12 November 2015

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

Dear Mr Wimbush,

INITIAL COMMENTS ON TERMS OF REFERENCE

Thank you for your correspondence of 28 October 2015 inviting initial comments on the matters raised in the Terms of Reference, to assist with the preparation of the Discussion Paper.

The formation of this Advisory Committee is welcomed by WorkSafe Victoria. It is recognised that this has been an area of increasing contention over recent years.

Please find attached our initial comments on the terms of reference and also some issues that you might wish to consider for inclusion in the discussion paper. The issues are derived from recent WorkSafe Victoria experience and include policy, legislation and technical areas. Should the Advisory Committee wish to clarify these points or seek further technical input prior to the finalisation of the Discussion Paper, representatives from our Major Hazards Program are available and can meet with you if required. Please contact Ms Jodie Georgiou, Manager Major Hazards, on either (03) 9641 1141 or jodie_georgiou@worksafe.vic.gov.au., should the Committee require any further assistance.

WorkSafe Victoria operates a specific stakeholder reference group for Major Hazards, the "Major Hazards Advisory Committee" (MHAC). MHAC includes representatives from industry, unions, emergency services and the community. Several MHAC participants have a keen interest in land use planning around MHFs and would welcome the opportunity to hear more about your Advisory Committee. Thank you for making yourself available to attend the next MHAC meeting, scheduled for 2-5 p.m., Monday 23 November at 222 Exhibition St., Melbourne

WorkSafe Victoria looks forward to providing a more detailed submission to the Advisory Committee in early 2016.

Yours sincerely,

Marnie Williams
Executive Director Health and Safety
WorkSafe Victoria
WorkSafe Victoria - Initial Comments for Discussion Paper

Introduction
This submission includes background information, comments on the Terms of Reference and a list of fifteen suggested discussion points for consideration by the Advisory Committee. The suggested discussion points represent a distillation of the issues that WorkSafe Victoria ['WorkSafe'] has identified over the last few years.

Background
Major Hazard Facilities ['MHFs'] are facilities where large quantities of Dangerous Goods ['DG'] may be present, e.g. explosives, flammable gases and toxic substances. In all cases they are either an essential part of Victoria’s infrastructure or an essential source of the raw materials used by industry. Because of the large quantities of DGs on site, a major incident at an MHF, such as a fire or explosion, would have the potential to inflict damage and cause fatalities in the surrounding area. Many MHFs have been in their present locations for a number of years. Some have existing neighbours, even residential areas, within the area that may be affected by a major incident at the facility. It is WorkSafe’s view that the public health and safety hazard posed by an MHF should not be increased by any further developments near such facilities. However, many areas around existing MHFs are seen as desirable for urban redevelopment and renewal.

Comments – Terms of Reference
The Terms of Reference at section 5.a. makes mention of “Victoria’s 40 registered MHFs”. A registered MHF has a particular meaning in Occupational Health and Safety ['OHS'] legislation, i.e. an MHF that may be operating but is either preparing a safety case (and related materials) for its initial licence application, or is having this licence application assessed. There are currently 2 MHFs of this type in Victoria. All other MHFs are licensed.

The Terms of Reference at section 11.b. has listed “Land Use Advisory notes issued by WorkSafe”. It is presumed that this is intended to be a reference to the WorkSafe Information Sheet “Land use planning near a major hazard facility” and the 4 annexures that have been prepared. It is recognised that this information will need to be reviewed in light of any findings of the Advisory Committee.

Suggestions - Discussion Points
1. Does Land Use planning around MHFs need further legislative framework?
   Currently the advice from WorkSafe on development proposals near an MHF is ‘Non-statutory’, i.e. has no legal standing. We note there have been inconsistencies across the various responsible authorities in seeking and applying such advice.

2. Which authorities/agencies are the most appropriate to provide advice and make decisions on land use planning around MHFs?
   WorkSafe is the OHS and DG Regulator for Victorian workplaces and so has an understanding of the hazards to public health and safety posed by MHFs within its jurisdiction. However, the OHS/DG legislation does not have any specific provisions around land use planning and WorkSafe does not have expertise in this area.
   In at least one Australian jurisdiction, the Authority that provides this advice operates outside the OHS/DG legislative framework.
   Do local Councils have the skills and knowledge to make informed decisions?

3. How should any on-going land use planning policy issues be addressed?
   Broad policy issues, such as changing criteria, need to be identified and addressed with assistance from an appropriate consultative forum.
4. Which MHFs need to be included in any planning regime?
Currently in Victoria there are:
- 37 MHFs licensed by WorkSafe
- 2 MHFs registered with WorkSafe
- 4 MHFs licensed by Comcare. These are clearly under Commonwealth OHS legislation, but it is less clear how planning legislation is applicable to the two companies operating these MHFs.
Also, there are sites that do not meet the criteria to be an MHF under OHS legislation but still pose a significant hazard to public health and safety. Consideration should be given to the inclusion of these significant DG sites in any planning regime.

5. Which developments affected by adverse amenity should be included in the need for advice?
Sensitive land uses, residences, developments that increase population density (both intermittently and permanently) and key infrastructure sites are possible considerations. Any development categories included need to be clearly defined.

6. What is the intent of any land use buffers?
Are the buffers for public health and safety or all aspects of adverse amenity? If the latter, there will be aspects for MHFs that are beyond WorkSafe's jurisdiction and expertise.

7. What criteria should be used to determine the extent of any land use buffers?
Considerations should include consequence versus risk criteria and what consequences/risks are tolerable.
Once the criteria are set, technical matters associated with the determination of land use buffers would need to be specified.

8. What level of review and oversight should be in place for the development of the advice that is used to establish land use buffers?
What is an appropriate quality assurance system, e.g. independent technical review?

9. How will any new MHFs be considered?
There may well be insufficient technical data available at the planning permit stage to exactly determine an appropriate land use buffer.

10. What mechanism should be put in place for the review and update of any determined land use buffers?
Currently the safety case for an MHF has to be reviewed at least every 5 years, or sooner in the case of a major incident or changed operations.

11. What information on land use buffers will be publically available?
For example, are the inner and outer areas currently used by WorkSafe appropriate?

12. What consideration should be given to existing properties inside any proposed land use buffers?
Owners of impacted properties are likely to feel aggrieved.

13. What education and information on the meaning and implications of advice on development is required by the various stakeholders?
Not all Councils are aware of the hazards to public health and safety posed by developments close to MHFs or the advice available regarding such hazards.

14. What level of coordination between the various agencies is appropriate?
Examples include where land use buffers cross local Council boundaries.

15. Are there any lessons to be learnt by the approach to this issue in the past or in other jurisdictions?