

**FINAL REPORT
NEW FORMAT
PLANNING SCHEMES**

COMPILED BY

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PLANNING PANELS VICTORIA

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FINAL REPORT

NEW FORMAT PLANNING SCHEMES

SECTION 1 INTRODUCTION

1.1 PURPOSE OF REPORT

Panels have now considered 79 new format planning schemes in accordance with the terms of reference set out in Appendix A.¹ Seven ‘teams’ of panel members, comprising a total of 28 people [Appendix B], have travelled to each municipality to conduct panel hearings, consider submissions and review each exhibited new format planning scheme in detail .

The result is that these panels have developed an in-depth insight into the way in which the planning reform program is unfolding. They have developed an overview of the way in which the VPPS² are being used and where improvements may be made. They have observed trends in a range of matters impacting on planning in Victoria, which are evident across the State. (In this respect, possibly none are so clear as the structural changes occurring within rural Victoria in association with the agricultural economy.) Their panel reports contain observations on a wide range of issues having relevance beyond the boundaries of single municipalities.

Panel involvement in the aspect of the planning reform program concerning the introduction of the new format planning schemes is now drawing to a close. It is therefore appropriate to gather together into a final report some of these observations on issues and trends, which are likely to influence the success of the planning reform program and to be of interest to the wider planning industry.

The purpose of this report is to address the following issues:

- **Background to Planning Reform Program**
Record the context of the planning reform program and its key objectives.

¹ The 79 new format planning schemes considered represent all municipalities except Surf Coast, plus French Island and Alpine Resorts. At this stage, no dates have been set for a panel hearing in respect of Surf Coast Planning Scheme. A new format planning scheme has not yet been prepared for Melbourne Ports.

² Victoria Planning Provisions

- **Where Are We Now?**

Draw together the experience of panels assessing 80 new format planning schemes to present an overview of where we currently stand with respect to the implementation of the planning reform program and critical issues that will need to be addressed in the future.
- **Key Issues**

Identify common key issues emerging from the panel reports.
- **Major Changes**

Identify where significant changes to the VPPS and the philosophy underlying their application need to be considered.
- **Record of Panel Views**

Collect the observations and recommendations of panels on a variety of subjects, which may be of interest to other municipalities and the wider planning industry.
- **Messages for the Future**

Make observations about key facets of the new format planning schemes and the planning reform program, which will be important for their effective future functioning and achieving the objectives of the reform program.

It has not been possible to address every aspect of the VPPS or the new format planning schemes. Nor have numerous site specific or issue specific matters been able to be addressed. There is a wealth of detail in most panel reports, which may have relevance elsewhere. This report has only concentrated on the most significant issues.

In the interests of expedition, many extracts from panel reports have been used verbatim or been adapted. As a result, the editing and style may not be entirely consistent.

The report concludes with a reasonably lengthy section on the LPPF,³ which concentrates on issues associated with the use of language. It includes sections on writing good objectives and good local policies.

Language will be one of the keys to the success of the planning reform program. The new format planning schemes are intended to represent a shift away from the notions of '*black letter law*' where schemes and terms within them must be interpreted according to a frame of reference divorced from the intended outcomes of Council. Instead, it is intended that schemes will be interpreted according to the objectives or desired outcomes that the planning authority wishes to see achieved. The key to this will be to ensure that the outcomes or objectives are identified with sufficient clarity to ensure there is no dispute about what they mean.

³ Local Planning Policy Framework

This was a lesson brought home to many Councils during the panel hearings when they found statements in their municipal strategic statement being quoted back to them in support of propositions diametrically opposed to their intended outcomes.

On the other hand, it will not be open to Councils to argue that their LPPF means something that is not evident on the face of the planning scheme. Part of the intent of the planning reform program is to introduce transparency into planning schemes in terms of the policies and other considerations a Council will rely upon when exercising its discretion. Therefore, although VCAT ⁴has so far indicated it will give the necessary weight to policy at a state and local level when applying and interpreting planning schemes, the language used must still support the objectives and outcomes contended for. It should not require an explanation outside the planning scheme to make clear what is really intended.

1.2 NOTE ON RECOMMENDATIONS

The report includes a number of recommendations. Many of these have already been included in individual panel reports. DOI is acting on many of the suggestions and recommendations already made. They are repeated for the sake of coherence and as general information about the origins of what may be future amendments to the VPPS.

From the outset of the planning reform program, the Minister has made it clear that it will involve a process of continual improvement. It is impossible, with the quantum of change that the introduction of the new planning system has involved, to get it entirely right from the outset. What has been particularly gratifying to the panels has been the willingness of DOI to heed their advice and recommendations on a wide range of matters in terms of changes to the VPPS and the preparation of practice notes. The panels believe this willingness is a strong counter to critics of the new system who wish to concentrate on its shortcomings. It demonstrates that any shortcomings will be overcome.

However, the real test of the system will depend on the way it is implemented and the shift in cultural thinking that will be required to make it work. The shift from a prescriptive based planning system to a performance-based system is as much about a shift in thinking as it is about new words and maps.

Finally, whilst this report highlights a number of improvements the panels believe could be usefully made to the new planning system and there have been many changes required to exhibited planning schemes as a result of their consideration by panels, it would be wrong to focus on these as negative aspects. The planning reform program has

⁴ Victorian Civil and Administrative Tribunal

progressed rapidly in a relatively short period of time. This has included the introduction of a comprehensive set of common planning provisions, the development by every municipality of a new planning scheme based on these, and an extensive public participation program in the form of community consultation, exhibition, panel hearings and the consideration of submissions.

Whilst the quality of the new format planning schemes has varied, in overall terms the panels have been impressed by the way in which Councils have grasped the challenges which the planning reform program has offered. What they have achieved in an environment of tight timelines, economic constraints and dramatic change generated by local government amalgamations, not to mention the continually evolving concepts of the whole reform package, is remarkable. The panels believe that the Councils and DOI should be congratulated on this achievement.

The panels also wish to take the opportunity to thank the officers of DOI and all the Councils throughout Victoria for the assistance they have given as the panels have undertaken their tasks.

SECTION 2 BACKGROUND TO THE PLANNING REFORM PROGRAM⁵

2.1 PHILOSOPHY OF PLANNING REFORM

Planning reform is a continuous process. The planning reform program over the past six years builds on past reforms.

The past reforms include the work of the Building and Development Approvals Committee (BADAC) in the 1970's, which aimed to improve approval processes; and, the legislative and administrative reform through the 1980's.

Legislative reform through the 1980's included consolidating legislation (e.g. Subdivision Act); removing obsolete legislation; and introducing new legislation (e.g. Planning and Environment Act). There was also significant reform to the organisation of government through this period, including the abolition of many quasi-government organisations (quangos).

The planning reform, in the 1980's, essentially concentrated on legislation and did not fundamentally review sub-ordinate legislation, such as planning schemes.

The introduction of the Planning and Environment Act in 1988 offered tremendous potential for innovation in planning schemes. This potential was not realised, largely because the existing schemes were 'rolled-over' to become new planning schemes

⁵ Prepared by Peter Bettess of PRB Consulting Pty Ltd, formerly Executive Director Planning and Development, DOI

under the Act. In fact, the system became more complex through actions, such as the splitting of the Melbourne Metropolitan Planning Scheme (MMPS) into around 50 individual municipal schemes. This resulted in a massive increase in the number of zones in the metropolitan area, with little thought as to whether differences in control were indeed necessary.

An underlying theme of all the reforms has been the achievement of micro-economic reform by reducing administrative costs and increasing efficiency. This is not a policy of any one government but sensible public administration.

With the election of the Kennett Government in 1992, the Government had a clear policy to create jobs and prosperity through:

- Facilitating investment by substantially simplifying and clarifying the development approvals system; and
- Improving the organisation for planning to help decision-making processes produce positive outcomes.

The Government did not change the objectives of planning set out in Section 4 of the Planning and Environment Act but looked to how these objectives could be better achieved.

Shortly after the Government was elected, the Perrott Committee commissioned a series of projects to produce recommendations on reform of various aspects of the state's planning system, over six months from late 1992. These project teams reported directly to the committee rather than through the department structure and brought together staff and people from outside the department. This mix brought new ideas and a fresh look at the system.

Some of the findings of the Perrott Committee were that:

1. The system was increasing in complexity both in the proliferation of zones and development approval instruments. There were 206 separate planning schemes and over 26,000 pages of ordinance. In the Melbourne metropolitan area alone there were over 150 residential zones and over 250 commercial and industrial zones.
2. Administration of the planning system was getting out of control. There were 4,871 separate amendments to planning schemes from 1988 to 1993 and over 42,000 development approval applications a year.
3. There was a lot of input for little output.
4. The focus was on running the system for its own sake rather than focussing on what the system was to achieve.

The outcome of the Perrott Committee's work was a series of recommendations to the Minister for Planning who announced details of the government's reform program in August 1993.

There were two key planning reform objectives:

- 1. Better planning schemes**
 - a. facilitation and certainty
 - b. simplicity and consistency
 - c. fewer, more consistent, performance based zones

2. Better approvals procedures

- a. permits as the usual form of planning approval
- b. streamlined notice requirements for applications
- c. new arrangements for objections
- d. certainty for permitted development
- e. better service by authorities
- f. government facilitation of approvals
- g. more efficient appeals system
- h. changes to legislation

This would be achieved by having:

- a policy basis for planning schemes and decision making;
- consistent statewide controls and provisions, with the ability for local discretion within an explicit policy context; and
- monitoring of system effectiveness.

This system aimed to achieve the potential of the objectives of the Planning and Environment Act by concentrating on the outcomes the planning system is seeking to achieve, expressed through policy statements, rather than layers of control with unclear purposes.

The planning reform program therefore aims to achieve better processes through the introduction of better planning schemes. The emphasis on policy as the basis for controls should lead to thinking about the outcome rather than merely administering a control.

SECTION 3 WHERE ARE WE NOW?

3.1 OBJECTIVES, STRATEGIES AND MEANS OF IMPLEMENTATION

Following the consideration of the first five new format planning schemes,⁶ a Report on Trends and Issues Emerging from Consideration of First Five New Format Planning Schemes (March 1998) was prepared. The panels are pleased to see that many of the

⁶ Ballarat, Campaspe, Glenelg, Mitchell and Port Phillip

issues raised in this report have been addressed by DOI with the publication of a number of Practice Notes.

One of the most influential outcomes of this report was the emphasis to be placed in the MSS on the need for Councils to distinguish much more clearly between objectives, strategies and means of implementation. These were identified as being:

- **Objectives** — the general aims or ambitions for the future use and development of an area responding to key issues identified in the MSS.
- **Strategies** — the ways in which the current situation will be moved towards its desired future to meet the objectives.
- **Implementation** — the means by which the strategies will be implemented.

A much more sophisticated understanding of the distinctions between these matters has developed as the panel hearing process has progressed. The result has been that the majority of Councils will need to rewrite their LPPF with these distinctions in mind to better respond to the requirements of Section 12A(3) of the *Planning and Environment Act 1987*, which states:

12A (3) A municipal strategic statement must contain –

- a) the strategic planning, land use and development objectives of the planning authority; and*
- b) the strategies for achieving the objectives; and*
- c) a general explanation of the relationship between those objectives and strategies and the controls on the use and development of land in the planning scheme; and*
- d) any other provision or matter which the Minister directs to be included in the municipal strategic statement.*

The panels believe the need to keep these distinctions at the forefront of thinking by Councils and other planning decision makers, will be critical to the overall success of the planning reform objective to base planning controls on a strategic focus at both State and local levels.

3.2 KEY ISSUES EMERGING FROM REVIEW OF NEW FORMAT PLANNING SCHEMES

3.2.1 CHANGES IN RURAL AREAS AND TO AGRICULTURE

Significant and far-reaching changes to the nature of agriculture and the structure of the rural sector are evident throughout Victoria. Maintaining agricultural land in productive use is one of the major challenges facing both government and the community if agriculture is to remain a thriving and dominant economic activity.

The changing nature of agriculture, together with specific Government policies to promote certain agriculture, such as timber production, require a more sophisticated approach to promoting environmentally sustainable agriculture in appropriate locations and avoiding, or at least minimising, potential conflicts between agriculture and residential use.

This raises issues of how residential use in the Rural Zone should be managed and whether greater emphasis should be given in certain locations to the primacy of agriculture over residential uses. The establishment of a new rural zone in the form of an Agriculture Zone is one option.

Catchment management will be of equal significance.

3.2.2 USE OF SCHEDULES

Schedules are a critical feature in customising new format planning schemes to reflect the needs and circumstances of individual municipalities.

As yet, their full potential has not been realised. Much greater education is required as to how schedules are intended to be used, particularly with respect to the 'scheduling-out' provisions as a means of facilitating development and land management practices encouraged by the Council. Greater improvement is required in framing objectives and statements of significance.

This is a key area where assistance by DOI in developing models and practice notes to guide their use will be valuable.

3.2.3 KEEPING POLICIES UNDER CONTROL

The municipal strategic statement is intended to provide the broad brush strategic direction of planning schemes and justify the application of zones and overlays. Local

policies are important in providing guidance to Councils and applicants in day-to-day decision making. With the broad discretions provided by zones, local policies provide a means of refinement to achieve identified objectives in the MSS, to address key issues and to avoid inconsistency in decision-making. The critical issue will be to what extent they can legitimately constrain the exercise of discretion.

Panels believe that unless policies are carefully monitored, they have the potential to undermine the intent of the planning reform program by becoming de facto zone controls. The emphasis will shift from what is permitted in the VPP zone to what is permitted under the local policy. They will be used as a prescriptive measure rather than as a means to establish a performance base. There will be the temptation to rely on local policies as proscribing the exercise of discretion, in the interests of 'certainty', rather than always measuring a proposal against objectives. Alternatively, there will be the temptation to couch objectives themselves as prescriptions.

On the other hand, unless local policies are ascribed a legitimate role in guiding the exercise of discretion over use or development, there is little point in having them. Establishing the appropriate balance will be of critical importance during the initial stages of operating the new format planning schemes.

3.2.4 TRANSPARENCY

Associated with the need to avoid the proliferation of local policies, which reintroduce the type of prescriptive measures the planning reform program was intended to overcome, will be the need to maintain the transparency of planning scheme. The purpose of requiring all local policies to be included in the planning scheme, and for making the municipal strategic statement its focus, was intended to ensure transparency in decision-making. The practice of 'under-the-counter' or 'unofficial' policies was supposed to be abolished.

Particular attention should be paid to ensuring that these practices do not re-emerge.

3.2.5 ROLE OF DOI AS GATEKEEPER OF STANDARDS

Section 12A of the *Planning and Environment Act 1987*, the VPPS, the Ministerial Direction on the Form and Content of Planning Schemes, the *Manual for the Victoria Planning Provisions* and the Practice Notes issued by DOI are all directed at ensuring that the new format planning schemes that are adopted by Councils and approved will respond to the objectives of the planning reform program and reflect a certain standard. Maintaining that standard and consistency with principle as schemes are amended will require constant monitoring.

Panels considering amendments will have a role to play in this respect. However, DOI will need to adopt a monitoring role with respect to standards also. It will be very easy for the new format planning schemes to unravel if the quality of amendments, including

additional local policies and schedules to overlays, is not maintained and they fail to remain consistent with the principles of the planning reform program.

One particular aspect of the new format planning schemes that the panels consider requires particular monitoring is the use of reference or incorporated documents, which have been prepared for other purposes. There are cases where these documents are being used in planning schemes or relied on in a way that does not reflect their original purpose. In some instances, much of the material is irrelevant and it would be better to extract the relevant bits and include them in the scheme proper, rather than having to refer to a voluminous external document. In other instances, their use may prove problematic because it is difficult to reconcile the purpose for which they were prepared with the purposes of the planning scheme.

Another issue associated with reference or incorporated documents is their availability. For example, in the course of considering the Greater Geelong Planning Scheme, the Panel discovered that the Avalon Airport Strategy (Department of Business and Employment/AeroSpace Technologies of Australia 1993), referred to in Clause 18.04–3 of the SPPF as something planning and responsible authorities should have regard to, is not a publicly available document.

This is one of the reasons for requiring documents to be incorporated in planning schemes, rather than simply referenced. It ensures their availability. It may be appropriate for a Ministerial Direction to require a copy of all reference documents to be kept by a responsible authority. This is an area where the possibilities of information technology may be able to be exploited.

3.2.6 ADVICE AND GUIDANCE BY DOI

Throughout this report, and the reports of panels on individual planning schemes, the need for advice and guidance by DOI on the use and application of the VPPS has been emphasised. The need for this is likely to wane, as Councils become more familiar with the system and more adept at drafting provisions. However, in the short-term, it will remain vital, even after all the new format planning schemes are gazetted.

The introduction of the Practice Notes is a valuable response to this need. It may also be appropriate now to consider replacing the *Manual for the Victoria Planning Provisions* by a series of Practice Notes, which incorporate remaining relevant material. The Manual was prepared to guide Councils in the initial preparation of their new format planning schemes. Now that this task is complete, the ongoing relevance of the Manual will relate to the use and implementation of the schemes, together with subsequent amendments. It may therefore benefit from revision with this new task in mind.

3.2.7 USE OF TECHNOLOGY

The Victorian Government is committed to the use of information technology in connection with the provision of government services and information, and to its widespread introduction within the community. The effective use of the tools developed as part of the planning reform program will depend on maximising its use. It is therefore ironic that these principles have not been applied to the operation of the principle tool of the new planning system – the VPPS.

In Section 8.4 of this Report, the use of data and technology is discussed, with particular reference to the use of mapping and information. However, the issue is broader than just this. It relates to the availability of the new format planning schemes and their means of amendment.

When the new planning system was developed, there were two concepts underlying the VPPS:

- They would provide a complete set of standard planning provisions for Victoria and provide the standard format (including clause numbering) for a planning scheme. All planning schemes would be constructed by taking the VPPS as a basic template, inserting the MSS and local policies, selecting the zones and overlays needed to implement these, writing appropriate local provisions to support the zones and overlays (the schedules) and discarding the zones and overlays which are not required in the scheme.
- When the VPPS were amended, all planning schemes incorporating those elements of the VPPS would be automatically amended as a consequence, because they would all be the same.

Unfortunately, this second aspect has not been implemented. Instead, whenever the VPPS are amended, a separate amendment must be done for every planning scheme repeating the same detail.

The panels consider this practice is administratively cumbersome, costly, time-consuming and inefficient. The opportunities for error or omission are rife. More importantly, it is unnecessary. It ignores the design concepts underlying the VPPS and the fundamental reliance on information technology they incorporated.

As a matter of urgency, the panels recommend that the *Planning and Environment Act 1987* should be amended to implement this original concept so that an amendment to the VPPS will result in the automatic amendment of all planning schemes using that particular provision of the VPPS.

The panels also consider it should be made clear that electronic versions of the VPPS and planning schemes are the ‘official’ versions, rather than paper copies. Whilst DOI is approving schemes electronically, the panels are not aware that the position is formalised in writing anywhere. It would be appropriate to address this before it becomes an issue of legal challenge in some case.

3.2.8 PROMOTING DECISION MAKING THAT IS STRATEGIC AND RECOGNISING DIVERSITY

It has been consistently emphasised by panels throughout their consideration of the new format planning schemes that for Councils to use the new schemes effectively, there will need to be a shift in cultural thinking. All decision-makers — responsible authorities and VCAT — will need to think strategically by assessing every proposal against relevant objectives. The application of performance standards will likewise always need to be tied to the achievement of objectives if they are not to become simple prescriptive standards.

However, as part of this process, it will always be important to remember that every municipality is part of a wider context. The SPPF is part of every planning scheme. The provisions respond at a State level to the objectives of planning in Victoria as set out in Section 4 of the *Planning and Environment Act 1987* (see Clause 12). In this respect, Clauses 11, 12 and 13 of the SPPF are just as important to bear in mind as the detailed provisions of Clauses 14–18. It is not for Councils to pick and choose between the bits of the SPPF they wish to apply. They must seek a balance between all relevant parts of the SPPF.

On the other hand, it is equally important to bear in mind that the significance of the resources or attributes of a particular municipality may have a wider significance than just their local importance. Likewise, the balance achieved in municipalities between aspects of the SPPF will be different from place to place because their roles are different.

The objectives in the *Planning and Environment Act 1987* and the principles in the SPPF apply across the State. There is no indication that one objective or principle has more weight than another does. (Although it is interesting to note that the ‘*Settlement*’ principles include the protection of environmentally sensitive areas and natural resources, yet there is no corresponding qualification in relation to economic objectives under the ‘*Environment*’ heading.)

The objectives are State-wide objectives, which recognise diversity across the State. Although all schemes must be consistent with all objectives, there is no expectation that all objectives will be met to an equal extent within any single municipality. For example, it is to be expected that the planning scheme of a suburb with an extensive industrial base will lean towards commercial and employment objectives, although environmental objectives such as air quality will also play a role. A country scheme

will emphasise agricultural and tourism objectives, with a lesser role for urban growth objectives. A ‘growth’ suburb will emphasise planning for urban expansion and the provision of infrastructure and community facilities. The emphasis in the scheme is dependent on the nature of the municipality. In other words, horses for courses.

If Councils have prepared their municipal strategic statements based on a thorough and realistic investigation and evaluation of the major characteristics, strengths and weaknesses of the whole of the municipality, leading to the development of a comprehensive new planning strategy, they should have no trouble in defending their objectives. Because in developing their strategy, they will have addressed their responsibility to implement the SPPF, whilst at the same time acknowledging the role that their municipality plays in contributing to the diversity of the State.

Understanding the need for balance will be the critical factor in strategic and justifiable decision-making.

3.2.9 OWNERSHIP OF PLANNING SCHEMES

There is no denying that the planning reform process has presented all municipalities in Victoria with some wonderful opportunities as well as some daunting problems. No overall evaluation of the schemes reviewed by panels to date could fail to acknowledge the enormous demands that both the scope and the timing of this exercise have placed on Councils — brand-new Councils, which have had to cope with all the post-amalgamation pressures and imperatives of economic constraints, rate caps, compulsory competitive tendering, and significant staff reductions.

The exercise of preparing a new format planning scheme has also been undertaken to a timetable that allowed only a limited opportunity to undertake all the necessary tasks in a truly logical progression from broad vision to specific local planning controls. And while the Councils were tackling these tasks, the whole reform process itself was evolving. Departmental staff who were trying to provide Councils with advice and support were often themselves barely a step ahead of the game. New information from other departments kept emerging, new mapping programs were under way, and new state and regional strategies and plans came into force that had to be accommodated in local planning schemes. (eg Regional Catchment Management Plans, Regional Tourism Strategies and the Biodiversity Strategy.)

Last but not least, Councils had to explain themselves at panel hearings, and comply with the panels’ own complex set of requirements for documentation and presentation.

In this context, it is remarkable how much has been achieved.

However, the key incentive for Councils was the tremendous opportunity the planning reform program was offering. The most successful new schemes are those where Councils recognised that opportunity and embraced it with gusto. Most Councils had

already decided to develop a new, single scheme rather than just consolidate the schemes inherited from their predecessors. This decision signalled the Councils' willingness to see themselves as a complete new entity, rather than as the sum of their former parts. What the planning reforms gave Councils was the ideal vehicle to express this new identity, to state its goals, to describe the shape and flavour of the community they wish to foster, and to make very clear the most important issues they must tackle to achieve their goals. It also enabled them, for the first time, to set these things down in an enforceable statutory document that has the backing of the community.

The range of approaches by Councils varied from total commitment to grudging compliance. Those Councils that have taken ownership of their planning schemes are best placed to reap the benefits of a strategic approach to planning. Interestingly, it is the rural municipalities which seem to have used their planning schemes most proactively to implement strategies for achieving objectives.

It will undoubtedly take time for lingering perceptions to dissipate that the new format planning schemes have been foisted onto Councils and that the VPPS are a 'one-size fits all' version of planning, allowing no room for response to local needs. This attitude is ill-conceived and ignores the first purpose of every zone and overlay, which is:

To implement the State Planning Policy Framework and the Local Planning Policy Framework, including the Municipal Strategic Statement and local planning policies.

The VPPS are only tools. In themselves, apart from the SPPF, they are not a policy document. The quality of the outcome of their application will depend, like any craftsman using a set of tools, on the vision, skill and commitment of the individual Council.

SECTION 4 AGRICULTURE AND THE RURAL ZONES

4.1 ECONOMIC SIGNIFICANCE OF AGRICULTURE

Agriculture is of prime economic significance to Victoria. Where Councils have critically evaluated their economic base, most rural municipalities have recognised the significance of agriculture to their own and regional economies. Those that have formulated economic development plans realise the extent to which their future depends on continued agricultural productivity.

Many rural areas see themselves as being in decline. Populations are falling and aging; services and facilities in towns are closing; unemployment is high.

However, the panels believe that a distinction needs to be drawn between what is happening in rural towns and what is happening to agriculture. Throughout Victoria, the panels saw evidence of an industry reinventing itself and substantial levels of investment in agriculture. Because of the changing nature of agriculture, the growth in

investment will not necessarily remedy the ills of the towns or reverse the trends in population decline, although growth in downstream processing may bring more benefits in this respect. Nevertheless, growth in agriculture is important for the overall economy of Victoria. The Government's Timber Industry Strategy, which aims to treble the amount of land planted with timber by 2020 in Victoria, is an example of the objectives for one particular agricultural activity.

The two most vital ingredients in maintaining sustainable growth in agriculture are productive land and adequate supplies of water. There is not an inexhaustible supply of either commodity.

The panels' experience in dealing with the new format planning schemes leads to the conclusion that, in rural areas, the greatest challenges, which will face planning in the new millennium, will be to:

- maintain agricultural land in productive use;
- ensure an ongoing supply of water for irrigation and stock purposes; and
- manage water supply catchments to ensure an adequate supply of high quality water for domestic consumption.

The greatest threat in this respect is the growth of residential use and the conflicts this creates. This is a difficult issue to manage when many people see a solution to the problems of rural towns in terms of increasing subdivision and hence population.

The importance of good catchment management is recognised in terms of protecting water resources. The issue will be how to achieve it. Managing the proliferation of farm dams associated with the growth in certain types of agriculture, such as viticulture, is a problem that requires immediate attention.

4.2 CHANGING NATURE OF AGRICULTURE

The nature of agriculture is changing in ways that will have important implications for planning in Victoria.

- It is broadening in scope. This is illustrated by the nesting diagram for agriculture included in Clause 75 of the VPPS [see Appendix C]. No longer is agriculture concerned primarily with grazing (extensive animal husbandry) and traditional crop growing, although these uses still dominate in terms of area devoted to them. Growth in agriculture is occurring in industries associated with horticulture, viticulture, timber production and intensive animal husbandry.
- It is becoming increasingly industrialised. Productive modern agriculture involves the use of heavy machinery, equipment operating at all hours, the application of agricultural chemicals and fertilisers, frequent heavy vehicle traffic and the construction of large industrial type buildings.

- It is intensifying. There is a growth in intensive animal husbandry (poultry farms are a particular example) and intensive horticulture. Other traditional extensive animal husbandry, such as dairying, is also intensifying. This trend is closely associated with that of increasing industrialisation.
- Investors are operating more enterprises. Farms operated by individuals and their families are still numerically significant and many are adopting a more businesslike approach. However, much major new investment in agriculture is coming from big business. This is frequently linked to downstream processing.
- The average farm size is increasing. This is a product of the need for economies of scale to achieve economic returns and the investment in agriculture by big business. Clearly, different agricultural activities will require different land areas. Some specialised horticulture, for instance, may only require a few hectares compared to broadacre crop raising. Nevertheless, the trend remains apparent irrespective of the activity or base farm size.

The result is that agriculture cannot be regarded as a benign activity, but is one with potential to cause substantial detriment to surrounding uses, particularly residential, through noise, traffic, odour, spray drift, runoff and visual impact. Conversely, agriculture is also being adversely impacted by surrounding uses through the spread of plant and animal pests and erosion resulting from poor land management, reduced water quality and quantity, and complaints about agricultural practices.

Throughout rural Victoria the panels found growing recognition of conflicts at the rural/residential interface. In the past, this interface has been frequently identified by small-scale rural residential development. However, residential use giving rise to these conflicts is not confined to these locations. It is spreading throughout productive farming areas as a result of:

- house lot excisions from properties;
- the small size of rural lots in some locations, particularly old gold mining areas;
- encouragement of subdivision by some Councils who see economic benefits resulting.

These land holdings are being fragmented in ownership, with new owners frequently purchasing them for residential purposes, notwithstanding the lots may be substantially larger than a typical rural residential lot of 2-8 hectares. They move in with quite different expectations about what constitutes rural amenity and what farming means in practice compared to farmers themselves.

The panels consider that unresolved conflicts between residential use and agriculture have the potential to inhibit the growth of agriculture and the contribution it can make to the economy, or create ongoing dissension and dissatisfaction within communities.

In this context, a parallel may be drawn with the conflict in urban areas between existing residents and medium density development. A complicating factor in achieving balanced outcomes in both situations is the propensity for councillors to respond according to the strength of voter numbers. In rural areas where there is a highly fragmented land ownership pattern, this may result in the protection of residential interests at the expense of new or expanded agricultural investment. Where the number of residents is few and the council is keen to promote investment, it may result in the legitimate interests of residents being overlooked.

The panels believe that the changing nature of agriculture, together with specific Government policies to promote certain agriculture, such as timber production, require a more sophisticated approach to promoting environmentally sustainable agriculture in appropriate locations and avoiding, or at least minimising, potential conflicts between agriculture and residential use.

This raises issues of how residential use in the Rural Zone should be managed and whether greater emphasis should be given in certain locations to the primacy of agriculture over residential uses.

4.3 HOUSES/SMALL LOT SUBDIVISION IN THE RURAL ZONE

Many previous planning schemes have controlled the proliferation of residential uses in rural areas by including tenement provisions, which have limited the fragmentation of lots in the one ownership by limiting the number of potential houses, or by excluding the ability for small lot excisions. Neither of these mechanisms is possible under the provisions of the Rural Zone in the VPPS. As a result, many Councils now face strong pressure to allow additional houses and small lot subdivision in the Rural Zone due to the higher value that land has for residential purposes compared to agricultural purposes. The aging of the farming population compounds this, with farmers seeking to capitalise on their property as a means of superannuation.

Panels have consistently emphasised the need for Councils to consider the implications of allowing residential use in the Rural Zone and to develop strong policies to guide their discretion and to assist potential applicants. Councils must be clear about the objectives they wish to achieve, so that decisions can be made on a consistent, strategic basis. Otherwise there will be a constant temptation to make decisions based on the individual needs and circumstances of applicants.⁷

Of particular importance will be the need for Councils to develop a clear strategy about how they will deal with applications for houses in the Rural Zone and small lot subdivisions in the Rural Zone. It will be important for Councils to link their policies

⁷ The most frequent reasons presented to panels to justify a change in zoning from Rural Zone to Rural Living Zone was lack of economic viability or lack of capacity, due to age, to manage the land any more.

with respect to these two issues because of the changes made to the Rural Zone in this regard as a result of Amendment V3.

The relevant provisions of Clause 35.01–4 of the Rural Zone in the original VPPS stated:

A permit is required to subdivide land.

Each lot must be at least the area specified for the land in the Schedule to this zone. ...

A permit may be granted to create smaller lots if any of the following apply: ...

- the subdivision is to excise an existing dwelling or excise a lot for a dwelling. Only two lots may be created and each lot must be at least 0.4 hectares. An agreement under Section 173 of the Act must be entered into with the owner of each lot created which ensures that the land may not be further subdivided under this provision. The agreement must be registered on the title. If the land contains more than one dwelling, each dwelling may be excised under this provision.

Amendment V3 changed this. The relevant provision under Clause 35.01–4 of the Rural Zone in the VPPS now states:

A permit is required to subdivide land.

Each lot must be at least the area specified for the land in the Schedule to this zone. ...

A permit may be granted to create smaller lots if any of the following apply: ...

- the subdivision is to create a lot for an existing dwelling. Only one additional lot may be created in the subdivision and each lot must be at least 0.4 hectares.

This now means that a small lot cannot be excised without a house, but it does open the opportunity for serial excisions provided they are done one at a time.

The panels are uncertain whether this was the intended consequence of Amendment V3. Certainly the outcome is different to the recommendation in the Report of the Advisory Committee on the Victoria Planning Provisions (VPPs) — August 1997, which was to amend Clause 35.01–4 by deleting the last dot point and replacing it as follows:

- *The subdivision is to create a lot for either:*
 - *an existing dwelling;*
 - *a dwelling which is allowed by the scheme or for which a permit has been granted.*

Only one additional lot may ever be created using this provision. Each lot must be at least 0.4 hectare and one lot must be at least any area specified for the land in the schedule to this zone or, if no area is specified, at least 40 hectares. An agreement under Section 173 of the Act must be entered into with the owner of each lot created which ensures that the land may not be further subdivided under this provision. The agreement must be registered on title. If the land contains more than one dwelling, each dwelling may be excised under this provision.

Whether intended or not, the provision now means that Councils will need a very clear idea of the outcomes they wish to see in their Rural Zones. These views should be expressed in the form of a local policy.

There are two options that Councils will face. They can succumb to pressure to allow a proliferation of additional dwellings and small lot subdivisions. This will add to the growing conflict between farmers on the one hand and, on the other hand, residents who move in and have a set of expectations about rural amenity that is often based on ignorance of agricultural practices. Alternatively, Councils can identify that houses and small lot excisions will not be encouraged where there is no demonstrable link with an agricultural enterprise. Councils will then need to identify how that link must be demonstrated.

An extract from the Report of the Advisory Committee on the Victoria Planning Provisions (VPPS) — August 1997, which deals with the issue of rural small lot excisions is included in Appendix D. Several points from this extract are worth emphasising.

First, the planning problems associated with small lot rural subdivision are of an incremental nature, much like development in flood plains or demands upon infrastructure. It is the cumulative effect that is the problem, rather than any individual subdivision.

Second, the Report of the Advisory Committee on the Victoria Planning Provisions (VPPS) — August 1997 acknowledged that traditionally, many planning schemes have permitted small lot rural excisions where they have been ‘*needed*’ by a member of the farmer’s family or for the running of the property. Experience has demonstrated however, that this requirement is frequently merely a device and excised lots are not used by the subdividing farmer but more often sold as a tradeable commodity on the open market. Even if they are ‘*needed*’ in the short term by the farmer or his family, there is no requirement that they remain within their ownership or control, nor ability to ensure this. The panels believe that, in this era of motor vehicle ownership and non-contiguous farm ownership, old arguments of farm workers and family members ‘*needing*’ to live on the farm no longer hold true.

The pressures to excise lots are more pronounced at the fringe of the metropolitan area and large rural centres where there is a demand for small lots so that a non-urban, yet essentially residential, lifestyle can be pursued. However, there is no lack of availability in most of these locations of existing allotments in a non-urban environment. Most country towns have at least 20 years supply, with up to 70 years or more in some locations. Consequently, any demand as a result of this pressure does not need to be met by the excision of further small lots in the Rural Zone.

In conclusion, the Advisory Committee on the VPPS noted that although it did not recommend deleting the small lot excision provision from the Rural Zone, it should not be assumed that the provision creates a **right** to a small lot excision. The point was made that councils should prepare policies to guide their decision making on this subject in order to:

- minimise the adverse effects of dispersed small lot subdivision;
- ensure that the provisions are only used in the case of the genuine farmer where:
- they will support the primary use of the zone; and
- all other decision guidelines are satisfactorily complied with.

The panels believe that this warning is even more relevant now in light of the changes to this provision that Amendment V3 made.

4.4 RURAL RESIDENTIAL SUBDIVISION

Many of the same issues relating to loss of productive agricultural land and conflict between agricultural and residential uses are raised by the subdivision of rural land for rural living purposes.

On the other hand, a recent study of rural living development prepared for DOI⁸ identified demand for rural living lots as a consistent and significant component of new residential development in many areas of the State, representing an important component of Victoria's economy. Rural living can be expected to be a continuing component of residential development in many areas of the State. It found that:

*Market forces together with State and local planning policies are likely, in the short term at least, to significantly limit the loss of highly productive agricultural land to rural living demand. However, the continuing demand for rural living development will see a continuing loss of highly productive land to non-productive uses unless a firm policy is put in place to prevent it from occurring.*⁹

The majority of urban fringe and rural Councils are constantly plagued by a continuing stream of planning scheme amendment applications for rezoning of rural land for rural residential subdivision. This can lead to a perception that the Council has a weak stance in relation to the issue, which only adds to the pressure for change.

The dilemma surrounding the delineation of where urban style residential living stops and rural activities commence is replayed constantly around the fringe of metropolitan Melbourne and large rural towns. Councils need to take a strong stand to provide certainty about the point at which this change occurs. The more the Council bends to the requests of individual landowners to subdivide, the greater the uncertainty that is created, and speculation follows. Expectations are raised and land prices increase. The possibility of capitalising on the speculation becomes a ray of hope to some, and then a 'right' denied when refused by the Council. The Council is thereby under constant pressure to alter and revise its policies.

Requests to rezone rural land to allow some form of rural residential subdivision were the most prolific sort of submissions that panels dealt with. In very few instances were these requests supported by either Councils or panels. The planning reform program required Councils, many for the first time, to assess their supplies of land. In many municipalities, in excess of 20 years supply of land already zoned for rural residential purposes was common. In some cases there was up to 70 or even 100 years supply. There was therefore little basis to justify further zoning. Some Councils took the opportunity offered by the new schemes to backzone some of this excessive oversupply.

⁸ A Study of Rural Living Development (October 1997), prepared for the Department of Infrastructure by TBA Planners in association with Spiller Gibbins Swan, Centre for Land Protection Research and Neil Clark and Associates

⁹ *ibid*, p 9

Nevertheless, the pressures on Councils remain. For this reason, the MSS should contain information about rural residential supply and demand, identify the locations where it is concentrated and establish clearly whether further rural residential development is to be encouraged.

A Council has the opportunity in its MSS to establish what realistic expectations should be with respect to the issue of further rezonings for rural residential purposes. If the Council makes it clear that, within the planning timeframe contemplated by the Scheme of 10–15 years, there is no need to provide additional land for either residential or rural residential purposes, it will establish a clear set of expectations that should reduce pressure from individual applicants on Council (and councillors). It will make it much easier for Council to deal with proposals when it is able to point to objectives, strategies and policies on the point. It can then decide matters on issues of principle rather than being drawn into the personal circumstances and aspirations of each applicant or proponent. For example, assessment criteria that a Council could require proponents seeking a rezoning to respond to, and by which Council would assess requests for rezonings, may include the following:

- What support is found in the SPPF and MSS?
- Does it require a change to the MSS?
- What other changes have been made to the MSS in this respect?
- Are constant changes to the MSS undermining its integrity and overall direction?
- Have the requirements of Ministerial Direction No. 6 been complied with?

Councils which recognise that management of landowner development expectations is a key issue and who develop strategies to deal with this, are in a much stronger position to deal with pressures for rural residential development than those who respond on an ad hoc basis. It is also important to recognise that other strategies are needed to resolve the long-term issues of ‘viability’ and rural land management. Panels are strongly supportive of a holistic approach to rural issues, as they believe that land use strategies and zoning alone cannot achieve the desired outcomes for the whole community. If planning controls are combined with active encouragement of the rural sector, much better long-term outcomes are likely to result.

4.5 BASIS FOR MINIMUM SUBDIVISION SIZE IN THE RURAL ZONE

4.5.1 LAND CAPABILITY

The capability of land is measured through applying land systems analysis. This is a procedure which integrates environmental features such as rainfall, geology, topography, soils and indigenous vegetation into a single mapping unit. It was first conducted by the then Soil Conservation Authority in 1953. Most of Victoria has been

mapped in this way, although not always at a level which is detailed enough for planning purposes.

Agricultural quality is usually based on a five class system commonly used throughout Victoria, namely:

- | | |
|----------------|--|
| Class 1 | Agriculturally versatile land, with high inherent productive potential through possessing deep permeable and fertile soils, a flat to gently undulating land form, and a growing season of 11-12 months either under natural rainfall or with the availability of irrigation. |
| Class 2 | Agriculturally versatile, but requiring higher level of inputs to achieve the same productivity as Class 1. Slope is greater, soils more variable, and the growing season is limited to 8-9 months. |
| Class 3 | Sound grazing land but limited in versatility. Generally unsuited to cropping wither because of contour, lack of topsoil depth, or presence of rock. Fertility levels are moderate to low, growing season limited to 8-9 months. With high inputs, high productivity levels may be achieved. |
| Class 4 | Capable of grazing under moderate to low stocking rates where clearing has occurred. Slopes are moderate to steep, with shallow infertile soils which need care in their mag. Erosion hazard is high. Forest is often the best and most stable form of land use. |
| Class 5 | Land unsuited to agriculture. Constraints may be steepness of slope, shallow, sandy or rocky soils, high erosion susceptibility. Environmental stability may be best achieved through isolating areas and strictly controlling, or eliminating agricultural land uses. |

Clause 17.05–2 of the SPPF states:

Land capability is a fundamental factor for consideration in rural land use planning.

The *Manual for the Victoria Planning Provisions* allows for more than one minimum lot size to be specified in the Rural Zone, but states that:

...any lot size specified must be justified on the basis of land capability, maintenance of rural productivity and other relevant considerations.

Relatively few municipalities took the opportunity to specify more than one minimum lot size in the Rural Zone or to directly employ land capability studies as the basis for their Rural Zone. When this did occur, there was often a failure to adequately describe the link between the two.

In most cases, where there was a single subdivision size only, the basis for the minimum lot size was seldom clearly articulated. The usual reasons given to panels for their selection were that:

- they reflected the previous minimum size;
- they were designed to discourage further rural subdivision given the prevailing range of lot sizes.

Rarely were they related in any way to land capability.

The panels believe that the issue of land capability as a basis for rural land planning, particularly subdivision, needs greater emphasis. It needs to be clearly distinguished from concepts such as economic viability and viable farming units.

Where other concepts are used, they need to be clearly articulated in the MSS. For example, Greater Geelong adopted a different approach to determining minimum subdivision size by establishing “*the minimum subdivision size to guarantee the environmental stability of the farming system practised.*”¹⁰

4.5.2 ECONOMIC VIABILITY

The most frequently used basis to support the rezoning of rural land to a residential or rural residential based zone is that “*it is no longer economically viable to farm*”. Minimum subdivision sizes in rural zones are also frequently criticised on the basis that they do not represent an “*economically viable farming unit*”.

However, rarely will the minimum subdivision size reflect any particular concept of an ‘economically viable’ farming unit. Economic viability is not a matter that a planning scheme can influence, nor should it be used as justification for either rezoning or subdivision. None of the purposes in the Rural Zone refer to viability. Viability will always be a product of size of total land holdings, markets, prices, products, efficiency, land management practices etc. It will vary from time to time, place to place and person to person. Throughout rural Australia, off farm income is increasingly being relied upon to maintain farming families. Farmers have always tended to farm multiple pieces of land, sometimes contiguous, sometimes separated. Individual lots have always been traded between farmers. All of these factors mean that there is no such thing as a universal economically viable farming unit. It is therefore unrealistic to equate a minimum subdivision size with what can be conceived as a ‘viable farming unit’.

What is far more important than economic viability when considering rural land and agriculture, is productive use. Agricultural land can still be used productively and can make a contribution to the overall economy of the State even though returns from it may be supplemented by other off-farm income in order to sustain the landowner.

4.5.3 AGRICULTURAL LAND PRODUCTIVITY

Clause 17.05–1 of the SPPF states that the objective with respect to agriculture is:

¹⁰ Draft City of Greater Geelong Rural Land Use Strategy (February 1997) Perrott Lyon Mathieson Pty Ltd and Phillips Agribusiness, p 54

To ensure that the State's agricultural base is protected from the unplanned loss of high quality agriculture land due to permanent changes of land use and to enable protection of productive farmland which is of high quality and strategic significance in the local or regional context.

The panels believe that the emphasis given to '*high quality productive agricultural land*' in the SPPF does not go far enough and should be altered to focus on '*productive agricultural land*'.

In various panel hearings it has been commented that there is no definition in the VPPS of what constitutes high quality productive agricultural land. The panels don't believe that this is a valid criticism because Clause 71 states that:

A term used in this planning scheme has its ordinary meaning unless that term is defined...

It is not difficult to determine what is high quality agricultural land. In any event, the panels believe that this criticism misses the real issue.

It is not disputed that high quality agricultural land is a limited resource of particular value to the State. However, if agriculture is to be properly recognised and promoted as a major contributor to the economy of the State and individual municipalities, it needs to be appreciated that valuable productive land is not limited to high quality agricultural land.

Some of the most productive land in Victoria, for example the irrigation districts at Mildura and Swan Hill or the river flats at Bacchus Marsh, is not classified as high quality (Class 1), but derives its productivity from access to water. With other forms of agriculture, for example timber production, high quality agriculture land is not suitable. Lower quality soils combined with a certain rainfall are preferred. Certain types of intensive agriculture, which are not soil dependent, such as poultry farms or cattle feedlots, have different sets of locational requirements relating to matters such as capacity for waste disposal, drainage, proximity to feed sources and access to processing plants etc.

The greatest threat to agriculture is to take productive land out of production by converting it to residential use. The pressure for this arises from two primary sources. One is the increased cost of land when its value for residential purposes exceeds its value for agricultural purposes. This can be managed to a certain extent by strong policies limiting the size of allotments on which houses can be built and by not allowing further subdivision. The second is by a failure to manage conflicts between agricultural use and residential use, so it simply becomes too hard to continue farming.

The solution to the broad problem of the loss of productive agricultural land is to limit, where possible, the proliferation of residential use within agricultural areas, and to state clearly within the MSS the priorities the Council sees as applying in different areas. In this respect, it needs to be remembered that the objectives of the Rural Zone make no mention of residential use. It is the purpose of the Rural Living Zone to provide for residential use in a rural environment. Even though the 'default' minimum subdivision size is eight hectares in the Rural Living Zone, there is no reason why it may not be much higher. The Rural Living Zone doesn't need to be applied only to traditional hobby farm/rural residential land. It is the correct VPP tool to use in areas where residential use is a primary use. The Rural Zone should be used where the primary purpose is for extensive animal husbandry and crop raising (ie farming). The Environmental Rural Zone is the zone to be used when it is the environmental characteristics of the land that should take precedence, even though it may be used for a range of other uses in accordance with sound management and land capability practices, which take into account the environmental sensitivity and biodiversity of the land.

In Section 4.5 the shortcomings of the rural zones, as they presently stand, are discussed. Recommendations are made about the need for a further rural zone. However, until changes of this nature are made to the VPPS, the above represents the basis of the rural zones.

It is therefore recommended that the SPPF should be reviewed to better recognise the role that all forms of productive agricultural land play in maintaining and expanding the State's agricultural base, not just high quality agricultural land.

DOI should encourage Councils to develop mechanisms in the form of policies and other initiatives by which to deal with pressures, which may result in the loss of productive agricultural land from production.

The panels also believe that recognition should be given to the contribution that all forms of agricultural production make to the overall economy, as distinct from the returns to individual landowners.

It has long been a central tenet of our planning system that planning is not intended to protect individuals from the effects of competition.¹¹ The purpose of the planning system should be to protect resources, in this case productive agricultural land, to enable it to be used in a sustainable way. The system should also recognise that agriculture, in common with most activities, is susceptible to change. Just because one activity ceases to be attractive because of low returns or management problems (for example, grazing), does not mean that the land ceases to be suitable for all forms of agriculture and should therefore be subdivided for rural residential purposes.

These were the sort of pressures faced by the Yarra Valley 20 years ago. Fortunately the pressures were resisted. A different form of agriculture in the form of viticulture gradually took over, resulting in a thriving wine industry, which today brings far more economic benefit to the region and Victoria than residential use of the land was ever likely to do.

It was frequently asserted at panel hearings, but nowhere demonstrated, that there is a 'need' for further subdivision in rural areas to facilitate the establishment of new niche agricultural enterprises. Observation of subdivision patterns in most rural areas indicates a broad range of lot sizes, which would be available to anyone seriously contemplating a new enterprise and needing only a small area of land. The fact remains that pressure for subdivision within rural areas comes almost exclusively from demand for residential opportunities. Recognising this will help Councils better manage the needs of agriculture and the need for residential use.

4.6 RURAL ZONES

There are three rural zones in the VPPS whose purposes differ in the following respects:

Rural Zone

To provide for the sustainable use of land for Extensive animal husbandry (including dairying and grazing) and Crop raising (including Horticulture and Timber production).

To encourage:

- An integrated approach to land management.
- Protection and creation of an effective rural infrastructure and land resources.

¹¹ See High Court of Australia decision in *Kentucky Fried Chicken Pty Ltd v Gantidis* 40 LGRA 132 at 141:

"However, the mere threat of competition to existing businesses, if not accompanied by a prospect of resultant overall adverse effect upon the extent and adequacy of facilities available to the local community if the development be proceeded with, will not be a relevant town planning consideration."

See also Planning Appeals Board decision in *Shell Company Ltd v City of Frankston and Amoco Ltd* 8 APAD 126:

"Town planning is not concerned with general economic regulation or the rationalisation of product markets; rather it is concerned with promoting consistency between various uses of land. Town planning provides a fetter on our free enterprise market system, but it is not designed to replace that system with a form of centralised economic decision making. Moreover, competition is an essential ingredient of the market system."

- Improvement of existing agricultural techniques.
- Protection and enhancement of the bio-diversity of the area.
- Value adding to agricultural products at source.
- Promotion of economic development compatible with rural activities.
- Development of new sustainable rural enterprises.

Environmental Rural Zone

To give effect to the environmental outcome specified in the schedule to this zone.

To conserve and permanently maintain flora and fauna species, soil and water quality and areas of historic, archaeological and scientific interest and areas of natural scenic beauty or importance so that the viability of natural eco-systems and the natural and historic environment is enhanced.

To encourage development and the use of the land which is in accordance with sound management and land capability practices, and which takes into account the environmental sensitivity and bio-diversity of the locality.

Rural Living Zone

To provide for residential use in a rural environment.

To encourage:

- An integrated approach to land management.
- Protection and creation of an effective rural infrastructure and land resources.
- Improvement of existing agricultural techniques.
- Protection and enhancement of the bio-diversity of the area.
- Value adding to agricultural products at source.
- Promotion of economic development compatible with rural living activities.
- Development of new sustainable rural living enterprises.

In the Report of the Advisory Committee on the Victoria Planning Provisions (VPPS) — August 1997, the need for additional rural zones was considered [see Appendix E]. At that stage, the Advisory Committee considered there was no convincing justification for a further zone. It stated:

Three broad categories of zones are provided for — agricultural, environmental and living – which describe the primary characteristics of each zone. It does not mean that elements of each characteristic may not be found within other zones, nor that the zones will not reflect other qualities and values, but no submission has convinced the Committee that there is any policy outcome or objective which could not be provided for within the ambit of the rural zones as they presently stand.¹²

¹² Report of the Advisory Committee on the Victoria Planning Provisions (VPPS) - August 1997, page 69

Since then panels have had the opportunity of observing how Councils have applied the rural zones and how they have used local policies and the MSS to identify outcomes in respect of their rural areas. Understanding about the way in which rural zones can be used has also evolved since then.

The Rural Living Zone has been applied largely to existing rural residential zones and subdivisions.

The Environmental Rural Zone was initially used very little and certainly with no consistency. Some Councils refused to use it, even in suitable locations, because of a prejudice against the name, preferring instead to use the Rural Zone with an overlay. However, its application has expanded due to the much tighter controls over use compared to the Rural Zone and because the same degree of control cannot be achieved by the use of overlays. It has been recommended where Councils wish to control agricultural uses, particularly timber production, in areas of high quality agriculture land or of high landscape quality, or in water catchments. Likewise it has been recommended for application over cleared agricultural land which is surrounded by forested, steeply sloping land in an area of high fire risk. Maroondah and Manningham sought to use the Environmental Rural Zone to achieve environmental outcomes in areas characterised by housing. Although the panels in those cases found that this was an inappropriate use of the zone, it is a good example of trying to use the zone as a 'catch all' when other zones appear to be less meaningful or less well suited to a particular situation.

The Rural Zone has been the most widely applied of the rural zones. It has been applied almost exclusively to all rural land other than recognised rural residential areas, with little regard to whether the land is used primarily for agriculture or residential purposes, or to the amount of vegetation cover or other physical or environmental constraints.

The panels believe that experience with the rural zones demonstrates a number of shortcomings with the zones and overlays as they presently stand. **It is recommended that the principles underlying the rural zones and the environmental overlays should be reviewed and modifications made to the VPPS to ensure that important objectives in respect of agriculture and rural land can be met effectively.**

These shortcomings can be characterised as follows.

The ambit of the Rural Zone is too wide. Its distinguishing purpose is to provide for the sustainable use of land for extensive animal husbandry and crop raising. There is no mention among its purposes of residential use. Presumably when residential is a significant use, it was intended that the Rural Living Zone should be used. However, this is not the case in practice. There are large areas of rural Victoria included in the Rural Zone where residential use is a primary purpose of land, even though it may be being used for agricultural purposes as well. It is in these circumstances that there is greatest potential for conflict between residential and agricultural uses, particularly when the changing trends in agriculture outlined above are considered.

The issue is whether greater emphasis needs to be given in certain locations to the primacy of agriculture over residential uses. This could be achieved by the creation of an Agriculture Zone. The primary purpose of the zone would be the same as the current Rural Zone, but the name of the zone would better reflect this purpose. Dwellings would be more strictly controlled and become Section 2 uses. In some way the nexus between subdivision and the expectation this gives rise to in terms of the right to construct a dwelling would need to be broken.

Clearly the Agriculture Zone would only be suitable for application to areas where productive agriculture was seen to be the primary purpose of the land.

The Rural Living Zone has tended to be applied to small acreage areas where there is an expectation that subdivision will occur (if it hasn't already) and that any productive use of the land will be ancillary to its residential use. There has been little thought given to its application to areas of larger lot size where residential use is nevertheless likely in conjunction with an ongoing use for agriculture. Little use has been made of the potential to broaden the range of minimum subdivision lot sizes or to take them much beyond the 8 hectares default specified in the VPPS.

It is probably too late to alter the nature and common perceptions of the purpose of the Rural Living Zone. Rural residential use is a strongly established and recognisable form of development in rural Victoria. It is appropriate to retain a zone whose primary purpose is to provide for residential use in a rural environment.

The principle that overlays should only control development, not use, has led to the Environmental Rural Zone being used as a catch-all when there is a perceived need to control use more closely than the Rural Zone allows.

The panels believe it needs to be acknowledged that there are circumstances where it is more important to control use than development in order to achieve identified environmental or other land use outcomes. Water catchments is one example, which is discussed in Section 5 where a new Water Catchment Overlay is recommended. The control of timber production in areas of landscape significance is another.

The panels believe that the Environmental Rural Zone is being misused in circumstances beyond its original intended purpose, which was akin to a conservation zone. The panels do not consider it is fundamentally suited for application to productive agricultural land, where agriculture is the primary purpose, simply because some of the controls it offers are more suited to the circumstances or status of the land than any other mechanism. Other mechanisms should be devised or modified to best meet their required objectives (even if this involves overlays controlling some uses) than continuing to distort the Environmental Rural Zone. The Environmental Rural Zone should remain as the zone to be applied where all uses should be subordinate to the environmental qualities or context of the land.

However, this approach leaves the need for a zone of general application where it is recognised that there is a need to balance the competing interests of residential use, agriculture and environmental qualities depending on the circumstances. The panels consider that this is an appropriate role for the Rural Zone, although the purpose of the zone would need to be modified to reflect this.

It is therefore recommended that consideration should be given to expanding the suite of rural zones in the VPPS to encompass the following:

- **Agriculture Zone**
 - apply to land where the primary purpose is productive agriculture and primacy is to be given to agriculture over residential use
 - purpose same as current purpose of Rural Zone
 - residential use would be strictly controlled and limited
 - no expectation of a dwelling on every lot
 - no nexus between subdivision and the right to construct a dwelling
 - minimum subdivision size would be based on land capability
- **Rural Living Zone**
 - same provisions as currently in VPPS
 - continue to apply as presently used
 - encourage larger minimum lot sizes where appropriate and where residential use is the primary purpose of the land
- **Environmental Rural Zone**
 - same provisions as currently in VPPS
 - restrict application to land where all uses should be subordinate to the environmental qualities or context of the land
 - limit its use as a catch-all by modifying overlays to fulfil the purposes that the Environmental Rural Zone is currently meeting by reason of its control over certain uses
- **Rural Zone**
 - use as a zone of general application where the competing interests of residential use, agriculture and environmental qualities will need to be balanced depending on the circumstances
 - modify the purpose of the zone in the VPPS to reflect this role
 - apply to all rural land that does not fit within one of the other rural zones

4.7 SUSTAINABLE AGRICULTURE

Sustainable agriculture, like any sustainable development, seeks to ensure that the operation will not have any adverse environmental or other impacts that will prevent it from continuing to operate at the same level into the future.

Agriculture is not a use that lends itself well to being controlled by permit. Permits are good at setting conditions for development (buildings and works) or spatial parameters (eg establishing setbacks from features such as roads, watercourses etc) but are not so good in governing the ongoing way in which certain activities will be carried out. This is because the nature of agricultural activities are constantly changing, in response to either price fluctuations, weather, new machinery, processes, methods or products, or different animals or crops being used.

Requiring permits for agriculture activities is unpopular with farmers and potentially stifling to their capacity to respond to changing circumstances because of the need to seek constant modifications. Frequently, council officers issuing permits lack the experience to frame conditions in a workable manner. However, this is not to say that there should be no control over the way in which farmers carry out agricultural activities. Unfortunately, agricultural practices have been a major contributor to land degradation, and the pollution of watercourses from fertilisers remains one of the biggest headaches for catchment management.

Appropriate land management, which results in sustainable agriculture and improved catchment management, is unlikely to result from a planning regime that requires permits for all sorts of agriculture. Rather, it will come from the development of codes of practice, which have widespread industry support and which are incorporated into the day-to-day land management practices of all farmers, irrespective of when they initially commenced their particular agricultural use.

The planning system that the new format planning schemes have introduced is well placed to facilitate this approach in a number of respects.

4.7.1 CODES OF PRACTICE

Good land management aimed at environmentally sustainable agriculture will be based on implementing certain performance standards, which will result in identified objectives or outcomes being achieved. A key component of the new planning system is its strategic focus. New format planning schemes are intended to facilitate appropriate development and the use of performance based provisions is encouraged. The techniques employed in the VPPS are designed to accommodate performance-based provisions.

A good example of this approach is timber production. Clause 52.18–2 of the VPPS requires that all timber production must comply with the Code of Forest Practices for Timber Production whether the use commenced before or after the coming into effect of this requirement. Timber production is a Section 1 use in the Rural Zone provided

certain requirements are met, including the requirements of Clause 52.18. Changes have been recently made to Clause 52.18 to address particular issues relating to the repair of roads used for cartage during timber harvesting operations, which were identified during the course of panel hearings in respect of the new format planning schemes. Timber production not meeting the Section 1 conditions is a Section 2 use in the Rural Zone, but must still meet the requirements of Clause 52.18.

The Code of Forest Practices for Timber Production has been developed in conjunction with the timber industry and embodies best practice management for timber production to:

...ensure that commercial timber growing and timber harvesting operations are carried out on both public land and private land in such a way that:

- (a) promotes an internationally competitive forest industry;
- (b) is compatible with the conservation of the wide range of environmental values associated with the forests; and
- (c) promotes the ecologically sustainable management of native forests proposed for continuous timber production.

The intent of the VPP provisions is to establish a performance basis for carrying out the use of timber production. Some of the standards are non-negotiable, such as compliance with the Code of Forest Practices for Timber Production. Other standards set out in the conditions to Section 1 can be departed from if a permit is granted. The conditions of any permit should relate only to the reason why a permit is required.

Another example of this performance-based approach to agricultural activities is the use of cattle feedlot. All cattle feedlots must comply with Clause 52.26, which requires compliance with the Victorian Code for Cattle Feedlots – August 1995. Clause 17.06–2 of the SPPF requires reference to the Code of Practice: Piggeries 1992 in respect of piggeries, although this does not have the same status as the codes for timber production or cattle feedlots.

Information supplied to panels during the course of their hearings indicates a growing need to establish codes of practice for the establishment and ongoing management of various forms of agricultural activity.¹³ Poultry farming is a perennial source of conflict. The growth in dairying and viticulture is resulting in new concerns being raised about them. Traditionally, these two activities have fallen within the ambit of extensive animal husbandry and crop raising and have not needed permits within the Rural Zone or former equivalents. The trends in intensification and mechanisation within these industries are creating a range of problems which need to be addressed. The panels do not believe that simply requiring permits for them is the answer. Rather, industry standards relating to the establishment and ongoing management of these uses need to

¹³ See also Report of the Advisory Committee on the Victoria Planning Provisions (VPPS) - August 1997, Section 16.9, planning permit 255-258

be developed and then applied across the board. The full range of impacts needs to be addressed, including traffic impact on roads, catchment issues, spray drift etc.

With respect to spray drift, this is an issue not confined to viticulture. It is a major source of conflict between agricultural and residential use. It has potential health impacts, as well as possibly contaminating land, which may affect its future suitability for residential subdivision.¹⁴ It may also have impacts for other agricultural uses, particularly those aimed at the growing 'clean and green' market. It may therefore be appropriate for DOI to work in conjunction with DNRE to develop a code of practice relating to chemical spraying.

The panels recommend that DOI should take the lead in coordinating, in conjunction with industry groups, local government, catchment management and water authorities, and relevant government departments:

- **The development of codes of practice relating to various agricultural uses, which establish standards and a performance based approach to the management of land for these purposes. They should be designed for inclusion in the VPPS as the basis on which these activities will be conducted. Consideration should be given to whether they should apply to all existing uses, as well as new uses, in a similar fashion to the Code of Forest Practices for Timber Production.**
- **The ongoing review of the VPPS to:**
 - **incorporate particular provisions relating to specific agricultural uses, including codes of practice;**
 - **include conditions that, if met, result in no permit being required for specific agricultural uses in appropriate locations or zones.**

4.7.2 LAND MANAGEMENT PLANS AND USE OF SCHEDULES

Codes of practice and the particular provisions of Clause 52 are applicable to specific activities or forms of development. However, in some locations, there may be land management practices, which are common to a range of uses, that should be carried out in certain ways in order to avoid detrimental impacts or to achieve other outcomes. Salinity management plans are one example: vegetation management plans are another.

Various provisions of the rural zones require a permit for certain things specified in schedules (earthworks and dams above a certain size) and overlays require permits for things unless it is stated in the schedule that **no** permit is required.

¹⁴ This was a particular problem identified by the panel considering the Mildura New Format Planning Scheme, where considerable spraying of vineyards and market gardens occurs and where spray drift was a concern to neighbouring uses such as schools and residences. Given the extent and quantity of spraying, it also raised the possibility of chemical contamination of large areas designated for long-term urban growth.

The provisions are intended to give Councils the opportunity to customise zones and overlays to respond to the particular needs of their municipalities or areas within them. Thus, if earthworks of a particular sort cause concern in a particular area, they can be identified in the schedule to the Rural Zone and a permit can be required.¹⁵

The ability to schedule out certain buildings or works from the need for a permit in a range of overlays is intended to encourage Councils, referral authorities and other organisations to develop performance standards, conditions or management plans, so that if development complies with them no permit is required.

At this stage, relatively few Councils have taken advantage of these provisions in overlays to schedule out development from the need for a permit. In some cases, where exemptions had been made, they were not performance based and little justification was provided. It appeared that many Councils had not fully appreciated the opportunities offered by these provisions to develop management plans or the like.

As stated previously, there are important distinctions between use and development of land, which planning schemes and planning permits can control but which are subject to existing use rights, and land management. The panels believe that a commitment to **proper land management** by land owners and managers is the only effective, long-term way in which good catchment management will be achieved and problems of land degradation, such as salinity and erosion, will be properly managed or reversed. The challenge will be to ensure that the distinctions are addressed in a way that overcomes issues and arguments relating to existing use rights, and avoids the need for excessive permits or referrals. An important mechanism in achieving this will be to encourage land managers to assume responsibility for the impacts that their activities may have and to manage their land according to identified standards or in line with agreed management plans.

The panels believe that DOI should be offering guidance in how to achieve this in practical terms. For instance, at present, there is a large gap between the general principles embodied in most catchment management plans and the sort of details needed to guide individual land owners in the day-to-day management of their land. An important role for DOI, DNRE, catchment management authorities and the like will be to identify in terms of practical detail what constitutes good land management in particular circumstances. The development of suitable models will be of great assistance to Councils to enable them to make appropriate use of the overlay provisions.

¹⁵ This provision was modified in the VPPS in particular response to the needs of the Municipalities Against Salinity for Northern Victoria: see Report of the Advisory Committee on the Victoria Planning Provisions (VPPS) - August 1997, Section 16.8.

It may be that as experience is gained with the new planning system, legislative change may be needed to better address the way in which the system deals with issues of ongoing land management. The panels believe this should be an important component of the monitoring and review undertaken by DOI in respect of the planning reforms.

It is therefore recommended that DOI should:

- **Monitor the way in which the new planning system integrates with issues relating to ongoing land management. It should consider if legislative change is required to better achieve the objectives of planning set out in the *Planning and Environment Act 1987*.**
- **Provide guidance on how to encourage land managers to assume responsibility for the impacts that their activities may have and to manage their land according to identified standards or in line with agreed management plans.**
- **Develop suitable models to assist Councils in making appropriate use of the overlay provisions, which enable certain buildings and works to be scheduled out of the need for a permit.**

4.8 DAMS

The proliferation of dams throughout rural Victoria is causing disquiet to a number of organisations such as VicRoads, water authorities and Councils due to their size, impact on downstream water quantity and safety.

In the rural zones, Clauses 35.01–3, 35.02–3 and 35.03–3 all require a permit for:

A dam which is any of the following:

- a capacity greater than that specified in the schedule to this zone
- on a permanent waterway
- diverts water from a permanent waterway

It would seem that if there is a concern about the effect of size and number of dams on downstream water quantity, there is already adequate power to control their construction. It is possible that insufficient attention has been paid to the need for a permit for a dam **of any size** diverting water from a permanent waterway. Education of local contractors and plant operators about this may be something that Councils and water authorities should address.

However, simply requiring a permit does not address the issue of whether or not a permit should be granted. On the one hand, the construction of dams is a necessary development to support the agricultural and horticultural use of the land. On the other hand, the proliferation of too many large dams can interfere with downstream water supply or restrict further agricultural activity due to commandeering catchment capacity. Either way, it is a situation likely to give rise to disputes in the future.

Councils, water authorities and catchment management authorities need to give urgent attention to setting standards that will ensure equitable future access to catchments for the purpose of harvesting water. This will depend on a variety of locally variable circumstances. The problem is that in some areas experiencing growth in vineyards, huge dams are being constructed, often much larger than necessary. The reason is that the size is based on an industry formula relating to the number of vines, irrespective of local rainfall.

In terms of dam safety, there is need to ensure that dams are constructed in a manner which minimises risk of dam failure. The onus should be placed on the developer to ensure that this occurs. One of the problems associated with the safety of dam walls is the competency of those designing or constructing them. The panels do not believe the onus for assessing the adequacy of the dam design should rest with a Council's planning staff.

It was recommended in the Wangaratta Panel Report that a new Clause 52.32 should be included in the VPPS, which would include a mandatory requirement for the submission of certified engineering plans as part of the planning permit application to prove the adequacy of design. This would also address more comprehensively the concerns about the structural safety of dams expressed in the Report of the Advisory Committee on the Victoria Planning Provisions (VPPS) — August 1997 [see p 253].

The panels therefore endorse the recommendation that the VPPS should be amended to introduce a particular provision in Clause 52 relating to dams. This should include a requirement for certified engineering plans to prove the adequacy of design to be submitted as part of an application. It should also be a requirement that applicants include an assessment of the impact that construction of the dam will have on water flows and the amount of water available to downstream users.

As a matter of urgency, DOI should liaise with DNRE, water authorities and catchment management authorities about suitable policies to guide the equitable access to water resources.

SECTION 5 CATCHMENT MANAGEMENT

5.1. SIGNIFICANCE OF CATCHMENTS

The importance of water catchments cannot be overemphasised. Water will be the most valuable single resource of the new millennium. For virtually every other form of resource, substitutes exist or can be manufactured. There is no substitute for an adequate supply of clean water.

Our society has a history of being wasteful of resources or using them in a non-sustainable manner through either ignorance of the consequences, not appreciating their significance, their plenitude or simply greed.

Particularly in this dry continent of Australia, we can no longer afford to ignore the critical importance of clean water and the need to manage our catchments to ensure an ongoing, adequate supply of this resource. The consequences of failure in this regard have been foreshadowed by the recent experiences of Sydney.

The sobering experience in Sydney in late 1998 when it was deprived of drinkable water due to contamination is an object lesson in why catchment management is so critical. The importance of maintaining quality and quantity of water in catchments cannot be over-emphasised. Victoria's emergence as a supplier of 'clean green' agricultural produce will also depend on its supply of water.

This significance is recognised in the SPPF, in particular Clause 15.01.

Good catchment management is particularly important in open catchments where all land users — residents, farmers and others — need to acknowledge the potential hazards of their activities and to accept that restrictions and conditions may be necessary for the overall benefit of the community.

No doubt in Sydney there was no one single development or land management practice that led to the contamination of its water. More likely it was the incremental creep of many minor decisions, omissions and oversights that led to the current problem. It is this cumulative impact of individually insignificant developments and activities that must always be considered and guarded against. Two key sources of pollution in this respect are septic tanks and farming practices.

5.2. SEPTIC TANKS

The issue of ongoing maintenance of septic tanks is a matter that cannot be ignored. Ensuring that septic tanks continue to function effectively is just as important as ensuring they are adequately designed and installed in the first place.

Some water authorities have used their position as a referral authority to require Section 173 Agreements, which relate to the management and maintenance of septic tanks, to be entered as a condition of a permit being granted for a dwelling.

The panels do not consider that Section 173 Agreements are the most suitable mechanism to deal with this issue. Section 173 Agreements are a clumsy mechanism;

they only capture new development, not existing septic tanks, which are just as important; and their enforcement provisions through VCAT are unsuited to the nature of the problem.

The panels consider that a local law would be a more appropriate way of dealing with the ongoing maintenance of septic tanks. This would have the advantage of applying to all septic tanks, irrespective of their date of installation. The local law could place a requirement on landowners to maintain their septic tanks and to have them regularly maintained by inspection and cleaning, say every two or three years. This could be demonstrated by production of a receipt or certificate from a recognised contractor. Failing production of adequate proof of maintenance by the landowner, the Council (or its agent, which may be the water authority) would have the right to carry out maintenance on the septic tank and recover the cost from the landowner. This process could be linked to the issue of rate notices. There would need to be agreement between the Council and the water authority on the appropriate cycle and criteria for maintenance.

Clearly, the concept of using a local law to address the issue of septic tank maintenance will require further work. It should be investigated by DOI in conjunction with the water industry and the Victorian Council for Catchment Management Authorities. Ideally, a model local law should be developed which any council could use.

It is therefore recommended that DOI, in conjunction with the water industry, Victorian Council for Catchment Management Authorities and local government, should investigate the development of a model local law to deal with the ongoing maintenance of septic tanks.

5.3 PLANNING CONTROLS IN WATER CATCHMENTS

5.3.1 STATE PLANNING POLICY FOR CATCHMENTS

In Victoria, the significance of catchments is reflected in the Catchment Management Plans prepared by catchment management authorities and is recognised in the SPPF, particularly Clause 15.01. It is worth quoting the clause in full to emphasise this significance:

15.01 Protection of catchments, waterways and groundwater

15.01-1 Objective

To assist the protection and, where possible, restoration of catchments, waterways, water bodies, groundwater, and the marine environment.

15.01–2 General implementation

Decision-making by planning and responsible authorities must be consistent with any relevant requirements of State environment protection policies as varied from time to time (Waters of Victoria and specific catchment policies).

Catchment planning and management

Planning authorities must have regard to relevant aspects of:

- any regional catchment strategies approved under the Catchment and Land Protection Act 1994 and any associated implementation plan or strategy, including regional vegetation plans, regional drainage plans, regional development plans, catchment action plans, landcare plans, and management plans for roadsides, soil, salinity, water quality and nutrients, floodplains, heritage rivers, river frontages and waterways.
- any special area plans approved under the Catchment and Land Protection Act 1994.

Planning and responsible authorities should coordinate their activities with those of the Boards of catchment management authorities appointed under the Catchment and Land Protection Act 1994 and consider any relevant management plan or works program approved by a catchment management authority.

Planning and responsible authorities should consider the impacts of catchment management on downstream water quality and freshwater, coastal and marine environments and, where possible should encourage:

- The retention of natural drainage corridors with vegetated buffer zones at least 30m wide along waterways to maintain the natural drainage function, stream habitat and wildlife corridors and landscape values, to minimise erosion of stream banks and verges and to reduce polluted surface runoff from adjacent land uses.
- Measures to minimise the quantity and retard the flow of stormwater runoff from developed areas.
- Measures, including the preservation of floodplain or other land for wetlands and detention basins, to filter sediment and wastes from stormwater prior to its discharge into waterways.

Responsible authorities should ensure that works at or near waterways provide for the protection and enhancement of the environmental qualities of waterways and their instream uses and are consistent with Guidelines for Stabilising Waterways (Rural Water Commission 1991) and Environmental Guidelines for River Management Works (Department of Conservation and Environment 1990), and should have regard to any relevant river restoration plans or waterway management works programs approved by a catchment management authority.

Water quality protection

Planning and responsible authorities should ensure that land use activities potentially discharging contaminated runoff or wastes to waterways are sited and managed to minimise such discharges and to protect the quality of surface water and ground water resources, rivers, streams, wetlands, estuaries and marine environments.

Incompatible land use activities should be discouraged in areas subject to flooding, severe soil degradation, groundwater salinity or geotechnical hazards where the land cannot be sustainably managed to ensure minimum impact on downstream water quality or flow volumes.

Planning and responsible authorities should ensure land use and development proposals minimise nutrient contributions to waterways and water bodies and the potential for the development of algal blooms, consistent with the Preliminary Nutrient Guidelines for Victorian Inland Streams (EPA 1995), the Victorian Nutrient Management Strategy (Government of Victoria 1995) and any nutrient or water quality management plans approved by Government.

Responsible authorities should use appropriate measures to restrict sediment discharges from construction sites in accordance with Construction Techniques for Sediment Pollution Control (EPA 1991) and Environmental Guidelines for Major Construction Sites (EPA 1995).

Planning and responsible authorities should utilise mapped information available from the Department of Natural Resources and Environment to identify the beneficial uses of groundwater resources and have regard to potential impacts on these resources of proposed land use or development.

15.01–3 Geographic strategies

Planning and responsible authorities should have regard to regional catchment strategies where relevant.

For land adjoining the Gippsland Lakes, planning and responsible authorities should have regard to Minister's Direction No. 5 Gippsland Lakes Strategy.

For land adjoining the Murray River, planning and responsible authorities should consider the recommendations of the Murray River Regional Environmental Plan No. 2 (REP2) of New South Wales.

5.3.2 VPPS TREATMENT OF CATCHMENTS

When the VPPs were in the course of preparation various submissions raised the issue of whether adequate controls exist within the VPPs to control use and development within water supply catchments. The need for an additional overlay was suggested.

In the Report of the Advisory Committee on the Victoria Planning Provisions (VPPs) — August 1997, the Advisory Committee reported on these submissions as follows:

The Committee is informed that DOI recommends an Environmental Rural Zone be applied to protect water catchments. This zone both affords discretion over the use of land for agriculture and prohibits a range of other uses which are generally inappropriate in water catchments, such as intensive animal husbandry, aquaculture, and abattoir.

DNRE (87) has recognised the applicability of the Environmental Rural Zone to proclaimed catchments, or now 'Special Water Supply Catchment Areas' under the Catchment and Land Protection Act 1994, even though a preference was indicated for a development control overlay related solely to water catchment protection.

Discussions have suggested that a generic natural resource overlay might be applied to water supply catchments, but the Committee's view is that the zone option would appear to be the most useful approach, offering land use, as well as development, controls. When the characteristics of the locality require it, an Environmental Significance Overlay may be appropriate, however, a separate water catchment overlay is not recommended.

While the protection of water quality could be seen as fitting generally within the present purposes of the Environmental Rural Zone, nevertheless the Committee considers it would be appropriate to add the protection of water quality as a specific purpose of this zone. The decision guidelines in Clause 35.02–6 already refer to the impact of proposals on water quality.

Amendment V3 amended the Environmental Rural Zone in accordance with the Advisory Committee's recommendation so that the purpose of the Environmental Rural Zone now includes:

To conserve and permanently maintain flora and fauna species, soil and **water quality** and areas of historic, archaeological and scientific interest and areas of natural scenic beauty or importance so that the viability of natural ecosystems and the natural and historic environment is enhanced.

No specific direction is given in the *Manual for the Victoria Planning Provisions* as to how water catchments should be dealt with in new format planning schemes.

5.3.3 TREATMENT OF CATCHMENTS IN EXHIBITED PLANNING SCHEMES

In planning schemes prepared prior to Amendment V3 Councils have generally not used the Environmental Rural Zone over catchments, but have applied the Rural Zone, Rural Living Zone and Township Zone, with an Environmental Significance Overlay.

This was the approach adopted in the Moorabool Planning Scheme. It is useful to refer to Moorabool in this context because it is a Shire where over two-thirds of the land, including its most highly productive agricultural land, is within proclaimed water catchments for Ballarat, Geelong, Melton, Bacchus Marsh and other towns within the municipality. The difficulties Moorabool faces with the extent of its water catchments and the potential conflicts between land uses, which this presents, are typical throughout Victoria. Likewise the concerns of the three water authorities in question reflect the concerns of other water authorities throughout the State on this issue.

The environmental objective of the Environmental Significance Overlay used by Moorabool (ESO1 — Proclaimed Water Catchment Areas) is:

- To provide for appropriate development of land within proclaimed water catchments.
- To protect quality and quantity of water produced within proclaimed water catchments.

A permit is required to subdivide land, to construct a building, construct or carry out works, and to remove, destroy or lop any vegetation. There are exemptions specified in the Schedule to the Overlay so that the requirements of the Overlay do not apply where:

- The proposal is for the erection of a dwelling in a township zone.
- The proposal is for the erection of a dwelling in the rural zone, where the lot exceeds 40 hectares.
- A permit is not required to construct a building or to construct or carry out works which are ancillary to a dwelling, and which do not have an area in excess of 30 square metres.

There are no referral provisions in ESO1. However, because it covers land in proclaimed water catchments, the referral provisions of Clause 66 apply. These provide as follows:

66 REFERRALS

Applications of the kind listed below must be referred to the person or body specified as a referral authority in accordance with Section 55 of the Act. This requirement is in addition to any other referral required in this scheme.

66.04 Use and development

KIND OF APPLICATION	REFERRAL AUTHORITY
To use or develop land that is within a Special Water Supply Catchment Area listed in Schedule 5 of the Catchment and Land Protection Act 1994 and which provides water to a domestic supply.	The relevant water board or water supply authority.
This does not apply to an application for a sign, fence, roadworks or unenclosed building or works ancillary to a dwelling.	

It should be noted that these referral provisions apply only to an application for use and development. Therefore, if no application for use or development is required, no referral is required. As a consequence, the water authorities are concerned about several gaps in the ambit of control over use and development in water catchments. These concern septic tanks associated with dwellings and certain agricultural uses.

The gaps arise because the Environmental Significance Overlay only controls buildings and works, not use. Under the provisions of the Rural Zone, crop raising, extensive animal husbandry and timber production are all agricultural uses that do not require a permit. In the Rural Zone, Rural Living Zone and Township Zone, no permit is required for a dwelling provided certain requirements are met. In each case, one of the requirements is that if a reticulated sewerage system is not available, the wastewater must be treated and retained on the site in accordance with the State Environment Protection Policy (Waters of Victoria). In the case of the Rural Zone and the Rural Living Zone, another requirement relates to the size of the lot, which is 40 hectares in the case of the Rural Zone and six hectares in the case of the Rural Living Zone.

The result is that the water authority will have no input in respect of:

- any new uses involving crop raising, extensive animal husbandry or timber production in the Rural Zone;
- the use and development of a dwelling in a Township Zone;
- the use and development of a dwelling in the Rural Zone on lots greater than 40 hectares.

Administration of the provisions of the Planning Scheme relating to septic tanks in these instances will rest entirely with the Council.

This contrasts to the current situation where the water authorities have a much greater input. In particular, Central Highlands Water has had a practice of requiring Section 173 Agreements to be entered to in order to ensure the ongoing maintenance of septic tanks. The loss of its capacity to require these Section 173 Agreements is of particular concern to it.

5.3.4 VIEWS OF WATER AUTHORITIES

Each of the three water authorities in Moorabool — Western Water, Central Highlands Water and Barwon Water — drew attention to the need to protect water assets from unplanned development. Maintaining a strong catchment management program to prevent pollution of the raw water is the first line of defence in the protection of potable water supplies. The higher the risk of contamination from an inhabited catchment, the higher the level of treatment needed to protect the public health. By protecting water catchments from contamination due to biological sources and nutrients, this can help ensure both a reasonable standard of water quality and, through ensuring a minimum level of treatment, reduce the cost of water to consumers.

The water authorities all supported the principle that all private land in proclaimed water catchments should be included in an Environmental Rural Zone with an Environmental Significance Overlay, supported by a strengthened policy base.

The Environmental Rural Zone is supported because:

- It is the preferred DOI approach to the protection of water catchments.
- It would require a permit for all agricultural uses and dwellings.
- As a consequence, all applications for use and development would be referred to the water authorities under Clause 66.04.
- It prohibits certain uses such as intensive animal industry, which are considered inappropriate in a proclaimed water catchment.

5.3.5 VIEWS OF COUNCILS AND LANDOWNERS

At the panel hearing, the Moorabool Shire Council did not support application of the Environmental Rural Zone because:

- Nearly two-thirds of all private land within the municipality would be included in the Zone.
- Most of the land has little or no environmental significance other than its status as being within a water catchment.
- Much of the land is conventional farming land and includes the high quality agricultural land in the western part of the Shire. The primary purpose of this land is best reflected by the purposes of the Rural Zone, which include to *'provide for the sustainable use of land for Extensive animal husbandry (including dairying and grazing) and Crop raising (including Horticulture and Timber production).'*
- The effect on both the resources of Council and landowners of requiring a permit for all new agricultural uses would be onerous.
- It is doubtful if the water authorities, as referral authorities, possess the capacity to deal with the number of referrals that would be generated by an Environmental Rural Zone over such a large area.

5.3.6 PREFERRED APPROACH

In the case of the Moorabool Planning Scheme, the Panel considered the arguments raised by both the water authorities and the Council all had substance. The Panel agreed with the water authorities that the planning regime in the exhibited Moorabool Planning Scheme creates gaps in the level of control over significant potential sources of pollution and, in this respect, is inadequate.

On the other hand, the virtual blanket of referral as a result of applying the Environmental Rural Zone over such an extensive area is likely to be a strain on the resources of the water authorities and does not support the principle of a performance based planning system, which is one of the objectives of the planning reform program.

Referrals Within Catchments

In September 1997, the Referral Authorities Advisory Committee released a Discussion Paper addressing the practical difficulties associated with the current referrals process. One of the approaches advocated in the Discussion Paper was the principle of requiring referral authorities to identify the criteria by which they assessed certain applications referred to them and to identify the information they required to be submitted with such applications. In association with this approach, it was advocated that applicants should be encouraged to liaise with referral authorities prior to lodging their application to ensure that the information supplied is adequate and the assessment criteria are met.

The Panel considers it is possible to take this approach further so that where certain performance criteria are identified, a referral is only required if those criteria are not satisfied.

Whilst the Panel supports the objective of the water authorities to protect the quality and quantity of water within their catchments, it does not support the concept of control for the sake of control. Rather, the objective behind control should be to ensure that use and development meet certain standards, and to identify those uses and developments that are unacceptable.

There will always be certain uses and developments that will need to be considered on their individual merits because of their unusual nature. But for the majority of more common uses and developments, water authorities should know the criteria by which they would assess such matters and the performance standards that should apply. They should also be aware of those uses and developments that are not acceptable within a proclaimed water catchment. It is the Panel's opinion that water authorities need to make their criteria and performance standards known. Where use and development meet these requirements, referral should not be necessary. Referral should only be required where the criteria or performance standards will not be met and the application is one for which no standard criteria or performance standards are available.

This approach recognises that the roles of referral authorities and responsible authorities are different. It is the role of referral authorities (in this case the water authorities) to identify the standards they require to be met in order to protect the interests they are responsible for. It is the role of responsible authorities to ensure that those standards are met by particular proposals. There needs to be confidence on the part of referral authorities that responsible authorities will properly ensure that their requirements are met. To this end, it will be necessary for referral authorities and responsible authorities to cooperate and identify satisfactory mechanisms for ensuring that the requirements are met.

The Panel regards the work involved with this approach as being the vital next stage in implementing the strategies for catchment management found in the SPPF, the MSS for Moorabool and numerous other councils, and in the catchment management plans of the various catchment management authorities. It will be an implementation of the performance-based approach to planning, which the planning reform program envisages. Whilst it may involve considerable work on the part of referral authorities such as water authorities to codify their requirements in respect of a range of matters, the outcome will be a substantially reduced number of referrals. Only unusual applications for which the referral authority has no standards will need to be referred.

Use of Environmental Rural Zone in Catchments

To facilitate this approach, the Panel believes that preferred controls applying to water catchments should be reconsidered.

Experience with using the Environmental Rural zone and Environmental Significance Overlays have led the Panel to the conclusion that the Environmental Rural Zone is not the most appropriate means by which to deal with water catchments. The Panel agrees with the Council that it is twisting the concept of 'environmental significance' to apply it to land simply because of its status as being within a water catchment. If the reservoir did not exist, the nature of the land would be no different, only its status in terms of being within a catchment would alter.

The Panel therefore believes it is undermining the integrity of the Environmental Rural zone to apply it to land better described by reference to the purpose of the Rural Zone (or the Rural Living Zone for that matter).

However, the Panel also acknowledges that applying the Environmental Significance Overlay to water catchments has shortcomings because of its failure to control use. This is particularly significant because practices associated with agricultural activities are the source of some of the worst pollution of waterways within catchments, eg. through the application of chemicals and fertilisers.

It may be just as important to control the establishment of new crop raising or timber production uses within water catchments, and apply appropriate conditions, as it is to control new development. This cannot be done by means of an overlay.

New Overlay for Water Catchments

Therefore, despite the recommendations of the Advisory Committee on the Victoria Planning Provisions (VPPs), the Panel believes that DOI should consider the introduction of a new type of overlay applying to water catchments that controls use as well as development. It would need to be framed in a way that promoted the approach advocated by the Panel with respect to referral authorities. This envisages that referral

authorities develop and publicise performance standards and conditions in respect of the uses and developments common or likely within their catchments. Referral would only be necessary where use or development could not meet these standards or criteria, or where standard conditions required by the referral authority were inappropriate.

Approach Recommended in Shire of Moorabool

In the interim, until such an overlay can be introduced, the Panel considers that the current DOI preferred approach should be adopted of including the water catchments within an Environmental Rural Zone. This includes land exhibited within the Rural Zone and the Rural Living Zone. They should be differentiated within the Environmental Rural Zone by the minimum subdivision sizes that apply to them under the exhibited Scheme.

The Panel bases this recommendation on the control over use, which it considers essential within a water catchment, that the Environmental Rural zone offers, compared to just relying on the overlay.

However, if the Environmental Rural Zone is applied, the Panel sees no need for the Environmental Significance Overlay to be retained. Dwelling is a Section 2 Use in the Environmental Rural Zone and a permit is also required for any buildings or works specified in Clause 35.02–3. The Council should specify earthworks in the Schedule to the Zone in locations 100 metres from a waterway, wetlands or designated flood plain under Clause 32.02–3 because the land is within a catchment.

Land that is within a residential zone in the catchments which includes a Township Zone or Low Density Residential Zone, should be retained in these zones, but should have an Environmental Significance Overlay applied.

The exhibited ESO1 will need to be modified, both to suit its more restricted application and to more accurately reflect the wording and requirements of Clause 42.01. The current exemptions should not apply. Rather, the Council should work with the water authorities to develop the sort of criteria the Panel has discussed previously, particularly with respect to dwellings. Development that meets these criteria should be included in the Schedule as being exempt from the need for a permit.

The Panel recognises that these outcomes are not ideal. Nevertheless, with the tools presently available, it considers these proposals best meet the needs of protecting the water catchments and reflect a consistent approach to the treatment of catchments.

The MSS will need to be rewritten with respect to catchments to reflect this approach.

Meanwhile, there is an onus on the water authorities to undertake the tasks necessary to implement a performance-based approach to their responsibilities. There is an onus also on DOI to reconsider the need for a water catchment overlay.

In advocating this approach, the Panel is not ignoring the interests or responsibilities of catchment management authorities. They have an important role to play. But in the current statutory framework, referral authority status rests with the water authorities and so it is they who will be most immediately involved in the framing of appropriate schedules to the Environmental Rural Zone and Environmental Significance Overlay.

The panels believe that the approach adopted in the Shire of Moorabool should be adopted elsewhere to promote the consistency of approach that the planning reform program was intended to encourage. In general terms the panels recommend that:

- **Water authorities should develop a series of performance measures and conditions upon which certain use or development may proceed within water catchments without the need for referral to the water authorities.**
- **DOI should consider the introduction of a new Water Catchment Overlay to the VPPs that controls use as well as development.**

SECTION 6 OVERLAYS

6.1 GENERAL ISSUES

There are a number of general issues relating to the use of overlays which emerged from the panels' consideration of new format planning schemes. These include:

6.1.1 DRAFTING THE SCHEDULE AS A PRIMARY FORM OF CONTROL

In some schemes, schedules to overlays were drafted as though they were the main overlay provisions, rather than simply including the information required in response to the VPP provision.

In other instances, additional provisions were included as a **requirement**, rather than simply as a decision guideline. This is contrary to the rule that a planning scheme cannot modify the wording or provisions of any part of the VPPS or schedules included in the Ministerial Direction on the Form and Content of Planning Schemes.

This type of drafting should be rectified as a result of panel comment and DOI scrutiny prior to the gazettal of individual schemes. However, it is a problem that will need to be watched in terms of maintaining quality control over amendments.

6.1.2 INADEQUATE EXPRESSION OF OBJECTIVES

The Environmental Significance Overlay, Significant Landscape Overlay, Vegetation Protection Overlay and Design and Development Overlay all require a schedule to contain a statement of objectives to be achieved. The first three also require a statement of significance.

Overall, panels found the statements of significance and the expression of objectives to be disappointingly bland and generalised. For a proper appreciation of **why** the overlay had been applied, and consequently **how** discretion should be appropriately exercised, one will usually need to look outside the planning scheme, sometimes to a reference document or some land mapping, but more often than not, simply to the physical state of the land itself. There was very little attempt to describe the significance of the land or the outcomes to be achieved with any degree of detail or specificity.

This is not what was intended. Statements of significance and outcomes to be achieved were intended to be place specific. Schedules were intended to incorporate all the relevant information needed on which to base a decision. Where scientific, landscape, urban character or other reports have been carried out, their essence should be extracted and included in the schedules. It may be appropriate to reference them as background material, but it should not be necessary to refer to them in order to understand what the real significance of the place is.

This is a shortcoming that may not be remedied in all planning schemes prior to gazettal. It is a quality control issue that DOI will need to monitor to ensure it is adequately addressed when Councils come to review their schemes. It is also an issue that will need to be addressed when amendments are dealt with.

6.1.3 INADEQUATE USE OF THE SCHEDULING - OUT PROVISIONS

This has already been referred to in the context of sustainable agriculture and land management plans in Section 4.6.2. However, the failure to use the opportunities provided by overlays to identify buildings and works that do not require a permit is not confined only to environmental overlays.

This may be partly explained by the fact that many Councils will not have had time to formulate the sort of management plans or standard conditions contemplated for inclusion in the schedules. But it may also be due to a lack of appreciation on the part of Councils of how these provisions are expected to work.

These provisions are a key mechanism in implementing the planning reform objective of promoting a performance based approach to planning assessment. The idea is that if development meets identified criteria or complies with certain conditions, no permit should be required. The criteria or conditions should be formulated in order to achieve identified objectives.

At present, the majority of instances where development is scheduled out of an Overlay requirement for a permit are expressed as **exemptions**, with little or no justification being provided for their exclusion. They are not being expressed in terms of: *“x buildings or works do not require a permit provided they meet the following conditions...”*

The panels believe it will be useful for DOI to provide guidance to Councils on the way in which the scheduling out provisions of overlays can work and possible models.

6.1.4 APPLICATION OF OVERLAYS TO PUBLIC LAND

There were frequent submissions made by authorities such as Vic Roads and the PTC that overlays, particularly environmental overlays, should not apply to land for which they were the land managers.

The panels believe this is an issue which needs to be dealt with on a Statewide basis. In general terms, it believes that if land has a particular character that justifies the application of an overlay, then **any** buildings or works which have an impact on the reason for the overlay should require a permit. If it can be demonstrated that the buildings or works have been designed to specifically address the issues or purpose of the overlay, then there is provision within the relevant schedules to exempt those

buildings or works from the need for a permit. To date, the ‘permit not required’ provisions of schedules to overlays have not been widely used for this purpose. As familiarity with the operation of the VPPs is gained, it is likely that this provision will be more widely used. However, the panels do not consider that buildings and works should be exempt from the need for a permit under an overlay just because a public authority proposes them or the land is public land.

6.1.5 MULTIPLICITY OF OVERLAYS/CONFUSION ABOUT PURPOSE

In some locations, panels found that Councils had gone overboard in their application of multiple overlays to the same piece of land. In other instances, there was confusion about which was the most appropriate overlay to apply. This was particularly evident with respect to the environmental overlays. Frequently an Environmental Significance Overlay was used when a Significant Landscape Overlay or Vegetation Protection Overlay may have been more appropriate

The panels generally believe that these problems will be overcome, as Councils become more familiar with the use of overlays and more adept at writing specifically targeted statements of significance and objectives. Many panels have made recommendations to combine overlays, apply alternatives or utilise other mechanisms where there has been an unnecessary duplication of control. It is an issue that DOI should monitor as part of the first review of schemes in order to ensure that Councils have responded to the general principle of keeping controls as straightforward as possible.

However, the broader issue of principle is whether all the overlays are necessary. This particularly relates to the environmental overlays. The distinctions in control are minimal and frequently, although not always, the features creating significance will call up the purpose of more than one overlay.

In further reviewing the VPPS, DOI should consider the practical differences between the environmental overlays and the way in which they are being used. It is possible that experience may reveal there is scope to reduce these overlays to one with multiple purposes, so long as the statement of significance and objectives for its application are stated with sufficient clarity and specificity.

It is therefore recommended that DOI should review the operation of the overlays, particularly the environmental overlays, with a view to possibly reducing their number.

6.2 ENVIRONMENTAL SIGNIFICANCE OVERLAY

6.2.1 PROTECTION OF WATERCOURSES

Many rural municipalities are applying the Environmental Significance Overlay to watercourses within their boundaries. They are being applied in response to the need to protect catchments, waterways, water bodies etc. referred to in the SPPF. However,

their proliferation is making planning schemes unduly complex. In addition, there are inconsistencies along the length of a single watercourse where different municipalities have different controls or no controls.

Whilst there have been variations in the extent of land included in the overlay, it most commonly applies to 100 metres either side of a watercourse. A permit is required for all buildings, works and vegetation removal within this distance.

However, overlaps exist between these overlay provisions and zone provisions. For example, under all rural zones, a permit is required for a **building** within 100 metres from a waterway, wetlands or designated floodplain (see Clause 35.01–3 et al). The Environmental Significance Overlay extends this permit requirement of the zone to **works** and **vegetation removal** also within 100 metres of a watercourse.

The panels query why the zone provisions could not also include the need for a permit for earthworks in addition to a permit for a building, within 100 metres of a waterway, wetland or designated floodplain. A permit would then be needed under the zone provisions for a building or works within 100 metres of a waterway, wetlands or designated floodplain without the need to rely on overlay provisions. This would mean that all the various Environmental Significance Overlays applying to watercourses could be removed from planning schemes. This would simplify the schemes and introduce consistency along the length of all waterways.

The only thing that would not then be caught by the zone provisions would be vegetation removal within 100 metres of a watercourse. This is notwithstanding Clause 52.17, which requires a permit to remove, destroy or lop native vegetation, because of all the exemptions listed in the Clause. Clause 52.17 only operates to catch widescale vegetation removal. It does not operate to capture removal of areas less than 0.4 hectares, which can nevertheless be very detrimental to the environment if carried out in close proximity to a watercourse.

One means of overcoming this problem would be to include a provision in Clause 52.17 providing that none of the exemptions apply to the removal of vegetation within a defined distance from a waterway, wetland or designated floodplain. An appropriate defined distance is something that would need to be carefully considered. A 100 metre distance is usually what is specified in Environmental Significance Overlays along watercourses. If this were felt to be excessive when applied on a statewide basis, a 30 metre distance would be in accordance with Clause 15.01 of the SPPF.

Specifically, Clause 15.01–2 provides:

Planning and responsible authorities should consider the impacts of catchment management on downstream water quality and freshwater, coastal and marine environments and, where possible, should encourage:

- The retention of natural drainage corridors with vegetated buffer zones at least 30m wide along waterways to maintain the natural drainage function, stream habitat and wildlife corridors and landscape values, to minimise erosion of streambanks and verges and to reduce polluted surface runoff from adjacent land uses.

The panels therefore suggest that a 30 metre exemption from all the exemptions in Clause 52.17 would be adequate to meet the intent of Clause 15.01–2.

The panels suggest that this measure, in conjunction with the need for a permit for all buildings and works within 100 metres of a watercourse, would go a long way to promote fundamental principles of good catchment management and would facilitate the implementation of strategies about the protection of waterways, which are common to many catchment management plans. The panels consider that the VPPs should be amended to reflect these provisions.

Where provisions protecting waterways are part of the zone and the standard conditions that apply, this reinforces principles of good catchment management, so they are not seen to be something special. On the other hand, the presence of an overlay along watercourses serves to highlight the requirements. It is an effective way of bringing to people's attention that particular care needs to be taken in proximity to watercourses. The problem with the overlay approach is that it becomes an 'optional extra'. It may apply in one municipality but not in the next. Not all watercourses or wetlands are caught by it and it makes planning schemes more complex in terms of the number of maps etc.

There are arguments that support both approaches to this issue. In the panels' opinion, if good catchment management is going to become accepted practice across the board, then fundamental principles such as the protection of watercourses, need to be incorporated into the basic building blocks of a planning scheme, namely the zones. The integration of catchment management with land use and development planning so that they are mutually supportive and complementary is one of the challenges lying ahead for councils, catchment management authorities, water authorities and DOI. The panels believe there is scope for developing performance measures that would be applicable to a wide variety of development along water courses. This is something that should be looked at further. However, at this point, the basic amendments to the VPPs, which the panels have advocated, would be a significant step along the route to implementing the objective and principles set out in Clause 15.01 of the SPPF.

The panels therefore recommend that the VPPs should be amended so:

- **There is a provision in all rural zones that a permit is required to construct or carry out a building *or works* within 100 metres from a waterway, wetlands or designated floodplain.**
- **The exemptions in Clause 52.17 from the need to obtain a permit to remove, destroy or lop native vegetation do not apply to any area within 30 metres from a waterway, wetland or designated floodplain. In other words, a permit is required to remove all vegetation within 30 metres of a waterway, wetland or designated floodplain without exception, except in the case of an emergency.**

6.2.2 NATURAL RESOURCE OVERLAY

In the Report of the Advisory Committee on the Victoria Planning Provisions (VPPS) — August 1997 consideration was given to the need for a Natural Resource Overlay.¹⁶ No recommendation about the introduction of such an overlay was made at that time, other than further review being needed.

The panels believe that experience with the use of the Environmental Significance Overlay and the rural zones generally, have emphasised the need to give further consideration to this concept.

The panels recommend that further consideration should be given to the concept of a Natural Resource Overlay.

6.3 SIGNIFICANT LANDSCAPE OVERLAY

Whilst there has been little objection about the quality of the landscape of the areas where the Significant Landscape Overlay has been applied, most statements of the nature and key elements of the landscape and the landscape character objectives to be achieved have been ill-defined and over-generalised. Nor have they been assisted by helpful decision guidelines included in the schedules. Little thought has been given to the type of development which may mar the landscape, what criteria appropriate development should meet, how impact will be assessed or from what vantage points. This is particularly relevant when wide swathes of countryside are in question, which may range from heavily timbered mountain ranges to high quality agricultural land along creek valleys.¹⁷

¹⁶ Report of the Advisory Committee on the Victoria Planning Provisions (VPPS) - August 1997, Section 9.1, pp 131-135

¹⁷ This has been the case with a number of National Trust Significant Landscapes, which have been omitted from inclusion in a Significant Landscape Overlay because of the size of the area they embrace and uncertainty about the type of development which would justify control.

This is part of the general problem concerning the inadequate expression of objectives and statements of significance in schedules to overlays. However, it is one that DOI may need to give special guidance on, particularly when it comes to identifying key elements of the landscape, as it is these elements which will influence the type of development that should require a permit or the conditions that should apply. The different nature of various landscapes will require a response tailored to the specific needs of each area. The landscape character objectives to be achieved will also need to be balanced by any objectives the council may have with respect to promoting agriculture in the area or any likely agricultural trends which may impact on the key elements of the landscape.

The exception, in terms of identifying specific development, has been timber production, which many Councils recognise may dramatically alter a pastoral landscape. It is noted that the first dot point of Clause 42.03–2 states:

- A permit is required to:
 - Construct a building or carry out works. This does not apply:
 - If a schedule to this overlay specifically state that a permit is not required.
 - To the conduct of agricultural activities including ploughing and fencing (but not the construction of dams) unless a specific requirement for that activity is specified in a schedule to this overlay.

Some Councils have applied an Environmental Rural Zone to areas of landscape significance in order to ensure control over timber production. The appropriate wording of a schedule to the Significant Landscape Overlay may address their needs in this respect. It is a matter that the regional offices of DOI should take up with those Councils concerned.

6.4 HERITAGE OVERLAY

In the Report on Trends and Issues Emerging from Consideration of First Five New Format Planning Schemes, specific attention was drawn to the practice of most Councils to simply replicate the extent of existing heritage controls based on pre-existing studies. It was also noted that panels assessing the new format planning schemes were not evaluating any of the studies on which application of the Heritage Overlay was based or the adequacy of statements of significance due to lack of time.

A new Practice Note has been issued by DOI elaborating on the requirements and application of the Heritage Overlay, which addresses a number of other matters raised in the Report on Trends and Issues Emerging from Consideration of First Five New Format Planning Schemes. However, the panels still consider that the standard of the material upon which Heritage Overlays are based should be upgraded to meet current guidelines and criteria.

It is therefore recommended that DOI should require Councils to include in the program for review of their planning schemes, a review of all places covered by a Heritage Overlay and an assessment of the material upon which it is based to ensure it meets the guidelines and criteria in the Practice Note. Appropriate statements of significance in respect of each heritage place should also be prepared.

In common with many other overlays, guidance by DOI about what is required with respect to statements of significance for heritage places would be helpful to Councils.

Most Councils, in response to submissions by Aboriginal Affairs Victoria, have included references in their MSS to Aboriginal heritage. Many propose studies to further identify Aboriginal cultural heritage sites. A difficulty associated with protecting Aboriginal cultural heritage sites in the planning scheme is that whilst Aboriginal Affairs Victoria is prepared to provide information to the council, it usually requests that sites not be included in the Heritage Overlay because of fears about theft and desecration. This means that there is no direct mechanism available to the council to trigger protection of sites and artefacts through the planning system. There needs to be clarification of how recognition and protection of Aboriginal heritage should be handled in planning schemes.

The panels therefore recommend that DOI prepare specific guidelines for dealing with the recognition and protection of Aboriginal heritage in planning schemes.

In Section 9.3.1 the issue of reference to heritage guidelines is discussed. **As a result, it is recommended that the third dot point of Clause 43.01–5 of the VPPS should be amended to read as follows:**

- **Any applicable heritage study and any applicable conservation policy or heritage guidelines incorporated in Clause 81.**

6.5 INCORPORATED PLAN OVERLAY AND DEVELOPMENT PLAN OVERLAY

6.5.1 OPERATION OF THE OVERLAYS

The operation of the Incorporated Plan Overlay and the Development Plan Overlay were commented on extensively in the Report of the Advisory Committee on the Victoria Planning Provisions (VPPS) — August 1997.¹⁸ The Advisory Committee was particularly critical of the need for a permit for a proposal that was generally in accordance with an incorporated plan or development plan without automatically exempting the application from notice and appeal.

¹⁸ Report of the Advisory Committee on the Victoria Planning Provisions (VPPS) - August 1997, Section 11.2, pp 154-157

This perceived shortcoming has now been addressed. The provisions of both the Incorporated Plan Overlay and Development Plan Overlay now provide that:

An application under any provision of this scheme which is generally in accordance with the incorporated plan [development plan] is exempt from the notice requirements of Section 52(1)(a), (b) and (d), the decision requirements of Section 64(1), (2) and (3) and the review rights of Section 82(1) of the Act.¹⁹

The panels believe this now makes these overlays far more useful as planning tools intended to encourage and facilitate the forward planning and masterplanning of areas. The panels also note the provisions under Division 5 of the *Planning and Environment Act 1987* for a combined permit and amendment process.

6.5.2 PERMITS NOT GENERALLY IN ACCORDANCE WITH INCORPORATED PLAN OR DEVELOPMENT PLAN

There is no ability to grant a permit that is not generally in accordance with a development plan under a Development Plan Overlay.

The same is not the case with an Incorporated Plan Overlay. Under the Incorporated Plan Overlay Clause 43.03–1 states:

A permit granted must:

- Be generally in accordance with the incorporated plan unless a schedule to this overlay specifies otherwise.

Incorporated Plan Overlays have been widely applied to major shopping centres, such as Northland, Highpoint etc. to incorporate concept plans, which have been through a public exhibition and amendment process, into the planning scheme. What panels frequently found in these situations was that schedules to the Incorporated Plan Overlay were drafted to specify that “*a permit may be granted for buildings and works that are not generally in accordance with the incorporated plan.*”

It is interesting to note that this provision, which is clearly contemplated by the VPPS Incorporated Plan Overlay, can lead to the situation where development is permitted not in accordance with the incorporated plan but without requiring any amendment to the incorporated plan. The Overlay only requires that changes to the incorporated plan should be by amendment; it does not specify that such an amendment should take place along with any permit issued for development not in accordance with the incorporated plan. The possibility is therefore contemplated that the incorporated plan will gradually become outdated since there is no imperative to amend it or to achieve consistency between the incorporated plan and permitted developments.

¹⁹ See Clause 43.03-2 and Clause 43.04-2

The Incorporated Plan Overlay has as one of its purposes:

To identify areas which require:

- The form and conditions of future use and development to be shown on an incorporated plan before the use or development of land can commence
- A planning scheme amendment before the incorporated plan can be changed

The panels are concerned about the fundamental structure of this arrangement. Little purpose is to be served by incorporating concept plans into the planning scheme if the permit process can alter them. The permit itself may refer to a designated plan and changes to it could be sought through applications to modify the permit. It is misleading and confusing to have incorporated plans in the scheme that can only be changed by planning scheme amendment if permits can be granted for development not in accordance with those plans.

Since this issue is common to a number of the freestanding shopping centres in metropolitan Melbourne, the panels suggest that DOI develop a model set of VPP techniques for these centres in order to maintain some consistency of approach, if this is not too late.

More importantly, the panels recommend that DOI examine this apparent anomaly, which appears to enable the primary purpose of the Incorporated Plan Overlay to be undermined.

6.5.3 MASTERPLANS

DOI has promoted the use of the Incorporated Plan Overlay to facilitate the preparation of masterplans for major institutional uses such as schools and hospitals. The issues were explored at length in the Panel Report on the Stonnington New Format Planning Scheme. Stonnington has a large number of institutional uses, which it proposed to include in the Special Use Zone. Issues surrounding the use of the Special Use Zone and the various options for preparing and approving masterplans are discussed in Section 7.3. The use of the Special Use Zone was not supported, with the Panel adopting a similar position to most other panels that institutions should be included in the surrounding zone. The following discussion relates specifically to the use of the Incorporated Plan Overlay for masterplans.²⁰

Currently, Council encourages institutions to prepare masterplans for their future development, providing them and surrounding uses with greater certainty. The level of detail required in masterplans to provide certainty for surrounding uses, and flexibility for the use, varies with individual circumstances.

²⁰ Extracted from Panel Report for Stonnington New Format Planning Scheme, Section 4.1, pp 39-40

The Department of Infrastructure and several surrounding Councils have supported the inclusion of masterplans into schemes as an Incorporated Plan Overlay. The introduction of this Overlay is considered a good procedure as it allows Council to state its requirements for the masterplan. It also requires public exhibition under an amendment process before the masterplan can be included into the scheme. This is especially desirable as under the amendment process, Council has the final 'say' because Council requests the independent panel and Council may or may not accept its advice when it reports back to Council. On the other hand, in a 'permit' situation the final 'say' is with the Appeals Tribunal and Council does not have the opportunity for review.

The main objection from submitters concerns the issue of exemption from further notification and appeal when new development is being proposed. The introduction of the Incorporated Plan Overlay should alleviate these concerns. Other than the requirement of public exhibition and panel hearing procedures to include the masterplan in the scheme in the first place, if a submitted proposal is subsequently determined to be inconsistent with the approved masterplan, then this Overlay requires a further amendment to the scheme involving further full public consultation. It should be noted, though, that if the submitted proposal is clearly consistent with the masterplan, this Overlay exempts the giving of notice and appeal rights. This is considered reasonable, however, given the masterplan has already undergone a full public scrutiny process to be included in the scheme in the first place.

These provisions do allow an applicant with the option of choosing not to prepare a masterplan by enabling development to proceed through the planning permit process. This path, although permitted, is considered less desirable for all concerned. It is hoped that institutions will elect to follow the amendment process and include their masterplans into the scheme as an Incorporated Plan Overlay. Whilst the preparation of a masterplan is discretionary, institutions should be encouraged to undertake the amendment/overlay process so as to provide a greater degree of certainty for both them and affected residents alike.

The consultative/ public exhibition process of an amendment is intended to identify, negotiate and resolve any areas of conflict between institutions, residents and the Council. The reward for institutions in undertaking this process is to reach agreement with the community on broad principles for any future development and thus avoid the need to continuously consult with the community on subsequent development that is consistent with the Incorporated Plan Overlay.

In the case of Stonnington, the Panel considered that the masterplan should not be too detailed but stipulate a building envelope, land use activities, operational and use details, hours of operation, car parking, traffic generation, height and the scale of buildings in relation to overlooking.

Whilst the circumstances of each case will vary, the panels do not consider that a masterplan incorporated under an Incorporated Plan Overlay must necessarily be confined to the property in question. Frequently the impacts arising from institutional uses extend well beyond property boundaries, which is usually why there is conflict in the first place. A good masterplan should address all impacts, not just those of a 'planning' nature in the form of buildings and works, hours of operation etc. For instance, it may include traffic works to be undertaken or contributed to by the land manager beyond the property. When preparing masterplans, Councils and proponents are encouraged to apply the same processes that should apply to the MSS and local policies, namely to state the key issues and to then identify objectives, strategies and means of implementation.

6.5.4 URBAN GROWTH

Different Councils have adopted different strategies for dealing with urban growth areas. The issue was discussed in the Report of the Advisory Committee on the Victoria Planning Provisions (VPPS) — August 1997,²¹ which advocated the possible application of both an Incorporated Plan Overlay to deal with broad brush planning for an area and a Development Plan Overlay to deal with the finer grain planning for specific parcels.

No major difficulties appear to have arisen, although **the panels recommend that DOI monitor the operation of the VPP mechanisms in conjunction with the development industry and local government to ensure that the planning and development of urban growth areas operates efficiently.**

The concerns that emerged were mainly in rural areas and were largely matters of detail. Sometimes a Development Plan Overlay was applied when it was unnecessary or the issues could be dealt with adequately at the planning permit stage. This highlights the fact that a Development Plan Overlay is most usefully applied where issues which extend beyond the property boundary must be addressed (eg open space network, flooding, road network, hydraulic infrastructure staging). Where only a single property is concerned, a planning permit may be all that is required.

In other situations, overlays allowed the interim subdivision of future urban land without an explicit requirement to ensure efficient future subdivision at urban densities.

6.5.5 MISUSE OF THE DEVELOPMENT PLAN OVERLAY

A potential problem that has been raised by panels is the danger of misusing the Development Plan Overlay. Councils are using this requirement as a means of introducing quite detailed development plans into the planning scheme by an

²¹ Report of the Advisory Committee on the Victoria Planning Provisions (VPPS) - August 1997, Section 11.3, pp 157-159

amendment process as a result of requiring the actual development plan to accompany the Development Plan Overlay. Rightly or wrongly they perceive themselves to be in a better position by doing this than by insisting that the development go through the permit process.

This approach is promoting site specific development approval through planning scheme amendments, which the new system was supposed to abolish or at least minimise.

The panels therefore recommend that DOI should prepare a practice note on how the Incorporated Plan Overlay and Development Plan Overlay can be used in various situations and when they are appropriate, which contains more detail than currently included in the *Manual for the Victoria Planning Provisions*.

6.6 FLOOD OVERLAYS

The panels note that in the latest version of the VPPS, the Floodway Overlay, which is no longer expressed to apply to rural and non-urban areas, has replaced the Rural Floodway Overlay. The requirements of the flood risk report have been simplified. The same requirements have also been modified in the Urban Floodway Zone.

The panels believe this modification is constructive. It will overcome the reluctance of some Councils to include active floodway land in urban areas, which is used for public open space or private recreational purposes, in the highly restrictive Urban Floodway Zone. It will enable the primary use of the land to be recognised whilst at the same time acknowledging its floodprone characteristics.

The application of the flood overlays in the new format planning schemes was supposed to be in accordance with flood mapping, being undertaken for the entire State by DNRE. Unfortunately there are delays with the mapping program and in many municipalities the mapping will not be available for some time to come. In these circumstances, the issue has arisen as to how land, which is known to be generally prone to flooding but for which there are no accurate DNRE flood levels, should be dealt with.

Some Councils have simply ignored the issue and determined to apply flood overlays only when the mapping is available. Some have applied an Environmental Significance Overlay to the general area known to be floodprone: others have used the Land Subject to Inundation Overlay.

The panels do not consider it is appropriate simply to ignore the situation. This is quite contrary to Clause 15.02 of the SPPF, as well as being irresponsible.

Some panels have endorsed the use of the Environmental Significance Overlay, however further reflection suggests that this may not be the most appropriate strategy. Clause 15.02–2 requires that:

Planning controls for areas subject to flooding should be consistent throughout the State.

Therefore, when there are specific overlays that deal with flooding, these should be used in preference to other techniques.

This then raises the issue about the boundary for the overlay if the relevant floodplain management authority cannot verify which land is inundated by the 1 in 100 year flood event as specified in Clause 15.02–2. The panels believe this is solved by the further words in Clause 15.02–2, “*or as determined by the floodplain management authority*”. These words find reflection in the purpose of the Land Subject to Inundation Overlay, which includes:

To identify land in a flood storage or flood fringe area affected by the 1 in 100 year flood or any other area determined by the floodplain management authority.

In the panels’ view, if accurate flood mapping has not been completed by DNRE, the relevant floodplain management authority should determine what land is potentially or likely to be affected by flooding and that land should be included in a Land Subject to Inundation Overlay. It does not matter that the boundaries may not be accurate at the time the overlay is applied. The Land Subject to Inundation Overlay only requires that a permit be obtained for buildings and works. It does not prohibit either use or development. The time to examine the evidence in detail about where flood levels lie in fact is at the time a permit application is made.

The same approach needs to be adopted even when flood levels have been verified by DNRE but individual landowners dispute their accuracy. Panels usually do not have the resources to examine in detail competing arguments about where the flood levels lie on an individual property when there is a lack of agreement about this. At the amendment stage it is usually irrelevant. It is a matter more appropriately sorted out at the time any permit may be applied for.

The panels recognise that in those very flat parts of Victoria prone to flooding, the Land Subject to Inundation Overlay may cover huge areas of a municipality. Minimal variations in height will make a substantial difference to whether the land floods or not. In those circumstances, landowners may well be reluctant to see the whole or substantial portions of their properties covered by the Land Subject to Inundation Overlay if they believe that in fact their land does not flood. However, it needs to be recognised that the overlay is not the last word. Its application will not alter the fact of whether the land floods or not. Rather, it indicates that flooding is a problem in the area and needs to be carefully considered when making any planning or other land management decisions concerning the property.

It is important to keep this point in mind, because in some parts of the State much heat has been generated about whether flood overlays should apply due to the alleged illegality of works causing the flooding.

The application of flood overlays is entirely unrelated to the cause of flooding. The causes need to be dealt with by separate means. The flood overlays look to the future

and the way in which future works will impact on the problem or be impacted themselves.

The *Water Act 1989* governs the redress which one landholder may have against another when it is alleged that a flow of water has been interfered with.

However, the panels note that in some locations the extent of ‘unauthorised’ works involving both landowners and former councils is so prevalent, long standing or complicated, that the situation is never likely to be set right by recourse to the Water Act. Instead, solutions that are based on best outcomes for the land and the community as a whole need to be devised and implemented, irrespective of the rights or wrongs of past actions. In this respect, the panels note the optimism held by many people that catchment management authorities will begin to proactively address these issues, rather than leaving them in the too-hard basket, where they have languished for many years.

In the Report of the Advisory Committee on the Victoria Planning Provisions (VPPS) — August 1997, the issue was addressed by the Advisory Committee, which said:

It is also important to recognise that the delineation of land liable to flooding for inclusion on planning scheme maps will, as a result of cartographic limitations, necessarily occur in such a way that within the defined floodplain there will be small areas **not** subject to inundation as the land will not be uniformly flat. Further, those areas which are subject to inundation will be affected more or less severely for the same reason.

It would seem that it is with the latter topographic cartographic realities in mind, that the floodplain management policies of the SPPF, and the zone and overlay controls, do not include absolute prohibitions on many uses and developments which would generally be inappropriate, but allow for the exercise of discretion according to the particular circumstances of each case.²²

The panels therefore recommend that where land is known to be prone to flooding, even though accurate mapping of the 1 in 100 year flood levels may not be available, the Land Subject to Inundation Overlay should be applied to land determined by the floodplain management authority. Those boundaries should be adjusted, if necessary, when detailed flood mapping becomes available. DOI should establish arrangements with relevant floodplain management authorities to make determinations about what land should be included in the Overlay in these circumstances.

6.7 WILDFIRE MANAGEMENT OVERLAY

The Wildfire Management Overlay continues to present problems with its application. It was the subject of comment in the Report on Trends and Issues Emerging from Consideration of First Five New Format Planning Schemes (March 1998), which has resulted in the recent issue of a Practice Note on Application of the Wildfire Management Overlay.

²² Report of the Advisory Committee on the Victoria Planning Provisions (VPPS) - August 1997, Section 13.4, p192

The Practice Note makes it clear that the Wildfire Management Overlay is a risk management tool to be used to:

- identify where the fire intensity level of wildfire is significant and likely to pose a threat to life and property
- ensure that development includes specified fire protection measures and does not significantly increase the threat to life and property from wildfire.

It is to be applied to areas identified by the CFA.

Because of the shift in nature and understanding of the use of the Wildfire Management Overlay since most new format planning schemes were first exhibited, most panels have not seen the extent to which the Wildfire Management Overlay will be applied in municipalities. They have been content to recommend that it be applied in consultation with the CFA. However, the recent experience of the Panel considering the Nillumbik Planning Scheme, which was shown the CFA plans for areas to which the Overlay is to be applied, raised concerns about whether its use has in fact been satisfactorily resolved.

The conclusion of the Nillumbik Panel was that:

...the new mapping, like the original mapping, was based on a complete misapprehension of the purpose of the WMO and the planning controls it can implement.

It is clear that further liaison between DOI, CFA and local government in the form of the MAV would be desirable.

6.8 ENVIRONMENTAL AUDIT OVERLAY

6.8.1 GENERAL

Confusion has arisen in various places about when it is appropriate to use the Environmental Audit Overlay.

The *Manual for the Victoria Planning Provisions* indicates that for new format planning schemes, Ministerial Direction Mo. 1 may be considered to apply only to situations where the scheme allows for the first time potentially contaminated land to be used for a sensitive use. It is therefore inappropriate to apply it to land currently zoned industrial, where a continued industrial or business zone, which does not allow sensitive uses, is applied. Nor should the overlay be applied where the current zoning allows a sensitive use and the new zone also allows a sensitive use.

The use of the Environmental Audit Overlay is not to identify **all** contaminated land in a municipality. The use of the overlay for this purpose would be misleading because it is unlikely to be comprehensive or exhaustive. A responsible authority is not relieved of

its obligation to consider the significant effects that the environment may have on a use or development under Section 60(1)(a)(iii) of the *Planning and Environment Act 1987*. Rather, the purpose of Ministerial Direction No. 1 is to ensure that when the zoning of land is changed so that its likely future use changes from one where land may have been potentially contaminated to one which allows for a sensitive use, that the suitability of the land for the sensitive use is ascertained at the time of the amendment. If it is too difficult or not appropriate to ascertain this suitability at the time of the amendment, the ascertainment may be deferred to a later date, but must be done before the sensitive use or development commences.

The purpose of the Environmental Audit Overlay is to flag those situations where a rezoning of potentially contaminated land has occurred, but where ascertainment of its suitability for a sensitive use has been deferred.

6.8.2 USE OF THE ENVIRONMENTAL AUDIT OVERLAY TO ADDRESS GOLDMINING RESIDUES (ARSENIC)

A situation arose in Nillumbik, which aroused considerable controversy during the panel hearing. It involved the application of the Environmental Audit Overlay to a significant area of land, which the Council had identified as possibly being contaminated from previous goldmining operations. The Environmental Audit Overlay was applied (even though the zoning of the land was not effectively changed) in order to reflect a previous control.

In its discussion of the issue, the Panel considered the question of equity and consistency across the whole State. It did so in the context that Victoria is famous for its goldmining history, and old goldmines and workings are found in many areas. It considered that if the Environmental Audit Overlay is applied to old goldmines in part of the Nillumbik Shire, it would be reasonable to assume that it should be applied elsewhere.²³

However, the Panel is not aware of any other municipality in the State where the Environmental Audit Overlay has been applied to address contamination as a result of former goldmining residues. Ballarat and Bendigo, Beechworth and Yackandandah, for example, were the sites of intensive goldmining activity, yet none of the relevant planning schemes applies the Environmental Audit Overlay in similar circumstances, or even discusses former goldmining activity in terms of potential contamination. It is acknowledged that many areas may not meet the criteria for a changed land use. However, both Ballarat and Bendigo are expanding towns, and it is highly probable that former goldmining areas have been subsumed, or will be subsumed, by urban development. Yet it does not appear to have been considered that Ministerial Direction No.1 should apply.

²³ The following discussion is an extract from the Panel Report on the Nillumbik New Format Planning Scheme

As a matter of principle, if it is determined that the Environmental Audit Overlay should be applied in the Plenty/Yarrambat area to address goldmining residue, then it should also be applied in similar circumstances across the state. The Nillumbik scheme could set a precedent for requiring wide-ranging investigations and mandatory environmental audit requirements across the State.

Similarly, if a non-mandatory control, such as a Local Planning Policy, were introduced in Nillumbik, the question of State-wide consistency would also need to be addressed.

The Panel is sympathetic to the concerns of the landowners, most of whom had no knowledge of the existing control and see it as an unnecessary and unfair financial burden. It is one of the advantages of the planning reform program that matters such as potentially contaminated land will be dealt with much more transparently in the new schemes, and property buyers will be aware of the constraints before they purchase.

However, the issue is not whether the present owners knew about the existing control, or object to the overlay, or would incur costs as a result of it. The issue is whether or not the land is contaminated to an extent that justifies application of a planning control. If the contamination is significant and represents a genuine risk to public health, then the control should be applied regardless of who owns it or when the pollution occurred.

The purpose of the Environmental Audit Overlay as set out in 45.03 of the VPPs is:

To ensure that potentially contaminated land is suitable for a use which could be **significantly** adversely affected by any contamination.

In reaching its conclusions, the Panel took into consideration the documents referred to in Clause 15.06–2 of the SPPF. There is a statement in one of these publications that *‘long term health effects have not been shown in people whose only exposure to arsenic has been from mine tailings’*. As a result, the Panel concluded that the health risk was minimal and on this basis, the Panel believed that arsenic contamination from mine tailings could not be defined as potentially causing a ‘significant’ adverse effect.

Therefore the Panel concluded that the application of the Environmental Audit Overlay is an inappropriate planning control for goldmining residue. It recommended that in Nillumbik, a Local Planning Policy should be introduced that is specifically directed towards sites where crushing batteries or tailing dumps were located. The policy should require environmental assessments on these sites and appropriate site remediation measures where significant contamination is found that exceeds relevant NEHF threshold levels.

At a more general level, the panels recommend that the DOI should examine the issue of goldmining residue and arsenic contamination on a Statewide basis. The examination should consider the following issues:

- **Are the potential adverse health effects significant enough to justify a planning control?**

- **If so, should the control apply to all land or be limited to changes in use?**
- **Should the NEHF threshold levels be formally adopted as a planning guideline?**
- **How extensive is the potential application of the control?**
- **How could the sites of former batteries and tailings dumps be identified?**
- **Who should have responsibility for undertaking and funding the investigation?**
- **Should Nillumbik be regarded as a precedent?**

SECTION 7 OTHER ZONES

7.1 RESIDENTIAL ZONES

The Residential 2 Zone, according to the *Manual for the Victoria Planning Provisions*, is intended particularly for areas identified as suitable for medium or higher density development, or areas where medium density development is unlikely to adversely impact on other residences. Where it has been applied to larger redevelopment sites, isolated from neighbouring residential areas by roads or other physical barriers, areas being converted from a former commercial or industrial use, or areas within a greenfields development set aside for medium to high density residential use, there have been few concerns. Where it has been applied to existing areas of residential development it has met with frequent objections on the following grounds:

- the lack of residents' right to be notified of, or lodge an objection to, a proposed medium or high density residential development;
- the poor planning and design outcomes that generally result from the lack of resident input.

Residents were concerned about the uncertainty that any 'voluntary' consultation would be undertaken as part of the Residential 2 Zone approval process, and about the lack of any statutory backing for a bona fide consultation process.

The Residential 2 Zone has not been widely used. The panels believe there are three reasons for this. The first is the scarcity of sites that are both large enough for a separate zone and that meet the criteria as interpreted above. The second is a reluctance to remove notification and appeal rights from its ratepayers. The third is a belief that better design and amenity outcomes are achieved when affected residents are able to contribute formally and effectively to the approval process.

The panels believe the Residential 2 Zone has potential to be an effective tool for Councils seeking to implement a housing strategy, to redevelop areas in need of improvement, where existing dwellings may be reaching the end of their economic life or to balance the application of controls to protect urban character. In any case, it will

work best in conjunction with well-developed objectives about the nature and character of the zone, which the Council wishes to achieve, and local policies to guide development. DOI should work in conjunction with Councils to overcome negative perceptions about the zone and to demonstrate its positive attributes for both Councils and landowners. At the same time, the zone needs to be applied appropriately. For instance, there may be little point in applying it to an area of existing residential development, which is also covered by a Heritage Overlay.

The Mixed Use Zone is being clearly interpreted as a residential zone. Potential problems may arise for existing or future commercial uses when considering impacts on amenity. Notwithstanding their presence in a Mixed Use Zone, or even a business zone, residents still tend to expect a level of amenity more akin to a residential environment than a commercial environment.

The success of mixed use areas in retaining or attracting a genuine mix of uses will depend largely on the way Councils deal with these expectations. Particular problems in maintaining a realistic balance arise because residents tend to be more articulate than commercial operators are and may enjoy the weight of numbers. Careful attention to design standards in these locations will be necessary, particularly to the acoustic properties of new dwellings.

7.2 INDUSTRIAL ZONES

The operation of the industrial zones will require particular monitoring to assess whether they are functioning in the way intended. There were many situations where panels found Councils had applied an Industrial 3 Zone rather than an Industrial 1 Zone, in order to ensure that all industrial uses require a permit. This is not in accord with the principles underlying the planning reform program to encourage a performance based system of planning or the purpose of the Industrial 3 Zone.

Application of the Industrial 2 Zone was complicated by the 1500 metre threshold distance specified, beyond which a permit was required for industry. Its application in some cases meant that there was no land falling within this category. Notwithstanding this, there were a number of provincial city Councils which applied the Industrial 2 Zone as a means of implementing strategies to encourage large manufacturing of offensive industry to their municipalities.

The panels note that as a result of Amendment V5, the provisions relating to the Industrial 2 Zone have altered in this respect. All industry is now a Section 2 use. Reference to the 1500metre threshold is included in the decision guidelines for use.

A detailed practice note about the operation of the industrial zones would be useful.

7.3 SPECIAL USE ZONES

7.3.1 GENERAL ISSUES

Special Use Zones have traditionally been used as catch-all zones to include any large single purpose use. One of their features has been to clearly identify on planning scheme maps the presence of these uses.

The application of the Special Use Zone in new format planning schemes is described in the *Manual for the Victoria Planning Provisions* as follows:

This zone provides for the use of land for specific purposes. The purposes and the land use requirements are specified in a schedule to the zone. This allows detailed land use requirements to be prescribed for a particular site. Development conditions where they are necessary should still be set out in a permit rather than the scheme. Exemptions from notification and appeal can be given if required. Note that the Ministerial Direction includes some specific requirements about this zone.²⁴

Panels found that many schedules to the Special Use Zone did not accurately reflect the requirements of the Ministerial Direction or directly relate to the provisions of Clause 37.01. Instead, they were drafted as though they were stand-alone zones. This is notwithstanding the advice in the *Manual for the Victoria Planning Provisions* not to restate the control in the schedule.²⁵ In fact, the operative provisions of the zone are found in Clause 37.01: the schedule is a supplement to the zone or identifies where the controls (eg over buildings and works) do not apply.

The poor drafting of so many schedules, not just to the Special Use Zone, indicates a clear need for further guidance and examples. **The panels therefore recommend that DOI prepare a practice note about drafting schedules to the various zones and overlays, which provides a range of good examples by way of illustration of good practice and variety of potential use.**

Although not specifically stated in the *Manual for the Victoria Planning Provisions*, DOI has favoured the general principle of including uses such as schools and hospitals in the surrounding zone if the use is a permitted use in that zone. This is on the basis that the planning permit is the principal instrument of development approval. If any 'special uses' require identification, the attitude of DOI has been that this should be done in the MSS or by way of local policy, not by the Special Use Zone.

In many exhibited schemes, councils had simply rolled over previous zones into Special Use Zones. Many of these were quite inappropriate and it was easy to include the land in surrounding zones and either issue a permit for existing use and development based on previous site specific provisions or allow existing use rights to cover the situation. The situation was more complex with respect to large institutional uses such as schools

²⁴ *Manual for the Victoria Planning Provisions*, p 41

²⁵ *ibid*, p 16

and hospitals and large recreational or sporting facilities such as golf courses and show grounds.

7.3.2 PRIVATE GOLF COURSES

Different municipalities adopted varying approaches. In Banyule, which has a large number of private golf courses and schools, the council identified them in its MSS as important to the economy of the municipality and included them in a Special Use Zone. This approach was supported by the panel. Likewise in Kingston with its golf courses, the panel supported the application of the Special Use Zone.

In the Panel Report on the Kingston New Format Planning Scheme, which applied a Special Use Zone to its private golf courses including them in Schedule 1: Private Golf Courses, the panel said:²⁶

The purpose of this schedule is to recognise the use of private golf courses and associated uses, and this applies to nine golf courses in Kingston including the Patterson River Country Club, Capital, Rosslands, Commonwealth, Kingston Heath, Woodlands, Spring Valley, Kingswood, and Southern Golf Courses. A tenth course, the Spring Valley Public Golf Course in Dingley is currently zoned Public Park and Recreation.

The Department of Infrastructure has held a consistent view that private golf courses and private schools area not special uses that should be in a separate zone, but rather they should be accommodated in the underlying or surrounding zone. In its submissions to the Panel the Department stated:

Further consideration should be given to the application of a Special Use Zone to private golf courses and community and recreation facilities. The surrounding zoning may be more appropriate. If there is something particular about the private golf courses or community or recreation facilities, this could be detailed in the MSS or a local policy (which can contain strategic mapping). It may also be appropriate to apply an Incorporated Plan Overlay or Development Plan Overlay if it is necessary to specify the form and conditions of future use and development.

The MSS recognises the special significance of the Golf Courses of Kingston and acknowledges them as a key asset. Because there are so many courses within Kingston, they could be seen as part of the contributing character and “specialness” of the municipality and as such be recognised within the Special Use zone. The Panel supports the inclusion of the golf courses in a Special Use zone, however this could be further strengthened through additional recognition in the MSS.

7.3.3 INSTITUTIONAL USES

A different approach was taken in Stonnington, which has in excess of 27 major private schools and hospitals. The major private institutional uses identified by Stonnington Council for inclusion in the Special Use Zone have predominantly regional rather than local catchments. The basis for this was that adjoining residents rarely accepted them as complementary to local residential activities. Council believed it was therefore legitimate to place such institutional uses in a Special Use Zone that signals their

²⁶ Panel Report on the Kingston New Format Planning Scheme, Section 3.4 p 27.

existence to surrounding residents and new residents looking to purchase in the neighbourhood.

The following discussion is taken from the Panel Report on the Stonnington New Format Planning Scheme.²⁷

There are a number of complex and overlapping issues about the application of the Special Use Zone and its role within the new format planning schemes, which include:

1. management and recognition of particular institutional uses
2. amenity and appropriate standards of development in a particular area
3. management of particular or special land use considerations.

Management and Recognition of Particular Institutional Uses

The first issue is essentially one of whether large institutions (or indeed all institutions) should be given any special recognition in the planning scheme by virtue of their use. The Department of Infrastructure has been very clear on this — the new scheme does not have to provide identification for uses. However, some uses are so large or unique (for example golf courses) that they constitute a land use pattern in their own right and need to be managed and recognised in the scheme. These uses warrant their own zone — rather than being an institution or use in a residential area they help to define the nature and character of the city itself. The issue is at what size or in what circumstances does the use become so extensive that it needs its own zone.

Associated with the issue of recognition is the issue of management control of development on the site. The Special Use Zone has the potential advantage of providing more flexible mechanisms to achieve masterplans on the site. While it is true masterplans can be achieved by the use of overlays or by generalised masterplan permits, a Special Use Zone has the advantage of providing a simpler approach.

Amenity

The second set of issues relates not to the institution itself but to the area in which the institution sits. For many residents a residential zoning across an institution is seen to provide a better level of planning security. It is considered that the residential zoning clearly articulates the residential nature of the area and the appropriate standards to be applied in assessing development applications of the institutional use. Part of this argument rests on existing conceptions of residential amenity and to a certain degree the objectives of the residential zone.

²⁷ Panel Report on the Stonnington New Format Planning Scheme, Section 3.4.1, pp 22-26

Special Requirements

The third aspect is where there are special circumstances such as part of the site is flood prone or has other particular characteristics which mean that no existing zone is appropriate. In this case the application of the Special Use Zone is driven not by the presence of the institution but by the nature of the planning constraints on the site.

Resolving the Issues

It seems to the Panel that the way through the tangle of issues on the Special Use Zone is to address two specific questions.

1. What is the best way to embody Council's strategic intent regarding institutions?
2. What formal controls are needed to achieve this strategic intent?

In answering the first question it is clear that it is preferable to explicitly state Council's policy direction on institutional uses as part of the planning framework set out in the Municipal Strategic Statement or through a local policy. The policy approach should not be left vague.

It seems to the Panel that the zone purposes could confuse the issue of what is to be achieved by the zone and distract discussion from the Municipal Strategic Statement and local policies. It is these sections of the planning scheme that should provide the strategic justification for the use of zones as a tool for achieving objectives, and hence address issues of the application of discretion under zones where this is needed.

If the proper place for strategic objectives about institutions is in the planning policy framework (and the zones are just a tool to achieve these objectives) then the issue becomes precisely what controls would be required over institutions to achieve these strategic objectives, and whether or not they can be achieved within standard VPP zones and overlays.

The issue of appropriate controls revolves around:

1. the desirability of masterplans, and
2. the notion that a particular zone may serve to limit the expansion of institutions.

The Panel will address the issue of the zone limiting expansion first.

While it may be tempting to consider that applying a Special Use Zone to an institutional use will serve to set some sort of boundary for that use, this hope could probably not be justified. Under the new planning schemes it will be possible to obtain a permit and a rezoning as part of the same process. In any case, the need to expand and the costs involved, if substantial, would invariably outweigh the difficulties in pursuing a rezoning. It would be naive to think that an expansion, which otherwise made sense, would not be considered in, say, ten years time because it required a rezoning.

In other words if there is the need to expand a school or hospital and there is the money and desire to do it, the rezoning would seem to be little real impediment. The issues will come back to the merits of the expansion. It is not conceivable that where there is the financial, business and medical justification for expanding a hospital use, there will not be some mechanism for considering that expansion on its merits — either by a permit or rezoning proposal.

What will provide longer term certainty for residents and institutions are clear policy objectives about the level of impact and the location of such uses. The Panel can conceive that these statements could stand the test of time and be reapplied by future panels, tribunals or councils. The Stonnington MSS does not provide this level of guidance, and does not provide any rationale as to the significance of these land uses that warrants a Special Use Zone.

If the Special Use Zone has no power to fix land use patterns in perpetuity (as some hope it might) then the remaining issue is whether a Special Use Zone is required in order to provide particular statutory mechanisms to achieve broader strategic objectives. This boils down to whether a Special Use Zone is required in order enable the smooth development and consideration of masterplans.

During the course of the hearing three mechanism for the preparation and approval of masterplans were identified and discussed, these being:

1. The Development Plan Overlay
2. The Incorporated Plan Overlay
3. Planning Permits

Using the Development Plan Overlay for Masterplans

The Development Plan Overlay has the advantage that it is relatively straightforward and does not embody a great deal of bureaucratic or legalistic process around its approval or change. This advantage is also its weakness in its application to institutional uses. It quite simply does not provide the security to adjoining residents that might reasonably be required when the Development Plan Overlay has the effect of removing third party appeal rights. A development plan could be approved by Council after discussion with residents, but it could be changed significantly without any legal or formal opportunity for community input.

It seems to the Panel that the Development Plan Overlay is most useful in areas where there needs to be coordination between different developments or landholders or across a development corridor or region, but where the particular outcomes are not at issue but rather the fact that a coordinated outcome is to be achieved. In this way the Development Plan Overlay would seem to be suited for growth areas but not for the management of institutions.

Using the Incorporated Plan Overlay for Masterplans

The Incorporated Plan Overlay provides the security that the Development Plan Overlay does not. However, for the owners and managers of institutions it has the disadvantage that it requires the planning authority to exhibit the overlay and that there are no rights of appeal or redress if the planning authority declines to exhibit an amendment or places unreasonable expectations around the form and contents of the masterplan. The Panel heard several submissions as to how requirements for masterplans from Stonnington Council were considered to be too detailed and not directed to long term future growth, but rather more short-term development proposals. The Panel accepts that it is a failing of the Incorporated Plan Overlay that its approval is generally at the discretion of the responsible authority, although it is recognised that the provisions of Section 185A of the *Planning and Environment Act 1987* enable the Minister to expedite the planning process.

Using Planning Permits for Masterplans

The third option for a masterplan is by way of a permit. In discussions, it was submitted by DOI that this option already exists and there is nothing within the current schemes or legislation that would prevent a masterplan being developed and implemented by way of a planning permit. While the Panel understands this is the case, and there are a number of examples of such masterplan permits in operation around Melbourne, it has not been typical use of the permit process and there may well be some hidden pitfalls in this approach. In this case there would seem to be some advantage in formalising the process of obtaining a permit for a masterplan. This formalisation would require the use of a Special Use Zone. The requirement could be that the table of uses is amended so that appropriate institutional uses do not require a planning permit when they are in accordance with a planning permit for a masterplan approved under a specific clause. This clause would specify the requirement of the masterplan, which could include:

1. building envelopes
2. facade treatment
3. historic buildings to be retained
4. traffic access points
5. parking ratios
6. landscape treatments

A variation on this approach is that when a masterplan is obtained a permit is still required under the zone, but there would be no third party rights for advertising or appeal. This has the advantage of providing a formal mechanism for the approval of subsequent development plans for the site and may prove to be administratively superior in terms of tracking approvals and documenting processes.

7.3.4 CONCLUSIONS ON THE SPECIAL USE ZONE

In the case of Stonnington, the Panel concluded as follows:

The Panel does not believe that zoning institutional uses as Special Use would provide any more certainty over their development than them being placed in the underlying zone. What is required are clear statements in the MSS and Local Policy.

The Special Use Zone should only be applied where the use is of such significance that it is regionally significant in some way, or has particular issues with respect to zoning or management. In general, schools should be placed in the underlying zone, which is usually Residential 1.

The uses that the Panel consider merit a Special Use Zone in Stonnington are Cabrini Hospital, because of its regional nature, and St Kevin's Senior School and Kooyong because of their particular location and the need to resolve regional flooding issues.

However, it can be seen from the different approaches by panels in Kingston and Stonnington that there is no simple answer with respect to when it is appropriate to apply the Special Use Zone.

Since these reports were prepared, DOI has issued a Practice Note relating to the Special Use Zone. In addressing the issue of where should the Special Use Zone be applied, it is stated:

A Special Use Zone can be considered when either:

- An appropriate combination of the other available zones, overlays and local policies cannot give effect to the desired objectives or requirements.
- The site adjoins more than one zone and the strategic intent of the site, if it was to be redeveloped, is not known and it is therefore not possible to determine which zone is appropriate.

Application of the Special Use Zone is not appropriate when an alternative zone can achieve a similar outcome, with appropriate support from local policies and overlays.

However, the panels believe this does not resolve the underlying issues causing difficulty in dealing with those large, single-purpose uses, which really do stand out from the pattern of surrounding uses for a variety of reasons. These reasons relate to:

- amenity and other off-site impacts
- future use of the land in the event that the current use ceases
- dichotomy between zones based on public/private ownership and the potential to zone land according to use rather than ownership

Issues of amenity and off-site impact can be dealt with through the planning permit or masterplan process discussed above. The panels believe that these issues alone do not justify the need for a separate zone.

However, the panels question the practicality of the philosophy that says the role of the planning scheme is not to identify the use of land, but to provide a framework for its future use and development. This was expressed in the context of the Bayside New Format Planning Scheme in the following terms:²⁸

... [T]he Victoria Planning Provisions generally endeavours to provide some flexibility about the way in which matters are dealt with in a statutory sense, within the broad principles of the reform agenda. In determining which approach is appropriate in any case, it is important to remember that the function of zones is different in new format schemes compared to existing schemes. Because the new zones deliberately allow a wider range of discretionary uses in most cases, the idea that planning scheme zones give any direct indication of the existing land use will no longer be true, if it ever was. The zone only describes the possible range of uses that may occur or be considered, not the existing use of the land.

Specifically, zones such as the Special Use Zone are not intended to be used for identification of uses on the land, but as a tool for the application of specific objectives or requirements where these cannot be applied through the discretion of another zone. If a Special Use Zone is proposed to be applied, an appropriate justification needs to be articulated in the MSS.

This is fine in theory, but there are certain uses of land, where because of the size of the land and the nature of its use, a council could legitimately wish to strategically review its future, if the current use ceased. Large recreational uses such as showgrounds, racecourses and golf courses fall within this category. Whilst these sites may be partly caught by the second dot point above, they do not necessarily all fall within the category of adjoining more than one zone. It doesn't seem that this is the most relevant factor. Nor do the panels believe it should be the determining factor in deciding whether or not a Special Use Zone is appropriate.

There are other types of uses where both the condition of the land and the nature of the use create a reasonable expectation that the land should be identified on a planning scheme map. Extractive industry is a use in this category. It doesn't fall comfortably within the parameters of the purpose of the rural zones (where it is largely located) even though it is a Section 2 use. The introduction of the Extractive Industry Schedule for the Special Use Zone is a partial recognition of this. The panels suggest that many people would expect to find large extractive industry operations specially zoned and 'identified' in planning schemes, rather than simply being included in the Rural Zone. Quarries carry with them the potential of significant off-site impacts, long-term use, prospects of expansion, end uses frequently associated with waste disposal and inhibitions on surrounding development due to the need to preserve buffer distances.

²⁸ Bayside New Format Planning Scheme Panel Report, Section 3.4.2, p24

The issue is complicated by the difference in zoning depending on whether the land is publicly or privately owned, even though the use may be the same. This is illustrated by the distinction in zoning referred to in the Kingston Panel Report, where the Spring Valley Public Golf Course in Dingley was in a Public Park and Recreation Zone whereas the other golf courses were in a Special Use Zone. A similar distinction applies to schools, with public schools included in a Public Use Zone but DOI advocating that private schools be included in surrounding residential zones. As various panels have commented, the uses are essentially the same and there is no reason for them to be treated differently.

This therefore leads the panels to suggest that the concept of Public Use Zones and Special Use Zones should be reviewed, with a view to creating a series of zones based on broad categories of use, rather than on ownership.

7.4 REMOVING THE DISTINCTION BETWEEN ZONES BASED ON PUBLIC AND PRIVATE OWNERSHIP

This issue is gaining currency as the trend to corporatising and privatising utilities and authorities grows, and as private operators increasingly use public land for various commercial and other purposes. Not only does the distinction in zoning raise issues of logic, but also issues relating to competition. This was an issue referred to in connection with utility service providers in the Report of the Advisory Committee on the Victoria Planning Provisions (VPPS) — August 1997, which commented:²⁹

With privatisation of many utility service providers there is good reason to treat them separately from public authorities and public land managers and to have them generally comply with planning schemes in similar fashion to other corporate bodies, without the exemptions and entitlements of public authorities or public land managers.

Similar arguments apply with respect to land, just as much as to operators.

The panels believe that greater uniformity, clarity and simplicity could be introduced to planning schemes by renaming some zones, introducing some new zones and applying them to public and private land alike. The need for a Special Use Zone to accommodate those uses not falling within the new zones is likely to remain. Whether there is also a need to retain the Public Use Zone or whether those uses still covered by it, such as local government and cemetery/crematorium, could be just as well included in the Special Use Zone, would need to be considered.

It is suggested that the suite of new zones could include the following.

²⁹ Report of the Advisory Committee on the Victoria Planning Provisions (VPPS) - August 1997, Section 16.18, p 267

Open Space Zones

The open space zones would include:

- a Parks and Recreation Zone (PRZ)
- a Conservation and Resource Zone (CRZ)

These zones would replace the Public Park and Recreation Zone, the Public Conservation and Resource Zone and those Special Use Zones applying to uses such as private sports grounds, racecourses, showgrounds and golf courses. They would allow all parks and recreational uses to be treated consistently. In a similar way, where there is private land managed essentially for conservation and resource purposes, it could be included in the Conservation and Resource Zone. A particular example of this would be land in catchments around reservoirs owned by water authorities in the event that they were ever privatised. Land owned by the Victorian Conservation Trust may be another example.

The special status of public land managers could be recognised in Section 1.

Utilities Zone

This would allow all utility installations, which are currently in either a Public Use Zone or a Special Use Zone, to be rationalised in a coherent way in a single zone. It would not alter the policy of including minor utility installations in the surrounding zone.

Education Zone

Despite all that has been said about including private schools in surrounding residential zones, as opposed to a Special Use Zone, during the course of the new format planning scheme hearings, the panels generally believe there would be merit in considering an Education Zone. This would apply to all large educational institutions, public or private. The way in which schools and other educational facilities operate is changing and intensifying. Students and others are using school faculties increasingly out-of-hours. Neat distinctions between religious and educational facilities are being blurred. All of these matters need to be considered. There may even be merit in expanding the concept of the zone to incorporate churches and religious use.

Consideration would need to be given to the size of the facility in order to avoid a multitude of small, site specific zones. The general principle of including uses in the surrounding zone where they meet the general purpose of the zone and dealing with them by way or permit is supported. Thresholds would need to be determined. The distinction between those serving a local, as distinct from a regional catchment, may be one measure.

Health and Community Facilities Zone

Similar comments in terms of threshold apply to the concept of a Health and Community Facilities Zone as to the Education Zone.

Transport Zone

This would apply to railway land and other land primarily devoted to transport facilities. The forthcoming privatisation of railways in Victoria will make resolution of this issue increasingly important.

A single Transport Zone would overcome the sort of situation, which arose on the Bellarine Peninsula, where the railway line operated by a tourist railway was included in a Public Park and Recreation Zone in Queenscliffe and in a Public Use Zone 4 – Transport in Greater Geelong.

Extractive Zone

This is not a new suggestion. The Practice Note on Extractive Industry and the Extractive Industry Schedule to the Special Use Zone illustrate the ongoing debate. The nature of extractive industry sets it apart from other industry and from other agricultural activities in the rural zones. The panels believe that it justifies consideration for this reason.

The panels therefore recommend that the VPPS should be reviewed with respect to:

- **removing the distinction between the Special Use Zone and the public zones based on the public or private ownership of land;**
- **replacing some of these zones by a new suite of zones based on broad categories of activity, which would be applied to public and private land alike, including the following:**
 - **Parks and Recreation Zone**
 - **Conservation and Resource Zone**
 - **Utilities Zone**
 - **Education Zone**
 - **Health and Community Facilities Zone**
 - **Transport Zone**
 - **Extractive Zone**

SECTION 8 OTHER ISSUES

8.1 USE OF SECTION 173 AGREEMENTS

As a result of the much wider range Section 1 uses and discretionary Section 2 uses, particularly in the business zones, a practice is emerging of using Section 173 Agreements in conjunction with rezonings to limit the range of uses that land will be used for. There is a similar potential to use them for the same purpose in conjunction with planning permits for development.

Councils are particularly attracted to this mechanism to control restricted retail premises in the Business 1 Zone.³⁰ In the past, strategy plans for many retail centres have sought to keep ‘peripheral sales’ (now restricted retail premises) out of core business districts or to strictly limit their floor area. However, this practice is contrary to the principle of freeing-up zones, particularly commercial zones, to allow the market to determine how they will evolve. This move recognises that previous distinctions between many types of ‘shop’ are becoming redundant. The retail industry is highly dynamic. The philosophy behind the planning reform program queries the purpose of trying to control different forms of retail outlets within a Business 1 Zone whose purpose is:

To encourage the intensive development of business centres for retailing and other complementary commercial, entertainment and community uses.

The panels believe the same trend is likely to emerge with respect to other zones and other forms of use. There is a danger of Section 173 Agreements becoming de facto zones. This would be quite contrary to the objectives of the planning reform program, as well as losing the transparency that the new format planning schemes were intended to provide.

The panels recommend that DOI should monitor the way in which Section 173 Agreements are being used in conjunction with rezonings and permits to limit the potential use of land.

8.2 CONTROL OVER USE VERSUS CONTROL OVER DEVELOPMENT

There has always been an important distinction between use and development in the planning system. That distinction is retained in the new planning system and, if anything, is even more important, particularly in the business and industrial zones.

Frequently, it is the implications of a **development**, in terms of its size, design, traffic impacts etc, which will determine if a particular proposal is appropriate in a location, even though the **use** per se is appropriate and may even be as-of-right. Where development requires a permit, but the use is Section 1, a proper exercise of discretion must still be undertaken about whether the development is appropriate, as distinct from

³⁰ Restricted retail premises is included in the definition of shop, which is a Section 1 use in the Business 1 Zone. In previous equivalent zones, such as the Restricted Business Zone, peripheral sales has usually been a Section 2 use.

the use. The control over buildings and works is intended to be exercised seriously, although in assessing a development, the matters taken into consideration must properly relate to the development and not the use.

8.3 LINKS BETWEEN TOURISM, ENVIRONMENTAL CHARACTERISTICS AND HERITAGE

Almost every rural council would like to encourage tourism as a plank in their economic development strategy. The attractions of these municipalities are inevitably a product of their natural features and heritage towns. These are the things that distinguish one shire or region from another. Yet one of the features many panels have commented on with respect to new format planning schemes is their failure to recognise and exploit the links between heritage, environment and tourism. Most schemes recognise tourism as a significant contributor, or potential contributor, to the local economy, but surprisingly few have acknowledged the role of their heritage assets and their environmental assets, particularly landscapes, in attracting tourists. By omitting this link, the schemes miss the opportunity to associate environment and heritage protection with economic benefits. Whilst the link between environment protection and the economy is generally well described in relation to maintaining agricultural production, the environment also has other economic benefits to the community. Evaluating applications affecting heritage sites or significant landscapes against criteria that include economic benefit or loss to the community in terms of impact on tourism is something that Councils who support tourism should consider more.

What is important in developing a strong tourism industry is to build on the natural, cultural or heritage assets of the area. Ballarat has done this with respect to gold; Daylesford has capitalised on its mineral springs; along the Surf Coast, the Great Ocean Road and the natural coastline are the primary attractions. However, it is rare that a tourist attraction, which bears no relationship to its surroundings in either environmental, cultural or heritage terms, is a major contributor to a region's economy.

Encouraging development of tourist facilities and services that are compatible with and add value to existing built and natural attractions is also a strategy advocated by Tourism Victoria.

8.4 USE OF DATA AND TECHNOLOGY

The biodiversity mapping by DNRE, the Supply Area Extractive Industry Interest Area Maps by Minerals and Petroleum Victoria, land capability data, salinity management plans and various environmental studies are all examples of the wealth of information available to Councils. The challenge is how to best use this information in the preparation of planning schemes and planning decision making, particularly as much of the mapping or information has been prepared for other purposes and is often difficult to adapt to the planning system.

One of the great advances the new format planning schemes provide, is the ability to incorporate natural systems information and to use that data as a basis for decision making. The availability of this information is a critical issue for regional Victoria for the proper functioning of the new format schemes and the opportunity it provides for cooperative working relationships between municipalities and other organisations such as Catchment Management Authorities.

The timely use of new information and information technologies to advance sustainable land use and development in Victoria will depend on its availability and capacity for integration. Rural Councils are being bombarded with often conflicting information about the data which is, or will shortly be, available in relation to biodiversity, salinity, erosion, flooding, land capability and bushfires. For example, delays in the completion of flood mapping for the whole of Victoria is inhibiting the introduction of flooding controls [see Section 6.6]. At the same time, few rural Councils have the digital mapping base that will allow them to incorporate the new maps readily. There is little or no coordination or commonality of purpose between the sources of this mapping. An additional complication has been the different levels of understanding within DNRE between regional and head office, and different business organisations within the Department, about the planning reform program and ways of using information.

To be effective the various data sets need to be digitised, brought to a common scale and defined to accord with the new local government boundaries.

The panels therefore recommend that DOI seek the cooperation of DNRE and Treasury to accelerate the provision of natural systems information to municipalities. DOI should also maintain pressure to ensure consistency between the data sets of various organisations.

However, these difficulties aside, the mapping being undertaken will be a tremendous boon to those Councils that are prepared to devote sufficient resources to incorporating the information into planning schemes, where relevant, or using it in other ways to implement their strategies, both economic and environmental. DOI has a pivotal role in making sure the planning reforms operate effectively. This includes assisting Councils to use the information and technology that is available.

Part of the corporate responsibility of DOI is marketing information. This responsibility recognises how integral to good decision making up-to-date and relevant information is. As they have been exposed to the range of information and technology that is available, it has become very clear to the panels, the enormous differences that exist between the quality of planning and decision making by Councils based on hard information relevant to the circumstances of the municipality, and decision making that is not so based.

For example, Pyrenees Shire began preparation of their new planning scheme with a full land capability analysis. The MSS sets out this information as the basis for identifying

key issues, objectives, strategies and implementation measures. As a result the Council was able to systematically arrive at the use of zones and subdivision minima. The City of Greater Geelong was another municipality that used a land capability study as the basis for its rural zones (even though the rationale was not incorporated into the exhibited MSS). Campaspe Shire has made a substantial investment in information by commissioning land capability studies specifically targeting a range of agricultural activities, such as cattle feedlots, tomato growing, olives and viticulture, as a means of implementing its strategies to promote agriculture. It uses this information to guide potential investors in these industries to those parts of the municipality best suited to their needs. The land capability studies incorporate information such as soil types, rainfall and the availability of infrastructure. They can be tailored to address whatever the particular needs of an activity may be.³¹

The panels believe that for maximum economic and environmental benefits to be derived from information and technology, it will be important that systems and databases are coordinated so that they are capable of integration with those of potential users. This is a responsibility that should not be ignored and is a role that DOI is best suited to assume.

It will also be important to market, both to Councils and other users of the planning system, the availability of information and technology, how it can be used and what it might cost. Again, the panels believe that this is a responsibility that should be assumed by DOI, which should also ensure coordination with local government and other government agencies, such as Business Victoria and DNRE. The panels found a wide disparity in awareness amongst Councils of what was potentially available. Often those most in need had least awareness of and were most resistant to using new technology and information, cost often being cited as a reason.

It is recommended that DOI develop strategies to assist in the dissemination and use of information and technology to Councils and other users of the planning system to ensure that maximum advantage is derived from what is available and that the quality of decision making is improved.

8.5 BIODIVERSITY

The protection of native vegetation on private land is an issue raised in most rural municipalities either by Councils or various submitters. Panels are aware in broad terms of the significant vegetation mapping program being undertaken by DNRE, and have consistently expressed the view that appropriate policies and overlays can only be applied when the relevant areas are mapped.

³¹ The land capability studies for the Campaspe Shire were prepared by the Centre for Land Protection Research in Bendigo, which is a business of DNRE.

Advice on the availability and management of biodiversity information through the Flora and Fauna Program of the DNRE was not consistently available during the preparation of the new format planning schemes or during the course of panel hearings. The publication of Victoria's Biodiversity Strategy and the availability of versatile computer based mapping tools and databases such as BioMap, Flora Information System and the Significant Sites Register, will provide the mapped data enabling Councils to use biodiversity considerations as part of their decision making processes. In particular, the section of the Strategy titled '*Directions in Management*' includes management measures that may have impacts on land use planning and will need to be carefully considered.

Although the Significant Sites Register is not yet available, systematic coverage of the State is being undertaken on an LGA basis through the Biodiversity Mapping Project. In the panels' view, it is desirable for arrangements to be made at a state level to ensure that municipalities are advised when coverage of their area is available so that provision can be made to incorporate the data into planning schemes by way of an amendment. This should utilise appropriate overlays and schedules, and may include introducing local policy providing it adds value to the decision making process and is not simply a repetition of other parts of the scheme.

In anticipation of the completion of the mapping, DOI in consultation with DNRE should develop appropriate model schedules, statements of significance and local planning policies to be given to Councils as a 'package' with the Significant Sites Register and maps for the municipality. This will help Councils to introduce the new controls, and will ensure that a consistent approach is taken across the State. Particular attention should be paid to the wording of these models to ensure they respond to the principles of the planning reform program and plain English.³²

In the panels' opinion, the introduction of these measures will provide the essential underpinning for the environmental values embodied in Victoria's Biodiversity Strategy. The Biodiversity Strategy should also be supported by direct reference in the SPPF.

The panels therefore recommend that:

- **DOI, in consultation with DNRE, should develop model schedules, statements of significance and local planning policies to assist Councils incorporate the Biodiversity Strategy into their planning schemes when the mapping becomes available.**
- **The SPPF should be amended to incorporate specific reference to Victoria's Biodiversity Strategy and use of the Significant Sites Register and maps.**

³² For example, the Panel considering the Wangaratta Planning Scheme was critical of the wording of proposed schedules for the Environmental Significance Overlay and Vegetation Protection Overlay, which had been prepared by DNRE and were intended as models for similar use around the State – see Wangaratta New Format Planning Scheme Panel Report, Section 3.2, pp 62-63

8.6 MAPPING

8.6.1 STATUTORY MAPPING

Problems were encountered in rural municipalities where boundaries between large scale (township maps) and small scale (rural maps) were not adequately reviewed during the course of preparing the new format planning schemes. In many cases, the boundaries of old urban planning schemes were straight lines on a survey grid. When these boundaries are used in the new amalgamated municipal area as boundaries between large and small scale maps, it results in areas on the fringe of these settlements – the areas where current growth is usually occurring – being in a small scale rural mapping area with resultant lack of clarity.

This is an issue that DOI should review during the first three-year period. New guidelines should be issued about the scale of mapping and appropriate boundaries when there are changes in scale.

8.6.2 STRATEGIC MAPPING

The quality of strategic mapping included in the MSS of new format planning schemes was generally disappointing in terms of quality, scale and number. The ability to reproduce maps clearly in black and white is essential.

It is recommended that DOI develop guidelines for strategic framework plans to assist clarity or publish examples of good practice.

8.7 AREA SPECIFIC ISSUES

Across the spectrum of the new format planning schemes considered there were a range of area specific issues, which nevertheless have a much wider interest and relevance. Unfortunately it is not possible to refer to all of these here. Likewise there were numerous issue specific topics addressed which are within the same category.

It is worth highlighting two of these issues because they illustrate the difficulties arising from the vacuum caused by the lack of a spatially based metropolitan strategy.

One of these is the green wedge. The green wedges have been important components of Melbourne's planning strategy since the 1970s. However, they are no longer geographically referenced in the SPPF. Instead, it is up to individual municipalities to incorporate objectives relating to them and strategies to manage and protect them into their municipal strategic statements.

The problem with this approach is that a single green wedge may lie within several municipalities. Despite evidence of regional cooperation, they are still susceptible to attrition as different municipalities make decisions affecting them. Nor does this approach adequately recognise the significance the green wedges have for Melbourne as a whole, as distinct from the individual municipalities or even their regions.

The green wedges are under sustained pressure in all parts of the metropolitan area. All affected municipalities are grappling with the problems they present. However, greater significance would attach to them and more consistent strategies may be developed if their metropolitan, indeed state, significance was recognised in the planning schemes.³³

Another issue is the potential loss of public open space through Parks Victoria/DNRE failing to take responsibility as acquisition authority for past Public Open Space Reservations. This was a concern raised by panels throughout the metropolitan area.

Significant areas of land currently included in a Proposed Public Open Space Reservation along Melbourne's major waterways are being zoned Urban Floodway (at the request of Melbourne Water) and are not being acquired by Parks Victoria. Thus, the planned open space network, which has existed for over 45 years, is liable to disintegration. This is totally contrary to the objective and implementation for open space in Clause 15.10 of the SPPF.

Numerous panels recommended that DOI consider the ramifications of losing this proposed public open space along these waterways from a local, regional and State perspective.

The other issue associated with the same matter is to do with equity.

If Melbourne Water has substantiated that this land is liable to flooding, it is appropriate to introduce the Urban Floodway Zone. Given commitments in the SPPF to catchment management and improving water quality, and given Melbourne Water's role as the relevant drainage authority, there can be little doubt as to the outcome of an amendment if it were to be exhibited. However, where this land was previously reserved for Proposed Public Open Space, it was part of the metropolitan open space strategy and this designation carried with it the implication that this land would one day be acquired for public use.

The change from a reservation for proposed open space to an Urban Floodway Zone has two effects. It essentially removes this land from being part of a proposed network of open space, which would be inconsistent with Clause 15.10 of the SPPF, and it effectively blights the land because, in an urban context, this zone is tantamount to a prohibition on development.

From the owners' perspective, there is a substantial difference between land, which they may or may not have been able to develop, being acquired from them with reasonable compensation, and having any development rights, however limited, effectively blighted by application of the Urban Floodway Zone.

³³ A comprehensive discussion of the green wedge concept, its history, significance and pressures for subdivision, is to be found in the Panel Report on the Manningham New Format Planning Scheme at pp 15-22.

Thus, this change of status affects not only the owners of the land but also significantly changes the potential metropolitan open space network.

Both these issues illustrate how important strategic elements giving character and definition to the form of the city can be lost through the lack of a spatially based strategy plan for Melbourne as a whole. Fortunately, the panels understand that a metropolitan strategy is under consideration. Hopefully, the opportunity will be taken to give it a geographic as well as a conceptual base, and that all authorities and bodies will need to give effect to it.

SECTION 9 LOCAL PLANNING POLICY FRAMEWORK

9.1 PRACTICE NOTE ON THE FORM AND STRUCTURE OF MUNICIPAL STRATEGIC STATEMENTS

There are very few new format planning schemes where the panel has not recommended that the MSS should be rewritten in some way.

In some instances, major structural amendment is required to ensure that the MSS is the prime embodiment of a municipality's objectives and strategies relating to land use and development, and that these are not still located in documents sitting outside the planning scheme.

However, most frequently the need to rewrite the MSS arises from the need to be more specific about what the council is seeking to achieve, and to distinguish more clearly between objectives, strategies and means of implementation.

This issue was highlighted in the Report on Trends and Issues Emerging from Consideration of First Five New Format Planning Schemes (March 1998). It has since led to the issue of a Practice Note on the Form and Structure of Municipal Strategic Statements.

In the Practice Note the following terms are defined:

- **Objectives** – the general aims or ambitions for the future use and development of an area responding to key issues identified in the MSS.
- **Strategies** – the ways in which the current situation will be moved towards its desired future to meet the objectives.
- **Implementation** – the means by which the strategies will be implemented.

Despite the rewriting that occurs prior to the gazettal of planning schemes, the panels believe that most MSSs will continue to undergo revision. This will be as a result of reviews of the planning scheme and refinement as experience is gained in the way is

which the LPPF can be used and as shortcomings with current expression are disclosed. In addition, there will be amendments. Unless an amendment finds existing strategic support within the MSS, it may require modification of the MSS as well.

It is therefore useful to make some further observations about the way in which language is used in the LPPF. The way language is used is also a good guide to the way in which thinking should proceed to guide the exercise of discretion. As discussed in Section 3, possibly more than anything else, the planning reform will demand a change to the way of thinking associated with decision making.

9.2 WRITING GOOD OBJECTIVES

Objectives are required in new format planning schemes in municipal strategic statements and as part of policies.

DOI has recently defined an objective as:

The general aims or ambitions for the future use and development of an area responding to key issues identified in the MSS.

It is a long way between knowing what an objective is in theory to drafting clear and concise objectives that can form part of a planning scheme.

The new planning system places a greater emphasis on objectives than ever before, and it is imperative that they are well constructed. A common criticism, often made without analysis, is that the objectives are simply 'motherhood statements'. This may well be the case with a number of schemes, but there is nothing inherently wrong with motherhood statements, which simply document the uncontroversial. Reviews of schemes have identified a number of other faults. These include:

- Motherhood statements
- Feel-good objectives
- Just good planning
- Visions as objectives
- No local colour
- Wishful objectives
- Contradictory objectives
- Mutually exclusive objectives
- Not written as an objective
- Objectives run together
- Actions as objectives
- Means as an end
- Tautology
- Concepts as measures

It is worth discussing these in some detail.

Motherhood statements

Motherhood statements are objectives that nobody is likely to disagree with. For example:

To reduce the risk of crime.

They are not necessarily vague—just too broad and well established as community goals to communicate anything about what your organisation considers important. They may well be necessary—a transport strategy that did not address safety would be suspect—but they are only a starting point.

Feel-good objectives

At first glance 'feel-good objectives' seem like motherhood statements but where a motherhood statement says something unremarkable feel-good objectives are fundamentally vague.

Consider the objective:

To ensure housing meets the needs of the community.

What this objective means depends on how the reader interprets key parts of the objective, in particular, how the reader interprets 'housing needs'. Housing need could be defined, either in space, financial or location needs. Until we do this there is no way of understanding the objective. There is nothing wrong with the sentiments behind this objective but it does not translate into any reasonable set of strategies or actions.

Just good planning

Some objectives set out in municipal strategic statements provide little if anything that is not self evident or already part of the SPPF.

Consider the aim:

Recognise the distinctive character of Stonnington's residential areas and ensure that future development is consistent with the character, scale appearance and amenity of the area.

This is nothing more than a restatement of general planning principles. An alternative set of objectives should be prepared to provide clearer guidance on what is considered distinctive about various parts of the municipality.

Visions as objectives

While a section in an MSS entitled 'what would we like to see' might be thought of as a set of objectives in practice this presents difficulties. For example the statement

What would we like to see ...

The focus on indigenous vegetation will be a key factor in promoting the identity of the city

is a description of a future world not an expression what the Council as a planning authority and responsible authority seeks to achieve. There is a role for such vision statements but they cannot substitute for objectives that provide the underpinning and logic to actions that Council will undertake in preparing its planning scheme or exercising discretion.

In the above example if it were converted to an objective it could imply any of the following objectives for Council

To use a focus on indigenous vegetation in promotion of the city, or

To promote the retention of indigenous vegetation, or

To foster an identity for the city based on indigenous vegetation.

Identifying objectives in terms of what Council wants to achieve by its own actions, rather than what it wants the future to be like is needed to make the MSS clear—and to fulfil the requirements of the Act.

No local colour

Many of the strategic goals identified in municipal strategic statements could be improved by making them more specific to the locality—that is by making them more clearly adapted to local conditions.

For example the strategic goal:

To maintain, enhance and create a sustainable natural and built form, having regard to environmental, social and economic considerations. Future City development shall reflect and respect the natural and cultural heritage of the area and through improved urban design create a sense of place.

could apply to any municipality in Victoria (or indeed anywhere). There is no sense of what 'sustainable' means to the particular Council or what exactly would constitute 'improved urban design'.

The strategic goal simply do not express in clear terms what it is that the particular Council is seeking to achieve—the goals need to express what the municipality considered a sustainable built form to be, or how urban design can improve the sense of place.

Wishful objectives

The purposes of one exhibited policy was:

To create a built environment along main (Category 1) roads that instils business confidence, is aesthetically pleasing and which the local community can identify with.

There may well be good urban design and amenity reasons why a particular design, siting and landscape approach should be maintained along main roads, but it seems a bit far-fetched to claim that this can 'instil business confidence'.

The SPPF provides a strong policy base for achieving a high standard of urban design and amenity, and these rather prosaic aims are to be preferred. There is no obvious connection between landscape setbacks and business confidence and such purposes in policies tend to obscure the intent of the policy rather than make it clearer.

Contradictory objectives

Sometimes a municipal strategic statement will have two clearly contradictory objectives. For example with respect to key redevelopment sites there may be conflicting objectives between:

Identification of preferred use and development options for key sites

and

Encourage residential uses as a component of redevelopment on large sites which become available

One of these objectives suggests an open mind to the uses that large sites may be put to, the other has a strong emphasis on residential use. This could cause confusion in interpreting Council's objectives for redevelopment sites that emerge in the future.

Mutually exclusive objectives

Sometime objectives are contradictory. Consider the objectives:

Support and reinforce a hierarchy of shopping centres,

Maintain the individual character in terms of use and built form in existing centres

Maintain and enhance the commercial viability of existing centres

If reinforcing a hierarchy means stopping more intensive development in lower order centres then how does this relate to the third objective of promoting viability. The Planning Scheme is left with an objective to promote the viability of centres by reinforcing the role they now have. In the dynamic and changing nature of retail this is a contradiction in terms.

The danger with criticising mutually exclusive objectives is that some one may develop a brilliant strategy that allows us to achieve what we thought were mutually exclusive objectives.

Not written as an objective

Some objectives just aren't written as objectives. For example objectives should begin with the infinitive form of the verb. That is the objective of:

Promotion and development of mixed use area

should be rewritten as

To promote the development of mixed use area

if this is what is meant.

Objectives run together

Strategic goals should be shortened to clearly express their underlying aim. For example the housing goal:

To reinforce and create residential environments that are economically and environmentally sustainable, livable, and have a sense of place. These environments will be based on the integration of physical and social infrastructure and characterised by identifiable neighbourhoods, community focal points, a diversity of dwelling types and household mix, and energy efficiency.

could be better expressed as a separate series of objectives—for example,

To ensure new residential development creates identifiable neighbourhoods that have a sense of place and clear community focal points

To provide a diversity of dwelling types for a range of household types

To ensure the integration of physical and social infrastructure

To create sustainable and livable residential environments that reinforce the natural values and bayside character of the municipality

To promote energy efficiency in residential development.

Actions as objectives

To reduce car trips by raising public awareness of the adverse impacts of car travel.

These objectives are actions or contain actions. They do not allow a variety of ways to be achieved.

This is a common mistake and one where the action is include in the objective. It is worth remembering that actions may have to opposite effect to those intended—this is only discovered by research. There are some pointed example of how actions may have opposite effects to those intended. For example wildlife tunnels under roads can **increase** the deaths of wildlife. In some areas the foxes just wait for their dinner to deliver itself! Tunnels can be made to work but they cannot be assumed to work.

Means as an end

Some purported objectives are really the means to some other objective that is not really spelt out. For example, the objective:

To control the removal of native vegetation

does not say why vegetation removal is to be controlled. The objective needs to state the reason why an organisation wants to control removal of native vegetation: seeking the control is not an objective in itself.

Tautology

To ensure landmark buildings have distinctive character.

Tautologies are where the objective is necessarily true. An example is the guideline that states 'well deigned street furniture can improve the look of an area'. Of course—that's what well deigned means. The example is calling for landmark buildings to be distinctive—could they really be anything else?

Concepts as measures

This problem arises when using concepts like urban character, which are descriptive concepts, as measures.

To increase the urban character of shopping strips.

Urban character describes the relationships between various elements of the urban environment. It can be changed, but it can't be increased.

9.3 LOCAL POLICIES³⁴**9.3.1 WRITING GOOD LOCAL POLICIES**

Local policies are an implementation tool just as zones, overlays and other provisions of the scheme are. They serve to implement Council's objectives — they should not be a substitute for those objectives.

The panels have a number of concerns about the way in which many policies are written. These include:

1. some policies duplicate items in the SPPF and are hence unnecessary
2. some policies duplicate guidelines set out in overlays and this is unnecessary

³⁴ This section is based on an extract from the Stonnington New Format Planning Scheme Panel Report [see Section 3.3, pp 14-16]. References to Stonnington have been retained for the purposes of illustration.

3. some policies contain controls or prescriptive standards and this is against the principles of planning reform
4. some important issues are spread across several policies.

1. *Duplication of SPPF*

It is important that policies on topics that are already covered by the SPPF are more specific or provide local context to the SPPF. The SPPF and the VPPS are quite comprehensive in the policies they set out and the matters that need to be taken into consideration in exercising discretion. The provisions of the SPPF should be the starting point for Council and local policies are only required when they can add something useful to that which is already in the scheme.

The reason why Councils often include local policies of this nature is their fear that the general provisions of the zones, overlays or Clause 65 are too open ended and too liable to defeat at VCAT. Hence they attempt to over-specify matters to be considered in decision making. At the very least this suggests a checklist requirement for local policies to ensure that they do not unreasonably duplicate other decision-making bases already in the scheme. It also suggests that Clause 65 should be given greater prominence and possibly further review. If it was up front and further refined it may enable a lot of other decision guidelines in various zones, overlays and local policies to be done away with and overcome the tendencies of Councils to be repetitious about matters to be taken into consideration in exercising discretion.

2. *Duplication of Overlays*

There is generally no need to have a separate policy that relates only to an area covered by an overlay. Overlays provide for decision guidelines to be included and this is often a better place for incorporating policy issues.

3. *Prescriptive Standards*

In Stonnington, the Advertising Signs Policy for example, seeks to set out a prescriptive set of standards for advertising. This is not appropriate in a local policy, apart from the issue of duplication with the advertising signs provisions of the VPPS. This was a common problem with many local policies.

Reference to '*must*' should not be included. The policies should be written with a performance based approach in mind, rather than being prescriptive. The actual policies should be expressed as '*It is policy that ...*' or '*It is policy that the following matters be taken into account when considering applications to...*'. In this way, even the words '*should*' and '*will*' can be deleted in the policy statements.

4. *Issues Spread across Many Policies*

There are a number of policies that deal with urban design and development issues. A person with a large development site in Stonnington could consult the MSS and local policies and determine that:

1. an absolute limit of three stories applies under the general strategy in the MSS (Page 15); but
2. up to four stories is permitted under the discretionary uses in retail areas (Policy S1); or
3. up to six stories is permitted under the large sites policy (Policy G9); or
4. even higher is permitted under the bonuses and dispensations policy (Policy G10); but despite any of this
5. the building should not be significantly higher or lower than surrounding buildings under the design of new development policy (Policy G2).

This overlap should be eliminated. Height is obviously an issue in Stonnington (judging from the number of times it is mentioned in the MSS and local policies) and a clear and consistent set of principles that are properly researched and argued should be developed as a separate policy.

1. *Not all Information is in the Policies*

A number of the policies refer to Stonnington Information Sheets. These and several other documents are proposed to be incorporated in the scheme. All policies and decision guidelines should be readily apparent in the planning scheme itself. The specific planning requirements should be extracted from the document and included in the scheme in an appropriate way rather than incorporating the document. Whether it is necessary to mention the document in the scheme as a reference document will depend on individual circumstances.

A possible exception to this are documents such as urban design guidelines or heritage guidelines, which too extensive to write directly into a local policy and include illustrations. One approach here is to have a local policy that says, for example: "*It is policy that in considering applications in the area covered by the Heritage Overlay the responsible authority will take into account the Heritage Guidelines.*" Alternatively, if the area to which the guidelines apply has an overlay that provides for additional decision guidelines, reference to the document can be included here. The document should then be included as an incorporated document under Clause 81.

With respect to the Heritage Overlay, it is noted that the decision guidelines in Clause 43.01-5 refer to any “*applicable heritage study and any applicable conservation study*”. It may be preferable to reword this provision to read as follows:

- Any applicable heritage study and any ~~applicable~~ conservation policy or heritage guidelines incorporated in Clause 81.

This would then avoid the need for a separate local policy merely to require consideration of these sorts of documents. It would also be in line with the provisions of other overlays.

2. *Some Policies are too Broad*

Some of the policy statements are too broad to guide decision making and would more appropriately be included in the MSS or could be deleted because they are already in the scheme as decision guidelines. For example, under Subdivision:

In considering subdivision applications the Council must be satisfied that the subdivision will:

1. *provide a high standard of amenity for the occupants and maintain the amenity of adjoining properties, particularly residential, minimising noise, traffic and parking impacts.*

This is very obvious. Does Stonnington really think that these issues can't be addressed without a local policy?

3. *Other Issues*

It is inappropriate to include a policy that applies to the consideration of rezoning applications. Guidance for the planning authority should be included in the MSS. (Even in the MSS, it is not appropriate to purport to restrict the powers of the planning authority as proposed; that is ‘*The Council may agree to rezoning of residential or industrial land only if...*’.)

Each policy needs to provide clear links to the MSS, articulating the strategic directions which have given rise to the policy, set out where the policy applies, provide clear separation between the policy statements and decision guidelines, draw out the policy implications from documents referred to and include key decision guidelines.

9.3.2 CONSTRAINTS ON THE EXERCISE OF DISCRETION

Possibly the greatest challenge in managing the new format planning schemes in the future will be to strike a suitable balance in the degree to which local policies can inhibit land uses otherwise allowed or subject to permit.

It is understood that local policies cannot prohibit a use permissible under the zone and have been restricted to use of words such as “encourage” or “discourage”. But the practical realities are that Councils have to make decisions. If the local policy

“discourages” certain uses (say, within the Mixed Use Zone or the Residential Zone) in certain locations, what real alternative does Council have but to refuse the application that should be discouraged? Put the other way, why would a Council not refuse an application if it has consciously written a policy “discouraging” that use in that location? This is a de facto limitation on the uses otherwise permissible in the zone. Whilst the encourage/discourage dichotomy may be supported by a couple of sentences under the heading “policy basis”, it does not detract from the reality that this is a mechanism that will be used for prohibiting land uses that are otherwise contemplated in the zone. There is nothing terribly wrong with this, particularly as it has been emphasised that Section 2 uses can be refused just as legitimately as approved. And indeed if it were not the case, why are uses in Section 2 at all? Nevertheless, it raises the potential for local policies to subsume the role of the standard VPP zones, resulting in a proliferation of de facto local zones, which the planning reform program was intended to eliminate.

The panels do not consider that the problem is solved simply by insisting on use of the word “encourage” as opposed to “discourage”. If a use is to be encouraged, it will be easy to argue that this means other uses are to be discouraged. At least, that is certainly the way in which many councils will apply the logic to achieve the outcomes they wish.

The panels see the solution in concentrating on the objectives of the policy, rather than on the words of the policy that “encourage” or “discourage” certain uses. If it is these provisions that are concentrated on, then local policies will act as de facto zones and the flexibility that the planning reforms have introduced by way of the new zones will be lost. Instead, it must constantly be asked, irrespective of whether it is stated that a use is “encouraged” or “discouraged”, what will the outcome be? Will it further the objectives of the policy or will it be contrary to them? If it will do neither (in other words, it is policy neutral), then it must be asked, why not allow the use? There may be other policy or amenity reasons why it should not be allowed. But if there are not, the intent of the reforms is to allow it to proceed, notwithstanding the policy may specifically provide that it is a use to be “discouraged”.

This illustrates the vital importance of writing good objectives in policies and the MSS. It also demonstrates the shift in thinking that will be required on the part of decision-makers, both at council level and at VCAT. The key aspect of any policy will always be the objectives. All decisions must be tested against them. The part of the policy that states, “*It is policy that...*” will always be of secondary significance, even though it is the part everyone traditionally goes to first.

This is the message that the panels consider DOI should concentrate on spreading and reinforcing. Unless it is vigilant in conveying this message and seeing it implemented at all decision-making levels, a key component of planning reform will fail.

9.4 LANGUAGE

The use of generalised language was an issue referred to in the Report on Trends and Issues Emerging from Consideration of First Five New Format Planning Schemes (March 1998). The point was made that many schemes suffer from the use of very generalised language, whether in the MSS, local policies or schedules. Similarly, language used was often convoluted when a direct, straightforward expression might be more useful and easily understood.

The panels have found that one of the most limiting features of this use of over-generalised language has been in describing the identity of the municipality and the character of towns within it. This has often had the effect of inhibiting the Council's appreciation of what features are significant in defining the character of their towns, what their strengths and weaknesses may be, and its development of strategies to deal with these. The growing concern about urban character and the proliferation of character studies may only serve to generate a lot of words and paper unless some comprehensive and clear thinking by Council in-house takes place.

Some schemes describe their towns and townships solely in terms of the number of residents, while others give only an engineer's approach — *'this township has made roads, a reticulated water supply but no sewerage.'* Others offer some analysis of the role of the towns — *'a small settlement of 150 residents providing basic retail and other services to its local rural community'* or *'this town is the centre of agricultural-based manufacturing in the region, and its industries provides 25% of the Shire's employment.'* Others have added a bit of history — *'this town was established in the goldmining era and once supported a population of 12,000. It has a legacy of fine public buildings.'*

However, there are very few cases where a truly comprehensive analysis has been provided. One of the examples above was *'a small settlement of 150 residents providing basic services to its local rural community.'* A comprehensive view might have added that:

1. *'the township is located on a north-facing hillside with good views over farming land in the X valley;*
2. *there is little prospect of expansion due to lack of reticulated services;*
3. *there are 276 lots within the township boundaries, 168 of which are vacant;*
4. *the township is only 8 km from the nearest commercial centre B, and a growing number of residents commute to B for employment;*
5. *34% of the population is over 60;*
6. *the major feature of the township is a magnificent avenue of oaks in the main street which is an attraction to both residents and tourists;*

7. *the township was formerly a popular stopping point on the road from B to C, but was bypassed in 1978;*
8. *the primary school (now closed) and the hotel are historic buildings classified by the National Trust;*
9. *the 6 shops and the community hall have not been upgraded for some years.*

Having built a more comprehensive picture of this mythical township it is much easier to identify the opportunities and constraints that it offers. What are its good points? Its views, its avenue, its proximity to urban services and employment in B, its attraction for commuters, its history. What are its constraints? Lack of reticulated services; ageing population; the run-down retail and community centre. The next step is to devise a strategy to build on its strengths and address its weaknesses. Examples might be: *apply VPO to the avenue and establish tree replacement program; provide reticulated water within 10 years; consider including the town in the Shire's proposed new Tourism Trail; establish a streetscape improvement plan for the township's centre; investigate housing and services options for elderly residentsetc.*

Very few schemes have set out comprehensive views of their towns, and as a result have not developed comprehensive strategies. The better schemes have identified at least some of the main characteristics of their towns and townships, and the best have included Structure Plans and a strategy for the future, backed up by specific implementation measures.

All Councils are urged to reconsider the treatment of towns and townships in their schemes. This requires thought rather than new studies. Some Councils have recognised the need for further work and indicated future actions such as urban character studies and the development of Structure Plans. However, it is the comprehensive thinking by Council in-house that is most needed. Expenditure on urban character studies will provide a part of the comprehensive picture, but is not a substitute for an objective evaluation by the Council based on a much wider range of parameters.

As a final word on the use of language within the LPPF, it is worth quoting from the Panel Report on the Moreland New Format Planning Scheme, which the Panel considered to be *“clearly the best of the urban schemes considered to date by members of this Panel”*:

The MSS is an excellent example of a true strategic planning document. It starts with a simple and charming vision statement:

‘Moreland seeks to create an environmentally sustainable and liveable city, where people can shop, work and socialise locally; a city where a car and a high income are not necessary for a rich and rewarding quality of life; a city which will continue to provide a range of opportunities and choices for a diverse and prosperous community.’

This ‘vision’ is woven like a continuous thread throughout the remainder of the document. The planning strategy under each MSS ‘theme’ is explicitly linked back to this vision through the analysis of environmental, economic and social perspectives. In this Panel’s experience, Moreland is the only scheme in which analysis to this degree of sophistication has been undertaken and included as an integral part of the MSS. The Local Planning Policies also relate directly to the vision. Similarly, the use of zone and overlay controls is clearly understandable as implementing the vision.³⁵

SECTION 10 RECOMMENDATIONS

1. As a matter of urgency, the *Planning and Environment Act 1987* should be amended so that an amendment to the VPPS will result in the automatic amendment of all planning schemes using that particular provision of the VPPS. (Section 3.2.7)
2. The SPPF should be reviewed to better recognise the role that all forms of productive agricultural land play in maintaining and expanding the State’s agricultural base, not just high quality agricultural land. (Section 4.5.3)
3. DOI should encourage Councils to develop mechanisms in the form of policies and other initiatives by which to deal with pressures, which may result in the loss of productive agricultural land from production. (Section 4.5.3)
4. The principles underlying the rural zones and the environmental overlays should be reviewed and modifications made to the VPPS to ensure that important objectives in respect of agriculture and rural land can be met effectively. (Section 4.6)
5. Consideration should be given to expanding the suite of rural zones in the VPPS to encompass the following:
 - Agriculture Zone
 - apply to land where the primary purpose is productive agriculture and primacy is to be given to agriculture over residential use
 - purpose same as current purpose of Rural Zone
 - residential use would be strictly controlled and limited
 - no expectation of a dwelling on every lot

- no nexus between subdivision and the right to construct a dwelling
- minimum subdivision size would be based on land capability
- Rural Living Zone
 - same provisions as currently in VPPS
 - continue to apply as presently used
 - encourage larger minimum lot sizes where appropriate and where residential use is the primary purpose of the land

- Environmental Rural Zone
 - same provisions as currently in VPPS
 - restrict application to land where all uses should be subordinate to the environmental qualities or context of the land
 - limit its use as a catch-all by modifying overlays to fulfil the purposes that the Environmental Rural Zone is currently meeting by reason of its control over certain uses
 - Rural Zone
 - use as a zone of general application where the competing interests of residential use, agriculture and environmental qualities will need to be balanced depending on the circumstances
 - modify the purpose of the zone in the VPPS to reflect this role
 - apply to all rural land that does not fit within one of the other rural zones (Section 4.6)
6. In conjunction with industry groups, local government, catchment management and water authorities, and relevant government departments DOI should take the lead in coordinating:
- The development of codes of practice relating to various agricultural uses, which establish standards and a performance based approach to the management of land for these purposes. They should be designed for inclusion in the VPPS as the basis on which these activities will be conducted. Consideration should be given to whether they should apply to all existing uses, as well as new uses, in a similar fashion to the Code of Forest Practices for Timber Production.
 - The ongoing review of the VPPS to:
 - incorporate particular provisions relating to specific agricultural uses, including codes of practice;
 - include conditions that, if met, result in no permit being required for specific agricultural uses in appropriate locations or zones. (Section 4.7.1)

7. DOI should:
 - Monitor the way in which the new planning system integrates with issues relating to ongoing land management. It should consider if legislative change is required to better achieve the objectives of planning set out in the *Planning and Environment Act 1987*.
 - Provide guidance on how to encourage land managers to assume responsibility for the impacts that their activities may have and to manage their land according to identified standards or in line with agreed management plans. (Section 4.7.2)
8. DOI should develop suitable models to assist Councils in making appropriate use of the overlay provisions, which enable certain buildings and works to be scheduled out of the need for a permit. (Section 4.7.2)
9. The VPPS should be amended to introduce a particular provision in Clause 52 relating to dams. This should include a requirement for certified engineering plans to prove the adequacy of design to be submitted as part of an application. It should also be a requirement that applicants include an assessment of the impact that construction of the dam will have on water flows and the amount of water available to downstream users. (Section 4.8)
10. As a matter of urgency, DOI should liaise with DNRE, water authorities and catchment management authorities about suitable policies to guide equitable access to water resources. (Section 4.8)
11. In conjunction with the water industry, Victorian Council for Catchment Management Authorities and local government, DOI should investigate the development of a model local law to deal with the ongoing maintenance of septic tanks. (Section 5.2)
12. Water authorities should be encouraged to develop a series of performance measures and conditions upon which certain use or development may proceed within water catchments without the need for referral to the water authorities. (Section 5.3.6)
13. DOI should consider the introduction of a new Water Catchment Overlay to the VPPs that controls use as well as development. (Section 5.3.6)
14. DOI should review the operation of the overlays, particularly the environmental overlays, with a view to possibly reducing their number. (Section 6.1.5)

15. The VPPs should be amended so:
 - There is a provision in all rural zones that a permit is required to construct or carry out a building *or works* within 100 metres from a waterway, wetlands or designated floodplain.
 - The exemptions in Clause 52.17 from the need to obtain a permit to remove, destroy or lop native vegetation do not apply to any area within 30 metres from a waterway, wetland or designated floodplain. In other words, a permit is required to remove all vegetation within 30 metres of a waterway, wetland or designated floodplain without exception, except in the case of an emergency. (Section 6.2.1)
16. Further consideration should be given to the concept of a Natural Resource Overlay. (Section 6.2.2)
17. DOI should require Councils to include in the program for review of their planning schemes, a review of all places covered by a Heritage Overlay and an assessment of the material upon which it is based to ensure it meets the guidelines and criteria in the Practice Note. Appropriate statements of significance in respect of each heritage place should also be prepared. (Section 6.4)
18. DOI should prepare specific guidelines for dealing with the recognition and protection of Aboriginal heritage in planning schemes. (Section 6.4)
19. The third dot point of Clause 43.01–5 of the VPPS should be amended to read as follows:
 - Any applicable heritage study and any ~~applicable~~ conservation policy *or heritage guidelines incorporated in Clause 81*. (Section 6.4)
20. DOI should examine the apparent anomaly in Clause 43.03, which appears to enable the primary purpose of the Incorporated Plan Overlay to be undermined by issuing a permit not in accordance with the incorporated plan. (Section 6.5.2)
21. **DOI should monitor the operation of the VPP mechanisms in conjunction with the development industry and local government to ensure that the planning and development of urban growth areas operates efficiently.** (Section 6.5.4)
22. DOI should prepare a practice note on how the Incorporated Plan Overlay and Development Plan Overlay can be used in various situations and when they are appropriate, which contains more detail than currently included in the *Manual for the Victoria Planning Provisions*. (Section 6.5.5)

23. Where land is known to be prone to flooding, even though accurate mapping of the 1 in 100 year flood levels may not be available, the Land Subject to Inundation Overlay should be applied to land determined by the floodplain management authority. Those boundaries should be adjusted, if necessary, when detailed flood mapping becomes available. DOI should establish arrangements with relevant floodplain management authorities to make determinations about what land should be included in the Overlay in these circumstances. (Section 6.6)
24. DOI should examine the issue of goldmining residue and arsenic contamination on a Statewide basis. The examination should consider the following issues:
 - Are the potential adverse health effects significant enough to justify a planning control?
 - If so, should the control apply to all land or be limited to changes in use?
 - Should the NEHF threshold levels be formally adopted as a planning guideline?
 - How extensive is the potential application of the control?
 - How could the sites of former batteries and tailings dumps be identified?
 - Who should have responsibility for undertaking and funding the investigation?
 - Should Nillumbik be regarded as a precedent? (Section 6.8.2)
25. DOI should prepare a detailed practice note about the operation of the industrial zones. (Section 7.2)
26. DOI should prepare a practice note about drafting schedules to the various zones and overlays, which provides a range of good examples by way of illustration of good practice and variety of potential use. (Section 7.3.1)
27. The VPPS should be reviewed with respect to:
 - removing the distinction between the Special Use Zone and the public zones based on the public or private ownership of land;
 - replacing some of these zones by a new suite of zones based on broad categories of activity, which would be applied to public and private land alike, including the following:
 - Parks and Recreation Zone
 - Conservation and Resource Zone
 - Utilities Zone

- Education Zone
 - Health and Community Facilities Zone
 - Transport Zone
 - Extractive Zone (Section 7.4)
28. DOI should monitor the way in which Section 173 Agreements are being used in conjunction with rezonings and permits to limit the potential use of land. (Section 8.1)
 29. DOI should seek the cooperation of DNRE and Treasury to accelerate the provision of natural systems information to municipalities. DOI should also maintain pressure to ensure consistency between the data sets of various organisations. (Section 8.4)
 30. DOI should develop strategies to assist in the dissemination and use of information and technology to Councils and other users of the planning system to ensure that maximum advantage is derived from what is available and that the quality of decision making is improved. (Section 8.4)
 31. In consultation with DNRE, DOI should develop model schedules, statements of significance and local planning policies to assist Councils incorporate the Biodiversity Strategy into their planning schemes when the mapping becomes available. (Section 8.5)
 32. The SPPF should be amended to incorporate specific reference to Victoria's Biodiversity Strategy and use of the Significant Sites Register and maps. (Section 8.5)
 33. DOI should review issues about the scale of mapping and appropriate boundaries when there are changes in scale during the first three-year period. New guidelines should be issued. (Section 8.6.1)
 34. DOI should develop guidelines for strategic framework plans to assist clarity or publish examples of good practice. (Section 8.6.2)

APPENDIX A TERMS OF REFERENCE

NEW FORMAT PLANNING SCHEME

TERMS OF REFERENCE FOR ADVISORY COMMITTEE

PART A BACKGROUND

The three key objectives of the current program of planning reform in Victoria are:

- To establish a focus on state and local strategic directions which provide the bases for controls in planning schemes and guidance to decision-making.
- To provide a consistent set of statewide planning scheme controls and provisions.
- To test the system's effectiveness by annual monitoring and review.

The introduction of new format planning schemes for every municipality in Victoria presents a unique opportunity to put in place a complete set of consistent new schemes which express clear and implementable strategic objectives, eliminate unnecessary controls and display a high standard of statutory drafting.

The program also provides an opportunity to begin to build into schemes performance measurement criteria as a basis for the evaluation of the longer term effectiveness of each scheme and the effectiveness of individual policy initiatives.

To achieve these outcomes, it is very important that each scheme be examined and enhanced wherever possible to ensure that it is strategically well founded, well constructed and as technically correct as possible at the time of approval. In particular, a scheme should:

- Be consistent with statutory requirements, Ministerial Directions and the guidance given about the use of the *Victoria Planning Provisions*.
- Be consistent with the State Planning Policy Framework.
- Be constructed to actively implement the Municipal Strategic Statement and local policies, rather than being a best fit translation of the previous scheme.
- Only include clearly justified local policies.
- Use performance based or outcome based requirements wherever practicable.

An advisory committee appointed under Section 151 of the *Planning and Environment Act 1987* provides a means to assess schemes in these terms and to develop a comparative understanding of schemes on a statewide basis.

The development and use of new format planning schemes will be a learning process. Good ideas which emerge from this review of schemes will be able to be passed on for the benefit of all planning authorities: similarly with lessons.

There is a potential for planning authorities to use the *Victoria Planning Provisions* in a way which may make planning schemes unduly cumbersome. Experience with using the VPPs will overcome many of these problems, however this opportunity should be taken to identify if there are schemes that are overly cumbersome and whether there are more appropriate approaches which could overcome this.

PART B THE TASK

The task of the Advisory Committee is to evaluate schemes and recommend modification or improvement to achieve a high standard statutory and strategic document.

It is not intended that the Advisory Committee re-examine the principles underlying the reforms to the planning system, the approval of the Victoria Planning Provisions, the structure of new planning schemes or any other matter introduced under the Planning and Environment (Planning Schemes) Act 1996.

The Advisory Committee must hold a public hearing at which it will give the planning authority an opportunity to respond to the specific matters identified in Part E. It may hear from any other person with respect to these matters also.

The Advisory Committee must prepare a report in accordance with Part D which responds to the matters set out in Part C.

The Advisory Committee must undertake its task in conjunction with its role as a panel appointed to consider submissions about the planning scheme under Section 153 of the Planning and Environment Act 1987.

PART C WHAT SHOULD ADVISORY COMMITTEES CONSIDER?

1. Consistency

Is the planning scheme consistent with:

- the Ministerial Direction on the Form and Content of Planning Schemes under section 7(5) of the Planning and Environment Act 1987;
- Ministerial Directions under section 12 of the Planning and Environment Act 1987;
- the Manual for the Victoria Planning Provisions?

2. Municipal Strategic Statement (MSS)

Does the MSS further the objectives of planning in Victoria to the extent that they are applicable in the municipal district?

Are the strategic planning, land use and development objectives of the planning authority a reasonable response to the characteristics, regional context, development constraints and opportunities of the municipal district?

Considering the objectives of planning in Victoria and the planning authority's objectives, are there any important omissions or inconsistencies?

Does the MSS contain realistic and reasonable strategies for achieving the objectives?

What were the processes used in arriving at the MSS?

Are there satisfactory links with the corporate plan?

Are local provisions clearly expressed and written following plain English principles?

3. Local Planning Policy Framework (LPPF)

Is the LPPF and other local provisions consistent with the SPPF?

4. Zones, Overlays and Schedules

Are there clearly defined linkages between the MSS and the application of zones, overlays and schedules?

Is the application of zones, overlays and schedules the most appropriate of the VPP techniques to achieve the stated outcomes?

Are overlays and schedules being used when it may be more appropriate to use local policies?

If there are situations where the application of zones, overlays and schedules are not clearly linked to the MSS, is reasonable justification provided and is it considered acceptable?

Are the zones, overlays and schedules reasonably compatible at the interface with adjoining schemes?

Do local provisions adopt a performance based approach?

Have local provisions introduced referral requirements additional to those in the VPP?

5. Local Policies

Are local policies directed towards implementation of the MSS?

Are local policies soundly based and reasonably justified?

Will local policies be of practical assistance in day-to-day decision making about permit applications?

To what extent have local policies been created as part of the new planning scheme and to what extent are they a replication of previous local policies?

6. Incorporated Documents

Does the planning scheme include incorporated documents apart from those in the VPP?

What is the basis for incorporating any such documents?

Can the intentions of the planning authority in using incorporated documents be better achieved by other techniques in the VPP such as local policies?

7. Monitoring and Review

Has the planning authority established appropriate mechanisms for:

- monitoring decisions made under the planning scheme;
- evaluating decisions against the intentions of the LPPF;
- reviewing the LPPF and other local provisions and the planning scheme generally?

PART D REPORTING REQUIREMENTS OF PANELS AND ADVISORY COMMITTEES

The reports of a panel and an advisory committee in respect of any new format scheme and submissions to it should be combined.

The Advisory Committee must prepare a report which:

- Addresses the terms of reference.
- Recommends appropriate modifications (either generally or specifically) to the exhibited scheme.
- Identifies matters which warrant ongoing review or monitoring, including the need for time limits or "sunset clauses" for such matters.
- Recommends matters or issues to be considered as part of a further review of either the scheme or the *Victoria Planning Provisions*.
- Addresses or recommends any other matters which the Committee considers appropriate.

The report should be structured in the following way:

- The first part should be a general overview including a brief appraisal of the municipality and its strategic planning response to its circumstances. Any major strategic issues which have not been sufficiently addressed or emphasised should be identified together with any major inconsistencies or apparent anomalies. This part of the report should also evaluate:
 - whether or not the scheme is in line with the expectations of planning reform
 - whether the scheme is an improvement on the old format scheme
 - options for further improvement in the short and long term.

- The second part should contain the Advisory Committee's responses to the matters set out in Part C, together with any discussion and recommendations arising from this part of its task. In doing this, the Committee should take into consideration the responses from the council under Part E.
- The third part should deal with all submissions and recommendations arising from them.
- The fourth part should assemble all the recommendations and divide them into two sections:
 - those which, in the opinion of the Panel/Advisory Committee, should be implemented before the planning scheme is adopted and approved. This will include any recommendations for rezoning etc. which arise from consideration of individual submissions.
 - those which can be considered as part of a further review or a proposed amendment following adoption and approval of the planning scheme. This will include any suggestions for revision of the VPPs.

Without limiting the ambit of recommendations which a Panel/Advisory Committee may make, the following actions are open to a Panel/Advisory Committee when making recommendations about a planning scheme:

- Change the zone or overlay applying to land.
- Modify a schedule.
- Recommend that the scheme be approved with identified modifications to the MSS or other parts of the LPPF.
- Recommend that the scheme be approved with a "sunset clause" applying to certain provisions which require further consideration.
- Recommend that the scheme not be approved until certain matters are reviewed or done by the planning authority, or certain changes are made to the scheme.

The Panel/Advisory Committee should leave the drafting of modifications to the planning authority unless there is a specific reason for recommending a particular wording. In particular, the Panel/Advisory Committee should avoid attempts to rewrite any part of the council's MSS or local policies.

When identifying matters which warrant further review or ongoing monitoring, the Panel/Advisory Committee should consider the need to specify a time limit within which such review or monitoring should be carried out.

A copy of the report must be submitted to both the Minister and the planning authority within two months following the last day of hearings. A copy of the report must also be provided to the Minister and the planning authority on disk in MS Word format.

The Panel/Advisory Committee report will be available to the public 28 days after it is received by the planning authority or earlier if the planning authority agrees.

PART E RESPONSES REQUIRED FROM COUNCILS

The Panel/Advisory Committee will rely heavily on the material presented to them by Council. It is important that this material assist the Panel/Advisory Committee to fulfil its terms of reference and, in particular, to respond to the matters set out in Part C. Council’s submission should respond to the following matters.

E.1. THE PLANNING SCHEME

1. What are Council’s strategic planning, land use and development objectives?

This responds to section 12A(3)(a) of the Planning and Environment Act 1987 and essentially answers the question, “What are we trying to achieve”? This section should identify the key issues in the municipality and explain how the objectives were arrived at.

2. What are the strategies for achieving these objectives?

This responds to section 12A(3)(b) of the Planning and Environment Act 1987 and essentially answers the question, “What are we going to do to reach the objectives?” This is the core of the Municipal Strategic Statement and sets the framework for the application of zones, overlays and schedules, and the development of local policies. The response is likely to contain a mixture of sectoral (eg. housing, industry,) and geographical (eg. activity centres, foreshore) statements identifying what Council intends to do and where it intends to do it.

3. How are the strategies to be implemented?

This is an important step in explaining how the planning scheme has been developed. Some strategies or parts of strategies will be implemented through the application of zones, overlays, schedules and local policies and the subsequent administration of the planning scheme. Some strategies or parts of strategies may require actions or budgetary commitments through other Council programs and services, eg. tree planting programs, capital works programs, traffic management schemes. There are therefore likely to be two aspects to the response.

For those strategies that are to be implemented through the planning scheme, it will be necessary to explain the relationship between the strategic action and the application of zones, overlays and schedules (where appropriate) and the relationship with particular local policies. One way of working through this exercise is to think of it in terms of the following matrix.

Strategy	Zone	Overlay	Schedule	Local policy
<i>1</i>				
<i>2</i>				
<i>etc</i>				

The components of the matrix would only be filled in as required. Not every strategy will require overlays and schedules nor have a specific local policy.

The matrix is only a tool; it is not necessary to include a matrix in Council’s submission. What is necessary, however, is to explain to the Advisory Committee the relationship between the elements of the strategy and the zones (with any overlays or schedules) and local policies which are to be used in the planning scheme to implement the various elements of the strategy.

It is expected that this explanation will include reference to maps in order to explain where the zones etc apply.

This explanation responds to section 12A(3)(c) of the Planning and Environment Act 1987.

For those strategies that will be implemented, wholly or in part, through other activities of Council, it will be necessary to explain how they fit in with Council’s corporate plan; what actions will be taken and when; and whether there is any budget commitment if one is necessary.

This explanation can be provided in the form of a simple matrix. It responds to section 12A(4) of the Planning and Environment Act 1987.

<i>Strategy</i>	<i>Relevant Council corporate program</i>	<i>Action</i>	<i>Time line</i>	<i>Budget commitment</i>
<i>1</i>				
<i>2</i>				
<i>etc</i>				

4. Explain any particular or special situations where zones, overlays, schedules or local policies have been included in the planning scheme which do not bear a direct relationship with Council’s municipal strategic statement.

5. What mechanisms have been established or are proposed for:

- **Monitoring decisions made under the planning scheme and evaluating them in terms of the MSS and local policies?**
- **Reviewing strategy and policy within the planning scheme and the planning scheme generally?**

6. Are there any:

- **Inconsistencies with the Ministers Directions under sections 7(5) and 12 of the Planning and Environment Act 1987?**
- **Inconsistencies with the Manual for the Victoria Planning provisions?**
- **Technical corrections which Council has made or wishes to make to the exhibited planning scheme?**

7. **How does the planning scheme relate to those of adjoining municipalities, particularly with reference to the compatibility of zones etc and local policies across municipal boundaries?**
8. **Are there any incorporated documents in the planning scheme in addition to those included in the VPPs and, if so, what is the basis for their incorporation?**
9. **Are there any referrals in the planning scheme in addition to those included in the VPPs and, if so, what is the basis for their incorporation?**

E.2 SUBMISSIONS TO THE PLANNING SCHEME

Councils should provide a response to ALL submissions received resulting from exhibition of its planning scheme. The response should include the following sections:

- submission number
- submittor's name
- address of property (if relevant)
- existing zone (if relevant)
- exhibited zone (if relevant)
- requested zone (if relevant)
- brief summary of submission
- strategic assessment
- Council comment and recommendation
- Panel comment and recommendation (to be left blank)

E.3 OTHER MATTERS

Councils may raise any additional issues as part of their overall submission which they consider appropriate.

APPROVED:

Peter Bettess
Executive Director, Planning, Building and Development

DATED:

APPENDIX B PANEL MEMBER TEAMS

LIST OF NFPS PANEL MEMBER TEAM

REGIONS	PANEL MEMBERS
South/West – Barwon	Margaret Pitt Malcolm Lee Gwenda Kullen Anne Cunningham
Northern – Loddon & Mallee	Cathie McRobert Ken Mackenzie Max Richards Warwick Horsfall
Eastern – Gippsland	Ray Rooke Elizabeth Jacka Jan Salmon Brian Harper
Western – Central Highlands	Egils Stokans Chris Banon David Rae Esther Kay
North/East – Goulburn/Central City	Helen Gibson Margaret Pitt John Glossop Richard Walter
Metropolitan South/East	Kathy Mitchell Janet Horak Lester Townsend Anne Murphy
Metropolitan North/West	Paul Jerome (till 30/06/98) Margaret Pitt (from 01/07/98) Lisa Riddle Pauline Semmens Christine Daly

Team Leaders in Bold

APPENDIX 1.

LIST OF PANEL MEMBERS

NFPS	PANEL MEMBERS
Ararat	Egils Stokans (Chairperson) Esther Kay
Ballarat	Helen Gibson (Chairperson) Paul Jerome Margaret Pitt
Banyule	Egils Stokans (Chairperson) Chris Banon David Rae
Bass Coast	Ray Rooke (Chairperson) Elizabeth Jacka
Baw Baw	Ray Rooke (Chairperson) Brian Harper Janet Horak
Bayside	Kathy Mitchell (Chairperson) Janet Horak Anne Murphy
Boroondara	Kathy Mitchell (Chairperson) Pauline Semmens
Brimbank	Paul Jerome (Chairperson) Pauline Semmens Christine Daly
Buloke	Ken Mackenzie (Chairperson) Max Richards Cathie McRobert
Campaspe	Helen Gibson (Chairperson) Paul Jerome Margaret Pitt
Cardinia	Ray Rooke (Chairperson) Elizabeth Jacka Jan Salmon
Casey	Ray Rooke (Chairperson) Brian Harper Elizabeth Jacka
Central Goldfields	David Rae (Chairperson) Esther Kay
Colac Otway	Margaret Baird (Chairperson) Malcolm Lee
Corangamite	Malcolm Lee (Chairperson) Gwenda Kullen
Darebin	Paul Jerome (Chairperson) Christine Daly
Delatite	Richard Walter (Chairperson) John Glossop

East Gippsland	Ray Rooke (Chairperson) Elizabeth Jacka Brian Harper
Frankston	Kathy Mitchell (Chairperson) Lester Townsend Anne Murphy
French Island	Ray Rooke (Chairperson) Jan Salmon
Gannawarra	Max Richards (Chairperson) Warwick Horsfall Ken Mackenzie
Glen Eira	Lester Townsend (Chairperson) Anne Murphy Janet Horak
Glenelg	Helen Gibson (Chairperson) Paul Jerome Margaret Pitt
Golden Plains	Gwenda Kullen (Chairperson) Anne Cunningham Malcolm Lee
Greater Bendigo	Cathie McRobert (Chairperson) Warwick Horsfall Max Richards
Greater Dandenong	Paul Jerome (Chairperson) Kathy Mitchell Margaret Baird
Greater Geelong	Helen Gibson (Chairperson) Anne Cunningham
Greater Shepparton	Cathie McRobert (Chairperson) Max Richards
Hepburn	Egils Stokans (Chairperson) Chris Banon
Hindmarsh	Chris Banon (Chairperson) Esther Kay
Hobsons Bay	Ray Rooke (Chairperson) Elizabeth Jacka Jan Salmon
Horsham	Egils Stokans (Chairperson) David Rae Esther Kay
Hume	Margaret Pitt (Chairperson) Lisa Riddle
Indigo	Margaret Pitt (Chairperson) Richard Walter John Glossop
Kingston	Kathy Mitchell (Chairperson) Janet Horak Egils Stokans

Knox	Kathy Mitchell (Chairperson) Lester Townsend Janet Horak
Latrobe	Egils Stokans (Chairperson) Chris Banon
Loddon	Warwick Horsfall (Chairperson) Cathie McRobert Ken Mackenzie
Macedon Ranges	Cathie McRobert (Chairperson) Warwick Horsfall Max Richards
Manningham	Lester Townsend (Chairperson) Anne Murphy Christine Daly
Maribyrnong	Pauline Semmens (Chairperson) Christine Daly Lisa Riddle
Maroondah	Egils Stokans (Chairperson) Chris Banon Esther Kay
Melbourne	Helen Gibson (Chairperson) Margaret Pitt John Glossop
Melton	Paul Jerome (Chairperson) Pauline Semmens Christine Daly
Mildura	Egils Stokans (Chairperson) David Rae
Mitchell	Paul Jerome (Chairperson) Cathie McRobert Ray Rooke
Moira	Richard Walter (Chairperson) John Glossop
Monash	Kathy Mitchell (Chairperson) Anne Murphy Janet Horak
Moonee Valley	Paul Jerome (Chairperson) Pauline Semmens Lisa Riddle
Moorabool	Helen Gibson (Chairperson) Esther Kay Egils Stokans
Moreland	Margaret Pitt (Chairperson) Anne Murphy
Mornington Peninsula	Margaret Baird (Chairperson) Anne Cunningham Malcolm Lee

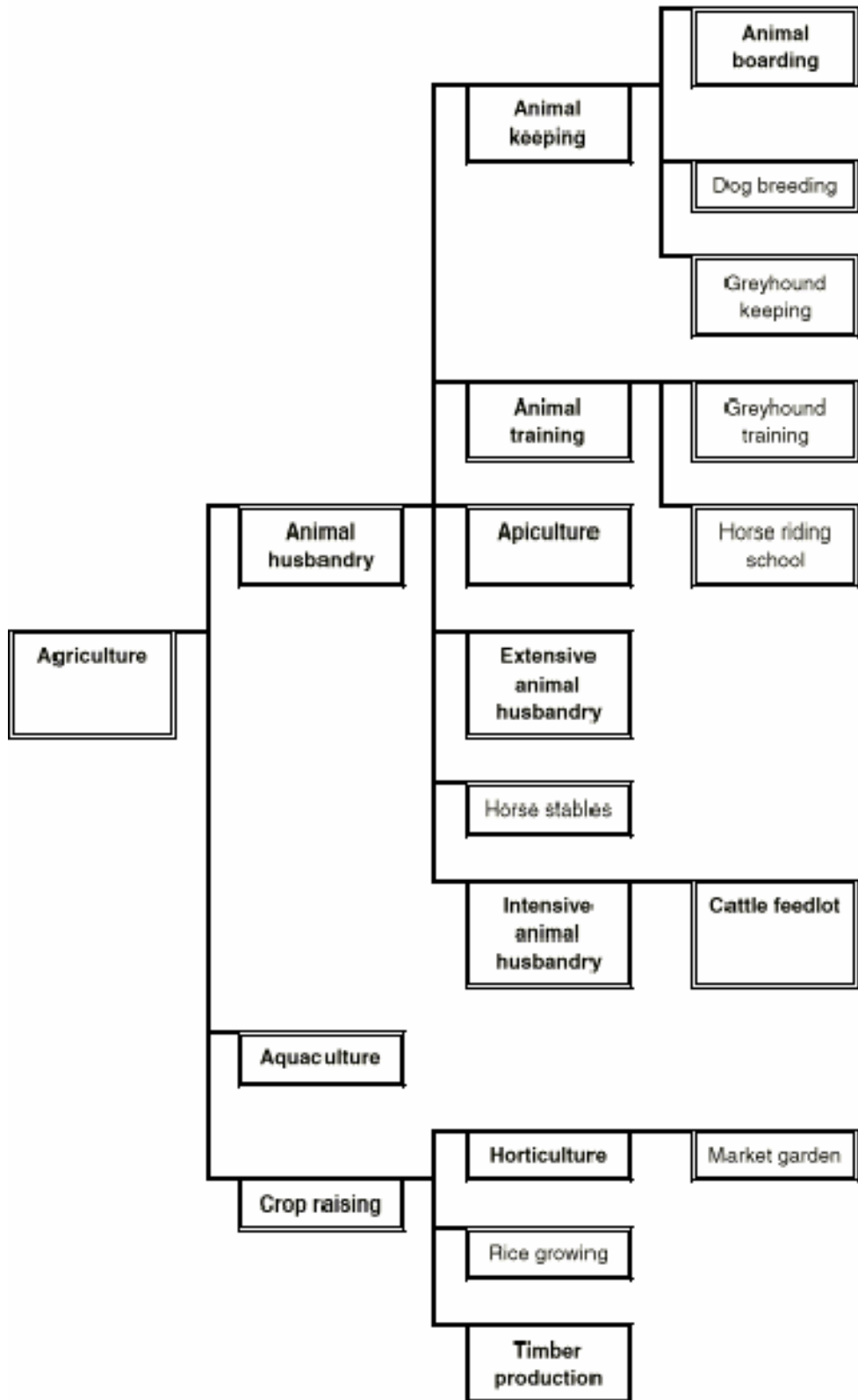
Mount Alexander	Cathie McRobert (Chairperson) Warwick Horsfall Ken Mackenzie
Moyne	Margaret Baird (Chairperson) Gwenda Kullen
Murrindindi	Margaret Pitt (Chairperson) John Glossop Richard Walter
Nillumbik	Margaret Pitt (Chairperson) Peter Davies Esther Kay
Northern Grampians	Chris Banon (Chairperson) David Rae
Port Phillip	Helen Gibson (Chairperson) Paul Jerome Margaret Pitt
Pyrenees	Margaret Pitt (Chairperson) Esther Kay Egils Stokans
Queenscliffe	Margaret Baird (Chairperson) Anne Cunningham
South Gippsland	Ray Rooke (Chairperson) Jan Salmon
Southern Grampians	Cathie McRobert (Chairperson) Warwick Horsfall Max Richards
Stonnington	Kathy Mitchell (Chairperson) Lester Townsend Janet Horak
Strathbogie	Margaret Pitt (Chairperson) Richard Walter
Surf Coast	Margaret Baird (Chairperson) Lester Townsend Elizabeth Jacka
Swan Hill	Ken Mackenzie (Chairperson) Warwick Horsfall Max Richards
Towong	Margaret Pitt (Chairperson) Richard Walter John Glossop
Wangaratta	Helen Gibson (Chairperson) Margaret Pitt Richard Walter
Warrnambool	Margaret Baird (Chairperson) Anne Cunningham Gwenda Kullen

Wellington	Chris Banon (Chairperson) Malcolm Lee
West Wimmera	Chris Banon (Chairperson) Esther Kay
Whitehorse	Kathy Mitchell (Chairperson) Lester Townsend Anne Murphy
Whittlesea	Paul Jerome (Chairperson) Christine Daly Lisa Riddle
Wodonga	Helen Gibson (Chairperson) Richard Walter John Glossop
Wyndham	Paul Jerome (Chairperson) Lisa Riddle Pauline Semmens
Yarra	Margaret Baird (Chairperson) Anne Cunningham Malcolm Lee
Yarra Ranges	Ray Rooke (Chairperson) Jan Salmon Pauline Semmens
Yarriambiack	Cathie McRobert (Chairperson) Ken Mackenzie Max Richards

Chairperson in Bold

**APPENDIX C AGRICULTURE GROUP NESTING
DIAGRAM CLAUSE 75 VPPS**

Agriculture group



**APPENDIX D EXTRACT FROM REPORT OF THE
ADVISORY COMMITTEE ON THE VPPS :
SECTION 6.4 'RURAL SMALL LOT
EXCISIONS'**

Rural Zones - cont'd

6.4 RURAL SMALL LOT EXCISIONS

The flexibility which the rural zones in the VPPs offer councils to specify minimum subdivision sizes for land within their municipality, depending on the nature of that land and the policy outcomes for that type of land which the council wishes to achieve, are perceived by many submissions to be threatened by the excision provisions found within each rural zone. Each zone has virtually identical provisions relating to permits for subdivision, which include the ability to grant a permit to create a smaller lot than the minimum subdivision size if:

- *The subdivision is to excise an existing dwelling or excise a lot for a dwelling. Only two lots may be created and each lot must be at least 0.4 ha. An agreement under Section 173 of the Act must be entered into with the owner of each lot created which ensures that the land may not be further subdivided under this provision. The agreement must be registered on title. If the land contains more than one dwelling, each dwelling may be excised under this provision.*

Notwithstanding the minimum lot size for general subdivision within each zone, there is no requirement attached to the rural lot excision clause that a minimum area of land must be available for subdivision. None of the zones have any tenement provisions. Thus every lot on every property included within these zones has potential for subdivision provided there is at least 0.8 hectares available (as each small lot created must be at least 0.4 hectares). There is no maximum size of lot to be created specified, whether or not the lot is to be used for a dwelling. Nor is there a requirement that one of the lots meets the minimum lot size for the zone. In these circumstances, there is concern that widespread subdivision of lots could seriously erode the preferred minimum lot size envisaged to prevail in the zone.

Although the provision states that only two lots may be created (or in effect, one additional lot), and a Section 173 Agreement would preclude further subdivision, the effect of the purported safeguard is negated by the ability, if the land contains more than one dwelling, to excise each dwelling under this provision. As each zone includes a discretion to permit multiple dwellings on a lot, the concern is that if a landowner wishes to carry out multiple excisions, an appropriate process to follow would be to apply for multiple dwellings on the lot, followed by subdivision.

There is also concern that whilst the Section 173 Agreement to preclude further subdivision is a form of future tenement control, this form of tenement control is less than secure, as Section 173 Agreements can be amended or abandoned by agreement.

The overwhelming concern is that the net effect of the rural lot excision provision will be to effectively undermine whatever minimum subdivision area is specified for a zone. Not only would it effectively allow subdivision at twice the density provided for, but it would mean that potentially every lot over 0.8 hectares in area, whatever the minimum subdivision size, could be subdivided into two lots. This would have significant ramifications for planning policy in non-urban areas.

Rural Zones - cont'd

In considering submissions to remove the provision for rural excisions from the rural zones, it is interesting to note that the majority of councils expressing concern about them were either provincial cities or councils on the fringe of metropolitan Melbourne (Ballarat, Bendigo, Wyndham, Yarra Ranges, Dandenong, Casey, Hume, Maroondah, Kingston, Mornington Peninsula, Whittlesea, Nillumbik and Surf Coast). The Committee considers that this is evidence that the pressures for small lot subdivision of non-urban land at the fringe of urban areas are different from subdivision pressures in more remote farming districts.

At the fringe of the metropolitan area and of large regional centres, there are pressures by urban dwellers for the creation of small rural lots for the construction of dwellings in order that a non-urban lifestyle can be pursued. Similar pressures can arise in areas of high scenic value or close to recreational facilities having good access to centres of population. In more remote farming areas, there are pressures by farmers for small lot subdivisions arising from their desire to sell off portions of farms to other farmers, to provide sites for farm managers and farmers' family dwellings, and to raise capital to invest in the farm or to serve as the farmer's '*superannuation*'.

Traditionally, many planning schemes have permitted small lot rural excisions where they have been '*needed*' by a member of the farmer's family or for the running of the property. Experience has demonstrated however, that this requirement is frequently merely a device and excised lots are not used by the excising farmer but more often sold as a tradeable commodity on the open market. Even if they are '*needed*' in the short term by the farmer or his family, there is no requirement that they remain within their ownership or control, nor ability to ensure this.

The problems associated with dispersed small lot subdivision in non-urban areas include:

- conflicting lifestyles and expectations of ex-urban and farming land owners;
- opposition by ex-urban land owners to traditional farming practices;
- poor land management of small lots;
- increased demands for urban-based services in outlying areas which cannot be provided in a cost-effective way;
- increased land values;
- long-term loss of valuable farmland;
- detriment to environmental or landscape values by the proliferation of houses and associated outbuildings and earthworks.

The planning problems associated with small lot rural subdivision are of an incremental nature, much like development in floodplains or demands upon infrastructure. It is the cumulative effect which is the problem, rather than any individual subdivision. The Committee therefore considers that the issue of small lot rural subdivisions needs to be considered from the perspective of:

- the basis on which they may be permitted under the VPPs;
- the degree to which they will aid in implementing policy;
- the areas where problems with them are most likely to arise.

Rural Zones - cont'd

BASES ON WHICH EXCISIONS MAY BE PERMITTED

Considering the first of these issues - the bases on which rural lot excisions may be permitted - it is important to remember that this type of subdivision is subject to permit. It is therefore subject to discretion and consequently susceptible to influence by the SPPF, the relevant MSS and local policy provisions. It can also be refused. The matters which 'must' be considered, as appropriate, in making the decision are extensive (see Clauses 35.01-6, 35.02-6 and 35.03-6). They are more extensive than for the consideration of subdivision applications in any other zones in the VPPs and there are significant distinctions in the matters to be considered between the rural zones themselves. The decision guidelines are further supplemented by the General Provisions relating to subdivision at Clauses 65.01 and 65.02.

In the Committee's view, the fear of an outbreak of small lot excisions undermining the cause and effect of the rural zones is not a fear so much about the controls in the VPPs, but more a fear that responsible authorities will be less than diligent in applying the decision guidelines, will not generate suitable local policies to govern their consideration and will be unduly influenced by local politics in granting permits. This fear is articulated by Mitchell Shire Council in its submission to:

... put some certainty back into the schemes, and not rely upon a political decision making process.

The new Rural Zones have reintroduced many provisions which were taken out of schemes by local Councils because of the abuse of such controls, and the difficulties associated with the regulation of such controls, now we seem to have taken a backward step.

In line with the position the Committee has expressed about the shift that will be necessary in attitude towards the exercise of discretion under the VPPs, the Committee can only observe that the extent to which a council indulges in 'political', rather than 'professional', decision making will be up to it. Whereas in the past, the extent to which political decision making could be exercised was controlled by rules and prohibitions within planning schemes, the ground rules have now been changed. Planning controls no longer provide a set of rules but a framework within which decisions based on policy considerations must be made. The regime set up in the three rural zones in the VPPs for considering small lot excision applications is onerous and can be supplemented by local policies. Nillumbik has provided a useful example. Councils should be encouraged to develop local policies for dealing with these applications. This can be done without transgressing the direction in the *Manual for the Victoria Planning Provisions* that local policies are not controls. They cannot say *must* or *shall*, nor should they purport to prohibit any particular use or development. On the other hand, they can specify outcomes or objectives by which applications should be measured. If an application would be inconsistent with such outcomes or objectives then it should not be permitted.

Rural Zones - cont'd

IMPLEMENTING POLICY

With respect to the second of the issues - the policy and purpose of the zones - the Committee has some concerns.

The purpose of the Rural Zone is to provide for agriculture. It is the zone which will be applied across large parts of country Victoria, particularly in the 'really rural' areas. Many parts of these really rural areas of Victoria are depopulating. Farms are being amalgamated and the average size of farm holdings is actually increasing, whatever the underlying pattern of subdivision. The traditional pattern of old farmers excising a lot for their retirement remains true for large parts of Victoria, with the difference being that the remaining farm holding is now more likely to be sold to another farmer than to be passed on to the son/daughter. The SPPF on agriculture recognises and seeks to protect productive farmland which is of high quality and strategic significance in the local or regional context. At the same time, support should be given to assist genuine farming enterprises to adjust flexibly to make changes (see Clause 17.05).

This situation is in contrast to the urban fringe areas, not only around Melbourne but around most major country towns. People can afford larger lots and, particularly in country regions, this offers a rural/residential lifestyle that many find attractive. In one respect this is the other end of the 'diversity and housing choice' spectrum which is encouraged by the SPPF: *'planning is to recognise the need for, and as far as possible contribute towards ... diversity of choice'* (see Clause 13). In addition, many people with limited incomes (e.g. pensioners) move to country towns and fringe areas because they can purchase relatively cheap accommodation and perceive there to be a cheaper lifestyle. The Rural Living Zone caters for these sets of aspirations. Its primary purpose is to be provide for residential use in a rural environment.

The main purpose of the Environmental Rural Zone is not to provide for agriculture or residential use but to conserve and to permanently maintain the environment. Use and development within the zone, whether for agriculture or residential, is subservient to this purpose and must take into account the environmental sensitivity and biodiversity of the locality.

In the Rural Zone there is a policy argument for allowing the genuine farmer to excise a small lot where it can be demonstrated to promote farming purposes or to allow for the farmers' traditional 'superannuation', provided the other decision guidelines which must be taken into consideration are satisfied. However, to avoid the primary purpose of the Zone and the SPPF on agriculture from being undermined, the Committee supports the submission by the Rural City of Ararat (68) (one of the really rural municipalities), that where a small lot excision occurs, one of the lots must be at least the minimum subdivision area specified for the land. This mechanism will assist in ensuring that the provision is only used by genuine farmers and not by people who are out to exploit the provision.

Rural Zones - cont'd

In the Environmental Rural Zone and the Rural Living Zone the primary purpose is not for farming. Therefore, in the Committee's opinion, the purpose of allowing a small lot excision to assist the genuine farmer is not applicable. If there are any genuine farmers left in these areas with large holdings, they have the ability to carry out a conventional subdivision. The subdivision minimum lot size will usually be smaller than in the Rural Zone. However, to allow subdivisions of a much smaller size than the minimum area already permitted, is to open the provision to exploitation where the main purpose will simply be to gain another small lot for living purposes. In the Committee's opinion, if subdivision is to occur in these zones, it should be in accordance with the primary purpose of the zone and in accordance with the normal minimum subdivision size, otherwise the practical outcome will be to effectively double rural densities in areas where the greatest pressure for further subdivision exists. The Committee considers that if councils make a policy decision that a particular area is suitable for increased residential density, it should either alter the minimum subdivision size for that zone or rezone the land, possibly to Low Density Residential. Effective rezoning should not be allowed to occur by stealth through an exploitation of the rural lot excision provision. Already there is evidence from the Shire of Nillumbik for instance, that there are a large number of enquiries already before the Shire in relation to small lot subdivision under the VPPs.

MULTIPLE SMALL LOT EXCISIONS

Some submissions have queried the potential ambiguity of the rural small lot excision provision where it says:

Only two lots may be created and each lot must be at least 0.4 hectare.

It is suggested that this could be interpreted as allowing two small lots to be created each of 0.4 ha.

In the Committee's opinion, and after discussion with DOI, this is not what was intended. The provision may only be used once to carry out one subdivision of two lots. One of those lots created must be at least 0.4 ha. This potential ambiguity should be removed by specifically stating that only one additional lot may be created.

The other concern submissions raised was the potential to circumvent this condition by the opportunity that: *'If the land contains more than one dwelling, each dwelling may be excised under this provision.'* Because more than one dwelling may be permitted on a rural lot, there is concern that landowners may obtain permits for multiple dwellings then subdivide off each one.

Again, the Committee considers that this is a concern more directed to councils' diligence and professionalism in the exercise of their discretion than to the existence of the discretion.

Rural Zones - cont'd

It is the potential impacts of the dwellings themselves, which need to be assessed at the time the dwellings are permitted, which are usually more important than their ownership. Will there be any difference in outcome if two families live in two dwellings on a property whether those dwellings are in single or multiple ownership?

Councils should consider the pressures for subdivision at the time they make a decision about whether to grant a permit for a second or subsequent dwelling. It is a known fact that most banks are reluctant to lend for the construction of a new dwelling without the security of a separate title. Consequently, there will invariably be pressure for subdivision if permission for more than one dwelling on a property is permitted. In this era of motor vehicle ownership and non contiguous farm ownership, old arguments of farm workers and family members '*needing*' to live on the farm no longer hold true. Therefore councils need to be rigorous in their analysis of reasons given for applications rather than simply accepting them at face value, or because they find it difficult to say no to people with whom they feel compassionate or who may be personally acquainted or known to them.

Likewise, councils need to be rigorous in their analysis of the type of dwellings involved and whether any subsequent application for subdivision is justified. For example, a farmer wishing to establish a host farm or bed and breakfast enterprise by providing small self-contained cottages should not be denied a permit simply because they classify as dwellings. Conversely, the fact that they are dwellings should not subsequently be used to justify an application for subdivision.

In line with the Committee's approach to the VPPs as a whole, it does not consider that the ability to excise multiple dwellings should be removed from the small lot excision provision where it exists in the Rural Zone. It considers that it offers a flexibility in genuine cases to support policy objectives for agricultural areas and that the onus will be on councils to professionally assess all applications to ensure their consistency with such objectives. However, in non-urban zones other than the Rural Zone, the Committee considers that the same policy objectives do not exist. The pressure for residential subdivision is so much greater in these locations that the Committee considers subdivision policy should be governed by the standard subdivision provision of the zones. In the Rural Zone, any applications for additional dwellings should be considered solely on their merits without the grant of a permit carrying any implication of an automatic opportunity for a small lot subdivision. Nor should such application, however, carry the likelihood of refusal because of this fact either. It will be vital in such cases for councils to really think about what is the critical decision - i.e. the house, not the subdivision.

COMMITTEE'S CONCLUSIONS ABOUT RURAL SMALL LOT EXCISIONS

The conclusion of the Committee is that there is justification for enabling excisions from rural properties where this is required for reasons of land transfer to another farm or to provide, in limited circumstances, for new dwelling sites associated with

Rural Zones - cont'd

rural use of land in the Rural Zone. The same justification does not arise in either the Environmental Rural Zone or the Rural Living Zone where the primary purpose of the zones is not for farming or associated activities. Just because farming may occur within the zone should not obscure what its primary purpose is or be allowed to justify the type of small lot subdivision likely to occur and which would undermine the primary purpose of these zones and their other subdivision provisions. For these reasons, the Committee recommends that the small lot excision provision be deleted from the Environmental Rural Zone and the Rural Living Zone.

It considers this recommendation will remove a serious weakness in the VPPs. It will represent an improvement to their operation which will better achieve the planning reform objective of focussing on State and local strategic directions.

In the Rural Zone, an additional condition requiring that one of the lots should be at least the minimum size permitted for subdivision under the normal zone provisions should be included. This will assist in ensuring that the prevailing lot size for the zone is not eroded. Any potential ambiguity that the provision may be used twice, rather than once only as intended, should be removed.

The concerns that some councils had about the need to impose an upper size limit on the lot to be excised in order to avoid undermining the minimum lot size for the zone, are effectively dealt with by the requirement that one of the lots must be the minimum size permitted for subdivision under the normal zone provisions.

As a final comment, the Committee notes that although it has not recommended deleting the small lot excision provision from the Rural Zone, it should not be assumed that the provision creates a **right** to a small lot excision. Councils should prepare policies to guide their decision making on this subject in order to minimise the adverse effects of dispersed small lot subdivision and to ensure that the provision is only used in the case of the genuine farmer; where it will support the primary use of the zone; and where all other decision guidelines are satisfactorily complied with.

RECOMMENDATION

Clause 35.01-4 – Subdivision

Amend Clause 35.01-4 by deleting the last dot point and replacing as follows:

' The subdivision is to create a lot for either:

- *an existing dwelling;*
-
- *a dwelling which is allowed by the scheme or for which a permit has been granted.*

Rural Zones - cont'd

Only one additional lot may ever be created using this provision. Each lot must be at least 0.4 hectare and one lot must be at least any area specified for the land in the schedule to this zone or, if no area is specified, at least 40 hectares. An agreement under Section 173 of the Act must be entered into with the owner of each lot created which ensures that the land may not be further subdivided under this provision. The agreement must be registered on title. If the land contains more than one dwelling, each dwelling may be excised under this provision.

Clause 35.02-4 and Clause 35.03-4 – Subdivision

Delete the last dot point in Clause 35.02-4 and Clause 35.03-4.

**APPENDIX E EXTRACT FROM REPORT OF THE
ADVISORY COMMITTEE ON THE VPPS:
SECTION 6.3 'NEED FOR ADDITIONAL
RURAL ZONES'**

Rural Zones - cont'd

6.3 NEED FOR ADDITIONAL RURAL ZONES

ZONE PURPOSES

First, the Committee refers back to its discussion about policy in Chapter 2 and, in particular, its discussion about the role of the VPPs and the role of policy.

The quotation above from the submission by the Shire of Yarra Ranges exemplifies the failure by many councils to grasp the fundamental shift in approach to planning decision making represented by the VPPs and the planning reform program. This attitude still sees the zone controls as the sole basis for guiding decision making. In fact, under the VPPs, zone controls merely provide a framework and it is policy which will now need to be the principal guide in decision making.

Councils expressing these concerns appear to overlook that the first purpose in every zone and overlay is:

To implement the State Planning Policy Framework and the Local Planning Policy Framework, including the Municipal Strategic Statement and local planning policies.

The recreational role and particular landscape value of rural areas referred to by Mornington Peninsula Shire Council are the sort of objectives which should be identified in the Local Planning Policy Framework. The LPPF is just as much part of the planning scheme as the other more general purposes of the rural zones. It provides the opportunity to be quite specific about the planning outcomes which a council wishes to achieve for particular areas within its municipality. These outcomes may recognise the particular value of different types of agricultural areas (e.g. intensive agriculture, irrigation, dairying etc.), or areas where agricultural production combined with landscape or other values represent a quality which needs to be recognised in the LPPF (e.g. Yarra Valley and parts of the Mornington Peninsula). These values or qualities may be in addition to the specific environmental outcomes which are required to be specified in the schedule to the Environmental Rural Zone (if this is the applicable zone).

A number of submissions (MAV (26), Surf Coast (28), National Trust (35), Hume (58), Mornington Peninsula (82), DNRE (87) and Whittlesea (105)) asked for the inclusion of a Rural Conservation Zone to apply to areas of outstanding environmental significance.

DNRE notes an emerging practice in favour of the application of one or more overlays to provide high levels of protection in certain areas (e.g. Mornington Peninsula) rather than the application of the Environmental Rural Zone. It is queried whether councils are using overlays in these circumstances as 'de facto' zone controls. On this point DNRE states:

Rural Zones - cont'd

DNRE would be keen to avoid the latter, particularly if it results in a large number of permit applications which are subject to referral and which are unlikely to succeed.

DNRE regards the ERZ [Environmental Rural Zone] as an important 'tool' in the VPP and considers that new format schemes would benefit from fuller advice to councils about the comparative advantages and disadvantages of choosing the ERZ to achieve local land use objectives and to minimise unwanted permit applications.

These observations reinforce the Committee's view that councils should be encouraged to appreciate and rely upon the strength which their LPPF will assume in new format planning schemes. In the Committee's view, if the small lot excision provision is removed from the Environmental Rural Zone, as the Committee recommends, it will significantly improve the potential of the Environmental Rural Zone to achieve its purpose and to be applied in areas of outstanding environmental significance just as effectively as the type of conservation zone referred to by the above submitters.

To the extent it is claimed that the rural zones in the VPPs fail to provide adequately for the range of policy outcomes which current rural zones provide for, the Committee considers submissions about the adequacy and number of rural zones are unjustified. Three broad categories of zones are provided for - agricultural, environmental and living - which describe the primary characteristic of each zone. It does not mean that elements of each characteristic may not be found within other zones, nor that the zones will not reflect other qualities and values, but no submission has convinced the Committee that there is any policy outcome or objective which could not be provided for within the ambit of the rural zones as they presently stand.

The Committee acknowledges that the strength of the LPPF in decision making has yet to be tested and that unless the weight attached to it, which the Committee considers is inherent in the structure of the VPPs and the rationale for the planning reform program, is substantive and determinative, the Committee's conclusions on this point may prove to be overly optimistic. However, that risk underlies the whole of the Committee's approach in this report. The Committee has accepted the fundamental premise of the planning reform program to be the establishment of a focus on State and local strategic directions which will provide the bases for controls in planning schemes and guidance to decision making. It accepts that the VPPs are also based on this fundamental premise. Without allowing an opportunity for this premise to be tested, to recommend a different approach to the framing of planning controls for the rural areas would be premature.

Rural Zones - cont'd

RANGE OF USES IN RURAL ZONES

In terms of the range of uses permitted in the rural zones, the ability to grant a permit does not mean that a permit should, or necessarily always will be, granted. No implication favouring the grant of a permit should be drawn from the fact that a permit may be applied for. The outcome of the exercise of any discretion should depend on the policy objectives for the particular area, rather than whether the use is to be found within Section 2 of the Table of uses for the particular zone.

In any event, the range of uses for which a permit is needed or which are prohibited, particularly in the Environmental Rural Zone and the Rural Living Zone (which are the two most sensitive rural zones), are of considerable significance. For example, agriculture is a Section 2 use in both zones. This compares to the situation existing currently in most rural zones, even those applying to areas where the Environmental Rural Zone and the Rural Living Zone are likely to be applied, where agriculture is a Section 1 use. Sawmill, industry and intensive animal husbandry are also Section 3 uses in these zones.

The subdivision provisions enable a range of different minimum lot sizes to be specified according to the nature of the land in question. This will enable a far more sensitive approach to be taken than under many existing planning schemes where only a single subdivision minimum lot size may be specified in a zone or else a different zone must be created. The VPPs enable varying minimum lot sizes to be incorporated within the one zone. Likewise, a dwelling is only a Section 1 use in the Rural Zone and the Rural Living Zone if the lot is at least a minimum size specified in the schedule to the zone, otherwise a permit is required. A permit is required for **all** dwellings in the Environmental Rural Zone. These provisions also give a council considerable control in identifying when and where residential use is appropriate.

ADEQUACY OF RURAL ZONES

There are no submissions which, in the Committee's view, present convincing justification for an additional rural zone. The variations provided for within the zones by means of the details in the schedules to each zone, taken together with the variety of overlays which may also be applied to land, present a range of control and guidance to decision making which the Committee regards as adequate and appropriate for virtually every circumstance it can envisage. The combination of controls under the VPPs will not replicate the range of controls under the existing planning regime, but they are not intended to. They provide the framework within which the councils' policies can be implemented, subject to the Committee's comments about the small lot excision provision.