

ERM Melbourne Consolidated Response to Draft SEPP (Waters) Policy

KEY QUESTIONS		ERM MELBOURNE COMMENT
1	One objective of the Draft SEPP (Waters) review is to provide a framework to protect and improve the quality of Victoria's waters . Rate whether the Draft SEPP (Waters): -did not achieve this objective (1 star) -neutral (3 stars) -fully achieved this objective (5 stars)	4 stars
2	The second objective of the Draft SEPP (Waters) is to improve certainty for the industry to enable compliance . Rate whether the Draft SEPP (Waters): -did not achieve this objective (1 star) -neutral (3 stars) -fully achieved this objective (5 stars)	3 stars
3	The third objective of the Draft SEPP (Waters) is to improve clarity for industry to enable improved compliance . Rate whether the Draft SEPP (Waters): -did not achieve this objective (1 star) -neutral (3 stars) -fully achieved this objective (5 stars)	3 stars
4	Has the Draft SEPP (Waters) achieved these objectives? -Yes -No -Partially	Partially
5	Is there anything missing that would help the Draft (SEPP) Waters meet its objectives?	<p>The Draft (SEPP) does not include efforts to minimise cross contamination of aquifers, including via drilling of exploration bore holes, geotechnical bore holes, coal seam gas fracking, or poorly designed and constructed wells. This is an ongoing issue and could potentially be considered for inclusion within the SEPP, given the "protect" focus of the SEPP.</p> <p>The SEPP also does not provide clauses related to groundwater protection during groundwater extraction, including during dewatering and mining operations. This could also potentially be considered within the Policy.</p> <p>Clause 24 - offset measures are discussed under Division 1 All Waters. However, offset measures appear to apply almost exclusively to surface waters, based on the explanatory notes. Has the potential for offset measures to apply to areas of groundwater contamination been considered i.e. rather than undertaking expensive remediation efforts that ultimately do not result in a net benefit to the environmental quality, could an environmental offset be considered as part of a CUTEP or GQRUZ application process?</p>
6	Do you have specific comments on clauses 1-19 of the Draft SEPP (Waters), including the explanatory notes? Is there sufficient clarity of rules and obligations to enable implementation?	<p>Clause 3 - while the "Policy comes into operation on the date it is published", has consideration been given to a timeframe for adoption of the Policy by industry i.e. ongoing site assessments which are being undertaken under the current SEPP structure. A timeframe for implementation may be appropriate i.e. a similar approach to that adopted for the NEPM 2013 implementation</p> <p>Clause 4 and Clause 5 - reference to "state environment protection policy" in Clause 4 and 5 is inconsistent with Clause 1 "State Environment Protection Policy" (as an example). Typographical inconsistencies such as this throughout the document can sometimes make interpretation difficult.</p> <p>Clause 6 - definition of a bore is confusing and should be reconsidered i.e. it is not clear whether a borehole installed for the purpose of "recharge of an aquifer" would be considered a bore under this definition, given the exclusion clause within this definition. Additionally, the definition of a bore (item c) should include a well used for dewatering or depressuring of an aquifer (often referred to as wellpoints or spear points), for example to aid bulk excavation in building, civil engineering or mining applications.</p> <p>Clause 6 - numerous references are made to Authority throughout the document. It is assumed this reference relates to the Environment Protection Authority, but this is not clear from the definitions, particularly given reference to the "Murray Darling Basin Authority". It is also not clear how "Authority" differs from "protection agencies", which is also not defined in Clause 6.</p> <p>Clause 6 - reference is made to NEPM 1999, please consider whether this should reference the revised NEPM 2013.</p> <p>Clause 6 - the definition of potable water-acceptable indicates a TDS range of 601 - 1,200mg/L. This is not consistent with Schedule 2 (Table 2) which indicates that potable water-acceptable is applicable to groundwater from 0 - 1,200 mg/L.</p> <p>Clause 6 - please consider whether the definition of "receiving waters", should also include reference to discharge from groundwater to surface waters</p> <p>Clause 6 - definition of "surface water" is confusing with respect to reference to "spring" which is a surface expression of groundwater (although groundwater is excluded from the definition) and "constructed channel" (despite artificial assets being excluded from the definition).</p> <p>Clause 6 - methods "approved by the Authority" for measurement of TDS are not clear., perhaps a guidance document could be referenced here</p> <p>Clause 9 (2) - this clause indicates that the "Authority will determine to which segment water belongs, having regard to information reasonably available to the Authority". Please consider whether consideration of "this Policy" should also be added to this clause and the associated explanatory notes.</p>

6	<p>CONTINUED</p> <p>Clause 12 (1) - the definition of practicality remains vague. While reference is made in the explanatory notes to "environmental, social and financial", it would be appropriate to also reference technological and sustainability considerations. Additionally reference to "over the lifetime of this Policy", could have implications for projects that are required to be completed within a shorter or longer timeframe i.e. remediation projects at contaminated sites.</p> <p>Clause 13 (1) (b) - pollution is mentioned in this clause, but "pollution" is not included in the definitions (Clause 6), although we note that pollutant is defined.</p> <p>Clause 14 (explanatory notes) - the explanatory notes provide the definition of beneficial use as per the Act, with this definition being more detailed and different from that defined by the Policy (Clause 6). This inconsistency should be reconsidered.</p> <p>Clause 15 (3) (a) - reference to "variations within the aquifer" should be clarified to indicate whether these are considered to be "variations in yield", or other variations such as water quality.</p> <p>Clause 16 (1) - reference is made to Schedule 2 (Table 3). Table 4 (of Schedule 2) also provides an outline of beneficial uses (for marine and estuarine waters) and should also be referenced in Clause 16 (1).</p> <p>Clause 17 (explanatory notes) - the methodology and process for development of objectives for the beneficial uses "cultural and spiritual values" and "Traditional Owners and Aboriginal Victorians cultural values" is not clearly defined, and could be open to significant interpretation. A robust and scientifically sound process would need to be followed for development of these objectives for broad scale adoption.</p> <p>Clause 18 (1) - "priority reaches" are not defined in Clause 6.</p>
7	<p>Do you have specific comments on clauses 20-31 (waste and waste water management) of the Draft SEPP (Waters), including the explanatory notes? Is there sufficient clarity of rules and obligations to enable implementation?</p> <p>Clause 22 (2)(e) - reference is made to "wetlands and lakes, or estuaries". It is not clear how this fits with the segment definitions presented in Schedule 1 Clause 3 i.e. "wetlands" (seperated into "lakes" and "swamps"), "rivers and streams" and "marine and estuarine".</p> <p>Clause 24 - this clause is included in Division 1 All Waters. It is not clear whether Clause 24 is intended to relate specifically to surface water, or whether offset measures could potentially be considered with respect to groundwater (as per our comment above).</p> <p>Clause 26 (explanatory notes) - reference is made to "persons". It is not clear whether this definition also includes companies/corporations/entities. Note that reference to "persons" is also made elsewhere in the document, including Clause 40, Clause 42, Clause 50 and Clause 53.</p> <p>Clause 26 (explanatory notes) - it is not clear whether this clause is focussed on wastewater reuse and recycling by industry, or is more focussed on domestic households.</p> <p>Clause 27 - has this clause (related to management of sewer systems) been developed to also consider the potential for groundwater (particularly in a contaminated site setting) to discharge into a sewer.</p> <p>Clause 28 (1) - reference is made to groundwater beneficial uses. Is the intent to also protect surface water beneficial uses as per the explanatory notes reference to waters, and inclusion of this clause under Division 1 All Waters?</p>
8	<p>Do you have specific comments on clauses 32-42 (management of specific risks to beneficial uses) of the Draft SEPP (Waters), including the explanatory notes? Is there sufficient clarity of rules and obligations to enable implementation?</p> <p>Clause 34 (2) - reference is made to the <i>Best Practice Environmental Management Guidelines for Stormwater</i>, but the Endnotes indicate that only Chapter 3.2 of this document is relevant to Clause 34 (2). This should be clarified in the explanatory notes or the Endnotes.</p> <p>Clause 34(4) - has this clause (related to management of urban stormater) been developed to also consider the potential for groundwater (particularly in a contaminated site setting) to discharge into underground drains.</p> <p>Clause 35 - the TDS definition of "saline wastewater" and "saline groundwater discharge" is not indicated. Furthermore, it is not clear whether this clause is related to disarge of saline water to surface water or groundwater. Reference to "high ground water recharge" is also not clear. The intent and relevance of this clause should be clarified.</p> <p>Clause 36 - reference is made to beneficial uses of receiving waters i.e. surface waters. It is equally important to minimise impacts to groundwater beneficial uses from irrigation drains and channels.</p> <p>Clause 37 (explanatory notes, dot point 3) - "functions can out their responsibilities", the meaning of this is not clear</p> <p>Clause 42 - as noted above for Clause 26, reference to "persons" is made. It is not clear whether this clause is therefore intended to relate to domestic scale construction projects or large construction activities e.g. large infrastrutcture projects. This clause also references surface water monitoring but does not include a requirement for groundwater monitoring and protection of groundwater during construction activities.</p>
9	<p>Do you have specific comments on clauses 43-52 (surface waters) of the Draft SEPP (Waters), including the explanatory notes? Is there sufficient clarity of rules and obligations to enable implementation?</p> <p>Clause 43 - discussion regarding impact of groundwater on surface waters is focussed on the extraction of groundwater. This clause could be aided by consideration of groundwater impacts on surface water associated with contaminated discharge. The explanatory notes should also be revised to indicate that "Groundwater <u>can</u> provide base flow", as this is not necessarily the case in all groundwater systems.</p> <p>Clause 46 - definition of floodplain is not provided in Clause 6</p> <p>Clause 48 - reference to minimising influences on groundwater levels would also be appropriate under this clause i.e. via removal of deep rooted trees that have some control on the water table</p> <p>Clause 51 and Clause 52 - it is not clear whether bilge and balast water is covered under the "waste from vessels" and "biofouling" considerations. It is noted that the Policy Impact Assessment indicates that reference to ballast waters has been removed, as this is managed through the Waste Management Policy (Ships' Ballast Water). However this appears to be a missing piece of Clause 51 and Clause 52, and should perhaps be discussed in the explanatory notes.</p>
10	<p>Do you have specific comments on clauses 53-59 (groundwater) of the Draft SEPP (Waters), including the explanatory notes? Is there sufficient clarity of rules and obligations to enable implementation?</p> <p>Clause 53 - reference is made to "beneficial uses" in the explanatory notes, but is not specifically part of Clause 53.</p> <p>Clause 55 - reference is made to an "occupier of the premises" being required to remove / control / clean up NAPL. It is not clear how this clause deals with NAPL generated from an adjacent site and being mobilised offsite beneath non-source properties. The wording of this Clause 55 indicates that, in this event, the occupier of a non-source site is obligated to remove / control / clean up that migrating NAPL, which is probably not the intention of this clause.</p> <p>Clause 56 - it is not clear whether Clause 56 is meant to cover water used for irrigation purposes, and associated potential for rising groundwater levels.</p> <p>Clause 58 (2) - "no significant risk" is not defined in (d) and "high permeability or low attenuation properties" are not defined in (e).</p>

<p>11</p> <p>Are the Schedules 1-5 (segments, beneficial uses, environmental quality indicators and objectives, pollutant load reduction targets and areas of high conservation value) easy to understand and use? Please identify the section of the schedules you are commenting on.</p>	<p>SCHEDULE 1</p> <p>Clause 2 (Figure 1) - please consider providing an interactive map (with base layer) to facilitate assessment of segments. This map would also benefit from identifying the "Aquatic reserves" and "Urban" segments. Reference in Figure 1 and throughout the document to the segments should be consistent i.e. "Marine and estuarine" should be indicated in Figure 1, consistency of "Twofold (Gippsland)" and "Gippsland (twofold)". The segments should also be consistently italicised for clarity i.e. clause 3 (4) (a) estuaries not italicised. The lack of consistency in the adopted segment and sub-segment terminology throughout the schedules causes confusion for the Policy reader/user.</p> <p>Clause 3 (2) - does the wetlands segment also exclude aquatic reserves? This is not clear</p> <p>Clause 3 (3) - the definitions of the "rivers and streams" segments are not consistent with Schedule 3 Table 1 i.e. reference to Broken and Western Port made for Uplands A in Schedule 3 Table 1, but these are not indicated in clause 3 (3) (b). East Gippsland is also referenced for Uplands B in Schedule 3 Table 1, but is not indicated in clause 3 (3) (c).</p> <p>Clause 3 (3) (d) - it is not clear whether Urban is also excluded for the Yarra River</p> <p>Clause 3 (4) (a) - the location of the estuaries segment is not clear, is this going to be presented on Figure 1?</p>
	<p>SCHEDULE 2</p> <p>Table 1 - are swamps and streams also included in definition of water dependent ecosystems (third dot point)?</p> <p>Table 1 - this would benefit from indicating which beneficial uses are applicable to surface water, which are applicable to groundwater and which are applicable to both surface water and groundwater. This could perhaps be presented as a separate column in the table.</p> <p>Table 1 - consider whether the beneficial use geothermal properties should refer to the "natural" geothermal capacity of the groundwater</p> <p>Table 2 - please consider whether there is any benefit to separating groundwater beneficial uses of potable water supply into "desirable" and "acceptable", given that Schedule 3 Clause 7 (2) and Clause 7 (3) adopt the same criteria for both beneficial uses?</p> <p>Table 1 - please consider whether a beneficial use associated with groundwater should be adopted that is protective of human health from vapours generated by groundwater.</p> <p>Table 1 - it is not clear whether geothermal properties are to be considered as a beneficial use for specific localities only or all areas of Victoria.</p> <p>Table 3 - should "wetlands and lakes" be separate to the "rivers and streams" heading, and should this also be identified as "wetlands (lakes and swamps)" to be consistent with definition of this segment in Schedule 1 clause 3 (2).</p> <p>Table 3 - it would be helpful if the order of segments and subsegments adopted in Table 3 is reflected in the order used elsewhere in the Policy, particularly Schedule 1 clause 3 (2).</p> <p>Table 3 - note the typographical error "water base recreation (primary contact)"</p> <p>Table 3 - please consider clarifying why "agriculture and irrigation" is not an applicable beneficial use for aquatic reserves, and why "industrial and commercial" is not applicable to all inland waters?</p> <p>Table 4 - please consider separating marine and estuarine under separate headings for clarity. The basis for the applicability of the beneficial uses "industrial and commercial" to selected segments is not clear. Please also consider whether "navigation and shipping" is applicable to the Open Coasts segment.</p> <p>Table 5 - this table could be made more clear by showing a separate column for inland and marine/ estuarine waters.</p> <p>Table 5 - please reconsider the reference to "estuaries and inlets" (as indicated for navigation and shipping), as this terminology is not used previously.</p> <p>Table 5 - note that the Geelong Arm should be referenced in "water based recreation (primary contact)", as per * in Table 4.</p> <p>Table 5 - fresh water aquatic reserves are also excluded (Table 3) and should be referenced for a number of beneficial uses</p> <p>Table 5 - Port Phillip Bay and Aquatics Reserves reference under "human consumption of aquatic food" and "navigation and shipping" is confusing, as Table 4 of the Policy seems to indicate that these are separate segments.</p> <p>Table 5 (first row) - the type of "water based recreation" is not defined.</p> <p>Table 5 - overall, Table 5 should be updated to be consistent with Table 3 and Table 4.</p>

SCHEDULE 3

Clause 1 - it is not clear whether the environmental quality indicators and objectives are related to surface water only. This should be clarified as clause 1 (5) (a), (c), (d) and (e) would appear to be unrelated to groundwater. This is also the case for clause 6 (2) (3)

Clause 2 (5) - there should be no need to define the Urban segment here, as this has already been detailed earlier in Schedule 1 clause 3 (3) (e)

Clause 5 (1) - should reference be to "wetlands and swamps", rather than "wetlands", again the lack of consistency of terminology is confusing

Table 1 - if highland streams are to be defined as "streams above 1000 m altitude", this should be outlined in Schedule 1

Table 1 - it is not clear why 99% protection levels for highlands, uplands A and uplands B have not been adopted, given the "largely unmodified" description for these areas (as per clause 1 (5)(b))

Table 1 - this table should also be consistent with the Schedule 1 definitions i.e.

-Mitta Mitta is listed in uplands A in schedule 1 clause 3 (3) (b), but is not in Table 1.

-Broken and Macalister are indicated in schedule 1 clause 3 (3) (c) for uplands B, but are not indicated in Table 1.

-Thomson, Macalister and South Gippsland are indicated in schedule 1 clause 3 (3) (d) for Central Foothills and Coastal Plains, but are not in Table 1.

-Broken and Millicent Coast Basins are indicated in schedule 1 clause 3 (3) (f) for Murray and Western Plains, but are not in Table 1.

Table 1 - Please clarify if Table 1 is intended to relate to all beneficial uses or just "water dependent ecosystems", as this is not clear from schedule 3 clause 1 (1)

Table 2 - why are objectives provided for the highlands in summer but not autumn/spring, consistent with the other segments.

Table 2 - why is there no R for Murray and Western Plains in Autumn?

Table 3 and Table 4 - the order of these tables should be swapped to better reflect the order of the report.

Table 3 - it is not clear how the "wetland types" in Table 3 are defined or meant to be applied.

Table 4 - there is no row for EQOs associated with closed shallow (<5m) inland, despite this being presented in Table 3

Table 5 - have biological parameters not been developed for estuaries?

Table 6 - there is no bottom EQO presented for Lake Reeve and Lake Wellington?

Table 7 - there is no bottom EQO presented for Exchange and Geelong Arm.

Table 9 - it is not clear why 99% protection levels for Corner Inlet have not been adopted, given the "largely unmodified" description (as per in clause 1 (5)(b))

Table 12 - schedule 3 would be easier to interpret if Table 12 is presented before Table 11, to clearly show that the weight of evidence assessment is related to "water dependent ecosystems" rather than aquaculture.

Clause 6 - should there be parameters adopted for secondary contact short term too?

Clause 6 - is this clause intended to be related primarily to surface water?

Clause 6 (6) - this clause is potentially applicable to groundwater, as well as surface water, but this is not made clear in the text.

Clause 6 (6) (b) (ii) - there is no definition provided for "low buffering capacity"

SCHEDULE 3 CONTINUED

Table 15 - the format of this table makes it difficult to interpret

Clause 7 - this clause would benefit from tabulation

Clause 7 (6) - this does not indicate which "livestock" guidelines should be adopted, noting that there are various criteria in ANZECC for some parameters depending on which "livestock" is adopted

Clause 7 (7) - no clear definition is provided for "impacted". Should this clause require that industrial/commercial water should not be impacted to render it unsuitable to the intended use(s)?

Clause 7 (8) - please clarify if short term or long term criteria (as presented in clause 6) are applicable?

Clause 7 (9) (b) - consider whether this should also reference NEPM Management Limits. MLs for petroleum hydrocarbon compounds have been derived to avoid or minimise the potential for adverse effects on buried infrastructure, such as penetration of, or damage to, in-ground services.

Clause 7 (9) (b) - in addition to buildings and structures, this clause (or an explanatory note) should include more explicit reference to protection of piles, cables, pits, sumps, pipes, geo-textiles, etc constructed of synthetic, concrete or metal materials and in contact with groundwater.

Clause 7 (9) - The Explanatory Note correctly refers to Australian Standard AS 2159-2009 Piling – Design and Installation for the protection of buildings and structures. However this Standard is limited to steel and concrete materials in contact with groundwater. Such a limitation should be included.

Clause 7 (10) - the application of the geothermal quality objectives is not clear, is this applicable only to groundwater with a background temperature of 30 - 70C? Further clarification should be provided in the explanatory notes

Additionally, we note that there are no guidelines provided for surface water for human consumption, agriculture / irrigation, human consumption of aquatic foods, industrial / commercial, Traditional Owners and Aboriginal Victorians cultural values, cultural and spiritual values, or navigation and shipping. Are the EQIs considered to be sufficiently protective of all beneficial uses?

No guidelines are provided for assessment of groundwater for Traditional Owners and Aboriginal Victorians cultural values, or cultural and spiritual values. A framework should be provided, or clarification that these beneficial uses are appropriately protected by other guidelines such as "water dependent ecosystems".

		<p>SCHEDULE 4 Clause 3 (2) (a, b) - reduction in load is indicated, but this is not reflected by the ranges indicated in Table 2, which as the same for both "baseline" and "target"</p> <p>SCHEDULE 5 (1) - this should indicate that only the Victorian chapter is applicable (as per the Endnotes) (2) (d) - this should indicate that only Appendix I is applicable (as per the Endnotes)</p> <p>ENDNOTES Some of the "statutory role provisions" are not specific to the relevant schedule and place in the Policy e.g. ANZECC is not applicable to all of Schedule 3, Table 12 or Schedule 3 clauses 5, 6 and 7. The reference to the Convention on the Conservation of Migratory Species of Wild Animals (Boon, Germany, 1979) appears to be incorrect and should instead be Schedule 5 clause 3 (d). Some of the "matter in applied, adopted or incorporated document" are not clear i.e. referene to Annex. Reference should also be made to the Food Standards Code, National Environment Protection Measure, and any other documents that are referenced in the Policy but are not currently included in the Endnotes table.</p>
12	Do you have any comments on the Policy Impact Assessment ? This analyses changes from the current obligations to those proposed changes in the Draft SEPP (Waters).	<p>Acronyms -PFAS should be defined as "per- and poly-fluorinated substances" (as per Section 7.2.1 of the Policy Impact Assessment) Figure 1 - It is not clear from this figure what role the water corporations (Southern Rural Water, Goulburn Murray Water etc.) play in implementation of the SEPP.</p>
13	Has the Draft Implementation Plan identified the highest priorities to be addressed in the first 3-5 years of implementing the policy? -Yes -No -Partially	Partially
14	Why have you provided the response to Question 13?	-
15	Other general items and attachments to support the submission.	-