

VicTrack

Our Ref: CSM 26639

Mr Nick Wimbush, Mr Chris Harty and Ms Catherine Wilson
Major Hazard Facilities Advisory Committee
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Dear Mr Wimbush, Mr Harty and Ms Wilson

MAJOR HAZARD FACILITIES ADVISORY COMMITTEE SUBMISSION

As you may be aware VicTrack is the owner of the majority of Victoria's railway land and infrastructure. Pursuant to the *Transport Integration Act 2010 (Vic)*, VicTrack's functions include managing and supporting access to transport-related land, infrastructure and assets, and providing or enabling access to the non-operational transport related land, infrastructure and assets where this supports the transport system.

State significant major hazard facilities are often located either adjacent to or within VicTrack assets and infrastructure. Usually where such facilities such as pipelines are located, is not spatially identified by the relevant planning scheme and as such it can be difficult to ascertain how use and development at or in close proximity to major hazard facilities should be assessed and the criteria that should be applied.

The State Planning Policy Framework contains three distinct references to hazardous facilities or activities. These are clause 13.02-1 Floodplain management; clause 17.02-2 Design of industrial development; and clause 18.03-2 Planning for port environs.

Clause 13.02-1 Floodplain management requires developments and uses which involve the storage or disposal of environmentally hazardous industrial and agricultural chemicals or wastes and other dangerous goods (including intensive animal industries and sewage treatment plants) must not be located on floodplains unless site design and management is such that potential contact between such substances and floodwaters is prevented, without affecting the flood carrying and flood storage functions of the floodplain.

This clause is focused on the proposed hazardous activity and expresses a logical planning design and siting principle. It does not however address existing situations where major hazard facilities are already located on floodplains, and the varying scenarios that can arise. For example, where a facility is existing and enjoys existing use rights, how is its future intensification and development to be assessed in the context of an environmentally significant floodplain/wetland where risk minimization works may be on environmental grounds not supported?

Clause 17.02-2 Design of industrial development has as its objective "To facilitate the sustainable development and operation of industry and research and development activity."

A relevant strategy is:

“Provide adequate separation and buffer areas between sensitive uses and offensive or dangerous industries and quarries to ensure that residents are not affected by adverse environmental effects, nuisance or exposure to hazards.”

Again, as expressed the strategy focusses on protecting the amenity and health of residents, but is silent on the impact of residential or other sensitive uses encroaching upon the separation and buffer areas of the offensive or hazardous industry and the increased cost of compliance and risk to operation.

As industry declines in Victoria and undergoes structural changes, redundant industrial land is being reallocated to serving other purposes including residential and other sensitive uses. Such changes are undertaken without proper regard for retaining previously existing separation and buffer distances which are not prescribed but had occurred naturally when the offensive or hazardous facility established itself in an unpopulated or distant location.

In inner urban areas, former industrial sites are audited by environmental audit when a new sensitive use or development is proposed on the site. However no assessment is required of adjoining or neighbouring uses and development which may also be a hazard, whether or not it is currently operating. Pollution does not recognize arbitrary title boundaries, nor do hazards.

Under Policy Guidelines for clause 17.022, planning must consider as relevant:

- *Recommended Buffer Distances for Industrial Residual Air Emissions* (Environmental Protection Authority, 1990).
- Any comments from the Victorian WorkCover Authority on requirements for industrial land use or development under the *Dangerous Goods Act 1985* and associated legislation and the *Occupational Health and Safety (Major Hazard Facilities) Regulations 2000*.

Therefore these should be equally applied to sensitive uses and development that are treading into the buffer space of these established industries.

Clause 18.03-2 Planning for port environs has as its objective:

To plan for and manage land in the environs of commercial trading ports so that development and use are compatible with port operations and provide reasonable amenity expectations.

A relevant strategy is to:

Ensure that the use and intensity of development does not expose people to unacceptable health or safety risks and consequences associated with an existing Major Hazard Facility.

While this clause objective appears to recognize the issue of compatibility of sensitive uses with port operations, the subsequent strategy is loosely defined and does not relate to any subsequent implementation actions. It relies on ad hoc implementation.

Clause 19.03-6 Pipeline infrastructure has as its objective:

To plan for the development of pipeline infrastructure subject to the Pipelines Act 2005 to ensure that gas, oil and other substances are safely delivered to

users and to and from port terminals at minimal risk to people, other critical infrastructure and the environment.

Strategies are to:

- Recognise existing transmission-pressure gas pipelines in planning schemes and protect from further encroachment by residential development or other sensitive land uses, unless suitable additional protection of pipelines is provided.
- Plan new pipelines along routes with adequate buffers to residences, zoned residential land and other sensitive land uses and with minimal impacts on waterways, wetlands, flora and fauna, erosion prone areas and other environmentally sensitive sites.
- Provide for environmental management during construction and on-going operation of pipeline easements.

Although there is a tacit acknowledgement in state policy to recognize pipelines in planning schemes, the example of DDO8 in the Mornington Peninsula Planning Scheme is an indication that there has not been any follow through on this strategy.

In the Mixed Use Zone and Industrial 3 Zone, Commercial 1 & 2 Zones, and Port Zone, a planning permit application to use land for industry and warehouse must be accompanied by the following information (unless the circumstances do not require it):

- The purpose of the use and the types of activities to be carried out.
- The type and quantity of materials and goods to be stored, processed or produced.
- Whether a Works Approval or Waste Discharge Licence is required from the Environment Protection Authority.
- Whether a notification under the *Occupational Health and Safety (Major Hazard Facilities) Regulations 2000* is required, a licence under the *Dangerous Goods Act 1985* is required, or a fire protection quantity under the *Dangerous Goods (Storage and Handling) Regulations 2000* is exceeded.
- How land not required for immediate use is to be maintained.
- The likely effects, if any, on the neighbourhood, including noise levels, traffic, air-borne emissions, emissions to land and water, light spill, glare, solar access and hours of operation (including the hours of delivery and dispatch of materials and goods).

The planning system places the burden of buffers on the hazardous facility, but once the hazardous facility is established, sensitive use and development are often at liberty to encroach within the buffer.

In the local planning controls, an example is the Design and Development Overlay – Schedule 8 (DDO8) Pipeline Policy Area contained in the Mornington Peninsula Planning Scheme.

The design objective of DDO8 is:

“To ensure that all buildings and works and in particular buildings designed to accommodate people are sufficiently separated from oil and gas pipelines to avoid a safety hazard.”

DDO8 then exempts from a permit the construction of a dwelling or a building designed to accommodate 20 or more people provided the structure is more than:

- 3 metres from a type A pipeline alignment.

- 3 metres from a type B pipeline alignment.
- 200 metres from a type C pipeline alignment.

No permit is required to construct any other building or to construct or carry out other works more than 3 metres from any pipeline.

The decision guidelines require the responsible authority to consider the comments of the authority responsible for the administration of the *Pipelines Act* 1967.¹

Unfortunately DDO8 does not appear on any of the planning scheme maps and therefore has no application.

The use of an Environmental Significance Overlay to identify a buffer area is another planning tool which has been used in the Greater Dandenong Planning Scheme around the Eastern Treatment Plant at Bangholme. ESO3 Eastern Treatment Plant Buffer Area recognizes that the inappropriate establishment or siting of odour-sensitive uses could impact on the operation of the Treatment Plant.

The environmental objectives to be achieved by ESO3 are:

- To ensure that the use and development of land around the Eastern Treatment Plant is compatible with the Plant's operation.
- To regulate the establishment and siting of odour-sensitive uses so that the impact of any odour from the Eastern Treatment Plant is minimised.
- To exclude uses that require the presence of a large number of people over an extended period of time.

The shortcoming in the ESO is that it applies to development as a permit trigger. However the decision guidelines require the responsible authority to consider:

- The proximity of the site to the Treatment Plant.
- The sensitivity of the proposed use to odour that may be generated from the Treatment Plant.
- The availability of ameliorative measures on the site to reduce the impact of odour.
- The number of people likely to use the proposed facility.
- The availability of similar facilities outside the overlay area.
- The potential for the proposed facility to expand and attract additional people.
- The degree of choice a person has to remain on the site.
- The length and frequency of stay of any person on the site.

The Hobsons Bay Planning Scheme has as a strategy under clause 21.08 Economic Development to:

- Protect Core and Secondary Industrial Areas from the impacts of encroachment of residential and other sensitive land uses.
- Manage the successful transition of identified Strategic Redevelopment Areas through the development of Outline Development Plans, (i.e. a master plan), Development Plan Overlays and Design and Development Overlays, as appropriate.
- Ensure that the growth in freight related industries does not diminish the residential amenity of non-industrial areas by way of traffic, noise, odour, dust, safety and visual impacts.

¹ The *Pipelines Act* 1967 was repealed on 1 April 2007 by section 213 of the *Pipelines Act* 2005, No. 61/2005.

However there are examples in the municipality where previously industrial land has transitioned to proposed residential use and development, and the necessary precautionary buffer areas are not maintained.

Reading through clause 21.08, its focus is on industry improving its amenity and appearance for residents. It even seeks to “encourage the relocation of industries that have amenity conflicts with existing residential areas (including industries in residential zones).”

The planning system provides little if any guidance or proper planning for the land use needs of the major hazard facility infrastructure. What is contained in planning schemes is very much focused on minimizing amenity impacts from potential major hazard facilities. Yet existing facilities which are of state or national importance are not properly recognized and planning schemes do not provide the proper recognition of this infrastructure.

VicTrack land is used for the location of major hazard infrastructure including pipelines and other assets. It often receives notice of planning applications under s52 of the *Planning and Environment Act 1987* as an adjoining property owner. Most planners assessing an application would not be aware that there could be other infrastructure such as pipelines within VicTrack land.

When VicTrack receives notice of an application, and there is an asset such as a pipeline, VicTrack will notify the asset owner of the pipeline. Under the *Planning and Environment Act 1987*, the pipeline owner is also entitled to notice of the application as an occupier of the land, and the Responsible Authority should not indirectly delegate this obligation to the land owner.

What would be a reasonable distance from a pipeline for any buildings or works? An indication is provided by the *Pipelines Act 2005* which under s118 provides that:

- (1) A person is guilty of an offence if the person carries out any excavation or bores or opens any ground within 3 metres of a pipeline without either obtaining the authority of the licensee or giving notice to the licensee in accordance with the regulations.

Section 120 of the *Pipelines Act 2005* provides that:

- (1) A person must not construct a building so that any part of it is situated less than 3 metres from a point on the surface of the land whose position is vertically above a part of a pipeline below the surface unless the Minister has first consented to that construction.

It goes on to give the Minister power to order the demolition of any building which may contravene this requirement.

But from a land use planning perspective 3 metres is a trifle and does not properly recognize the need for access for maintenance, the potential zone of impact if there is an incident or accident and other occupational, operational and environmental requirements.

In Australia, standard AS 2885 has been developed as the overarching standard that applies to the pipeline industry. AS 2885 Part 1 sets out:

4.2 ROUTE

4.2.1 General

The route of a pipeline shall be selected having regard to public safety, pipeline integrity, environmental impact, and the consequences of escape of fluid.

A new pipeline shall be designed in accordance with the requirements of this Standard—

- a) for the land use existing at the time of design; and*
- b) for the future land use that can be reasonably determined by research of public records and consultation with land planning agencies in the jurisdiction through which the pipeline is proposed.*

The land use for which the pipeline is designed shall be documented and approved.

For an existing pipeline, changes in land use from those for which the pipeline was designed introduce an obligation for a safety management study of the pipeline and where required, the implementation of design and/or operational changes to comply with the safety obligations of the Standard.

4.2.2 Investigation

A detailed investigation of the route and the environment in which the pipeline is constructed shall be made. The appropriate authorities shall be contacted to obtain details of any known or expected development or encroachment along the route, the location of underground obstructions, pipelines, services and structures and all other pertinent data.

This guideline is specifically targeted at ensuring the pipeline design shall be informed by the best available information pertaining to:

- land use existing at the time of design;
- future land use that can be reasonably determined by research and consultation; and
- known, proposed or expected development or encroachment along the route.

Thus while the guideline attempts to look forward and address any potential risks it may pose to future land uses, it cannot address the fundamental issue of incompatibility with future sensitive land uses.

The guideline looks at the classification of the locations the pipeline passes through, with the classifications or classes reflecting threats to pipeline integrity, and risks to people, property and the environment. The primary location class reflects the population density.

It is worth noting that location class analysis of an existing pipeline must take full account of current land use and authorized developments along the pipeline route, but need not take into full account land use which is planned but not implemented.

There should not be any barrier to the identification of pipeline routes on planning scheme maps, as AS2885 requires identification of the pipeline route and its location.

In Queensland, the Ipswich Planning Scheme is an example of planning controls that map the presence of pipelines and buffer areas. See example of Part 11—Overlays, Div 4—Development Constraints Overlays of the Ipswich Planning Scheme.

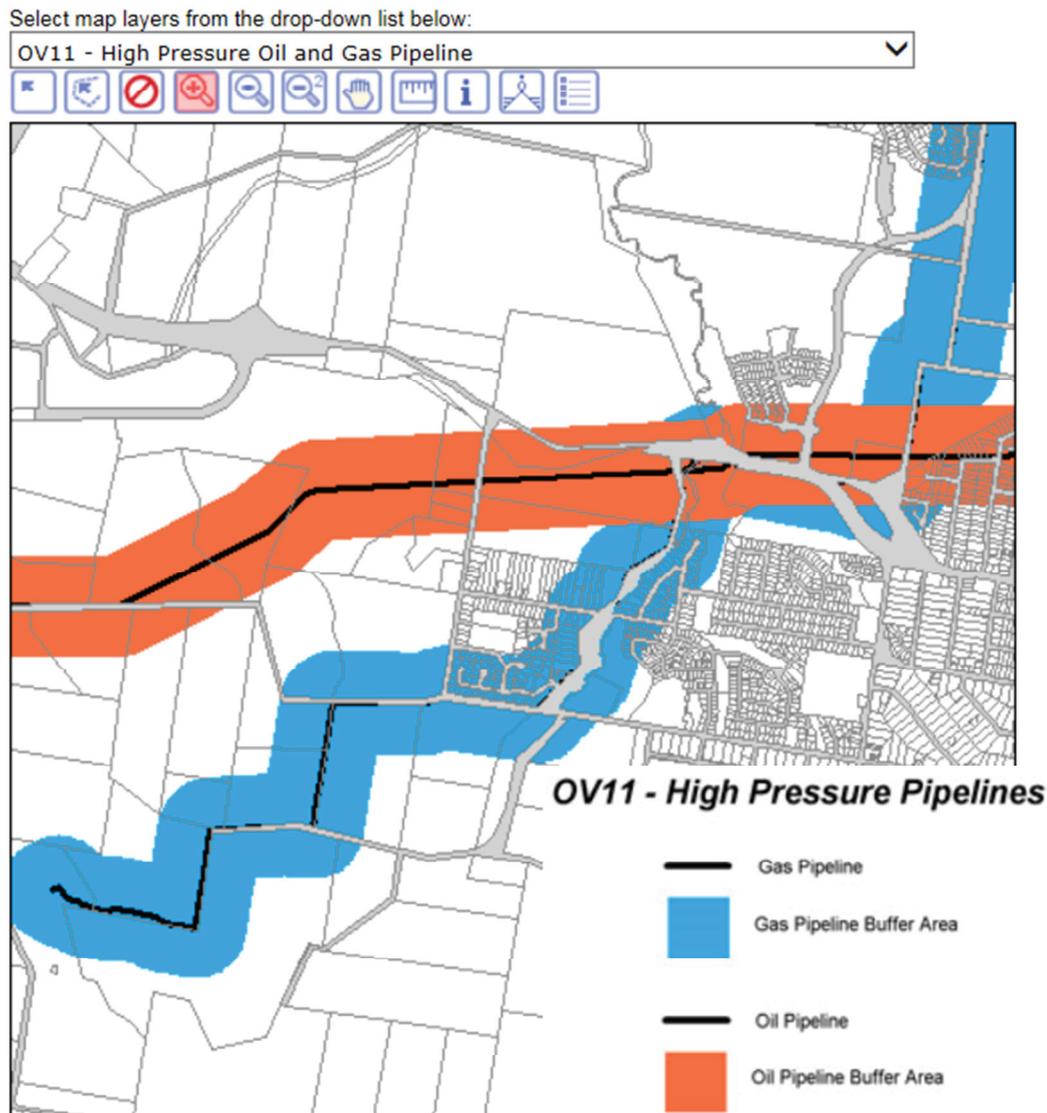


Figure 1 - Overlays in Ipswich Planning Scheme.

The overlays that apply in the Ipswich Planning Scheme are an example of what could be introduced into the Victoria Planning Provisions. These overlays have specific outcomes such as:

- “Uses and works are located to provide appropriate separation to high pressure oil and gas pipelines.
- Uses and works are constructed to avoid damaging or adversely affecting the pipeline’s operations and the supply of gas or oil.
- Uses that—
 - (i) have the propensity to attract people in large numbers to live, work or congregate (e.g. educational establishments, place of worship, retirement village, nursing home); or

(ii) involve the storage of flammable, explosive or other hazardous materials; are avoided within 200 metres of high pressure oil and gas pipelines, unless otherwise determined by an appropriate risk assessment”

The overlay suggests appropriate separation treatments may include provision of large lot sizes and associated building envelopes to increase separation between the pipeline and buildings on new lots.

VicTrack supports the introduction of similar overlay provisions in the Victoria Planning Provisions with referral to the Minister administering the *Pipelines Act 2005* as a determining authority. This will ensure that proper consideration is given to the protection of state and national significant infrastructure and protection of people and property.

Should you have any queries, please contact me on 03 9619 0222 or sotirios.katakouzinis@victrack.com.au.

Yours faithfully

A handwritten signature in blue ink, appearing to read 'S. Katakouzinis', with a stylized flourish at the end.

**SOTIRIOS KATAKOUZINOS
PLANNING MANAGER (ACTING)**

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