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Questions from the discussion paper

CHAPTER 2: HOW STATUTORY POLICY WORKS

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

Some elements of the statutory policy have worked well for example providing those tasked with objectives under the policy defined roles.

- However tasks allocated to roles are not always measurable or achievable due to a combination of factors such as financial limitations, lack of technical skills, lack of accountability and jurisdictional confusion over what authority is responsible. The requirement for Local Government to have a compliance program under the SEPP (Waters of Victoria) is an example of where financial limitation makes it impossible for Local Government to meet this objective.
- EPA policy relies on a multitude of agencies for delivery, despite this, at times EPA assistance and support in fulfilling these objectives has been absent. Many Local Governments have experienced EPA stepping back from their own role in enforcing policy objectives, relying on Council to enforce issues with industrial/ commercial noise through planning permit conditions with no assistance or guidance.

Policy such as SEPPN1, has presented problems for Local Government officers as it is a technical document that applies to Metropolitan areas. Often we need to apply it in a regional or rural setting further making it harder to utilise without EPA support. SEPPN2 on the other hand is set out with clear measurable objectives and is easier to understand, and clearly tasks the EPA as the responsible authority making it easier for Local Government to direct enforcement to the correct agencies.

- It is clear that some SEPPS have achieved their objective as air quality and stormwater quality has improved under policy objectives however these improvements are often applied to metropolitan areas only and should perhaps be expanded to be applied in different settings.
- Direction, task and indicators in SEPPS provide officers with the basis to make their decision, for example to domestic wastewater management. However public perception and the weight of the legal standing of the document is often challenged and not given full consideration because of the language used in the title or referenced supporting documents. Officers find themselves defending their decisions to Councillors, developers and VCAT who think that the policy presents best practice scenario and that accountability is not followed through. Examples of this can be commonly found at the subdivision process where compliance with codes and the domestic wastewater management plans can not be demonstrated, but officer recommendation is overturned on occasion.
- The relevance of objectives and indicators contained within policy is sometimes questioned, particularly when new research or technology emerges, highlighting that the frequency of review needs to keep up with technology and best practice to improve outcomes.
- The EPA clearly has a role to implement its policies through facilitation, training and

perhaps overseeing. Those who have roles under policy need to be given financial assistance, technical support and training to ensure that they can meet the objectives of the policy without these even good intentions cannot ensure compliance.

- The intention of the policy has merit but overall, it is seen as another tier in the ‘legal kitbag’, language used within policy sometimes downplays the strength and intention of the objectives. Experience shows that there must be a degree of prescription to guide enforcement with a balance of flexibility to achieve some best practice standards within the areas which they govern.

Question 2: How well do you think the features and obligations in statutory policy are understood? Are some parts better understood than others? (We would welcome some examples).

- As previously discussed there seems to be a lack of understanding of the legal weight of policy, experience over the years seems to be that when policy is challenged in either the political context of Council or VCAT the intention of the policy is compromised for the sake of financial gain.
- In some areas of responsibility and objectives intent has been misunderstood or ignored. For example our experience of SEPP (Waters of Victoria). We have seen developers avoid providing reticulated sewerage and instead propose on-site wastewater management. Regardless of land capability, proximity of sewerage or cumulative effect, subdivision occurs without reticulated sewerage regardless of recommendations or long term impact. In the future this will further burden Water Authorities and Local Government who will have to deal with old subdivisions and townships with failing systems which are identified as requiring reticulated sewer. The requirement to identify these priority areas and enter in with discussions with joint partners occurs under our domestic wastewater management planning, but financially progression of these areas is restricted and protracted.
- Local Government finds it hard to work with Codes that have been reviewed over a 4 year period without effective engagement. Issues raised within the Septic Tank Code Review by professionals who apply the Code have not been conducive to building an effective partnership with the EPA.
- The methodology behind land capability assessments is sensible; however the consumer is not protected by the regulation of the industry through certification and accreditation of service providers. Unlike the Food Industry, LCA assessors are not accredited or registered by the State Government department overseeing the legislation. Independence of assessors is also raised time and time again and the professional credibility of the officer disputing the LCA is often under the spot light.
- Obligations put onto consumers and Local Government through EPA policy is not always understood by all parties involved and is further confused when the EPA compromise the very policy they request compliance with as they allow non-compliance. We have seen buffer zones compromised between residential and industry/commercial, impacting on amenity and causing future problems for both EPA and Local Government.
- Another common occurrence in administering policy is the other authorities overstepping their statutory responsibilities. City of Greater Bendigo have a referral authority requesting Land Capability Assessments at the planning stage when as the responsible authority the Environmental Health Officer does not require one due to existing Land Capability data for

the municipality showing that the development will be able to manage waste on-site. Or the other authority requiring that another authority enforces their objective, for example the requirement to connect to sewerage is presented to Local Government as their responsibility under the SEPP.

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?

- Roles and responsibilities need to be clear, unambiguous and achievable to avoid any attempt of shifting of responsibility between authorities/parties.
- Tools and examples within other state legislation should be considered, Environmental Health Officers often use the Nuisance provisions of the Public Health & Wellbeing Act 2008 to deal with noise, odour and wastewater problems as the tools within the existing legislation are impracticable such as those under Part VIII – Control of Noise of the Environment Protection Act 1970.
- Policy reviews need to be flexible to adapt to changing priorities and community expectations, and changing priorities for environment protection. A 10 year review timeframe sometimes is too long and policy does not reflect the opinion or knowledge of the day.
- Policy should be uncomplicated and easy for all players in the application of the policy to understand.
- Response to climate change, carbon emissions and energy generation is a prime example of this, the installation of wind farms within residential areas has not only amenity and social implications, but with emerging health implications are arising at the same time with little or no research to qualify these issues.

CHAPTER 4: CRITICAL CHALLENGES FOR STATUTORY POLICY

Question 4: What do you think are the main challenges for statutory policy? Are there other challenges not presented in the discussion paper?

- Flexibility to conform to policy/technology and community expectations of the day will be one of the most critical challenges for EPA Policy in the future. Consideration by the EPA and DSE must be given on how to address this through modelling future policy review and structure.
- The legal weight and understanding of policy will also be challenged; the clearer this is made to all parties', better compliance with objectives will be sought by all responsible parties.
- The financial cost of policy on industry, local government and other authorities will also be a relevant challenge for all parties. Keeping up with pressures on Local and State Government to regulate industry/community or apply Federal priorities is becoming a real issue.

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?

The Environmental Health & Local Laws Unit use the following instruments and documents to administer our delegated responsibilities:-

Noise

- Part VIII – Control of Noise – Environment Protection Act 1970 – Residential Noise
- Environmental Protection (Residential Noise) Regulations 1997
- Noise Control Guidelines TG 302/92.
- Various guidance notes as found on the EPA website.

Septic Tanks

- Part IXB – Septic Tanks Environment Protection Act 1970
- Septic Tank Code of Practice (current and historic)
- Various Certificates of Approval.
- SEPP (Waters of Victoria)
- Land Capability Assessment Guidelines
- Australian Standards.

Litter

- Environment Protection Act

CHAPTER 5: APPROACHES TO STANDARD SETTING

Question 6: What types of measures or provisions in the ‘attainment programs’ of statutory policy do you find most useful?

Do you think these need to stay in statutory policy or may be better placed in other regulatory instruments or guidance?

- Indicators, limits, performance objectives and best practice measures are useful to be included within attainment programs. They could be improved by making them locally specific and flexible where appropriate (performance pass rates so to speak).
- Recognition and incentives of performance against these ‘attainment programs’ should also be explored as a way to encourage and engage industry/authorities.
- ‘Attainment programs’, indicators or measures should sit outside policy to allow for flexibility to change with policy/technology/research or community expectation.

Question 7: How well do you think statutory policies perform their standard-setting role?

Would specific types of standards be better placed in other regulatory instruments or guidance?

As previously discussed the content and intent of current policy is placed to set standards, however their performance at setting a standard faces a number of challenges. For example the understanding that the policy is actually law and sits within the legislative hierarchy is not clear. This perception is generally formed because of the language used; the fact that it is titled policy implies discretion of application. Further supporting documents and technical guidelines also suffer from the assumption of ‘best practice’.

Clearly for the policy to set standards, consideration must be given into moving policy objectives into more formal areas such as legislation and further detail perhaps to regulation and indicators/performance measures to technical information.

This would address the legal weight of the objective and allow for flexibility to adapt to changing environmental/social priorities, community expectations and allow for technical advancement.

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?

Why/why not?

- To achieve environmental objectives, partnerships across agencies are critical, experience shows that this is not always applied within the context of the policy. There is confusion over roles as highlighted in question 2, or agencies shifting responsibility. Ultimately it is the community that suffers whilst agencies determine whose responsibility it is to apply the policy.
- Roles and responsibilities need to be more prescriptive and explain how different agencies will indeed work together where appropriate and assist other agencies for a better outcome (i.e. EPA and local Government working together.)
- Relationships between agencies would be also improved if technical, financial and social issues were clear and agreed before policy application.

Question 9: In your experience, are there features in other fields of regulation that would be useful in the Victorian environment protection framework?

The tools within the Nuisance Provisions of the Public Health & Wellbeing are regularly used to address noise, odour and wastewater discharge by Environmental Health Officers. Consideration to a similar tool within the EPA legislative framework may be useful but may not fit all aspects of policy.

It is important that limits for performance are clear, achievable and measurable so that when a breach is observed that preventative action or penalty can be applied.

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

Investigation to other states and overseas models should be conducted to benchmark and inform any approach to regulatory change. At times in the absence of Victorian policy reference has been made to South Australian and New South Wales EPA documents for guidance.

CHAPTER 6: POTENTIAL MODELS FOR REFORM

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

Consultation with staff and experience with other legislation leads us to believe that the existing model should be changed, to:-

- Environmental Objectives to be clearly articulated and given legal weight.
- Improve language use within legislation, regulation or technical guides so that it is of a format that gives it appropriate recognition and consideration.
- Improve indicators, performance measures to be current with technology and research advancements be placed within a format that allows easier updating.

Also reliance of regulation/compliance by third party agencies has not been successful often resulting in conflicting advice, poor documentation, questionable ethics and inappropriate application of guidelines or standards. Measures should be included to prevent or minimise this occurrence.

Model 2 and 3 are improvements on Model 1, however as discussed at the workshop Model 4 where policy objective is moved to the Act, specific requirements moved to regulation and technical advice where 'technical guides' can be enforceable could be more workable model.

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

No response

CHAPTER 6 (CONT'D): SPECIFIC SUGGESTIONS FOR REFORM

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

The City of Greater Bendigo is in general agreement with the suggestions, however the following points are made:-

- Roles and responsibilities need to be more prescriptive and explain how different agencies will indeed work together where appropriate and assist other agencies for a better outcome (i.e. EPA and local Government working together.)
- Technical, financial and social concerns must be clear and agreed before policy application.
- Reporting will improve accountability, however it should not be so burdensome that the task and cost of reporting will be greater than undertaking the role.
- User guides could contain case studies of previous issues.

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

Education and awareness is key to the success of policy, community acceptance that the policy is best practice and perhaps second nature. A shift in the cost of environment values versus financial gain will always be an issue in the Australian political context.

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

A review of previous cases should be undertaken to understand how the current policy has influence or has failed in the current planning process. Clearly defining roles and responsibilities within the process is needed and examination as to the appropriateness/ability of an agency to undertake enforcement of the policy objective is required.

An example where the City of Greater Bendigo struggles with being able to administer EPA requirements is where proposed land development sites show a history of mining. The requirement to ask for an assessment of site contamination is straightforward however there is no assistance from the regional EPA office to peer review these reports and offer written technical advice.

EPA also stipulate planning conditions relating to their policy at the planning referral process, when a problem or a breach occurs past experience has found that the EPA are not interested in enforcing the condition and refer it back to Local Government for non –compliance with the planning permit condition.

Local Government officers are not trained or resourced to undertake the EPA's responsibilities.

Question 16: Do you have any other suggestions for reforms to the statutory policy framework?

- Reforms should not create business opportunities for third parties, unless those third parties are regulated and their performance annually assessed by the EPA.
- Policy should be reviewed and updated regularly, understanding that is a large task perhaps investigation of how the Building Code of Australia is reviewed may demonstrate how this is more achievable.
- Reform and education are paramount to the success of policy as challenging as community engagement is we need to get better at it at all levels of government.