



Commissioner for Better Regulation

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17 May 2016

Ms Christine Wyatt
Deputy Secretary
Planning
Department of Environment, Water, Land and Planning
Level 9, 8 Nicholson Street
EAST MELBOURNE VIC 3002

Dear Ms Wyatt

I would like to thank the staff of the Department of Environment, Water, Land and Planning for working with our team on the preparation of the Regulatory Impact Statement (RIS) for the proposed Planning and Environment (Fees) Regulations 2016 and Subdivision (Fees) Regulations 2016, the interim Regulations for which are due to sunset on 14 October 2016.

Under section 10 of the *Subordinate Legislation Act 1994*, the Commissioner for Better Regulation is required to provide independent advice on the adequacy of analysis presented in all RIS prepared in Victoria. In doing so, the Commissioner's role is to advise on the adequacy or otherwise of the RIS overall rather than the merits or otherwise of policy or regulatory proposals. To be adequate, the RIS must contain analysis that is logical, draws on relevant evidence, is transparent about assumptions used, and is proportionate to the proposal's expected effects. The RIS must also provide a suitable basis for public consultation, which is an important step in the policy development process.

I am pleased to advise you that the final version of the RIS received by us on 16 May 2016 meets the adequacy requirements of the Act.

These Regulations set fees for services provided by responsible authorities and planning authorities (usually a local council) under the *Planning and Environment Act 1987* and *Subdivision Act 1988*, including for applications to:

- amend a planning scheme
- obtain a permit to use, develop or subdivide land, clear vegetation or amend an existing permit

- amend an agreement made in relation to permitted use of a property
- obtain a certificate of compliance or planning certificate
- approve a subdivision plan or for a statement of compliance for a proposed subdivision.

The Department notes that only between about 20 and 30 per cent of the overall costs of these activities are recovered by the current fees. This is partly because most fees have not been changed in nominal terms since 2000 and those which have been adjusted for inflation have not been changed since 2009-10. There have also been changes to planning processes over this time, such as the introduction in 2014 of VicSmart (a streamlined planning permit process for low-value applications).

This RIS proposes new fees that would involve, among other things:

- introducing some new fee categories
- significantly increasing some fees, particularly for applications for:
 - planning scheme amendments, which would increase by between 500 and 1330 per cent, depending on the number of submissions (the maximum fee would be \$41 792)
 - use-only planning permits, which would increase by 147 per cent, from \$502 to \$1241
- continuing the practice of holding some fees (including for low-value planning permit applications) deliberately below costs to reflect other important policy objectives, mainly affordability and equity.

The Department estimates that the proposed fees will increase the overall level of cost recovery to about 75 per cent of the around \$100 million of costs incurred in providing planning services.

To help set the fees proposed in this RIS, the Department commissioned a data collection exercise based on 15 sample Councils to enable the new fees to reflect, as much as possible, the current efficient costs of providing planning services. Notwithstanding this work, the Department recognises that significant information gaps about costs remain, including the following:

- the data collection exercise did not enable the costs of all activities (and what influences these costs) to be identified reliably. In such cases, the views of selected Councils were used to supplement the data collected
- there are variations across Councils in planning functions and in the nature of applications they receive. The RIS, therefore, assumes that the average cost of activities taken across the 15 sample Councils is a reasonable proxy for efficient costs
- although the Department developed indicators that allowed it to measure the influence of many of the factors that affect costs ('cost drivers'), it was not able to do so for all of them, most notably, the complexity of applications.

Not all of the proposed fees are based on the outcomes of the Department's data collection exercise.

- The Department has adjusted fees where it considers that the costs measured did not accurately reflect costs in practice. This is the case, for example, in relation to subdivision permit applications. For these applications, the proposed fees are based on the number of lots, even though the Department notes that the data collected did not show that the number of lots affects costs. However, the Department accepted the advice received from some

Councils that a flat fee for subdivision permits would not recover costs for very large subdivisions, especially in growth areas, because they are more likely to require a more detailed examination of the effects of the subdivision against relevant decision guidelines.

- Some fees are set as a percentage of the value of works although the Department has not found evidence to show that the value of works is an appropriate proxy for costs incurred by Councils in providing the relevant planning service.

Given these data issues, the consultation process for this RIS will be especially important to seek views on the assumptions and judgements underlying the proposed fees.

The Department has committed to evaluating the proposed fees within five years as required by the *Victorian Guide to Regulation* in the case of high-impact proposals. This is particularly important given the significant revenue to be collected in the next five years by Councils, the limited information about the costs of some activities and the adjustments made to set some fees.

The Government's recently announced 'Smart Planning' initiative provides an important opportunity through which broader changes to the planning system can be considered. These could have consequential impacts on specific activities and their costs, and the level and structure of fees. Depending on the finalisation and timing of this initiative, the Department states in the RIS that it may need to undertake additional work in the meantime to enable the five-year review to be effective.

We look forward to assisting the Department to finalise the detailed evaluation strategy to ensure that the five-year evaluation provides a sound basis for future Government decisions on planning and subdivision fees.

It is government practice that this letter be published with the RIS when it is released for public consultation.

Should you wish to discuss any issue raised in this letter, or the implications of new information or policy options identified through the public consultation process for your proposal, please do not hesitate to contact me on (03) 9092 5800.

Yours sincerely



Anna Cronin

Commissioner for Better Regulation