REPORT OF THE ADVISORY COMMITTEE ON THE VICTORIA PLANNING PROVISIONS (VPPS)

AUGUST 1997

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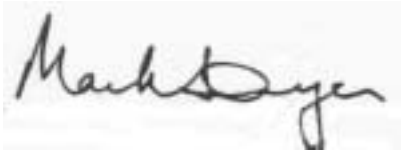

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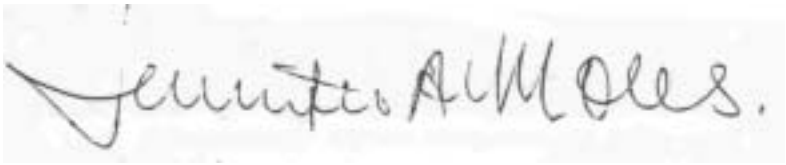

JENNIFER A. MOLES

AUGUST 1997

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1. INTRODUCTION

1.1 THE ADVISORY COMMITTEE

On 20th May 1997, the Minister for Planning and Local Government appointed an advisory committee pursuant to Section 151(1) of the *Planning and Environment Act 1987* to review the *Victoria Planning Provisions*.

The Committee comprised:

Helen Gibson, Chairperson

Megan Carew

Mark Dwyer

Paul Jerome

Kathryn Mitchell

Jennifer Moles

The Committee was supported by Department of Infrastructure officers:

Peter Allen, Team Leader Planning Reform

Peter Anderson

Dale Wardlaw

1.2 TERMS OF REFERENCE

The Committee's Terms of Reference were as follows:

Objectives for planning reform

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 base 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.

Introduction - cont'd

Objectives for the review of the *Victoria Planning Provisions*

The principle objective is to get an operational version of the *Victoria Planning Provisions* in place as soon as possible so that new format planning schemes based on the *Victoria Planning Provisions* can be brought into operation as soon as possible.

A further objective is to identify matters not currently included or aspects of the *Victoria Planning Provisions* which would benefit from review of reconsideration within 12 months of the *Victoria Planning Provisions* becoming operational.

The task

The task of the Advisory Committee is to:

- Identify gaps, anomalies, inconsistencies or weaknesses in the *Victoria Planning Provisions.*
- Identify technical or other improvements that could be made to the *Victoria Planning Provisions* to improve its operation and better achieve the three key objectives for planning reform noted above.
- Recommend action about submissions referred by the Department.
- Make any other recommendations the Committee feels appropriate to further the objectives for planning reform or the review of the *Victoria Planning Provisions* noted above.

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.

Outputs

The Advisory Committee should recommend changes or other actions to the *Victoria Planning Provisions* which may be:

- Appropriate for immediate inclusion in the *Victoria Planning Provisions* without further exhibition or consultation.
- Matters or issues to be considered as part of a further review of the *Victoria Planning Provisions* to take place within 12 months of new format schemes coming into operation.
- Any other matters which the Committee considers appropriate.

The Committee's report should be submitted by 30 June 1997 or as soon as possible thereafter.

(signed) **Peter Bettess**
20 May 1997

Introduction - cont'd

1.3 PROCEEDINGS OF COMMITTEE

A call for submissions on the Victoria Planning Provisions in accordance with the Committee's Terms of Reference was published in *The Age* on 22nd March 1997 and sent to all Victorian municipal councils together with peak interest groups.

A total of 105 written submissions were received and considered by the Committee. A list of submittors is included in Appendix A.

No formal hearings were conducted by the Committee but informal discussions were held between Committee members and a range of submittors including Government departments, statutory authorities, municipal councils and other organisations. In particular, the Committee met with representatives of DNRE, EPA, EPA Stormwater Advisory Committee, Victorian Coastal Council and Melbourne Water.

In considering submissions, the Committee endeavoured to respond to all substantive issues. It has not been possible however, to respond to every query or comment made. In some instances, such as rewording the SPPF, the Committee has recommended a general review and has not considered every modification submitted. The exception to this is with respect to issues relating to flooding, water quality and drainage, where the Committee considers that the SPPF requires strengthening in line with recent Government and other initiatives in this field. If there are other gaps in its consideration of submissions and their significance subsequently becomes evident, the Committee considers that the process of monitoring and review which the planning reform program envisages will provide an opportunity to address such matters.

1.4 MONITORING AND REVIEW

Some submissions were critical of the timing of this review, stating it was premature because there was no experience in using the new planning schemes upon which to base an assessment of the VPPs. Other submissions (e.g. Property Council of Australia (7)) want an ongoing review of the VPPs, with a standing committee, rather than waiting for an annual review.

The Committee does not consider this review of the VPPs to have been premature. The purpose has been to look at the package which the VPPs represent as a whole and to test its potential workability in terms of ambit, wording and internal consistency. Its ultimate workability will only be demonstrated by experience.

The Committee agrees that any anomalies or unintended consequences found in practice should not necessarily await an annual review. Regular review should be undertaken, particularly in the first year of operation. At all times however, the Minister has indicated that changes will be made where necessary to get the controls right and to get the system of planning reform functioning well. Regular monitoring and review is part of the reform program.

Introduction -cont'd

In addition to the way in which the VPPs operate as part of the new format planning schemes, the Committee considers that review will be required into a range of matters to ensure that the VPPs keep pace with changing trends in retailing, business, agriculture, the environment and people's lifestyles. Review of procedure will also be vital to ensure that the planning system operates robustly without becoming mired in procedural technicalities and indecision, and with proper regard to policy based outcomes. The change in approach which this will necessitate will involve:

- internal administrative efficiencies within councils, begun as part of the LARP process;
- reform of the referrals process, already commenced with the Review of Referral Authorities currently underway;
- changes in approach to decision-making by responsible authorities and the AAT.

With respect to the latter, the Committee discusses the changes inherent in the philosophy underlying the VPPs in Chapter 2, of this report on 'Policy'.

In terms of monitoring and review, it is not only the VPPs which will require this, but also the councils' Municipal Strategic Statements. They are expected to be reviewed every three years but it should not be left to the end of this period to commence the task. The Committee considers that councils will need to develop mechanisms for collecting information about how their MSS and local policies are working from the outset of introduction of their planning schemes.

1.5 ACKNOWLEDGMENTS AND IMPLEMENTATION

In submitting this report, the Committee wishes to acknowledge the extent of cooperation it has received from the Department officers responsible for Planning Reform, namely Peter Allen, Peter Anderson and Dale Wardlaw. They have worked tirelessly, yet rigorously, to sculpt the VPPs into a workable form which the Committee considers will provide a turning point for planning in Victoria.

The contribution by Kate Sullivan as Manager Planning Reform in the overall planning reform program is also acknowledged.

Whilst there remain issues to be resolved and doubtless there will be unforseen outcomes which will surface as the VPPs are implemented and applied in the new format planning schemes, the best way in which the Committee considers they will work will be by an enthusiastic embrace of the opportunities offered to implement key objectives of the planning framework established by the *Planning and Environment Act*, namely:

> *4(2) (a) to ensure sound, strategic planning and coordinated action at State, regional and municipal levels;*

Introduction - cont'd

(b) to establish a system of planning schemes based on municipal districts to be the principal way of setting out objectives, policies and controls for the use, development and protection of land;

(c) to enable land use and development planning and policy to be easily integrated with environmental, social, economic, conservation and resource management policies at State, regional and municipal levels;

…

The new format planning schemes will not necessarily be slimmer documents than existing planning schemes. What they will contain, which has been largely missing from existing schemes, is the strategic reasoning providing the rationale for the application of zones and overlays throughout a municipality, and the local policies which, together with the State Planning Policy Framework, will guide day-to-day decision making.

Some submissions have criticised the system being introduced by the VPPs as too complex. The layering of zones and overlays is a characteristic of the system adopted by the VPPs and stands in contrast to the collapsing of controls into a single zone which is a feature of the current system. The degree to which the new system better meets the needs of Victoria will itself require monitoring and review. The important point, the Committee believes, is that the reform process is seen to be ongoing with the objective of developing a better planning system for Victoria and one which better meets the objectives for planning in Victoria set out in the *Planning and Environment Act*.

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2. POLICY

2.1 THE REASON FOR PLANNING REFORM

The reform program to Victoria's planning system has had three key objectives:

- To establish a focus on State and local strategic directions which provides 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.

Much has been made of the 2,871 different zones and 26,272 pages comprising existing planning schemes in Victoria. However, the figures themselves are not the problem: rather, it is felt that planning in Victoria has become unduly complex and in many schemes it is perhaps difficult to see the wood for the trees. There is a perception that planning controls, in many instances, have become ends in themselves, rather than means to ends. By prescribing what is or isn't permitted too

tightly, controls lack responsiveness to change, either in people's living or working patterns, the marketplace, or developments in retailing, commerce or industry.

A consequence has been a proliferation of site specific amendments to planning schemes which rezone individual sites or, more frequently, exempt specific sites from certain provisions, in order to allow a particular use or development to proceed.

Another problem has been the lack of any well-founded strategic base for many planning schemes. A planning authority has a duty under the *Planning and Environment Act* to provide sound, strategic and co-ordinated planning of the use and development of land in its area and to review regularly the provisions of the planning scheme for which it is a planning authority (see Section 12(1)). Since the introduction of the Act in 1987, not all planning authorities have responded to these obligations, nor have the means existed whereby they could be required to fulfil their duties.

The disparity in strategic and policy based planning through the State and the ad hoc growth of exemptions have been highlighted by the amalgamation of local government and the need to provide a consistent planning regime within the various parts of new municipalities.

The planning reform program comprises a number of inter-related actions:

- Preparation of the *Victoria Planning Provisions* (VPPs) - a reference document containing a complete set of Statewide, standard planning provisions.

Policy - cont'd

- Introduction of the *Planning and Environment (Planning Schemes) Act 1996.* This requires that municipal councils must:
  - prepare a new planning scheme for their municipality using the VPPs;
  - prepare a Municipal Strategic Statement (MSS) which 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.
  - review its Municipal Strategic Statement at least once in every three years after it is prepared or at any other time that the Minister directs.
- The *Planning and Environment (Planning Schemes) Act 1996* also included the machinery for implementing the new planning schemes, together with a combined permit and amendment process, which may operate once new format schemes are adopted.

The outcome of these actions has been to oblige councils to undertake strategic planning for their municipality by preparing an MSS and to prepare a new planning scheme which implements these strategies using a consistent set of Statewide planning controls and provisions in the form of the VPPs.

2.2 THE ROLE OF THE ADVISORY COMMITTEE ON THE VPPS

The role of this Advisory Committee is set out in its terms of reference as follows:

Objectives for the Review of the Victoria Planning Provisions

The principal objective is to get an operational version of the Victoria Planning Provisions in place as soon as possible so that new format planning schemes based on the Victoria Planning Provisions can be brought into operation as soon as possible.

A further objective is to identify matters not currently included or aspects of the Victoria Planning Provisions which would benefit from review or reconsideration within 12 months of the Victoria Planning Provisions becoming operational.

Policy - cont'd

The Task

The task of the Advisory Committee is to:

- identify gaps, anomalies, inconsistencies or weaknesses in the *Victoria Planning Provisions.*
- identify technical or other improvements that could be made to the *Victoria Planning Provisions* to improve its operation and better achieve the three key objectives for planning reform noted above.
- recommend action about submissions referred by the Department.
- make any other recommendations the Committee feels appropriate to further the objectives for planning reform or the Review of the *Victoria Planning Provisions* noted above.

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.

Outputs

The Advisory Committee should recommend changes or other actions to the Victoria Planning Provisions which may be:

- appropriate for immediate inclusion in the *Victoria Planning Provisions* without further exhibition or consultation.
- matters or issues to be considered as part of the further review of the Victoria Planning Provisions to take place within 12 months of new format schemes coming into operation.
- any other matters which the Committee considers appropriate.

Under the *Planning and Environment (Planning Schemes) Act* 1996, a person is not entitled to make a submission about a new planning scheme which requests a change to the VPPs. The opportunity has therefore been provided to make submissions about the VPPs before the new planning schemes are considered by panels or come into operation. As the Committee's terms of reference state, the purpose of this Review is to review the VPPs in a statutory sense, and to identify technical or other improvements that could be made to improve their operation and better achieve the reform program's objectives. It is not the task of the Committee to comment on the direction which the reform program has taken.

Policy - cont'd

For the most part, the reform program has been supported by the planning profession and community at large. The amalgamation of local government has provided both a need and an opportunity to review planning policies and develop consistent planning controls for municipalities. Across the board, the focus on strategy to provide the basis for controls in planning schemes and guidance to decision-making has been welcomed. It is only natural however, that such a radical shift in approach to planning has caused some concern amongst councils and other people who see the VPPs as representing a loss of control. There is concern that sensitive areas with special attributes will be vulnerable and will be overwhelmed by a rash of use and development or subdivision proposals now currently prohibited or strictly regulated.

Likewise, there are concerns that the limited range of zones available do not meet the needs of some of these sensitive areas. There is fear that years of struggle to reach an equilibrium between planning controls and development pressures will be lost by the conversion of specifically tailored local controls to selections from the suite of standard controls available in the VPPs. Alternatively, the number of overlays required to adequately reflect the special characteristics of some areas will result in a planning regime far more complex and cumbersome than at present.

The Committee considers that whilst these concerns are valid, they need to be addressed in the context of the role of the VPPs, the role which policy will play in the new planning system and the radical change in approach which councils will need to adopt in attitude if the system is to work and the reforms are to be successful.

2.3 ROLE OF THE VPPS

Although the suites of zones and overlays in the VPPs resemble those found within many current planning schemes, the fundamental difference is that they are intended simply to provide a framework within which decisions will be made according to an integrated set of policies contained either in the State Planning Policy Framework (SPPF) or the Local Planning Policy Framework (LPPF), which includes the Municipal Strategic Statement (MSS) and local planning policies. Much more than in the past, policy is expected to drive decision-making. In this respect, the VPPs are intended, in decision-making terms, to be a means to an end, rather than an end in themselves.

Grasping this concept will require some adjustment in thinking. Many zones in the VPPs are drawn very widely with a great many more Section 1 and Section 2 Uses than has previously been the case. Many of the actual planning controls are very similar, with the main differences being found in the zone purposes.

Many councils are fearful of how they will be able to stop inappropriate use and development given this freeing up of discretionary uses. In the Committee's opinion, if the approach of, *'its a Section 2 Use, ipso facto we should grant a permit for it'*, is applied, then the fears of some councils and other submittors in this respect will be realised. However, to apply this way of thinking to decision making under the VPPs is to misunderstand their role as a tool, not as a directive.

Policy - cont'd

In the past, many councils have had an attitude that if a use is a Section 2 Use (permit required), there is an implication by virtue of this favouring the grant of a permit, if applied for, unless there are very strong reasons to the contrary. Under the VPPs, any prejudice in favour of saying 'yes' is removed. It must be recognised that equal discretion to say 'no' exists. Which way the discretion should be exercised is intended to depend on the outcome of measuring the application against the purpose of the zone (or other control) and the State and local policy objectives called up by the first purpose of every zone.

Responsible authorities should not be looking to the 'rules' (i.e. the zone provisions) for automatic answers, but rather should be looking to the objectives of their local policies to determine the outcomes they want to achieve and should be saying 'yes' or 'no' on these bases. The zone or overlay controls will merely give them the power to say yes or no. In far fewer cases will they be forced to say no because the use or development is prohibited. Instead, a decision based on outcomes will be required.

This will require a boldness on the part of some councils. Councils are, after all, made up of individuals who often find it difficult to say no to permit applications. Frequently however, the difficulty of saying no is magnified where there is a lack of clear policy objectives or identified outcomes which the Council is trying to achieve and against which an application can be measured. It is easier to have the discretion removed by means of a prohibition in a zone. Problems occur though, when an otherwise acceptable proposal arises but is found to be prohibited. It is in these circumstances that a site specific amendment is often the outcome. This is the type of situation which the VPPs are intended to avoid. The discretion which responsible authorities will exercise is much wider than hitherto, but the discretion entails an ability to say no, just as much as to say yes. Councils will have to be confident in the exercise of their discretion if they are to avoid claims of inconsistency in decision-making or unacceptable outcomes. The only way they will achieve this is by developing, not only strong strategic plans, but local policies intended to guide day-to-day decision-making in particular areas or with respect to particular uses which are in accord with those strategic plans.

It is also important to remember that the VPPs are intended to make the issue of a permit the primary means of planning approval, and to do away with numerous site specific amendments. As change occurs, either to lifestyles, business or to land use patterns within specific locations, a flexibility will exist within zones to respond to change, as so few uses will be prohibited. (Only those inimical to the fundamental purpose of the zone will be Section 3 Uses.) Because policies should be identifying objectives and outcomes, not being prescriptive, they will provide opportunities for doing things differently so long as those objectives and outcomes can be achieved.

To reinforce this vital message, that discretion to say ‘yes’ or ‘no’ to a permit application will depend on policy outcomes, the Committee recommends adding a new paragraph to this effect to Clauses 31 and 41, which describe the operation of zones and overlays, and Clause 65, which sets out general decision guidelines.

Policy - cont'd

RECOMMENDATION

Clause 31 - Operation of zones

Add a new sub-heading and paragraph under the heading 'Section 2 uses' in Clause 31 as follows:

'Making decisions about Section 2 uses

Because a use is in Section 2 does not imply that a permit should or will be granted. The responsible authority must decide whether the proposal will produce acceptable outcomes in terms of the State Planning Policy Framework, the Local Planning Policy Framework, the purpose and decision guidelines of the zone and any of the other decision guidelines in Clause 65.'

Clause 41 - Operation of overlays

Add a new paragraph to Clause 41 as follows:

'Because a permit can be granted does not imply that a permit should or will be granted. The responsible authority must decide whether the proposal will produce acceptable outcomes in terms of the State Planning Policy Framework, the Local Planning Policy Framework, the purpose and decision guidelines of the zone and any of the other decision guidelines in Clause 65.'

Clause 65 - Decision guidelines

Add a new paragraph to Clause 65 before Clause 65.01 as follows:

'Because a permit can be granted does not imply that a permit should or will be granted. The responsible authority must decide whether the proposal will produce acceptable outcomes in terms of the decision guidelines of this Clause.'

2.4 ROLE OF POLICY

The first purpose in every zone and overlay control in the VPPs is:

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

There is a danger that because this purpose is repeated in each control, it will tend to be overlooked or ignored in favour of subsequent purposes, which more directly describe the nature of the zone or the control. This would be a mistake.

Policy - cont'd

A key objective of the planning reform program is to make planning much more strategic and policy-based. The MSS is intended to identify the planning 'vision' for each municipality. According to the *Manual for the Victoria Planning Provisions*, the MSS must contain:

- the strategic planning, land use and development objectives of the Council.
- the method and strategies for achieving the objectives.
- land use or development opportunities and constraints that are relevant to the municipality and which provide a context for local planning decisions.
- clearly demonstrated links between strategic planning in the municipality, the objectives of surrounding municipalities in the region, and the State Planning Policy Framework.
- any provisions or matters which the Minister has directed for inclusion in the Statement.

In the Committee's opinion, these issues can be more colloquially expressed in terms of the following questions:

- What sort of a place is this municipality?
- What do we want it to be like in the future?
- What are its strengths and attributes?
- What makes it special?
- What do we want to retain?
- What do we want to change?
- How can the various needs of the community be provided for?

Because the strategies developed for each municipality will guide the application of the VPPs (i.e. what zones and overlays will apply and where), it will be important that councils avoid their Municipal Strategic Statements merely being a collection of motherhood statements. They will need to be crisp and useable, and distinctly related to their individual municipality.

Even so, the MSS and the planning controls applied as a reflection of it, will be broad brushes needing the application of a finer brush in the form of local policy to develop the light and shade in decision-making which will distinguish one area from another. Local policy too will need to be crisp and useable.

In the past, local policy has been something about which there has been considerable confusion. Some local policy has been developed through a rigorous consultation program, has been clearly stated and consistently applied. In appeal situations, this type of local policy has usually been given considerable weight. In other circumstances, local policy has not met the same tests of transparency. It has been something brought out

Policy - cont'd

from under the counter or applied selectively: something which has not been regularly reviewed or which has accumulated, so that a variety of policies have come to apply to the same matter, creating complexity and confusion. Less weight has been accorded to these types of local policy in appeal situations. Alternatively, policies have been applied as though they were de facto planning controls, rather than guidelines. Councils have been fearful that if they stepped aside from the standards identified in their policies, they would thereby undermine them. In such cases, decision-making has been guided by testing proposals against the 'rules' of the policy in order to determine the outcome, rather than against the objectives of the policy.

Confusion about the role and weight of local policy should be removed following introduction of the new format planning schemes. By incorporating local policies in planning schemes, they will become identifiable and available, and will have passed through a public consultation phase as part of the exhibition of the planning schemes. By incorporation in the planning schemes and direct reference to them in the purpose section of control provisions, the weight to be given to them will no longer be open to debate. They will be a fundamental part of the planning scheme and should influence decision-making at all levels.

In this respect, councils have a great opportunity to guide the future shape and direction of their municipalities. The opportunity will only be constrained by the quality of the local policies themselves and the way in which councils seek to employ them. There are clear guidelines for the preparation of local policies set out in the *Manual for the Victoria Planning Provisions*: they need to have clear strategic linkages; not be inconsistent with the SPPF; not be de facto controls; and be directed to achieving outcomes. In order to successfully play their role in decision making however, these local policies will have to be drafted with a high degree of specificity and clarity. 'Motherhood' statements open to wide interpretation will fail to give an adequate lead to decision making.

The quality of local policies, the extent to which they are relied on in guiding decision-making and how successfully they function, will all be matters which should be monitored and reviewed as part of the planning reform program. If experience demonstrates that local policies are not being given the weight they should in decision-making by councils or the AAT, if they are proving inadequate in achieving desired outcomes or their objectives are being undermined, then their use within the framework of the VPPs will need to be reassessed.

However, until a reasonable opportunity has been given to test the effectiveness of this new system, the Committee is not convinced by the submissions it has received that the overall range of zones and overlays in the VPPs, together with the flexibility offered by the schedules to the zones and overlays, are inadequate to deal with the range and complexity of planning situations throughout the State. A combination of:

- a clearly defined MSS;

Policy - cont'd

- a series of well-conceived local policies supportive of the MSS with clear objectives aimed at defined outcomes;
- appropriate selection of the right mix of zones and overlay controls to match the land use and development objectives of the MSS; and
- a robustness in decision-making based on the objectives and outcomes identified in the MSS and supported by local policies,

is encouraged by the Committee.

The final point which the Committee wishes to make with respect to the general issue of the role of the policy in the VPPs is to emphasise the importance of councils thinking laterally in terms of achieving their objectives.

With the flexibilities offered by the VPPs and the greater range of Section 2 Uses, the time is ripe for councils to step outside the traditional range of prescriptions placed on many activities and approaches to land management, and to creatively tackle some of the issues associated with:

- changing work patterns, including increased home based occupation;
- changes in agriculture, including conflicts between residential and agricultural activities and expectations;
- alternative means of balancing landscape/streetscape objectives and residential pressures;
- the synergistic relationships between certain types of activities.

There are changes occurring in people's lifestyles, including living, working and recreation patterns, business opportunities and expected environmental standards. Identifying realistic outcomes and realistic expectations should be part of the process of developing local policies by councils. Thinking about outcomes should also be an integral part of councils' strategic planning. In some cases, these outcomes will be amenity related. In others, they will be the synergistic relationships which some uses have with other uses and which should lead to their concentration in one location and their discouragement elsewhere. (See for example, the finding of the Advisory Committee on the Review of Cinema Based Entertainment Facilities that, given their ability to develop a synergy with other activities which will reinforce the viability, vitality, perceived safety and sense of place or community at established activity centres, cinema based entertainment facilities should be encouraged to locate within or at the periphery of established activity centres. Likewise, see the Committee's discussion about the role which core retailing facilities may play in supporting residential strategies in Chapter 5.1 of this Report.)

The introduction of the VPPs is, as much as anything else, an exercise in change management. The best planning system in the world will not succeed if the people who implement the system do not adopt and promote it in a positive fashion. Thinking laterally about how to achieve outcomes and rejecting expectations which are based on past systems or which are selfish or unrealistic, on the part of either developers or residents, will be one of the challenges by which the success of the VPPs and the planning reform program will be measured.

Policy - cont'd

2.5 SUBMISSIONS ABOUT THE VPPS

The majority of submissions considered by the Committee related to the wording or statutory effect of the VPPs. However, there were a significant number concerned that the suite of zones and overlays in the VPPs were inadequate to meet specified policy objectives, to reflect particular values important in some areas, or that particular provisions of the VPPs would run counter to achieving policy objectives contained both within the VPPs themselves, the SPPF and local policies. In assessing these submissions, the Committee has concentrated on examining the extent to which councils have been able to identify gaps in the planning controls which would prevent them from achieving legitimate policy objectives for a particular area. The Committee recognises that in some circumstances, particularly in very environmentally sensitive areas, a series of overlays may be required in order to adequately identify the significance of the area. Some submittors see this system as more complex than having the various purposes and provisions which are contained in the various layers of planning control rolled into one locally designed zone.

The Committee acknowledges that the use of the VPPs will result, in some locations, in a variety of planning controls applying to the same land. However, the Committee considers this is a characteristic of the new system and reflects the complexity of planning in a community which takes the maintenance of high environmental and amenity standards seriously. As such it cannot be avoided.

The issue of complexity is one which should be monitored but is not a matter which, of itself, justifies the creation of any new State standard zones or any local zones at this stage.

In light of the Committee's discussion about the role of the VPPs and the role of policy in the planning reform program, the Committee has not supported submissions calling for changes to the VPPs where these are based on concerns about the potential strength of policy to guide decision-making and the corresponding need for more controls in the form of prohibitions. Such submissions run counter to the philosophy underlying the planning reform program. The success of this shift in philosophy should be monitored, but not, at this stage, rejected or watered down.

2.6 RELATIONSHIP BETWEEN USE AND DEVELOPMENT CONTROLS IN ZONES AND OVERLAYS

The guiding principle in the development of the VPPs has been that zones control use and overlays control development. The principle has been guiding, rather than binding, as exceptions can be found in the Heritage Overlay, Airport Environs Overlay, Public Acquisition Overlay and City Link Project Overlay.

Policy - cont'd

The decision to draw this distinction has been criticised by various submittors such as the Victorian National Parks Association (48) which submits:

> *Overlays such as the Heritage and Salinity Management Overlays have many well thought out provisions. Nonetheless all the overlays are relatively toothless as none can prohibit uses. ... The limitation on the powers of the overlays will be a problem mostly for rural areas as these lack the relatively larger number of zones available for more densely populated areas. In rural areas tailoring for local conditions will rely heavily on overlays.*
>
> *Without any power of prohibition, the main way these overlays can be at all effective will be the extent to which they can condition uses. ... At the very least overlays should be able to prohibit uses that are blatantly contrary to the objectives of the overlay.*

The layering of overlays is a characteristic of the system which the VPPs embodies. Concerns about the complexities this will give rise to, in terms of the number of overlays which may apply to specific land, will need to be monitored with a view to identifying whether there is a need to introduce any new zones or overlays which may collapse some of the purposes and controls found in several overlays into a single zone or overlay.

In monitoring this aspect of the VPPs, the Committee considers it will be important to critically evaluate the extent to which development controls are used as de facto use controls. For example, to what extent might an application for an intensive piggery or for a warehouse to store chemicals on land in a Rural Floodway Overlay or a Land Subject to Inundation Overlay be refused more because it is the use which is inappropriate in such location, rather than the buildings and works themselves. There is no doubt that on land liable to flooding it will usually be the buildings and works which are inappropriate because of the impediment they offer to free flood flow or the extent to which they reduce the storage capacity of the floodplain, but in some cases it will be the use itself which is inappropriate. It may be that refusing a permit for use in such circumstances is a proper exercise of discretion under the zone provisions. In considering any application for use, the nature and suitability of the land for the use must be considered. The degree of flood hazard is a matter specifically mentioned in Clause 65.01 which sets out decision guidelines for all applications. To this extent therefore, it can be argued that the exercise of discretion to refuse an application of this nature would be properly made under the provisions of the zone and there is no need to control use *per se* by the overlay.

Nevertheless, the Committee considers that the application of the principle that zones should control use and overlays control development, is less clear cut when it comes to some of the built form overlays such as the Incorporated Plan Overlay. This issue is discussed in greater detail in Chapter 11.

Policy - cont'd

Whilst the Committee acknowledges the philosophy underlying the distinction between zones and overlays, it nevertheless considers that above all the VPPs should be a pragmatic document which improves the planning regime operative in Victoria, rather than unduly complicates it for the sake of maintaining a principle. Clearly, this will need to be balanced by the need to maintain consistency amongst planning schemes, which was one of the key objectives in the introduction of the VPPs, and to ensure that their framework is not undermined by too many exceptions to their principles. Striking the right balance will be a function of the monitoring and review process which the Committee regards as integral to the overall planning reform program.

2.7 SCHEDULES

The use of schedules is one of the most important characteristics of the VPPs. It is by these means that planning schemes will be tailored to identify and respond to the local characteristics of municipalities. They will work together with the Local Planning Policy Framework as the lynch pins of day to day decision-making.

In its examination of the VPPs, the Committee has found that there is potential for the interplay between schedules and incorporated plans to become confusing. Again, this relationship is something which the Committee considers will need to be monitored. Very careful consideration will also need to be given to the wording of schedules, particularly where they identify the significance of various matters which provide the justification for the controls contained in overlays. Motherhood statements will need to be avoided in favour of crisp, specific language.

The Committee's conclusion, however, is that the proper use of schedules will provide councils with great flexibility to tailor their planning schemes to meet their needs and to implement their planning policies.

2.8 SCHEME RELATIONSHIPS

One of the principles embodied in the VPPs is that overlay areas will identify issue based requirements and there should be only one issue or theme for each overlay. As a consequence, particularly in sensitive areas, more than one overlay may be required to identify each issue affecting the land and which may be relevant in decision making about it. When administering the scheme, it will be important to bear in mind the provisions of Clause 41 which state:

> *If an overlay is shown on the planning scheme map, the provisions of the overlay apply in addition to the provisions of the zone.*

Policy - cont'd

It will be equally important to bear in mind the guidance in the *Manual for the Victoria Planning Provisions* that neither is more important than the other. It should not be assumed therefore that because a use may be a Section 1 Use in a zone, but a permit is required for buildings and works pursuant to an overlay, there is any implication favouring the grant of a permit for buildings and works because of the status of the use in the zone. If a proper consideration of the purpose of the overlay, State and local policies, and the decision guidelines in the overlay lead to a conclusion that the buildings and works are inappropriate, a responsible authority should not hesitate to refuse the permit even though effectively it may mean that the use may not proceed. Councils will need to be wary however, that it is, in fact, the buildings and works they are rejecting, not the use.

It will thus be important, if discretion is to be properly exercised under the new schemes, that there is a shift in thinking about the importance of overlay provisions, which are, under present scheme arrangements, sometimes seen as of less importance than those of the zone. Under the new regime, the zone and overlay provisions need to be seen as an integrated 'package' with no part assuming greater significance than any other.

The same must also be said of the provisions of the schedules to zones and overlays. These must not be seen as lesser elements of the Scheme. They too are an integral and 'key' component of the municipal scheme. They are, in company with the local policy components, the key means by which the scheme can respond to the character of the locality and assume a local flavour.

If the preparation and processing of new schemes is correctly carried out, the various components of the schemes will thus support and complement each other. Even with the most careful scrutiny, however, schemes may be prepared where inconsistencies occur between the different provisions.

Section 7(4) of the Act deals with these situations. Clause (1) of that section provides that, so far as is practicable, the scheme must be read to resolve the inconsistency. Failing this, the legislation provides:

> *(i) the State standard provisions prevail over the local provisions; and*
>
> *(ii) a specific control over land prevails over a municipal strategic statement, or any strategic plan, policy statement, code or guideline in the planning scheme.*

The Committee would simply comment that subclauses (i) and (ii) may set up a 'tension' in scheme interpretation in so far as a State provision is to be preferred to a local, and specific controls over policy over other more generalised components. This 'tension' may arise in the circumstances where a specific control is local and the general policy is Statewide.

This is another matter which the Committee believes it would be appropriate for the Department to monitor during the early operation of VPP-based schemes.

Policy - cont'd

RECOMMENDATION

General

Monitor use of overlays, with particular attention to:

- **complexity in schemes due to number of overlays.**
- **potential confusion in relationship between schedules and incorporated plans.**
- **whether there is a greater need for overlays to be able to control use.**

Monitor any tensions evident between parts of planning schemes.

2.9 STATE PLANNING POLICY FRAMEWORK (SPPF)

The State Planning Policy Framework is set out in Clauses 11 to 18. It is the first purpose of every zone and overlay:

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

Consequently, whilst there have always been State planning policies as part of all planning schemes, the importance of the SPPF will be heightened in all new format planning schemes.

Numerous submissions were made requesting changes to the wording of the SPPF. Some changes are clearly inappropriate to consider as part of this review as they involve policy change, which should be the subject of separate review. Many changes however, simply reflect the need for an overall redrafting of the SPPF. The Committee considers that the overall wording could be improved. This is a task which is beyond the Committee in the limited timeframe it has had for this review. The only changes recommended by the Committee involve a strengthening of wording (although no change in policy direction) to those provisions of the SPPF relating to catchment management, flooding, water quality and drainage issues. As discussed in Chapter 13, these simply reflect important recent Government initiatives in these fields.

Policy - cont'd

In some instances, the Committee considers that the SPPF may benefit by more geographic identification of the application of some of the policies; e.g. protection of the brown coal fields of the Latrobe Valley (see also discussion in Chapter 9 about Natural Resource Overlay) and green wedge policy, which has been a central tenet of planning in metropolitan Melbourne for many years.

RECOMMENDATION

General

Review and redraft the State Planning Policy Framework.

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3. RESIDENTIAL ZONES

3.1 SINGLE DWELLINGS

A number of municipalities have queried the interpretation of the clause dealing with the construction and extension of single dwellings on lots of at least 300 square metres in the Residential 1, Residential 2 and Mixed Use Zones (i.e. Clauses 32.01-3, 32.02-3 and 32.04-4) - see for example City of Ballarat (11), City of Yarra (12), City of Glen Eira (46) and Mornington Peninsula Shire Council (82). It is submitted that this Clause is confusing viz a viz VicCode 1 and that the Clause needs to be clarified, as to what permission is required if performance measures are not met, but the responsible authority is otherwise satisfied as to the objectives and performance criteria.

This clause provides that no permit is required if certain VicCode 1 performance measures are met. The clause then provides that:

> *If the development does not meet one or more of these performance measures, it must meet the objectives and performance criteria for that element of the Code to the satisfaction of the Responsible Authority.*

If the performance measures are not met, a planning permit is still not required, but it appears that an application must be made to the responsible authority for an assessment of whether the responsible authority is nonetheless satisfied that the objectives and performance criteria are met. Given that variations to VicCode 1 performance measures are now dealt with under the Victoria Building Regulations, the VPPs reference to requiring 'the satisfaction of the responsible authority' is confusing in that it seems to reintroduce a planning approval requirement in addition to a building approval. Apart from the additional workload this would introduce for councils, appeal mechanisms are unclear and would probably depend on Section 149A of the *Planning and Environment Act.*

In the Committee's opinion, introducing planning **permission** in respect of single dwellings on lots of 300 square metres or more requires a conscious, rather than incidental, decision. This is reinforced by the finding of the Advisory Committee for the Review of the Victorian Code for Residential Development - Subdivision and Single Dwellings (VicCode 1), 1996, that planning permits should not be introduced across the board for single dwellings on lots, however the threshold for permits should be lifted to 450 square metres.

The threshold size for permits for single dwellings is a separate issue not relevant in this context. From 1 July 1997 the Victoria Building Regulations became performance based and the appeal procedures under those Regulations will deal with variations to performance measures. The Committee considers that the VPPs need to clearly acknowledge the application of VicCode 1, but without altering the status quo or introducing an additional planning process.

Residential Zones - cont'd

It does not seem appropriate to introduce a formal permit requirement for dwellings on lots greater than 300 square metres in a residential zone. The Clauses should be changed so that if the development does not meet one or more of the specified performance measures, it must comply with the Victoria Building Regulations or any variation granted pursuant to those Regulations.

RECOMMENDATION

Clause 32.01-3, Clause 32.02-3 and Clause 32.04-4 - Construction and extension of single dwellings on lots of at least 300 square metres

Amend Clause 32.01-3, Clause 32.02-3 and Clause 32.04-4 by deleting the second paragraph and inserting the following:

'If the development does not meet one or more of these performance measures, it must comply with the Victoria Building Regulations 1993 or any variation granted under those regulations.'

3.2 BUILDINGS AND WORKS PERMITS

A number of municipalities, including City of Yarra (12), City of Port Phillip (57) and MAV (26) have indicated that the requirement for a buildings and works permit for Section 2 Uses in a residential zone will significantly increase planning workloads for no real gain (i.e. it will represent a change from the status quo because there is no buildings and works requirement currently in the Residential C Zone). City of Yarra (12) is also concerned that the permit requirement in relation to minor buildings and works for existing dwellings on lots of less than 300 square metres will increase the workload.

The Committee is not convinced that significantly increased planning workloads will result from this requirement. Councils now frequently deal with such development approvals for Section 2 Uses in various forms, such as:

- Buildings and works approvals associated with existing uses. This applies particularly in inner city areas where there are many attached houses.
- Processing a use permit rarely occurs without also involving some form of development.
- Where a use or development operates under a permit with endorsed plans and any change to those plans requires either a secondary consent under the permit or a further permit under the planning scheme.

The Committee considers there is merit in having a buildings and works control over Section 2 Uses. These are uses which require a permit and where their impact in their context needs to be considered. Buildings and works can be a significant

Residential Zones - cont'd

component of that potential impact, including the subsequent extension of those buildings and works. There may be scope for providing an exemption for certain specified minor buildings and works or from exempting these from notice requirements etc. However, this is a matter which should be separately reviewed.

With respect to the minor extension of dwellings on lots of less than 300 square metres, the permit requirement is no different to that under the current planning regime. It is up to councils how efficiently they deal with the issue of these types of permits should it be assessed that no detriment will be caused to anyone.

In addition to the above, City of Ballarat (11) has queried whether a permit is required for construction of a dwelling on a lot less than 300 square metres. This seems to be simply a misreading of the VPPs, as the matter is clearly addressed in clauses such as Clause 32.01-4. A permit is required.

The Committee recommends no change in respect of these submissions.

3.3 USE AND DEVELOPMENT IN RESIDENTIAL ZONES

DWELLINGS

City of Boroondara (74) and the Town and Country Planning Association (94) want dwelling to be a Section 2 Use in the Mixed Use Zone. Their concerns relate to the need to control dwellings where they may be in proximity to other uses such as industry.

It must be remembered that the Mixed Use Zone is a residential zone, not a business or industrial zone. It is contrary to the philosophy of the VPPs to require a permit to use land for a dwelling in a residential zone. A permit is required for development of more than one dwelling on a lot or for medium density development, which should ensure that design factors appropriate to the location of land and surrounding uses are taken into consideration.

The Committee recommends no change in respect of these submissions.

City of Monash (78) submits the Residential 2 Zone should make provision for the use of incorporated plans in order to facilitate integrated developments on consolidated sites.

The Committee considers that this is the function intended to be achieved by the Development Plan Overlay. A separate provision in the Residential 2 Zone is unnecessary.

The Committee recommends no change in respect of this submission.

Residential Zones - cont'd

A number of submissions opposed the removal of notice requirements and third party appeal rights in respect of medium density housing and residential buildings in the Residential 2 Zone. It was submitted that few councils would be willing to use the Residential 2 Zone when the rights of the community were excluded in this way.

The exemption from notification and third party appeal rights for medium density housing and residential buildings is the distinguishing feature of the Residential 2 Zone. The purpose of the zone is:

> *To encourage residential development at medium or higher densities to make optimum use of the facilities and services available.*

The Committee considers that where councils decide it is appropriate to encourage this type of residential development then it should be facilitated by the specific provisions of the Residential 2 Zone. It does not mean that responsible authorities should not consider the impact of new development on surrounding landowners, but it seeks to avoid delays associated with general notification to third parties. If councils lack confidence in their ability to exercise discretion properly, then they have the choice of using the Residential 1 Zone where the notice requirements etc. are not excluded. The Committee considers however, that the Residential 2 Zone is an important tool in councils' ability to develop balanced housing strategies for their municipalities, particularly where they may wish to specifically recognise some other areas as more suitable for low density residential development. For example, if a council wishes to introduce a local variation to the Good Design Guide for Medium Density Housing by lowering the density criteria in a locality, this should be done in the context of providing higher densities elsewhere. In such cases, the application of the Residential 2 Zone to appropriate areas would demonstrate that they are providing a diversity of housing choice in accordance with the SPPF.

The Committee recommends no change in respect of these submissions.

HEIGHT CONTROL

City of Glen Eira (46) has queried whether the height control for a single house should be reinstated in the VPPs.

The removal of the height control from planning schemes in 1995 was a conscious planning policy decision. It is now covered under the Building and Siting Design Provisions in VicCode 1.

The Committee recommends no change in respect of this submission.

Residential Zones - cont'd

PLACE OF WORSHIP

Mornington Peninsula Shire Council (82) seeks a review of the conditions on a place of worship in residential zones, believing there to be potential adverse amenity consequences.

The conditions applicable to place of worship in Section 1 of the residential zones were intentionally included in the VPPs and current planning schemes very recently. They are intended to allow small places of worship without a permit, which is in accordance with the purpose of the residential zones to allow religious uses to serve local community needs. Where the conditions are not met, a permit must be obtained.

The Committee recommends no change in respect of this submission.

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4. INDUSTRY

4.1 DESCRIPTION OF INDUSTRIAL ZONES

Industry is one of Victoria's key economic strengths. Balancing the legitimate interests of industry with other uses, particularly residential, in such a way as to facilitate industrial development in appropriate locations with minimal need for permits, has been one of the outcomes sought by the planning reform process. This has led to development of the three industrial zones in the VPPs.

In the VPPs, 'industry' is no longer categorised according to type as currently defined in the Metropolitan Regional Sections of planning schemes, for example:

• light industry an industry:

* That does not adversely affect the amenity of the locality by the appearance of any building, works or materials, the transporting of goods to or from the premises, emissions from the site or in any other way.

* That does not impose an undue load on any existing or proposed sewerage facility, water, gas or electricity supply or similar service.

• **general industry** an industry other than a dangerous industry, extractive industry, light industry or offensive industry.

• **dangerous industry** an industry that, because of the materials kept, used or produced or any manufacturing process, may, except to people engaged in the industry, be injurious to health or a danger to life or property from fire or explosion.

• **offensive industry** an industry that, because of the material kept, used or produced or any manufacturing process, may discharge emissions liable to become

foul so as to be injurious or revolting to people on nearby land in another occupation or injurious to operations on nearby land.

The VPPs define industry as follows:

Land used for any of the following operations:

a) any process of manufacture;

b) dismantling or breaking up of any article;

c) treating waste materials;

d) winning clay, gravel, rock, sand, soil, stone, or other materials (other than Mineral, stone or soil extraction);

e) laundering, repairing, servicing or washing any article, machinery or vehicle, other than on-site work on a building, works, or land; or

f) any process of testing or analysis.

Industry - cont'd

If on the same land as any of these operations, it also includes:

a) storing goods used in the operation or resulting from it;

b) providing amenities for people engaged in the operation;

c) selling by wholesale, goods resulting from the operation; and

d) accounting or administration in connection with the operation.

If Materials recycling, goods resulting from the operation may be sold by retail.

Industry includes: Materials recycling, Refuse disposal, Refuse transfer station, Research and development centre, Rural industry, and Service industry. (These uses are separately defined, but their meanings are not relevant for the purpose of this discussion.) The definition of industry in the VPPs is largely in accordance (although not identical) with the definition of industry in the Metropolitan Regional Section.

There are three industrial zones included in the VPPs. Their specific purpose is set out below together with the description of the zone included in the *Manual for the Victoria Planning Provisions.*

Industrial 1 Zone:

To provide for manufacturing industry, the storage and distribution of goods and associated uses in a manner which does not affect the safety and amenity of local communities.

This is the main zone to be applied in most industrial areas. It includes additional requirements for land close to residential areas. See the Industrial Zone section of *New Zones for Planning Schemes in Victoria - June 1995* for EPA recommendations about buffer distances for industrial residual air emissions. A schedule to the zone allows the maximum floorspace of certain uses to be limited (lighting shop and restricted retail premises).

Industrial 2 Zone:

To provide for manufacturing industry, the storage and distribution of goods and associated facilities in a manner which does not affect the safety and amenity of local communities.

To promote potentially offensive and potentially hazardous manufacturing industries and storage facilities within the core of the zone.

Industry - cont'd

This zone is for large industrial areas which have a core more than 1500 metres from residential areas and are of State significance. Note that special requirements apply to the 'core' area of this zone (i.e. that area more than 1,500 metres from a residential zone) as these areas are a resource intended to be protected for use only by uses which require that degree of separation from residential and similar areas. Each industry in the core area will be considered on its merits depending upon its effect on neighbouring industries and communities. Generally, uses which do not depend on such a location would be discouraged. See the Industrial Section of *New Zones for Planning Schemes in Victoria - June 1995* for EPA recommendations about buffer distances for industrial residual air emissions. A Schedule to the zone allows the maximum floorspace of certain uses to be limited. [In fact there is no schedule to the Industrial 2 Zone and no reference within the Zone to any schedule. The Manual is in error in this respect.]

Industrial 3 Zone:

To provide for industries and associated uses in specific areas where special consideration of the nature and impacts of industrial uses is required.

To provide a buffer between the Industrial 1 Zone or Industrial 2 Zone and local communities, which allows for industries and associated uses compatible with the nearby community.

This zone is designed to be applied:

- as a buffer between the Industrial 1 or 2 Zone and residential areas, if necessary.
- to industrial areas where special consideration is required because of the industrial traffic using residential roads, unusual noise or other emission impacts.

A schedule to the zone allows the maximum floorspace of certain uses to be limited (lighting shop and restricted retail premises). See the Industrial Section of *New Zones for Planning Schemes in Victoria - June 1995* for EPA recommendations about buffer distances for industrial residual air emissions.

In the Industrial 1 Zone, industry (other than Materials recycling) is a Section 1 Use subject to the following conditions:

- it is not a purpose shown with a Note 1 or Note 2 in the Table to Clause 52.10.
- the land is not within the following buffer distances from land (not a road) which is in a residential zone or Business 5 Zone, land used for a hospital or school or land in a Public Acquisition Overlay to be acquired for a hospital or school:
  - the air emission buffer, for a purpose listed in the Table to Clause 52.10.
  - 30 metres, for a purpose not listed in the Table to Clause 52.10.

Industry - cont'd

If any of these conditions are not met, industry is a Section 2 Use.

In the Industrial 2 Zone, industry (other than materials recycling) is also a Section 1 Use subject to the same conditions as the Industrial 1 Zone but subject to the following important additional condition:

- No part of the land may be **more** than 1,500 metres from land (not a road) which is in a residential zone or Business 5 Zone, land used for a hospital or school or land in a Public Acquisition Overlay to be acquired for a hospital or school.

Industry which does not meet any of these conditions is a Section 2 Use.

In the Industrial 3 Zone, all industry is a Section 2 Use requiring a permit.

In all industrial zones a permit is required for subdivision and buildings and works.

The following amenity provision applies to the use of all land within each industrial zone (see Clauses 33.01-2, 33.02-2 and 33.03-2):

> *A use must not adversely affect the amenity of the neighbourhood, including through the:*
>
> - *Transport of materials, goods or commodities to or from the land.*
> - *Appearance of any stored goods or materials.*
> - *Emission of noise, artificial light, vibration, odour, fumes, smoke, vapour, steam, soot, ash, dust, waste water, waste products, grit or oil.*

The purpose of Clause 52.10 is:

> *To define those types of industries and warehouses which if not appropriately designed and located may cause offence or unacceptable risk to the neighbourhood.*

The Table to Clause 52.10 sets out an extensive list of industrial or storage purposes and the air emission buffer in metres by which any part of the land used for such purpose must be set back from land (not a road) in a residential zone or Business 5 Zone, land used for a hospital or school or land in a Public Acquisition Overlay to be acquired for a hospital or school. These categories of land will be referred to for the remainder of this discussion about industry as 'sensitive land uses'.

There are notes to the Table to Clause 52.10:

- Note 1 indicates that the air emission buffer is variable, dependent on the processes to be used and the materials to be processed or stored.
- Note 2 indicates an assessment of risk to the safety of people located off the land may be required.

Industry - cont'd

Air emission buffer distances range from 100 metres for the likes of a smallgoods production, bakery or joinery; 500 metres for a seafood processor or waste incinerator for plastic or rubber waste; to 5,000 metres for paper or paper pulp production involving combustion of sulphur or sulphur-containing materials.

Industry is also provided for, both in the zone purpose and as a Section 1 Use, in the Business 3 Zone and the Business 4 Zone.

4.2 INTER-INDUSTRY CONFLICT

One of the primary purposes of the planning reform program has been to encourage investment and new jobs by boosting business confidence. One of the ways in which it was seen this would occur was by removing unnecessary planning controls, especially by eliminating the need to obtain a planning permit for a use that is in conformity with the purpose of the zone.

This objective has been implemented in the Industrial 1 and 2 Zones by providing flexibility for industry to locate within these zones without the need for a permit, providing minimum buffer distances are observed according to the type of process undertaken or goods stored. The onus will rest with operators to determine whether or not they need a permit. This will depend on the distance they are located from a sensitive land use and whether they are likely to adversely affect the amenity of the neighbourhood through their operations.

The buffer distances set out in the Table to Clause 52.10 are designed to protect sensitive land uses, which are primarily residential in nature. The EPA (99), Ballarat City Council (11) and Perrott Lyon Mathieson on behalf of EFFEM Foods (60) raise the issue of inter-industry conflict and how sensitive industries, such as food production, may be protected from the adverse effects of another industry locating within close proximity without the need for a planning permit.

For example, EFFEM Foods Pty Ltd is a multi-national company which includes Mars Confectionary. Mars Confectionary is one of the largest manufacturing employers in Ballarat and produces chocolate and candy products for domestic consumption and export. Mars Confectionary's operations are sensitive to odour and dust emissions from nearby industrial uses. These emissions, if present, could affect the quality and taint the taste of the chocolate products. A nearby odorous or dust-producing use may cause problems for Mars Confectionary's operations. There is nothing within the Industrial 1 or 2 Zones to prevent such an industry locating nearby without the need for a permit.

One possible deterrent to this is the amenity clause requiring that a use must not adversely affect the amenity of the neighbourhood, but this is unlikely to be of use when a new industry is establishing in proximity to a sensitive industry. How is the new industry likely to know about the particular sensitivities of other industries in proximity if no permit or notice is required? Likewise, how is a sensitive industry likely to know the intentions of prospective industries and their likely effects if no

Industry - cont'd

permit or notice is required? Should it come to an issue of enforcement arising from a breach of the planning scheme requirement that there be no adverse affect on the amenity of the neighbourhood, a sensitive industry may still not be protected. The amenity of the neighbourhood must be judged by the reasonable amenity likely to be found in an industrial zone, not by the particular sensitivities of individual uses.

In the Committee's opinion, encouraging investment by boosting business confidence is achieved not only by facilitating industry to establish, but by ensuring that its needs continue to be met. If sensitive industries, such as food processing and electronics, have particular needs in terms of protection from odour and dust emanating from other industry, these needs should be capable of recognition. This is particularly important where an industry has been enticed to set up in a particular location suited to its particular requirements, it is a major employer in a town or area, or forms part of a cluster of like industries of strategic economic significance.

The issue of inter-industry conflict was considered at length during the consultation preceding introduction of the industrial zones into the State Section of current planning schemes. At that time, it was decided that where sensitive industry was located which warranted protection from the potential effects of other industry, it should be included in a zone which required a permit for all industry. This is now the Industrial 3 Zone. Unfortunately, the Industrial 3 Zone is also designed to be a buffer between the Industrial 1 or Industrial 2 Zones and local communities, and this purpose has obscured the intent of the other purpose of the Industrial 3 Zone which is:

> *To provide for industries and associated uses in specific areas where special consideration of the nature and impacts of industrial uses is required.*

The Committee considers that the intent of this purpose is not sufficiently clear from its wording. Consequently, the following words should be added to this purpose to make its intent clearer:

> *'or to avoid inter-industry conflict.'*

The submission by the EPA (99) to add the following new purpose to the Industrial 3 Zone is also supported:

> *To ensure that uses within the Zone do not affect the safety and amenity of adjacent more sensitive land uses.*

The Committee also considers that an Industrial 3 Zone should only be applied for this purpose where it is supported by a local policy. It should not be used simply as a means of requiring permits for all industry within the zone unless there is a clear need for this.

As a corollary to this, a permit for buildings and works in the Industrial 3 Zone should not be exempt from notice requirements, decision requirements or appeal rights set out in Clause 33.03-4. These may have just as much of an impact on a nearby sensitive industry as a use itself.

Industry - cont'd

Similarly, a new dot point should be added to Clauses 33.03-2 and 33.03-4, which set out decision guidelines for permits relating to use and buildings and works, requiring the effect on other nearby industries to be taken into consideration.

The Committee also recommends that a new *Users Guide to Industrial Zones* be prepared, clearly targeted at new industry seeking to establish and the Department of Industry whose task is to promote and facilitate the establishment of industry in Victoria. There needs to be a clear understanding on the part of industry and those advising it that if you are a sensitive industry with particular needs, you should seek to locate in an Industrial 3 Zone. It is inappropriate to locate in an Industrial 1 Zone or Industrial 2 Zone, even though this might be easier in terms of not needing permits, then complain about other industries locating nearby which may have adverse effects on your industry. It is very important that the need to make good initial locational decisions be emphasised.

In dealing with the issue of inter-industry conflict, consideration also needs to be given to the effect of uses in other zones on sensitive uses - see EPA (99). Thus the effect of industries locating in an Industrial 1 Zone or Industrial 2 Zone on a sensitive industry located in an adjacent Industrial 3 Zone needs to be considered just as much as their effect on residential or other sensitive land uses. To this end, submittors suggest that '*the safety and amenity of local communities'* referred to in the purpose of the Industrial 1 and Industrial 2 Zones should be expanded to apply to the safety and amenity of industry in other industrial zones.

The Committee does not consider this should be included as a purpose in the Industrial 2 Zone. The Industrial 2 Zone is intended to apply only to very large industrial areas having a core more than 1,500 metres from a residential zone. Where an Industrial 2 Zone is buffered by an Industrial 3 Zone from a residential area, it is unlikely that the purpose of the Industrial 3 Zone will also be to accommodate and protect sensitive industry. It is therefore inappropriate that further constraints be placed on industry which may locate in the Industrial 2 Zone over and above the requirements of Clause 52.10.

The real difficulty arises where an Industrial 1 Zone abuts an Industrial 3 Zone and the purpose of the Industrial 3 Zone is to protect sensitive industries from inter-industry conflict. The question is whether the buffer distances applicable to industry in the Industrial 1 Zone should also be measured from the Industrial 3 Zone as well as the sensitive land uses already identified.

The Committee has decided against making such a recommendation. It considers this would add an unnecessary complication to the operation of the Industrial 1 Zone, which is designed to have a wide application and to offer maximum flexibility to industry locating there. The Committee considers that if an Industrial 3 Zone is introduced by a council to protect sensitive industry from inter-industry conflict, and it will abut an Industrial 1 Zone (or even an Industrial 2 Zone), then the location of the boundary and the treatment of the interface between the zones should be dealt

with in the local policy which supports the application of the Industrial 3 Zone. Thus, any buffer between a sensitive industry in an Industrial 3 Zone and an industry in an adjoining zone should be provided for within the Industrial 3 Zone. This is consistent with the general approach that where buffers are required, they should be provided for by the use or the zone requiring the buffer, rather than being forced onto other uses or other zones, or, as in this case, using a zone whose purpose is to provide a buffer.

RECOMMENDATION

Clause 33.03 - Purpose

Add the words in italics to the following purpose:

'To provide for industries and associated uses in specific areas where special consideration of the nature and impacts of industrial uses is required *or to avoid inter-industry conflict.'*

Add the following purpose:

'To ensure that uses do not affect the safety and amenity of adjacent more sensitive land uses.'

Clause 33.03-2 - Use of land
Clause 33.03-4 - Buildings and works

Add the following dot point to 'Decision guidelines' in both Clauses:

'• the effect on nearby industries.'

Clause 33.03-4 - Buildings and works

Delete the whole paragraph headed 'Exemptions'.

General

Prepare new '*Users Guide to Industrial Zones' targeted specifically industry and its advisors, including other Government departments, which emphasise the locational criteria industries should consider, particularly if they are sensitive industries.*

4.3 INDUSTRIAL 2 ZONE

Victorian National Parks Association (48) queries the Section 1 condition for industry in the Industrial 2 Zone which states that: '*no part of the land may be **more** than 1500 metres from [a sensitive land use]'*, and suggests that this should read '**less** than'.

The Committee considers this submission misconceives the nature of the Industrial 2 Zone. The Industrial 2 Zone is for large industrial areas which have a core more than 1500 metres from residential areas. These core areas should be reserved for the type

Industry - cont'd

of offensive or dangerous industry that needs a large buffer from sensitive land uses. The intent of the condition is to require that industry locating within this core, i.e. more than 1500 metres from a sensitive land use, must obtain a permit to ensure that these strategic core areas are not wasted on industries which don't need such a large buffer and are consequently more suited to location in an Industrial 1 Zone or the outer periphery of the Industrial 2 Zone. Because there are relatively few of these zones in the Melbourne metropolitan area, they are of State strategic significance and should be preserved to provide opportunity for offensive or hazardous industries to locate there. Even though demand for them may be relatively low, the potential establishment of an offensive or hazardous industry will usually carry considerable economic significance and therefore the cores of Industrial 2 Zones should be recognised as important assets of Victoria.

No change to this condition is recommended. However, the Committee recommends that the purpose of the Industrial 2 Zone be reworded to make clearer what the zone is trying to achieve.

RECOMMENDATION

Clause 33.02 - Purpose

Add the following new purpose:

'To keep the core of the zone free of uses which are suitable for location elsewhere so as to be available for potentially offensive and potentially hazardous manufacturing industries and storage facilities as the need for these arises.'

4.4 AMENITY OF THE NEIGHBOURHOOD

All of the industrial zones contain a mandatory provision that a use must not adversely affect the amenity of the neighbourhood - see Clauses 33.01-2, 33.02-2 and 33.03-2. These Clauses essentially reflect the performance standards of the former definition of light industry.

However, whereas planning schemes used to distinguish between light industry, which was defined as not adversely affecting the amenity of the neighbourhood, and other industry which either implicitly or by definition could adversely affect amenity, and created different zones to provide for them, these distinctions have now been removed from the VPPs. There is only one definition, and consequently category, of industry and the Industrial 1 Zone is the single zone intended to be most commonly applied to all previous industrial zones throughout the State.

Industry - cont'd

The Victorian National Parks Association (48) expresses concern about this lack of differentiation between types of industry in respect of the Industrial 1, Business 3 and Business 4 Zones:

> *Each of these zones caters for all but the most dangerous and unpredictable industries and yet have a 'buffer of only 30 metres from an adjacent school, hospital or residential zone in which a permit is required for any new industry. Beyond this, no permit is required provided any EPA buffer is met. This seems to be most inadequate and unlikely to give much confidence to adjacent residents about their future amenity. It assumes that the present EPA and Dangerous Goods standards and regulations will always adequately cover a large range of industry types in all eventualities.*

The submission goes on to suggest that the 30 metre buffer is inadequate and it should be 200 metres.

In making this submission, it appears that the Association has overlooked the effect of the 'Amenity of the neighbourhood' provision in Clause 33.01-2 in the Industrial 1 Zone and similar provisions in Clauses 34.03-2 and 34.04-2 relating to the Business 3 and Business 4 Zones, which states:

> *A use must not adversely affect the amenity of the neighbourhood including through the:*
>
> - *Transport of materials, goods or commodities to or from the land.*
> - *Appearance of any stored goods or materials.*
> - *Emission of noise, artificial light, vibration, odour, fumes, smoke, vapour, steam, soot, ash, dust, waste water, waste products, grit or oil.*

The difficulty which the Committee perceives with this provision, particularly as it applies in the Industrial 1 and Industrial 2 Zones, is that it would appear to preclude **all** uses with **any** adverse amenity effects, which would include many of the industries listed in the Table to Clause 52.10.

The notion underlying the identification of buffer distances in Clause 52.10 assumes that some industries have the potential to create adverse amenity effects. This fact, together with common sense, indicates that the definition of industry in the VPPs will include industries unable to comply with the performance criteria set out in Clauses 33.01-2, 33.02-2 and 33.03-2 relating to the amenity of the neighbourhood. The way in which the clauses are worded however, appears to make attainment of these performance criteria mandatory for all uses, even potentially offensive and potentially hazardous industries intended to be located within the core of the Industrial 2 Zone.

Industry - cont'd

The Committee considers that where an industry or warehouse is unable to meet these performance criteria, there should remain an ability to issue a permit. The location and off-site impacts can be considered in deciding whether or not to grant a permit and the conditions which should apply. Accordingly, the Committee considers that the performance criteria requiring that a use must not adversely affect the amenity of the neighbourhood be included as a condition in Section 1 for both industry and warehouse. If this condition is not met, then the use becomes Section 2 - one for which a permit must be applied for.

In the Committee's opinion, this does not confine the flexibility of industry to locate within the Industrial 1 or Industrial 2 Zones any more than currently exists. In fact, it frees up the zones to enable a use not complying with the amenity performance criteria to be considered. The Committee suggests this was possibly the intent of the zones. In clarifying the intention that it is only those industries or warehouses which do not adversely affect the amenity of the neighbourhood that do not require a permit, the type of concerns expressed by the Victorian National Parks Association (48) are addressed in respect of the Industrial 1, Business 3 and Business 4 Zones.

However, whilst the Committee considers that the amenity criteria should be transferred to the conditions applicable to industry and warehouse in Section 1 of the Industrial 1 Zone (plus the Industrial 2 Zone), it does not support a similar approach in respect of the Business 3 and Business 4 Zones. Both these zones are designed to cater for a mix of industry and other commercial purposes. It is entirely appropriate that **no** use in such zones should detrimentally affect the amenity of the neighbourhood; whether this is industry or some other use. In other words, it should not be possible to consciously permit any use which will detrimentally affect the amenity of the neighbourhood.

For the same reasons the Committee does not consider any alterations should be made to the amenity provisions in the Industrial 3 Zone. The Industrial 3 Zone is intended to provide a buffer between other industrial zones and local communities or to protect sensitive industry and avoid inter-industry conflict. In both cases it is appropriate that all use of land within the zone comply with the 'Amenity of the neighbourhood' provisions of Clause 33.03-2.

The St Albans North Environmental Action Group Inc. (9) submits that dangerous and offensive industries should be prohibited in the Industrial 3 Zone, given that this is '*meant to be a buffer between industrial uses and local communities.'*

The Committee considers that this submission misconceives the nature of the Industrial 3 Zone as it may be used for other than a buffer between industrial uses and local communities (see 'Inter Industry Conflict'). The Committee does not consider that any industry should be prohibited in an industrial zone. However, the practicalities of the situation are that the amenity of the neighbourhood provision in Clause 33.03-2 would function to exclude the type of industries which are now classified as dangerous or offensive.

The Committee therefore recommends no change in respect of this submission.

Industry - cont'd

RECOMMENDATION

Clause 33.01-1 and Clause 33.02-1 - Table of Uses

Add the following condition in Section 1 to the use 'Industry (other than Materials recycling)' and 'Warehouse (other than Mail centre)':

'Must not adversely affect the amenity of the neighbourhood, including through the:

- ***Transport of materials, goods or commodities to or from the land.***
- ***Appearance of any stored goods or materials.***
- ***Emission of noise, artificial light, vibration, odour, fumes, smoke, vapour, steam, soot, ash, dust, waste water, waste products, grit or oil.'***

Clause 33.01-2 and Clause 33.02-2 - Use of Land

Delete the whole of the paragraph under the heading 'Amenity of the neighbourhood'.

4.5 BUFFERS

A number of submissions raised concerns about the air emission buffers included in the Table to Clause 52.10. These concerns relate to:

- the way in which the buffer is measured;
- discrepancies between the buffer distances in the VPPs and the air emission buffer guidelines published by the EPA (Recommended Buffer Distances for Industrial Residual Air Emissions, EPA Publication AQ2/86);
- inadequacies in the buffers specified.

The buffer distances set out in the Table to Clause 52.10 are an integral element in the functioning of the industrial zones. Their use represents an attempt to introduce performance criteria applicable to the location of industry in order to make its siting more flexible and less subject to the need to obtain a permit within a zone whose primary purpose is for industry. The use of performance criteria represents a major shift in planning thinking. It is one which will need to be matched by a greater onus of responsibility on the part of operators to ensure that proposals are soundly based and environmentally acceptable, and that adherence to criteria is maintained.

EPA air emission buffer guidelines were used as the starting point for the buffer distances included in the Table to Clause 52.10. For this reason they are still referred to in the Table to Clause 52.10 as air emission buffers. However, the Table to Clause 52.10 does not include all air emission buffer guidelines published by the EPA and some of those included in Clause 52.10 have been modified.

Industry - cont'd

The Committee therefore considers that the VPPs should be amended to delete reference to the buffers being in respect of 'air emission'. The *Manual to the Victoria Planning Provisions* should make it clear that:

- The buffer distances specified in the table to Clause 52.10 should not be confused with the EPA Industrial Residual Air Emission Guidelines. Whilst the distances were based originally on EPA residual air emission buffers, they have been supplemented and altered and are now used for a general planning purpose different to their original purpose.
- The distances are a threshold or a trigger as to whether a permit is required or not.
- The threshold distances are intended to take into consideration various amenity issues, including air emissions and noise.

Concern has also been raised about whether the expression *'buffer distance'* should be used at all because this creates an impression that they are a mandatory requirement in order to protect the amenity of the sensitive uses they are measured from. In reality, they are only trigger mechanisms for the need for a permit. In appropriate circumstances, a permit for a particular use may be granted for a location within the specified buffer distance.

The Committee acknowledges the validity of this concern, and considers the term uses should be changed to read *'threshold distance'*. This removes any implication that uses should never be allowed closer to sensitive land than the distance specified. The zone provisions are quite clear that a permit may be obtained for a use within its buffer distance: they are not prohibited and it may be appropriate to reduce the buffer in certain circumstances or on certain conditions.

The EPA (99) wanted the 'default' buffer distance increased from 30m to 100m. It considered 30m will usually be inadequate for an industrial land use which is the source of residual air emissions or noise.

The EPA (99) also make the point that the buffer distances specified in the Table to Clause 52.10 only relate to residual industrial air emissions and not to noise. The EPA receives more complaints about noise from industry than it does about air emission. Uses such as food and beverage processing, packaging, production, panel beating and car washes are not covered by air emission buffers but have a high potential to reduce amenity by generating noise.

SEPPN1 (Control of Noise from Commerce, Industry and Trade) is already applicable to all relevant premises in metropolitan Melbourne and is referred to in the State Planning Policy Framework in Clause 15.05-2. This Clause also requires that consideration must be given, where relevant, to the EPA Interim Guidelines for Control of Noise from Industry in Country Victoria (1989) and SEPPN2 (Control of Music Noise from Public Premises).

Industry - cont'd

The Committee acknowledges that both EPA and councils have significant difficulty in resolving complaints about noise issues, particularly where permits have been granted or uses allowed to establish without adequate assessment of the impacts of noise. It is difficult for EPA and councils to act as policemen in respect of noise. It would be preferable for industries and other uses generating noise to develop environmental management plans relating to its control of noise. This should be part of the ongoing reform of the planning process. It is not a matter which can be entirely dealt with by modification to the VPPs at this stage, without reverting to a situation where a planning permit is required for virtually every use. This would be contrary to the philosophy underlying the VPPs in general and the industrial zones in particular.

The EPA has suggested some additional buffer distances some of which would take account of noise problems associated with the use. These are endorsed by the Committee. The Committee does not support increasing the 'default' buffer distance to 100m. It considers the 30m distance needs to be tested and monitored for any problems first.

The EPA (99) and the City of Greater Bendigo (97) also drew attention to the fact that the VPPs define an air emission buffer as the distance between the property boundary of the potentially offending use and the boundary of the nearest sensitive land use, whereas the EPA's guidelines define an air emission buffer as the distance between the source of emission and the nearest sensitive existing land use or the nearest sensitive land use zone.

The EPA suggests that a section should be included in Clause 52.10 explaining how to interpret the recommended buffer distances (or referring to EPA publication AQ2/86). The City of Greater Bendigo suggests that the method of calculating the buffer distance according to the VPPs may prejudice the economic development of non-metropolitan municipalities where, because of cheap industrial land, industries establish on large sites with an emission source outside the buffer distance but with title boundaries within the buffer. Such industries may find difficulty in obtaining planning approval for extensions in these circumstances.

The Committee considers that because existing use rights attach to a site, it is appropriate that buffer distance be measured from site boundaries not emission sources within the site. This would introduce too much uncertainty into the administration of what is intended to be a straightforward planning criterion. An industry which has properly considered potential or other noise impacts should not fear the need to obtain a permit for any extension to buildings and works where there is an existing use, particularly given the exemption provisions for notice, decision requirements and appeal rights of third parties. The EPA's suggestion is not appropriate given that the way in which buffer distances are used in the Table to Clause 52.10 is different to the way in which they are used in the EPA guidelines. The recommendations made by the Committee to remove the reference to *'air emission'* buffers should clarify this.

Industry - cont'd

RECOMMENDATION

Clause 52.10 - Uses with a potential for offence or risk

Delete the heading to Clause 52.10 and replace by the following:

'Uses with adverse amenity potential'.

Amend the Table to Clause 52.10 by deleting the heading 'Air emission buffer' and replace with the heading '*Threshold distance*'.

Make consequential amendments to reflect this change throughout the VPPs.

Amend the table to Clause 52.10 by including the following new purposes and buffers as follows:

TYPE OF PRODUCTION, USE OR STORAGE (PURPOSE)	THRESHOLD DISTANCE (METRES)	NOTES
Food, Beverage & Tobacco		
Poultry processing works	100	
Freezing and cool storage	150	
Milk depot	100	
Manufacture of milk products	~~100~~ 300	
Other Premises		
Panel beating	100	
Composting		Note 1
Rural industry handling, processing or packing agricultural produce	300	
Recreation, Personal & Other Services		
Industrial dry cleaning	100	
Non-metallic Mineral Products		
Concrete batching plant:	~~100~~ 300	
Fabricated Metal Products		
Works producing iron or ~~Iron and~~ steel ~~production~~ *products* in amounts:		
• up to 1,000,000 tonnes a year	100	
• exceeding 1,000,000 tonnes per year	1,000	

Industry - cont'd

TYPE OF PRODUCTION, USE OR STORAGE (PURPOSE)	THRESHOLD DISTANCE (METRES)	NOTES
Wood, Wood Products & Furniture		
Sawmill	~~300~~ *500*	
Wood-fibre or wood chip ~~production~~ *products*	~~300~~ *1,500*	
Transport and Storage:		
Temporary storage of industrial wastes:	~~200~~ *300*	
Treatment of aqueous waste:	~~300~~ *200*	
Treatment of organic waste:	~~100~~ *500*	

General

Include in the *Manual for the Victoria Planning Provisions* a note about the table to Clause 52.10 in the VPPs to the following effect:

- **the buffer distances specified in the table to Clause 52.10 should not be confused with the EPA Industrial Residual Air Emission Guidelines. Whilst the distances were based originally on EPA residual air emission buffers, they have been supplemented and altered and are now used for a general planning purpose different to their original purpose.**
- **the distances are a threshold or a trigger as to whether a permit is required or not.**
- **the threshold distances are intended to take into consideration various amenity issues, including air emissions and noise.**

4.6 DANGEROUS INDUSTRY

ICI Australia Operations Pty Ltd (27) raises a site specific issue as the operator of the only Dangerous Industrial Zone in Victoria under the current planning regime. The ICI site at Deer Park has been used for the manufacture and storage of explosives and a wide range of other general and light industrial activities for over of 100 years. It currently employs in excess of 600 people.

Industry - cont'd

In the Dangerous Industrial Zone, dangerous industry is a Section 1 Use. General industry and light industry which are ancillary to a dangerous industry are also Section 1 Uses. ICI is concerned that if its Deer Park site is included in an Industrial 2 Zone (as proposed), a permit will be required for the majority of its industrial uses. ICI submits that the manufacture and storage of explosives is currently regulated by a range of other strict legislative requirements. Because of the changing technology associated with explosives manufacture, any planning permit issued would need to be very general with minimal conditions to avoid an ongoing need for new permits or permit modifications. It is submitted that the VPPs should have sufficient flexibility to recognise special activities and to include site specific zoning and planning controls.

As a site specific issue, this submission should really be dealt with in conjunction with the Brimbank Planning Scheme. However, the Committee considers it raises a matter of general principle relating to the use of the Special Use Zone. The Committee considers that the application of a Special Use Zone is probably appropriate in this case because of the uniqueness of the existing Dangerous Industrial Zone, the nature of the existing uses and their long user. The special use of this land justifies its inclusion in a Special Use Zone. Nevertheless, this should not be seen as encouraging the proliferation of special use zones. The Committee considers they should be applied sparingly and only where fully justified by the nature of the special use involved. Where the use is not 'special', a standard zone with a permit issued for the use of the land should be the preferred course of action.

Apart from these observations, the Committee makes no specific recommendation with respect to this submission as it is a matter which does not affect the VPPs themselves but should be dealt with in the context of the Brimbank Planning Scheme.

4.7 USES IN INDUSTRIAL ZONES

HOME OCCUPATION

The St Albans North Environment Group Inc. (9) submits that it is anomalous for 'home occupation' to be a Section 1 Use in the Industrial Zones, when 'accommodation' is prohibited, because a home occupation by definition requires a 'dwelling'.

The Committee does not recommend any change to the VPPs because a dwelling may exist in these zones, with existing use rights, even though it is a prohibited use. In such circumstances, there is no reason why such a dwelling should not be used as-of-right for a home occupation, particularly when industry is a Section 1 Use.

Industry - cont'd

MATERIALS RECYCLING

Mornington Peninsula Shire Council (82) suggests 'materials recycling' should be a Section 2 Use in the Industrial 3 Zone, to allow for smaller scale operations {e.g. auto parts recovery), as distinct from being a Section 3 Use.

The Committee agrees with this suggestion. There is no reason why materials recycling should be treated differently to other industry in this zone. Discretion and local policy can restrict inappropriate recycling operations, e.g. major junk yards.

ADULT SEX BOOKSHOP

The St Albans North Environmental Group Inc. (9) submitted that an 'adult sex bookshop' in the Industrial 3 Zone should have the same Section 2 condition as appears for this use in each of the business zones (i.e. that the use be a minimum of 200 metres from a residential zone).

Subject to the Committee's comments on the treatment of adult sex bookshops elsewhere in this report, the Committee agrees given that one of the purposes of the Industrial 3 Zone is to provide a buffer between the Industrial 1 or 2 Zones and local communities.

RECOMMENDATION

Clause 33.03-1 - Table of Uses

Delete 'materials recycling' from Section 3 and include in Section 2.

Add the same condition to 'adult sex bookshop' in Section 2 as applies to this use in other business zones.

4.8 BUILDINGS AND WORKS

Mornington Peninsula Shire Council (82) suggests that Clause 33.03-4 in the Industrial 3 Zone is ambiguous in dealing with buildings and works which comply with a direction or licence under dangerous goods legislation etc., i.e. in purporting to grant a general exemption rather than an exemption for works necessary to comply with the legislation.

The Committee agrees that there is ambiguity in the Clause as presently worded and the limitation to this exemption should be clarified.

Mornington Peninsula Shire Council (82) also believes there should be a schedule to the industrial zones, allowing for the provision of development standards (e.g. height, setback etc.).

Industry - cont'd

The Committee does not agree with this suggestion. Given the permit requirement for buildings and works, design standards can be introduced through local policy.

Ballarat City Council (11) has queried the 'maintenance' provision, which appears in clauses such as 33.01-4, requiring that all buildings and works be maintained in good order and appearance to the satisfaction of the Responsible Authority.

The Committee fails to see that this is of major concern. It is a general provision which councils may find useful in dealing with a derelict or run down premises and where there may be no commensurate permit condition upon which to rely. No change is recommended.

RECOMMENDATION

Clause 33.03-4 - Buildings and works

Alter the second dot point under 'Permit requirement' by adding the words in italics so that the paragraph reads as follows:

'• *Are necessary* to comply with a direction or licence under the Dangerous Goods Act 1985 or a Waste Discharge Licence, Works Approval Or Pollution Abatement Notice under the Environment Protection Act 1970.'

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5. BUSINESS ZONES

5.1 LOCAL RETAIL SHOPPING CENTRES

The MAV (26) submits that an additional business zone is required to apply to neighbourhood and local shopping centres as the existing zones do not adequately deal with the range of uses found in small strip and local shopping centres. Similar submissions are made by the councils of Ballarat (11), Yarra (12), East Gippsland (34), Monash (75), Banyule (52), Port Phillip (57), Hume (58), Glen Eira (46) and Melbourne (92), as well as the Local Government Planners Association (36). In particular, some councils consider it is unacceptable to include 'food and drink premises' (i.e. a restaurant etc.) as a Section 1 Use in the Business 1 Zone (i.e. the primary retail zone) because of the potential loss of core retailing precincts. Some councils have proposed an additional Business 6 Zone to deal with strip centres; others have suggested that food and drink premises be a Section 2 Use (or even prohibited in certain circumstances) in the Business 1 Zone.

The Business 1 Zone is the main zone to be applied in most retail commercial areas. It allows a wide range of commercial activities. In particular, food and drink premises (other than hotel and tavern) and shop (other than adult sex bookshop) are

Section 1 Uses. A schedule to the zone allows the maximum floorspace of certain uses to be limited. A permit is required for all buildings and works.

The concerns which councils have centre around the ability to maintain the viability of the local shopping centre function, particularly in strip centres, where market pressures are favouring an alternative function. The problem is highlighted by many inner city shopping strips such as Lygon Street, Brunswick Street, Victoria Street and Fitzroy Street, which have a dual function servicing the convenience retailing needs of the local community and a regional tourist/entertainment role. The difficulties are described in the submission by the City of Port Phillip (57), which states:

> *Port Phillip Council, along with many other inner city councils, is in the difficult position of trying to achieve its urban consolidation targets and promote urban village concepts and yet there are dwindling local shopping facilities available to cater for both existing and new residents. In some cases, such as Fitzroy Street St Kilda, 90% of the shopping centre has been taken over by restaurants which has led to a substantial decrease in the range of facilities available to the local residential population as well as considerable parking and traffic problems.*
>
> *Councils should be able to identify sections of their key retail centres where restaurants will be encouraged while also identifying areas where traditional retailing is more appropriate. As it currently stands, the Business 1 Zone does not allow Council to exercise any discretion and does not permit Council to target restaurant facilities in appropriate areas.*

Business Zones - cont'd

The Business 1 Zone has been deliberately designed to promote flexibility in commercial centres and there is a view that such centres, including strip centres, should be market driven rather than artificially planned. On the other hand, there is evidence that the restriction on restaurants in certain core retail areas has assisted the revitalisation of those areas. For instance, Lygon Street currently has specific controls on restaurants and cafes based on the Lygon Street Action Plan 1984. The Lygon Street precinct south of Grattan Street (where restaurants and cafes do not require a permit) is predominantly cafes (over 90%), whereas the northern part of Lygon Street (where new restaurants and cafes with a ground floor frontage are prohibited) provides a greater mix of activities and has become the focus for the centre.

One of the key principles underlying the planning reform program and the introduction of the VPPs is promotion of policy-based planning. The Committee considers that there are circumstances where it may be desirable to place locational constraints on certain uses in business zones in order to support strategic policy objectives. For example, if a municipal strategic objective is to promote urban consolidation and medium density residential development in certain locations, it should be part of a council's policy to ensure that such residential development is serviced by appropriate facilities, including local core retailing facilities. If an area is suffering an unreasonable loss of such facilities due to extreme pressures from other uses, such as restaurants, the Committee considers it is reasonable for councils to develop policies which locationally restrict the uses creating the pressure in order to allow opportunities for other retailing facilities to establish. The Committee does not consider it would be appropriate to prohibit specified uses, but it should be possible to impose a condition requiring, for example, that they not be located at ground floor level without a permit.

The Committee does not consider that a new business zone is required to achieve this objective nor is it appropriate. Instead, it recommends that in the Business 1 Zone, 'food and drink premises (other than hotel and tavern)' should be subject to a condition which states: *'must not be within a core retail area specified in the schedule to this zone.'* A schedule to the zone would then allow for the inclusion of core retail precincts, with guidelines or ministerial direction indicating that any entry in this schedule must be clearly supported by local policy demonstrating the need to protect the particular core retail area from a proliferation of restaurants etc. (The Minister may need to exercise a supervisory role to ensure this schedule is not used without a sound planning basis. An amendment would be needed to introduce a schedule, which would prevent the mechanism from being abused.)

If the condition is not met, a permit will be required, so that food and drink premises cannot be prohibited in the Business 1 Zone. Local policy may then indicate when a food and drink premises would be acceptable (e.g. if at first floor level, or below a certain size).

Business Zones - cont'd

The Committee notes that in the recently released draft Melbourne Planning Scheme, the Lygon Street Precinct referred to above has been included in a Lygon Street Special Use Zone because of the perceived deficiencies of the Business 1 Zone. This is acknowledged by the City of Melbourne as not being ideal. The Committee would agree with this and add that nor is it desirable, as it undermines the integrity of the Special Use Zone. The Committee's recommendation about the ability to schedule in core retail areas in the Business 1 Zone would address this issue.

RECOMMENDATION

Clause 34.01-1 - Table of uses

In Section 1 of Clause 34.01-1 include the following condition opposite 'food and drink premises (other than hotel and tavern)':

'Must not be within a core retail area specified in a schedule to this Zone.'

Ministerial Direction

Amend the Ministerial Direction to All Planning Authorities on the Form and Content of Planning Schemes to make provision for a Schedule to Clause 34.01-1 specifying core retail areas which relate to the condition in Section 1 applicable to 'food and drink premises (other than hotel and tavern)'.

5.2 REGIONAL RETAIL CENTRES

The Gandel Group (100) wants a dedicated activity centre zone for major shopping centres reflecting the Regional Retail Zone (or similar) currently applying to Chadstone, Northland, Highpoint, Southland, Doncaster Shoppingtown and Knox City. The Group does not consider that the Business 1 Zone will cater for the specific requirements and already approved provisions of these major centres.

When the business zones were introduced, a deliberate decision was made not to differentiate between types of retail based business centres. The existing rights enjoyed by major freestanding centres can be protected by a combination of mechanisms, including permits to preserve existing entitlements, Development Plan Overlay and/or Design and Development Overlay.

The Committee recommends no change in respect of this submission. Nevertheless, although the Committee is confident that the suite of controls offered by the VPPs will protect existing development rights, because of the significance of these regional retail centres to the economy of Victoria, if this is found not to be the case, quick action will clearly be needed to remedy the situation. The Committee recommends that DOI remain alert to this need and monitor the way in which controls operate in respect of the regional retail centres.

5.3 DISTINCTIONS BETWEEN BUSINESS ZONES

Banyule City Council (52) believes the differences between the Business 3 and Business 4 Zones are so subtle that two separate zones are not required.

The Committee does not agree with this submission as there are important distinctions between them in their Section 1 Uses. In particular, office is a Section 1 Use in the Business 3 Zone but a Section 2 Use in the Business 4 Zone; restricted retail premises and trade supplies are Section 1 Uses in the Business 4 Zone but Section 2 Uses in the Business 3 Zone. This distinction is reflected in the purpose of the two zones.

The purpose of the Business 3 Zone is:

> *To encourage the **integrated development of offices** and manufacturing industries and associated commercial and industrial uses.*

The purpose of the Business 4 Zone is:

> *To encourage the development of **a mix of bulky goods retailing** and manufacturing industry and their associates business services.*

The Committee agrees that the descriptions of the zone purposes are brief and the distinctions between the two are subtle. A more fulsome description of the way it was envisaged these zones would be applied was contained in the *Users Guide to the New Business and Industrial Zones* published by the Department of Planning and Development in June 1995 when the zones were initially incorporated in the State Section of existing planning schemes. In this Guide the zones were described as follows:

> ***Business 3 Zone***
>
> *This special zone enables the integrated development of offices and manufacturing industries and associated commercial and industrial uses.*
>
> *A number of highly accessible or visible locations, often previously zoned for industry, have the potential to develop more intensively if this zone is applied.*
>
> *The Zone would be applied to mixed use industrial/office parks and some inner suburban industrial areas which are evolving towards commercial and office uses. 'New wave', advance technology industries and research establishments, will also seek these locations for their high amenity and good address. Some zones of this nature already exist, but the likelihood is that sections of existing industrial zones should be converted to the new zone. Unless the existing land use reflects the purpose of the zone, then the council will need to demonstrate through its strategic planning studies that a change to the new zone should occur. Otherwise, the flexible Industrial 1 Zone should be used, which allows a limited mix of industries with offices.*

Business Zones - cont'd

Business 4 Zone

The Business 4 Zone encourages a mix [of] retail outlets for bulky goods (peripheral uses) and manufacturing industry and associated business services. The zone accommodates road exposed low intensity retailing uses, service industries and warehousing. Typical uses include peripheral sales outlets such as furniture and whitegoods and similar uses like car sales yards and showrooms.

Areas zoned for these purposes will often be located along highways and on the periphery of major business activity centres.

A key issue in selecting the location of this zone is to ensure that there is adequate scope for designs that protect the safety and functional efficiency of the road network, such as service roads and rear access.

Some zones of this nature already exist, but the likelihood is that sections of existing industrial zones should be converted to the new zone. Unless the existing land use reflects the purpose of the zone, then the council will need to demonstrate through its strategic planning studies that a change to the new zone should occur. Otherwise, the flexible Industrial 1 Zone should be used, which allows a limited mix of industries with peripheral sales.

The Committee recognises that it is not possible to be so fulsome in identifying the purpose of zones within the VPPs. However, as a general comment, the Committee notes that the purposes, in being concise, are somewhat bland. It may be of assistance to be a little more pointed in describing the purpose of the business zones. (The same could be said for other zones also.)

RECOMMENDATION

General

The purpose of zones be reviewed with the objective of describing them more pointedly and with greater clarification.

5.4 FLOORSPACE CONTROLS

Tract Consultants (53) believes that the Business 1 Zone Schedule is too limited in that time constraints cannot be placed upon floorspace levels.

The Committee considers that time limits will be more appropriately placed on buildings and works permits (consistent with State policy to avoid 'banking' floorspace entitlements - see Clause 17.02-2). In any event, there is no reason why a floorspace restriction shown in the Schedule could not have a date or time limit attached to it, if really necessary.

Business Zones - cont'd

Although not directly raised in submissions, the Committee is aware of concern in the development industry about the translation of existing floorspace controls to new schemes and permits. The issue arises in relation to both shops and offices, but is most clearly evidenced in relation to major retail centres.

At present, retail floorspace in most major centres is controlled under planning schemes by reference to gross leasable floor area (GLFA), defined for example in the Metropolitan Regional Section as '*floor area able to be leased for or in conjunction with a shop'*. The Committee understands that the term GLFA is peculiar to planning controls, and major retail industry bodies such as the Property Council of Australia (formerly BOMA) have long advocated a change to more commonly used floorspace terms for development and leasing. The Committee has been advised that this is the reason why, in the VPPs, there is now no reference to GLFA, but instead definitions are introduced for gross floor area, leasable floor area and net floor area.

The concerns about the translation of existing floorspace controls to new schemes and permits arise in a number of ways. Importantly, the new term 'leasable floor area' is different to the existing term GLFA, albeit in some minor respects, in that it is defined by reference to net floor area and potentially excludes some areas previously calculated as part of GLFA. Moreover, changes to the definition of 'shop' in the VPPs and the nesting of terms (e.g. to include restricted retail premises within 'shop') mean that some shopping centre uses previously excluded from the calculation of GLFA may now be included in a calculation of leasable floor area unless expressly dealt with to the contrary. Accordingly, it will not necessarily be possible to simply equate a floorspace limit of, say, 60,000m^2 GLFA under an existing scheme to 60,000m^2 leasable floor area under a new scheme. There are also potentially significant ramifications for other consequential controls which relate to floorspace, such as car parking ratios.

It is almost trite to observe that floorspace allowances for major retail centres are extremely valuable, and often result from lengthy and hotly contested panel hearings. Absolute certainty is therefore required in the translation of floorspace controls from existing schemes to new schemes and permits, not just for the relevant retail owners, but also for the responsible authorities, competing commercial interests and the broader community who seeks some benefit or protection from the controls. This will require a careful review (and, in some instances, a resurvey) of existing retail centres, and careful referencing of floorspace controls in schedules to the new business zones.

Given that floorspace controls will primarily appear in local schedules to zones, there is no specific change to the VPPs which the Committee can recommend to address this issue. However, the Committee urges extreme care in the translation of floorspace controls to new schemes and permits, and recommends careful monitoring by DOI to ensure valuable planning rights are not unwittingly increased, decreased or manipulated in the translation process.

5.5 EXEMPTION FROM NOTICE

Nillumbik Shire Council (90) wants the 'exemption from notice' provisions in the buildings and works controls in business zones variable by schedule.

These exemptions from notice simply relieve the responsible authority from the **obligation** to give notice etc. There is nothing to prevent the responsible authority, if it considers it is desirable in the circumstances, to in fact give notice of a particular application. Whilst this would not override the exemption provisions of the likes of Clause 34.01-4 by conferring appeal rights on objectors, it would at least give the responsible authority the opportunity to gauge if there are people affected by a particular application and enable it to take those matters into consideration when making its determination. If, on the other hand, there is a special need or reason for a buildings and works control to require notice, then the sensitivity of an area may justify an overlay control where there is no exemption from notice (e.g. a Design and Development Overlay).

The Committee recommends no change in respect of this submission.

A concern has been raised in relation to the operation of the exemption from notice requirements and appeal rights for certain applications for a permit for building and works within the Business 1 Zone. At present, Clause 34.01-4 exempts an application, '*except for a building or works within 30 metres of land which is in a Residential Zone or Business 5 Zone, land used for a hospital or school or land in a public acquisition overlay to be acquired for a hospital or school'*. The concern relates to the operation of the exemption in circumstances where part of the building or works falls within 30 metres of the designated zone or land use, but a substantial part of the works falls beyond this threshold area. For example, the clause could apply in relation to a major free-standing shopping centre comprised in a single building, only a small part of which falls within 30 metres from a designated zone or land use. It has been suggested that only small part should be subject to notice and appeal rights or, at worst, only the area within the 30 metres should be a relevant consideration under the decision guidelines as to whether a permit should be granted.

The Committee does not agree with such an approach as being a proper interpretation of the VPPs provision. The exemption from notice requirements and appeal rights will only apply where the whole of the relevant building or works is outside the 30 metres. It must be recognised that Clause 34.01-4 requires a permit for all of the building and works, and the responsible authority will need to consider all relevant issues pertaining to the building or works as a whole, not just the area within the 30 metres from a designated zone or land use. It must also be recognised that the exemption only applies in relation to notice requirements and appeal rights, and is not intended to limit the general decision guidelines which may pertain to the responsible authority's consideration of whether or not a permit should be granted

Business Zones - cont'd

for the building or works as a whole. Accordingly, it is not necessarily inappropriate that notice requirements and appeal rights should still arise in relation to a whole development in circumstances where only a small part of the building or works is within the 30 metres. It may simply be a question of the weight which the responsible authority will need to attach to any objection raising issues beyond the 30 metres from the designated zone or land use, depending on the circumstances of a particular case.

5.6 USES IN BUSINESS ZONES

UTILITY INSTALLATIONS

Telstra (2) requests that 'utility installation' should be a Section 1 or Section 2 Use in a Business 1 and Business 5 Zone.

The Committee considers it would be inappropriate for utility installation to be a Section 1 Use but in certain circumstances it may be appropriate with a permit. Utility installation is a Section 2 Use in all other business zones and the Committee considers that it should be included in Section 2 of the Business 1 and Business 5 Zones also.

DWELLING IN BUSINESS 1 ZONE

'Dwelling (other than bed and breakfast and caretaker's house)' is a Section 1 Use in the Business 1 Zone subject to the condition that:

> *'Any frontage at ground floor level must not exceed two metres and access must be shared with other dwellings.'*

City of Yarra (12) requests that dwelling not be subject to a condition requiring shared access, which would restrict shop top dwellings.

The Committee agrees that this condition requiring shared access is unjustified with respect to existing development. With new development, good design may dictate that access should be shared by dwellings. However, as all buildings and works require a permit, the desirability of shared access can be considered in this context.

The City of Yarra also submitted that:

> *The section 2 use of Dwelling in the Business 1 Zone requires clarification. At the moment Dwelling is listed as a section 1 use provided that the condition opposite it is met. However, it should be made clear that if this condition is not met dwelling becomes a section 2 use. Currently, Accommodation is listed as a section 2 use, with dwelling excluded.*

If the condition opposite dwelling in Section 1 is not met it falls within the category in Section 2 '*Any use in Section 1 - if the condition is not met'*. 'Accommodation (other than corrective institution and dwelling)' on the other hand, is a Section 2 Use in all cases.

The Committee recommends no change in respect of this submission.

Business Zones - cont'd

SHOP

City of Melbourne (92) and City of Port Phillip (57) request that 'shop' be a Section 2 Use, rather than prohibited, in the Business 5 Zone.

The Business 5 Zone encourages the co-location of offices and dwellings, including multi-dwelling units. According to the *Manual for the Victoria Planning Provisions*, typically, the zone will be applied at the edges of centres where a mix of uses either exists or is strategically justified.

The Business 5 Zone is not intended to be a retailing zone, although some retail premises are Section 2 Uses. In particular, 'convenience shop' is a Section 2 Use, which would allow a small retail outlet to service offices or dwellings in the zone. Any greater retail use for a shop would warrant a rezoning.

The Committee recommends no change in respect of this submission.

KLM Planning Consultants (102) submits that 'shop' should be a Section 2 Use in the Business 4 Zone to allow for video shop.

KLM is acting for clients in the video industry. The main substance of this submission has been dealt with in the section of this report dealing with specific uses under the heading of 'Restricted Retail Premises / Trade Supplies' (see Chapter 16.12). The Committee has recommended that videos be added to the list of goods referred to in the definition of restricted retail premises. This will now enable large scale video shops to be located in the Business 4 Zone where restricted retail premises is a Section 1 Use (subject to conditions). It is not appropriate to otherwise allow 'shop' within this Zone as it is intended to prohibit retailing other than traditional peripheral sales (now defined as trade supplies or restricted retail premises) and manufacturing industry.

The Committee recommends no change in respect of this submission.

INDUSTRY

Tract Consultants (53) suggests that 'shop' should be a prohibited use in the Business 2 Zone, and 'industry' should be a prohibited use in the Business 2, Business 4, Business 5 and Mixed Use Zones.

The basis for these requests is the potential for inappropriate uses to undermine the objectives of these and other zones through their incremental establishment.

The Committee considers that local policy should discourage inappropriate uses in various locations. However, a purpose of the planning reforms, which allow a much greater range of uses to be considered in zones, is to avoid the need for site specific amendments when a proposed use may be suitable for a specific location but it is otherwise prohibited by the planning scheme.

Business Zones - cont'd

The amenity clauses in these zones (e.g. Clause 34.02-2) will prevent any industry from detrimentally affecting the amenity of the neighbourhood. The exercise of discretion should keep inherently inappropriate uses (e.g. panel beaters) out of the Mixed Use Zone.

The Committee recommends no change in respect of this submission.

MOTEL

Freitag (81) submits that 'accommodation' should be a Section 2 Use, not prohibited, in the Business 4 Zone to allow for motels etc. in the ribbon strips along highways at the entrance to rural towns.

The Business 4 Zone provides for a mix of retailing for bulky goods, manufacturing industry and associated business services. This zone will be applied typically on road exposed locations. It is the zone being considered by many provincial councils for use along highways and main roads which pass through their main towns and where there is also a regular occurrence of motels.

Given that this pattern of development is common in many provincial towns and cities, the Committee agrees that 'motel' should be a permitted use in the Business 4 Zone. However, it would be undermining the intent of this Zone to allow all other forms of accommodation in light of the various Section 1 Uses such as industry. Consequently, it is only motel that should be included as a Section 2 Use.

AMUSEMENT PARLOUR

City of Melbourne (92) wants additional requirements included in the VPPs to enable the introduction of a saturation control for amusement parlours.

The Committee considers this is a matter best left to local policy. 'Amusement parlour' is a Section 2 Use in the Business 1 Zone. Discretion can be exercised subject to local policy, which could justify saturation levels if appropriate.

The Committee recommends no change in respect of this submission.

RECOMMENDATION

Clause 34.01-1 and Clause 34.05-1 - Table of uses

Delete 'utility installation (other than minor utility installation)' from Section 3 in Clause 34.01-1 and Clause 34.05-1.

Business Zones - cont'd

Clause 34.01-1 - Table of uses

Delete the following words in the condition in Section 1 of Clause 34.01-1 relating to 'dwelling (other than bed and breakfast and caretaker's house)':

'Any frontage at ground floor level must not exceed two metres ~~and access must be shared with other dwellings~~.'

Clause 34.04-1 - Table of uses

Add '*motel*' to Section 2 of Clause 34.04-1.

Add the words in italics to Section 3 of Clause 34.01-1 to read as follows:

'Accommodation (other than Caretaker's house *and Motel)*'

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6. RURAL ZONES

6.1 DESCRIPTION OF RURAL ZONES

PURPOSE

There are three rural zones included in the VPPs. Their specific purposes are set out below together with the description of each zone included in the *Manual for the Victoria Planning Provisions.*

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

To ensure that subdivision promotes effective land management practices and infrastructure provision.

This is the main zone to be applied in most rural areas. A schedule to the zone allows the standard lot size to be varied, and a number of other matters to be specified.

Environmental Rural Zone:

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

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

Rural Zones - cont'd

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 the biodiversity of the locality.

To ensure that subdivision promotes effective land management practices and infrastructure provision.

This zone may be appropriate where specific environmental considerations also apply to rural land. A schedule to the zone allows an environmental outcome, the appropriate lot size and a number of other matters to be specified.

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 resource.*
- *Improvement of existing agricultural techniques.*
- *Protection of the biodiversity 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.*

To ensure that subdivision promotes effective land management practices and infrastructure provision.

This zone provides for predominantly residential use in a rural environment provided appropriate land management is undertaken. This zone should only be used where this type of use exists or where such a use can be strategically justified. A schedule to the zone allows the lot size and a number of other matters to be specified. Refer to Ministerial Direction No. 6 when considering this zone.

Essentially, the Committee's understanding is that the Rural Zone is intended to apply to farming land, including broadacre farming, irrigation, dairying, intensive horticulture or intensive animal husbandry; the Environmental Rural Zone is intended to apply to non-farm rural areas (i.e. the bush) or to cleared areas where environmental qualities and characteristics are important; the Rural Living Zone will apply to rural residential or hobby farm areas.

Rural Zones - cont'd

A further residential zone - the Low Density Residential Zone - is also likely to be found at the interface of rural and urban areas. According to the *Manual for the Victoria Planning Provisions*, this zone is intended for areas which are shown to be:

> *... appropriate for subdivision into lots which are both large enough, in the absence of reticulated sewerage, to contain all waste waters on site (0.4 ha minimum) and small enough to be maintained without the need for agricultural techniques or equipment (2.0 ha maximum). Ministerial Direction No. 6 must be referred to when considering this zone.*

USES

Apart from their purpose, the distinguishing feature between the rural zones is the variation in their tables of uses with respect to key uses.

A single dwelling on a lot is a Section 1 use in the Rural Zone and the Rural Living Zone subject to conditions. One condition is that the lot has a minimum size specified in the Schedule to the Zone. If no area is specified, the lot must be at least 40 hectares, in the case of the Rural Zone, and at least eight hectares, in the case of the Rural Living Zone (these are the minimum subdivision default sizes for each zone.)

A dwelling which does not meet the conditions in Section 1, is a Section 2 Use in the Rural Zone and Rural Living Zone, as are two or more dwellings on a lot. In the Environmental Rural Zone all dwellings are Section 2 Uses.

An important aspect of the VPPs is the distinction made between various types of agriculture; namely, animal husbandry, aquaculture and crop raising. These terms are, in turn, separated into categories, including intensive activities and broadacre (or extensive) activities. The distinctions between various uses reflect not only the nature of the activity, but potential off-site impacts and environmental impacts to the land itself. They recognise that not all agriculture is a benign activity and a suitable use for all non-urban land. This is a significant change compared to the current planning regime, where there is little distinction between different types of agriculture and agriculture is frequently a Section 1 Use in most rural zones.

In the Rural Zone, crop raising and extensive animal husbandry are Section 1 uses. Cattle feed lot and timber production, both on a small scale, are also Section 1 uses. All other agriculture is a Section 2 use. The only Section 3 uses are brothel and shop (other than convenience shop and equestrian supplies).

In the Rural Living Zone, all agriculture, other than intensive animal husbandry, is a Section 2 use. Intensive animal husbandry is a Section 3 use, together with a range of other specified uses, including industry (other than car wash and rural industry), office (other than medical centre), retail premises (other than community market, convenience shop, food and drink premises, postal agency, plant nursery and primary produce sales), sawmill, transport terminal and warehouse (other than store).

Rural Zones - cont'd

In the Environmental Rural Zone, the range of uses is more restricted. Agriculture, other than animal boarding, aquaculture and intensive animal husbandry, is a Section 2 Use, which reinforces the purpose of the zone in terms of emphasising its environmental qualities. Animal keeping is a Section 2 use subject to condition that there must be no more than four animals. There is a similar range of Section 3 uses to the Rural Living Zone, but including animal boarding and aquaculture.

DECISION GUIDELINES

Each zone has an extensive range of decision guidelines which the responsible authority must consider, as appropriate, before deciding on an application to use or subdivide land, construct a building or construct or carry out works. Whilst many of these guidelines are common to each zone, there are important distinctions. The different provisions are set out below:

General Issues:

Rural Zone

- *How the use or development relates to **rural land use, rural diversification and natural resource management.***
- *Whether the dwelling is reasonably required for the operation of the **rural activity** conducted on the land.*

Environmental Rural Zone

- *How the use or development relates to natural resource management.*
- *Whether the dwelling is reasonably required for the operation of the **environmental rural activity** conducted on the land.*

Rural Living Zone

- *How the use or development relates to **rural land use, rural diversification and natural resource management.***
- *Whether the dwelling is reasonably required for the operation of the **rural living activity** conducted on the land.*

Rural Zones - cont'd

Rural Issues:

Rural Zone

- *The maintenance of farm production and the impact on the rural economy.*
- *Whether the site is suitable for the use or development and the compatibility of the proposal with adjoining and nearby **farming** and other land uses.*
- *The farm size and the productive capacity of the site to sustain the rural enterprise and whether the use or development will have an adverse impact on the surrounding land uses.*
- *The requirements of any existing or proposed rural industry.*
- *The impact on the existing and proposed **rural** infrastructure.*
- *An assessment of industry requirements, growth expectations, staging of the development and investment requirements.*

Environmental Rural Zone

- *Whether the site is suitable for the use or development and the compatibility of the proposal with adjoining and nearby land uses.*
- *The impact on the existing and proposed infrastructure.*

Rural Living Zone

- *The maintenance of farm production and the impact on the local rural economy.*
- *Whether the site is suitable for the use or development and the compatibility of the proposal with adjoining and nearby land uses.*
- *The impact on the existing and proposed **rural** infrastructure.*
- *An assessment of industry requirements, growth expectations, staging of the development and investment requirements.*

SUBDIVISION

The subdivision provisions for each of the rural lots are the same except for the minimum lot size. A schedule is required for each zone which may state the minimum lot size for various areas. If no area is specified, each lot in the Rural Zone must be at least 40 hectares and each lot in the Rural Living Zone must be at least eight hectares. There is no minimum default size in the Environmental Rural Zone.

Rural Zones - cont'd

In each zone a permit may be granted to create smaller lots if any of the following apply:

- *The subdivision is the resubdivision of existing lots. The number of lots must not be increased and all lots must be at least 0.4 ha.*
- *The number of lots is no more than the number the land could be subdivided into in accordance with the schedule to this zone. All lots 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.*
- *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 137 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.*

The first dot point allows a restructure of an existing holding. The second dot point allows an averaging of lot sizes in a subdivision. This permits any variation in land capability or topography to be taken into consideration in establishing lot sizes, or for a primary lot/secondary lots concept to be applied when subdividing land. The third dot point allows for a single small lot excision to occur for the purpose of creating a house lot, although if more than one dwelling exists on the land, each dwelling may be excised under this provision.

6.2 CONCERNS ABOUT RURAL ZONES

There were more concerns expressed in submissions on the VPPs about the rural zones than about any other matter. Key areas of concern relate to the following:

- Limited number of rural zones.
- Rural excision clause.
- Need for a further urban fringe zone.
- Lack of dwelling density control.
- Increased range of commercial uses permitted.

Rural Zones - cont'd

Under the present planning regime councils have created a multitude of rural zones which have been reduced to three in the VPPs. Councils that have developed zones which reflect the particular characteristics and issues of specific areas within their municipalities are anxious about their capacity to achieve the same future and objectives for these areas using the VPPs as they are currently able to achieve with zones and other provisions tailored specifically to meet local policy needs.

For example, Shire of Yarra Ranges (32) submits:

> *The greatest concern with the zones as they are provided, is that the zone will become almost irrelevant, as planning authorities are forced to use other mechanisms (such as local policies, overlays and schedules) in attempting to achieve local policy outcomes.*
>
> *The zones (and the overlays and other provisions) lack purposes which give a clear and relevant explanation of the intent of different zones, and where they should be applied in local situations. They are too brief and generalised and provide no scope for 'localised' purposes/objectives to be applied. An example of this (and the above problems) is the lack of a clear zone to implement the 'landscape living' policies of the Regional Strategy Plan (particularly where it is applied within the Dandenong Ranges).*

Mornington Peninsula Shire Council (82) submits:

> *The current Rural zone is limited in its objectives to promoting viable rural land use and land/environmental management. The recreational role of rural areas and areas of particular landscape value are not recognised in the existing zone objectives, nor is specific reference made to integration with catchment management plans. Accordingly, the existing Rural zone does not reflect the full range of roles which rural areas may play within planning strategies. For this reason ... a further Rural zone, the Rural Conservation zone is proposed. This zone would also limit the extent of permissible commercial uses in fringe rural areas. This is considered necessary due to the likely pressures for commercial strip development along major rural highways.*

Before dealing with some of the specific issues raised about rural zones, the Committee considers that some general observations should be made about submissions concerning the need for additional rural zones and the way in which they will function.

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 submittors.

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.

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.

6.5 URBAN FRINGE ZONE

NEED FOR A NEW ZONE

A significant number of councils on the metropolitan fringe want a new urban fringe zone to be included in the VPPs. This was considered by the Advisory Committee which conducted the recent *Review of Issues on the Urban Fringe* but not recommended by it. The Committee acknowledges that there are particular pressures faced by municipalities on the urban fringe of metropolitan Melbourne and provincial centres. These are well documented in the report by the Advisory Committee in its *Review of Issues on the Urban Fringe.*

Various councils making submissions about the VPPs are experiencing difficulty selecting a suitable zone from the suite of rural zones in the VPPs for application to their fringe areas. The difficulties appear to arise primarily from:

- a mix of policy objectives which councils have for these areas within their municipalities but which don't appear to be reflected in the purposes of the rural zones in the VPPs;
- a lack of dwelling density control in the VPPs;
- the increased range of commercial uses permitted;
- a lack of averaging or cluster provisions for subdivisions;
- the need to supplement zones by an excessive number of overlay controls to reflect existing planning regime.

Rural Zones - cont'd

The Committee is not persuaded that, at this stage, a new urban fringe zone needs to be created, particularly if the small lot excision provisions are removed from the Environmental Rural Zone and the Rural Living Zone. It considers that many councils are trying to equate the VPPs with the type of planning controls which currently exist rather than recognising the fundamental shift which has occurred in philosophy. It does not consider they have fully understood the opportunities which exist to achieve similar planning outcomes to the intent of their present zones, but which have a much more strategic and policy based focus. Nor does it consider that they have appreciated the flexibility and range of controls which the VPPs do provide.

For example, the Committee has already discussed the opportunity for councils to articulate the purpose and objectives for various areas within their municipality in their Local Planning Policy Framework, which is part of the planning scheme and which is referred to in the first purpose of every zone. These purposes will be in addition to the primary descriptive purpose of the zone included within the zone provisions of the VPPs.

On this point, the City of Kingston (71) submits:

> *The suite of new zones does not offer a non urban zone which suitably provides for Council's objectives in Kingston's non urban areas. Although three core non urban zones are provided in the VPPs, both the Environmental Rural Zone and the Rural Living Zone are geared towards environmental and residential objectives which are not consistent with Council's strategic objectives for the non urban areas, and do not reflect the particular characteristics of this region. These zones have necessarily been excluded, which leaves the Rural Zone as the only zone selection for most of the non urban area.*
>
> *The Rural Zone is also not considered ideal particularly for the more sensitive areas of Kingston's non urban region, where it may be desirable to exclude some uses because of the complexity of the surrounding land use mix. (i.e. the Moorabbin Airport, extractive industries, land fills, etc.). It is acknowledged that there are other mechanisms provided in the VPPs, including the MSS, which Council can utilise to express its policy objectives for the non urban area. Such mechanisms are not considered to provide the certainty to both Council and the development industry, which a more defined rural zone may achieve.*
>
> *If no definitive policy statements are put at local and State level it is officers' opinion that due to the pressures on rural land in the transitory areas between the urban and non-urban zones, and the increased development opportunities under the Rural Zone, uses of this land will change significantly in the short term i.e. industrial uses are subject to a permit in the Rural Zone.*

The Committee cannot accurately assess whether Kingston's rejection of the suitability of the Environmental Rural Zone and the Rural Living Zone is justified, but assuming it is, the Committee can see no reason why the Rural Zone would not be suitable with an Environmental Significance Overlay.

Rural Zones - cont'd

The Committee notes from the *Manual for the Victoria Planning Provisions* that 'environmental significance' is intended to be interpreted widely and may include issues such as noise effects or industrial buffer areas in addition to issues related to the natural environment. This could well be extended to the type of matters which constitute the sensitivity of Kingston's non urban region. The Environmental Significance Overlay provides that the nature of the issue and the intended effects or outcomes of the requirements being imposed must be stated. The Committee can see no reason why the Section 1 uses in the Rural Zone would be likely to cause conflict with Kingston's objectives for its non-urban areas. The type of uses it may have concerns about are more likely to be Section 2 uses and in deciding whether or not to grant a permit, Council is able to fully take into account its objectives for the area. The real basis of Kingston's concerns, which are shared by other councils, is the lack of certainty they perceive in relying upon the SPPF and Local Planning Policy Framework, compared to current zoning constraints and prohibitions.

The Committee has already commented that for the VPPs, and the planning reform program as a whole, to work, proper weight must be given to policies. By the same token, councils (and the AAT) must appreciate that there is no implied suggestion in the structure of the VPPs that because a use is in Section 2, a permit should be granted. A discretion must be properly and professionally exercised in deciding whether to say yes or no to an application. The discretion should be based on policy objectives and the range of decision guidelines required to be considered. If the current practice of councils tending to favour the grant of a permit because a use is in Section 2, and allowing this structure of the zone provisions to guide the decision making, rather than policy objectives, then the fears which Kingston expresses about significant changes in transitory areas between the urban and non-urban zones will be realised. It is only if councils themselves develop definitive policy statements and have confidence in the outcomes and objectives which they identify, that the VPPs and the planning reform program as a whole will work.

Councils will need to be particularly diligent when they come to delating with their 'green wedge' land. Much concern about the continued maintenance of Melbourne's green wedge policy has been expressed by councils and others. It is such a long-standing and integral aspect of planning policy in Melbourne that any consideration of its future should only occur in the context of a separate policy review. It is not the role of the VPPs Advisory Committee to comment upon this. Nevertheless, unless councils redefine what they understand to be its desirable outcomes in terms of their own municipalities, they are in danger of seeing the positive attributes of the policy eroded by the cumulative impact of piecemeal decision-making.

Rural Zones - cont'd

TRANSLATING EXISTING URBAN FRINGE ZONES INTO THE VPPS

Manningham City Council is typical of municipalities on the metropolitan urban fringe having a range of existing zones tailored to the specific qualities and characteristics of different areas. Manningham is one of the municipalities that has made strong submissions in support of the need for a new urban fringe zone. It is therefore useful to examine the current zones within the Doncaster and Templestowe and Lilydale Planning Schemes to assess whether the rural zones in the VPPs, together with appropriate overlays, are capable of reflecting the objectives currently embodied in these planning schemes for different areas. The key purposes of the five relevant non-urban zones and their minimum subdivision sizes, together with the Committee's comments about suitable VPP controls, are as follows:

ZONE	PROVISIONS	COMMITTEE'S COMMENTS
Landscape Interest Zone - Warrandyte/Park Orchards	• Eight hectares • Primarily to protect and enhance the existing rural residential character, landscape quality and other natural environmental characteristics of the zone in an equitable and sustainable manner.	*Suitable VPP controls would be:* - *Rural Living Zone (specify subdivision minimum as eight hectares). Purpose: to provide for residential use in a rural environment.* - *Environmental Significance Overlay. Purpose: to identify areas where the development of land may be affected by environmental constraints; to control development which might have an effect on identified environmental values.* - Alternatively, Significant Landscape Overlay. Purpose: to identify significant landscape; to conserve and enhance the character of significant landscapes.

Rural Zones - cont'd

ZONE	PROVISIONS	COMMITTEE'S COMMENTS
Rural Conservation Zone - Wonga Park	• 40 hectares • Allow only limited subdivision and development of land in areas which are suitable and capable of supporting it. • Limit residential development in accordance with land capability. • Preserve the landscape quality of the area derived principally from its land forms and forest cover.	*Suitable VPP controls would be:* - *Environmental Rural Zone (specify subdivision minimum as 40 hectares). Purpose: to give effect to the environmental outcomes specified in the schedule to this zone; 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 the biodiversity of the locality; to ensure that subdivision promotes effective land management practices and infrastructure provision.* - *Vegetation Protection Overlay. Purpose: to protect areas of significant vegetation; to ensure that development minimises loss of vegetation; to preserve existing trees and other vegetation; to recognise vegetation protection areas as locations of special significance, natural beauty, interest and importance; to maintain and enhance habitat and habitat corridors for indigenous fauna; to encourage the regeneration of native vegetation.* - *Alternatively, Significant Landscape Overlay. Purpose: to identify significant landscapes; to conserve and enhance the character of significant landscapes.*

Rural Zones - cont'd

ZONE	PROVISIONS	COMMITTEE'S COMMENTS
Rural Residential Zone - Wonga Park	• 4 hectares (averaging option) • Provide for primarily low density residential use of land in a rural environment. • Prevent the intrusion into the zone of non residential / rural activities. • Conserve the land by relating lot size to land capability. • Maintain and enhance the visual and landscape quality of the land.	*Suitable VPP controls would be:* - *Rural Living Zone (specify subdivision minimum as four hectares; averaging provision available). Purpose: to provide for residential use in a rural environment; to ensure that subdivision promotes effective land management practices and infrastructure provision.* - *Significant Landscape Overlay. Purpose: to identify significant landscapes; to conserve and enhance the character of significant landscapes.*
Rural General Farming 1 Zone - Wonga Park	• 25 hectares (averaging option) • Protect productive agricultural land for agricultural pursuits and prevent the establishment of inappropriate uses which threaten this. • To protect and enhance the remaining natural vegetation, wildlife and water quality.	*Suitable VPP controls would be:* - *Rural Zone (specify subdivision minimum as 25 hectares; averaging provision available). Purpose: to provide for the sustainable use of land for extensive animal husbandry (including dairying and grazing) and crop raising (including horticulture and timber production).* - *Vegetation Protection Overlay. Purpose: to protect areas of significant vegetation; to ensure that development minimises loss of vegetation; to preserve existing trees and other vegetation; to recognise vegetation protection areas as locations of special significance, natural beauty, interest and importance; to maintain and enhance habitat and habitat corridors for indigenous fauna; to encourage the regeneration of native vegetation.*

Rural Zones - cont'd

Rural Landscape Living Zone - Wonga Park	• 2 hectares (averaging option) • Provide for primarily low density residential use of land in areas of significant landscape. • Maintenance and enhance the landscape qualities of the land, and views across the land. • Discourage uses of land which would be intrusive in a residential setting, or reduce its amenity for residential use.	*Suitable VPP controls would be:* - *Rural Living Zone (specify subdivision minimum as two hectares; averaging provision available). Purpose: to provide for residential use in a rural environment.* - *Significant Landscape Overlay. Purpose: to identify significant landscapes; to conserve and enhance the character of significant landscapes*

In the Committee's opinion, the above analysis indicates that the purposes of the existing non-urban zones in Manningham all find reflection in one or other of the rural zones in conjunction with one or other of the overlay controls. The same minimum lot sizes for subdivision can be set under the VPPs. The assumption by Manningham City Council that there is no averaging provision available under the VPPs in the rural zones is incorrect. The second dot point in each clause relating to subdivision allows for the creation of smaller lots than the minimum provided the total number of lots is not more than could be achieved by means of a conventional subdivision - see Clauses 35.01-4, 35.02-4 and 35.03-4 as follows:

> *A permit may be granted to create smaller lots if any of the following apply:*
>
> ...
>
> • *The number of lots is no more than the number the land could be subdivided into in accordance with the schedule to this zone. All lots must be at least 0.4 hectare. An agreement under Section 173 of the Act must be entered into with the owner of each lot created which ensure that the land may not be further subdivided under this provision. The agreement must be registered on title.*

Rural Zones - cont'd

INCREASE IN SECTION 2 USES

With respect to the range of uses permitted in the rural zones under the VPPs, the Committee agrees that they provide a much broader range of Section 2 uses than what is currently permitted within the existing non-urban zones within Manningham. However, their inclusion in Section 2 does not mean that there will necessarily be an uncontrollable proliferation of those uses throughout the area. If a proposal does not meet design, overlay or local policy objectives, then it should be rejected.

The Committee agrees that this process does not provide the same certainty as prohibiting many uses, but this is one of the fundamental shifts in the planning regime which the VPPs and the planning reform program as a whole has effected. Until the effectiveness of this change can be assessed, the Committee does not consider it would be appropriate to depart significantly from this approach by the creation of a special urban fringe zone. It is a matter however, which should be monitored.

DWELLING DENSITY

The main concern which Manningham City Council has about the VPPs is the lack of control over dwelling density - a concern shared by many other councils, particularly in fringe areas. Under present planning controls, the maximum number of dwellings is normally specified. Under the VPPs, Manningham is concerned that an unlimited number of dwellings could be permitted. Taken in conjunction with the small lot excision clause in the rural zones under the VPPs, it is concerned that the objectives and densities of its non urban areas could be seriously undermined.

If the Committee's recommendation to remove the small lot excision clause in the Environmental Rural Zone and the Rural Living Zone is implemented, a justifiable and major concern of the Council would be removed. If there is no opportunity to excise a lot containing an existing dwelling, and a subdivision must otherwise comply with the normal zone requirements, the pressure to build additional dwellings will be reduced. Applications for more than one dwelling must be assessed on their merits and in accordance with policy objectives for the area. The Committee can see no reason why in certain areas of its municipality the Council should not have a policy of encouraging single detached dwellings, so long as this exists in the context of an overall housing strategy for the municipality, which clearly indicates where and how a range of housing choice is to be provided.

Rural Zones - cont'd

NEED FOR A RESIDENTIAL CONSERVATION ZONE

The greatest difficulty which the Committee considers Manningham City Council faces in translating its existing planning regime into the VPPs is in respect of the Environmental Residential Zone in the Doncaster and Templestowe Planning Scheme. This Zone recognises residential areas with particular environmental constraints, qualities and characteristics. The Environmental Residential Zone features:

- dwelling density controls (maximum of one dwelling per lot except in Templestowe);
- prohibition of most non-residential uses;
- varying subdivision minimum lot sizes:
  - 650 square metres in Templestowe;
  - 0.2 hectare in Donvale / Doncaster East;
  - 0.1 hectare in Warrandyte;
- buildings and work controls;
- setbacks / height / open space controls;
- vegetation removal controls.

The Council is concerned that the Low Density Residential Zone (the zone of 'best fit' in the VPPs) has a minimum subdivision size of 0.4 hectares, considerably higher than the subdivision minimums under the Environmental Residential Zone. Nor is there an averaging option for subdivision in the Low Density Residential Zone. On the other hand, it is concerned that the use of a Residential 1 Zone, which does not specify a minimum lot size, would be inappropriate having regard to the pattern of vegetation, environmental and landscape characteristics within the areas currently covered by the Environmental Residential Zone. The purpose of the Residential 1 Zone does not reflect the particular visual and environmental characteristics of the existing zoning provisions either.

For similar reasons, other councils support the need for a Residential Conservation Zone, the absence of which they say represents a gap in the suite of zones available under the VPPs.

In the Committee's opinion, the visual and environmental characteristics of the areas in question could be protected by an appropriate overlay control, which would give control over buildings and works and vegetation removal. With respect to subdivision, if the land is presently subdivided to its full capacity and a council does not wish to see the subdivision density increase, one means of maintaining the current density would be to apply a Low Density Residential Zoning. Alternatively, the Committee can see no reason why the Council cannot develop a local policy which identifies the type of objectives to be encouraged by subdivision in different areas. In the event of having clearly defined objectives for various areas, in conjunction with any overlay control, the Committee would envisage that any subdivision of less than 0.4 hectares would be governed by those objectives and the relevant land capability. In this event, it would not matter that the Residential 1 Zone does not have a minimum subdivision size.

Rural Zones - cont'd

The Committee therefore considers that a Residential 1 Zone with an appropriate overlay would be a suitable replacement for the Environmental Residential Zone in the likes of Manningham, unless the land is unsewered when the Low Density Residential Zone should be selected.

The issue of dwelling density is one which councils will need to manage through development of a municipality-wide policy on housing. The problems previously faced in Warrandyte when 'dual occupancy' was as of right, no longer apply as a permit is required for more than one dwelling on any lot. It will be up to a council to demonstrate that its housing policy provides adequate choice. Balancing the need to provide such choice with the environmental characteristics of various areas should lead to logical outcomes in terms of dwelling densities.

COMMITTEE'S CONCLUSIONS ABOUT URBAN FRINGE ZONES

The Committee has considered the submission by Manningham City Council in support of a new urban fringe zone and a residential conservation zone to replace its Environmental Residential Zone in some detail as it considers it is representative of the difficulties being faced by a number of councils in translating specific local zones into the VPPs.

The Committee does not recommend that, at this stage, any new zones should be created for the urban fringe. It considers there is sufficient flexibility with the zones currently in the VPPs when combined with appropriate overlays to accurately reflect the outcomes and objectives which existing zones seek to achieve. The main proviso to this is the need to remove the small lot excision provision in the Environmental Rural Zone and the Rural Living Zone, which the Committee considers will not support the policy objectives of either the SPPF or the zones themselves.

In other respects, namely dwelling density and the increased range of Section 2 uses, the Committee emphasises what it has said previously. Councils must face the challenge of developing appropriate local policies to guide decision making, which clearly enunciate the outcomes envisaged for various areas, and apply these rigorously to individual planning permit applications. The rules of the planning game have been changed with the planning reform program. Councils can no longer hide behind a set of prohibitions or a predetermined attitude towards certain types of use or development. They must be more flexible in accepting that use and development applications which do not conflict with the objectives and policy outcomes they seek for areas within their municipality, may be acceptable, even though under the current planning regime they may be prohibited. The old assumptions that a Section 2 use implied that a permit **should** be granted, will no longer be valid. The presence of a use within Section 2 should mean no more than that it will be properly assessed on its merits against all the relevant decision guidelines contained in the planning scheme and by reference to the SPPF and LPPF.

Rural Zones - cont'd

The way in which councils (and the AAT) handle this change in emphasis will need to be monitored in all zones not just on the urban fringe. The additional workloads (on councils and the AAT), additional costs and delays, consistency in decision making, consistency of outcomes with objectives and the overall quality of decision making are all matters that the Committee considers should be the subject of detailed review by DOI as part of the annual monitoring and review to test the system's effectiveness, which is one of the objectives of the planning reform program.

RECOMMENDATION

General

Monitor operation of VPPs by reference to:

- **overall quality of decision making;**
- **consistency of outcomes with objectives of zones, overlays, SPPF, MSS and local policies;**
- **consistency in decision making by councils and AAT;**
- **additional workload on councils;**
- **additional appeals;**
- **additional costs to councils, AAT, applicants, referral authorities or objectors;**
- **additional delay due to any of the above factors.**

6.6 PURPOSE OF RURAL ZONES

Various submissions commented about the purpose of the rural zones. Some (e.g. Johnstone (8)) queried the meaning of the term '*sustainable use of land'*, noting that 'sustainable agriculture' makes reference to the notion of 'the economic viability of agricultural production'. The desirability and practicality of introducing the notion of economic viability into zone purposes is questioned.

On the other hand, there were submissions such as that from TBA Planners Pty Ltd (77) which said:

> *The purpose of the Rural zone should be wider in scope and have greater emphasis on natural resource management objectives. In the purpose of the zone it needs to be explicit that the first principle is* ***sustainable resource management****.*
>
> *The Rural zone deals primarily with use and development with minimal attention given to natural resource management issues. The adoption of a performance based approach to use and development standards needs to be fully embraced. Often the type of use is not a significant issue as compared to the impact that use has on resource quantity and quality. Performance based provisions focussing on resource impact and environmental quality need to be included in the zone provisions. This could be extended further through a 'Rural Code of Practice'.*

Rural Zones - cont'd

Other submissions suggested that there was insufficient differentiation between the purpose of the three rural zones.

The Committee does not find it surprising that there is a similarity between the purpose of the rural zones given the non-urban character which they share in common. However, there are distinctions between them which are important. These are reinforced by the distinctions in the decision guidelines applicable in each zone, which the Committee has highlighted in Chapter 6.1.

In addition, there are some important Section 3 Uses for each zone which prohibit uses which potentially conflict with the differentiating purposes of the zones. Again, the Committee has highlighted these in Chapter 6.1.

The Committee considers that the issues raised in the submission by TBA Planners Pty Ltd, particularly as they relate to the issue of sustainable resource management, are worth consideration. It also considers that the issue of ecologically sustainable development as embodied in the Inter-Governmental Agreement on the Environment prepared in 1992 between Commonwealth, State, Territory and local government, should be reflected in the SPPF as a result of the general review which the Committee has recommended. This review, together with more specific objectives which may emerge as a result of experience with the operation of the VPPs, may require subsequent amendments to the purpose of the rural zones. For the time being, however, the Committee supports retaining the existing rural zone purposes.

The Committee recommends no change in respect of these submissions.

With respect to the issue of some sort of 'Good Design Guide for Rural Zones' (supported also by City of Ballarat (11) and MAV (26)), the Committee considers that the matters potentially to be covered by such a document are already referred to in the extensive range of decision guidelines found within each of the rural zones, together with the general decision guidelines contained in Clause 65.

The Committee recommends no change in respect of these submission.

6.7 RURAL OUTBUILDINGS

City of Greater Bendigo (97) and Mitchell Shire Council (103) both raise problems associated with the lack of control over outbuildings in rural areas. These problems relate to their scale, use as dwellings when there is no house on the land and the use of reflective materials. Whilst some rural planning schemes currently contain controls over the size and materials of outbuildings, there is no similar control in the VPPs.

In terms of the potential use of outbuildings, the Committee considers that this is an enforcement issue which does not require special consideration in the VPPs.

Rural Zones - cont'd

With respect to the size and reflectivity of outbuildings, particularly in rural residential locations or areas of high landscape or environmental significance, the Committee is aware that problems can arise. In light of this, it considers that the schedule to the Environmental Rural Zone and the Rural Living Zone should contain a provision enabling a permit to be required for an outbuilding above a certain size. It should be left to councils to decide if they wish to take up this option and if so, to nominate the size of the shed for which a permit is required.

The Committee does not consider that similar provision is necessary in the Rural Zone, particularly given the nature of its Section 1 Uses and the fact that no permit is required for buildings and works associated with a Section 1 Use in most cases. Where the land has special characteristics which might justify control over outbuildings, it is more likely than not that an overlay will apply under which consideration of a permit for large or reflective sheds would be justified.

RECOMMENDATION

Clause 35.02 - Environmental Rural Zone

Clause 35.03 - Rural Living Zone

Include a provision enabling the council to schedule in a requirement for a permit to be obtained for an outbuilding above a certain size, which must be specified in the schedule.

6.8 SUBDIVISION FOR SECTION 2 USES

There is an implication in the submission by Mornington Peninsula Shire Council (82) that there should be an ability to create a subdivision in the rural zones less than the minimum where a permit has been granted for a Section 2 Use.

In light of the Committee's discussion about subdivision in the rural zones generally, and the concerns which have been raised about small lot excisions, this suggestion is not supported by the Committee. The subdivision regime applying in a zone and the size of the land should be factors taken into consideration when a locational decision is made in respect of a Section 2 Use. A piece of land which is larger than required is not sufficient justification for a subdivision which does not otherwise meet zone requirements.

The Committee recommends no change in respect of this submission.

7. PUBLIC LAND ZONES

7.1 DESCRIPTION OF PUBLIC LAND ZONES

The purpose of the zones and their description in the *Manual for the Victoria Planning Provisions* are as follows:

Public Use Zone:

To recognise public land use for utility and community services and facilities.

To provide for associated uses that are consistent with the intent of the public land reservation or purpose.

This zone recognises the use of land for a public purpose and prescribes a number of categories of public use which can be shown on the planning scheme map. This is the main zone for public land used for utility or community service provision. A schedule allows specified uses or public land managers to be exempted from specified requirements and alternative advertising sign categories to be specified if required.

Public Park and Recreation Zone:

To recognise areas for public recreation and open space.

To protect and conserve areas of significance where appropriate.

To provide for commercial uses where appropriate.

This is the main zone for public open space and public recreation areas. A schedule allows specified uses or public land managers to be exempted from specified requirements, an exemption for buildings and works specified in an Incorporated Plan and alternative advertising sign categories to be specified if required.

Public Conservation and Resource Zone:

To protect and conserve the natural environment and natural processes for their historic, scientific, landscape, habitat or cultural values.

To provide facilities which assist in public education and interpretation of the natural environment with minimal degradation of the natural environment or natural processes.

To provide for appropriate resource based uses.

Public Land Zones - cont'd

This zone provides for places where the primary intention is to conserve and protect the natural environment or resources. It also allows associated educational activities and resource based uses. A schedule allows specified uses or public land managers to be exempted from specified requirements, an exemption for buildings and works specified in an Incorporated Plan and alternative advertising sign categories to be specified if required.

Road Zone:

To identify significant roads.

To provide for control of access to identified roads.

This zone enables declared roads and other important roads or proposed roads to be designated on the planning scheme map. A road designated under the *Transport Act 1993* must be included in a Road Zone - Category 1. Other roads (or proposed roads where the land has been acquired) may be included as Category 1 or Category 2 roads if appropriate. Certain uses, such as *Place of worship* and *Convenience restaurant* may only be permitted if the site abuts a Road Zone so this should be considered when deciding whether or not to include a road in the zone. VicRoads can provide information about the roads in each municipality which are declared.

Apart from the purpose of these zones, the distinguishing feature between the three public land zones (not including the Road Zone) is the range of controls over land use, which range from minimum restriction in the Public Use Zone to maximum protection in the Public Conservation and Resource Zone.

In the Public Use Zone, basically any use for the purpose described in the table to Clause 36.01-7 which corresponds to the notation on the planning scheme map is a Section 1 Use. Any other use is a Section 2 Use. There are no Section 3 Uses. The table to Clause 36.01-7 identifies the following public land use purposes:

- PUZ1 Service & Utility;
- PUZ2 Education;
- PUZ3 Health & Community;
- PUZ4 Transport;
- PUZ5 Cemetery / Crematorium;
- PUZ6 Local Government;
- PUZ7 Other public use.

In the Public Use Zone, a permit is required for buildings and works for any Section 2 Use and for all subdivision.

Public Land Zones - cont'd

In the Public Park and Recreation Zone, Section 1 Uses include informal outdoor recreation, natural systems, open sports ground, and any other use not in Section 3 subject to the condition that it is specified in an Incorporated plan in a schedule to the zone. Section 3 Uses include brothel, corrective institution, display home, funeral parlour, industry, saleyard, transport terminal (other than heliport), veterinary centre and warehouse (other than store). All other uses are Section 2 Uses, including leisure and recreation (other than informal outdoor recreation and open sportsground) and place of assembly, although several uses (such as office and retail premises) are subject to the condition that they are associated with the public land use.

In the Public Park and Recreation Zone, a permit is required for all buildings and works apart from a number of specified matters normally associated with a park or recreational area, and all subdivision.

In the Public Conservation and Resource Zone, the Section 1 Uses include natural systems and any use in Section 2 specified in an Incorporated plan in a schedule to the zone. There are a range of Section 2 Uses including boat launching facility, camping and caravan park, informal outdoor recreation, and open sports ground. All other uses are included in Section 3. A permit is required for all buildings and works, subject to some exemptions, and all subdivision.

However, all the public use zones include the following exemption (see Clauses 36.01-2, 36.02-2 and 36.03-2):

> *A permit is not required for the use or development of public land by a public land manager or for specified public land or for a specified use or development listed in a schedule to this zone, provided any condition in the schedule is complied with.*

Both in the Public Park and Recreation Zone and the Public Conservation and Resource Zone provision is made for Incorporated plans and certain uses specified in Incorporated plans become Section 1 Uses within each zone. An Incorporated plan is a plan which shows the way the land is to be used and developed. It must be consistent with the intent of the public land reservation under any Act and make reference to relevant policies and guidelines (see Clauses 36.02-4 and 36.03-4). The other provision common to all three public land zones relates to applications for a permit by a person other than the relevant public land manager (see Clauses 36.01-5, 36.02-6 and 36.03-6). Such applications must be accompanied by the written consent of the public land manager, indicating that the public land manager either:

- Consents generally or conditionally to the proposed use or development.
- Consents to the application for permit being made and determined prior to any decision by the public land manager in relation to the proposed use or development.

Public Land Zones - cont'd

7.2 CONCERNS ABOUT PUBLIC LAND ZONES

The public land zones have been designed to cater for the needs of 'public land managers' in a manner similar to the reserved land provisions of existing planning schemes. The zones do not provide for, and were not intended to provide for, privatised bodies which carry out a public function.

The public land zones will be amongst the most widely applied zones in the State, in terms of the area they cover, and will apply to some of the most sensitive land. It is not surprising then that they have been the subject of so many submissions which centre primarily around the issue of control of activities on public land. On the one hand, there are the concerns of public land managers (many of whom have huge areas of land for which they are responsible) who do not wish to see their management of land fettered other than by reference to the purpose for which land is reserved or the legislation under which they are responsible for the land. On the other hand, there are the concerns of organisations and individuals who mistrust the wide ambit of power encompassed by *'the purpose of the reservation'* or other legislation, and who desire much greater opportunity for public input into decision making concerning activities on public land.

The tension between these two sets of concerns is heightened by a number of factors:

- reduced financial resources available to public land managers;
- poor past management practices by some public land managers and perceived inappropriate uses which they have allowed on public land;
- a growing public awareness of the fragility of certain land systems largely encompassed on public land, particularly along the coast;
- dispute between certain interest groups over the relative significance to be placed on the values of public land in terms of certain activities, e.g. mining, vegetation removal, accommodation and commercial facilities.

The Committee acknowledges that the public land zones incorporated in the VPPs represent a balance between pragmatism and control. They represent a major step forward by comparison to the reserved land provisions in existing planning schemes in terms of categorising the purpose of the land and suitable activities to be governed by the table of uses. Their application to a range of Government departments which have previously been exempt from planning controls (such as DNRE, Health and Education) also represents a major shift in the transparency of planning in Victoria. In agreeing to relinquish their blanket exemptions, it is important for these departments that their existing rights be acknowledged.

Public Land Zones - cont'd

Public land managers collectively exercise responsibility over vast land and asset resources usually under a specific charter guiding their activities. There are many other people however, not bound by any charter, who also wish to use or develop public land. The Committee sees the two fundamental issues needing clear resolution with respect to public land as being:

- What can a public land manager do on public land?
- What can any other person do on public land?

7.3 PUBLIC LAND MANAGERS

'Public land manager' is defined in the VPPs as follows:

> *The Minister, government department, public authority or municipal council having responsibility for the care or management of public land. In relation to Crown land reserved under an Act and managed or controlled by a committee of management, it means the Minister administering that Act and does not include the committee of management.*

The definition of public land manager is important because of the exemption in the various public land zones from the need for a permit for the use or development of public land by a public land manager (see Clauses 36.01-2, 36.02-2 and 36.03-2).

Parks Victoria (58), DNRE (87) and Boroondara City Council (74) want the definition amended to exempt Melbourne Parks and Waterways and councils from the treatment of committees of management.

The Committee is advised that this change has already been negotiated and agreed with DOI.

RECOMMENDATION

Clause 72 - General terms

<u>Public land manager</u>

Add the words in italics to the definition of 'public land manager' to read as follows:

'Public land manager	**The Minister, government department, public authority or municipal council having responsibility for the care or management of public land. In relation to Crown land reserved under an Act and managed or controlled by a committee of management *other than Melbourne Parks and Waterways or a municipal council,* it means the Minister administering that Act and does not include the committee of management.'**

7.4 EXEMPTION PROVISIONS

AMBIT

Many submissions raised concerns about the clarity and extent of the exemption provisions of the public land zones, which exempt from the need for a permit public land managers and specific sites, uses or developments listed in a schedule to the zone, provided any condition in the schedule is complied with.

The feeling that the exemptions are too broad is well summarised in the submission by Victorian National Parks Association (48) which states:

> *While not clear, it is possible this exemption would also enable prohibited uses to take place under either the direction of the land manager or by the government inserting new uses in the schedule.*
>
> *We are most concerned about this exemption, especially if it can allow otherwise prohibited uses inside parks and reserves. We also point out that additions could be made to the schedule through unexhibited amendments, thus bypassing any public participation. While to some extent this can be done at present (either through spot amendments or because much public land lacks clear planning controls), we do not feel that this is any reason to continue to make public land liable to ad hoc development through exemptions from the zone controls. Rather the zone controls should function effectively to make the use, development and protection of public land more certain.*

The Committee agrees that the exemption provision is broad, however, any entry to the schedule would be achieved only by a planning scheme amendment. The Minister's Direction provides that the schedule is a Local Provision. A new format scheme may be amended by the same amendment processes available in the *Planning and Environment Act* as apply to existing planning schemes. This includes, in certain circumstances, the possibility for unexhibited amendments. However, an unexhibited amendment is only likely to be made to an individual schedule, rather than across the board to all schedules to all public land zones throughout the State. This would be a massive undertaking and better achieved, if such was the intention, by amending the table of uses in the zone itself.

Nevertheless, the Committee does not consider that the real weakness of the public land zone lies in the potential use of unexhibited amendments, which are not a creature of the VPPs but rather of the *Planning and Environment Act*. More significantly, it considers the weakness of the zones to rest in the complete lack of any fetter over the actions of any public land manager.

Public Land Zones - cont'd

With respect to non-public land managers, the Committee considers that the public land zones are more or less adequate (apart from coastal land), although it considers there is ambiguity in the way in which the exemption provisions are written. It is unclear whether there are three situations when no permit is required or only two.

One way of reading the clause is as follows:

A permit is not required for:

- the use or development of public land by a public land manager;
- specified public land listed in a schedule to this zone, provided any condition in the schedule is complied with;
- a specified use or development listed in the schedule to this zone, provided any condition in the schedule is complied with.

Alternatively, the clause can be read as follows:

A permit is not required for:

- use or development of public land by a public land manager;
- a specified use or development on specified public land listed in the schedule to this zone, provided any condition in the schedule is complied with.

According to DOI, the clause is intended to be read in the first way with three possible categories of exemption. A revised schedule to the Public Use Zone is proposed by DOI as follows:

Public land	Use or development	Conditions

Land	Advertising Sign Category

Public Land Zones - cont'd

The Committee still considers there is some ambiguity associated with the layout of this schedule. It still appears to require that the public land **and** the use or development must be specified rather than the public land **or** the use or development being specified.

DOI advise that it should be read as requiring the public land **and/or** the use or development being specified. If a use or development is to be exempt from the need for a permit by non-public land managers on all public land then the schedule could simply read '*all land covered by this scheme'*. Alternatively, it could read all land in a particular zone or some specific piece of land. The same flexibility can be used in describing the use or development.

In the Committee's view, the schedule to the Public Use Zone should be altered in the way suggested by DOI. However, the *Manual for the Victoria Planning Provisions* should not only make it clear that the schedule can be used to specify public land and/or use or development, but also give guidance as to the circumstances when it may be appropriate to use the schedule to the Public Use Zone to create exemptions from the need for a permit, as distinct from using an Incorporated plan.

The major difficulty which the Committee has with the exemption provisions though, is their application to **all** use and development by a public land manager.

First, if this is the intent, the Committee considers that the provision should be removed from the exemption provision and included in Section 1 of the table of uses for each zone. The Public Use Zone in effect contains such a provision now with 'any use' being included in Section 1 subject to the condition that:

> *The use must be for the purpose described in the table to Clause 36.01-7 which corresponds to the notation on the planning scheme map.*

In fact, this Section 1 Use is not confined to a use by the relevant public land manager but extends to any use for the purpose described in the table to Clause 36.01-7 by anyone. Thus a utility service provider, which is not a public authority, or even a private individual or company, would not require a permit for such a use so long as it was consented to by the public land manager.

Even if the use was not for the purpose described in the table to Clause 36.01-7, notwithstanding such a use is a Section 2 Use, no permit would be required if it was a use proposed by the public land manager by virtue of the operation of the exemption clause.

In the reserved land provisions of existing planning schemes, use of land for the purpose for which the land is reserved does not normally require a permit by the land owner or manager. In cases where the applicant is not the land owner or manager or the use is not for the purpose for which the land is reserved, a permit is required. Both these fetters appears to have been removed by the provisions of the Public Use Zone.

Public Land Zones - cont'd

In the Public Park and Recreation Zone and the Public Conservation and Resource Zone, a public land manager may use or develop the land for **any** purpose, irrespective of whether it accords with the purpose of the zone, the purpose for which the land is being managed under any Act, or even whether it is a Section 3 Use.

Whilst the Committee can appreciate that these provisions are possibly inspired by a philosophy which ascribes altruistic purposes to public land managers and which considers they should be left to get on with the job they must do of managing this public land, the Committee is not certain that such a philosophy finds universal public support or is necessarily valid in all cases. Certainly, the Committee is concerned that there is nothing in the exemption provisions which would limit the exemption to at least a purpose for which the land is zoned or managed.

The increasing corporatisation of public land managers; their focus on what they perceive to be 'core business'; and their dwindling resources, resulting in a corresponding emphasis on 'user pays' or general commercial opportunities, is likely to see far greater pressures for commercial uses being proposed for public land, whether applied for by the public land manager or others. The Committee does not mean to imply that it considers all such uses to be inappropriate, but it is concerned that they may be allowed to proliferate without proper public scrutiny and the opportunity for public participation in the decision making process. If such uses and development are proposed as part of an incorporated plan which passes through the public scrutiny of an amendment, then the Committee agrees it may be unnecessary for a further permit to be applied for. However, the Committee does not consider that other proposals which have not passed through this process should be wholly exempt from the need for a permit, especially where they are not part of the primary purpose for which the public land manager is managing the public land.

Extensive discussions have been held by DOI with the Committee, DNRE and others resulting in a redrafted set of public land zones. These embody much more clearly the concept that a public land manager operating under a charter in respect of public land should be able to use and develop the land for any purpose in connection with that charter without the need for a permit. Otherwise, a permit should be required either by the public land manager or anyone else. Exceptions should apply where an incorporated plan has been through the public scrutiny of an amendment process or the council decides that a permit should not be required for specified use or development listed in a schedule to the zone.

The Committee endorses the proposed new zones, which it sees as a vast improvement on those in the VPPs at present. It considers that an appropriate balance has been struck between the need for pragmatism and control, and that many concerns have been addressed. Like all the VPPs, their actual application and operation will need to be monitored and possibly fine tuned with experience.

Public Land Zones - cont'd

SHOULD EXEMPTIONS FOR PUBLIC LAND MANAGERS BE AVAILABLE UNDER THE OVERLAY PROVISIONS

DNRE (87) would like to see overlays provide for exemptions for public land managers and for specified sites and developments in overlays to the same extent as in the underlying public land zones.

The Committee considers that public land will not generally be affected by overlays. In the event that this is proposed, the introduction of overlays will be by planning scheme amendment of which the public land manager should be given notice. It would then be incumbent on the public land manager to argue why an overlay was inappropriate. However, in the rare instances when the additional protection which an overlay provides is considered appropriate to be applied to public land, it would be undermining its most likely and common application to exempt the public land manager from the need for a permit.

The Committee recommends no change in respect of this submission.

RECOMMENDATION

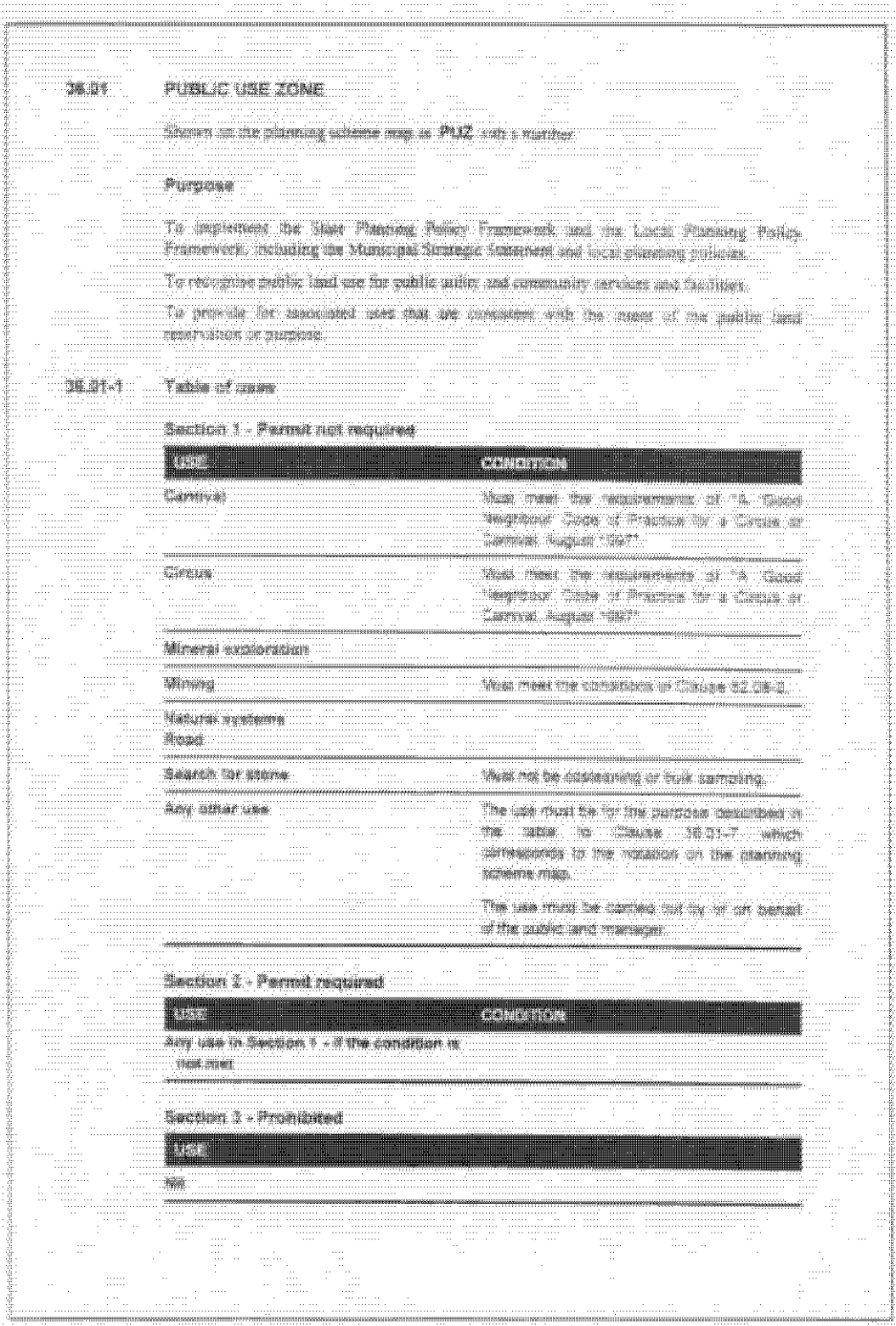
Clause 36.01 - Public Use Zone

Clause 36.02 - Public Park and Recreation Zone

Clause 36.03 - Public Conservation and Resource Zone

Delete Clause 36.01, Clause 36.02 and Clause 36.03 and replace by the following:

Public Land Zones - cont'd



36.01 PUBLIC USE ZONE

Shown on the planning scheme map as PUZ with a number.

Purpose

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

To recognise public land use for public utility and community services and facilities.

To provide for associated uses that are consistent with the intent of the public land reservation or purpose.

36.01-1 Table of uses

Section 1 - Permit not required

USE	CONDITION
Carnival	Must meet the requirements of 'A Good Neighbour Code of Practice for a Circus or Carnival, August 1997'.
Circus	Must meet the requirements of 'A Good Neighbour Code of Practice for a Circus or Carnival, August 1997'.
Mineral exploration	
Mining	Must meet the conditions of Clause 62.03-2.
Natural systems	
Road	
Search for stone	Must not be carried out by quarrying or bulk sampling.
Any other use	The use must be for the purpose described in the table to Clause 36.01-7 which corresponds to the notation on the planning scheme map. The use must be carried out by or on behalf of the public land manager.

Section 2 - Permit required

USE	CONDITION
Any use in Section 1 - if the condition is not met	

Section 3 - Prohibited

USE
Nil

Public Land Zones - cont'd

36.01-2 Exemption from permit

A permit is not required for a use or development of public land listed in a schedule to this zone, provided any condition in the schedule is complied with.

36.01-3 Buildings and works

A permit is required to construct a building or to construct or carry out works for any use in Section 2 of Clause 36.01-1. This does not apply to navigational beacons and aids.

36.01-4 Subdivision

A permit is required to subdivide land.

36.01-5 Application requirements

An application for a permit by a person other than the relevant public land manager must be accompanied by the written consent of the public land manager, indicating that the public land manager either:

- Consents generally or conditionally to the proposed use or development.
- Consents to the application for permit being made and determined prior to any decision by the public land manger in relation to the proposed use or development.

36.01-6 Decision guidelines

Before deciding on an application to excise or subdivide land, construct a building or construct or carry out works, the responsible authority must consider:

- The State Planning Policy Framework and the Local Planning Policy Framework, including the Municipal Strategic Statement and local planning policies.
- The comments of any Minister or public land manager having responsibility for the care or management of the land or adjacent land.
- Whether the development is appropriately located and designed, including in accordance with any relevant use, design or siting guidelines.

36.01-7 Table of public land use

Shown on the Planning Scheme Map	Purpose of public land use
PUZ1	Service & Utility
PUZ2	Education
PUZ3	Health & Community
PUZ4	Transport
PUZ5	Cemetery/Crematorium
PUZ6	Local Government
PUZ7	Other public use

36.01-8 Advertising signs

Advertising sign requirements are at Clause 52.05. This zone is in Category 1 unless a different requirement is specified in the schedule to this zone.

Public Land Zones - cont'd

Note: *Refer to the State Planning Policy Framework and the Local Planning Policy Framework, including the Municipal Strategic Statement, for strategies and policies which may affect the use and development of land.*

Check whether an overlay also applies to the land.

Other requirements may also apply. These can be found in Particular Provisions.

LOCAL PROVISION

SCHEDULE TO THE PUBLIC USE ZONE

Public Land	Use or development	Conditions

Land	Advertising Sign Category

Public Land Zones - cont'd

36.02 PUBLIC PARK AND RECREATION ZONE

Shown on the planning scheme map as PPRZ.

Purpose

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

To recognise areas for public recreation and open space.

To protect and conserve areas of significance where appropriate.

To provide for commercial uses where appropriate.

36.02-1 Table of uses

Section 1 - Permit not required

USE	CONDITION
Apiculture	Must not be within 2000 metres of a Reference Area designated under the Reference Areas Act 1978. Must not be within 1500 metres (in the case of a permanent apiary) or 600 metres (in the case of a temporary apiary) of a Wilderness Area or Zone designated in the National Parks Act 1975. Must not be in a Natural Catchment Area designated in the Heritage Rivers Act 1992.
Carnival	Must meet the requirements of A 'Good Neighbour' Code of Practice for a Circus or Carnival, August 1997.
Circus	Must meet the requirements of A 'Good Neighbour' Code of Practice for a Circus or Carnival, August 1997.
Mineral exploration	
Mining	Must meet the conditions of Clause 52.08-2.
Informal outdoor recreation **Natural systems**	
Open sports ground	Must be conducted by or on behalf of the public land manager. Must not be on coastal Crown land under the Coastal Management Act 1995.
Road	
Search for stone	Must not be costeaning or bulk sampling.

Public Land Zones - cont'd

USE	CONDITION
Contractors depot	Must be any of the following:
Heliport	• A use conducted by or on behalf of a public land manager under the relevant provisions of the Local Government Act 1989, the Reference Areas Act 1978, the National Parks Act 1975, the Fisheries Act 1995, the Wildlife Act 1975 or the Forest Act 1958.
Office	
Retail premises	
Store	• A use conducted by or on behalf of Melbourne Parks and Waterways under the Water Industry Act 1994, the Water Act 1989, the Marine Act 1988, the Port of Melbourne Authority Act 1958 and the Crown Land (Reserves) Act 1978.
Any other use not in Section 3	• A use specified in an incorporated plan in a schedule to this zone.

Section 2 - Permit required

USE	CONDITION
Contractor's depot - if the Section 1 condition is not met	Must be associated with the public land use.
Heliport - if the Section 1 condition is not met	Must be associated with the public land use.
Office - if the Section 1 condition is not met	Must be associated with the public land use.
Retail premises - if the Section 1 condition is not met	Must be associated with the public land use.
Store - if the Section 1 condition is not met	Must be associated with the public land use.
Any other use in Section 1 (other than Apiculture) - if the condition is not met	

Section 3 - Prohibited

USE
Brothel
Cinema based entertainment facility
Corrective institution
Display home
Funeral parlour
Industry
Saleyard
Transport terminal (other than Heliport)
Veterinary centre
Warehouse (other than Store)

Public Land Zones - cont'd

36.02-2 Exemption from permit

A permit is not required for a use or development of public land listed in a schedule to this zone, provided any condition in the schedule is complied with.

36.02-3 Buildings and works

A permit is required to construct a building or to construct or carry out works.

This does not apply to:

- Pathways, trails, seating, picnic tables, drinking taps, shelters, barbeques, rubbish bins, security lighting, irrigation, drainage or underground infrastructure.
- Playground equipment or sporting equipment, provided these facilities do not occupy more than 10 square metres of parkland.
- Navigational beacons and aids.
- Planting or landscaping.
- Fencing that is 1 metre or less in height above ground level.
- Building or works shown in an Incorporated plan which applies to the land.
- Works carried out by or on behalf of a public land manager under the Local Government Act 1989, the Reference Areas Act 1978, the National Parks Act 1975, the Fisheries Act 1995, the Wildlife Act 1975 and the Forests Act 1958.
- Works carried out by or on behalf of Melbourne Parks and Waterways under the Water Industry Act 1994, the Water Act 1989, the Marine Act 1988, the Port of Melbourne Authority Act 1958 and the Crown Land (Reserves) Act 1978.

36.02-4. Incorporated plan

An Incorporated plan is a plan which shows the way the land is to be used and developed. An Incorporated plan may include the following information:

- Recognition of existing use and how the area is to be developed.
- The building envelope of any proposed buildings.
- Details of any proposed buildings or works.
- The location of pedestrian or vehicle access points or car parking areas.
- The location of any areas for specific uses or a schedule of specific uses which are allowed without permit.
- Topographic details including any proposed cut and fill.
- The location of existing and proposed features.
- The location of existing native and other vegetation and any proposed landscaping works or areas of vegetation to be added or removed.
- The identification of sites of flora or fauna significance (including, in particular, any potentially threatened species or significant habitat) or other places of cultural heritage or scientific value.

The Incorporated plan must be consistent with the intent of the public land reservation under any Act and make reference to relevant policies and guidelines.

An Incorporated plan may be prepared in parts or stages.

36.02-5 Subdivision

A permit is required to subdivide land.

An application to subdivide land which is consistent with an Incorporated 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 appeal rights of Section 82(1) of the Act.

Public Land Zones - cont'd

36.02-6 Application requirements

An application for a permit by a person other than the relevant public land manager must be accompanied by the written consent of the public land manager, indicating that the public land manager either:

- Consents generally or conditionally to the proposed use or development.
- Consents to the application for permit being made and determined prior to any decision by the public land manager in relation to the proposed use or development.

36.02-7 Decision guidelines

Before deciding on an application to subdivide land, construct a building or construct or carry out works, the responsible authority must consider:

- The State Planning Policy Framework and the Local Planning Policy Framework, including the Municipal Strategic Statement and local planning policies.
- The comments of any public land manager or other relevant land manager having responsibility for the care or management of the land or adjacent land.
- Whether the development is appropriately located and designed, including in accordance with any relevant use, design or siting guidelines.

36.02-8 Advertising signs

Advertising sign requirements are at Clause 52.05. This zone is in Category 3 unless a different requirement is specified in the schedule to this zone.

Note: Refer to the State Planning Policy Framework and the Local Planning Policy Framework, including the Municipal Strategic Statement, for strategies and policies which may affect the use and development of the land.

Check whether an overlay also applies to the land.

Other requirements may also apply. These can be found at Particular Provisions.

Public Land Zones - cont'd

LOCAL PROVISION

SCHEDULE TO THE PUBLIC PARK AND RECREATION ZONE

Public land	Use or development	Conditions

Land	Advertising Sign Category

Public Land Zones - cont'd

36.03 PUBLIC CONSERVATION AND RESOURCE ZONE

Shown on the planning scheme map as **PCRZ**.

Purpose

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

To protect and conserve the natural environment and natural processes for their historic, scientific, landscape, habitat or cultural values.

To provide facilities which assist in public education and interpretation of the natural environment with minimal degradation of the natural environment or natural processes.

To provide for appropriate resource based uses.

36.03-1 Table of uses

Section 1 - Permit not required

USE	CONDITION
Aquaculture	Must not be within 2000 metres of a Reference Area designated under the Reference Areas Act 1978. Must not be within 1600 metres (in the case of a permanent abattoir) or 800 metres (in the case of a temporary abattoir) of a Wilderness Area or Zone designated in the National Parks Act 1975. Must not be in a Natural Catchment Area designated in the Heritage Rivers Act 1992.
Boat launching facility Camping and caravan park Caretaker's house Car park Informal outdoor recreation Interpretation centre Jetty Kiosk Marine dredging	Must be any of the following: • Conducted by or on behalf of a public land manager under the relevant provisions of the Local Government Act 1989, the Reference Areas Act 1978, the National Parks Act 1975, the Fisheries Act 1995, the Wildlife Act 1975 or the Forest Act 1958. • Conducted by or on behalf of Melbourne Parks and Waterways under the Water Industry Act 1994, the Water Act 1989, the Marine Act 1988, the Port of Melbourne Authority Act 1958 and the Crown Land (Reserves) Act 1978. • Specified in an incorporated plan in a schedule to this zone.
Mineral exploration	

Public Land Zones - cont'd

Section 1 - Permit not required (continued)

USE	CONDITION
Mineral, stone or soil extraction (other than Mineral exploration, Mining and Search for stone)	Must be any of the following: • Conducted by or on behalf of a public land manager under the relevant provisions of the Local Government Act 1989, the Reference Areas Act 1978, the National Parks Act 1975, the Fisheries Act 1995, the Wildlife Act 1975 or the Forest Act 1958. • Conducted by or on behalf of Melbourne Parks and Waterways under the Water Industry Act 1994, the Water Act 1989, the Marine Act 1988, the Port of Melbourne Authority Act 1958 and the Crown Land (Reserves) Act 1978. • Specified in an incorporated plan in a schedule to this zone.
Mining	Must meet the conditions of Clause 52.08-2.
Minor utility installation **Mooring pole**	Must be any of the following: • Conducted by or on behalf of a public land manager under the relevant provisions of the Local Government Act 1989, the Reference Areas Act 1978, the National Parks Act 1975, the Fisheries Act 1995, the Wildlife Act 1975 or the Forest Act 1958. • Conducted by or on behalf of Melbourne Parks and Waterways under the Water Industry Act 1994, the Water Act 1989, the Marine Act 1988, the Port of Melbourne Authority Act 1958 and the Crown Land (Reserves) Act 1978. • Specified in an incorporated plan in a schedule to this zone.
Natural systems	

Public Land Zones - cont'd

Section 1 - Permit not required (continued)

USE	CONDITION
Open sports ground Pier Pontoon Reservoir Road	Must be any of the following: • Conducted by or on behalf of a public land manager under the relevant provisions of the Local Government Act 1989, the Reference Areas Act 1978, the National Parks Act 1975, the Fisheries Act 1995, the Wildlife Act 1975 or the Forest Act 1958. • Conducted by or on behalf of Melbourne Parks and Waterways under the Water Industry Act 1994, the Water Act 1989, the Marine Act 1988, the Port of Melbourne Authority Act 1958 and the Crown Land (Reserves) Act 1978. • Specified in an incorporated plan in a schedule to this zone.
Search for stone	Must not be costeaning or bulk sampling.
Water retarding basin	Must be any of the following: • Conducted by or on behalf of a public land manager under the relevant provisions of the Local Government Act 1989, the Reference Areas Act 1978, the National Parks Act 1975, the Fisheries Act 1995, the Wildlife Act 1975 or the Forest Act 1958. • Conducted by or on behalf of Melbourne Parks and Waterways under the Water Industry Act 1994, the Water Act 1989, the Marine Act 1988, the Port of Melbourne Authority Act 1958 and the Crown Land (Reserves) Act 1978. • Specified in an incorporated plan in a schedule to this zone.
Any other use	Must be either of the following: • Conducted by or on behalf of a public land manager under the relevant provisions of the Local Government Act 1989, the Reference Areas Act 1978, the National Parks Act 1975, the Fisheries Act 1995, the Wildlife Act 1975 or the Forest Act 1958. • Conducted by or on behalf of Melbourne Parks and Waterways under the Water Industry Act 1994, the Water Act 1989, the Marine Act 1988, the Port of Melbourne Authority Act 1958 and the Crown Land (Reserves) Act 1978.

Public Land Zones - cont'd

Section 2 - Permit required

USE	CONDITION
Boat launching facility - if the Section 1 condition is not met	
Camping and caravan park - if the Section 1 condition is not met	
Caretaker's house - if the Section 1 condition is not met	
Car park - if the Section 1 condition is not met	
Informal outdoor recreation - if the Section 1 condition is not met	
Interpretation centre - if the Section 1 condition is not met	
Jetty - if the Section 1 condition is not met	
Kiosk - if the Section 1 condition is not met	
Marine dredging - if the Section 1 condition is not met	
Mineral, stone or soil extraction (other than Mineral exploration, Mining and Search for stone) - if the Section 1 condition is not met	
Mining - if the Section 1 condition is not met	
Minor utility installation - if the Section 1 condition is not met	
Mooring pole - if the Section 1 condition is not met	
Open sports ground - if the Section 1 condition is not met	
Pier - if the Section 1 condition is not met	
Pontoon - if the Section 1 condition is not met	
Reservoir - if the Section 1 condition is not met	
Road - if the Section 1 condition is not met	
Search for stone - if the Section 1 condition is not met	
Water retarding basin - if the Section 1 condition is not met	

Public Land Zones - cont'd

Section 3 – Prohibited

USE
Any use in Section 1 if the condition is not met and the use is not specifically mentioned in Section 2

36.03-2 Exemption from permit

A permit is not required for a use or development of public land listed in a schedule to this zone, provided any condition in the schedule is complied with.

36.03-3 Buildings and works

A permit is required to construct a building or to construct or carry out works.

This does not apply to:

- Planting or landscaping.
- Building or works shown in an incorporated plan which applies to the land.
- Works carried out by or on behalf of a public land manager under the Local Government Act 1989, the Reference Areas Act 1978, the National Parks Act 1975, the Fisheries Act 1995, the Wildlife Act 1975 and the Forests Act 1958.
- Works carried out by or on behalf of Melbourne Parks and Waterways under the Water Industry Act 1994, the Water Act 1989, the Marine Act 1988, the Port of Melbourne Authority Act 1958 and the Crown Land (Reserves) Act 1978.
- Navigational beacons and aids.

36.03-4 Incorporated plan

An incorporated plan is a plan which shows the way the land is to be used and developed. An incorporated plan may include the following information:

- Recognition of existing use and how the area is to be developed.
- The building envelope of any proposed buildings.
- Details of proposed buildings or works.
- The location of pedestrian or vehicle access points or car parking areas.
- The location of any areas for specific uses and a schedule of specific uses which are allowed without permit.
- Topographic details including any proposed cut and fill.
- The location of existing and proposed features.
- The location of existing native or other vegetation and any proposed landscaping works or areas of vegetation to be added or removed.
- The identification of uses of flora or fauna significance including, in particular, any potentially threatened species or significant habitat or other places of cultural, heritage or scientific value.

The incorporated plan must be consistent with the intent of the public land reservation under the Act and make reference to relevant policies and guidelines.

An incorporated plan may be prepared in parts or stages.

36.03-5 Subdivision

A permit is required to subdivide land.

An application to subdivide which is consistent with an incorporated plan is exempt from the notice requirements of Section 52(1) (a), (b) and (d), the decision requirements of Sections 60(1) (c), (2) and (3) and the appeal rights of Section 82(1) of the Act.

Public Land Zones - cont'd

36.03-6 Application requirements

An application for a permit by a person other than the relevant public land manager must be accompanied by the written consent of the public land manager, indicating that the public land manager either:

- Consents generally or conditionally to the proposed use or development;
  or
- Consents to the application for permit being made and determined prior to any decision by the public land manager in relation to the proposed use or development.

36.03-7 Decision guidelines

Before deciding on an application to excise or subdivide land, construct a building or construct or carry out works, the responsible authority must consider:

- The State Planning Policy Framework and the Local Planning Policy Framework, including the Municipal Strategic Statement and local planning policies.
- The comments of any public land manager or other relevant land manager having responsibility for the care or management of the land or adjacent land.
- Whether the development is appropriately located and designed, including in accordance with any relevant use, design or siting guidelines.

36.03-8 Advertising signs

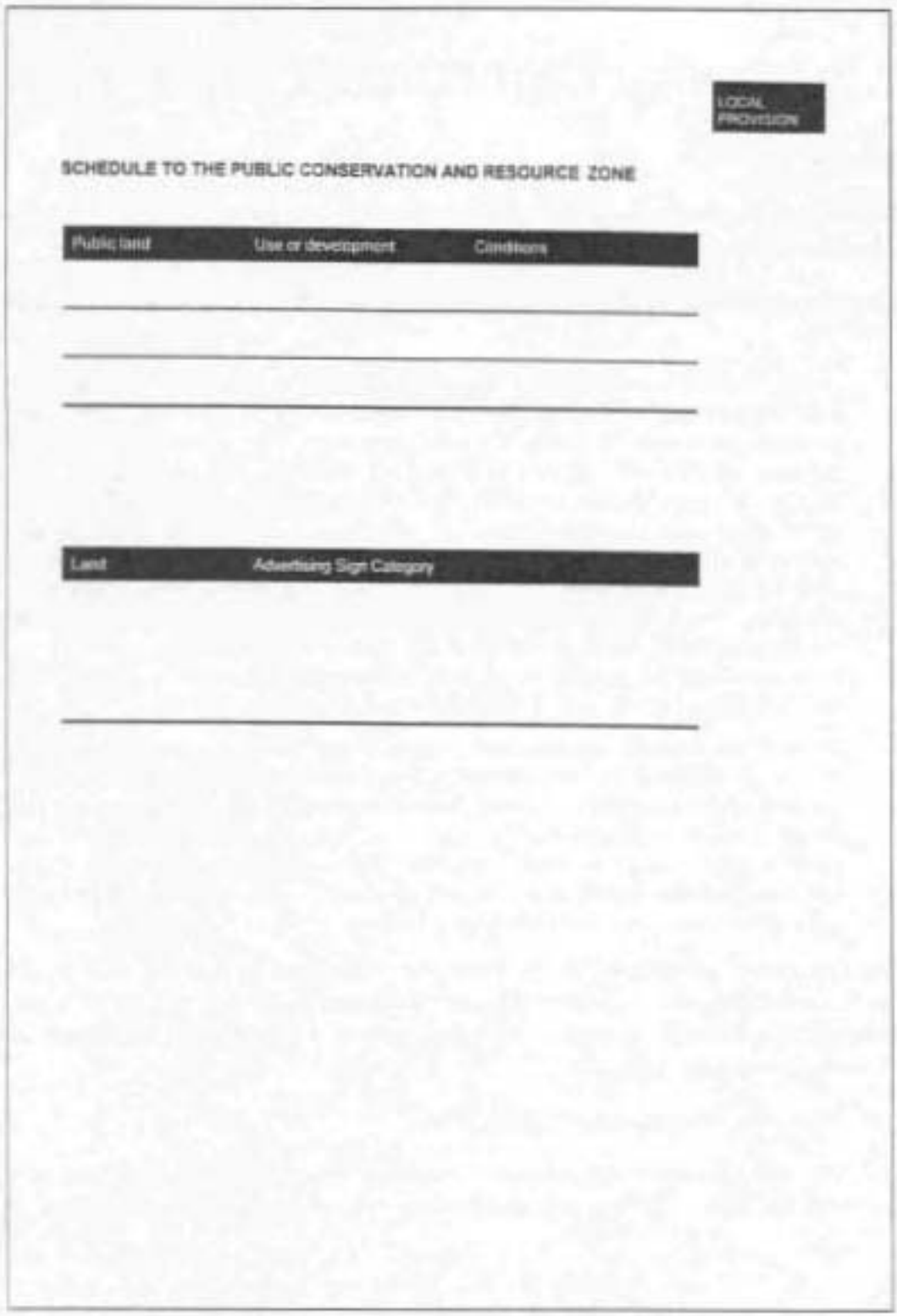
Advertising sign controls are at Clause 52.05. This zone is in Category 3 unless a different requirement is specified in the schedule to this zone.

Note: Refer to the State Planning Policy Framework *and the* Local Planning Policy Framework, *including the* Municipal Strategic Statement, *for strategies and policies which may affect the use and development of land.*

Check whether an overlay also applies to the land.

Other requirements may also apply. These can be found at Particular Provisions

Public Land Zones - cont'd



LOCAL PROVISION

SCHEDULE TO THE PUBLIC CONSERVATION AND RESOURCE ZONE

Public land	Use or development	Conditions

Land	Advertising Sign Category

Public Land Zones - cont'd

7.5 CONFLICT WITH OTHER LEGISLATION

MINING

Several submissions noted conflict between the provisions of the public land zones relating to mining and the *National Parks Act*.

Victorian National Parks Association (48) outlined the issue and suggested a solution:

> *... the Public Conservation and Resource Zone which is to apply to National and State Parks, Wilderness Areas, Flora and Fauna reserves together with some other conservation reserves is to allow 'mineral exploration' and 'search for stone' as a section 1 use with 'mining' and 'stone and soil extraction' as a section 1 or 2 use. This is in direct conflict with the National Parks Act which prohibits these activities in most of the above reserves. We point out that there is no blanket legislative requirement that planning schemes should allow these activities in all areas but rather the Mineral Resources Development Act over-rides any conflicting planning controls. In areas where licences cannot be issued due to the operation of the National Parks Act (and the MRD Act which contains identical prohibitions) there is no conflict at all if the planning scheme prohibits these activities, but certainly an unclear message to the public if they do not.*
>
> *To solve this problem and avoid the creation of separate zones, this can easily be resolved by inserting the words in the conditions column of the Table of Uses 'must not be prohibited under the National Parks or Reference Areas Act' or (to cater for future changes in the name of the Acts) 'must not be prohibited under the Act under which the land is reserved' every time these uses are listed as a section 1 or 2 use. Without such clarification it is difficult to have faith in the future intentions of the government with respect to mining in Parks.*

The Committee considers that the concerns of the likes of the Victorian National Parks Association and the National Trust are misconceived with respect to mining in the public land zones. In each of the zones mining is a Section 1 Use subject to the following condition:

> *Must meet the conditions of Clause 52.08-2.*

Clause 52.08-2 provides that a permit is required to use or develop land for mining unless all the following three requirements are met, when no permit is required:

- *An environment effects statement has been prepared under the Environment Effects Act 1978 for the work proposed to be done under a licence issued under the Mineral Resources Development Act 1990, and*
- *An assessment of that statement by the Minister administering the Environment Effects Act 1978 has been submitted to the Minister administering the Mineral Resources Development Act 1990, and*

Public Land Zones - cont'd

- *An authority to commence work has been granted by the Secretary of the Department of Energy and Minerals with the approval of the Minister administering the Mineral Resources Development Act 1990.*

A further exemption from the need for a permit applies if the mining is in accordance with and within an area covered by a mining licence granted or Order made by the Governor-in-Council under Section 47A of the *Electricity Industry Act 1990*.

The Committee considers it is improbable that the specified requirements set out in the exemption in Clause 52.08-2 could be met in any public land zone where mining was prohibited by the *National Parks Act* or any other Act. No authority to commence work would ever be issued in such circumstances, let alone the other processes under the *Environment Effects Act* being carried out. It is therefore redundant to add the type of condition proposed by VNPA to the table of uses opposite 'mining'; i.e. that it must not be prohibited under the Act under which the land is reserved.

Where the exemption provisions of Clause 52.08-2 do not apply, mining is a Section 2 Use. Likewise however, a permit would never be issued if mining was prohibited on the land by any Act.

The Committee recommends no change in respect of these submissions.

PUBLIC OPEN SPACE

Boroondara City Council (74) submits that:

> *The Subdivision Act (1980) provides the other statutory control over the use of public parks, being land shown on a planning scheme as reserved for public open space, land provided as part of a subdivision for public open space and land purchased with the resort and recreation levy, including replacement public open space. The provisions of this Act restrict the use of such land to recreation and a limited range of municipal purposes. It is considered that the status of this Act viz a viz the new VPPs needs to be clarified to ensure that parks continue to be used primarily for 'public', 'open', 'space'.*

Just as no permit could be issued for mining on any public land where it was prohibited by an Act other than the *Planning and Environment Act*, so the *Planning and Environment Act* cannot override other legislation relating to public open space. If there are restrictions on how a council may deal with public open space under the *Subdivision Act*, the *Local Government Act* or any other Act, this legislation must be complied with in addition to any requirements of the *Planning and Environment Act*. This is a general principle of law and the Committee does not consider it needs clarification in the VPPs.

The Committee recommends no change in respect of this submission.

Public Land Zones - cont'd

7.6 COASTAL LAND

ADDITIONAL COASTAL ZONE OR OVERLAY

Many submissions were received requesting a new Coastal Zone or Overlay. For example, TBA Planners Pty Ltd (77) submitted that:

> *The VPPs are very weak on coastal resource management and planning. The option of using an Environmental Rural Zone as well as overlays, such as the Environmental Significance Overlay, is not considered an appropriate option for coastal areas. It is likely that planning authorities will resort to the use of the Special Use Zone which again is not considered appropriate.*

The Victorian Coastal Council (95) submitted:

> *Council has examined the range of public land planning zones and believes that there is merit, particularly from a coastal perspective, for the establishment of one additional public land zone or for modification of the use tables in an existing zone. In suggesting the introduction of one additional zone, Council believes that there are broadly three public land use planning groupings on the coast:*
>
> 1. *those areas of prime conservation significance.*
> 2. *those areas used for passive recreation and other non-permanent coastal uses where there are often significant local coastal values.*
> 3. *those areas where more intensive concentration of activity is encouraged (including, townships, activity nodes identified in the Victorian Coastal Strategy and so on) where remnant natural coastal values may be quite low and where existing modification of the environment is often significant.*
>
> *Council believes that the existing public conservation and resource zone and public park and recreation zone deal well with groups one and three. Group two, which includes most of the coastal reserves outside national parks fits poorly within the existing available zones, particularly when the table of uses are examined. For example, including roads and open sports ground in section one of the use table for a zone which could be applied to most coastal reserves is not considered appropriate.*

The Committee held informal discussions with Mr John Ginivan of the Victorian Coastal Council who tabled a draft Coastal Zone. The zone was based on the Public Conservation and Resource Zone with the primary difference being the purposes and the exclusion of 'leisure and recreation' and 'reservoir' from Section 2 of the table of uses.

Public Land Zones - cont'd

The Committee does not believe that a new zone is required in this case given the closely related provisions of the Public Conservation and Resource Zone, although it does recommend a Coastal Overlay. The concerns expressed in terms of the Public Park and Recreation zone primarily relate to the use of land for 'open sports ground' being included in Section 1 of the table of uses. The Committee agrees that such uses are of concern on coastal sites and recommends that a condition be included to the effect that open sports grounds must not be located on coastal land. Whilst it is noted that public land managers would not require a permit, this is probably not a problem as it is non-public land managers whom it is more important to control.

The lack of specific controls applying to the coast also led to calls for a Coastal Overlay to cover such issues as building siting and design in proximity to the coast and referrals to coastal management bodies. DNRE(87) suggested that a coastal protection overlay be considered based on the development of a better understanding of the links between planning schemes and the Coastal Management Act 1995:

> *The Design and Siting [sic] Overlay could prove to be sufficient for coastal planning purposes in built up areas, but a specific overlay with generic coastal planning controls and decision guidelines, plus a schedule to detail specific provisions, might be more effective, particularly if it is considered desirable to avoid multiple overlays. The issue here is whether a single composite overlay should be available to deal with a particular land system because it is more 'user friendly' than the repetitious application of several overlays throughout the system.*

Port Phillip City Council (57) outlined its concerns as follows:

> *There is no provision in the VPPs for the Port Phillip Coastal Overlay control which is currently in all municipal planning schemes abutting Port Philip Bay. This overlay contains a number of requirements for the use and development of land adjacent to Port Phillip Bay, including referral to certain State Government authorities. Given the sensitivity of foreshore issues and the range of State Government authorities with an interest in new developments along the foreshore, it would seem critical that the provisions of this existing overlay be provided for in the VPPs. Alternatively, a series of standard schedules to the Environmental Significance Overlay and / or the Design and Development Overlay could be formulated which integrate foreshore issues and referrals on a regional basis.*

This was echoed by Parks Victoria (59):

> *[O]n 1 March 1996 Parks Victoria took on a new role as the recreational manager of Port Philip and Westernport Bays. This involved taking over some of the functions of the former Port of Melbourne Authority. One of these roles included becoming a referral authority for planning applications that fall within the Port Philip Coastal Area clause.*

Public Land Zones - cont'd

This clause covers specified areas of Crown land, waters and sea bed within Port Phillip Bay. The clause provides a framework for assessing applications within this area and requires referral of applications to Department of Natural Resources and Environment and Parks Victoria (ex Port of Melbourne Authority role).

This provision has not been translated into the new planing scheme. Furthermore, the Victorian Planning Provisions do not include the tools to do this. Discussions with the Department of Infrastructure reveal that it is believed this is covered within the provisions of the Public land Zones.

These zones require consent to any application, conditional or otherwise from the public land manager. It is not considered that this adequately covers all situations. The foreshore area is Crown Land and the public land manager is the Department of Natural Resources and Environment. In this instance no opportunity is provided for any Parks Victoria input. Furthermore, not all foreshore land will be zoned within a public land zone. An example of this within the Port Phillip Planning Scheme is the inclusion of the St Kilda Sea Water Baths within a Special Use Zone. It has also been mooted that areas of commercial activity of the foreshore may have a business zoning.

Increasing attention is being focussed on the importance of coastal planning at both State and Commonwealth levels. The *Coastal Management Act 1995* established the Victorian Coastal Council, which is in the process of finalising the Victorian Coastal Strategy. Coastal land is frequently subject to conflicting pressures due to its sensitive, often fragile, natural environment and demands to maximise its commercial, recreational or residential potential to take advantage of the natural environment. The Committee believes that Government impetus to develop a Victorian Coastal Strategy and tackle the problems which past ad hoc and diffuse decision making have resulted in should be supported positively by the VPPs and appropriate tools provided to achieve this. A Coastal Overlay should be developed with purposes specifically oriented to coastal land. A buildings, works, vegetation removal and subdivision provision should be included, with appropriate mechanisms for exempting development in accordance with Incorporated plans or other plans which may be developed under the *Coastal Management Act*. The Committee supports the submission by DNRE that the processes established by this legislation be integrated with planning schemes. Appropriate referral provisions should also be included for coastal land. The Overlay should have the capacity to apply to land in both public land zones and other zones.

The introduction of a Coastal Overlay supports State Planning Policy on Coastal Planning incorporated in Clause 15.08 of the SPPF.

Public Land Zones - cont'd

APPLICATION OF PLANNING SCHEMES OVER WATER

The EPA considers that planning schemes should apply to coastal and other waters and that certain activities, should require planning permission, in particular dredging and other major works.

On the coast, the municipal boundary is generally the high water mark and, as such, municipal planning schemes would not automatically apply to coastal waters unless specified as water to which the scheme applies.

The EPA supports the extension of planning schemes seawards 600 metres from the highwater mark along the coast and within Port Phillip Bay. It submits that the Minister should be the responsible authority for the middle of Port Phillip Bay and the entire area of Westernport Bay below highwater mark.

According to the EPA, this view is supported in the draft Victorian Coastal Strategy (1996) and has the support of the Dredge Protocol Management Committee.

Whilst many major works along the coast will be assessed by an Environment Effects Statement, many others will not benefit from this scrutiny. In particular, much maintenance dredging by various organisations can cause considerable damage and interference with coastal processes. At present, control is either non-existent or informal.

The Committee generally supports the control of potentially damaging activities or use and development along the coast, particularly in light of the importance being given to coastal strategy by the Government. However, the nature of controls and the extension of municipal boundaries requires further consultation between DOI and other key stakeholders.

RECOMMENDATION

General

Develop a new Coastal Overlay suitable for application to all coastal land. Include appropriate referral provisions for Parks Victoria and other bodies responsible for coastal areas. Ensure integration with Coastal Management Act 1995.

DOI consult with EPA, DNRE, coastal councils and the Victorian Coastal Council with respect to extending planning control over coastal waters.

Public Land Zones - cont'd

7.7 APPROVED MANAGEMENT PLANS

DNRE (87) suggests:

> *Most land managed by public land managers (as defined) is managed according to statutory provisions of various Acts and approved management plans.*
>
> *DNRE considers that, while not strictly necessary given the public land manager's consent role and the requirement to take into account the comments of the public land manager, the decision guidelines for all three public land zones could include a requirement on the responsible authority to consider (or take account of) an approved management plan. This would assist in ensuring that council planning officers and other parties become aware of the Government's intentions regarding the use and development of any particular part of the public land estate early in a planning approval process, but without having to amend planning schemes to incorporate or reference approved plans.*

The public land manager must give consent for any application for a planning permit. Such consent is presumably given with knowledge of the objectives of any approved management plan for the land. Whilst the responsible authority should be made aware of any management objectives, this should be achievable through the consent process. The Committee sees no reason for an additional decision guideline to do this.

The Committee recommends no change in respect of this submission.

7.8 REFERRALS

The decision guidelines for the public land zones require the responsible authority to have regard to the comments of any public land manager having responsibility for the land.

DNRE (87) provided the following comments on the referral process:

> *DNRE would expect that comments would generally be sought by the responsible authority from any public land manager having responsibility for the care for management of the land by way of a S.52 notification, rather than a S.55 referral. However, given the consent options available to public land managers, consideration should be given to a distinction between S.52 notification and S.55 referral on the following basis:*
>
> - *If the written consent is for the permit application to be made and determined prior to any decision by the public land manger in relation to the proposed use or development, then S.55 referral.*

Public Land Zones - cont'd

- *All other cases, S52 is probably sufficient unless DNRE is dependent on the planning scheme alone to achieve Government policy objectives at the local level.*

Assuming that it is agreed that certain proposals to use and develop land should be subject to S.55 referral, it is not clear whether or how this should be specified in the zone controls or elsewhere in the VPP.

The Committee has referred this submission to the Advisory Committee conducting the Review of Referral Authorities.

7.9 ADDITIONAL PUBLIC LAND ZONE

East Gippsland Shire Council suggests that:

There needs to be a zone to cover areas identified for natural resource utilisation. The inclusion of both National parks and State Forests used for timber production under the same 'Public Conservation and Resource Zone' is apt to be very misleading to the general public.

The purpose of the Public Conservation and Resource Zone reflects both preservation and resource utilisation objectives. Resource utilisation activities are generally controlled in the first instance by the public land manager and in the second instance by the scheme.

The Committee considers that a separate zone is not necessary, however the purpose of the zone may benefit by being modified to reflect more closely a balance of use as determined by the public land manager.

7.10 ROAD ZONE

FOOTPATH

Ballarat City Council (11) queries whether the Road Zone will include a footpath and wants this clarified so as to exclude a duplication of control over matters presently covered by local laws (e.g. sandwich board advertising).

A road includes the area of the road reserve and will thus generally include a footpath, as at present. Street furniture, signs etc. are exempt buildings and works under Clause 62.01 so that the existing control regime under local laws will continue to regulate sandwich board signs and the like.

The Committee recommends no change in respect of this submission.

Public Land Zones - cont'd

ACCESS TO DECLARED ROADS

VicRoads (47) wants the permit requirement in Clause 36.04-3 to apply not only to the creation of access to a Category 1 road but also for 'alteration to the access'. VicRoads submits that often additional access to declared roads is permitted without referral to VicRoads. It only comes to its attention when the land is subdivided, after the development has been constructed. Problems also arise when access is not altered but the use changes, e.g. a small service station site redeveloped as a fast food outlet, which could have adverse effects on the road.

A similar submission has been made to the Review of Referral Authorities Advisory Committee.

This Committee considers that the concerns of VicRoads are justified. The community has a huge investment in road infrastructure. It is State Planning Policy, set out in Clause 18.01-2, that:

> *New uses or development of land near an existing or proposed transport route should be planned or regulated to avoid detriment to, and where possible enhance, the service, safety and amenity desirable for that transport route in the short and long terms.*

Very often the efficient functioning of a road may be detrimentally affected by the cumulative impact of numerous small developments just as much as by a single large development.

The Committee is aware that VicRoads is working with DOI to establish a set of standards which can be applied to access onto declared roads which would eliminate the need for referral of such applications. However, until this work is completed, the Committee supports the submission by VicRoads that a permit be required where access to a Category 1 road is being altered as well as created. This should also require referral. This recommendation is seen as an interim measure pending the outcome of the separate Review of Referral Authorities and the work on access standards to declared roads being undertaken by VicRoads and DOI.

In considering this submission, the Committee queried why access is dealt with in the Road Zone. If someone is in a zone abutting a Road Zone, how will they know to look to the Road Zone to see if a permit is required for access? In the Committee's opinion, a note should be included at the end of each zone and overlay drawing attention to the need to check if a permit is required where the land abuts a Road Zone.

The Committee also notes that the 'Road categories' table in Clause 36.04-2 is potentially ambiguous. Where it refers to a road 'identified on the planning scheme map', the words '*as a Category 1 road'* or '*as a Category 2 road'* should be added, as the case requires, to ensure certainty of reference.

Public Land Zones - cont'd

NOISE - ACOUSTIC BUFFER OVERLAY

VicRoads (47) wants to provide protection for developments of a noise sensitive nature abutting freeways or state highways addressed by an Acoustic Buffer Overlay for areas adjacent to main roads or future main roads.

The Committee notes it is State Planning Policy to assist the control of noise effects on sensitive land uses - see Clause 15.05. At present, the implementation of this objective refers to '*suitable separation between potentially amenity reducing and sensitive land uses and developments'*. The submission by VicRoads goes beyond this to suggest that specific noise attenuation measures be incorporated in residential subdivisions and dwellings.

The Committee supports the general thrust of VicRoads' concerns but considers it would be inappropriate to introduce this type of control into the VPPs at this stage. It questions whether overlays along all major roads or freeway reservations would be appropriate and suggests that a 'Particular Provision' clause might be more appropriate. However, it considers that the policy implications need to be addressed in greater depth before this is introduced.

SCENIC BOULEVARDS

City of Port Phillip (57) wants a Category 3 road designation for scenic boulevards to remove them from being stigmatised with 'main' roads under Category 1. In support of this, it submits that:

> *Council has received numerous submissions to its new Planning Scheme in relation to the inclusion of Ormond Esplanade, Marine Parade and Beaconsfield Parade, in Category 1 to the Road Zone.*
>
> *The submittors feel that the inclusion of these roads in Category 1 to the Road Zone will lead to (among other things) increased use by heavy vehicles. Many submittors feels that this issue would be overcome if there was a third category created in the Road Zone to accommodate 'scenic boulevards' such as the beachside roads that traverse Port Phillip and many other bayside councils.*

The creation of a Road Zone will depend on the function and significance of the road and whether or not it is a declared road. If the roads referred to by the City of Port Phillip in its submission are declared roads under the *Transport Act* then they must be included in Category 1. If they are not, presumably they may be included in Category 2. However, the Committee can see no reason why a third category should be created and the concerns of the submittors referred to by the Council are not matters which it is relevant to consider as part of the review of the VPPs.

The Committee recommends no change in respect of this submission.

Public Land Zones - cont'd

RECOMMENDATION

Clause 36.04-2 - Road categories

Amend Clause 36.04-2 by adding the words '*as a Category 1 road*' or '*as a Category 2 road*' , as the case requires, where the Clause refers to a road 'identified on the planning scheme map'.

Clause 36.04-3 - Permit requirement

Amend the first dot point in Clause 36.04-3 by adding the words in italics to read as follows:

'• Create *or alter* access to a Category 1 road.'

Clause 36.04-4 - Referral of applications

Amend Clause 36.04-4 by adding the words in italics to read as follows:

'• An application to create *or alter* access to or to subdivide land adjacent to a road declared under the Transport Act 1983 must be referred to the Roads Corporation under Section 55 of the Act unless in the opinion of the responsible authority the proposal satisfies requirements or conditions previously agreed in writing between the responsible authority and the Roads Corporation.'

General

Add a note at the end of each zone and overlay as follows:

'Check if a permit is required where land abuts a Road Zone.'

General

In conjunction with VicRoads and EPA, investigate means of providing adequate protection for developments of a noise sensitive nature which abut existing or future declared roads.

Public Land Zones - cont'd

7.11 PUBLIC USE ZONE

UTILITY SERVICES

Several electricity corporations (e.g. Power Corp (42) and Solaris (43)) want the scope of the Public Use Zone broadened to include utility service provider assets.

In the Committee's opinion, privatised utility service providers should use and comply with standard zones, where 'minor utility installation' is often a Section 1 Use. The Public Use Zone is for public authorities and public land.

The Committee recommends no change in respect of these submissions.

TRANSPORT FACILITIES

The PTC (49) wants tramways, railways and stations more sympathetically treated in all zones, and wants these uses to be in Section 1 in the Public Use Zone.

Railways will generally be in the Public Use Zone as PUZ 4 (Transport). Transport uses will be exempt from permit on land controlled by the PTC in this Zone (i.e. under Clause 36.01-2) but should otherwise require a permit in other zones or situations.

The Committee recommends no change in respect of this submission.

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8. SPECIAL PURPOSE ZONES

8.1 SPECIAL USE ZONE

PURPOSE OF SPECIAL USE ZONE

The purpose of the Special Use Zone is:

To recognise or provide for the use and development of land for specific purposes.

The Committee considers that this is virtually meaningless as the same could be said for virtually any zone. The effective purpose of each Special Use Zone will be found in the schedules. The Committee considers that the purpose of the zone itself should reflect this.

SPECIAL USE ZONE FOR SCHOOLS, HOSPITALS ETC.

Tract Consultants (53) submits that a Special Use Zone is needed for private schools, hospitals, sporting clubs etc. otherwise these uses will require permits in other zones. City of Monash (78) also seeks a separate new zone for private schools, clubs etc. rather than relying on the Special Use Zone which should primarily be used for 'one-off' areas such as AFL Park.

Various councils have adopted different approaches with respect to these types of uses. Ordinary zones (e.g. Residential 1) should be used where appropriate, given the purposes clearly include educational and community facilities. Local policy should encourage master plans for sensitive sites (e.g.. private schools and private hospitals) as a basis for planning decision making. An Incorporated Plan Overlay may provide a suitable mechanism for both requiring, then implementing, a master plan for such sites. The Committee agrees that Special Use zoning should be exceptional rather than for standard type uses but does not consider that another Special Use Zone is required.

The Committee recommends no change in respect of this submission.

RECOMMENDATION

Clause 37.01 - Special Use Zone

Amend the purpose of the Special Use Zone in Clause 37.01 by adding the words in italics as follows:

'To recognise or provide for the use and development of land for specific purposes *as identified in a schedule to the zone.*'

Special Purpose Zones - cont'd

8.2 CAPITAL CITY ZONE

Since publication of the VPPs, a new Capital City Zone has been inserted as Clause 37.04. The purpose of this zone includes:

> *To enhance the central city's role as the capital of Victoria and as an area of national and international importance.*

The Committee considers that this purpose should specifically identify that it is the central city of Melbourne which is of importance.

The Committee also makes the same comment about the meaninglessness of the third purpose as it did with respect to the same purpose in the Special use Zone (see Chapter 8.1). This should be made more specific.

RECOMMENDATION

Clause 37.04 - Capital City Zone

Amend the second purpose of Clause 37.04 by deleting the words indicated and adding the words in italics as follows:

'To enhance the c~~entral city's~~ role *of Melbourne's central city* as the capital of Victoria and as an area of national and international importance.'

Amend the third purpose of Clause 37.04 by making more specific.

9. ENVIRONMENT AND LANDSCAPE OVERLAYS

9.1 NATURAL RESOURCE OVERLAY

NEED FOR NATURAL RESOURCE OVERLAY

A number of submittors advocated the need for a Natural Resource Overlay as an additional environmental overlay. In particular, Latrobe Shire Council (93) wants a 'Brown Coal Overlay' for coalfields in the Latrobe Valley not included within its proposed Special Use - Brown Coal Zone, but which contain coal deposits that may be required in the future. It is submitted that simply identifying these resources within the Local Planning Policy Framework is vastly inadequate when balanced with the need to protect a significant resource of importance to the State and nation.

The Committee is advised that councils in the Latrobe Valley, in conjunction with DOI and DNRE, have agreed that land required or likely to be required for brown coal mining for the next 20 years or so will be included in a Special Use - Brown Coal Zone. The Public Acquisition Overlay will be used as a basis for any compulsory acquisition required.

The real problem is how to deal with those areas which have brown coal resources but which will not be required for mining for 20 to 50 years. These areas are currently recognised in existing planning schemes, but are inappropriate for translation into a special use - brown coal zone, whose primary purpose is for mining and electricity generation. The primary use of the brown coal reserve areas would remain basically rural, but with an expectation that the land would eventually be required for mining. Intensive subdivision or capital intensive development would be discouraged both in terms of the increased capital value associated with compensation and the disruption which acquisition causes.

Existing planning controls in the Latrobe Valley have been the outcome of many years experience and detailed input by the community, the electricity industry and State and local government. A detailed strategy, *Framework for the Future* 1987, identified townships for protection, buffer areas and areas for coal winning. The details of this strategy are of great importance to all the parties involved, none of whom would wish to see this detail lost by an over-generalised planning control or rather, lack of control, which Latrobe Shire Council is concerned would be the outcome if identification of these areas relied on policy only.

The Committee agrees there is a need to designate identified stone, mineral and other resources to ensure their protection from incompatible land uses and development which would prejudice the utilisation of the resource, and to provide for the development of the resource. While it is technically possible to use the

Environment and Landscape Overlays - cont'd

existing Environmental Significance Overlay to achieve this outcome, the terminology would give a false impression that land will not be developed for its intended purpose of the extraction and processing of the identified resource.

A Natural Resource Overlay would be more appropriate in order to clearly indicate that a resource has been identified and, subject to normal regulations, **will** be developed. This is very different to the purpose of the Environmental Significance Overlay which is to identify areas where the development of land may be affected by environmental constraints and to control development which may have an effect on identified environmental values. In popular terminology, the Natural Resources Overlay can be seen to be 'brown' (it would provide for the extraction or development of an identified resource), whereas the Environmental Significance Overlay is 'green' (it will protect a matter of environmental significance).

The Committee considers it would be inappropriate to attempt to adapt the Environmental Significance Overlay as it serves a different purpose and its use would send wrong messages.

The development of any Natural Resource Overlay would need to be generic and able to be applied to various types of natural resources (such as brown coal, high quality agricultural land, stone and mineral deposits etc.). There are two key issues which are relevant when considering the possible introduction of a Natural Resource Overlay:

- its purpose; and
- the potential extent of its application.

Gannawarra Shire Council (25) gave the following example of the need for such an overlay in respect of high quality agricultural land:

> *Irrigated areas in the Shire are highly productive and are capable of supporting more intensive uses and higher value production. Irrigation systems represent a major taxpayer investment in irrigation channels and networks. Private investment has been substantial and include multimillion dollar investment by milk processing firms in plants, in Gannawarra, this is one of the Shire's backbone industries which has been further developed recently. The State planning Policy Framework recognises the importance of high quality agricultural land for the State's economy. This recognition translates readily to the local situation. Other than by a non-prescriptive policy there is no mechanism in the VPP by which a Council can give recognition to or include such land and its economic value into its planning scheme. Council supports an overlay or a recognition in the Rural Zone provisions to the importance of irrigated land as an economic resource with special qualities which , because of irrigation, is generally highly productive.*

Environment and Landscape Overlays - cont'd

PURPOSE

There are two reasons for requiring a Natural Resource Overlay:

- identification; and
- control.

Identification is the primary reason for pressure to introduce a Natural Resource Overlay. It would be an effective planning tool to ensure that planning and responsible authorities and Government agencies give effect to the VPPs' requirement to implement strategies for the protection and development of natural resources in Victoria. For example, the extractive industry objective at Clause 17.09-1 in the SPPF is:

> *To identify and protect stone resources accessible to major markets and to provide a consistent planning approval process for extraction in accordance with acceptable environmental standards.*

A Natural Resource Overlay would also provide a means to give effect to Clause 17.08-3 in the SPPF which requires that:

> *Planning decisions affecting the brown coal fields of the La Trobe Valley must be consistent with the policies described in the La Trobe Regional Section previously incorporated in planning schemes applying to that area.*

The primary benefit in terms of identification will be that an overlay will show up on a planning certificate applied for at the time when any land changes hands. This is a critical time to bring to the attention of prospective owners the implications of acquiring the land in terms of its potential future use and development. Where land is simply identified in a policy or strategy, there is a risk that its significance will not be so clearly identified or understood.

There is also a fear, especially in the Latrobe Valley where very detailed mapping has been carried out to identify brown coal reserves and land likely to be required for mining in the future, that maps simply incorporated in policy documents would lack sufficient detail.

In terms of control, a Natural Resource Overlay could provide for control over buildings and works and subdivision specified in a schedule. (It is not anticipated that dwellings or normal buildings associated with agriculture would require control.) The Overlay could require referral of applications and specify matters to be considered before deciding on an application.

Environment and Landscape Overlays - cont'd

The main argument against using a Natural Resource Overlay to control such matters is whether or not it is really needed for this purpose. Subdivision in all zones requires a permit in any event. It is only likely that a permit would be required for buildings and works for a Section 2 Use and this is also a requirement in all zones. The existence of the resource, the need to protect it and the implications of any proposed use or development on its exploitation are already matters which must be considered as issues of policy required by the first purpose of all zones. The Committee has emphasised that the role of policy will be much more significant and determinative in new format planning schemes. It may undermine this perceived role of policy to argue that a Natural Resources Overlay is required because policy is not strong enough to give the necessary direction to decision making in respect of important natural resources.

If the need for a Natural Resources Overlay is to enable referral, it must be questioned what purpose would be served by this. By its nature, a Natural Resources Overlay would be protecting a resource which may be exploited at some undetermined time in the future. Would referral authorities want the additional workload associated with such referrals or be able to give meaningful responses? A concern has been raised that if they are likely to object to much use or development in such an Overlay, does it not then resemble a de facto reservation or Public Acquisition Zone?

EXTENT OF APPLICATION

The answers to these questions really depend upon the extent to which a Natural Resource Overlay would be applied. It can be argued that the protection of natural resources is one of the objectives of planning in Victoria (see Section 4(1)(a) of the *Planning and Environment Act*) and that there is sufficient justification in the SPPF to also require this protection. One of the aims of planning is to direct the most appropriate way in which land should be used and developed. If this involves the use and development of resource of State or regional significance, then it is legitimate that this protection be embodied in a planning scheme.

The difficulty is that if a Natural Resource Overlay is included in the VPPs, it may be indiscriminately applied by councils over huge swathes of land. Even in terms of brown coal resources, which are clearly of State significance, the Gippsland reserves are the largest in the world and there are further reserves (although some at great depth) stretching between Bacchus Marsh and Anglesea.

One possible means of limiting the application of a Natural Resource Overlay which the Committee has explored is to make it a 'State Resource Policy Identification Overlay', with a purpose of accurately identifying areas in which resources of State significance are located and to which State planning policy applies. Such an option would entail, of course, designating the resources as being of State significance.

THE COMMITTEE'S CONCLUSION ABOUT NATURAL RESOURCE OVERLAY

At this stage, the Committee has decided not to make a recommendation about introducing a Natural Resource Overlay. It can see no real 'need' for an additional overlay in terms of control. Whilst it would be an important identification mechanism, its introduction for this purpose would result in a philosophical shift in the VPPs by the creation of a new sort of overlay. This may undermine confidence in the strength of policy as a mechanism for identifying resources and issues and governing the exercise of discretion.

The Committee considers that these factors need more detailed review over the next 12 months and a more in depth consideration of the implications of a natural resource or resource management overlay.

In the short term, the Committee recognises that the lack of continuity in 'standard' planning controls over land with brown coal reserves in the Latrobe Valley may cause concern to councils, the electricity industry and the community in this area. However, the Committee considers that this may be partly due to their lack of familiarity with the new system and the fact that the strength of policy is as yet untested.

RECOMMENDATION

General

Consider further during the next 12 months the implications of introducing a natural resource or resource management overlay.

9.2 VEGETATION REMOVAL

DNRE (87) has concerns about the provisions of the Environmental Significance Overlay, Vegetation Protection Overlay, Significant Landscape Overlay and Public Acquisition Overlay with respect to exemptions for harvesting of crops for timber and for extractive industries, mining and mineral exploration. Confusion arises if harvesting of timber or crops is considered 'removal of vegetation' or where removal of vegetation for extractive industry or mining activities is not specifically exempt.

It is submitted that:

> *If a planning approval has been granted for a plantation or if crop raising is an as of right use in a zone, then it should not be necessary to obtain a permit for the* ***harvesting*** *(removal) of crops including plantation timber, whether of indigenous or exotic species. The problem appears to arise because some crops and plantations will fall within the definition of 'native vegetation', and the broader term 'vegetation' is not defined to exclude crops.*

Environment and Landscape Overlays - cont'd

The Committee considers that the VPPs must be considered as a whole and that some ordinary common sense must be brought to bear in interpreting their provisions. *'Crop raising'* covers the propagation, cultivation and harvesting of plants. It would seem quite clear that if vegetation has been planted for the purpose of harvesting, then it should be regarded as a crop, particularly if crop raising is a Section 1 Use.

The overlays identified by DNRE all have the ability to either schedule **out** vegetation which does not require a permit for removal, or to schedule **in** vegetation which does require a permit. Councils could use this ability to distinguish between the types of vegetation it wants to control the removal of. It could therefore schedule out crops or timber which have been planted for the purpose of harvesting, if this is desired, or ensure that such vegetation is not included in any schedule in the case of the Vegetation Protection Overlay for instance.

However, the Committee considers this process is complicated should be simplified to ensure that where timber has been planted for the purpose of harvesting this purpose is not unreasonably curtailed, particularly where timber production is otherwise a Section 1 Use. In these circumstances, in overlays which control vegetation removal there should be a general exemption from the need for a permit for plantations or woodlots planted for the purpose of harvest unless they are specifically scheduled **in** as requiring a permit. The exception to this should be the Salinity Management Overlay. It needs to be recognised in these locations that values have changed and that even if timber has been planted for the purpose of harvest, it should now not be removed without a permit. This does not mean that removal would be prohibited, but it may require special conditions.

In terms of DNRE's request that exemptions be provided where vegetation removal is required in association with mining or extractive industry, the Committee is not convinced that when an overlay controls vegetation removal, an exemption should be made for extractive industry, based on the presumption that DNRE will provide sufficient safeguards for native vegetation within the works approval process. If an area is considered to be sufficiently significant to justify an overlay which controls vegetation removal, the Committee considers that the responsible authority should retain planning control over this in respect of all uses, bearing in mind its ability to schedule specific categories of vegetation removal in or out of the overlay controls.

The Committee recommends no change in respect of this submission.

RECOMMENDATION

Clause 42.01-2 - Permit requirement

Clause 42.02-2 - Permit requirement

Clause 42.03-2 - Permit requirement

Add an additional dot point to the last paragraph of Clause 42.01-2, Clause 42.02-2 and Clause 42.03-2 as follows:

'• ***If the vegetation has been planted for timber production.'***

9.3 ADDITIONAL OVERLAYS

Various suggestions were made about the desirability of additional overlays such as a Roadside Conservation Overlay and Watercourse Environs Overlay (e.g. Victorian National Parks Association (48)). In all cases, the Committee considers the Environmental Significance Overlay is appropriate to apply. The issue is discussed further in Chapter 13.6.

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10. HERITAGE OVERLAYS

10.1 PARKS AND GARDENS

ROUTINE WORKS - LANDSCAPING

Parks Victoria (59) wants an exemption provision within the Heritage Overlay for works carried out in accordance with an incorporated plan.

Extending the exempt buildings and works provision of Clause 43.01-2 to buildings and works in accordance with an incorporated plan would also overcome many concerns raised by the City of Melbourne (92) which relate to the burden the Council will face as a public land manager through the need for numerous permits under the Heritage Overlay to carry out routine or minor work on parks and gardens, and to roads, that do not necessarily affect the natural or cultural significance of these heritage places. The problem will arise because many of the parks and gardens within Melbourne are currently included in Urban Conservation No. 2 Areas which will be translated into a Heritage Overlay.

The Committee does not consider that the burden will be quite as great as feared by the City of Melbourne, nevertheless many minor buildings and works will be caught by the permit provisions of the Heritage Overlay.

Under Clause 43.01-1 a permit is required to construct a building and to construct or carry out works. The construction of a building or the construction or carrying out of works specifically includes a fence, roadworks and street furniture.

Removing, destroying, pruning or lopping a tree only requires a permit if the schedule to the Heritage Overlay area identifies the specific heritage place as one where tree controls apply. Thus, unless a heritage place is designated in the schedule to the overlay for this purpose, tree pruning or removal would not require a permit. However, there are various important parks and gardens within the City of Melbourne where doubtless the tree controls would apply because the significance of the heritage place derives largely from their trees (e.g. Fitzroy Gardens, the Domain, etc.).

An exemption is provided in Clause 43.01-2 whereby no permit is required for repairs or routine maintenance which do not change the appearance of a heritage place. The repairs must be undertaken to the same details, specifications and materials. As it stands however, this exemption would not cover new construction or garden maintenance where the appearance of the heritage place **is** changed (e.g. relocating a garden path, installation of rubbish bins or picnic tables etc.). Some of these things would be exempt from the need for a permit by virtue of Clause 62.01. Clause 62.01 is a general exemption from control over specified buildings and works, which includes:

- *a fence.*
- *roadworks.*

Heritage Overlays - cont'd

- *street furniture, including post boxes, telephone booths, fire hydrants, traffic control devices, and landscaping.*
- *the removal, destruction or lopping of trees and the removal of vegetation.*

The important proviso to Clause 62.01 is that: *'This exemption does not apply if a permit is specifically required for any of these matters.'* Therefore, because a fence, roadworks and street furniture are specifically mentioned in Clause 43.01-1 as requiring a permit under the Heritage Overlay, they do not fall within the general exemption created by Clause 62.01. On the other hand, the removal, destruction or lopping of trees and the removal of vegetation is exempt from the need for a permit because these works are not specifically included in Clause 43.01-1. (The only time when this exemption would not apply is where the heritage place is identified in the schedule to the overlay area as one where tree controls do apply - see last dot point in Clause 43.01-1.)

In terms of general landscaping works, the Committee considers there is some ambiguity about Clause 62.01. Although landscaping is mentioned, it is included in the following context:

- *Street furniture including post boxes, telephone booths, fire hydrants, traffic control devices, and landscaping.*

This may be interpreted as being '*Street furniture ... and landscaping'*, or it may be interpreted that landscaping forms one of the aspects of 'street furniture'. If the latter is the case, then it would not be exempt, as street furniture is an item specifically mentioned in Clause 43.01-1 for which a permit is required. It could be argued that landscaping is not in the same category as post boxes, telephone booths, fire hydrants and traffic control devices and therefore should not be regarded as street furniture. Nevertheless, it would be preferable to place the matter beyond dispute, possibly by including landscaping as a separate item in Clauseá62.01.

Doing this would mean that landscaping is generally exempt from the need for a permit anywhere pursuant to Clause 62.01. Because it is not specifically mentioned in Clause 43.01-1 as something for which a permit is required under the Heritage Overlay, the proviso to Clause 62.01 does not operate and consequently landscaping would remain exempt from the need for a permit. This would apply to all heritage places, not just parks and gardens.

Whilst the Committee considers this will produce an acceptable outcome in most circumstances, there remains a concern about exempting landscaping from the need for a permit under the Heritage Overlay when the significance of a heritage place relates to its landscape qualities (e.g. Royal Park).

Although the schedule to the Heritage Overlay may identify a place as one where tree controls apply, landscaping can often extend beyond simply removing, destroying, pruning or lopping trees, and may involve quite substantial earthworks

Heritage Overlays - cont'd

or planting which could significantly impact on the natural or cultural significance of the heritage place. The real difficulty stems from the lack of a definition for landscaping. According to dictionaries, landscaping generally involves adorning or improving land by contouring it and planting trees, shrubs and flowers. There is usually an element of 'works' involved which, under the *Planning and Environment Act*, includes: *'any change to the natural or existing condition or topography of land including the removal, destructing or lopping of trees and the removal of vegetation or topsoil.'* This contrasts with the concept of 'gardening', which involves the cultivation and maintenance of plants including grass without the element of land contouring.

One of the key things for which a permit is required under the Heritage Overlay, and numerous other controls in the VPPs, is to construct or carry out works. It may be opening a considerable loophole to create a general exemption under Clause 62.01 for landscaping under which quite major works could be carried out without the need for a permit.

The Committee considers that it is the 'gardening' aspect of landscaping which should be generally exempt from the need for a permit (unless otherwise specified). Any contouring or other works involved in landscaping should not be given a general exemption.

This leads the Committee to the conclusion therefore, that any reference to landscaping should be removed from Clause 62.01 and replaced by the term 'gardening'. This, taken together with the other general exemptions in Clause 62.01 of routine maintenance to an existing building and works and the removal, destruction or lopping of trees and the removal of vegetation should ensure that the day to day maintenance of parks and gardens and the grounds of other heritage places are excluded from the need for a permit. New works however, even for landscaping purposes, will require a permit unless, if as the Committee subsequently recommends, they are in accordance with an incorporated plan.

ROUTINE WORKS - STRUCTURES

Whist this clarifies the position about landscaping and maintenance on gardens themselves, it does not address the concern of Melbourne City Council that permits would be needed for a multitude of facilities such as street furniture, toilet blocks, picnic facilities etc. The Council suggests that these be included in Clause 43.01-4, where a permit is required but applications are exempt from notice requirements and third party appeal rights etc. If this modification is supported, the Council submits that the provisions of Clause 67.02 must also be amended to correct an anomaly whereby a council must give notice of applications that are otherwise exempted from the notice requirements of the Act.

Heritage Overlays - cont'd

When urban conservation controls were introduced, roadworks and street furniture were specifically included in the need for a permit, as the removal of bluestone kerb and guttering, old street lights and seats by councils, or the construction of inappropriate bus or tram shelters in Urban Conservation Areas could all impact on the conservation and enhancement of their architectural and historic significance. The Committee considers that this rationale remains valid. Whilst the City of Melbourne may have extremely high urban design standards for works in parks, gardens and roadways which are highly regarded by the community, the VPPs will be applicable Statewide and not all councils or other authorities may exhibit the same high standards. Nevertheless, the Committee acknowledges that the procedures involved in obtaining permits, notifying the owners and occupiers of adjoining land etc. may be cumbersome when applied to the multitude of day to day works a council carries out. (Although in this respect, the permit provisions under the Heritage Overlay are no different to those existing under urban conservation controls, which do not appear to have presented councils with any major problems to date.)

Simply including the works in Clause 43.01-4 will not exclude councils from the need to give notice of permit applications made by itself because of the provisions of Clause 67. This Clause applies to an application for a permit which, except for the provisions of the Clause, would be made to the Minister in accordance with Section 96 of the *Planning and Environment Act*. Clause 67.01 sets out classes of use and development which are exempt from Sections 96(1) and 96(2) of the Act, which means that where a responsible authority is the applicant for a permit it may issue a permit to itself. Clause 67.02 provides that in accordance with Section 52(1)(c) of the Act, which provides for mandatory notice for certain types of applications, notice must be given to:

- *the owners and occupiers of adjoining land.*
- *The National Trust of Australia (Victoria), if the application relates to land on which there is a building classified by the Trust.*

This does not apply to an application:

- *for a sign or advertisement.*
- *to remove, destroy or lop native vegetation under Clause 52.17 of this Scheme.*

City of Melbourne proposes to add to this list of applications in respect of which notice under Section 52(1)(c) of the Act need **not** be given, the following:

- *for a use or development which 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 appeal rights of Section 82(1) of the Act.*

The argument is that the Council should be in no different position to any other applicant with respect to notice requirements etc. in respect of minor buildings and works.

Heritage Overlays - cont'd

The Committee does not agree with this. Section 96 of the Act provides that a responsible authority must obtain a permit from the Minister where the responsible authority is the applicant, unless the planning scheme exempts the land, use or development from this requirement. This requirement was a check on the powers of a responsible authority to issue a permit to itself when, on the face of it, it may not have the same objective stance it is expected to have when dealing with other applications. Because this mechanism proved too cumbersome in practice, the right to grant permits to itself was given to a responsible authority, but a check to this power was provided by requiring that mandatory notice of applications was given to the owners and occupiers of adjoining land pursuant to Section 52(1)(c) of the Act.

In situations where notice requirements and third party appeal rights are removed for certain types of applications, the responsible authority is expected to be objective and weigh the interests of all those who may be affected by the proposal when making a decision. These provisions do not mean that people may not be adversely affected, but it is considered that the responsible authority will be able to deal with these considerations. This type of provision appears in various zones for various matters, including all buildings and works applications in the industrial zones and business zones. To remove this check on the exercise of power by the responsible authority in situations where it has a vested interest, is considered by the Committee to be unwise. In any event, it is only a limited check. All that Clause 67.02 requires is that notice be given to certain people. Even though objections may be lodged, if the decision requirements of Section 64(1), (2) and (3) and the appeal rights of Section 82(1) of the Act are removed, a permit may still be granted which cannot be appealed against.

In overall terms, the Committee considers that the City of Melbourne is being unnecessarily cautious in its concerns about routine works needing a permit. The general exemption for repairs and routine maintenance which do not change the appearance of a heritage place must be interpreted reasonably. For example, changing the position of the paths in Fitzroy Gardens for example, or construction of a new toilet block would change the appearance of the place and would justify a permit being required to which people had the opportunity to object. Whether new rubbish bins, bollards or security lighting would do the same thing or could be considered as maintenance is more debatable. In all cases, it will be a question of assessing what the appearance of the heritage place is and whether what is proposed will affect that appearance.

INCORPORATED PLANS

The Committee believes that where parks and gardens are heritage places, councils and other land managers should be encouraged to develop incorporated plans for their ongoing maintenance and development. Because any incorporated plan must go through an amendment and public consultation process, the heritage significance can be properly taken into account as part of this process.

Heritage Overlays - cont'd

Appropriate exemptions can be made in the incorporated plan or a permit issued at the time of the amendment which should satisfy the concerns raised by the City of Melbourne by relieving it of the burden of having to obtain numerous permits and having to give notice because of Clause 67.02.

Incorporated plans are a feature of the Public Park and Recreation Zone and the Public Conservation and Resource Zone. In both zones, uses specified in an incorporated plan can become Section 1 Uses. A schedule to the zone can exempt buildings and works specified in an incorporated plan from the need for a permit.

An incorporated plan under an Incorporated Plan Overlay can exempt certain use and development from the need to comply with the notice requirements, decision requirements and third part appeal rights of the Act, but cannot exempt entirely from the need for a permit. (The Committee discusses the limitations of this aspect of the Incorporated Plan Overlay further in Chapter 11.)

There are two difficulties which the Committee perceives with creating an exemption within the Heritage Overlay for all buildings and works carried out in accordance with an incorporated plan:

- Incorporated plans prepared under the provisions of the Public Park and Recreation Zone or the Public Conservation and Resource Zone may only address horticultural or landscaping issues, not heritage issues.
- Not all heritage places which might benefit from the preparation of an incorporated plan will be in a public land zone nor may it be appropriate to apply an Incorporated Plan Overlay to such land.

The Committee therefore considers there would be benefit in including in the Heritage Overlay the ability for an incorporated plan to be prepared and to then exempt buildings and works undertaken in accordance with the incorporated plan either from the need for a permit altogether or from the notice requirements, decision requirements and third party appeal rights of the Act. In situations where an incorporated plan has been incorporated in the planning scheme under a public land zone, the same plan could also be incorporated under the Heritage Overlay provided the planning authority was satisfied that it adequately addressed heritage matters. The amendment process required to incorporate the plan would provide the opportunity to assess this and enable public input. There is no reason why incorporation of a plan under both zone and overlay provisions could not occur simultaneously as part of the same amendment, when appropriate.

There are certain additional items which the Committee considers should be exempt from the need for a permit, such as traffic signals or traffic signs, fire hydrants, parking meters and postboxes. Things such as construction of seating, picnic tables, barbeques and the like, should not be exempt from the need for a permit but could be included in Clause 43.01-4. This would facilitate the management and upkeep of

Heritage Overlays - cont'd

heritage places, in particular, parks and gardens. Councils would still be required to give notice of these works under Clause 67.02 (f if they were not included in an incorporated plan) where the council was the permit applicant, but the Clause would operate to exclude the decision requirements and third party appeal rights under the Act.

RECOMMENDATION

Clause 43.01 - Heritage Overlay

Amend Clause 43.01 to include provision for an incorporated plan and amend the schedule accordingly.

Clause 43.01-1 - Permit requirement

Amend the last paragraph of Clause 43.01-1 by adding the words in italics to read as follows:

> 'The construction of a building or the construction or carrying out of works includes a fence, road works and street furniture *other than traffic signals, traffic signs, fire hydrants, parking meters or post boxes.'*

Clause 43.01-2 - Exempt buildings and works

Amend Clause 43.01-2 by adding the words in italics to read as follows:

'No permit is required for:

- Repairs or routine maintenance which do not change the appearance of a heritage place. The repairs must be undertaken to the same details, specifications and materials.
- *Anything done in accordance with an incorporated plan specified in a schedule to this overlay.'*

Clause 43.01-4 - Exemptions

Add an extra dot point to Clause 43.01-4 as follows:

- *'Construction of seating, picnic tables, drinking taps, barbeques, rubbish bins, security lighting, irrigation, drainage or underground infrastructure, bollards, telephone boxes.'*

Clause 62.01 - Exempt buildings and works

Amend Clause 62.01 by deleting the words indicated and adding the words in italics to read as follows:

- 'street furniture including post boxes, telephone booths, fire hydrants *and* traffic control devices, ~~and landscaping~~.
- *gardening.'*

Heritage Overlays - cont'd

10.2 ABORIGINAL PLACES

Brimbank City Council (69) submits that the schedule to the Heritage Overlay is largely geared towards historic heritage places (particularly buildings) encompassed by the *Heritage Act* 1995 and there is a need to adapt the schedule to aboriginal cultural heritage sites, places and landscapes. Similar concerns have been expressed by Aboriginal Affairs Victoria to Heritage Victoria. Brimbank also wants the format of the schedule amended to enable individual guidelines for sites to be listed.

The Committee is not convinced that the Heritage Overlay fails to adequately protect places that possess aboriginal cultural significance. They are protected in the same was as any other heritage place. Heritage Victoria has suggested that the overlay should forewarn that an approval to damage a site possessing aboriginal cultural values may be required under the *Archaeological and Aboriginal Relics Preservation Act* and the *Commonwealth Aboriginal and Torres Strait Islander Heritage Protection Act*.

The Committee considers it is appropriate to alert people to these Acts. This could be done by means of a note at the end of the overlay, but would probably be more effective if it was included as a specific provision.

Although the Committee agrees that the schedule should be altered to identify a heritage place as having aboriginal cultural significance, it does not agree with Brimbank City Council that it should also be altered to enable individual guidelines for sites to be listed. This is better done by means of local policy. The Committee draws attention to the first purpose of the Heritage Overlay which includes: '*To implement ... local planning policies.*'

RECOMMENDATION

Clause 43.01 - Heritage Overlay

Amend the schedule to Clause 43.01 by including a new column to identify whether the place is an aboriginal heritage place.

Clause 43.01-7 - Aboriginal heritage places

Add a new Clause 43.01-7 as follows:

'Aboriginal heritage places

A heritage place identified in the schedule to this overlay as an aboriginal heritage place is also subject to the requirements of the Archaeological and Aboriginal Relics Preservation Act 1972 and the Commonwealth Aboriginal and Torres Strait Islander Heritage Protection Act 1984.'

10.3 EXEMPTIONS FROM CONTROL

EXEMPTIONS FROM NOTICE, DECISION REQUIREMENTS AND APPEAL RIGHTS

The Nepean Historical Society (33) submits that the exemptions from notice in Clause 43.01-4 are too broad and should not apply where such works could affect the design integrity of heritage buildings and the amenity of adjoining owners.

Clause 43.01-4 exempts certain buildings and works, for which a permit is required, from the notice requirements, decision requirements and appeal rights of third parties under the *Planning and Environment Act*. These are the type of development which it is appropriate to control in order to conserve and enhance heritage places and to ensure that development does not adversely affect the significance of heritage places, but which frustrate many landowners by the delays and bureaucracy associated with the normal procedures of notice etc. associated with getting a permit. The exemptions from notice and appeal are limited and, in the case of alterations to a building, do not include a circumstance where the natural or cultural significance of the heritage place will be adversely affected. This criterion will need to be objectively assessed by the responsible authority.

In terms of potential effect on the amenity of adjoining owners, the Heritage Overlay is intended to protect the heritage place, not the amenity of adjoining owners/ occupiers. It is the misuse of the opportunity to object to a permit required **only** because of existing urban conservation area controls through objections being lodged relating to amenity, as distinct from urban conservation matters, that has led to the incorporation of Clause 43.01-4 in the VPPs.

Accordingly, the Committee recommends no change in respect of this submission.

TRANSPORT INFRASTRUCTURE

The PTC (49) seeks to exempt PTC works from the Heritage Overlay.

The Committee does not agree with this submission. Many PTC buildings and works are of cultural significance and there is no reason why the PTC should not be subject to controls under the Heritage Overlay.

The Committee recommends no change in respect of this submission.

10.4 VICTORIAN HERITAGE REGISTER

Clause 43.01-3 provides that no permit is required under the Heritage Overlay to develop a heritage place identified in the schedule to the overlay as a place which is included on the Victorian Heritage Register if a permit has been granted under the *Heritage Act* or it is exempt.

The Committee sees a potential problem with the operation of this provision if the schedule to the Heritage Overlay is not kept up to date as new heritage places are included on the Victorian Heritage Register. A planning reform objective underlying the Heritage Overlay was to identify all heritage controls affecting land in a single document and to eliminate the need for multiple permits. To function effectively from an administrative point of view, mechanisms need to be implemented for Heritage Victoria to become a planning authority for an amendment to any planning scheme for the purpose of including a heritage place in the Schedule to Clause 43.01 whenever a heritage place is added to the Victorian Heritage Register. The Committee is aware that in practice Heritage Victoria now attends to the consequences of including a place on the Victorian Heritage Register. Its concern is to ensure that this continues as part of the new planning regime.

RECOMMENDATION

General

Implement a mechanism for Heritage Council of Victoria to be made a planning authority for all planning schemes for the purpose of amending any planning scheme to include a heritage place in the Schedule to Clause 43.01 whenever a heritage place is added to the Victorian Heritage Register, and to exempt such amendments from the need for exhibition where appropriate.

10.5 STATUS OF THE NATIONAL TRUST

The National Trust (35) wants a referral to the National Trust as a 'default' mechanism where the council has no heritage adviser, or where the building is classified.

The Committee disputes the Trust's assertion that a classified building would be allowed to disappear or be altered beyond recognition without any opportunity for the Trust to comment or appeal the decision simply through lack of information. Any permit application to alter a heritage place should be advertised in the normal way, which would include to the National Trust if it was a classified building, unless exempt from these requirements pursuant to Clause 43.01-4. Clause 43.01-4 only

Heritage Overlays - cont'd

applies if the alteration does not adversely affect the natural or cultural significance of the heritage place. It applies to minor works only and the Committee can see no reason why the National Trust should be notified of such minor matters. This would defeat the purpose of the provision, which is to prevent delay in issuing permits for minor matters.

In terms of ensuring that the Trust is notified in the case of other permit applications affecting classified buildings, it is incumbent on the Trust to keep responsible authorities advised of those heritage places to which the Heritage Overlay applies and which are also classified by the National Trust.

The Committee recommends no change in respect of this submission.

10.6 DESIGN AND DEVELOPMENT GUIDELINES

City of Port Phillip (57) and City of Glen Eira (46) submit that the Heritage Overlay should allow for design and development guidelines to apply by means of a schedule, to avoid the need for a separate Design and Development Overlay.

The Committee disagrees with this submission. It considers that this would complicate the Heritage Overlay unnecessarily. Design and development guidelines for specified buildings and works are best dealt with by means of local policy or a Design and Development Overlay.

The Committee recommends no change in respect of these submissions.

10.7 NOTABLE BUILDINGS

The National Trust (35) submits that notable buildings in the Central City Development Area of Melbourne should continue to have separate protection through an appropriate overlay.

The Heritage Overlay, which applies to heritage places, may apply to either individual buildings or to areas. In some instances, the overlay may apply to both an individual building and the area within which it is located. However, in terms of any additional controls currently applicable to notable buildings in the central city, this is not a matter relevant to the VPPs but to the preparation of the Melbourne Planning Scheme.

The Committee recommends no change in respect of this submission.

10.8 MEANING OF 'HERITAGE PLACE'

Although there is no definition of 'heritage place' in the VPPs, it is the expression used in the *Heritage Act* 1995. Likewise, the concept of cultural significance is also referred to in the *Heritage Act*. It is not considered that separate definitions are required in the VPPs.

10.9 CONSOLIDATION

City of Ballarat (11) submits that consolidation should not require a permit under the Heritage Overlay. It is submitted that often consolidation of historic sites is more beneficial than the average subdivision and the current provision requiring a permit for consolidation discourages such an action.

The Committee disagrees that requiring a permit for consolidation would discourage this action. It also disagrees with the submission generally. Consolidation of small titles is often a prelude to further development or it may be detrimental to a heritage place where part of its significance is its subdivision pattern. Requiring a permit for consolidation, as with subdivision, provides an opportunity for the implications to be considered. Requiring a permit implies neither encouragement nor discouragement for either.

The Committee recommends no change in respect of this submission.

10.10 EXTERNAL PAINTING OF A BUILDING

City of Boroondara (74) have identified that it is a difficult task to identify all unpainted buildings in heritage areas, hence a general permit control for painting of unpainted surfaces is considered desirable.

Clause 43.01-1 provides that a permit is required to:

- *externally paint a building if the schedule to this Overlay area identifies the heritage place as one where external paint controls apply or if the painting constitutes an advertisement.*

An application for the external painting of a building is exempt from notice and third party appeal rights pursuant to Clause 43.01-4.

Heritage Overlays - cont'd

The main situations where it would be desirable to control the external painting of a building is where there is a proposal to paint a previously unpainted surface (e.g. cement render, shingles, stained woodwork etc.). There may be other situations where control over colours on heritage buildings may be desirable. The Committee appreciates that in some areas where there are large numbers of buildings of a style which have unpainted surfaces (e.g. Garden City) it would be difficult and time consuming to identify them all where it was not wished to otherwise control the external painting of buildings which have been previously painted.

Heritage Victoria have suggested an amended wording for this provision in Clause 43.01-1, which the Committee endorses.

RECOMMENDATION

Clause 43.01-1 - Permit requirement

Amend Clause 43.01-1 by deleting the seventh dot point and replacing it by the following three dot points:

'• externally paint a building if the schedule to this overlay area identifies the heritage place as one where external paint controls apply.

• externally paint an unpainted surface.

• externally paint a building if the painting constitutes an advertisement.'

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11. BUILT FORM OVERLAYS

11.1 DESCRIPTION OF BUILT FORM OVERLAYS

There are three built form overlays - Design and Development Overlay, Incorporated Plan Overlay and Development Plan Overlay. Submissions with which the Committee is concerned relate to the Incorporated Plan Overlay, the Development Plan Overlay and, in particular, their application to former Corridor Zones and the need for an additional urban development zone.

The purpose of the overlays and their description in the *Manual for the Victoria Planning Provisions* are as follows:

Incorporated Plan Overlay:

To show areas which require:

- *The form and conditions of future use and development to be shown on an Incorporated plan before development can commence.*
- *A planning scheme amendment process before the Incorporated plan can be changed.*

This overlay should be used where some form of plan is required to specify requirements over the development of an area and it is necessary for the plan to be incorporated in the scheme. The VPPs make no distinction between the form or content of an incorporated plan or a development plan, only over the way that they are related to the scheme and therefore the way in which they can be approved and amended. If a plan is incorporated in the scheme it can only be changed by a planning scheme amendment. Where a plan contains specific requirements which affect whether or not a permit is required, then it should be an Incorporated plan. Where this is not necessary the Development Plan Overlay can be used.

Development Plan Overlay:

To identify areas which require the form and conditions of future use and development to be shown on a development plan before development can commence.

This overlay should be used where the form of development is appropriately controlled by a plan to the satisfaction of the planning authority and a planning scheme amendment is not considered necessary for the amendment of the plan. If the plan contains specific requirements which affect whether or not a permit is required, it should generally be an Incorporated plan.

Built Form Overlays - cont'd

The permit requirements of Clause 43.03-1 (Incorporated Plan Overlay) and Clause 43.04-1 (Development Plan Overlay) are virtually identical:

> *A permit must not be granted to use or subdivide land, construct a building or construct or carry our works until an Incorporated plan has been incorporated into this scheme.* [or *a development plan has been prepared to the satisfaction of the responsible authority*].
>
> *This does not apply to a use, the construction of a building, the construction or carrying out of works or a subdivision specifically exempted by a schedule to this overlay.*
>
> *A permit must:*
>
> - *be generally consistent with the incorporated plan [development plan].*
> - *include any conditions or requirements [specified for the area] in the [a] schedule to this overlay.*

11.2 OPERATION OF INCORPORATED PLAN OVERLAY AND DEVELOPMENT PLAN OVERLAY

The Committee must admit to an initial misunderstanding about the way in which it is intended these overlays will operate, but which possibly highlights the confusion which surrounds their intended application.

The overlay in each case prevents the grant of a permit pursuant to the underlying zone until the relevant plan is prepared. A schedule to the overlay (not to be confused with the plan itself) may exempt certain use or development for which a permit may be granted prior to preparation of the plan. What the overlay provisions do **not** do is to exempt certain use or development specified in the plan from the need for a permit. The Committee had wrongly assumed this to be the case. It still seems to the Committee that there should be some benefit to land owners arising from the preparation of an incorporated plan (which will have undergone public scrutiny by way of the amendment which incorporates it into the planning scheme) or a development plan (which it is likely the land owner will have prepared to the satisfaction of the responsible authority).

EXEMPTION FROM NOTICE, DECISION REQUIREMENTS AND THIRD PARTY APPEALS

According to DOI, it is intended that the ability to exempt specified use and development from the notice requirements, decision requirements and third party appeal rights of the Act, will be included in the incorporated plan or development plan itself.

Built Form Overlays - cont'd

The Committee does not consider this is clear from either the VPPs or the *Manual for the Victoria Planning Provisions.* Whilst it appreciates that an incorporated plan will be part of the planning scheme, the same cannot be said for a development plan. Therefore, at the very least, any such powers in respect of development plans would need to be incorporated in the Development Plan Overlay, which is part of the planning scheme, for them to be valid. Even with respect to the Incorporated Plan Overlay, the Committee does not consider it would be legitimate to include such powers in the incorporated plan, rather than the Incorporated Plan Overlay.

Section 52(4) of the *Planning and Environment Act* states that:

> *A planning scheme may exempt any class or classes of applications from all or any of the requirements of subsection (1).*

Section 52(1) relates to notice requirements in respect of applications for permits. Similar wording in Section 64(4) relating to the requirements for a responsible authority to give notice of its decision to grant a permit to objectors, and Section 82(2) relating to appeals by objectors, each use similar language and refer to '*classes of applications'* which are set out in a planning scheme. The Committee doubts that specific uses and development set out in individual incorporated plans could be categorised as *'classes of applications'*. It considers that if it is intended that incorporated plans and development plans are to exempt certain use and development from the notice requirements of Section 52(1)(a), (b) and (d), the decision requirements of Section 64(1), (2) and (3) and the appeal rights of Section 82(1) of the Act, this needs to be specified in the provisions of the Incorporated Plan Overlay and the Development Plan Overlay and the class of applications should be described there (e.g. use or development specified in an incorporated plan or development plan).

EXEMPTION FROM PERMIT

It is not intended that an Incorporated Plan Overlay or a Development Plan Overlay will exempt a use or development permit altogether from the need for a permit. The underlying zone provisions will still control the need for a permit. The overlay will simply constrain what a permit may be granted for, and may relieve an application from the notice requirements, decision requirements and third party appeal rights of the Act. According to DOI, it would be inappropriate for an overlay to attempt to control use by exempting it from the need for a permit.

The Committee considers this approach may well be justified where an Incorporated Plan Overlay or Development Plan Overlay is used to guide the future planning of new urban areas by directing where key uses, roads, services and other infrastructure are to be provided. It is less convinced about the merits of this approach when an Incorporated Plan Overlay or Development Plan Overlay is applied to the future use and management of a particular site (e.g. master plans for

Built Form Overlays - cont'd

schools or hospitals, or development plans for shopping centres or the like). In the latter case, it seems to the Committee that if a constraint is to be placed over a landowner or applicant, restraining them from doing something until an incorporated plan or development plan is prepared and then restricting them to acting only in accordance with that plan, there should be some benefit to them as a consequence of that constraint, which reflects the considered planning invested in the preparation of the plan, by enabling them to use or develop land (subject to any conditions) in accordance with the plan without the need for further permit. If a landowner or applicant wishes to use or develop land **not** in accordance with the incorporated plan or development plan, they should apply for a permit in the normal way and go through the normal processes.

The argument that the combined permit/amendment process now provided for by the *Planning and Environment Act* could be used to grant a permit in accordance with the incorporated plan at the time it is incorporated into the planning scheme, would not always be appropriate. If a master plan for, say, a school is to project for a period of 10 years or more, it may be quite premature to grant any meaningful sort of permit. Even though a subsequent application for a permit may be exempt from the notice requirements etc. of the Act, a discretion will still exist as to whether or not one is granted. It is not unknown for the political composition of a council to change and support for a master plan to also change. Even though any permit refusal or onerous conditions may be successfully challenged on appeal, the need for a permit in the first place does not create the type of certainty which the Committee considers an organisation may wish to achieve if it is to engage in a detailed master planning exercise and meaningful community negotiation.

The Committee considers there may be benefit in encouraging master planning and community consultation which finds both expression and certainty through the imprimatur of an incorporated plan incorporated into the planning scheme by way of amendment, which then exempts future use and development in accordance with that incorporated plan from the need for further permit (although still being to the satisfaction of the responsible authority). The same arguments do not apply in respect of a development plan, which will not have passed through the scrutiny of an amendment process, but which could still facilitate development by exempting it from the notice requirements, decision requirements and third party appeal rights of the Act.

COMMITTEE'S CONCLUSIONS ABOUT INCORPORATED PLAN AND DEVELOPMENT PLAN OVERLAYS

Both the Incorporated Plan Overlay and Development Plan Overlay are intended to firstly, restrain use and development until detailed planning for the land has been carried out and secondly, to then ensure that use and development is carried out in accordance with that planning. In both cases, it would seem that a clear mechanism should exist to facilitate use and development in accordance with the planning which has occurred and which, particularly in the case of an incorporated plan, will have undergone public scrutiny.

Built Form Overlays - cont'd

At this stage, the Committee recommends only those changes proposed by DOI, which would enable use and development in accordance with an incorporated plan or development plan to be exempt from the notice requirements, decision requirements and third party appeal rights of the Act. It considers that extending the opportunity to exempt all use and development in accordance with an incorporated plan under an Incorporated Plan Overlay should be reviewed by DOI within the next 12 months.

RECOMMENDATION

Clause 43.03 - Incorporated Plan Overlay

Clause 43.04 - Development Plan Overlay

Include an additional provision in Clause 43.03 and Clause 43.04 enabling use and development specified in an incorporated plan or development plan to be 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 appeal rights of Section 82(1) of the Act.

General

Review the possibility of enabling use and development specified in an incorporated plan under an Incorporated Plan Overlay to be exempt from the need for a permit.

11.3 NEED FOR URBAN DEVELOPMENT ZONE

Urban Land Authority (101), Wyndham City Council (31) and City of Casey (20) want an additional urban development zone as a zone of transition prior to the ultimate future use or layout of land being determined.

Although an urban development zone was at one stage contemplated as a part of the suite of residential zones in the VPPs, it was decided that a separate zone was unnecessary. According to the *Manual for the Victoria Planning Provisions*, existing Corridor Zones can be dealt with as follows:

> To identify land for future urban development there are two possible approaches. One is to include the land in an appropriate non-urban zone and identify it in a Local Policy as land where future urban development will be considered, subject to whatever prerequisites might need to be met. The other approach is to rezone the land to a residential zone but also apply an Incorporated Plan or Development Plan Overlay to require conformity with or preparation of a plan of development and other appropriate requirements. The appropriate technique will mostly depend on the expected timing of development.

Built Form Overlays - cont'd

The concerns raised by submittors relate to the timing of different stages of the development process and the need for commercial certainty. Normally, once land is identified for future residential purposes, a local structure plan (LSP) is prepared, which establishes the broad brush framework for future development in terms of location of uses, commercial centres, road network etc.. Within the LSP, outline development plans (ODPs) are then prepared, normally by the developer to the satisfaction of the responsible authority, to guide detailed subdivision, use and development.

According to DOI, the function of an LSP can be served by an incorporated plan under an Incorporated Plan Overlay. The role of an ODP would be served by a development plan under a Development Plan Overlay. The incorporated plan could only be modified by amendment and would provide an opportunity for public input, however, more detailed development plans would only need to be to the satisfaction of the responsible authority. Any disputes about detail or any refusal to accept a development plan by a responsible authority could be resolved by reference to the AAT pursuant to Section 149A of the *Planning and Environment Act*. It would remain possible to allow permits to be granted for a limited number of uses or development pending preparation of an incorporated plan or development plan by exempting the uses or development from the prohibition on grant of permits by a schedule to the overlay. According to the area in question and the nature of the proposed incorporated plan or development plan, it may not be necessary for both overlays to be applied but for one only to be selected. However, there is no reason why both could not be applied, each fulfilling a different function in the urban development process.

The Committee considers that the rationale behind this approach has merit. The main drawback will be the need to rezone the land from Residential to Business in order to allow development of commercial areas identified in the equivalent of the LSP. However, even under the existing planning regime, a planning scheme amendment is usually required to facilitate commercial development. A rezoning also enables the most appropriate business zone to be selected once detailed planning has been complete. It would not be possible to make this selection at the early planning stage when an LSP or incorporated plan is being prepared. In this respect therefore the Committee does not consider that the absence of a specific urban development zone will disadvantage developers.

The Committee's conclusion is that the need for a separate urban development zone is not justified as the staged planning of future urban areas can be achieved through a process of identifying future urban areas in the Local Planning Policy Framework (which forms part of the planning scheme), followed by an urban rezoning with the application of an Incorporated Plan Overlay and/or a Development Plan Overlay. The Committee is confident that the VPPs offer sufficient flexibility to meet the needs of all future and developing urban areas even if some fine-tuning needs to be achieved by subsequent rezoning.

Built Form Overlays - cont'd

The Committee also understands that discussions between DOI, ULA and some of the urban fringe municipalities have largely resolved many initial concerns on this subject.

The Committee recommends no change in respect of these submissions.

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12. LAND AND SITE MANAGEMENT OVERLAYS

12.1 PUBLIC ACQUISITION OVERLAY

Powercor (42) and Solaris (43) both submit that the Public Acquisition Overlay in Clause 44.01 needs to be clarified for its potential use by utility service providers.

Privatised utility service providers do not have a power of compulsory acquisition. Even in the limited circumstances where a Minister may acquire land on behalf of a utility service provider, that land will ultimately be rezoned to an appropriate zone and the ordinary planning regime should apply.

The Committee recommends no change in respect of this submission.

12.2 AIRPORT ENVIRONS OVERLAY

Submissions were made in relation to the Airport Environs Overlay by Melbourne Airport (56), Hume City Council (58) and Brimbank City Council (69).

Further work has been undertaken on this issue in consultation with the Federal Airports Commission and affected Councils, particularly Hume, to achieve appropriate statutory controls around Melbourne Airport.

Advice on this issue has been given to the Committee by DOI as follows:

> ***Background***:
>
> *On 20 December 1996 and on 27 June 1997, the Minister wrote to the Federal Airports Corporation (FAC), Melbourne Airport, and the municipalities of Brimbank, Hume, Melton and Moonee Valley advising:*
>
> > *'It is important that Melbourne Airport is recognised as a strategic site in metropolitan planning policy, all the more, during the current privatisation bidding process. Councils are preparing new planning schemes which are to reflect a strategically driven approach to planning decisions. The new schemes should maintain the level of control currently afforded by the Melbourne Airport Environments Areas 1 and 2 (as interim controls and exhibited proposals). ...'*
>
> *Subsequently, the FAC has been working with the affected Councils and the Department to establish a consistent approach to address the issue of aircraft noise impact and protection of the effective operation of the airport. The Councils and Melbourne Airport have all made submissions on this issue.*

Land and Site Management Overlays - cont'd

The extent of the effect of Melbourne Airport Environs Area is greatest within the City of Hume. They affect some 22 of the Councils 26 Planning Scheme maps and the application of some 15-17 of the new VPP zones.

It was originally intended that the best way to achieve Minister's requirement would be to introduce a series of Special Use Zones to address aircraft noise sensitive uses over the areas affected. It was initially though that some 4-7 variations would be necessary.

However, as experience at Hume suggests, the reality is far more complex. Hume believes that it may be necessary for it to create up to 17 Special Use Zone schedules to comply with the requirement and, at the same time, ensuring Council's strategic aspirations for those areas can be met.

This approach is very clumsy and cumbersome. It creates 17 new provisions which are virtually identical to VPP standard zones, which would also apply in the Hume Scheme, but include a few more restrictions on use. The length of the scheme will double simply so the issue of aircraft noise can be addressed.

1. *Clause 44.02 has been varied to include provisions regarding Use of land which would be triggered through either of two schedules.*

   - *Schedule 1 contains provisions requiring that despite the provisions of any affected zone land may not be used for certain particularly aircraft noise sensitive uses and permits would be required for others. All such applications are to be referred to the airport owner.*
   - *Schedule 2 requires referral of applications for aircraft noise sensitive uses to the airport owner.*

   These provisions parallel existing provisions of the Melbourne Airport Environs Areas 1 & 2 which have existed as interim (in the case of Area 1) and proposed provisions affecting the Hume, Brimbank, Melton and Moonee Valley Planning Schemes. The provisions have been varied to account for new use definitions and the greater range of permit uses available under VPP zones. Focussing on aircraft noise sensitive uses appears to be the appropriate translation of a blanket referral for all use applications proposed in Melbourne Airport Environs Area 2.

   The application of these should be in a format directed by the Minister, rather than being open for a planning authority to include its own list of uses.

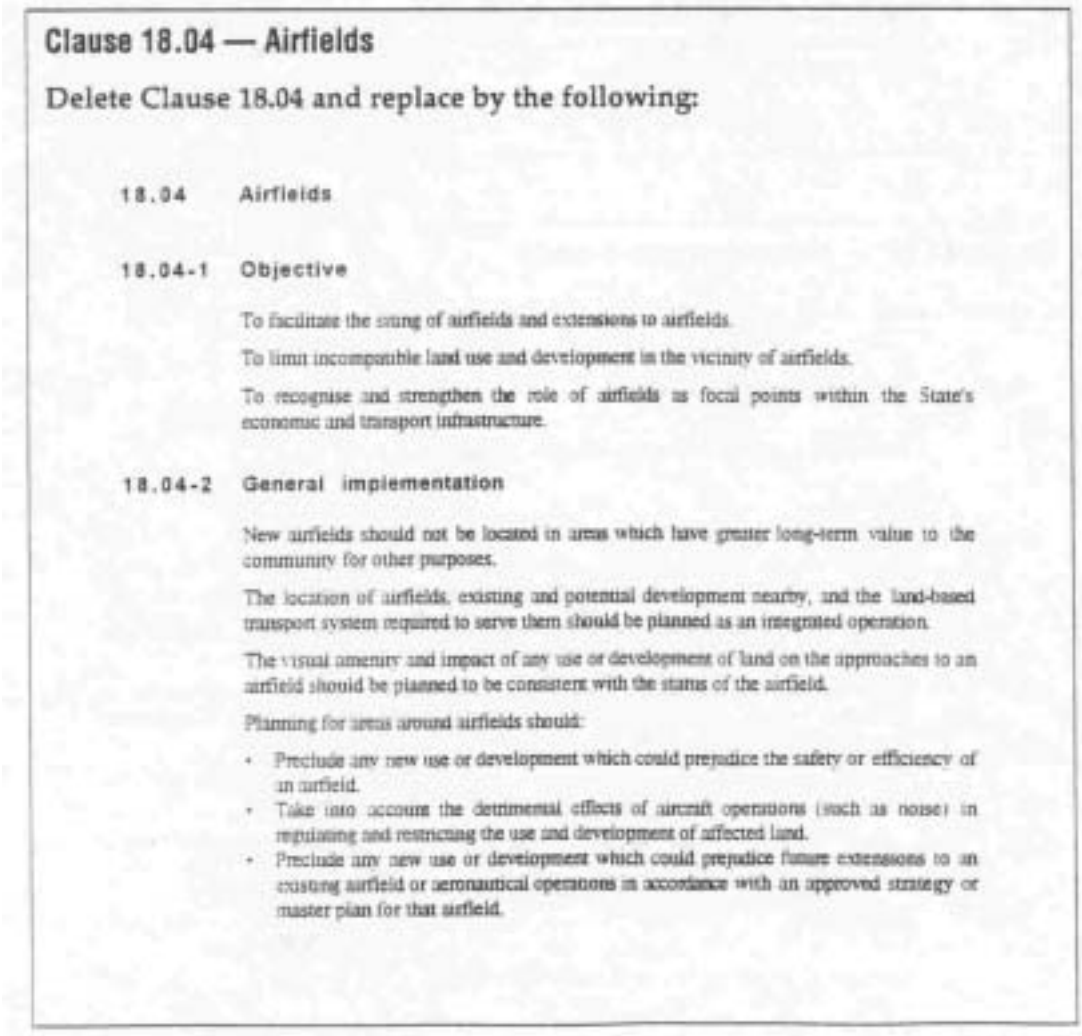
2. *Other provisions remain unaltered from the original Airport Environs overlay.*

Land and Site Management Overlays - cont'd

The Committee has not reviewed the proposed modifications to the Airport Environs Overlay in detail. It endorsed the proposals as an outcome of discussions between the relevant interested parties. In terms of the principle underlying the VPPs that overlays should not control use, only development, it considers that whilst this is a good guiding principle, it should not be a binding principle. The Airport Environs Overlay is clearly an exception to this principle but one which is justified by the strategic importance of airports and the need for a transparent, user friendly planning system. Clearly, the alternative would be unnecessarily complex and confusing.

Clause 18.04 in the SPPF relating to airfields has also been reworded to reflect more comprehensively the current Government policy and issues relating to airfield location, land in the vicinity of airfields and the role of airfields in the State's economic and transport infrastructure. These changes are also endorsed by the Committee.

RECOMMENDATION



Clause 18.04 — Airfields

Delete Clause 18.04 and replace by the following:

18.04 Airfields

18.04-1 Objective

To facilitate the siting of airfields and extensions to airfields.

To limit incompatible land use and development in the vicinity of airfields.

To recognise and strengthen the role of airfields as focal points within the State's economic and transport infrastructure.

18.04-2 General implementation

New airfields should not be located in areas which have greater long-term value to the community for other purposes.

The location of airfields, existing and potential development nearby, and the land-based transport system required to serve them should be planned as an integrated operation.

The visual amenity and impact of any use or development of land on the approaches to an airfield should be planned to be consistent with the status of the airfield.

Planning for areas around airfields should:

- Preclude any new use or development which could prejudice the safety or efficiency of an airfield.
- Take into account the detrimental effects of aircraft operations (such as noise) in regulating and restricting the use and development of affected land.
- Preclude any new use or development which could prejudice future extensions to an existing airfield or aeronautical operations in accordance with an approved strategy or master plan for that airfield.

Land and Site Management Overlays - cont'd

18.04-3 **Geographic strategies**

Melbourne Airport

Planning for areas around Melbourne Airport should:

Strengthen the role of Melbourne Airport as a key local point within the State's economic and transport infrastructure.

Ensure the effective and competitive operation of Melbourne Airport at both national and international levels.

Ensure any new use or development does not prejudice the optimum usage of Melbourne Airport.

Ensure any new use or development does not prejudice the curfew-free operation of Melbourne Airport.

Planning and responsible authorities must have regard to the Melbourne Airport Strategy (Government of Victoria/Federal Airports Corporation, approved 1990) and its associated Final Environmental Impact Statement in relation to planning decisions affecting land in the vicinity of the Melbourne Airport. Reference should be made to the Melbourne International Airport Australian Noise Exposure Forecast (ANEF) (index ref: EN/NOI) approved by the Civil Aviation Authority 23/8/93, Amendment No 5, 12/7/96 endorsed for technical accuracy by the Manager, Environment Monitoring Section, Air Services Australia, Canberra on 2/9/96).

Avalon Airport

Planning and responsible authorities should have regard to the Avalon Airport Strategy (Department of Business and Employment/Aerospace Technologies of Australia 1993) and its associated Aircraft Noise Exposure Concepts.

Clause 44.02 — Airport Environs Overlay

Delete Clause 44.02 and replace by the following:

44.02 **AIRPORT ENVIRONS OVERLAY**

Shown on the planning scheme map as **AEO** with a number.

Purpose

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

To identify areas which are or will be subject to high levels of aircraft noise, including areas where the use of land for uses sensitive to aircraft noise will need to be restricted.

To ensure that land use and development are compatible with the operation of airports in accordance with the airport-wide strategy or master plan and with safe air navigation for aircraft approaching and departing the airfield.

To assist in shielding people from the impact of aircraft noise by requiring appropriate noise attenuation measures in new dwellings and other noise sensitive buildings.

To limit the number of people residing in the area or likely to be subject to significant levels of aircraft noise.

44.02-1 **Use of land**

Any requirement in a schedule to this overlay must be met.

Land and Site Management Overlays - cont'd

44.02-2 **Construction of buildings**

Any new building must be constructed so as to comply with any noise attenuation measures required by Section 3 of Australian Standard AS 2021-1994, Acoustics - Aircraft Noise Intrusion - Building Siting and Construction, issued by the Standards Association of Australia.

Note: In Section 3 of Australian Standard AS 2021-1994, Table 3.3 refers to both building types and activities within these buildings. Each building type listed has its ordinary meaning and should not be interpreted as defined in this scheme.

44.02-3 **Subdivision**

A permit is required to subdivide land.

An application to subdivide land must be referred to the airport owner under Section 55 of the Act unless in the opinion of the responsible authority the proposal satisfies requirements or conditions previously agreed in writing between the responsible authority and the airport owner.

44.02-4 **Decision guidelines**

Before deciding on an application the responsible authority must consider:

- The State Planning Policy Framework and the Local Planning Policy Framework, including the Municipal Strategic Statement and local planning policies.
- Whether the proposal will result in an increase in the number of dwellings and people affected by aircraft noise.
- Whether the proposal is compatible with the present and future operation of the airport in accordance with the appropriate airport strategy or master plan.
- Whether the design of the building incorporates appropriate noise attenuation measures.
- The views of the airport owner.

Notes: Refer to the State Planning Policy Framework and the Local Planning Policy Framework, including the Municipal Strategic Statement, for strategies and policies which may affect the use and development of land.

Check the requirements of the zone which applies to the land.

Other requirements may also apply. These can be found at Particular Provisions.

Land and Site Management Overlays - cont'd

LOCAL PROVISION

SCHEDULE 1 TO THE AIRPORT ENVIRONS OVERLAY

Shown on the planning scheme map as **AEO1**

Requirements

Despite the provisions of the zone land must not be used and a permit must not be granted to use the land for any of the following uses:

- Accommodation (other than Backpackers lodge, Dwelling, Dependent persons unit, Host farm and Residential hotel)
- Child care centre
- Drive-in theatre
- Education centre
- Hospital

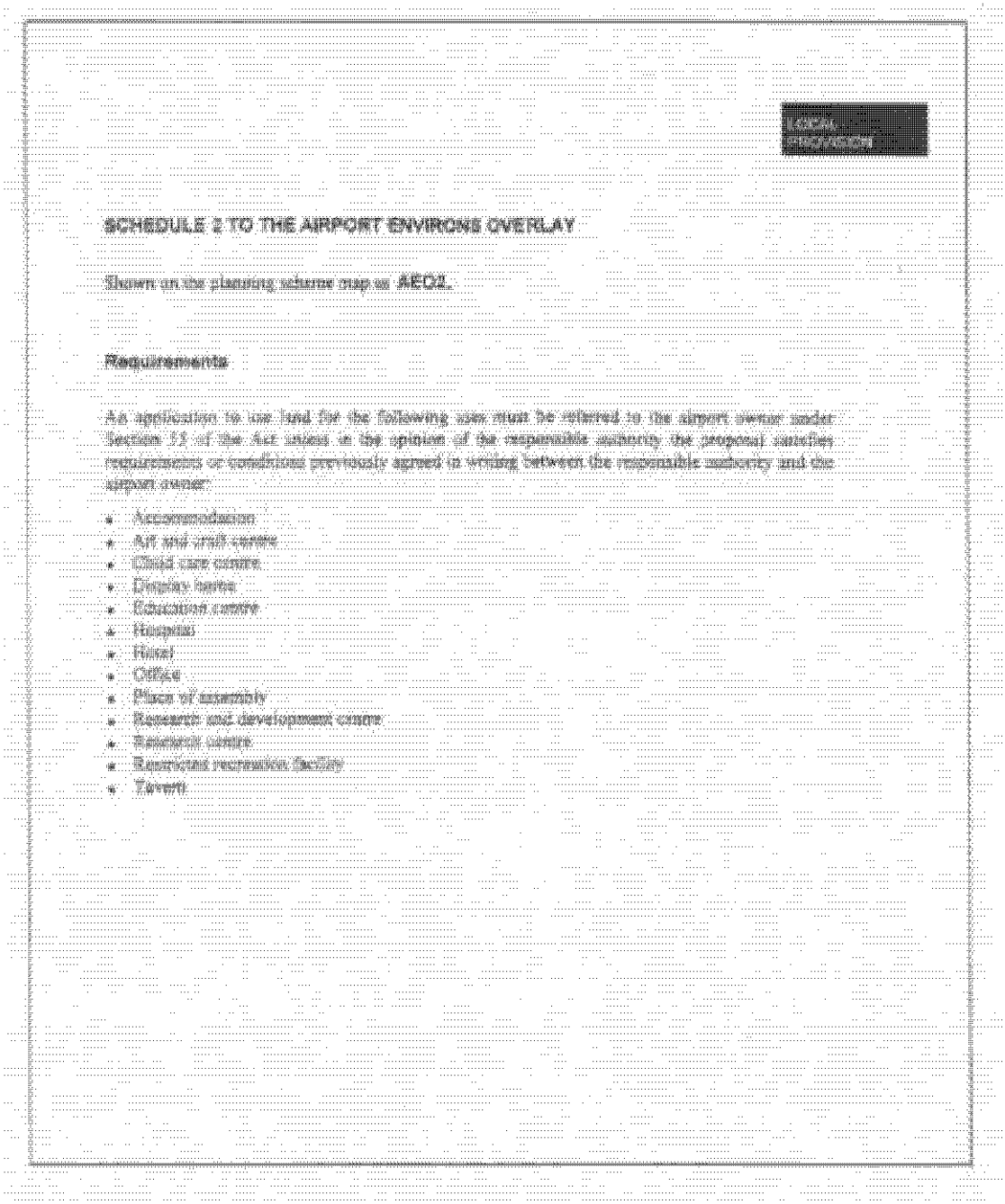
A permit is required to use land for any of the following uses:

- Art and craft centre
- Backpackers lodge
- Dependent person's unit provided no more than one is established on any lot.
- Display home
- Dwelling (other than a Dependent persons unit) provided no more than one is established on any lot
- Host farm
- Hotel
- Office
- Place of assembly (except Drive-in theatre)
- Research and development centre
- Research centre
- Residential hotel
- Restricted recreation facility
- Tavern

No permit may be granted for a use that is prohibited under the zone.

An application to use land under this overlay must be referred to the airport owner under Section 55 of the Act unless in the opinion of the responsible authority the proposal satisfies requirements or conditions previously agreed in writing between the responsible authority and the airport owner.

Land and Site Management Overlays - cont'd



SCHEDULE 2 TO THE AIRPORT ENVIRONS OVERLAY

Shown on the planning scheme map as AEO2.

Requirements

An application to use land for the following uses must be referred to the airport owner under Section 55 of the Act unless in the opinion of the responsible authority the proposal satisfies requirements or conditions previously agreed in writing between the responsible authority and the airport owner:

- Accommodation
- Art and craft centre
- Child care centre
- Display home
- Education centre
- Hospital
- Hotel
- Office
- Place of assembly
- Research and development centre
- Research centre
- Restricted recreation facility
- Tavern

12.3 RESTRUCTURE OVERLAY

The Restructure Overlay applies a restructure plan to old and inappropriate subdivisions as a condition of development approval. Restructure plans will be incorporated documents.

Clause 44.05-2 provides that:

> *A permit is required to construct or extend a dwelling or other building.*
>
> *All dwellings and other buildings must be in accordance with a restructure plan for the land listed in the schedule to this overlay.*

Mornington Peninsula Shire Council (82) submits that the second paragraph of Clause 44.05-2 requires rewording to read:

> *No permit may be granted to construct a dwelling or other building unless the site is in accordance with the restructure plan for the land listed as a schedule to this overlay.*

The Committee agrees that it would be preferable for the second paragraph to relate to the first paragraph and refer to the fact that a permit must be in accordance with the restructure plan. However, it considers this should be worded positively, in line with the general approach adopted in the VPPs, rather than negatively as suggested by Mornington Peninsula.

Shire of Yarra Ranges (32) is concerned that the VPPs require reference to each and every individual parcel of land in a restructure plan. It also considers that the schedule should refer to a code/notation, which would also appear on the planning scheme maps for each individual restructure plan.

The Committee believes it is not the intention of the schedule to the Restructure Overlay to require the address of each parcel of land within a Restructure Area. This is clear from the 'Checklist for a New Format Planning Scheme' contained in the *Manual for the Victoria Planning Provisions.*

The Committee agrees that it would be helpful for a notation to be included on the planning scheme maps corresponding to the restructure plan listed in the schedule to the Restructure Overlay.

Pruneau (1) raised the issue of the requirement for a 'land assessment report' where reticulated sewerage is not available and an application for subdivision has been made. She questioned whether the report must be prepared by a qualified person and whether verification by the appropriate referral authority is required.

Land and Site Management Overlays - cont'd

The Committee considers that a general meaning must be applied to this requirement. It is clear from the provisions of Clause 44.05-1 what the purpose of the land assessment report is (i.e. it must demonstrate that each lot is capable of treating and retaining all waste water in accordance with SEPP (Waters of Victoria)). The Committee does not consider it is necessary to specify by whom this report must be prepared. It can be left to the responsible authority to determine the adequacy of the report. It is clear on the face of it, that unless the report is prepared by a suitably qualified person, it will not '*demonstrate'* what the land capability in respect of waste water disposal is.

The Committee recommends no change in respect of this submission.

RECOMMENDATION

Clause 44.05-2 - Dwellings and other buildings

Amend the second paragraph of Clause 44.05-2 by deleting the words indicated and including the words in italics as follows:

'~~All dwellings and other buildings~~ *A permit* must be in accordance with a restructure plan for the land listed in the schedule to this overlay.'

Ministerial Direction to all planning authorities on the form and content of planning schemes

Amend the schedule to the Restructure Overlay by including a column 'PS MAP' and provide for a '*RO Number*' to be included in this column which corresponds to the '*RO Number*' on the planning scheme maps.

12.4 SPECIAL BUILDING OVERLAY

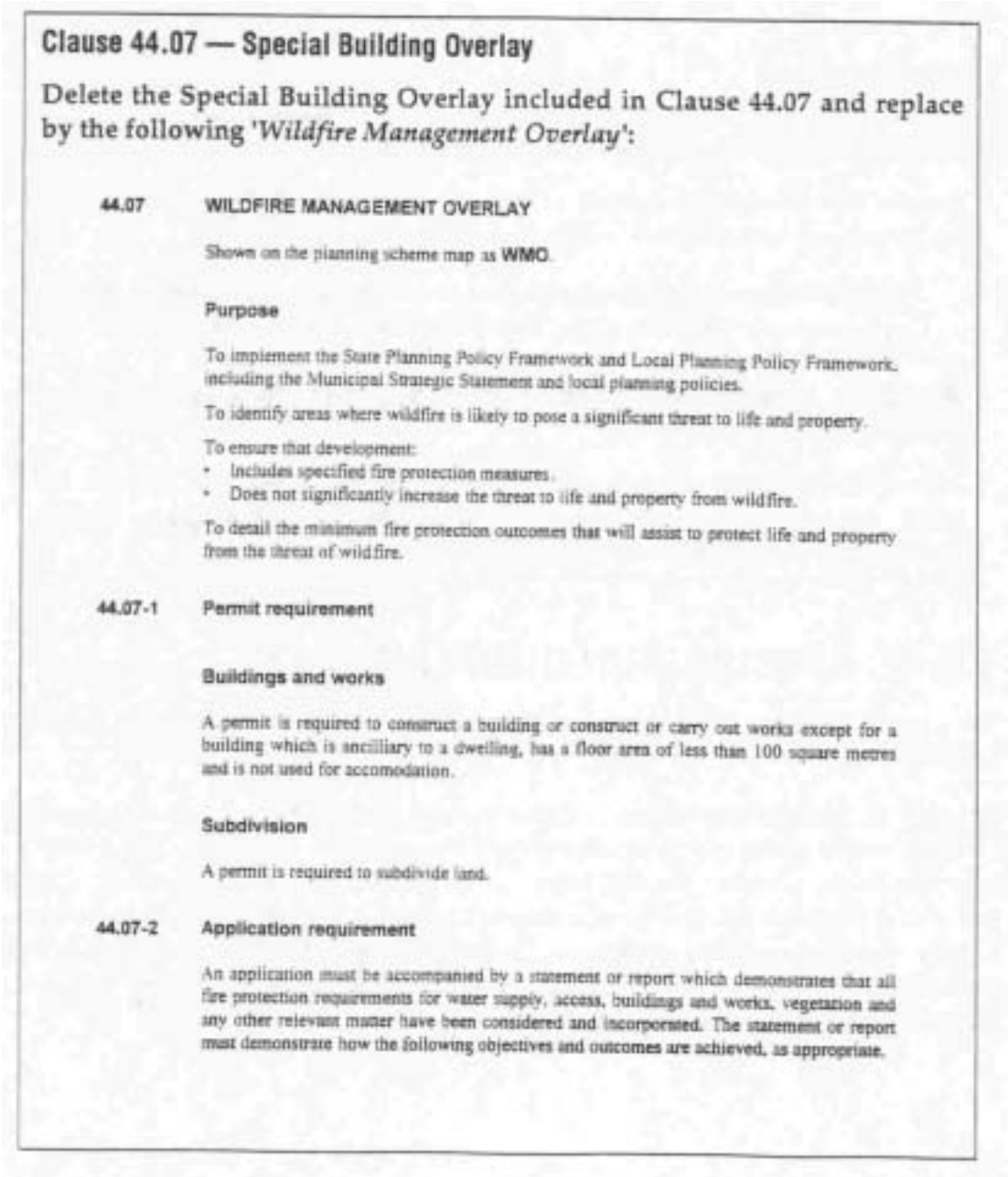
The Special Building Overlay is intended to be applied to areas identified as having high bushfire hazard by the CFA.

A range of submissions queried various aspects of this Overlay. The name of the Overlay was considered euphemistic (Pruneau (1)); it was considered that the purpose of the Overlay should refer to 'wildfire' rather than 'bushfire' (City of Ballarat (11)); there were serious concerns about the standards required for water supply requirements (City of Ballarat (11)); and Victorian National Parks Association (48) was concerned about the apparent blanket exemption from any vegetation removal controls.

Land and Site Management Overlays - cont'd

It is unnecessary for the Committee to deal with these submissions in detail as additional work by DOI and discussions with the CFA have resulted in preparation of a new Wildfire Management Overlay intended to replace the Special Building Overlay. The Committee considers that the Wildfire Management Overlay represents a significant improvement to the Special Building Overlay. In particular, it commends the use of performance standards identified in the application requirements of Clause 44.07-2 relating to water supply, access, buildings and works, and vegetation.

RECOMMENDATION



Clause 44.07 — Special Building Overlay

Delete the Special Building Overlay included in Clause 44.07 and replace by the following '*Wildfire Management Overlay*':

44.07 WILDFIRE MANAGEMENT OVERLAY

Shown on the planning scheme map as **WMO**.

Purpose

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

To identify areas where wildfire is likely to pose a significant threat to life and property.

To ensure that development:
- Includes specified fire protection measures.
- Does not significantly increase the threat to life and property from wildfire.

To detail the minimum fire protection outcomes that will assist to protect life and property from the threat of wildfire.

44.07-1 Permit requirement

Buildings and works

A permit is required to construct a building or construct or carry out works except for a building which is ancilliary to a dwelling, has a floor area of less than 100 square metres and is not used for accomodation.

Subdivision

A permit is required to subdivide land.

44.07-2 Application requirement

An application must be accompanied by a statement or report which demonstrates that all fire protection requirements for water supply, access, buildings and works, vegetation and any other relevant matter have been considered and incorporated. The statement or report must demonstrate how the following objectives and outcomes are achieved, as appropriate.

Land and Site Management Overlays - cont'd

Water supply

OBJECTIVE	OUTCOME
To ensure that water is available to landholders and emergency services to enable life and the property to be defended from fire.	A reticulated or non-reticulated water supply must provide a water discharge of a minimum of four hours to ensure that water is distributed around the perimeter and roof space of the main building and any outbuildings. The water supply must be maintained, accessible and able to be effectively employed for personal and fire brigade use at all times. The water supply system must include an outlet and connectors compatible with standard fire brigade equipment.

Access

OBJECTIVE	OUTCOME
To ensure that safe access is provided for emergency and other vehicles at all times.	Appropriate all weather access to and within the property and the water supply must be provided and constructed to allow fire-fighting and other vehicles to traverse with ease and safety. The property must front a road that provides suitable access for emergency vehicles and which: has adequate width and a stable surface, with no horizontal or vehicle encroachments which restrict fire fighting vehicles. is not a deadend road, unless there are adequate passing bays and turning circles within that road.

Buildings and works

OBJECTIVE	OUTCOME
To ensure that the design and siting of buildings and works improves protection for life and minimises the level of fire impact.	The design and siting of any building or works, including outbuildings, driveways, vegetation and storage areas for flammable materials, must minimise the fire risk to life and property. The design of any building must incorporate fire protection construction features to prevent the entry and build up of embers in the building and reduce the likelihood of direct flame contact. The siting of any building in relation to slope, access, aspect, orientation and vegetation must minimise the fire risk to life and property.

Vegetation

OBJECTIVE	OUTCOME
To ensure that fuel (ground fuel and shrubs) is managed to reduce potential fire intensity in the vicinity of buildings.	A building protection zone, landscaped to reduce fuel load, distribution and continuity, must be established to inhibit the spread of fire and minimise the fire risk to life and property.

Land and Site Management Overlays - cont'd

44.07-3 **Decision guidelines**

Before deciding on an application, the responsible authority must consider, as appropriate:

- The State Planning Policy Framework and the Local Planning Policy Framework, including the Municipal Strategic Statement and local planning policies.
- The comments of the relevant fire authority.
- Any adopted municipal fire prevention plan.
- The principles and guidelines included in:
  - Design and Siting Guidelines, Bushfire Protection for Rural Houses, Country Fire Authority and Ministry for Planning and Environment, 1990.
  - Planning Conditions and Guidelines for Subdivisions, Country Fire Authority, 1991.
  - Building in Bushfire-Prone Areas - CSIRO & Standards Australia (SAA HB36-1993), May 1993.
- Whether the design and siting of any proposed building, works or access road appropriately meets the objectives and outcomes set out in this overlay.

Notes: *Refer to the* State Planning Policy Framework *and the* Local Planning Policy Framework, *including the* Municipal Strategic Statement, *for strategies and policies which may affect the use and development of land.*

Check the requirements of the zone which applies to the land.

Other requirements may also apply. These can be found at Particular Provisions.

12.5 EROSION MANAGEMENT OVERLAY

The Local Government Catchment Project (79) submitted that the Erosion Management Overlay would be better designed if it incorporated three schedules which might divide areas subject to erosion hazard into three categories:

- severe risk - where additional buildings and works are prohibited, and thus there would be no need for referral of applications
- high risk - where buildings and works would be subject to management guidelines and require referral to the DNRE (presumably pursuant to Section 55 of the *Planning and Environment Act* 1987).
- moderate risk - areas where buildings and works would be subject to management guidelines and referred to the DNRE only if necessary (presumably pursuant to Section 52 of the Act).

It is argued that under the present proposal to have a single overlay, the different risks applying to land would have to be distinguished by use of a reference document, which is a less direct approach than by scheduling.

The Victorian National Parks Association (48) also expressed the view that developments disturbing land over a large area (e.g. 0.2 ha) should require referral to DNRE and suggested that a schedule of high risk activities which require referral might be appropriate.

The Committee finds it difficult to perceive what would be achieved by introducing the type of schedule proposed by the Local Government Catchment Project. At present, the Erosion Management Overlay simply requires a permit for all buildings and works, and subdivision. Presumably the Overlay will only be applied in areas where the council is conscious of the need for this type of control. Whilst some councils may be able to divide areas in their municipalities into the three categories of erosion hazard identified by the Local Government Catchment Project, this would not necessarily be the case in all municipalities. The Committee considers that including such a schedule would introduce a further layer of complexity. This type of detail is more properly included in a local policy.

The Committee does not consider that there is a strong case for referring applications under the Erosion Management Overlay to DNRE at this stage. If referral is considered to be appropriate, it should be included in the VPPs as a separate amendment after consultation with DNRE and local government generally. In the meantime, there is nothing to prevent councils from giving DNRE notice of applications under Section 52 of the Act, which is often current practice.

RECOMMENDATION

General

Investigate if permit applications under the Erosion Management Overlay should require referral to DNRE.

12.6 SALINITY MANAGEMENT OVERLAY

The Municipalities Against Salinity of Northern Victoria (37) were critical of the Salinity Management Overlay on the basis that it appeared to have been written to apply only to land areas of either high groundwater recharge or discharge. They suggested that the Salinity Management Overlay as drafted would not be applicable to the broad scale, high water table salinity problems of irrigation land in northern Victoria. In particular, they expressed concerns that the application of the Salinity Management Overlay to the 500,000 ha of the Shepparton irrigation region would create additional unnecessary impositions on routine developments and farming operations. They suggested that accordingly, Councils should be advised to apply the Overlay only to high recharge and groundwater discharge zones under dry land salinity management programs - which areas are already largely known and mapped. They went so far as to suggest that the overlay be retitled ***'Dry Land*** *Salinity Management Overlay'*.

Similar concerns were expressed by the Shire of Campaspe (44). It suggested that there ought to be an opportunity to provide for exempt buildings and works which are not inconsistent with the purpose of the Overlay. If this was not done, it was argued, there would be an onerous imposition on responsible authorities resulting in many permit applications for minor proposals not likely to affect salinity.

The Committee's view is that, apart from concerns relating to the **extent** of buildings and works permissions which might arise from the application of this Overlay in northern Victoria, there are no other apparent reasons why the Salinity Management Overlay should not be applied in irrigated areas. Salinity is just as much a problem in irrigated areas as dry land areas. The extent of the problem should not be used as an excuse not to highlight it. If anything, the widespread nature of the problem only emphasises the need to highlight it.

However, the Committee supports the inclusion of a schedule which would enable the exemption of certain buildings and works from control. In this way, not only would the workload of processing additional development applications be reduced for responsible authorities, but the overlay requirements might be better adapted to dry land and irrigated situations.

Land and Site Management Overlays - cont'd

The incorporation of a schedule to the Overlay might also afford the opportunity for schemes to distinguish between recharge and discharge areas, and the appropriate controls applying thereto. This matter was raised by Trevor Budge and Associates (77).

Pruneau (1) also made a number of comments upon the Salinity Management Overlay. She noted that one of the purposes of the Overlay is:

> *To ensure development is compatible with site capability and the retention of native vegetation, and complies with the objectives of any salinity management plan for the area.*

She queried whether the reference to native vegetation should not be to vegetation generally. The Committee believes that in the context of a Salinity Management Overlay reference to all kinds of vegetation would be appropriate, as they all perform a similar function.

This raises a further issue. If the retention of vegetation is an objective of this Overlay, why does the Overlay not impose a requirement for permission for removal of vegetation. It seems inappropriate to rely on the Vegetation Protection Overlay, which has a different purpose to the need to control vegetation removal in a Salinity Management Overlay. As control over vegetation removal is integral to the purpose and effectiveness of the Salinity Management Overlay, then the Committee considers it should be included in the control provisions of the Overlay.

Pruneau also queried whether the impacts of irrigation or increased irrigation should be matters considered in relation to applications on land included in the Salinity Management Overlay. This is clearly the case, but the Committee considers that these matters are already referred to in the second dot point under the application requirements at Clause 44.09-2, and also would be covered by a number of the points listed under Clause 44.09-4, setting out decision guidelines.

RECOMMENDATION

Clause 44.09 - Purpose

Amend the purpose of Clause 44.09 by deleting the word indicated in the sixth paragraph to read as follows:

'To ensure development is compatible with site capability and the retention of ~~native~~ vegetation, and complies with the objectives of any salinity management plan for the area.'

Land and Site Management Overlays - cont'd

Clause 44.09-1 - Permit requirement

Add a further two paragraphs to Clause 44.09-1 under the heading 'Buildings and works' as follows:

'A permit is required to remove, destroy or lop any vegetation.

'This does not apply if the proposal is exempted in a schedule to this overlay.'

Ministerial Direction to All Planning Authorities on the Form and Content of Planning Schemes

Include a schedule to the Salinity Management Overlay which provides for exemptions for buildings and works not inconsistent with the purpose of the Overlay.

12.7 POTENTIALLY CONTAMINATED LAND OVERLAY

City of Port Phillip (57) and others have queried when a Potentially Contaminated Land Overlay under Clause 44.10 should be used. City of Monash (78) submits that it needs to be clear who gets a copy of a statement or certificate of environmental audit. The EPA (99) also seeks to ensure that the Potentially Contaminated Land Overlay does not limit the application of Minister's Direction No. 1 under the *Planning and Environment Act*, and also that actual contaminated land is clearly identified where possible.

The Committee is informed that DOI has recently amended its guidelines for use of the Potentially Contaminated Land Overlay indicating that it is only intended to be used when the requirements of Minister's Direction No. 1 are being deferred until commencement of a use, rather than being met at the time of a rezoning.

The reason for this is that Minister's Direction No. 1 requires a Certificate of Environmental Audit or a Statement that the land is suitable for a sensitive use at the time land is rezoned for a sensitive use. With the introduction of new planning schemes throughout Victoria, all land will be rezoned, with many of the new zones allowing sensitive uses where they might not have otherwise been permitted. The application of the Potentially Contaminated Land Overlay is intended to avoid the need for a Certificate of Environmental Audit etc. for huge areas of land but to still ensure that the intent of Minister's Direction No. 1 is addressed before land is used or developed for a sensitive use. Councils are concerned however, that in places such as Maribyrnong where virtually all land within the municipality has had a history of industrial use at some time, the Potentially Contaminated Land Overlay may need to

Land and Site Management Overlays - cont'd

be applied on a virtual municipality-wide basis. There is concern about the impressions that this will raise in people's minds. There is also concern about the potential consequences for councils failing to identify potentially contaminated land if it subsequently emerges that it is contaminated.

Given DOI's view of the limited application of the Overlay, this could perhaps be better reflected in the purpose clause to the Overlay, or by some other notation. It needs to be clearly understood that this overlay is not intended to substitute for Minister's Direction No.á1; it does not mean that the land involved **is** contaminated and it does not imply that land **not** subject to the Overlay is free from contamination. The Committee considers that the name of the Overlay should be changed to 'Environmental Audit Requirement Overlay' to prevent public misconceptions of widespread contamination. In addition, the Committee considers that the effect of Minister's Direction No. 1 needs to be reviewed in light of the new planning schemes and the VPPs.

It may be appropriate to examine the triggers for the need for an environmental audit etc. to ensure that the objective of the Direction is being achieved. The Direction may need rewriting to bring it into the context of the VPPs as distinct from the old planning regime.

Clause 15.06-2 of the SPPF requires responsible authorities to consult with the EPA in considering applications for use of land used or known to have been used for industry, mining or the storage of chemicals, gas, wastes or liquid fuel. In the Committee's opinion, it is inappropriate to include this requirement in this location. Before deciding on an application, the responsible authority must consider the matters set out in Clause 60 of the *Planning and Environment Act*, including '*any significant effects ... which the responsible authority considers the environment may have on the use or development'*. This, together with the requirements of Minister's Direction No. 1 and the normal referral provisions should ensure that the objective of Clause 15.06 is met.

RECOMMENDATION

Clause 15.06-2 - Soil Contamination: General implementation

Amend the second paragraph of Clause 15.06-2 by deleting the words indicated to read as follows:

'In considering applications for use of land used or known to have been used for industry, mining or the storage of chemicals, gas, wastes or liquid fuel, responsible authorities should ~~consult with the Environment Protection Authority and~~ require applicants to provide adequate information on the potential for contamination to have adverse effects on the future land use.'

Clause 44.10 - Potentially Contaminated Land Overlay

Change the name of the 'Potentially Contaminated Land Overlay' to *'Environmental Audit Overlay'*.

General

Review the effect and wording of Minister's Direction No. 1 under the *Planning and Environment Act* in the context of the new planning schemes and the VPPs.

Give clear directions to councils about when the Potentially Contaminated Land Overlay (*'Environmental Audit Overlay')* should be applied.

12.8 ADDITIONAL OVERLAYS

SEWERAGE POND BUFFER OVERLAY

The Central Highlands Water Board (see submission by City of Ballarat (11)) requested that an overlay be developed for buffer controls around sewerage ponds:

> *The Authority also requests that consideration be given to protecting major community infrastructure assets, such as waste water treatment plants, from encroachment by inappropriate development by the use of a suitable overlay. Such an overlay provides a clear public document for any prospective purchaser to make them aware of the existence of the community asset and the need for compatible development.*

The Committee considers that the Environmental Significance Overlay would be suitable for the purpose of protecting the type of major community infrastructure assets referred to by the Central Highlands Water Board. The purpose of the Environmental Significance Overlay and its description in the *Manual for the Victoria Planning Provisions* are as follows:

> **Environmental Significance Overlay:**
>
> *To identify areas where the development of land may be affected by environmental constraints.*
>
> *To control development which may have an effect on identified environmental values.*
>
> Environmental significance is intended to be interpreted widely and may include issues such as noise effects or industrial buffer areas in addition to issues related to the natural environment. The nature of the issue and the intended effects or outcomes of the requirements being imposed must be clearly stated.

Land and Site Management Overlays - cont'd

The schedule to the Environmental Significance Overlay must contain a statement of the matters of environmental significance to be protected for the area affected by the schedule. A permit is required for all buildings and works, removal of vegetation and subdivision, unless the proposal is exempted in the schedule to the Overlay.

Before applying such an overlay however, the council would need to be clear about the justification for it and to develop guidelines to guide in the exercise of discretion, which should be included in the LPPF. Alternatively, it may be sufficient to identify major community infrastructure assets in the LPPF.

The Committee recommends no change in respect of this submission.

INFRASTRUCTURE CONSTRAINT OVERLAY

Pruneau (1) suggests the inclusion of an Infrastructure Constraint Overlay in order:

> *To identify areas where existing and future water and sewerage infrastructure capacity is significantly restricted.*

The Committee believes that these issues should firstly be addressed in the Local Planning Policy Framework and the designation of land suitable for development through the application of appropriate zones. Secondly, these issues should be monitored by referrals to the relevant authorities when an application for subdivision is made. Thirdly, if the developer is prepared to pay the costs of infrastructure upgrade then this issue becomes less relevant to the consideration of a permit application.

The Committee recommends no change in respect of this submission.

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13. FLOODING, WATER QUALITY AND DRAINAGE

13.1 DESCRIPTION OF CONTROLS

There is one zone and two overlays in the VPPs applicable to land liable to flooding. The purpose of the Urban Floodway Zone, Rural Floodway Overlay and Land Subject to Inundation Overlay and the description of them in the *Manual for the Victoria Planning Provisions* are as follows:

Urban Floodway Zone:

To identify waterways, major flood paths, drainage depressions and high hazard areas within urban areas which have the greatest risk and frequency of being affected by flooding.

To ensure that any use or development maintains the free passage and temporary storage of floodwater, minimises flood damage and is compatible with flood hazard, local drainage conditions and the minimisation of soil erosion, sedimentation and silting.

To reflect any declarations under Division 4 of Part 10 of the Water Act, 1989.

To protect water quality and waterways as natural resources in accordance with the provisions of relevant State Environment Protection Policies, and particularly in accordance with clauses 33 and 35 of the State Environment Protection Policy (Waters of Victoria).

This zone should be applied to urban land identified as part of the active floodway or a high hazard area where high flow velocities are known to occur and where impediment of flood flows is likely to cause significant changes in flood flows, adversely affecting flooding in other areas. Where land is subject only to inundation and low velocities the Land Subject to Inundation Overlay can be used. The views and flooding information of the relevant floodway management authority must be considered when applying this zone.

Rural Floodway Overlay:

To identify waterways, major flood paths, drainage depressions and high hazard areas in rural and non-urban areas which have the greatest risk and frequency of being affected by flooding.

Flooding, Water Quality and Drainage - cont'd

To ensure that any use or development maintains the free passage and temporary storage of floodwater, minimises flood damage and is compatible with flood hazard, local drainage conditions and the minimisation of soil erosion, sedimentation and silting.

To reflect any declarations under Division 4 of Part 10 of the Water Act 1989 if such have been made.

To protect water quality and waterways as natural resources in accordance with the provisions of relevant State Environment Protection Policies, and particularly in accordance with Clauses 33 and 35 of the State Environment Protection Policy (Waters of Victoria).

This Overlay should be applied to rural land identified as part of the active floodway or a high hazard area where high flow velocities are known to occur and where impediment of flood flows is likely to cause significant changes in flood flows, adversely effecting other areas. The identification of these areas should be established in consultation with the relevant floodplain management authority.

Land Subject to Inundation Overlay:

To identify land in urban and non-urban areas liable to inundation by overland flow, sheet flooding, or land in any flood fringe area from the one in one hundred year flood or as designated by the floodplain management authority.

To ensure that any development maintains the free passage and temporary storage of floodwaters, minimises flood damage, is compatible with the flood hazard and local drainage conditions and will not cause any significant rise in flood level or flow velocity.

To protect water quality in accordance with the provisions of relevant State Environment Protection Policies, and particularly in accordance with Clauses 33 and 35 of the State Environment Protection Policy (Waters of Victoria).

This overlay applies to land in either rural or urban areas which is subject to inundation, but is not part of the primary floodway. The identification of these areas should be established in consultation with the relevant floodplain management authority.

In the Urban Floodway Zone, agriculture and informal outdoor recreation are Section 1 Uses, leisure and recreation (other than informal outdoor recreation) and utility installation are Section 2 Uses and virtually all other uses are prohibited. A permit is required for all buildings and works, '*including a solid or paling fence'*, and subdivision.

The Rural Floodway Overlay and Land Subject to Inundation Overlay do not control uses but have similar buildings, works and subdivision controls.

Flooding, Water Quality and Drainage - cont'd

In the Urban Floodway Zone and the Rural Floodway Overlay, all applications must be accompanied by a floodplain management plan, unless the responsible authority has already adopted a floodplain management plan for the area in consultation with the floodplain management authority. There is a long list of matters which the floodplain management plan must consider. All applications must be referred to the relevant floodplain management authority.

Direct and indirect reference to flooding, drainage and other water management issues occurs in various parts of the SPPF but notably in the three Principles of Land Use and Development Planning at Clause 13 which deal with environment, management of resources and regional cooperation, and in the three specific policies dealing with these issues, namely Clause 15.01 - Protection of waterways, groundwater and catchments, Clause 15.02 - Floodplain management, and Clause 18.09 - Water supply, sewerage and drainage.

13.2 GENERAL COMMENTS

A large number of submissions addressed the adequacy and appropriateness of the flooding polices and controls of the VPPs, and the need for additional or altered scheme provisions relating to drainage and water quality matters.

The key issues raised can be categorised as:

- The adequacy of the components of the SPPF relating to flooding, water quality and drainage.
- The purposes of the flooding controls and the need to regulate the use of land in the Rural Floodway Overlay and Land Liable to Inundation Overlay.
- The appropriateness of particular land uses within the Urban Floodway Zone and particular types of development within the two Overlays.
- The need for additional overlays to protect water catchments and wetlands, to address drainage matters and identify additional areas subject to flooding.

13.3 STATE PLANNING POLICY FRAMEWORK (SPPF)

Water quality is integral to the health and standard of living of our community. Management of water resources affects drinking water, waterways and their ecosystems and property damaged by flooding. Maintaining water quality and minimising flood damage are inter-linked and can only be achieved through the integration of sound planning and land management practices across a broad range of activities which involve:

- management of industrial and domestic wastewater;
- management of stormwater;
- land disturbance, such as sediment from construction sites, agricultural practices etc.;
- run-off pollution;
- vegetation clearance.

The need to integrate the activities of various land managers to achieve an overall improvement to water quality (or, at the very least, to prevent its further deterioration) and to reduce the impacts and damage caused by flooding has resulted in a range of recent new initiatives and cooperative efforts involving all levels of government and government organisations relating to flooding, drainage, stormwater, water quality and catchment management. These include:

- EPA Stormwater Advisory Committee recently appointed by the EPA to explore approaches that could be adopted to improve the quality of urban stormwater. Its objective is to establish an agreement between EPA, Melbourne Water and Local Government dealing with the management of stormwater quality and to facilitate implementation of this Stormwater Agreement by developing:
  - Best Practice Environmental Management Guidelines for Stormwater;
  - recommendations for ongoing arrangements to coordinate and oversee the management of stormwater quality.
- Establishment of Catchment and Land Protection Boards under the *Catchment and Land Protection Act* 1994 (to be replaced by Regional Catchment Management Authorities post July) with responsibilities covering:
  - development of regional catchment strategies;
  - land and water management;

Flooding, Water Quality and Drainage - cont'd

- implementation works;
- floodplain management;
- river management.

- Mapping by Melbourne Water of all overland flow paths impacted by a one in 100 year storm event in metropolitan Melbourne.
- In country Victoria, regional cooperation through organisations such as MASMV (Municipalities Against Salinity of Northern Victoria) and the Local Government Catchment Project are developing cooperative links between local government and natural resource management programs such as the Shepparton Irrigation Region Land and Water Salinity Management Plan and the Shepparton Irrigation Region Surface Drainage Strategy, July 1995.

The comments of many submittors focussed on the policy components of the SPPF and the extent to which they adequately reflected the importance of integrated catchment management, stormwater management and the linkages between various Acts, other government policies, strategies and plans.

Broadly, the Committee is of the view that the expression of policy in the SPPF concerning water-related issues requires improvement. The policies are something of a *'grab-bag'* of issues, and there is considerable overlap between parts of the policies. Some immediate improvements to the wording are recommended but the Committee is of the view that a longer term restructuring of the *'general implementation'* provisions of Clause 15 et seq is required. This would involve a more thorough review than can be made at the present time and should be done as part of the Committee's general recommendation for a review of the SPPF.

EPA (99) made an extensive submission concerning the better integration of land use and development decisions made under planning schemes with environment protection decisions under the *Environment Protection Act* 1970. The submission recommended various means to improve the SPPF, and the provisions of the new zones and overlays with this objective in mind. Their recommendations related to flooding, drainage and water quality issues.

The EPA Stormwater Committee is developing draft Best Practice Guidelines for Stormwater Management, which will be an integral element in the implementation of the Stormwater Agreement between EPA, Melbourne Water and Local Government. It has requested that the Guidelines be included in the VPPs. The Stormwater Committee also made a number of other recommendations concerning rewording of the SPPF and other provisions of the VPPs to better reflect stormwater management objectives.

Flooding, Water Quality and Drainage - cont'd

It is not intended to discuss in detail all the requested changes to the wording of SPPF by submittors. The Committee has recommended a number of changes which are detailed in its recommendation in this section. It considers that the rewording and additions make a clearer and more positive statement about objectives and policies relating to flooding, water quality and drainage issues, and better reflect the initiatives of policy direction that all sections of government are taking in these areas. In particular, the Committee supports the inclusion of the Best Practice Guidelines for Stormwater Management prepared by the EPA Stormwater Committee. They should be included as an incorporated document in the VPPs when they are adopted by the EPA.

DNRE (87) submitted that planning schemes should have clearer links to the objectives of the *Water Act* 1989 and other significant government policies and approved plans for the protection of waterways and water quality.

The objective of this submission has been incorporated in the Committee's recommendation, however its view is that reference to the *Water Act* 1989 is not appropriate, as there is no greater justification for referral to this Act in the VPPs than any other act, and the VPPs could become clogged with such references. The inclusion of a reference to river restoration plans and related programs is supported, as these references do not otherwise occur in the SPPF. The Committee also supports a general reference in Clause 15.01-3 'Geographic strategies' to consider any relevant regional catchment strategy, salinity plan, regional vegetation plan, special area plan or stormwater management strategy. This recommendation will meet the requests of the Victorian Catchment and Land Protection Council (45) and the Dandenong Valley Catchment Action Committee (93) that Regional Catchment Strategies prepared under the *Catchment and Land Protection Act* 1994 be referred to in the SPPF.

One important element which is not clear from the current wording of the VPPs is that the State Standard for defining land which is subject to flooding is the one in 100 year event.

A submission that has been rejected is by Pruneau (1) that in Clause 18.09 'Water supply, sewerage and drainage', reference should be made to excluding mining from water supply catchments. This would be inconsistent with other legislative provisions designed to facilitate mining activities and no change is recommended in respect of this submission.

The Victorian Catchment and Land Protection Council (45) were of the view that reference needs to be made to groundwater resources in the SPPF. It is expected these resources will be much more extensively used in future. Preparation of a State Environment Protection Policy (Groundwaters of Victoria) is well advanced.

The Committee does not consider any specific action is necessary on this issue at the moment. It is noted that Clause 15.02 deals with the *'Protection of Waterways, Groundwater and Catchments'*, and the general implementation policies address

Flooding, Water Quality and Drainage - cont'd

groundwater together with other water resources. It would be possible to incorporate a sectoral policy dealing solely with the conservation of groundwater resources, but this would need to be developed in the longer term, when the nature of any complementary planning controls necessary to conserve this resource have been identified.

RECOMMENDATION

Clause 13 - Principles of Land Use and Development Planning

Amend the first paragraph of the section 'Regional cooperation' of Clause 13 by inserting the words in italics as follows:

'Some issues dealt with by planning and responsible authorities have impacts that extend beyond municipal boundaries. These impacts may be economic, social or environmental and particularly arise around such issues as coordinated planning for transport and water infrastructure, floodplain management, *catchment management,* water quality protection and waste management.'

Clause 15.01 - Protection of waterways, groundwater and catchments

Clause 15.01-1 - Objective

Amend Clause 15.01-1 by deleting the words indicated and adding the words in italics as follows:

'To assist the ~~prevention~~ *protection* and, where possible, ~~rectification of degradation~~ *restoration* of waterways, water bodies, groundwater, catchments and ~~the~~ marine environment*s*.'

Clause 15.01-2 - General implementation

Amend the first paragraph of Clause 15.01-2 by including the words in italics as follows:

'Planning and responsible authorities ~~must~~ *should ensure that land use and development* comply with any relevant requirements of State Environment Protection Policies as varied from time to time (Groundwaters of Victoria, Waters of Victoria and specific catchment policies) *and any best practice guidelines for stormwater adopted by the EPA.*'

Flooding, Water Quality and Drainage - cont'd

Amend the third paragraph of Clause 15.01-2 by deleting the words indicated and adding the words in italics as follows:

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

- ***the retention of natural drainage corridors and waterways to maintain the natural drainage function, protection of natural aquatic ecosystems and provide a diverse urban landscape.***
- ***the maximum retention of stormwater on site through control of impervious cover.***
- ***the minimisation and control of quantity and speed of any runoff of stormwater through retardation and flow management.***
- ***the provision of maximum opportunities for screening, sedimentation and filtration of stormwater prior to its entering main collector waterways or ultimate receiving waters.***
- **the preservation of *floodplain or other* land for wetlands and detention basins to help remove pollutants from stormwater prior to its discharge into waterways.**
- **the retention of vegetated buffer zones at least 30 m wide along waterways to maintain stream habitat and wildlife corridors, minimise erosion of stream banks and verges and to reduce polluted surface runoff from adjacent land uses.'**

Amend the fourth paragraph of Clause 15.01-2 by adding the words in italics as follows:

'Planning and responsible authorities should ensure that land use activities potentially discharging contaminated runoff or wastes to waterways are sighted and managed to minimise such discharges and to protect the quality of surface water and groundwater 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 downstream impact of water quality or flow volumes.*'

Amend the fifth paragraph of Clause 15.01-2 by adding the words in italics as follows:

'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), Environmental Guidelines for River Management Works (Department of Conservation and Environment 1990), *any relevant river restoration plans, waterway management works programs and the National Water Quality Management Strategy.'*

Flooding, Water Quality and Drainage - cont'd

Add the following new paragraphs to Clause 15.01-2:

'Planning and responsible authorities should ensure that best management practice is used in the design, construction and operation of drainage systems to reduce impacts on water quality in receiving waters, including impacts downstream of the municipality.

Responsible authorities should ensure that new developments or redevelopments are managed to minimise the impact of urban stormwater runoff on waterways, in accordance with any best practice environmental management guidelines.

Responsible authorities should recognise that the effective management of stormwater requires a whole of catchment approach and attention to small incremental impacts. Where catchments extend beyond municipal boundaries, planning and responsible authorities must ensure that in development of policies for stormwater management there are cooperative and coordinating mechanisms in place to ensure all catchment stakeholders are fully involved. '

Clause 15.01-3 - Geographic strategies

Add an additional paragraph to Clause 15.01-3 as follows:

'Planning and responsible authorities should consider any relevant regional catchment strategy, salinity plan, regional vegetation plan, special area plan or stormwater management strategy approved by a statutory authority, public land manager or the responsible authority. ;

Clause 15.02 - Floodplain management

Clause 15.02-2 - General implementation

Add an additional dot point to the third paragraph of Clause 15.02-2 as follows:

'• Any best practice guidelines for stormwater management adopted by the EPA.'

Add the words in italics to the fourth paragraph of Clause 15.02-2 as follows:

'Land affected by flooding, including high hazard floodway areas, as verified by the relevant floodplain management authority, should be shown on planning scheme maps. *Land affected by flooding is land inundated by the one in one hundred year flood event or by the largest recorded flood event.'*

Flooding, Water Quality and Drainage - cont'd

Clause 18.09 - Water supply, sewerage and drainage.

Clause 18.09-2 - General implementation

Amend the first paragraph of Clause 18.09-2 by deleting the word indicated and including the word in italics as follows:

'Water supply catchments ~~should~~ *must* be protected from possible contamination by urban, industrial and agricultural land uses.'

Amend the third paragraph of Clause 18.09-2 by adding the words in italics as follows:

'Drainage systems should be protected from the intrusion of litter in accordance with strategies set out in Victoria's Litter Reduction Strategy (EPA 1995) and the Codes of Practice of the Waste Management Council. *Planning authorities should maximise the opportunities for facilities such as litter traps, constructed wetlands etc. to be provided as a means of assisting the treatment of stormwater drainage.'*

Add two additional paragraphs to Clause 18.09-2 as follows:

'Design new urban drainage systems and retro fit existing systems to achieve flood protection and improved waterway water quality, by reducing stormwater contamination and moderating peak flows.

Planning and responsible authorities should ensure that urban development and drainage infrastructure is designed and managed to minimise the impacts of stormwater on waterways, in accordance with any best practice environmental management guidelines for urban stormwater by a statutory authority.'

General

Include Best Practice Guidelines for Stormwater Management as an incorporated document when finalised and adopted by the EPA.

13.4 CONTROL OF USE ON LAND AFFECTED BY FLOODING ZONES VERSUS OVERLAYS

Pruneau (1) was critical that the SPPF allows hazardous uses to be located on floodplains in circumstances where contact with floodwaters is prevented and the flood carrying and flood storage capacity of the floodplain is not affected. She said that this represented an unacceptable risk. She also suggested that it was not satisfactory to consider, in the case of the Rural Floodway Overlay, whether development could be located on land with a lesser flood hazard outside the land included in the overlay. She suggested that the overlay needed to identify all land with flood hazard not just that most seriously affected.

Similar concerns were expressed by the Victorian National Parks Association (48). It argued that the acceptance of uses such as piggeries and the storage of dangerous chemicals in floodplains, assumes that site design and management will operate perfectly and that all circumstances and flood magnitudes can be foreseen.

Related to this were Pruneau's concerns as to why only emergency facilities should be located outside the one in 100 year floodplain and where possible *'at levels above the height of any probable maximum flood'*.

The East Gippsland Shire Council (34) submitted that if the Rural Flood Overlay mainly exercised control over the design and location of buildings and works without altering the intent of the zone or the Section 1 Uses, there may well be resultant difficulties in decision making. It was submitted that councils should have the right to prohibit a dwelling as a Section 1 Use on a lot which is entirely within a Rural Floodway Overlay.

City of Boroondara (74) also raised the possibility of the control of uses by the Land Subject to Inundation Overlay.

The Committee believes these submissions indicate some basic misunderstandings in relation to the flooding controls. The City of Casey submission (20) reinforced this by noting that the distinction between the Urban Floodway Zone and the Rural Floodway Overlay and Land Subject to Inundation Overlay was not readily apparent to them.

As noted earlier, the State standard for flood affected land is defined as the land liable to flooding in a one in 100 year event and it is intended that areas designated as affected by flooding on planning scheme maps should adopt this definition. The *'probable maximum flood'*, such as referred to in paragraph 5 of Clause 15.02-2, is an even more severe flood. The Committee notes the obligation created by Clause 15.02-2 of the SPPF that:

> *Land affected by flooding, including high hazard floodway areas, as verified by the relevant floodplain management authority, should be shown on planning scheme maps.*

Flooding, Water Quality and Drainage - cont'd

The important distinction to be drawn when identifying land affected by flooding is between land which is in main flood paths and that which is in the flood fringe. In the former case, the application of the Urban Floodway Zone and Rural Floodway Overlay is intended; in the latter case, the Land Subject to Inundation Overlay is to be applied.

As the name implies, the Urban Floodway Zone should be applied in urban areas to main flood paths. A zone has been used as the controlling feature for these locations because a zone can control use, as well as development. It is vital in urban areas, where flood paths are usually well identified, to keep them free of obstruction in order to avoid loss of floodplain capacity, which in turn will cause further damage downstream. This is in addition to the damage caused to structures within the floodway itself and risks to public safety. The nature of urban areas is such that main floodways are usually (although not in all instances) found in some form of public or private open space. They do not occupy large areas of land by comparison to their urban surrounds. This contrasts to the situation in rural areas where frequently floodways may cover much wider swathes of land, and the flood fringe, greater areas again. It would be impractical in such circumstances to prohibit all uses except recreation, which is the use most likely to be found within the Urban Floodway Zone. In rural areas also, allotments of land are much larger. An overlay control may cut through an allotment whereas it is preferable for zone boundaries to coincide with allotment boundaries.

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.

The Committee has some sympathy with the view that certain types of uses should be prohibited on all flood affected land and in floodways in particular. However, in light of the extensive areas which might be affected by the Rural Floodway Overlay and the Land Subject to Inundation Overlay, and in light of the topographic variability even within relatively flat floodplains, the Committee believes it is acceptable that discretion in relation to uses is retained. It is possible that uses which are normally undesirable may be acceptable in limited circumstances, for example, where they meet the intents expressed in the SPPF of avoiding potential contact between polluting substances and floodwaters.

Flooding, Water Quality and Drainage - cont'd

It would be wrong to assume however, that simply because a use is not prohibited on land covered by one of the flooding overlays that it could nevertheless occur, particularly if it involved any sort of buildings or works. Even if a use is a Section 1 Use, it may still be effectively prevented by virtue of the need for a buildings and works permit under the overlay. It is important to bear in mind that it is not the use of the land which is usually objectionable, but the erection of structures or works which will impede the flow of floodwaters or reduce the capacity of the floodplain.

An important exception to this is the use of land which involves high pollution risks during flood events. The use of land for intensive animal husbandry is one instance. With respect to this, it is noted that in the rural zones, agriculture including intensive animal husbandry is a Section 2 Use, whereas in the Urban Floodway Zone all agriculture is a Section 1 Use. This seems inappropriate and the Committee considers it would be preferable for agriculture (other than extensive animal husbandry) to be included in Section 2. Extensive animal husbandry could remain as a Section 1 Use.

It should also be noted that local policies about land affected by flooding may be developed as part of the Local Planning Policy Framework to supplement policies in the SPPF. Taken together, they may well indicate that development for certain uses which are in Section 1 is not appropriate and would not be permitted, notwithstanding the status of the use as a Section 1 Use (e.g. a dwelling within a Rural Floodway Overlay). As previously discussed, the discretion to issue a permit for buildings and works even for a Section 1 Use involves a discretion to say 'no' just as much as a discretion to say 'yes'.

FENCES

Another matter raised by Pruneau (1) was the inadequacy of the approach taken to fence controls in the Urban Floodway Zone, Rural Floodway Overlay and Land Subject to Inundation Overlay.

In all cases, a permit is required to construct a building or construct or carry out works *'including a solid or paling fence'*. Exempt buildings and works listed thereafter include *'post and wire and rural type fencing'*. It was submitted that what was meant by *'rural type fencing'* was not clear and further, wire mesh fences could trap debris and therefore could be as obstructive to the free flow of water as solid fences.

The Committee agrees with these concerns. It is recommended that the reference to those works which are controlled should include simply a *'fence'*, and exempt fencing should be described as *'post and wire and post and rail fencing'*.

UTILITY INSTALLATIONS AND TRANSPORT FACILITIES

Two servicing authorities - Telstra (2) and the Public Transport Corporation (49) - sought to have further exemptions made to the buildings and works controls. Telstra sought to have *'minor utility installation'* exempted from the controls and the Public Transport Corporation wanted tramways and railways as Section 2 Uses in the Urban Floodway Zone.

Flooding, Water Quality and Drainage - cont'd

The Committee notes that the provisions of Clause 62.01, which specify buildings and works generally exempt from controls, already means that buildings and works associated with a minor utility installation or roadworks would be exempt from controls in the Urban Floodway Zone and two overlays as no permit is specifically required for such items in their provisions. It would also be possible under the Rural Floodway Overlay and the Land Subject to Inundation Overlay to include developments of this kind in a schedule to the overlay dealing with exempt developments (see Clauses 44.03-1 and 44.01-1).

The Committee does not support the request by the PTC that tramways and railways be included as Section 2 Uses in the Urban Floodway Zone. These are high hazard areas within urban localities and the extent of new uses should be severely restricted.

RECREATION USES

The City of Boroondara (74) suggested that consideration should be given to prohibiting in the Urban Floodway Zone *'indoor recreation facility'* and *'motor racing track'*, which form part of the leisure and recreation use group, which is a Section 2 Use in the Urban Floodway Zone. They noted that these two uses are currently prohibited in the Stream and Floodway Zone of the Metropolitan Schemes.

The Committee believes this is appropriate having regard to the extent of development normally associated with these uses.

FLOODPLAIN MANAGEMENT PLAN

Pruneau (1) was critical that the matters to be dealt with in a Floodplain Management Plan for the Rural Floodway Overlay sought to prevent or **reduce** the concentration or diversion of floodwater. *'Reduction'* was regarded by her as insufficiently stringent. The Committee believes that this is to misunderstand the provision, which seeks to rectify past problems as well as prevent future difficulties.

The same submittor requested that there be public input into the preparation of any Floodplain Management Plan by the responsible authority. The Committee does not consider it is appropriate that the process of preparation of such documents should be prescribed by the VPPs.

Pruneau also questioned the suitability and applicability of the standard by which development must be above the one in 100 year flood level. The Committee notes that these figures have been adopted for some time in planning documents and in building regulations, and any changes would be inappropriate. The flooding of accessways to developments other than dwellings is already included in the general provisions listed in Clause 44.03-2.

Another issue raised by Pruneau pointed out that the requirement for a Floodplain Management Plan to accompany buildings and works and subdivision applications in the Urban Floodway Zone and Rural Floodway Overlay (see Clauses 37.03-4 and 44.03-3) simply lists the matters to be included in such a plan. She suggested that there should be a requirement for accuracy in the preparation of the components of the plan, given the nature of flooding.

Flooding, Water Quality and Drainage - cont'd

DOI has modified the provisions relating to Floodplain Management Plans so that it is clear that Floodplain Management Plans are a more strategic document prepared by the responsible authority, and a *'Flood Risk Report'* is a document prepared by applicants where a Flood Management Plan has not been adopted.

DOI has incorporated these provisions, together with a number of the other changes recommended by the Committee, in new draft versions of the Urban Floodway Zone, Rural Floodway Overlay and Land Subject to Inundation Overlay. The Committee supports the revised versions of these provisions, subject to inclusion of its additional recommendations relating to agriculture and fences.

RECOMMENDATION

Clause 37.03-1 - Table of uses

Amend Section 1 of the table of uses in Clause 37.03-1 by deleting 'Agriculture' and including '*Extensive animal husbandry*'.

Amend Section 2 of the table of uses in Clause 37.03-1 by including '*Agriculture (other than Extensive animal husbandry).*'

Clause 37.03-2, Clause 44.03-1 and Clause 44.04-1 - Buildings and works

Amend the last dot point in Clause 37.03-2, Clause 44.03-1 and Clause 44.04-1 by deleting the word indicated and including the words in italics as follows:

'• Post and wire and ~~rural~~ *post and rail* type fencing.'

Clause 37.03 - Urban Floodway Zone

Clause 44.03 - Rural Floodway Overlay

Clause 44.04 - Land Subject to Inundation Overlay

Subject to the above recommendations, delete Clause 37.03, Clause 44.03 and Clause 44.04 and replace by the following:

Flooding, Water Quality and Drainage - cont'd

37.03 URBAN FLOODWAY ZONE

Shown on the planning scheme map as UFZ.

Purpose

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

To identify waterways, major flowpaths, drainage depressions and high hazard areas within urban areas which have the greatest risk and frequency of being affected by flooding.

To ensure that any development maintains the free passage and temporary storage of floodwater, minimises flood damage and is compatible with flood hazard, local drainage conditions and the minimisation of soil erosion, sedimentation and silting.

To reflect any declarations under Division 4 of Part 10 of the Water Act, 1989.

To protect water quality and waterways as natural resources in accordance with the provisions of relevant State Environment Protection Policies, and particularly in accordance with Clauses 33 and 35 of the State Environment Protection Policy (Waters of Victoria).

37.03-1 Table of uses

Section 1 - Permit not required

USE	CONDITION
Agriculture (other than Apiculture)	
Apiculture	Must meet the requirements of the Apiary Code of Practice, May 1997.
Informal outdoor recreation	
Mineral exploration	
Mining	Must meet the conditions of Clause 52.08-2.
Natural Systems	
Search for stone	Must not be costeaning or bulk sampling.

Section 2 - Permit required

USE	CONDITION
Apiculture - if the Section 1 condition is not met	
Leisure and recreation (other than Informal outdoor recreation, Indoor recreation facility and Motor racing track)	
Mineral, stone or soil extraction (other than Mineral exploration, Mining and Search for stone)	
Mining - if the Section 1 condition is not met	
Road	
Search for stone - if the Section 1	

Flooding, Water Quality and Drainage - cont'd

condition is not met

Utility installation

Section 3 - Prohibited

USE
Indoor recreation facility
Motor racing track
Any use not in Section 1 or 2

37.03-2 **Buildings and works**

A permit is required to construct a building or construct or carry out works, including a fence and any works which increase the length or height of a levee bank, embankment or road.

This does not apply to:

- Works carried out by the floodplain management authority.
- The following works in accordance with plans prepared to the satisfaction of the responsible authority:
  - The laying of underground sewerage, water and gas mains, oil pipelines, underground telephone lines and underground power lines provided they do not alter the topography of the land.
  - The erection of telephone or power lines provided they do not involve the construction of towers or poles.
- Post and wire and post and rail fencing.

37.03-3 **Subdivision**

A permit is required to subdivide land.

Unless a floodplain management plan specifically provides otherwise:

- Land may only be subdivided to realign the boundaries of existing lots provided the number of lots is not increased.
- No new lot may be created which is entirely within this zone, except to create a lot which by agreement between the owner and the relevant floodplain management authority is to be transferred to that authority for public purposes.
- If the land is partly within this zone, the area of each lot created must not be less than the minimum specified for the zone or zones in which the land is situated and at least 75 percent of the area of each lot created must be outside this zone.

37.03-4 **Application requirements**

An application must be consistent with a floodplain management plan developed for the area in accordance with best practice principles and adopted by the responsible authority in consultation with the floodplain management authority.

Flooding, Water Quality and Drainage - cont'd

37.03-6 **Flood risk report**

If a floodplain management plan has not been adopted, an application must be accompanied by a flood risk report to the satisfaction of the responsible authority which must consider the following, where applicable:

- Whether the proposed use or development could be located on flood-free land or land with a lesser flood hazard outside this zone.
- The existing use and development of the land.
- The need to prevent or reduce the concentration or diversion of floodwater, stormwater, or drainage water.
- The frequency and duration of flooding.
- The velocity and depth of flood flows.
- The effect of any development on obstruction of or redirection of flood flows, increase in flood levels, drainage and flood storage.
- The cumulative long-term effect of development on flood flows, flood levels, flow velocities, flood storage and the floodplain environment.
- The amount of flood warning that can be reliably expected.
- The susceptibility of the building or works to flooding and flood damage.
- The likely danger to occupants of the proposed building if the site or accessway is flooded.
- The need to have a floor level higher than 0.3 metre above the 1 in 100 year flood level.
- The extent and depth of flooding at any dwelling site relative to ground level (particularly if the depth of flooding in a 1 in 100 year flood is more than 0.5 metre).
- The effect of flooding on access to any dwelling site (particularly if access to a dwelling site is flooded to a depth greater than 0.5 metre relative to ground level in a 1 in 100 year flood).
- The likelihood of placing unreasonable demands on the community for restoration of losses and provision of emergency services.
- The effect of any relevant State Environment Protection Policy and in particular the provisions of Clauses 22 and 35 of the State Environment Protection Policy (Waters of Victoria).
- The effect on water quality and watercourse capacity and the need to prevent erosion.
- The extent of any changes to topography.
- The susceptibility of any proposal to instability and the erosion likely to arise from any flood or water flow.
- The conservation of natural habitats.
- The preservation of and impact on the environment.
- The effect of any development on the protection of sites of scientific significance, particularly sites identified as having botanical, zoological, geological, geomorphological, archaeological or landscape significance.
- Any comments of the waterway management authority.

37.03-6 **Referral of applications**

An application must be referred to the relevant floodplain management authority under Section 55 of the Act unless in the opinion of the responsible authority the proposal satisfies requirements or conditions previously agreed in writing between the responsible authority and the floodplain management authority.

37.03-7 **Decision guidelines**

Before deciding on an application, the responsible authority must consider, as appropriate:

- The State Planning Policy Framework and the Local Planning Policy Framework, including the Municipal Strategic Statement and local planning policies.
- The Planning Guide for Land Liable to Flooding in Victoria 1997.

Flooding, Water Quality and Drainage - cont'd

- The floodplain management plan or flood risk report.
- Any comments of the relevant waterway management authority or catchment management authority constituted under the Water Act 1989 or any other Act.

37.03-6 Advertising signs

Advertising sign requirements are at Clause 52.05. This zone is in Category 1 unless a schedule to this zone specifies a different category.

Notes: *Refer to the* State Planning Policy Framework *and the* Local Planning Policy Framework *including the* Municipal Strategic Statement *for strategies and policies which may affect the use and development of land*

Check whether an overlay also applies to the land.

Other requirements may also apply. These can be found at Particular Provisions.

Flooding, Water Quality and Drainage - cont'd

44.03 **RURAL FLOODWAY OVERLAY**

Shown on the planning scheme map as **RFO**.

Purpose

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

To identify waterways, major floodpaths, drainage depressions and high hazard areas in rural and non-urban areas which have the greatest risk and frequency of being affected by flooding.

To ensure that any development maintains the free passage and temporary storage of floodwater, minimises flood damage and is compatible with flood hazard, local drainage conditions and the minimisation of soil erosion, sedimentation and silting.

To reflect any declarations under Division 4 of Part 10 of the Water Act, 1989 if such have been made.

To protect water quality and waterways as natural resources in accordance with the provisions of relevant State Environment Protection Policies, and particularly in accordance with Clauses 33 and 35 of the State Environment Protection Policy (Waters of Victoria).

44.03-1 **Permit requirements**

Buildings and works

A permit is required to construct a building or to construct or carry out works, including a fence and any works which increase the length and height of a levee bank, embankment or road.

This does not apply to:

- Buildings or works exempted in a schedule to this overlay.
- Works carried out by the floodplain management authority.
- The following works in accordance with plans prepared to the satisfaction of the responsible authority:
  - The laying of underground sewerage, water and gas mains, oil pipelines, underground telephone lines and underground power lines provided they do not alter the topography of the land.
- The erection of telephone or power lines provided they do not involve the construction of towers or poles.
- Post and wire and post and rail fencing.

Subdivision

A permit is required to subdivide land.

Unless a floodplain management plan specifically provides otherwise:

- Land may only be subdivided to realign the boundaries of existing lots provided the number of lots is not increased.
- No new lot may be created which is entirely within this overlay, except to create a lot which by agreement between the owner and the relevant floodplain management authority is to be transferred to that authority for a public purpose.

Flooding, Water Quality and Drainage - cont'd

- If the land is partly within this overlay, at least 75 percent of the area of each lot created must be outside this overlay.

44.03-2 Application requirement

An application must be consistent with a floodplain management plan developed for the area in accordance with best practice principles and adopted by the responsible authority in consultation with the floodplain management authority.

44.03-3 Flood risk report

If a floodplain management plan has not been adopted, an application must be accompanied by a flood risk report to the satisfaction of the responsible authority which must consider the following, where applicable:

- Whether the proposed development could be located on flood-free land or land with a lesser flood hazard outside land included in this overlay.
- The existing use and development of the land.
- The need to prevent or reduce the concentration or diversion of floodwater, stormwater, or drainage water.
- The frequency and duration of flooding.
- The velocity and depth of flood flows.
- The effect of any development on obstruction of or restriction of flood flows, increase in flood levels, drainage and flood storage.
- The cumulative long-term effect of development on flood flows, flood levels, flow velocities, flood storage and the floodplain environment.
- The amount of flood warning that can be reliably expected.
- The susceptibility of the building or works to flooding and flood damage.
- The likely danger to occupants of the proposed building if the site or accessway is flooded.
- The need to have a floor level higher than 0.3 metre above the 1 in 100 year flood level.
- The extent and depth of flooding at any dwelling site relative to ground level (particularly where the depth of flooding in a 1 in 100 year flood is more than 0.5 metre).
- The effect of flooding on access to any dwelling site (particularly where access to a dwelling site is flooded to a depth greater than 0.8 metre relative to ground level in a 1 in 100 year flood).
- The likelihood of placing unreasonable demands on the community for restoration of losses and provision of emergency services.
- The effect of any relevant State Environment Protection Policy and in particular the provisions of Clauses 33 and 35 of the State Environment Protection Policy (Waters of Victoria).
- The effect on water quality and watercourse capacity and the need to prevent erosion.
- The extent of any changes to topography.
- The susceptibility of any proposal to instability and the erosion likely to arise from any flood or water flow.
- The conservation of natural habitats.
- The preservation of and impact on the environment.
- The effect of any development on the protection of sites of scientific significance, particularly sites identified as having botanical, zoological, geological, geomorphological, archaeological or landscape significance.
- Any comments of the waterway management authority.

44.03-4 Referral of applications

Flooding, Water Quality and Drainage - cont'd

An application must be referred to the relevant floodplain management authority under Section 55 of the Act unless in the opinion of the responsible authority the proposal satisfies requirements or conditions previously agreed in writing between the responsible authority and the floodplain management authority.

44.03-5 Decision guidelines

Before deciding on an application, the responsible authority must consider as appropriate:

- The State Planning Policy Framework and the Local Planning Policy Framework, including the Municipal Strategic Statement and local planning policies.
- The Planning Guide for Land Liable to Flooding in Victoria 1997
- The floodplain management plan or flood risk report.
- Any comments of the waterway management authority or catchment management authority constituted under the Water Act 1989 or any other Act.

Notes: *Refer to the* State Planning Policy Framework *and the* Local Planning Policy Framework *including the* Municipal Strategic Statement *for strategies and policies which may affect the use and development of land.*

Check the requirements of the zone which applies to the land.

Other requirements may also apply. These can be found at Particular Provisions

Flooding, Water Quality and Drainage - cont'd

44.04 LAND SUBJECT TO INUNDATION OVERLAY

Shown on the planning scheme map as **LSIO**.

Purpose

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

To identify land in urban and non-urban areas liable to inundation by overland flow, land in any flood fringe area from the 1 in 100 year flood or as designated by the floodplain management authority.

To ensure that development maintains the free passage and temporary storage of floodwaters, minimises flood damage, is compatible with the flood hazard and local drainage conditions and will not cause any significant rise in flood level or flow velocity.

To protect water quality in accordance with the provisions of relevant State Environment Protection Policies, particularly in accordance with Clauses 33 and 35 of the State Environment Protection Policy (Waters of Victoria).

44.04-1 Permit requirement

Buildings and Works

A permit is required to construct a building or to construct or carry out works, including a fence and any works which increase the height or height of a levee bank, embankment or road.

This does not apply to:

- Buildings or works exempted in the schedule to this overlay.
- Works carried out by the floodplain management authority.
- The following works in accordance with plans prepared to the satisfaction of the responsible authority:
  - The laying of underground sewerage, water and gas mains, oil pipelines, underground telephone lines and underground power lines provided they do not alter the topography of the land.
  - The erection of telephone or power lines provided they do not involve the construction of towers or poles.
- Post and wire and post and rail fencing.

Subdivision

A permit is required to subdivide land.

44.04-2 Referral of applications

An application must be referred to the relevant floodplain management authority under Section 55 of the Act unless in the opinion of the responsible authority the proposal satisfies requirements or conditions previously agreed in writing between the responsible authority and the floodplain management authority.

Flooding, Water Quality and Drainage - cont'd

44.04-3 **Decision guidelines**

Before deciding on an application the responsible authority must consider, as appropriate:

- The State Planning Policy Framework and the Local Planning Policy Framework, including the Municipal Strategic Statement and local planning policies.
- The Planning Guide for Land Liable to Flooding in Victoria 1997.
- Any floodplain management plan developed for the area in accordance with best practice principles and adopted by the responsible authority in consultation with the floodplain management authority.
- Whether the proposed development could be located on flood-free land or land with a lesser flood hazard outside land included in this overlay.
- The need to prevent or reduce the concentration or diversion of floodwater, stormwater, or drainage water.
- The frequency and duration of flooding.
- The velocity and depth of flood flows.
- The effect of any development on obstruction of or redirection of flood flows, increase in flood levels, drainage and flood storage.
- The cumulative long-term effect of development on flood flows, flood levels, flow velocities, flood storage and the floodplain environment.
- The amount of flood warning that can be reliably expected.
- The susceptibility of the building or works to flooding and flood damage.
- The likely danger to occupants of the proposed building if the site or accessway is flooded.
- The need to have a floor level higher than 0.3 metre above the 1 in 100 year flood level.
- The extent and depth of flooding at any dwelling site relative to ground level (particularly where the depth of flooding in a 1 in 100 year flood level is more than 0.3 metre).
- The effect of flooding on access to any dwelling site (in particular where access to a dwelling site is flooded to a depth greater than 0.3 metre relative to ground level in a 1 in 100 year flood level).
- The likelihood of placing unreasonable demands on the community for restoration of losses and provision of emergency services.
- The effect of any relevant State Environment Protection Policy and in particular the provisions of Clauses 22 and 35 of the State Environment Protection Policy (Waters of Victoria).
- The effect on water quality and watercourse capacity and the need to prevent erosion.
- The extent of any changes to topography.
- The susceptibility of any proposal to instability and the erosion likely to arise from any flood or water flow.
- The conservation of natural habitats.
- The preservation of, and impact on, the environment.
- The effect of any development on the protection of sites of scientific significance, particularly sites identified as having botanical, zoological, geological, geomorphological, archaeological or landscape significance.
- Any comments of a relevant waterway management authority or catchment management authority constituted under the Water Act 1989 or any other Act.

Notes: *Refer to the State Planning Policy Framework and the Local Planning Policy Framework, including the Municipal Strategic Statement, for strategies and policies which may affect the use and development of land.*

Check the requirements of the zone which applies to the land.

Other requirements may also apply. These can be found in Particular Provisions.

13.5 DECISION GUIDELINES

The EPA Stormwater Committee requested that, in situations where planning permits are required, particular stormwater considerations should be taken into account. Eight decision guidelines were suggested for inclusion in Clauses 65.01 and 65.02.

The Committee's view is that these are matters which should be taken into account in planning permit decisions, but to add the eight additional particular items to either of the existing lists of guidelines in Clause 65, would unbalance the 'generality' of those lists. It is recommended that only the most generalised of the matters recommended by the Stormwater Committee be included in Clause 65.01, namely *'whether the proposed development is designed and incorporates works which will maintain (or improve) the quality of stormwater within and exiting the site'*. The Committee considers that the more detailed matters could be specified within the overall package of Best Practice Guidelines for Stormwater Management when they are incorporated in the VPPs.

RECOMMENDATION

Clause 65 - Decision guidelines

Clause 65.01 - Approval of an application or plan

Add an additional dot point to Clause 65.01 as follows:

'• whether the proposed development is designed to maintain or improve the quality of stormwater within and exiting the site.'

13.6 NEED FOR ADDITIONAL OVERLAYS

SURCHARGE FLOWS FROM URBAN DRAINAGE SYSTEM

Pruneau (1) queried whether the Land Subject to Inundation Overlay was intended to apply to flooding arising from surcharges from urban drainage systems. The Committee is advised that in the metropolitan area, consultation between DOI, Melbourne Water and others has led to the development of an additional overlay: the *Special Building Overlay*. This is not to be confused with the Special Building Overlay existing in the VPPs, which the Committee has recommended be renamed the 'Wildfire Overlay'.

Flooding, Water Quality and Drainage - cont'd

One of the difficulties which Melbourne Water has been concerned about for many years is that there are many underground drains and watercourses within the metropolitan area that are unable to cater for the one in 100 year flood event. Overland flows and surcharge flows from the drainage system during major storms cause extensive damage to developments constructed in these locations. These are not areas which are necessarily within existing floodway management areas, floodway zones or watercourse setback areas of planning schemes. Councils often do not have knowledge of the flooding potential in such areas and consequently rarely seek advice from Melbourne Water about development applications. Whilst all subdivision applications must be referred to Melbourne Water, it is the development application which can be critical if the potential effects of flooding are to be taken into account. Consequently, many developments close to Melbourne Water main drains or non-designated watercourses are not designed to minimise the impact of flooding. Damage to such development from major storms costs the community millions of dollars per annum.

Melbourne Water regards the prevention of problems caused by flooding as a key risk management process. To overcome difficulties associated with lack of accurate data, it has invested $2.5 million to accurately map the overland flow paths of existing drains and watercourses and areas subject to inundation within the urban area of metropolitan Melbourne. This information is now available for incorporation into new planning schemes. To facilitate this incorporation, a Special Building Overlay has been developed in consultation with DOI to identify land in urban areas liable to inundation by surcharge flows from the urban drainage system or overland flow as designated by the floodplain management authority.

The Committee supports the inclusion of the Special Building Overlay in the VPPs as a useful tool in implementing the SPPF objectives relating to floodplain management and, in particular, the obligation identified in Clause 15.02-2 that:

> *Land affected by flooding, including high hazard floodway areas, as verified by the relevant floodplain management authority, should be shown on planning scheme maps.*

DRAINAGE INVESTIGATION OVERLAY

Two submissions addressed the matter of the incomplete nature of information available to planning authorities concerning flood affected land and the need for an additional overlay arising therefrom. The City of Greater Bendigo (97) suggested there could be a drainage investigation overlay for areas suspected of being affected by the one in 100 year flood, but where adequate information was not available at the time that a new planning scheme is introduced. Pruneau (1), in commenting on the policies at Clause 15.02-2, said that land affected by flooding may not be able to be verified by the relevant floodplain management authority as is required by that policy, and therefore might not be able to be included on the planning scheme maps.

Flooding, Water Quality and Drainage - cont'd

The Committee does not believe this additional flooding overlay is required. DOI advises that the zone and overlay controls may be employed even where the flooding information is provisional only.

The Committee recommends no change in respect of these submissions.

WATER SUPPLY CATCHMENTS

East Gippsland Shire Council (34), Pruneau (1), TBA Planners Pty Ltd (77), and the Victorian Catchment and Land Protection Council (45), raised the issue of whether adequate controls exist within the VPPs to control use and development within water supply catchments. An additional overlay was suggested.

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 this zone. The decision guidelines in Clause 35.02-6 already refer to the impact of proposals on water quality.

WATERCOURSES AND WETLANDS

The Victorian National Parks Association (48) and TBA Planners Pty Ltd (77) both recommended overlays to protect the environs of wetlands and, in the case of the VNPA,, watercourses. Mornington Peninsula Shire Council (82) also saw scope for a statewide Streamline and Wetlands Overlay, and the City of Hume (58) noted that within the Rural Zone, there is no schedule available which might be used to require development setbacks from watercourses.

Flooding, Water Quality and Drainage - cont'd

DNRE (87) recommended a waterway protection overlay in preference to adaptation of the generic Environmental Significance Overlay, which would allow specific waterway provisions and that aquifer intake areas, groundwater and mineral springs, could also form the subject of further overlays. The Victorian Catchment and Land Protection Council (45) supported a groundwater overlay.

Generally, the Committee believes that options for achieving the protection of all water resources, including wetlands, aquifer intake areas and mineral springs, are adequately offered by an application of the Environmental Rural Zone and the Environmental Significance Overlay. The Committee notes that the buildings and works provisions already included in the three rural zones include a requirement that permission be granted for buildings within 100m of a watercourse or designated floodplain (e.g. see fourth dot point in Clause 35.01-3).

The Committee also notes that the Environmental Significance Overlay differs from other overlays in that the decision guidelines are included in the schedule to the overlay. It would avoid these guidelines being overlooked, if the overlay provisions themselves advise that the schedule contains the decision guidelines.

DNRE also suggested that there is a need for a definition of *'watercourse'* in the VPPs, noting that *'waterway'* is defined in the *Water Act*.

The Committee supports inclusion of a definition of *'waterway'* in the VPPs. It believes *'waterway'* should be the adopted term, in the interests of consistency between the pieces of legislation. If the term is defined, it would avoid disputes arising in relation to whether there is a need for permission flowing from the buildings and works setbacks for *'waterways'* and *'floodplains'*. At the same time, consideration could be given to whether *'wetlands'* should be included in either of the definitions, or separately defined. The VPPs should adopt the definition of *'waterway'* from the *Water Act* 1989, even though it is understood to be under review by the Water Bureau at the present time.

REGIONAL DRAINAGE

Finally, there were a number of direct or implied requests for the introduction of an overlay dealing with regional drainage matters in rural areas.

Shire of Campaspe (44) submitted that the issue of surface drainage is one of major concern to Campaspe and surrounding shires in the northern irrigated regions of Victoria. At present, the planning schemes for the Shires of Moira, Shepparton and Campaspe include common special provisions relating to regional drainage works. Campaspe Shire advised that in its new planning scheme already exhibited, these provisions appear in an incorporated document: *'Uniform Local Government Planning Controls for Drainage Works'*. It is suggested, however, that drainage controls would better be included as an individual overlay in the VPPs.

Flooding, Water Quality and Drainage - cont'd

This submission was complemented by that of the Municipalities Against Salinity in Northern Victorian (39). That group advised that surface drainage is the largest component of the Shepparton Irrigation Region Salinity Management Plan Program, though only 40% of the region is currently served by regional drainage. There is consequently a need to ensure that development does not occur on land required for future drains, the routes for which are already mapped in the Shepparton Irrigation Region Surface Drainage Strategy of June 1995. That submittor also indicated that an overlay was a desirable option to control developments in the area. They recognised, however, that the Environmental Significance Overlay might be applied, and/or the drainage strategies might be referred to in the SPPF, or included as incorporated documents. That submittor also recognised that the flooding overlays might be applied to low lying land. Alternatively, they suggested a schedule could be introduced for the Rural Zone which would enable reference to regional drainage strategies as part of decision guidelines.

The Local Government Catchment Project (79) also commented that drainage issues are frequently omitted from relevant parts of the VPPs or not clearly articulated. They referred to the lack of a drainage overlay which might otherwise act as a mechanism to deal with the issue.

This matter is in part proposed to be dealt with by DOI by means of clarifying the provisions relating to *'earthworks'* in the rural zones. These changes are more fully discussed in Chapter 16.8. In summary, a permit will be required in the three rural zones to carry out *'earthworks'* as specified in a schedule to the zone. A broad definition of *'earthworks'* is included. The schedule would differentiate between earthworks *'which change the rate of flow or the discharge point of water across a property boundary'* and earthworks which *'increase the discharge of saline groundwater,* and would enable identification of those land areas where development permission would be required.

The Committee believes that these provisions would in some measure meet the need for a drainage overlay, by allowing regulation of works which might affect the free flow of water through a region. The control would be inadequate, however, to identify the route of future drains forming part of a regional drainage network. A difficulty faced under the present VPPs in this respect is that buildings and other structures associated with Section 1 Uses in the Rural Zone, such as cattle feedlots, crop grazing and extensive animal husbandry, together with certain dwellings, would not generally require development approval, unless caught by particular buildings and works control provisions. This is less problematic in the Environmental Rural Zone and the Rural Living Zone where the list of Section 1 Uses for which land might be developed as-of-right is more restricted than in the Rural Zone.

Flooding, Water Quality and Drainage - cont'd

The Committee is informed that while land to accommodate primary arterial drains in a regional drainage network may ultimately be publicly acquired, this may not occur for many years, and thus surveys of the land to be acquired will not necessarily have been completed. Further, lower order drains in the network, including community drains, will not be provided for by land acquisition or easement, but merely by planning permit and with the consent of the land owner. In such circumstances, the application of the Public Acquisition Overlay does not seem appropriate. It also does not seem appropriate to utilise the flooding overlays to achieve the control of buildings and works along drainage routes, as not all parts of the catchment could be regulated.

Consideration of the most appropriate means to incorporate planning provisions dealing with this matter is at present clouded by the infancy of the adoption of regional drainage management responsibilities (and floodplain management responsibilities) by the Catchment and Land Protection Boards established under the *Catchment and Land Protection Act* 1994.

It seems to the Committee that regional co-ordination of future drainage networks is a matter which requires planning attention and the routes of future drains should be taken into account in individual development decisions concerning land in catchments. The Committee believes that development of a regional drainage overlay seems appropriate, but it needs to be done in consultation with the bodies responsible for regional drainage under the *Catchment and Land Protection Act*. This will necessarily take some time and should respond to the Boards' evolving responsibilities. In the interim, it would seem that application of the Environmental Significance Overlay would be an option, even though the title to the overlay is a little inappropriate. Even if no changes to the VPPs are introduced immediately, the Committee also notes that *'any Catchment and Land Protection Strategy and policies applying to the land'* are matters to be taken into account in relation to exercising discretion within each of the three rural zones. Reference to catchment strategies in local policies and their incorporation as documents forming part of the scheme are also appropriate options.

Regional drainage is but one component of the broader issue of the co-ordination of land use planning by planning authorities and catchment planning to be undertaken by Catchment and Land Protection Boards under the *Catchment and Land Protection Act*. On the 1st of July 1997, the Boards were given responsibilities covering land and water management, implementation works, floodplain management and river management. The responsibilities of the Boards can be understood by reference to the objectives of the *Catchment and Land Protection Act* which are included in Section 4, namely:

> *(a) To establish a framework for the integrated and co-ordinated management of catchments which will -*

Flooding, Water Quality and Drainage - cont'd

(i) maintain and enhance long-term land productivity while also conserving the environment; and

(ii) aim to ensure that the quality of the State's land and water resources and their associated plant and animal life are maintained and enhanced;

(b) To establish processes that can be used to assess the condition of the State's land and water resources and the effectiveness of land protection measures;

(c) To establish processes to encourage and support participation of land holders, resource managers and other members of the community in catchment management and land protection;

(d) To establish and support the operations of the Victorian Catchment and Land Protection Council, Regional Catchment and Land Protection Boards and the Pest Animal Advisory Committee ...

The Act provides for the development of regional catchment strategies. The contents of strategies are specified in Section 24 and include the assessment of land and water resources of a catchment and their utilisation, assessment of land degradation, the setting of a program to promote improved land use and water resources, and to treat land degradation, and establishment of monitoring systems to assess the effectiveness of the program. Section 24(3) provides that strategies may provide for a number of matters, including land use planning. Pursuant to Section 25 a regional board may recommend to a planning authority amendments to a planning scheme to give effect to the regional strategy. Further, Section 27 of that Act provides for the development of special area plans by regional boards to deal with specific land management issues. Section 30 provides that such plans specify issues of concern, develop a program of action and allocate the responsibility for that action. The special area plan may specify the most suitable land uses for the special area *'having regard to the public interest'*, and state what land in the area can be used for what purpose. Where a special area plan has been developed it may identify the need for the *'land use conditions'* which may be served on land owners. Those land use conditions are binding on present and future land owners, and are enforceable pursuant to Section 35. Land management notices which may prohibit of regulate land use or land management practices can also be served on land owners pursuant to Section 37 and following.

While there is already some reference in the *Catchment and Land Protection Act* to the co-ordination of land use planning under that Act and that occurring under the *Planning and Environment Act*, there will obviously need to be a broad agreement between catchment boards and planning authorities about appropriate land uses if land owners are not to be frustrated by conflicting intents and regulations. TBA Planners Pty Ltd (77) expressed concern that the regional strategies prepared by the Catchment and Land Protection Boards and planning scheme provisions will have

Flooding, Water Quality and Drainage - cont'd

different foci and problems may arise. The City of Dandenong (21) submitted there was a need for a clearer link between catchment strategies and planning schemes through the VPPs, but suggested that this issue arose principally from the need for greater integration of the two Acts and that the two Acts should be combined.

Clearer reference in the VPPs to regional catchment management and the need for better links between planning schemes and other legislation were expressed by the Victorian Catchment and Land Protection Council (45), Municipalities Against Salinity in Northern Victoria (37), DNRE (87), the Rural City of Ararat (68) and the Victorian National Parks Association Incorporated (48) .

The Committee expects that the approach taken to integrated planning by planning authorities and Catchment and Land Protection Boards in the different areas of Victoria will vary, according to the particular physical characteristics and environmental resources of the region, the land use activities conducted therein, the stage of development of planning strategies, schemes and catchment policies for the region, and the resources available to the authorities and regional boards. It would be appropriate, therefore, for the State to adopt an overseeing role in relation to the various approaches. It is clearly within the purview of the Victorian Catchment and Land Protection Council, established under Section 6 of the *Catchment and Land Protection Act*, to monitor the integration of catchment planning and land use planning under the *Planning and Environment Act*. It would seem also that it could be appropriate for DOI to monitor these activities as part of its assessment of the planning reform program.

At this stage, however, the Committee does not believe that there are any changes required to the VPPs arising from the catchment management legislation. Direct and indirect reference is already made to catchment planning both in the SPPF and in relevant parts of the zone controls, especially in the decision guidelines

RECOMMENDATION

Clause 44.13 - Special Building Overlay

Add a new *Clause 44.13 'Special Building Overlay'* as follows:

Flooding, Water Quality and Drainage - cont'd

44.13 SPECIAL BUILDING OVERLAY

Shown on the planning scheme map as SBO.

Purpose

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

To identify land in urban areas liable to inundation by surcharge flows from the urban drainage system or overland flow as designated by the floodplain management authority.

To ensure that development maintains the free passage and temporary storage of floodwaters, minimises flood damage, is compatible with the flood hazard and local drainage conditions and will not cause any significant rise in flood level or flow velocity.

To protect water quality in accordance with the provisions of relevant State Environment Protection Policies, particularly in accordance with Clauses 33 and 35 of the State Environment Protection Policy (Waters of Victoria).

44.13-1 Permit requirement

Buildings and Works

A permit is required to construct a building or to construct or carry out works, including a fence and any works which increase the length or height of a levee bank, embankment or road.

This does not apply to:

- Buildings or works exempted in the schedule to this overlay.
- Works carried out by the floodplain management authority.
- The following works in accordance with plans prepared to the satisfaction of the responsible authority:
  - The laying of underground sewerage, water and gas mains, oil pipelines, underground telephone lines and underground power lines provided they do not alter the topography of the land.
  - The erection of telephone or power lines provided they do not involve the construction of towers or poles.
- Post and wire and post and rail fencing.

Subdivision

A permit is required to subdivide land.

44.13-2 Referral of applications

An application must be referred to the relevant floodplain management authority under Section 55 of the Act unless in the opinion of the responsible authority the proposal satisfies requirements or conditions previously agreed in writing between the responsible authority and the floodplain management authority.

Flooding, Water Quality and Drainage - cont'd

44.13-3 Decision guidelines

Before deciding on an application the responsible authority must consider, as appropriate:

- The State Planning Policy Framework and the Local Planning Policy Framework, including the Municipal Strategic Statement and local planning policies.
- The Planning Guide for Land Liable to Flooding in Victoria 1997.
- Any floodplain management plan developed for the area in accordance with best practice principles and adopted by the responsible authority in consultation with the floodplain management authority.
- Whether the proposed development could be located on flood-free land.
- The need to prevent or reduce the concentration or diversion of floodwater, stormwater, or drainage water.
- The frequency and duration of flooding.
- The velocity and depth of flood flows.
- The effect of any development on obstruction of or redirection of flood flows, increase in flood levels, drainage and flood storage.
- The susceptibility of the building or works to flooding and flood damage.
- The likely danger to occupants of the proposed building if the site or accessway is flooded.
- The need to have a floor level higher than 0.3 metre above the 1 in 100 year flood level.
- The extent of any changes to topography.
- The susceptibility of any proposal to instability and the erosion likely to arise from any flood or water flow.
- Any comments of a relevant waterway management authority or catchment management authority constituted under the Water Act 1989 or any other Act.

Notes: *Refer to the State Planning Policy Framework and the Local Planning Policy Framework, including the Municipal Strategic Statement, for strategies and policies which may affect the use and development of land.*

Check the requirements of the zone which applies to the land.

Other requirements may also apply. These can be found at Particular Provisions.

Clause 35.02 — Environmental Rural Zone

Add the words in italics to the third Purpose in Clause 35.02 as follows:

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

Flooding, Water Quality and Drainage - cont'd

Clause 42.01-4 - Decision guidelines

Add a new *Clause 42.01-4 'Decision guidelines'* as follows:

'Decision guidelines

Before deciding on an application, the responsible authority must consider, as appropriate:

- ***The State Planning Policy Framework and the Local Planning Policy Framework, including the Municipal Strategic Statement and local planning policies.***
- ***The environmental objectives of the relevant schedule to this Overlay.***
- ***Any decision guidelines of the relevant schedule to this Overlay.'***

Clause 35.01-3, Clause 35.02-3 and Clause 35.03-3 - Buildings and works

Add the words in italics to the last item in the fourth dot point in Clause 35.01-3, Clause 35.02-3 and Clause 35.03-3 as follows:

'. 100 metres from a watercourse, *wetlands* or designated floodplain.'

Clause 72 - General terms

Waterway

Include a definition of '*Waterway*' consistent with the definition in the Water Act 1989.

Replace the term 'watercourse' with '*waterway*' wherever this appears in the VPPs.

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14. PARTICULAR PROVISIONS

14.1 SUBDIVISION (CLAUSE 52.01)

REFERRALS

The Institute of Surveyors (50) wants subdivision referrals reduced, and suggests liaison with other policy reviews in this regard. The Association of Consulting Surveyors (89) believes Clause 52.01 and Clause 66.03 duplicate each other.

The issue of referral authorities and referrals generally is being considered by the Review of Referral Authorities Advisory Committee and these submissions will be dealt with by that committee.

OPEN SPACE

Provision is made under Section 18 of the *Subdivision Act 1988* for planning schemes to specify a different mandatory public open space provision to be provided in respect of subdivisions than that set out in the *Subdivision Act* of 5 per cent. Only a few municipalities have taken advantage of this, but the Committee considers that the VPPs should recognise the provision and make allowance for it.

RECOMMENDATION

Clause 52.01 - Subdivision

Amend Clause 52.01 by adding the following paragraph:

'A person who proposes to subdivide land must make a contribution to the municipal council for public open space in an amount specified in the schedule to this clause (being a percentage of the land intended to be used for residential, industrial or commercial purposes, or a percentage of the site value of such land, or a combination of both). If no amount is specified, a contribution for public open space may still be required under Section 18 of the Subdivision Act 1988.'

14.2 SPECIFIC SITES AND EXCLUSIONS (CLAUSE 52.03)

TIME LIMITS

Jewell Partnership (15) believes that the two years sunset clause is too restrictive and some flexibility is required, e.g. consistency with the five year commencement for major retail expansions (see Clause 17.02-2), or allowance for another date to be specified in the Incorporated Document.

Philosophically, the Committee considers that if there is to be a site specific exclusion then the development authorised should be carried out promptly. On the other hand a realistic timeframe for the particular development proposed may be greater than two years and the VPPs should acknowledge this. It is preferable for realistic time limits to be imposed at the outset rather than having an on-going series of extensions. The Clause should be amended to provide some flexibility.

IDENTIFICATION OF SPECIFIC SITES

City of Greater Dandenong (21), City of Glen Eira (46) and Mornington Peninsula Shire Council (82) submit that site specific exclusions under Clause 52.03 should either be listed in a schedule to the zone in which they arise or be highlighted in an overlay, otherwise an inspection of the zone provisions applying to that land will give a misleading impression as to the actual situation with the risk of the site specific exclusion being overlooked.

The Committee does not consider that use of an overlay is appropriate. As a general rule, overlays are not intended to control use, only buildings and works, whereas a specific site exclusion will frequently govern use. Including the site specific exclusion in a schedule to the zone would only duplicate the Schedule to Clause 52.03.

However, the Committee considers there is a need to identify specific sites subject to different controls on the planning scheme maps, so as to easily identify all relevant planning issues. This should be done by placing a notation over specific properties on relevant planning scheme maps (e.g. by the letter 'S' to identify site specific exclusions).

Particular Provisions - cont'd

RECOMMENDATION

Clause 52.03 - Specific Sites and Exclusions

In the paragraph 'Expiry of specific controls' amend the two dot points by adding the words in italics as follows:

'• The development and use is not started within two years of the approval date *or another date specified in the incorporated document.*

• The development is not completed within one year of the date of commencement of works *or another date specified in the incorporated document.'*

Planning scheme maps

Identify specific sites on zone maps by the letter 'S' to identify site specific exclusions under Clause 52.03.

14.3 CAR PARKING (CLAUSE 52.06)

Swan Hill Rural City Council (14) believes the car space requirements should allow for lesser requirements in rural cities and towns compared to metropolitan areas.

The Committee considers that this is a matter which should be dealt with in conjunction with implementation of the outcomes of the recent review of car parking policy.

Mornington Peninsula Shire Council (82) sees an anomaly with hotel car spaces being two per premises for a bar area less than 150 square metres, but 60 per 100 square metres for bar areas greater than 150 square metres.

On the face of it, there appears to be an obvious error, but these figures reflect the existing metropolitan regional car space requirements. The Committee considers that this needs to be reviewed.

The Committee notes that for shop and office, car space requirements under Clause 52.06 will use a ratio based on floorspace. The ratio is the same as the existing metropolitan regional schemes (i.e. for shop a standard requirement of eight per 100 square metres, and a reduced requirement of four per 100 square metres) but the **base** is different (i.e. '*leasable floor area'* in the VPPs as opposed to '*gross leasable floor area'* in existing schemes).

Particular Provisions - cont'd

The implications of using a different base need to be considered as to whether they will result in significant different requirements. This should be done with the introduction of the outcomes of the Car Parking Policy Review.

RECOMMENDATION

General

Incorporate outcomes of the Car Parking Policy Review in the VPPs. Assess the implications of changing the base on which car parking requirements are calculated (e.g. from 'gross leasable floorspace' to 'leasable floorspace') and apparent anomalies between the car spaces required for a hotel or tavern exceeding or not exceeding 150 square metres of public bar area.

14.4 NATIVE VEGETATION (CLAUSE 52.17)

TBA Planners state that it appears that the native vegetation retention controls have been weakened in transfer to the VPPs but does not expand.

The VNPA (48) states that:

> *This clause is simply a continuation of the existing native vegetation retention (NVR) controls. However we still (as previously) consider that some of the exemptions represent huge loopholes that could be abused. These include the cutting of wood for 'personal use', clearing of native vegetation for the construction or maintenance of 'farm structures', for driveways and structures appurtenant to a dwelling, the clearing of up to 10 ha for rabbit control and an unlimited number of 6m wide strips for 'fire prevention.'*
>
> *This review of planning controls should be looking at improving the NVR controls including whether some of the current exemptions are appropriate or excessive'.*

On the other hand, Australian Paper (62) wants the native vegetation retention controls to be reviewed to identify which private native vegetation is worthy of retention and which is commonplace and could therefore be used for plantation development.

The native vegetation retention controls were introduced into the State Section of existing planning schemes following an exhaustive public consultation process. Amendment S6 which introduced the native vegetation controls aroused much controversy. Not all points of view were able to be reconciled, and as is evident from these two submissions, there remain differences of opinion about the ambit and effect of these controls. It is not the Committee's role to undertake any review of policy as part of its review of the VPPs. Any change in policy regarding native vegetation would need to be considered separately and involve proper public consultation.

The Committee recommends no change in respect of these submissions.

Particular Provisions - cont'd

14.5 TIMBER PRODUCTION (CLAUSE 52.18)

In 1993, following extensive consultation, Amendment S13 to the State Section of all planning schemes introduced policy and planning controls in respect of timber production. It required that all timber production be carried out in accordance with the Code of Forest Practices for Timber Production - Revision No. 1, May 1989 and allowed a plantation development of up to 40 hectares to proceed without a permit.

In the Environmental Rural Zone and the Rural Living Zone timber production is a Section 2 Use. In the Rural Zone timber production is a Section 1 Use subject to the condition that:

> *The area must be no more than any area specified in the schedule to this zone. Any area specified must be at least 40 hectares.*

Timber production, if the Section 1 condition is not met, becomes a Section 2 Use in the Rural Zone. All zones where timber production is allowed require compliance with Clause 52.18.

In the *Manual for the Victoria Planning Provisions* it is stated with respect to the default provision for timber production that:

> No permit is required for timber production in the Rural Zone, however a council can specify an area in the schedule to the zone above which a permit is required. Any area specified must not be less than 40 hectares. The strategic justification should be outlined in the MSS. A Local Policy may also be included in the Local Policy section to provide a clear basis for the control and for decision making. A permit is required in the Environmental Rural and Rural Living Zones.
>
> The requirements of Clause 52.18 must be met in all three zones, including the requirement to comply with the *Code of Forest Practices for Timber Production*, whether a permit is required or not.

DNRE (87) and Johnstone (8) have drawn attention to an anomaly in Clause 52.18. In particular, Clause 52.18-3 states as follows:

> *A permit is not required to use and develop land for timber production by establishing tending and harvesting a plantation having an area of not more than 40 hectares.*

Particular Provisions - cont'd

This does not apply:

- *if the schedule to the Rural Zone specifies a different requirement for the land.*
- *if the total area of plantation (existing and proposed) on contiguous land which was in the same ownership on or after 28 October 1993 exceeds 40 hectares.*

...

First, this does not reflect the position in the Environmental Rural Zone and Rural Living Zone where a permit is required for **any** proposed plantation area.

Second, the reference to an area of '*not more than 40 hectares'*, coupled with the first two dot points in the exemption provision of Clause 52.18-3, makes it extremely confusing to know when a permit is required for timber production in the Rural Zone.

The Committee recommends the deletion of Clause 52.18-3 and the inclusion of amended conditions opposite timber production in Section 1 of the Rural Zone to better clarify the intent of the clause and to remove this anomaly. Clause 52.18 should deal only with application of the Code, decision guidelines and native vegetation removal exemptions.

Australian Paper (62) seeks the removal of any limit on the size of plantation which requires a permit for timber production in the Rural Zone.

The Committee disagrees with this submission. The area of 40 hectares was considered in detail in conjunction with Amendment S13. The VPPs in fact have this only as a minimum below which no permit is required. Councils must consciously schedule in an area of 40 hectares or more, which they must be prepared to justify, if they want a permit to be obtained for any plantation greater than this area. If no area is scheduled in, all timber production, whatever the size of plantation, will be as-of-right in the Rural Zone.

Australian Paper is concerned that councils are scheduling in areas of 40 hectares as a matter of course when preparing their new format planning schemes without sufficient justification. This is considered to be contrary to Government policy to encourage timber production on private land.

In the Committee's view, if DOI wish to strengthen understanding that timber production is to be encouraged and that councils should not place restrictions on the as-of-right use of land in rural zones for timber production without sound justification, the place to do this is in the *Manual for the Victoria Planning Provisions.*

EPA (99) and Gannawarra Shire Council (25) both requested additions to the decision guidelines in Clause 52.18. In particular, Gannawarra Shire Council submitted:

Particular Provisions - cont'd

The VPPs provide no basis for Council or proponents being required to give any consideration to adjoining uses in the rural areas. The recently released revised Forest Code of Practice is deficient in the matters which need to be addressed. The VPPs provides no basis for consideration of any matters where a plantation could impact on existing agricultural operations.

The Committee does not consider that any additional decision guidelines need to be included. The concerns raised by Gannawarra Shire Council are all encompassed by the decision guidelines set out in Clause 65.01.

The Committee recommends no change in respect of these submissions.

The Committee notes that the reference in the VPPs to the Code of Forest Practices for Timber Production should be updated to recognise its recent revision.

RECOMMENDATION

Clause 52.18-3 - Timber production by establishing a plantation

Delete Clause 52.18-3 and renumber subsequent clauses.

Clause 35.01-1 - Table of uses

Delete the conditions opposite 'timber production' in Section 1 of the Table of Uses in Clause 35.01-1 and replace by the following:

'Must meet the requirements of Clause 52.18.

The plantation area must not exceed any area specified in the schedule to this zone. Any area specified must be at least 40 hectares.

The total plantation area (existing and proposed) on contiguous land which was in the same ownership on or after 28 October 1993 must not exceed any scheduled area.

The plantation must not be within 100 metres of:

- ***Any dwelling in separate ownership.***
- ***Any land zoned for residential, business or industrial use.***
- ***Any site specified on a permit which is in force which permits a dwelling to be constructed.***

The plantation must not be within 20 metres of a powerline whether on private or public land, except with the consent of the relevant electricity supply or distribution authority.'

Particular Provisions - cont'd

General

Update all references in the VPPs to '*Code of Forest Practices for Timber Production Revision No. 2 (Department of Natural Resources and Environment, Revision 2 1996) as amended from time to time.*'

14.6 BED AND BREAKFAST (CLAUSE 52.19)

City of Yarra (12) suggests this clause should be deleted because the same requirements appear in relevant use conditions in the zones.

The Committee agrees that Clause 52.19 is unnecessary.

There has been some criticism about the number of tourists which can be accommodated without the need for a permit. It is suggested that five is an awkward number and six would be more realistic.

The Committee is unaware of the reason for selecting five tourists. It suspects that it centres around the number of car parking spaces required, which is two. If six people are permitted, this probably means three cars and three rooms. The intent of the conditions is to allow only small establishments to operate without requiring a permit. A larger bed and breakfast establishment, which may have greater potential off site impacts, may still operate but would require a permit.

In the Committee's opinion, any change to this provision should be the subject of a specific, policy-based amendment to the VPPs.

RECOMMENDATION

Clause 52.19 - Bed and Breakfast:

Delete Clause 52.19.

Particular Provisions - cont'd

14.7 PRIVATE TENNIS COURT (CLAUSE 52.21)

Mornington Peninsula Shire Council (82) wants the permit requirements clarified so an exemption from permit cannot override a buildings and works permit requirement in an overlay.

Under Clause 52.21 no permit is required for a private tennis court which is used in association with a dwelling and which meets the performance requirements specified in the Code of Practice - Private Tennis Court Development, August 1996. In defining the scope of the provision, Clause 52.21 states:

> *This does not apply where the land is identified in the planning scheme as:*
>
> - *An area of heritage significance and a permit is required to demolish or construct buildings or works.*
> - *An area which is subject to flooding and a permit is required to construct buildings or works.*
> - *An area of significant landscape or environmental significance and a permit is required to remove vegetation.*
> - *Land listed in the Schedule to Clause 52.03 (Specific sites and exclusions).*

These scoping provisions appear to have been lifted from current planning controls and do not accurately reflect the provisions of the VPPs. In particular, the Environmental Significance Overlay requires a permit for both buildings and works, and to remove vegetation. The Vegetation Protection Overlay only requires a permit to remove vegetation. In terms of flooding, there are two overlays and one zone. The Committee considers that the scope of Clause 52.21 should be more accurately described by reference to the provisions of the VPPs.

RECOMMENDATION

Clause 52.21 - Private tennis court

Amend the second paragraph of 'Scope' of Clause 52.21 by deleting it and inserting the following:

'This does not apply where the land is identified in the planning scheme as:

- ***Land within a Heritage Overlay.***
- ***Land within an Urban Floodway Zone, a Rural Floodway Overlay or a Land Subject to Inundation Overlay.***
- ***Land within an Environmental Significance Overlay, a Vegetation Protection Overlay or a Significant Landscape Overlay.***
- ***Land listed in the Schedule to Clause 52.03 (Specific sites and exclusions.)***

14.8 ADDITIONAL PARTICULAR PROVISION CLAUSES

A number of councils (e.g. City of Port Phillip (57), Melbourne (97)) request additional clauses to deal with issues such as brothels, adult sex bookshops and adult cinema, child care centres, etc., where local policy may not be sufficient as it only provides a policy rather than a control.

Some of these requests have been dealt with by the Committee in its consideration of specific uses (e.g. adult sex bookshop/adult cinema/sexually explicit adult entertainment), whilst others would require specific policy provisions to be formulated and included. The Committee considers this is beyond the scope of its Terms of Reference.

Nillumbik Shire Council (90) requests a domestic animal control to protect wildlife and to reflect some existing planning controls. The Committee considers the control of domestic animals is dealt with by other means (e.g. under a local law of the *Domestic Companion Animal Act*).

The Committee recommends no change in respect of these submissions.

15. GENERAL PROVISIONS

15.1 ADMINISTRATION OF SCHEME (CLAUSE 61)

Several submissions raised the issue of how zone boundaries are determined where they do not coincide with title boundaries.

Clause 61.06 adequately addresses this issue.

The Committee recommends no change in respect of these submissions.

15.2 EXEMPT BUILDINGS, WORKS AND SUBDIVISIONS (CLAUSE 62)

LANDSCAPING/GARDENING

In Chapter 10.1 the Committee has discussed at length the distinction between 'landscaping' and 'gardening' in the context of parks and gardens which are subject to a Heritage Overlay. It has concluded that any reference to landscaping should be removed from Clause 62.01 and replaced by the term 'gardening'. This will removal any connotation that the exemption provided by Clause 62.01 would enable contouring or earthworks normally associated with landscaping to be exempt from any control over works elsewhere in the planning scheme. It would leave unaffected however, the cultivation and maintenance of plants including grass.

RANGE OF EXEMPTIONS

City of Ballarat (11) considers there are not enough exemptions, such that too many small matters will require permits, but provides no detail as to what extra exemptions should apply. Mornington Peninsula Shire Council (82) suggests limiting the buildings and works permit requirement, either generally or in some zones to buildings greater than 1,000 square metres. City of Glen Eira (46) agrees there are too many buildings and works permit requirements in the business and industrial zones. However, City of Maroondah (61) claims the opposite.

The basis for some of these submissions is not clear. In the Committee's opinion, a balance has been struck in the VPPs between the need to control buildings and works to achieve certain planning objectives, and the need to provide certainty and flexibility. The exempt buildings and works provision in Clause 62.01 largely reflects

General Provisions - cont'd

the status quo. Where additional buildings and works controls have been introduced elsewhere in the VPPs, they are often exempt from notice requirements and third party appeals. The Committee considers that the balance which has been struck should be a matter for review in the future as part of the monitoring process of the planning reforms. However, at this stage, no change should be made.

The Committee recommends no change in respect of these submissions.

The PTC (49) submits that the provisions relating to exempt buildings and works in Clause 62.01 be amended to make clear that specified exemptions are categorically exempt from the need to gain planning permission, irrespective of other zoning and overlay controls.

The Committee disagrees with this submission as it is the clear intent of Clause 62.01 that:

> *This exemption does not apply if a permit is specifically required for any of these matters.*

Thus, there will be circumstances when it is intended that control will extend to buildings or works which would otherwise be exempt (e.g. a fence, roadworks and street furniture in the Heritage Overlay).

The Committee recommends no change in respect of this submission.

DEMOLITION

City of Port Phillip (57) submits that, to avoid ambiguity, exempt buildings and works should include demolition, unless a permit for demolition is expressly required.

Under current planning schemes, the Committee believes there is a general perception that demolition does not require a buildings and works permit unless the planning scheme specifically requires this, on the basis that 'demolition' does not fall specifically within the definition of either 'building' or 'works' under the *Planning and Environment Act*, but only falls within the general definition of 'development'. The Committee considers that it would be sensible to put the matter beyond doubt so that, unless demolition specifically requires a permit in a particular zone or overlay, no permit is required.

In making its recommendation, the Committee has confined the proposed provision to buildings. 'Building' is defined in the *Planning and Environment Act* to include a structure and part of a building or structure, fences, walls, outbuildings, service installations and other appurtenances of a building. 'Works' includes any change to the natural or existing condition or topography of land. The 'demolition of works' would introduce an element of confusion to the meaning of the term 'works'. When would a change to the existing condition of land, which was not its natural condition, be new works or the demolition of old works? For this reason, the Committee considers it is only in respect of buildings (which includes structures) that no permit should be required for demolition unless specified.

General Provisions - cont'd

KERBSIDE CAFES AND STREET TRADING

City of Melbourne (92) wants kerbside cafes and street trading buildings and works exempt so there is no duplication of control by planning schemes and local laws.

The Committee agrees with this submission.

SUBDIVISIONS

Martin (76) has sought a simpler process for boundary realignments which do not meet minimum lot areas or dimensions, but which do not create additional lots (e.g. people wishing to purchase a portion of their neighbour's land to provide for a tennis court, garden, potential building addition, improved vehicular access or whatever). He considers these should not require a planning permit but should be exempted under Clause 62.02.

Clause 62.02 exempts boundary realignments from the subdivision permit process in many defined instances (e.g. to coincide with boundary fences). However, where the result of a boundary realignment will make a lot smaller in size or dimension than a minimum specified for the zone, the Committee considers it is appropriate that a permit process apply, essentially to safeguard against misuse of this provision. If the proposed reason for the boundary realignment is justifiable, there is no reason why a permit would not be granted upon suitable conditions.

The Committee recommends no change in respect of this submission.

Eastern Energy (91) seeks an exemption for subdivision by a utility service provider required solely for a minor utility installation.

Eastern Energy submits that:

> *Many of its substations and minor utility installations, fundamental to the adequate provision of power, require the acquisition of small parcels of land. Eastern Energy is no longer 'an acquiring authority' and consequently is required to negotiate, like any other private party, for the purchase of sites for its use.*
>
> *Under the VPPs, subdivision requires a permit in all zones and there is no provision for subdivision for the purposes of a minor utility installation to be exempt from the requirements of the scheme.*

This is particularly significant in rural areas of the State where there appears to be no provision to create lots smaller in area than the minimum required in the case of a lot that is acquired for a minor utility installation.

Given that buildings and works associated with a minor utility installation are exempt under Clause 62.01, the Committee agrees there is a justification for exempting a smaller subdivision required for a minor utility installation from the need for a permit and from the minimum subdivision size set out in any zone provisions. However, this should not extend to an overlay control where a permit for subdivision may be required.

General Provisions - cont'd

RECOMMENDATION

Clause 62.01 - Exempt Buildings and Works:

Add an extra dot point to Clause 62.01 as follows:

'• Buildings and works associated with a kerbside cafe or street trading authorised by a municipal council under a local law.'

Clause 62.02 - Exempt Subdivisions:

Add an additional dot point to Clause 62.02 as follows:

'• A subdivision by a public authority or utility service provider which does not create an additional lot other than for the sole purpose of use for a minor utility installation. This exemption does not apply if a permit is required to subdivide land under any overlay.'

Clause 62.03 - Demolition

Add a new Clause 62.03 headed *'Demolition'* as follows:

'Any control in this scheme over the construction of a building does not apply to the demolition or removal of a building unless a permit is specifically required for the demolition or removal.'

15.3 EXISTING USES (CLAUSE 63)

There were no submissions about the existing use rights provisions in the VPPs. The Committee has therefore not considered these provisions. It notes the inclusion of a limitation period now required as proof of continuous use (see Clause 63.11), which is endorsed.

Because of the dramatic changes to what are now Section 1 and Section 2 Uses in various zones, the operation of the existing use provisions will need to be carefully monitored. The increasingly mixed use nature of many zones perhaps signals the time is appropriate to generally review certain notions involved in the concept of existing use rights, e.g. that non-conforming uses should be phased out and all use and development brought into conformity with the scheme. It may be time to acknowledge that most problems associated with existing uses arise from their intensification or a change in their operation and to question the usefulness of concentrating the characterisation of the purpose of the use of the land at the relevant date (see Clause 63.02).

RECOMMENDATION

General

Monitor and review the operation of Clause 63 and existing uses in general.

15.4 DECISION GUIDELINES (CLAUSE 65)

Clause 65 sets out the matters which a responsible authority must consider before deciding on any matter under a planning scheme. Whilst responsible authorities and others familiar with the planning process will be aware of these decision guidelines, someone simply turning to the particular planning controls may not be aware of the need to take into consideration those matters set out in Clause 65 in addition to the decision guidelines included within the zone, overlay or particular provision control.

It would therefore be useful to add to the beginning of every provision within the VPPs which sets out matters to be considered, that these are in addition to the matters set out in Clause 65.

NATIVE VEGETATION PROTECTION

The VNPA (48) suggests that the second last dot point of Clause 65.01 should read:

- *Whether native vegetation can be protected or allowed to regenerate or is to be planted.*

The provision currently reads as follows:

- *Whether native vegetation is to be or can be protected, planted or allowed to regenerate.*

It was submitted that native vegetation should always be protected or allowed to regenerate where this is feasible.

The Committee does not consider that the proposed change to this provision would add anything. The effect of the provision is to require a responsible authority to take into consideration what is going to happen to native vegetation. In doing this, it should be guided by Clause 15.09 relating to conservation of native flora and fauna in the SPPF and, if relevant, Clause 52.17, which is the particular provision relating to native vegetation. The way in which the provision in Clause 65.01 is worded is not likely to influence a responsible authority's consideration in the way implied by the VNPPA.

The Committee recommends no change in respect of this submission.

General Provisions cont'd

LEGITIMATE EXPECTATIONS

Burnet (104) submitted that legitimate expectations should be one of the decision guidelines a responsible authority must consider before deciding on an application. It was suggested that the following matters be included amongst the decision guidelines:

- *The legitimate expectations of the applicant that are implicit in the wording of the Shire Plan in respect of the particular zone.*
- *The extent to which the planning implications of the particular application do not conform to the generality of circumstances that lead to the creation of the zone in its present form.*

In the Committee's opinion, the inclusion of any such decision guidelines would add uncertainty to planning schemes and do not accord with what is generally accepted as being appropriate to be taken into consideration when making a decision about an application. The AAT, in a recent appeal, *TCH Homes Pty Ltd v. City of Stonnington* (Appeal No. 1997/11813), discussed in some detail the question of legitimate expectations and made it quite clear that 'legitimate expectations' cannot be formed independently of planning scheme requirements. The Tribunal then quoted from the case of *Peech v. City of Yarra* (Appeal No. 1994/44650) as follows:

> *A reasonable expectation must surely be based on the planning framework itself, it is reasonable to expect that any proposal will be responsibly and expertly dealt with by responsible authorities and on appeal the Tribunal, but in the Tribunal's mind it is doubtful that reasonable expectations should go beyond this. Perhaps reasonable expectations are another way of expressing ordinary planning concepts such as amenity and orderly planning as established in planning schemes.*
>
> (The Tribunal's underling.)

The Committee recommends no change in respect of this submission.

RECOMMENDATION

Decision Guidelines:

Add to the beginning of all provisions of the VPPs where there are 'Decision guidelines' the words in italics as follows:

'In addition to the matters set out in Clause 65 ...;

General Provisions cont'd

15.5 REFERRALS

There were a number of submissions about the referral provisions in the VPPs. Another Advisory Committee is currently undertaking a Review of Referral Authorities. Submissions relating to referrals and referral authorities have been forwarded to that Advisory Committee and will be dealt with by it.

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16. SPECIFIC USES AND DEFINITIONS

16.1 ADULT SEX BOOKSHOP/ADULT CINEMA/ SEXUALLY EXPLICIT ADULT ENTERTAINMENT

Henshall Hansen (10) and Melbourne City Council (92) raise concerns, from very different perspectives, on the treatment of adult sex bookshops and adult cinemas.

Henshall Hansen, who act on behalf of several owners and operators of adult sex bookshops, draw attention to the extreme difficulty of finding suitable locations which comply with the conditions applicable to adult sex bookshops of being at least 200 metres from a residential zone or Business 5 Zone etc. This distance must be measured 'as the crow flies', regardless of whether there are railway lines or other barriers which prevent access on foot. According to Henshall Hansen, the preferred location of adult sex bookshops is within business zones, not industrial zones, but there are few strip commercial centres, particularly in the inner and middle suburbs of Melbourne, more than 200 metres from a residential zone.

Melbourne City Council submits that the VPPs should include a new definition and a planning permit requirement for sexually explicit adult entertainment. At the moment, there are no direct mechanisms to regulate sexually explicit adult entertainment such as table top dancing venues and men's clubs. These activities currently operate in licensed premises and are only indirectly controlled through the liquor licensing provisions as ancillary activities to the licensed premises. City of Melbourne submits such activities have become specific activities in their own right, warranting planning consideration. They can have socially undesirable and amenity impacts in particular locations, especially where a number of similar premises congregate.

City of Melbourne also submit that adult cinemas are similar to adult sex bookshops and may have socially undesirable impacts in particular locations. Under the VPPs as they currently stand, an adult cinema may be interpreted as a cinema, which is a Section 1 Use in zones such as the Business 1 Zone.

The Committee is aware that the traditional activities of adult sex bookshops are expanding by the inclusion of peep shows and adult cinemas. The Committee is advised that with venues offering sexually explicit entertainment, it is the off-site behaviour of patrons after leaving the premises, or moving between premises, coupled with the effects of alcohol, which creates the socially undesirable and amenity impacts complained of. (This is unlike brothels, which, on the information available to the Committee, occasion no similar adverse off-site impacts.)

Specific Uses and Definitions - cont'd

The Committee has been advised by DOI that the Prostitution Advisory Committee under the *Prostitution Act* is currently conducting a review which is expected to make recommendations about brothels and sexually explicit entertainment shortly. The Minister intends to wait until this report is received before taking any action about adult sex bookshops or related matters. In addition, although the different distance specified for adult sex bookshop and brothel is recognised as a anomaly, the Minister will need to consult with the Attorney-General before any changes to these matters are made, and this too will need to wait for a decision.

Notwithstanding this, the VPPs Advisory Committee considers that there is no justification in measuring the distance between an adult sex bookshop and a residential zone 'as the crow flies'. Where the reason for a spatial separation between uses or zones is based on the access by people between the uses or zones (as distinct from being a buffer against noise, air emissions, light or other emissions), the distance should be measured by the shortest route reasonably accessible on foot.

The Committee also considers that the changing nature of adult sex bookshops, in terms of the range of activities and products offered, means that the term 'bookshop' is now a misnomer. The Committee recommends that the uses of adult sex bookshop, adult cinema and sexually explicit adult entertainment should be combined and renamed 'adult sex centre'. The Committee does not see great merit in attempting to distinguish between the type of goods sold or entertainment provided. Increasingly, as with other types of uses such as retailing and cinema based entertainment facilities, the boundaries between activities are becoming blurred. Planning should be concerned with likely off-site impacts rather than regulating what occurs inside the premises, which is best left to other legislation, including the *Prostitution Act*, the *Liquor Licensing Act* and the *Classification of Films and Publications Act*.

A separate definition of adult sex centre, which collapses the current distinctions between adult sex bookshop, adult cinema and sexually explicit adult entertainment, would give councils planning control over the full ambit of sexually explicit activities (other than prostitution) they are currently concerned about and the ability to determine suitable locations for such premises on their individual merits according to the type of activities to be provided or goods sold. It would not obviate a permit being required for a hotel or other licensed premises if liquor was to be sold. In other words, an adult sex centre would be a separate use for which a permit is required irrespective of whether the land is used for any other purpose, e.g. a hotel. It would not be possible to argue that an adult sex centre is ancillary to any other use.

Initially, the Committee recommends that a condition be included in respect of all adult sex centres that they be at least 200 metres from a residential zone or Business 5 Zone etc., measured via the shortest route reasonably accessible on foot. If alternative or additional requirements or guidelines are subsequently developed, they may be included in the VPPs as a particular provision.

Specific Uses and Definitions - cont'd

If a definition for adult sex centre is introduced, the Committee does not consider it should be nested with 'shop' nor with 'place of assembly'. It should be a term that is not nested, similar to brothel. The Committee recommends that the use be included in all those zones where adult sex bookshop is currently included.

The Committee considers that the issues raised by Henshall Hansen and the City of Melbourne need to be dealt with in a planning context promptly and that the action recommended by the Committee will not compromise the review currently underway involving the *Prostitution Act*, which essentially relates to a different matter.

RECOMMENDATION

Clause 74 - Land Use Terms

Adult sex bookshop

Delete the definition of 'adult sex bookshop'.

Adult sex centre

Include the following definition of '*adult sex centre*':

'Adult sex centre Land used to:

a) provide live sexually explicit entertainment for adults only. It may include the provision of food and drink;

b) show films or provide screen-based entertainment to the public where the majority of films shown or entertainment provided are classified as restricted under the Classification of Films and Publications Act 1990;

c) sell or hire sexually explicit material, including:

- ***publications classified as restricted under the Classification of Films and Publications Act 1990;***
- ***visual media containing explicit exhibition of sexual activity; and***
- ***materials and devices (other than contraceptives and medical treatments) used in conjunction with sexual behaviour.'***

Specific Uses and Definitions - cont'd

All zones -Uses

Replace the use 'adult sex bookshop' with the use '*adult sex centre*' in all zones where it is referred to.

Change the condition applicable to the use 'adult sex bookshop' to a condition applicable to the use '*adult sex centre*' in all zones where this appears and amend the condition by including the words in italics to read as follows:

'Must be at least 200 metres *(measured by the shortest route reasonably accessible on foot)* from a residential zone or Business 5 Zone, land used for a hospital or school or land in a Public Acquisition Overlay to be acquired for a hospital or school.'

16.2 BEEKEEPING

Victorian Apiarists' Association Inc. (73) made an extensive submission regarding beekeeping. One of the main points was that the term '*beekeeping*' should be changed to the term '*apiary*'. Beekeeping has recently been the subject of an Advisory Committee Report and provisions relating to beekeeping were subsequently introduced into all planning schemes in Victoria by Amendment S44. The Victorian Apiarists' Association made submissions to this Advisory Committee, many of which are repeated in this submission on the VPPs. The Committee recommends no change in respect of this submission.

The Victorian National Parks Association (48) wants a consistency in respect of beekeeping within buffer distances to Reference Areas in rural zones and public land zones. There is presently a condition on beekeeping in the public land zones which prohibits the use inside a two kilometre distance of Reference Areas.

East Gippsland Shire Council (34) notes that a permit will be needed for beekeeping in all rural zones because it is included in the definition of animal husbandry which in turn is included in agriculture, which is a Section 2 Use in the rural zones.

The Committee is advised that the substance of the provisions of Amendment S44 will be included in the VPPs and most of these concerns will be addressed. Given the recent consideration of this subject, it would be inappropriate to make any further policy alterations at this stage.

RECOMMENDATION

General

Incorporate the substance of the provisions of Amendment S44 into the VPPs.

16.3 BOAT SALES

Tract Consultants (53) notes that boat sales is not separately listed in a similar way that car sales is.

A definition exists for 'motor vehicle, boat or caravan sales'. Boat sales is obviously a category of this and does not need separate treatment in the VPPs. A local policy could encourage boat sales adjacent to a marina etc.

The Committee recommends no change in respect of this submission.

16.4 BUILDINGS, WORKS AND ROAD

Yarra City Council (12), Port Phillip City Council (57) and the National Trust (34) variously want 'buildings', 'works' and 'road' defined.

These terms are defined in the *Planning and Environment Act 1987*. Clause 71 of the VPPs picks up these definitions.

The Committee recommends no change in respect of these submissions.

16.5 CARETAKER'S HOUSE

The City of Yarra (12) wants the definition of 'caretaker's house' limited to avoid the manipulation of the current definition to allow an effective separate dwelling. City of Yarra submits:

> *Industrial buildings located within the municipality are experiencing market pressure for conversion to residential use. The establishment of quasi residential uses in these areas undermines the integrity of the municipality's important industrial base. These residential conversions have been made possible by the broad definition of Caretaker's house. The definition can be interpreted to included a dwelling with an ancillary home occupation/business use. For this reason, it has been difficult to Council to defend a decision to refuse the use of these 'Caretaker's houses' at the Administrative Appeals Tribunal.*
>
> *We would like a more 'traditional' concept of caretaker's house to be used in the definition section of the VPP. This would ensure that new caretaker's houses established in industrial and mixed business areas are ancillary to legitimate industries and businesses.*

Caretaker's house in the current Metropolitan Regional Section of planning schemes is defined as:

> *A dwelling occupied by the owner or manager of an industry, business or community or religious establishment conducted on the site, or by a person who has care of the building or plant of the industry, business or establishment.*

Specific Uses and Definitions - cont'd

Caretaker's house in the VPPs is defined as:

> *A dwelling on the same site as a building, operation, or plant, and occupied by an owner or supervisor of that building, operation or plant.*

The Committee is aware that the current definition of caretaker's house gives rise to problems not only in the City of Yarra, but in rural areas where it is used as a mechanism to gain an additional house over and above other dwelling entitlements.

The definition in the VPPs has been modified somewhat, in particular by removing the reference to business and confining its operation to the site of a building, operation, or plant. This should overcome the specific problem identified by the City of Yarra. However, by enabling the dwelling to be occupied by an owner of the building, operation or plant, the nexus between the dwelling and the supervision of the building, operation or plant is not necessarily present. The definition may continue to be used to allow construction of a dwelling for an owner in a location where dwelling might otherwise be prohibited without the need having to be established that the presence of the dwelling is necessary for the proper supervision of the building, operation or plant on the site.

In the Committee's opinion, a caretaker's house should be linked to the need for supervision of the building, operation or plant on the site and it is irrelevant whether this is carried out by the owner or some other person. For this reason the Committee recommends that reference to occupation by an owner be deleted from the definition.

RECOMMENDATION

Clause 74 - Use of land terms

Caretaker's House

Delete the words indicated in the definition of 'caretaker's house' to read as follows:

'Caretaker's house	**A dwelling on the same site as a building, operation, or plant, and occupied by a~~n owner or~~ supervisor of that building, operation, or plant.** '

Specific Uses and Definitions - cont'd

16.6 CATTLE FEEDLOTS

RELATIONSHIP BETWEEN ZONE CONDITIONS AND CLAUSE 52.26

EPA (99) comments that the Particular Provisions for cattle feedlots at Clause 52.26 would be more useful if they included decision guidelines and application requirements.

The Committee notes that the provisions of Clause 52.26 require that all cattle feedlots comply with the Victorian Code for Cattle Feedlots - August 1995. The Code incorporates detailed objectives, accepted standards and approved measures applying to cattle feedlots, together with information about site selection, approved locations and sizes, appropriate design and construction, information about the control of odour, noise and effluent, standards for traffic, parking and landscaping, and a special chapter on planning considerations. In the Committee's view, matters to guide the consideration of cattle feedlots are exhaustively included in the Code and which, when added to the general matters for consideration listed at Clause 65.01 of the VPPs, are more than adequate to guide discretion.

In examining the provisions in relation to cattle feedlots, the Committee has come to the view, however, that certain problems arise because of the structure of the cattle feedlot provisions at Clause 52.26. In somewhat unusual fashion, this Clause includes not only a *'Requirements to be met'* section and a *'Permit not required'* section, but also a *'Permit required'* section. It is the presence of both the permit-not-required and permit-required sections that produce difficulties of interpretation.

The Committee recognises this structure has been drawn from the current State provisions of schemes. The permit-not-required section indicates that no planning permission is required for the use or development of a cattle feedlot if the total number of cattle to be housed in the cattle feedlot is 1,000 or less and three conditions are complied with. The permit-required section, however, imposes a requirement for permission for the use or development of a cattle feedlot housing more than 1,000 cattle, but does not impose a requirement for permission in the case of a feedlot with less than 1,000 cattle where the provisions of the permit-not-required section are not met. Instead, the permit-required section includes an additional clause which provides that if only the second of the three conditions which would otherwise exempt applications from the need for permission, is not complied with, then a planning permit is required for the use and development - unless the cattle feedlot is prohibited (and by this it is understood to mean prohibited by inclusion in Appendix 2 of the Victorian Code for Cattle Feedlots - August 1995). It would also seem, by reference to the earlier *'Requirements to be met'* section, that if the first of the conditions required to be complied with in order to gain exemption from the need for planning permission, is not met, that cattle feedlot becomes prohibited, in so far

Specific Uses and Definitions - cont'd

as it would not be designed, constructed and used in accordance with the Code for Cattle Feedlots. Further, the permit-required section does not include a provision that if the third of the conditions affording exemption from the need for planning permission is not met, then a permit is required. That third condition is *'siting of the feedlot works area is to the satisfaction of the responsible authority'*.

The Committee's view is that confusion arises because of the inclusion of both a permit-not-required and a permit-required section, where the obverse of the provisions in each section are not provided in the alternative section. This approach is contrary to the general approach adopted in the VPPs of setting out the requirements to be met by specific uses in the Particular Provisions section and cross-referencing compliance with those requirements to the use and its conditions in the table of uses for each zone.

In the Committee's opinion, all cattle feedlots should be required to meet the requirements of Clause 52.26. If these requirements are not met, then the use of land for cattle feedlot should be prohibited. The conditions column of the table of uses should determine whether the use is Section 1 (permit-not-required) or Section 2 (permit-required). It is inappropriate for there to be confusing and conflicting provisions relating to the need or otherwise for a permit between the table of uses in a zone and the Particular Provisions section of Clause 56.26.

The Committee notes that pursuant to Clause 66.04, the Minister for Agriculture and Resources is a referral authority for all applications to use or develop land for a cattle feedlot. A referral will only be required however, where a permit is required, not where cattle feedlot is a Section 1 Use. In this case, it would appear from the wording of the first dot point in the permit-not-required section of Clause 52.26 that even though a permit is not required for a cattle feedlot where the total number of cattle to be housed is 1,000 or less, the layout, siting and design of the feed lot still needs to be to the satisfaction of the responsible authority, *'following consultation with the Minister for Agriculture'*.

This is one of the 'informal referrals' which the VPPs should be trying to eliminate (see Review of Referral Authorities). In line with the objective of making more uses performance-based, particularly where there are codes of practice or best practice guidelines, it seems preferable to make it a requirement of the planning scheme that all uses comply with such codes of practice or best practice guidelines to the satisfaction of the responsible authority. If the responsible authority needs to consult with any other organisation or authority to determine if the code or guidelines are complied with, the onus rests with the responsible authority to do so. It is not necessary however, to provide a vague requirement to *'consult'* with that organisation or authority for which no time lines apply and which are without clearly defined appeal mechanisms. With respect to cattle feedlots, the Committee considers that the provisions in Clause 52.18 requiring timber production to comply with the Code of Forest Practices for Timber Production provide a good model.

Specific Uses and Definitions - cont'd

DEFINITION OF CATTLE FEEDLOT

DNRE (66) expressed concerns that the current definition of cattle feedlots in the State Section of all planning schemes (as inserted by Amendment S45) and in the VPPs, is not consistent with that introduced earlier by Amendment S41 at the time of the introduction of the Victorian Code for Cattle Feedlots. The Department is of the view that the S41 definition is to be preferred, as the definition in the scheme should accord with that in the Victorian Code for Cattle Feedlots, which is not intended to apply to **all** situations where cattle are restrained for intensive feeding, such as the rearing of calves.

The definition of cattle feedlot appearing in the VPPs is:

> *Land used to keep and fatten cattle which are restrained by pens or enclosures and intensively fed.*

'Cattle feedlot' is included in '*intensive animal husbandry'* within the agriculture group of land use terms in the VPPs.

The Code definition of cattle feedlot which was included in the State Section of all planning schemes reads as follows:

> ***Cattle Feedlot*** *land on which cattle are restrained by pens or enclosures for the purposes of intensive feeding and includes any structure, work or area:-*
>
> *(a) in which such cattle are handled, fed, loaded and unloaded;*
>
> *(b) where the animal wastes from the feedlot are accumulated or treated pending removal or disposal;*
>
> *(c) where the animal wastes from the feedlot are treated, placed or dispersed on the land;*
>
> *(d) in which facilities for feeding such cattle are maintained and the feed for such cattle is stored; and*
>
> *(e) set aside for the purpose of landscaping and planting of vegetation.*
>
> *It does not include any area in which cattle are penned or enclosed for:*
>
> *(a) grazing;*
>
> *(b) hand feeding prior to 12 weeks of age for weaning, or the provision of subsistence rations due to fodder shortage, abnormal seasonal conditions or other like events; and*
>
> *(c) the provision of supplementary rations for cattle which have daily access to pasture.*

Specific Uses and Definitions - cont'd

The Committee considers that this definition is too lengthy for inclusion in the VPPs. In addition, it refers to a range of development issues which it is not appropriate to include in land use terms within the VPPs, according to the philosophy which has guided other definitions.

The Committee supports the view that there should be consistency between the Code and the VPP definition, but believes that the definitions of *'cattle feedlot'*, and *'intensive animal husbandry'*, together with the definition of *'extensive animal husbandry'*, in the VPPs generally make it clear that those matters exempted from the definition of cattle feedlot in the Code are also exempted from the VPPs definition. The Code provides for example, that *'hand feeding prior to 12 weeks of age or for weaning, or for the provision of subsistence rations due to fodder shortage, abnormal seasonal conditions or other like events'* and *'the provision of supplementary rations for cattle which have daily access to pasture'* are not activities which are incorporated in the definition of cattle feedlot. Under the VPPs, the definition of *'extensive animal husbandry'* indicates that the use includes:

a) emergency and supplementary feeding; and

b) incidental penning and housing of animals, including birds, for brooding, weaning, dipping or other husbandry purposes.

In the Committee's view, this largely ensures the coincidence of the definition under the Code and the VPPs. However, to avoid circumstances where it might be argued that certain activities associated with a cattle feedlot are excluded from the need for planning permission because they fall within the definition of *'extensive animal husbandry'*, the Committee believes it would be appropriate to modify the definition of *'intensive animal husbandry'* by adding to the matters which are **not** included in the definition, the following:

a) emergency and supplementary feeding; or

b) the penning and housing of animals, including birds, for brooding, weaning, dipping, or other husbandry purposes,

where incidental to the use of land for extensive animal husbandry

The Committee realises that this is departing from DOI policy to minimise any *'it does not include'* sections in definitions, but in the circumstances, where such a section already occurs in the definition, we believe that it is warranted.

LOCATION OF CATTLE FEEDLOTS

Pruneau (1) was concerned that the provisions of Clause 52.26 might result in cattle feedlots being permitted in local water catchments and in flood prone areas, which she saw as inconsistent with the protection of the environment and public health.

Specific Uses and Definitions - cont'd

The Committee notes that reference to the Victorian Code for Cattle Feedlots indicates that feedlots are prohibited in many catchment areas as specified in Appendix 2 of the Code, and the site selection provisions indicate that feedlot works areas are to be located above the level of a one in 100 year flood or outside areas of flood prone land.

Pruneau also made similar comments in relation to the referral requirements of Clause 66.04, which would see cattle feedlots referred to the Minister for Agriculture and Resources; where the site is located within a special water supply catchment area under the *Catchment and Land Protection Act* 1994, to the relevant water authority and the Secretary of the Department administering the *Catchment and Land Protection Act*; and where the number of cattle to be housed in the feedlot exceeds 5,000, referral to the EPA. Pruneau's concerns seem to relate to the undesirability of cattle feedlots ever being located in water supply catchment areas. However, the Committee feels that factors such as the number of cattle to be housed, and the distance from watercourses etc could lead to the use being acceptable in certain circumstances. It is something which should be considered on the merits of each case.

RECOMMENDATION

Clause 52.26 - Cattle feedlot

Amend Clause 52.26 by deleting the paragraphs headed 'Requirements to be met', 'Permit-not-required' and 'Permit-required', and adding the following paragraph:

'Requirements to be met

All use and development of cattle feedlots must comply with the comply with the Victorian Code for Cattle Feedlots - August 1995.

The Code must be complied with to the satisfaction of the responsible authority.'

Specific Uses and Definitions - cont'd

Clause 35.0-1 Table of uses

Amend Section 1 of the table of uses in Clause 35.01-1 by including the following additional conditions opposite the use 'Cattle feedlot':

'Site must be located outside a special water supply catchment under the Catchment and Land Protection Act 1994.

'Site must be located outside a catchment area listed in Appendix 2 of the Victorian Code for Cattle Feedlots - August 1995.'

Amend Section 2 of the table of uses in Clause 35.01-1 by deleting the words indicated and adding the words in italics to the use and conditions relating to 'Cattle feedlot' to read as follows:

'Cattle feedlot - if the Section 1 conditions ~~is~~ *are* not met	**Must meet the requirements of Clause 52.26.**
Site must be located outside a	***catchment area listed in Appendix 2 of the Victorian Code for Cattle Feedlots - August 1995.***

Clause 74 - Land use terms

<u>Intensive animal husbandry</u>

Amend the definition of 'Intensive animal husbandry' by deleting the words indicated and adding the words in italics to read as follows:

'Land used to keep or breed farm animals , including birds, by importing most food from outside the enclosures. It does not include ~~an abattoir or sale yard~~:

a) an abattoir or sale yard;

b) emergency and supplementary feeding where incidental to the use of land for extensive animal husbandry; or

c) the penning and housing of animals, including birds, for brooding, weaning, dipping, or other husbandry purposes where incidental to the use of land for extensive animal husbandry.'

Specific Uses and Definitions - cont'd

16.7 CINEMAS

Cinema based entertainment facilities were the subject of an advisory committee review completed in 1996. The recommendations of the committee have been adopted by the Minister. The Advisory Committee made the following recommendations relating to the incorporation of definitions and policy in planning schemes:

Recommended Definitions

'Cinema' a place where screen based entertainment or information is provided to the public.

'Place of assembly' does not include a cinema with facilities exceeding 500 seats or a cinema based entertainment facility.

'Cinema based entertainment facility' a cinema with 500 seats or more which may have associated eating, sporting, amusement, entertainment leisure and related retail facilities.

Policy Principles

The principles to underline the policies for cinema based entertainment facility developments are:

1. the need for flexibility to respond to innovation and market demand;
2. net community benefit;
3. the objectives of planning in Victoria embodied in Section 4 of the *Planning and Environment Act 1987*.

Recommended Policy

1. Given their ability to develop a synergy with other activities which will reinforce the viability, perceived safety and sense of place or community at established activity centres, cinema based entertainment facilities should be encouraged to locate within or at the periphery of established activity centres.
2. Locations outside activity centres or on freestanding sites are not encouraged but land use policy and the needs of business may be reviewed if it can be established that a new activity centre should be created. The onus will be on the applicant to show how a net community benefit will be derived at the strategic level.

Specific Uses and Definitions - cont'd

3. Cinema based entertainment facilities should not require a permit for use in zones appropriate for activity centres but should require a permit for buildings and works and car parking so that local amenity, traffic and other off-site impacts pertaining to a particular proposal can be examined and satisfactorily resolved.

Implementation of Policy:

1. The recommended policy be incorporated into the state and regional schemes as appropriate;

2. The recommended definitions be incorporated into all planning schemes as appropriate.

3. Cinema based entertainment facilities should be made a permitted or discretionary use in appropriate business and commercial zones which apply to activity centres.

4. In zones where cinema based entertainment facilities may be located associated buildings works and car parking should be made the subject of permit approval to enable assessment of the specific impacts of the proposed use.

5. Cinema based entertainment facilities should be made a prohibited use in all other zones.

6. Proposals for cinema based entertainment facilities in zones other than those where the use is permitted or discretionary should be reviewed in a strategic context and through a strategic planning process including a requirement to amend the planning scheme by the rezoning of appropriate land.

Cinema is a Section 1 Use in the Business 1 Zone. It is not defined specifically in the VPPs but is included in place of assembly. Place of assembly is a Section 2 Use in most zones other than the Industrial 2 Zone.

The policy recommendations of the Advisory Committee have been incorporated in the SPPF in Clause 17.02-2 in the following terms:

> *Cinema based entertainment facilities should be located within or on the periphery of existing or planned activity centres and should not require a permit for use in activity centre zones. Such facilities are not encouraged on free-standing sites.*

In order to overcome the practical problems, which gave rise to the Review of Cinema Based Entertainment Facilities, associated with cinema being included in place of assembly and to give effect to the adopted recommendations of the Review of Cinema Based Entertainment Facilities, the Committee recommends that definitions of ‘cinema’ and ‘cinema based entertainment’ facility are included in the VPPs and amendments made to the definition of place of assembly. In line with the

Specific Uses and Definitions - cont'd

philosophy underlying the way in which definitions in the VPPs are written, it is not recommended that the definition of place of assembly exclude a cinema based entertainment facility. Rather, this exclusion should be included in the table of uses in appropriate zones. Cinema and cinema based entertainment facility should be Section 1 Uses in the Business 1 Zone, with place of assembly (other than cinema and cinema based entertainment facility) a Section 2 Use. In other business zones, the Mixed Use Zone and the Township Zone place of assembly, which includes cinema and cinema based entertainment facility, would be a Section 2 Use (listed or unlisted). In all other zones, cinema based entertainment facility would be a Section 3 Use. Whilst cinema may be a Section 2 Use in other zones, depending on whether place of assembly was in Section 2, it is only cinemas of less than 500 seats which could be considered. This arrangement will set the framework for enabling applications involving cinemas and cinema based entertainment facilities to be considered in accordance with the SPPF and any Local Planning Policy Framework.

RECOMMENDATION

Clause 74 - Land use terms

Cinema

Include a definition of 'cinema' as follows:

'Cinema a place where screen based entertainment or information is provided to the public.'

Cinema based entertainment facility

Include a new land use term and definition for *'cinema based entertainment facility'* as follows:

'Cinema based entertainment facility ***a cinema with 500 seats or more which may have associated eating, sporting, amusement, entertainment, leisure and related retail facilities.'***

Include *'cinema based entertainment facility'* in 'place of assembly' and the place of assembly group where appropriate.

Clause 34.01-1 - Table of uses

Amend the table of uses in Clause 34.01-1 by including *'cinema based entertainment facility'* in Section 1.

Specific Uses and Definitions - cont'd

Clause 32.01-1, Clause 32.02-1, Clause 32.03-1, Clause 33.01-1, Clause 33.03-1, Clause 35.01-1, Clause 35.02-1, Clause 35.03-1, Clause 36.01-1 and Clause 36.02-1 - Table of uses

Amend the table of uses in Clause 32.01-1, Clause 32.02-1, Clause 32.03-1, Clause 33.01-1, Clause 33.03-1, Clause 35.01-1, Clause 35.02-1, Clause 35.03-1, Clause 36.01-1 and Clause 36.02-1 by including '*cinema based entertainment facility*' in Section 3 and including '*place of assembly (other than cinema based entertainment facility)*' in Section 2.

16.8 EARTHWORKS AND LAND FORMING

There was a significant response by submittors to the proposed controls in the VPPs relating to *'land forming',' excavations and fill'*, and *'earthworks'*.

In the VPPs, the buildings and works provisions of the Rural Zone, the Environmental Rural Zone and the Rural Living Zone require a permit for *'excavation or land fill works'* in excess of a depth or height specified in the schedule to the zone, and for *'land forming'* if it is specified in the schedule also. None of these types of works are defined. A number of submittors, including TBA Planners Pty Ltd (77), Municipalities Against Salinity in Northern Victoria (37), City of Hume (58), Victorian National Parks Association (48) and the Local Government Catchment Project (79) pointed to this deficiency.

The Victorian National Parks Association (48) was also concerned that some excavation and fill might occur without the benefit of regulation by planning permit. They were concerned that these works could cause problems such as the alteration of drainage, loss of vegetation or export of top soil for sale. The Local Government Catchment Project (79) also suggested that control is required over those works which have a significant effect on drainage and water dispersal. The Municipalities Against Salinity of Northern Victoria (37) argued that there was a need to control private earthworks which are an integral part of irrigation land use and the Northern Victoria Regional Salinity Management Strategy.

Tract Consultants (58) and the Victorian National Parks Association (48) both referred to the desirability of regulating land forming by implementing approved whole farm plans.

The Committee has been informed that DOI, in consultation with the Local Government Catchment Project (79) and the Municipalities Against Salinity of Northern Victorian (37), has revised the VPPs requirements in relation to excavation and fill and land forming.

Specific Uses and Definitions - cont'd

At present, in each of the three rural zones, there is a clause dealing with the need for permission of buildings and works which provides (see Clauses 35.01-3, 35.02-3 and 35.03-3):

A permit is required to construct or carry out any of the following:

- *A building or works associated with a use in Section 2 ...*
- *Excavation or land fill works which are in excess of the depth or height specified in the schedule to this zone.*
- *Land forming if specified in the schedule to this zone.*
- *A building which is within any of the following setbacks:*
  - *100m from a Road Zone Category 1.*
  - *40m from a Road Zone Category 2.*
  - *20m from any other road.*
  - *5m from any other boundary.*
  - *100m from a dwelling not in the same ownership.*
  - *100m from a watercourse or designated floodplain.*
- *A dam which is any of the following:*
  - *More than 3,000 cubic metres.*
  - *On a permanent watercourse.*
  - *Diverts water from a permanent watercourse.'*

DOI now suggests that the reference to both excavations and land fill and *'land forming'* in the buildings and works clause be deleted and the following substituted:

- *Earthworks as specified in the schedule to this zone. Earthworks include land forming, laser grading, levee banks, lanes, tracks, aqueducts, surface and sub-surface drains, and any associated structures.'*

DOI acknowledges that overlap occurred between the various types of controlled earthworks which were all intended as measures to deal with drainage problems.

It is also proposed to amend the schedule to the three rural zones by deleting the permissible ‘fill height’ and ‘excavation depth’ rows and the 'land forming' row in the table, and introduce a separate table enabling the specification of land where:

- A permit is required to construct or carry out *'earthworks which change the rate of flow or the discharge point of water across a property boundary'*.

or

- A permit is required to construct or carry out *'earthworks which increase the discharge of saline groundwater.'*

Specific Uses and Definitions - cont'd

In this manner, DOI explains, councils would have a choice to invoke either or both of the earthworks controls (by applying appropriate land descriptions) or neither.

DOI has also suggested words which might be included in any local policy framework concerning earthworks.

The Committee understands that the Local Government Catchment Project and the Municipalities Against Salinity in Northern Victoria are generally in agreement with these arrangements for control over earthworks and the Committee believes that the changes address many of the concerns expressed in relation to regional drainage.

The Committee wishes to make two further comments upon the proposed alterations to the building and works provisions, however.

Firstly, it is not clear who is to be responsible for the assessment of whether the earthworks will change the rate of flow or discharge point of water, or the discharge of saline groundwater. The Committee considers it would be appropriate to refer to a decision maker in this regard: it would seem that the responsible authority would be the appropriate body.

Secondly, the list of buildings and works requiring permission includes large dams or those affecting permanent watercourses. For reasons outlined later in this section, the Committee recommends that the ability to vary the size of the dam which triggers the need for a permit should be introduced into the schedule to the rural zones. The structure of the buildings and works clause, however, results in other smaller dams apparently being caught by the requirement for permission for *'earthworks'* under the proposed new provision. The Committee envisages that some argument and confusion as to whether smaller dams not affecting permanent watercourses require permission, may arise.

It is understood, however, that the capture of small dams by the new earthworks control is an outcome intended by DOI. While all dams falling within the category of the final dot point would require a permit in the rural zones, councils would have a choice whether to activate the control over earthworks. The reason for activating this control may well justify dams other than those specified in the final dot point also requiring a permit.

The Committee considers that potential confusion about this matter and other overlaps under the separate buildings and works controls may be avoided if there was an explanation in the *Manual for the Victoria Planning Provisions*. The *Manual*, in its present form, has been designed to assist councils and others preparing new format planning schemes based on the VPPs. Once this task is complete, there will still remain a need for a manual which will assist in understanding the way in which planning schemes using the VPPs work and the way in which the VPPs are intended to operate. A description of the buildings and works control in the rural zones would be a useful addition to such manual. The Committee also considers that DOI should monitor the operation of this Clause to ascertain if it does cause the type of confusion apprehended.

Specific Uses and Definitions - cont'd

DRAINAGE WORKS

Tract Consultants (53) expressed concerns that the controls proposed over land forming (now earthworks) would not include the same exemptions from the need for a permit as exist now in the joint planning controls over drainage in the Moira, Campaspe and Shepparton Shire Planning Schemes, which include where a drainage plan for the total farm has already been approved. They argued that this would reduce the incentive to farmers to establish whole farm plans of this kind.

The Committee does not consider that the proposed controls will discourage farmers from seeking approval for a package of drainage works for their entire farm where those works have been certified by Goulburn Murray Water (and VicRoads where necessary). There is no reason why a number of earthworks cannot be proposed simultaneously.

One problem which may arise if certified farm plans, incorporating a package of drainage works to be developed over a number of years, is approved is that the conditions of the permit may need to specify a more lengthy period for completion of works than is normally provided for in permits. Some finite life to the permit may also be desirable, however, to enable review of drainage plans in the longer term if they have not been implemented. Nevertheless, the Committee is led to believe, from discussions with the Local Government Catchment Project that such a farm plan would be unlikely to be certified if it involved drainage works which increased or redirected the flow of water onto or from adjoining properties. The Committee's conclusion is that a permit can be granted for a farm plan which contains a package of works to be carried out over a period of years. In this way, the need for individual permits is avoided - and thus the incentive to develop such plans would remain.

DAMS

The City of Ballarat (11) had some particular concerns in relation to dams. It suggested that the proposed construction of dams in the rural zones should be subject to the comments of the authorities established under the *Water Act*. It also referred to a document prepared by the then Department of Conservation and Natural Resources in 1992: *Your Dam, an Asset or Liability,* which serves as a guide to dam location and construction, and suggested that this might be referred to in decision guidelines. Ballarat also questioned the role of responsible authorities in assessing applications for dams, in particular if they are required to consider structural safety aspects.

The Committee has investigated this issue. There are two approvals procedures in relation to dams under the *Water Act.* One is the licensing of dams (under Section 67) to be constructed on waterways as defined in that Act. The other is a notification procedure (under Section 84) for the construction of large private dams, whether or not on waterways: i.e. those with a wall height in excess of 5m and a capacity in excess of 50 megalitres; or a wall height in excess of 10m and a capacity of 20 megalitres or more.

Specific Uses and Definitions - cont'd

The Committee considers it would be desirable to coordinate approval procedures, at least for dams on waterways. To achieve this, referral of planning applications to the relevant rural water authority might be desirable. It also seems desirable that more flexible controls be introduced (by scheduling) that would enable dams of different sizes and locations to be regulated according to need as determined by the environmental characteristics of the local area.

The Committee's view is that the *Your Dam, an Asset or Liability* document, is not appropriate for incorporation in the VPPs, being only advisory in nature. It is referred to in the decision guidelines in the Erosion Management Overlay as something the responsible authority must consider. Assessment of the structural safety of the dam would be a proper matter for the responsible authority to assess. Referral of applications should assist in this.

RECOMMENDATION

General

Investigate the feasibility of coordinating approvals of dams under the Water Act 1989 and planning permits for dams, including referral of planning applications to relevant authorities under the Water Act 1989.

Clause 35.01-3, Clause 35.02-3 and Clause 35.03-3 - Buildings and works

Amend Clause 35.01-3, Clause 35.02-3 and Clause 35.03-3 by deleting the second and third dot points and substituting the following:

'• ***Earthworks if specified in the schedule to this zone. Earthworks include landforming, laser grading, levee banks, lanes, tracks, aqueducts, surface and subsurface drains and any associated structures.'***

Amend the last dot point in Clause 35.01-3 by deleting the words indicated and adding the words in italics as follows:

'• A dam which is any of the following:

- **~~More than 3000 cubic metres~~.**
- ***A capacity greater than specified in the schedule to this zone.***
- **On a permanent watercourse.**

.Diverts water from a permanent watercourse.'

Ministerial Direction to all planning authorities on the form and content of planning schemes

Amend the schedule to the Rural Zone, Environmental Rural Zone and Rural Living Zone to delete the last three rows of the table and delete the words 'metres' or 'height' in the heading to the third column.

Add a separate table as follows:

Specific Uses and Definitions - cont'd

Permit requirement for earthworks	Land
A permit is required to construct or carry out earthworks which in the opinion of the responsible authority change the rate of flow or the discharge point of water across a property boundary.	
A permit is required to construct or carry out earthworks which in the opinion of the responsible authority increase the discharge of saline groundwater.	

Add a further separate table as follows:

Permit requirement for large dams	Land	Capacity
Capacity above which a permit is required to construct a dam (cubic metres)		

General

Monitor operation of buildings and works control in rural zones to ascertain if confusion arises about their operation.

Prepare a new manual to explain the operation and application of the Victoria Planning Provisions and planning schemes based on them. Include a section giving guidance to the operation of the buildings and works control in the rural zones.

16.9 INTENSIVE AND EXTENSIVE ANIMAL HUSBANDRY

The effectiveness and appropriateness of the VPP policies and controls in relation to the management of intensive and extensive animal husbandry were matters raised by a number of submittors.

EPA (99) requested that, in the State policies dealing with intensive animal industries, reference be made to an established national series of management guidelines for water quality for various uses. The Committee supports this recommendation.

Specific Uses and Definitions - cont'd

Pruneau (1) addressed the matter of intensive and extensive animal husbandry. She firstly observed that the definitions of these uses do not relate to the common meaning of extensive being *'over a large area'* and intensive meaning *'much use over a small area'*. She noted that, instead, the definitions relate to whether food is grown on the land or brought in. She suggested that this might be confusing. She also queried whether intensive animal husbandry would include pig keeping and poultry farming. Further she questioned whether the *'enclosures'* included in intensive animal husbandry referred to internal enclosures on the land or external fencing. Thus, the question arose as to whether *'importing most food from outside the enclosures'* might refer to food grown on the same property.

Johnstone (8) also questioned the use of the terms 'intensive animal husbandry' and 'extensive animal husbandry'.

In relation to these submissions, the Committee believes that intensive animal husbandry would include intensive piggeries and poultry farms. The Committee also believes that whether or not the food for the animals inside the enclosures is brought from elsewhere on the property or from off the property, matters not in defining intensive animal husbandry, as the effects of the concentration of the animals - which lead to the need for planning control - would be the same. The Committee does not believe that any confusion would arise in relation to the definitions not according to the common usage of 'intensive' and 'extensive' in terms of land area.

DAIRYING

The Shire of Campaspe (44) as part of its submission advised that in the irrigated areas of Victoria, there is a trend for the establishment of new dairy farm ventures with very large herds. It suggested that these farms are similar to feedlots in operation and there is a need for control over the development of such proposals due to the potential impact of effluent on water quality. The Council is concerned that under the VPPs, dairy farms would be a Section 1 Use in the Rural Zone by incorporation under the broad land use definition of *'extensive animal husbandry'*.

Similar comments were made by Gannawarra Shire Council (25). It submitted that dairying and other intensive animal industries can have major impacts on surface water and watercourse quality to the detriment of downstream land uses, unless appropriate conditions apply. It was similarly concerned that dairying, as a result of nesting effects, would be included as a Section 1 Use in the Rural Zone.

The Committee believes that a change to the use arrangements are required to accommodate these changes in dairying. It considers it would be appropriate to allow councils to regulate extensive and intensive dairying differently according to the characteristics of the industry in their locality.

The Committee notes that the provisions of the table of uses in Clause 35.01-1 includes extensive animal husbandry in a Section 1, together with cattle feedlots housing less than 1,000 cattle, subject to conditions, but intensive animal husbandry (other than cattle feedlot) is a Section 2 Use, together with cattle feedlots in excess of 1,000 cattle.

Specific Uses and Definitions - cont'd

It seems to the Committee that conventional dairying operations should continue to be regarded as part of extensive animal husbandry and generally not require planning permission, but dairy farms operating like feedlots (in irrigated or other areas), should be regarded as falling within the definition of intensive animal husbandry and should require a permit. They might also be regarded as a *'cattle feedlot'*, which definition has traditionally been applied only to beef cattle but could easily be extended to dairying. In this respect, the Committee notes that the Victorian Code for Cattle Feedlots - August 1995, while purporting to be based on a national code for *beef* cattle, does not refer to the type of cattle to which the Code applies.

The barrier to this approach to the use of land for dairying, whereby the use is defined as intensive or extensive animal husbandry (or cattle feedlot), according to the characteristics of the proposal, is that the present VPPs definitions indicate that dairy farm is included in the broader nest of extensive animal husbandry.

However, despite the reference to *'dairy farm'* in the definitions, the Committee can find no table of uses which utilises this specific definition, nor indeed any reference in the VPPs at all to dairy farm. It seems to the Committee that in these circumstances, little would be lost if dairy farm was deleted from the list of definitions and from the agricultural group nesting diagram.

This would enable the particular characteristics of dairy farms to be taken into account and a proposal allocated to either extensive or intensive animal husbandry, according to its characteristics. In this way too, the dairy farm might be characterised as a *'cattle feedlot'* if that is appropriate. In the longer term, the DOI together with the relevant industry interest groups could develop a code of practice in relation to dairying, and a set of criteria to be used to distinguish extensive and intensive forms of the industry.

POULTRY AND EMUS

Parkinson (55) recommended that in addition to dairying, poultry production including emu production, should be included as an exemption to the definition of extensive agriculture.

The Committee's view is that as with dairying, where these uses are not defined or allocated to particular nests, the characteristics of a particular land use proposal can be taken into account in allocating the use to intensive or extensive animal husbandry, thereby affording the level of control appropriate to the zone.

The Committee recommends no change in respect of this submission.

RECOMMENDATION

Clause 17.06 - Intensive animal industries

Amend Clause 17.06-2 by adding an additional paragraph under the heading 'General implementation' as follows:

'In considering proposals for use and development of intensive animal industries, responsible authorities should have regard to the National Water Quality Management Strategy Series - Effluent Management Guidelines for Dairy Sheds, Dairy Processing Plants, Intensive Piggeries, Aqueous Wool Scouring and Carbonising, Tanning and Related Industries.'

Clause 74 - Land use terms

Dairy farm

Amend Clause 74 by deleting 'dairy farm' from the list of land use term definitions, the agriculture group nesting diagram and the definition of 'extensive animal husbandry'.

16.10 MINOR UTILITY INSTALLATION

'Minor utility installation' is defined in the VPPs as follows:

Land used for a utility installation comprising any of the following:

a) sewerage or water mains;

b) storm or flood water drains or retarding basins;

c) gas mains providing gas directly to consumers;

d) power lines designed to operate at less than 220,000 volts;

e) telecommunication lines:

f) a sewerage treatment plant, and any associated disposal works, required to serve a neighbourhood;

g) a pumping station required to serve a neighbourhood; or

h) an electrical substation designed to operate at no more than 66,000 volts.

Telstra (2) wants a greater range of telecommunications facilities included, but does not provide detail. However, the MAV (26) and Port Phillip City Council (57) say the change from telephone lines to telecommunications lines already goes too far and is inconsistent with Commonwealth advice that telecommunications facilities would become subject to planning.

Specific Uses and Definitions - cont'd

The importance of what works are included in the definition of minor utility installation arises from the exemption from control over buildings and works associated with a minor utility installation provided by Clause 62.01.

With respect to telecommunications facilities, the Commonwealth has recently issued a Telecommunications (Low Impact) Determination 1997, through which a limited range of telecommunications facilities remain immune from the State planning controls. However, since 1 July 1997, many telecommunications facilities (including mobile phone towers and overhead cabling) no longer maintain such immunity from planning control.

The Committee is advised that DOI is separately dealing with the issue of telecommunications facilities in conjunction with the Commonwealth, through a State section amendment to existing schemes and an amendment to the VPPs. The Committee is also advised that this will result in telecommunications facilities being treated (at least on an interim basis) separately from other forms of utility installation, with consequential changes therefore required to the definitions of 'utility installation' and 'minor utility installation' in the VPPs. The VPP amendment dealing with telecommunications facilities is intended to take place at the same time as the broader VPP amendments resulting from this Committee's report.

The Committee has not sighted, and is unable to comment upon, any proposed VPP amendment dealing with telecommunications facilities. However, if there is any delay in the finalisation of such amendment, the Committee believes the currently understood definitions of utility installations should be maintained on an interim basis. In such event, the Committee considers that in the definition of minor utility installation, the term 'telecommunication lines' should revert simply to 'telephone lines'. This would maintain the current status quo and enable telecommunication facilities (including lines) to be dealt with separately when resolution is reached with the Commonwealth. It will avoid creating any loopholes in planning schemes whereby overhead cabling for pay TV (which has created so much controversy) may be considered exempt from control as 'telecommunication lines' and hence a minor utility installation, regardless of what specific outcomes have been agreed at government level.

The PTC (49) wants minor transport facilities and infrastructure included as a minor utility installation.

The National Trust (34) and Victorian National Parks Association (48) submit that sewerage treatment plants and water retarding basins are too big to be 'minor' utility installations.

With respect to the potential size of sewerage treatment plants, the Committee considers that the definition may not have been completely understood. Minor utility installation includes *'a sewerage treatment plant ... required to serve a neighbourhood'*. This is intended to cover a small package treatment plant serving a

Specific Uses and Definitions - cont'd

commercial operation or group of dwellings, but not the type of major sewerage treatment plant serving a large population and occupying a large area of land. The scale of any minor utility installation would need to be judged by reference to the term *'minor'* otherwise it would come within the definition of 'utility installation'. The same argument would apply to a water retarding basin.

With respect to transport facilities, these are not utility installations.

The Committee recommends no change in respect of these submissions.

RECOMMENDATION

Clause 74 - Use of land terms

Minor utility installation

Delete the words indicated and add the words in italics to the definition of 'minor utility installation' to read as follows:

'e)~~telecommunication~~ *telephone* lines;'

Note: This recommendation may be superseded by a separate amendment to the VPPs proposed by DOI dealing with telecommunications facilities.

16.11 MISCELLANEOUS

Port Phillip City Council (57) draws attention to the fact that there is no definition for 'shared housing', 'crisis accommodation' and 'licensed premises'.

Clause 74 provides that terms not defined should be given their ordinary meaning but should not be characterised as a separate use of land if the term is obviously or commonly included within one or more of the terms listed in the definition table.

With licensed premises, the various types recognised by planning are separately defined in the land use section of the VPPs. Shared housing and crisis accommodation are both types of accommodation and may come within other uses included in accommodation. There is no evidence of a need for a separate definition for these terms. Particular provisions dealing with them are found in Clauses 52.22 and 52.23.

The Committee recommends no change in respect of this submission.

Specific Uses and Definitions - cont'd

16.12 RESTRICTED RETAIL PREMISES AND TRADE SUPPLIES

These definitions split into two what was previously 'peripheral sales'. The VPPs define these uses as follows:

Trade supplies *Land used to sell by retail and wholesale, or to hire, materials, tools, equipment, or machinery for use in:*

a) the automotive trade;

b) the building trade;

c) commerce;

d) industry;

e) the landscape gardening trade;

f) the medical profession; or

g) primary production.

Restricted retail premises *Land used to sell or hire:*

a) automotive parts and accessories;

b) camping equipment;

c) electric light fittings;

d) equestrian supplies;

e) floor coverings;

f) furnishings;

g) furniture;

h) household appliances;

i) party supplies; or

j) swimming pools.

A T Cocks on behalf of Campbell's Cash and Carry (4) wants the definition of 'trade supplies' to pick up 'warehouse sales', defined in existing planning schemes as:

> *land used for wholesaling including the selling of goods to be used by business, industry, local government, government departments or public institutions.*

The introduction of warehouse sales into the planning scheme was the outcome of a long history of discussion, debate and legal action involving the operation of Campbell's Cash and Carry which sells a range of products directly to end users, particularly through its bulk sales to government and public authorities.

The Committee considers that the resolution of the particular problems involving Campbell's Cash and Carry should not be lost through the translation of definitions into the VPPs. It is appropriate to include the Campbell's Cash and Carry operation within the definition of trade supplies. However, the definition needs to be clarified to ensure that it relates, as was intended, to the selling by both retail **and** wholesale, rather than allowing the definition to be abused by those who may wish to simply conduct a retail operation.

Specific Uses and Definitions - cont'd

Officeworks (30) submits that office supplies should be added to restricted retail sales, rather than trade supplies.

There is an AAT decision confirming that Officeworks fits within the trade supplies component of peripheral sales, being land used to sell materials or equipment for use in commerce.

The Committee considers there is no justification for adding office supplies to restricted retail premises. The proportion of bulky goods sold is, according to Officeworks only 59.5 per cent of its retail floorspace and therefore does not really fit the criterion that restricted retail premises is really to cater for the sale of bulky goods. The concern that the Officeworks use appears to have been excluded from the zones in which it believes it should be located is not justified. Trade supplies and restricted retail premises are treated exactly the same in the VPPs, excepting two instances where trade supplies are more favourably treated (Section 1 in the Business 1 Zone, and Section 2 in the Industrial 2 Zone). In this respect, Officeworks is better off as it is.

Jetgrove and KLM Planning Consultants (102), acting for clients in the video industry, wants video hire included in restricted retail premises so it does not suffer the limitations in business and industrial zones applying to a shop. In the VPPs, 'video shop' is nested under the general term of 'shop'. It is submitted that the VPPs fail to recognise the changing nature of video shopping and the key locational criteria for video store developments. Current video store activities are much more akin to peripheral sales in terms of size and locational criteria, than to traditional retail shopping.

The Committee considers that this submission is justified and videos should be included as an item in the restricted retail premises definition. If seeking to use this definition, video stores will need to meet the minimum floorspace criterion for restricted retail premises or, in default, 1,000 square metres. Where this floorspace criterion is not met, a video shop will remain within the general definition of shop as *'land used ... to hire goods'*.

The Committee cannot envisage any locations where one would want to allow a shop and not a video shop, but there are locations where one may wish to allow a large video shop, such as Blockbuster, but not a small retail premises. At present the VPPs do not cater for this circumstance. The change recommended by the Committee will allow for this. However, having included videos in restricted retail premises, the Committee can see no need to retain 'video shop' as a separate category of shop.

Specific Uses and Definitions - cont'd

RECOMMENDATION

Clause 74 - Land Use Terms

Trade supplies

Add the words in italics to the definition of 'trade supplies' to read as follows:

'Trade supplies Land used to sell by *both* retail and wholesale, or to hire, materials, tools, equipment, ~~or~~ *machinery or other goods* for use in :

a) the automotive trade;

b) the building trade;

c) commerce;

d) industry;

e) the landscape gardening trade;

f) the medical profession; ~~or~~

g) primary production; *or*

h) local government, government departments or public institutions.'

Restricted retail premises

Add the following category to the definition of 'restricted retail premises':

'k) videos'.

Video shop

Delete the land use term 'video shop' from Clause 74 and all tables of uses wherever appearing.

16.13 RETAIL PREMISES

In dealing with these submissions about trade supplies and restricted retail premises, the Committee is conscious of a number of contradictions and artificialities underlying the categorisation of different activities and the definitions. For example, video stores do resemble peripheral sales outlets and tend to locate in similar areas because of the large floorspace they require, which was the initial reason for recognising the special needs of bulky goods retailers and creating the land use category of 'peripheral sales', but videos themselves bear no resemblance to the other goods listed in the definition of 'restricted retail premises'. Similarly, in the definition of 'trade supplies', the Committee queries why the emphasis is being placed on the supply of goods to 'trade'? This only results in lengthy arguments at the AAT about the proportion of customers who are trade and the proportion who are general public.

Specific Uses and Definitions - cont'd

Consideration of these submissions illustrates the trend in peripheral retailing and 'big box' uses discussed in the report of the Retail Development Policy Review Panel, *Retailing Victoria* (May 1996). We are heading towards a situation where 'restricted retail premises' has a growing list of categories which seems to allow the sale of bulky goods or large floor area retailing (or hiring) of anything other than food and clothing; 'trade supplies' is endeavouring to pick up the hybrid retail/wholesale operations; and 'warehouse' is intended to pick up limited wholesale operations. Whether there remains a need to distinguish between the type of goods sold, rather than concentrating on off-site impacts; the impact of these uses on activities centres; the spatial patterns of our urban areas; and the social and economic consequences of locational choices, should be reviewed in line with the recommendations made in *Retailing Victoria*.

When the concept of peripheral sales was introduced into planning schemes and this use was permitted in industrial zones and other places outside core retailing centres, it was done so on the basis of the large areas of floorspace needed for the display and sale of bulky goods, such as floor coverings, furniture and household appliances. Such large floorspace areas were either not available or too expensive in core retail areas. Allowing this type of retailing into industrial zones constituted an exception to the general principle that retailing should be excluded from these zones. The exception was created because at that time there were no other alternative, suitable zones available.

With the growth in peripheral sales outlets, the situation has now changed. The VPPs have created a new business zone where peripheral sales (now restricted retail premises and trade supplies) are specifically recognised and encouraged - the Business 4 Zone - and where they are permitted in other business zones. In light of this, the Committee queries whether there remains a need to cater for peripheral sales in industrial zones.

The Committee considers this is a topic which should be reviewed. In doing so, it would be useful to identify the way in which various councils have accommodated peripheral sales locations in their new format planning schemes. The way in which councils have used the business zones, industrial zones and Mixed Use Zone will provide valuable information in the ongoing task of review and planning reform, and in assessing whether the VPPs are responding to real needs. It will also provide information by which to assess the criticism which has been made by some submissions, that there is insufficient distinction between the business zones. The Committee has already observed that although there are important distinctions between the business zones, particularly the Business 3 and Business 4 Zones, this does not appear to be clearly appreciated. It will be important in reviewing the operation of the business zones to identify if the distinctions between zones accord with the reality of councils' application of them. It is an assessment which is probably pertinent to all zones.

Specific Uses and Definitions - cont'd

Apart from the way in which peripheral sales are treated, the trends evident in such outlets illustrate the more general trend evident in all forms of retailing and entertainment, for traditional distinctions between categories of activities to become blurred. The general thrust of the planning reform program, particularly within the business and industrial zones, has been to free up the system to enable more flexible choices to be made by the market about location. The time is now ripe to think carefully about where trends are heading and how they can best be catered for. Just as the Review of Cinema Based Entertainment Facilities recognised the blurring between activities and recommended that a composite based definition of 'cinema based entertainment facility' be introduced into planning schemes, so too this Committee considers that the definitions, criteria and relationships between peripheral retailing and 'big box' uses generally, fuel and convenience units, convenience shops, petrol stations and convenience restaurants should be examined.

RECOMMENDATION

General

Undertake a general review of retailing, entertainment, convenience shopping and associated definitions in the VPPs to reflect market trends where traditional distinctions between activities are becoming blurred, and where size and locational criteria are changing.

Review the way in which councils have utilised the business zones, industrial zones and Mixed Use Zone in the VPPs when preparing their new format planning schemes and in particular, whether the activities in zones reflect the distinctions between the purpose of the zones.

16.14 RICE GROWING

Shire of Campaspe (44) and the Municipalities Against Salinity of Northern Victoria (37) raised concerns about the need for the control of irrigated rice growing, which has significant salinity impacts and effects on sustainable agriculture and soil degradation. It was recognised by these submittors that rice growing is already controlled in rural areas by its nesting in the broader land use term *'aquaculture'*, and in turn in the broad use category of *'agriculture'*. However, their concern was that this may not be immediately apparent and there may be a misunderstanding that the use is incorporated in the definition of *'crop raising'* - which is a Section 1 use in the Rural Zone.

Specific Uses and Definitions - cont'd

The Committee accepts this is a problem likely to arise as it is not obvious that rice growing is not crop raising but aquaculture. It considers the best solution is to include rice growing in the definition of crop raising and to exclude it from aquaculture. The table of uses in the Rural Zone should be amended to add after the words in Section 1, 'crop raising (other than timber production *and rice growing*)'. 'Rice growing' should then be added to Section 2. No problems are presented in the other rural zones because in both cases, crop raising is a Section 2 Use.

RECOMMENDATION

Clause 35.01-1 - Table of uses

Amend Section 1 of the table of uses in Clause 35.01-1 by adding the words in italics as follows:

'Crop raising (other than Timber production *and Rice growing*)'

Amend Section 2 of the table of uses in Clause 35.01-1 by including *'Rice growing'*.

Clause 74 - Land use terms

Aquaculture

Delete 'rice growing' from the land use term 'aquaculture'.

Crop raising

Amend the definition of 'crop raising' by adding the words in italics as follows:

'Land used to propagate, cultivate or harvest plants, including cereals, flowers, fruit, seeds, trees, turf and vegetables. *It includes rice growing.*'

16.15 SHOWGROUNDS

Tract Consultants (53) notes that no definition of 'showgrounds' is included.

The absence of a definition does not mean that reference could not be made to a showgrounds in a policy or permit context. Otherwise, it is presumably a place of assembly or leisure and recreation facilities, dependent on the predominant purpose.

The Committee recommends no change in respect of this submission.

16.16 TAVERN

The Australian Hotels and Hospitality Association Inc. (40) wants the definition of 'tavern' changed to 'bar' and amended to make it a requirement that the activities of food for consumption, entertainment, dancing and amusement machines must be ancillary to the consumption of liquor.

The definitions relating to licensed premises in the VPPs have been the subject of considerable work within DOI, which extends to liquor control generally in planning schemes. The Committee does not consider it is appropriate to alter the meaning of tavern in the manner sought, both because of the implications for other definitions and the unnecessary arguments it may introduce about whether or not the activities listed are **ancillary** to the consumption of liquor.

Although the term 'bar' may be more widely used and recognised than the term 'tavern', 'tavern' is a term previously used in planning schemes and the Committee sees no great need to alter it.

The Committee recommends no change in respect of this submission.

16.17 UTILITY INSTALLATION

Tract Consultants (53) wants generating works included within the definition of 'utility installation'.

Generating works is best characterised as industry. Where it is most significant, in the Latrobe Valley, it will be dealt with under a Special Use - Brown Coal Zone.

The Committee recommends no change in respect of this submission.

16.18 UTILITY SERVICE PROVIDER

Telstra (2) wants the definition of 'public land manager', and references to a 'public authority' to include utility service providers. Power Corp (42), Solaris (43) and Power Net (84) also want utility service provider included and defined.

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. Nevertheless, there are some occasions when utility service providers need to be referred to generically in the scheme, e.g. as referral authorities or in respect of the emergency works exemption in Clause 62.01.

The Committee recommends that a definition of 'utility service provider' should be inserted in the VPPs which reflects the definition in the *Subdivision Act*.

Specific Uses and Definitions - cont'd

RECOMMENDATION

Clause 74 - Land use terms

Utility service provider

Insert a new definition of *'utility service provider'* as follows:

'Utility service provider ***A person or body, other than a public authority or municipal council, having responsibility under an Act for the generation, transmission, distribution or supply of electricity, gas, power, telephone, water supply, drainage or sewerage services.'***

Clause 62.01 - Exempt buildings and works

Delete the word indicated and add the words in italics to the 15th dot point in Clause 62.01 to read as follows:

'• Any emergency works undertaken by, or on behalf of, a municipality, ~~or~~ public authority *or utility service provider* in the exercise of any power conferred on them under any Act.'

17. OTHER ISSUES

17.1 AMENITY PROVISIONS

Mallesons Stephen Jaques (5) wants a 'reasonableness' test in assessing adverse effects on amenity. Numerous zones, overlays and particular provision controls employ wording to the effect that a use must not adversely affect the amenity of the neighbourhood etc. As this is a strict prohibition, a standard (e.g. reasonable) should be specified to prevent unwarranted enforcement proceedings.

This is a performance control introduced as a consequence of the increased number of Section 1 uses within zones. The Committee has made certain recommendations about how this provision should be treated in industrial zones, but in other circumstances it considers that its retention is justified. Whether an effect is 'adverse' to the amenity of the neighbourhood must be objectively assessed in the context of each specific case, including the nature of the neighbourhood. It is a concept well recognised within planning and it is not known to have been a major problem in existing schemes. If problems do arise with this provision under the VPPs, it should be reviewed as part of the ongoing monitoring process.

The Committee recommends no change in respect of this submission.

17.2 COMMONWEALTH LAND

While not raised in a submission, the Committee notes that CA is to be shown on the planning scheme maps but not referenced in the scheme. It should be made clear within the VPPs that no controls apply to CA land.

17.3 PERFORMANCE CRITERIA

City of Moreland (39), City of Monash (78) and others submit that it was a fundamental principle of planning reforms that more performance criteria be established for Section 1 and Section 2 Uses.

These submission are really by way of comment. The Committee agrees that this would be a useful next stage of the planning reform process and DOI should be encouraged to pursue it. Nevertheless, many performance standards are included in various incorporated documents, guidelines and other criteria referred to in the VPPs. Local policies may also include such material.

17.4 REGIONAL STRATEGY PLANS

Save the Dandenongs League Inc. (Submission 22) raised the issue of potential conflicts between the *Planning and Environment Act 1987*, the VPPs, the Yarra Ranges Planning Scheme and the Upper Yarra Valley and Dandenong Ranges Regional Strategy Plan over matters including:

- VPPs provide permit application opportunities for uses within zones which the Regional Strategy Plan requires to be prohibited;
- excision provisions;
- tenement holding policies;
- control of commercial activities;

It was submitted that the current planning controls for the area now forming the Shire of Yarra Ranges have been developed over two decades, in conformity with various State and Regional policies and under the Regional Strategy Plan, to meet the special environmental and other requirements of the Dandenong Ranges and the Upper Yarra Valley.

The Committee is not in a position to respond to this issue. The Upper Yarra Valley and Dandenong Ranges Regional Strategy Plan has a special statutory status, unlike other Statements of Planning Policy applying to areas such as the Mornington Peninsula and Macedon Ranges. It will be necessary for the dual legislative requirements to be reconciled before the Shire of Yarra Ranges can complete preparation of its new planning scheme. The Committee considers it would be unfortunate however, for the Regional Strategy Plan to be abandoned. It has strong public support and has been effective over the years in protecting the Dandenong Ranges and Upper Yarra Valley from excessive urbanisation. The Dandenong Ranges remains an important tourist and recreation destination close to Melbourne, whilst the Upper Yarra Valley has developed into a premier wine producing area of considerable economic significance to Victoria. The pressures which would be faced by these areas should the Regional Strategy Plan be abandoned, may jeopardise the effective continuation of these roles.

17.6 FORMAT

PAGE NUMBERING AND HEADING

Numerous submissions made reference to the difficulty in finding a way through the VPPs due to the lack of page numbering and page heading.

Certainly the Committee has encountered this difficulty in its task. Given that the VPPs are a resource document, the pages have not been numbered because of the differences which will occur when they are used in planning schemes themselves.

Other Issues - cont'd

The problem with page numbering is the loss of sequence when additional pages are introduced. This can be overcome by adding an alphabetical suffix to the inserted pages. To those using a planning scheme on a regular basis and consulting various parts of it, page numbers are invaluable and they should be included in individual planning schemes.

Likewise a need exists for page headers setting out the zone, overlay or particular provision name and clause number. There are pages where no clause numbers appear and even if they do, unless one is familiar with the provisions, it is not clear which zone or overlay etc. the particular clause relates to.

HEADINGS AND SUB-HEADINGS

The Committee considers that the system of headings and sub-headings should be made clearer. For example, as Australian Paper (62) notes with respect to Clause 52.17 dealing with native vegetation:

> *This is a long clause of five pages, and the Exemptions paragraph 'A permit is not required:' is followed by 13 subject groups in the same format and letter size as the Exemptions statement at the beginning, and as the qualifying guidelines at the end of the Clause, making quick reference difficult.*

The Committee notes that only two sized headings have been used. It considers that a third size should be introduced to distinguish more clearly between main headings, sub-headings and sub-sub-headings.

CROSS-REFERENCING

Various criticism was made of the cross-referencing in the VPPs and its consistency. DOI is reviewing this.

SCHEDULES

City of Port Phillip (57) requests that the Schedule to Clause 43 (Heritage Overlay) should be printed in landscape instead of portrait format due to the number of columns in the table.

The Committee agrees with this submission.

MAPS

City of Port Phillip (57) requests a means of distinguishing between a heritage area and a individual heritage place, both in the schedule to the Heritage Overlay and in the planning scheme maps. It is suggested that in the schedule, heritage areas could be given the initials HA (and a number) and for individual heritage places, the

Other Issues - cont'd

initials HP (and a number). They should also be mapped in two different shades as it is difficult to distinguish the boundaries of a heritage area and the boundaries of individual heritage places within a heritage area.

The Heritage Overlay is intended to apply to all heritage places, whether they are large areas presently covered by Urban Conservation Area controls or individual properties presently separately identified and protected in planning schemes.

Because the planning controls over both types of heritage places will now be the same, the Committee can see no need to separately identify individual properties within a wider heritage area on planning scheme maps unless different controls are to apply to them compared to the rest of the heritage place. For example, internal alteration controls may apply or there may be outbuildings or fences which are not exempt under Clause 43.01-4. In these instances, the individual heritage place will need to be separately identified both within the schedule to the Heritage Overlay and on the overlay map. The Committee therefore endorses the suggestion by the City of Port Phillip of numbering heritage places. It does not necessarily recommend the precise method advocated by the Council as there is no such thing as a 'heritage area' referred to in the Heritage Overlay controls, only heritage places.

In some zones (e.g. rural zones) there may be a number of schedules applying with different provisions (e.g. minimum subdivision size). It will be important to any user of the planning scheme to be able to identify from the planning scheme maps the number of the schedule applicable to a particular piece of land. For this reason, the Committee recommends that a means should be introduced to differentiate on planning scheme maps between areas to which different schedules apply under a zone or overlay.

RECOMMENDATION

Clause 43 - Heritage Overlay

Amend the Schedule to Clause 43 by printing in landscape format instead of portrait format.

Provide a means of numbering heritage places in the schedule to the Heritage Overlay and on planning scheme maps.

Format

Introduce a system of headings using three sizes to distinguish more clearly between headings, sub-headings and sub-sub-headings.

Require page numbering for individual planning schemes.

Require the inclusion of page headers, setting out the zone, overlay or particular provision name and clause number, in individual planning schemes.

Other Issues - cont'd

Maps

Provide a means of differentiating on planning scheme maps between areas to which different schedules apply under a zone or overlay.

17.7 TYPOGRAPHICAL AND MINOR AMENDMENTS

DOI have identified a significant number of typographical and minor amendments to the VPPs which it intends to rectify.

The Committee has not perused these in detail. It recommends that before implementation, DOI check their consistency with whatever changes are made to the VPPs as an outcome of the Committee's recommendations.

RECOMMENDATION

General

Check that typographical and other minor amendments are consistent with the outcomes of all other changes to the VPPs.

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18. RECOMMENDATIONS

18.1 CHANGES APPROPRIATE FOR IMMEDIATE INCLUSION IN THE *VICTORIA PLANNING PROVISIONS* WITHOUT FURTHER EXHIBITION OR CONSULTATION

STATE PLANNING POLICY FRAMEWORK

Clause 13 — Principles of Land Use and Development Planning		
CLAUSE NO	**DESCRIPTION**	**RECOMMENDATION**
13	**Principles of Land Use and Development Planning**	**Amend the first paragraph of the section 'Regional cooperation' of Clause 13 by inserting the words in italics as follows:** **'Some issues dealt with by planning and responsible authorities have impacts that extend beyond municipal boundaries. These impacts may be economic, social or environmental and particularly arise around such issues as coordinated planning for transport and water infrastructure, floodplain management, *catchment management*, water quality protection and waste management.'**
Clause 15 — Environment **Clause 15.01 — Protection of waterways, groundwater and catchments**		
15.01-1	**Objective**	**Amend Clause 15.01-1 by deleting the words indicated and adding the words in italics as follows:** **'To assist the ~~prevention~~ *protection* and, where possible, ~~rectification of degradation~~ *restoration* of waterways, water bodies, groundwater, catchments and ~~the~~ marine environments.'**

Recommendations - cont'd

CLAUSE NO.	DESCRIPTION	RECOMMENDATION
15.01-2	**General implementation**	**Amend the first paragraph of Clause 15.01-2 by including the words in italics as follows:** **'Planning and responsible authorities ~~must~~ *should ensure that land use and development* comply with any relevant requirements of State Environment Protection Policies as varied from time to time (Groundwaters of Victoria, Waters of Victoria and specific catchment policies) *and any best practice guidelines for stormwater adopted by the EPA.*'** **Amend the third paragraph of Clause 15.01-2 by deleting the words indicated and adding the words in italics as follows:** **'Planning and responsible authorities should consider the impacts of ~~poor~~ ~~*water quality*~~ *catchment management* on downstream ~~*catchments*~~ *water quality* and *freshwater,* coastal *and* marine environments, and where possible should encourage:** • ***the retention of natural drainage corridors and waterways to maintain the natural drainage function, protection of natural aquatic ecosystems and provide a diverse urban landscape.*** • ***the maximum retention of stormwater on site through control of impervious cover.*** • ***the minimisation and control of quantity and speed of any runoff of stormwater through retardation and flow management.*** • ***the provision of maximum opportunities for screening, sedimentation and filtration of stormwater prior to its entering main collector waterways or ultimate receiving waters.***

Recommendations - cont'd

CLAUSE NO.	DESCRIPTION	RECOMMENDATION
15.01-2 cont'd	**General implementation**	• **the preservation of *floodplain or other* land for wetlands and detention basins to help remove pollutants from stormwater prior to its discharge into waterways.** • **the retention of vegetated buffer zones at least 30 m wide along waterways to maintain stream habitat and wildlife corridors, minimise erosion of stream banks and verges and to reduce polluted surface runoff from adjacent land uses.'** **Amend the fourth paragraph of Clause 15.01-2 by adding the words in italics as follows:** **'Planning and responsible authorities should ensure that land use activities potentially discharging contaminated runoff or wastes to waterways are sighted and managed to minimise such discharges and to protect the quality of surface water and groundwater 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 downstream impact of water quality or flow volumes.*'** **Amend the fifth paragraph of Clause 15.01-2 by adding the words in italics as follows:** **'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), Environmental Guidelines for River Management Works (Department of Conservation and Environment 1990), *any relevant river restoration plans, waterway management works programs and the National Water Quality Management Strategy.'***

Recommendations - cont'd

CLAUSE NO.	DESCRIPTION	RECOMMENDATION
15.01-2	**General implementation**	**Add the following new paragraphs to Clause 15.01-2:** ***'Planning and responsible authorities should ensure that best management practice is used in the design, construction and operation of drainage systems to reduce impacts on water quality in receiving waters, including impacts downstream of the municipality.*** ***Responsible authorities should ensure that new developments or redevelopments are managed to minimise the impact of urban stormwater runoff on waterways, in accordance with any best practice environmental management guidelines.*** ***Responsible authorities should recognise that the effective management of stormwater requires a whole of catchment approach and attention to small incremental impacts. Where catchments extend beyond municipal boundaries, planning and responsible authorities must ensure that in development of policies for stormwater management there are cooperative and coordinating mechanisms in place to ensure all catchment stakeholders are fully involved.'***
15.01-3	**Geographic strategies**	**Add an additional paragraph to Clause 15.01-3 as follows:** ***'Planning and responsible authorities should consider any relevant regional catchment strategy, salinity plan, regional vegetation plan, special area plan or stormwater management strategy approved by a statutory authority, public land manager or the responsible authority.;***

Recommendations - cont'd

Clause 15.02 — Floodplain management		
CLAUSE NO.	**DESCRIPTION**	**RECOMMENDATION**
15.02-2	**General implementation**	**Add an additional dot point to the third paragraph of Clause 15.02-2 as follows:** **'• *Any best practice guidelines for stormwater management adopted by the EPA.'*** **Add the words in italics to the fourth paragraph of Clause 15.02-2 as follows:** **'Land affected by flooding, including high hazard floodway areas, as verified by the relevant floodplain management authority, should be shown on planning scheme maps. *Land affected by flooding is land inundated by the one in one hundred year flood event or by the largest recorded flood event.'***
Clause 15.06 — Soil contamination		
15.06-2	**General implementation**	**Amend the second paragraph of Clause 15.06-2 by deleting the words indicated to read as follows:** **'In considering applications for use of land used or known to have been used for industry, mining or the storage of chemicals, gas, wastes or liquid fuel, responsible authorities should ~~consult with the Environment Protection Authority and~~ require applicants to provide adequate information on the potential for contamination to have adverse effects on the future land use.'**

Recommendations - cont'd

CLAUSE NO.	DESCRIPTION	RECOMMENDATION
Clause 17 — Economic Development **Clause 17.06 — Intensive animal industries**		
17.06-2	**General implementation**	**Amend Clause 17.06-2 by adding an additional paragraph under the heading 'General implementation' as follows:** ***In considering proposals for use and development of intensive animal industries, responsible authorities should have regard to the National Water Quality Management Strategy Series - Effluent Management Guidelines for Dairy Sheds, Dairy Processing Plants, Intensive Piggeries, Aqueous Wool Scouring and Carbonising, Tanning and Related Industries.'***
Clause 18 — Infrastructure **Clause 18.04 — Airfields**		
18.04	**Airfields**	**Delete Clause 18.04 and replace with Clause 18.04 in the Replacement and New Provisions Section of this Chapter**
Clause 18.09 — Water supply, sewerage and drainage		
18.09-2	**General implementation**	**Amend the first paragraph of Clause 18.09-2 by deleting the word indicated and including the word in italics as follows:** **'Water supply catchments ~~should~~ *must* be protected from possible contamination by urban, industrial and agricultural land uses.'** **Amend the third paragraph of Clause 18.09-2 by adding the words in italics as follows:** **'Drainage systems should be protected from the intrusion of litter in accordance with strategies set out in Victoria's Litter Reduction Strategy (EPA 1995) and the Codes of Practice of the Waste Management Council. *Planning authorities should maximise the opportunities for facilities such as litter traps, constructed wetlands etc. to be provided as a means of assisting the treatment of stormwater drainage.'***

Recommendations - cont'd

CLAUSE NO.	DESCRIPTION	RECOMMENDATION
18.09-2 cont'd	**General implementation**	**Add two additional paragraphs to Clause 18.09-2 as follows:** ***'Design new urban drainage systems and retro fit existing systems to achieve flood protection and improved waterway water quality, by reducing stormwater contamination and moderating peak flows.*** ***Planning and responsible authorities should ensure that urban development and drainage infrastructure is designed and managed to minimise the impacts of stormwater on waterways, in accordance with any best practice environmental management guidelines for urban stormwater by a statutory authority.'***

ZONES

Clause 31 — Operation of Zones		
31	**Operation of zones**	**Add a new sub-heading and paragraph under the heading 'Section 2 uses' in Clause 31 as follows:** ***'Making decisions about Section 2 uses*** ***Because a use is in Section 2 does not imply that a permit should or will be granted. The responsible authority must decide whether the proposal will produce acceptable outcomes in terms of the State Planning Policy Framework, the Local Planning Policy Framework, the purpose and decision guidelines of the zone and any of the other decision guidelines in Clause 65.'***
Clause 32.01 — Residential 1 Zone		
32.01-1	**Table of uses**	**Amend the table of uses in Clause 32.01-1 by including *'cinema based entertainment facility'* in Section 3 and including *'place of assembly (other than cinema based entertainment facility)'* in Section 2.**

Recommendations - cont'd

CLAUSE NO.	DESCRIPTION	RECOMMENDATION
32.01-3	**Construction and extension of single dwellings on lots of at least 300 square metres**	**Amend Clause 32.01-3 by deleting the second paragraph and inserting the following:** ***'If the development does not meet one or more of these performance measures, it must comply with the Victoria Building Regulations 1993 or any variation granted under those regulations.'***
Clause 32.02 — Residential 2 Zone		
32.02-1	**Table of uses**	**Amend the table of uses in Clause 32.02-1 by including '*cinema based entertainment facility*' in Section 3 and including '*place of assembly (other than cinema based entertainment facility)*' in Section 2.**
32.02-3	**Construction and extension of single dwellings on lots of at least 300 square metres**	**Amend Clause 32.02-3 by deleting the second paragraph and inserting the following:** ***'If the development does not meet one or more of these performance measures, it must comply with the Victoria Building Regulations 1993 or any variation granted under those regulations.'***
Clause 32.03 — Low Density Residential Zone		
32.03-1	**Table of uses**	**Amend the table of uses in Clause 32.03-1 by including '*cinema based entertainment facility*' in Section 3 and including '*place of assembly (other than cinema based entertainment facility)*' in Section 2.**
Clause 32.04 — Mixed Use Zone		
32.04-4	**Construction and extension of single dwellings on lots of at least 300 square metres**	**Amend Clause 32.04-4 by deleting the second paragraph and inserting the following:** ***'If the development does not meet one or more of these performance measures, it must comply with the Victoria Building Regulations 1993 or any variation granted under those regulations.'***

Recommendations - cont'd

Clause 33.01 — Industrial 1 Zone		
CLAUSE NO.	**DESCRIPTION**	**RECOMMENDATION**
33.01-1	**Table of Uses**	**Add the following condition in Section 1 to the use 'Industry (other than Materials recycling)' and 'Warehouse (other than Mail centre)':** ***'Must not adversely affect the amenity of the neighbourhood, including through the:*** • ***Transport of materials, goods or commodities to or from the land.*** • ***Appearance of any stored goods or materials.*** • ***Emission of noise, artificial light, vibration, odour, fumes, smoke, vapour, steam, soot, ash, dust, waste water, waste products, grit or oil.'***
33.01-1	**Table of uses**	**Amend the table of uses in Clause 33.01-1, Clause 33.03-1 by including '*cinema based entertainment facility*' in Section 3 and including '*place of assembly (other than cinema based entertainment facility)*' in Section 2.**
33.01-2	**Use of Land**	**Delete the whole of the paragraph under the heading 'Amenity of the neighbourhood'.**
Clause 33.02 — Industrial 2 Zone		
33.02	**Purpose**	**Add the following new purpose:** ***'To keep the core of the zone free of uses which are suitable for location elsewhere so as to be available for potentially offensive and potentially hazardous manufacturing industries and storage facilities as the need for these arises.'***

Recommendations - cont'd

CLAUSE NO.	DESCRIPTION	RECOMMENDATION
33.02-1	**Table of Uses**	**Add the following condition in Section 1 to the use 'Industry (other than Materials recycling)' and 'Warehouse (other than Mail centre)':** ***'Must not adversely affect the amenity of the neighbourhood, including through the:*** • ***Transport of materials, goods or commodities to or from the land.*** • ***Appearance of any stored goods or materials.*** • ***Emission of noise, artificial light, vibration, odour, fumes, smoke, vapour, steam, soot, ash, dust, waste water, waste products, grit or oil.'***
33.02-2	**Use of Land**	**Delete the whole of the paragraph under the heading 'Amenity of the neighbourhood'.**
Clause 33.02 — Industrial 3 Zone		
33.03	**Purpose**	**Add the words in italics to the following purpose:** **'To provide for industries and associated uses in specific areas where special consideration of the nature and impacts of industrial uses is required *or to avoid inter-industry conflict.'*** **Add the following purpose:** ***'To ensure that uses do not affect the safety and amenity of adjacent more sensitive land uses.'***
33.03-1	**Table of uses**	**Delete 'materials recycling' from Section 3 and include in Section 2.**
33.03-1	**Table of uses**	**Add the same condition to 'adult sex bookshop' in Section 2 as applies to this use in other business zones.**

Recommendations - cont'd

CLAUSE NO.	DESCRIPTION	RECOMMENDATION
33.03-1	**Table of uses**	**Amend the table of uses in Clause 33.03-1 by including '*cinema based entertainment facility*' in Section 3 and including '*place of assembly (other than cinema based entertainment facility)*' in Section 2.**
33.03-2	**Use of land**	**Add the following dot point to 'Decision guidelines' in Clause 33.03-2:** **'• *the effect on nearby industries.*'**
33.03-4	**Buildings and works**	**Add the following dot point to 'Decision guidelines' in Clause 33.03-4:** **'• *the effect on nearby industries.*'**
33.03-4	**Buildings and works**	**Delete the whole paragraph headed 'Exemptions'.**
33.03-4	**Buildings and works**	**Alter the second dot point under 'Permit requirement' by adding the words in italics so that the paragraph reads as follows:** **'• *Are necessary* to comply with a direction or licence under the Dangerous Goods Act 1985 or a Waste Discharge Licence, Works Approval Or Pollution Abatement Notice under the Environment Protection Act 1970.'**
Clause 34.01 — Business 1 Zone		
34.01-1	**Table of uses**	**In Section 1 of Clause 34.01-1 include the following condition opposite 'food and drink premises (other than hotel and tavern)':** ***'Must not be within a core retail area specified in a schedule to this Zone.'***
34.01-1	**Table of uses**	**Delete 'utility installation (other than minor utility installation)' from Section 3 in Clause 34.01-1.**

Recommendations - cont'd

CLAUSE NO.	DESCRIPTION	RECOMMENDATION
34.01-1	**Table of uses**	**Delete the following words in the condition in Section 1 of Clause 34.01-1 relating to 'dwelling (other than bed and breakfast and caretaker's house)':** **'Any frontage at ground floor level must not exceed two metres ~~and access must be shared with other dwellings~~.'**
34.01-1	**Table of uses**	**Amend the table of uses in Clause 34.01-1 by including '*cinema based entertainment facility*' in Section 1.**
Clause 34.04 — Business 4 Zone		
34.04-1	**Table of uses**	**Add '*motel*' to Section 2 of Clause 34.04-1.** **Add the words in italics to Section 3 of Clause 34.04-1 to read as follows:** **'Accommodation (other than Caretaker's house *and Motel)*'**
Clause 34.05 — Business 5 Zone		
34.05-1	**Table of uses**	**Delete 'utility installation (other than minor utility installation)' from Section 3 in Clause 34.05-1.**
Clause 35.01 — Rural Zone		
35.01-1	**Table of uses**	**Amend Section 1 of the table of uses in Clause 35.01-1 by including the following additional conditions opposite the use 'Cattle feedlot':** ***'Site must be located outside a special water supply catchment under the Catchment and Land Protection Act 1994.*** ***'Site must be located outside a catchment area listed in Appendix 2 of the Victorian Code for Cattle Feedlots - August 1995.'***

Recommendations - cont'd

CLAUSE NO.	DESCRIPTION	RECOMMENDATION
35.01-1 cont'd	**Table of uses**	**Amend Section 2 of the table of uses in Clause 35.01-1 by deleting the words indicated and adding the words in italics to the use and conditions relating to 'Cattle feedlot' to read as follows:** **'Cattle feedlot - if the Section 1 conditions ~~is~~ *are* not met** — **Must meet the requirements of Clause 52.26.** ***Site must be located outside a catchment area listed in Appendix 2 of the Victorian Code for Cattle Feedlots - August 1995.***
35.01-1	**Table of uses**	**Delete the conditions opposite 'timber production' in Section 1 of the Table of Uses in Clause 35.01-1 and replace by the following:** ***'Must meet the requirements of Clause 52.18.*** ***The plantation area must not exceed any area specified in the schedule to this zone. Any area specified must be at least 40 hectares.*** ***The total plantation area (existing and proposed) on contiguous land which was in the same ownership on or after 28 October 1993 must not exceed any scheduled area.*** ***The plantation must not be within 100 metres of:*** • ***Any dwelling in separate ownership.*** • ***Any land zoned for residential, business or industrial use.*** • ***Any site specified on a permit which is in force which permits a dwelling to be constructed.*** ***The plantation must not be within 20 metres of a powerline whether on private or public land, except with the consent of the relevant electricity supply or distribution authority.'***

Recommendations - cont'd

CLAUSE NO.	DESCRIPTION	RECOMMENDATION
35.01-1	**Table of uses**	**Amend the table of uses in Clause 35.01-1 by including '*cinema based entertainment facility*' in Section 3 and including '*place of assembly (other than cinema based entertainment facility)*' in Section 2.**
35.01-1	**Table of uses**	**Amend Section 1 of the table of uses in Clause 35.01-1 by adding the words in italics as follows:** **'Crop raising (other than Timber production *and Rice growing*)'** **Amend Section 2 of the table of uses in Clause 35.01-1 by including '*Rice growing*'.**
35.01-3	**Buildings and works**	**Add the words in italics to the last item in the fourth dot point in Clause 35.01-3 as follows:** **'. 100 metres from a watercourse, *wetlands* or designated floodplain.'**
35.01-3	**Buildings and works**	**Amend Clause 35.01-3 by deleting the second and third dot points and substituting the following:** **'• *Earthworks if specified in the schedule to this zone. Earthworks include landforming, laser grading, levee banks, lanes, tracks, aqueducts, surface and subsurface drains and any associated structures.'*** **Amend the last dot point in Clause 35.01-3 by deleting the words indicated and adding the words in italics as follows:** **'• A dam which is any of the following:** **. ~~More than 3000 cubic metres~~.** **. *A capacity greater than specified in the schedule to this zone.*** **. On a permanent watercourse.** **. Diverts water from a permanent watercourse.'**

Recommendations - cont'd

CLAUSE NO.	DESCRIPTION	RECOMMENDATION
35.01-4	**Subdivision**	**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.*** ***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 — Environmental Rural Zone		
35.02	**Environmental Rural Zone**	**Add the words in italics to the third Purpose in Clause 35.02 as follows:** **'To conserve and permanently maintain flora and fauna species, soil *and water* quality and areas of historic, archaeological and scientific interest so that the viability of natural ecosystems and the natural and historic environment is enhanced.'**
35.02	**Environmental Rural Zone**	**Include a provision enabling the council to schedule in a requirement for a permit to be obtained for an outbuilding above a certain size, which must be specified in the schedule.**

Recommendations - cont'd

CLAUSE NO.	DESCRIPTION	RECOMMENDATION
35.02-1	**Table of uses**	**Amend the table of uses in Clause 35.02-1 by including '*cinema based entertainment facility*' in Section 3 and including '*place of assembly (other than cinema based entertainment facility)*' in Section 2.**
35.02-3	**Buildings and works**	**Add the words in italics to the last item in the fourth dot point in Clause 35.02-3 as follows:** **'. 100 metres from a watercourse, *wetlands* or designated floodplain.'**
35.02-3	**Buildings and works**	**Amend Clause 35.02-3 by deleting the second and third dot points and substituting the following:** **'• *Earthworks if specified in the schedule to this zone. Earthworks include landforming, laser grading, levee banks, lanes, tracks, aqueducts, surface and subsurface drains and any associated structures.'*** **Amend the last dot point in Clause 35.02-3 by deleting the words indicated and adding the words in italics as follows:** **'• A dam which is any of the following:** **. ~~More than 3000 cubic metres~~.** **. *A capacity greater than specified in the schedule to this zone.*** **. On a permanent watercourse.** **. Diverts water from a permanent watercourse.'**
35.02-4	**Subdivision**	**Delete the last dot point in Clause 35.02-4.**
Clause 35.03 — Rural Living Zone		
35.03	**Rural Living Zone**	**Include a provision enabling the council to schedule in a requirement for a permit to be obtained for an outbuilding above a certain size, which must be specified in the schedule.**

Recommendations - cont'd

CLAUSE NO.	DESCRIPTION	RECOMMENDATION
35.03-1	**Table of uses**	**Amend the table of uses in Clause 35.03-1 by including '*cinema based entertainment facility*' in Section 3 and including '*place of assembly (other than cinema based entertainment facility)*' in Section 2.**
35.03-3	**Buildings and works**	**Add the words in italics to the last item in the fourth dot point in Clause 35.03-3 as follows:** **'. 100 metres from a watercourse, *wetlands* or designated floodplain.'**
35.03-3	**Buildings and works**	**Amend Clause 35.03-3 by deleting the second and third dot points and substituting the following:** **'• *Earthworks if specified in the schedule to this zone. Earthworks include landforming, laser grading, levee banks, lanes, tracks, aqueducts, surface and subsurface drains and any associated structures.'*** **Amend the last dot point in Clause 35.03-3 by deleting the words indicated and adding the words in italics as follows:** **'• A dam which is any of the following:** **. ~~More than 3000 cubic metres.~~** **. *A capacity greater than specified in the schedule to this zone.*** **. On a permanent watercourse.** **. Diverts water from a permanent watercourse.'**
35.03-4	**Subdivision**	**Delete the last dot point in Clause 35.03-4.**

Recommendations - cont'd

Clause 36.01 — Public Use Zone		
CLAUSE NO.	**DESCRIPTION**	**RECOMMENDATION**
36.01	**Public Use Zone**	**Delete Clause 36.01 and replace with Clause 36.01 in the Replacement and New Provisions section of this Chapter.**
36.01-1	**Table of uses**	**Add an additional condition opposite mining in the table of uses in the new Clause 36.01 as follows:** ***'Must not be prohibited under the Act which the land is reserved.'***
36.01-1	**Table of uses**	**Amend the table of uses in Clause 36.01-1 by including '*cinema based entertainment facility*' in Section 3 and including '*place of assembly (other than cinema based entertainment facility)*' in Section 2.**
Clause 36.02 — Public Park and Recreation Zone		
36.02	**Public Park and Recreation Zone**	**Delete Clause 36.02 and replace with Clause 36.02 in the Replacement and New Provisions section of this Chapter.**
36.02-1	**Table of uses**	**Add an additional condition opposite mining in the table of uses in the new Clause 36.02 as follows:** ***'Must not be prohibited under the Act which the land is reserved.'***
36.02-1	**Table of uses**	**Amend the table of uses in the new Clause 36.02-1 by including '*cinema based entertainment facility*' in Section 3 and including '*place of assembly (other than cinema based entertainment facility)*' in Section 2.**

Recommendations - cont'd

Clause 36.03 — Public Conservation and Resource Zone		
CLAUSE NO.	**DESCRIPTION**	**RECOMMENDATION**
36.03	**Public Conservation and Resource Zone**	**Delete Clause 36.03 and replace with Clause 36.03 in the Replacement and New Provisions section of this Chapter.**
36.03-1	**Table of uses**	**Add an additional condition opposite mining in the table of uses in the new Clause 36.03 as follows:** ***'Must not be prohibited under the Act which the land is reserved.'***
Clause 36.04 — Road Zone		
36.04-2	**Road categories**	**Amend Clause 36.04-2 by adding the words '*as a Category 1 road*' or '*as a Category 2 road*' , as the case requires, where the Clause refers to a road 'identified on the planning scheme map'.**
36.04-3	**Permit requirement**	**Amend the first dot point in Clause 36.04-3 by adding the words in italics to read as follows:** **'• Create *or alter* access to a Category 1 road.'**
36.04-4	**Referral of applications**	**Amend Clause 36.04-4 by adding the words in italics to read as follows:** **'• An application to create *or alter* access to or to subdivide land adjacent to a road declared under the Transport Act 1983 must be referred to the Roads Corporation under Section 55 of the Act unless in the opinion of the responsible authority the proposal satisfies requirements or conditions previously agreed in writing between the responsible authority and the Roads Corporation.'**

Recommendations - cont'd

Clause 37.01 — Special Use Zone		
CLAUSE NO.	**DESCRIPTION**	**RECOMMENDATION**
37.01	**Special Use Zone**	**Amend the purpose of the Special Use Zone in Clause 37.01 by adding the words in italics as follows:** **'To recognise or provide for the use and development of land for specific purposes *as identified in a schedule to the zone.*'**
Clause 37.03 — Urban Floodway Zone		
37.03	**Urban Floodway Zone**	**Delete Clause 37.03 and replace with Clause 37.03 in the Replacement and New Provisions section of this Chapter.**
37.03-1	**Table of uses**	**In the new Clause 37.03, amend Section 1 of the table of uses in Clause 37.03-1 by deleting 'Agriculture' and including '*Extensive animal husbandry*'.** **In the new Clause 37.03, amend Section 2 of the table of uses in Clause 37.03-1 by including '*Agriculture (other than Extensive animal husbandry).*'**
Clause 37.04 — Capital City Zone		
37.04	**Capital City Zone**	**Amend the second purpose of Clause 37.04 by deleting the words indicated and adding the words in italics as follows:** **'To enhance the ~~central city's~~ role *of Melbourne's central city* as the capital of Victoria and as an area of national and international importance.'**
37.04	**Capital City Zone**	**Amend the third purpose of Clause 37.04 by making more specific.**

Recommendations - cont'd

OVERLAYS

Clause 41 — Operation of Overlays		
CLAUSE NO.	**DESCRIPTION**	**RECOMMENDATION**
41	**Operation of overlays**	**Add a new paragraph to Clause 41 as follows:** ***'Because a permit can be granted does not imply that a permit should or will be granted. The responsible authority must decide whether the proposal will produce acceptable outcomes in terms of the State Planning Policy Framework, the Local Planning Policy Framework, the purpose and decision guidelines of the zone and any of the other decision guidelines in Clause 65.'***
Clause 42.01 — Environmental Significance Overlay		
42.01-2	**Permit requirement**	**Add an additional dot point to the last paragraph of Clause 42.02-2 as follows:** ***'• If the vegetation has been planted for timber production.'***
42.01-4	***Decision guidelines***	**Add a new *Clause 42.01-4 'Decision guidelines'* as follows:** ***'Decision guidelines*** ***Before deciding on an application, the responsible authority must consider, as appropriate:*** • ***The State Planning Policy Framework and the Local Planning Policy Framework, including the Municipal Strategic Statement and local planning policies.*** • ***The environmental objectives of the relevant schedule to this Overlay.*** • ***Any decision guidelines of the relevant schedule to this Overlay.'***

Recommendations - cont'd

Clause 42.02 — Vegetation Protection Overlay		
CLAUSE NO.	**DESCRIPTION**	**RECOMMENDATION**
42.02-2	**Permit requirement**	**Add an additional dot point to the last paragraph of Clause 42.02-2 as follows:** **'• *If the vegetation has been planted for timber production.'***
Clause 42.03 — Significant Landscape Overlay		
42.03-2	**Permit requirement**	**Add an additional dot point to the last paragraph of Clause 42.03-2 as follows:** **'• *If the vegetation has been planted for timber production.'***
Clause 43.01 — Heritage Overlay		
43.01	**Heritage Overlay**	**Amend Clause 43.01 to include provision for an incorporated plan and amend the schedule accordingly.**
43.01-1	**Permit requirement**	**Amend Clause 43.01-1 by deleting the seventh dot point and replacing it by the following three dot points:** **'• *externally paint a building if the schedule to this overlay area identifies the heritage place as one where external paint controls apply.*** **• *externally paint an unpainted surface.*** **• *externally paint a building if the painting constitutes an advertisement.'***
43.01-1	**Permit requirement**	**Amend the last paragraph of Clause 43.01-1 by adding the words in italics to read as follows:** **'The construction of a building or the construction or carrying out of works includes a fence, road works and street furniture *other than traffic signals, traffic signs, fire hydrants, parking meters or post boxes.'***

Recommendations - cont'd

CLAUSE NO.	DESCRIPTION	RECOMMENDATION
43.01-2	**Exempt buildings and works**	**Amend Clause 43.01-2 by adding the words in italics to read as follows:** **'No permit is required for:** • **Repairs or routine maintenance which do not change the appearance of a heritage place. The repairs must be undertaken to the same details, specifications and materials.** • ***Anything done in accordance with an incorporated plan specified in a schedule to this overlay.'***
43.01-4	**Exemptions**	**Add an extra dot point to Clause 43.01-4 as follows:** ***'• Construction of seating, picnic tables, drinking taps, barbeques, rubbish bins, security lighting, irrigation, drainage or underground infrastructure, bollards, telephone boxes.'***
43.01-7	***Aboriginal heritage places***	**Add a new Clause 43.01-7 as follows:** ***'Aboriginal heritage places*** ***A heritage place identified in the schedule to this overlay as an aboriginal heritage place is also subject to the requirements of the Archaeological and Aboriginal Relics Preservation Act 1972 and the Commonwealth Aboriginal and Torres Strait Islander Heritage Protection Act 1984.'***

Recommendations - cont'd

Clause 43.03 — Incorporated Plan Overlay		
CLAUSE NO.	**DESCRIPTION**	**RECOMMENDATION**
43.03	**Incorporated Plan Overlay**	**Include an additional provision in Clause 43.03 enabling use and development specified in an incorporated plan or development plan to be 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 appeal rights of Section 82(1) of the Act.**
Clause 43.04 — Development Plan Overlay		
43.04	**Development Plan Overlay**	**Include an additional provision in Clause 43.04 enabling use and development specified in an incorporated plan or development plan to be 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 appeal rights of Section 82(1) of the Act.**
Clause 44.02 — Airport Environs Overlay		
44.02	**Airport Environs Overlay**	**Delete Clause 44.02 and replace with Clause 44.02 in the Replacement and New Provisions Section of this Chapter.**
Clause 44.03 — Rural Floodway Overlay		
44.03	**Rural Floodway Overlay**	**Delete Clause 44.03 and replace with Clause 44.03 in the Replacement and New Provisions Section of this Chapter.**
Clause 44.04 — Land Subject to Inundation Overlay		
44.04	**Land Subject to Inundation Overlay**	**Delete Clause 44.04 and replace with Clause 44.04 in the Replacement and New Provisions Section of this Chapter.**
Clause 44.05 — Restructure Overlay		
44.05-2	**Dwellings and other buildings**	**Amend the second paragraph of Clause 44.05-2 by deleting the words indicated and including the words in italics as follows:** **'~~All dwellings and other buildings~~ *A permit* must be in accordance with a restructure plan for the land listed in the schedule to this overlay.'**

Recommendations - cont'd

Clause 44.07 — Special Building Overlay *(Wildfire Management Overlay)*		
CLAUSE NO.	**DESCRIPTION**	**RECOMMENDATION**
44.07	**Special Building Overlay**	**Delete the Special Building Overlay in Clause 44.07 and replace with Clause 44.07 '*Wildfire Management Overlay*' in the Replacement and New Provisions section of this Chapter.**
Clause 44.09 — Salinity Management Overlay		
44.09	**Purpose**	**Amend the purpose of Clause 44.09 by deleting the word indicated in the sixth paragraph to read as follows:** **'To ensure development is compatible with site capability and the retention of ~~native~~ vegetation, and complies with the objectives of any salinity management plan for the area.'**
44.09-1	**Permit requirement**	**Add a further two paragraphs to Clause 44.09-1 under the heading 'Buildings and works' as follows:** ***'A permit is required to remove, destroy or lop any vegetation.*** ***'This does not apply if the proposal is exempted in a schedule to this overlay.'***
Clause 44.10 — Potentially Contaminated Land Overlay *(Environmental Audit Overlay)*		
44.10	**Potentially Contaminated Land Overlay**	**Change the name of the 'Potentially Contaminated Land Overlay' to *'Environmental Audit Overlay'*.**
Clause 44.13 — Special Building Overlay		
44.13	**Special Building Overlay**	**Add a new *Clause 44.13 'Special Building Overlay'* in the Replacement and New Provisions section of this Chapter.**

Recommendations - cont'd

PARTICULAR PROVISIONS

CLAUSE NO.	DESCRIPTION	RECOMMENDATION
Clause 52.01 — Subdivision		
52.01	**Subdivision**	**Amend Clause 52.01 by adding the following paragraph:** ***'A person who proposes to subdivide land must make a contribution to the municipal council for public open space in an amount specified in the schedule to this clause (being a percentage of the land intended to be used for residential, industrial or commercial purposes, or a percentage of the site value of such land, or a combination of both). If no amount is specified, a contribution for public open space may still be required under Section 18 of the Subdivision Act 1988.'***
Clause 52.03 — Specific Sites and Exclusions		
52.03	**Specific sites and exclusions**	**In the paragraph 'Expiry of specific controls' amend the two dot points by adding the words in italics as follows:** **'• The development and use is not started within two years of the approval date *or another date specified in the incorporated document.*** **• The development is not completed within one year of the date of commencement of works *or another date specified in the incorporated document.'***
Clause 52.10 — Uses with a potential for offence or risks		
52.10	**Uses with a potential for offence or risk**	**Delete the heading to Clause 52.10 and replace by the following:** ***'Uses with adverse amenity potential'.***

Recommendations - cont'd

<table>
<tr><th>CLAUSE NO.</th><th>DESCRIPTION</th><th>RECOMMENDATION</th></tr>
<tr><td>52.10</td><td>Uses with a potential for offence or risk</td><td>Amend the table to Clause 52.10 by adding the following new purposes and buffers in italics as follows:
<table>
<tr><th>TYPE OF PRODUCTION, USE OR STORAGE (PURPOSE)</th><th>AIR EMISSION BUFFER (METRES)</th><th>NOTES</th></tr>
<tr><td>Food, Beverage & Tobacco</td><td></td><td></td></tr>
<tr><td>Poultry processing works</td><td>100</td><td></td></tr>
<tr><td>Freezing and cool storage</td><td>150</td><td></td></tr>
<tr><td>Milk depot</td><td>100</td><td></td></tr>
<tr><td>Manufacture of milk products</td><td></td><td><s>100</s> 300</td></tr>
<tr><td>Other Premises</td><td></td><td></td></tr>
<tr><td>Panel beating</td><td>100</td><td></td></tr>
<tr><td>Composting</td><td></td><td>Note 1</td></tr>
<tr><td>Rural industry handling, processing or packing agricultural produce</td><td>300</td><td></td></tr>
<tr><td>Recreation, Personal & Other Services</td><td></td><td></td></tr>
<tr><td>Industrial dry cleaning</td><td>100</td><td></td></tr>
<tr><td>Non-metallic Mineral Products</td><td></td><td></td></tr>
<tr><td>Concrete batching plant:</td><td><s>100</s> 300</td><td></td></tr>
<tr><td>Fabricated Metal Products</td><td></td><td></td></tr>
<tr><td>Works producing iron or <s>Iron and</s> steel <s>production</s> products in amounts:</td><td></td><td></td></tr>
<tr><td>• up to 1,000,000 tonnes a year</td><td>100</td><td></td></tr>
<tr><td>• exceeding 1,000,000 tonnes per year</td><td>1,000</td><td></td></tr>
<tr><td>Wood, Wood Products & Furniture</td><td></td><td></td></tr>
<tr><td>Sawmill</td><td><s>300</s> 500</td><td></td></tr>
<tr><td>Wood-fibre or wood chip <s>production</s> products</td><td><s>300</s> 1,500</td><td></td></tr>
<tr><td>Transport and Storage:</td><td></td><td></td></tr>
<tr><td>Temporary storage of industrial wastes:</td><td><s>200</s> 300</td><td></td></tr>
<tr><td>Treatment of aqueous waste:</td><td><s>300</s> 200</td><td></td></tr>
<tr><td>Treatment of organic waste:</td><td><s>100</s> 500</td><td></td></tr>
</table></td></tr>
</table>

Recommendations - cont'd

CLAUSE NO.	DESCRIPTION	RECOMMENDATION
52.10	**Uses with a potential for offence or risk**	**Amend the Table to Clause 52.10 by deleting the heading 'Air emission buffer' and replace with the heading '*Threshold distance*'.** **Make consequential amendments to reflect this change throughout the VPPs.**
Clause 52.18 — Timber production		
52.18-3	**Timber production by establishing a plantation**	**Delete Clause 52.18-3 and renumber subsequent clauses.**
Clause 52.19 — Bed and breakfast		
52.19	**Bed and breakfast**	**Delete Clause 52.19.**
Clause 52.21 — Private tennis court		
52.21	**Private tennis court**	**Amend the second paragraph of 'Scope' of Clause 52.21 by deleting it and inserting the following:** ***'This does not apply where the land is identified in the planning scheme as:*** • ***Land within a Heritage Overlay.*** • ***Land within an Urban Floodway Zone, a Rural Floodway Overlay or a Land Subject to Inundation Overlay.*** • ***Land within an Environmental Significance Overlay, a Vegetation Protection Overlay or a Significant Landscape Overlay.*** • ***Land listed in the Schedule to Clause 52.03 (Specific sites and exclusions.)***

Recommendations - cont'd

Clause 52.26 — Cattle feedlot		
CLAUSE NO.	**DESCRIPTION**	**RECOMMENDATION**
52.26	**Cattle feedlot**	**Amend Clause 52.26 by deleting the paragraphs headed 'Requirements to be met', 'Permit-not-required' and 'Permit-required', and adding the following paragraph:** ***'Requirements to be met*** ***All use and development of cattle feedlots must comply with the comply with the Victorian Code for Cattle Feedlots - August 1995.*** ***The Code must be complied with to the satisfaction of the responsible authority.'***

GENERAL PROVISIONS

Clause 62 — Exempt Buildings, Works and Subdivisions		
62.01	**Exempt buildings and works**	**Amend Clause 62.01 by deleting the words indicated and adding the words in italics to read as follows:** **'• street furniture including post boxes, telephone booths, fire hydrants *and* traffic control devices, ~~and landscaping~~.** **• *gardening.'***
62.01	**Exempt buildings and works**	**Add an extra dot point to Clause 62.01 as follows:** ***'• Buildings and works associated with a kerbside cafe or street trading authorised by a municipal council under a local law.'***

Recommendations - cont'd

CLAUSE NO.	DESCRIPTION	RECOMMENDATION
62.01	**Exempt buildings and works**	**Delete the word indicated and add the words in italics to the 15th dot point in Clause 62.01 to read as follows:** **'• Any emergency works undertaken by, or on behalf of, a municipality, ~~or~~ public authority *or utility service provider* in the exercise of any power conferred on them under any Act.'**
62.02	**Exempt subdivisions**	**Add an additional dot point to Clause 62.02 as follows:** ***'• A subdivision by a public authority or utility service provider which does not create an additional lot other than for the sole purpose of use for a minor utility installation. This exemption does not apply if a permit is required to subdivide land under any overlay.'***
62.03	***Demolition***	**Add a new Clause 62.03 headed *'Demolition'* as follows:** ***'Any control in this scheme over the construction of a building does not apply to the demolition or removal of a building unless a permit is specifically required for the demolition or removal.'***
Clause 65 — Decision Guidelines		
65	**Decision guidelines**	**Add a new paragraph to Clause 65 before Clause 65.01 as follows:** ***'Because a permit can be granted does not imply that a permit should or will be granted. The responsible authority must decide whether the proposal will produce acceptable outcomes in terms of the decision guidelines of this Clause.'***

Recommendations - cont'd

CLAUSE NO.	DESCRIPTION	RECOMMENDATION
65.01	**Approval of an application or plan**	**Add an additional dot point to Clause 65.01 as follows:** **'• *whether the proposed development is designed to maintain or improve the quality of stormwater within and exiting the site.'***

DEFINITIONS

Clause 72 — General Terms		
72	**General terms**	**<u>Public land manager</u>** **Add the words in italics to the definition of 'public land manager' to read as follows:** **'Public land manager** — **The Minister, government department, public authority or municipal council having responsibility for the care or management of public land. In relation to Crown land reserved under an Act and managed or controlled by a committee of management *other than Melbourne Parks and Waterways or a municipal council,* it means the Minister administering that Act and does not include the committee of management.'**
72	**General terms**	***<u>Waterway</u>*** **Include a definition of '*Waterway*' consistent with the definition in the Water Act 1989.** **Replace the term 'watercourse' with '*waterway*' wherever this appears in the VPPs.**

Recommendations - cont'd

Clause 74 — Land Use Terms		
CLAUSE NO.	**DESCRIPTION**	**RECOMMENDATION**
74	**Land use terms**	**Adult sex bookshop** **Delete the definition of 'adult sex bookshop'.**
74	**Land use terms**	***Adult sex centre*** **Include the following definition of '*adult sex centre*':** ***'Adult sex centre*** ***Land used to:*** ***a) provide live sexually explicit entertainment for adults only. It may include the provision of food and drink;*** ***b) show films or provide screen-based entertainment to the public where the majority of films shown or entertainment provided are classified as restricted under the Classification of Films and Publications Act 1990;*** ***c) sell or hire sexually explicit material, including:*** • ***publications classified as restricted under the Classification of Films and Publications Act 1990;*** • ***visual media containing explicit exhibition of sexual activity; and*** • **materials and devices (other than contraceptives and medical treatments) used in conjunction with sexual behaviour.'**

Recommendations - cont'd

CLAUSE NO.	DESCRIPTION	RECOMMENDATION
74	Land use terms	**Aquaculture** Delete 'rice growing' from the land use term 'aquaculture'.
74	Use of land terms	**Caretaker's House** Delete the words indicated in the definition of 'caretaker's house' to read as follows: 'Caretaker's house — A dwelling on the same site as a building, operation, or plant, and occupied by ~~an owner or~~ supervisor of that building, operation, or plant.'
74	Land use terms	**Cinema** Include a definition of 'cinema' as follows: *Cinema* — *a place where screen based entertainment or information is provided to the public.'* ***Cinema based entertainment facility*** Include a new land use term and definition for *'cinema based entertainment facility'* as follows: *'Cinema based entertainment facility* — *a cinema with 500 seats or more which may have associated eating, sporting, amusement, entertainment, leisure and related retail facilities.'* Include *'cinema based entertainment facility'* in 'place of assembly' and the place of assembly group where appropriate.

Recommendations - cont'd

CLAUSE NO.	DESCRIPTION	RECOMMENDATION
74	**Land use terms**	**<u>Crop raising</u>** **Amend the definition of 'crop raising' by adding the words in italics as follows:** **'Land used to propagate, cultivate or harvest plants, including cereals, flowers, fruit, seeds, trees, turf and vegetables. *It includes rice growing.*'**
74	**Land use terms**	**<u>Dairy farm</u>** **Amend Clause 74 by deleting 'dairy farm' from the list of land use term definitions, the agriculture group nesting diagram and the definition of 'extensive animal husbandry'.**
74	**Land use terms**	**<u>Intensive animal husbandry</u>** **Amend the definition of 'Intensive animal husbandry' by deleting the words indicated and adding the words in italics to read as follows:** **'Land used to keep or breed farm animals , including birds, by importing most food from outside the enclosures. It does not include ~~an abattoir or sale yard~~:** ***a) an abattoir or sale yard;*** ***b) emergency and supplementary feeding where incidental to the use of land for extensive animal husbandry; or*** ***c) the penning and housing of animals, including birds, for brooding, weaning, dipping, or other husbandry purposes where incidental to the use of land for extensive animal husbandry.'***

Recommendations - cont'd

CLAUSE NO.	DESCRIPTION	RECOMMENDATION
74	**Land use terms**	**Minor utility installation** **Delete the words indicated and add the words in italics to the definition of 'minor utility installation' to read as follows:** **'e) ~~telecommunication~~ *telephone* lines;'** **Note: This recommendation may be superseded by a separate amendment to the VPPs proposed by DOI dealing with telecommunications facilities.**
74	**Land use terms**	**Restricted retail premises** **Add the following category to the definition of 'restricted retail premises':** ***'k) videos'.***
74	**Land use terms**	**Trade supplies** **Add the words in italics to the definition of 'trade supplies' to read as follows:** **'Trade supplies** — **Land used to sell by *both* retail and wholesale, or to hire, materials, tools, equipment, ~~or~~ *machinery or other goods* for use in :** **a) the automotive trade;** **b) the building trade;** **c) commerce;** **d) industry;** **e) the landscape gardening trade;** **f) the medical profession; ~~or~~** **g) primary production; *or*** ***h) local government, government departments or public institutions.'***

Recommendations - cont'd

CLAUSE NO.	DESCRIPTION	RECOMMENDATION
74	**Land use terms**	**Utility service provider** **Insert a new definition of *'utility service provider'* as follows:** ***'Utility service provider*** ***A person or body, other than a public authority or municipal council, having responsibility under an Act for the generation, transmission, distribution or supply of electricity, gas, power, telephone, water supply, drainage or sewerage services.'***
74	**Land use terms**	**Video shop** **Delete the land use term 'video shop' from Clause 74.**

GENERAL

DESCRIPTION	RECOMMENDATION
All zones - uses	**Replace the use 'adult sex bookshop' with the use '*adult sex centre'* in all zones where it is referred to.** **Change the condition applicable to the use 'adult sex bookshop' to a condition applicable to the use '*adult sex centre'* in all zones where this appears and amend the condition by including the words in italics to read as follows:** **'Must be at least 200 metres *(measured by the shortest route reasonably accessible on foot)* from a residential zone or Business 5 Zone, land used for a hospital or school or land in a Public Acquisition Overlay to be acquired for a hospital or school.'** **Delete 'video shop' from all tables of uses wherever appearing.**

Recommendations - cont'd

DESCRIPTION	RECOMMENDATION
All Zones and Overlays	**Add a note at the end of each zone and overlay as follows:** ***'Check if a permit is required where land abuts a Road Zone.'***
Decision Guidelines	**Add to the beginning of all provisions of the VPPs where there are 'Decision guidelines' the words in italics as follows:** ***'In addition to the matters set out in Clause 65 ...;***
Format	**Introduce a system of headings using three sizes to distinguish more clearly between headings, sub-headings and sub-sub-headings.** **Require page numbering for individual planning schemes.** **Require the inclusion of page headers, setting out the zone, overlay or particular provision name and clause number, in individual planning schemes.**
General	**Check that typographical and other minor amendments are consistent with the outcomes of all other changes to the VPPs.**
General	**Incorporate the substance of the provisions of Amendment S44 into the VPPs.**
General	**Update all references in the VPPs to *'Code of Forest Practices for Timber Production Revision No. 2 (Department of Natural Resources and Environment 1996)* as amended from time to time.'**
Maps	**Provide a means of differentiating on planning scheme maps between areas to which different schedules apply under a zone or overlay.** **Identify specific sites on zone maps by the letter 'S' to identify site specific exclusions under Clause 52.03.**

Recommendations - cont'd

MINISTERIAL DIRECTION

<table>
<tr><th>Description</th><th>Recommendation</th></tr>
<tr><td>Business 1 Zone</td><td>Include a Schedule to the Business 1 Zone specifying core retail areas which relate to the condition in Section 1 applicable to 'food and drink premises (other than hotel and tavern)'.</td></tr>
<tr><td>Restructure Overlay</td><td>Amend the schedule to the Restructure Overlay by including a column 'PS MAP' and provide for a 'RO Number' to be included in this column which corresponds to the 'RO Number' on the planning scheme maps.</td></tr>
<tr><td>Salinity Management Overlay</td><td>Include a schedule to the Salinity Management Overlay which provides for exemptions for buildings and works not inconsistent with the purpose of the Overlay.</td></tr>
<tr><td>Rural Zone, Environmental Rural Zone, Rural Living Zone</td><td>Amend the schedule to the Rural Zone, Environmental Rural Zone and Rural Living Zone to delete the last three rows of the table and delete the words 'metres' and 'height' in the heading to the third column. add a separate table as follows:
<table>
<tr><th>PERMIT REQUIREMENT FOR EARTHWORKS</th><th>LAND</th></tr>
<tr><td>A permit is required to construct or carry out earthworks which in the opinion of the responsible authority change the rate of flow or the discharge point of water across a property boundary.
A permit is required to construct or carry out earthworks which in the opinion of the responsible authority increase the discharge of saline groundwater.</td><td></td></tr>
</table>
<table>
<tr><th>PERMIT REQUIREMENT FOR LARGE DAMS</th><th>LAND</th><th>CAPACITY</th></tr>
<tr><td>Capacity above which a permit is required to construct a dam (cubic metres)</td><td></td><td></td></tr>
</table></td></tr>
</table>

Recommendations - cont'd

Description	Recommendation
Heritage Overlay	**Amend the schedule to Clause 43.01 by including a new column to identify whether the place is an aboriginal heritage place.** **Amend the Schedule to Clause 43.01 by printing in landscape format instead of portrait format.** **Provide a means of numbering heritage places in the schedule to the Heritage Overlay and on planning scheme maps.**

Recommendations - cont'd

REPLACEMENT AND NEW PROVISIONS

Clause 18.04 — Airfields

18.04 Airfields

18.04-1 Objective

To facilitate the siting of airfields and extensions to airfields.

To limit incompatible land use and development in the vicinity of airfields.

To recognise and strengthen the role of airfields as focal points within the State's economic and transport infrastructure.

18.04-2 General implementation

New airfields should not be located in areas which have greater long-term value to the community for other purposes.

The location of airfields, existing and potential development nearby, and the land-based transport system required to serve them should be planned as an integrated operation.

The visual amenity and impact of any use or development of land on the approaches to an airfield should be planned to be consistent with the status of the airfield.

Planning for areas around airfields should:

- Preclude any new use or development which could prejudice the safety or efficiency of an airfield.
- Take into account the detrimental effects of aircraft operations (such as noise) in regulating and restricting the use and development of affected land.
- Preclude any new use or development which could prejudice future extensions to an existing airfield or aeronautical operations in accordance with an approved strategy or master plan for that airfield.

18.04-3 Geographic strategies

Melbourne Airport

Planning for areas around Melbourne Airport should:

Strengthen the role of Melbourne Airport as a key focal point within the State's economic and transport infrastructure.

Ensure the effective and competitive operation of Melbourne Airport at both national and international levels.

Ensure any new use or development does not prejudice the optimum usage of Melbourne Airport.

Ensure any new use or development does not prejudice the curfew-free operation of Melbourne Airport.

Planning and responsible authorities must have regard to the Melbourne Airport Strategy (Government of Victoria/Federal Airports Corporation, approved 1990) and its associated Final Environmental Impact Statement in relation to planning decisions affecting land in the vicinity of the Melbourne Airport. Reference should be made to the Melbourne International Airport Australian Noise Exposure Forecast (ANEF) (index ref: EN/NOI) approved by the Civil Aviation Authority 22/8/93, Amendment No 5, 12/7/96 (endorsed for technical accuracy by the Manager, Environment Monitoring Section, Air Services Australia, Canberra on 2/9/96).

Avalon Airport

Planning and responsible authorities should have regard to the Avalon Airport Strategy (Department of Business and Employment/AeroSpace Technologies of Australia 1993) and its associated Aircraft Noise Exposure Concepts.

Recommendations - cont'd

Clause 36.01 — Public Use Zone

36.01 PUBLIC USE ZONE

Shown on the planning scheme map as **PUZ** with a number.

Purpose

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

To recognise public land use for public utility and community services and facilities.

To provide for associated uses that are consistent with the intent of the public land reservation or purpose.

36.01-1 Table of uses

Section 1 - Permit not required

USE	CONDITION
Carnival	Must meet the requirements of "A 'Good Neighbour' Code of Practice for a Circus or Carnival, August 1997"
Circus	Must meet the requirements of "A 'Good Neighbour' Code of Practice for a Circus or Carnival, August 1997"
Mineral exploration	
Mining	Must meet the conditions of Clause 52.08-2.
Natural systems	
Road	
Search for stone	Must not be costeaning or bulk sampling.
Any other use	The use must be for the purpose described in the table to Clause 36.01-7 which corresponds to the notation on the planning scheme map. The use must be carried out by or on behalf of the public land manager.

Section 2 - Permit required

USE	CONDITION
Any use in Section 1 - if the condition is not met	

Section 3 - Prohibited

USE
Nil

Recommendations - cont'd

36.01-2 Exemption from permit

A permit is not required for a use or development of public land listed in a schedule to this zone, provided any condition in the schedule is complied with.

36.01-3 Buildings and works

A permit is required to construct a building or to construct or carry out works for any use in Section 2 of Clause 36.01-1. This does not apply to navigational beacons and aids.

36.01-4 Subdivision

A permit is required to subdivide land.

36.01-5 Application requirements

An application for a permit by a person other than the relevant public land manager must be accompanied by the written consent of the public land manager, indicating that the public land manager either:

- Consents generally or conditionally to the proposed use or development.
- Consents to the application for permit being made and determined prior to any decision by the public land manger in relation to the proposed use or development.

36.01-6 Decision guidelines

Before deciding on an application to excise or subdivide land, construct a building or construct or carry out works, the responsible authority must consider:

- The State Planning Policy Framework and the Local Planning Policy Framework, including the Municipal Strategic Statement and local planning policies.
- The comments of any Minister or public land manager having responsibility for the care or management of the land or adjacent land.
- Whether the development is appropriately located and designed, including in accordance with any relevant use, design or siting guidelines.

36.01-7 Table of public land use

Shown on the Planning Scheme Map	Purpose of public land use
PUZ1	Service & Utility
PUZ2	Education
PUZ3	Health & Community
PUZ4	Transport
PUZ5	Cemetery/Crematorium
PUZ6	Local Government
PUZ7	Other public use

36.01-8 Advertising signs

Advertising sign requirements are at Clause 52.05. This zone is in Category 5 unless a different requirement is specified in the schedule to this zone.

Recommendations - cont'd

Note: *Refer to the* State Planning Policy Framework *and the* Local Planning Policy Framework *including the* Municipal Strategic Statement *for strategies and policies which may affect the use and development of land.*

Check whether an overlay also applies to the land.

Other requirements may also apply. These can be found at Particular Provisions

LOCAL PROVISION

SCHEDULE TO THE PUBLIC USE ZONE

Public land	Use or development	Conditions

Land	Advertising Sign Category

Recommendations - cont'd

Clause 36.02 — Public Park and Recreation Zone

36.02 **PUBLIC PARK AND RECREATION ZONE**

Shown on the planning scheme map as **PPRZ**.

Purpose

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

To recognise areas for public recreation and open space.

To protect and conserve areas of significance where appropriate.

To provide for commercial uses where appropriate.

36.02-1 **Table of uses**

Section 1 - Permit not required

USE	CONDITION
Apiculture	Must not be within 2000 metres of a Reference Area designated under the Reference Areas Act 1978. Must not be within 1500 metres (in the case of a permanent apiary) or 800 metres (in the case of a temporary apiary) of a Wilderness Area or Zone designated in the National Parks Act 1975. Must not be in a Natural Catchment Area designated in the Heritage Rivers Act 1992.
Carnival	Must meet the requirements of A 'Good Neighbour' Code of Practice for a Circus or Carnival, August 1997.
Circus	Must meet the requirements of A 'Good Neighbour' Code of Practice for a Circus or Carnival, August 1997.
Mineral exploration	
Mining	Must meet the conditions of Clause 52.08-2.
Informal outdoor recreation Natural systems	
Open sports ground	Must be conducted by or on behalf of the public land manager. Must not be on coastal Crown land under the Coastal Management Act 1995.
Road	
Search for stone	Must not be costeaning or bulk sampling.

Recommendations - cont'd

USE	CONDITION
Contractors depot Heliport Office Retail premises Store Any other use not in Section 3	Must be any of the following: • A use conducted by or on behalf of a public land manager under the relevant provisions of the Local Government Act 1989, the Reference Areas Act 1978, the National Parks Act 1975, the Fisheries Act 1995, the Wildlife Act 1975 or the Forest Act 1958. • A use conducted by or on behalf of Melbourne Parks and Waterways under the Water Industry Act 1994, the Water Act 1989, the Marine Act 1988, the Port of Melbourne Authority Act 1958 and the Crown Land (Reserves) Act 1978. • A use specified in an incorporated plan in a schedule to this zone.

Section 2 - Permit required

USE	CONDITION
Contractor's depot - if the Section 1 condition is not met	Must be associated with the public land use.
Heliport - if the Section 1 condition is not met	Must be associated with the public land use.
Office - if the Section 1 condition is not met	Must be associated with the public land use.
Retail premises - if the Section 1 condition is not met	Must be associated with the public land use.
Store - if the Section 1 condition is not met	Must be associated with the public land use.
Any other use in Section 1 (other than Apiculture) - if the condition is not met	

Section 3 - Prohibited

USE
Brothel
Cinema based entertainment facility
Corrective institution
Display home
Funeral parlour
Industry
Saleyard
Transport terminal (other than Heliport)
Veterinary centre
Warehouse (other than Store)

Recommendations - cont'd

36.02-2 **Exemption from permit**

A permit is not required for a use or development of public land listed in a schedule to this zone, provided any condition in the schedule is complied with.

36.02-3 **Buildings and works**

A permit is required to construct a building or to construct or carry out works.

This does not apply to:

- Pathways, trails, seating, picnic tables, drinking taps, shelters, barbeques, rubbish bins, security lighting, irrigation, drainage or underground infrastructure.
- Playground equipment or sporting equipment, provided these facilities do not occupy more than 10 square metres of parkland.
- Navigational beacons and aids.
- Planting or landscaping.
- Fencing that is 1 metre or less in height above ground level.
- Building or works shown in an Incorporated plan which applies to the land.
- Works carried out by or on behalf of a public land manager under the Local Government Act 1989, the Reference Areas Act 1978, the National Parks Act 1975, the Fisheries Act 1995, the Wildlife Act 1975 and the Forests Act 1958.
- Works carried out by or on behalf of Melbourne Parks and Waterways under the Water Industry Act 1994, the Water Act 1989, the Marine Act 1988, the Port of Melbourne Authority Act 1958 and the Crown Land (Reserves) Act 1978.

36.02-4. **Incorporated plan**

An Incorporated plan is a plan which shows the way the land is to be used and developed. An Incorporated plan may include the following information:

- Recognition of existing use and how the area is to be developed.
- The building envelope of any proposed buildings.
- Details of any proposed buildings or works.
- The location of pedestrian or vehicle access points or car parking areas.
- The location of any areas for specific uses or a schedule of specific uses which are allowed without permit.
- Topographic details including any proposed cut and fill.
- The location of existing and proposed features.
- The location of existing native and other vegetation and any proposed landscaping works or areas of vegetation to be added or removed.
- The identification of sites of flora or fauna significance (including, in particular, any potentially threatened species or significant habitat) or other places of cultural heritage or scientific value.

The Incorporated plan must be consistent with the intent of the public land reservation under any Act and make reference to relevant policies and guidelines.

An Incorporated plan may be prepared in parts or stages.

36.02-5 **Subdivision**

A permit is required to subdivide land.

An application to subdivide land which is consistent with an Incorporated 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 appeal rights of Section 82(1) of the Act.

Recommendations - cont'd

36.02-6 **Application requirements**

An application for a permit by a person other than the relevant public land manager must be accompanied by the written consent of the public land manager, indicating that the public land manager either:

- Consents generally or conditionally to the proposed use or development.
- Consents to the application for permit being made and determined prior to any decision by the public land manager in relation to the proposed use or development.

36.02-7 **Decision guidelines**

Before deciding on an application to subdivide land, construct a building or construct or carry out works, the responsible authority must consider:

- The State Planning Policy Framework and the Local Planning Policy Framework, including the Municipal Strategic Statement and local planning policies.
- The comments of any public land manager or other relevant land manager having responsibility for the care or management of the land or adjacent land.
- Whether the development is appropriately located and designed, including in accordance with any relevant use, design or siting guidelines.

36.02-8 **Advertising signs**

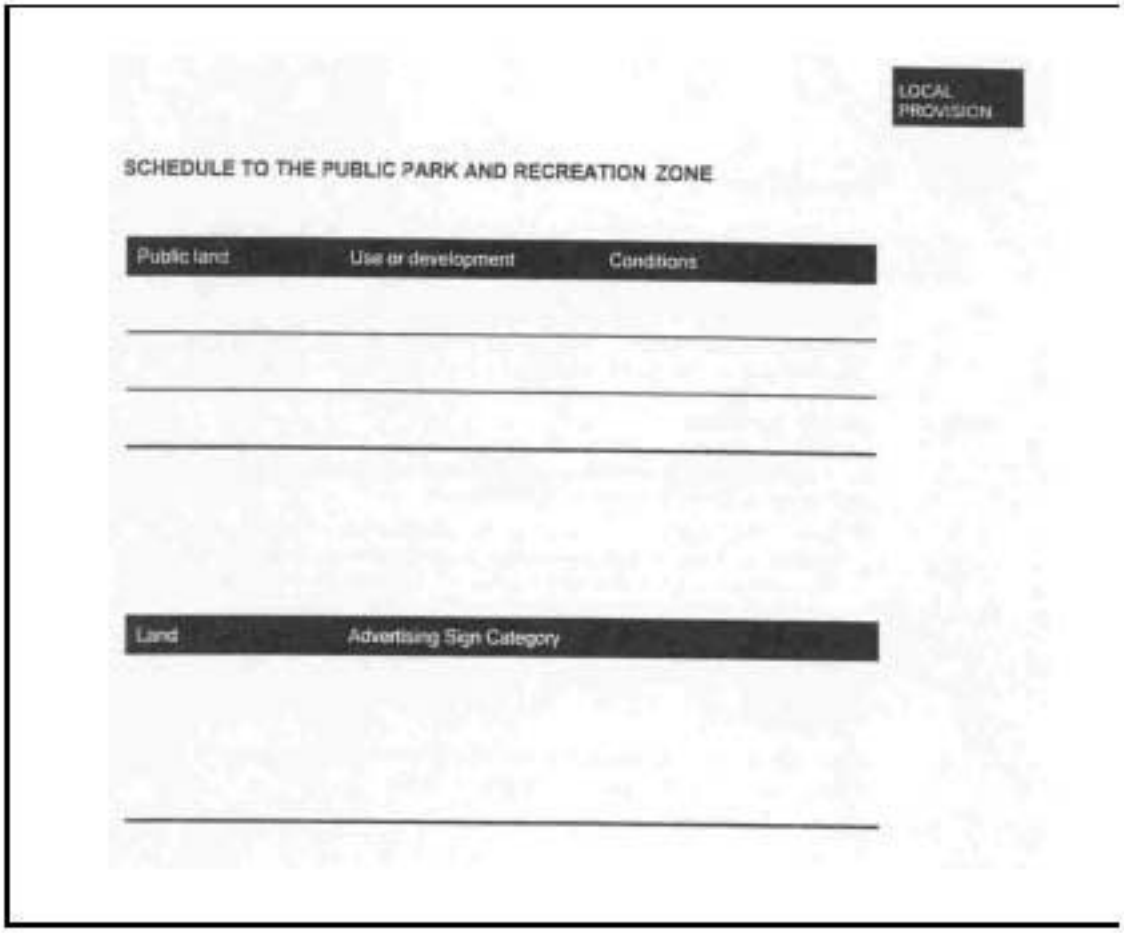
Advertising sign requirements are at Clause 52.05. This zone is in Category 3 unless a different requirement is specified in the schedule to this zone.

Note: *Refer to the* State Planning Policy Framework *and the* Local Planning Policy Framework, *including the* Municipal Strategic Statement *for strategies and policies which may affect the use and development of the land.*

Check whether an overlay also applies to the land.

Other requirements may also apply. These can be found at Particular Provisions

Recommendations - cont'd



LOCAL PROVISION

SCHEDULE TO THE PUBLIC PARK AND RECREATION ZONE

Public land	Use or development	Conditions

Land	Advertising Sign Category

Recommendations - cont'd

Clause 36.03 — Public Conservation and Resource Zone

36.03 PUBLIC CONSERVATION AND RESOURCE ZONE

Shown on the planning scheme map as **PCRZ**.

Purpose

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

To protect and conserve the natural environment and natural processes for their historic, scientific, landscape, habitat or cultural values.

To provide facilities which assist in public education and interpretation of the natural environment with minimal degradation of the natural environment or natural processes.

To provide for appropriate resource based uses.

36.03-1 Table of uses

Section 1 - Permit not required

USE	CONDITION
Apiculture	Must not be within 2000 metres of a Reference Area designated under the Reference Areas Act 1978. Must not be within 1600 metres (in the case of a permanent apiary) or 800 metres (in the case of a temporary apiary) of a Wilderness Area or Zone designated in the National Parks Act 1975. Must not be in a Natural Catchment Area designated in the Heritage Rivers Act 1992.
Boat launching facility Camping and caravan park Caretaker's house Car park Informal outdoor recreation Interpretation centre Jetty Kiosk Marine dredging	Must be any of the following: • Conducted by or on behalf of a public land manager under the relevant provisions of the Local Government Act 1989, the Reference Areas Act 1978, the National Parks Act 1975, the Fisheries Act 1995, the Wildlife Act 1975 or the Forest Act 1958. • Conducted by or on behalf of Melbourne Parks and Waterways under the Water Industry Act 1994, the Water Act 1989, the Marine Act 1988, the Port of Melbourne Authority Act 1958 and the Crown Land (Reserves) Act 1978. • Specified in an incorporated plan in a schedule to this zone.
Mineral exploration	

Recommendations - cont'd

Section 1 - Permit not required (continued)

USE	CONDITION
Mineral, stone or soil extraction (other than Mineral exploration, Mining and Search for stone)	Must be any of the following: • Conducted by or on behalf of a public land manager under the relevant provisions of the Local Government Act 1989, the Reference Areas Act 1978, the National Parks Act 1975, the Fisheries Act 1995, the Wildlife Act 1975 or the Forest Act 1958. • Conducted by or on behalf of Melbourne Parks and Waterways under the Water Industry Act 1994, the Water Act 1989, the Marine Act 1988, the Port of Melbourne Authority Act 1958 and the Crown Land (Reserves) Act 1978. • Specified in an incorporated plan in a schedule to the zone.
Mining	Must meet the conditions of Clause 52.08-2.
Minor utility installation Mooring pole	Must be any of the following: • Conducted by or on behalf of a public land manager under the relevant provisions of the Local Government Act 1989, the Reference Areas Act 1978, the National Parks Act 1975, the Fisheries Act 1995, the Wildlife Act 1975 or the Forest Act 1958. • Conducted by or on behalf of Melbourne Parks and Waterways under the Water Industry Act 1994, the Water Act 1989, the Marine Act 1988, the Port of Melbourne Authority Act 1958 and the Crown Land (Reserves) Act 1978. • Specified in an incorporated plan in a schedule to the zone.
Natural systems	

Recommendations - cont'd

Section 1 - Permit not required (continued)

USE	CONDITION
Open sports ground **Pier** **Pontoon** **Reservoir** **Road**	Must be any of the following: • Conducted by or on behalf of a public land manager under the relevant provisions of the Local Government Act 1989, the Reference Areas Act 1978, the National Parks Act 1975, the Fisheries Act 1995, the Wildlife Act 1975 or the Forest Act 1958. • Conducted by or on behalf of Melbourne Parks and Waterways under the Water Industry Act 1994, the Water Act 1989, the Marine Act 1988, the Port of Melbourne Authority Act 1958 and the Crown Land (Reserves) Act 1978. • Specified in an incorporated plan in a schedule to this zone.
Search for stone	Must not be costeaning or bulk sampling.
Water retarding basin	Must be any of the following: • Conducted by or on behalf of a public land manager under the relevant provisions of the Local Government Act 1989, the Reference Areas Act 1978, the National Parks Act 1975, the Fisheries Act 1995, the Wildlife Act 1975 or the Forest Act 1958. • Conducted by or on behalf of Melbourne Parks and Waterways under the Water Industry Act 1994, the Water Act 1989, the Marine Act 1988, the Port of Melbourne Authority Act 1958 and the Crown Land (Reserves) Act 1978. • Specified in an incorporated plan in a schedule to this zone.
Any other use	Must be either of the following: • Conducted by or on behalf of a public land manager under the relevant provisions of the Local Government Act 1989, the Reference Areas Act 1978, the National Parks Act 1975, the Fisheries Act 1995, the Wildlife Act 1975 or the Forest Act 1958. • Conducted by or on behalf of Melbourne Parks and Waterways under the Water Industry Act 1994, the Water Act 1989, the Marine Act 1988, the Port of Melbourne Authority Act 1958 and the Crown Land (Reserves) Act 1978.

Recommendations - cont'd

Section 2 - Permit required

USE	CONDITION
Boat launching facility - if the Section 1 condition is not met	
Camping and caravan park - if the Section 1 condition is not met	
Caretaker's house - if the Section 1 condition is not met	
Car park - if the Section 1 condition is not met	
Informal outdoor recreation - if the Section 1 condition is not met	
Interpretation centre - if the Section 1 condition is not met	
Jetty - if the Section 1 condition is not met	
Kiosk - if the Section 1 condition is not met	
Marine dredging - if the Section 1 condition is not met	
Mineral, stone or soil extraction (other than Mineral exploration, Mining and Search for stone) - if the Section 1 condition is not met	
Mining - if the Section 1 condition is not met	
Minor utility installation - if the Section 1 condition is not met	
Mooring pole - if the Section 1 condition is not met	
Open sports ground - if the Section 1 condition is not met	
Pier - if the Section 1 condition is not met	
Pontoon - if the Section 1 condition is not met	
Reservoir - if the Section 1 condition is not met	
Road - if the Section 1 condition is not met	
Search for stone - if the Section 1 condition is not met	
Water retarding basin - if the Section 1 condition is not met	

Recommendations - cont'd

Section 3 - Prohibited

USE
Any use in Section 1 if the condition is not met and the use is not specifically included in Section 2

36.03-2 Exemption from permit

A permit is not required for a use or development of public land listed in a schedule to this zone, provided any condition in the schedule is complied with.

36.03-3 Buildings and works

A permit is required to construct a building or to construct or carry out works.

This does not apply to:

- Planting or landscaping.
- Building or works shown in an Incorporated plan which applies to the land.
- Works carried out by or on behalf of a public land manager under the Local Government Act 1989, the Reference Areas Act 1978, the National Parks Act 1975, the Fisheries Act 1995, the Wildlife Act 1975 and the Forests Act 1958.
- Works carried out by or on behalf of Melbourne Parks and Waterways under the Water Industry Act 1994, the Water Act 1989, the Marine Act 1988, the Port of Melbourne Authority Act 1958 and the Crown Land (Reserves) Act 1978.
- Navigational beacons and aids.

36.03-4 Incorporated plan

An Incorporated plan is a plan which shows the way the land is to be used and developed. An Incorporated plan may include the following information:

- Recognition of existing use and how the area is to be developed.
- The building envelope of any proposed buildings.
- Details of proposed buildings or works.
- The location of pedestrian or vehicle access points or car parking areas.
- The location of any areas for specific uses and a schedule of specific uses which are allowed without permit.
- Topographic details including any proposed cut and fill.
- The location of existing and proposed features.
- The location of existing native or other vegetation and any proposed landscaping works or areas of vegetation to be added or removed.
- The identification of sites of flora or fauna significance (including, in particular, any potentially threatened species or significant habitat) or other places of cultural, heritage or scientific value.

The Incorporated plan must be consistent with the intent of the public land reservation under any Act and make reference to relevant policies and guidelines.

An Incorporated plan may be prepared in parts or stages.

36.03-5 Subdivision

A permit is required to subdivide land.

An application to subdivide which is consistent with an Incorporated plan is exempt from the notice requirements of Section 52(1) (a), (b), and (d), the decision requirements of Sections 64(1), (2) and (3) and the appeal rights of Section 82(1) of the Act.

Recommendations - cont'd

36.03-6 **Application requirements**

An application for a permit by a person other than the relevant public land manager must be accompanied by the written consent of the public land manager, indicating that the public land manager either:

- Consents generally or conditionally to the proposed use or development; or
- Consents to the application for permit being made and determined prior to any decision by the public land manager in relation to the proposed use or development.

36.03-7 **Decision guidelines**

Before deciding on an application to excise or subdivide land, construct a building or construct or carry out works, the responsible authority must consider:

- The State Planning Policy Framework and the Local Planning Policy Framework, including the Municipal Strategic Statement and local planning policies.
- The comments of any public land manager or other relevant land manager having responsibility for the care or management of the land or adjacent land.
- Whether the development is appropriately located and designed, including in accordance with any relevant use, design or siting guidelines.

36.03-8 **Advertising signs**

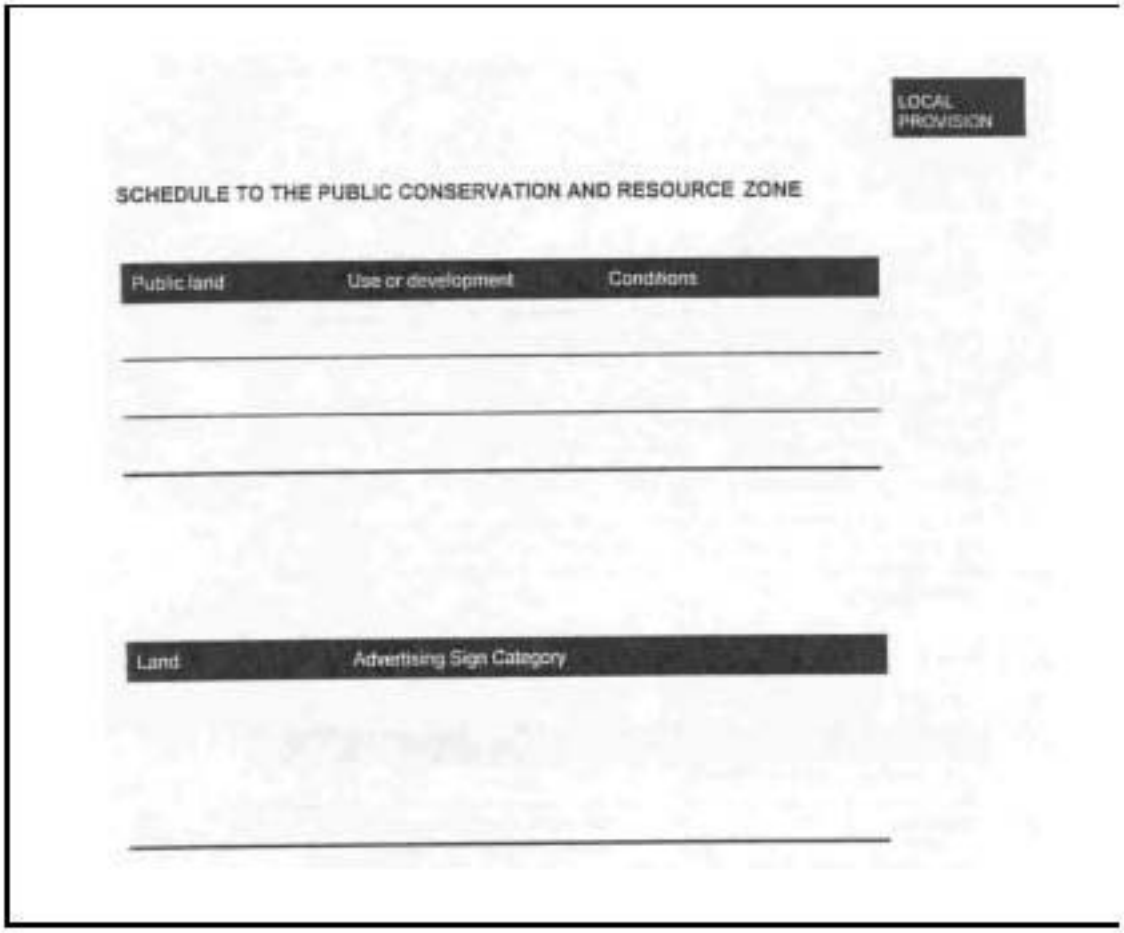
Advertising sign controls are at Clause 52.05. This zone is in Category 5 unless a different requirement is specified in the schedule to this zone.

Note: *Refer to the* State Planning Policy Framework *and the* Local Planning Policy Framework *including the* Municipal Strategic Statement *for strategies and policies which may affect the use and development of land.*

Check whether an overlay also applies to the land.

Other requirements may also apply. These can be found at Particular Provisions

Recommendations - cont'd



LOCAL PROVISION

SCHEDULE TO THE PUBLIC CONSERVATION AND RESOURCE ZONE

Public land	Use or development	Conditions

Land	Advertising Sign Category

Recommendations - cont'd

Clause 37.03 — Urban Floodway Zone

37.03 URBAN FLOODWAY ZONE

Shown on the planning scheme map as UFZ.

Purpose

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

To identify waterways, major floodpaths, drainage depressions and high hazard areas within urban areas which have the greatest risk and frequency of being affected by flooding.

To ensure that any development maintains the free passage and temporary storage of floodwater, minimises flood damage and is compatible with flood hazard, local drainage conditions and the minimisation of soil erosion, sedimentation and silting.

To reflect any declarations under Division 4 of Part 10 of the Water Act, 1989.

To protect water quality and waterways as natural resources in accordance with the provisions of relevant State Environment Protection Policies, and particularly in accordance with Clauses 33 and 35 of the State Environment Protection Policy (Waters of Victoria).

37.03-1 Table of uses

Section 1 - Permit not required

USE	CONDITION
Agriculture (other than Apiculture)	
Apiculture	Must meet the requirements of the Apiary Code of Practice, May 1997.
Informal outdoor recreation	
Mineral exploration	
Mining	Must meet the conditions of Clause 52.08-2.
Natural Systems	
Search for stone	Must not be costeaning or bulk sampling.

Section 2 - Permit required

USE	CONDITION
Apiculture - if the Section 1 condition is not met	
Leisure and recreation (other than Informal outdoor recreation, Indoor recreation facility and Motor racing track)	
Mineral, stone or soil extraction (other than Mineral exploration, Mining and Search for stone)	
Mining - if the Section 1 condition is not met	
Road	
Search for stone - if the Section 1	

Recommendations - cont'd

condition is not met
Utility installation

Section 3 - Prohibited

USE
Indoor recreation facility
Motor racing track
Any use not in Section 1 or 2

37.03-2 **Buildings and works**

A permit is required to construct a building or construct or carry out works, including a fence and any works which increase the length or height of a levee bank, embankment or road.

This does not apply to:

- Works carried out by the floodplain management authority.
- The following works in accordance with plans prepared to the satisfaction of the responsible authority:
  - The laying of underground sewerage, water and gas mains, oil pipelines, underground telephone lines and underground power lines provided they do not alter the topography of the land.
  - The erection of telephone or power lines provided they do not involve the construction of towers or poles.
- Post and wire and post and rail fencing.

37.03-3 **Subdivision**

A permit is required to subdivide land.

Unless a floodplain management plan specifically provides otherwise:

- Land may only be subdivided to realign the boundaries of existing lots provided the number of lots is not increased.
- No new lot may be created which is entirely within this zone, except to create a lot which by agreement between the owner and the relevant floodplain management authority is to be transferred to that authority for public purposes.
- If the land is partly within this zone, the area of each lot created must not be less than the minimum specified for the zone or zones in which the land is situated and at least 75 percent of the area of each lot created must be outside this zone.

37.03-4 **Application requirements**

An application must be consistent with a floodplain management plan developed for the area in accordance with best practice principles and adopted by the responsible authority in consultation with the floodplain management authority.

Recommendations - cont'd

37.03-5 **Flood risk report**

If a floodplain management plan has not been adopted, an application must be accompanied by a flood risk report to the satisfaction of the responsible authority which must consider the following, where applicable:

- Whether the proposed use or development could be located on flood-free land or land with a lesser flood hazard outside this zone.
- The existing use and development of the land.
- The need to prevent or reduce the concentration or diversion of floodwater, stormwater, or drainage water.
- The frequency and duration of flooding.
- The velocity and depth of flood flows.
- The effect of any development on obstruction of or redirection of flood flows, increase in flood levels, drainage and flood storage.
- The cumulative long-term effect of development on flood flows, flood levels, flow velocities, flood storage and the floodplain environment.
- The amount of flood warning that can be reliably expected.
- The susceptibility of the building or works to flooding and flood damage.
- The likely danger to occupants of the proposed building if the site or accessway is flooded.
- The need to have a floor level higher than 0.3 metre above the 1 in 100 year flood level.
- The extent and depth of flooding at any dwelling site relative to ground level (particularly if the depth of flooding in a 1 in 100 year flood is more than 0.5 metre).
- The effect of flooding on access to any dwelling site (particularly if access to a dwelling site is flooded to a depth greater than 0.8 metre relative to ground level in a 1 in 100 year flood).
- The likelihood of placing unreasonable demands on the community for restoration of losses and provision of emergency services.
- The effect of any relevant State Environment Protection Policy and in particular the provisions of Clauses 33 and 35 of the State Environment Protection Policy (Waters of Victoria).
- The effect on water quality and watercourse capacity and the need to prevent erosion.
- The extent of any changes to topography.
- The susceptibility of any proposal to instability and the erosion likely to arise from any flood or water flow.
- The conservation of natural habitats.
- The preservation of and impact on the environment.
- The effect of any development on the protection of sites of scientific significance, particularly sites identified as having botanical, zoological, geological, geomorphological, archaeological or landscape significance.
- Any comments of the waterway management authority.

37.03-6 **Referral of applications**

An application must be referred to the relevant floodplain management authority under Section 55 of the Act unless in the opinion of the responsible authority the proposal satisfies requirements or conditions previously agreed in writing between the responsible authority and the floodplain management authority.

37.03-7 **Decision guidelines**

Before deciding on an application, the responsible authority must consider, as appropriate:

- The State Planning Policy Framework and the Local Planning Policy Framework, including the Municipal Strategic Statement and local planning policies.
- The Planning Guide for Land Liable to Flooding in Victoria 1997.

Recommendations - cont'd

- The floodplain management plan or flood risk report.
- Any comments of the relevant waterway management authority or catchment management authority constituted under the Water Act 1989 or any other Act.

37.03-8 **Advertising signs**

Advertising sign requirements are at Clause 52.05. This zone is in Category 5 unless a schedule to this zone specifies a different category.

Notes: *Refer to the* State Planning Policy Framework *and the* Local Planning Policy Framework *including the* Municipal Strategic Statement *for strategies and policies which may affect the use and development of land*

Check whether an overlay also applies to the land.

Other requirements may also apply. These can be found at Particular Provisions

Recommendations - cont'd

Clause 44.02 — Airport Environs Overlay

44.02 AIRPORT ENVIRONS OVERLAY

Shown on the planning scheme map as **AEO** with a number.

Purpose

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

To identify areas which are or will be subject to high levels of aircraft noise, including areas where the use of land for uses sensitive to aircraft noise will need to be restricted.

To ensure that land use and development are compatible with the operation of airports in accordance with the appropriate airport strategy or master plan and with safe air navigation for aircraft approaching and departing the airfield.

To assist in shielding people from the impact of aircraft noise by requiring appropriate noise attenuation measures in new dwellings and other noise sensitive buildings.

To limit the number of people residing in the area or likely to be subject to significant levels of aircraft noise.

44.02-1 Use of land

Any requirement in a schedule to this overlay must be met.

44.02-2 Construction of buildings

Any new building must be constructed so as to comply with any noise attenuation measures required by Section 3 of Australian Standard AS 2021-1994, Acoustics - Aircraft Noise Intrusion - Building Siting and Construction, issued by the Standards Association of Australia.

Note: In Section 3 of Australian Standard AS 2021-1994, Table 3.3 refers to both building types and activities within those buildings. Each building type listed has its ordinary meaning and should not be interpreted as defined in this scheme.

44.02-3 Subdivision

A permit is required to subdivide land.

An application to subdivide land must be referred to the airport owner under Section 55 of the Act unless in the opinion of the responsible authority the proposal satisfies requirements or conditions previously agreed in writing between the responsible authority and the airport owner.

44.02-4 Decision guidelines

Before deciding on an application the responsible authority must consider:

- The State Planning Policy Framework and the Local Planning Policy Framework, including the Municipal Strategic Statement and local planning policies.
- Whether the proposal will result in an increase in the number of dwellings and people affected by aircraft noise.
- Whether the proposal is compatible with the present and future operation of the airport in accordance with the appropriate airport strategy or master plan.
- Whether the design of the building incorporates appropriate noise attenuation measures.
- The views of the airport owner.

Recommendations - cont'd

Notes:	*Refer to the* State Planning Policy Framework *and the* Local Planning Policy Framework, *including the* Municipal Strategic Statement, *for strategies and policies which may affect the use and development of land.* *Check the requirements of the zone which applies to the land.* *Other requirements may also apply. These can be found at* Particular Provisions.

Recommendations - cont'd

LOCAL PROVISION

SCHEDULE 1 TO THE AIRPORT ENVIRONS OVERLAY

Shown on the planning scheme map as **AEO1**

Requirements

Despite the provisions of the zone land must not be used and a permit must not be granted to use the land for any of the following uses:

- Accommodation (other than Backpackers lodge, Dwelling, Dependent persons unit, Host farm and Residential hotel)
- Child care centre
- Drive-in theatre
- Education centre
- Hospital

A permit is required to use land for any of the following uses:

- Art and craft centre
- Backpackers lodge
- Dependent person's unit provided no more than one is established on any lot.
- Display home
- Dwelling (other than a Dependent persons unit) provided no more than one is established on any lot
- Host farm
- Hotel
- Office
- Place of assembly (except Drive-in theatre)
- Research and development centre
- Research centre
- Residential hotel
- Restricted recreation facility
- Tavern

No permit may be granted for a use that is prohibited under the zone.

An application to use land under this overlay must be referred to the airport owner under Section 55 of the Act unless in the opinion of the responsible authority the proposal satisfies requirements or conditions previously agreed in writing between the responsible authority and the airport owner.

Recommendations - cont'd

LOCAL PROVISION

SCHEDULE 2 TO THE AIRPORT ENVIRONS OVERLAY

Shown on the planning scheme map as AEO2.

Requirements

An application to use land for the following uses must be referred to the airport owner under Section 55 of the Act unless in the opinion of the responsible authority the proposal satisfies requirements or conditions previously agreed in writing between the responsible authority and the airport owner:

- Accommodation
- Art and craft centre
- Child care centre
- Display home
- Education centre
- Hospital
- Hotel
- Office
- Place of assembly
- Research and development centre
- Research centre
- Restricted recreation facility
- Tavern

Recommendations - cont'd

Clause 44.03 — Rural Floodway Overlay

44.03 RURAL FLOODWAY OVERLAY

Shown on the planning scheme map as RFO.

Purpose

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

To identify waterways, major floodpaths, drainage depressions and high hazard areas in rural and non-urban areas which have the greatest risk and frequency of being affected by flooding.

To ensure that any development maintains the free passage and temporary storage of floodwater, minimises flood damage and is compatible with flood hazard, local drainage conditions and the minimisation of soil erosion, sedimentation and silting.

To reflect any declarations under Division 4 of Part 10 of the Water Act, 1989 if such have been made.

To protect water quality and waterways as natural resources in accordance with the provisions of relevant State Environment Protection Policies, and particularly in accordance with Clauses 33 and 35 of the State Environment Protection Policy (Waters of Victoria).

44.03-1 Permit requirements

Buildings and works

A permit is required to construct a building or to construct or carry out works, including a fence and any works which increase ther length and height of a levee bank, embankment or road.

This does not apply to:

- Buildings or works exempted in a schedule to this overlay.
- Works carried out by the floodplain management authority.
- The following works in accordance with plans prepared to the satisfaction of the responsible authority:
  - The laying of underground sewerage, water and gas mains, oil pipelines, underground telephone lines and underground power lines provided they do not alter the topography of the land.
- The erection of telephone or power lines provided they do not involve the construction of towers or poles.
- Post and wire and post and rail fencing.

Subdivision

A permit is required to subdivide land.

Unless a floodplain management plan specifically provides otherwise:

- Land may only be subdivided to realign the boundaries of existing lots provided the number of lots is not increased.
- No new lot may be created which is entirely within this overlay, except to create a lot which by agreement between the owner and the relevant floodplain management authority is to be transferred to that authority for a public purpose.

Recommendations - cont'd

- If the land is partly within this overlay, at least 75 percent of the area of each lot created must be outside this overlay.

44.03-2 Application requirement

An application must be consistent with a floodplain management plan developed for the area in accordance with best practice principles and adopted by the responsible authority in consultation with the floodplain management authority.

44.03-3 Flood risk report

If a floodplain management plan has not been adopted, an application must be accompanied by a flood risk report to the satisfaction of the responsible authority which must consider the following, where applicable:

- Whether the proposed development could be located on flood-free land or land with a lesser flood hazard outside land included in this overlay.
- The existing use and development of the land.
- The need to prevent or reduce the concentration or diversion of floodwater, stormwater, or drainage water.
- The frequency and duration of flooding.
- The velocity and depth of flood flows.
- The effect of any development on obstruction of or redirection of flood flows, increase in flood levels, drainage and flood storage.
- The cumulative long-term effect of development on flood flows, flood levels, flow velocities, flood storage and the floodplain environment.
- The amount of flood warning that can be reliably expected.
- The susceptibility of the building or works to flooding and flood damage.
- The likely danger to occupants of the proposed building if the site or accessway is flooded.
- The need to have a floor level higher than 0.3 metre above the 1 in 100 year flood level.
- The extent and depth of flooding at any dwelling site relative to ground level (particularly where the depth of flooding in a 1 in 100 year flood is more than 0.5 metre).
- The effect of flooding on access to any dwelling site (particularly where access to a dwelling site is flooded to a depth greater than 0.8 metre relative to ground level in a 1 in 100 year flood).
- The likelihood of placing unreasonable demands on the community for restoration of losses and provision of emergency services.
- The effect of any relevant State Environment Protection Policy and in particular the provisions of Clauses 33 and 35 of the State Environment Protection Policy (Waters of Victoria).
- The effect on water quality and watercourse capacity and the need to prevent erosion.
- The extent of any changes to topography.
- The susceptibility of any proposal to instability and the erosion likely to arise from any flood or water flow.
- The conservation of natural habitats.
- The preservation of and impact on the environment.
- The effect of any development on the protection of sites of scientific significance, particularly sites identified as having botanical, zoological, geological, geomorphological, archaeological or landscape significance.
- Any comments of the waterway management authority.

44.03-4 Referral of applications

Recommendations - cont'd

An application must be referred to the relevant floodplain management authority under Section 55 of the Act unless in the opinion of the responsible authority the proposal satisfies requirements or conditions previously agreed in writing between the responsible authority and the floodplain management authority.

44.03-5 **Decision guidelines**

Before deciding on an application, the responsible authority must consider as appropriate:

- The State Planning Policy Framework and the Local Planning Policy Framework, including the Municipal Strategic Statement and local planning policies.
- The Planning Guide for Land Liable to Flooding in Victoria 1997.
- The floodplain management plan or flood risk report.
- Any comments of the waterway management authority or catchment management authority constituted under the Water Act 1989 or any other Act.

Notes: *Refer to the* State Planning Policy Framework *and the* Local Planning Policy Framework *including the* Municipal Strategic Statement *for strategies and policies which may affect the use and development of land.*

Check the requirements of the zone which applies to the land.

Other requirements may also apply. These can be found at Particular Provisions.

Recommendations - cont'd

Clause 44.04 — Land Subject to Inundation Overlay

44.04 **LAND SUBJECT TO INUNDATION OVERLAY**

Shown on the planning scheme map as **LSIO**.

Purpose

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

To identify land in urban and non-urban areas liable to inundation by overland flow, land in any flood fringe area from the 1 in 100 year flood or as designated by the floodplain management authority.

To ensure that development maintains the free passage and temporary storage of floodwaters, minimises flood damage, is compatible with the flood hazard and local drainage conditions and will not cause any significant rise in flood level or flow velocity.

To protect water quality in accordance with the provisions of relevant State Environment Protection Policies, particularly in accordance with Clauses 33 and 35 of the State Environment Protection Policy (Waters of Victoria).

44.04-1 **Permit requirement**

Buildings and Works

A permit is required to construct a building or to construct or carry out works, including a fence and any works which increase the length or height of a levee bank, embankment or road.

This does not apply to:

- Buildings or works exempted in the schedule to this overlay.
- Works carried out by the floodplain management authority.
- The following works in accordance with plans prepared to the satisfaction of the responsible authority:
  - The laying of underground sewerage, water and gas mains, oil pipelines, underground telephone lines and underground power lines provided they do not alter the topography of the land.
  - The erection of telephone or power lines provided they do not involve the construction of towers or poles.
- Post and wire and post and rail fencing.

Subdivision

A permit is required to subdivide land.

44.04-2 **Referral of applications**

An application must be referred to the relevant floodplain management authority under Section 55 of the Act unless in the opinion of the responsible authority the proposal satisfies requirements or conditions previously agreed in writing between the responsible authority and the floodplain management authority.

Recommendations - cont'd

44.04-3 **Decision guidelines**

Before deciding on an application the responsible authority must consider, as appropriate:

- The State Planning Policy Framework and the Local Planning Policy Framework, including the Municipal Strategic Statement and local planning policies.
- The Planning Guide for Land Liable to Flooding in Victoria 1997.
- Any floodplain management plan developed for the area in accordance with best practice principles and adopted by the responsible authority in consultation with the floodplain management authority.
- Whether the proposed development could be located on flood-free land or land with a lesser flood hazard outside land included in this overlay.
- The need to prevent or reduce the concentration or diversion of floodwater, stormwater, or drainage water.
- The frequency and duration of flooding.
- The velocity and depth of flood flows.
- The effect of any development on obstruction of or redirection of flood flows, increase in flood levels, drainage and flood storage.
- The cumulative long-term effect of development on flood flows, flood levels, flow velocities, flood storage and the floodplain environment.
- The amount of flood warning that can be reliably expected.
- The susceptibility of the building or works to flooding and flood damage.
- The likely danger to occupants of the proposed building if the site or accessway is flooded.
- The need to have a floor level higher than 0.3 metre above the 1 in 100 year flood level.
- The extent and depth of flooding at any dwelling site relative to ground level (particularly where the depth of flooding in a 1 in 100 year flood level is more than 0.5 metre).
- The effect of flooding on access to any dwelling site (in particular where access to a dwelling site is flooded to a depth greater than 0.8 metre relative to ground level in a 1 in 100 year flood level).
- The likelihood of placing unreasonable demands on the community for restoration of losses and provision of emergency services.
- The effect of any relevant State Environment Protection Policy and in particular the provisions of Clauses 33 and 35 of the State Environment Protection Policy (Waters of Victoria).
- The effect on water quality and watercourse capacity and the need to prevent erosion.
- The extent of any changes to topography.
- The susceptibility of any proposal to instability and the erosion likely to arise from any flood or water flow.
- The conservation of natural habitats.
- The preservation of, and impact on, the environment.
- The effect of any development on the protection of sites of scientific significance, particularly sites identified as having botanical, zoological, geological, geomorphological, archaeological or landscape significance.
- Any comments of a relevant waterway management authority or catchment management authority constituted under the Water Act 1989 or any other Act.

Notes: *Refer to the* State Planning Policy Framework *and the* Local Planning Policy Framework *including the* Municipal Strategic Statement *for strategies and policies which may affect the use and development of land.*

Check the requirements of the zone which applies to the land.

Other requirements may also apply. These can be found at Particular Provisions.

Recommendations - cont'd

Clause 44.07 — Special Building Overlay *(Wildfire Management Overlay)*

44.07 WILDFIRE MANAGEMENT OVERLAY

Shown on the planning scheme map as **WMO**.

Purpose

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

To identify areas where wildfire is likely to pose a significant threat to life and property.

To ensure that development:
- Includes specified fire protection measures.
- Does not significantly increase the threat to life and property from wildfire.

To detail the minimum fire protection outcomes that will assist to protect life and property from the threat of wildfire.

44.07-1 Permit requirement

Buildings and works

A permit is required to construct a building or construct or carry out works except for a building which is ancilliary to a dwelling, has a floor area of less than 100 square metres and is not used for accomodation.

Subdivision

A permit is required to subdivide land.

44.07-2 Application requirement

An application must be accompanied by a statement or report which demonstrates that all fire protection requirements for water supply, access, buildings and works, vegetation and any other relevant matter have been considered and incorporated. The statement or report must demonstrate how the following objectives and outcomes are achieved, as appropriate.

Water supply

OBJECTIVE	OUTCOME
To ensure that water is available to landholders and emergency services to enable life and the property to be defended from fire.	A reticulated or non-reticulated water supply must provide a water discharge of a minimum of four hours to ensure that water is distributed around the perimeter and roof space of the main building and any outbuildings. The water supply must be maintained, accessible and able to be effectively employed for personal and fire brigade use at all times. The water supply system must include an outlet and connectors compatible with standard fire brigade equipment.

Recommendations - cont'd

Access

OBJECTIVE	OUTCOME
To ensure that safe access is provided for emergency and other vehicles at all times.	Appropriate all weather access to and within the property and the water supply must be provided and constructed to allow fire-fighting and other vehicles to traverse with ease and safety. The property must front a road that provides suitable access for emergency vehicles and which: has adequate width and a stable surface, with no horizontal or vehicle encroachments which restrict fire fighting vehicles. is not a deadend road, unless there are adequate passing bays and turning circles within that road.

Buildings and works

OBJECTIVE	OUTCOME
To ensure that the design and siting of buildings and works improves protection for life and minimises the level of fire impact.	The design and siting of any building or works, including outbuildings, driveways, vegetation and storage areas for flammable materials, must minimise the fire risk to life and property. The design of any building must incorporate fire protection construction features to prevent the entry and build up of embers to the building and reduce the likelihood of direct flame contact. The siting of any building in relation to slope, access, aspect, orientation and vegetation must minimise the fire risk to life and property.

Vegetation

OBJECTIVE	OUTCOME
To ensure that fuel (ground fuel and shrubs) is managed to reduce potential fire intensity in the vicinity of buildings.	A building protection zone, landscaped to reduce fuel load, distribution and continuity, must be established to inhibit the spread of fire and minimise the fire risk to life and property.

44.07-3 **Decision guidelines**

Before deciding on an application, the responsible authority must consider, as appropriate:

- The State Planning Policy Framework and the Local Planning Policy Framework, including the Municipal Strategic Statement and local planning policies.
- The comments of the relevant fire authority.
- Any adopted municipal fire prevention plan.
- The principles and guidelines included in:
  - Design and Siting Guidelines, Bushfire Protection for Rural Houses, Country Fire Authority and Ministry for Planning and Environment, 1990.
  - Planning Conditions and Guidelines for Subdivisions, Country Fire Authority, 1991.

Recommendations - cont'd

Building in Bushfire-Prone Areas - CSIRO & Standards Australia (SAA HB36-1993), May 1993.

- Whether the design and siting of any proposed building, works or access road appropriately meets the objectives and outcomes set out in this overlay.

Notes: *Refer to the* State Planning Policy Framework *and the* Local Planning Policy Framework *including the* Municipal Strategic Statement *for strategies and policies which may affect the use and development of land.*

Check the requirements of the zone which applies to the land.

Other requirements may also apply. These can be found at Particular Provisions.

Recommendations - cont'd

Clause 44.13 — Special Building Overlay

44.13 SPECIAL BUILDING OVERLAY

Shown on the planning scheme map as SBO.

Purpose

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

To identify land in urban areas liable to inundation by surcharge flows from the urban drainage system or overland flow as designated by the floodplain management authority.

To ensure that development maintains the free passage and temporary storage of floodwaters, minimises flood damage, is compatible with the flood hazard and local drainage conditions and will not cause any significant rise in flood level or flow velocity.

To protect water quality in accordance with the provisions of relevant State Environment Protection Policies, particularly in accordance with Clauses 33 and 35 of the State Environment Protection Policy (Waters of Victoria).

44.13-1 Permit requirement

Buildings and Works

A permit is required to construct a building or to construct or carry out works, including a fence and any works which increase the length or height of a levee bank, embankment or road.

This does not apply to:

- Buildings or works exempted in the schedule to this overlay.
- Works carried out by the floodplain management authority.
- The following works in accordance with plans prepared to the satisfaction of the responsible authority:
  - The laying of underground sewerage, water and gas mains, oil pipelines, underground telephone lines and underground power lines provided they do not alter the topography of the land.
  - The erection of telephone or power lines provided they do not involve the construction of towers or poles.
- Post and wire and post and rail fencing.

Subdivision

A permit is required to subdivide land.

44.13-2 **Referral of applications**

An application must be referred to the relevant floodplain management authority under Section 55 of the Act unless in the opinion of the responsible authority the proposal satisfies requirements or conditions previously agreed in writing between the responsible authority and the floodplain management authority.

Recommendations - cont'd

44.13-3 **Decision guidelines**

Before deciding on an application the responsible authority must consider, as appropriate:

- The State Planning Policy Framework and the Local Planning Policy Framework, including the Municipal Strategic Statement and local planning policies.
- The Planning Guide for Land Liable to Flooding in Victoria 1997.
- Any floodplain management plan developed for the area in accordance with best practice principles and adopted by the responsible authority in consultation with the floodplain management authority.
- Whether the proposed development could be located on flood-free land.
- The need to prevent or reduce the concentration or diversion of floodwater, stormwater, or drainage water.
- The frequency and duration of flooding.
- The velocity and depth of flood flows.
- The effect of any development on obstruction of or redirection of flood flows, increase in flood levels, drainage and flood storage.
- The susceptibility of the building or works to flooding and flood damage.
- The likely danger to occupants of the proposed building if the site or accessway is flooded.
- The need to have a floor level higher than 0.3 metre above the 1 in 100 year flood level.
- The extent of any changes to topography.
- The susceptibility of any proposal to instability and the erosion likely to arise from any flood or water flow.
- Any comments of a relevant waterway management authority or catchment management authority constituted under the Water Act 1989 or any other Act.

Notes: *Refer to the* State Planning Policy Framework *and the* Local Planning Policy Framework, *including the* Municipal Strategic Statement, *for strategies and policies which may affect the use and development of land.*

Check the requirements of the zone which applies to the land.

Other requirements may also apply. These can be found at Particular Provisions.

Recommendations - cont'd

18.2 MATTERS OR ISSUES TO BE CONSIDERED AS PART OF A FURTHER REVIEW OF THE *VICTORIA PLANNING PROVISIONS* WITHIN 12 MONTHS

1. **Review and redraft the State Planning Policy Framework.**

2. **Review the purpose of zones with the objective of describing them more pointedly and with greater clarification.**

3. **Develop a new Coastal Overlay suitable for application to all coastal land. Include appropriate referral provisions for Parks Victoria and other bodies responsible for coastal areas. Ensure integration with Coastal Management Act 1995.**

4. **Consult with EPA, DNRE, coastal councils and the Victorian Coastal Council with respect to extending planning control over coastal waters.**

5. **Consider further the implications of introducing a natural resource or resource management overlay.**

6. **Review the possibility of enabling use and development specified in an incorporated plan under an Incorporated Plan Overlay to be exempt from the need for a permit.**

7. **Monitor and review the operation of Clause 63 and existing uses in general.**

8. **Investigate if permit applications under the Erosion Management Overlay should require referral to DNRE.**

9. **Incorporate outcomes of the Car Parking Policy Review in the VPPs. Assess the implications of changing the base on which car parking requirements are calculated (e.g. from 'gross leasable floorspace' to 'leasable floorspace') and apparent anomalies between the car spaces required for a hotel or tavern exceeding or not exceeding 150 square metres of public bar area.**

10. **Prepare a new manual to explain the operation and application of the Victoria Planning Provisions and planning schemes based on them.**

11. **Include in the *Manual for the Victoria Planning Provisions* a section giving guidance to the operation of the buildings and works control in the rural zones.**

Recommendations - cont'd

12. Include in the *Manual for the Victoria Planning Provisions* a note about the table to Clause 52.10 in the VPPs to the following effect:

- **The buffer distances specified in the table to Clause 52.10 should not be confused with the EPA Industrial Residual Air Emission Guidelines. Whist the distances were based originally on EPA residual air emission buffers, they have been supplemented and altered and are now used for a general planning purpose different to their original purpose.**
- **The threshold distances are intended to take into consideration various amenity issues, including air emissions and noise.**
- **The distances are a threshold or a trigger as to whether a permit is required or not.**

13. Prepare new 'Users Guide to Industrial Zones' targeted specifically at industry and its advisors, including other Government departments, which emphasise the locational criteria industries should consider, particularly if they are sensitive industries.

14. Review the effect and wording of Minister's Direction No. 1 under the *Planning and Environment Act* in the context of the new planning schemes and the VPPs.

14. Give clear directions to councils about when the Potentially Contaminated Land Overlay ('Environmental Audit Overlay') should be applied.

Recommendations - cont'd

18.3 Other Recommendations

1. Monitor operation of VPPs by reference to:

- **overall quality of decision making;**
- **consistency of outcomes with objectives of zones, overlays, SPPF, MSS and local policies;**
- **consistency in decision making by councils and AAT;**
- **additional workload on councils;**
- **additional appeals;**
- **additional costs to councils, AAT, applicants, referral authorities or objectors;**
- **additional delay due to any of the above factors.**

2. Monitor use of overlays, with particular attention to:

- **complexity in schemes due to number of overlays;**
- **potential confusion in relationship between schedules and incorporated plans;**
- **whether there is a greater need for overlays to be able to control use.**

3. Monitor any tensions evident between parts of planning schemes.

4. Monitor operation of buildings and works control in rural zones to ascertain if confusion arises about their operation.

5. Review the way in which councils have utilised the business zones, industrial zones, Mixed Use Zone and Special Use Zone when preparing their new format planning schemes and, in particular, whether the activities in zones reflect the distinctions between the purpose of the zones.

6. Undertake a general review of retailing, entertainment, convenience shopping and associated definitions in the VPPs in order that defined used reflect market trends where traditional distinctions between activities are becoming blurred, and where size and locational criteria are changing.

Recommendations - cont'd

7. Include Best Practice Guidelines for Stormwater Management as an incorporated document when finalised and adopted by the EPA.

8. Investigate the feasibility of coordinating approvals of dams under the Water Act 1989 and planning permits for dams, including referral of planning applications to relevant authorities under the Water Act 1989.

9. Implement a mechanism for Heritage Council of Victoria to be made a planning authority for all planning schemes for the purpose of amending any planning scheme to include a heritage place in the Schedule to Clause 43.01 whenever a heritage place is added to the Victorian Heritage Register, and to exempt such amendments from the need for exhibition where appropriate.

10. In conjunction with VicRoads and EPA, investigate means of providing adequate protection for developments of a noise sensitive nature which abut existing or future declared roads.

APPENDIX A - LIST OF SUBMITTORS

VICTORIAN PLANNING PROVISIONS - SUBMISSIONS

1.	Christine Pruneau
2	Telstra
3	P Ashdown
4	Campbells Cash & Carry
5	Mallesons Stephen Jaques Solicitors
6	Jill Dobson
7	Property Council of Australia
8	Brian Johnstone
9	St Albans North Environmental Action Group Inc
10	Henshall Hansen Association
11	City of Ballarat
12	City of Yarra
13	Ewan Ogilvy
14	Swan Hill Rural City Council
15	Jewell Partnership Pty Ltd
16	Anne Kaufman & Roberta McKibbon
17	Brian Seabrook
18	Collie Planning and Development Services Pty Ltd
19	Flora Anderson
20	City of Casey
21	City of Greater Dandenong
22	Save the Dandenongs League Inc
23	Malcolm Calder
24	Upper Yarra & Dandenongs Environmental Council
25	Gannawarra Shire Council
26	Municipal Association of Victoria
27	Clayton Utz
28	Surf Coast Shire
29	Jackman and Neale
30	Officeworks
31	Wyndham City Council
32	Shire of Yarra Ranges
33	Nepean Historical Society Inc
34	East Gippsland Shire Council
35	National Trust of Australia (Victoria)
36	Local Planners Association of Victoria
37	Municipal Soil and Water Quality
38	Docklands
39	Moreland City Council
40	Australian Hotels and Hospitality Association Inc

41 Convenor of St Andrews and District Branch of the Australian Greens
42 Powercor
43 Solaris
44 Shire of Campaspe
45 Victorian Catchment and Land Protection Council
46 City of Glen Eira
47 VicRoads
48 Victorian National Parks Association Inc
49 Public Transport Corporation
50 The Institute of Surveyors Victoria
51 Association of Consulting Surveyors
52 Banyule City Council
53 Tract Consultants Pty Ltd
54 Manningham City Council
55 Jamoney Pty Ltd
56 Melbourne Airport
57 City of Port Phillip
58 Hume City Council
59 Parks Victoria
60 Effem Foods
61 Maroondah City Council
62 Australian Paper
63 Stonnington City Council
64 G W Lucas
65 AMCOR
66 Department of Natural Resources and Environment
67 Bayside City Council
68 Rural City of Ararat
69 Brimbank City Council
70 Royal Australian Planning Institute
71 City of Kingston
72 Yarra Valley Wine Growers Association Inc
73 Code of Practice Committee
74 Boroondara City Council
75 City of Greater Geelong
76 G J Martin Consulting Lane Surveyors and Planner
77 TBA Planners Pty Ltd
78 City of Monash
79 Local Government Catchment Project
80 RMIT
81 Freitag Planning and Design
82 Mornington Peninsula Shire Council
83 Docklands Authority
84 Powernet
85 Department of Treasury and Finance

86	United Energy
87	Natural Resources and Environment
88	Mornington Peninsula Ratepayers and Residents Association Inc
89	Association of Consulting Surveyors Vic Inc
90	Nillumbik Shire Council
91	Eastern Energy Limited
92	City of Melbourne
93	Dandenong Valley Catchment Action Committee
94	Town and Country Planning Association
95	Victorian Coastal Council
96	Alpine Resorts Commission
97	City of Greater Bendigo
98	La trobe Shire
99	Environment Protection Authority
100	The Gandel Group of Companies
101	Urban Land Authority
102	KLM Planning Consultants
103	Mitchell Shire Council
104	Ian Burnett
105	City of Whittlesea