



Victoria

No. 5 of 1988

Planning and Environment (Amendment) Act 1988

[Assented to 15 April 1988]

The Parliament of Victoria enacts as follows:

Purpose.

1. The purpose of this Act is to amend provisions of the *Planning and Environment Act 1987* relating to transitional arrangements and certain other matters.

Commencement.

2. (1) This Act, except sections 4 and 10, is deemed to have come into operation on 16 February 1988.

(2) Sections 4 and 10 come into operation on the day on which this Act receives the Royal Assent.

Principal Act.

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

No.45/1987.
Amended by
Nos. 59/1987
and 97/1987.

New section 26 substituted.**4. For section 26 of the Principal Act substitute—****Reports to be made public.**

“26. (1) The planning authority may make the panel’s report available at its office during office hours for any person to inspect free of charge at any time after the planning authority receives the report and must make it so available forthwith if—

- (a) the planning authority has decided whether or not to adopt the amendment; or
- (b) 28 days have elapsed since it received the panel’s report.

(2) A report made available for inspection under sub-section (1) must be kept available for inspection until the end of two months after the amendment comes into operation or lapses.”.

Minor amendments.**5. The Principal Act is amended as follows:**

- (a) In section 114 (1) for “sub-section (2)” substitute “sub-section (3)”;
- (b) In section 150 (5) for “sub-section (1)” substitute “sub-section (4)”;
- (c) In section 172 (3) for “*Land Acquisition and Compensation Act 1987*” substitute “*Land Acquisition and Compensation Act 1986*”.

Amendment of section 207.**6. In section 207 of the Principal Act, for sub-sections (2) and (3) substitute—**

“(2) All acts, matters and things of a continuing nature made, done or commenced under or in relation to a revoked scheme or order that could have been made, done or commenced under or in relation to the relevant new planning scheme as in force on the commencement of item 131 in the Schedule, are to be taken, so far as relates to any period after that commencement, to have been made, done or commenced under or in relation to the new planning scheme.

(3) On and from the commencement of item 131 in the Schedule—

- (a) all proceedings commenced by or against a responsible authority under or in relation to a revoked scheme or order may be continued by or against the responsible authority for the relevant new planning scheme; and
- (b) any arrangement, contract or agreement entered into by or on behalf of a responsible authority in relation to a revoked scheme or order that could be so entered into under this Act in relation to the relevant new planning scheme may be

enforced by or against the responsible authority for the new planning scheme; and

- (c) all rights and liabilities existing under or in relation to a revoked scheme or order immediately before that commencement continue under or in relation to the relevant new planning scheme, insofar as the new scheme contains provisions to the like effect as provisions of the revoked scheme or order, and may be enforced by or against—
- (i) the Minister, if they were rights and liabilities of or enforceable against the Minister immediately before that commencement; or
 - (ii) the Geelong Regional Commission, if they were rights and liabilities of or enforceable against the Geelong Regional Commission immediately before that commencement; or
 - (iii) a person or body that was liable to pay compensation under section 42 (5B) or section 43 (4) of the *Town and Country Planning Act* 1961 immediately before that commencement, in the case of that liability; or
 - (iv) the responsible authority for the new planning scheme, in any other case.

(4) A notice in force under section 44 of the *Town and Country Planning Act* 1961 before the commencement of item 131 in the Schedule in relation to a revoked scheme or order continues to have effect in relation to the relevant new planning scheme, insofar as the new scheme contains provisions to the like effect as provisions of the revoked scheme or order, as if it were an enforcement order made under Part 6 of this Act.”

Amendment of section 209.

7. (1) In section 209 (1) of the Principal Act after “come into operation” insert “and in accordance with the relevant planning scheme as in force at the date of the determination”.

(2) In section 209 (2) of the Principal Act for “this Act applies” substitute “this Act and the relevant planning scheme as in force for the time being apply”.

(3) After section 209 (2) of the Principal Act insert—

“(3) If, before the commencement of item 131 in the Schedule—

- (a) a responsible authority had determined an application for a permit made under the *Town and Country Planning Act* 1961; and

- (b) an appeal against the determination had not been lodged before that commencement and time for so lodging had not expired—

an appeal may be made to the Administrative Appeals Tribunal against that determination as if the application had been made under this Act and the date of the determination had been the date of commencement of item 131 in the Schedule.

(4) If—

- (a) a responsible authority had not determined an application for a permit made under the *Town and Country Planning Act 1961* before the commencement of item 131 in the Schedule; and
- (b) despite sub-section (1), the relevant responsible authority under this Act fails to determine the application in accordance with that Act after that commencement and; under that Act, the applicant for the permit could have appealed against that failure—

the applicant may appeal to the Administrative Appeals Tribunal against that failure as if the application had been made under this Act and, if such an appeal is lodged, the relevant responsible authority may decide on the application in accordance with and subject to section 84 as if it had been made under this Act.

(5) If an appeal is made under sub-section (3), (4) or (6) to the Administrative Appeals Tribunal, this Act and the relevant planning scheme as in force at the date of the determination by the Tribunal apply to the hearing and determination of the appeal.

(6) If—

- (a) before the commencement of item 131 in the Schedule, a responsible authority had refused an application for a permit made under the *Town and Country Planning Act 1961* or had imposed conditions on the grant of such a permit; and
- (b) an appeal against the refusal or the conditions had not been lodged under that Act before that commencement and had not been lodged under this section before the enactment of the *Planning and Environment (Amendment) Act 1988* and the time for so lodging expired on or after that commencement and before that enactment—

an appeal may be made to the Administrative Appeals Tribunal against that refusal or those conditions as if the application had been made under this Act and the date of the refusal or imposing of the conditions had been the date of commencement of item 131 in the Schedule.”.

Amendment of section 210.

8. (1) In section 210 (1) of the Principal Act, after “come into operation” insert “and in accordance with the relevant planning scheme as in force at the date of the determination”.

(2) In section 210 (2) of the Principal Act for “this Act applies” substitute “this Act and the relevant planning scheme as in force for the time being apply”.

Amendment of Schedule.

9. The Schedule to the Principal Act is amended as follows:

- (a) In item 22 for “(a) after “and paragraph (a) (ii)” insert— substitute “(a) after paragraph (a) (ii) insert—”;
- (b) In item 41 for “(5)” substitute “(4A)”;
- (c) In item 117 after “*Upper Yarra*” insert “*Valley*”.

Savings.

10. After section 210 of the Principal Act insert—

Savings for permits issued in accordance with revoked scheme or order.

“211. (1) If, on or after the commencement of item 131 in the Schedule and before the enactment of the *Planning and Environment (Amendment) Act 1988*, an application for a permit was determined—

- (a) in accordance with the *Town and Country Planning Act 1961*; and
- (b) a planning scheme or order in force before that commencement—

any permit issued as a result of such a determination that, if issued before that commencement, would have been a permit in force under the *Town and Country Planning Act 1961*—

- (c) continues in force under this Act; and
- (d) subject to section 208 (2) and (3), has the same effect and is subject to the same provisions as if it had been issued under this Act.

(2) Section 208 (2) and (3) has effect for the purposes of sub-section (1) as if a reference to the commencement of item 131 in the Schedule were a reference to the enactment of the *Planning and Environment (Amendment) Act 1988*.”

Savings for appeals determined in accordance with revoked scheme or order.

“212. If, on or after the commencement of item 131 in the Schedule and before the enactment of the *Planning and Environment (Amendment) Act 1988*, an appeal was determined by the Administrative Appeals Tribunal in accordance with the *Town and Country Planning Act 1961* and a planning scheme or order in force before that commencement, the determination, and any thing done as a result of the determination, is not invalid or ineffective by reason only that the

determination was made in accordance with a revoked scheme or order.”.

Planning schemes.

11. (1) Despite anything to the contrary in the Principal Act, any planning scheme prepared, adopted or approved or purporting to have been prepared, adopted or approved by the Minister on 16 February 1988 must be taken to have been duly prepared, adopted and approved in accordance with all of the requirements of the Principal Act and the regulations made under the Principal Act and to be valid and effective in all respects.

(2) A planning scheme referred to in sub-section (1) must not be called into question in any proceeding in any court or tribunal or in any proceeding by way of review under the Principal Act.

(3) A planning scheme referred to in sub-section (1) must be taken to have come into operation at the beginning of 16 February 1988.

(4) The following must not be called into question in any proceeding in any court or tribunal or in any proceeding by way of review under the Principal Act on the ground of any non-compliance or alleged non-compliance with the provisions of the Principal Act:

- (a) A planning scheme or order made or approved under the *Town and Country Planning Act* 1961 after the commencement of section 4 of the Principal Act and before 16 February 1988;
- (b) Any amendment approved after the commencement of section 4 of the Principal Act and before 16 February 1988 to a planning scheme or order;
- (c) Any determination made after the commencement of section 4 of the Principal Act and before 16 February 1988 under or in relation to a planning scheme or order.

(5) Nothing in this section precludes either House of the Parliament from exercising the power conferred on it by section 38 of the Principal Act.

NOTES

1. *Minister's second reading speech—*

Legislative Assembly: 22 March 1988

Legislative Council: 30 March 1988

2. The long title for the Bill for this Act was “A Bill to amend provisions of the *Planning and Environment Act* 1987 relating to transitional arrangements and certain other matters and for other purposes.”.