9 February 2016

Nick Wimbush
Major Hazard Advisory Committee
c/- Planning Panels Victoria
Level 5, 1 Spring Street
Melbourne Vic 3000

Dear Mr Wimbush,

Major Hazard Facilities Advisory Committee: Discussion Paper

Thank you for your letter received on 22 December 2015. Council welcomes the opportunity to comment on the Major Hazard Facilities Advisory Committee: Discussion Paper (Discussion Paper).

There are two approved Major Hazard Facilities (MHFs) in the City of Brimbank:

- Hexlon Pty Ltd- Gate 3, 765 Ballarat Road, Deer Park
- Elgas Lts - 61 Radnor Drive, Deer Park area.

An officer response to the Discussion Paper is attached, and highlights five issues relating to land use planning:

1) The need to define hazardous facilities within the Victorian Planning Provisions (VPP’s)
2) Lack of strategic policy relating MHFs in the State Planning Policy Framework
3) Consideration of Reverse Buffers
4) The need for a top down approach in terms of expertise
5) The creation of a new Planning Overlay for hazardous facilities.

The formation of the Major Hazard Facilities Advisory Committee is supported as an important first step in developing an integrated land use planning approach for MHFs.

If you would like to discuss this response further please contact Dhiraj Joti, Senior Strategic Planner, at Dhirajj@brimbank.vic.gov.au or 9249 4112.

Yours sincerely

S. Menzies

Stuart Menzies
Director City Development
Brimbank City Council Officers’ Response to Major Hazard Facilities Advisory Committee: Discussion Paper

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This officer response to the Discussion Paper highlights five issues relating to land use planning:

1) The need to define hazardous facilities within the Victorian Planning Provisions (VPP’s)
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The need to define major hazard facilities within the planning scheme

MHFs are limited to 45 sites in Victoria identified within the WorkSafe Website, however, the Discussion Paper notes:

"WorkSafe stated that there are sites that do not meet the criteria for a MHF under Occupational Health and Safety legislation but still pose a significant hazard to public health and safety, and that consideration should be given to the inclusion of these significant sites in any planning regime."

It is considered that the discussion around hazardous facilities and land use planning should not be limited to MHFs but encompass all sites that create a potential hazard to public health and safety. These hazardous sites should include major pipeline facilities which have similar issues to MHFs.

The City of Brimbank is a municipality which has many of these facilities. It is recommended that the Advisory Committee work with relevant state wide bodies to provide a clear definition of hazardous facilities which can be formally incorporated into Planning Schemes. This will provide the basis to undertake land use planning ensuring that these facilities are recognised.
Lack of a strategic policy in the State Planning Policy Framework

The Discussion Paper acknowledges that there are no policies directly relating to MHFs within the State Planning Policy Framework (SPPF). Councils are therefore placed in a position where they are compelled to take an ad hoc approach to land use planning for, and in proximity to, these sites. This also applies to the planning decision making process at VCAT or Planning Panels Victoria. Without strategic policies in place to provide a consistent approach for all stakeholders, these matters will continue to be dealt with on an individual basis leading to significant legal and expert witness costs, time delays, potential risk and uncertainty and inconsistencies in decision making.

An example relevant to Council involved Brimbank Planning Scheme Amendment C128: Commercial Rezoning, Orica Site, Deer Park involving a registered MHF located adjacent to Gate 3 at 765 Ballarat Road. Council was required to commission expert advice in this matter due to the risk and resulted in significant time delays and cost. The decision made by the Planning Panel was based on taking into consideration the views of conflicting expert statements where neither WorkSafe or the Environmental Protection Agency (EPA) would participate. The Panel stated:

"It was unfortunate that WorkSafe was not able to attend the Hearing. It would have been useful for WorkSafe to attend and explain the current status of their preparation of planning advisory areas for the Momentive MHF and clarify a number of matters of interpretation put by the parties."

A policy framework is required, particularly at the SPPF level, to provide certainty about how to plan for these facilities.

Consideration of reverse buffers

Clause 52.10 of Planning Schemes establishes threshold (buffer) distances for industrial and warehouse uses from residential uses, and where required, formal referrals to both WorkSafe and the EPA must be carried out. The Discussion Paper acknowledges that:

"The Clause does not act as a "reverse buffer" and does not provide a statutory buffer for the location of residential uses a suitable distance from existing industries" and;

"There are no referral mechanisms for use and development of land near MHF".

However, the use of reverse buffers is recognised in both EPA and WorkSafe publications, and has been applied in decision making by councils, VCAT and Planning Panels Victoria. Additionally, Council uses its discretion to refer applications that lie within proximity to MHFs for comments to EPA or WorkSafe where considered necessary. This brings into question consistency during processing of applications and in decisions made across Victoria. It is important that this gap between policy and the statutory approvals process is bridged.
Need for a top down approach in expertise

In terms of MHFs, pipelines and other hazardous facilities, the majority of policy formulation, management and enforcement lies with the EPA, WorkSafe or Energy Safe Victoria (in relation to pipelines) under the various acts and regulations.

Conversely councils generally lack expertise and resources in this field and need these types agencies’ assistance to provide advice and guidance in local decision-making.

For example, WorkSafe Victoria has published a guidance note “Land use planning near a major hazard facility.” The Discussion Paper acknowledges that this guidance note is not an incorporated document in Clause 81 of a planning scheme and not referenced in the SPFF.

The Discussion Paper notes in the Port Phillip Woollen Mills Case, the Committee stated in relation to WorkSafe not being a referral authority where a residential use was proposed in proximity to a MHF;

“Referral authority status is a serious role in the planning process and it is only conferred if the input from a nominated agency is central to the outcome of an application ... It seems to this Committee that there is a gap in the planning process if the agency that is responsible for something as serious as a potentially life threatening event is not required to be informed.”

It is important that the Advisory Committee considers how the expertise of state wide bodies can be effectively utilised in a formal structured manner to ensure that all planning decisions are informed in relation to hazardous facilities. It is recommended that referral to WorkSafe and the EPA be a mandatory requirement and that both agencies be given the status of Referral Authorities and the responsibility this entails in relation to governing MHFs reverse buffer requirements.

The need for a new overlay for hazardous facilities

The Discussion Paper suggests a number of ways forward to address the policy gap in planning relating to MHFs.

It is proposed that the introduction of a new overlay that deals with hazardous facilities is the best way forward and could alleviate many of the issues raised above and within the Discussion Paper. Similar to a Special Building Overlay (SBO) which requires the views of Melbourne Water as a referral authority, an overlay which relates to hazardous facilities would require the views of state wide bodies such as WorkSafe and the EPA. This would provide responsible authorities and developers with professional expertise to make informed decisions on planning land use matters.

It is noted that the Discussion Paper raises caution in the use of overlays stating:
"Zone boundaries tend to follow defendable boundaries whilst overlays enjoy greater flexibility in terms of crossing through properties they remain reliant upon clearly modelled and mapped outcomes."

However, it is considered that there is significant expertise at a state wide level, and WorkSafe has already identified Advisory Areas for a number of MHFs, although presently not within the Brimbank area. These overlays would provide the following advantages that are lacking within the current regime:

- Allow state wide bodies to identify all state significant hazardous facilities and establish appropriate threshold distances to these uses
- Establish areas where state wide bodies with the expertise can assess applications and where necessary introduce parameters for use and development (threshold distances that do not necessary prohibit use or development within these areas).
- Provide greater certainty and consistency in decision making for all stakeholders
- Ensure that applications within the overlay trigger formal referrals to state wide bodies where necessary
- Ensure that the state wide bodies have a formal role at all stages of the planning decision making process.
- Avoid the risk of potential litigation in situations where there is conflicting expert opinion.