



Municipal Association of Victoria

Submission

Integrated Planning Policy Framework

April 2014

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Integrated Planning Policy Framework has been prepared by the Municipal Association of Victoria (MAV) for discussion with member councils, Local Government Victoria and the State Government.

The MAV is the statutory peak body for local government in Victoria, representing all 79 municipalities. The MAV would like to acknowledge the contribution of those who provided their comments and advice during this project.

While this paper aims to broadly reflect the views of local government in Victoria, it does not purport to reflect the exact views of individual councils.

Contents

1	<i>Introduction</i>	4
2	<i>Background</i>	4
	The role of policy.....	4
	What we have said previously.....	5
3	<i>Comments</i>	6
	Part 1 – Review of the State Planning Policy Framework	6
	Was the objective met?.....	6
	Back-of-house improvements.....	9
	PART 2 – Integration of the State and Local Planning Policy Frameworks	10
4	<i>Implementation</i>	13
5	<i>Conclusions</i>	14
	ATTACHMENT A.....	15

1 Introduction

The MAV is pleased to make a further submission to the State Planning Policy Framework review and notes that the Advisory Committee has gone further than its terms of reference and put forward an integrated policy framework model for State, regional and local policy for comment.

The MAV acknowledges the work of the Committee in making backend improvements such as language guidance, rules of entry and the technological arrangements that will make policy frameworks tailored. This work will strengthen the usability and robustness of State Policy and are all long overdue. The new format also generally integrates key policy documents well. The inclusion of maps and the key decision making components of these plans is critical to their future implementation. A much tighter, and updated, State Policy framework should now exist going forward.

We are aware that many councils are comfortable with the proposed themes of the integrated policy framework and believe they can fit their policies within such themes. Indeed a number of councils have taken this approach as part of their planning scheme reviews and now follow the State Policy headings.

Despite this, the MAV cannot unreservedly support the merging of the State Planning Policy Framework and the Local Planning Policy Framework without the resolution of a number of critical issues. We are concerned, in the absence of evidence, that not all of the potential ramifications of the new model have been fully explored and that a substantial shift in the framework of the Victoria Planning Provisions is being proposed without the expected rigour for such a change.

In this submission the MAV has not sought to identify errors or omissions in the rewording of policies, as we believe councils are in a much better position to do this; instead, we have sought to evaluate the Advisory Committee's response to the first terms of reference (Part 1 of the submission) and provide a number of questions and issues for consideration in relation to the preparation of an integrated policy framework (Part 2 of the submission).

2 Background

The role of policy

The inclusion of a policy frameworks in the planning schemes came about in 1992 with the introduction of 'new format' planning schemes. One of the key objectives for reform was to:

'...establish a focus on State and local strategic directions which provide the basis for controls in planning schemes and guidance to decision-making'

The Victoria Planning Provisions were developed as a template for planning schemes, and planning schemes were structured to include:

- The State Planning Policy Framework (SPPF), which comprised the Statewide ambitions for land use and development in Victoria
- A Local Planning Policy Framework (LPPF) which comprised of two components – the Municipal Statement Statement (MSS) and Local Planning Policy. The MSS contains the strategic vision for a municipality and the strategy for achieving the vision. The LPP provides a tool for assisting councils in the exercise of their discretion.

[Reference Group on Decision Making Processes: Using and Interpreting Local Policy, September 2002]

There is often a presumption that all local policy is derived from the State Planning Policy Framework. However, the need for policy can be generated at a local level and can respond to common issues arising in decision making and the resolution of competing policy objectives.

What we have said previously

The MAV provided written comments to the Advisory Committee in September, 2013. In the comments we shared the view that we would like to see a State Planning Policy Framework that:

- Spatially demonstrates the Government's long-term planning directions and infrastructure commitments for the development of Victoria and highlights key areas for protection
- Provides leadership, in a statewide context, for the resolution of difficult policy issues and conflicts
- Only includes policy that is within the scope of land use planning to influence.

We also advised:

- The audience for State policy should be clarified
- State policy needs to go further than referencing documents and give useful directions for land use planning
- There should be a connection between State policy and provisions within planning scheme
- Councils would prefer to see the Regional Growth Plans properly translated into planning schemes rather than simply being incorporated or reference documents
- Policies should be filtered on the basis on a number of criteria
- An overarching mechanism is required to determine when State policy is required or needs to be modified.

The Advisory Committee has picked up a number of these matters.

3 Comments

PART 1 – Review of the State Planning Policy Framework

Was the objective met?

In July, 2013 an Advisory Committee was appointed by the Minister for Planning to review the SPPF to:

.....advise on the content and structure of a revised SPPF to apply any consequential changes arising from recent legislation and to align and integrate with the review of each of the following state policy matters:

- *the Vision for Victoria;*
- *the proposed Metropolitan Planning Strategy;*
- *the eight Regional Growth Plans (Central Highlands, G21 - Geelong Region Alliance, Gippsland, Great South Coast, Hume, Loddon Mallee North, Loddon Mallee South, Wimmera Southern Mallee);*
- *the reformed commercial, industrial, residential and rural zones; and*
- *the Development Contributions system*

The table below evaluates the proposed changes to State Policy:

Component	MAV Comments	Suggested improvement
Integration of regional plans	<p>The Advisory Committee has generally done a good job of distilling the key new policy documents (Plan Melbourne and regional growth plans) into framework plans and strategies.</p> <p>Is the PPF, however, the right location for some very specific actions of the RGPs? For example '<i>prepare an outline development plan for Messmate Road growth area in Torquay</i>' seems more like a local policy action than regional policy action. As a result it is not clear who is responsible for implementing the strategies and who owns the content of regional policy.</p> <p>In addition some actions have already been completed and probably should be removed.</p>	<p>Consider developing some rules around what should be State, regional or local policy.</p> <p>Amend the PPF so that it is clear who is responsible for implementing each of the strategic planning guidelines.</p> <p>As actions are completed they should be removed through a regular review of the policy.</p>

Component	MAV Comments	Suggested improvement
<p>Integrate with the reformed commercial, industrial, residential and rural zones</p>	<p>The Committee appears to have integrated some of the purposes of the new zones into the policy framework. The implications of this on decision making are however unclear. For example 9.07-S-01 <i>Commercial and retail uses</i> includes a strategy (based on the purpose of the Commercial 2 zone) to ‘<i>facilitate commercial areas for offices, appropriate manufacturing and industries, bulky goods retailing, other retail uses, and associated business and commercial services</i>’. Some of these uses are inconsistent with the purposes and controls of the Commercial 1 zone. The policy applies to all commercial land.</p>	<p>Undertake a legal review of the policy framework and testing with live applications to identify outcomes from new policy and any unintended consequences.</p>
<p>Integration of the development contributions system</p>	<p>There is currently no reference in the policy framework to developer contributions. This may be because the Government’s policy position had not been released.</p>	<p>The new Development Contributions system and Standard Levies were announced on 1 May. The outcomes of this should be reflected in the policy framework.</p>
<p>Additional thematic areas/policy gaps</p>	<p>The areas highlighted by councils are:</p> <p>Break the Planning Vision chapter into two - planning vision – State, regional and local (3) and settlement planning (4). Context could be included in Planning Vision</p> <p>Missing theme – livability</p> <p>Missing policies – activity centres, developer contributions, car parking, grade separation, coastal planning elements such as coastal settlement boundaries, neighbourhood design, state significant industrial areas</p> <p>Missing maps – regional framework plan</p> <p>Modify policies:</p> <ul style="list-style-type: none"> - <i>Planning for local areas</i> only refers to 20 minute neighbourhoods (this is a strategy of <i>Plan Melbourne</i> not State Policy). There are many local areas that can either already meet this objective or are outside of the metropolitan area. Change this heading and consider other ways of planning for local areas. This might be an area, for 	<p>Consider the inclusion of the suggested theme and policy areas as well as the suggested policy modifications.</p> <p>The MAV would be pleased to assist convening a small group of representative councils to assist the Committee understand the implications for decision making.</p>

Component	MAV Comments	Suggested improvement
	<p>example, that could include precinct based policies.</p> <ul style="list-style-type: none"> - <i>Planning urban growth areas</i> now requires Growth Corridor Plans and Precinct Structure Plans for areas that are beyond metropolitan Melbourne. Councils that have growth areas outside of Melbourne do not have the financial or technical support of a State authority or the internal resources necessary to undertake this work as a matter of course. These requirements should be shifted to Regional Policy - Growth Areas - <i>The Planning for Cities</i> – regional policy, should remove the number one strategic planning action - <i>consider unsolicited bids for changes to controls</i> – this is not a planning action! - <i>Commercial and retail uses</i> State policy does not include the existing strategy to locate uses in an existing or planned activity centre – removing this is not a policy neutral translation and it should be retained (not just in the Metropolitan region). Reference to out of centre development should also be State policy. Including the Commercial 2 zone purpose also creates problems for applications that might be in a Commercial 1 zone – there are different uses encouraged. - <i>Gaming and brothels</i> appear to be incongruous under the heading of community development and should be separate policies as they do not necessarily relate to one another. <p>Clarify policies:</p> <ul style="list-style-type: none"> - What is an urban renewal area? Is it only residential? - Consider how a policy about how 20 minute neighbourhoods might apply in inner Melbourne <p>Some policies do not translate well. There is a need to identify where certain policies go:</p> <ul style="list-style-type: none"> - Urban design, non-residential uses, heritage and neighbourhood character. - geographic-based policies which didn't really fit a particular theme in the draft framework (i.e. policies which encompass land use, design guidelines 	

Component	MAV Comments	Suggested improvement
	and car parking in a particular policy).	
Background documents	The term 'background document' has been introduced in addition to the existing 'reference' and 'incorporated' documents.	<p>Replace the term 'reference' document with 'background' document.</p> <p>Require documents referred to in <i>Guidelines for decision makers</i> to be 'incorporated' documents as they must be referred to in making a decision and make consequential changes to support material.</p>
Impact on decision making	<p>There is considerable new content (eg. gaming, freight and logistics, public transport, cycling, water cycle management) and rewording of existing policies which could create legal issues for the State and unexpected interpretation issues.</p> <p>The rules of entry seem not to have been applied where new material has been inserted. The gaming objective for example is new, and whilst it seems innocuous enough, it is not approved Government policy and it is also questionable whether the land use planning system is the best place to deliver it.</p>	<p>It is recommended that:</p> <ul style="list-style-type: none"> - A legal review be undertaken; - The document be re-reviewed against the rules of entry; and - Both councils and VCAT test the policies on some live applications through concurrent processing.

Back-of-house improvements

The rules of entry are an important new addition to the management of State Policy. The MAV is supportive of the rules identified and proposes an additional rule along the lines:

'A clear policy implementer is identified.'

The MAV also believes the rules of entry should be supplemented by rules around when a new policy is required such as when:

- A need for a new land use policy direction emerges – for example coal seam gas
- There is a need to resolve a common or difficult policy conflict
- There is a high number of councils seeking amendments about a particular issue.

A valuable part of the review process has been the identification of clear policy owners. This should be followed up by communicating the ongoing expectations of individual 'policy owners' such as:

- Development of guidance documents for referral agency staff
- Monitoring policy outcomes
- Identifying operational issues arising from the policy through VCAT
- Helping and justifying the development of statutory controls

The final control required at the backend is a commitment to regular review. This will ensure new policy issues are identified in a timely fashion, any outdated matters are removed and any ambiguities corrected.

PART 2 – Integration of the State and Local Planning Policy Frameworks

The MAV has a number of reservations, in the absence of analysis, about the proposed integrated policy framework model.

Some of the common criticisms of the Local Planning Policy Framework (LPPF) are considered unfair – that MSS’ and local policies are longwinded, repetitive or cover issues that are not really local. If there is repetition between the State and Local Policy Frameworks, or between various clauses, this more of a reflection of poor drafting by councils or gatekeeping by the Department of Transport, Planning and Local Infrastructure than immediately suggestive of a need to combine the two frameworks. If there is a repetition of local policies amongst councils this is often because of an absence of State policy about the issue.

The MAV is concerned that there has been no evidence presented that the current separation between State and local policy is not working and that there is a prima facie case to combine policy frameworks (along with the inclusion of regional policy). Without this evidence we would prefer to see the LPPF retained as a separate component of planning scheme.

The Advisory Committee needs to be sure, through rigorous analysis, that the proposed integrated planning policy framework model is *‘really worth it’*. Will additional value be created for decision making – will it be easier to find relevant policy, is it easier to understand the nuances of State, regional and local policy, are competing issues between the different levels of policy easier to resolve? Are decisions fundamentally easier to make? If the answer is a resounding yes, then we should proceed with caution.

The MAV is conscious, however, that the decision to move to an integrated policy framework appears to have already been made.

If this is case the MAV would like the Advisory Committee and Government to:

- Consider and resolve the issues raised in the table below

- Further test the format with a number of additional councils (particularly those that might raise concerns)
- Test the potential decision outcomes with both councils and VCAT. This might be done by reviewing applications against both the existing policy framework and the proposed policy framework.

We have sought to articulate our concerns in a way that might assist the Advisory Committee:

Issue	MAV comment	Suggested approach
Ownership of the policy framework	<p>The <i>Planning and Environment Act</i> 2012, Regulations, Ministerial Directions and Guidelines set up a system where the existing SPPF and LPPF have clearly defined owners. The Minister is responsible for State standard provisions – SPPF, zones and overlays, particular provisions, general provisions - and councils (as planning authorities) are responsible for local provisions – LPPF and schedules to zones and overlays (authorised by the Minister).</p> <p>The new policy framework is less clear as it creates regional policy, around which there are no structures or delivery organisation, and contains State, regional and local provisions all in one section of a planning scheme. It is unclear who will maintain and amend the policy framework.</p> <p>Clarity is also required around who will implement the objectives and strategies outlined. This is particularly true in respect to regional policy.</p>	<p>Legislative amendment, and amendment to associated documents, is required to create a similar level of certainty of ownership of the policies and for procedures around their amendment.</p> <p>The approach to implementation could be through the strategies indicating who is the implementer.</p>
Existing legislative constraints	<p>As well as the issue of ownership the <i>Planning and Environment Act</i> sets out that in the event of conflict State provisions must prevail over local provisions [s7(4)(b)]. No such arrangements exist for regional provisions.</p> <p>The Act also requires that a planning scheme include a Municipal Strategic Statement [s7(3)] and what it should contain [s12A(1)].</p> <p>While some might argue that as the</p>	<p>Legislative amendment is required to give clarity about precedence of provisions and also to restructure planning schemes.</p>

Issue	MAV comment	Suggested approach
	<p>content of an MSS will remain so by default so does an MSS. However, we consider that its disaggregation effectively removes it as a component of a planning scheme.</p>	
<p>The limitation the new framework places on planning authorities in terms of being able to articulate a logical and cohesive policy story.</p>	<p>The effect of the disaggregation of MSSs into the proposed new structure has the perceived effect of downgrading the municipal vision.</p> <p>The current LPPF provides a logical and cohesive place for a council to articulate the key issues relevant to decision making, and the overarching planning response and connections to other documents such as the Council Plan and Health Plan. It also provides the location for local policy relevant to specific planning decisions.</p> <p>There will not always be a connection between State and local policy as local policy by its very nature has 'local' impacts. While at times councils may seek to give a local interpretation to a State policy, the policies are there to predominantly reflect local issues that may come up in decision making.</p>	<p>Rigourously evaluate the options for structure of planning schemes.</p> <p>If the integrated model still remains preferred the planning vision section will need to be simplified to only include:</p> <p>3.01 – Vision for Victoria</p> <ul style="list-style-type: none"> Context/key issues Overarching/prime objectives Strategic/settlement framework <p>3.02 – Vision for the region</p> <ul style="list-style-type: none"> Context/key issues Overarching/prime objectives Strategic/settlement framework <p>3.03 – Vision for Gumnut</p> <ul style="list-style-type: none"> Context/key issues Overarching/prime objectives Strategic/settlement framework
<p>The difficulty in including geographic policies that spatially resolve some of the competing policy objectives.</p>	<p>Local policy also provides the ability to resolve competing policy tensions in a particular precinct or geographic area. Breaking these policies down into separate bits would be counterproductive and a backwards step in terms of decision making. The LPPF gives the capacity for councils to be place and topic specific.</p>	<p>If the PPF model proceeds guidance will be required about where precinct/area based policies should be located.</p> <p>Perhaps a <i>Planning for neighbourhoods</i> section could be included or expansion of the <i>Planning for local areas</i>.</p>
<p>Usability</p>	<p>The PPF, when local content is included, becomes quite large and unwieldy.</p>	<p>Consider how the size and functioning of the PPF could be</p>

Issue	MAV comment	Suggested approach
	The reality is that a great deal of planning permit decisions do not need to refer to the SPPF but rather any elaboration of SPPF policies in the LPPF and geographic policies. The LPPF is usually the only area that needs to be navigated through.	improved.

4 Implementation

Significant time, effort and expense have been expended by councils in the development, and ongoing review, of their Municipal Strategic Statements and local policy.

Any transition to an integrated Planning Policy Framework will need to be:

- Rigorous – to ensure critical components of LPPFs are included in the PPF and the effect of local policy is not ‘watered down’.
- Flexible - councils should have flexibility to stage their translation of their LPPFs into the PPF. For example, a council may be fairly well placed to translate the MSS into the PPF, but may require a longer timeframe to redo Local Planning Policies.
- Tailored – timing should relate to when councils are scheduled to review their planning schemes. This would result in a four year timeframe.
- Supported – by Advisory and Practice Notes to ensure clear instructions about translating LPPFs. The guidance should ensure a shared understanding on the rollout of local policy components in the PPF. Additionally, funding should be considered for expert policy writing assistance.

If the Government is intent on transitioning to a new integrated PPF within a shorter timeframe the following elements will be required:

STEP 1 – Funding

- Funding is necessary because it is likely that the translation would be ahead of a council’s scheduled review of its planning scheme and there will not be the budget to undertake the work. Attachment A outlines the likely costs associated with the translation at a council and sector level. This could be through individual grants to councils.
- Alternatively an expert policy writing team (internal or external to the Department of Transport, Planning and Local Infrastructure) could undertake the work with council or act an expert review body.

STEP 2 – Testing

- Thorough testing of any translated LPPF into the new PPF structure should occur before it is formally introduced. This should be done with live applications to ensure that policy intent and interpretation has not changed.
- Legal review should also be undertaken, again to determine whether there are any issues with policy interpretation.

STEP 3 – Ministerial amendment

- A streamlined planning scheme amendment process will be required to assist councils. The time and cost to councils of both notification procedures and representation at panel hearings is enormous.

STEP 4 – Monitoring

- A process of audit and review should be built in to identify any teething problems with the new structure and to identify recommendations to address the issues. This should include feedback from decision makers (councils, referral agencies and the Victorian Civil and Administrative Tribunal) and the MAV as well as a review of VCAT decisions.

The MAV would be pleased to assist in developing an implementation process with the Advisory Committee.

5 Conclusion

The Advisory Committee has generally done some good work in restructuring the State policy component and creating clarity and structure around how policies should be framed. It has met its terms of reference well in terms of integrating regional plans and new zones.

At this stage, however, the MAV needs to be convinced that the benefits of a combined policy framework outweigh the disbenefits of the unwieldy nature of an integrated policy framework, the disaggregation of the municipal vision and policies and the considerable cost and effort required to translate to the proposed model. Analysis of evidence and rigorous review and testing is required. The MAV looks forward to talking further with the Advisory Committee and helping to convene representative councils to work through some of the more challenging issues.

An obvious translation path to move to an integrated policy framework is currently available through the required four yearly review of planning schemes. If a quicker timeframe is desired then funding and additional support will be needed.

ATTACHMENT A

Type of cost	Specific costs	Regulatory cost	
		Price x quantity	Cost per council
Administrative costs	Review and translation costs	\$998,900	\$12,644
	Amendment costs	\$79,000	\$1000
	Legal review	\$790,000	\$10,000
Substantive compliance costs	Community communications	\$79,000	\$1000
	Training	\$671,500	\$8,500
	Unintended consequences	\$150,000	\$1,899
	<ul style="list-style-type: none"> • Legal challenge • Sunk costs from previous review 	\$1,500,000	\$18,987
Delay costs to council	Nil	Nil	Nil
TOTAL		\$2,618,400 - \$4,268,400	\$33,844 - \$54,730

Assumptions:

General

- A quicker process is required than the four yearly planning scheme review.

Review and translation

- Half of councils (40) use a consultant to undertake the translation
- Costs for council are an average of \$170 per day for staff time (ranging from senior through to administrative staff)
- Staff time would equate to 30 days.

Amendment

- Ministerial amendment – no notification or panel hearing required. Costs associated with preparation and liaison with DTPLI
- Costs for council are an average of \$170 per day for staff time (ranging from senior through to administrative staff)
- Staff time would equate to 5.8 days

Legal

- Legal review costs at an average of \$10,000

Communications

- Communications with community require 2 days plus publication costs
- Costs for council are an average of \$170 per day for staff time (ranging from senior through to administrative staff)

Training

- Training required 0.5 day for 20 people (could include staff, councillors)

Unintended consequences

- Three cases of interpretation, in the first year, will be held at VCAT at a cost of \$50,000
- Sunk costs equate to \$100,000 for 15 councils for reviews recently completed.