

19 August 2011



Statutory Policy Review Team  
Environmental Protection Agency  
GPO Box 4395  
Melbourne VIC 3001

Dear Sir/ Madam

Thank you for the opportunity to input into the review of the framework for statutory policies - State Environment Protection Policies (SEPPs) and Waste Management Polices (WMPs) - currently being conducted by the Environmental Protection Authority Victoria (EPA) and Department of Sustainability and Environment (DSE).

This submission from the City of Boroondara includes some broad and some detailed feedback from Council officers in response to a sub-set of the questions posed in the *Statutory Policy Review Discussion Paper*. Responses are focussed on how Council uses SEPPs and WMPs in its decision-making and operations. It should be noted that this submission does not represent an official Council position on the issues raised.

**Question 1: In your experience, what has worked well with statutory policy? What has not worked well?**

Given land use planning cannot be separated from the environment, it is beneficial that all Victorian Planning Schemes require local government to consider relevant SEPPs and WMPs. However, as the provision included in the State Planning Policy Framework only requires 'consideration' of SEPPs and

WMPs this can lead to confusion about what to do where the implementation of SEPPs and WMPs is contrary to other land development outcomes.

The use of 'consideration' also does not make it clear that these policies establish in law the use and environmental values to be protected in Victoria and therefore planners using them may not fully appreciate their legal weight.

The inclusion of contaminated land requirements in the Planning and Environment Act 1987 and a specific SEPP resulted in a State Planning Policy relating to environmental audits. This State Planning Policy is highly restrictive and can require environmental audits for minor developments that do not result in land disturbance. The State Planning Policy should therefore not be so restrictive.

The contaminated land requirements should also provide greater clarity regarding unknown contaminated sites and consideration of historical use.

*Recommendation 1: Consider the provision of guidelines to enable effective consideration of the environment and environmental risks where the ideal outcome conflicts with other beneficial land use or development outcomes (such as higher density).*

*Recommendation 2: Consider updating the State Planning Policy Framework to require SEPPs and WMPs to be applied rather than considered.*

**Question 3: Are there critical issues, risks or relevant processes (e.g. upcoming reviews, strategic planning processes) that should be considered in prioritising individual policy reviews?**

The Department of Planning and Community Development (DPCD) is currently seeking submissions regarding the Victorian Planning System. Given the ties between land use planning and the environment, it is suggested that collaboration and information sharing between State departments will improve the outcomes of both the planning review and this statutory environmental

policy framework review. This will be especially important if the planning system review results in changes and updates to the State Planning Policy Framework.

The planning review may also provide an opportunity for the EPA and DSE to assess whether the State Planning Policy Framework environmental provisions and SEPP and WMP considerations effectively achieve environmental protection and risk mitigation outcomes. Gaps identified can be used to guide the update of the individual SEPPs and WMPs.

The City of Boroondara is also currently in the early stages of reviewing its Planning Scheme. This review will result in the exhibition of various proposed scheme amendments. It would be useful if the EPA and DSE could advise, during the public exhibition period, whether or not the amendments proposed by the City will achieve improved environmental outcomes and help mitigate environmental risks.

*Recommendation 3: That the EPA contact the DPCD to ensure collaboration between the Environmental Statutory Policy Review and the review of the Victorian Planning System.*

**Question 5: In your work, which instruments or documents under the Environment Protection Act do you (or your organisation) use most often? The Environment Protection Act, Regulations, statutory policies or guidance?**

Statutory policies and guidance are used to inform statutory town planning decisions, most commonly those relating to noise and contaminated land.

**Question 8: Has including the roles and responsibilities of agencies — which often sets out how agencies will jointly tackle particular issues — in statutory policy been valuable?**

Theoretically, defining the roles and responsibilities of agencies is a useful feature of statutory policy, however in practice, including the roles and responsibilities of agencies in statutory policy can be unhelpful where there are grey areas in outlined responsibilities, where responsible agencies need specialist/ technical input that other agencies are unwilling or unable to provide or where the responsible agency does not have the capacity to effectively undertake their responsibilities. For example, noise complaints may be received by the City or directed to the City by the EPA. The City does not have the capacity or required technical equipment to assess whether or not a noise exceeds the limits set by the SEPP and noise regulations and therefore is required to hire an acoustic technician.

*Recommendation 4: Update the statutory policies to:*

- *Allow for situations where the responsible agency may not be immediately apparent;*
- *Allow improved consultation between agencies where technical knowledge may be inadequate;*
- *Enable the responsible agency to be altered where there are gaps in knowledge or capacity within the usual agency.*

**Question 10: In your experience, what features of statutory policy in other states or overseas work well?**

Local planning policies in other states work more effectively than in Victoria as they are simpler to apply. They are seen as an avenue to provide local context and provisions for a number of factors, including environmental issues. The use and development of local planning policies (with input from the EPA) could provide an opportunity for the EPA to enable improved environmental protection at a local level without the need of developing a SEPP or State Planning Policy. This option also provides the opportunity to adapt existing geographically specific policies to other areas.

**Question 11: Which, if any, of the model(s) do you think may work well? Why?**

All four models discussed in the *Statutory Policy Review Discussion Paper* have the potential for improving the statutory environmental framework. Given the lengthy process that is likely to be involved in a number of the models, it may be beneficial to develop a staged plan that involves the implementation of more than one model over time.

Further information is required relating to model three as there is not enough information to either support or reject the proposal. For example, how would statutory regional or local implementation plans be applied, and who would be responsible for their implementation? Model three could be adapted to incorporate local planning policy as an implementation method (refer to previous response to Question 10).

**Question 12: Are there other models that should be considered?**

It may also be useful to consider the removal of some of the SEPPs where they relate to large, state-wide issues that may benefit from dedicated legislation separate to the Environmental Protection Act 1970, for example, water management, and contaminated sites.

*Recommendation 5: Consider whether environmental legislation, in addition to the Environmental Protection Act, is required.*

**Question 13: What do you think of the specific suggestions for reform (on pages 25-26)?**

Publishing a consolidated version of each SEPP rather than the amendments as separate documents is supported.

The proposal to avoid repetition in the various levels of the statutory framework is generally supported; however, it should be ensured that this results in greater clarity and improved process. It would extend timeframes and complexity if a number of documents had to be referred to continually.

It is agreed that the phrase 'environmental value' is more easily understood than 'beneficial use' and the terminology in the Victorian statutory policies could be updated.

The publishing of a user guide to explain the role of statutory environmental policy would be useful. However, it is important to ensure that such a guide is practical and not onerous to use.

**Question 14: What else should be done to make statutory policy more responsive, accessible and easier to apply?**

Improved processes for obtaining advice on the application of statutory policy and greater training and capacity building would make the policies more responsive, accessible and easier to apply.

*Recommendation 6: Consider the development of improved process documentation for statutory referrals.*

*Recommendation 7: Consider the development of training and capacity building programmes to ensure policies are more effectively applied.*

**Question 15: How could the links between statutory policy, catchment planning, statutory planning and other frameworks be improved?**

Links between statutory policy and statutory planning could be improved though better provision of advice, for example, advice that is easily translatable into statutory planning provisions, development conditions etc.

Where planning conditions are applied due to requirements of the Environmental Protection Act 1970, SEPPs, WMPs or separate advice, it would also be useful for the agency that supplied the advice to be involved in the condition sign-off process, including approval of technical reports, and if the decision is appealed, in the VCAT process.

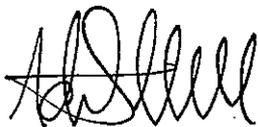
It should also be noted that under the Planning and Environment Act 1987, the EPA and the DSE are not specifically listed as referral agencies and therefore referral of planning applications, scheme amendments etc. is not legally required.

*Recommendation 7: Consider the development of standard advice templates that are easy and meaningful for referral agencies and decision-makers to use.*

I trust this information will assist the review of environmental statutory policy, and I look forward to the outcomes of the review process. Relevant officers have also participated in the local government workshop to further assist with the review.

Should have any further enquiries please contact Nicola Hoey Principal Environmental Sustainability Officer on 9278 4532.

Yours sincerely



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Our Ref:      File No.: