

Date: 19 June 2018

**Submission in response to Draft SEPP Waters on behalf of the
City of Port Phillip
(Officer Submission)**

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1. Introduction

1. This submission for Port Phillip City Council (**Council**) relates to the *Draft SEPP Waters* released for comment on 26 February 2018. This is an officer level submission which has been submitted to Council and will be endorsed in due course. In good faith, this submission represents the views of the City of Port Phillip officers on behalf of Council. Once endorsed by Council, the final submission will be forwarded to the Department of Environment, Land, Water and Planning (DELWP).
2. The City of Port Phillip welcomes actions by the State Government to enhance the protection of Victoria's 'waters' and is in support of the ambitions and goals of the SEPP. As our name suggests, our municipality is defined by water. Located on Port Phillip Bay, the City of Port Phillip wraps eleven kilometres around the coast from the mouth of the Yarra River in our northwest to Elwood in the south. Our community and visitors are drawn to the array of opportunities our beachside suburbs provide. Whether it is sailing on Albert Park Lake, penguin watching or swimming at one of our many beaches the quality of our water environments is integral to the quality of life and economic prosperity of our municipality.
3. Council has long recognised the importance of protecting our valuable water resources and willingly shoulder our share of that responsibility. We have established policy and progressive practices delivering an ongoing transition toward best practice outcomes for stormwater management. We have also implemented a water sensitive urban design local planning policy to guide development across our city. We take our responsibilities relating to stormwater management very seriously and have set targets to achieve best practice environmental outcomes over time. It is our goal to become a Water Sensitive City.
4. We note that the current water reform agenda in Victoria extends beyond the SEPP and that there are a range of related reforms either in train or being planned such as review of Urban Stormwater Best Practice Environmental Management Guidelines (BPEMG), changes to Clause 56:07 of the Victorian Planning Provisions and potential new planning provisions, alongside the broader review of stormwater management through the recently announced Improving Stormwater Management Advisory Committee. Interdependencies mean *SEPP Waters* does **not** stand alone and its ultimate success as an environmental protection policy rests with the outcomes of all related policy reform coming together in a coherent way.
5. The key points of this submission can be summarised as:
 - Overall direction of the SEPP is supported;

- The SEPP must be finalised with consideration for other policy reforms currently underway;
- Greater clarity around compliance and accountability relating to the responsibilities of the SEPP is needed especially as it relates to the principles based responsibilities;
- There is a cost to SEPP implementation and new funding mechanisms should be identified;
- Statutory requirements can be made clearer especially as it relates to the planning assessment process; and
- The requirement for stormwater management plans should be extended to include other authorities with stormwater responsibilities such as VicRoads.

2. Background context and general discussion

6. SEPP WoV has provided the basis for the environmental protection of Victoria's waterways and groundwater for decades. It has served a valuable statutory purpose and has assisted in regulating landuse activities and driving improvements across the water industry. In particular, the management of point source pollution has evolved significantly. Efforts to deal with diffuse source pollution have also evolved over this time. Providing further statutory weight to associated reference documents such as BPEMG has enabled statutory planning to link with SEPP objectives however this has not been a universal outcome.
7. While there have been significant improvements in practices which have an impact on waterways and bays in Victoria, there is still a long way to go. Ongoing development, population growth and climate change put increasing pressure on our water resources as do the vast range of legacy issues associated with our existing water infrastructure and our urban and rural environments. Greater efforts are needed because of these evolving challenges and also to some degree because the 'low hanging fruit' has already been exploited (eg. WTP upgrades and regional water quality wetlands) and gains in some areas are becoming incrementally harder.
8. There has also been a lack of sufficient clarity around accountability and the statutory weight of existing SEPP and this is most pronounced for diffuse source pollution. This is the single biggest area where improvement in the SEPP can be made in meeting the challenges mentioned above.
9. Water for Victoria (WfV) has set a clear policy agenda for Victoria. The update of the SEPP sits within this context and ensuring a joint approach to legislation and policy reform is critical. In addressing the draft SEPP, it is hard to separate the range of linked activities. It would be helpful if discussion of the interrelationships was included in the SEPP PIA. The PIA mentions potential update of the EP Act but is silent on a future BPEMG, VPP's etc. These also have direct bearing on the SEPP's implementation. Policy development in isolation will lead to substandard outcomes and it is not clear how this process is being managed.
10. In reference to the above, it is noted that BPEMG remains a reference document to the SEPP. This can be supported on the proviso that BPEMG is reviewed and updated to integrate the current state of knowledge and that a review cycle is also established. It is also hoped that VPP's are also updated to reflect the intent of WfV and SEPP. Without either of these actions SEPP implementation will be significantly compromised.
11. Council holds concerns in relation to the infrastructure funding mechanisms which would be required if the true intent of the SEPP was to be realised. Without addressing the cost of

meeting the SEPP objectives and identifying methods to fund the necessary capital upgrades, especially as it relates to urban stormwater, there is a risk the SEPP intent can never be fully realised.

As an example, the sheer size of the Victorian urban stormwater asset base (in excess of \$11b for the local drainage network alone) highlights the problem of considering urban stormwater management without linking funding to any new accountability. This should not be a separate discussion.

3. SEPP Waters

Protected Beneficial Uses

12. The approach to basing the Policy around the Protection of Beneficial Uses is supported. It is recommended that stormwater harvesting is also included as a beneficial use at Schedule 2, Table 1.

Environmental Quality Indicators and Objectives

13. The Environmental Quality Indicators and Objectives in the SEPP are supported in principle for their environmental and public health protection intent. However, it is noted that Schedule 3 provides for a changed regime relating to the methodology behind the BeachWatch program which may have resource implications.

The Environment Protection Agency recently circulated information to this effect raising the following concerns for Council

- The EPA has given clear indication of their intention to increase the BeachWatch sampling regime and that this may lead to an increase in swim advisories being issued by the EPA.
- Once issued Council is requested to erect and subsequently at a later date, remove, warning signs at the affected beaches. The task, usually performed after regular business hours, consequently carries with it an associated additional and unplanned cost to Council.
- Council is willing to participate and contribute to risk assessments relating to Beach Report sites but note the limitations of current resources at our disposal. Significant catchment assessments would be considered the responsibility of the EPA.

Target Setting

14. The target setting objectives, including schedule 4 of the SEPP are supported

Rules and Obligations

15. Generally the SEPP, its identified objectives and the approach taken to implementation are supported, though changes to clarify and firm up statutory obligations and establish accountability are needed in some areas. There are a range of well-regulated activities/landuses where the compliance regime is clear (e.g. point source wastewater discharge). However, the complex nature of the water cycle means there are also a range of other responsibilities identified in the SEPP which are harder to manage and regulate (such as diffuse source stormwater pollution). Diffuse pollution has however been identified as a key threat and must therefore be treated with this in mind. The draft SEPP is an improvement on previous versions but is still weaker when comparing non-point with point source pollution.

Clause 32 Planning Schemes and Permits,

16. This clause includes the wording [**‘if relevant’**, planning schemes must have regard for this policy] and [if a planning permit is required...the responsible authority **‘may where appropriate’**, consider this policy]. This language lacks definition and for this reason provides a weaker signal about statutory responsibilities. This type of ambiguity can be easily exploited by parties avoiding their responsibilities.

Under clause 32.1, it is clear that there are a range of planning scheme amendments where the SEPP may not be relevant, a definition of where it is and isn't relevant is required to make this clearer. Likewise, under Clause 32.2, without a clear definition of **‘where appropriate’** this clause becomes highly contestable. Further weakening of this clause through use of the word **‘may’** should also be rectified by use of the word **‘must’**.

As the Statutory Policy Review (EPA DEPI 2013) noted it is necessary to strengthen the links between the statutory land use planning system and catchment and waterway management.

Clause	Draft Wording	Recommendation	Comment
32.1	If relevant, planning authorities must have regard to this Policy when developing and amending planning schemes under the	Provide clear definition of ‘relevant’ in explanatory note	

	Planning and Environment Act 1987.		
32.2	If a planning permit is required by a planning scheme the responsible authority may where appropriate, consider this Policy.	Replace 'may' with 'must'	
32.2	If a planning permit is required by a planning scheme the responsible authority may where appropriate, consider this Policy.	Provide clear definition of 'where appropriate' in explanatory note	In defining 'where appropriate' there are threshold issues (development scale) and context issues which need to be discussed in the explanatory note.

Clause 34. Urban Stormwater.

17. This section is strongly supported however the wording could again be clearer. Under 34.2 'Councils must ensure all new developments meet....' The main intent in this sub-clause is to drive a statutory planning response and this can be made clearer. An example of setting a statutory obligation with more clarity can be found in Clause 28.1, 'When considering planning applications....authorities must ensure...'

The failure of previous versions of the SEPP to be implemented by council planning departments has in part been due to the weak language in the SEPP. This has meant that in many instances it has not been seen to carry sufficient statutory weight to be called up. It is therefore critical ambiguity is removed to the fullest extent possible.

Under 34.4, councils must develop and implement stormwater, or equivalent, management plans. Stormwater management plans are key documents that have supported a range of activities past 15 years and have been largely superseded by integrated water plans. While closely aligned with SEPP objectives these newer documents have often been driven by a broader set of objectives. 34.4 provides for this evolution however, there is a lack of detail to ensure uniform uptake and implementation. Clarification of review periods and reporting frameworks along with a detailed guideline are required.

Clause 34.4 is specific to councils. There are a range of other authorities who have responsibility for significant stormwater assets. This clause should be extended to them as it

is more comprehensive than responsibilities identified elsewhere in the SEPP (e.g. Clause 47 for road management which is narrow in scope). VicRoads, Victrack and others should also carry an equitable level of responsibility for stormwater alongside local government and the development and implementation of stormwater management plans could go some way toward addressing this. Currently there is no requirement for these authorities to plan for and manage diffuse source stormwater pollution through water sensitive urban design. As a result, councils carry a greater burden of the responsibility and invest significantly more into stormwater than others managing similar roads and drains type assets.

Clause	Draft Wording	Recommendation
34.1	Stormwater must be managed in order to avoid or minimise risks posed to beneficial uses by minimising the impacts of flow, sediments, nutrients, pathogens, toxicants, litter and other pollutants in surface waters.	This appears to be a catch all principles based responsibility clause. If it is intended to have statutory weight it must be more targeted
34.2	Councils must ensure all new developments meet the objectives for environmental management of stormwater as set out in the Best Practice Environmental Management Guidelines for Urban Stormwater to— (a) minimise the quantity of stormwater leaving the property boundary and to hold or use it as close to where it is generated as possible; and (b) minimise the pollution of stormwater.	Change 34.2 to “Councils must ensure all new developments, including when considering planning applications, meet the objectives...’ It would be helpful to retain the broad application of this clause while also emphasising the role it has in planning assessment.
34.2		Add ‘(c) maintain permeability’
34.4	Councils must, in consultation with the Authority, catchment management authorities.....develop and implement stormwater management or equivalent plans	Identify review period and reporting objectives for stormwater management plans

34.4		Broaden Clause 34.4 to include other authorities who manage stormwater or who's assets have an impact on stormwater
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Clause 35. Management of Discharges

18. Development which includes basements that intersect groundwater can result in buildings which must be pumped to stay dry. In some cases very large volumes of water can infiltrate a basement and it can be highly saline and/or contaminated depending on groundwater conditions. There has been a lack of clarity about how this can be managed through the statutory planning process. The result has been council stormwater networks receiving large volumes of groundwater derived basement pump-out water. In many instances, this is highly saline with resultant impacts on surface water ecology, asset life, stormwater harvesting potential and in worst case situations could result in the transfer of dangerous contaminants to surface waters.

Clause	Draft Wording	Recommendation
35.	In order to avoid or minimise risks posed to beneficial uses by the discharge of saline wastewater, including discharges from groundwater pumping and irrigation drains—	Establish separate sub-clause to directly enable the regulation of basement pump-outs.

4. Conclusion

19. The City of Port Phillip is committed partner, supporting the overall intent of the SEPP and the role it can play in protecting Victoria's waters. There are a range of improvements that can be made to strengthen the SEPP further, these include greater detail on accountability and compliance with SEPP objectives, actions to identify funding mechanisms and a broader application of stormwater management plans to include other agencies. Linkage with the current raft of policy reform is critical to it's success.