



1079 PASCOE VALE ROAD  
BROADMEADOWS  
VICTORIA 3047

Postal Address:  
PO BOX 119  
DALLAS 3047

Telephone: 03 9205 2200  
Facsimile: 03 9309 0109  
[www.hume.vic.gov.au](http://www.hume.vic.gov.au)

Friday 1<sup>st</sup> December 2017

Forward Policy and Business Strategy  
Department of Environment, Land, Water and Planning  
8 Nicholson Street  
East Melbourne VIC 3000

Email: [smart.planning@delwp.vic.gov.au](mailto:smart.planning@delwp.vic.gov.au)

Dear Sir/Madam

**RE: HUME CITY COUNCIL'S SUBMISSION ON REFORMING THE VICTORIA  
PLANNING PROVISIONS – A DISCUSSION PAPER**

I refer to the release of the *Reforming the Victoria Planning Provisions - A discussion paper* for consultation. Hume City Council welcomes the opportunity to comment on the discussion paper. This response has been prepared by Council Officers, and is not an endorsed position of Council.

Our response to the discussion paper is outlined in this letter below and comprises of two parts, the first relating to concerns around the consultation process, and the second responding to the five proposals outlined in the discussion paper.

*Consultation*

It is recognised that the document was not formally sent to Council for consideration however based on the scale and breath of changes proposed and the implications of these changes it is disappointing that the initial consultation period provided inadequate time for Council to review and understand the changes proposed. While an additional week was provided, advice of the extension was relayed when many Councils had already made submissions, and still did not allow for the matter to be reported to Council.

The discussion paper lacks adequate detail for Officers to properly understand the implications of the changes and make the appropriate submissions. A number of significant changes are proposed, with the exact nature of the majority of these changes unknown. Officers are concerned that the release of the discussion paper for consultation provides the only opportunity to comment on the proposed changes, with no further opportunity available to Council to review and comment on the exact nature of the changes.

Council recently participated in the Stakeholder Reference Group for the review of the native vegetation regulations within the Planning Scheme. Officers are strongly supportive of the process undertaken by DELWP Environment, and encourage this approach and process, to be used as a benchmark of how the

detailed changes within the broader planning scheme should be workshopped and resolved prior to the final planning scheme changes being sent out for consultation. The immense value of that reference group was noted by Council during the final round of consultation in which almost all the changes were strongly supported.

Comment on each of the proposals is provided below.

## **Proposal 1: A simpler VPP Structure with VicSmart assessment built in**

Officers are concerned with the language and terminology used to highlight the issues with the planning scheme. Simply having many bespoke overlays is not necessarily problematic, if they are well written and address the values that are sought to be protected. Many overlays and specific permit triggers that are non-standard have been developed based on substantial background reports and costly planning panels. If changes to these are proposed the community must have an opportunity to comment on the specifics of the changes. It is unclear how the link has been made between 'sustainable economic growth' and less regulation. Poorly managed growth is inherently unsustainable and managing it appropriately can assist in mitigating detrimental impacts. It is unclear as to what the overriding issue is with the existing suite of controls, in short, what is the cost of 'bespoke' controls?

Council has undergone a substantial planning scheme amendment through C195 to introduce a useful and usable earthworks trigger into the Green Wedge Zone (GWZ). Other Interface Councils have also been faced with the issue of large scale fill importation in the GWZ. Any change to standardised permit triggers must maintain this trigger and ensure that medium to large scale fill disposal in the GWZ requires a planning permit. It is also suggested that further work be undertaken to determine the suitability of applying the permit trigger to the Urban Growth Zone (UGZ).

### *Proposal 1.3 Consolidate all administrative provisions*

This proposal is supported.

## **Proposal 2: An integrated planning policy framework**

### *Proposal 2.1 Integrate state, regional and local planning policy*

Officers made a submission to the State Planning Policy Framework Advisory Committee's proposed draft Planning Policy Framework (PPF) in 2014. This submission provided overall support for the draft PPF, but raised a number of concerns.

Consistent with Officers previous submission, Officers are highly supportive of the proposed format of the draft PPF, and feel that the new structure will provide for a clearer and more efficient operation of both state and local planning policy when making land use and development decisions. The integration of state and local policy and the introduction and integration of regional policy in particular are supported. Officers also support the increased recognition of local policy under the new structure, and support the equal importance and consideration of state, regional and local policy in decision making.

Proposal 2.1 states that directly relevant regional and local policies would be nested under the corresponding state planning policy if policy is in place at those levels. It is unclear who is responsible for determining if policy is in place at those

levels. This is of particular concern given that a more detailed PFF structure is not presently available for comment, and the timeline for the project does not include any further public consultation. This issue was raised in the previous Officer submission to the 2014 draft PFF, where a number of clauses did not provide the opportunity for local content. It is requested that in the absence of any further consultation, the provision for local content in all clauses be included in the draft PFF.

*Proposal 2.2 Simplify the Municipal Strategic Statement*

The proposal for a new 'municipal context and vision' is unclear, as the content proposed to be contained within this section is consistent with that currently within Council's MSS and that outlined in Planning Practice Note 4.

The relocation and integration of local policy in the PFF is supported provided opportunity and flexibility exists within the PFF, as outlined above.

*Proposal 2.3 Expand Policy themes*

Proposal 2.3 outlines the need to update the existing SPFF thematic structure to capture policy intentions at the state, regional and local level. This is expressed through a proposed table of contents that outlines the themes and sub-themes. The proposed table of contents however is too simplistic to enable Officers to undertake an assessment of whether all policy themes are covered within the proposed structure, and whether all Council local policies are able to be appropriately redistributed under the relevant policy themes. For example the heritage theme includes sub-themes of heritage conservation and Aboriginal cultural heritage. It is unclear from these sub-themes where matters such as built form and landscape heritage sit.

This proposal also outlines the likely need for a number of policy changes that will not be policy neutral. It is of concern to Officers that state policies will be changed without the opportunity for Council to review and provide comment. The 2014 draft PFF provided a full version of the PFF for review and comment. This enabled Officers to undertake an assessment of the proposed objectives and strategies, particularly those which were not policy neutral.

In summary Officers support the proposed draft PFF, however request that opportunity be provided to review and comment on the detailed structure, including objectives and strategies, and where local policy can be included.

*Proposal 2.4 Create a clearer and simpler structure for policy making*

This proposal states that "each level of policy (state, regional and local) may include an 'objective', 'strategies' and a new 'policy documents' section for each policy matter" (emphasis added). It is unclear whether the use of the word 'may' refers to it being at Council direction whether to include local content, or whether the Department will determine which policies can include local content. It is of concern that Council may not be able to integrate all existing local policies within the PFF structure, and that as a result, many local policies will be lost.

*Proposal 2.5 Set new rules and guidelines for writing policy*

The clear distinction between the SPPF and the LPPF allows Council's to trial and improve specific 'issues' based local planning policy that may not be deemed appropriate to incorporate at the state policy level. For example Clause 22.19 of the Hume Planning Scheme has shown that an industrial WSUD policy is effective and does not increase regulatory burden, in proportion to the harm of industrial pollutants in our creeks and stormwater systems. This type of policy would assist in achieving broader environmental and planning goals with wider application through the SPPF. Local government has a track record in leading policy development that undergoes rigorous testing and is largely implemented. For

example a substantial portion of policy development in the environmental sector in the past 15 years has occurred through Council reflecting community values, wants and needs.

Regular review of the LPPF is supported however it will have financial/resourcing implications for both local and state government.

### **Proposal 3: Assessment pathways for simple proposals**

Embedding a VicSmart assessment pathway in appropriate particular provisions and overlay schedules and introducing a new code-based assessment method for simple proposals is generally supported on the condition that 'pilot testing' and further consultation and review with Councils is undertaken on these provisions.

The unintended consequence of such substantive change is often not known until a permit application is being processed or an assessment of whether a permit is required or not is undertaken. This has been evident with the introduction of VC110.

Transition provisions will also need to be unambiguous and clear.

Introducing more eligible VicSmart applications will have a significant resource impact on Council therefore it is agreed that introducing a longer VicSmart assessment timeframe (i.e. 30 days) for specified classes of more complex applications will be important to ensure appropriate assessment.

The listed potential 'simple proposals' appear to have merit however as mentioned above, some rigorous testing of these provisions prior to their implementation into the scheme will be critical.

In terms of other matters suitable for code-based assessment, it would seem appropriate to narrow this method to a limited number of proposals as listed with a 12 month review and then explore other potential matters following review on the first 'tranche'.

The current range of industrial applications considered through VicSmart is extensive. This does not allow best practice stormwater protection mechanisms to be built into the approval processes. The scale of industrial buildings and works being approved through VicSmart are sizeable and the VicSmart categories should be reviewed to ensure that adequate consideration is given to local policy designed to ensure that poor outcomes for industrial areas do not result (landscaping, amenity, urban form).

### **Proposal 4: Smarter planning scheme drafting**

#### *Proposal 4.1 Create a new VPP user manual*

It is acknowledged that the Manual for the Victoria Planning Provisions 1997 is outdated. The creation of a new VPP user manual is supported. The new user manual should include content from, and replace, a number of planning scheme drafting practice notes, and the Ministerial Directions on the form and content of planning schemes. This updated and revised document would serve as a single document to assist users in drafting local policies and schedules, rather than the current suite of documents available.

The discussion paper states that the creation of the user manual may result in some loss of flexibility in the drafting of local provisions, but that more concise and precisely expressed planning controls can only improve their effectiveness.

Flexibility and conciseness are not mutually exclusive. It is possible to have planning controls that are concise and effective, yet provide the flexibility to cater for local or site specific issues. It is requested that in seeking consistency in the drafting and application of planning scheme provisions the flexibility and ability for councils to respond to local or site specific issues is not lost.

It is considered that the user manual would benefit from the inclusion of a section on how to apply best practice biodiversity protection and waterway protection provisions.

*Proposal 4.2 Establish a business unit dedicated to VPP and planning scheme amendment drafting*

The creation of a dedicated business unit within DELWP is supported. However it should be seen as a centre for excellence for good planning outcomes not just protecting the integrity and usability of the VPP. The training unit for development drafting skills is supported. The role of this unit would be strengthened by having dedicated secondment roles for local government strategic and statutory planning staff to ensure a clear link between policy development and policy implementation.

It is unclear whether the proposal to have the business unit receive drafting instructions from councils, and prepare proposed planning provisions and amendments will be a requirement under the proposed reforms, or a service available at request e.g. for council's with inadequate resourcing to undertake the drafting. The drafting of policy and planning provisions is an important skill of any planner. Any compulsory requirement for this drafting to be undertaken by a business unit of DELWP is not supported, and will have a significant impact on the skill set of council and consultant planners. The business case for such a change is not clear and the benefits it would provide ill defined. Such an approach is also dependent on State Government resourcing.

It is recommended that a specialist team or service (outside of VCAT and potentially within the business unit proposed) be established where Councils can seek assistance in interpreting requirements of the scheme. This will ensure consistency across Council's and reduce the financial burden of Councils in interpreting the scheme. The State Government should participate in legal matters where these interpretations are challenged to ensure that the scheme intent is not changed/degraded via legal proceedings.

*Proposal 4.3 Create an online Victorian planning library*

This proposal is supported.

## **Proposal 5: Improve specific provisions**

*Proposal 5.1 Improvements to specific provisions*

A number of changes to zones and overlays are proposed that have not been fully explored. A number of the modifications proposed simply state 'review', 'examine', or 'address' in regard to an issue or matter. These types of statements indicate that further work is required to determine the exact nature of the changes. It is not considered appropriate to release a document, indicating changes to zones and overlays without providing Council with the opportunity to review the exact detail of the changes, and their implications. As highlighted in the opening statement of this letter, a consultation period of 6 weeks, for planning reform that consists of not only changes to the structure of the planning system, but zone reform, is considered inadequate and inappropriate.

A number of planning permit exemptions are proposed by the reforms. Increased planning permit exemptions do not always lead to fewer burdens for Council;

particularly when landowners and developers skirt on the edge of exemptions to undertake major developments or introduce uses which impact on the community (e.g. earthworks exemptions within standard GWZ). These exemptions result in councils having to undertake costly enforcement action to determine if a breach has occurred or not. Furthermore in many cases the permit trigger allows Council consideration to ensure that the strategic planning objectives, particularly around environmental conservation and protection, are achieved. Any permit trigger removals should be considered on a case by case basis, having regard to the need and impact of each exemption change. Councils should be consulted in regards to these changes.

The proposed reforms appear to focus heavily on increasing exemptions placing greater emphasis on the need to enforce the planning scheme. Particularly the amenity based exemptions for as of right uses in select zones.

Legislative changes are proposed to be made as part of this reform. Given this, Council requests that a review to the enforcement and compliance mechanisms within the Planning and Environment Act is undertaken to ensure that breaches are dealt with in a way more comparable to the economic gains of causing the breach. Consideration should be given to establishing a specific working group set up to deal with compliance and enforcement related issues with the Planning Scheme.

#### Urban Growth Zone (UGZ) Comments

It is acknowledged that the use of applied zones within the UGZ is a confusing concept for non-planners, and results in a lack of transparency, particularly when using planning maps online or accessing property planning reports. This concern however should be moderated with the acknowledgement that the development of UGZ land is for the most part limited to developers with extensive knowledge of PSPs and the use of the UGZ, rather than the general public or small scale developers.

It is acknowledged that many schedules to the UGZ have become lengthy and complex documents to navigate. This is in part due to the complexities of applying the appropriate planning controls to structure plans that span extensive areas that are subject to a range of constraints. Officers are concerned that the suite of zones and overlays do not currently have the flexibility required to accommodate many of the development controls, application requirements and permit conditions contained within existing and proposed UGZ schedules. A review of a number of existing and proposed UGZ schedules within Hume, has highlighted a number of development controls, application requirements and permit conditions that could not be applied within other zones, due to the inability to provide for site or development specific schedules to these zones.

As a growth area Council, a significant proportion of the Hume municipality is subject to the UGZ. Any change to the way in which the UGZ is used and applied will have significant implications on the Council as the planning authority for the assessment of applications within this zone. It is requested that any changes to the use of applied zones within the UGZ be subject to consultation with the VPA and growth area Councils and the exact nature of the change be made available for comment and submissions.

Although unclear in the documentation, it is assumed that any changes to the UGZ and the use of applied zones would not be applied retrospectively. Any change to the UGZ needs to be undertaken in conjunction with the Precinct Structure Plan (PSP) Guidelines as the schedules are used to implement PSP objectives.

Comments in regard to specific changes proposed are provided in Attachment 1.

*Proposal 5.2 Update the definitions section of the VPP*

In relation to updating definitions in the VPP this is supported, VCAT decisions relating to common 'innominate' uses would be useful to review and perhaps create new definitions. Other VCAT decisions relating to uses where the interpretation of their meaning have been tested would also be useful to review when determining on VPP definitions. Any new definitions introduced would need to then be reviewed in the context of zones to determine whether or not they would be appropriate Section 1, 2 or 3 uses in various zones.

*Proposal 5.3 Regularly review and monitor the VPP*

Regular review and monitoring of the VPP is supported. As detailed in the discussion paper it would require a close working relationship between the business unit and Councils to ensure that the proposed changes to the VPP are considered by all parties and timely in introduction (similar to the Native Vegetation Framework process outlined on page 1 of this letter).



Yours sincerely //

