

8 February 2016

MH/CO/16/16

Mr Nick Wimbush
Chair, Major Hazard Facilities Advisory Committee
Planning Panels Victoria
GPO Box 2392
Address 2
MELBOURNE VIC 3001

Dear Mr Wimbush

SUBMISSION ON DISCUSSION PAPER

Thank you for your correspondence dated 22 December 2015 inviting submissions on the matters raised in the Discussion Paper. Please find following and attached our comments on the Discussion Paper.

Key Comments on Discussion Paper

Managing the risks to persons (and to a lesser extent the risks to property) associated with major incidents at Major Hazard Facilities (MHFs) is a key focus of the provisions regarding MHFs in the *Occupational Health and Safety Regulations 2007*. The occurrence of a major incident at an MHF, although unlikely, has the potential to affect large numbers of persons, resulting in numerous fatalities and serious injuries. WorkSafe's main concern regarding the Discussion Paper is that it does not sufficiently consider the serious risks to persons posed by major incidents. WorkSafe's view is that the discussion paper focuses too heavily on the environmental and amenity risks posed by MHFs, and not enough on the risks of fatalities and serious injuries associated with a major incident occurring at an MHF. While WorkSafe acknowledges the importance of amenity and environmental risks, it is crucial that the potential impact of major incidents is given appropriate consideration in the planning process. It is WorkSafe's view that the types of incidents which are the focus of MHF regulation are adequately addressed by the planning process.

WorkSafe notes that there is currently no requirement for consideration of the risks to persons posed by major incidents at existing MHFs, in decisions regarding planning developments in surrounding areas. WorkSafe is concerned that there is no statutory obligation to consult with WorkSafe. WorkSafe has proactively contacted councils to raise awareness that advice can be obtained on these types of developments. There have also been developments in areas surrounding MHFs where WorkSafe's advice has been disregarded. In part this may be due to the perception of MHF risks being limited to amenity risks rather than extending to catastrophic risks to human safety. WorkSafe believes that there should be mandatory consideration of existing MHFs for particular planning decisions.

WorkSafe notes that major incidents at MHFs generally occur with little or no warning. Therefore it is important the Advisory Committee understands that information provided to local communities regarding what to do in the event of a major incident has limited effectiveness in ensuring the safety of persons present in areas surrounding MHFs.

Furthermore, WorkSafe supports clear and consistent definitions of key concepts such as 'MHFs' and 'sensitive uses' to ensure transparency and clarity for all involved in and affected by planning decisions. To this end, WorkSafe strongly recommends using the definition of 'MHF' provided in regulation 1.1.5 of the *Occupational Health and Safety Regulations 2007*.

Please see Appendices 1 and 2 to this letter which set out WorkSafe's additional comments and response to questions posed in the Discussion Paper. WorkSafe would welcome the opportunity to be included in the hearings and further consultation. Please contact Jodie Georgiou, Manager Major Hazards, on either (03) 9641 1141 or jodie_georgiou@worksafe.vic.gov.au should the Committee require further information or clarification.

Yours sincerely



Marnie Williams
Executive Director
Health and Safety

APPENDIX 1

ADDITIONAL COMMENTS ON DISCUSSION PAPER

Discussion Paper (section/page)	Correction/ Recommendation	Reason
1.1 TOR quotation "Issues to be addressed for each of Victoria's 40 registered MHFs..."	Issues to be addressed for each of Victoria's 40 registered and licensed MHFs...	In accordance with the Victorian <i>OHS Regulations 2007</i> . There are currently 2 registered facilities and 38 licensed facilities.
1.3 Approach in the Discussion Paper "The Committee has framed the Discussion Paper using the following approach: ... • An outline of the regulatory regime around MHF	The outline of the regulatory regime under the <i>OHS Regulations 2007</i> does not reflect all elements of the regime. It only focuses on determination and does not deal with registration and licensing.	
2. Start of section "Planning for Major Hazard Facilities..."	Planning for land use around (or in proximity of) Major Hazard Facilities...	New MHF are addressed by the Victorian planning system – development/land use near existing facilities is not.
2.2 Planning scheme provision (iii) Zones "Clause 2.0 of the Schedule relating to the use of land includes application requirements relating to (amongst other matters): ... • Whether a licence under the Dangerous Goods Act 1985 is required".	Recommend replacing this bullet point with: • Whether notification regarding the quantity of dangerous goods on site, is required under the <i>Dangerous Goods (Storage and Handling) Regulations 2012</i> ; • Whether licences are required under the <i>Dangerous Goods (Explosives) Regulations 2011</i> ; • Whether licences are required under the <i>Dangerous Goods (HCDG) Regulations 2005</i> .	These bullet points are more likely to reflect circumstances where potentially hazardous quantities of dangerous goods will be present at a site.

Discussion Paper (section/page)	Correction/ Recommendation	Reason
<p>2.2 Planning scheme provision (iii) Zones</p> <p>“Similar to those under the SUZ examples mentioned earlier, the 1N1Z includes permit requirements that seek information on matters including:</p> <p>...</p> <ul style="list-style-type: none"> • Whether notification is required under the Occupational Health and Safety Regulations” 	<p>Recommend replacing this sentence with:</p> <ul style="list-style-type: none"> • Whether notification is required under the <i>Occupational Health and Safety Regulations 2007</i> regarding the quantity of Schedule 9 materials on site; • Whether the site is required to be registered or licensed as an MHF under the <i>Occupational Health and Safety Regulations 2007</i>. 	<p>These bullet points are more likely to reflect circumstances where potentially hazardous quantities of dangerous goods will be present at a site.</p> <p>It is also noted that notification has a specific meaning in the <i>OHS Regulations 2007</i> and WorkSafe believes that these dot points better reflect what was intended by the Discussion Paper.</p>
<p>2.2 Planning scheme provision (vi) General provisions</p> <ul style="list-style-type: none"> • “A notification is required under the Occupational Health and Safety Regulations 2007” 	<p>Recommend replacing this bullet point with:</p> <ul style="list-style-type: none"> • A notification is required under the <i>Occupational Health Safety Regulations 2007</i> regarding the quantity of Schedule 9 materials on site. • The site is required to be registered or licensed as an MHF under the <i>Occupational Health and Safety Regulations 2007</i>. 	<p>These bullet points are more likely to reflect circumstances where potentially hazardous quantities of dangerous goods will be present at a site.</p>
<p>3.1 1st paragraph</p>	<p>Insert the following after the last sentence:</p> <p>“...to further the objects of the <i>Dangerous Goods Act 1985</i>.</p>	<p>The second sentence in the second paragraph relates to the objects of the <i>Dangerous Goods Act 1985</i> not the objects of the <i>Occupational Health and Safety Act 2004</i>.</p>

Discussion Paper (section/page)	Correction/ Recommendation	Reason
3.1 3 rd paragraph “They are identified as industrial facilities where significant quantities of certain types of dangerous goods may be present.”	For the purposes of the regulations, an MHF is defined as: (a) a facility where Schedule 9 materials are present or likely to be present in a quantity exceeding their threshold quantity; or (b) a facility determined by WorkSafe to be a major hazard facility under regulation 5.2.29.	The description of an MHF does not sufficiently reflect the definition provided in reg 1.1.5 of the <i>OHS Regulations 2007</i> .
3.1 3 rd paragraph and 4 th paragraph “provide the methodology to determine...” and “In determining whether”.	Use a different word instead of ‘determine’ or ‘determining’.	The word ‘determine’ has a particular meaning for the purposes of the <i>OHS Regulations 2007</i> , particularly in relation to MHFs.
3.1 3 rd paragraph “Examples of MHF include... transport depots.”	Examples of MHF include... dangerous goods warehouses.	No transport depots are MHFs. There is potential for transport depots and public transport hubs to be confused.
3.1 4 th paragraph “In determining whether a facility is a MHF, WorkSafe takes into consideration the proximity of the facility to other major hazard facilities, sensitive land uses, other land uses and the record of the operator.”	In determining whether a facility with Schedule 9 materials present below threshold is a MHF, WorkSafe takes into consideration the potential for a major incident to occur having regard to: (a) the quantity or combination of Schedule 9 materials present or likely to be present at the facility; (b) the type of activity within the facility that involves those materials; (c) the land use and activities of occupancy in the area surrounding the facility.	Incorrect. Some facilities are automatically MHF and WorkSafe does not need to consider anything else in those cases. The only ones where WorkSafe can consider items are those under threshold. List is as per reg 5.2.29 of the <i>OHS Regulations 2007</i> .

Discussion Paper (section/page)	Correction/ Recommendation	Reason
<p>3.1 5th paragraph “In order to understand the risks, the regulations require the operator of a MHF to do a Safety Assessment of the facility and eliminate or reduce as far as practicable the extent of property damage if a major incident should occur.”</p>	<p>In order to understand the risks, the regulations require the operator of a MHF to do a Safety Assessment and a Property Protection Assessment for the facility. The regulations also require the operator to eliminate or reduce so far as is reasonably practicable the extent of property damage and injury to persons onsite and offsite from a major incident occurring.</p>	<p>The paragraph fails to mention the main purpose of conducting a safety assessment— to eliminate or reduce the risk so far as is reasonably practicable to persons of a major incident occurring. This includes people both on and off-site (i.e. employees/workers/ contractors/visitors and the general public/neighbours etc). There is a separate requirement to conduct a property protection assessment and control risks in relation to property damage.</p>
<p>6.1 1st paragraph “These land uses are often referred to as MHF. Examples include:... some warehousing and transport depots...”</p>	<p>These land uses often include licensed MHF. Examples include: ... some warehousing ...</p>	<p>“Often referred to” seems to imply voluntary classification. No transport depots are MHF. WorkSafe believes warehousing is what was intended by the Discussion Paper.</p>
<p>6.1 (i) Definition of MHF</p>	<p>WorkSafe would encourage any definition of MHF to be consistent with or refer to the definition in the <i>OHS Regulations 2007</i>.</p> <p>OHS Regulations 2007, reg 1.1.5 define major hazard facility as— (a) a facility where Schedule 9 materials are present or likely to be present in a quantity exceeding their threshold quantity; or (b) a facility determined by the Authority to be a major hazard facility under regulation 5.2.29.</p>	

Discussion Paper (section/page)	Correction/ Recommendation	Reason
6.1(ii) Risk assessment and modelled hazard boundaries 3 rd paragraph	WorkSafe believes that additional research and evaluation of all methods available should be undertaken prior to an assessment methodology being selected. WorkSafe believes that application of the 'inner advisory area' and 'outer advisory area' (currently available for some MHF) is a suitable way of addressing this issue. However, there may be other appropriate methods (e.g. potential consequence zones) that should be evaluated and WorkSafe would encourage that these are reviewed as part of this committee process to ensure that the most appropriate method is chosen.	
6.1 (iii) Paragraph 1 “... conflicting land uses and development do not occur in areas where environmental risk may occur.”	... conflicting land uses and development do not occur in areas where safety and environmental risk may occur.	The planning system should be concerned with both types of risks (safety and environmental).
6.1 (iii) Paragraph 3 “There are non-sensitive uses which might be compatible with potential environmental risk.”	There are non-sensitive uses which might be compatible with potential safety and environmental and risks.	The planning system should be concerned with safety and environmental risks.
6.1 (iii), Reflection in the Planning System, Zones “...design measures to manage external effects from vibration, light spill and glare, noise, airborne emissions and provide for safety and emergency evacuation to minimise potential amenity conflicts and threat to human life.”	... design measures to manage consequence effects from smoke or toxic emissions, displaced objects, heat effects and structural damage and emergency evacuation to minimise potential threat to human life and the effects from vibration, noise, light spill and glare and airborne emissions to minimise potential amenity conflicts.	Neglects the key consequences which could occur as a result of major incidents (eg fires, explosions and toxic releases) such as smoke or toxic emissions, displaced objects/missiles/ structural damage and heat effects. Does not sufficiently focus on threat to human life.

Discussion Paper (section/page)	Correction/ Recommendation	Reason
6.2 Adverse amenity	While this section is intended to discuss adverse amenity, it is noted that many of the identified issues and discussions should also apply to high consequence safety risk. High consequence safety risk and amenity issues are not mutually exclusive.	
6.2 Adverse amenity (i) Buffers/separation distances Clause 52.10 "Any review of Clause 52.10 may benefit from considering the following matters..."	Inclusion of high consequence safety risk in matters for review. For example: <ul style="list-style-type: none"> • Clarifying what risks it addresses, such as effects of low frequency but high consequence incidents at MHF (i.e. major incidents). These may include but are not limited to explosions, toxic releases, fires (including smoke and heat effects). 	The matters listed for inclusion in a review of clause 52.10 do not include any matters that arise from a major incident at a major hazard facility. (The other matters listed are amenity risk rather than high consequence safety risk).

Discussion Paper (section/page)	Correction/ Recommendation	Reason
<p>6.2 Adverse amenity (i) Buffers/separation distances</p> <p>The size of buffers “...a focus on human and environmental health; and human amenity.”</p> <p>“Insufficient buffers may lead to significant health and amenity impacts.”</p>	<p>... a focus on high consequence risk and consideration of other relevant matters (e.g. environment, human amenity).</p> <p>Insufficient buffers may lead to significant impacts.</p> <p>The wording of the first two paragraphs should be improved, for example: Buffers between MHF and other industry and sensitive uses must be ‘fit for purpose’. That is they must reduce risk to a minimal level to people who may be within them, if a major incident were to occur. This acceptable level should be evidence based with a focus on the high consequences that could follow a possible major incident. Excessive buffers may be ... (as is)... Insufficient buffers may lead to more people than necessary being in the area where the consequences of a possible major incident could be severe.</p>	<p>This section refers to human and environmental health and human amenity. Including the risk of a fatality as “human health” does not promote understanding of the high consequence risks associated with MHFs. The word “acceptable” can be emotive, and begs the question “Acceptable to whom?” The Planning Authority or the people who live in the area?</p>
<p>6.3 Sensitive Uses</p>	<p>It is noted that the sensitive uses mentioned do not include hospitals, aged care facilities or facilities that may attract large numbers of people (such as recreation facilities).</p>	<p>The uses mentioned do not include many that would be classed as sensitive land uses in other jurisdictions (e.g. NSW’s Hazardous Industry Planning Advisory Paper (HIPAP) No 4 – Risk Criteria for Land Use Safety Planning).</p>

APPENDIX 2

RESPONSES TO DISCUSSION PAPER THOUGHT STARTERS

Discussion Paper Thought Starter	Comment (For questions left blank, WorkSafe is not in a position to comment)	Reason
1	<p>WorkSafe believes that the planning system and its implementation do not currently effectively address existing MHF or other hazardous industry that poses a risk to the safety of surrounding areas.</p> <p>WorkSafe believes that greenfield MHFs are currently effectively managed by the planning system.</p>	<p>In particular, WorkSafe is aware of the potential for proposals in the area surrounding a MHF to be approved without considering fully the possible impacts that could arise from a major incident at the facility. WorkSafe has proactively contacted councils to request that they refer developments in the surrounding area. However this reliance on administrative controls rather than statutory controls has proven to be ineffective possibly due to a high turnover of council staff and multiple departments within councils having responsibilities in this area.</p>
2	<p>WorkSafe believes that additional research and evaluation of all methods available should be undertaken prior to an assessment methodology being selected. WorkSafe believes that application of the 'inner advisory area' and 'outer advisory area' (currently available for some MHF) is a suitable way of addressing this issue. However, there may be other appropriate methods that should be evaluated, such as the use of potential consequence zones, and WorkSafe would encourage that these are reviewed as part of this committee process to ensure that the most appropriate method is chosen.</p>	
3	<p>WorkSafe believes the current consultation requirements in the <i>OHS Regulations 2007</i> are sufficient. It is noted that most MHF have community consultation groups at which discussion about many issues occurs – including major incident safety, pollution and other environmental issues.</p>	

Discussion Paper Thought Starter	Comment (For questions left blank, WorkSafe is not in a position to comment)	Reason
4	<p>WorkSafe believes the definition of MHF from the OHS Regulations 2007 should be included in planning schemes. <i>OHS Regulations 2007</i>, reg 1.1.5 define major hazard facility as—</p> <p>(a) a facility where Schedule 9 materials are present or likely to be present in a quantity exceeding their threshold quantity; or</p> <p>(b) a facility determined by the Authority to be a major hazard facility under regulation 5.2.29.</p>	
5	<p>Regulation 5.2.9 already requires MHF emergency plans to address the potential off-site consequences of a major incident occurring.</p> <p>Regulation 5.2.24 requires the MHF operator to provide information concerning the safety of the MHF to the local council, and also to the local community (by sending it to the community or the public library servicing the community). Such information must include the action that members of the community should take, in accordance with the MHF emergency plan, in the event of a major incident occurring. That said, WorkSafe has found that the local library does not always retain the information provided to it under regulation 5.2.24.</p> <p>Regulation 5.2.25 also requires the MHF operator to make the information provided under regulation 5.2.24 available to concerned individuals on request.</p>	

Discussion Paper Thought Starter	Comment (For questions left blank, WorkSafe is not in a position to comment)	Reason
6	WorkSafe believes that application of the 'inner advisory area' and 'outer advisory area' available for some MHF is a suitable way of addressing this issue. These areas could be determined by WorkSafe for all MHF. However, there may be other appropriate methods and WorkSafe would encourage that these are reviewed as part of this committee process to ensure that the most appropriate method is chosen.	WorkSafe has calculated these areas on the basis of information provided to it during the licensing process for MHF, which it has verified using its own experts. Planning may prefer to use independently calculated data. It should also be acknowledged that there are other methods to determine buffer zones – such as the use of consequence rather than risk to determine the size of these – the preferred method may be dependent on public perceptions of what is most appropriate.
7	WorkSafe believes that the required buffer zones around MHF should be clearly identified to give transparency and clarity to all users of the planning system. These zones should also be specified so that mandatory consideration is required. However, WorkSafe has no specific view on whether this should be via planning legislation, schemes, overlays or any other method.	WorkSafe notes that the current method of non-statutory referrals is inconsistent.
8	WorkSafe would encourage that any method used is consistent, transparent and relatively easy to use to ensure its implementation and effectiveness.-	
9	WorkSafe believes there are additional questions that need to be answered before this question can be answered. For example: What criteria to be used for determining modelled areas? Who is to do the modelling? How are these areas to be updated if needed?	
10	WorkSafe is aware of issues with council awareness and implementation of the existing system using non-statutory referrals to WorkSafe to manage development around MHFs. There is no mechanism for mandatory consideration by councils of existing facilities in planning decisions.	
11	-	

Discussion Paper Thought Starter	Comment (For questions left blank, WorkSafe is not in a position to comment)	Reason
12	-	
13	-	
14	-	
15	-	
16	-	
17	-	
18	-	
19	-	
20	-	
21	WorkSafe would be in favour of this, particularly if no other alternative is to be adopted.	<u>Note</u> Should the wording of this question be "...for permit applications lodged within identified risk areas around MHF."?
22	-	
23	WorkSafe would encourage the inclusion of high consequence safety risk in matters for review of Clause 52.10. For example: Clarifying what risks it addresses, such as effects of low frequency but high consequence incidents at MHF (i.e. major incidents). These may include but are not limited to explosions, toxic releases, fires (including smoke and heat effects).	
24	-	
25	WorkSafe would agree with this, however it is noted that the EPA separation distances are for amenity risk not high consequence safety risk and therefore the two aims may not be achieved by implementation of the EPA guidelines alone.	
26	-	
27	A clearer articulation around the need for buffers would be useful. Any such articulation would need to clearly explain matters such as the potential for high consequence incidents.	
28	As noted previously, planning approvals have been granted in what could be termed buffer zones, therefore the planning system does not currently facilitate appropriate responses to the provision of buffers.	
29	How could this be achieved in practice and/or enforced?	
30	WorkSafe would encourage the definition of sensitive uses to ensure transparency and clarity for all users.	
31	-	

Discussion Paper Thought Starter	Comment (For questions left blank, WorkSafe is not in a position to comment)	Reason
32	-	
33	-	