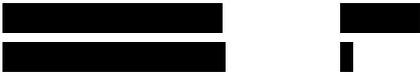




24 November 2017



Department of Environment, Land, Water and Planning
Smart Planning Team
8 Nicholson Street
EAST MELBOURNE VIC 3002

VIA ONLINE SUBMISSION FORM

Dear Sir / Madam,

RE: Submission to Reforming the Victoria Planning Provisions discussion paper

APA Group thanks the Smart Planning Team for the opportunity to provide its views on the proposals detailed within the *Reforming the Victoria Planning Provisions* discussion paper. The Smart Planning project represents a unique opportunity to think outside of the box and improve the fundamental mechanics of Victorian Planning Schemes.

APA Group is Australia's largest natural gas infrastructure business and has direct management and operational control over its assets and investments. APA's gas transmission pipelines span across Australia, delivering approximately half of the nation's gas usage. APA owns and operates over 15,000 km's of high pressure gas transmission pipelines across Australia.

APA frequently engages with Planning Authorities and Responsible Authorities to ensure our assets are factored into strategic plans and statutory planning decisions. An APA subsidiary, APA VTS (Operations) Pty Ltd, owns and maintains the Victorian Transmission System. This 2,000km network of pipelines traverse through forty-five Local Government Areas which must be monitored to ensure land use planning does not result in an inappropriate risk profile to our pipeline (as required under the *Pipelines Act 2005*). APA also develops energy infrastructure throughout Australia, including gas processing plants, solar facilities and wind energy facilities.

The key recommendations of our submissions are:

1. Formalise Planning Permit Extension of Time requests and Secondary Consent Requests through the use of a General Provision.
2. Re-locate the Pipelines Infrastructure Policy from Development Infrastructure to Energy and re-write strategies so that they relate to the protection of pipelines, rather than the construction of pipelines (which is governed by other legislation).
3. The VPPs should include local policies which identify significant infrastructure (including specific gas pipelines) within each municipality to ensure proponents and decision makers are aware of specific pieces of infrastructure. This could act as local enhancement to the Pipeline Infrastructure policy at Clause 19.03-6.

4. It is inappropriate to identify childcare centres as 'as of right' in residential or mixed use zones until there is a suitable planning tools, including buffers and a working definition of sensitive uses, which would identify where further assessment for childcare centres may be required.
5. Introduce a 'fit for purpose' buffer overlay which can exert control over land use as well as subdivision and buildings and works.
6. Formalise 'reverse amenity' and 'agent of change' principles within the Victoria Planning Provisions, where these concepts serve to support state-significant uses and development.
7. Modify the table to Clause 66.01 to clarify that transmission pipelines are pipelines licensed under the *Pipelines Act 2005* and that the referral authority is the pipeline licensee.
8. Introduce a definition of sensitive use that functions as an umbrella definition for uses that are sensitive to hazards.
9. Enhance images, maps and plans contained within Planning Scheme policies by linking images to full resolution or vectored 'stand-alone' images.

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Attachment 1: Submissions to Reforming the Victoria Planning Provisions discussion paper

Submissions to Reforming the Victoria Planning Provisions discussion paper

Proposal 1: A simpler VPP structure with VicSmart assessment built in

What other changes to the VPP structure do you think should be considered?

APA submits that Planning Permit extension of time requests and secondary consent requests should be formalised within the VPPs.

Planning Permit extension of time requests and secondary consent requests are both common 'tools of the trade' in Victorian planning, with most sizable projects requiring at least several of these requests to be processed by Responsible Authorities. Both requests are currently determined based on case law (*Kantor v. Murrindindi Shire Council* [1997] 18 AATR 285 for extension of time requests and *Westpoint Corporation v. Moreland CC* [2005] VCAT 1049 for secondary consent requests), rather than provisions within the VPPs. Although case law provides a useful point of reference to contextualise planning policy and decisions, both Kantor and Westpoint have become the de-facto planning rules for these types of applications and argued in numerous forums.

Case law is not necessarily an accessible medium for policy. Kantor, for example, is not available using AustLii and it is not an over statement to suggest that many practitioners (let alone members of the public) would have referenced the 'Kantor' principles at some point in their career without having actually read the decision itself. Case law also introduces the risk of decision requirements unintentionally evolving over time through 'dissenting' decisions from VCAT or the Supreme Court. Further, the "tests" contained within Westpoint and Kantor are not necessarily written as plainly as they might be for non-practitioners.

APA suggests introducing two new General Provisions into the VPP which provide application requirements and decision guidelines to guide Responsible Authorities and applicants when submitting and determining Secondary Consent requests or Extension of Time requests.

Proposal 2: An integrated planning policy framework

Are there any themes that should be added to the proposed PPF thematic framework — shown in Appendix 1 — to ensure that it covers all required policies?

The proposed PPF thematic framework proposes a reconfiguration of Clause 19 (Infrastructure), which includes the following relevant policy nesting.

[State] Clause 19.01 Energy

[State] Clause 19.01-1 Energy Supply

[State] Clause 19.01-2 Renewable Energy

[State] Clause 19.03 Development Infrastructure

[State] Clause 19.03-6 Pipeline Infrastructure

Acknowledging the 'user focused' principle of the VPP reform process, APA agrees that planning schemes should primarily provide information relevant to decision makers and users. For example, while an MSS identifying a potential investigation area for development does not directly identify planning regulation, it does inform decision makers of the need to protect this land from being prejudiced.

The current pipeline policy at Clause 19.03-6 provides two strategies regarding the planning of new pipelines and managing environmental impacts during the construction and operation of pipelines. These strategies are effectively weightless as Section 85 of the *Pipelines Act 2005* effectively exempts a pipeline from planning laws. The requirements for new pipelines, including environmental management, is considered through the pipeline licencing regime managed through DELWP and Energy Safe Victoria, which includes consultation with a wide range of stakeholders including Local Government.

It is APA's position that pipelines should be recognised at the State Planning level to:

- a) Protect a state-significant energy asset and the security of energy supply to Victoria;
- b) Inform decision makers and developers that high pressure transmission pipelines need to be factored into land use planning matters; and
- c) Protect the lives and property of Victorians from potential pipeline-related incidents.

We submit the Pipelines policy would be better nested within the Energy policy proposed at Clause 19.01 and re-drafted to provide strategies which implement the above objectives. APA further submits that a Planning Scheme should provide local, contextual information to articulate important features of a municipality. Infrastructure should be treated similarly, particularly when it is state-significant infrastructure (such as energy generation, storage and transmission infrastructure).

As such, we submit the following VPP structure should be implemented:

[State] Clause 19.01 Energy

[State] Clause 19.03-6 Transmission Pipeline Infrastructure

[Local MSS] Clause XX.XX Pipeline Infrastructure in [Municipality].

Proposal 3: Assessment pathways for simple proposals

APA has no comments in relation to Proposal 3.

Proposal 4: Smarter planning scheme drafting?

What planning documents or information do you think should be included in a Victorian planning library?

The highest priority for a Victorian planning library is to ensure any documents that have a statutory effect are digitised and available to members of the public. The largest gap of digital data is likely to be a plethora of Development Plans that have been endorsed but never digitised. It should be noted

that the Development Plan Overlay is not the only VPP control that utilises 'Development Plans'. Special Use Zones have often adopted 'Development Plan' requirements.

Proposal 5: Improvements to specific provisions

All Residential Zones & Mixed Use Zone

APA acknowledges the need for the provision of social services, including childcare centres, to assist in servicing the growing population of Victoria.

Although APA recognises that childcare centres are largely appropriate within residential areas, they are not universally appropriate within residential areas. APA advises caution in nominating childcare centres as 'as of right'. Various Planning Panels, and the Major Hazard Facility Advisory Committee (**MHFAC**) have recognised that Childcare Centres are 'sensitive uses'. This has resulted in additional permit triggers and requirements for childcare centres, particularly within urban growth areas such as the Mt Atkinson and Tarneit Plains (Melton Planning Scheme, UGZ9) and Wollert (Whittlesea, UGZ5).

In the absence of an overlay or buffer tool to identify areas where childcare centres would not be appropriate for safety and operational reasons within the VPPs, APA submits it would be inappropriate to remove planning permit requirements for childcare centres.

Urban Growth Zone

APA supports the initiative to provide a more rigid structure to the Urban Growth Zone. Notwithstanding, we submit that the UGZ should not be transformed to the extent where it is no longer able to resolve specific issues to each precinct.

A great deal of 'fat' could be stripped from current UGZ schedules by re-locating common components of UGZ Schedules. For example, land and home sales signs provisions should be written into Clause 52.05 and all referral requirements should be identified in Clause 66. We also note that previous suggestions by the VPP Reforms Discussion Paper, including through policy writing guidelines and a dedicated drafting unit within DELWP would contribute to simplifying UGZ schedules.

All Overlays

APA supports an investigation into the way 'buffers' are addressed in the Victoria Planning Provisions in a holistic fashion. Buffers and separation distances can be effective land use planning tools when managing potentially incompatible land uses. Facilities, including those associated with odours, noise or hazardous materials or other safety issues, require appropriate consideration when decision makers are determining encroaching development.

The Major Hazard Facilities Advisory Committee (**MHFAC**) provided a robust consideration of whether a new overlay or existing overlay would provide a satisfactory 'buffer tool'. There was generally wide spread support from both Local Government submitters and industry for a new overlay to manage buffers to major hazard facilities and licensed pipelines. The MHFAC concluded that the Environmental Significance Overlay, when paired with an appropriate schedule, should produce an "acceptable outcome".

We submit that there is a significant distinction between the MHFAC process, which is looking at one specific aspect of the existing planning framework, and a more holistic interrogation of how the VPPs may be improved. The MHFAC process was clearly grounded in the current VPP structure, which heavily encourages utilising existing controls wherever possible.

APA submits that the ESO was not designed as a buffer tool originally and has simply been a 'best fit' approach. The ESO is nested within Clause 42 (Environment and Landscape Overlays), alongside the Vegetation Protection Overlay and Significant Landscape Overlay. On face value, a reader assumes that an ESO relates to matters of natural environmental significance such as areas of biodiversity significance, waterways or areas of natural environmental sensitivity. This is consistent with a view that the Environment and Landscape overlays would give effect to the Environmental and Landscape Values policy at Clause 12. This is similar to how Land Management Overlays at Clause 44 typically give effect to the Natural Resource Management policy at Clause 13.

APA acknowledges that the ESO can be drafted to give effect to buffer-type provisions however, consider it inconsistent with the discussion papers' principles of modern planning schemes as it does not assist the user of the schemes and is inconsistent with the broader architecture of the scheme. Having one overlay attempt to do two very different tasks does not simplify the planning process, rather it convolutes it. We also note that the ESO has structural shortfalls in the parent clause, namely the inability to specify planning permit triggers for land use that reduces its' effectiveness as a buffer.

APA supports the formalisation of buffers within the Victoria Planning Provisions. A potential option could be the creation of a new nesting of overlays specifically identified as "buffer overlays". This nesting of overlays can be suited to implement Clauses 18 and 19. This would be the appropriate location for Airport Environs overlays, Port Environs overlays (currently drafted as ESOs) and an overlay tailored for land surrounding uses such as Landfills, Major Hazard Facilities or high pressure gas transmission pipelines (such as a 'Special Use Buffer Overlay').

Further, to ensure overlays do not 'evolve' for unintended purposes, as the ESO has done over time, APA also supports the introduction of nesting or explanatory policies within each of the overlay nesting clauses (Clauses 41, 42, 43, 44, 45) which should guide how these overlays are to be implemented within planning schemes. This will aid in the consistency of overlays and schedules.

Clause 52.10 (Uses with Adverse Amenity Potential)

APA supports the formalisation of 'reverse amenity' and 'agent of change' principles more broadly within the VPPs. These principles would need to be implemented in a way that does not support NIMBYism, but rather supports the continuation of uses that support planning objectives including the protection of significant industrial uses such as major hazard facilities.

The provision of buffer tools within the VPPs or within Victorian Planning mapping applications would be a necessary feature to ensure the usability (and visibility) of these provisions.

Clause 66 (Referral and Notice Provisions)

APA supports consolidating all referral provisions into Clause 66.

The table to Clause 66.01 identifies that applications to subdivide land crossed by a gas transmission pipeline or a gas transmission pipeline easement are to be referred to the relevant gas supply

authority. This terminology is ambiguous and undefined. APA submits that it would be more appropriate to link this requirement with the legislative provisions that define what a gas pipeline is and who is the relevant authority. This is best achieved through:

- Modifying the kind of application to refer to "*land crossed by a high pressure gas transmission pipeline licensed under the Pipelines Act 2005*"
- Modifying the referral authority to "*The relevant pipeline licensee*".

Clause 72 (General Terms)

APA supports providing a definition of "sensitive uses" within the Victoria Planning Provisions, and has advocated for this across a number of forums.

The Australian Standard that governs high pressure gas transmission pipelines, AS2885 (Pipelines – Gas and Liquid Petroleum) (AS2885) classes a use as sensitive if it is developed for use by sectors of the community who may be unable to protect themselves from the consequences of pipeline failure. This can be understood as the young, the physically or mentally disabled or persons otherwise constrained from movement (such as detention facilities). Conversely, the Victorian EPA defines a sensitive land use as "any land use which requires particular focus on protecting the beneficial uses of the air environment relating to human health and wellbeing, local amenity and aesthetic enjoyment...".

A working definition of sensitive use would need to be a broad umbrella definition, as the concept of a sensitive use is relative to the subject matter such as odour or land contamination. Notwithstanding, most sensitive land use concepts typically end up pointing to similar land uses such as:

- Accommodation
- Child care centre
- Education centre
- Place of assembly
- Hospital
- Medical Centre

Where sensitive uses are captured within this definition, but are not required to be considered by authorities for various reasons, standard agreements between Responsible Authorities and referral authorities can be used to reduce administrative burden.

APA would be pleased to be a member of any working party aimed at determining a definition for sensitive uses.

Technology and the availability of documents

APA agrees that a plain text version of each Planning Scheme would assist in saving time for practitioners over time. APA also submits that the quality of images and maps in Planning Scheme documents should be investigated. While a map or plan included within a policy is often required to show a large area, such as a settlement, practitioners often need to identify specific sites. A common

example would be determining which precinct a particular site lies within in the Activity Centre Zone. Low quality and rasterised image formats make it difficult to 'zoom in' on plans as they blur or pixilate due to insufficient quality. It is also acknowledged that Microsoft Word is not a user friendly program for vectored graphics.

APA suggests policies that include maps within the scheme should also hyperlink to a larger resolution or vectored stand-alone image, which could open up in a separate browser tab for users to interrogate, mark up or otherwise use for their required purposes such as inclusion in reports.

Further, where possible, any planning control which introduces a precinct-based controls (such as various DDOs, ACZs or even Development Plans) should be required to submit GIS data to DELWP for inclusion in the state-based mapping system to enable ease of identification.