## Draft State Environment Protection Policy (Waters) – Proposed MAV Response

## Summary points

* A Draft State Environment Protection Policy (Waters) – SEPP Waters – has been released for consultation. It sets out an updated legal framework for protecting and improving water quality in Victoria’s waters for the next 10 years.
* The incorporation of new science and national guidelines, and amalgamation of location-specific schedules to apply state-wide and including groundwater and surface water mean that standards for many water bodies will increase.
* We acknowledge that even though this will require action by agencies, industry and individuals, increased standards need to be considered to mitigate the significant environmental, social and economic costs associated with deteriorating water environments (such as loss of biodiversity, economic production and tourism revenue, environmental rehabilitation, clean-up and water treatment costs). In urban settings increasing densification and loss of permeable surfaces and green canopy mean that increased standards need to be considered to retain liveability of our cities and towns.
* There are many issues being managed through this SEPP that councils will welcome, such as more specific requirements for landowners and businesses to minimise runoff of pollutants from their premises and land.
* For councils the proposed changes mostly won’t involve substantial change to their current obligations for urban stormwater and onsite domestic wastewater, noting that we are seeking clarification about the scope of developments needing to comply with the SEPP for urban stormwater management.
* Regardless, though, the backdrop of increased standards for water quality is likely to result in greater community awareness about pollution of water sources, which in turn will generate higher publicity and attention to councils’ management of stormwater, land-use planning requirements for new developments and on-site domestic wastewater.
* We’re surprised that obligations to manage road runoff have increased with very little assessment or consultation with local government and the SEPP Stakeholder Reference Group which MAV participated in last year. We are seeking urgent review of this clause.
* For the draft SEPP Waters to achieve its objectives, it will be important that agencies such as local government have the capacity and resources to make the step changes required to protect beneficial uses in the face of increasing severity of the threats to water availability for human and environmental purposes. We therefore seek a commitment from the Victorian Government for a number of initiatives specifically for local government to be included in the 3-5 year Implementation Plan, particularly for urban stormwater and onsite domestic wastewater management.

Feedback is sought from councils on the detailed response the MAV is proposing to make on behalf of the local government sector - **please forward comments to Rosemary Hancock at the MAV – email** [**rhancock@mav.asn.au**](mailto:rhancock@mav.asn.au) **by Wednesday, 13 June 2018**

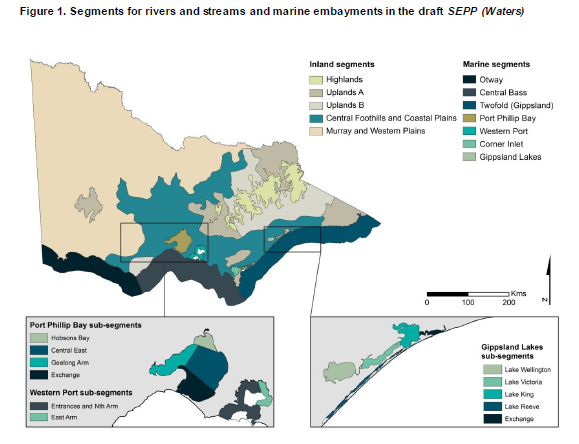
## Background

Established as a statutory policy document under the Environment Protection Act 1970, the proposed SEPP Waters outlines what is to be protected to safeguard Victoria’s waters from pollution (beneficial uses and environmental quality indicators and objectives), and rules and obligations for how these will be achieved. They are required to be reviewed every 10 years.

The Minister for the Environment is the lead Minister, and the Department of Environment, Land, Water and Planning (DELWP) has led this review. The Environment Protection Authority (EPA) relies on the SEPPs to guide activities it requires agencies to perform to issue licences, and its expectations of the actions agencies and landowners need to take to minimise pollution.

SEPPs work in parallel with other pieces of legislation and supporting mechanisms to protect Victoria’s water environments, such as the Victoria Planning Provisions, the Road Management Act, and various guidelines and codes of practice, such as the Best Practice Environmental Management Guidelines for Urban Stormwater (BPEM) published by the CSIRO and the Code of Practice On-Site Wastewater Management published by the EPA.

A range of different parties need to take actions in order to comply with the SEPPs, including water corporations, catchment management authorities, councils, businesses and landowners. There are also defined segments to enable locally appropriate actions for specific waterbodies.



Explanation of core concepts:

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| **Beneficial uses** define uses, elements or segments of the environment which is conductive to public benefit, welfare, safety, health or aesthetic employment which requires protection from the effects of waste discharges, emissions or deposits or of the emission of noise. A beneficial use does not prohibit or permit the use of waters for any particular purpose, but it requires waters to be of a suitable quality and quantity to support that use or value. | **Environmental quality objectives and indicators** create benchmarks which are used to prioritise water quality actions around the state and inform regional catchment management planning to identify ‘at risk areas’ which then trigger further investigation and improvement actions. They assist in assessing existing water quality levels and determining water bodies where beneficial uses may be facing an unacceptable level of risk. |

## Relevance for councils:

Councils are affected by the SEPP Waters in a number of ways, including as:

* Regulator/enforcer of the SEPP Waters - eg, ensuring land-use planning requirements for new developments comply with the policy, construction activities, onsite domestic wastewater management, native vegetation removal
* Infrastructure and operations manager of activities which impact surface water – eg, urban stormwater management, polluted run-off from local roads, dredging
* Landowner of municipal service sites which have potential to pollute waters, such as depots which store chemicals and waste collection sites
* Environmental health responder to nuisances causing risks to public health, such as algal bloom events, flood recovery activities
* Community advocate for access to waters for recreation and tourism purposes
* Marine port operators (a small number of councils have this role).

A Policy Impact Assessment (PIA) has been prepared which focusses on areas likely to involve change from the current policy. In relation to local government, the issues assessed in detail in the assessment are urban stormwater and onsite domestic wastewater management.

A draft Implementation Plan has also been provided outlining the activities DELWP and EPA will undertake to support achieve of the Draft SEPP Waters’ objectives.

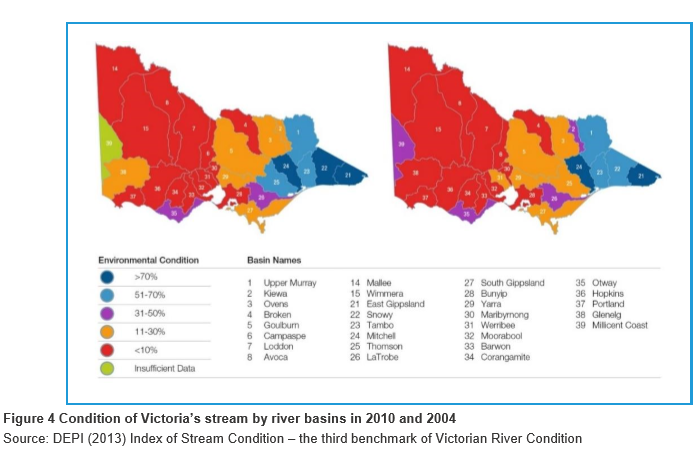
## Overview of the new policy

The Draft SEPP Waters includes all waters throughout Victoria including groundwater and the territorial sea adjacent to the state as defined in the Pollution of Waters by Oil and Noxious Substances Act 1986. Surface waters include any reservoir, billabong, anabranch, canal, spring, swamp, natural channel or constructed channel, lake, lagoon, waterway, dam, tidal water, coastal water but it does not include water in artificial assets (eg, swimming pools).

The Draft Policy amalgamates the two current policies for water protection – the SEPP (Waters of Victoria) and its five separate schedules applying to particular geographic locations, and the SEPP (Groundwaters of Victoria). As a consequence, some elements that used to just relate to specific locations will now apply state-wide. Groundwater being included in the same policy will enable greater attention to its connection and relationship with surface waters. Clauses have been rewritten to make obligations clearer and remove wording and requirements set out in other higher order instruments such as the Environment Protection Act and associated regulations.

The revisions are proposed to protect waters in the face of:

* Population growth leading to changing land use and increasing urbanisation
* Greater intensity of agriculture and shifting locations, particularly as export markets develop and in response to climate change
* Effects of climate change on flow regimes and extreme events such as fire, droughts, and floods that in turn impact water quality and beneficial uses.



**New structure**

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| **Parts** | **Detailed clauses** |
| 1. Application | * Purpose, authorising provisions, definitions, segments, policy principles, etc. |
| 1. Protection of environmental quality | * Objectives, beneficial uses of all waters, and those specific to groundwater and surface water * Environmental quality indicators and objectives * Target setting including interim regional targets and pollutant load reduction targets |
| 1. Rules and obligations | * All waters – waste and wastewater management   (eg, applications for subdivision and onsite domestic wastewater management)   * Management of specific risks to beneficial uses   (eg, planning schemes and permits, urban stormwater, management of recreation activities, works affecting water dependant ecosystems and specifics, storage and handling of fuels and potentially polluting chemicals, management of construction activities)   * Surface Waters   + Protecting surface water beneficial uses   + Managing catchment risks to beneficial uses   (eg, native vegetation protection and rehabilitation, floodplains and flood detention, management of roads, forestry activities, dredging and desilting management, waste and wastewater from ports, marinas and vessels, aquatic pests   * Groundwater * Protecting groundwater beneficial uses * (eg, prevention, direct waste discharge to groundwater, non-aqueous phase liquids, rising water tables) * Identifying and managing pollutants in groundwater |

Most of the rules and obligations have been redrafted to be more specific about what agencies and landowners need to do to protect beneficial uses. Repetitions of requirements set out in the Environment Protection Act and regulations have been removed on the assumption that this Policy is read in conjunction with them, rather than needing to replicate them.

As a result, this proposed new Policy is much more regulatory in effect, and will require more specific actions to be undertaken by councils. There are fewer specific functions assigned to the EPA because its role is outlined in the Environment Protection Act and regulations.

**New standards and applicability**

In order to recognise spatial variation for particular geographic locations, Victoria’s water environments are defined into segments which enable specific beneficial uses and objectives relevant to the area. There are no changes to the segments currently defined. There are, however, more consistent approaches being proposed for the segments, with some uniform indicators and objectives being set across all catchments.

The number of identified beneficial uses has been streamlined from 30 to 14, however these changes are mainly because of definition streamlining rather than new uses being added. The actual uses and environmental objectives are outlined in Schedule 2 and 3 of the Draft Policy. Pages 162 to 163 of the Policy Impact Assessment identify the main changes from the current policy.

A more consistent suite of indicators and objectives have been adopted for all surface waters, and new indicators for some particular segments. Many of these indicators are based on pollutants or risks identified in the Australia and New Zealand Guidelines for Fresh and Marine Water Quality. The changes are not intended to the environmental quality objectives more or less stringent. Rather they are intended to make the objectives more reflective of environmental conditions in healthy environments (by using up to date monitoring data) and to better reflect improved scientific understanding and knowledge.

There are new load-based targets for nitrogen, phosphorous and sediments. Pollutant load reduction targets and areas of high conservation values are set out in Schedules 4 and 5 of the Draft Policy. Chapter 9 of the Policy Impact Assessment outlines details and rationale for the changes to load-based targets, actual numbers being proposed are outlined in Table 7 on p76. The main changes by water type are:

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| **Rivers & streams** | Mostly slight changes to indicators |
| **Lakes and wetlands** | Traditional water quality and biological indicators now apply. As it is difficult to determine appropriate toxicant levels, a sediment weight of evidence approach has been introduced to assist determining different lines of evidence of toxicants of concern (biomarkers, ecotoxicity, etc) |
| **Estuaries** | Are a new segment with new guidelines to be developed |
| **Marine waters** | New bio-indicators (seagrass and phytoplankton) to enable better understanding of natural variances caused by events such as drought. A monitoring, evaluation and reporting system has been introduced to track indicators and provide ‘real-time’ feedback. |
| **Groundwater** | Existing segments retained, and indicators will continue to be based on total dissolved solids, which is a measure of salinity set by the EPA. Geothermal has been added. Also new is protection for how groundwater affects surface waters for key identified aquifers. |
| **Water-based recreation** | Objectives are now broader, and more strongly based on protecting human health, with a focus on bathers and disease risk. Microbial, algal and chemical indicators have been added. Enterococci is now to be the indicator for marine and estuarine segments, rather than e.coli. This is likely to result in increases in the number of swim advisories issued by the EPA over summer for bays, lakes and rivers used for bathing. Further work will be undertaken to develop a communication plan for how these changes will influence the Beach Report, Yarra Watch and other programs that report recreational water quality in the community. |

**New target setting processes**

CMAs and Melbourne Water will be required to develop regional targets in high priority reaches with regional management actions and programs aimed at improving water quality). The process for target setting outlined in the Draft SEPP Waters will be added to the existing regional waterway strategy development process. Management outcomes that are developed will need to take into account environmental, social and economic values. This is intended to introduce transparency around the costs and benefits of pollution abatement and action and assist in ensuring any costs associated with this are at least proportionate to the water quality improvements that would be delivered.

**Priority actions**

There are six critical actions identified as priorities in the PIA which DELWP will publicly report on within the first three years of implementation. These critical actions include:

* 1. Setting interim regional targets to rehabilitate priority areas (PIA p12)
  2. Achieving pollutant load reduction targets (PIA p13)
  3. Managing urban stormwater and sewerage (PIA p15)
  4. Managing wastewater discharges (PIA p16)
  5. Managing onsite domestic wastewater (PIA p17)
  6. Monitoring, evaluation and reporting - DELWP and EPA will be responsible for undertaking the monitoring, evaluation and publicly reporting within three years (PIA p18)

Additional actions are identified relevant to local government, including:

* DELWP and EPA will consult with councils when developing guidance for them where this is identified in the SEPP (PIA p24)
* DELWP and EPA will work with road managers to understand prioritisation processes for implementing measures to prevent erosion and runoff and maintain roads, including clarifying current best practice relevant to the management of roads, and the application of the notion of “practicality” (PIA p23)

There is a possibility that elements of the new SEPP Waters will be strengthened by moving them into core legislation, regulation or relevant codes of practice (PIA, p20). DELWP and EPA will undertake a detailed assessment to determine if regulations would be better suited to address impacts for the following:

* Wastewater management
* Urban stormwater management
* Onsite domestic wastewater
* Prevention of discharge of sewage from vessels
* Vessels and hull biofouling

## Rules and obligations specific to councils

The proposed SEPP Waters have clauses relating to a wide range of issues and activities impacting councils in various degrees, including clauses relating to the following issues:

* As a regulator:
  + Urban stormwater
  + Planning schemes and permits
  + Onsite domestic wastewater management
  + Vegetation protection and rehabilitation
  + Floodplains and flood detention
  + Animal wastes
  + Recreation management
  + Construction activities
  + Waste and wastewater from ports, marinas and vessels
* As an agency undertaking activities which pose risks to specific beneficial uses:
  + Spills, illegal discharges and dumping of wastes
  + Storage and handling of fuels and potentially polluting chemicals
  + Management of roads
  + Prevention of groundwater pollution
* As an advocate for local standards to benefit the community:
  + Forestry activities
  + Water conservation
  + Protecting catchment areas used to supply water.

## MAV’s proposed response

The MAV is generally supportive of the changes proposed in the new policy, but that the Implementation Plan would benefit from more specific funding programs identified for local government. We would also like to see the roles of EPA and DELWP included in the onsite domestic wastewater management and urban stormwater clauses.

The details of our proposed response are outlined in our draft submission.

Further background information and comment on urban stormwater, onsite domestic wastewater and the management of road run-off are outlined below to assist councils consider the issues they may consider including in submissions they prepare. Comment about the various other areas relevant to local government are include in the MAV’s proposed submission.

**Urban stormwater**

Stormwater has long been known as a key threat to water quality, and continues to be identified in the Draft SEPP Waters as a high priority risk to beneficial values for waters in all segments (see the list of priority actions in the Policy Impact Assessment, p10). Urban stormwater is one of the six Critical Actions (p15 of the PIA) which need to be effectively implemented over the life of the policy.

The threats arise from rainfall run-off that flows into waterways directly from land or via council stormwater infrastructure. These discharges can comprise a range of pollutants, including nutrients, sediments and toxicants such as fertilisers, oils from roads, grey-water from unsewered areas, animal wastes, paints, litter, grass clippings and tree debris. .

The SEPP is one of a number of instruments that provide the regulatory backdrop for the management of stormwater. As such, it needs to work in with them to be most effective. These include the authorising provisions of the Local Government Act’s public drainage provisions, and the standards and requirements of the Environment Protection Act, the Best Practice Environmental Management Guidelines for Urban Stormwater (BEPM) developed by the CSIRO in 1999, and the Stormwater Management Planning Guidelines developed by the EPA in 2007.

There are also multiple strategies, reviews and actions being taken by multiple agencies, including DELWP, water corporations, CMAs and Melbourne Water, which are working with councils to improve management of stormwater. These include:

* Chapter 5 of Water of Victoria
* Victorian Floodplain Management Strategy
* Western Port and Port Phillip Bay Floodplain Management Strategy
* Port Phillip Bay Environmental Management Plan
* Yarra River Catchment Action Plan
* Melbourne Water’s Health Waterways Strategy
* Regional catchment management strategies being developed by the CMAs
* Review of Clause 56 of the Victoria Planning Provisions and
* Review of the institutional arrangements for the delineation of responsibilities between Melbourne Water and the 38 councils in its service area are also being reviewed
* Resilient Melbourne’s Integrated Water Management and Urban Forest Strategy
* Local Government Act review (council public drainage provisions)

In terms of new changes being proposed in the Draft SEPP Waters, these include.

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| **Summary of main changes impacting councils for urban stormwater:**   * Strengthened obligations on asset owners/managers to undertake ongoing maintenance and management of stormwater assets is included in addition to a stronger focus on the stormwater management responsibilities for landowners, land managers, developers and water corporations rather than merely focusing on those of municipal councils * Upgraded pollutant load targets and development of regional goals to reduce pollutants to specific waterways to be developed by CMAs and Melbourne Water * Stronger obligations for councils to develop and implement stormwater management plans in consultation with waterway managers, landowners and the community * EPA’s role in assisting councils develop stormwater management plans has been deleted, with councils now needing to consult the EPA * The clause for animal wastes not to be left on public land has been deleted * Minor wording changes to the minimisation of road-runoff polluting waterways and groundwater systems * Minor wording changes to requirements for pollution caused by construction activities.   **Proposed actions in the Implementation Plan:**   * + - DELWP and EPA will work with local government to revise the 2007 Stormwater Management Planning Guidelines (2007) to develop/review Stormwater Management Plans (PIA Action 3.2, p15)     - EPA/DELWP will review the 1999 Best Practice Environmental Management Guidelines for Urban Stormwater which guide the construction of assets for the treatment of stormwater in new residential sub-divisions (PIA Action 3.3, p16)     - DELWP will work with water corporations, councils, industry and communities to prevent wastewater and other types of pollutants entering constructed stormwater assets, including changes to the VPPs for commercial and industrial sites (PIA Action 3.4 p16) |

There are a number of changes to the clause specifically focussed on urban stormwater and councils’ role. To assist councils identify the changes, the current Clause 46 and the proposed Clause 34 are presented in the following table.

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| Existing Clause 46 | Proposed Clause 34 |
| Artificial stormwater drains and artificial stormwater management wetlands need to be managed for the purposes for which they were constructed (see clause 10). They need to be designed and managed so that their waters are not harmful to humans or have unacceptable impacts on animals, and so that the impacts of flow, sediments, nutrients, toxicants, litter and other pollutants on surface waters are minimised.  To enable this, the Environment Protection Authority and relevant protection agencies will:  (1) support municipal councils in developing stormwater management plans and in implementing effective management practices to minimise the generation and transport of pollutants, particularly from new developments and drainage systems;  (2) provide guidance on practices to minimise the impacts of urban stormwater including that provided in the *Best practice environmental management guidelines for urban stormwater* (1999) as amended;  (3) work with municipal councils, businesses and communities to prevent wastewater discharges to stormwater drains;  (4) assist municipal councils to monitor and report to the community and relevant stakeholders on the impact of stormwater drains on surface waters, on a priority basis as identified through stormwater management plans;  (5) work with municipal councils and the Department of Infrastructure to ensure new developments include effective practices to manage stormwater runoff volumes and minimise runoff of pollutants in stormwater; and  (6) assist municipal councils to provide to communities and businesses, education and awareness raising material on stormwater management and pollution avoidance measures. | (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.  (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  (b) minimise the pollution of stormwater.  (3) Owners and managers of assets created to protect water quality, including constructed sediment ponds and wetlands, must ensure assets are—  (a) maintained for the purposes for which they were constructed; and  (b) designed and managed so they are not harmful to humans or have unacceptable impacts on animals; and  (c) managed so that their impact on beneficial uses in receiving waters is minimised; and  (d) renewed or replaced with substitute assets, so that discharges from these assets meet equivalent environmental quality objectives.  (4) Councils must, in consultation with the Authority, catchment management authorities established under the Catchment and Land Protection Act 1994, water corporations, landowners and the community, develop and implement stormwater management or equivalent plans that—  (a) identify potential adverse impacts of stormwater; and  (b) identify options to prevent the generation and transport of pollutants in stormwater; and  (c) identify options to minimise the generation, velocity and volume of stormwater flows; and  (d) identify the options for stormwater reuse; and  (e) identify preferred options, together with costs, funding needs, timelines and priorities; and  (f) outline a monitoring, reporting and evaluation program. |

*MAV comment:*

The full implications for councils of the new policy for their management of urban stormwater is difficult to assess. At one level it is relatively straight-forward that the policy confirms that councils still need to prepare stormwater management plans. At another level, it’s clear this policy will lead to a renewed focus on councils’ management of stormwater in terms of actions being generated by other agencies such as water authorities, and community seeking greater attention from councils if water-bodies are increasingly being identified as unsafe for public recreational use.

This is not a bad thing, in that the renewed attention will generate better industry and community understanding of the need for actions to be taken and that they also have a role to play. It will also provide an authorising environment for councils to deal with issues already facing them from the rapidly approaching perfect-storm of population growth, increasing densification and loss of permeable surfaces from development pressures in greater Melbourne and regional cities, increasing community expectations of service levels and protection of property from flooding, at the same time as climate change is projected to result in more dryer periods punctuated by more intense storm events.

We are seeking clarification about scope of “all new developments” referred to in proposed Clause 34(2). Currently new developments impacted by Clause 56 of the Victoria Planning Provisions are in scope, but this drafting implies a broader application than this. If this were to be the case, this would represent a significant increase in application.

Having stronger targets and actions by DELWP, EPA and water authorities to work with councils, industry and communities to improve stormwater management is therefore a welcome development.

In terms of the actual clause changes, it is important that the requirements the policy sets out for councils will enable, rather than impede their positive involvement in continuous improvement in their stormwater management.

To this end, the requirement that councils “must” develop a stormwater management plan needs to be amended to have regard for the needs of a number of smaller rural councils. For example, a desktop review undertaken by the MAV of council websites showed that the majority of the 13 councils which did not have a management plan available through their websites were small rural councils. These were also the councils with plans dating back to the early 2000’s when assistance was provided through the three year Victorian Stormwater Action Plan which provided funding assistance to the MAV and councils.

We are therefore seeking drafting changes to the wording of the new Clause 34 to be clearer about matters councils do not have control over, and for there to be more realistic requirements concerning the level of consultation they need to undertake with industry and communities.

Step change in council practices is most reliably achieved when there is partnership investment between the state and collective arrangements with councils. We are concerned that with all the considerable activities and reviews being funded by DELWP and water authorities without direct local government input and oversight, change will take longer, and there is a real risk that these resources will not generate reform across the whole urban sector. Rather those councils already practising innovation will continue to lead, and other councils with resourcing difficulties will increasingly lag behind. This is of concern, given that upstream/downstream actions need to work together to deliver efficient allocation of resources to where most benefits can be achieved.

We’d like to see that one of the major areas of reform activity involving local government through the Melbourne Urban Stormwater Institutional Arrangements Review commissioned under the Victorian Floodplain Management Strategy (the so-called ’60 hectare review) is not referred to in the Implementation Plan. Although this is an review emanating from implementation of the Victorian Floodplain Management Strategy, its recommendations will emerge during the life of this policy, and would benefit from being flagged in the Implementation Plan.

Issues emerging from the MAV Local Government Working Group for review include consideration of options for new governance arrangements which have a greater catchment perspective to enable stormwater management to be targeted where it is most cost-effective, and there being better opportunities for consistency in the way councils deliver their stormwater management. These will be important developments to emerge during the life of the 10 year plan.

We are also seeking support for funding to be provided to be provided to the MAV to undertake a stormwater infrastructure improvement program aimed at ensuring critical infrastructure is included in council’s asset registers and maintenance programs. The project would also aim to identify cost-savings and efficiencies for councils utilising a more collaborative approach with an upstream/downstream perspective.

At an operational level, we are concerned that the role of the EPA in providing advice to councils has been removed. We would also like to see reference in the new proposed clause that DELWP and the EPA will consult with councils about any guidance they develop.

The details of the response MAV proposes to provide to DELWP are included under Clause 34 of the draft MAV submission.

**Management of Roads**

Sediment and pollution runoff from roads into waterways either directly or via stormwater flows, are significant contributors to waterway pollution. Road runoff from roads to surface waters can include increases in sedimentation, turbidity, nutrients and toxic contaminants as well as changes to hydrology, and loss of habitat. Roads and other transport related surfaces make up a significant amount of the total impervious area in an urban catchment.

There are changes being proposed to the current clause which will significantly increase the legal obligation of councils to manage runoff from roads. Attachment 1 sets out the current clauses (the main one is included in the SEPP(WoV), there are others specifically relating to Gippsland Lakes, the Yarra River and Port Phillip Bays which are contained in specific Schedules), and the proposed new Clause 47.

Essentially what used to be outlined as a priority for road authorities is now included as a “must”. Although this is defined to be “so far as practicable’, the explanatory notes clearly provide this clause is a requirement. Clause 12 is referenced to guide the assessment of practicability – currently Clause 12 does not include reference to resources, which MAV considers is also required.

Although the Policy Impact Assessment identifies the changes to this clause as minor (PIA, p155), in fact this clause represents a major change in obligation for councils which collectively manage over 132,000 kilometres of roads in Victoria.

We note that councils have not been consulted about this proposed change, with the last draft provided to the final Stakeholder Implementation Committee including the wording “should aim to minimise erosion and sediment and pollutant transport to protect beneficial use of waters”. We can therefore only assume this has been a last-minute change which has not been given full policy consideration in respect of the impacts on road authorities.

The full implication for councils of these changes is difficult to judge because no assessment of the actions and resources required to achieve this clause have been undertaken. However it is clear there is potentially a significant lift in legal liability which has potential for meaningful impact for councils because of their role as authorities, investors and maintainers of roads.

The Implementation Plan identifies that DELWP and EPA will undertake workshops with road managers to understand prioritisation measures to prevent erosion and runoff and maintain roads. It is not clear how these relate to the “must” requirements contained in the actual clause or the extent they will address clarifying current best practice relevant to management of roads, including the application of the notion of ‘practicality’.

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| **Main change:**   * Obligations of road managers have increased, with “must” being used rather than “priority”. * There are new requirements in relation to ‘protection agencies’ when they approve, construct or manage roads. It is unclear whether councils fall within this clause as no definition of ‘protection agencies’ is provided * Clause 12, which defines practicability is much more specific than the current Clause 12, but omits available resources being a consideration. |

MAV Comment

We support in principle that the draft SEPP Waters address better management of road run-off. We consider that this should be advisory, however, rather than a requirement, given that assessment of where actions need to be targeted still need to be considered, and capacity building for councils would need to be identified.

The impact of the draft SEPP clause 47 has not been addressed in the Policy Impact Assessment. MAV considers this is required in light of the large road network managed by councils that may be impacted and the limited resources of councils.

Guidance documentation as to the types of actions/treatments that may be taken to reduce the sediment and pollution runoff from roads is desirable. It is preferable for this to be undertaken in consultation with councils to ensure that the actions/treatments proposed are achievable and practical.

**Onsite domestic wastewater**

Councils will continue to have similar requirements to what they currently have, with some additional review, consultation and reporting requirements. Water corporations will also have some new responsibilities to provide responses to councils.

Poorly treated sewage from failing ODWMS can lead to diffuse disease-causing pollution of surrounding land, groundwater and waterways. Risks to human health from the spread of micro-organisms and chemicals which can cause illnesses such as hepatitis, either from direct ingestion of soils from contaminated land (risks to children for example) or from food grown with polluted groundwater, mean that regulatory responses continue to need to be in place.

The problems in onsite domestic wastewater regulation are well known and documented in various reviews over the last 10 years or so. Necessary reforms mainly require reviews of the Act, however, rather than changes to the SEPP Waters. This issue will continue to require the attention of both DELWP, EPA and the Department of Health and Human Services because of the risks failing onsite domestic wastewater systems pose to human health.

A local government working group convened by the MAV through 2016/17 has identified the following issues continue to require statutory reform:

* + The need for the Environment Protection Act to provide enforcement powers for landowners to improve or rectify works on their ODWMS
  + Greater ease of powers to councils to withdraw/amend/transfer existing permits
  + Greater scope to deal with all tanks (permitted and non-permitted)
  + Cost recovery for local government services (such as ongoing regulator inspections).

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| **Main change:**   * New requirements for councils to review and update their Domestic Wastewater Management plan at intervals of no more than five years * New requirement to conduct an audit to assess progress against the DWMP and publicly report on this every three years * Water corporations will need to work with councils to develop the DWMP, and formally respond to councils on their progress in implementing the preferred wastewater management solution   + - DELWP will set up a small local government/water corporation working group to scope the revision of current guidance and the code of practice, including the Land Capability Assessment Framework, the ODWM Code of Practice, the 2006 MAV DWMP guidance and ministerial guidance for planning permit applications in open potable water supply catchment areas (Action 5.1, PIA p17)     - DELWP will work with local government to develop materials to assist councils inform ratepayers about the need to maintain septic systems.     - Work with local government to determine the feasibility of developing a system to accredit Land Capability Assessment providers (Action 5.4, PIA p18)     - DELWP will work with local government to facilitate information exchange on alternative solutions to reticulated sewerage (Action 5.5, PIA p18)     - Work with water corporations and local government to determine ‘practical/viable’ for where sewage can’t be provided (Action 5.6, PIA p18)     - Secure funding to assist local government undertake domestic wastewater management planning (Action 5.7, PIA p18). |

MAV comment

We broadly support the revisions to the actual clauses. We will continue to advocate, however, for regulatory change to strengthen regulation of onsite domestic wastewater if councils are to continue to be involved in onsite domestic wastewater management. We welcome and are willing to participate in the small working group DELWP is proposing to establish.

We also strongly recommend that EPA has more specific requirements in the SEPP to consult with the MAV and councils about its review of the Code of Practice. We continue to be concerned at EPA’s exit from providing advice to councils about conditions they should consider requiring when the issue installation permits for ODWW systems, even though it is involved in the development of national standard setting processes.

## Consultation

Reforms in the Draft SEPP have been informed from several reviews undertaken by the Victorian Government in recent years, such as the 2013 Statutory Policy Review, the 2016 independent inquiry into the EPA, and the Victorian Coopetition and Efficiency Commission review of environmental regulation. A discussion paper seeking responses to questions about the current SEPP (Waters of Victoria) was also circulated in June 2015 seeking feedback from stakeholders.

In respect of consultation undertaken with local government, MAV participated in the Stakeholder Reference Committee. DELWP held a number of workshops on individual topics in which council representatives participated. MAV also convened a small working group of rural council officers with DELWP to consider onsite domestic wastewater management issues.

For urban stormwater, MAV’s position is informed by various reviews we have been involved with flowing from Chapter 5 of Water for Victoria. We have also been convening a Melbourne Urban Stormwater Institutional Arrangements Local Government Working Group which is considering reforms to the way councils consider stormwater management in order that it meets the needs of the increasing urbanisation and loss of permeable surfaces at the same time as the effects of climate change manifest through increasing dry periods punctuated by severe storm events.

## Further information

Website link: <https://engage.vic.gov.au/seppwaters> to access the following documents:

* Draft SEPP Waters
* Policy Impact Assessment
* Draft Implementation Plan
* Various fact sheets
* On-line submission mechanism

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| **Current SEPP(WoV) - Clause 57 Roads** Road managers, including municipal councils and VicRoads, need to maintain and, where relevant, manage roads and infrastructure to minimise erosion and sediment and pollutant transport, particularly along urban, unsealed and forestry roads. A priority for managers of unsealed roads should be to maintain and, where relevant, upgrade those roads that adjoin or cross surface waters to minimise sediment runoff. A further priority for managers of forested roads and roads in areas of high conservation value is to close roads that are no longer needed. A priority of managers of sealed roads should be to manage contaminated stormwater runoff from roads.  **Schedule 6 (Port Phillip Bay) – Clause 22(2) Stormwater management**    Protection agencies responsible for the management of the catchment in the Schedule area must ensure that contaminants in run-off, including litter, are prevented from adversely affecting beneficial uses. In particular, attention must be given to -  (a) waste minimisation and litter control programs;  (b) regular maintenance of litter and waste water treatment works;  (c) regular removal of contaminants from surfaces by means that do not pollute the waters; and  (d) trapping of contaminants in run-off as close as practicable to the source. | **Schedule F7 (Yarra) - Clause 22. Run-off from urban land, built-up areas and main roads**  Protection agencies responsible for drainage and waterway management, in conjunction with planning authorities (including local government), must ensure that urban stormwater run-off is managed to protect beneficial uses, and in particular that -  (1) new urban development and drainage systems are designed, constructed and maintained in accordance with current best practice or with any relevant best practice environmental management guidelines adopted by the Authority;  (2) existing drainage systems are managed and maintained in accordance with current best practice or with any relevant best practice environmental management guidelines adopted by the Authority, and in particular that -  (a) sources of pollution and opportunities for minimising the generation and transport of stormwater pollutants at, or near to, source are identified and addressed;  (b) opportunities for installing stormwater treatment measures, including water quality, litter control and flow improvement measures, as part of asset maintenance and replacement programs, are identified and exploited;  (c) the environmental performance of the drainage system is progressively improved, with priority given to those areas which most adversely affect, or have the potential to most adversely affect beneficial uses; and  (d) the volume, timing and velocity of stormwater entering waterways is managed to minimise adverse impacts on waterway stability, flow regimes and in-stream and riparian habitat. | **Schedule F8 (Gippsland Lakes) - Clause 18 Environmental management of activities**   * 1. Proposed and existing activities in the schedule area, including those listed in Annex B,[which includes sealed and unsealed road management nad construction] must be planned for and managed so that significant environmental risks posed to beneficial uses, including those listed in Annex C, are minimised. To achieve this:      1. it is the responsibility of protection agencies which approve new activities, to only approve those activities that do not pose a significant environmental risk to beneficial uses. To achieve this, appropriate measures to minimise significant environmental risks posed to beneficial uses should be incorporated into licences or permits for new activities;      2. it is the responsibility of operators activities to implement appropriate measures to ensure that their activities do not pose a significant environmental risk to beneficial uses;   2. Where an individual activity or group of activities is identified by the Environment Protection Authority as posing a significant environmental risk to beneficial uses, and where appropriate measures have not been implemented or are ineffective, the Environment Protection Authority may require those responsible to undertake all practicable measures to minimise significant environmental risks posed to beneficial uses.   3. In order to achieve sub-clause (1):      1. each relevant protection agency must identify measures to minimise significant environmental risks posed to beneficial uses, and must encourage and assist, and where relevant require, operators to implement these;      2. any measures specified by a protection agency must be consistent with any guidance, guideline or process adopted by the Environment Protection Authority. |

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| **Proposed New Clause 47****- Management of roads** (1) A road authority responsible for the management of roads and infrastructure along urban, unsealed and forestry roads must, so far as practicable, minimise erosion, sediment and pollutant transport.  (2) For the purposes of subclause (1) a road authority must, so far as practicable—  (a) maintain, and if relevant, upgrade unsealed roads where they adjoin or cross surface waters; and  (b) close forested roads and roads in areas of high conservation value that are no longer needed; and  (c) minimise contaminated stormwater runoff from sealed roads.  (3) Protection agencies responsible for the approval, construction and management of unsealed roads must, so far as practicable—  (a) implement stabilisation measures to prevent erosion and runoff of sediment to waters; and  (b) maintain roads, or where necessary seal, to protect beneficial uses, consistent with current best practice or with any relevant guidelines approved by the Authority. Explanatory Notes: Clause 47 requires road authorities and relevant protection agencies to contribute to the protection of surface waters and their beneficial uses by reducing the amount of sediment and pollutant runoff from sealed and unsealed roads. The assessment of practicability must be consistent with clause 12 of this Policy. | **Proposed New Clause 12 - Assessing practicability** (1) Where this Policy requires actions or management practices to minimise risks to and impacts on beneficial uses so far as practicable, this means actions or management practices must:  (a) reduce to the maximum extent practicable the impact of any activity or waste on beneficial uses; and  (b) implement best practice where practicable; and  (c) pursue continuous improvement.  (2) In assessing practicability, regard must be given to the:  (a) risks to existing and potential beneficial uses; and  (b) availability and suitability of actions or management practices, including best practice, to eliminate or reduce risks identified in subclause (2)(a); and  (c) proportionality of actions or management practices identified in subclause (2)(b) to risks identified in subclause (2)(a). Explanatory Notes: Clause 12 defines what ‘so far as practicable’ means for the purposes of actions and management practices required to minimise risks to and impacts on beneficial uses. Where a clause in this Policy references ‘so far as practicable’, this should be interpreted consistent with this clause.  Subclause (1) requires that actions and principles taken in accordance with this Policy must:  • reduce to the maximum extent practicable the impact of any activity or waste generated from an activity on the beneficial uses of water; and  • implement best practice where practicable; and  • include the pursuit of continuous improvement.  Actions and practices must implement best practice, where identified and practicable, to ensure that risks to beneficial uses are reduced to the maximum extent.  Best practice standards and what is practicable in the adoption of environmental management practices may change over time; accordingly, practices taken in accordance with this Policy must include the pursuit of continuous improvement. This requires practices to be monitored and evaluated for their effectiveness and improved over the lifetime of this Policy to ensure that they are protecting beneficial uses to the greatest extent practicable.  Subclause (2) sets out the relevant considerations for assessing practicability for the purposes of this Policy. What actions and practices are practicable in minimising risks to beneficial uses need to be considered on a case by case basis to ensure that the environmental principle of integration of environmental, social and financial aspects of actions are considered so that the best overall outcome is achieved and beneficial uses in this Policy are protected to the greatest extent achievable. |