INQUIRY INTO ENVIRONMENTAL PLANNING INSTRUMENTS (SEPPS)

Organisation: Scrutiny of Acts and Regulations Committee - Parliament of

Victoria

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PARLIAMENT OF VICTORIA

Scrutiny of Acts and Regulations Committee



4 May 2021

Hon Mick Veitch MLC Committee Chair Legislative Council Regulation Committee Parliament House 6 Macquarie Street Sydney NSW 2000

By email:

Regulation.Committee@parliament.nsw.gov.au

Dear Mr. Veitch Mick

Inquiry into environment planning instruments (SEPPs) - Submission

Thank you for the opportunity to make a submission to the NSW Legislative Council's Regulation Committee inquiry into environmental planning instruments (SEPPs).

The Scrutiny of Acts and Regulations Committee (the **Committee**) has no formal comments to make with respect to the Terms of Reference. However, the Committee appreciates the opportunity to provide the following background material for your general assistance in understanding Victorian processes.

In Victoria, state environment protection policies (**SEPPs**) are made pursuant to section 16 of the *Environment Protection Act 1970* (Vic) (the **EP Act**). Section 16 gives the Governor in Council broad powers to make SEPPs on the recommendation of the Environment Protection Authority (the **Authority**) with respect to:

- the environment generally or in any portion or portions of Victoria or with respect to any element or elements or segment or segments of the environment s 16(1);
- the removal, disposal or reduction of litter in the environment s 16(1B); and
- the re-use and recycling of substances s 16(1C).

Pursuant to clause 38 of Schedule 3 to the Subordinate Legislation (Legislative Instruments) Regulations 2011, SEPPs made under sections 16(1), 16(1B) or 16(1C) are exempt legislative instruments. Exempt legislative instruments are exempt from the operation of the following provisions of the Subordinate Legislation Act 1994 (Vic) (the SL Act):

- Part 2A Preparation of legislative instruments;
- Part 5A Scrutiny, suspension and disallowance of legislative instruments;
- section 16B Legislative instruments and related documents to be laid before Parliament;
- section 16C Legislative instrument and accompanying documents to be sent to Scrutiny Committee;
- section 16E Compliance with this Part and requirements of authorising Act—tabling in Parliament; and
- section 16F Instrument maker to ensure consolidated version of legislative instrument is available.

Accordingly, SEPPS are exempt from the provisions regarding scrutiny and disallowance in the SL Act. Instead, these are provided for in the authorising Act (the EP Act).

Division 1 of Part 3 of the EP Act prescribes a range of processes that must be followed in the preparation of SEPPs in Victoria. Relevantly for the Committee this includes prescribing under section 18D of the EP Act that the Authority must ensure that a copy of the following documents is provided to the Committee:

- the final policy impact assessment;
- the summary of the submissions made under section 18A(2)(f) received by the Authority;
- the statement of the Authority's evaluation of the submissions and of any changes made to the draft declaration or variation of policy as a result of the Authority's consideration of the submissions; and
- the review panel's advice (if any) under section 18C(4) and the Authority's response.

The Committee may report to each House of Parliament if it considers that a SEPP does not appear to be within the powers conferred by the EP Act, has been prepared in contravention of the EP Act, or contains any matter in contravention of the EP Act. A report to Parliament by the Committee may contain such recommendations as the Committee considers appropriate, including a recommendation that the SEPP be disallowed in whole or in part, or amended as suggested in the report.

SEPPS that incorporate a national environment protection measure or vary a State environment protection policy so as to make the policy consistent with a national environment protection measure are not required to be provided to the Committee for consideration (s 17A of the EP Act). However, in these circumstances, SEPPs may be disallowed in whole or in part by either House of Parliament (s 18D(5) of the EP Act).

Pursuant to subsection 18D(6) of the EP Act, sections 23 and 24 of the SL Act apply in relation to the process for and effect of disallowance of SEPPS that do not incorporate a national environment protection measure (as discussed above). Importantly, it states that a SEPP will be disallowed in whole or in part if a notice of resolution to disallow is given in the House of the Parliament within 18 sitting days after the SEPP is laid before that House; and the resolution is passed by that House within 12 sitting days after the giving of the notice of the resolution (see s 23(2) of the SL Act).

I hope this information will be of assistance to your inquiry.

If you require further information, please do not hesitate to contact our senior research officer, Lauren Cook on or

Yours sincerely

Mr Mark Gepp MP Chairperson Scrutiny of Acts and Regulations Committee