into consideration by a consent authority in determining whether to provide consent to a development application under Part 4 of the *Environmental Planning and Assessment Act* 1979 (NSW) (the EP&A Act). However, loss of trade may be considered where development is likely to have an overall adverse impact on the extent and adequacy of facilities and services available to the local community.

Any existing restrictions in any planning instruments or development control plans on the number and proximity of retail premises in any commercial development, or in any particular area, will not apply. In addition, any covenants, agreements or instruments that restrict the carrying out of development in a manner inconsistent with the Draft Competition SEPP will not apply.

The Competition SEPP was placed on exhibition until 26 August 2010. The Competition SEPP is expected to be finalised later this year.

What are the implications?

The Draft Competition SEPP is very much at the cross roads of competition and planning policy. While planners may argue that impacts of a major shopping mall on high street shops are an important factor, the competition experts say this should be irrelevant. Lower prices thus trump the streetscape.

For new applicants, the Draft Competition SEPP is generally good news because it aims to limit objections to purely town planning and environmental issues. For existing players, it may be the opposite as they cannot object to new proposals on the grounds they will take away their trade and result in a loss of jobs.

For consent authorities, they have their own issues when it comes to assessing development proposals. One of these is the disconnect between the EP&A Act and the Draft Competition SEPP.

Section 79C of the EP&A Act sets out the matters that a consent authority must consider when determining a development application. This includes considering applicable environmental planning instruments such as the Competition SEPP. A consent authority must also consider the likely impacts of the development, which includes 'social and economic impacts in the locality' of a proposed development.

Thus consent authorities are compelled to consider the social and economic impacts under the EP&A Act, but cannot take into account the commercial viability of a development or its impact on local competitors under the Competition SEPP. Similarly s. 5 says that one of the objects of the EP&A Act is the promotion and co-ordination of the orderly and economic use and development of land, but in considering that object, a consent authority now can't consider competition issues. Ideally, the Draft Competition SEPP should be accompanied by some minor amendments to the EP&A Act so as to remove this disconnect. Otherwise issues may arise for applicants and consent authorities as to how to apply the Act in assessing development proposals.

VICTORIA

Wayne Gumley

Climate Change Act passed

The *Climate Change Bill* 2010 (Vic) was passed by Parliament without amendment on 3 September 2010. This new Act implements a number of actions outlined in the Climate Change White Paper released on 26 July 2010. The main purposes of the Act are:

- to establish a target to reduce Victoria's greenhouse gas emissions [s.5 sets a target of 20% of 2000 levels by 2020]
- to facilitate the consideration of climate change issues in specified areas of Victorian Government decision making [ss.14 and 15]
- to promote collaboration, cooperation and innovation in the Victorian response to climate change by strengthening the role of communities and other measures[s 13 includes a guiding principle of community engagement]
- to provide for a strategic Victorian Government response to climate change through a Climate Change Adaptation Plan [s.16]
- to facilitate Victoria's contribution to national and international carbon sequestration efforts [Part 4 deals with forestry rights, carbon sequestration rights and soil carbon rights, and repeals the Forestry Rights Act 1996 (Vic)]
- to provide for the creation of forestry, carbon

sequestration and soil carbon rights [see Part 4]
- to provide for Forestry and Carbon Management Agreements in relation to private land and Carbon Sequestration Agreements in relation to Crown land [see Part 4]
- to promote transparency and accountability by providing basic, accessible information to the Victorian community on climate change [ss.17-19 deal with reporting and review].

The Act also amends the *Environment Protection Act 1970* (Vic) to include 'greenhouses gas substance' within the definition of 'waste' which clearly brings greenhouse emissions within the EPA licensing and approvals regime. It also establishes a Climate Communities Funding scheme under the Environment Protection Act 1970 (Vic).

The White Paper also proposed that new power stations in Victoria would be required to have emissions of less than 0.8 tonnes of CO2eq per MWh. This requirement is not specifically provided under the Act, however it could be achieved through regulation making powers.

Amendments to Water Act to establish Environmental Water Holder

The *Water (Victorian Environmental Water Holder) Act* 2010 (Vic) was passed by Parliament on 13 August 2010. The Act amends the Water Act 1989 (Vic), by:

- establishing the Victorian *Environmental Water Holder* as a separate legal entity.
- enabling the *Environmental Water Holder* to hold and manage environmental water.
- empowering the Environment Minister to make rules or directives that bind the *Environmental Water Holder*.

For further information see http://www.ourwater.vic.gov.au/environment/environmental-water-holder

Traditional Owner Settlement Bill 2010 (Vic)

The Traditional Owner Settlement Bill 2010 (Vic), introduced into Parliament on 28 July 2010, provides an alternative process for resolving native title claims through agreements between the State and traditional owner groups. The Bill provides for the making of agreements between the State and traditional owner groups to recognise and confer rights on traditional owner groups with respect to:

- access to, ownership or management of public land, and
- decision making rights and other rights that may be exercised in relation to the use and development of the land or natural resources on the land.

Bushfires Royal Commission report and Government response

The Bushfires Royal Commission made 67 recommendations in its final report released on 31 July 2010. The four-volume report is the culmination of an 18-month inquiry into the causes and circumstances of the fires that devastated parts of Victoria in January and February 2009, killing 173 people. The Commissioners were the Hon. Bernard Teague AO, Ms Susan Pascoe AM and Mr Ron McLeod AM.

On 27 August 2010 Victorian Premier the Hon John Brumby MP responded by accepting 66 of the 67 recommendations, in full or in part. Any aspects not accepted were based on a combination of expert advice and feedback received from communities. He also announced investment of almost $1.4b, and key changes to address the threat of bushfires including:

- hundreds more firefighters and a doubling, then tripling of fuel reduction burns
- a significant Increase in support for volunteer firefighters
- new fire mapping technology for faster and more accurate community warnings
- more funding to accelerate the roll-out of more Neighbourhood Safer Places
- a tougher maintenance regime for electricity businesses and high visibility arson operations
- agreement to replace the Fire Services Levy with a progressive property-based levy and improvements to planning controls in bushfire-prone areas
- a major boost to community education and information about preparing for bushfires, including the introduction of bushfire education in the school curriculum

(Source: Government Monitor, 26 August 2010)