This version of **Regulatory Impact Statement – Planning and Environment (Fees) Regulations 2016 and Subdivision (Fees) Regulations 2016** has been prepared for use with screen reader software. The printed publication contains design features that have been necessarily omitted from this version. In other respects this document contains identical text to that in the PDF version of the document which is available at www.delwp.vic.gov.au/planning .

May 2016

Regulatory Impact Statement

Planning and Environment (Fees) Regulations 2016 and Subdivision (Fees) Regulations 2016

This Regulatory Impact Statement has been prepared in accordance with the requirements of the *Subordinate Legislation Act 1994* and the *Victorian Guide to Regulation*.

PLANNING AND ENVIRONMENT (FEES) REGULATIONS 2016 AND SUBDIVISION (FEES) REGULATIONS 2016

Regulatory Impact Statement

The Regulatory Impact Statement (RIS) process involves an assessment of regulatory proposals and allows members of the community to comment on proposed Regulations before they are finalised. Such public input provides valuable information and perspectives, and improves the overall quality of regulations.

This RIS has been prepared to facilitate public consultation on the proposed Planning and Environment (Fees) Regulations 2016 and Subdivision (Fees) Regulations 2016 (the proposed Regulations). The proposed amendments contain changes to the fees for a number of services provided by local councils and the Minister related to planning and subdivision. A copy of the proposed Regulations is available with this RIS.

Submissions are now invited on the proposed Regulations. Unless otherwise requested by the author, all submissions will be treated as public documents and may be made available to other parties.

Comments and submissions on the RIS and proposed Regulations should be received no later than **5pm on 24 June 2016**. The preferred method of receiving submissions is via an online form at:

http://www.dtpli.vic.gov.au/planning/about-planning/legislation-and-regulations/review-of-planning-and-subdivision-fees

Alternatively, submissions can be sent by hard copy and addressed to:

Director, Planning Systems
Department of Environment, Land, Water and Planning
PO Box 500
East Melbourne Vic 3008

Or emailed to: planning.systems@delwp.vic.gov.au

Abbreviations

the current Regulations – refers to both the Planning and Environment (Fees) Interim Regulations 2015 and the Subdivision (Fees) Interim Regulations 2015

the proposed Regulations – Planning and Environment (Fees) Regulations 2016 and the Subdivision (Fees) Regulations 2016

CBR – Commissioner for Better Regulation

CPI – Consumer Price Index

DELWP – Department of Environment, Land, Water and Planning

MCA – Multi-criteria Analysis

NCC – National Competition Council

PPARS – Planning Permit Activity Reporting System

PPV – Planning Panels Victoria

PV – Present Value

Premier's Guidelines – *Subordinate Legislation Act 1994 Guidelines*

RIS – Regulatory Impact Statement

Summary

SUMMARY OF REGULATORY IMPACT STATEMENT

Department of Environment, Land, Water and Planning

Planning and Environment (Fees) Regulations 2016 and the Subdivision (Fees) Regulations 2016

Has the CBR assessed the RIS as meeting the Victorian Guide to Regulation requirements? YES

Form of regulatory change proposed in this RIS

The establishment of new regulations

The amendment of existing regulations

The replacement of sunsetting regulations

<table>
<tr>
<th>The problem and objectives of the proposed intervention</th>
<th>Affected sector(s) of the public</th>
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<tr>
<td>The Planning and Environment Act 1987 and the Subdivision Act 1988 allow persons to apply to a local council (in most cases) 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
• obtain approval of a subdivision plan or a statement of compliance for a proposed subdivision.
Upon receiving an application, the authority must consider the application in line with processes that are set out in the relevant legislation. These services are provided primarily for the benefit of the person making the application. It is government policy that the costs of these services be recovered from those who directly benefit from the service.
Most of the planning fees currently in place were set in 2000 and have remained unchanged, or have been increased on an ad-hoc basis to account for changes in CPI (but were last increased in 2009/10). Further, the existing fees have not been reviewed in light of changes in the processes followed by council, such as the introduction of VicSmart in 2014.
A recent data collection and analysis study commissioned by the department identified that the actual cost to councils for providing these services was, in most cases, significantly higher than the current fees. While it is difficult to aggregate fees across all councils and across different types of fees, it is estimated that current fees only recover about 20-30 per cent of the actual costs to councils.</td>
<td>The proposed changes to the prescribed fees will directly affect any person making an application for a planning permit or an application for other planning or subdivision matters. The increases are significant in some cases, however the department considers they remain reasonable in relation to the benefit ultimately obtained by the person making the application.
The proposed fee changes will affect local councils by increasing their revenue to make a greater contribution towards the costs of providing these services.
Small business impact
While small businesses will be affected by the proposed changes, these effects will be the same as for other parties making a relevant application. There is not anticipated to be any special impacts that affect small business greater than other businesses.</td>
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Key regulatory changes	Costs and benefits
The proposed Regulations increase the fees that can be charged by local councils (or other responsible planning authorities) for the services provided under the legislation. The table on the following page summarises the proposed changes. A full list of the proposed fees is at Attachment A. The new fees will be converted to fee units and be subject to annual indexation according to the value of fee units set by the Treasurer under the *Monetary Units Act 2004*. The proposed new fees are aimed at recovering a greater percentage of costs from those making applications. However, some categories of fees have been set below the estimated costs, in order to achieve fairness or other policy objectives.	The proposed fee changes will impose additional costs on applicants for the relevant services. Depending on the matter, fees may increase significantly, although most will increase by much less, and some applications will see a reduction in fees. Total revenue collected from the proposed new fees is estimated to be around $80-90 million per annum, an increase of around $40 million from what would otherwise be collected. This increase is less than $600,000 per council per annum (on average). The proposed fees aim to allow local councils to provide planning services on a sustainable basis, removing pressure on councils to cross-subsidise or reduce service levels. A key benefit of the fee increases is to improve the efficiency of the fee system, by better recovering the costs of providing services from those that benefit from the service. The new fees therefore better support the operation of the planning framework.

Alternative options considered
The proposed fees were assessed against alternative options including different fee levels (ranging between the status quo and full cost recovery) as well as different fee structures (such as specifying different categories for which a different fee level may apply). These options were identified through the cost data collection exercise and consultation with councils. The specific alternative options varied according to each fee type.

Who was consulted	Position
Stakeholder Reference Group	The department convened a Stakeholder Reference Group to provide feedback on the data collection and analysis, and also to provide advice on the principles and options examined in this RIS. This Group included six councils, the Municipal Association of Victoria, Planning Institute of Australia, Property Council, Surveying and Spatial Sciences Institute and Association of Consulting Surveyors. In general, stakeholders supported the proposed fees, although in a few instances councils advocated for higher fees than those proposed (related to permits for subdivision, and the fee cap for consideration of engineering plans). These were included as options considered in this RIS. Non-council stakeholders on the reference group were also generally supportive of the proposed changes to fees.
Who was consulted	**Position**
Are regional areas specifically adversely affected?	The proposed fees will apply equally to all councils. Data from regional and rural councils were included in the analysis underpinning the setting of the new fees to ensure that the proposed fees were representative of all councils. However the impacts may vary from council to council depending on their individual cost structures, and it is not clear if this may have a different impact on regional areas.

Contact for enquiries	Any other queries related to the RIS can be directed to the Victorian Government Contact Centre on 1300 366 356 (local call cost), or by email to planning.systems@delwp.vic.gov.au

The proposed fee changes – summary

Fees	Current fee	Proposed fee (fee units)	Proposed fee amount	Percentage change
Planning permit applications Use only	$502	89	$1,241	147%
Planning permit applications Single dwelling	$0 to $490 (depending on value of works)	13.5 to 3894 (depending on value of works)	$188 to $54,282	Variable (depending on value of works)
Planning permit applications Development	$102 to $16,130 (depending on value of works)	77.5 to 3894 (depending on value of works)	$1,080 to $54,282	Variable (depending on value of works)
Planning permit applications Subdivision	$249 to $781 (depending on nature of change)	89 per 100 lots	$1,241 per 100 lots	Variable (depending on nature of change and number of lots)
Planning permit applications Permit application other than use, development or subdivision	–	89	$1,241	New fee category
VicSmart	(Fee charged as standard permit fee)	13.5 (for works between zero and $10,000) 29 (for works over $10,000)	$188 or $404	New fee category
Amend an application after notice but before decision	$102	–	40% of fee applicable to the original permit class plus the difference in fees if the amendment moves the application into a different class	Variable
Amend an application for an amendment to a permit	$102	–	40% of fee applicable to the original permit class plus the difference in fees if the amendment moves the application into a different class	Variable

Fees	Current fee	Proposed fee (fee units)	Proposed fee amount	Percentage change
Amend an existing planning permit	$102 to $815 (depending on type of permit and value)	–	75% of fee applicable to the original permit class plus the difference in fees if the amendment moves the permit into a different class	Variable
Amend a planning scheme	$2,918	1292 to 2998 (depending on number of submissions)	$18,010 to $41,792	500% to 1330%
Planning scheme under section 20(4) of the Planning and Environment Act	$2,918	270	$3,764	29%
Planning scheme amendment under s. 20A	$2,918	65	$906	-69%
Issue a certification of compliance (planning permit)	$147	22	$307	108%
Issue a planning certificate	$18.20	1.5	21	15%
Satisfaction matter	$102	22	$307	200%
Amend or end a s.173 agreement	–	44.5	$620	New fee category
Certify a subdivision plan	$100 + $20 per lot	9.5	$132	Variable
Amend an application to certify a subdivision plan	–	7.5	$105	New fee category
Request to amend a certified subdivision plan	–	9.5	$132	New fee category
Statement of Compliance (subdivision)	–	2.3	$32	New fee category

Fees	Current fee	Proposed fee (fee units)	Proposed fee amount	Percentage change
Consider engineering plans	Cap of 0.75% of works	–	Cap of 0.75% of works	No change
Prepare engineering plans	Cap of 3.5% of works	–	Cap of 3.5% of works	No change
Supervision of works	Cap of 2.5% of works	–	Cap of 2.5% of works	No change

Note: In the proposed Regulations, fees will be expressed in fee units in accordance with the *Monetary Units Act 2004.* As the underlying costs of the services were measured in 2015-16, the current value of a fee unit ($13.60) was used to determine the corresponding number of fee units in the proposed Regulations. However, by the time the proposed Regulations commence, the value of a fee unit will be $13.94, reflecting the indexation of fees in line with the annual rate determined by the Treasurer (2.5 per cent for the coming financial year). The table below shows the fee units as contained in the proposed in the Regulations, and the equivalent value of those fees at the time the Regulations commence in October 2016. The percentage increases in the last column therefore also incorporate the 2.5 per cent increase due to automatic indexation for the next financial year.

A complete list of all proposed fees is set out at Attachment A.

The new fees will apply from the time the new Regulations commence (expected October 2016). For applications that have already commenced prior to the commencement of the new Regulations but require a further fee during the process (for example with planning scheme amendments), the further fee will be charged according to the new fees.

It is proposed that fees for planning scheme amendments and planning permits for development over $50 million will be 50 per cent of the specified fee for one year after commencement of the Regulations to help mitigate the impact of those fees with the highest fee increase. For the first 12 months this lower fee will only apply to fees paid within that period. Where an application is already commenced and a further fee is payable, the further fee will be charged at the full amount if it occurs after the 12 month period.

The following table provides some examples of how the fee changes would apply in particular circumstances.

Scenario	Current fee	Proposed new fee	% change
Alex requires a permit that relates only to the use of a building	$502	$1,241	147%
Blair and Courtney want to construct a front fence in a residential zone (single dwelling) at a cost of $5,000	$0	$188	New fee requirement
Dale wants to build a new garage which is ancillary to his single dwelling property, at a cost of $55,000	$239	$592	148%
Eden wants to extend his corner shop at an estimated cost of $2 million	$1,153	$3,213	179%

Scenario	Current fee	Proposed new fee	% change
Finn applies for a permit for works of $5 million for a commercial development. The council receives the application and provides notice of the application. After notice has been given but before a decision has been made, Finn decides to change the works allowed under the permit, to increase the density of the development so the total estimated amount of works now equate to $10 million	$1,153 + $102 = $1,255	$3,213 + $6,268 = $9,481	655%
Scenario	**Current fee**	**Proposed new fee**	**% change**
Gale has previously been granted a permit for works of $4 million. Gale now wants to amend the existing permit to allow works of $14 million	$815 (original permit $1,153) (if original permit was for $14 million, fee would have been $8,064)	$7,393 (original permit $3,213) (if original permit was for $14 million, fee would be $8,196)	807%
Scenario	**Current fee**	**Proposed new fee**	**% change**
Harper wants to amend a VicSmart permit to change the configuration of a driveway	$502	$141	-72%
Scenario	**Current fee**	**Proposed new fee**	**% change**
Indiana wants to amend an application for a new home, that is valued at about $1 million	$239	$524	119%
Scenario	**Current fee**	**Proposed new fee**	**% change**
Jordan wants a permit to subdivide a property with an approved development plan into two lots	$386	$188	-51%
Scenario	**Current fee**	**Proposed new fee**	**% change**
Kim wants to subdivide a large piece of land into 50 lots, that involves a planning permit, a subdivision plan and a statement of compliance	Planning permit $781 Subdivision plan $1,100 Statement of compliance $0 Total $1,881	Planning permit $1241 Subdivision plan $132 Statement of compliance $32 Total $1,405	-25%

Key Issues in determining proposed fees

The objective of the proposed Regulations is to prescribe fees (that are required in the legislation to be set by the government) to recover an appropriate amount of the costs of providing planning and subdivision services.

The scope of this RIS and the proposed Regulations deal only with the setting of fees. The requirement to obtain a permit (or other approval or document) is contained in legislation or in planning schemes, and it is not possible for the regulations to alter these requirements.

Guiding Principles

The Government's Cost Recovery Guidelines do not apply to local government charges. However, as the setting of fees occurs within the existing planning framework that is set by the government, and some of the fees are collected by the Minister, the department has identified the following guiding principles, which reflect the Cost Recovery Guidelines, in considering the approach to setting fees:

- fees charged for the planning and subdivision functions of municipal councils should support Victoria's planning objectives

- fees should be set to encourage the optimal use of the planning and subdivision functions of municipal councils
- fees should not over-recover costs and fees are to be based on efficient cost
- fees should be equitable
- fees should be simple to understand and administer.

The implications of these guiding principles are explained in Attachment B and discussed later in this RIS in order to inform the design of the proposed fees and determine the assessment criteria used to compare alternative fee options.

Setting of fee amounts

The setting of the proposed fees was informed by collecting data from a sample of councils and the department on the time (and other costs) spent on processing various applications. This data was used to estimate average costs across the sample councils, and to estimate how the average costs varied if various factors that affect costs ('cost drivers') were taken into account.

The inclusion of various cost drivers was an attempt to distinguish between different applications as to the time and cost to councils of considering them and in doing so to create a like-for-like assessment. In practice, each individual application will be different in terms of matters to be considered and complexity of making a decision. As it is not possible to know in advance the exact time and effort that an application will require, the cost drivers tested in the data analysis sought to approximate the average level of complexity involved in different types or classes of applications.

With any data sampling and analysis, there are limitations to how useful and accurate the results are. In this case, the data was collected from 15 councils over a four-week period. While the department considers that the results of the data analysis are generally robust, there are a number of areas where the data may not provide a complete picture of council costs. The costs involved with considering permits for subdivisions is a key area where the data collected may not have captured the cost to councils for larger-scale subdivisions. The data collected for costs of amending planning schemes was also subject to wide variability between councils.

Further information about the data collection and analysis is contained in Attachment C.

While the data collection activity provided results for most of the fees covered by the proposed Regulations, there were a number of costs that were not directly measured. These included amendments to applications, planning scheme amendments where special provisions apply (e.g. exemptions from notice), and amending or ending agreements made under s. 173 of the Planning and Environment Act. For these fees, the department has used policy judgment to propose a fee, in consultation with councils. These are noted in this RIS and will be given additional scrutiny in the implementation and evaluation stages outlined in this RIS.

The Victorian Government's policy is that fees should be set to recover the full cost of providing a service, unless there are policy objective reasons to depart from full cost recovery. Most of the fees in the proposed Regulations are set to recover the full estimated costs. There are a number of fees that are set at less than full cost recovery—these are fees for permits related to developments of single dwellings less than $2 million, permits for other developments less than $100,000, and VicSmart permits less than $10,000.

A reduced fee (less than full cost recovery) is considered appropriate for these lower value permit categories because:

- a large proportion of permits in these categories likely reflects building and work carried out by home owners and small business owners which has historically been supported and recognised through special policy treatment. The department believes this remains an appropriate consideration
- where the value of works is small, a high fee relative to the value of works raises concerns in the areas of ability to pay (equity), risk of deterring otherwise useful economic activity, and potential for non-compliance (undertaking small-scale works without a permit). This is different from non-compliance or deterrence caused by the presence of the planning requirements themselves (which are beyond the scope of this RIS). To date, the department has no specific evidence that the fees themselves are causing any non-compliance or deterrence, however the department believes this is a relevant consideration where fees are proposed to be increased significantly above their current levels.

Overall level of cost recovery

While the prevailing purpose of the increases to (most of) the fees is to improve the level of cost recovery from applicants, the proposed fees do not achieve full cost recovery in all fee areas. Less than full cost recovery is proposed for planning permits, reflecting the consideration of guiding principles related to equity and the potential for some fee increases to affect compliance. Specifically, the fees for VicSmart permits for works up to $10,000, permits related to single dwelling for works up to $2 million, and for other developments up to $100,000, have been set below full cost recovery. All other fees are set to recover the full cost to the council of providing the service (on average across the state).

Fee revenue impact on growth area councils

During pre-RIS consultation, some growth area councils expressed concerns that the proposed lower fee to certify a subdivision plan would have more of an effect upon their fee revenue compared to other councils. It was apparent that some growth area councils may in fact receive lower fee revenue from the subdivisions category, but the overall increase in other fees should more than offset this lower amount. This was tested with an outer-metropolitan growth area council.

In the case of the outer-metropolitan growth area council, fee revenue under the current fees for subdivisions was around $120,000 (1 July 2015 to April 2016) ($100 flat fee plus $20 per lot). Under the proposed subdivision fees, fee revenue would amount to around $40,000 (averaging $155 per lot) – a difference of $80,000.

However, for the same council, the proposed changes to the planning fees (currently $781, proposed to increase to $1,213 per 100 lots) and changes to how satisfaction matters are calculated ($300 per item), will raise almost $400,000. By contrast, current fees for these items would raise around $60,000.

It is clear that, for councils with a high level of subdivisions, increases in other fees (such as subdivision permits) more than offsets lower revenue from the proposed fee to certify a subdivision plan.

Evaluation of the new fees

The proposed Regulations are scheduled to sunset in 2026, creating a need to review the fees in a future regulatory impact statement. However, under the *Victorian Guide to Regulation*, an evaluation must be conducted within five years, given the magnitude of the fees imposed. The Department of Environment, Land, Water and Planning will be responsible for undertaking this evaluation by October 2021.

The nature and scope of this evaluation will be significantly informed by the 'Smart Planning' initiative (announced in the 2016-17 Budget) and the need to fill gaps in data used to set specific fees. The government recently announced a $25.5 million 'Smart Planning' initiative, which aims to streamline the planning system by delivering an integrated program of reforms. The program will cover a number of areas, and the first two stages will be delivered over the next two years. Part of this initiative will change the way in which the department monitors and evaluates the new fees.

The department is committed to working with councils across Victoria to better understand the new costs of planning activities and to help identify information gaps. For example, the department will ensure that any changes to the system will enable information to be collected based on the fee categories in these Regulations.

As well as the opportunity to improve data collection offered by the Smart Planning initiative, the department will collect information from sample councils on efficient costs. This will facilitate the evaluation of the proposed fees. In this regard, the department has decided to undertake a time-capture study, similar to the one undertaken for this RIS, of the planning and subdivision functions delivered by councils. This study will be designed to ensure that the costs of all substantial planning and subdivision processes can be identified and measured more accurately.

Prior to the five-year evaluation, the department will monitor and analyse the following:

- Planning permit data for at least the first 2-3 years (until the new data reporting system is implemented under the Smart Planning initiative), with particular focus on the categories with new fees. The department will seek views from councils, the development industry and other stakeholders to gauge what impacts the new fees are having, and to seek views on implementation, compliance and fees. This engagement will occur in partnership with the Municipal Association of Victoria and the current membership of the Stakeholder Reference Group to ensure that views of all stakeholders are considered.

- Data reported through the local government performance reporting framework (published on the KnowYourCouncil website), which includes time taken for planning decisions, average service costs, percentage of applications decided within 60 days, and the proportion of decisions upheld at VCAT.

In addition to working with councils, the department will address gaps in the data used to set current fees through a range of other means. As noted elsewhere in this RIS, there are a number of fees that were not directly estimated, or for which the department considered estimates were not sufficiently robust, and for which the department has drawn on other anecdotal information or judgements to set fees. These include those for amendments to applications, planning scheme amendments where special provisions apply (e.g. exemptions from notice), amending or ending agreements made under s. 173 of the Planning and Environment Act, and fees that are based on the value of works.

As part of the evaluation of the fees, the department will undertake specific work to address these gaps.

Input from stakeholders

A primary function of the RIS process is to allow the public to comment on the proposed Regulations before they are finalised. Public input provides valuable information and perspectives and improves the overall quality of regulations. Accordingly, feedback on the proposed Regulations is welcomed and encouraged.

Stakeholders may wish to comment on the following questions and provide reasons for the responses given:

1. The proposed fees seek to recover the full cost to councils (on average), however fees for permits related to single dwellings and low value developments are set below the full cost recovery level. Is it reasonable to apply discounts for these applications? Is the size of the proposed discount appropriate? Are the development value thresholds at which they are proposed appropriate? Please explain your views.

2. The proposed fees for applications for subdivision permits introduce a fee based on the number of lots to be created. As the data collected on subdivisions had only a small number of applications for permits with more than 100 lots, the department has relied on the advice of councils from the stakeholder reference group to propose a fee for 100 lot increments. Is this reasonable? Please explain your views.

3. In recognition that VicSmart offers a streamlined permit decision process, the proposed planning regulations include new fee categories for VicSmart applications. These are for VicSmart permits:

    - for use or development up to $10,000 in value, including non-monetary value applications. This fee category is set at around 50 per cent of the actual cost to councils; and

    - for developments over $10,000 for which the fee is set to recover the full cost.

    Bearing in mind that currently VicSmart permits only relate to low impact application, including minor building or works of up to $50,000, as well as some small subdivision matters, are these categories appropriate?

4. The proposed fee for each satisfaction matter is $300. What impact would this have if there are a large number of satisfaction matters (e.g. conditions on a permit) or the same matter is considered at different stages of the development? Please explain your views.

5. Under regulation 8 of the Subdivision (Fees) Interim Regulations 2015 (fee for supervision of works), a council or referral authority may charge a fee of up to 2.5 per cent of the estimated cost of constructing the works when they supervise the construction of works. Is the level of this fee appropriate? Is it likely to over-recover costs? Please explain your views.

6. The proposed Regulations retain the current approach to fee waivers and rebates; that is councils may only provide waivers or rebates in limited, defined circumstances and will not have a general discretion to charge a lower fee. Where the department believes there is a basis for some fee categories to be set at less than full cost recovery to reflect considerations of ability to pay, these are included within the proposed fee schedules, rather than in the ability of councils to reduce fees, to ensure that the approach to affordability is applied consistently across the state. Do you agree with the approach?

The consultation period for this RIS will be 28 days, with written comments required by **5pm on 24th June 2016**. See the DELWP website for details on how to make a submission at:

http://www.dtpli.vic.gov.au/planning/about-planning/legislation-and-regulations/review-of-planning-and-subdivision-fees or www.delwp.vic.gov.au/planning-and-subdivision-fees-review

1. Purpose and scope

1.1 Purpose of this Regulatory Impact Statement

This Regulatory Impact Statement (RIS) formally assesses the proposed Planning and Environment (Fees) Regulations 2016 and the proposed Subdivision (Fees) Regulations 2016 against the requirements in the *Subordinate Legislation Act 1994* and the Victorian Guide to Regulation. A RIS is required under the Subordinate Legislation Act when there is likely to be a significant burden imposed by the proposed Regulations.

The proposed Regulations deal with fees for services provided by local councils and the Minister in relation to planning and subdivision.

As required by the Subordinate Legislation Act, this RIS:

- outlines the objectives of the proposed Regulations
- explains the effects of the proposed Regulations on various stakeholders
- assesses the costs and benefits of the proposed Regulations and other practical means of achieving the same objectives.

A primary function of the RIS process is to allow the public to comment on the proposed Regulations before they are finalised. Public input provides valuable information and perspectives and improves the overall quality of regulations. Accordingly, feedback on the proposed Regulations is welcomed and encouraged.

1.2 Scope

The scope of this RIS and the proposed Regulations deal only with the setting of fees. The requirement to obtain a permit (or other approval or document) is contained in legislation or in planning schemes; it is not possible for the proposed Regulations to alter these requirements.

Rather than allowing local councils to set their own fees for these services, the proposed Regulations prescribe fees that are required by legislation to be set by the government.

Fee options that require legislative amendment are considered out of scope of the timeframes in which this RIS has been prepared. Therefore, any options that are not within the regulation-making powers of the Planning and Environment Act or the Subdivision Act (see 2.6 'The need to set council fees in government regulations' below) have not been considered as part of this RIS.

Identifying the need for regulation

2.1 Legislative framework

Planning and Environment Act

The *Planning and Environment Act 1987* establishes a framework for planning the use, development and protection of land in Victoria in the present and long-term interests of all Victorians. The objectives of planning in Victoria are to provide for the fair, orderly, economic and sustainable use, and development of land.

Relevant to the proposed fees, the Act establishes a comprehensive planning framework to:

- establish a system of planning schemes based on municipal districts to be the principal way of setting out objectives, policies and controls for the use, development and protection of land
- facilitate development which achieves the objectives of planning in Victoria and planning objectives set out in planning schemes
- encourage the achievement of planning objectives through positive actions by responsible authorities and planning authorities

- establish a clear procedure for amending planning schemes, with appropriate public participation in decision making.

Subdivision Act

Relevant to the proposed fees, the *Subdivision Act 1988* sets a framework for:

- the subdivision and consolidation of land, including buildings and airspace; and
- for the creation, variation or removal of easements or restrictions.

2.2 Planning processes

Planning schemes

Planning schemes set out policies and provisions for use, development and protection of land. Each local government area in Victoria is covered by a planning scheme, which consist of:

- maps, which show how the land is zoned and overlays affecting the land
- an ordinance, which sets out the written requirements of a scheme, including local policies and the types of use or development which needs a permit
- incorporated documents – such as the Code of Practice for Private Tennis Court Development.

Sometimes, local areas have special planning controls (known as overlays), such as areas of significant vegetation or special heritage significance. These controls are in addition to the zone controls and ensure that important aspects of the land are recognised.

Planning schemes are legal documents prepared by the local council (or the Minister for Planning), and approved by the Minister. Planning schemes can apply to all private and public land in Victoria. A planning scheme is generally binding on all people and corporations, on every Minister, government department, public authority and local council.

The administration and enforcement of a planning scheme is the duty of a responsible authority (which includes the consideration and issuing of a planning permit). In most cases this will be a local council, but it can be the Minister administering the Planning and Environment Act or any other Minister or public authority specified in the scheme.

Changes to a planning scheme are undertaken by a planning authority, which in most cases will be the local council but it may also be the Minister for Planning. Councils can decide to amend a planning scheme to achieve a desirable planning outcome or to support a new policy direction. The process for changing a planning scheme must be followed exactly and involve anyone who may have an interest in or be affected by the amendment.

Planning permits

Each planning scheme sets out circumstances for which a person is required to obtain a permit for a use or development of land within the scheme.

A planning permit is a legal document that gives permission for a use or development on a particular piece of land. A permit may be subject to a time limit or expire under specified circumstances, however the permit is generally considered to be active for the duration of what is permitted under the permit i.e. the use and/or development. The responsible authority (usually the local council) may impose conditions when granting a permit.

Some of the most common reasons people require a planning permit are for:

- constructing or altering a building
- starting a new use on land (particularly where it may create a demand for car parks)
- displaying a sign
- subdividing land
- clearing native vegetation from land.

A section 173 agreement is an agreement between a council and a landowner which limits the uses and activities that may be undertaken on a property. It is usually entered as a condition to the granting of a planning permit.

Subdivision

Subdivision involves dividing a property into two or more smaller lots that can be sold separately. Consolidation is the joining of two or more lots together to make a larger lot.

There are four main stages in the subdivision process:

1. **Obtain a planning permit for the subdivision** – provides in-principle approval of the plan of subdivision under the Planning and Environment Act and the council's planning scheme. A planning permit must be applied for through council (or in some cases the Minister) and will undergo an assessment process that may involve referrals to servicing authorities and notification to affected properties.

2. **Obtain a certified plan of subdivision** – approves the plan of subdivision under the Subdivision Act. The certification of a plan of subdivision is an administrative step to ensure the plan of subdivision is satisfactory. The Plan of Subdivision for Certification is referred to the servicing authorities whoTick whether easements are required.

3. **Obtain a Statement of Compliance** – this is the final approval letter stating that all requirements have been met. A Statement of Compliance is the document that concludes the subdivision process, although under certain circumstances it may not be required. Once the letter is issued, the subdivision is registered at the Titles Office and a new Title is released by the Titles Office. A Statement of Compliance will not be issued until all conditions of the planning permit have been met.

4. **Lodgement of the certified plan of subdivision at Land Victoria** – allows new titles to be issued for each lot created.

A council or a referral authority may require an applicant to submit an engineering plan including specifications for works required under the planning scheme or permit. Any person who constructs works must comply with the certified plan, the approved engineering plan, and the standards specified in the planning scheme or the permit. To ensure this occurs, a council may appoint a person to supervise the construction of works.

2.3 The need for planning and subdivision services

The legislation specifically requires councils (and the Minister) to do certain things when applications are received. These are outlined in the following table.

Application	Services provided
Planning permit	Once received, councils (or the Minister) must consider the application against the planning scheme, other requirements and conditions, and seek comment from referral authorities as required. Council (or the Minister) must also consider objections to applications. See Part 4 of the Planning and Environment Act. Since 2014, a new category of permits has been established—VicSmart—which provides for a streamlined decision process (decision within 10 business days), with some of the usual required steps specifically excluded, such as providing notice and advertising of applications.

<table>
<tr><td>Application

Planning scheme amendment</td><td>Services provided

Changes to a planning scheme are known as amendments; the process for an amendment to a planning scheme is set out in the Act. An amendment may involve a change to a planning scheme map (such as a rezoning), a change to the written part of the scheme, or both (although it is up to the council to determine how a change will be reflected in the scheme documents).

Anyone can ask a planning authority to prepare an amendment. In agreeing to progress it a council (or the Minister) will have to determine if the amendment has merit and is consistent with the future strategic directions for the municipality. The department's Planning Practice Note 46 – Strategic Assessment Guidelines for Planning Scheme Amendments (June 2015) sets out the matters that council (and/or the Minister) should consider before amending its planning scheme.

The basic tasks involved in receiving a request to amend a planning scheme are:
• receive the request
• assess whether the proposal has merit
• provide notice and exhibit the proposed amendment
• receive submissions on the proposed amendment
• consider all submissions received
• for submissions which seek to change an amendment, either change the amendment, abandon the amendment, or refer to an independent panel
• consider a panel report (if received)
• determine whether to adopt the amendment with or without changes
• seek approval from the Minister for the amendment.

There is also a role for the department to facilitate and support the Minister considering a request to approve the amendment, and to give notice of approval (gazettal).</td></tr>
<tr><td>Application

Subdivision</td><td>Services provided

The subdivision or consolidation of land, or the creation, variation or removal of an easement or restriction, or the creation of common property, or any dealing with common property, must be done in accordance with the Subdivision Act. Plans under the Act include plans for subdivision, consolidation, and creation/variation of easements/restrictions.

A council must certify a plan if:
• it complies with the Act, the regulations, and requirements of the planning scheme and any permit that relates to the boundaries of roads, lots, common property and reserves and the form and content of the plan
• it is, or will be, under the Transfer of Land Act 1958
• every referral authority has given consent and alterations required by referral authorities have been made
• alterations required by the council have been made
• where the only access to a lot is over Crown land, either a road has been reserved or proclaimed or the Minister administering the Land Act 1958 has consented in writing to the use of the land for access; and (if applicable) the plan is accompanied by a copy of the unanimous resolution of the owners corporation or the order of the Victorian Civil and Administrative Tribunal (VCAT)
• where a plan removes or varies a restriction, the removal or variation is in accordance with the planning scheme or a permit; or the Registrar has declared that the restriction has been released modified or varied
• where a plan removes or varies the whole or part of an easement, the removal or variation is in accordance with the planning scheme or a permit; or the Registrar has declared that the easement has been abandoned or extinguished; or the easement was set aside for the purpose of a council, public authority or other person which has requested or consented to the removal or variation; or all parties interested in the easement or the part of it have agreed to the removal or variation; or VCAT has given leave under section 36 to remove the easement and, if leave is given subject to conditions relating to the plan, those conditions have been met.

If the conditions are not met, the council must refuse to certify the plan and give its reasons in writing to the applicant within the prescribed time.

Councils need to perform a range of activities to determine whether the conditions for certification have been met.</td></tr>
</table>

Application	Services provided
Consideration to amend or end a section 173 agreement	Steps for consideration of a request to amend or end an agreement include: registration of application, preparation of file, and an assessment and preparation of an initial report to establish whether to grant in-principle support to amend or end the agreement.

2.4 The need to recover costs for services

Cost recovery principles

This RIS concerns setting fees for the services outlined above. Cost-recovery is the recuperation of the costs of government-provided or funded products, services or activities that, at least in part, provide private benefits to individuals, entities or groups, or reflect the costs imposed by their actions. Cost recovery is a method of recovering all or some of the cost of particular activities undertaken by government agencies from individuals or businesses, based on the beneficiary pays* or impactor pays** principles. The concept 'user pays' will be used in this RIS to capture both situations.

* Those who benefit from the provision of a particular good or service should pay for it (Productivity Commission, 2001, p. XXI).

** This is where impactors meet the full costs of their actions, based on the view that those who create the need for a service should incur these costs.

The task of setting cost recovery fees/charges involves identifying the relevant costs and determining whether to recover costs from users or others who benefit, those whose actions give rise to it, or taxpayers (in this case ratepayers) more generally. Whether costs should be user pays or more generally funded by taxpayers will depend on the type of activity and the existence of any public benefits.

The Victorian Government's Cost Recovery Guidelines do not apply to local government charges***, however have been used as relevant guidance in this RIS given the role of the state government in regulating the processes and fees for local councils, and also because some of the fees will apply when the Minister is the responsible planning authority.

***Government of Victoria, 2013, Cost Recovery Guidelines, Department of Treasury and Finance, Melbourne.

As stated in the Cost Recovery Guidelines, Victorian Government policy is that regulatory fees and user charges should generally be set on a full cost-recovery basis. However, if it is determined that full cost-recovery is not consistent with other policy objectives of the government, it may not be appropriate to introduce a full cost recovery regime.

When designed and implemented appropriately, the adoption of cost-recovery has the potential to advance efficiency and equity objectives. However, the Guidelines note that "efficiency and equity considerations may need to be balanced against each other in determining the appropriate form of cost-recovery"****. In this context Victoria's planning objectives are a significant consideration.

****Cost Recovery Guidelines, 2013, page 7.

In designing cost recovery arrangements the Cost Recovery Guidelines advise that cost recovery arrangements should:

- advance the objectives of efficiency, equity and fiscal sustainability
- recover costs directly from those that benefit from the service
- be cost effective and practical in administration of fees
- avoid volatility
- be easy to understand
- be decided in consultation with relevant parties

- be transparent
- be monitored and reviewed regularly.

Cost recovery in the context of planning and subdivision fees

Councils and the Minister for Planning (the Minister) have responsibilities under the *Planning and Environment Act 1987* (PE Act) and *Subdivision Act 1988* (Subdivision Act). Responsibilities include carrying out statutory functions, for example, processing permit applications, issuing planning certificates, amending planning schemes, and certifying plans of subdivision. When the need to carry out a statutory function is instigated by someone other than the council or the Minister, a statutory service is provided and the cost of providing that service may be recovered by charging a fee.

If the planning and subdivision fee regulations were not remade it is unlikely that councils and the Minister would be able to charge fees for activities outlined above. Councils and the Minister would be unlikely to charge fees because the governing legislation requires fees to be set by the government for these services. Councils do not receive any specific funding for planning and subdivision services from the Victorian Government. The costs of these services are expected to be borne by fees and other sources of revenue such as rates.

Councils report that, given their low amounts, the current fees on the whole do not provide any material barrier to persons making an application; but in the absence of fees more local businesses or residents may apply to council for services such as planning scheme amendments. Therefore in the absence of fees there may be some, but perhaps not a large increase in the number of planning scheme applications. However, it should be noted that applications for planning scheme amendments are a high cost, low volume activity for most councils, therefore any increase in applications could substantially increase costs for most councils.

Planning and subdivision services will still need to be provided by councils and the Minister (as required in the relevant legislation, and also to ensure council's planning objectives can be met). Therefore, if there was no ability for councils to charge fees for planning and subdivision functions, they would have to meet the costs of these services by increasing other sources of revenue (which is difficult to do on this scale), or decrease the level of other services provided by councils.

While the overall planning framework is designed for the benefit of the whole community, and in that context council decisions on planning permits, amendments to planning schemes and subdivisions are made with the best interests of the community in mind, those making applications under either Act are seeking a private benefit and, in so doing, giving rise to the need for the applications to be assessed. It is because of these private interests that councils must consider the merits of the various planning and subdivision related applications. This justifies requiring applicants to pay for the costs of having their applications considered, notwithstanding that the decision is ultimately made for the benefit of the community.

It is also efficient in economic terms that a person faces the full cost of an action (including costs to the community) when they decide on that action. In this context, the department considers that a person making an application to council should face the full costs of having their application considered.

It is government policy to enable councils to charge fees for these services (and indeed to require councils to charge for these services to align with cost recovery principles). In setting fees there are additional issues that need to be considered such as ensuring that:

- fees provide sufficient funds for councils to provide an efficient service, while avoiding both over-recovery of costs and cross-subsidisation from other council activities
- fees provide an incentive for applicants to submit sound applications that:
  - are based on the true value of the proposed work
  - do not encourage avoidance of councils' planning and subdivision requirements
  - are not frivolous or vexatious.

There has historically been an ability for councils to waive or rebate some fees in limited circumstances. These waivers are not used for reasons of affordability or ability to pay, but in situations where the nature of the consideration does not warrant the charging of the usual fee—for example where the consideration is minor or, in the case of planning scheme amendments, there is a substantial public benefit (for example, if the amendment is to substantially assist in the implementation of state, regional or local policy).

Although this power could be adapted to be used to address concerns about ability to pay, the department considers that leaving such a decision to individual councils may undermine achieving cost recovery objectives and provide for inconsistent approaches across the state. While the current matters for which waivers are possible (e.g. public benefit in relation to a planning scheme amendment) are suitable for consideration by each council, the department believes that the approach to reducing fees based on consideration of ability to pay should be consistent across the state. There would also be a further burden on councils to determine ability to pay for each applicant. For these reasons the proposed Regulations continue the existing arrangements by setting out the limited circumstances in which fee waivers or rebates are to be considered.

The current Regulations require that where a waiver or rebate is provided, the matters taken into account that form the basis of the decision to waive or rebate the fee must be recorded in writing. The Regulations do not specify any particular form of this documentation or storage/retention requirements, however local councils must retain all records in line with the *Public Records Act 1973*. It is proposed to retain this requirement in the new Regulations.

Question for stakeholders

The proposed Regulations retain the current approach to fee waivers and rebates; that is, councils may only provide waivers or rebates in limited, defined circumstances and will not have a general discretion to charge a lower fee. Where the department believes there is a basis for some fee categories to be set at less than full cost recovery to reflect considerations of ability to pay, these are included within the proposed fee schedules, rather than in the ability of councils to reduce fees, to ensure that the approach to affordability is applied consistently across the state. Do you agree with the approach?

2.5 The extent of the cost of services

In late 2015, the department commissioned a data collection and analysis report to measure the costs to councils and the Minister of providing each of the services outlined above. The results of this are set out in the report attached to this RIS (Attachment C), and are described later in this RIS for each type of service.

While it is difficult to aggregate fees across all councils and across different types of fees, the department estimates that current fees only recover about 20-30 per cent of the actual costs to councils, although this is likely to differ across councils.

Consolidated aggregate data is only available for fees for planning permit applications. In 2014-15, total fee revenue for planning permits was around $34 million. Based on the findings from the data analysis, the actual cost to councils of providing these services would have been in the order of $100 million. While this is high in total, it amounts to less than $1.3 million on average for each local council. However, the nature of the data analysis meant that the true cost is likely to be less than this; for example the data analysis did not separately measure the costs of VicSmart permits, which will have a lower cost to councils.

Planning permits represent the largest cost to councils of the activities covered in this RIS. Amendments to planning schemes, while individually costly, occur less frequently. Based on the data analysis, the total cost to councils of processing amendments to planning schemes is between $5 and $10 million per annum, of which currently less than $1 million is charged in fees.

There is no aggregated data available on the extent of the other activities. It is noted that for these fees, the data analysis found that costs were generally close to the current fee amount, or were in some cases lower than the current fee.

2.6 The need to set council fees in government regulations

In general, councils may set their own fees for the services they provide (pursuant to the *Local Government Act 1989*, section 130. However, for the services outlined above, the Planning and Environment Act and the Subdivision Act specify that fees for these services will be set in government regulations. The table below sets out the fees to be prescribed in the Regulations:

Application	Legislative basis for setting fee
Planning and Environment Act Planning permits	Section 47(1)(b) requires the fee for planning permit applications to be prescribed in regulations in order for a fee to be charged. Similarly, sections 57A(3)(a) and 96A(4)(a) (respectively), require fees for an amendment to a permit application after notice and a combined permit and planning scheme to be set in regulations.

Application **Planning and Environment Act** Planning schemes	**Legislative basis for setting fee** Section 203 enables regulations to set the fees related to consideration of amendments to planning schemes.
Application **Planning and Environment Act** Certificate of compliance	**Legislative basis for setting fee** Section 97N(2) requires the fee to be prescribed in regulations.
Application **Planning and Environment Act** Planning certificate	**Legislative basis for setting fee** Section 198(2) requires the fee for a planning certificate to be prescribed in regulations.
Application **Planning and Environment Act** Satisfaction matters	**Legislative basis for setting fee** Section 203 provides for regulations to set the fee for satisfaction matters.
Application **Planning and Environment Act** Section 173 agreements	**Legislative basis for setting fee** Section 178A(2)(c) requires a fee to consider a request to amend or end an agreement to be prescribed in regulations.
Subdivision Act **Application** Subdivision plans	**Legislative basis for setting fee** Section 43(2) provides for regulations to set the fees for consideration and certification of subdivision plans
Subdivision Act **Application** Supervision of works	**Legislative basis for setting fee** Section 17(2)(b) allows a council to charge a fee for the supervision of works, but not exceeding the amount prescribed in regulations
Subdivision Act **Application** Engineering plans	**Legislative basis for setting fee** Section 15(6) allows councils to charge a fee for preparation of engineering plans, but not exceeding the amount prescribed in regulations

More generally, the Subdivision Act specifies that fees may be set for anything done under the Act, which include services councils are required to provide such as providing statements of compliance.

Historically, fees related to planning and subdivision services have been set in state government regulations to ensure there is consistency across the state for similar services.

While the legislation allows the government to set the fees able to be charged by local councils, it does not have the power to require local councils to use that revenue for a particular purpose (i.e. there is no hypothecation of fee revenue). Councils are free to use the revenue as they wish. It is therefore important to, as best as possible, match fees to the costs of providing the relevant planning and subdivision services. This is also relevant in the context of the controls over councils' ability to increase council rates—planning fees should in general not be used to cross-subsidise other council activities, while councils will have limited ability to fund planning services if the fees are not sufficient to meet costs.

There are some cases where councils charge additional fees for services that are related to the relevant planning or subdivision services, but which are considered (by some councils) to fall outside the strict scope of the services defined in the regulations. There are different practices across councils, where some appear proactive in charging for additional services, while others do not. As the Regulations can only include fees allowed, and as defined, in the legislation, it is not feasible to address these differences in the regulations.

Base case

The analysis of options in this RIS will be assessed against the ‘base case’, which is the situation in the future if no new regulations about fees are made after the current regulations sunset on 14 October 2016.

Possible outcomes in this situation were discussed in section 2.4 'Cost recovery in the context of planning and subdivision fees' above — in particular, councils would be unlikely to charge many of the fees for the services outlined above, but would still need to provide the services. The costs of the services would then need to be met by increasing other sources of revenue or reducing other services.

Councils would still be able to charge a fee for services related to planning services (but not strictly within the defined services of the Act). This currently occurs in some councils, but the department expects that in the absence of planning fees, councils would seek to increase the amount of fees they could reasonably charge elsewhere.

Without any regulations, councils would be able to charge any fee for consideration and preparation of engineering plans and costs of appointing a person to supervise construction of works under a subdivision plan, because the regulations may only set a cap on such fees and without the regulations no cap would be set.

2.7 New fees

The current Regulations do not prescribe fees for all fees possible under the Planning and Environment Act. For example, no fee has previously been prescribed for section 178A(2)(c) for seeking to amend or end a section 173 agreement as this is a recent amendment to the Act. Councils have reported there is ambiguity about whether a fee can be charged in the circumstances where the Regulations are silent. This RIS includes consideration of such fees on the basis that in general, fees should be set for all services provided under the legislation.

In addition, the current fees do not provide for the recent introduction of VicSmart permit applications. VicSmart provides for a streamlined consideration process of certain types of applications by limiting matters under the Act that may considered and as such may warrant a different fee to be set.

3. Objectives and methodology

3.1 Objective

The objective of the proposed Regulations is to prescribe fees to recover an appropriate amount of the costs of providing planning and subdivision services. The appropriateness of the fees should be considered by reference to the guiding principles:

- fees charged for the planning and subdivision functions of municipal councils should support Victoria’s planning objectives
- fees should be set to encourage the optimal use of the planning and subdivision functions of municipal councils
- fees should not over-recover costs and fees are to be based on efficient cost
- fees should be equitable
- fees should be simple to understand and administer.

3.2 Measuring the cost of planning and subdivision services

Costs of providing the services were measured using the activity-based costing (ABC) approach. The ABC approach identifies the discrete tasks performed by councils and allocates costs to each task.

The methodology involved the following steps:

1. A sample of 15 councils was selected to participate in the data collection over a four week period. These councils were chosen to be representative of geographic areas and different council sizes.
2. Where feasible, councils collected data on staff time attributable to an individual application. Process maps for the main planning and subdivision services were agreed in relation to the key activities performed by councils. Staff timesheets recorded the activity being performed, as per the stages in the

process maps. Data was also collected about the characteristics of the applications and the councils. Regression analysis was used on the data sets to identify material cost drivers for each stage of the process—these cost drivers were identified by testing a range of application attributes to determine if the attributes provided a statistically significant factor in explaining the cost to councils. The attributes tested were those that are reflected in the current fees (such as development value, single dwelling) and those that the department considered might further explain costs (such as the number of referrals for planning permits). See Attachment C for further information.

3. Where time-sheeting was not possible for some activities (planning scheme amendments, certificates of compliance, planning certificates and satisfaction matters), councils were asked to estimate the typical costs incurred and identify any factors that were relevant in determining the costs of individual applications. For these processes, estimates of average (mean or median) costs rather than detailed time-sheeting data were used to assess the levels of cost. The reasons for using a different methodology for these functions varied—in the case of a planning scheme amendment, the process time and variability of tasks did not enable a one-month data collection to provide an accurate picture of costs; other functions are carried out very rarely in some councils.

Regression analysis was used to identify average costs of each activity. Regression analysis tries to make data gathered on a sample of individual applications fit to a model that is a reasonably good 'fit' for all applications. The model is designed to find parameters (in this case potential cost drivers) that have a linear relationship to the cost. However, for small datasets, regression in not appropriate. In such cases other forms of analysis, such as simple graphical comparison, was used.

What is the regression analysis attempting to do?

Where a service is provided by a public entity to an individual party, such as granting a permit or other approval, the cost of providing that service should be recovered from the party gaining the benefit of the service.

For processes such as assessing a planning permit, the cost will vary considerably from application to application. This is because some applications are inherently more complex than others, or concern important policy matters that require more attention from councils. Resolving these issues may not only take additional time, but may require a council to seek further information and views (such as expert advice) in order to make an informed decision.

However, in practice, it is not possible to know in advance (i.e.at the time the application is lodged) how much time and cost will be required to consider it. While it is theoretically possible to allow a council to measure the cost of processing each application and charge the applicant at the end of the process, this is generally not favoured because:

- an applicant would have no idea when making an application of the cost which may discourage people from seeking permits
- it would add additional costs for councils to have to track costs for every application
- if councils could charge all costs back to an applicant, there would be no incentive on councils to minimise this cost and provide services efficiently
- there is a general principle of providing not only certainty on fees, but consistency across the state for similar types of permits.

Recognising that complexity and costs will vary, it would be inappropriate to have a single flat fee apply to all applications as this would require a substantial amount of cross-subsidisation from simple permits to more complex ones.

Therefore, in setting fees, the regression analysis is seeking to find characteristics or features of applications that are indicative of the likely time and cost required to provide the respective service. Regression analysis is not a complete measure of the inherent complexity, but to the extent that some characteristics do tend to be correlated with cost, there is a sound basis for differentiating fees based on these characteristics. Bearing in mind that the Act allows fees based on different 'classes' of applications.

The regression method attempts to quantify whether there is a correlation between these different characteristics and costs.

There will inevitably be factors that affect the time and cost of processing an application, but for which there is no relevant ex-ante characteristic that could predict this in advance. Further, regression analysis quantifies the correlation as a functional relationship (a coefficient) across all applications that share the relevant characteristic. This means that in practice there will still be cross-subsidisation within defined classes (e.g. there will be cases of some applications having a much higher cost than the 'average' revealed by the data modelling), however this is much less so than if the different classes did not exist.

Further details on the methodology of collecting cost data is outlined at Attachment C.

3.3 Determining if the measured costs are efficient

The government policy on cost recovery is that fees should be based on the efficient costs of providing the services. In order to provide incentives to regulated entities to operate efficiently, fees are generally set to recover only those costs that would be incurred by an efficient operator. Costs that are excessive or due to inefficient operations should not be recovered through fees.

It is difficult to determine whether the costs that have been measured are efficient. Processes that councils are required to follow differ between states, as do the legal bases for charging fees for some activities. Therefore, a direct comparison with fees in other states is not necessarily an accurate or useful benchmark.

Further, the nature of the data collection activity and the manner in which fees are to be prescribed for all councils (i.e. consistent fees for all councils), means that the concept of an efficient cost is less meaningful. The fees will apply consistently across all councils, however it is known that some councils have higher costs for similar activities. It is not known if these differences in costs between councils are due merely to inefficient practices, or whether there are genuine reasons to justify higher costs (e.g. difficulty in attracting skills in some areas or lack of economies of scale for smaller councils). Furthermore, some decisions are made by councils that are specific to the planning scheme in place (which may differ across councils) and other factors such as the frequency of overlays within each council. Costs to councils may also vary according to the internal policies which have been developed to address specific planning objectives in each council area. While the process structure can have a large influence on costs, it cannot be said that more costly processes are less efficient. Indeed, processes that increase costs (such as internal quality assurance) are often in place to improve the quality of decision making. Overall, comparisons between councils' costs are unlikely to provide a meaningful benchmark.

It is therefore only practical to base the setting of fees on actual costs, averaged across the sample councils. This will inevitably mean that the fees under-recover costs for some councils and over-recover for others. The extent to which fees can be varied in order to address particular characteristics of an application (e.g. development value), rather than differences in efficiency, can assist in minimising this imbalance.

The department notes that the costs estimated in the data collection report were based on the level of services currently being provided by councils, for which the current fees significantly under-recover costs. In other words, councils currently face an incentive (among others) to provide the services efficiently, given councils have to meet a large proportion of the costs from their own sources.

3.4 Behavioural changes in response to fees

The department considers that behavioural change is possible under different fee options, however the exact nature and extent of any behavioural change cannot be determined and as such was not directly taken into account in the development and assessment of fee options.

The department notes that even at full cost recovery, the fees would most likely comprise only a small proportion of the full value of the proposal to the applicant given that applicants can make significant private gain from certain planning approvals such as for planning permits and planning scheme amendments. The department therefore considers significant behavioural change as a result of a change in fees will be unlikely.

One area for attention may be compliance, particularly where some activities currently attract zero or a very low fee, and the value to the application of receiving the service (e.g. obtaining a permit) is also low. Where substantially higher fees are proposed, the risks that non-compliance may increase and the potential harms that could result from this will need to be monitored and qualitatively assessed.

3.5 Comparing options

The following sections of this RIS set out potential options for each fee type. Where a number of options are available, the options are compared by assessing each option against the base case for relevant

assessment criteria, using a multi-criteria assessment (MCA) framework. The following table sets out the assessment criteria used in this RIS and how they relate to the guiding principles outlined earlier (and discussed in Attachment B). Options are scored against each criterion (from -10 to +10, depending on how the option compares to the base case), then applying different weightings to each criterion score, to arrive at a total score.

The assessment criteria were developed by the department in consultation with the Stakeholder Reference Group (see section 10) and in discussions with the Office of the Commissioner for Better Regulation.

However, the department considers that not all criteria are relevant for each type of fee and the relative importance of the criteria differs for different fee types. Where only one criterion was relevant to a fee type, or where there was only one feasible option identified, the MCA comparison was not necessary, however this RIS still provides a qualitative discussion about the choice of fees.

MCA assessment criteria

Guiding principle	Assessment criteria
Fees charged for the planning and subdivision functions of municipal councils should support Victoria's planning objectives	**Effectiveness** The primary objective of Victoria's planning system is to provide for the fair, orderly, economic and sustainable use and development of land. Planning authorities and responsible authorities are required to balance conflicting objectives in favour of net community benefit and sustainable development for the benefit of present and future generations. This principle advances Victoria's planning objectives and indicates that fees should support sustainable development that provides benefits to the community now and in the future. Fees should therefore avoid creating inappropriate incentives for non-compliance or inadequate consideration of applications. Fees should not be set so high as to encourage avoidance of compliance with planning requirements, nor too low as to encourage numerous amendments that could be bundled together into one amendment. It is an established policy fundamental that home owners (i.e. 'the principal place of residence') and small businesses have traditionally been supported through special policy arrangements. This has historically been reflected in having lower fees for permits related to single dwellings. Such an arrangement is consistent with the broader policy intention.
Guiding principle Fees should be set to encourage the optimal use of the planning and subdivision functions of municipal councils **Guiding principle** Fees should not over-recover costs and should be based on efficient costs	**Assessment criteria** **Efficiency** In general, the beneficiaries of a service should pay for the full cost of providing that service (provided the service is provided efficiently and the service is considered necessary). Beneficiaries are those who seek to gain by using or developing their land in a particular way, and for which councils must consider various matters before that use or development can be achieved. It is also desirable that fees create incentives for well prepared and complete applications, as this enables councils to consider applications more efficiently. Fees should also encourage councils to be efficient in the provision of services. Efficient fees also minimise cross-subsidisation; where some people pay for services enjoyed by others.
Guiding principle Fees should be equitable	**Assessment criteria** **Equity** Equity in fees can be given effect in two ways. Fees may be regarded as equitable if those who benefit from a service pay for that service and are not subsidising the costs of services that benefit others. This is 'horizontal equity' and is achieved where fees are set efficiently. (This aspect of equity is already reflected in the efficiency criterion and is not counted again in this criterion.) Fees may also be regarded as equitable if those with proportionately greater means pay more than those with lesser means. Hence, equity means fees that reflect the different ability to pay between different groups of people so that applicants who stand to greater benefit from the planning and subdivision services of councils contribute more to the cost of those services.

Guiding principle	Assessment criteria
Fees should be simple to understand and administer	**Simplicity** Simplicity is reflected in the ability to easily determine what fee applies in various situations. For the purposes of this RIS, simplicity includes consistency across council areas, as this was highlighted as an important consideration by the stakeholder reference group.

4. Fees for planning permits

4.1 Basis for setting fees

Under section 47(1)(b) of the Planning and Environment Act, an application for a permit must be accompanied by the prescribed fee. Similarly, a request to amend a permit application before notice must be accompanied by the prescribed fee under section 57A(3)(a).

Section 203 of the Act provides a power for fees to be set in regulations. Regulations prescribing fees may prescribe different fees for different cases or classes of cases.

If no fees are prescribed in the regulations relating to permit applications, fees would be zero and councils would not be able to recover costs of considering applications for permits.

Historically, planning fees have been set lower by respective governments to ensure non-cost prohibitive access for persons wishing to build or improve a single dwelling. The department considers that this approach should continue and that planning matters covered by VicSmart (typically low value and low impact matters) should also be relatively low. This approach is designed to support affordability objectives for households and small business.

4.2 Findings from data analysis

The data collection and analysis project found that the (average) cost to councils of considering applications for planning permits varied according to the following cost drivers:

- the value of the proposed development (both in absolute value of the development and the natural logarithm of the value, reflecting that the relationship between value and cost is not linear)—this was found to be a positive relationship, consistent with the department's expectations that higher value development permits require more attention from councils, but both the absolute value and logarithm of the value were significant, which suggests there are economies of scale in considering larger value development
- for permits for subdivisions (for which the data relied on number of lots rather than development value), the data suggested that the cost of processing a subdivision permit application was not related to the number of lots (although, as noted below (section 4.7), councils have suggested this is not the case in practice for larger scale subdivisions)
- the number of overlays that apply to a property – this was a positive relationship, consistent with the expectation that more overlays will in general require more consideration of an application against the relevant overlay's decision criteria
- the number of referrals to other authorities required to consider the application – this was a positive relationship, consistent with the expectation that a higher number of referrals would require more council time to refer and follow up on referrals before decision
- the distance of the council from Melbourne CBD – this was found to be a negative relationship (i.e. councils further from Melbourne having a lower cost)—there was no prior expectation about the likely influence of this variable because it was included to test as a proxy for potentially different factors that were not elsewhere captured
- whether the Minister is the responsible authority—the data project sought to identify whether there was a material cost difference where the Minister was the responsible authority. It found that there was a higher cost, which was considered reasonable as the project also identified that the processes followed were different (more labour intensive) where the Minister was the responsible authority.

The data analysis identified the functional relationship to estimate costs where all these cost drivers are taken in to account. For options where not all cost drivers are included or considered separately (Options 1 and 3), the data analysis provided the basis for estimating average costs where development value is the base factor in the fees and other costs are incorporated into the fees for each development value.

4.3 Options for fees

Based on the above findings, the department identified three feasible options to consider.

Option 1 – retains the current approach to fees by keeping the same classes across all fees, including the current value ranges for development permits. This option also updates the fees for each class based on the estimated costs for considering applications in each class, as identified from the data collection activity. Most fees are set on the basis of full cost recovery, with the qualification that the estimation of costs for each class took into account the cost drivers available under the existing class definitions (i.e. permit type and value). Other cost drivers identified in the data analysis are not included as they are not part of the current structure. In addition, where permit classes are currently set below cost recovery on the basis of equity (fees for single dwelling permits and low value developments), these lower fees have been retained by keeping the current ratios of these fees to the ‘use only’ fee.

Option 2 – aligns the with full cost recovery. The fees for all permit classes are set according to the full modelled cost, taking into account the existing class definitions as well as a number of other characteristics of applications that were found to be significant cost drivers. No classes provide for a lower fee based on equity considerations as such. There is no provision for a separate single dwelling category which was originally created to address equity issues but which cannot be accommodated in a full cost recovery option. In addition, the value ranges for development permits have been revised to provide a more logical and balanced graduation of fees which better reflect the relationship between cost and development value. The fee paid is the fee based on the permit development value, plus additional fee components listed in the table above to reflect the other cost drivers. Under this arrangement fees for a specified value will vary according to the additional fee components.

Option 3 (preferred option) – is the same as Option 2, except that certain fees have been reduced to be less than full cost recovery to improve vertical equity, and some of the additional fee components have been excluded, such as the component costs related only to applications where the Minister is the responsible authority. There will be separate fees for single dwelling developments and for low value developments in order to address policy considerations. The department considers these changes would better support the ability of people to pay in these categories, and would also assist with compliance. The exclusion of the additional fee components follows discussions with councils on the practicalities of applying these amounts to each permit application. The other fees for each class have been adjusted to recover the revenue from these cost drivers, however they would be recovered across all permits and not separately levied.

Options 1 and 3 include discounts for some fee categories—notably permits related to single dwellings and low-value developments. The department considers that affordability has historically been, and continues to be, an important consideration for policy in this area. This has been limited to fee categories where a high proportion of applications relate to home owners or small businesses improving their own home or business premises. For other fee categories, affordability is not a particular concern as these would generally involve larger developers.

It is recognised that the discounted fees are not perfectly targeted, however this is due to the limitation imposed by the Act that fees may differ by class of application, but not by particular types of applicants.

Further, the department acknowledges that the initial incidence (who pays the fee) may differ from final incidence (who ultimately bears the cost); for example developers may pass through fees to the ultimate buyers of dwellings in large-scale developments, however the department considers that actual pass through is very small in the context of other pricing considerations. The department also notes that the question of affordability of fees for very minor works is most relevant for consideration of non-compliance (which over a large area could see the accumulation of many activities inconsistent with planning objectives).

Under Options 2 and 3, there would be two new fees in the permit classes: VicSmart; and permits for matters other than use or development.

VicSmart options

VicSmart is a streamlined assessment process for straightforward planning permit applications. Classes of application are identified in the planning scheme as being VicSmart and have specified requirements for information, assessment processes and decision guidelines. Key features of VicSmart include:

- a 10 day permit process
- applications are not advertised
- information to be submitted with an application and what council can consider is pre-set
- the Chief Executive Officer of the council or delegate decides the application.

The data collection and analysis study did not separately measure the costs for VicSmart permits, however an indicative cost can be deduced by excluding the estimated costs for stages (refer to process maps in Attachment C) that are not required for VicSmart permits (such as advertising), or unlikely to be used significantly (such as VCAT appeals). On this basis, the estimated cost of a VicSmart permit application would range from $378 for a permit involving works less than $5,000 up to $398 for works up to $50,000 (the current cap for VicSmart permits). It is proposed to introduce two VicSmart categories: use and development up to $10,000 and development over $10,000. The $10,000 threshold was selected as a reasonable point to separate lower value matters from those that typically involve more substantial development work (albeit still minor). These categories would be set at full cost under Option 2, but for Option 3 it would be necessary to reduce the lower category to be the same as the fee for low value developments (on the basis of fairness between the VicSmart and low value development categories, and the department's view that the use of VicSmart should not involve higher fees that would otherwise be charged).

An alternative to achieve fairness between VicSmart and other low value permits would be to increase the planning fee for low-value developments (i.e. from $186 in Option 3 to $384) to result in low-value development permits not being less than the VicSmart permits. However, this would no longer achieve the objective of ensuring the permit fee for low-value developments sufficiently reflected consideration of equity (ability to pay) outlined earlier (and noting that the majority of applications in this group would be from households for which the department considers affordability is an important policy consideration). As Option 3 has been designed specifically to provide discounted fees for lower-value developments, alignment at $186 was selected for that option.

Use Only options

Options 2 and 3 also introduce a new fee for permits for matters other than use or development. It is currently unclear whether some permits strictly fall into the 'use only' category, as they may also relate to other parts of planning schemes resulting in some ambiguity about the appropriate fee. Currently most councils apply the use only permit fee to these permits, but have expressed a need for the regulations to clarify this position. Therefore, these options specifically include a residual category, for any permit application that does not fall into the defined classes, for which the fee will be set at the use only amount. The number of applications that fall into this category is low, and the new fee is proposed in order to provide certainty. The use only fee is prescribed, because this is the category of application that is affected by the current ambiguity.

Combined Permits and other options

In preparation of this RIS, the department considered numerous other options (variations on the above or alternative ways to apply the cost factors) and the use of flat fees with no variations for cost drivers. The options considered were filtered based on design principles, the assessment criteria and practical feasibility. Different structural options were considered to present difficulties in drafting of the regulations or in the practical application. These other options included different fees based on the type of applicant, different fees based on the local council responsible, and different fees based on a definition of the nature of the property (e.g. rural). An option was also identified where the fee may vary depending on whether or not a pre-application meeting was held with council. The difficulty in developing these options was due to the limited scope of power to set fees, which requires fees to apply to 'classes' of applications, and does not provide a power to set fees for matters outside those listed in the legislation.

The following table sets out three options for setting fees for permit applications. The fees vary depending on the type of permit. (Note: permits for subdivisions are considered separately below.)

The figures in the table below are based on allocation of the actual costs measured through the data collection and analysis project, and have been used to illustrate how the measured costs could be modelled to fee structure. In the proposed Regulations, the preferred fees will be converted to an equivalent fee unit amount, based on the current value of a fee unit of $13.60. However, by the time of the commencement of the proposed Regulations, the value of a fee unit will have increased to $13.94 in line with the annual indexation across all fees. The fees to be paid will therefore be 2.5 per cent higher than those shown in the table below.

All options would also retain the current arrangements where an application is for a permit that related to more than one class. The current Regulations provide that the fee will be the highest of the relevant classes, plus 50 per cent of any other lower fee that may also apply. This recognises that when considered together, some tasks (such as site inspection and assessment of likely impacts) can be done together. The data analysis was not able to separately identify the cost savings from combined applications, however the councils on the stakeholder reference group indicated that the current arrangements were appropriate, and the department is not aware of any situations from applicants where this arrangement was a reason of concern. The department understands that such combined permits are not common, but does not have reliable data on this.

The proposed Regulations would also retain the ability for councils to waive or rebate permit fees in a range of circumstances.

Stage Change of use only	**Current fee** $502	**Current fee** $502	**Option 1** $1,213	**Option 1** $1,213	**Option 2** $1,213	**Option 2** $1,213	**Option 3 (proposed fees)** $1,213	**Option 3 (proposed fees)** $1,213	**Option 3 (proposed fees)** $1,213
Stage **Development**	**Current fee** Single dwellings	**Current fee** Other develop-ments	**Option 1** Single dwellings	**Option 1** Other develop-ments	**Option 2** VicSmart permits	**Option 2** Other develop-ments (include single dwellings)	**Option 3 (proposed fees)** VicSmart	**Option 3 (proposed fees)** Single dwellings	**Option 3 (proposed fees)** Other develop-ments
Stage **Development** Up to $10,000	**Current fee** $0	**Current fee** $102	**Option 1** $0	**Option 1** $1,003	**Option 2** $384	**Option 2** $1,312	**Option 3 (proposed fees)** $186	**Option 3 (proposed fees)** $186	**Option 3 (proposed fees)** $1,056
Stage **Development** $10,000 - $100,000	**Current fee** $239	**Current fee** $604	**Option 1** $578	**Option 1** $1,121	**Option 2** $398	**Option 2** $1,312	**Option 3 (proposed fees)** $398	**Option 3 (proposed fees)** $578	**Option 3 (proposed fees)**
Stage **Development** $100,000 - $250,000	**Current fee** $490	**Current fee** $604	**Option 1** $1,184	**Option 1** $1,121	**Option 2** $398	**Option 2** $1,649	**Option 3 (proposed fees)** $398	**Option 3 (proposed fees)** $1,184	**Option 3 (proposed fees)** $1,425
Stage **Development** $250,000 - $500,000	**Current fee** $490	**Current fee** $707	**Option 1** $1,184	**Option 1** $1,301	**Option 2** $398	**Option 2** $1,649	**Option 3 (proposed fees)** $398	**Option 3 (proposed fees)** $1,184	**Option 3 (proposed fees)** $1,425
Stage **Development** $500,000 - $1 million	**Current fee** $490	**Current fee** $815	**Option 1** $1,184	**Option 1** $1,567	**Option 2** $398	**Option 2** $1,649	**Option 3 (proposed fees)** $398	**Option 3 (proposed fees)** $1,278	**Option 3 (proposed fees)** $1,425
Stage **Development** $1 million to $2 million	**Current fee** $490	**Current fee** $1,153	**Option 1** $1,184	**Option 1** $3,831	**Option 2** $398	**Option 2** $3,280	**Option 3 (proposed fees)** $398	**Option 3 (proposed fees)** $1,377	**Option 3 (proposed fees)** $3,137
Stage **Development** $2 million to $5 million	**Current fee** $490	**Current fee** $1,153	**Option 1** $1,184	**Option 1** $3,831	**Option 2** $398	**Option 2** $3,280	**Option 3 (proposed fees)** $398	**Option 3 (proposed fees)** $3,137	**Option 3 (proposed fees)** $3,137

Stage **Development** $5 million to $7 million	**Current fee** $490	**Current fee** $1,153	**Option 1** $1,184	**Option 1** $3,831	**Option 2** $398	**Option 2** $7,932	**Option 3 (proposed fees)** $398	**Option 3 (proposed fees)** $7,990	**Option 3 (proposed fees)** $7,990
Stage **Development** $7 million to $10 million	**Current fee** $490	**Current fee** $4,837	**Option 1** $1,184	**Option 1** $6,951	**Option 2** $398	**Option 2** $7,932	**Option 3 (proposed fees)** $398	**Option 3 (proposed fees)** $7,990	**Option 3 (proposed fees)** $7,990
Stage **Development** $10 million to $15 million	**Current fee** $490	**Current fee** $8,064	**Option 1** $1,184	**Option 1** $21,833	**Option 2** $398	**Option 2** $7,932	**Option 3 (proposed fees)** $398	**Option 3 (proposed fees)** $7,990	**Option 3 (proposed fees)** $7,990
Stage **Development** $15 million to $50 million	**Current fee** $490	**Current fee** $8,064	**Option 1** $1,184	**Option 1** $21,833	**Option 2** $398	**Option 2** $22,882	**Option 3 (proposed fees)** $398	**Option 3 (proposed fees)** $23,562	**Option 3 (proposed fees)** $23,562
Stage **Development** Over $50 million	**Current fee** $490	**Current fee** $16,130	**Option 1** $1,184	**Option 1** $52,963	**Option 2** $398	**Option 2** $51,118	**Option 3 (proposed fees)** $398	**Option 3 (proposed fees)** $52,963	**Option 3 (proposed fees)** $52,963
Matters not otherwise specified	**Current fee** –	**Current fee** –	**Option 1**	**Option 1**	**Option 2** $1,213	**Option 2** $1,213	**Option 3 (proposed fees)** $1,213	**Option 3 (proposed fees)** $1,213	**Option 3 (proposed fees)** $1,213
Matters not otherwise specified Additional fees (added/subtracted to the above fees for all classes other than VicSmart)	**Current fee** –	**Current fee** –	**Option 1**	**Option 1**	**Option 2**	**Option 2**	**Option 3 (proposed fees)** –	**Option 3 (proposed fees)** –	**Option 3 (proposed fees)** –
Matters not otherwise specified Where Minister is the responsible authority	**Current fee** –	**Current fee** –	**Option 1**	**Option 1**	**Option 2** +$263	**Option 2** +$263	**Option 3 (proposed fees)** –	**Option 3 (proposed fees)** –	**Option 3 (proposed fees)** –
Matters not otherwise specified Number of overlays	**Current fee**	**Current fee**	**Option 1**	**Option 1**	**Option 2** +$16 per overlay	**Option 2** +$16 per overlay	**Option 3 (proposed fees)** –	**Option 3 (proposed fees)** –	**Option 3 (proposed fees)** –
Matters not otherwise specified Number of referrals	**Current fee**	**Current fee**	**Option 1**	**Option 1**	**Option 2** +$15 per referral	**Option 2** +$15 per referral	**Option 3 (proposed fees)** –	**Option 3 (proposed fees)** –	**Option 3 (proposed fees)** –

Matters not otherwise specified	Current fee	Current fee	Option 1	Option 1	Option 2	Option 2	Option 3 (proposed fees)	Option 3 (proposed fees)	Option 3 (proposed fees)
Distance from Melbourne					-$2.69/km	-$2.69/km	–	–	–

4.4 Assessment of options

The three options were assessed against the assessment criteria outlined in section 3. Compared to the base case of no fees, the relevant factor supporting the setting of fees is efficiency (achieving recovery of costs), while the fees themselves tend to have a negative impact on equity, effectiveness and simplicity (compared to no fees). Therefore, the multi criteria assessment gives weight to the 'costs' and 'benefits' of fee options; efficiency has been given a weight of 50 per cent, with the other criteria making up another 50 per cent. In this case, effectiveness and equity are equally important considerations to the government and are weighted at 20 per cent, and simplicity at 10 per cent.

This analysis found that Option 3 has a positive overall score (indicating a net improvement over that base case) and it scored higher than the other options. On this basis, Option 3 is the preferred option for the new permit fees. The department notes that the scores for Options 2 and 3 are almost the same, and that a small change in relative weightings of the criteria used and/or the scores assigned could change the preferred option. On balance, the department considers that, while not as efficient as full cost recovery, Option 3 provides a better outcome than Option 2 on the other criteria, which offsets the lower efficiency.

While Option 2 better reflects the findings from the regression analysis of the cost drivers, given the large number of cost drivers, this approach is not preferred because it would undermine the simplicity of the fee structure. Instead, in the preferred option each of these factors has been taken into consideration in the following ways:

- **Value and log of value** have been used to set different fees for different classes of development permit applications based on the value of the development.

- **The number of referrals and number of overlays** have not been used to differentiate classes of applications because these matters are within the control of councils, and may not be well understood by applicants and cannot be modified by permit applicants. If these matters were used to differentiate fees it may be considered that councils increase the number of referrals or overlays in order to raise fee revenue. Instead, the costs of referrals and overlays have been averaged in the proposed fees.

- **The distance from Melbourne and type of council** have not been used to differentiate classes of applications because basing fees on these matters would undermine the principle of consistency that has been applied to council fees, whereby all councils across Victoria charge the same fee for the same service. Again these costs have been averaged in the proposed fees.

- Difference in costs where the **Minister is the Responsible Authority** has not been included in the fees because these costs are related only to those applications which must be approved by the Minister. As the source of this differential comes from only one responsible authority, it is important to test whether there are unavoidable additional tasks required to be performed or whether it reflects inefficient costs. It is noted that a cost differential only appeared for two stages of the process, which indicates that the cost differences do not arise from general productivity differences or from different wage rates or staff levels involved in processing applications. These additional costs could not be averaged across all councils because they are not borne by councils at all.

Comparison of planning permit options

Efficiency (weighting = 50 (0.5))	This option increases fees in line with the findings of the cost data analysis, but maintains the current suite of reduced fees for single dwellings and low value developments. The total annual revenue to all councils would be in the order of $50-60 million, or just over 50% cost recovery. However, this option is likely to over-recover costs for VicSmart applications. The limited development value ranges means this option only has a moderate ability to set fees that reflect costs for different types of permits. Score: 5/10 Weighted score: 2.5	This option is designed to best recover full costs to councils (within the limitations of using averages and achieving consistency across councils). The total annual revenue would be in the order of $100 million (close to 100% cost recovery). The use of the 'additional' fee components means this option is best targeted to all the known material cost drivers. Score: 9 Weighted score: 4.5	This option is similar to Option 1, but is more effective at targeting the relevant fee applicable to the service (i.e. VicSmart) and reducing the concessional treatment of single dwellings. The total annual revenue would be in the order of $75 million. However, some specific cost drivers would not be reflected and therefore there would be slightly more cross-subsidisation between applicants. Score: 7.5 Weighted score: 3.75
Effectiveness (weighting = 20 (0.2))	Compared to the base case (zero fees), this option adds slightly to the risk of non-compliance or deterred activity due to the increase in fees. It would also add slightly to the incidence of councils needing to take corrective action once a breach becomes known (e.g. seeking rectification, prosecution) although this is considered minor. Score: -1/10 Weighted score: -0.2	Compared to the base case (zero fees) this option represents large increases in fees and may lead to a higher risk of non-compliance or deterred activity, therefore adding to the need for councils to take corrective action if breaches are brought to their attention. Score: -3.5/10 Weighted score: -0.7	This option is similar to Option 2, however provides discounted fees for single dwellings and low value developments (including VicSmart) which should minimise the risk of non-compliance and avoid the need for councils to take corrective action if and when breaches of planning schemes come to their attention. Score: -1.5/10 Weighted score: -0.3
Vertical Equity (weighting = 20 (0.2))	This option imposes fees for all applicants (above a base case of zero), however maintains relative concessional fees for single dwellings and low value developments. Score: -3.5/10 Weighted score: -0.7	This option increases fees for all applicants, and removes the current concessional treatments of some classes. This may raise some concerns about ability to pay in the categories for which the department believes affordability is a relevant policy consideration (see page 34). Score: -5/10 Weighed score: -1	This option increases fees for all applicants, however maintains relative concessional fees for single dwellings and low value developments (albeit less generous than Option 1), thus more effectively recognising a user's ability to pay. Score: -4/10 Weighted score: -0.8
Simplicity (weighting = 10 (0.1))	Compared to the base case of zero fees, this option adds to complexity. However, the fees under this option are relatively simple to identify and apply. Score: -4/10 Weighted score: -0.4	The fees under this option are relatively simple to apply, although more complex than the other options due to the need to add the additional fee components in some cases. Further, this option would lead to different fees (for otherwise identical applications) between councils, which is not consistent with the definition of simplicity. Score: -8/10 Weighed score: -0.8	The fees under this option are relatively simple to apply, similar to option 1. Score: -4/10 Weighted score: -0.4

TOTAL (WEIGHTED)	+ 1.2	+ 2.0	+ 2.25

4.5 Related fees – amendments to permit applications

Basis for setting fees

Section 57(3)(a) of the Act provides for the payment of a prescribed fee for a request to amend an application after notice.

Options

The current fee regulations prescribe a fee for amending an application after notice has been given. This has been fixed at $102. The costs to councils for amendments to permit applications were not directly measured in the data collection activity. However, feedback from councils on the stakeholder reference group suggests that the current fee does not reflect the additional costs to councils, as the cost of notice alone may be significant and many steps in the process (e.g. call for and consider submissions, further referrals, briefing council) may need to be repeated. Further, councils consulted in the development of this RIS indicated that the current low fee does not act as a suitable incentive for applicants to submit well prepared and complete applications in the first instance.

It is proposed to replace this flat fee with a fee of 40 per cent of the fee for the class to which the permit relates. Discussion with councils indicated that the additional costs could range from almost nothing to up to around 80 per cent of the process costs, depending on the specifics of the individual amendment. Therefore 40 per cent was considered a reasonable midpoint of the additional work required. However, there is no data on how frequently this situation arises. The choice of 40 per cent is therefore aimed at full cost recovery, noting that as it is applied as a percentage, discounts that apply to the original class will flow through to amendment fees. Hence, the fee also takes account of other policy factors reflected in the effectiveness and equity assessment criteria.

If the amendment to the application moves the permit to a different permit class, the applicant would also be required to pay the difference in the fees of the original and new classes. This is to avoid a situation where an applicant pays a low fee for the initial application and then seeks a permit for a higher value development through amendment. The department is not aware of applicants currently avoiding fees on this basis, but considered the risk would be higher where the fees are increased.

This fee would also apply to an application to amend an application to amend an application.

The power in the Act would also allow a fee to be set for amendments to applications made before notice is given, however no such fee has previously been set and there is no data to support a new fee. Councils on the stakeholder reference group consulted in the preparation of this RIS indicated that a fee in such a circumstance may have merit, as there are some activities undertaken prior to notice that may need to be repeated, which impose a real cost on councils. However, there was no specific data to quantify this, and the department understands that the changes made at this stage are more likely to be trivial (such as correcting a detected error) that would not require additional effort from councils. The department therefore considers that setting a fee for amending applications prior to notice is not necessary.

4.6 Related fees – amendment to existing permits

Basis for setting fees

Section 72 of the Act sets out a process for councils considering applications to amend an existing permit.

Options

The data collection and analysis exercise did not identify any statistically significant difference in costs between considering new permits and amendments to existing permits. However, is it noted that the data regression method used compared costs within a given stage of the process, and did not indicate whether an application to amend an existing permit necessarily requires all stages performed for the original permit to be repeated. Discussions with sample councils indicated that most of the stages are repeated 'in most cases' (they may not if the amendment is very minor).

The current fee structure for amendments to permits is based on the additional development value created by the amendment. This is inadequate as it may encourage applicants to seek a permit just below a current value threshold and then to seek to amend the permit by a very small amount to achieve a permit in a higher class, thus circumventing payment of the corresponding fee. This has not been a significant issue to date, as the fees for all categories are low, but the department considered it to be a concern where fees are increased.

It is therefore proposed that the fee for amending permits be structured as follows:

- 75 per cent of the original fee—this reflects that not all steps may be required to be repeated for all amendments, but still provides a sufficient incentive for applicants to include all the correct information in their original application; PLUS
- the difference in the fees associated with the original and the new permit classes, should the amendment cause the permit to fall into a higher class—in order to deter applicants deliberately obtaining a permit for a value below their intended value and seeking to use the amendment process to avoid paying the correct fee.

The choice of 75 per cent reflects that, as required by the legislation, all steps that apply to a new permit still need to be undertaken by council, however there may be some steps that can be completed more efficiently. The choice of 75 per cent is therefore aimed at full cost recovery, noting that as it is applied as a percentage, discounts that apply to the original class will flow through to amendment fees. Hence, the fee also takes account of other policy factors reflected in the effectiveness and equity assessment criteria.

This arrangement for amendments would also apply to single dwelling and VicSmart permits, although as the fees for those permits are lower, the fee for amendments would also be lower.

4.7 Related permit fees – subdivision permits

Basis for setting fees

Section 203 of the Act provides that fees for considering applications for permits may prescribe different fees for different cases or classes of cases. Historically, the regulations have provided different fees for subdivision permits.

Options for fees

Since these permit classes were initially defined, a number of subdivision matters now fall into the VicSmart process, and will have a lower fee under the proposed changes (see page 34). The types of permits now covered by VicSmart include:

- realignment of boundary between two lots
- subdivision into two lots each containing an existing building or car parking space
- subdivision into two lots with an approved development
- minor subdivision in a Heritage Overlay
- minor subdivision within a Special Building Overlay.

As VicSmart now captures small and relatively straight-forward subdivision permits that were previously in subdivision permit categories, those permits that remain subject to the current subdivision permit classes are likely to be more complex than the existing ‘average’ subdivision permit. Subdivision matters that relate to the 'family home' are captured under VicSmart, and as such, other subdivision matters that will remain in the subdivision permit categories are not of direct concern to the department in terms of affordability. Unlike other planning permits where the groups for which affordability is an important consideration, these remain a large proportion of applications in the low-value development categories. As such, the department does not consider that any subdivision permit fees need to be set at less than full cost recovery, as they will not in general include the groups for which the department considers affordability is an important policy matter.

All of the options attempt to reflect the full cost to councils of considering applications for subdivision (or related) permits. The data analysis estimated the cost of these permits to be $1,213—the same as an application for a ‘use only’ permit. The cost of subdivision permits were found not to be statistically different.

Although the regression analysis found that the number of lots created in a subdivision permit is not a statistically significant cost driver, the department considers that this may not be representative of all subdivision matters. In particular, while the data sample included permits for up to 935 lots, there was a regular distribution of the number of lots across applications up to 100 lots, after which the number of lots was very spread out, with only 10 permits with more than 100 lots in the data sample. This is less than 5 per cent of the sample. The department therefore considered it may be appropriate to treat 100 lots as an appropriate point of change in the data, and only interpret the findings as relevant for permits with up to 100 lots.

Option 1 – streamlines all classes related to subdivision permits to a single flat fee of $1,213.

During consultation, the stakeholder reference group councils considered that a fixed flat fee for subdivision permits was not sufficient to recover costs for very large subdivisions, particularly in growth areas where some new developments can involve hundreds of lots.

The cost data analysis did not identify the number of lots as a statistically significant cost driver of council costs. However, there were limitations to this data analysis:

- While the data sample included permits for up to 935 lots, there was a consistent distribution of applications with up to 100 lots, but then only 10 permits with more than 100 lots in the data sample. This is less than 5 per cent of the sample. It would therefore be conservative to only interpret the findings for permits with up to 100 lots.
- For some stages within the activity maps, there were smaller numbers of subdivision permits, which may have prevented a statistically significant finding to be identified.

Option 2 – provides for a higher fee—the same as Option 1 for the first 100 lots and then just over $24 per lot, applied in blocks of 50 lots. Feedback from the stakeholder reference group councils and some non-council stakeholders on the reference group suggested the costs for larger numbers of lots provided diseconomies of scale i.e. the cost per lot increased as the overall number of lots increased, reflecting additional considerations for larger-scale developments (e.g. larger subdivisions would have a disproportionately higher need than small subdivisions for councils to consider the impacts on local government infrastructure (such as roads and stormwater), local government services and the cumulative impact on the local character). Some examples were provided by councils that suggested costs to councils could be in the order identified in this option. Hence this option was considered in this RIS. A fee based on blocks of 100 lots, as opposed to a per lot additional fee, was used to simplify the charging of fees.

Option 3 (preferred) – provides a mid-way option between the costs identified in the data collection and the level of costs advocated by some councils, by setting fees on the basis that the measured cost ($1,213) corresponds to up to 100 lots in a permit, and for each additional 100 lots, a similar cost is applied. This equates to just over $12 per lot. For an example permit for 900 lots, the fee would be $10,917.

Previously, some subdivision permit classes had intentionally lower (less than cost) fees to recognise that full cost recovery of some classes, including very minor subdivision matters was not appropriate. As many of these classes are now covered under VicSmart, the department considers it is no longer necessary to have reduced or discounted fees in subdivision permits that do not fall within VicSmart.

The following table sets out three options for setting fees for subdivision permits.

Permit type	Current fee	Option 1	Option 2	Option 3 (proposed fees)
An application to subdivide an existing building.	$386	$1,213	$1,213	$1,213
An application to subdivide land into 2 lots.	$386	$1,213	$1,213	$1,213
An application to effect a realignment of a common boundary between lots or, to consolidate 2 or more lots.	$386	$1,213	$1,213	$1,213
An application to subdivide land (all other cases)	$781	$1,213	$1,213 for first 100 lots and then $1,213 for each 50 lots created	$1,213 per 100 lots created
An application to remove a restriction (within the meaning of the *Subdivision Act 1988*) over land if the land has been used or developed for more than 2 years before	$249	$1,213	$1,213	$1,213

the date of the application in a manner which would have been lawful under the Act but for the existence of the restriction.				
Permit type An application to create, vary, or remove a restriction within the meaning of the Subdivision Act; or create or remove a right of way.	**Current fee** $541	**Option 1** $1,213	**Option 2** $1,213	**Option 3 (proposed fees)** $1,213
Permit type An application to create, vary or remove an easement other than a right of way; or vary or remove a condition in the nature of an easement (other than a right of way) in a Crown grant.	**Current fee** $404	**Option 1** $1,213	**Option 2** $1,213	**Option 3 (proposed fees)** $1,213

Assessment of options

The assessment criteria used for planning permits above is not suitable to considering the options for subdivision permits. This is because all options are effectively designed to recover full costs (with no particular impacts on equity or effectiveness), however the true cost (and hence the 'correct' cost recovery) of larger-scale subdivision permits is not known.

The department believes that the data collected on subdivision plans was limited due to time constraints and because the nature of these permit processes resulted in a small sample that may not adequately represent some of the more complex subdivision permits considered by councils. The department also agrees that larger scale subdivisions are more likely to have a disproportionately larger need for councils to consider the impacts of the subdivision against relevant decision guidelines. The department therefore accepts the premise advocated by the stakeholder reference group councils that the fee for subdivision should be proportional to the scale of the subdivision for very large and complex development. However, at this stage the department does not consider there is sufficient reliable data to justify a fee as high as Option 2. Therefore, the department believes that Option 3 is a reasonable mid-way approach and is proposed in the new fees. However, specific evaluation of these fees has been proposed over the next two years.

In the proposed Regulations, the preferred fees have been converted to an equivalent fee unit value, being 89 fee units for all subdivision permits, with the exception of large subdivisions which will be a fee of 89 fee units per 100 lots created under the subdivision. By the time of the commencement of the Regulations, 89 fee units will be $1,241.

Questions for stakeholders

The proposed fees seek to require the full cost to councils (on average), however fees for permits related to single dwellings and low value developments are set below the full cost recovery level. Is it reasonable to apply significant discounts for these applications? Is the size of the proposed discount appropriate? Are the thresholds at which they are proposed appropriate (e.g. should they apply to single dwellings with a value of $1 million to $2 million as proposed? Please explain your views.

The proposed fees for applications for subdivision permits introduce a fee based on the number of lots to be created. As the data collected on subdivisions had only a small number of applications for permits with more than 100 lots, the department has relied on the advice of councils from the stakeholder reference group to propose a fee for 100 lot increments. Is this reasonable? Please explain your views.

In recognition that VicSmart now offers a streamlined permit decision process; the proposed planning regulations include new fee categories for VicSmart applications. These are for VicSmart permits:

- for use or development up to $10,000 in value, including non-monetary value applications. This fee category is set at 50 per cent of the actual cost to councils; and
- for developments over $10,000 for which the fee is set to recover the full cost.

Bearing in mind that currently VicSmart permits only relate to low impact application, including minor building or works of up to $50,000, as well as some small subdivision matters, are these categories appropriate?

5. Fees for requesting amendments to planning schemes

5.1 Basis for setting fees

There is no reference in Part 3 of the Planning and Environment Act to pay a fee for a planning scheme amendment; however section 203 provides that the Governor in Council may make regulations prescribing fees for amendments to planning schemes including but not limited to:

- considering proposals for amendment
- any stage in the amendment process
- considering whether or not to approve the amendment.

Regulations may prescribe different fees for different cases or classes of cases.

Note: Fees are not intended to recover the costs related to panel hearings. Where submissions are referred to Planning Panels Victoria (PPV), a separate fee is charged by PPV to the relevant council. Under section 156 of the Act, the council is responsible for paying the costs of the panel, however under section 156(3) the council may request any person who has requested the amendment of the planning scheme to agree to contribute to that amount, and may abandon the amendment if no agreement is reached. In practice, this means that councils can request agreement from an applicant at the time of making the application that any PPV costs will be passed on to the applicant.

5.2 Findings from data project

As amendments to planning schemes are typically a very long and infrequent process for most councils, actual time and cost data was not able to be tracked for individual amendments. Instead, councils were asked to estimate costs for each stage of the process (staff time and other costs), and also to identify any factors that could distinguish costs between different types of requests.

The data activity found that the costs estimated by each council varied widely. This was a similar finding to previous attempts by the department to estimate costs from individual councils. (See Attachment C on the findings of the data project.)

Councils reported that the key cost driver was the number of submissions required to be considered for each proposed amendment6. It was noted that planning fees regulations prior to 2000 had distinguished fees based on the number of submissions received, however this was removed after 2000. The comparison of council data, and the calculation of the fee options below was therefore undertaken on a per submission basis, taking into account advice from sample councils on the typical numbers of submissions received.

5.3 Options for fees

Based on the above findings, the department identified three broad options for new fees.

Option 1 – preserves the current stages and approach, fees are updated based on the estimated costs for each stage. The estimated cost is based on the median costs measured through the data analysis (Attachment C), with 20 submissions taken as a typical request.

Option 2 – recovers the same cost as Option 1, however it is paid as a single upfront payment. This would simplify the administration required for seeking a series of payments by collecting only one payment. The current stages are structured on the basis that there is potential for an amendment to be abandoned at several stages of the process, which has to date been linked to the fee schedule. However, should an amendment be abandoned, councils advise it may be more practical if a fee was collected upfront if there was scope to refund part of the payment.

Option 3 (preferred) – is structured similar to Option 1, however the fee for considering submissions is differentiated based on the number of submissions received. This option was included in the planning fee regulation prior to 2000; the fee for amending a planning scheme varied based on whether there was less than or more than 20 submissions. Councils on the stakeholder reference group consulted in the development of this RIS indicated support for differentiating the fee based on the number of submissions.

There was no statistically reliable data on the number of submissions received for a proposed amendment. Feedback from sample councils reported that some amendments have very few submissions, while others may have a lot. Variations on this option included only two categories (up to 20 submissions; over 20

submissions) however the department considered the difference in fees between these two categories was too large, particularly where there was a risk of a large jump in fee creating incentive for people to lodge submissions solely for the purpose of increasing the applicant's fees.

Another variation was identified where there would be a fixed fee for up to 20 submissions and then an additional fee per submission was applied. On balance, the department determined that stepped fees based on increments of 10 submissions provided sufficient graduation.

The following table sets out three options for setting fees for seeking amendments to planning schemes. All options represent full cost recovery. The dollar figures included in the table below are based on the actual costs measured in the data collection project, and used here to inform option design. In the proposed Regulations, fees are expressed in fee units and subject to indexation in line with the annual increases in the fee unit value.

Stage	**Current fee**	**Option 1 (no submission categories)**	**Option 2 (up front fixed fee)**	**Option 3 (proposed fees)**
Consider request, prepare notice and required documents, consider non-amending submissions, scope to abandon	$798	$2,798	$31,415 paid upfront	$2,798
Stage Consider submissions seeking to change amendment, determine costs related to panel attendance and information requirement, consider panel report, scope to abandon	**Current fee** $798	**Option 1 (no submission categories)** $27,737	**Option 2 (up front fixed fee)** $31,415 paid upfront	**Option 3 (proposed fees)** $13,882 for up to 10 submissions $27,737 for up to 20 submissions $37,082 for more than 20 submissions
Stage Adopting amendment and submitting it for approval to Minister	**Current fee** $524	**Option 1 (no submission categories)** $440	**Option 2 (up front fixed fee)** $31,415 paid upfront	**Option 3 (proposed fees)** $440
Stage Approval and notice	**Current fee** $798	**Option 1 (no submission categories)** $440	**Option 2 (up front fixed fee)** $31,415 paid upfront	$440
Stage **TOTAL FEES PAID**	**Current fee** **$2,918**	**Option 1 (no submission categories)** **$31,415**	**Option 2 (up front fixed fee)** **$31,415**	**Option 3 (proposed fees)** **Up to 10 submissions: $17,560** **Up to 20 submissions: $31,415** **Over 20 submissions: $40,760**

The proposed regulations would retain the power for councils to waive or rebate the fee under a range of circumstances including:

- where a request is withdrawn and a new request submitted (which occurs where a request is changed in response to issues raised in submissions, and hence should be encouraged)

- where the amendment implements a state, regional or local policy
- to remove errors or anomalies only
- the request imposes no appreciable burden on the council
- the request is to make the scheme more readily understood without changing the planning policy
- to improve the planning scheme in the public interest
- the request has been made by persons not standing to gain any benefit from the amendment and does not benefit an owner of land.

These circumstances are seen as appropriate as there is wider public benefit in the amendment, no real cost, or otherwise the costs involved in making the amendment should not be charged to the person making the request. Within the cost recovery framework, the persons making requests in these circumstances are not the (direct) beneficiaries of the requested change.

Question for stakeholders

Do you think it is appropriate to continue to allow councils to grant fee waivers and rebates in these circumstances? Are the categories appropriate?

Combined planning scheme amendment and permit application fee

Under all options, it is proposed to continue the current arrangement for the situation where an applicant requests an amendment to a planning scheme at the same time as seeking a planning permit (under the amended scheme). This provides that the combined fee will be the higher of the two separate fees plus 50 per cent of the lower of the two fees. This recognises that when considered together, some tasks (such as site inspection and assessment of likely impacts) can be done together. The data analysis was not able to separately identify the cost savings from combined applications, however consultation with councils indicated that the current arrangements were appropriate.

Section 20(4) and section 20A planning scheme amendments

It is also proposed, under all options, to introduce new fees for a number of special cases of amendments to planning schemes. Under section 20(4) of the Planning and Environment Act, the Minister may exempt himself or herself from the notice requirements of the Act. In such circumstances, the costs of considering an amendment are expected to be lower. It is proposed that the fee reflect the cost of $3,678 (being the cost if there were no submissions). This cost is equivalent to a senior planner spending around 30 hours to consider a request, process the changes to the scheme and gaining approval of the change.

Further, under section 20A of the Planning and Environment Act, certain types of amendments to planning schemes are exempt from the normal consideration processes. The types of amendments in this category are prescribed under regulation 8 of the Planning and Environment Regulations 2015, and include mainly administrative changes such as correcting obvious errors, grammatical changes, and removing redundant references. Such amendments require minimal effort, however still require formal decision and approval. While these types of amendments are usually initiated by the planning authority itself, there could be cases where a person makes an application for such changes. In these circumstances, the department considers that a fee of $880 is appropriate, being the cost of adopting the amendment and obtaining Ministerial approval of the change (costs were estimated in Stages 3 and 4 in the above table as being the costs of formally amending the planning scheme and seeking approval). This cost is equivalent to a senior planner spending around 7 hours to process the changes to the scheme and gaining approval for the change.

5.4 Impacts of proposed fees

All options are designed to reflect full cost recovery. However, the degree to which this will exactly match actual costs to councils for each application, or indeed the average for any individual council, is low. The data analysis noted that there is a very wide range of costs between councils.

The revenue collected from these fees is expected to increase by over 970 per cent. This is a very large increase, however the increase would still only reflect a small proportion of the monetary benefit an applicant may achieve should the planning scheme be amended in their favour.

The total increase in fee revenue is difficult to estimate, because of the infrequency of such applications. There are around 300 requests for planning scheme amendments made each year (excluding amendments

initiated by councils or the Minister). It is estimated that the projected total fee revenue from all options is around $5-10 million per annum (up from around $1 million, assuming no behavioural responses).

5.5 Assessment of options

Of the assessment criteria identified in chapter 3, only efficiency and simplicity were considered relevant to the identified options. To reflect the ‘costs’ and ‘benefits’ of different fee options (compared to a base case of zero fees), efficiency and simplicity were both weighted at 50 per cent (although the extent to which each option improves/worsens the objective is reflected in the assigned scores). Effectiveness is not directly relevant, as there is no scope for non-compliance with this process and the structure of fees is not relevant to the broader planning policy objectives. While planning schemes are important to the overall functioning of the planning system, the department does not consider that fee amounts that reflect costs would have any impact on the willingness of parties to make an application, even if a large upfront fee is required.

This analysis (contained on the next page) found that Option 3 is the preferred option, as the superior score on efficiency (better matching of fees) outweighs its slightly lower simplicity relative to option 2.

In implementing the preferred fee structures, the preferred fees have been converted to a fee unit amount, based on the current value of fee units ($13.60, for the year in which council costs were measured). The fee units included in the proposed Regulations will have a higher corresponding value by the time the Regulations commence, due to the annual indexation of fee unit amounts (the value of a fee unit after 1 July 2016 will be $13.94). The following table shows the amounts that will apply in relation to each fee component.

Stage	Preferred recovery of measured costs (current value)	Equivalent fee unit amounts included in the proposed Regulations	Value of fees by the time the proposed Regulations commence
Consider request, prepare notice and required documents, consider non-amending submissions, scope to abandon	$2,798	206	$2,871
Consider submissions seeking to change amendment, determine costs related to panel attendance and information requirement, consider panel report, scope to abandon	$13,882 for up to 10 submissions	1021	$14,233
Consider submissions seeking to change amendment, determine costs related to panel attendance and information requirement, consider panel report, scope to abandon	$27,737 for up to 20 submissions	2040	$28,438
Consider submissions seeking to change amendment, determine costs related to panel attendance and information requirement, consider panel report, scope to abandon	$37,082 for more than 20 submissions	2727	$38,014
Adopting amendment and submitting it for approval to Minister	$440	32.5	$453
Approval and notice	$440	32.5	$453

Other fees Fee for amendment under s. 20(4)	**Preferred recovery of measured costs (current value)** $3,678	**Equivalent fee unit amounts included in the proposed Regulations** 270	**Value of fees by the time the proposed Regulations commence** $3,764
Other fees Fee for amendment under s. 20A	**Preferred recovery of measured costs (current value)** $880	**Equivalent fee unit amounts included in the proposed Regulations** 65	**Value of fees by the time the proposed Regulations commence** **$906**

The new fees will apply from the time the new Regulations commence (expected October 2016). For applications that have already commenced prior to the commencement of the new Regulations but require a further fee during the process (for example once the number of submissions is determined), the further fee will be charged according to the new fees.

The department notes that the size of the increase in these fees is large. Therefore, as a transitional matter, the fees for requesting amendments to a planning scheme will be set at 50 per cent for the first year.

This lower fee for the first 12 months will only apply to fees paid within that period; where an application is already commenced and a further fee is payable, the further fee will be charged at the full amount if it occurs after the 12 month period.

Criterion	**Option 1 (no submission categories)**	**Option 2 (up front fixed fee)**	**Option 3 (proposed fees)**
Efficiency (weighting = 50 (0.5))	Full cost recovery option. However, as it represents an average there will be cross-subsidising between applicants. Score: 7.5/10 Weighted score: 3.75	Full cost recovery option. However, as it represents an average there will be inevitable cross-subsidising between applicants. Score: 7.5/10 Weighted score: 3.75	Full cost recovery option. However as it represents an average there will be inevitable cross-subsidising between applicants. The ability to set a different fee for the number of submissions reduces this cross-subsidisation where the number of submissions was identified as a key cost differentiator. However, with the fee based on the number of submissions, there could be undesired behaviour through nuisance submissions with the purpose of increasing the applicant fee. This can in part be addressed through the exercise of discretion by councils on the nature of submissions to be counted. Score: 8.5/10 Weighted score: 4.25

Criterion	Option 1 (no submission categories)	Option 2 (up front fixed fee)	Option 3 (proposed fees)
Simplicity (weighting = 50 (0.5))	Compared to the base case (zero fees), this fee option detracts from simplicity, however the staged fee arrangement is aligned to the current process and continues the current structure, it is relatively simple to understand and apply. Therefore, while a negative impact on simplicity, it is a very minor impact. Score: -1/10 Weighted score: -0.5	While this option provides for a single upfront payment, for applicants that withdraw during their application, the process for using partial refunds may be more difficult. Score: -1.5/10 Weighted score: -0.75	Compared to the base case (zero fees), the fee option detracts from simplicity, however the fee arrangement continues to align with the current process and is relatively simple to understand and apply. It is slightly more complex than Option 1 in that the number of submissions must be determined in applying the fee, however this is easy to determine. Score: -1.2 Weighted score: -0.6
Criterion	**Option 1 (no submission categories)**	**Option 2 (up front fixed fee)**	**Option 3 (proposed fees)**
TOTAL WEIGHTED SCORE	**+3.25**	**+3.0**	**+3.65**

6. Fees for certification of subdivision plans

6.1 Basis for setting fees

There is no specific reference in Part 2 of the Subdivision Act to pay a fee, however section 43 provides that regulations may prescribe fees for anything done under the Act. Fees may set out:

- different fees for different classes of application, determination, documents or things done
- composite fees
- maximum and minimum fees related to the costs and value of services or works.

6.2 Options for fees

Prior to 2000, the fee for certification of subdivision plans was based on the number of lots created. From 2000, this was changed to be a fixed component plus an amount per lot created. The data analysis undertaken for this RIS tested the relationship between costs and the number of lots, and found that there was no statistically significant relationship between costs to councils and the number of lots. This reconfirmed a preliminary finding undertaken by the department in 2012. In both analyses, there were small data sets, and the maximum number of lots created in any of the samples may not have been reflective of some larger subdivisions that occur less frequently.

Consultation with sample councils revealed concern about not linking fees to the number of lots, and identified that for some large subdivisions (e.g. over 500), the fee that could be charged by councils could be substantially less under all of these options compared with the current fees. Nevertheless, there are linkages between a subdivision plan and obtaining a permit for subdivision under the Planning and Environment Act, and some of the services provided by councils in relation to a subdivision plan could be considered as consequential work following the issue of a subdivision permit, such as checking compliance with permit conditions. On the basis that the permit fees will now include higher fees for a larger number of lots, the department believes that in practice the permit fees will recognise the work related to the permit.

Therefore, councils on the stakeholder reference group considered that as the planning permit fee for subdivision sufficiently recognised the associated work in relation to subdivision, the fee for certification of subdivision plans could be limited to the processes of reviewing and certifying the plan only.

Three options were identified, based on the findings of the data analysis. All options are based on full cost recovery:

- **Option 1** – reflects the average cost of each type of plan as measured through the data collection activity. This identified different costs between subdivision plans and other types of plans covered by the Act.

- **Option 2** – provides for a component of the fee to be based on the number of referrals required for each plan. In the data sample, all plans required at least 4 referrals, and therefore the fixed component includes at least 4 referrals, with an additional cost for further referrals.

- **Option 3 (preferred)** – provides for a single fee to apply to all types of plans under the Act based on the average cost in the data sample (weighted by the number of each type of plan in the sample).

All options are based on full cost recovery, and would raise the same level of total fee revenue (for all councils in aggregate, assuming the sample is representative of total applications).

The following table sets out three options for setting fees for a council considering and certifying a plan under the Subdivision Act. The figures in the table reflect the costs as measured in the data analysis project. The proposed Regulations will convert the fee to an equivalent fee unit amount.

Type of plan	Current Fee	Option 1	Option 2	Option 3
Subdivision plan	$100 plus $20 per lot created	$128	$121 plus $2 for each referral over 4	$125
Type of plan	**Current Fee**	**Option 1**	**Option 2**	**Option 3**
Other plan (e.g. consolidation of land, create or vary easements and restrictions, create common property)	$100	$114	$121 plus $2 for each referral over 4	$125

Under all options, it is also proposed to introduce new fees. While these are new in terms of being separately identified in the regulations, they seek to clarify situations where currently councils are unclear about the fee to be charged (with some councils simply charging the same fee as a new plan or determining their own fees). These are:

- Amendment to applications before certification – the data analysis identified this as requiring a separate fee, and estimated the average cost to council where an amendment was made to be $101. Where an amendment was trivial in nature, the council could waive the fee.

- Amendments to previously certified plans – the process for considering such amendments is still required to be undertaken by councils, however the current Regulations are unclear on whether a new fee can be charged. The data analysis identified that in such cases, the cost to councils of considering an amendment to a certified plan was effectively equal to considering a new plan, and as such recommended that the fee for amending plans be the same as the fee for a new plan (in practice, most councils applied this fee anyway).

The regulations also propose to retain the ability for councils to waive or rebate fees in circumstances where an application is withdrawn, a change is considered minor, or related to land used for charitable purposes.

6.3 Assessment of options

Of the assessment criteria identified in chapter 3, all options were considered to be broadly equal on the efficiency criterion (all are designed to achieve full cost recovery), and none of the options are expected to raise any issues related to equity or policy effectiveness. Therefore, in this instance, the department considered that simplicity was the only material differentiator between the options, and as such Option 3 was preferred as it achieved full cost recovery in the simplest way.

In the proposed Regulations, the preferred fees have been converted to fee unit amounts, using the current fee unit value of $13.60. By the time the Regulations commence, the value of a fee unit will increase to $13.94, increasing the dollar amount of all fees. At the time of commencement, the relevant subdivision fees will be:

- 9.5 fee units for certification of a new plan or amendment to existing certified plan, which will be $132 at the time of commencement

- 7.5 fee units for amendment to a plan before certification, which will be $105 at the time of commencement.

7. Other fees under the Planning and Environment Act

7.1 Fees for minor or ancillary activities

There are a number of other activities that councils are required to perform under the Planning and Environment Act or the Subdivision Act for which cost recovery is warranted. These are generally minor in nature or occur infrequently, and as such do not require the level of analysis as the fees in the previous sections. As far as possible, the costs of each activity have been measured or estimated, however the range of options has been limited as full cost recovery is taken as the default preferred position.

7.2 Certificate of compliance

Section 97N(2) of the Planning and Environment Act requires payment of a prescribed fee for a certificate of compliance. Section 203(1)(ba) of the Act specifically provides for the setting of fees for applications for certificates of compliance. If no fee is prescribed, councils could not recover the costs of providing certificates.

The data analysis identified the median cost to councils of providing a certificate of compliance to be $300. In general, providing a certificate requires only a review of the relevant file (which could take several hours) and issuing the certificate. Feedback from the stakeholder reference group councils in the data project and further consultation in the preparation of this RIS indicated that a fee of $300 was appropriate, based on their experiences. This fee reflects council staff time of around 2.5 hours to provide the certificate.

As this fee would be based on full cost recovery and is not of a size that raises any concerns about ability to pay or the integrity of the planning system, the department did not consider that any other option was necessary to consider.

A fee of $300 is currently equivalent to 22 fee units, which will be the basis for setting the fee in the proposed Regulations. By the time the proposed Regulations commence operation, 22 fee units will be $307.

The current fee (found to be under-recovering costs) is $147, giving a proposed increase of 108 per cent (including the automatic 2.5 per cent increase of fee units). While this is a large percentage increase, it is still a low fee level.

7.3 Application for planning certificates

Section 198(2) of the Planning and Environment Act requires payment of a prescribed fee for seeking a certificate. Section 203(1)(a) specifically provides for the setting of fees for planning certificates. If no fee is prescribed, councils could not recover the costs.

The data analysis identified a cost of $21 for providing a planning certificate. While this was based on a limited sample, subsequent review of the findings of the data analysis and discussion of proposed fees in this RIS confirmed that the stakeholder reference group councils consider this cost appropriate for setting the new fee. This cost is equivalent to around 10 minutes of council staff time to issue to the certificate.

As this fee would be based on full cost recovery and is not of a size that raises any concerns about ability to pay or the integrity of the planning system, the department did not consider that any other option was necessary to consider.

A fee of $21 is currently equivalent to about 1.5 fee units, which will be the basis for setting the fee in the proposed Regulations. By the time the proposed Regulations commence operation, 1.5 fee units will still be $21.

The current fee is $18.20, giving a proposed increase of 15 per cent.

7.4 Determination of whether anything has been done to the satisfaction of a responsible authority, Minister, council or other referral authority

There are no specific provisions in the Planning and Environment Act that deal with this type of service (other than the fee regulation-making power under section 203(1)(e)), however confirming satisfaction is often a necessary requirement, for example to confirm that particular conditions on a permit have been satisfied. In general, these costs are not recovered through permit fees, as it is often a different party that is required to be satisfied of a particular matter.

Section 203(1)(e) of the Act provides for the determination of whether anything has been done to the satisfaction of a responsible authority, Minister, public authority, municipal council or a referral authority. It is unclear whether in the absence of prescribing a fee, councils may be able to determine their own fees for such activities.

The data analysis identified that the current fee ($102) was under-recovering the cost to councils. A median cost of $300 was measured, or around 2.5 hours of staff time (on average). Councils on the stakeholder reference group confirmed this was a reasonable estimate of costs, provided that the regulations were clearer that the fee could be applied on a per matter basis, to avoid a situation where a council was asked to confirm satisfaction against conditions in a single permit that in fact related to several different matters. During the preparation of the RIS, the department has become aware that there is inconsistency in the way in which this regulation had been applied. The fee should apply on a per matter basis. The department considers this clarification in the proposed Regulations appropriate.

As this fee would be based on full cost recovery, and is not of a size that raises any concerns about ability to pay or the integrity of the planning system, the department did not consider that any other option was necessary to consider. Unlike permits under VicSmart, single dwellings or other low-value developments, the large majority of cases where a satisfaction matter will be required to be determined relate to larger developments, for which the department does not consider affordability is a relevant policy consideration.

A fee of $300 is currently equivalent to 22 fee units, which will be the basis for setting the fee in the proposed Regulations. By the time the proposed Regulations commence operation, 22 fee units will be $307. This would be an increase of around 200 per cent.

The data analysis asked the sample councils about any other classes or categories where the cost of this activity may be materially different. None were identified in the data analysis.

Question for stakeholders

The proposed fee for each satisfaction matter is $300. What impact would this have if there are a large number of satisfaction matters (i.e. conditions on a permit) or the same matter is considered at different stages of the development? Please explain your views.

7.5 Section 173 Agreements

Under section 178A of the Planning and Environment Act, a person may apply to a responsible authority to amend or end an agreement made under section 173.

A s. 173 agreement is an agreement between a council and a landowner which regulates the uses and activities that may be undertaken on a property. It is usually entered as a condition to the granting of a planning permit.

To amend or end an agreement, the Act requires the council to take particular steps including notice, consideration of objections and submissions, and consideration against matters outlined in the Act. In practice, these are similar to considering a permit application.

Section 178A(2)(c) requires the applicant to pay the prescribed fee. The intention of this fee is to charge for consideration (only) of a request to amend or end an agreement in order provide in-principle agreement. In the absence of setting a fee in regulations (as is currently the case), councils could not charge any fee for such a request.

The data analysis did not measure the costs to councils of amending or ending a s. 173 agreement. However, it is noted that the Act (in s. 178H) already provides an ability for councils to require an applicant to pay the costs of giving notice of the proposed amendment and preparing the amended agreement. The fee for the application is therefore limited to the council considering the request (which consulted councils indicated is similar to considering an application for a 'use only' planning permit, albeit some costs should be excluded).

The department therefore proposes to introduce a new fee for applications to amend or end a s. 173 agreement, at $606, being 50 per cent of the cost of a permit for use application, which is a conservative estimate of actual costs given the type of work needed to assess whether an agreement can be amended. The estimate is conservative to acknowledge the fact that the cost of amending these agreements was not specifically addressed during data collection and anticipated costs have been based on a proxy for the work required.

A fee of $606 is currently equivalent to 44.5 fee units, which will be the basis for setting the fee in the proposed Regulations. By the time the proposed Regulations commence operation, 44.5 fee units will be $620.

8. Other fees under the Subdivision Act

8.1 Supervision of works

Under the Subdivision Act, a council may appoint a person to supervise works carried out under a certified plan. In general, councils have the ability to charge the applicant a fee for providing this person, however, section 17(2)(b) of the Act provides that this fee cannot exceed a limit set in the regulations. Section 43 provides for setting of maximum fees related to the costs and value of services or works. In the absence of a maximum fee in the regulations, councils could theoretically charge any amount, although in practice this would be limited by other obligations on councils (including internal fees policies) to only recover the actual cost to the council.

Data obtained from a small number of councils, and confirmed more generally by the stakeholder reference group councils, indicates that councils currently use the maximum fee (set at 2.5 per cent of the value of works) as the default fee calculation for all plans. This suggests that, in the view of councils, the current maximum is below cost for most, if not all, councils.

Given the nature of this service, and that it only occurs in relatively low volume, no data on actual costs was collected by the department. It is noted that the government does not have the power to set fixed fees, but can only prescribe a maximum. The available options are (broadly) to set a maximum as a fixed fee, or a maximum percentage based on the value of works (these are the two bases allowed under the Act). A fixed fee is inherently problematic as the work of a supervisor may range from a very short time (days) to much longer (weeks and months). The effort of a supervisor is for the most part proportionate to the scale of works to be undertaken, as the value of works is expected to be proportional to the time the supervisor will be required. Therefore, in principle, a fixed fee cap is not suitable (and indeed not practical unless set at a very high level, in which case it would become largely irrelevant). Therefore, the department determined that setting a maximum percentage of works was the only feasible approach, and then considered what percentage of costs should be the maximum.

Despite the fact that fees are currently charged at the cap by the sampled councils, which could imply that actual costs are higher than the current cap, feedback from the stakeholder reference group councils in the preparation of this RIS indicated that the current cap (2.5 per cent) was appropriate, and maintained an incentive to appoint a supervisor only where necessary and to keep costs as efficient as possible. In the absence of any strong argument to vary the current cap, the department proposes to retain the fee cap at 2.5 per cent.

Question for stakeholders

Under regulation 8 of the Subdivision (Fees) Interim Regulations 2015 (fee for supervision of works), a council or referral authority may charge of fee of up to 2.5 per cent of the estimated cost of constructing the works when they supervise the construction of works. Is the level of this fee appropriate? Is it likely to over recover costs? Please explain your views.

8.2 Checking engineering plans

As part of the subdivision process, councils may be required to check engineering plans for works proposed to be carried out to create the subdivision. Section 43 of the Act specifically provides for the regulations to fix fees for the checking of engineering plans. In the absence of fixing the fee in the regulations, a council is unlikely to be able to charge any fee for consideration of engineering plans.

The data analysis estimated the cost of checking engineering plans at $161. However, this was based on a very small sample, and feedback from councils indicated that this was unlikely to be representative of all engineering plans. The data analysis identified a weak relationship between cost and the value of works, however the small sample size made it difficult to adequately assess whether this relationship was significant. Discussions with the sample councils identified that the work undertaken in checking an engineering plan was somewhat discretionary, with councils adopting an approach that more attention was given to larger scale (value) plans and less attention to minor works. This is consistent with risk-based regulation.

Based on fee data charged by councils, by default most councils apply the current prescribed fee cap (0.75 per cent of value of works), which for the councils in the sample amounted to an average cost per plan of $6,665 (noting that the department considered this small sample is unlikely to be representative).

The department understands there is significant work involved in the checking of plans, which typically involves technical experts. Consultation with the sample councils noted that the level of effort was in proportion to the scale of work proposed in the plan. The department therefore believes that a fee cap set as a percentage of works value remains appropriate.

It is not known how many cases attract this fee each year.

The stakeholder reference group councils suggested that the fee cap could be increased to 1 per cent, noting that it was widely understood that actual costs nearly always exceeded the current 0.75 per cent (and there remained an ability to charge a lower fee should actual costs be less). However, it was difficult to identify any quantitative basis for a different fee cap. The department therefore considers, in the absence of any compelling reason for change that retaining the current fee cap of 0.75 per cent remains appropriate.

The department acknowledges, however, that the data analysis did not support this approach and it is unclear:

- whether the cap should be based on the value of the engineering works (and the extent to which this reflects the cost to councils of checking plans), or another basis, such as a fixed dollar amount
- the appropriate level for the cap to avoid overcharging (i.e. whether the existing cap of 0.75 per cent is greater than councils' efficient costs).

8.3 Preparation of engineering plans

Section 15(6) of the Subdivision Act allows councils to charge a fee for an engineering plan that it prepares, but not exceeding a maximum set in regulations. The current maximum is set as 3.5 per cent of the value of works. In the absence of a maximum fee in the regulations, councils could theoretically charge any amount, although in practice this would be limited by other obligations on councils (including internal fees policies) to only recover the actual cost to the council.

The department did not collect specific information on the costs to councils of preparing engineering plans, the number of plans prepared by councils or the actual fees charged under the current Regulations. In part, the absence of information reflects the fact that councils rarely prepare such plans, and in consultation with the sample councils and the stakeholder reference group councils, no examples were identified where a council had prepared an engineering plan in the past ten years. Some councils and other stakeholders therefore suggested that the cap could be removed.

Competition for the preparation of engineering plans by the private sector should act to ensure that councils do not charge excessive fees. The department also considered that capping the price of a service provided by council that is otherwise readily able to be provided by the private sector may not be consistent with competitive neutrality principles, whereby councils should not charge a fee below their cost of providing the service.

However, the department understands that where there are private sector providers available, this service is in practice not provided by councils. It is only where there are no alternative providers that the council would prepare an engineering plan, and in such situations the most relevant concern is that councils do not charge excessive amounts for this service.

Thus, where there are no private sector providers to complete engineering plans and councils act as a 'provider of last resort', the department considers it appropriate to set a fee cap, to avoid the risk of councils imposing excessive (‘monopoly’) fees.

In setting a fee cap, the cap is not necessarily designed to equate exactly with the expected cost, but to provide an upper limit to prevent excessive fees. However, if set too high, the fee cap would fail to achieve its purpose, particularly if councils use the fee cap as a default fee instead of calculating actual costs. The department is not aware of the price that a private provider may charge for preparing an engineering plan..

In the absence of any actual data on the costs of providing this service, it is proposed to retain the current cap at 3.5 per cent of the value of works to allow for circumstances where councils provide this service as a last resort and a fee would need to be charged. Although rarely used, there are potential situations where, in the absence of any alternative provider, the cost of having council prepare an engineering plan should not be

prohibitive for an applicant. Despite the consulted councils not having prepared a plan in recent years, the councils did not consider the fee cap should be increased for the potential situation where they may have to prepare an engineering plan. Similarly, non-council stakeholders did not consider a need to reduce the fee cap.

The department acknowledges, however, that without relevant data it is unclear:

- whether the cap should be based on the value of the engineering works (and the extent to which this reflects the cost to councils of preparing plans), or another basis, such as a fixed dollar amount;
- the appropriate level for the cap to avoid overcharging (ie., whether the existing cap of 3.5 per cent is greater than councils' efficient costs).

8.4 Statement of Compliance

Under section 21 of the Subdivision Act, a person can apply for a statement of compliance (a document necessary to register a subdivision) to be evidence that the subdivision complies (or will comply) with the Subdivision Act and the Planning and Environment Act. Section 43 of the Subdivision Act allows a fee to be set for requesting a statement of compliance.

Prior to issuing a statement of compliance, a council must check that the applicant has provided the prescribed information, and must be satisfied that all requirements of the two Acts have been met or that there is an agreement in place to ensure compliance.

In practice, there can be substantial work involved in checking compliance, however councils consulted in the preparation of this RIS indicated that most of these activities should be appropriately reflected in the costs and fees associated with the original subdivision permit (e.g. the permit fee should also cover post-permit activities such as checking compliance with permit conditions, monitoring, and so on). On the basis that the proposed planning permit fees incorporate higher fees for larger subdivisions, the activities related to a statement of compliance should be limited to checking the relevant file and issuing the statement.

The data analysis estimated that there was a cost of around $30 per statement. The department considers that a flat fee of $30 per statement is therefore appropriate.

A fee of $30 is currently equivalent to 2.3 fee units, which will be the basis for setting the fee in the proposed Regulations. By the time the proposed Regulations commence operation, 2.3 fee units will be $32.

As this fee would be based on full cost recovery and is not of a size that raises any concerns about ability to pay or the integrity of the planning system, the department did not consider that any other option was necessary to consider.

9. Implementation and evaluation

9.1 Implementation plan

The following implementation plan has been developed to support implementation.

Issue	**Relevant information**
Communication with regulated entities	The new fees will be communicated to local councils. Each council will be responsible for how the new fees are communicated to their local communities. This is typically through publishing details about fees on their websites and making information sheets available at council offices.
Issue	**Relevant information**
Transitioning to the new regime	Due to the size of the increase in fees in dollar terms for planning scheme amendments and for planning permits for developments over $50 million, it is proposed that the new fee for these categories be set at 50% of the proposed new fee in the first year of the Regulations, before increasing to the full new fee in the second year. Thus, for planning scheme amendments, any new stages commenced in the first year (even where initial applications are made before the commencement of the new Regulations) will be charged 50 per cent of the fee proposed in the Regulations for those stages. From the second year of the commencement of the Regulations, the full fee will be charged for all stages commenced from that point (even where the initial application was made in earlier years). The fees selected for the transitional arrangements were those with the largest dollar value increase from the current fees. The department considers that setting lower

	fees for these categories is appropriate because there will be no other transitional arrangements (e.g. continuing current fees for applications already commenced). Furthermore, these categories are most likely to involve processes that are either already underway (in the case of planning scheme amendments), or where a large amount of work has already been undertaken in the lead up to making a permit application (for high value developments) that will face large increases in fees after the work to initiate the application has already been done. A rate of 50% was chosen for the first 12 months to smooth the large fee increase, but also (for the case of planning permits) to ensure that the new fee for developments over $50 million would still be higher than the fee (charged at full rate from the first year) for lower value developments. The fees selected for the transition arrangements were those with the largest dollar value increase (permits for developments over $50 million will increase by more than $50,388 and fees for planning schemes will increase by up to almost $40,000). No transition was considered necessary for development permits between $15 million and $50 million (for which the fee will increase by around $22,000), because the size of the increase was considered more manageable in the context of the value of the development. The proposed fees will be converted to fee units, allowing for automatic indexation of fees under the Monetary Units Act. The department does not believe the increases to fees will result in any material bringing forward of applications, given the work involved in making an application and the fees remain small relative to the value of work.
Issue Achieving compliance	**Relevant information** Local councils are responsible for charging the correct fee for the service provided.
Issue Establish clear accountabilities between the department and regulator	**Relevant information** N/A
Issue Implementation risks and monitoring	**Relevant information** There will not be any major implementation arrangement required for the proposed Regulations, other than fee levels and transition arrangements referred to above. These relate only to the quantum of fees charged, and there are no changes to the processes or systems required to implement the levying and collection of fees. Council staff will need to acquaint themselves with the fees and councils will notify potential applicants of the proposed fee changes. The broad structure of the proposed Regulations remains the same as the current regulations.

9.2 Evaluation strategy

The proposed Regulations are scheduled to sunset in 2026, creating a need to review the fees in a future regulatory impact statement. However, under the *Victorian Guide to Regulation*, an evaluation must be conducted within five years, given the magnitude of the fees imposed.

The department will be responsible for undertaking this evaluation by October 2021. The nature and scope of this evaluation will be significantly informed by the 'Smart Planning' initiative (announced in the 2016-17 Budget) and the need to fill gaps in data used to set specific fees.

Smart Planning

The government recently announced a $25.5 million 'Smart Planning' initiative, which aims to streamline the planning system by delivering an integrated program of reforms. The program will cover a number of areas, and the first two stages will be delivered over the next two years.

The integrated digital platform will replace manual processing and enable online lodgement and transactions for planning applications handled at the state level. This will change the way in which the department monitors and evaluates the new fees as follows:

- Stage 1 (Improve): An online 'real-time' planning scheme amendment management system, enabling efficient lodgment, publication and management of planning schemes.
- Stage 2 (Reform): Streamlined state permit system for land and heritage assessments (eg.windfarms, Environment Effects Statements and heritage).

- Smart Planning will seek to further improve the performance of the planning system by building on the successful implementation of Stages 1 and 2 to deliver a simpler to use planning system.

Smart Planning offers significant benefits for the evaluation of the proposed fees and the setting of new fees in the future. For example, improving efficiency in Stage 1 is expected to reduce the costs to be recovered through fees. Similarly, the intended future streamlining will likely include changes to specific planning processes and activities that may require reconsideration of the fees (in both amount and structure).

The department is committed to working with councils across Victoria to better understand the new costs of planning activities and to help identify information gaps. For example, the department will ensure that any changes to the system will enable information to be collected based on the fee categories in these Regulations.

In addition to working with councils, the department will address gaps in the data used to set current fees through a range of other means, as discussed below.

Other data sources

As well as the opportunity to improve data collection offered by the Smart Planning initiative, the department will collect information from sample councils on efficient costs. This will facilitate the evaluation of the proposed fees. In this regard, the department has decided to undertake a time-capture study, similar to the one undertaken for this RIS, of the planning and subdivision functions delivered by councils. This study will be designed to ensure that the costs of all substantial planning and subdivision processes can be identified and measured more accurately.

Prior to the five-year evaluation, the department will monitor and analyse the following:

- Planning permit data for at least the first 2-3 years (until the new data reporting system is implemented under the Smart Planning initiative), with particular focus on the categories with new fees. The department will seek views from councils, the development industry and other stakeholders to gauge what impacts the new fees are having, and to seek views on implementation, compliance and fees. This engagement will occur in partnership with the Municipal Association of Victoria and the current membership of the Stakeholder Reference Group to ensure that views of all stakeholders are considered.

- Data reported through the local government performance reporting framework (published on the KnowYourCouncil website), which includes time taken for planning decisions, average service costs, percentage of applications decided within 60 days, and the proportion of decisions upheld at VCAT.

Addressing significant gaps in the data used to gather specific fees

As noted elsewhere in this RIS, there are a number of fees that were not directly estimated, or for which the department considered estimates were not sufficiently robust, and for which the department has drawn on other anecdotal information or judgements to set fees. These include those for amendments to applications, planning scheme amendments where special provisions apply (e.g. exemptions from notice), amending or ending agreements made under s. 173 of the Planning and Environment Act, and fees that are based on the value of works.

As part of the evaluation of the fees, the department will undertake specific work to address these gaps.

- In relation to subdivision permit fees, the department has proposed a fee based on the number of lots in each permit application. This is based on a number of assumptions that were at odds with the data analysis. As an improvement measure, the department is planning to examine the scope for subdivision processes to be reviewed as part of the Smart Planning Initiative. Such a review would include an analysis of the costs to councils of new arrangements (thereby enabling fees to be better matched to costs). Given the Smart Planning program is not expected to be fully implemented prior to the five-year evaluation, the department will also undertake a time-capture study to collect data from councils about the existing functions. The department will ensure that this study includes a sufficient number of applications and application types to enable the impact of lot numbers on the cost of planning activities to be analysed more accurately.

- Similarly, the department's new system will enable the monitoring of data on amendments to planning schemes. This will be helpful in improving the data and analysis of costs. It will be particularly useful in informing a review of both the structure (stages and thresholds for number of submissions) and fee levels. The Smart Planning initiative will enhance the ability to monitor data and support the five-year evaluation.

The department will also rely on the time-capture study to collect data on planning scheme amendments from councils so that an extensive evaluation of costs and fees can occur. This will take place over a sufficient period of time so that planning scheme amendment requests can be tracked from beginning to the end of the process.

- The time-capture study undertaken by the department prior to the five-year evaluation will also aim to collect data on other planning and subdivision functions. The study will focus on fees for which qualitative data or indirect estimates were relied upon to set the fees proposed in this RIS. These fees include those for amendments to applications, amending or ending agreements made under s. 173 of the Planning and Environment Act, and fees that are based on the value of works.

10. Consultation

As part of the review of fees, 15 local councils participated in a data collection and analysis exercise. Councils provided data and views on service levels, compliance and implementation relevant to the new fees. (See data analysis at Attachment C for further details.)

The department convened a Stakeholder Reference Group to provide feedback on the data collection and analysis, and also to provide advice on the principles and options examined in this RIS. This group comprised:

Local councils

- Campaspe Shire Council
- Glen Eira City Council
- Greater Shepparton City Council
- Port Phillip City Council
- Surf Coast Shire Council
- Wyndham City Council

Peak bodies

- Association of Consulting Surveyors, Victoria
- Municipal Association of Victoria
- Planning Institute of Australia
- Property Council
- Surveying and Spatial Sciences Institute.

In general, stakeholders supported the proposed fees, although in a few instances councils advocated for higher fees than those proposed (related to permits for subdivision, and the fee cap for consideration of engineering plans). These were included as options considered in this RIS. Non-council stakeholders on the reference group were also supportive of the proposed changes to fees.

A primary function of the RIS process is to allow the public to comment on the proposed Regulations before they are finalised. Public input provides valuable information and perspectives and improves the overall quality of regulations. Accordingly, feedback on the proposed Regulations is welcomed and encouraged.

The consultation period for this RIS will be 28 days, with written comments required by no later than **5pm on 24th June 2016**.

Attachment A: Proposed fees

The following table sets out all the proposed fees (in fee units) with the corresponding dollar amount of the fee at the time the Regulations commence (expected October 2016). This dollar amount includes the additional 2.5 per cent increase in all government fees from 1 July 2016 under the Monetary Units Act.

Fee category **Planning permit applications** Use only	**Proposed fee (fee units)** 89	**Proposed fee amount from October 2016** $1,241
Fee category **Planning permit applications** Single dwelling use or development: up to $10,000	**Proposed fee (fee units)** 13.5	**Proposed fee amount from October 2016** $188
Fee category **Planning permit applications** Single dwelling use or development: more than $10,000 and up to $100,000	**Proposed fee (fee units)** 42.5	**Proposed fee amount from October 2016** $592
Fee category **Planning permit applications** Single dwelling use or development: more than $100,000 and up to $500,000	**Proposed fee (fee units)** 87	**Proposed fee amount from October 2016** $1,213
Fee category **Planning permit applications** Single dwelling use or development: more than $500,000 and up to $1 million	**Proposed fee (fee units)** 94	**Proposed fee amount from October 2016** $1,310
Fee category **Planning permit applications** Single dwelling use or development: more than $1 million and up to $2 million	**Proposed fee (fee units)** 101	**Proposed fee amount from October 2016** $1,408
Fee category **Planning permit applications** VicSmart permit: Use and development up to $10,000	**Proposed fee (fee units)** 13.5	**Proposed fee amount from October 2016** $188
Fee category **Planning permit applications** VicSmart permit: Development more than $10,000	**Proposed fee (fee units)** 29	**Proposed fee amount from October 2016** $404
Fee category **Planning permit applications** Develop land: Up to $100,000	**Proposed fee (fee units)** 77.5	**Proposed fee amount from October 2016** $1,080
Fee category **Planning permit applications** Develop land: More than $100,000 and up to $1 million	**Proposed fee (fee units)** 104.5	**Proposed fee amount from October 2016** $1,457
Fee category **Planning permit applications** Develop land: More than $1 million and up to $5 million	**Proposed fee (fee units)** 230.5	**Proposed fee amount from October 2016** $3,213
Fee category **Planning permit applications** Develop land: More than $5 million and up to $15 million	**Proposed fee (fee units)** 587.5	**Proposed fee amount from October 2016** $8,196
Fee category **Planning permit applications** Develop land: More than $15 million and up to $50 million	**Proposed fee (fee units)** 1732.5	**Proposed fee amount from October 2016** $24,151

Fee category **Planning permit applications** Develop land: More than $50 million	Proposed fee (fee units) 3894	Proposed fee amount from October 2016 54,282*
Fee category **Planning permit applications** Subdivision: Subdivide existing building, subdivide land into 2 lots, give effect to a realignment of common boundary between 2 lots or to consolidate lots	**Proposed fee (fee units)** 89	**Proposed fee amount from October 2016** $1,241
Fee category **Planning permit applications** Subdivision: Create, vary or remove a restriction, create or remove a right of way, create, vary or remove an easement, vary or remove a condition in the nature of an easement	**Proposed fee (fee units)** 89	**Proposed fee amount from October 2016** $1,241
Fee category **Planning permit applications** Other subdivisions	**Proposed fee (fee units)** 89 per 100 lots	**Proposed fee amount from October 2016** $1,241 per 100 lots
Fee category **Planning permit applications** Permit application other than use, development or subdivision	**Proposed fee (fee units)** 89	**Proposed fee amount from October 2016** $1,241
Fee category **Planning permit applications** Amend an application after notice but before decision	**Proposed fee (fee units)** -	**Proposed fee amount from October 2016** 40% of fee applicable to the original permit class plus the difference in fees if the amendment moves the application into a different class
Fee category **Planning permit applications** Amend an application for an amendment to a permit	**Proposed fee (fee units)** -	**Proposed fee amount from October 2016** 40% of fee applicable to the original permit class plus the difference in fees if the amendment moves the application into a different class
Fee category **Planning permit applications** Amend an existing planning permit	**Proposed fee (fee units)** -	**Proposed fee amount from October 2016** 5% of fee applicable to the original permit class plus the difference in fees if the amendment moves the permit into a different class
Fee category **Planning permit applications** Amend a planning scheme*: Request with up to 10 submissions	**Proposed fee (fee units)** 1292	**Proposed fee amount from October 2016** $18,010
Fee category **Planning permit applications** Amend a planning scheme*: Request with more then 10 and up to 20 submissions	**Proposed fee (fee units)** 2311	**Proposed fee amount from October 2016** $32,215
Fee category **Planning permit applications** Amend a planning scheme*: Request with more than 20 submissions	**Proposed fee (fee units)** 2998	**Proposed fee amount from October 2016** $41,792

Fee category	Proposed fee (fee units)	Proposed fee amount from October 2016
Planning permit applications Planning scheme under s.20(4) of the Planning and Environment Act	270	$3,764

Fee category	Proposed fee (fee units)	Proposed fee amount from October 2016
Planning permit applications Planning scheme amendment under section 20A	65	$906

Fee category	Proposed fee (fee units)	Proposed fee amount from October 2016
Planning permit applications Issue a certification of compliance (planning permit)	22	$307

Fee category	Proposed fee (fee units)	Proposed fee amount from October 2016
Planning permit applications Issue a planning certificate	1.5	$21

Fee category	Proposed fee (fee units)	Proposed fee amount from October 2016
Planning permit applications Satisfaction matter	22	$307

Fee category	Proposed fee (fee units)	Proposed fee amount from October 2016
Planning permit applications Amend or end a s.173 agreement	44.5	$620

Fee category	Proposed fee (fee units)	Proposed fee amount from October 2016
Planning permit applications Certify a subdivision plan	9.5	$132

Fee category	Proposed fee (fee units)	Proposed fee amount from October 2016
Planning permit applications Amend an application to certify a subdivision plan	7.5	$105

Fee category	Proposed fee (fee units)	Proposed fee amount from October 2016
Planning permit applications Request to amend a certified subdivision plan	9.5	$132

Fee category	Proposed fee (fee units)	Proposed fee amount from October 2016
Planning permit applications Statement of Compliance (subdivision)	2.3	$32

Fee category	Proposed fee (fee units)	Proposed fee amount from October 2016
Planning permit applications Consider engineering plans	-	Cap of 0.75% of works

Fee category	Proposed fee (fee units)	Proposed fee amount from October 2016
Planning permit applications Prepare engineering plans	-	Cap of 3.5% of works

Fee category	Proposed fee (fee units)	Proposed fee amount from October 2016
Planning permit applications Supervision of works	-	Cap of 2.5% of works

** For the first 12 months, the fees for planning scheme amendments and permits for developments over $50 million will only be charged at 50 per cent of the proposed fee.*

Attachment B: Guiding principles

Guiding Principle	Description
Fees charged for the planning and subdivision functions of municipal councils should support Victoria's planning objectives	The primary objective of Victoria's planning system is to provide for the fair, orderly, economic and sustainable use and development of land. Planning authorities and responsible authorities are required to balance conflicting objectives in favour of net community benefit and sustainable development for the benefit of present and future generations. This principle advances Victoria's planning objectives and indicates that fees should support sustainable development that provides benefits to the community now and in the future. Fees should therefore avoid creating inappropriate incentives for noncompliance or inadequate consideration of applications. Any divergence from full cost recovery on this basis should demonstrate the need for the underlying requirements (i.e. that imposing these requirements on, for example, low-value applications is warranted), that potential applicants are responsive to changes in fees, and that such responsiveness would undermine the objectives of the Act and result in detriment.
Guiding Principle	**Description**
Fees should be set to encourage the optimal use of the planning and subdivision functions of municipal councils	Setting fees so that there is optimal use of council planning and subdivision services suggests that fees should be set for activities that are significant in the planning and subdivision processes. Fees should not be set too low as to encourage numerous amendments that could otherwise be bundled together into one amendment.
Guiding Principle	**Description**
Fees should not over-recover costs and should be based on efficient costs	This principle points to the need for robust and transparent costing of council services that identifies inherent inefficient practice and adjusts those costs accordingly. This principle will be given effect primarily through the cost analysis that is undertaken for the project. While the consultants will be asked to identify cost drivers and provide advice on efficient costs, the selection of councils for participation in the cost analysis has taken into account the need to ensure the costing reflects efficient practices. There are two broad elements to efficiency, that is, that the regulation is: • applied only where it is warranted (i.e. benefits outweigh the costs) • implemented and administered in the most effective and least costly way possible.
Guiding Principle	**Description**
Fees should be equitable	Equity in fees can be given effect in two ways. Fees may be regarded as equitable if those who benefit from a service pay for that service and are not subsidising the costs of services that benefit others. Fees may also be regarded as equitable if those with proportionately greater means pay more than those with lesser means. This second view is relevant also to ensuring access to services are safeguarded. This principle will need to be given effect within the constraints of the head of power provided for fees in the planning and subdivision acts. As they stand, the heads of power do not allow fees to be differentiated by different classes of applicant, such as individuals or corporate applicants, developers or objectors. Any differentiation of fees will need to be based on "cases or classes of cases". Where fees are to be differentiated by type of development it is important to be able to describe such classes of development unambiguously in the Regulations. It is recognised that legal/initial incidence (who pays the fee) differs from final incidence (who ultimately bears the cost). In this context, it is not clear that a proposal that reduces fees for single dwellings relative to others is more equitable, given the likely pass-through of fees to the ultimate buyers of dwellings in large-scale developments (some of whom buy in these areas because they cannot afford to buy single dwellings on large blocks in the suburbs).
Guiding Principle	**Description**
Fees should be simple to understand and administer	The calculation and application of fees should not unnecessarily add to the regulatory burden of the planning system.

Attachment C: Summary of data collection and analysis methodology

Background

Regulatory Impact Solutions collected and analysed cost information from 15 councils as part of the fees review project. The cost information related to fees covered by the Planning and Environment (Fees) Interim Regulations 2015 and Subdivision (Fees) Interim Regulations 2015 (together referred to below as the current regulations) and a small number of activities not currently included within the Regulations.

This attachment provides a summary of the:

- activities that are subject to cost recovery
- full (indirect and direct) unit costs incurred by councils and the department of activities to be recovered through regulatory fees.

This attachment provides detailed information for the costing of permit applications, which is the highest volume planning and subdivision activity undertaken by councils and for which data on the number of permits are captured at an aggregate level through the PPARS system. Summary outcomes are provided for other activities, noting that data on the number of these activities is not available. VicSmart applications were not separately costed, instead the costs related only to the relevant stages for dealing with planning permit applications were used to set VicSmart fees.

Methodology

The methodology for costing council activities involved the following steps:

- A sample of 15 councils was selected to participate in the data collection over a four week period. These were chosen to be representative of geographic areas and different sizes.
- Process maps were prepared for the key activities performed by councils.
- Councils were provided with pro-forma timesheets and a questionnaire about planning and subdivision processes. Where feasible, councils collected data on staff time attributable to an individual application. Staff timesheets recorded the task being performed, in accordance with the stages in the process maps. Data was also collected about the characteristics of the councils and the applications they processed.
- Regression analysis (a statistical tool for estimating the relationships among variables) was used to identify factors that explain differences in costs (cost drivers), for each stage of the process that could be used to differentiate fees.
- Time-sheeting was not possible for those activities where a one-month data collection was inadequate (such as planning scheme amendments) or activities undertaken infrequently,(such as VCAT processes. For these activities councils were asked to estimate the typical costs incurred and identify any factors that were relevant in determining the costs of individual applications. Estimates of average (mean or median*) costs rather than detailed data were used to assess the levels of cost.

*The "mean" is the average, which is calculated by adding up all the values and dividing by the number of matters. The "median" is the "middle" value in the list of numbers that have been listed from lowest to highest (or highest to lowest). In general, the mean was used to set an appropriate fee, however where the number of estimates in the sample was both small and showed an irregular distribution, the median was used.

Sample councils

For the project, fifteen councils were selected to participate in the data collection. These councils were chosen to be representative of geographic areas and different council sizes and types (e.g. urban council, city council). Table 1 lists the councils that participated in the data collection, along with information on the council type, location, distance of its main population centre from Melbourne CBD, population and revenue derived from rates and charges.

Table 1: Councils participating in the data collection activity

Council	Council type	Location	Distance from Melbourne (km)	Population (in 2016)	Rates revenue (2013-14, $m)	Time taken to decide planning decisions (days)	Planning applications within 60 days (%)	Service cost ($ per application)	Decisions upheld at VCAT (%)	Planning permit applications received in 2014-15
Moreland	City	Urban	5	170,178	114	99	59	2,376	55	1,692
Port Phillip	City	Urban	8	108,049	101	67	61	1,367	79	1,602
Glen Eira	City	Urban	11	148,050	86`	72	77	2,342	59	1,574
Manningham	City	Urban	15	121,184	84	45	69	2,196	44	1.011
Wyndham	City	Urban	32	218,553	137	65	67	1,317	60	1,292
Greater Geelong	City	Regional City	75	231,487	171	58	81	1,598	54	1,814
Greater Bendigo	City	Regional City	150	110,497	75	50	77	2,026	76	1,318

Council	Council type	Location	Distance from Melbourne (km)	Population (in 2016)	Rates revenue (2013-14, $m)	Time taken to decide planning decisions (days)	Planning applications within 60 days (%)	Service cost ($ per application)	Decisions upheld at VCAT (%)	Planning permit applications received in 2014-15
Greater Shepparton	City	Regional City	191	64,803	60	53	78	1,696	80	511
Wangaratta	Rural City	Regional	250	27,410	24	51	90	1,983	50	265
Macedon	Shire	PeriUrban	50	46,272	37	91	45	1,931	53	591
Moorabool	Shire	PeriUrban	60	32,420	26	63	70	3,990	89	323
Surf Coast	Shire	PeriUrban	107	29,337	42	76	65	1,748	75	654
Colac Otway	Shire	Rural	150	20,676	25	63	60	2,342	100	339
Campaspe	Shire	Rural	225	36,955	34	42	89	732	83	506

Council **Moyne**	**Council type** Shire	**Location** Rural	**Distance from Melbourne (km)** 285	**Population (in 2016)** 16,503	**Rates revenue (2013-14, $m)** 18	**Time taken to decide planning decisions (days)** 73	**Planning applications within 60 days (%)** 69	**Service cost ($ per application)** 2,003	**Decisions upheld at VCAT (%)** 50	**Planning permit applications received in 2014-15** 309
Average of sample			**Distance from Melbourne (km)** 108	**Population (in 2016)** 16,503	**Rates revenue (2013-14, $m)** 69	**Time taken to decide planning decisions (days)** 65	**Planning applications within 60 days (%)** 70	**Service cost ($ per application)** 1,976	**Decisions upheld at VCAT (%)** 67	**Planning permit applications received in 2014-15** 920
Minister for Planning										**Planning permit applications received in 2014-15** 114

Table 1 also shows how each of these councils has most recently performed in relation to statutory approvals (taken from performance reporting published on the KnowYourCouncil website). Finally, the table lists the number of planning permit applications received in 2014-15.

In addition to these councils, data was also collected for permit applications processed by the Department of Environment, Land, Water, and Planning (the department) where the Minister is the responsible authority (see the last line of Table 1). This data capture allowed an analysis of whether the different processes used within the department compared to councils may affect the costs, and also allowed higher value applications to be included in the data set to better understand the costs associated with high value applications as well as the relationship between cost of processing applications and proposed development value, both of which have not been done in previous cost exercises.

Time sheets

Councils were asked to arrange for staff involved in the processing of applications to complete a timesheet over a four week period providing details of the relevant stage in the process map to which their work related, and the time spent on that application and process stage. Staff time was converted to a cost using the mid-point of the council's salary range for each staff level. Annual salaries were converted to an hourly staff rate taking account of conditions of related enterprise agreements.

Councils were asked for information on overheads, however there were significant inconsistencies in how overhead costs were attributed by councils. Instead, a default rate of 1.75, commonly used for estimating public sector costs in regulatory impact assessments, was applied across all councils in the sample.

Application data

For the processes subject to the timesheet exercise, data was collected on each application progressed within the data collection period in order to test for potential cost drivers. The data collected was as follows.

For planning permit applications:

- Whether the application was for a new permit or to amend an existing permit
- The type of permit sought (use, development, subdivision)
- Whether the permit related to a single dwelling
- The value of proposed development (for a development permit)

- The number of lots to be created (for a subdivision permit)
- Whether the permit application was amended after notice and before decision
- Whether the permit related to residential or commercial property
- Whether the permit was for buildings and works only
- Whether advertising was required
- The location type of the property (urban, rural)
- The number of relevant overlays applying to the property
- The number of referrals
- The number of objections received
- Whether there was a pre-application meeting
- Data about the council (council type, distance from Melbourne)
- Whether the permit was within the criteria for the Minister to be the responsible authority

For consideration of subdivision plans:

- Type of plan (subdivision or 'other')
- Number of lots to be created (for subdivision plans)
- Total area
- Number of referrals required
- Whether the plan related to residential or commercial use
- The number of overlays on the site
- Location type (urban, rural)
- Whether advertising was required
- Whether the permit application was amended after notice and before decision
- Data about the council (council type, distance from Melbourne)

For consideration of engineering plans:

- The type of plan to which the engineering plan relates
- The estimated value of construction of works proposed in the plan
- Whether council requested amendments be made to the engineering plan
- The total areas covered by the plan
- The number of lots created (if related to a subdivision plan)
- The number of pages in the engineering plan

The choice of data collected was based on identifying any factors that might be relevant for explaining differences in costs of processing different applications. Councils noted that the fundamental driver of costs was the complexity of the application, however such complexity is not known in advance, and therefore, councils were asked to nominate characteristics of applications that might be ex ante indicators of complexity that could be tested in the analysis, without necessarily expecting any particular result.

The individual parameters used were either:

- Parameters that are part of the current fee structure (such as development value), in order to test whether they remained valid characteristics on which to differentiate fees
- Parameters that had previously been suggested as relevant or where previous analysis by the department had identified as significant factors (such as the natural log of development value), in order to validate these prior suggestions
- A range of further factors that we considered might be directly related to the time required for council staff to process and consider an application, such as the number of referrals needed to be made and the number of overlays that applied to the site which would require consideration of additional decision guidelines. The analysis was to test whether these factors were relevant.
- Parameters that described the council itself (council type and remoteness) that, because of the different needs of the area, may have shown a different focus of effort in processing applications.

Regression analysis

Regression analysis was used to identify whether each characteristic of an application was correlated with the cost information to a statistically significant level that could then be used as the basis for differentiating fees. For example, if the value of a development was found to correlate with an increase in the costs of processing a planning permit application.

Regression analysis results in a co-efficient for each cost driver. This is the scale factor that relates the cost driver to the cost. However, to be accepted, the co-efficient must be statistically significantly different from zero. A standard rule of thumb for significance is 95 per cent confidence that an estimated co-efficient is not zero. This confidence is reflected in what is known as a ‘p-value’. In regression results, a p-value of less than 0.05 is equivalent to more than 95 per cent confidence that the cost driver is statistically significant. Regression results are discussed below.

There were some fees where regression analysis was not used due to the impracticalities of collecting data within the time period. These are noted in the main body of the RIS. As these were generally considered less significant (e.g. lower fees and/or smaller volume of applicants), other forms of data analysis were considered appropriate.

For a number of fee items, regression analysis was conducted, however ultimately the regression results were not used as the only factor in setting the appropriate fee. In the case of the cost of checking engineering plans, for example, it was considered the sample size of the regression was too small for the results to be meaningful. For subdivision permits, it was considered that the regression results may only be applicable for a limited number of lots in a single application and may not be representative of larger scale subdivisions.

Planning permits

Data was collected from councils on the costs of processing applications for planning and subdivision permits which involved tracking staff time for all work on applications within a four week period. As the entire process would be unlikely to be completed for a single application within four weeks, time was captured for smaller stages of the process and then aggregated.

Figure 1 sets out the application stages for processing a permit application, although not all of the stages are relevant for each type of permit.

As VCAT disputes and compliance steps can typically occur long after a permit has been considered and span a period longer than 4 weeks, this final stage was not included in the time sheet collection but costs were separately requested from councils.

In aggregate, there were 1185 data items (separate applications) obtained for this activity. These data points reflected a spread of applications as follows:

- 1091 applications for new permits; 94 applications to amend existing permits
- 160 applications for use only permits; 791 for development permits; 234 for subdivisions
- Of the 791 development permits, 234 related to single dwellings

- 801 applications for residential properties; 384 for commercial/other
- 929 for properties in city councils; 256 in shire/rural councils.

The value of developments ranged from $1,000 to $400 million. The average value of developments in the dataset was $1.2 million, with a median value of $200,000. For permits to create subdivisions, the number of lots ranged up to 935 lots, with an average of 28 lots and a median of 2 lots.

Process for determining permit applications

1. Receiving/registering a new request (include acknowledgement, receipts, etc)
2. Give notice of application/advertise
3. Preliminary assessment
4. Request further information from applicant (including meetings with applicant) and review further information provided
5. Refer to relevant referral authorities
6. Site inspection
7. Receive and consider objections (including meetings with objectors or other interested persons)
8. Consider application (section 60) (includes seeking other information (eg internal advice) and further meetings with the applicant)
9. Receiving/registering/considering and approving/refusing requests made under s50 and s57 (requests to amend a permit application)
10. Make decision (include writing assessment report, report review by others, briefing Councillor and presenting to Council meetings)
11. Notice of decision/issue/permit/refusal
12. Appeals (VCAT) and compliance activities

The costs for each application at each stage were regressed against the other measured variables, namely:

- Whether the application was for a new permit or to amend an existing permit
- The type of permit sought (use, development, subdivision)
- Whether the permit related to a single dwelling
- The value of proposed development (for a development permit)
- The natural logarithm of the development value. (For each step in the process, both the value of the proposed development and the natural logarithm of the value were included in possible regression models. This was because a previous cost analysis had identified a positive relationship between the cost of considering a permit application and the natural log of the value of development, and this exercise sought to validate that finding. Taking the natural log recognises that costs may be proportional to the value of developments but it may not be a linear relationship—for example, a doubling of development value may not result in a doubling of costs. The natural log allows the range of values to be 'squashed'.)
- The number of lots to be created (for a subdivision permit)
- Whether the permit application was amended after notice and before decision
- Whether the permit related to residential or commercial property
- The number of relevant overlays applying to the property
- The number of referrals

- The number of objections received
- Whether there was a pre-application meeting
- The council type (city/shire etc.)
- The distance from Melbourne CBD
- Whether the permit was within the criteria for the Minister to be the responsible authority**.

** This variable is included only to check that applications considered by the Minister as Responsible Authority are comparable with the rest of the sample from councils. Where this is not relevant to the results for each stage, it has been omitted from the results presented below.

All variables were included in each model as a linear model—that is, each variable would contribute to the total cost in an additive way, based on an estimated coefficient, according to the form:

Cost of each application = A base amount for all applications + coefficient) x (variable) + (coefficient) x (variable) + …

Time and cost is also incurred by council when dealing with individual applications after permits are granted or plans approved, which may be related to monitoring and enforcement, by checking to see if plans and/or permits are complied with). The additional costs for these activities were estimated to be between $120 and $320, depending on the specific case and its complexity. For the purposes of this cost exercise, compliance monitoring and enforcement costs were estimated as an average of $220 per permit, based on a discussion with the sample councils about typical activities undertaken, staff time and costs.

The cost driver findings for each stage were presented to the councils on the Stakeholder Reference Group to test and validate whether the statistical relationships found from the regression analysis were logical. This is important as regression analysis measures correlation but not causation and council feedback provided a reality check on the correlations found through the data.

For example, while councils broadly confirmed the results, for site inspections the regression results suggested that the cost of undertaking a site inspection was inversely proportional to the number of overlays that apply to a property (i.e. the more overlays, the less council time was used in undertaking site inspection). Councils were consulted on this finding and indicated that it was inconsistent with their experience and knowledge of the process. Through consultation the department and the consultants were unable to identify any aspect of council tasks at this stage that could explain the correlation. For the purposes of forming an overall model, this relationship was excluded as there was no sound basis for determining fees based on this result.

The regression results, set out in Table 2, show the cost drivers for each stage of permit application. For example, Table 2 indicates that the value of the development and/or the log of the value were cost drivers for six of the 12 stages identified for permit applications. On the other hand, the type of council was only a driver in the cost for two stages of the application process. The only stage where a driver was not identified was stage 12, which relates to post permit compliance and VCAT costs, because costs for this stage were collected using a different process as discussed above.

Table 2: Regression analysis of permit application data

Stage 1					**Distance from Melbourne** Tick		
Stage 2	**Value** Tick	**Log value** Tick	**No. of referrals** Tick		**Distance from Melbourne** Tick	**Council type** Tick	
Stage 3	**Value** Tick	**Log value** Tick	**No. of referrals** –	**No. of overlays** Tick	**Distance from Melbourne** Tick		

Stage 4		**Log value** Tick					
Stage 5		**Log value** Tick	**No. of referrals** Tick				
Stage 6				**No. of overlays** Tick			
Stage 7					**Distance from Melbourne** Tick		
Stage 8							**Minister as RA** Tick
Stage 9	**Value** Tick	**Log value** Tick			**Distance from Melbourne** Tick		
Stage 10	**Value** Tick				**Distance from Melbourne** Tick		
Stage 11					**Distance from Melbourne** Tick	**Council type** Tick	**Minister as RA** Tick
Stage 12							

A note on subdivision

The regression analysis found that the number of lots created in a subdivision permit is not a statistically significant cost driver. While the data sample included permits for up to 935 lots, there was a regular distribution of the number of lots across applications up to 100 lots, after which the number of lots was very spread out, with only 10 permits with more than 100 lots in the data sample. This is less than 5 per cent of the sample. It would therefore be conservative to treat 100 lots as an appropriate point of change in the data, and only interpret the findings as relevant for permits with up to 100 lots.

Ancillary fees for planning and subdivision permits

There are a number of relatively small fees that councils charge for matters that are ancillary to planning and subdivision permits. They are:

Planning permits:

- Certification of Compliance
- Planning Certificate
- Satisfaction of conditions

Subdivision permits:

- Amendment to plans before certification
- Amendment to certified plans
- Preparation of Engineering Plans
- Consideration of Engineering Plans
- Appointing a Supervisor of Works
- Certification of Plans

Ancillary fees for planning permits

The councils participating in cost data collection provided only limited information on other fees included in the current Regulations. These activities are generally lower volume and lower cost activities compared with processing permit applications. These are briefly outlined below.

For each of these activities, process maps were developed. Data was collected, but not all councils could supply data for each activity over the four week data collection period, so only the data that was available was used. Given the lower volume of cost data, regression analysis was not applied to these cost data. However, scatter diagrams were prepared so that outlier costs could be identified and put aside.

In general, the mean was used to set an appropriate fee, however where the number of estimates in the sample was both small and showed an irregular distribution, the median was used.

Application for Certificate of Compliance

Five councils were able to estimate their average costs of producing a certificate of compliance. These estimates ranged from $100 (two councils) to $1,000 (two councils). Councils noted that the costs depended on the complexity of the individual case, which could not usually be known in advance. For example, it was noted that in some cases in order to issue the certificate the council required surveying work to be undertaken to confirm compliance. While only occurring in some cases this is a costly process potentially adding up to $5,000 to the total costs. The median estimate was $300.

The average of these estimates was highly skewed by the councils indicating costs of $1,000, therefore the median estimate ($300) would be more appropriate.

Application for Planning Certificate

Councils responded that this is not a frequent activity they undertake, with only one council providing a cost estimate of $21 based on their estimate of the time taken to issue a certificate.

Satisfaction Matters

Five councils provided estimates of their average cost for this activity, noting that by its nature each request is different. The estimates ranged from $90 to $320, with an average of $238, and median of $300.

Ancillary fees for subdivision permits

The following figure sets out the steps involved in considering a proposed subdivision plan.

Process for certifying plans under the Subdivision Act

1. Lodgement/receipt/register application in system
2. Preliminary assessment, and referral of the plan to servicing authorities/internal departments
3. Site inspection
4. Request further information from applicant
5. Collect information on whether the plan meets conditions for certification (including liaison with referral authorities and other parties)
6. Make decision on certification, including the writing and review of the delegate report

7. Certify plan, includes notify applicant of outcome (or prepare written reasons if refused)

Seven councils provided complete data that could be used to analyse the costs of certifying plans. The remaining councils either did not provide data (due to no activity within the data collection period) or did not provide complete data that could be analysed.

The total data set for this activity was 115 subdivision plans, with the number of lots created ranging from zero to 255. This means that the finding that the cost is not driven by the number of lots in the plan (see further discussion below) may only be relied on within this range. Further, within each stage of the process map, there were generally fewer councils' data available, and the overall small number of data points meant that regression analysis was not feasible.

Certification of Plans under the Subdivision Act

The total average cost for certification of plans was found to be $125. The only factors found to be materially related to the cost were:

- Subdivision plans had a higher cost at $128; whereas non-subdivision plans had a cost of $114.
- The number of referrals had a positive relation to the cost for Stage 2. That is, an application with 4 referrals (there were no plans in the data sample with less than 4 referrals) had an average cost of $121, with on average an additional $2 for each referral in excess of 4.

Amendment to Plans before Certification

There is currently no fee prescribed for when an applicant seeks to amend a plan already submitted to council, prior to it being certified.

Provision was made to capture data on applications that were amended during the process (at the request of the applicant). However, no applications within the dataset were indicated as being amended before the decision on certification. Therefore, while there would likely be additional cost to councils if an application were amended during the process, this cost was not able to be captured from the timesheet exercise.

During consultation with the sample councils, a number of councils considered that an amended application may add materially to costs, depending on the stage at which it was amended and, in some instances the nature of the amendment (such as, whether the amendment related to minor details or more substantive changes to how the site will be divided). Therefore the costs were benchmarked against other costs where data had been collected.

In general, where a plan is changed after it has already been referred to any referral authorities and where the change requires the plan to be re-referred (which would appear to be in most cases), the activities of stages 1 to 6 are effectively repeated. These stages have an average cost of $101.

Applications to Amend Certified Plans

There is currently no individual fee prescribed for applicants to amend a plan that has already been certified. Some council treat such applications as new applications, with the full fee being charged, however some councils charge no fee because they consider it is unclear whether this is within or outside the current Regulations.

During the data collection exercise, councils were asked to identify whether an application was for certification of a new plan or to amend an existing certified plan. However, the reported data showed only one application that fell within the latter category (although some councils noted that their own systems may not record this information).

Discussions with sample councils suggested that there was no reason to expect that the costs of amending a certified plan would be any more or less than certifying a new plan, as a similar level of work would be required to document the change, collect relevant information and make an assessment. The requirements in the Act (such as referrals and checking of compliance with planning requirements) would need to be followed regardless of whether an earlier plan was already certified.

On this basis, and in the absence of specific data, the most reasonable estimate for costs of amending certified plans is the same as costs related to certifying new plans – see Certification of Plans above.

Consideration of Engineering Plans

Data was also requested on the fees charged in 2014-15 for consideration of engineering plans. Only two councils provided this data: one regional city and one peri-urban city council, which was $161. This service requires a technical expert (engineer) to review a submitted plan on the basis of completeness and suitability. Other councils reported that data was not collected or available on this basis.

The available data showed that, for the two councils, the average fee charged for considering engineering plans was $6,665. In every case, the fee was calculated at 0.75 per cent of the value of works (the maximum allowed under the current Regulations) which suggests that councils use this as the default fee calculation without reference to actual costs. All sample councils commented that they believed that actual costs exceeded the cap, and therefore using the cap as the default fee was unlikely to recover more than the actual cost to council. Some of the sample councils suggested the fee cap could be increased to 1 per cent to better reflect costs.

As no evidence has been provided to support a change to the current arrangements, no change in fee is proposed. The data collected from only two councils was regarded as too small to use as a basis for changing the fee arrangements, as they may be unrepresentative.

Preparation of engineering plans

No data was provided on council costs for preparation of engineering plans. All councils sampled in the project noted that this happens very infrequently, if at all. It is noted that this service can be readily provided by private sector engineers, and this would usually be the first choice of applicants, with the council preparing engineering plans only as a last resort.

Cost of appointing a supervisor of works

Only two councils provided data on the fees charged in 2014-15 for supervising works under an approved engineering plan. The data suggests that for some councils, this only occurs in a small number of cases each year.

The data from these two councils showed that both councils charged the maximum 2.5 per cent of the value of works for this activity. This suggests it is used as the default approach to calculating the fee to be paid, without reference to the actual costs incurred in each case.

However, some councils (other than those which provided data) suggested that the costs are thought to always be greater than the allowed fee, making an individual calculation redundant. As no evidence has been provided to support a change to the current arrangements, no change in fee is proposed.

Statement of Compliance

The data collection exercise in relation to certification of subdivision plans did not include the work required to issue a statement of compliance under section 21 of the Subdivision Act. While this usually follows a plan's certification, it does not necessarily follow as there are additional triggers before a council must issue the statement.

Prior to issuing a statement of compliance, the council must check that the applicant has provided the prescribed information and must be satisfied that all requirements of the Planning and Environment Act that relate to public works have been met (or there is an agreement to secure compliance).

These tasks undertaken by council were not specifically requested in the time sheeting exercise, however during discussions with councils prior to data being collected, this additional step was identified and councils were asked to estimate the costs of providing the certificate.

Importantly, some of the pre-requisites to issuing a certificate are directly linked to the issuing of a permit, and as such, activities including confirming that any permit conditions have been met (which can be significant for some subdivisions) should be covered by the costs estimated for permits (which included a step for compliance monitoring and enforcement). Therefore, the costs estimated for issuing a statement of compliance were primarily limited to the tasks of retrieving information from a property file and preparing the statement. The cost of these tasks was an average $30 per statement. We note that a previous data exercise in 2009 estimated that the cost of providing a statement of compliance was around $25, which appears consistent with the feedback from councils.

Amendments to planning schemes

Figure 3 sets out the steps involved in processing a request for an amendment to a planning scheme.

Process for amendments to planning schemes

1. Receive/register a new request (include acknowledgement, receipts, etc)
2. Request authorisation and give notice of proposed amendment
3. Exhibit proposed amendment
4. Consider each submission on the proposed amendment
5. Refer submission to panel and participate in hearing
6. Publish and consider panel report
7. Make decision on whether amendment be adopted
8. Submit amendment to the Minister for approval
9. Update scheme to incorporate amendment.

It was not possible to capture real time cost data on considering requests to amend planning schemes, as these are relatively infrequent (most councils in the sample received less than 10 over the past 5 years) and typically each stage takes more than the four weeks during which data was collected. For example, a single request may take over 12 months before an amendment is made.

As requests are relatively infrequent and will always have their own unique characteristics, it is difficult to determine appropriate costs. Therefore, councils were asked to estimate the average cost per application to the council of processing a ‘typical’ request to amend a planning scheme against each of the above stages. Councils were also required to indicate how the cost for each stage was determined (e.g. staff time and hourly rate) to allow the validity of responses to be tested.

Twelve councils provided responses on this process. Their responses are set out in Table 3 below. While the panel costs include cost to council of preparation and participation at panel hearings, these costs do not include the fee charged by Planning Panels Victoria. Under section 156 of the Act, the council is responsible for paying for the costs of the panel, however under section 156(3) the council may request any person who has requested the amendment of the planning scheme to agree to contribute to that amount, and may abandon the amendment if no agreement is reached.

Table 3: Council costs for amending planning schemes

Process step* Receiving / registering	Urban $35	$61	Urban	Urban **	Urban $1,190	Peri Urban $120	Regional City $70	Regional City $100	Regional City $180	Regional $35	Rural City $70	Rural $6,060
Process step* Request authorisation / Notice	Urban $135	$93	Urban	Urban **	Urban $1,120	Peri Urban $2,200	Regional City $1,000	Regional City $1,360	Regional City $600	Regional $405	Rural City $1,900	Rural $5,700
Process step* Exhibition	Urban $135	$700	Urban $13,159	Urban **	Urban $3,200	Peri Urban $3,000	Regional City $1,600	Regional City $400	Regional City	Regional $120	Rural City $620	Rural $300
Process step* Making decision	Urban $180	$270	Urban $2,100	Urban **	Urban $3,920	Peri Urban	Regional City $266	Regional City $800	Regional City $1,180	Regional $1,200	Rural City $1,190	Rural $750
Process step* Submitting to Minister	Urban $90	$90	Urban $1,600	Urban **	Urban $210	Peri Urban $120	Regional City $532	Regional City $310	Regional City $120	Regional $120	Rural City $490	Rural $1,620

Process step* Updating scheme / incorporate	**Urban** $70	$545	**Urban** $1,000	**Urban** **	**Urban** $210	**Peri Urban** $80	**Regional City** $140	**Regional City** $150	**Regional City** $10	**Regional** $70	**Rural City** $35	**Rural** $470
Process step* Submissions (costs per submission)	**Urban**		**Urban**	**Urban** **	**Urban**	**Peri Urban**	**Regional City**	**Regional City**	**Regional City**	**Regional**	**Rural City**	**Rural**
Process step* Considering submission	**Urban** $45	$241	**Urban** $100	**Urban** **	**Urban** $70	**Peri Urban** $160	**Regional City** $250	**Regional City** $200	**Regional City** $450	**Regional** $460	**Rural City** $150	**Rural** $3,440
Process step* Referring submission to panel	**Urban** $135	$1,050	**Urban** $500	**Urban** **	**Urban** $210	**Peri Urban**	**Regional City**	**Regional City** $300	**Regional City** $300	**Regional** $590	**Rural City** $1,400	**Rural** $5,500
Process step* Publishing and considering panel report	**Urban** $90	$211	**Urban** $100	**Urban** **	**Urban** $560	**Peri Urban** $1,000	**Regional City** $1,600	**Regional City** $250	**Regional City** $70	**Regional** $400	**Rural City** $245	**Rural** $1,620
Process step* Total (based on 20 submissions) ***	**Urban** $6,045	$31,799	**Urban** $31,859	**Urban** ** $31,000	**Urban** $26,650	**Peri Urban** $28,720	**Regional City** $40,608	**Regional City** $18,120	**Regional City** $18,490	**Regional** $30,950	**Rural City** $40,205	**Rural** $226,100

** Data as provided by councils has been adjusted to present data on a consistent basis (e.g. some cost elements have been moved between steps, or adjusted based on the number of submissions).*

*** This council provided data according to different stages, which allowed an indicative total to be determined, but data was not aligned to the above stages.*

**** The figures in the table for considering submissions, referring submissions to panel and publishing panel report are shown on the basis of a single submission. The totals in the table factor in these costs being incurred for 20 submissions for a typical amendment.*

The data collected shows a very wide range of cost estimates. Previous cost measurement activities have produced a similar finding. Councils reported that the number of submissions on a proposed amendment was the primary factor driving costs.

To overcome this, and to avoid results from a single council skewing the overall outcome, the following steps were taken to determine an appropriate cost estimate:

- The highest and lowest cost estimates from councils were disregarded. These costs may be reasonable for the individual councils (for example, a council that receives many requests may have well established practices for handling requests while a council that receives few may rely more on external expert advice), however are likely to be too far removed from what would be considered 'typical' for most councils.
- The mean and median cost was determined; both for overall costs and for groups of activities (as indicated in Table 4). The grouping of activities allowed costs to be considered separately for those activities where the number of submissions impacted on costs and where they did not.

Taking this approach, the cost estimates are as shown in Table 4 where costs are grouped according to the current fee structure.

Table 4: Summary of costs of amending planning schemes

Group 1 (receipt, notice, authorisation, exhibition, make decision	**Mean** $4,423	**Median** $2,798
Group 2 (consider submissions, panel) **Based on 10 submissions**	**Mean** $12,631	**Median** $13,882

Group 2 (consider submissions, panel) Based on 20 submissions	Mean $24,834	Median $27,737
Group 2 (consider submissions, panel) Based on 30 submissions	Mean $36,780	Median $37,082
Group 3 (adopt amendment, submit for approval)	Mean $583	Median $440
Group 4 (approval and notice)	Mean $583	Median $440
TOTAL Based on 10 submissions	Mean $17,637	Median $17,120
TOTAL Based on 20 submissions	Mean $29,840	Median $30,975
TOTAL Based on 30 submissions	Mean $41,786	Median $40,320

As can be seen from Table 4, costs vary significantly depending on the number of submissions that must be considered by councils. While there may be other factors that influence the cost of an individual application, no such factors were evident from the data provided. Nevertheless, some councils may receive applications that require substantially more or less resources than those indicated in Table 4. Given the materiality of costs that relate to submissions, the costing analysis supports setting different fees based on the number of submissions that are received, although the choice of thresholds for the number of submissions involved judgements about practicalities of determining fees and how the step increases in fees may affect incentives for submissions.

Fees could be set on a per submission basis. Following discussion with council representatives, the department considers that it is important to provide for a reasonable level of certainty where fees are concerned while also taking account of actual cost drivers. The department acknowledges that different councils have different approaches to planning scheme amendments and that, at times, many hundreds of submissions may be received in relation to a single proposal. In order to provide some level of certainty while also responding to costs faced by councils, the proposed fee structure sets 3 fee levels that take account of different numbers of submissions as indicated in Table 4, capping the fee at the cost of 30 submissions and providing for stepped fees for consideration of up to 10 submissions, up to 20 submissions and more than 20 submissions, using the median costs identified above.

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