



Making LOCAL POLICY stronger

Report of the Ministerial Working Group
on Local Planning Policy : June 2007

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27 June 2007

The Hon Justin Madden MLC
Minister for Planning
PO Box 500
EAST MELBOURNE VIC 3002

Dear Minister

REPORT OF THE MINISTERIAL WORKING GROUP ON LOCAL PLANNING POLICY

I am pleased to provide you with the report of the working group. The purpose of the working group was to:

- Examine the role of local planning policy in decision-making.
- Develop local policy implementation principles.
- Clarify the relationship between state and local policy.
- Promote local policy that implements local and state planning policy objectives.
- Inform a Ministerial statement on local policy.

In preparing this report, the working group considered written submissions and presentations from a range of stakeholders in the planning system and conducted its own investigations.

The working group concluded that Victoria's statutory planning system, based on the Victoria Planning Provisions, is a sound one – but needs refinement after ten years. For most, planning schemes have become complex and confusing. The system needs to deliver clarity and more certainty in decision making. Whilst the system should remain performance based rather than prescriptive, there needs to be more direct implementation of local and state policy through control provisions of planning schemes including zones and overlays. The working group's report contains an action plan for how this can be done.

Included in these actions, the working group proposes that a Planning Policy Technical Committee be established to oversee the application of policy in planning schemes and promote improved quality and consistent expectations from stakeholders.

In developing the report and the action plan, the working group was impressed by the positive and constructive approach of all stakeholders who contributed and there is a genuine desire from all parties to work together to promote the continuous improvement of Victoria's planning system.

On behalf of the working group, I would like to thank you for the opportunity to contribute to this important initiative and commend the report and the action plan for your consideration.

Yours sincerely

Peter Cumming
Chair

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The Ministerial working group

Members of the working group were:

- Peter Cumming, Director of Urban Systems Pty Ltd.
- Peter Allen, Executive Director, Statutory Systems, Department of Sustainability and Environment.
- Cr Beth Davidson, President, Victorian Local Government Association, assisted by James Larmour-Reid, Director Planning Building and Health, Shire of Yarra Ranges.
- Helen Gibson, Deputy President, Victorian Civil and Administrative Tribunal.
- John Keaney, Keaney Planning.
- Kathryn Mitchell, Chief Panel, Member Planning Panels Victoria, assisted by Mark Marsden, Senior Panel Member.
- Hon Justice Stuart Morris, President, Victorian Civil and Administrative Tribunal (now former).
- Rob Spence, Chief Executive Officer, Municipal Association of Victoria assisted by Liz Johnstone, Senior Planning Advisor, Municipal Association of Victoria.

The working group met on six occasions between January and June, 2006. In addition to their deliberations the working group met and received submissions from representatives of the following organisations:

- Building Designers Association of Victoria.
- Eastern Metropolitan Regional Group of Councils.
- Municipal Association of Victoria and local government representatives.
- Property Council of Australia.
- Urban Development Institute of Australia.
- Royal Australian Institute of Architects.
- Save Our Suburbs.

Terms used in this report

See **Section 4** for an explanation of Victorian planning schemes and terms used in this report.

Note: The land use planning functions of the Department of Sustainability and Environment (DSE) have now been transferred to the Department of Planning and Community Development (DPCD).

Online: This report is available online at www.dpcd.vic.gov.au/planning

1. MAKING LOCAL POLICY STRONGER

One of the fundamental components of the reforms to the Victorian planning system that introduced the *Victoria Planning Provisions* (VPP) and the VPP based schemes was that any planning control should have a clear reason to be imposed, based on achieving a strategic, amenity or design outcome. These outcomes could be achieved either by applying a range of zones or overlays or by the operation of various particular provisions. Many of these provisions allowed local refinement through local schedules.

The VPP intention was that where a planning objective cannot be implemented directly by a zone or overlay, a Local Planning Policy can be used. A Local Planning Policy is a statement of intent or expectation. It is a guideline not a control. It states either what the responsible authority will do in specified circumstances or what the responsible authority expects should happen. The consistent application of policy over time should achieve a desired outcome.

The operation of Local Planning Policy has however become unclear over time. In many planning schemes, it has replaced other components of the planning scheme as the primary method of expressing strategic direction. This has led to a proliferation of local policy and confusion about how local planning policy should be used and what it can or should deliver. Ultimately this has led to considerable uncertainty within the planning system.

To address this, Action 10 in the *Cutting red tape in planning* report (DSE August 2006) included a number of actions to make local policy stronger. To inform the implementation of these actions the Minister for Planning appointed a working group to:

- Examine the role of local planning policy in decision-making.
- Develop local policy implementation principles.
- Clarify the relationship between state and local policy.
- Promote local policy that implements local and state planning policy objectives.
- Inform a Ministerial statement on local policy.

The working group included planners, local government representatives and officers of the Victorian Civil and Administrative Tribunal, Planning Panels Victoria and the Department of Sustainability and Environment. The working group heard submissions from the development industry and local government. In proposing significant changes to the application of the VPP's, there was unanimity within the group.

The working group considers that the VPP are basically sound and provide a good foundation for land use planning in Victoria. The strategically driven and primarily performance based nature of the system remain positive attributes of the Victorian planning system. In particular, the working group supports the following principles:

- State policy must provide the overarching policy framework.
- Local policies and provisions should provide the ability to deal with local objectives provided they are consistent with state and regional objectives and provisions.
- Local planning policy should provide guidance to discretionary decision making.

However, after ten years of operation the application of some components of the VPP needs immediate clarification and action. The key issues are:

- The development of voluminous local policies;
- The need to clearly define and differentiate state and local interests;
- The importance of effective policies and controls to deliver strategic outcomes at both state and local level;
- The need to revise land use zones and overlays so that they better fit state and local strategic objectives; and
- That DSE and local government must work in partnership to achieve the improvements to the planning system.

The working group recommends the following **Action plan**. The actions are complementary and will progressively make local policy stronger. This will be achieved by:

- Ensuring the VPP tools are effective in delivering both state and local policy.
- Clearly identifying when local planning policy frameworks and state planning policy frameworks operate.
- Making local planning policy frameworks more focused, simpler and clearer.
- Enabling prescription where appropriate by converting policy to zones, overlays and schedules where control rather than discretion is desirable.

Implementation of the actions must be underpinned by a cooperative partnership between DSE and local government that promotes consistency and guides continuous improvement of the VPP.

1.1 Action plan

Recommendation	Action	By
1. Provide more certainty by making it easier to implement policy through planning controls.	<ul style="list-style-type: none"> ■ Revise the zones, overlays and particular provisions to provide more opportunity to express state and local policy outcomes. As a priority, review the residential zones and associated provisions. 	DSE
2. Make the State Planning Policy Framework clearer about how it should be implemented at the local level.	<ul style="list-style-type: none"> ■ Expedite the review of the State Planning Policy Framework recommended in Action 9 of <i>Cutting red tape in planning</i>. In particular, review the expression of state policy in the SPPF to give stronger guidance about how it is expected to be implemented. 	DSE
3. Progressively review planning schemes to clearly express state and local strategic intentions.	<ul style="list-style-type: none"> ■ Use zones, overlays and schedules rather than policy to control the use and development of land where appropriate. ■ Establish a Planning Policy Technical Committee with representation from local government, DSE, Planning Panels Victoria and VCAT to review quality and consistency in state and local policy implementation. The Committee would provide a joint approach to policy implementation and: <ul style="list-style-type: none"> – Provide advice on the implementation of new policy. – Oversight the review of existing local policy. – Provide advice on policy implementation and effectiveness as part of the four year review of planning schemes. ■ Make the requirement for the four year review of planning schemes more specific and structured to: <ul style="list-style-type: none"> – Focus on policy effectiveness and quality assurance. – Improve the implementation of state policy at the local level. – Improve the effectiveness of local policy implementation. ■ Establish, as a planning scheme review procedure, a pre-review meeting of DSE and local government officers to identify strategic planning priorities for the review. ■ Update the audit kit for the review of planning schemes to reflect the recommendations of the working group. ■ Integrate the review of existing local planning policy by expert teams already underway as a <i>Cutting red tape in planning</i> initiative. 	DSE PPV LG DSE DSE LG DSE MAV DSE PPV LG
4. Increase the effectiveness of local policy by simplifying the way it is presented in planning schemes.	<ul style="list-style-type: none"> ■ Pilot a restructure of clauses 20, 21 and 22 of planning schemes to produce a single simplified section that provides the 'local policy' section of the planning scheme, with a range of Councils. ■ Where direction is required in the restructured provision to guide the exercise of discretion under a planning control, the direction should be termed a 'policy guideline'. 	DSE LG
5. Clarify when prescriptive provisions can be used.	<ul style="list-style-type: none"> ■ Develop guidelines to clarify when prescriptive rather than performance based provisions are appropriate and how they should be expressed. 	DSE LG

2. ISSUES, PRINCIPLES AND FINDINGS

Having considered the views of stakeholders and having undertaken its own investigations, the working group has identified the following issues for comment and response.

2.1 Is the VPP framework still relevant?

The establishment of the VPP was a substantial achievement and the working group found that there was strong agreement between stakeholders that the basic structure of the VPP is sound.

The VPP provides a logical framework for the use and development of land in Victoria. It includes standardised planning tools such as definitions, zones, overlays and base standards for common types of development. The selection of these specific tools is to be informed by the MSS.

After ten years of operation, the VPP based system of statewide standard planning provisions has proved to be a good foundation for achieving the objectives of planning in Victoria. The VPP structure of a strategic 'front end' with separate state and local policy sections provides a strategic platform for the application of detailed standards. Importantly, it is also a system based on the principle that planning permits should be the usual means of considering proposals for new use and development (as distinct from amendments to planning schemes) and that planning controls should be sufficiently flexible to cope with innovation; unforeseen or unanticipated uses and development; changes in use and development over time as a result of market shifts; evolving demographic and social needs; peoples' preferences; and diversity.

No stakeholders disagreed with this view or suggested that the system needed a major overhaul. No local government submissions suggested a return to autonomous local planning schemes. Victoria's planning system is well regarded and has demonstrably produced good development and conservation outcomes. Interestingly, NSW has recently adopted a statewide standard template for planning schemes and there is considerable criticism of local differences in planning schemes made under the *Integrated Planning Act* in Queensland.

The working group believes that the primary shortcomings with the VPP are:

- The generality of much of state policy.
- The way in which the local planning policy framework is expressed and implemented.
- The inadequacies of some zones and overlays to effectively achieve state and local planning policy objectives.

The working group sees removing these shortcomings as a necessary evolution of the VPP's. The planning system should retain its essential characteristics of being policy driven, performance-based and with a uniform approach to planning issues across the state.

Finding:

- **The VPP framework is sound but needs refinement after ten years of operation.**
- **The VPP structure of articulating and differentiating state and local policy in schemes is supported.**

2.2 Are the roles of state and local government in administering the planning system clear?

The state government should be primarily concerned with:

- Dealing with matters of state and regional significance such as supporting economic development, state investment in infrastructure, ensuring that there is a greater diversity of dwellings to support young and older household growth, guidance on residential densities, development of major centres, uses of state significance, ensuring that subdivision does not undermine agriculture, tourism and environmental assets and other matters of state importance.

- Ensuring consistency in planning controls and policies in the planning system – maintaining the VPP, ensuring consistency in state and local provisions, ensuring common approaches to common issues such as residential standards (ResCode), ESD, disability access, environmental and fire protection, ensuring the appropriate application of the available planning tools.
- Ensuring that the planning system is efficient and effective - that the time spent on decisions is commensurate with the complexity and potential impact of the proposal.

Local government should be primarily concerned with:

- Addressing local challenges and developing local strategies and a Local Planning Policy Framework to respond to them. The Local Planning Policy Framework must be consistent with state policy and objectives.
- Using the VPP tools such as zones and overlays to implement state and local strategies.
- Carrying through strategic imperatives and applying them in decision-making at the local level and with local flavour.

Finding:

- **The areas of state and local interest and responsibility need to be made clear in the administration of the planning system.**

2.3 Is the State Planning Policy Framework too general?

The SPPF contains sound general principles for planning urban and rural areas and managing growth and development, but they tend to be general and unspecific. There are instances of mixed messages in the SPPF. Clause 16, for example, establishes the objectives and implementation principles for housing. For medium density housing the objective is:

“To encourage the development of well-designed medium-density housing which:

- Respects the neighbourhood character.
- Improves housing choice.
- Makes better use of existing infrastructure.
- Improves energy efficiency of housing.”

The problem is that if the neighbourhood character is traditional single detached dwellings then, no matter what the circumstances, residents will argue that medium-density housing is not respectful of that neighbourhood character¹. The need for a subjective judgement or a conflict is created from the outset.

On such a critical and contentious issue there is little guidance from the SPPF about where medium density development should be located or how local government should approach the task. Alternatively, if the intent of this clause is to be confined to the design of housing rather than its location, then the SPPF should reflect this.

State planning policy should progress from general statements to include more specific and detailed targets, provisions and guidelines for such key policies as urban consolidation and higher density residential development, centre development, retail hierarchy and employment generation. The structure of zones and their spatial application should reflect these strategic intentions. The disposition and structure of residential zones in the metropolitan area clearly does not. This is a fundamental issue in terms of creating greater certainty in the planning system in urban areas. The working group also notes that there are major gaps in state policy and consequently in the SPPF. For example, there is nothing about ESD (environmentally sustainable development) or rural policy.

¹This same “respect for character” wording is carried through into the objectives of the Residential 2 Zone which aims to encourage development at “medium or higher densities to make optimum use of available service and facilities.”

The working group notes that one of the strongest outcomes of the new planning system has been the great deal of strategic work done by the State and local government since the introduction of the VPP including:

- Municipal Strategic Statements;
- Melbourne 2030²;
- Growth area planning;
- The development of housing strategies;
- Detailed structure planning of centres and townships by local government;
- Coastal Spaces;
- The Great Ocean Road Regional Strategy;
- The work on farming zones and rural strategies in municipalities;
- The design evolution in mixed developments and medium-density buildings.

This work needs to be incorporated into more targeted state planning policy direction on issues of state importance and in turn local government should be able to translate this direction into more positive and certain local planning provisions.

Consequently, the working group supports the recommendation of *Cutting red tape in planning* that the SPPF be audited every four years to improve its effectiveness. The working group notes a review of the State Planning Policy Framework is presently underway and that some of the working group's recommendations have implications for the SPPF review.

Finding:

- **The SPPF should be more targeted on issues of state importance.**
- **The SPPF should be reviewed on a regular basis.**

2.4 Is too much expected of local government?

Local government needs assistance to address recurrent strategic planning challenges within its communities such as urban consolidation and rural subdivision. The characteristics of the SPPF described above make it difficult for local government to develop the MSS and local planning policies. Local government is left to undertake the translation of the SPPF at the local level.

No definition alone of local and state policy can supplant an up-front and productive process for resolving local and state intentions for an area. This must involve much better dialogue between the state and councils at the time of planning scheme reviews or major amendments to planning schemes.

In addition, DSE should more strongly support its policies in critical cases at Panels, VCAT and major public forums. Council officers and elected representatives often face strong resistance to residential intensification, rural subdivision controls and other contentious issues that would greatly benefit from state support. The working group notes that recently prepared DSE protocols on officer attendance at VCAT and Panel hearings partly addresses this issue, and considers that their broader application to deal with other forums should be implemented.

Finding:

- **There must be better dialogue between the state and councils at the time of planning scheme reviews or major amendments to planning schemes.**
- **The state should better support local government in cases involving strategic decisions of state significance at Planning Panels, VCAT and in public forums.**

²Melbourne 2030 is reflected in the Metropolitan Development provisions (Clause 12) of the VPP but the provisions are general rather than specific (ie. spatial or empirically based).

2.5 Is the role of local planning policy clear?

There is confusion about what is meant by 'local policy' and what it can achieve. The confusion is partly the result of a lack of clarity in the use of language; it stems partly from a lack of rigour in distinguishing between the various aspects of policy; and it has not been assisted by the over proliferation of local planning policies in planning schemes and the unrealistic expectations about its role. The confusion is shared by local and state government, the community and the development sector.

While explanations about the terms 'municipal strategic statement' and 'local planning policy' are contained in clause 20 of the VPP, the term 'policy' is commonly used to refer to any line of action or statement of position adopted by local government. Use of the term 'policy' encompasses both broad strategic planning and specific guidance about the exercise of discretion.

There is considerable misunderstanding about how policy can be used in a statutory sense and how it can be used to achieve planning objectives. A local planning policy is not a control and cannot remove the discretion (under the relevant planning control) that triggers its consideration. The proliferation of local planning policies in many planning schemes attempts to apply specific land use controls to local areas, but land use control is properly and more effectively achieved through the zone and overlay provisions, not policy. This approach has been encouraged by a perception that prescriptive provisions are discouraged under the performance based VPP system.

The working group believes that it is important to clarify that a planning scheme is an instrument that controls the use, development and protection of land. A planning scheme is a control instrument which is informed by strategic planning. State and local strategic planning finds expression in the SPPF and LPPF and is then implemented by the application of planning controls (zones and overlays).

It is not widely understood that local planning policies (at Clause 22) can only be guidelines as to how discretion should or will be exercised under the planning controls. As a general principle when a decision making body (such as a council or VCAT) is exercising authority to reach a discretionary decision, it is open to the body to rely upon a guideline or policy with respect to the exercise of the discretion. However, a guideline or policy is not a rule; it is only a guideline and cannot override zoning provisions, overlays, other controls or state policies.

Finding:

- **Local planning policies should remain as guidelines about how discretion should or will be exercised under the planning controls contained in zones and overlays.**

2.6 Is the application of state and local planning policy frameworks clear?

In the process of reviewing the impact of local and state planning policy, the working group looked at provisions relating to urban consolidation and medium density residential development in the metropolitan area. This is one of the most important and controversial planning policy issues at this time.

The working group observes that there is a disconnection between metropolitan policy and the distribution of residential zones in the metropolitan area. This is not helping state or local government to achieve their objectives.

In urban areas the reasons for this include:

- While zoning is the cornerstone of planning provisions in Victoria, the spatial distribution of residential zones does not reflect a strategic intent.
- The provisions of Clause 12 of the SPPF (Metropolitan Development) and Clause 16 (Housing) are general in nature. More clarity in state provisions (specific targets, guidelines and examples and supporting documentation) will provide more certain direction at local level.
- Despite local housing strategies which might identify (for instance) areas for accelerated growth or areas for special protection, the Residential 1 Zone is the overwhelming 'zone of choice' in residential areas and provides for a mix of densities and dwelling types.

- The Residential 2 Zone, which is meant to “encourage residential development at medium or higher densities”, covers only small areas and its greatest concentrations are in the outer suburbs at Frankston and Dandenong. The Residential 2 Zone is not to be found around the vibrant inner and middle ring centres, the public transport nodes or along arterial roads with tramlines which is where Melbourne 2030 suggests are the very places to “encourage residential development at medium or higher densities”.
- Councils maintain that without appeal provisions in the Residential 2 Zone they will not use it³.
- It is optimistic and unrealistic to expect that performance-based planning within the parameters of the Residential 1 Zone provisions and Clauses 54 and 55 of the VPP can resolve such basic spatial and structural issues.

The outcome of this lack of structure is uncertainty. While some councils proactively identify “go” (substantial change), “slow go” (incremental change) or “no go” (minimal change) areas in their local planning policy framework, they do not have a suite of zones that provides a ‘neat fit’. As a consequence, the issue tends to be resolved through complex and lengthy local planning policy or difficult permit application assessment processes rather than through a combination of zoning, state planning policy direction and local application.

In other metropolitan planning jurisdictions in Australia, residential densities and intentions are far more readily discerned even in performance based planning systems⁴.

Finding:

- **There is a disconnection between metropolitan policy and the distribution of residential zones in the metropolitan area which indicates that the application of state and local planning policy frameworks is not clear on this important and controversial issue.**

2.7 Does VCAT ignore local planning policy?

One of the reasons for the establishment of this working group was the perception of some local government and community members that VCAT was not backing local planning policy.

Analysis by the working group suggests that local planning policy is carefully considered in cases before VCAT. Further that the interpretation of local planning policy is a determinative decision-making factor in only a relatively small number of appeals. Most cases are decided on the merits of a proposal assessed against general planning principles. There were only a few instances where local planning policy was not supported at VCAT. Typically more weight in decisions was given to control provisions.

Nevertheless, it is acknowledged that cases involving the interpretation of policy can be very contentious and can highlight a friction between local and state planning policy objectives.

Finding:

- **The evidence shows that local planning policy is carefully considered in cases before VCAT.**
- **Local planning policy was not a decisive factor in a large number of appeals.**

2.8 Is prescription appropriate in a performance based system?

A significant feature of the VPP when it was introduced ten years ago was the expectation of a performance based approach. The VPP Manual states:

New schemes will facilitate appropriate development.

- *Local provisions assist in exercising, rather than limiting discretion.*
- *Discretion must be wide rather than narrow.*
- *The use of performance based provisions is encouraged.*

³In the Residential 2 Zone an application to develop land for medium density housing is exempt from the requirement to give notice and an objector or other third party is unable to apply to VCAT to review a decision to grant a permit.

⁴See for example the Brisbane Planning Scheme which defines areas of different residential density within a totally performance based system.

Prescriptive controls tend to be absolute. Through detailed standards or land use zone controls development either fits or doesn't. Performance based planning provisions define outcomes to be achieved and guidelines for development – there is some flexibility in decision-making. Presently the VPP are a mixture of both prescription and performance with more emphasis on the latter.

Many matters considered in planning decisions cannot be readily prescribed. Social and economic needs, the cost of housing, the ability of younger and older people to live or remain in areas over their life cycle, and the development of local employment opportunities are important considerations. Planning also should allow for innovation; for instance environmentally sustainable development principles demand new approaches to building design and water-cycle management. There must be a balance between prescriptive provisions and performance based provisions that allow for variation and innovation.

Despite the objectives of the VPP for a performance based approach, there have been, and continue to be, many requests from councils to introduce prescriptive provisions. However, there has been no guidance from DSE on when prescriptive provisions may be appropriate. Some Panel reports have considered this matter. The Panel report on Queenscliffe C7 in particular argues that a number of tests should be applied when considering whether prescriptive provisions are appropriate.

It is appropriate that guidelines are developed which assist stakeholders determine when prescriptive provisions are appropriate.

Finding:

- **Guidelines should be developed to assist planning authorities determine when prescriptive or mandatory provisions are appropriate and how they should be expressed.**

2.9 How to ensure effective local planning policy frameworks?

A review of existing local planning policy by expert teams is already available as a *Cutting red tape in planning* initiative. This initiative has been well received by Councils and is a valuable undertaking to make local planning policy more effective.

To complement this work, the working group suggests the formation of a Planning Policy Technical Committee with expert representation from local government, DSE, Planning Panels Victoria and VCAT to advise councils on planning scheme content, state strategic directions for the area and the drafting of local provisions.

In addition to providing advice as required, there needs to be a more formal mechanism for a regular and independent review of every planning scheme in the state on a four year cycle as previously provided by PPV in the review of new format planning schemes. This review should be provided by the independent committee.

The role of the Planning Policy Technical Committee would then be to:

- Provide advice on the appropriate implementation of new policy.
- Oversight the review of existing local planning policy.
- Provide advice on policy implementation and effectiveness as part of the four year review of every planning schemes.

This proposal has links to other improvement initiatives:

- The expert teams could form an operational arm of the Planning Policy Technical Committee.
- The audit kit for the review of planning schemes should be updated to reflect the revised focus and role of the Planning Policy Technical Committee.
- The importance of a pre-review meeting of DSE and local government officers to identify priorities for the review should be promoted via the audit kit and more generally.

Finding:

- **Consistent and quality assured local policy frameworks should be maintained by a Planning Policy Technical Committee who would provide advice on best practice local policy implementation and effectiveness as part of the four year review of planning schemes.**

2.10 How can the LPPF be improved?

The place of local planning policy (at Clause 22) in the system has become increasingly unclear over time and for many it has replaced the MSS, zones and overlays as the key focus of expressing strategic direction. The other consequence of the elevation of local planning policy at Clause 22 has been the devaluation of the Municipal Strategic Statement. The working group was advised that this clause has almost become irrelevant and is now often the repository of background information, platitudes and bland statements. This was never the intended role of the MSS.

Recurrent problems with 'Clause 22 local planning policies' referred to, or detected by the working group included that, in some cases, they:

- Restate the MSS or SPPF.
- Are a strategy and should be in the MSS.
- Are a set of application requirements.
- Do not relate to a discretion in the scheme.
- Are better dealt with by another VPP tool.

Ten years after its introduction, it is instructive to compare the original intentions for the VPP with current practice. Many an MSS and Local Planning Policies are lengthy, complex documents and are repetitive and overlap other provisions. In some cases the LPPF exceeds 150 pages of text and maps and reads as a complete planning scheme rather than a section of it.

The original purpose of both the MSS and Local Planning Policy sections has become clouded. Their effectiveness in expressing and implementing local planning objectives has been diminished by their complexity, lack of prioritisation and lack of access to more appropriate statutory controls.

As a result of submissions and to inform its own deliberations, the working group undertook the review of an LPPF for a middle metropolitan council. The findings were that:

- The LPPF is over 150 pages in length.
- The LPPF contains considerable duplication and it is possible to significantly reduce the volume of the document or apply a control instead of using policy.
- The LPPF is repetitive with many planning precincts containing virtually the same provisions.
- Despite its length, the LPPF has a fairly simple message and a simple strategy based on accommodating new dwellings predominantly in and around its retailing centres.
- Three sound development scenarios can be discerned from the LPPF:
 - shop top apartments above the retail core;
 - apartments graduating to lower scaled multiunit development within walking distance of the retail core; and
 - housing development that respects existing neighbourhood character beyond this radius.
- The graduation of development sought within the walking distance radius is not expressed well in the Local Planning Policy Framework and is difficult to interpret.
- The Residential 1 Zone is applied in all housing development scenarios, whether area change is proposed or not.
- The Local Planning Policy Framework is used as the principal tool to direct change.
- Site specific policies are used and could be delivered by a more appropriate zoning and overlay tools.
- The length could be markedly reduced by removing duplication and applying an overlay control instead of using policy.

The working group edited the sample LPPF, removed duplication and redistributed parts of it into more effective VPP controls. This approach reduced it to 10% of its original size without appearing to lose any substantive content, strategic direction or effectiveness.

This review of the sample LPPF suggests to the working group that, quite apart from its unnecessary length, there is a 'disconnect' between the development of local planning policy and the implementation of that local planning policy. Some councils have developed a sophisticated housing strategy only to be frustrated by a

VPP 'tool kit' which does not provide for effective implementation through zones and overlays. As a consequence, councils resort to loading-up their policy sections with as much material as possible to provide 'insurance' against any possible outcome. This not only expands the LPPF, it also results in important messages being lost under layers of unnecessary material.

In addition, a repeated cause of length is the desire by local government to 'guarantee' particular policy outcomes by restating them in the MSS, the LPPF and in controls such as overlays. Again this may arise because existing zones and overlays do not adequately provide for the distinctions in outcomes that local government wishes to achieve in different areas. It can also arise through a misguided perception that overlays need to be backed up by a local planning policy. The lack of detail in the SPPF on a subject may also lead to a desire to be more specific.

The working group believes that succinct documents are more easily understood by decision-makers and the community and are more effective in operation.

The working group consider that the use of the term 'policy' in planning schemes needs to be simplified. While it remains relevant to maintain the distinction between state and local planning policy, the distinction between the municipal strategic statement and local planning policies in the LPPF could be removed. Clauses 21 and 22 of planning schemes could be amalgamated to produce a single section that represents the 'local policy' section of the planning scheme.

In such a revised section, where direction is required to guide the exercise of discretion under any of the planning controls, those directions should be termed 'policy guidelines' and should be listed in the 'implementation' section of the revised clause. In light of the earlier discussion on the role of local planning policy, zones, overlays and schedules are the primary controls on the use and development of land. In the event of a 'policy' position not being able to be implemented by a zone or overlay, a 'policy guideline' could be used although this could not override or replace state planning policy, zones, overlays or schedules.

A merger of the two separate clauses of the LPPF would avoid the duplication and confusion caused by two very different documents – one outlining the strategic intentions for the local area, and the other exercising guidance on discretionary planning decisions. It would also reinstate Clause 21 to its original role. A single "local policy" document could contain:

- Identification and discussion of the key local issues;
- Local strategic objectives for the area;
- A succinct summary of the strategies to meet these objectives;
- Inclusion of local 'policy guidelines' (if necessary) to address discretionary decisions.

Simplifying the way in which the term 'policy' is used in planning schemes should remove much of the confusion and uncertainty surrounding what policy means. The VPP should include direction about the statutory application of policy guidelines.

The working group suggests that the new local planning policy framework (a merged Clause 21 and 22) should be formulated in this way:

- Identify the important issue;
- Determine what council wants to achieve (the objective);
- Determine how council will do it (the strategy);
- Determine the means of implementing this strategy;
- Determine whether the strategy can be addressed by tools in the planning scheme such as a zone or overlay;
- Determine if there is a discretion that Council would like to influence which is not dealt with by the zone or overlay;
- In the event that there is discretion, then devise a 'policy guideline' to address it.

Finding:

- **Clause 21 (Municipal Strategic Statement) and Clause 22 (Local Planning Policy) should be simplified and amalgamated to increase their effectiveness.**
- **Guidance on discretionary decisions should be provided by 'policy guidelines'.**

2.11 How can the VPP's be improved?

There is agreement that 'certainty' for all stakeholders will be best delivered if, instead of relying on local planning policy, the VPP controls (zones, overlays and particular provisions) are modified to provide a better fit for the typical strategies found in most planning schemes.

Using medium density residential development as the example, it is clear that:

- The Residential 1 Zone is the preferred tool of local government despite the Residential 2 Zone having the more obvious zone purposes.
- The reluctance to use the Residential 2 Zone is based on the exemption from third party notice and review rights.

This suggests that the Residential 2 Zone needs to be modified to enable it to be used more confidently by local government to reflect local planning policy framework directions and should be applied to areas identified for substantial change. Modifications to the Residential 2 Zone could include:

- Alter the purpose to encourage new preferred neighbourhood character.
- Emphasise that the zone encourages use of land for multi-dwellings.
- Remove the exemption for third party notice and review rights.
- Enable more explicit design and development guidelines to be considered in the schedule to the zone.
- Encourage high quality design outcomes.

As a complementary tool, the Residential 1 Zone should be modified so that it is applied to areas identified for incremental change. Its purposes would remain unchanged but with an emphasis on existing neighbourhood character.

As a further complementary tool, the Residential 3 Zone could also be modified so that it applies to areas identified for minimal change. It may be applied in conjunction with appropriate overlays (eg Heritage Overlay, Significant Landscape Overlay or Vegetation Protection Overlay). Modifications may include:

- An emphasis on existing neighbourhood character.
- Use of land for a single dwelling would be as of right.
- Use of land for two or more dwellings would require a planning permit.
- Consequential changes to clauses 54 and 55.

While the working group deliberations were focussed on the residential zones, it anticipates that similar observations would apply to other zones.

The working group also noted that many planning schemes include local planning policies at Clause 22 on the same or similar issues. This defeats one of the purposes of the VPP based planning system, which is to have consistent statewide controls and provisions. It also places unnecessary burdens on councils which are forced to constantly 'backfill' their schemes by writing their own local planning policies when a standard policy on the subject might be appropriate. There is no reason why the SPPF should not include policy guidelines on specific issues in the same way as the working group advocates for an amalgamated LPPF.

There are other alternatives for dealing with typical local policies across the state (such as 'discretionary uses in residential zones'), by including them as a Particular Provision in Clause 52 with an accompanying schedule. Alternatives also exist for dealing with typical rural local policies, such as small lot excisions and housing in rural areas, by the use of a modified schedule to the suite of rural zones. The working group notes that its investigations indicated in many instances, 'site specific' policies can be better delivered by applying more appropriate zoning and overlay tools.

Neighbourhood character policies are increasing in the LPPF. Often these policies are no more than a series of statements on 'prevailing' character serving little useful purpose and can be best left to a reference document. Where a specific neighbourhood character reflecting specified design features is desired, a Design and Development Overlay is likely to be more effective than a local planning policy or a Neighbourhood Character Overlay. In saying this, the working group notes that the reluctance by local government to use the Neighbourhood Character Overlay indicates that this overlay may need review in any event in order to be more effective.

Finding:

- **There is a need for modified VPP zones, overlays and particular provisions, particularly residential zones and associated provisions, to provide more opportunity to directly express state and local policy outcomes.**

3. SUBMISSIONS

Submissions were received from local government representatives, industry representatives, architect/designer representatives and a resident group. Submissions were in the form of verbal presentations and discussions with notes provided by the groups.

3.1 Local government

In Victoria, local government comprises 79 councils, with an aggregate budget of \$4.5 billion, assets of \$40 billion and over 38,000 staff. Local government, as do all elected levels of government, operates in a political context and as a consequence pursues a range of approaches to long term strategic issues. Councils have different scale, capacity, local contexts and planning issues.

Two groups of local government representatives made presentations. One group was organised by the MAV and another drawn from the Eastern Metropolitan Regional Group of Councils.

Some common themes emerged from the discussions with representatives of this sector, in particular that:

- Local government is an investor and partner with the state government in operating and improving the planning system and this role should be recognised and strengthened.
- There was broad support for the performance based planning system introduced by the VPP and a desire to refine its operation to alter the balance between performance and prescription.
- Local government should have a greater capacity to represent and respond to the priorities of local stakeholders.
- The balancing of state planning objectives and local aspirations that occurs in the development of a Local Planning Policy Framework needs formal acknowledgment.
- Local planning policies should have greater weight in planning decision making processes of responsible authorities including VCAT.
- Existing planning tools are inadequate to deliver local governments strategies.

The solutions suggested by local government include:

- Recognise the statutory role of local government as planning and responsible authority, possibly through an amendment to the Planning and Environment Act 1987 or a memorandum of understanding between state and local government.
- Provide a greater direction and clarity of state policies regarding state and metropolitan matters.
- Clearer definition of the role of state and local planning policies and the relationship between them.
- A Ministerial Statement that clarifies the weight to be applied to local policy.
- A broader review of the operation of the VPP and the relationship between local government and other key agencies involved in the planning system is also necessary.
- Policy should be expressed in clear, concise and unambiguous language to describe the planning outcome to be achieved by a given policy.
- The development of more definitive planning controls.
- Introduction of a streamlined planning policy development and implementation methods.
- Clear statements in VCAT decisions about the role and outcome of planning policy in the decision.
- Greater leadership from DSE on a variety of planning issues.

3.2 The development industry

A group presentation was received from the HIA, UDIA and PCA. Their presentation noted:

- A number of implementation issues around local planning policies including inconsistent implementation, their generally “overly complex and poorly written” nature, and the replication of state policies or direction.
- Poor access to and transparency of some local policies and supporting documentation including ‘under the counter policies’.
- The lack of active review.

They suggested that:

- Local planning policy should be in place to support and assist in guide decision making on “significant and unique local issues or features” that are not addressed through VPP provisions or state policies.
- Local planning policy should not be required if zoning and overlay controls are appropriate. Local planning policy needs to be specific, short and to the point and should follow a standard format or a model template.
- Additional tests should be applied before introducing new planning policies together with automatic reviews or sunset clauses.

3.3 Architect and designers

A group presentation was received from the RAI and BDAV. Their presentation noted:

- Support for plain English, geographically focused planning policy that avoided the use of aspirational or motherhood statements.
- Concern with loosely worded clauses and phrasing, broad expression and unclear outcomes or assessment criteria.
- ‘Under the counter’ policies.
- The lack of active review.

They stated:

- That the role of local planning policy in planning decisions should be pivotal, however in their current form local policies generally fail to sufficiently articulate and detail their stated objectives to be so.
- Support for Action 10.4 of Cutting red tape in planning, which aims to promote greater consistency in the expression of local planning policy and to clarify issues relating to certainty in language and expression.
- Only when local planning policy is clear and certain, should the pivotal role in decision-making be supported in a Ministerial Statement.
- There needs to be ability for developers to go straight to the Minister for a priority listing with the PDP or similar, whenever a council quotes policy that is not in the scheme.

3.4 Save Our Suburbs

A submission was received from Save Our Suburbs. Amongst other matters, their submission contended that:

- The most significant problem is that the planning system is ‘performance’ based, and when coupled with poorly constructed state planning policies interacting with local planning policies results in inconsistent planning outcomes.
- Implementing higher densities in Melbourne 2030 has lacked focus and the necessary infrastructure planning to accommodate density increases.
- The state has failed to develop comprehensive planning policies in a number of critical areas such as mass transit, ESD and disability access.
- VCAT is being used as a central planning authority which independently decides planning applications from scratch and the consistency of decisions can vary considerably.
- Local planning policies contain loose objectives and are open to a wide range of subjective assessments.
- Policy development is time consuming and long delays are experienced before a new policy becomes operational.

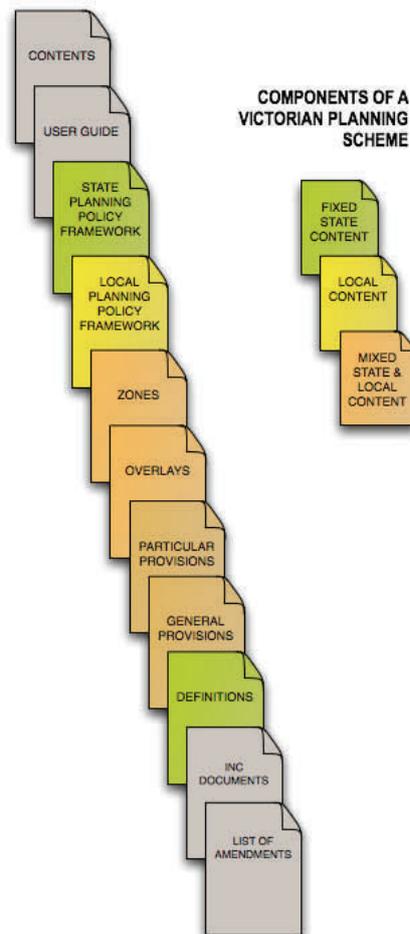
They suggest:

- Allowing key state and local planning policies to have mandatory (and explicit) conditions.
- Suspend implementation of Melbourne 2030 until it can be implemented properly.
- Develop specific state planning policies in areas such as ESD and disability access.
- Change the role of VCAT to that of process review only.
- Allow councils to quickly review their local planning policies and introduce ‘template’ policies for common issues or areas.
- Give local planning policies a higher priority than a more general state planning policy as they are more specific to the area.

4. THE VPP SYSTEM AND TERMS USED

4.1 The Victoria Planning Provisions

The components of a planning scheme in Victoria are shown below. The Victoria Planning Provisions and all planning schemes are available at www.dpcd.vic.gov.au/planning



The strategic foundation of each planning scheme is expressed in the SPPF and the LPPF. The selection of zones and overlays in the scheme implements the policy objectives of the SPPF and MSS.

The SPPF

The State Planning Policy Framework (SPPF) sets general principles objectives and strategies for land use and development in Victoria and specific state policies that deal with settlement, environment, housing, economic development, infrastructure and particular uses and development.

The MSS

The Municipal Strategic Statement (MSS) is a concise statement of the key strategic planning, land use and development objectives for the municipality and the strategies and actions for achieving the objectives. It sets out the local application of the State Planning Policy Framework in the municipality and objectives related to local issues. It provides the strategic basis for the application of the zones and overlays in the planning scheme and for decision-making by the responsible authority.

Local Planning Policy

A Local Planning Policy is one of the tools available for implementing the objectives and strategies in the MSS. A Local Planning Policy is a policy statement of intent or expectation. It states either what the responsible authority will do in specified circumstances or what the responsible authority expects should happen. It helps the responsible authority and other users of the scheme to understand how a particular discretion is likely to be exercised. The consistent application of policy over time should achieve a desired outcome.

Zones

Zones are the primary tool for planning decision-making in a planning scheme. They prescribe:

- Uses which do not require a planning permit;
- Uses which require a planning permit and are therefore the subject of discretionary decision-making;
- Uses which are prohibited in the zone.

Overlays

Overlays are used to identify particular development requirements and apply in addition to the zone. Overlays apply to issues such as heritage, environmental significance and flooding.

Schedules

Schedules to zones, overlays and particular provisions are used to include local provisions in schemes and can be used to 'fine-tune' the basic provision of a zone, overlay or particular provision.

Particular provisions

Particular provisions apply statewide standards and guidelines for specific uses or developments such as residential development, subdivision, car parking and advertising signs.

General provisions

General provisions are operational requirements for matters such as existing use rights, administrative provisions and referral of planning permit applications.

4.2 Terminology

This report uses the following terms:

Municipal Strategic Statement (MSS):	The Municipal Strategic Statement set out in Clause 21 of a planning scheme.
Local planning policy:	The Local Planning Policies set out in Clause 22 of a planning scheme that guide the exercise of discretion under other provisions of the scheme.
Local Planning Policy Framework (LPPF):	The Municipal Strategic Statement and Local Planning Policies of clauses 21 and 22 of a planning scheme.
Local provisions:	All the parts of a planning scheme that can contain local content. These are the Local Planning Policy Framework plus the local schedules of zones, overlays and particular provisions.
State planning policy:	The planning policies contained in the State Planning Policy Framework of all planning schemes in clauses 10 to 19.
State provisions:	The standard state content in planning schemes as contained in the Victoria Planning Provisions.

