

# Water in Victorian Planning

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Water is a fundamental consideration in a wide variety of statutory planning contexts and can be seen as the thread that ties together environmentally-sensitive and sustainable planning and development. Pressures on the use of water from climate change, poor water quality and limited water availability present significant challenges for sustainable water usage across the vast range of water applications. Although planning policy differs throughout the Australian States and Territories, this level of land use control is increasingly tasked to deal with local water priorities that integrally link with national and international best practice.

This paper considers the application of water management to land use and development controls within the Victoria Planning Provisions, the state-based planning controls used across Victoria.

By way of background, groundwater within the Melbourne Metropolitan area is largely controlled by Southern Rural Water and Melbourne Water maintains a significant role as to surface water. It does this in three ways: first, by providing assistance in development of Integrated Water Management Plans within municipalities preparing Growth Area Precinct Structure Plans; second, through the creation and management of Development Services Schemes, specific to a particular catchment area; and third, through the development of water priority initiatives, strategy documents prepared through the Office of Living Victoria (OLV)<sup>2</sup>.

Recent Departmental changes have absorbed the OLV into the Department of Environment and Primary Industries (DEPI). OLV was responsible for a number of water functions including the Water Law Review. However, it is reported that the Minister for Water, Peter Walsh, in an interview with ABC Radio's Jon Faine, declined to confirm the new structure of the OLV and the status of its staff as it was for DEPI's Secretary to handle such matters<sup>3</sup>.

The Water Bill 2014, the much anticipated rewrite of the Victorian Water Act 1989, has been placed before Parliament and was read for the second time on 26 June 2014.

## Victoria Planning Provisions

In Victoria, water forms a core element in State wide planning through the Victoria Planning Provisions (VPP). Core aspects of the VPPs, where water can be seen to guide planning, include the State Planning Policy Framework (SPPF) and Zones and Overlays.

### SPPF

The SPPF seeks to ensure that the objectives of planning in Victoria are fostered through appropriate land use and development as well as planning policies and practices which integrate relevant environmental, social and economic factors in the interests of net community benefit and sustainable development [Cl.10.02, VPP].

The SPPF provides a framework for water management through land use by providing provisions specifically for water quality [Cl.14.02-2], water conservation [Cl.14.02-3], stormwater [Cl.19.03-3], environmental risks [Cl.13] and natural resource management [Cl.14].

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<sup>1</sup> This Article draws on an in-house memorandum prepared by Kellehers Australia, published on its website [www.kellehers.com.au/category/latest-news/](http://www.kellehers.com.au/category/latest-news/)

<sup>2</sup> Strategy documents, at various stages of preparation, include *Water Future West*, *Water Future North* and *Water Future Central*. They are prepared as part of the *Melbourne's Water Future* initiative.

<sup>3</sup> [www.weeklytimesnow.com.au/business/office-of-living-victoria-abolished-as-a-stand-alone-entity-now-under-department-of-environment-and-primary-industries-control/story-fnkij14-1226974854290](http://www.weeklytimesnow.com.au/business/office-of-living-victoria-abolished-as-a-stand-alone-entity-now-under-department-of-environment-and-primary-industries-control/story-fnkij14-1226974854290)



The provisions integrate a wide range of techniques to effectively implement water-sensitive urban design in the protection of wetlands, estuaries and landscapes and management of stormwater networks [Cl.19.03-3]. The SPPF advocates sustainable methods of water conservation to utilise alternative sources and to take advantage of effluent recycling in the development of new urban areas and green spaces [Cl.14.02-3]. This may include methods such as effluent recycling, recycled water treatment as well as the use of alternative water sources, such as rainwater tanks, stormwater and recycled water [Cl.14.02-3]. The provisions also protect water quality through strategies to minimize contaminated discharges and run-off and prevent the establishment of incompatible land uses in aquifer recharge or saline discharge areas and in potable water catchments [Cl.14.02.-2].

### **Zones and Overlays**

Zones and Overlays, with their more local context, reflect location-specific elements concerning water in the development and protection of land. An overview of some controls illustrates the point.

The Residential Growth Zone, Neighbourhood Residential Zone and General Residential Zone contain no provisions that specifically address water, but refer to subdivision provisions of Cl.56 which require compliance with the urban landscape requirements, including public open space integrated with floodways, urban water management systems and other water bodies [Cl.56.05]. Commercial Zones 1 and 2 specifically require that a use must not detrimentally affect the amenity of the neighbourhood, including through the emission of waste water and that an application by an industry or warehouse to use land must be accompanied by information on the likely effects on adjoining land, including emissions to land and water [Cl.34.01-2 & Cl.34.02-2; Cl.34.01-6 & Cl.34.02-5]. Before deciding on an application in Commercial 1 and 2 zones, the responsible authority must consider the drainage of the land [Cl.34.01-8 & Cl.34.02-7].

Rural zones all contain similar provisions with respect to water, including consideration the impact of reticulated sewerage and potable water supply [for example, Cl.35.03-2, Cl.35.04-2, Cl.35.05-2, Cl.35.06-2, Cl.35.07-2]. A permit is required in all rural zones to construct a building within a 100 meter setback from a waterway, wetlands or designated flood plain [for example, Cl.35.04-5]. Decisions in rural areas usually consider any regional catchment management strategy and may consider issues such as the location of on site effluent disposal areas to minimise impact of nutrient loads on waterways and native vegetation [e.g. Cl.35.04-6].

The Green Wedge Zone ('GWZ') is similar to its companion rural zones but provides, among its purposes, the recognition and protection of land for its agricultural, environmental, historic, landscape, recreational and tourism opportunities, whilst still encouraging development that is consistent with sustainable land management practices and encouraging sustainable farming practices [Cl.35.04]. A permit is required for any building or works within 100m of a waterway, wetlands or designated floodplain.

Many GWZ uses are permissible only on condition of use in conjunction with Natural Systems. The term 'Natural Systems' is likely generally to include water, being defined as:

*"Land in substantially its natural state which is used to maintain ecological systems, or to preserve an area of historic, scientific, aesthetic, or cultural significance"* [Definitions, Cl.74]

In determining a permit application, a Responsible Authority must consider as appropriate rural issues including the:

- maintenance of agricultural production and the impact on the rural economy;
- environmental capacity of the site to sustain the rural enterprise;
- need to prepare an integrated land management plan;
- impact on the existing and proposed rural infrastructure;
- potential for the future expansion of the use or development and the impact of this on adjoining and nearby agriculture and other land uses;
- protection and retention of land for future sustainable agricultural activities.

It must also consider the need for an Integrated Land Management Plan (**ILMP**), dealing with existing and future agricultural use, and Sustainable Land Management Practices. Frequently Councils considering an application in a GWZ require the applicant to provide both such Plans. Thus, indirectly, water requirements for both agricultural use and environmental sustainability can be directly assessed within the planning process.

The Environmental Significance Overlay (**ESO**) includes the purpose of identifying land affected by environmental constraints, such as native vegetation, and ensure that development is compatible with identified environmental values [Cl.42.01, VPP]. Water is significant in preserving the natural environment and in many areas, for example coastal areas such as the Mornington Peninsula, one can expect to find Schedules whose objectives include promoting integrated land and catchment management and protecting and conserving drainage patterns and stream quality and that a permit for buildings and works will only be allowed where no septic system is located within 60 meters of a streamline, wetland, area of 'fluvial deposits'<sup>4</sup>, cliff and beach area.

Likewise the Land Subject to Inundation Overlay (**LSIO**), through its purposes, including ensuring development maintains or improves river and wetland health, waterway protection and flood plain health, links the protection of water quality to State Environment Protection Policy (**SEPP**) [Cl.44.04], particularly the SEPP (Waters of Victoria) which requires that:

- The precautionary principle and other environmental principles<sup>5</sup> be applied and decision-making be guided by careful evaluation to avoid serious or irreversible damage to the environment and also by an assessment of the risk-weighted consequences of various options [Cl.6(2)];
- Surface waters and their aquatic ecosystems be free of any substance at a level, or human impact, that would pose a risk to beneficial uses [Cl.11];
- Catchment Management Authorities have a responsibility to coordinate the ecologically sustainable development and use of catchments, floodplains and waterways, including the protection and rehabilitation of water quality, flow and aquatic habitats [Cl.15];
- EPA guides to stakeholders to reduce impact of specific activities on surface waters [Cl.25];
- Development of a sewerage management plan and control of losses of wastewater through sewer overflows, leakages and collapses [Cl.33 & Cl.35];
- The discharge of saline wastewater, including discharges from groundwater pumping and irrigation drains should not pose an environmental risk to beneficial uses [Cl.36];
- Groundwater managers and those who use groundwater need to ensure that their activities do not pose an environmental risk to surface water beneficial uses, particularly through the excessive extraction of water and the subsequent prevention of surface water environmental flows, and through reducing the quality of adjoining surface waters [Cl.45].

The Urban Flood Zone (**UFZ**) and the Flood Overlay (**FO**) provide similar conditions to the LSIO.

This overview of some of Victoria's Planning Controls reveals the place of water in the planning approvals process. It observed patterns in the regulation of water use through the VPPs. Residential zone controls focus on water issues particularly as they affect subdivision. By contrast, Rural zones tend to control the management of potable water supply as well as effluent and water run-off in the context of reticulated and non-reticulated water systems.

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<sup>4</sup> Meaning *pertaining or peculiar to rivers; found in or near rivers: 'Fluvial'*, *The Macquarie Dictionary* (Macquarie University NSW, 2<sup>nd</sup> Revised Ed, 1990).

<sup>5</sup> For example, the principles of integration of economic, social and environmental considerations; intergenerational equity; conservation of biological diversity and ecological integrity; shared responsibility; see Clause 6, State Environment Protection Policy (Waters of Victoria), Victorian Government Gazette, 4 June 2003

## Conclusions

There is a need to review the VPPs, particularly from the perspective of what is not there. Best practice elements could be integrated in planning provisions, including requirements for water management plans, farm management plans as well as mandatory consideration of planning effects on groundwater and groundwater dependent ecosystems, not just surface water. Other States may also benefit by reviewing their planning provisions to better address matters of water planning.

As one of the world's driest continents, Australia can be expected to be increasingly compelled to plan for limited water resources. Victorian State Planning does and must continue to serve a vital role in the framework by which this matter of national concern is addressed.