



Reforming the Victoria Planning Provisions

Victorian Farmers Federation Submission

The Victorian Farmers Federation

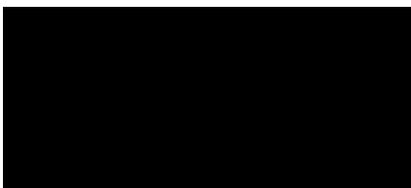
The Victorian Farmers Federation (VFF) is the only recognised consistent voice on issues affecting rural Victoria and we welcome the opportunity to comment on Reforming the Victoria Planning Provisions.

Victoria is home to 25 per cent of the nation's farms. They attract neither government export subsidies nor tariff support. Despite farming on only three per cent of Australia's available agricultural land, Victorians produce 30 per cent of the nation's agricultural product. The VFF represents the interests of our state's dairy, livestock, grains, horticulture, flowers, chicken meat, pigs and egg producers.

The VFF consists of a nine person Board of Directors, with seven elected members and two appointed directors, a member representative General Council to set policy and eight commodity groups representing dairy, grains, livestock, horticulture, chicken meat, pigs, flowers and egg industries.

Farmers are elected by their peers to direct each of the commodity groups and are supported by Melbourne-based and regionally located staff.

Each VFF member is represented locally by one of the 200 VFF branches across the state and through their commodity representatives at local, district, state and national levels. The VFF also represents farmers' views on hundreds of industry and government forums.



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Foreword

The Victorian Farmers Federation welcomes the opportunity to comment on Reforming the Victoria Planning Provisions.

Our members express concern that planning controls are being increasingly applied to land management issues, often with little opportunity to be involved. The recent VAGO report highlighted systemic failure to consider the legislative requirements in relation to planning scheme amendments. There is great opportunity to tailor the SMART approach to ensuring that planning controls have met the statutory test of being a land use / development issue at their core (Planning and Environment Act) rather than land management / biodiversity (Catchment and Land Protection Act).

To truly ensure that outcomes are consistent, proportional and land use focused there needs to be a greater focus on questioning whether a permit trigger is lawful or sensible.

SMART reform	DELWP Blurb	Agricultural opportunity
Digital First	The provisions should be optimised for more efficient access and processing of planning information, including through better digital interfaces e.g. utilising technology and the desired user experience to reverse engineer the way planning provisions are written and applied – moving from ‘document’ to ‘database’ driven planning schemes.	Particular Provisions should not be used for things that can, and should, be mapped – such as native vegetation. Heritage overlays are based on detailed studies which respond to significance thresholds and go through normal planning scheme amendments. Over the 30 years since NVR (and heritage) was introduced detailed studies and normal amendment processes have occurred across Victoria as data was required to justify the control and the regulatory burden. Very few studies have occurred for native vegetation yet the regulatory burden has increased and this does not appear on planning certificates or planning property reports.
User Focused	The provisions should be end user focused and provide accessible, transparent and understandable pathways to navigate the approval process – restructuring planning schemes so users can freely, instantly and intuitively access relevant information, using spatial	52.17 should not apply to Farming Zone. If there is critical habitat to be protected then acquisition of land should be the primary tool. A specific overlay could be applied to respond to considerations relating to land use change. The economic importance of farming land should

	means wherever possible.	be clearly acknowledged.
Consistent	The architecture of the provisions and how they are applied should be simple and consistent regardless of the content, so that it is clearly understood and applied by planning authorities and proponents e.g. use technology and drafting rules to ensure that new provisions are created and planning schemes amended in a way that both maintains the integrity of the system and delivers the desired policy outcomes.	VPP controls should be prepared by a team within planning. Recently too many reviews have been undertaken by non planners who do not understand the legislation or the planning system and are then signed off without independent assessment by a panel or advisory committee. Ensuring that an advisory committee is appointed to consider submissions to any VPP change would assist with consistency and statutory compliance.
Proportional	The provisions should impose a level of regulatory burden that is proportionate to the planning and environmental risks e.g. implementing an assessment pathways approach, including code assessment, where low risk or simple applications can be assessed against objective criteria through faster processes.	The planning system (environment controls) is rarely proportional. For example the same process applies for tree clearing (NVR) so matter if it is the only trigger impacting on existing section 1 use to a major use and development permit – or even a rezoning. Also some ‘pathways’ are the same – no matter the area. So 7 or 8 trees on 2ha or 2000ha. This failure to consider proportionality has major implications for the ability to agriculture to implement new technology and more sustainable practice.
Land Use Focused	The provisions should avoid conflict and overlap with other interlocking regulatory regimes e.g. building, environmental & earth resources legislation, in particular where better technical expertise and resources reside elsewhere.	Again the planning system (environment controls) is increasingly entering the realm of land management and the CALP Act. Where there is a setback – such as for dwelling from a reservoir – that is an element suited for a control. When it is then used by a water authority, when there is no use permit and the dwelling meets all setbacks and EPA septic requirements, to mandate fencing of all waterways and revegetation that is something that should be done under a Special Area Plan.

		Offsets for native vegetation are another example. That is a defacto “compensation” aspect that does not belong in the Planning Scheme but requires a special area plan (with compensation) or land acquisition / stewardship payments.
Policy and Outcome focused	The provisions should ensure that controls have a clear policy basis and are planning outcomes driven e.g. utilise technology and information databases to achieve strategic clarity and precision in the way controls are created and implemented.	Again the failure of the SPPF to have appropriate agricultural policy that recognises the economic value of the sector leads to scenarios where councils see farm land ‘vacant’ or do not recognise the good farm management and sustainability practices of the system and try and regulate for land management. Where the land is zoned for farming the impacts of any proposed program or change on that use should be carefully weighed up and considered on first principles.

The Victorian Farmers Federation would welcome the opportunity to elaborate on the many opportunities to apply SMART planning to the agricultural sector – the major land use in the state.

Proposal 1: A simpler VPP structure with VicSmart Assessment Built in

The focuses of these reforms seem to be on urban uses. There are many opportunities to apply a simpler assessment system to issues within the Farming Zone. SMART Planning principles should remove many classes of control from farm land. At a minimum these provisions, such as native vegetation, should be evidence based and formulated so that the consideration is a true ‘one stop shop’ with notice and appeal provisions removed.

Interface provisions should be carefully examined to ensure that they are required and are not duplicating what is better covered under another regulation – for example the CALP Act.

Proposal 2: An integrated planning policy framework

The VFF is concerned that not only do many policies go beyond the scope of a planning scheme but that Agricultural Policy is located in the incorrect area of the SPPF and fails to include policy relating to its importance to the Victorian economy.

Unless significant work is undertaken to relocate and rewrite the state content for Agriculture then local policy and Council decisions will continue in the failure to properly consider social and economic impacts.

There has been an increasing trend of Council's applying widespread SLO or ESO controls without notification of landholders and with statements that there will be no social and economic impact as post and rail fencing will be allowed without a permit.

There is concern that proposal 2.3 is contrary to the principles of SMART planning. Many of the topics listed are not 'planning' issues at their core and are subject to specific legislation. Focus should be given to ensuring planning schemes focus on land use and development issues.

Proposal 2.5 is similar in practice to guidance since the NPS-1 Schemes. As the Auditor General found it is rare that Council or DELWP fully comply with s12 and the Strategic Assessment Guideline. Attention should be given to ensuring legislative requirements are properly considered in future amendments and the review of planning schemes be an opportunity to critically assess scheme content against the principles of SMART Planning.

The planning practice note 'Writing Planning Policy' needs to be rewritten to ensure that the policy and its considerations are clearly linked to a permit trigger and are not achieving land management or other issues which are more properly covered in other legislation.

Proposal 3: Assessment pathways for simple proposals

The VFF believes 3.1 should be applied to the Native Vegetation regulations.

A specific pathway should be provided for farming land to recognise that it is the only permit trigger which is impacting on safe and efficient operation of existing section one land uses. This should rely on detailed mapping and include clear 'no permit required' activities and exemption from notice and review where a permit is required.

Any reference to "compensation" in the form of offsets should be removed as this is outside the head of power of the legislation. For example if you receive permission to remove a tree under the heritage overlay you are not required to protect another and make a payment towards embellishment.

Similar changes should be made to other areas of agriculture where a blanket approach based on rezoning and multiple use and development triggers are applied to broadacre farming and to issues such as proclaimed water catchments which are being used to trigger compulsory fencing and revegetation (for land management outcomes) which is contrary to

government policy (voluntary fencing of riparian areas) and which require the preparation of a Special Area Plan under the Catchment and Land Protection Act, which will include an assessment of benefit and costs and who should pay for the actions which impact on existing use.

Proposal 4: Smarter Planning Scheme drafting

The VFF supports in Principle Proposals 4.1, 4.2 and 4.3 as being essential to ensuring that the planning scheme is returned to a land use and development document.

There needs to be a much greater degree of consistency in ensuring compliance with the legislation and addressing the shortfalls identified by the Victorian Auditor General's Office.

Over the past decade the reduction in resourcing to 'planning systems' had led to a reduction in quality control of amendments. Many non land use based policies or controls have been introduced without full review by a panel or DELWP and then the existence of that policy "in the system" has been used to justify it elsewhere.

The Strategic Assessment Guidelines purely codify s12 of the Planning and Environment Act. Very few planning scheme amendment documents, including VC amendments, fully comply with the guidelines.

Greater attention needs to be given to how to assess impact and how to ensure that a proportional and appropriate land use and development outcome is being facilitated.

On a specific issue DELWP attempted to have ESO for threatened species using low resolution non ground truthed data during the roll out of the NPS-1 schemes. As a result of several advisory committees this proposal was not recommended as the evidentiary base was not there. Increasingly this same data is being sent to Council's as the basis for a control. Wide notification has not occurred and consideration has not been given to first principle issues. It will be critical, as with the heritage system, for there to be a basic level of evidence / demonstration of 'significance' and then a tailoring of control based on that significance and what is a reasonable outcome that maintains existing use.

It should also be noted that once an approval is given for demolition / removal under the heritage overlay there is no requirement to replace or augment. Nor should there be 'compensation' requirements under other provisions as we believe this goes beyond the foundation principles of the enabling legislation.

Proposal 5: Improve Specific provisions

There are multiple 'missed opportunities' in this section to address inappropriate planning controls on agricultural land use. It will be critical that a first principle assessment be made of many development and some use triggers in relation to agriculture that go beyond the core functions of the Act and seek to achieve change that is better regulated by other statutes.

Under proposal 5.1 improvements to specific provisions there should also be a focus on more 'as of right' development triggers or clear exemptions – especially in relation to land management issues such as water catchments and native vegetation. Many triggers should be removed where they have very little land use / development link, and where there is a link the permit considerations should be minimal, linked to the trigger, avoid notice and appeal and preferably be exempted where setbacks or codified requirements have been met.

Along with reducing referral requirements there needs to be clear guidelines and requirements on referral authorities to focus their referral and conditions on the permit trigger. Many authorities have little understanding of the Act, the difference between use and development permits or the nexus between the trigger and conditions. DELWP should request that VAGO examine compliance with the Act and Scheme by referral authorities and ensure that Councils, DELWP and referral authorities understand the range of factors to be considered under the Act, and how that should be applied to each control (from implementation (SAG) to implementation (conditions)).

There should also be a focus to ensure that particular provisions only apply to guiding use / development triggers rather than being the trigger in itself, especially where the provision should be mapped and shown on certificates and reports. Non complying provisions should be removed.

Any submission / review process on VPP changes should be facilitated by Planners and subject to a Panel or Advisory Committee. The Planning Reform process envisaged that there would be opportunities to raise issues with the functioning of the VPP to a Standing Advisory Committee that would make recommendations on potential changes. This should also be facilitated.

In relation to 5.3 there is an urgent need to undertake a holistic review of the VPP in relation to agriculture. This is a key land use in Victoria with significant annual contributions to the economy. Facilitating agricultural uses, intensification and diversification should be the primary objective.

Agriculture is highly regulated by all levels of government as well as internal industry standards. Poorly targeted regulation can lead to perverse outcomes where one regulation must be breached to comply with another.

The planning scheme should recognise the primacy of agriculture in farming zones and seek to minimise any 'right to farm' land use conflict. As the population increases and the available arable land decreases farmers will need to change practices to provide the basic human needs to Australian and global populations.

Farming is also a price taking industry which is subject to many climatic events. The planning scheme should recognise the important role the sector plays in the Victorian and regional economies and seek to support farmers undertake practices that are more sustainable and productive. The recent proposed clarifications of emergency, seasonal and supplementary feeding is one example but there are many more opportunities through policy, zones, overlays, provisions and even guidance that need to be undertaken to ensure the benefits of the proposed reforms are achieved for rural landholders.

The VFF would welcome the opportunity to discuss the many opportunities to apply SMART Planning to farming land.



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