england's proposed national development management policies—potential lessons from victoria

Our understanding of the possible consequences of the significant reform to decades of planning practice represented by the introduction of NDMPs in England can be aided by consideration of the workings, successes and shortcomings of the Victoria Planning Provisions and their operation in the Australian State of Victoria, as Ben Clifford explains

The Levelling-up and Regeneration Bill currently going through Parliament would radically change the planning system in England. One of the most significant measures in the Bill is the proposal to introduce 'National Development Management Policies' (NDMPs). Announcing the Bill, the government suggested that having policies on issues applying across the country would help to make Local Plans faster to produce (by saving planners from repeating nationally important policies in their own plans) and easier to navigate (by reducing their length).[1]

A consultation paper from the government published in December 2022 suggests that the NDMPs would cover considerations such as heritage asset conservation, preventing inappropriate development in the Green Belt, or dealing with areas of high flood risk that apply regularly in decision-making across England, and would draw heavily on existing National Planning Policy Framework (NPPF) considerations which are already 'material considerations' when assessing planning applications, but without statutory status. Existing policies aimed at decision-making in the current NPPF (which itself would be reformatted to focus on plan-making) would form the core of the NDMPs, apparently supplemented by additions to reflect new national policies in relation to, for example, net zero, carbon reduction, allotments, and housing in town centres.[2]

The government consultation suggests that NDMPs could also provide more consistency for small- and medium-sized housebuilders by reducing the complexity that comes from having slightly different requirements across local authorities. There would still be scope for local authorities to have policies relating to particular local issues not covered by the NDMPs, which might include (where appropriate) issues around student housing or coastal management.

The legal process to introduce these new NDMPs would involve the Levelling-up and Regeneration Bill (if it receives Royal Assent as an Act of Parliament) amending Section 38 of the Planning and Compulsory Purchase Act 2004, so that, instead of making a determination on a planning application in accordance with the development plan unless material considerations indicate otherwise, the local

planning authority would instead take regard of the development plan and any NDMPs unless material considerations *strongly* indicate otherwise; and if the development plan conflicts with an NDMP then the conflict must be resolved in favour of the NDMP. The Bill also defines the NDMPs as any policy relating to the development or use of land in England designated as such by the Secretary of State, and says that, in producing them, the Secretary of State would have to undertake such consultation as they think appropriate.

There are a number of potential concerns raised by these proposals, which at the time of writing the House of Commons Levelling Up, Housing and Communities Committee is examining.

First, these proposals significantly alter the nature of a planning system in which the locally made development plan has primacy. Instead, national policy would have supremacy, and as such the NDMPs represent centralisation of planning decision-making.[3] Secondly, there is the risk of an erosion of public participation, since there are specific processes around participation and rights in plan-making which would not apply here, with only a weak legal protection leaving it to the whim of the Secretary of State as to how much it is considered necessary to consult on any NDMP. Thirdly, there is also wide scope and discretion over what the Secretary of State can designate as an NDMP in the first place, which again could lead to concerns around centralisation and the scope for participation in the system.

Such concerns can be seen in commentary on the proposals. Highlighting that they break with the tradition of 70 years of law and practice, the RTPI has suggested that there should be a requirement for Parliament to debate and approve the policies, following public consultation.[4] The Local Government Association has expressed concern that the NDMPs could leave councils unable to tailor policies to local circumstances.[5]

The Mayor of London believes that the NDMPs are oppositional to devolution and could stifle innovation on things such as net zero, fire safety, and housing delivery.[6] The Mayor has argued that they should be subject to tests set out in legislation, including tests on their justification, purposes, and deliverability, and that they should be national minimum standards which can be exceeded locally where evidence in justification exists.[7]

The London Assembly has also expressed concern about the government's approach, with particular disquiet that Local Plans cannot contain policies on the same areas as the NDMPs if they are setting absolute standards rather than minimum standards which can be enhanced locally.[8] And, arguing that proposals give secondary legal status for the Local Plan, the TCPA has highlighted the lack of meaningful safeguards in relation to public scrutiny of the NDMPs.[9]

Comparison with Australia: the Victoria Planning Provisions

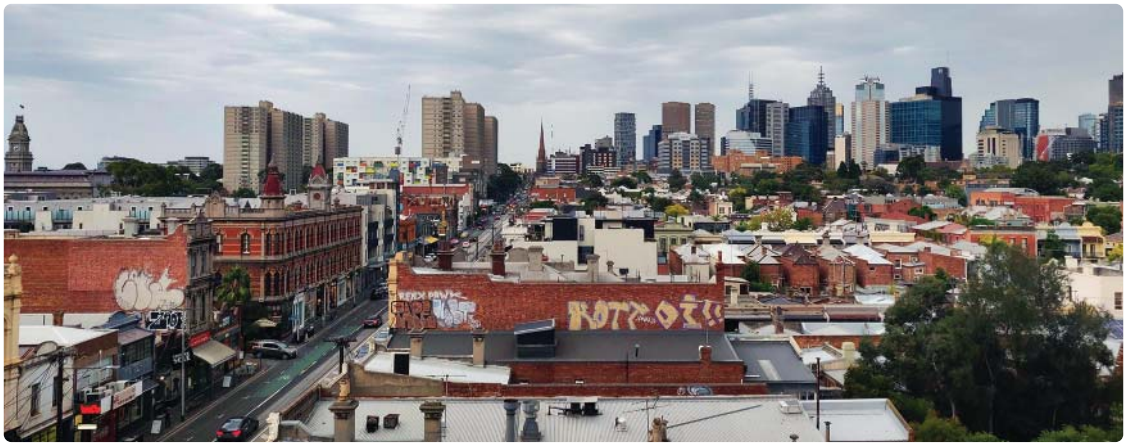
It is clear that the NDMP proposals represent a significant change to the existing planning system in England. Our understanding of them can be assisted by consideration of international practice. Comparative approaches to studying planning have a long history and can help to illuminate the taken-for-granted—albeit any comparison must consider the political, legal, administrative, social and cultural context for planning.

In this respect, Australia and the UK might be noted as nations drawing legally on the tradition of common law, with British administrative traditions including an agency model of local government (where local authorities are seen as agents carrying out government policies and with a 'dual polity' where there is little movement of professionals between levels of government) and with dominant (neo)liberal social models and governance approaches. Both the UK and Australia also have planning systems that differ by nation (in the UK) or state (in Australia) but which generally involve some balance between centralised and localised policy- and decision-making and of 'by-right' and discretionary decision-making.

The planning system in the State of Victoria offers an interesting comparator for the NDMPs proposal: the Victoria Planning Provisions (VPPs).[10] Victoria has a planning system that mixes by-right planning (with zoning and particular types of development either expressly allowed or expressly prohibited) with a discretionary system (with planning permits required for a range of development neither expressly allowed nor prohibited). Each local planning authority produces a 'planning scheme' (which might be considered akin to a development plan) that allocates zones and 'overlays' along with other policies to regulate and guide decision-making about land use and development.

The VPPs are much wider than the NDMPs and can be considered a toolkit of parts, out of which a local authority must assemble their planning scheme. They include a state-wide planning policy framework (originally called the State Planning Policy Framework or SPPF, but now just the Planning Policy Framework or PPF, which contains guiding principles about the use and development of land with themes of settlement, environmental and landscape values, environmental risks, natural resource management, built environment and heritage, housing and economic development, transport, and infrastructure) and a set of zones and overlays which a local planning authority can use in making the planning scheme for their area (in 1996 there were 23 zones and 22 overlays).

There are also particular provisions, which are authored by officials at the state level and apply across the planning schemes of all of Victoria's 79 local authorities. The idea is that since the rules in



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Melbourne, Victoria—the Victoria planning system mixes by-right planning with a discretionary system

zones and overlays apply to particular locations only (as allocated in each planning scheme), they allow for controls for certain issues and application types state-wide; the PPF is policy background to guide applications, whereas the particular provisions can trigger the need for planning permission in the first place and include binding restrictions applying to the determination of planning permits. They are outcome-focused and can have a powerful effect, and include provisions relating to advertising signs, car parking, uses with adverse amenity potential, home businesses, native vegetation, telecommunications facilities, licensed premises, and gaming.

There is a key group of clauses under the particular provisions governing residential development and assessment guidelines (now popularly referred to as the 'ResCode'), which work alongside residential zones, the neighbourhood character overlay and, separate to the planning system, building regulations (which provide universal minimum standards even where a planning permit is not required).[11]

The general provisions provide guidance on how decisions should be made about permits and specify some things as essentially what would be understood in the UK as 'permitted development'. The incorporated documents include state-wide documents, but local authorities can also add to them in their particular planning scheme (in 1996 there were 29 documents specified by the state). They can include codes of practice and technical standards such those as relating to telecommunication facilities and car parking. All of these state and locally authored components are combined to form the 'planning scheme' for a particular local planning authority area.

The emergence of the Victoria Planning Provisions

Prior to the introduction of the VPPs, each local planning authority had considerable discretion over the content of their planning schemes (although there had been some consistency through widespread acceptance of standard codes for issues such as overlooking and shadowing, and there were some state-wide controls where they were felt necessary, for example over native vegetation clearance). This even included discretion over what zones might be used in the first place and over the restrictions associated with them (although there was consistency across Melbourne's local authorities through the role of the now abolished Melbourne Metropolitan Board of Works). Some planning authorities had also made slow progress in adopting a planning scheme at all.

In 1993, under right-wing Liberal Premier Jeff Kennett, the then Minister for Planning claimed that planning schemes were too large, too complex and had too much variation between them, which could increase costs, uncertainty and delay for developers. It was argued the planning system often gave too much weight to the views of existing residents at the cost of facilitating economic development.[12] A committee called the Perrott Committee was established to develop a more standardised planning system for the State of Victoria. There were no resident or community representatives on this group, which was seen by some as having been heavily influenced by developers and their consultants. There was little meaningful public engagement on the development of the measures that became the VPPs—which might be understood as something of a 'crash through' model of government.

In 1996, the proposed state-wide standardised planning provisions were introduced. There have been a number of additions and changes since—for example the number of zones available to use in planning schemes has increased from 23 to 30. The controls around residential development were replaced in 2001 following battles over medium-density housing and arguments in favour of greater emphasis on local context through ensuring that attention is paid to site analysis and appropriate design response. With increased references made to neighbourhood character and community

involvement, greater discretion was introduced around moderate infill developments.

Additions and changes to the VPPs over time have varied slightly according to the issues and the politics of the time, with wide differences around public engagement over the development of parts of the VPPs, from the tokenistic to the meaningful. There is a continual tension between the need for customisation and meeting particular needs for different localities within the state and the desire to avoid the VPPs themselves then becoming ever longer and more complex—a basic dilemma which recurs at various levels of their design and drafting.[13] Interestingly, the Labor Party promised that, if elected in 1999, they would seek to increase local control over decision-making in planning again, but did not then follow through with this commitment once elected to state government, and the VPPs survived a change of administration.

The Victoria Planning Provisions in practice

The VPPs have been criticised by some as being based on a worldview that sees planning as essentially bureaucratic, and negative and even pointless, and so seeks to centralise in order to impose on local government standardised systems intended to facilitate development.[14] But they are now taken for granted to the point that many practising planners cannot recall (or have never experienced) the system before they existed and are well used to working within the framework that they provide. There are some clear advantages to the VPPs. There were certainly some local planning authorities that did not have an up-to-date planning scheme, or had one that was not particularly sophisticated, and introducing the VPPs ensured a baseline of provisions that applied state-wide, which probably improved the decision-making framework in those local areas.

There are advantages to consistency. Centralisation means that well designed changes to VPP clauses can have beneficial effect rapidly, and amending their core controls can allow powerful changes to be introduced state-wide. This has included, for example, the response to wildfires in 2009, which resulted in a new Bushfire Management Overlay in 2011, the update to which was the subject of public engagement in 2022.[15] As well as ease of change and impact, standardisation can act to raise professional standards, encouraging a structured and logical approach to decision-making consistently across different local authorities.[13]

The centralised VPPs also have not entirely extinguished the ability to respond to local circumstances, since within their defined parameters there can still be flexibility in each adopted planning scheme. This includes the ability to customise schedules accompanying residential zones in relation to building setback, height, site coverage, private open space, and so on. That said, it is very difficult for local government to introduce mandatory controls through schedules or local policies with state government maintaining oversight over attempted variations.

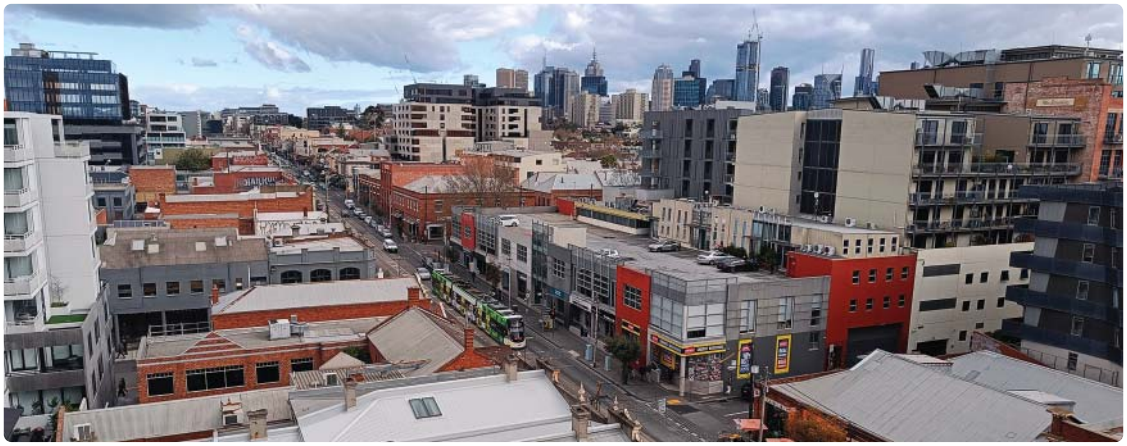
The VPPs are not generally considered to have met the original 1990s objectives of reducing the size and complexity of planning schemes, nor of making the planning system more efficient and less costly to administer. The task of trying to account for differences across the state and in existing planning schemes meant that the VPPs quickly developed into a complex and layered mix of compulsory and optional features. This complexity has increased over time.

In some cases, VPPs seem to have actually increased the amount of developments needing approval via the discretionary permit route. Smaller, rural authorities are required to have the same set of state-wide policies as urban and high-growth areas, and the provisions include things developed for places where there are particular problems, which can then increase complexity elsewhere as they are applied universally. And everywhere, over time, the number of provisions has grown, so the streamlining aim is lost in the face of broad pressure for planning to resolve or regulate various issues (or try to).

To some extent the process of implementing the VPPs involved a loss of some local distinctiveness. While some authorities had outdated or even inadequate planning schemes, others had already developed effective schemes. For example, some heritage towns had nicely developed design guidance on matters such as roof pitches, while some green belt authorities had stricter policies over the sub-division of land—and in replacing local with state-wide policies, some nuanced and sophisticated local policies were lost when the VPPs were developed and implemented.

The weight given to the state-wide policies and provisions under the VPP approach makes it all the more problematic when there are issues missing or not appropriately covered by the VPPs. The ResCode has not applied to developments over four stories high, and a lack of effective control has been associated with the boom in high-rise development, particularly in central and inner suburban Melbourne.[16] In the inner suburbs, historic 19th century shopping strips at a human scale are a loved and characteristic feature of Melbourne, but with local planning authorities having to 'pick from what's on the shelf' within the VPPs, sometimes the regulatory levers are less matched to local context and circumstance than might be ideal to protect them.

Furthermore, there have been concerns about the impacts of high-rise apartment buildings in the central business district, which has led to the VPPs being amended to include new design standards under the *Better Apartments* document which



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'The introduction of the VPPs has not 'solved planning', and concerns around efficiency and effectiveness continue to drive calls for further reform'

initially, in 2017, focused on internal amenity issues but was then further amended in 2019 to consider access to outdoor space and some public realm issues.[17] However, a rush of development occurred before these policies were updated, leaving a legacy of housing at extremely high density which has raised concern about matters such as access to daylight, internal space standards, overshadowing, and public realm and neighbourhood character issues which will now not be easily resolved and could not be adequately considered at the time of approval under the VPPs then in force.

The VPPs were introduced at a similar time to local government reorganisation in Victoria. Perhaps somewhat inevitably, given the VPPs and other reforms that have made planning more centralised and hierarchical, there is a feeling from some that local government is increasingly disenfranchised and seen as a less vital part of planning government; more of a de-democratised delivery agency. Addressing issues such as apartment design therefore requires action from the state government.

The combination of state-wide standardised controls and strong Ministerial powers means that in theory problematic VPP clauses might be amended or missing issues might be addressed through additional clauses with relative ease, but this requires the Minister 'both to accept the problem and assume responsibility for the solution'.[13] There have been examples where Ministers have sought to avoid directly dealing with potentially problematic issues by delegating back to local councils, for example by having car parking standards set locally.

At the same time, amendments to the VPPs can themselves become political issues owing to their control by central government, and this can lead to some back-and-forth as Ministers and administrations change. Suburban height controls were introduced under a Liberal Minister in 2013, but then removed once the Labor government was elected in 2016. A Labor Minister had increased controls over industrialised sheds in rural areas in 2006, but these controls were then scrapped by a Liberal Minister. There has been a tendency to fiddle with the VPPs as governments change.

The remove between making and amending the VPPs (state government) and decision-making on planning permits (primarily local government) can be problematic; there can be issues around the distance and disconnect between state and local governments. There is limited ability for local government planners to try to fix problems that they might encounter, while state government officials in the Ministry might see the system differently as they are removed from local government practice and the challenges and consequences of everyday decision-making. This has apparently not been helped by communication and co-operation inadequacies between the layers of government. In other words:

> *'state government management of the system risks being at once too far above the system (in that it is separated from anecdotal experience of system issues) and not high level enough (if it is not adequately monitoring the state-wide outcomes). It is therefore important that the system include a strong performance monitoring framework to help ensure that problems with the system are effectively and promptly diagnosed.'*[13]

Unfortunately, this does not appear to have happened very effectively; the Victorian Auditor-General expressed concern in a 2008 review that there was no formal mechanism for the Ministry to systematically collect, analyse and monitor the views of stakeholders on an ongoing basis or to evaluate the impact of the implementation of planning policies and reforms.[18] A follow-up review in 2017 noted that this issue of a lack of structured feedback mechanisms (from local decision-makers to central policy-writers) continued.[19] Furthermore, there is no

formal use of planning appeals tribunal decisions to help identify potential improvements to the system's operation, even though there is clear scope for this as a feedback route to the Ministry.

A system whereby standard policies, authored by state government officials, apply across all local authorities means that there is a need for those drafting the policies to have a good understanding of the impacts of their wording and to be able to effectively write these policies. That does not always appear to have been the case to date; just as the state-wide continuity of the VPPs means that well designed changes to the clauses can have beneficial effect rapidly, so poorly worded clauses can have detrimental impact widely. Over time, amendments have often improved the wording of controls, but this has taken an iterative approach. An understanding of the relationship between the strategy and the controls and of the need for precise language which gives clear guidance to decision-makers in local government has sometimes been lacking.

Finally, it is worth highlighting that, even with strongly centralised planning policy making, decision-making on planning permits can still vary considerably between local authorities using the VPPs. This has been linked to resourcing, and resourcing issues remain key in the efficient operation of the planning system in Victoria.

'The potential for measures which spread harmful impacts across England through a few poorly worded clauses drafted in the Ministry is enormous, and careful thought needs to be given to how the NDMPs are working in practice'

Conclusions—thinking ahead to the National Development Management Policies

The Victoria Planning Provisions provide an example of centralisation of planning policy-making in a governance setting which is in many ways familiar to England. The VPPs were introduced in 1996 and are now well embedded in planning practice.

Views on their merits clearly diverge, but there do appear to have been some advantages in relation to some issues and in some places from ensuring that certain minimum standards are consistently applied state-wide, and from the ability to implement positive new measures with ease. However, there are also disadvantages related to a reduced ability to account for particular local contexts, a reduced role for local government, and a disconnect between planning policy-making and planning decision-making. There has also been some variation in levels of public engagement around the development and revision of particular clauses in the VPPs. More broadly, planning reform has continued apace in Victoria, with a wave of other initiatives implemented and proposed. In other words, the introduction of the VPPs has not 'solved planning', and concerns around efficiency and effectiveness continue to drive calls for further reform.

If, as now seems likely, the NDMPs are introduced in England, they will represent a significant reform to decades of planning practice and remove the primacy of the locally made development plan in decision-making. There are important issues around what this means for local democracy and the ability to respond to local character and circumstances across a country with an arguably much wider range of development contexts than the State of Victoria. This might be potentially problematic if they offer only the weakest or lowest levels of regulation because of concerns about viability in some parts of England and authorities that wish to have stronger regulations on some issues are then prevented from doing so.

The Levelling-up and Regeneration Bill also offers weak protection on community engagement and the widest possible scope of discretion for the Secretary of State in terms of what can become a NDMP and how the NDMPs are developed—something that experience of the VPPs suggests we should be concerned about.

The NDMPs could be positive for planning practice in increasing standards for *some* authorities with outdated or poorly developed Local Plan policies on *some* issues. They could become beneficial if, for example, they made the Nationally Described Space Standards mandatory across the whole country rather than having to be adopted into local planning policy via a convoluted route, or if they helped to embed something like the TCPA's Healthy Homes Principles.

But as experience from Victoria shows, there is reason to be concerned about channels of communication between layers of government and about understanding in central government of planning outcomes and decision-making in practice. If we look at the example of office-to-residential permitted development in England, issues with the wording and coverage of the regulations which became apparent fairly quickly after the approach was introduced in 2013 were not addressed until political pressure led to an independent review reporting in 2020.[20]

The potential for measures which spread harmful impacts across England through a few poorly worded clauses drafted in the Ministry is enormous, and careful thought needs to be given to how the NDMPs are working in practice and what outcomes they are leading to on the ground, including clear opportunities for feedback from local planning authorities and

careful attention to Planning Inspectorate appeal decisions. Correcting errors must not take seven years.

It is also instructive that introduction of the centralised VPPs in Victoria does not appear to have made the planning system speedier or more efficient. Issues with plan-making by authorities in England are surely related to the decade of super-austerity imposed on local government, as well as political issues around housing targets and allocations. The NDMPs are unlikely to resolve these issues, nor the dilemmas of everyday practice in interpreting them in decision-making on planning applications.

It is somewhat disconcerting to see central government policy reduce the capacity of local planning authorities and then see central government claim that key areas of policy-making must be centralised because of a lack of capacity and progress locally. Systematic evaluation of the implications of central government policy-making remains important as the chaotic bandwagon of planning reform continues.

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