponent/applicant and the Minister must be notified in writing of the decision and the reasons for it.

PEA s. 96F If an amendment lapses, or the part of the amendment to which the permit application applies lapses, the application also lapses.

2.11.5 The Minister's consideration of a combined amendment and permit application

Approving a combined amendment and permit

PEA ss. 35, 96B(1)(b), 96I The Minister can approve the amendment, or part of it, and can grant a permit, with or without changes and subject to conditions.

PEA s. 96I(1A) However, if the grant of a permit would result in the breach of a registered restrictive covenant, the Minister must refuse to grant the permit unless :

- the amendment to which the permit applies provides for the variation or removal of the covenant; or
- a permit has been issued, or a decision has been made to grant a permit to allow the removal or variation of the covenant.

PEA s. 96I(2) Even if no permit has been applied for, or even if a panel has not recommended the grant of a permit, the Minister may still grant a permit if the Minister considers it appropriate as a result of any changes made to the amendment during the amendment process. The permit granted can be for a purpose recommended by the planning authority or it can be for an entirely new purpose for which the planning scheme, as amended by the proposed amendment, would require a permit to be obtained.

PEA s. 96I(B) If the permit granted would allow anything that would breach a registered restrictive covenant, the permit must be granted subject to a condition that the permit does not come into effect until the covenant is removed or varied.

PEA s. 96I(B) The conditions included on a permit granted by the Minister can be ones recommended by the planning authority or panel (if applicable), or they can be new conditions that the Minister considers appropriate and necessary. Sections 62(2) to (6) of the Act specify the types of conditions that a permit granted under Division 5 can include.

PEA s. 96I(3) The permit must be granted at the same time as the amendment to which the permit applies, is approved.

Can additional notice of an amendment and application be required?

PEA s. 96H If the initial notice is considered inadequate, the Minister can defer making a final decision on the amendment and permit application and direct a planning authority to give additional notice and go through the process of considering submissions, panel, appointing a panel, adoption and submission again.

What must the Minister consider before deciding to grant a permit?

PEA ss. 60(2), (4), (5), 96I(5) The Minister must not grant a permit that allows the removal or variation of a restriction, unless he or she is satisfied that no loss or other detriment specified will be suffered.

Adopting and approving an amendment

PEA s. 96M(5) The process for adopting and approving an amendment prepared under Division 5 is generally the same as that described in the parts in this section on adopting amendments and the Minister's consideration of an amendment. The main difference is that the notice of approval of the amendment published in the *Government Gazette* and given to Parliament must also specify if a permit has been granted under this Division.

Issuing a permit

PEA s. 96J A permit is issued by the responsible authority at the direction of the Minister. The permit must be issued to the applicant or, if there was no application, to the owner of the land.

PEA s. 96J(4) A responsible authority must issue a permit if it is directed by the Minister to do so.

PEA s. 96J(2) The day the permit is issued by the responsible authority, which must be within seven days after the Minister has directed it to issue a permit, is the date that must be specified in the permit.

PE Reg r41
PE Regs Form 9 A permit issued under section 96J of the Act comes into operation from the date specified in the permit. This date must not be before the day on which the amendment to which the permit applies comes into operation. The permit must be in the prescribed form.

PE Regs Form 19 If no date is specified, the permit comes into operation on the same day as the amendment to which the permit applies comes into operation.

Where a permit issues as a result of the combined process, there is no opportunity for review by VCAT under Division 2 of Part 4 of the Act. It is important, therefore, that conditions on the proposed permit are carefully drafted, the views and ordinary referral requirements of other authorities are included, and that any other potentially affected parties clearly indicate their grounds of objection in any submission.

Refusing a combined amendment and permit application

PEA ss. 96I(1)(c), 96K(1); PE Regs r. 42 Form 10 The Minister can refuse to approve a permit and, if so, can direct the responsible authority to give notice of the refusal of the permit.

PEA s. 96K(2) The direction given by the Minister and the notice by the responsible authority must set out the specific grounds on which the permit is refused.

Administering a permit

PEA ss. 96M(1), (2),
96N

Once a permit is granted:

- the responsible authority under the planning scheme becomes the responsible authority for the permit; and
- the provisions of the Act apply in relation to permit expiry, extension of time, mistakes, amendments and review of decisions to refuse or extend a permit.
- the permit may be amended under the process set out in sections 72 - 76D of the Act (see 3.6.4). The combined permit must be in the prescribed form.

PE Regs r. 41, Form 9

2.12 Amendments to the *Victoria Planning Provisions*

PEA s. 4A(2)

The VPP are State-standard planning provisions that were approved by the Minister on 9 July 1998. The VPP can provide for any matter that a planning scheme can provide for.

PEA s. 4B(1)

The Minister can prepare an amendment to the VPP at any time. VPP amendments may be a small change to one provision, or major changes or additions.

PEA s. 4B(2)

Section 4B of the Act enables the Minister to give consent or authorisation for a public authority, another Minister or a municipal council to prepare an amendment to the VPP. This power would only be used in unusual circumstances.

PEA s. 4B(3)

The process for preparing an amendment to the VPP is the same as that for a scheme amendment, except for making and considering submissions which request a change to the terms of a State-standard provision. Unlike a planning scheme amendment, an amendment to the VPP will always involve making changes to the terms of a State-standard provision.

PEA s. 4J

The Act includes special provisions for making an amendment to one or more planning schemes at the same time an amendment to the VPP comes into operation. These provisions are discussed in Section 2.10.

PEA ss. 4H, 4I

The Minister, each responsible authority and any person the Minister specifies, must keep an up-to-date copy of the VPP (incorporating all its amendments and any documents lodged with those amendments) and make it available for public inspection during office hours.

2.12.1 Preparing an amendment

PEA s. 4B(1), (2)

Amendments to the VPP will be required from time to time to keep the VPP abreast with changes in policy and practice. Only the Minister or any other Minister, public authority or council authorised by the Minister can prepare an amendment to the VPP.

PEA s. 4B(3), (4)

Unlike a planning scheme amendment, if notice of an amendment to the VPP is given, the Minister or the body or person authorised to prepare the amendment can receive and consider submissions which seek a change to the terms of a State-standard provision. The change may be made as requested or the notice of an amendment and submissions may be referred to a panel for consideration. The panel can recommend that an amendment be adopted with changes to the terms of the VPP.

PEA s. 4B(3)

Apart from these differences, the requirements for the exhibition, consideration of submissions (if any), adoption and approval of a VPP amendment are generally the same as for a planning scheme amendment.

2.12.2 Approving an amendment

- PEA s. 4C(1) The Minister can approve an amendment to the VPP (or part of it) with or without changes and subject to conditions. The Minister can also refuse to approve an amendment or part of it.
- PEA ss. 4D, 4E If an amendment is approved, notice of approval must be published in the *Government Gazette*. The amendment comes into operation the day the notice is published in the *Gazette*, or on any later day, or days, specified in the notice.
- PEA s. 4G A copy of every approved amendment to the VPP must be lodged with each responsible authority, each council and any other person or persons nominated by the Minister.

2.12.3 Amendment of planning schemes by the *Victoria Planning Provisions*

- PEA s. 4J An amendment to provisions of the VPP can also amend specified planning schemes which include those provisions. When the amendment to the VPP - which also provides for an amendment to a planning scheme - is approved, the amendment to the planning scheme is also approved under Part 3 of the Act.
- PEA s. 4J(4) An amendment to a planning scheme by the VPP comes into operation when the amendment to the VPP comes into operation, or on any later date specified in the notice of approval of the amendment to the VPP.

2.13 Advisory committees

Before making a decision about a proposal or policy or before preparing an amendment or permit application, it is sometimes necessary to evaluate all of the options to be sure about what is to be achieved and to determine what is the best way of achieving it.

One method by which this can be done is through the establishment of an advisory committee.

- PEA s. 151(1), (2) Advisory committees are established by the Minister to consider any matter which the Minister refers to them. An advisory committee may consist of one or more persons.

The Act does not include a procedure for making a request to the Minister for the establishment of an advisory committee. However, it is an established practice that planning authorities do make such requests where the proposal raises a major issue of policy, or where it may have a substantial effect on the achievement of the objectives of planning in Victoria as set out in section 4 of the Act.

Advisory committees usually operate in a manner similar to a panel considering submissions to a planning scheme amendment. If notice of the issues or options being considered by the advisory committee is given, it is the role of the committee to give the submitters an opportunity to be heard and provide advice to the Minister about the options and the submissions made to it. The advisory committee usually produces a report to the Minister outlining its response to the matters referred to it.

- PEA s. 151(8), VCATA Sch. 1, Cl. 58 If a matter in a proceeding before VCAT is referred to the Governor in Council for determination, the Minister may decide to establish an advisory committee to provide advice about the matter.

- PEA s. 189(1) The Minister can delegate to an advisory committee any of his or her powers or functions under a planning scheme in relation to applications for permits for which the Minister is the responsible authority or a referral authority.

2.14 Checklist of statutory procedures for planning scheme amendments

The preparation stage

- PEA s. 4 Have the objectives of planning been considered?
- PEA s. 6 Have the matters a planning scheme can provide for been considered?
- PEA s. 12(1), (3) Has the area or issue concerned been adequately investigated?
- PEA s. 12(2) Would the amendment have any significant environmental, social or economic effects?
- What is the strategic basis for the amendment? Have the matters set out in the Planning Practice Note *Strategic Assessment Guidelines for Planning Scheme Amendments* been considered?
- Has the amendment properly considered the implications that it has on the SPPF or LPPF?
- PEA ss. 9, 11 Has the Minister's authorisation been obtained?
- PEA s. 12(1)(e) Has an explanatory report been prepared?
- PEA s. 12(2) Have any reports required by the Minister's Directions to be included in the explanatory report been prepared?
- PEA ss. 7(5), 12(2) Has regard been given to all the Minister's Directions? Has the amendment been drafted to comply with the *Ministerial Direction on the Form and Content of Planning Schemes*?
- Has the amendment been drafted correctly and is it consistent with the rest of the scheme, including the provisions of other sections of the scheme?
- Is the amendment documentation consistent with the format and requirements set out in the online guideline *Preparing the Documentation for a Planning Scheme Amendment*? (See www.dpcd.vic.gov.au/planning.)
- PEA s. 96A(4)(c) In the case of a combined permit application and amendment, if the application includes land affected by a registered restrictive covenant, did a copy of the covenant accompany the application?

The public exhibition stage

- PEA s. 17 Has an electronic folder containing a copy of the amendment and all documents been forwarded to the relevant regional office of the Department?
- PEA s. 20 Is the Minister to be asked to give an exemption from any of the notice requirements of section 19 of the Act? If so, the application must include supporting grounds and information to justify the request. Any owner of land to be reserved or affected by a road closure in the amendment must be notified, as must prescribed Ministers. Has the Minister agreed to the exemption?

- PEA s. 19(1) If no exemption is sought, has notice of preparation of the amendment been forwarded to:
- relevant Ministers, government departments, public authorities and councils, if materially affected or prescribed
 - owners and occupiers of land if in the planning authority's opinion they could be materially affected (or alternative notification undertaken in accordance with section 19(1B))
 - owners and occupiers of land benefited by a registered restrictive covenant if the amendment would allow the variation or removal of the covenant
 - any other people or groups, including nearby owners or occupiers, relevant social or community organisations, or associations which represent the interests of persons residing or owning property within the area?
- PEA s. 19(4) Has notice of preparation of amendment been given in accordance with the Regulations and does it specify the date for submissions? Does the exhibition period provide not less than one month for lodging of submissions from the time notice is given in the *Government Gazette*?
- PEA s. 96C In the case of the combined amendment and permit process, have the notice requirements under section 96C been complied with? Have copies of the proposed permit been given to all persons and bodies to whom notice of the amendment and permit application has been given?
- PEA ss. 19(2A), 96C(2A) If the amendment will allow a registered restrictive covenant to be removed or varied, has a sign about the amendment been placed on the land?
- PEA s. 19(2) Has notice of preparation of amendment been published in a newspaper generally circulating in the area?
- PEA s. 19(3) Has notice of preparation of amendment been published in the *Government Gazette* on the same day as the last of the notices under sections 19(1) and (2) is given, or after all other notices under this section have been given?
- The public submission stage**
- PEA s. 21 Have any submissions been received? If not, go to the 'The adoption stage' checklist.
- PEA s. 22(2) Has the Minister directed that any late submissions be considered?
- PEA s. 22 Has the planning authority considered all submissions made within the prescribed period, and any late submissions?
- PEA s. 23 Are there any submissions which need to be referred to a panel? If not, go to 'The adoption stage' checklist.
- PEA ss. 23(1)(b), 153 Has the Minister been asked to appoint a panel?
- PEA s. 158 Has the panel venue and secretarial assistance been organised?
- PEA ss. 24, 25 Has the panel conducted hearings and made a report to the planning authority?
- PEA ss. 27 Has the planning authority considered the panel's report on the amendment and decided what recommendations it will make to the Minister on the panel's report?
- PEA ss. 26 Has the planning authority made the panel's report available for inspection?

The adoption stage

- Is it clear that the planning authority has fully complied with Divisions 1 and 2 (that is, sections 17 to 28 involving exhibition notice and submission procedures)?
- If an Environment Effects Statement has been prepared, have the relevant requirements under the *Environment Effects Act 1978* been followed?
- PEA s. 29 Has the planning authority decided to adopt the amendment with or without changes, in full or in part? - **OR**
- PEA s. 28 Has the planning authority advised the Minister of its decision to fully or partly abandon the amendment? - **OR**
- PEA ss. 30, 188 Has the amendment lapsed? Has the resolution of the planning authority been formally recorded in minutes or a report? (The planning authority cannot delegate the decision to adopt or abandon an amendment.)

Approval by the Minister

- PEA s. 31 Have the following documents and information been submitted to the Minister?
 - The appropriate number of copies of the amendment correctly drafted and adopted.
 - The items listed in Regulation 12.
 - Strategic assessment of the amendment.
 - The information required by section 31(2) of the Act, if applicable.
 - The report of the planning authority summarising the above information.
 - The prescribed fee.
- PEA s. 35(4) Is the consent of a specified Minister required? If so, has it been obtained?
- PEA s. 96I(1A) In the case of a combined amendment and permit application:
 - Would the grant of a permit result in the breach of a registered restrictive covenant?
 - If the grant of a permit would allow a breach of a covenant, has a condition been included on the permit that the permit does not come into effect until the covenant is removed or varied?
- PEA ss. 32, 33 Has the Minister required that additional notice be given of the amendment or of the changes proposed by the planning authority or by the Minister? If so, has this been done?
- PEA s. 35 Has the Minister approved the amendment or part of it and advised the planning authority?
- PEA s. 36 Has the planning authority given notice of approval of the amendment to the Minister's satisfaction?

Approval by the planning authority

PEA s. 35B

- Has the required documentation been given to the Secretary of the department for certification?

Lodging of approved amendment

PEA s. 40(1)

- If the Minister has directed the planning authority to lodge a copy of the approved amendment with:
 - the council
 - the responsible authority
 - any other specified person

has this been done? (This must be done before the notice of approval is published in the *Government Gazette*.)

PEA s. 40(1A)

- If the planning authority approves an amendment, have the prescribed documents been lodged with the relevant authorities? (This must be done before notice of approval is published in the *Government Gazette*.)

PEA s. 41

- Has the planning authority made available for public inspection a copy of the approved amendment?

PEA s. 42

- Has the approved amendment been incorporated into the planning scheme?