



***SMART Planning
Reforming the Victoria Planning Provisions***

Morrington Peninsula Shire Council

Submission

November 2017



The Mornington Peninsula Shire Council (MPSC) welcomes the opportunity to make a submission to *the Reforming the Victoria Planning Provisions* Discussion Paper that was released for comment by the Department of Environment, Land, Water and Planning (DELWP) on 16 October 2017.

The MPSC supports many of the suggested changes to the structure and operation of the Victoria Planning Provisions (VPP) as proposed by the SMART Planning program on the basis that they seek to address long standing concerns of useability and transparency in decision making, and create a planning system that is robust and flexible enough to respond to future challenges.

There are some proposals that are not supported by the MPSC as outlined below. These proposals need significant review and further work to address the limitations in order to reflect the SMART planning objectives of a useability and flexibility. It is contended that in order for the planning system to be able to respond to future challenges that not all applications will meet a one size fits all approach and discretion is required to balance the competing objectives that are to be achieved in complex situations and landscapes such as the Mornington Peninsula.

The following issues and areas of concern outlined by the MPSC with regard to the proposals outlined in the Discussion paper should be addressed or reviewed as part of the process:

Proposal	MPSC response
A simpler VPP structure with VicSmart assessment built it	
1.1 Restructure and reform the particular provisions	<p>Not supported</p> <p>It is believed that the proposals to restructure and remove aspects of the Particular Provisions is necessary in order to achieve the objectives of SMART Planning. It is maintained though that where standards are specified, that consideration be given to including these in the codes referenced in the zone controls should these eventuate.</p>
1.2 Integrate VicSmart into appropriate particular provisions and overlay schedules	<p>Partly supported</p> <p>MPSC understands the basis of the proposed changes and the significant benefit to applicants in providing a “one stop shop” within the zone, overlay and particular provisions. MPSC does not support the proposal to expand VicSmart on the basis that it reduces</p>



**MORNINGTON
PENINSULA**
Shire

the inclusion of third parties in the planning process.

- 1.3 Consolidate all administrative provisions

Supported

This change appears minor with no real consequences.

An integrated planning policy framework

- 2.1 Integrate state, regional and local policy

Partly supported

The MPSC believe that the thinking behind this proposal being to integrate and improve transparency and usability is credible. The further desire to give local policy equal effect is further supported. The MPSC has concerns though, that this restructuring of the PPF could reduce the strength and intent of the Mornington Peninsula's specificity within its local policy.

Under the current planning scheme, there are number of local policies that might not comfortably fit under one of the proposed themes. For example, Clause 22.17 and Clause 22.21 are specific to the townships of Sorrento and Mornington North respectively, and may not integrate perfectly with the prescribed State policy themes. Additionally, Clause 22.01 (Industrial Areas), Clause 22.03 (Dwelling Density, Excisions and Realignment in Rural Areas) and Clause 22.12 (Non-residential Uses in Residential Zones) seek more responsive land use and development than prescribed under state planning policies.

There is a risk that policies under the current scheme will be challenged to be grouped with the new themes. In the pressure to reform, this critical detail that relates to the local context, items may be left out and/or rejected for not deriving with the prescribed themes.

- 2.2 Simplify the Municipal Strategic Statement

Supported

Moving to a more concise MSS will be beneficial. This is currently achieved through the planning scheme review process (every four years).

- 2.3 Expand policy themes

Partly supported

If this initiative goes ahead, it would be important to have a home for place based policy. However, it is not appropriate to 'make up' state policy if none exists as it must have a strategic basis and been through a strategic process.



Nor is it appropriate to include headings under State policy for matters that are purely local.

- 2.4 Create a clearer and simpler structure for policy making

Supported

The proposed structure has logic.

- 2.5 Set new rules and guidelines for writing policy

Supported

This proposal is an important part of the necessary structures required to effectively manage the VPP. The rules should be relevant to all levels of policy and help guide Government agencies when they wish to include material in State policy.

Translation guidelines will be an essential implementation tool if this initiative is proceeded with.

Assessment pathways for simple proposals

- 3.2 Embed a VicSmart assessment pathway in appropriate particular provisions and overlay schedules

Partly supported

As outlined above MPSC do not support the VicSmart assessment pathway in the first instance given its inability to consider and allow third party concerns and review rights.

Introduce new code-based assessment provisions for simple proposals to support small business, industry and homeowners

Not supported

The 'code approach' as outlined will limit the scope of a discretion in the determination, which has the potential to result in undesirable local planning outcomes. This code assessment approach is a 'one size fits all' across Victoria and or the Mornington Peninsula or other peri urban municipalities a one size fits all approach is not appropriate.

Smarter planning scheme drafting

- 4.1 Create a new VPP user manual

Supported

There is a need to prepare guidelines about the use of the suite of VPP controls and for a review of Planning Practice Notes. Practice Notes may well need to be reformatted to form part of the new manual.



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

Supported in principle

As planning schemes are subordinate legislation it is important that there is access to the appropriate skills for drafting of amendments. If the suggestion is that the service will be mandatory for councils to use then it will be critical that service commitments are put in place regarding timeliness and using the service does not further delay an already lengthy amendment process. There will also be the need for management of the pipeline of work.

Consideration should be given to commencing this operation in a voluntary nature and, if successful at managing a high workload, then for it be expanded to all councils.

- 4.3 Create an online Victorian planning library

Supported

This is an important addition to the management structures for the VPP. The library must be maintained so that it is up-to-date and relevant.

Improve specific provisions

- 5.1 Improvements to specific provisions

Partly supported

There is a significant amount of work proposed in the 50 ideas outlined in Appendix 2 of the discussion paper. Whilst the proposals to remove duplication, to clarify and improve consistency, correct anomalies, update references, improve readability and usability, there are significant aspects of this proposal that are not supported.

A key concern of the MPSC are the proposals that will make a number of land uses as of right. Such land uses are a common source of amenity and land use conflict. For example, industrial areas are being constantly challenged by an influx of non-industrial land operators being attracted by the cheaper lease opportunities. Frequently planners are required to strike the balance between preserving industrial land for manufacturing and/or warehousing with 'new age' commercial land uses such as gyms, dance schools and breweries. Carparking and conflict between operations is a genuine issue that requires careful balancing through a detailed planning permit consideration.



Additionally, the reforms seek to enable licensed premises to be 'as of right' within commercial zones. There is concern that this could have lasting and direct impact within the townships of the Mornington Peninsula. For example, under the Commercial 1 Zone a restaurant, tavern (aka bar), nightclub and bottle shop are all 'as of right' land uses under the zone.

The current permit trigger under Clause 52.27 enables councils to control the hours of operation, patron number and areas of liquor consumption. A clear framework will need to be developed for how the Victorian Commission for Gambling and Liquor Regulation to seriously consider the adverse amenity outcomes and the cumulative impact of alcohol harm. Subject to the Commission giving Council referral responses, the appropriate weight in the decision making process and being able to restrict hours, patron numbers and the area of consumption this should be supported.

The Mornington Peninsula's Green Wedge is highly sought after for lifestyle and amenity purposes, which can often be at odds with genuine farming operations and the environmental assets. The Green Wedge area is the most critical element of the character and values of the Shire. It is critical that planning policy continues to have in place measures to control the encroachment of 'rural living' on the Green Wedge Zone.

The reforms that propose to exempt dwelling extensions and ancillary outbuildings from requiring a planning permit seem to be at odds with Clause 14.01 (Agriculture) of the SPPF, which seeks to prevent the unplanned loss of productive agricultural land due to permanent changes of land use. The reform is likely to result in the gradual creep of residential curtilage or land unit into productive agricultural land, which must be protected into perpetuity.

The MPSC observe a broad range of dwelling extensions and outbuildings being proposed in the Green Wedge Zone. Many of these applications involve in depth negotiations with permit applicants to scale back the



development or respond to the site's context in terms of landscape, agriculture or vegetation.

It is considered vital that planning discretion is continued to be required for these developments to ensure the values and character of the Green Wedge Zone are not further eroded.

5.2 Update the Definitions section of the VPP

Supported

Definitions are the most contested part of planning schemes and can have significant impacts on whether a use or development is permitted or prohibited. After 20 years it is appropriate for there to be a comprehensive review of definitions.

5.3 Regularly review and monitor the VPP

Supported

Monitoring needs to include both 'outcome' and 'workability'.