

1 December 2017

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By email only

SUBMISSION TO REFORMING THE VICTORIAN PLANNING PROVISIONS - A DISCUSSION PAPER

Greater Shepparton City Council welcomes the opportunity to comment on *Reforming the Victorian Planning Provisions - A Discussion Paper 2017*.

Council officers broadly support the proposed reforms which seek to review the Victorian Planning Provisions to ensure that it not only remains aligned to the principles for which they were originally set out for and to ensure that they remain current and can respond to the modern planning context.

Council officers would make the following suggestions to further clarify some elements of the proposed reforms.

Proposal 1.1 Restructure and reform the particular provisions

It is proposed to restructure and reform the particular provisions into a more understandable and consistent format, with an emphasis on providing clearer assessment pathways for specific uses and development. The new structure would also more clearly recognise the functions of the different types of particular provision, under the following categories:

- General performance standards and requirements — where the provisions set objectives and performance standards for classes of use and development
- Specific use and development provisions — where the provisions set out permit exempt requirements and classes of VicSmart application and can operate as a 'one stop shop' for certain simple proposals (such as a small restaurant, or 'pop-up' use)
- Interface Provisions — where the provisions set out requirements for planning decisions that may affect other legislative processes and instruments
- Specific sites, areas and exclusions.

Officer Response

The reforms seek to make particular provisions more useable for practitioners and for the public. However, without a proper example of the proposed changes, it is difficult for officers to determine how this restructure will impact the operation and use of the planning scheme. Further clarification is required to allow for officers to provide a fully considered response.

It is important that any changes make the planning schemes easier to use and more streamlined. Council officers would be happy to participate in any process to achieve this reform.

Although a couple of examples are:

- Clause 52.10 it is not clear how it operates and how it triggers a permit only having relevance where called up under a condition of the zone;
- Clause 52.29 access to road zone category 1 needs to be reworded to take account of different interpretations at VCAT
- How the DDOs can trigger a planning permit for advertising signs if no planning permit is triggered on the zone.

Proposal 1.2 Integrate VicSmart into appropriate particular provisions and overlay schedules

It is proposed to integrate VicSmart classes into the particular provisions and overlay schedules where appropriate, emphasising simple assessment pathways (permit exempt and VicSmart).

Officer Response

There is general support for the proposal to integrate VicSmart classes into the particular provisions and overlay schedules.

At present the VicSmart provisions sit within a separate section at the end of the planning scheme. This is unwieldy and can cause confusion for inexperienced users of the planning process.

At a recent VCAT case (Wittenbach v Cardinia SC (Red Dot) [2017] VCAT 793) Deputy President Gibson noted that an application must be made by the applicant as a VicSmart application to be considered under the VicSmart provisions. At paragraph 28 Deputy President Gibson states:

I do not find there is any intention in the VicSmart provisions to make them the exclusive means of consideration of classes of applications that can be a VicSmart application. Rather, I consider that the VicSmart provisions provide an opportunity for a permit applicant to pursue the VicSmart fast track permit application process for assessing VicSmart applications as provided for by clauses 90-95 of the planning scheme if a permit applicant chooses to do so. If a VicSmart application is made, then the provisions of clauses 90-95 apply. But unless a specific VicSmart application is made, I do not consider that those provisions automatically apply to any other permit application notwithstanding it may be eligible for a VicSmart application to be made and so considered.

In light of the above the application to be considered under this pathway, it is considered that applications should be VicSmart or not VicSmart to avoid confusion.

Proposal 1.3: Consolidate all administrative provisions

The list of incorporated documents and other administrative and operational provisions would be relocated to the General Provisions section. This would consolidate all administrative provisions in one location.

Officer Response

There is general support for this proposal, there would appear to be no consequences to this reform on the operation of the planning scheme.

Proposal 2.1: Integrate State, Regional and Local Planning Policy

It is proposed to merge the SPPF and LPPF into a single policy source called the Planning Policy Framework (PPF), with three levels of policy: state, regional and local.

Officer Response

The three levels of policy would be grouped by general themes, allowing for all corresponding regional and local policy to be accessible by theme. This would allow users to access all of the relevant information, policies and objectives from one location.

There is merit in placing all relevant policy in one location. One element of the proposal which has not been fully considered is that all regional and local policy would have to be appropriately reviewed to ensure that it appropriately corresponds to the theme.

It is difficult to see how this would occur in instances where State policy has not managed to keep abreast of local/ regional policy. For instance, the implementation of environmental sustainability, solar policy, gambling policy, infrastructure design requirements, all these have been included in policy as part of local government led reform. Council officers consider this requires further consideration as to how these policies will be balanced.

It may also require further consideration of the 'weighting' each relevant section is given, and in turn, the weighting afforded to potential policies that may conflict when assessing the merits of a planning proposal.

Council officers participated in the previous review, the bulk of our comments are now included.

In this regard officers consider that the Infrastructure Design Manual should be included in proposed Clause 19.03 of the draft Planning Policy Framework as identified in the draft contents page for the PPF shown in Appendix 1 of the discussion paper.

Proposal 2.2 Simplify the Municipal Strategic Statement

A reformed PPF would start with a new 'municipal context and vision' that provides a concise description of the municipality and an overview of council's strategic planning direction. This would set the scene for the planning scheme and establish the policy basis. It would contain information specific to the municipality, such as location and regional context, history, assets and strengths, key attributes and influences.

Appropriate MSS content that is not included in the context and vision statement would be reviewed and integrated into the PPF. The concise format would ensure a more focused and direct message about a council's planning aspirations, strengthening that element of policy.

As with the MSS, the municipal context and vision would need to be regularly reviewed.

Officer Response

This reform is partially supported by officers, however it is unclear how it will be implemented and there is some question as to whether it will particularly reduce content and specific policy direction. It is difficult to see how this will differentiate from some aspects of the local policy in the tiered section.

The proposal to move to a more concise MSS would be beneficial to all users of the planning scheme. However, Could officers query what value will then be placed on MSS content, while it is noted that a review process already exists, by the planning scheme review process, which occurs every four years.

It is considered that, if parts of the MSS are removed, the role of the reference document in the scheme may be lost, Where is the narrative as to why is this? Further there would be more reliance on reference documents to provide background on policy formulation. Therefore appropriate weight would need to be given to reference documents to allow them to be used in the consideration of statutory applications as the Planning system cannot rely solely on Incorporated Documents to perform this function. Ordinarily this is not the case.

Proposal 2.3 Expand policy themes

To ensure the PPF has the capacity to deliver policy intentions at state, regional and local levels, the existing SPPF thematic structure is to be updated.

The proposed thematic structure starts with a municipal context and vision and then a settlement policy that includes growth and place-based policy. This is followed by thematic-based policies, which are to be expanded by including additional policy themes to ensure appropriate existing and future local and regional planning policies are able to be included in the PPF.

In the PPF, the state-wide policy context is expressed through the policy themes. A planning scheme user would learn about what is important by observing the policy matters addressed in the PPF.

Some existing policies at the state and regional level may need to be recast to fit the new framework. For example, where a state policy and a regional policy are essentially equivalent, they may be standardised as a single state policy.

Any policy will also need to avoid including provisions that act as controls. These are properly implemented in appropriate zones, overlays or particular provisions, and their associated local schedules.

Based on the proposed PPF thematic framework and adjustments to various planning scheme schedule templates, local planning policy would be capable of being successfully translated into planning schemes without losing critical local content.

Officer Response

This reform is partially supported by officers, however, it is unclear how this reform would be implemented as there are no practical examples.

It is considered important that any updates should be considered in light of the proposals set out in proposal 5.1 of the discussion document which seeks to amend and improve specific VPP provisions. Further to this, any improvements made as a result of VCAT or Panel recommendations should be considered in this.

This proposal may also require further consideration of the relative importance of each policy intention and how a conflict between opposing policies may be dealt with (i.e. solar policy and agricultural land).

Proposal 2.4 Create a clearer and simpler structure for policy making

A standard format is proposed for the PPF that generally follows the existing SPPF policy construction of objectives, strategies and policy guidelines, but with some key improvements.

Each level of policy (state, regional and local) may include an 'objective', 'strategies' and a new 'policy documents' section for each policy matter.

Local and regional planning policy need only include objectives where they expand on the corresponding state objective. They do not need to repeat the state planning policy objective.

At the local level, two new headings, 'policy application' and 'policy context', are proposed to ensure policy transparency. These local policy elements each have a specific purpose:

- Policy application explains where a policy is applied (such as policies that may only apply within a mapped area, in certain zones or for certain types of applications).
- Policy context gives a brief background to the issue that generated the local policy.

Officer Response

This reform is partially supported by officers; however, it is not clear how opposing policies would be dealt with by implementing this reform, for example the conflict between solar panels and agricultural policy. A more detailed proposal is required to allow council officers to provide a more detailed response.

Reference documents provide background information to assist in understanding the context within which a particular policy or provision has been framed. They are not listed in Clause 81.01 or schedule. Different types of documents may perform this role. They may be wide-ranging in their content and contain information not directly relevant to specific decisions under the planning scheme.

Reference documents provide guidance and compliance is discretionary and not mandatory as is the case with Incorporated documents.

In light of the above, it is considered that documents such as the Infrastructure Design Manual should be included as part of the new policy documents where appropriate, as it is increasingly relied upon by responsible authorities in specifying infrastructure requirements and has been included in the previous PPF model.

Proposal 2.5 Set new rules and guidelines for writing policy

To ensure the new PPF delivers clearer and more effective planning policy, new policy rules of entry and new drafting rules are proposed.

Rules of entry would complement existing ministerial directions (including Ministerial Direction No.11 Strategic Assessment of Amendments) by setting out tests for whether a matter is appropriate for inclusion in the PPF.

Officer Response

This reform is supported, the proposal is considered to provide a key component in providing the necessary structures to implement the VPP. This reform should provide clear rules which would be relevant to each policy level and assist all agencies where it is necessary to include material in the State policy.

Proposal 3.1 Embed a VicSmart assessment pathway in appropriate particular provisions and overlay schedules

A revised structure and templates for appropriate particular provisions and overlay schedules is proposed to better integrate VicSmart with the rest of the VPP.

The particular provisions and overlay schedules would be restructured to clearly identify:

- exempt use and development
- VicSmart applications for use and development and relevant VicSmart codes or standards
- clearly articulated performance standards
- classes of applications that are exempt from notice and review
- use or development that is prohibited.

Officer Response

This reform is partially supported by council officers.

While officers generally support quick and efficient decision making where practical, the removal of third party rights and review rights is a very serious matter and a step that should not be made lightly.

It is considered that there is a need to clearly define the role of VicSmart and to clearly define when an application is VicSmart and when it is not.

A more detailed proposal is required to allow Council officers to provide a detailed response.

Proposal 3.2 Introduce new code-based assessment provisions for simple proposals, to support small businesses, industry and homeowners

It is proposed to develop new codified assessment provisions for simple proposals:

- **Small café/restaurant standards** could package a basic set of approvals for the conversion of a building in an existing commercial centre to a café, where the proposal complies with pre-set criteria, such as a maximum seating capacity. The basic approvals would likely cover car parking waiver/reduction, low- impact advertising signs, liquor licences and minor buildings and works. Further investigation may reveal the opportunity to incorporate approvals outside the planning system, such as a footpath occupancy permit and food handling permits.
- **Temporary retail or cultural activity standards** could facilitate the establishment of temporary 'pop up' retail and cultural activity uses in vacant spaces in commercial centres.

- **'Home occupation plus' or 'live/work unit' standards** could facilitate small home-based businesses and creative industries beyond the home occupation threshold in appropriate residential or mixed use locations. The UK and the US have live/ work unit codes that could inform a Victorian model.
- **Secondary dwelling ('granny flat') standards** could apply to residentially zoned land where the secondary dwelling is in conjunction with an existing dwelling. NSW has code requirements in this area, which could be reviewed having regard to their practical implementation. In NSW, among other requirements, a secondary dwelling must be no more than 60 square metres in area, located on the same land as an existing dwelling and cannot be subdivided.
- **Small lot standards** could apply to a single dwelling on a lot less than 300 or 500 square metres. There are existing codes for greenfield development on small lots in Victoria (in growth areas) and in NSW that validate the concept and could likely provide a basis for developing a code with general applicability in Victoria.

Officer Response

This reform is partially supported.

The proposal to make the planning process more streamlined for simple proposal has merit and would allow for quick decision making. However there are concerns with how this proposal would practically be implemented and what impact the proposal would have on local areas.

This reform has the potential to provide a standardised response to the entire state and the local context could not be considered. For example, this reform could encourage business to relocate from regional CBD areas to less desirable peripheral areas such as Industrial Zones and Commercial 2 Zones. This outcome has the potential to lead to CBD location being drained of commercial uses and would lead to high vacancy rates, which is not an acceptable outcome.

While officers are not opposed to mechanisms that provide for quick decision making for relatively minor applications, it is considered that more thought needs to be given to practical outcomes and that a one size fits all approach may not provide for good outcomes for regional areas and is contrary to retail policy.

It is therefore considered that this reform should be complimented by a review of the commercial zones.

Proposal 4.1 Create a new VPP user manual

It is proposed to develop a new VPP user manual that includes business rules for the drafting and application of planning scheme provisions, with a focus on ensuring that:

- permit triggers are clearly and objectively expressed, evidence-based and relevant to the planning outcomes sought
- provisions are consistently and appropriately applied
- local provisions are clearly and consistently structured and drafted, and consistent with the state provisions
- where a proposed use or development is subject to discretion, performance standards are clearly articulated wherever possible, so that a user can determine when their proposal will be acceptable

- the structure and drafting of planning scheme provisions are optimised for processing and access via digital platforms, according to user queries.

A new VPP user manual could be electronically integrated with the necessary templates and the Ministerial Direction on the Form and Content of Planning Schemes.

Officers Response

The proposal to develop a common, clear approach to the drafting of new planning scheme provision is supported.

It is considered that, as part of this reform Practice Notes will need to be updated to react appropriately to this proposed reform.

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

It is proposed to establish a business unit in DELWP that is a 'centre of excellence', dedicated to protecting the integrity and usability of the VPP and planning schemes through:

- the ongoing development and review of business rules for the drafting and application of VPP and local provisions
- receiving drafting instructions from councils and others, and preparing proposed planning provisions and amendments in accordance with the VPP business rules
- ensuring that any proposed planning scheme amendment is prepared in accordance with the VPP user manual and relevant ministerial directions.

Units in the DELWP Planning Group already do this work to some extent, but this role can be more formalised and strengthened. The model of centralised document preparation has already been successfully applied to the preparation of planning scheme amendment maps.

Officer response

The proposal to establish a dedicated unit for the management of the VPPS is not supported by planning officers as appropriate detail has not been provided.

Council officers would require clarification on the following:

- What is the level of guidance required from Council officers (would this lead to job losses and de skilling of planners, which is a key concern in regional areas)
- Where is the business unit to be located and how will it be set up? GSCC has recently experienced some difficulties putting forward strategic planning solutions/ processes tailored to a regional perspective, often being dismissed as that is not how it is done in metro areas. It would be important to ensure there is flexibility within drafting and process to reflect individual circumstances of particular governments, as well as the regional context it is being prepared for.
- the dynamic between Council officers, community expectations and the role of Councillors and how this will be addressed when policy making and drafting.
- The ability of staff in the 'centre of excellence' to respond in a timely, tailored manner.

Proposal 4.3 Create an online Victorian planning library

A single, comprehensive online repository of all planning documents necessary for the efficient operation of the planning system is proposed. This would provide significant efficiencies to all planning system users as it would provide immediate access to the correct versions of the many documents that affect planning decision making.

Officers Response

This reform is supported by planning officers and it is considered that this would provide for an important recourse for planners, It is important that the library is appropriately monitored and is kept up to date and is relevant. Council officers are happy to provide information to feed into the library where relevant and possible.

Proposal 5.1 Improvement to specific provisions

Appendix 2 outlines a list of potential improvements to specific VPP and related provisions that have been identified through the Smart Planning consultation program and previous reviews (see Appendix 3). The proposals generally address one or more of the following objectives:

- add new, or expand existing, buildings and works exemptions in certain provisions
- make more permit-required land uses 'as of right' where the use is consistent with the purpose of the zone (in combination with increased use of conditions, where appropriate)
- make prohibited land uses permit-required uses where consistent with the purpose of the zone (in combination with increased use of conditions, where appropriate)
- reduce referral requirements where possible
- remove or amalgamate zones and overlays where purposes are duplicated or where need has changed
- clarify common points of confusion and complexity, remove duplication and ensure consistency
- correct anomalies, update references, and improve readability and usability.

Officers Response

The proposed reform outlines 50 ideas, which generally seek to outline a list of potential improvements to specific VPP and related provisions that have been identified through the Smart Planning consultation program and previous reviews.

The proposals generally address one or more of the following objectives:

- add new, or expand existing, buildings and works exemptions in certain provisions;
- make more permit-required land uses 'as of right' where the use is consistent with the purpose of the zone (in combination with increased use of conditions, where appropriate);
- make prohibited land uses permit-required uses where consistent with the purpose of the zone (in combination with increased use of conditions, where appropriate);
- reduce referral requirements where possible;
- remove or amalgamate zones and overlays where purposes are duplicated or where need has changed;
- clarify common points of confusion and complexity, remove duplication and ensure consistency;
- correct anomalies, update references, and improve readability and usability.

While there is partial support for the proposed reforms, council officers do have some general concerns, for example including some uses in Section 1 in certain zones has the potential to create conflict. This is particularly the case in Industrial Zones, where there is increasing tension between, commercial uses, such as gyms and traditional industrial uses, the inclusion of such commercial uses as Section 1 uses in the Industrial 1 Zone is not considered to be appropriate. It is also considered that the proposed reforms would have the potential to undermine the retail hierarchy.

Specific concerns are set out below:

- Clause 32 (b) this provision should include a trigger point for a planning permit for location on a Road Zone (1 or 2), and distance from a commercial centre.
- Clause 33.03 gyms should be directed toward commercial centres.
- Clause 35(a) The removal of the need for a planning permit for dwelling extensions and associated shed in the Farming Zone would requires further consideration against the policy set out in Clause 14.01 of the planning scheme which seeks to prevent the unplanned loss of agricultural land.
- Clause 37.03 (a) the urban floodway zone allows council to prohibit most uses, with eventual rehabilitation of land to vacant floodways, this is considered to be an appropriate outcome.
- Clause 40 (b) it is considered that overlays are an appropriate management tool.
- Clause 44.03 Keep the LSIO / FO separate as people understand the constraints. It is also considered that the designation of FO helps guide strategic planning.
- Clause 54, 55, 56 and 58, officers consider that it would be appropriate to include the provisions of Infrastructure Design Manual in applicable standards and objectives as.
- Clause 52.06 (c) this has to be considered in light of proposed a and b, if the car parking ratios are reduced, it is likely that any application for a reduction in car parking would be substantial, therefore notification of an application for reduction should be required as there is the potential for impact on the amenity of the surrounding area.

Proposal 5.2 Update the definitions section of the VPP

A key component of the proposed improvements to specific provisions is improving definitions.

This includes reviewing the VPP land use terms and definitions and associated treatment in the land use tables, with the objective to:

- increase use of everyday terms that the community understands
- remove or modernise obsolete terms and provide for new or emerging land uses
- distinguish between similar land uses where treated differently in land use tables
- remove unnecessarily specific terms and broaden terms, where appropriate
- provide definitions for undefined terms where appropriate (except for terms that are sufficiently captured by an ordinary dictionary meaning or defined in the Act).

Officer Response

Officers support this reform, it is considered that one of the most contentious part of the planning scheme is the definitions of terms. Planners use the definitions section of the planning scheme to ascertain if a use is permissible or prohibited.

In some cases the definitions are out dated and not fit for purpose and can lead to contentions decisions on the need for a planning permit or an application being prohibited. In light of the above, the proposal to update the definitions is timely and supported by council officers.

This is particularly the case around horse stables / animal keeping and this was not captured by the recent review of the animal industries. In this regard, if a term is in the definition, it should be defined, not left blank.

Proposal 5.3 Regularly review and monitor the VPP

It is proposed to establish a process for ongoing reporting of VPP correction and reform suggestions. DELWP would maintain a register of reforms underway online, with each reform suggestion given an approximate timeline for decision. This may be the responsibility of the drafting unit (see Proposal 4.2).

The system could include an ability for Victorian Civil and Administrative Tribunal (VCAT) and Planning Panels Victoria members to flag decisions and reports that recommend VPP change.

Officer Response

This reform is supported, particularly a mechanism that looks at VCAT and Panel decisions and endeavours to make reform and provide consistency in interpretation and implementation in line with these.

For example, it is considered that regular reviews of the performance of zones would be important, especially for lands with the Commercial 1 Zone, where certain reforms could encourage business to relocate from regional CBD areas to less desirable peripheral areas such as Industrial Zones and Commercial 2 Zones. This outcome has the potential to lead to CBD location being drained of commercial uses and would lead to high vacancy rates, which is not an acceptable outcome.

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