SUBMISSION ON MACEDON RANGES PROTECTION
AND DRAFT LPS

4 March 2018

Thank you for the opportunity to provide a submission on the draft Victorian legislation *Planning and Environment Amendment (Distinctive Areas and Landscapes) Bill 2017* and the draft Macedon Ranges Localised Planning Statement (LPS) released in December 2017.

I have been following this process since late 2015 when the Minister for Planning announced legislative protection for the Macedon Ranges. I made submissions to the Macedon Ranges Protection Advisory Committee in 2016. I attended the drop in session in Woodend on 6 February 2018 to discuss the current proposals with DELWP staff (Fiona DePreu and Robert Rourke).

My comments are based on my experience as a working in the over the past years. Amongst other roles, I have been a and a where I was regularly required to .

My views are therefore grounded in the understanding that with the proposals put forth by the government, a future decision maker will need to refer to the Act, the Macedon Ranges Planning Scheme, the proposed statement of planning policy (established in the draft legislation) and potentially a separate LPS for guidance on land use decisions. It is in this context that I make the following key points:

1. The draft legislation has the potential to deliver on the protections sought by the Minister for Planning and to implement the public policy aims of the Victorian government. If implemented well, it could become a lasting positive legacy for the Minister and the officers who have been involved with its drafting and implementation.

2. The problems lie with the draft LPS. If the LPS is meant to be used to write the statement of planning policy or to be incorporated into the Macedon Ranges Planning Scheme, then it will fail to deliver on the public policy aims of protecting the Shire from poor land use decisions. My reasons for saying this include the following:

3. The language used in the LPS does not add value for decision makers – it is full of general statements that could apply anywhere. There are already similar statements contained in the
State and local sections of the Macedon Ranges Planning Scheme. It is unlikely that the language in the LPS will lead to better ‘protection’ decisions because there is nothing new for decision makers to consider. Some of the language may actually undermine the draft legislation because it suggests that the VPPs are more than adequate to the task. Given the number of poor decisions visible throughout the Shire, we know that they are not adequate, and that a tailored policy statement with legislative backing is needed.

(4) Another issue is that each of the policy domains – landscape, biodiversity and environmental values, water catchments and supply, Aboriginal cultural heritage, European cultural heritage, settlements, agriculture and rural land, tourism and recreation, transport and infrastructure - is separately defined and has its own set of objectives and strategies. The LPS is a missed opportunity to spatially integrate these elements, to assist decision makers who are being asked to decide in favour of protection. A spatially integrated LPS would help answer the question of what protection should mean in everyday practice. It would inform the framework plan included in the LPS (Map 4), which at present does not provide meaningful information in terms of informing planning policy and land use decisions.

A spatially integrated framework might require, for example: (a) identifying for the Macedon Ranges the opportunities and threats for each policy domain; (b) understanding how these opportunities and threats play out in land use (and built form) decisions; and (c) determining how integration (not balance) of complementary and at times competing interests should be dealt with in the Shire so that better decisions can be made in the future. The LPS also missed an opportunity to address any current land use conflicts in the Shire. Resolving land use conflicts can open new opportunities not previously recognized.

(5) Comparisons with the language and content of Statement of Planning Policy No. 8 are inevitable. SPP8 provides an integrated response to planning challenges with clear, unambiguous policy statements for achieving protection. This contrast is evident in the following two statements relating to tourism and recreation:

SPP8: Policy 2.4. Planning for recreation and leisure shall be directed predominantly towards activities which require natural or semi-natural surroundings and shall be integrated with planning for water catchment management and nature conservation so as to minimize conflicts.

LPS: Objective 8. To provide for a diverse, sustainable range of recreational activities and a strong, resilient visitor economy in the policy area.

The SPP8 statement refers to local conditions and to how competing objectives are to be managed. The LPS statement is so general that it could apply equally to Port Phillip (or a multitude of other metropolitan and regional councils in Victoria) and provides no context in which recreation and tourism is to be located or supported. This does not assist with decision making. Given the problems with the LPS, it would be worth using SPP8 as a starting point and adding to it as a new statement of planning policy is developed, and the LPS could then be revised accordingly.
(6) There is a strong focus in the LPS on protecting individual assets of State significance rather than protecting an area of State significance. This is a subtle but important difference that reflects the complexity of factors that make an area distinctive. The Minister appears to understand this. In the Minister’s own words regarding the draft legislation, “The bill is a landmark because it will protect the iconic and historic Macedon Ranges region. It will protect the natural beauty of the ranges and preserve, cultural, environmental and rural values.” (Hansard, 14 December 2017, p 4528) And more recently, “What makes the Macedon Ranges so special? It’s a combination of rich native vegetation, a long list of heritage buildings and assets, major water catchment areas and unique geological formations.” (Planning News, March 2018, p 5) The complexity and interplay of the natural and built elements that make a place special needs to be recognized in any redrafting of the LPS or preparation of a statement of local policy.

(7) The LPS misses an important policy domain, the towns and villages of the Macedon Ranges. Each has a distinctive country character and each sits within a rural landscape with many interfaces to its non-urban environment, whether it be forest or farmland. It is difficult to understand how the LPS for the Macedon Ranges neglected to discuss the setting, heritage, character, diversity and attraction of its iconic settlements. This element must be included in any future statement of planning policy or LPS.

(8) The Settlement discussion in the LPS and the framework plans for each of the towns is misleading. The Council undertook detailed settlement planning in 2011 (Macedon Ranges Settlement Strategy) which concluded that there was sufficient land in each of the main towns to accommodate population growth for 20 years and more. The exception was Riddells Creek, where additional land has now been rezoned to accommodate projected growth. Since then, the Council has added potential for hundreds of new homes in the Rural Living Zone, none of these were counted in the Settlement Strategy. There is ample opportunity for township growth in a consolidated manner in the main towns and more than ample opportunity for rural living development outside of these towns.

(9) The township boundaries in the Macedon Ranges Planning Scheme are up to date — they are consistent with the 2011 settlement work and individual town structure plans or outline development plans. There is no strategic basis for extending township boundaries through this current process. A land owner would normally need to prepare substantial studies to include land within a settlement boundary for urban conversion, including establishing the need for the land and that the land is suitable for urban development, can be serviced, whether it contains important flora, fauna or habitat, is subject to hazards such as fire and flooding, and the like. It is inconceivable that this current process would be used to bypass this normal planning requirement, thereby encouraging speculative land purchase and increasing pressure for premature rezonings. This would be contrary to proper and orderly planning and long-established planning practice.

(10) The proposed Woodend settlement boundaries are unacceptable as they add wide swaths of rural land (including Rural Conservation zoned land) to the township and would make them instantly available for rezoning even though they are subject to extensive fire and flood conditions and have not been investigated for their suitability for future urban use – this is why
they are called investigation areas, they are tagged for investigation for the post-2036 timetable. Despite this being the situation, there would be no reasonable basis for refusing a rezoning once land is included within the boundary, and potentially all of the new land could be rezoned within a few years.

Woodend is naturally growing at a low to moderate pace. The 2015 structure planning (Woodend Town Structure Plan) and Amendment C98 confirmed that the current town boundaries can easily accommodate a population of 5,000 by 2036 and at the current level of infill it may be possible to accommodate the 6,000 person upper limit indicated in the Macedon Ranges Planning Scheme. Unless further work is undertaken to contradict this, it cannot be said that any additional land will be needed in Woodend even in the longer term.

(11) The draft legislation calls for a 50-year vision, not 50-year settlement boundaries. No one can crystal ball what the needs will be in 50 years’ time and the LPS does not need to do this. Settlement boundaries can and should be based on the Macedon Ranges Planning Scheme township boundaries and then reviewed at the 10-year mark in conjunction with an update of the Shire’s settlement strategy. All indications are that this will allow for a timely review of township needs.

In conclusion:

• The draft legislation provides a positive and timely opportunity to protect the Macedon Ranges.

• There would be more confidence in the LPS if it:
  – were amended in line with community submissions,
  – recognized in a more integrated and expansive way the reasons why the Macedon Ranges is special and deserving of protection,
  – provided a spatially integrated framework,
  – expressed clear protection policy outcomes to be achieved that respond to local conditions,
  – revised the settlements policy domain to recognize the iconic towns and villages of the Macedon Ranges,
  – revised framework plans/settlement boundaries for the towns consistent with current township boundaries which have been proven to be valid to at least 2036, and
  – incorporated the protections and integrated policy set out in statement of planning policy no. 8.

• Please consider testing the value of an updated LPS or statement of planning policy with the senior members of VCAT’s Planning and Environment List and Planning Panels Victoria to determine how it will be used and interpreted by these organisations. Consider using sample cases from the Macedon Ranges to see what difference it would have made to the VCAT decision or Panel recommendation. This exercise will provide a meaningful evaluation of whether the document/s will actually deliver what the public policy and legislation promise in terms of land use protections.
ADDENDUM. EXTRACT FROM THE SETTLE WOODEND REVIEW

Settle Woodend is an informal group of Woodend residents who regularly participate in planning matters affecting the Macedon Ranges, and especially the township of Woodend, and through its local networks encourages others to do the same. This review represents the views of a number of people in Woodend and these views are likely to be shared by others in the community. I am including this extract from the Settle Woodend review because it raises LPS content and drafting issues that in my view deserve serious attention from the Minister for Planning and DELWP.

What will the draft legislation do?

This is a bill before Parliament to amend the Planning and Environment Act 1987. It will apply across Victoria, the intention being that it would first be used in the Macedon Ranges. The following provides an overview of the Planning and Environment Amendment (Distinctive Areas and Landscapes) Bill 2017. The draft legislation can be downloaded at [http://www.legislation.vic.gov.au/domin0/Web_Notes/LDMS/PubPDocs.nsf/ee665e366dcb6c80ca256da400837f6b/bf94f71fe0da7314ca2581f40078b75d!OpenDocument](http://www.legislation.vic.gov.au/domin0/Web_Notes/LDMS/PubPDocs.nsf/ee665e366dcb6c80ca256da400837f6b/bf94f71fe0da7314ca2581f40078b75d!OpenDocument)

Distinctive areas and landscapes

The legislation would create “distinctive areas and landscapes” in the planning system, specifically to:

- Recognise the importance of these areas, “protect and conserve their unique features and special characteristics”, and enhance their “unique habitats, ecosystems and biodiversity”.
- Integrate “policy development, implementation and decision making” by reintroducing Statements of Planning Policy.
- Recognise “the connection and stewardship of traditional owners”.

Declaration to create an area

A declaration of an area of Victoria that is a distinctive area and landscape will take a number of steps, culminating in publication of an order in the Government Gazette.

In particular, through the Minister for Planning, the following will need to be identified:

- The area description – this is proposed to be the entire Macedon Ranges Shire.
- The attributes that qualify the area as a distinctive area and landscape, including “outstanding environmental significance, significant geologic and landform features, heritage and cultural significance, natural resources and productive land of significance, strategic infrastructure or built form of significance”.
- The threats of “significant or irreversible land use change that would affect the environmental, social and economic value of the area”, whether the threat arises from “land use conflicts; or multiple land use changes over time”, or another land use threat.
Statement of Planning Policy

After the declaration of an area, the Minister for Planning must prepare a Statement of Planning Policy. Its purpose is to “create a framework for the future use and development of land in the declared area to ensure the protection and conservation of the distinctive attributes of the declared area.”

There is a long list of required content which we are reproducing here because it becomes critical when considering the Localised Planning Statement currently available for comment.

(1) The Statement of Planning Policy for a declared area must—

(a) set a vision for a period of at least 50 years that identifies the values, priorities and preferences of the Victorian community in relation to the distinctive attributes of the declared area, including preferences for future land use, protection and development; and

(b) set out the long-term needs for the integration of decision-making and planning for the declared area; and

(c) state the parts of the Statement that are binding on responsible public entities and the parts that are in the nature of recommendations to which responsible public entities are only required to have regard; and

(d) include a declared area framework plan in accordance with subsection (2); and

(e) set out Aboriginal tangible and intangible cultural values, and other cultural and heritage values, in relation to the declared area.

(2) The declared area framework plan must provide a framework for decision-making in relation to the future use and development of land in the declared area that—

(a) integrates environmental, social, cultural and economic factors for the benefit of the community and encourages sustainable development and identifies areas for protection and conservation of the distinctive attributes of the declared area; and

(b) may specify settlement boundaries in the declared area or designate specific settlement boundaries in the declared area as protected settlement boundaries.

The Minister is required to consult on a Statement of Planning Policy. There is a provision in the draft legislation which states that consultation on the Localised Planning Statement will satisfy this requirement.

Protected settlement boundary

The legislation would allow the Minister with Parliamentary consent to establish a “protected settlement boundary” around a city, town or village. Once established, these would require an Act of Parliament to be changed.
**Settle Woodend position**

What is proposed is overarching legislation that has the capacity to govern decision making regarding land use in the Macedon Ranges for decades to come, whether this is a decision of the Council, the Minister for Planning, VCAT or another government organisation.

The *Planning and Environment Amendment (Distinctive Areas and Landscapes) Bill 2017* focuses on geologic, geomorphic and ecological features and cultural attributes of human occupation and emphasises the importance of these. Statement of Planning Policy No. 8 prioritises the protection and use of natural resources for water supply, tourism, recreation and nature conservation, with a secondary focus on agriculture and forestry. In introducing the bill to Parliament, the Minister for Planning referred to the natural environment, significant water catchments, agricultural land and heritage townscapes of the Macedon Ranges.

The objectives included in the draft legislation emphasise protection and conservation of the landscapes, environment and heritage of a local area. It includes the welcome addition of the recognition of the traditional owners of land.

The declaration of an area of Victoria to be a distinctive area and landscape requires identification of unique features and special characteristics including its settlements.

The Statement of Planning Policy will be the key driver in decision making and in future changes to the Macedon Ranges Planning Scheme including rezonings and changes to township boundaries. It is critical that the Statement is an accurate representation of community values and expectations.

There are various processes set out in the draft legislation as well as amendments to other Victorian Acts. If interested in these, it is recommended that you review the bill.

*Settle Woodend supports both the intent and content of the draft legislation. However, we are concerned that the Localised Planning Statement is being used to satisfy consultation on a Statement of Planning Policy as we do not support the LPS. Our reasons are set out in the next section of this paper.*

**What is the Localised Planning Statement?**

The current version of the Localised Planning Statement (LPS) can be downloaded at [https://engage.vic.gov.au/macedon-ranges-localised-planning-statement](https://engage.vic.gov.au/macedon-ranges-localised-planning-statement) We assume that this LPS would form the new Statement of Planning Policy. This is an overview of the LPS in relation to the draft legislation:

**Policy area**

The policy area is identified as the Macedon Ranges Shire as recommended by the Macedon Ranges Protection Advisory Committee.
Distinctive attributes

The LPS uses “policy domains” to describe distinctive attributes including Landscape, Biodiversity and environmental values, Water catchments and supply, Aboriginal cultural heritage, European cultural heritage, Settlements, Agriculture and rural land, Tourism and recreation, and Transport and infrastructure. There is a description, objective and set of strategies with in some cases a map for the policy domains.

The descriptions are a mixture of generalisations and at times good detail, leaving gaps in the identification of the unique features and special characteristics that justify a declaration and that are to be protected under the legislation. There is emphasis on state-level significance only instead of a careful layering of the attributes that qualify the Macedon Ranges as a “distinctive area and landscape” – with Shire, Victorian and Australian icons (e.g. what is Woodend’s Avenue of Honour?)

The objectives are so broad that anyone should be able to support them (hint. The DELWP online survey asks if you support the objectives – why wouldn’t you?). The strategies and maps only recognise attributes of state significance and the strategy wording is the same as can be found in the planning scheme (or should be); these do not advance protection policy across the Macedon Ranges or with any detail. In addition, there is no prioritising of values or outcomes or any emphasis on development occurring within a natural setting as we have in Statement of Planning Policy No. 8.

Land use threats

These are missing from the LPS.

50-year vision

The front end of the LPS includes several short sections leading up to the vision. Here the emphasis is on growth and on balance (i.e. trade-offs) rather than on integration. The Council’s position (in its submission to the Macedon Ranges Protection Advisory Committee) that the current planning scheme offers sufficient protection and Statement of Planning Policy No. 8 has been superseded by the planning scheme comes through clearly. This does not engender confidence that the Council is fully supportive of lasting, legislative protection.

The vision is a list of (obvious) statements that it would be difficult to argue against, but which does not establish priorities or other clarifications to assist decision makers. It does not express the “values, priorities and preferences of the Victorian community in relation to the distinctive attributes of the declared area.” It also does not reflect the importance of the Macedon Ranges and its role in relation to the Melbourne Metropolitan Area, as a rural break and recreational destination.

As an example, the last vision statement reads “transport, community and essential services infrastructure will support liveable, well-connected rural communities that are more resilient to natural hazards and the effects of climate change”. How will this help a decision maker to determine whether a proposed land use change protects the distinctive attributes of the Macedon Ranges or is instead a land use threat?
Integration of decision-making and planning

The LPS fails to provide any direction on how the different unique features and special characteristics of the Macedon Ranges are to be protected and conserved in an integrated manner. The separate policy maps that are provided only include state-significant attributes. The final framework plan is a map that is intended to implement the vision and reflect the strategies, but it is not clear how it actually does this.

In any case, the document fails to explain how the nine policy domains are to work together and how a decision maker should approach these. We note there is no statement of planning policy such as in Statement of Planning Policy No.8. Once the content problems are fixed for the policy domains (including their plans), then a clear policy statement should be added similar to the one contained in Statement of Planning Policy No.8, to establish clear priorities and outcomes consistent with the legislation and tailored to this distinctive area and landscape.

Whether the statement is binding

The LPS fails to address what elements are binding. The document says that government agencies “must consider it when making relevant decisions and carrying out activities in the policy area.” This does not meet the legislative requirement.

Aboriginal cultural heritage

The three communities in the Macedon Ranges are recognised along with spiritual and culture heritage connection to Country. Sadly, the strategies do not acknowledge that these communities can offer meaningful advice on utilizing and managing the natural resources of the Macedon Ranges for their protection and conservation. This perspective needs to be added if we are to meaningfully recognise connection to Country.

Integrated framework plan

See “Integration of decision-making and planning”, above.

Protected settlement boundaries

Both the terms “protected settlement boundary” (requiring Parliamentary approval for adoption and change) and “settlement boundary” are used in the LPS, creating confusion about what is meant for each of the six township boundaries identified – Kyneton, Woodend, Gisborne, Lancefield, Romsey and Riddells Creek.

Mapped future investigation areas from local township plans for Woodend, Kyneton and Riddells Creek have now been converted to areas for development by their inclusion in the settlement boundaries, instantly adding several hundred hectares of land for township development even when individual township plans have concluded that this land is not needed for the medium to long term. We note that the legislation requires a 50-year vision, not a 50-year settlement boundary. And in any case, the town has certainly not doubled in size in the last 50 years, unlike Melbourne.
It is unclear why the LPS includes investigation areas that have been excluded from township boundaries because there is already sufficient land for housing and commercial growth. The inclusion of these areas appears arbitrary and lacking proper process.

In addition, there is no process set out as to how these investigation areas are to be treated. In practical terms, their inclusion simply gives property owners the go-ahead to apply for rezonings because the high-level Statement of Planning Policy will give them the strategic support that they need. It would then be difficult for any decision maker to oppose the rezoning when the land has been identified for township development under the legislation. The “balancing” of competing objectives would see the land developed despite the legislation requiring protection of unique features and special characteristics – which should be seen as a priority. This scenario illustrates the type of problem that would be created by the LPS as it is currently written.

In the case of Woodend, the investigation areas comprise the north-western, north-eastern and eastern areas included in the Woodend Town Structure Plan of 2015 and would double the size of the town. This contradicts the conclusions of the structure plan and the values, priorities and preferences of the community, and instead it introduces rezoning by stealth.

**Settle Woodend position**

The Localised Planning Statement is meant to respond to the recommendations of the Macedon Ranges Protection Advisory Committee and we would also expect it to respond to the draft legislation and Statement of Planning Policy No. 8; these documents should be the starting point for the current LPS. We do not think that it does this. The ongoing position of the Council (2014 LPS and Macedon Ranges Protection Advisory Committee submission) has been dressed up. However, it has not conceded its focus on economic development and tourism and it has very little focus on protection policies or integrated outcomes. The LPS does not even concede the need for protective legislation and dismisses the relevance of Statement of Planning Policy No. 8.

Woodendans worked extensively with the Council to develop the Woodend Town Structure Plan that was adopted in 2015. The plan confirmed the Settlement Strategy's 2011 conclusions that there is adequate land within the existing town boundary for housing and employment growth to 2036 and potentially beyond. The existing town boundary was confirmed with adoption of Amendment C98.

It is disrespectful to the Woodend community – and contrary to the draft legislation – to see a new, expanded settlement boundary included in the Localised Planning Statement. Our position is that there is no basis for this boundary change. The investigation areas referred to in the LPS were included in the town structure planning project at the request of the Amendment C84 panel. The preliminary review of these areas – some of which are in the Rural Conservation Zone – highlighted many development constraints including high fire risk, flooding and loss of a high value heritage township entry. This is addressed in the final structure plan document and would be apparent to anyone who has read the document.
To extend the boundaries now ignores the most recent strategic work for the Woodend township and opens the door to speculative development, pressure for premature rezonings and a loss of proper and orderly planning, in direct conflict with the desire to protect the unique features and special characteristics of the area and manage growth pressures.

Settle Woodend’s position is that the Localised Planning Statement should be scrapped and a proper Statement of Planning Policy should be written, preferably by someone associated with the preparation of the draft legislation. The new Statement of Planning Policy should not only incorporate the outcomes envisaged by Statement of Planning Policy No. 8 it should also complement the new legislation.

The existing Woodend settlement boundary should be declared as a “protected settlement boundary” under the new legislation to ensure protection of surrounding natural areas, water catchment and farmland and the heritage townscape and approaches as foreshadowed by the Minister in his second reading speech to Parliament.