



8 February, 2016

Mr. Nick Wimbush
Advisory Committee Chair
Major Hazard Facility Advisory Committee
Planning Panels Victoria
GPO Box 2392
MELBOURNE VIC 3001
Via: Online Form Submission

Dear Nick,

MAJOR HAZARD FACILITY ADVISORY COMMITTEE

The Victorian Planning and Environmental Law Association (VPELA) welcomes the opportunity to make this submission to the Major Hazard Facility Advisory Committee (MHFAC).

VPELA is a unique organisation in that it represents a broad cross-section of expertise in the planning, development and environmental industries. That enables VPELA to provide a comprehensive review of documents such as those before us now.

We understand that the MHFAC has been appointed by the Minister for Planning to *provide advice ... about improvements to land use planning for areas surrounding major hazard facilities (MHFs), in order to better manage the interface areas between existing and new development and land used for MHFs.*

We have reviewed the 'Discussion Paper' (21 December, 2015) and note that the MHFAC may undertake hearings and workshops prior to issuing its final Report and Recommendations to the Minister for Planning. VPELA representatives are able to attend the workshops if the MHFAC considers that it would be beneficial to its purpose.

Our submission follows for your consideration.

1. Economic and Employment Considerations

Major Hazard Facilities are, by their nature, important contributors to the functioning and economic viability and competitiveness of the Victorian economy. MHFs can also generate complementary employment and research and development operations in their vicinity. Similarly, MHFs, like other specialised industrial operations, often have specific locational requirements (including such as access to a port or the airport). In recognition, the planning system in Victoria should accommodate these facilities and make planning allowances for their establishment and ongoing operation in the interests of present and future Victorians.

2. State Planning Policy Framework (SPPF)

The SPPF currently recognises industrial areas at Clause 17.02 The preamble to Clause 17 states as follows:

Planning is to contribute to the economic well-being of communities and the State as a whole by supporting and fostering economic growth and development by providing land, facilitating decisions, and resolving land use conflicts, so that each district may build on its strengths and achieve its economic potential.

Clause 17.02-3, under the heading of 'State Significant Industrial Land', includes a strategy to *protect heavy industrial areas from inappropriate development and maintain adequate buffer distances from sensitive or incompatible uses.*

The SPPF generally only recognises some of the areas of Industrial 2 Zone land as being of State significance, whilst the Ports (which include MHF facilities) are separately recognised at Clause 18.03-2. However, there are many MHFs in Victoria which do not fall within this classification of "State Significant Industrial Land" but deserve equal, or possibly even greater, recognition within the planning system. The designation of significant industrial areas could be reviewed and improved, with a separate provision in Clause 17.02 to add State support for the protection of and appropriate planning around MHFs.

We do not consider it is necessary to include a MHF definition in the Planning Scheme as each facility has a different land use and purpose; instead, the SPPF could recognise how they are categorised by Worksafe.

3. Involvement in Planning Process

Having provided recognition to the MHFs through the SPPF, it becomes imperative that the processes followed in both strategic and statutory planning support this recognition.

The statutory planning process is discussed further below.

In relation to strategic planning, there would be merit in advancing dedicated planning assessments of each MHF or MFH precinct (where such facilities are co-located) and its surrounds (inner and outer advisory areas) to determine the existing planning context (land use, buildings and works, risk / safety, emissions, hazards etc.). From there, the appropriate strategic planning decisions could be made, including the need for further protection in upset events, restrictions on nearby land use intensity or built form to manage risk and amenity impacts, a revision to inner and outer advisory area boundaries and the like. Such studies could also be used as a reference document in the event of a broad strategic planning review by a Council, such as the implementation of reformed residential zones. The Safety Case which exists for each MHF will be an important starting point for each planning assessment.

Whilst we recognise that this work would impose resource and cost expenditures on the MHF operators, local Councils and the State Government, we see the earliest and most detailed planning work will generate far longer-term benefits to the MHFs through the resulting planning outcomes. For example; a lower risk that MHFs would need to contest VCAT and Panel Hearings against inappropriate development; and more certainty for those seeking to develop in and around the MHF precincts.

In order to avoid a concern by MHF operators about a requirement that its full Safety Case be provided in a planning context, an "Essential Item" Safety Case could be prepared for planning purposes – not dissimilar to the way in which a lesser level of detail is required for planning application drawing, when compared with building permit plans.

4. Advancements in Technology, Management and Operations

Insofar as planning is to support, regulate and manage the MHFs and their interface with other land, the planning process must also be flexible enough to integrate advances in technology, management and operations. In particular, a review of the planning for MHFs should include, as an adjunct, a review of the Clause 52.10 provisions which have not been comprehensively reviewed for some time and have been regarded as a somewhat ineffective tool by some.

5. Statutory Planning Tools

The statutory planning process does not currently recognise "reverse buffers"; a new land use or development in proximity to a MHF (or any industrial use) is not generally required to take account of the potential amenity, risk and safety impacts, other than through policy statements (although we are aware of some instances where this does occur – eg. Hobsons Bay SUZ precinct). In response, as occurs with the Airport Environs Overlay, the outcome of specific and detailed studies of each MHF as suggested above could assist to generate a new "Major Hazard Facility Overlay" or similar.

An Overlay would also assist to overcome a scenario where a land use is as-of-right in a zone and buildings and works are exempt from third party notice, decision and review rights (as often occurs in commercial and industrial zones), whereby a MHF operator may not be statutorily able to participate in the planning permit application process. An Overlay would also have the benefit of appearing on a Planning Certificate as part of a Section 32 Statement when land is sold.

We consider it is important that any such Overlay is not introduced as a one-size-fits-all approach, but is specific to each MHF. The content of the Overlay should not seek to burden land owners and developers unnecessarily and each Overlay should be rigorously tested to ensure its outcomes are appropriate and fair in the context of balancing other competing planning objectives. Further, in considering whether an MHF Overlay is the right solution, the process that flows from the application of the Overlay must also be considered. For example, if no substantive information can, or will, be provided by the MHF Operator to a nearby permit applicant, the permit applicant will face considerable difficulty in preparing a proposal which can be properly assessed in the context of the nearby MHF.

6. Referrals and Public Notice

In our view, a MHF Overlay should not automatically generate standard public notice or referral requirements, but instead provide a land owner / occupier with an opportunity to meet a series of agreed standards, and “design out” the issue, if appropriate to do so. For example, meet particular noise criteria. In some cases, this will not be possible, and the MHF Overlay would need to control land use and built form more stringently.

Where non-compliance occurs, or if the potential safety or amenity impact so requires, an application could be triggered under the Overlay and either notice to the MHF, or notice and / or referral to Worksafe and / or EPA can be implemented by way of Clause 66 of the Planning Scheme. Each MHF would have specific requirements in this respect. We do not support a referral right being conferred on a MHF and suggest that this be confined to notice only.

It should not be the intention of planning to burden land owners, responsible authorities, and VCAT with applications, objections and appeals resulting from a new Overlay provision. The purpose of this review is to *improve* land use planning in and around MHF areas. This is why detailed and specific planning studies of each MHF should be undertaken in advance of any Overlay being applied, and an Overlay should only be applied where it is needed for a demonstrable planning outcome with net community benefit.

We take this opportunity to thank-you for the invitation to make a submission in this matter. If you have any questions in relation to this submission, please contact Jane Power, Executive Officer, at the VPELA office on 98132801

Yours sincerely,



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