



29<sup>th</sup> January 2016

Major Hazards Advisory Committee  
c/- Planning Panels Victoria  
Level 5, 1 Spring Street  
Melbourne, VIC, 3000

## Re: Advisory Committee's 21 December 2015 Discussion Paper on Major Hazard Facilities

Qenos welcomes the opportunity to provide comment on the Advisory Committee's 21 December 2015 Discussion Paper on Major Hazard Facilities. Qenos operates Major Hazard Facilities in both Victoria (Altona) and in NSW (Botany and Port Botany). Qenos has structured its comments with General Comments first followed by responses to the Discussion Paper's Key Issues *Thought Starters*.

### General Comments

The aim of Government legislation & planning policy should be to manage the safety and environmental risk to people, property and the environment. Qenos recommends that clear limits be defined when development should not occur around Major Hazard Facilities (MHFs). This includes a 'reverse buffer' zone principle to protect MHFs from encroachment or intensification by inappropriate surrounding land use.

As identified by the Discussion Paper, the issues raised concerning MHFs are relevant for other potentially hazardous or offensive developments e.g. pipelines. For this reason the NSW Land Use Planning term *potentially hazardous or offensive development*<sup>1</sup> is recommended in this Planning Policy context.

Qenos supports the concept of 'agent of change' approach. The Discussion Paper identified a number of issues with this approach. To mitigate against the issue of "designing out" risk, when a development should in fact be denied, can only be achieved through effective planning policy. Planning Policy must clearly define appropriate land use relative to distance around a potentially hazardous or offensive development. Such an approach is supported by the hierarchy of controls which defines separation distance as a higher order control to engineering controls. To mitigate against poorly located or poorly performing industry is addressed by defining the methodology of assessing the potential risk around a facility along with defining the acceptable risk criteria *at the boundary of the facility*. If the facility does not meet the *boundary risk criteria* then either its location or performance is inadequate, and this needs to be addressed with the operator of that facility before development consent is granted and once granted through ongoing consent or licence conditions<sup>2</sup>. The Inner and Outer Planning Advisory Areas are defined by *different* risk criteria, such as those given on p.32 of the

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<sup>1</sup> Term used in NSW State Environment and Planning Policy 33 (a.k.a. SEPP33)

<sup>2</sup> Where a development is an MHF, planning development consents should recognise this and defer to the ongoing management of the facility under the MHF Licence or EPA Licence regulatory regimes. This will avoid duplication of regulatory oversight.



Discussion Paper. Given that the boundary risk criteria must be satisfied by the operator first, then it follows that the Inner and Outer Planning Advisory Areas will be appropriate for all parties and need to be enforced by Planning Policy.

The current planning policy framework is inadequate. This is clearly evident from local councils having to undertake costly legal action to protect the public and industry from inappropriate development around MHFs and other potentially hazardous or offensive facilities (ref: Discussion Paper Chapter 4 examples). A Planning Scheme is needed that is administered and enforced by the Minister administering the Planning and Environment Act 1987. This would provide guidance and safeguards for appropriate land use relating to *new* potentially hazardous or offensive developments as well as developments around *existing* potentially hazardous or offensive facilities. Such arrangements need to operate at the highest level of the planning policy framework, providing clarity and coherence, which would cascade down to local planning policy.

The risk relating to potentially hazardous or offensive developments is a complex matter which is best administered at a State regulatory level. The current model of requiring each local council to have personnel with the required high level skills to understand and assess the risk associated with these types of developments with consistency across the State is fundamentally flawed and inefficient. Two approaches can be taken to address this. One option, as operating in the NSW jurisdiction, is that the State Planning Department provides these high level risk assessment skills and has the planning authority to approve or deny development applications. A potential disadvantage of this approach is that the Planning Authority may then impose planning consent conditions which are *in addition to* legislative requirements already governing Major Hazard Facilities. This can potentially result in unnecessary duplication of regulatory oversight. The alternative option, as operating in the UK and Ireland, is that the authority responsible for Major Hazard Facilities (COMAH sites in the UK/Ireland context) is legislated to be consulted with by the Local Planning Authority<sup>3</sup>. The COMAH regulator then advises whether or not the development application should proceed or not<sup>4</sup>. The current situation in Victoria where the assessment of risk associated with potentially hazardous or offensive developments lies with the local municipal council as well as the MHF Regulator having no statutory enforced involvement in the planning approval process is clearly inadequate.

Finally, the comments provided in this submission emphasise the safety aspect of land use planning considerations around potentially offensive or hazardous facilities. The safety principles being applied in these comments equally apply to the environmental and amenity aspects such as noise and odour.

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<sup>3</sup> COMAH stands for Control of Major Accident Hazards

<sup>4</sup> UK HSE website states: **“Under current legislation decision-makers are required to consult HSE on certain planning proposals around major hazard establishments and major hazard pipelines and to take into account HSE’s representations when determining associated applications. [...]HSE’s role in land use planning is an advisory one because safety implications, however important, cannot be divorced from other relevant planning matters. When HSE advises a local planning authority that a planning application should be refused on safety grounds, the planning authority is guided not to override HSE’s advice on safety without the most careful consideration.”** Emphasis added. Source: <http://www.hse.gov.uk/landuseplanning/why.htm>



## Comments relating to Discussion Paper's Key Issues *Thought Starters*

### 1. Does the planning system effectively address existing or greenfield MHF or other hazardous industry that poses a risk to the safety of surrounding areas?

Qenos generally agrees with the shortfalls in Land Use Planning in relation to MHFs identified by the Discussion Paper. The current Land Use Planning instruments are inadequate and too reliant upon local municipal councils (as evidenced by Chapter 4 examples of local councils having to legally defend against inappropriate development near MHFs). Understanding the potential hazards and risks associated with major hazards facilities can be complex and are best assessed at an appropriately resourced State Planning Department level.

### 2. How should planning address areas surrounding existing or proposed MHF or other hazardous industry that poses a risk to the safety of surrounding areas?

Regulators must publish clearly defined land use planning risk assessment methodology and published risk criteria for each land use type. An example of this for reference is the NSW State Planning Department's Hazardous Industry Planning Advisory Papers (HIPAPs)<sup>5</sup>; also the Health and Safety Authority (Ireland) "Policy and Approach of the Health and Safety Authority to COMAH Risk Based Land Use Planning" (2010)<sup>6</sup>

### 3. Should there be greater consultation when a new MHF is proposed or changes made that would require changes to its safety assessment? Who should be involved in that consultation?

No comment.

### 4. Should a definition for MHF be included in planning schemes, and if so, what might a definition include?

The definition of an MHF is provided for the purposes of the Occupational Health and Safety Regulations therefore caution must be used when applying it to another context such as Land Use Planning. The Discussion Paper correctly identifies that the issues of safe distances around MHFs can equally apply to non-MHF sites handling potentially hazardous or offensive materials. The key issue then is the relationship of the nature of the material and the distance it is to other land uses. This principle is used in Clause 52.10 of the SPPF. A similar, but more detailed approach, is used in NSW State Environment Planning Policy (SEPP) 33 *Potentially Hazardous or Offensive Development*. The definitions and criteria of materials and their distance to other land uses need to be expressed in the context of Land Use Planning. With this in place, the criteria could include, but not be limited to, MHFs. Also refer to the HSA "Policy and Approach of the Health and Safety Authority to COMAH Risk Based Land Use Planning" (2010)

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<sup>5</sup> HIPAP No. 3 Risk Assessment, HIPAP No.4 Risk Criteria for Land Use Planning and HIPAP No. 10 Land Use Safety Planning

<sup>6</sup> UK HSE has similar documents and arrangements to the HSA in Ireland, these include: "HSE'S LAND USE PLANNING METHODOLOGY" <http://www.hse.gov.uk/landuseplanning/methodology.pdf> and "A Review of HSE's Risk Analysis and Protection – Based Analysis Approaches for Land-Use Planning" <http://www.hse.gov.uk/landuseplanning/hseriskanalysis.pdf>



**5. Should MHF emergency plans also [be] required to consider the affect a major incident would have on property within the land use planning areas and provide this in information given to the local community?**

MHF emergency response planning taking into account potential offsite impacts, is a requirement of the current MHF regulations, and needs to be performed in consultation with emergency services and local authorities.

**6. Should the WorkSafe methodology for Inner and Outer Planning Advisory Areas continue to be the basis for identifying risk areas around MHF and be used for the land use planning system?**

A system that extends beyond the MHF operators perimeter fence line to clearly identify the need for appropriate land use between the MHF perimeter and other more sensitive land uses is essential. The *concept* of having Inner and Outer Planning Advisory Areas serves this need well. The issue then becomes what is the basis for establishing sound risk based limits and the establishment of robust 'reverse buffer' provisions. The need for a consistent QRA methodology and risk criteria is needed. The lack of 'reverse buffer' provisions in Clause 52.10 of the SPPF is a key vulnerability and short sightedness of this State Policy.

**7. Should risk areas around MHF, through Inner and Outer Planning Advisory Areas, be identified in planning schemes?**

Yes, risk areas around an MHF need to be identified; this is a key weakness in the current planning processes identified by the Discussion Paper. The most robust method needs to be identified; inner and outer zones could be an outcome.

**8. Are there other more appropriate mechanisms other than the planning system that could be used to identify risk areas around a MHF that would alert landowners, tenants, permit applicants, facility operators and prospective purchasers and others about a MHF and the risk potential?**

Qenos is not aware of any other mechanism that would be both effective and enforceable.

**9. Should modelled risk areas around MHF be translated into planning schemes, and if so, how could this best be achieved?**

Modelling risk areas to a defined set of modelling requirements (which needs to be set down by the planning department) is the international benchmark. It is important to recognise that simply because MHFs have a Safety Case this does not necessarily translate immediately to a Land Use Planning QRA. Safety Cases can use a wide variety of risk assessment methodologies whereas Land Use Planning QRAs are specific in their methodology in order that they are consistent, accurate and comparable.

**10. Is the treatment of MHF in State policy adequate/appropriate?**

Qenos believes that the Discussion Paper review of the issues clearly demonstrates that the treatment of MHF in State planning policy is inadequate.



**11. Should policy more clearly prioritise the protection of human life in areas around MHF similar to that provided under Bushfire policy?**

No further comment.

**12. Could local planning policy play a greater role in managing conflicting land uses and sensitive land use near MHF and provide strategic guidance on how such areas are developed?**

Whilst Local Planning Policy may have the potential to understand the specific planning issues of a region this advantage is offset by a number of significant disadvantages. Planning Policy at a State level is required to manage the potentially competing interests of land users including local municipal councils. Reliance on Local Planning Policy to manage conflicting Land Use has the following disadvantages:

- Inconsistency – as each local area would have to develop Local Planning Policy to manage conflicting land use, opportunities for inconsistencies between state regions will arise
- Difficulty to Enforce – Local Planning Policy is more difficult to enforce cf. State Planning Policy. If State Planning Policy is provided as the lead policy then Local Planning Policy can echo these requirements thus providing two levels at which planning policy can be enforced
- Attitude – the attitude of local council may vary towards industry. The State has the primary responsibility to support industry (ref: SPPF Clause 17) therefore it is incumbent upon State Planning Policies to manage land use conflicts

**13. Should a specific zone be considered and applied to all MHF such as the SUZ or a new zone?**

Yes, a specific zone approach can be considered; however, the most robust planning mechanism needs to be used, which may or may not be zones.

**14. Could or should SUZ or other zone boundaries extend off-site from MHF and Schedules used to allow certain use and development to occur?**

Yes. Encroachment and incremental intensification are significant issues that need to be controlled by clear boundaries through the Land Use Planning process.

**15. Could any new or modified zone include purposes, permit requirements, decision guidelines that identify and manage sensitive uses?**

Yes, a new or modified zone approach can be considered; however, the most robust planning mechanism to identify and manage sensitive uses need to be used, which may or may not be zones.

**16. Should zones prohibit intensification of use or should they maintain a discretionary permit process?**

This is fundamental and central recommendation of the Discussion Paper. Qenos wholly endorses the need to control land use planning around potentially hazardous and offensive development.



**17. Could or should an existing or new overlay be used to identify risk and manage development on land surrounding a MHF?**

Yes, an existing or new overlay approach can be considered however, the most robust planning mechanism to identify risk and manage development on land surrounding a MHF needs to be used, which may or may not be overlays.

**18. Should both use and development of land around a MHF be managed in an overlay?**

Given the precedents sighted where overlays have been used to govern both, development and use, then this option can be explored by regulatory authorities.

**19. Could an overlay identify inner and outer hazards areas or be applied to identified areas (whether default or modelled)?**

Yes. If Land Use Planning QRA methodology risk contours are not available to generate inner and outer hazard areas then default distances could be used which are subject to review pending more rigorous QRA analysis at a later date or as required.

**20. Is notification of the risk status of land in proximity to a MHF important and how might it be achieved?**

Public amenity, safety and property values can be significantly affected by the risk status of land in proximity of an MHF. The earlier and more transparent this information is during the land use planning process the better. Finding out late in the process leads to poor relations by developers and residents towards industry and potentially is the cause of litigation proceedings.

**21. Would it be appropriate or beneficial to include key agencies such as the EPA and WorkSafe as referral authorities for permit applications lodged with identified risk areas around MHF?**

Yes, they are significant stakeholders. The UK and Ireland models have the UK HSE and HSA as legislated advisory authorities, this approach is an option. It is important however that the referral authority's advice carries statutory weight and simply does not become another battle ground of expert opinions.

**22. Would the use of a zone or overlay provide the mechanism for engaging the EPA and/or WorkSafe as a referral authority for areas of risk around Major Hazard Facilities?**

The most robust planning mechanism to identify consultation requirements needs to be used.

**23. Should Clause 52.10 be reviewed to provide more than just an advisory role in determining the need for permits for industrial and warehousing uses?**

Yes. From the Discussion Paper Chapter 2 assessment it would appear that Clause 52.10 *USES WITH ADVERSE AMENITY POTENTIAL* of the SPPF is currently the most appropriate Clause to target the key issues being



discussed. However, Clause 52.10 needs to be more definitive. See other comments regarding Planning Policy framework and the need for reverse buffer.

**24. If so, what should such a review seek?**

See above.

**25. Should the EPA IRAE Guidelines be better articulated in the VPP to accord greater weight to separation distances for industry or sensitive use expansion?**

Yes. See General Comments regarding Planning Policy framework and the need for a State level Planning Scheme.

**26. Are the separation distances/buffer distances in Clause 52.10 and the IRAE Guidelines clearly justified and appropriate?**

No. The technical basis for these distances is not given. A more robust definition on how these were arrived at is required. In addition, the table in Clause 52.10 is not discerning and potentially out of date based on international benchmark data. The means for assessing the specific aspects of a facility are needed. Consider NSW SEPP 33 philosophy of approach (provides Tables and graphs that relate hazardous material quantities to distance). It is imperative that these distances function in both directions, that is the 'reverse buffer' principle needs to be applied.

**27. Might a clearer articulation in the planning system of principles around the need for buffers be useful?**

Yes. Refer to comments above.

**28. Does the planning system currently allow and/or facilitate appropriate responses to the provision of buffers whilst ensuring the most efficient land use and land value capture outcomes around MHF and industry?**

Refer to General Comments and responses to other *Thought Starters*.

**29. Could the 'agent of change' principle be introduced to planning schemes for industry to ensure that the onus on ensuring appropriate buffers rests with the encroaching sensitive use.**

Yes. This is an important weakness of the current planning process identified by the Discussion Paper. Clear and specific guidance is required for the 'agent of change' that promotes an understanding that an application will not be successful in specific circumstances. Refer to General Comments above.

**30. Should sensitive uses be formally defined in the planning scheme?**

Yes. This would improve land use planning outcomes. Different Risk Criteria can be defined for different land use sensitivities as is the case in NSW Hazardous Industry Planning Advisory Paper No.4 *Risk Criteria for Land Use Safety Planning*. This in turn would impact potential Inner and Outer Planning Advisory Areas which need to be enforced.



**31. Would a Planning Practice Note(s) for interface planning between industry and sensitive uses be useful?**

Yes, the need exists for something like a Planning Practice Note for interface planning between industry and sensitive uses, however, the most robust planning tool needs to be used, which may or may not be Planning Practice Notes. Refer to General Comments on the need for a Planning Scheme.

**32. Given there is already a legislative framework for pipeline protection, does the planning system need to include additional provisions?**

The existing legislative framework is focussed on the requirements the operator of the pipeline must satisfy. They do not restrict or control other land uses surrounding the pipeline therefore the planning system does need to provide additional provisions to protect against inappropriate land use, encroachment and intensification around pipelines carrying potentially hazardous or offensive materials.

**33. Could a risk based spatial overlay developed for MHF and industry with a specific schedule for pipelines be a potential tool for use in identifying major pipelines in planning schemes?**

Yes. If this provides a robust planning mechanism to identify where these facilities are consultation requirements need to be used.

Please contact me, as per details below, if you require any clarification or further information on these comments.

Sincerely,

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