

15 June 2020

The Hon. Richard Wynne MP  
Minister for Planning

By email: [planning.implementation@delwp.vic.gov.au](mailto:planning.implementation@delwp.vic.gov.au)

Dear Minister

### **Distinctive Areas and Landscapes Program – Bellarine Peninsula – Submission**

The Urban Development Industry of Australia, Victoria Division (UDIA Victoria) is a non-profit advocacy, research and educational organisation supported by a membership of land use and property development organisations, across the private sector and Victoria's public service. We are committed to working with both industry and Government to deliver housing, infrastructure and liveable communities for all Victorians.

UDIA Victoria welcomes the opportunity to work with the Department of Environment, Land, Water and Planning (DELWP) to work towards appropriate long-term protection of the Bellarine Peninsula. Our Geelong Chapter has met with DELWP and City of Greater Geelong officials several times to discuss the issues around long-term protection of the area. DELWP have agreed to hold further discussions with our Committee over the coming months – which we appreciate.

### **UDIA Victoria's Policy Position on the Distinctive Areas and Landscapes Program**

I refer to my letter of 18 December 2019 (available on UDIA Victoria's [website here](#) and attached) and our Position Paper, *Distinctive Areas and Landscapes Program – Threatening The Integrity of Victoria's Planning System*.

To address the lack of transparency in the current process for preparing Statements of Planning Policy introducing protected settlement boundaries, and in order to uphold the integrity of the Victorian Planning System, UDIA Victoria recommended the Minister for Planning implement the following process improvements and positive changes to restore and maintain community and industry confidence:

1. The public provision of the following materials on the DELWP website as part of Phase 1 consultation for any future DAL declaration, and immediately for all live DAL processes where declaration has already occurred:
  - A clear map and definition of the area under investigation for declaration as part of the public engagement process;
  - A summary of the strategic guidance already in place for the area (such as Regional Growth plans);
  - A list of relevant existing controls in place for the proposed DAL;
  - A list of any live and proposed strategic planning process that may be affected by any declaration and subsequent Statement of Planning Policy, and a strategy for how the two related processes will be managed; and

- A list of any technical studies proposed to inform the declaration and SPP preparation, and
  - Copies of all technical studies and background documents already completed.
2. Specific industry engagement under Section 46AW(c) of the Planning and Environment Act 1987, during the public engagement processes at the pre-declaration (Phase 1), pre-draft Statement of Planning Policy (Phase 2), and draft Statement of Planning Policy (Phase 3) stages. This would be consistent with consultation processes undertaken for other matters of planning policy. We propose that DELWP provide an opportunity for joint industry, DELWP and Council workshops at each stage – to inform decision-making.
  3. At each stage, DELWP must:
    - Provide a consultation period of at least one month, to allow potential submitters sufficient time to prepare evidence to support their submissions; and
    - Prepare and publicly release a consultation report outlining submissions and responses to issues.
  4. Following release of a draft SPP and receipt of submissions, an Independent Advisory Committee must be appointed to hear submissions regarding township settlement boundaries.
  5. SPPs must consistently include investigation areas within protected settlement boundaries, to allow for further refinement through a standard Planning Scheme Amendment process without requiring ratification by Parliament. These should be merits based strategic planning decisions tied
  6. All SPPs must include policy consideration of the challenges and opportunities of the area in question, relating to how it may play a role in positively accommodating population growth.
  7. The preparation of further guidance (in the form of a Planning Practice Note):
    - To identify how future planning policy changes and potential conflicts with the Statement of Planning Policy will be managed; and
    - To document the standard processes relating to DAL declarations and implementation of Statements of Planning Policy.

### **Amendment C395 to the Greater Geelong Planning Scheme**

The Bellarine DAL process has been analysed as part of recent proceedings in Planning Panels Victoria.

The Panel Report for Amendment C395 to the Greater Geelong Planning Scheme (Settlement Strategy and Northern and Western Geelong Growth Areas Framework Plan) was publicly released on 26 May 2020. The report outlines the Panel's recommendations based on the proceedings of the Panel Hearing between 12 November 2019 and 18 March 2020. The City of Greater Geelong is currently reviewing the Panel's recommendations and will prepare a report to be considered at a Council meeting in August 2020.

The Settlement Strategy considers the totality of the Greater Geelong LGA and directs where future growth will occur. A key strategic objective of the Strategy is to diminish the future growth of townships in the Bellarine Peninsula. The declaration of the Bellarine DAL in October 2019, one month prior to the Panel Hearing, resulted in the DAL process being a key consideration of the Panel in relation to Council's objectives.

Submissions and evidence from developers and landowners overwhelmingly supported the need for

third party input and independent assessment. The Panel heard and understood the concern raised by numerous parties about the uncertainty of the level of consultation likely to be afforded to landowners and affected parties through the DAL process.

The Panel, in discussing the Bellarine DAL, considered that options remain open for refining township boundaries through either the DAL program, a logical inclusions process proposed by Council, or as an iteration of structure planning for towns in future. Additionally, the Panel recognised that flexibility is available in the Bellarine DAL process and a tailored approach can be applied to settlement boundaries; the DAL can introduce a 'protected' boundary without necessarily introducing a 'permanent' boundary.

UDIA Victoria welcomes the following key finding of the Panel Report that:

- 'Some form of review should be undertaken for Bellarine townships, whether through the DAL process or structure plans as envisaged in the planning scheme.' (p. iii)

Importantly the Panel considered that, in the interests of sound planning and fairness, any permanent or long-term boundary setting, or refinement should include the opportunity for landowners and other parties, including the community, with an interest to be given notice and an adequate opportunity to respond.

The Panel concluded that the Bellarine DAL seems to be the logical process to define the long term or permanent settlement boundaries and that this process should be robust, transparent and evidence based. Where additional strategic investigative work is required, a tailored approach to settlement boundaries is adopted to allow detailed structure planning to be undertaken with the Statement of Planning Policy.

The Panel highlighted the importance of the DAL declaration and planning process to be developed and implemented by the State Government and do not make recommendations relating to settlement boundaries; however, the Panel concluded that it is neither fair, nor sound planning, to 'shut the gate' on future urban development in the Bellarine Peninsula without a logical and comprehensive review of the existing settlement boundaries.

It is acknowledged that the State Planning Policy seeks to protect the unique features of the area – to be effective, that policy must logically identify areas that are relatively less suitable to protect.

### **Comprehensive and Rigorous Process**

UDIA Victoria submits that the DAL should provide for a comprehensive, transparent and rigorous process. We prefer that the process include an independent review of submissions in the form of a ***planning panel or advisory committee***. If it is not possible in this instance to have an independent umpire hear submissions, then we submit that more structured and detailed documentation must be made available for comment in the next and final phase of the DAL's development.

Our members tend to have specific and detailed issues associated with their investments and development proposals in individual towns and places. The material available for comment in Phase 1 and Phase 2 is broad and describes high level visions, general directions and other high-level statements. Also, there is virtually no information or technical studies available relating to more detailed urban development and landscape issues around key towns and other nodes.

### **Insufficient Information to Make Meaningful Comment**

On several occasions we have requested an understanding of the scope of any technical material being prepared and to understand for example what criteria, or even broad considerations will be considered

when looking at individual town boundaries and extensions. While we appreciate that the underlying consideration is the protection of beautiful landscapes, when it gets down to the detail of drawing lines on a plan – more detailed assessment is necessary. If our members knew how the DELWP were approaching these more micro decisions and what work might be undertaken – they would be better be able to provide more useful and targeted submissions.

We appreciate that the DAL process is moving down a funnel - from the broad to the narrow as we move through Phases 1 to phase 3. The lack of more detailed and meaningful information in the first two phases means that submissions to Phase 3 will be extremely important. It will be our member's last opportunity to have their submissions heard.

We request that you direct DELWP to provide sufficient detail and information when the Phase 3 consultation occurs. We understand that a planning scheme amendment to implement the SPP will be included in the planning scheme with no further consultation. Give this, we request that the Phase 3 consultation include the Statement of Planning Policy, but also the full scheme amendment that would implement it. Or at the very least, a detailed outline of what changes to the scheme the amendment might do, including any town boundaries, permanent or adaptable and the rationale for them. This is important, as the changes to the planning scheme are where the 'rubber hits the road' so to speak.

### **No Backzoning**

The UDIA submits that the DAL process should not back zone any land. Backzoning occurs when land within an existing township boundary and identified for urban use but not yet zoned for urban development is not allowed to be rezoned. Backzoning would also occur when existing development entitlements are removed. Also, the Greater Geelong Planning Scheme does identify that further structure plan reviews will occur in the future, for example to allow relevant towns to expand in a limited and controlled manner. It is important that the DAL should allow for these processes to occur in the future. As the information associated with the DAL is no limited and high level, it is necessary that the DAL allow for a future more rigorous and comprehensive process to occur. To do otherwise, would be in our view, another form of backzoning.

### **Detailed Strategic Investigation for Key Towns that have been identified as Suitable for Growth**

There is a strong need for the DAL to provide for a comprehensive strategic planning investigation into the merits of further expansion of towns like Ocean Grove, Leopold and Drysdale. Any reports or criteria to be considered should be made public as soon as possible so impacted members can have adequate time to prepare submissions when the SPP is released. Alternatively, the period for Phase 3 Consultation should be extended to be at least 6 weeks so that our members have time to prepare expert reports and material in response to the Phase 3 material. To do otherwise would not allow our members with sufficient time to make submissions to an appropriate standard. If the DAL is going to set long term boundaries - then sufficient time needs to be allowed for our members to respond.

### **Support Tourism and Appropriate Non-Residential Development**

The DAL should be more explicit about its support for well-designed and located and landscape responsive tourism and related developments. Our members are concerned that in the rush to remove urban development opportunities and restrict town expansion there may be some unintended consequences for tourism related developments. Some tourism developments and resort type development cover large sites with plenty of green space and cannot be practically located within townships. Such proposals have been successfully located outside town boundaries in the past – through

innovative, well designed and sited proposals – and this opportunity should be retained into the future so they can be considered on their merits.

### Conclusion

The Bellarine DAL Project is likely to provide detailed and inflexible planning scheme changes that will be in place for the next 50 years and beyond. Limited information has been made available to date on the more detailed considerations that our members would like to engage in. Therefore, as much detail as possible should be made available in the final consultation phase – including a detailed implementation plan. Also, given the importance of the next phase, sufficient time needs to be afforded to our members to ensure a rigorous process is followed so that the best long-term outcomes can be achieved.

Please contact me directly at [danni@udiavic.com.au](mailto:danni@udiavic.com.au) to arrange a suitable time to do so.

Yours sincerely

A handwritten signature in black ink that reads 'Danni Hunter'. The signature is stylized with a large, flowing 'D' and a long, sweeping underline.

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## Background

The Victorian Government, through the Department of Environment, Land, Water and Planning (DELWP), is implementing a Distinctive Areas and Landscapes (DAL) Program following the passage through Parliament of the *Planning and Environment Amendment (Distinctive Areas and Landscapes) Act 2018*.

The legislation is now found in Part 3AAB of the *Planning and Environment Act 1987*, and the DAL Program is intended to deliver on the Plan Melbourne policy to, “Protect and enhance valued attributes of distinctive areas and landscapes” in Melbourne’s green wedges and peri-urban areas.

The legislation requires that within one year of declaration of a DAL by the Governor in Council, a Statement of Planning Policy (SPP) is prepared. A critical element of this is the designation of long-term protected settlement boundaries to the area, with Planning Scheme Amendments proposing boundary changes requiring ratification by both houses of Parliament.

At the time of writing, a Statement of Planning Policy has been prepared for the Macedon Ranges DAL and endorsed by Macedon Ranges Shire Council. It is currently awaiting endorsement from other relevant responsible public entities ahead of approval by the Governor in Council.

The Surf Coast (Torquay-Jan Juc and surrounds), Bellarine Peninsula and Bass Coast DALs have been declared and DELWP have commenced work on the preparation of draft Statements of Planning Policy, which will be required to be completed throughout 2020.

The Macedon DAL process to date has been highly political, with the resulting SPP taking an inconsistent approach to the inclusion of investigation areas within settlement boundaries, leaving parts of the well-serviced Woodend area excluded from the settlement boundary despite its capacity to accommodate growth in the medium-long term. The subsequent declaration of the Surf Coast DAL has also been highly politicised, with public announcements prior even to the commencement of a public consultation process flagging predetermined outcomes contrary to existing planning controls and the well-advanced Spring Creek Structure Plan planning scheme amendment.

Proposed DAL area boundaries have been unclear during pre-declaration consultations, and in the case of the Surf Coast, part of the City or Greater Geelong was included in the Surf Coast DAL without prior notice or consultation with the affected community.

The Bellarine Peninsula declaration has coincided with the planning panel process for the proposed introduction of the Geelong Settlement Strategy to the Greater Geelong Planning Scheme, with debate on contested sites highlighting the importance of ensuring an opportunity for independent review of any proposed protected settlement boundaries. While the Geelong Settlement Strategy proposes that a logical inclusions process would occur before permanent settlement boundaries were contemplated, the DAL process does not provide an avenue for background technical reports to be reviewed and tabled or for

evidence to be presented and independently reviewed as would ordinarily be the case in a logical inclusions planning scheme amendment process.

## Policy Position

### The current DAL process threatens the integrity of Victoria's Planning System

The Victorian Auditor-General's Report, Managing Victoria's Planning System for Land Use and Development (March 2017), stresses that assessments informing planning decisions must be *"transparent, based on evidence and address all relevant planning matters"*. To allow for such assessments, the report notes,

*"planning schemes must be clearly focused, and policies must clearly express the state's planning priorities and objectives. The planning schemes must be supported by effective and efficient processes for their implementation. **This must all be done transparently, within the constraints of a politicised environment, to help ensure the community's confidence and trust in the planning system to deliver sustainable outcomes.**"*

*The planning system provides a strategic and policy framework to integrate and balance often conflicting policy objectives and economic, social, and environmental considerations. It seeks to ensure that there **are fair, orderly, responsive and transparent processes** to manage the economically productive and sustainable use of land in Victoria"* (emphasis added).

### Issues with the current process

The processes surrounding the declaration and preparation of Statements of Planning Policy for declared areas appear to be purely politically motivated, with publicly reported announcements indicating predetermined outcomes ahead of any consultation:

- Decision-making processes are opaque;
- There is a failure to recognise existing zoning undertaken through robust, proper planning processes, and the raft of technical studies and strategic planning work undertaken to date in specific areas to guide appropriate growth;
- Submission are not made public nor responded to, and there is no avenue for independent review of proposed outcomes by a panel or advisory group;
- There are no third-party rights; and
- The ability of well-serviced areas to accommodate planned growth is restricted.



## Proposed amendments

To address the lack of transparency in the current process for preparing Statements of Planning Policy introducing protected settlement boundaries, and in order to uphold the integrity of the Victorian Planning System, UDIA Victoria recommends the Minister for Planning implement the following process improvements and positive changes to restore and maintain community and industry confidence:

1. **The public provision of the following materials on the DELWP website as part of Phase 1 consultation for any future DAL declaration, and immediately for all live DAL processes where declaration has already occurred:**
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3. **At each stage, DELWP must:**
  - Provide a consultation period of at least one month, to allow potential submitters sufficient time to prepare evidence to support their submissions; and
  - Prepare and publicly release a consultation report outlining submissions and responses to issues.
4. **Following release of a draft SPP and receipt of submissions, an Independent Advisory Committee must be appointed to hear submissions regarding township settlement boundaries.**
5. **SPPs must consistently include investigation areas *within* protected settlement boundaries, to allow for further refinement through a standard Planning Scheme Amendment process without requiring ratification by Parliament. These should be merits based strategic planning decisions tied**





December 2019

## UDIA Victoria – Policy Position

### Distinctive Areas and Landscapes Program: Threatening the Integrity of Victoria's Planning System

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to Victoria's growth plan, not political decisions.

6. All SPPs must include policy consideration of the challenges and opportunities of the area in question, relating to how it may play a role in positively accommodating population growth.
7. The preparation of further guidance (in the form of a Planning Practice Note):
  - To identify how future planning policy changes and potential conflicts with the Statement of Planning Policy will be managed; and
  - To document the standard processes relating to DAL declarations and implementation of Statements of Planning Policy.

## Contact UDIA Victoria

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