Our Ref: MA006750

Mr Nick Wimbush
Advisory Committee Chair
Major Hazards Advisory Committee

via email to: planning.panels@delwp.vic.gov.au

Dear Mr Wimbush

Major Hazard Facilities Advisory Committee

Thank you for your letter of 28 October 2015 regarding the appointment of the Major Hazard Facilities Advisory Committee (Committee).

The Environment Protection Authority Victoria (EPA) welcomes the invitation to provide initial comments on the matters raised in the terms of reference to assist with preparation of the discussion paper.

**EPA’s role**


Under the EP Act, EPA:

- licenses many of Victoria’s MHFs. The purpose of EPA licences is to control the operation of the premises so that there is no adverse effect on the environment. Conditions on EPA licences address areas such as air and water discharges, noise, odour, and waste acceptance and treatment. The EP Act specifies penalties for breach of conditions.

- monitors industry, including MHFs, to ensure compliance with the EP Act. The EP Act sets out EPA’s compliance and enforcement powers, which are also identified, together with further detail on EPA’s approach, method and priorities, in its Compliance and Enforcement Policy (EPA Publication 1388).

Under the P&E Act, EPA:

- is a referral authority for planning permit applications for:
  - any use or development requiring a works approval, licence or licence amendment under the EP Act; and
  - any use listed in the table to Clause 52.10 of the Victoria Planning Provisions (VPPs) shown with a Note 1 or if the threshold distance specified in that clause is not met.

- provides advice on the environmental risks of a broader range of planning permit applications, in response to notice under section 52.

- works with planning authorities on strategic planning, including through advice on appropriate separation distances between industrial and sensitive uses.
Scope

The Committee’s terms of reference focus on land use planning for areas surrounding MHFs. Paragraph 5b of the terms of reference asks the Committee to make recommendations on principles for applying land use buffers more broadly to other uses with adverse amenity potential.

EPA welcomes this scope and anticipates that many of the principles for how land use planning can assist with managing the risks associated with MHFs could equally assist with managing the risks associated with other industrial uses. EPA respectfully encourages the Committee to fully pursue this broader approach supported by paragraph 5b.

Key challenge: managing encroachment

From EPA’s perspective, there is particular need for improvement to land use planning in areas that interface with existing industrial operations, whether or not they are approved MHFs. This issue is identified as a strategic priority in EPA’s 5 Year Plan (2011-2016), in which EPA committed to working more closely and proactively with the planning system to prevent future problems.

With regard to statutory planning, the way the Victoria Planning Provisions (VPPs) deal with applications for new sensitive uses and developments in proximity to existing industrial facilities may be contrasted with the way they deal with applications for new industrial uses and developments. The operation of clause 52.10 of the VPPs for the latter only is a clear example.

Operation of clause 52.10

The combined effect of clauses 52.10 and 66 of the VPPs is to ensure EPA and WorkSafe’s involvement in planning permit applications for new industrial uses (and certain developments, in the case of WorkSafe) that may pose risks to human health and amenity in the surrounding area. This ensures responsible authorities have the benefit of EPA and WorkSafe’s technical expertise as appropriate to inform their decisions.

At present, there is no equivalent mechanism for planning permit applications for use or development in proximity to a use with recognised adverse amenity potential. No referral or notice is required to EPA or WorkSafe in this inverse situation. There is no provision in the VPPs to ensure a responsible authority accounts for the environmental and health risks posed by the nearby industry in its assessment or that advice is sought from relevant experts.

Under the current framework, therefore, an industrial facility with the potential to adversely affect human health and amenity may be permitted under the VPPs on the basis that there is adequate distance separating the facility from sensitive uses, only for that separation distance to be eroded by new sensitive uses encroaching on the facility with little or no assessment of the potential risks involved.

Additional points worth considering with respect to clause 52.10 include:
- clarifying what risks it addresses, such as noise, odour, dust, vibration and public safety
- the definition of ‘threshold distance’ and whether adequate protection is extended to sensitive uses in zones that are not listed
- clarifying its function, for instance that it does not set ‘separation distances’, but rather trigger points for referral and further assessment
• whether certain applications for development (in addition to use) should be referred to EPA, as they are to WorkSafe
• clarifying its interaction with EPA and WorkSafe guidance
• the potential for application requirements to ensure applications are accompanied by necessary information to streamline the referral process and reduce delays associated with further information requests
• links with relevant provisions in the State Planning Policy Framework (SPPF), as was proposed in the Planning Policy Framework (Integration Version) prepared by the SPPF Review Advisory Committee in March 2014.

**EPA guidance on encroachment**

EPA's primary publication on the separation of industrial and sensitive uses is the *Recommended Separation Distances for Industrial Residual Air Emissions – Guideline* (EPA Publication 1518).

Unlike clause 52.10, which is silent on the sources of risk informing the threshold distances, this guideline specifically considers odour and dust emissions from industries. The recommended separation distances in the guideline assume good pollution control technology and practice at the industrial site, but address the risk of unintended emissions, for instance due to equipment failure, accidents or abnormal weather events. The distances specified are to allow industrial residual air emissions to dissipate without adverse impacts on sensitive land uses.

Other statutory policies and guidelines address land use separation to mitigate other sources of risk, including:
• *State Environment Protection Policy (Air Quality Management)*
• *State Environment Protection Policy (Control of Noise from Commerce, Industry and Trade) No. N-1*
• *Noise from Industry in Rural Victoria* (EPA Publication 1411)
• *State Environment Protection Policy (Control of Music Noise from Public Premises) No. N-2*
• *Siting, Design, Operation and Rehabilitation of Landfills – Best Practice Environmental Management* (EPA Publication 788).

**EPA's encroachment project**

EPA has a priority project for 2015-16 focused on residential encroachment on industries that require an EPA licence or works approval. The project stemmed from recognition that EPA is often involved in responding to impacts on residents from industrial facilities that have, at least in part, been caused or exacerbated by land use conflicts. The project aims to develop a more strategic and preventative approach to using EPA's environmental specialist expertise to avoid these situations arising.

As part of the encroachment project, EPA is considering EPA’s guidance and capacity to support planners with interface area planning and opportunities to enhance the management of residential encroachment on industry through the planning system. One of the outcomes of this project will be an options paper on those opportunities, which EPA is currently preparing with support from an external steering group.

Once finalised, EPA will provide that options paper to the Committee, in addition to the Independent Inquiry into the EPA established by the Minister.
for Environment, Climate Change and Water. In the meantime, EPA is able to share information collected as part of the project with the Committee as would be helpful, such as odour, noise and dust complaints data, case studies and the results of a survey EPA conducted earlier this year of 13 councils about the encroachment issue.

Other current work in this area

EPA is also contributing to a number of projects led by other organisations considering this issue, or aspects of it, which may be of interest to the Committee, including:

- guidelines prepared by Hobsons Bay City Council on Interim Management of Land Use Planning Around Major Hazard Facilities (October 2014)
- the Local Buffer Support Program led by the Metropolitan Waste and Resource Recovery Group considering buffer protection for waste and resource recovery facilities
- the work of the Extractive Industries Taskforce, established following the Inquiry into greenfields mineral exploration and project development in Victoria, whose actions include identifying the most effective mechanism to ensure appropriate planning protection for extractives.

If you would like to discuss these comments further, please contact Dan Keely, Manager of Policy & Regulation on 9695 2606 or Dan.Keely@epa.vic.gov.au.

EPA looks forward to participating in the next steps of the Committee’s process.

Yours sincerely

NIAL FINEGAN
CHIEF EXECUTIVE OFFICER
ENVIRONMENT PROTECTION AUTHORITY VICTORIA

16/11/2015