

# Chapter 4

## Planning Controls

### 4.1 Introduction

The new planning system in Victoria, based on the *Victorian Planning Provisions*, requires the development and incorporation within municipal planning schemes of a sound policy basis for subsequent detailed decision making.

The three underpinning principles for the new schemes are:

- a new format scheme is an expression of a considered vision and policies for an area and the planning requirements designed to achieve them;
- the application of requirements and controls such as zones, overlays and local provisions must have a readily discernible basis in the *Local Planning Policy Framework* (LPPF) or *State Planning Policy Framework* (SPPF); and
- the planning permit is the preferred form of development control.

Section 4.2 includes an outline of the way in which the innovative use of the new planning principles and detailed provisions can assist municipalities in the achievement of water quality objectives.

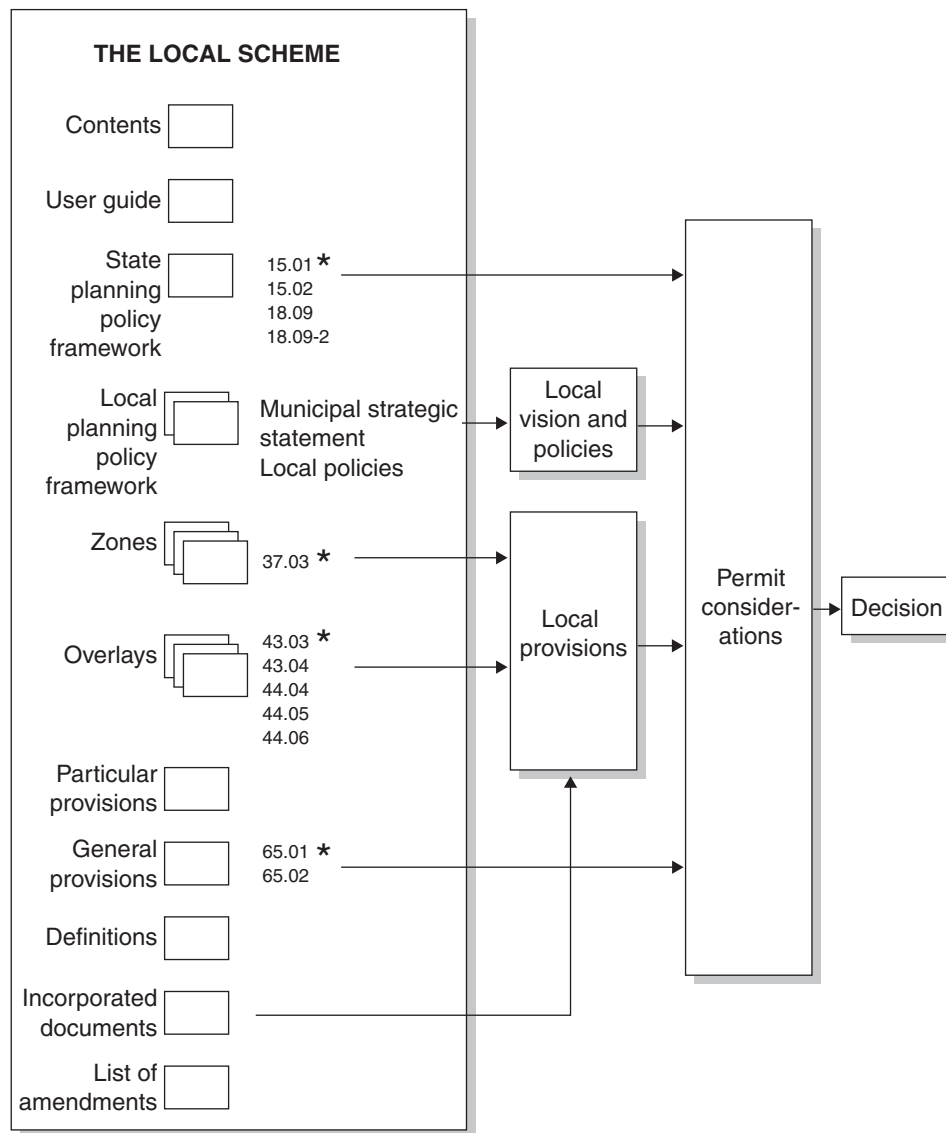
Chapter 5 provides a range of design 'tools' from which planners and designers can choose those techniques most applicable to their specific site conditions.

Figure 4.1 illustrates the clear linkages between the policy framework and the appropriate statutory controls.

### 4.2 Land-use planning

#### 4.2.1 State Planning Policy Framework

The *State Planning Policy Framework* (SPPF) sets out general principles for land use and development in Victoria, with specific policies under a series of headings. These State policies must be heeded by all planning authorities.



\* Relevant section of Victorian Planning Provisions

\* incorporates *Best Practice Guidelines*

\*\* incorporates *Stormwater Management Plan*

† clause numbers (e.g. 65.01) refer to the *Victorian Planning Provisions*

**Figure 4.1 Linking the policy framework to the permit decision.**

In relation to water quality, the SPPF emphasises the need for a cooperative approach with key stakeholders.

Integrated catchment planning for land use and resource management provides the basis for planning to protect waterways and water quality, and to minimise flood hazards, drainage infrastructure costs and downstream impacts, including on estuarine, coastal and marine environments. (SPPF, Section 13 MANAGEMENT OF RESOURCES)

This is supported by the policies contained in:

- Section 15 ENVIRONMENT and specifically
  - Section 15.01: Protection of Catchments, Waterways and Groundwater
    - Catchment Planning and Management

- Water Quality Protection
  - Section 15.02: Floodplain Management
- Section 18 INFRASTRUCTURE and specifically
  - Section 18.09: Water Supply, Sewerage and Drainage
  - Section 18.09–2: General Implementation

At present, Section 15.01–2: Water Quality Protection makes only general reference to ‘any nutrient or water quality management plan approved by government’.

It is intended that the final version of the Best Practice Environmental Management Guidelines for Urban Stormwater will be incorporated into the SPPF, thus emphasising its status.

Sections 15.01–2 and 18.09–2 of the SPPF are attached in full in Appendix I of these Guidelines.

The contributory nature of other elements is particularly highlighted in:

- Section 13: Environment
  - Management of Resources
  - Regional Cooperation
- Section 15.09–2: Conservation of Native Flora and Fauna
- Section 15.10: Open Space
- Section 18.01: Infrastructure

#### **4.2.2 Local Planning Policy Framework**

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In the *Local Planning Policy Framework* (LPPF) the planning authority must bring together in the *Municipal Strategic Statement* (MSS) and Local Policies its overall vision for the municipality and in this particular case indicate how water quality objectives are to be achieved.

The *Municipal Strategic Statement* (MSS) should, therefore, recognise the role of infrastructure planning in achieving overall municipal goals. In the case of stormwater, that vision will recognise the wider relationship between any local drainage network and the rest of the catchment, the key features of the drainage infrastructure that are to be protected and the ways in which the drainage system can, in turn, contribute to the achievement of other municipal goals.

Fundamental requirements for the content of an MSS are set out in Section 12A of the *Planning and Environment Act*. The *Manual for the Victoria Planning Provisions* (Department

of Infrastructure 1996) clearly encourages local initiative and flair to drive the individual format of the MSS, but suggests that each MSS contain:

- a profile of key characteristics and the regional context;
- a vision statement identifying overall landuse goals for the municipality;
- clear policy links to SPPF and the corporate plan;
- strategic statements and policies about key issues;
- a future land-use framework;
- an outline of how the municipality intends to implement the MSS; and
- a program for monitoring and review.

#### **4.2.3 Establishing a framework for stormwater management**

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As Chapter 3 indicates, the preparation of a stormwater management plan involves:

- identifying threats to receiving water environments from urban stormwater;
- identifying strategies for managing urban stormwater to protect receiving environments;
- identifying responsibilities for implementing strategies and actions to improve the environmental management of stormwater; and
- identifying opportunities to incorporate into all council management and operations activities actions and strategies to improve the environmental management of stormwater.

This is therefore the ideal process for the identification of issues and objectives for inclusion in the MSS and to develop local policies and statutory controls for the achievement of these objectives.

The MSS is intended to be a concise document and it will be necessary to focus on key challenges and strategies at that level. However, by making the municipal stormwater plan a document referred to in the MSS, the full detail would be readily available.

A possible approach is illustrated opposite.

This brief description could be accompanied by a drainage features plan to illustrate the broad geographic pattern of key drainage features. This might include:

- key drainage lines including drains, channels, waterways and floodways;
- existing wetlands and floodplains;

## City of \*\*\*\*\* Stormwater Profile

The City of \*\*\*\*\* lies at the receiving end of the major drainage system of the \*\*\*\*\* catchment in \*\*\*\*\* Melbourne. The \*\*\*\*\* Creek, \*\*\*\*\* River and the network of connecting waterways and drains accept waters from the creeks much higher in the catchment, such as the \*\*\*\*\* and \*\*\*\*\* Creeks. These all play a critical role in channelling water through the municipality to Port Phillip Bay and protecting the surrounding land from flooding.

The adjoining floodplains and wetlands running from \*\*\*\*\* in the south through the \*\*\*\*\* wetlands to \*\*\*\*\* Park provide benefits to the drainage system by allowing major opportunities for treatment of waters before they reach the Bay.

In turn this creates areas of rich habitat significance providing major contributions to the overall amenity of the area and its recreational potential.

The Port Phillip Regional Catchment Strategy indicates that many of these waterways are in poor condition and require significant improvements in stormwater planning to ensure they do not deteriorate further.

Water quality in the network must meet the requirements of the SPPF and all development must be consistent with the Municipal Stormwater Management Plan (if this has not been finalised, comply with the Best Practice Environmental Guidelines for Urban Stormwater).

- existing and potential open space or major vegetation networks which make a significant contribution to the drainage function; and
- major overland flow paths.

### 4.2.4 Implementing the vision

#### Use of zones, overlays and related documents

A range of tools is available through the VPPs to contribute to the achievement of water quality objectives as illustrated in Figure 4.1.

The following are examples of 'single function' techniques with a spatial base.

- *Urban Floodway Zone (VPP Clause No. 37.03)*  
Applied to land in urban areas identified as part of the active floodway.
- *Land Subject to Inundation Overlay (VPP Clause No. 44.04)*  
Applied to land in rural or urban areas subject to inundation, but not part of the primary floodway.
- *Special Building Overlay (VPP Clause No. 44.05)*  
Applied to land urban areas subject to inundation, but not part of the primary floodway.

- *Incorporated Plan Overlay (VPP Clause No. 43.03)*

May identify specific areas where more detailed planning is necessary and include specific policy measures in a document which is incorporated in the planning scheme.

- *Development Plan Overlay (VPP Clause No. 43.04)*

May indicate areas of land where a detailed development plan is essential before development can be approved.

- *Development Contributions Overlay (VPP Clause No. 45.06)*

May illustrate areas where a development contributions plan is in place or proposed.

Each zone or overlay has a clearly identified range of matters for consideration in making a decision. Municipal stormwater management plans (MSWMPs) should therefore consider the opportunities available to interlink with the techniques above.

## Local policies

Local policies can be issue- or geography-based. The following is an example of an issue-based policy for stormwater.

### Stormwater drainage policy

This policy applies to all land in the municipality.

#### Policy basis

State Planning Policy provides for the protection of water quality through integrated catchment planning for land-use and resource management. Nine Catchment Management Authorities and the Port Phillip Catchment and Land Protection Board have been established by the State Government to develop strategies and plans to implement integrated catchment management. Victoria is a signatory to the *National Water Quality Management Strategy* and has developed *Best Practice Environmental Guidelines for Urban Stormwater*.

#### Objectives

To ensure that land-use activities potentially discharging contaminated run-off or wastes to waterways are sited and managed to minimise such discharges and to protect the quality of surface water and ground water resources, rivers, streams, wetlands, estuaries and marine environments.

#### Policy

Policy is that:

Urban development be designed in accordance with the adopted municipal stormwater management plan or, if a plan has not been adopted, with the *Best Practice Environmental Management Guidelines for Urban Stormwater*.

Local policies can also apply to a specific area or feature and may be multi-functional in character. The following example is drawn directly from the *Manual for the Victoria Planning Provisions*.

## Skeleton Creek Environs

This policy applies to land within 100 metres of Skeleton Creek.

### Policy basis

Skeleton Creek is the second major watercourse in Wyndham, after the Werribee River. The creek is identified in the MSS as a key environmental feature in Wyndham. Urban development is encroaching upon the Skeleton Creek as part of the residential expansion. Action to manage the impact of development on the creek environs is required. The creek also provides an opportunity for a major open space link.

Reference: *Skeleton Creek Waterways and Environs Strategy*, Melbourne Water, 1996.

### Objectives

To establish Skeleton Creek as a major open space link, to safeguard water quality, to protect conservation assets and to ensure that nearby urban development is sympathetic to the creek environment.

### Policy

It is policy that:

- Natural environmental conditions be protected and enhanced, particularly in terms of weeds and soil removal.
- Landscape guidelines will be prepared for the development of Skeleton Creek.
- Development in the policy area must comply with the council's adopted Municipal Stormwater Management Plan.
- Development must comply with the *Best Practice Environmental Management Guidelines for Urban Stormwater*.

### 4.2.5 Permit applications

The State and Local Planning Policy Frameworks contain the long term direction and outcomes sought by the *Victorian Planning Provisions*. Figure 4.1 illustrates the way in which a permit decision derives its policy input from the SPPF and the LPPF and its statutory force from the relevant zone or overlay in the scheme. The SPPF lists a number of plans, strategies and guidelines which councils should give effect to under planning controls.

Councils should develop appropriate planning permit conditions as part of the development and implementation of stormwater management plans. These conditions can impose requirements related to a particular development or use of land both during construction and ongoing use of the site.

There are therefore probably two standard conditions that should appear on all permits which involve water quality considerations.

- Development in the policy area must comply with the council's adopted Municipal Stormwater Management Plan,

and/or (if a plan has not been adopted)

- Development must comply with the *Best Practice Environmental Management Guidelines for Urban Stormwater*.

and

- The owner of the land must enter into an agreement with the relevant drainage authority for the provision of drainage to the site in accordance with the authority's requirements and relevant legislation at the time. (This may form part of the general servicing condition normally placed on subdivision but should apply to development where there is no subdivision.)

Examples of other, more specific conditions are set out below.

### **Example: Planning permit conditions for stormwater protection**

- Ensure that no water containing oil, foam, grease, scum or litter shall be discharged to the stormwater drainage system from the premises.
- Ensure that all stored wastes are kept in designated areas or covered containers that prevent escape into the stormwater system.
- Ensure that measures are taken to minimise the amount of mud, dirt, sand, soil, clay or stones deposited by vehicles on the abutting roads when vehicles are leaving the premises.
- Ensure that no mud, dirt, sand, soil, clay or stones are washed into or allowed to enter the stormwater drainage system.
- Ensure that the site be developed and managed to minimise the risks of stormwater pollution through the contamination of run-off by chemicals, sediments, animal wastes or gross pollutants in accordance with currently accepted best practice.

#### **4.2.6 Other controls**

Section 12 of the *Water Act 1989* imposes a duty upon councils to include conditions if, by granting a permit, the existing drainage regime of the area may be affected. Section 12 provides that a person who has power under any Act to authorise or permit any activity, or change in the use of land, that may affect the existing drainage regime:

- (a) must make the authorisation or permission subject to conditions that, in the opinion of the person, are required to ensure the conservation of waterways, wetlands and aquifers; and
- (b) may withhold the authorisation or permission until any works are carried out or any measures are undertaken by the person, for avoiding or lessening any possible adverse effect of the granting of the authorisation or permission.



Councils may also impose conditions for stormwater quality management by entering into an agreement with a landowner (and Melbourne Water as an interested party) under Section 173 of the *Planning and Environment Act 1987*. An agreement may be required as part of the planning control process. It may provide for:

- the prohibition, restriction or regulation of the use or development of the land;
- the conditions subject to which the land may be used or developed for specified purposes; and
- any matter intended to advance the objectives of planning in Victoria.

An advantage of a Section 173 agreement is that it is registered on title and binds future purchasers of the land.

#### **4.2.7 The importance of an integrated approach**

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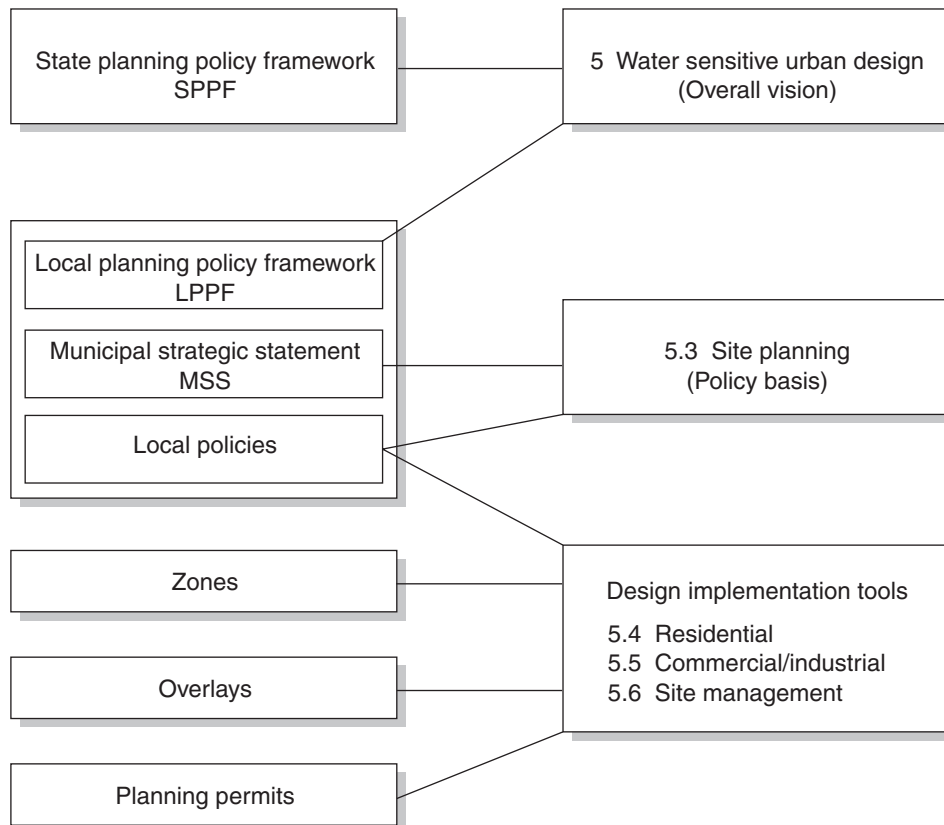
The critical linkage between land-use planning and other operational activities of council is recognised in the recent insertion of Section 12A to the *Planning and Environment Act 1987*, which requires in subsection (4):

A municipal strategic statement must be consistent with the current corporate plan prepared under Section 153A of the *Local Government Act 1989* for the municipal district.

This mandatory provision creates the opportunity for the ‘municipal vision’ contained in the municipal strategic statement to be realised through the complementary policies of all council departments and service providers. This is of major significance for stormwater management, where other activities such as infrastructure planning and development, parks and recreation and conservation planning can play key roles in achieving improved stormwater quality.

It is the integration of these processes that is the foundation for the new approach to planning schemes and policy implementation in Victoria.

These Guidelines support the development of an integrated approach to the environmental management of stormwater within local government. The specific area of urban development is addressed in Chapter 5. Figure 4.2 describes the link between the planning process and the urban development issues described in the balance of this chapter.



**Figure 4.2 Water sensitive design and the planning process.**