

Mr. Nick Wimbush  
Advisory Committee Chair  
Major Hazards Facilities Advisory Committee  
C/-Planning Panels Victoria  
Level 5, 1 Spring Street  
MELBOURNE VIC 3000

February 12, 2016

Dear Mr Wimbush,

**Submission in Response to the Discussion Paper released by the Major Hazard Facilities Advisory Committee ('Discussion Paper')**

On behalf of the Viva Energy group of companies (**Viva Energy**), Viva Energy Australia Pty Ltd is pleased to provide this submission in relation to the Discussion Paper released by the Major Hazard Facilities Advisory Committee (**Advisory Committee**).

As the exclusive distributor of Shell branded fuels and lubricants in Australia, Viva Energy supplies around 55% of Victoria's, and 25% of Australia's, fuel needs. We therefore have a natural interest in the Advisory Committee's work, and the Discussion Paper you have released, as we are the owner and operator of three Major Hazard Facilities (**MHF**) in Victoria. In addition, the Viva Energy business in Victoria also comprises a 250 site-retail network and a bulk fuels, bitumen, chemicals, marine and lubricants business supported by our major fuel storage and distribution terminal in Newport.

We trust that this submission is of assistance in informing the review being undertaken by the Advisory Committee and we would be pleased to answer any questions, or provide any further information you believe would be useful.

**1. Viva Energy's Major Hazard Facilities**

As noted above, Viva Energy has three MHF in Victoria:

- **The Newport Terminal** in Burleigh Street, Spotswood is owned by Viva Energy Australia Pty Ltd and is one of the State's primary fuel distribution centres. It services the Melbourne and greater Victorian marketplace for fuels (including Melbourne and Avalon airports). The terminal operates 24 hours per day, 365 days of the year. It has 40 storage tanks with a total capacity of 140 million litres and vehicle filling gantries for fuels, solvents and lubricating oils.
- **The Geelong Refinery** in Refinery Road, Corio is owned by Viva Energy Refining Pty Ltd and occupies 120 hectares of land adjacent to Corio Bay and is one of the largest refineries remaining in Australia. The Geelong Refinery currently supplies about 55% of Victoria's fuel needs. While primarily a manufacturing facility, there is also substantial fuel storage on site and a vehicle filling gantry for fuel deliveries into Western Victoria. The refinery receives some crude oil via the WAG pipeline and transfers fuel via two pipelines to the Newport Terminal. The Geelong refinery is the last manufacturer in Australia of bitumen, avgas (for propeller airplanes) and hydrocarbon solvents.

- **The Lara LPG Terminal** in McManus Road, Lara, is owned by Viva Energy Refining Pty Ltd and stores and distributes LPG products. The facility can store up to 5,000t of butane, 1,200 t propane and 1,000 t of propylene (chemical feedstock).The Lara facility is connected to the Geelong Refinery by a licensed LPG pipeline.

In addition to these MHF's, Viva Energy also owns and/or operates around 260km of licensed pipelines that are used for conveying oil products in and around the greater Melbourne area, including three major pipelines as follows:

- the Westernport-Altona-Geelong (WAG) Pipeline which conveys crude and condensate from Westerport to both Altona and Geelong refineries; and
- two pipelines which convey fuel products from Geelong refinery to Newport Terminal.

## 2. Viva Energy Supports the Review

The location of our MHFs and the associated liquid fuel infrastructure (refinery, pipelines and terminals) that Viva Energy has in Victoria means we are well placed to deliver fuel to customers in an efficient and cost effective way. It is therefore imperative that these state significant industries and our associated infrastructure are protected from encroachment from inappropriate land use and development which has the potential to adversely affect our viability, limit our further growth and impact on the security of fuel supply in Victoria.

The Victorian Planning Provisions have a significant role to play in managing uses on land which is situated adjacent to or nearby to our facilities to ensure that we continue to operate and potentially grow to meet future demand without the added time and cost burden in managing planning issues. In addition, the existence and implementation of controls over land use proximate to those assets is also vital for protecting the safety of Viva Energy's operations as well as nearby residents and local businesses.

In light of this, Viva Energy welcomes the key issues raised by the Discussion Paper and encourages further discussion around the regulation of land use in the vicinity of MHFs. Some of the key issues that Viva Energy would like considered are set out below.

## 3. Reverse Amenity Provisions

As the Discussion Paper has identified, there is a disparity in the way in which new industrial and residential developments are currently regulated under the Victorian Planning Provisions.

Existing planning controls place greater scrutiny on the effect of new industrial development on existing residential or sensitive uses. For example, clause 52.10 (uses with adverse amenity potential) acts as a planning permit trigger when certain types of new industrial developments fall within a prescribed threshold distances to prescribed sensitive uses.

However, the reverse is not true. Clause 52.10 does not apply to new residential or other sensitive developments that are located near existing industrial developments. This therefore leaves open the possibility for residential or other sensitive developments (**Sensitive Developments**) inappropriately encroaching on to those industrial developments if they occur in a zone or overlay where such developments are 'as of right'.

Such encroachment may mean that the efforts by the owners of such industrial developments to mitigate their environmental effect (e.g. noise or odour) on the surrounding neighborhood are rendered ineffective due to the close proximity of Sensitive Developments.

In the case of Sensitive Developments near MHFs, it may mean therefore that those Sensitive Developments are located within an inner planning advisory area which WorkSafe recommends against in its 'Land Use Planning Near a Major Hazard Facility' publication.

Therefore, Viva Energy supports further consideration of how the 'reverse amenity' and agent of change principles can be implemented into the current planning framework. There should be increased oversight of Sensitive Developments near MHFs and other industrial developments so that the efforts already expanded by industrial development operators to minimise safety risk and environmental effect on the surrounding environment are not affected due to encroachment by Sensitive Developments.

This appears to have been successfully achieved with the new Port Zones and the Environmental Significance Overlays (ESO) that were introduced in Port Areas following the Minister's Ports Review. It means in effect, that proponents for any new residential or industrial developments within the ESO area around the Ports need to demonstrate to the Council how they have protected themselves from the amenity issues and risks posed by the Port's operations. This allows the Ports to object to that development if the application for planning approval indicates insufficient protection.

#### **4. Protection for MHF in the Victorian Planning Provisions**

Apart from developing permit triggers when Sensitive Developments are proposed near MHFs, there needs to be some analysis of how those Sensitive Developments are subsequently assessed.

As the Discussion Paper has noted, there are no specific planning controls that deal with how MHFs should be protected from encroachment by Sensitive Developments.

Viva Energy supports further consultation into how MHFs should be formally recognized and incorporated into the planning system through appropriate policy, zoning and/or overlays so as to limit inappropriate development while giving some flexibility for MHFs to expand.

Viva Energy supports further consultation on:

- appropriate zoning/overlays for MHFs and the areas around such facilities;
- appropriate buffer distances for external developments around MHF;
- the relevant considerations that responsible authorities should consider when assessing applications for planning approval for external developments around MHFs;
- the types of appropriate and inappropriate developments around MHFs (to ensure there is some sound risk science around compatible uses);
- design and siting requirements of those developments; and
- referral requirements for developments around MHFs (see below).

This is not an exhaustive list, but provides a starting point for further consultation.

It may also be worth expanding the above enquiry beyond MHFs to other state significant industrial infrastructure as there is no concept of 'State Significant Infrastructure' in the Victorian Planning Provisions. For infrastructure that is critical to the operation of this State, we need to consider adjacent land uses which are incompatible either through gradual amenity concerns restricting their operation or because those surrounding uses could directly risk or impact the

operation of the state significant development. This is just sound risk management but is not a concept that is acknowledged by the Victorian Planning Provisions (VPP).

It is imperative that State significant industries and their associated infrastructure such as MHFs are identified (and included in a definition or Land Use Terms in the VPPs) and are then protected in the Victorian Planning Provisions. In the case of Viva Energy's MHF and pipeline facilities we need to ensure adequate protection from encroachment by inappropriate development which would adversely affect our viability, limit our further growth and have the potential to impact on liquid fuel supply security in Victoria.

Without those 'automatic' controls in place and the establishment of proper MHF and State Significant Infrastructure protection, it is left to the individual companies such as Viva Energy to monitor developments around their facilities and to object to the permits being applied for. However, that is ad hoc and fraught with risk because it is informal and relies upon the responsible authority to informally refer the application to Viva Energy or for Viva Energy to identify the application itself.

In circumstances where Viva Energy does object, Viva Energy relies upon the responsible authority to understand the risks associated with our MHF and to manage the response appropriately. Once again this is ad hoc and a risk given the nature of the MHF facilities and the risks posed.

Having clear and consistent provisions contained in the Victorian Planning Provisions would make it easier for responsible authorities to refer applications to MHF owners and then to have clear decision guidelines against which to assess the proposed development, including the response from Viva Energy and the other MHF owners.

## 5. Recent Examples of Development Around Our MHF

Following on from the above discussion, it is worth noting that there are numerous recent examples of development applications that Viva Energy has had to object to around its MHFs:

- a proposed child care facility in the vicinity of our Newport Terminal;
- a proposed school development in the vicinity of our Newport Terminal;
- proposed high density residential and commercial development in the vicinity of our Newport Terminal and high pressure pipelines; and
- a proposed redevelopment of the old Corio Distillery into a recreational facility in close proximity to our Geelong Refinery.

The thought of having a child care facility in close proximity to the Newport Terminal seems to highlight the issue with the Victorian Planning Provisions.

In the case of the Corio Distillery redevelopment, Viva Energy objected to this proposed development given its close proximity to existing industrial and port land uses and the potential to create land use conflicts which would significantly impact on the on-going and future operations of the Geelong Refinery and other key contributors to the Geelong economy.

Of primary concern was that the proposed indoor recreational facility was to be located within an Industrial 2 Zone, located next to a MHF and located adjacent to the Port Zone. These proposed uses conflict and could potentially limit industrial, port and MHF uses into the future.

These examples highlight the potential conflicts that can arise. These conflicts can be difficult for responsible authorities (e.g. local councils) and other industry groups to address, given they are often very supportive of a new development proposed for these areas due to their predicted

economic contribution and new jobs. A consequence of this can be that important guidance such as WorkSafe's Guidelines on land use planning near MHF (which states that "it is...important that land use planning minimises exposure of people close to an MHF.") can be overlooked or ignored.

## 6. Mandatory Referral to WorkSafe & EPA

Viva Energy also notes that new or expanding industrial developments that fall within the threshold distances to prescribed sensitive land uses in clause 52.10 may also require mandatory referral to determining referral authorities such as the EPA or WorkSafe.

The criteria for such referrals is set out in clause 66 (referral and notice provisions).

However, there is no mandatory requirement for referral in the case of Sensitive Developments that are proposed to be located near MHFs and similar industrial or hazardous facilities such as pipelines. It is at the responsible authority's discretion whether to consult with either EPA or WorkSafe in this inverse situation. This should not be the case.

It is further noted that in this context, neither the EPA or WorkSafe have a formal function under the planning provisions when it comes to development near a MHF.

Viva Energy believes that it would be prudent for responsible authorities to formally refer to the EPA and WorkSafe any Sensitive Developments that are proposed near existing MHFs due to the experience that these regulatory authorities have in assessing the environmental and safety risks of development proposals.

Viva Energy supports further investigation into what the appropriate threshold distances would be to trigger that referral requirement.

Viva Energy also notes that both WorkSafe and EPA have turned their mind to the issue of industrial land encroachment and have guidelines about how the interface between industrial and sensitive uses should be managed. Viva Energy supports further discussion into how the recommendations in EPA publication *Recommended Separation Distances for Industrial Residual Air Emissions* and WorkSafe publication *Land use planning near a major hazard facility* can be best adapted into the planning framework so regulate developments occurring near industry/MHFs.

## 7. Licensed Pipelines

As the Consultation Paper has also identified, there is little consideration given in the existing Victorian Planning Provisions for how to regulate the impact of developments around pipelines as defined in the *Pipeline Act 2005* (Vic) (**Pipelines Act**).

All works associated with licensed pipelines in Victoria are regulated in accordance with the Pipelines Act. The Pipelines Act requires all pipelines to be maintained in accordance with Australian Standard 2885-2012 for pipelines – Gas and Liquid Petroleum. The Pipelines Act also contains several restrictions on building on land near pipelines, digging near pipelines and obstructing the operation of pipelines.

The following issues arise from the absence of regulation in the Victorian Planning Provisions for land use around pipelines:

- First, developers are rarely aware of the importance of ensuring that their design and construction process accounts for the presence of the pipeline until late in the planning

process and well after the initial planning application has been submitted and pipeline licensees are notified by the responsible authority. This adds time and significant cost to projects.

- Secondly, there is no guidance as to the appropriate use, development or design requirements for developments located near licensed pipelines. Licensed pipelines carry hazardous and/or volatile material, and are closely and carefully managed by licensees to ensure that any safety risks are appropriately identified and managed. There needs to be similar oversight of any changes in the density, design and type of land use around licensed pipelines, and the manner in which those changes occur. Any proposed developments around licensed pipelines should be required to design their developments in consultation with ESV and/or pipeline licensees to ensure that the design does not restrict access of pipeline licensees to maintain pipelines or increase safety risks.
- Finally, there is a risk that planning applications that affect the access or maintenance of pipelines are not referred to pipeline operators or occur as of right and potentially in circumstances which there is little or no awareness of the precautions that should be taken in working around a pipeline. This may result in an increased in risk to people, property and the environment from the construction and use of the development may not be within acceptable levels.

Viva Energy believes that further consultation is required to determine appropriate land use planning controls for land in the vicinity of pipelines.

For example, one strategy might be to include a schedule or overlay in areas affected by pipelines that:

- trigger the requirement for a planning permit;
- set out the design and construction requirements that will need to be addressed as part of the planning permit application; and
- require the applicant to work with the relevant pipeline licensee / Energy Safe Victoria to satisfy the requirements of the Pipelines Act and Australian Standard 2885-2012.

## **8. Conclusion**

The business that we operate and the associated liquid fuel infrastructure (refinery, pipelines and terminals) particularly in major cities, is well established and well placed to deliver fuel to customers in an efficient and cost effective way. Given the inter-related nature of liquid fuel supply infrastructure and the enormous cost to replace it, it would be extremely difficult, cost prohibitive and damaging to the local economy if our operations were constrained or forced to relocate due to limitations on expansion and /or encroachment from inappropriate Sensitive Developments.

As such, Viva Energy welcomes the key issues canvassed in the Discussion Paper and believes that they highlight a gap in the current Victorian planning framework.

Viva Energy always aims to work in harmony with our neighbours who have, over time, become physically closer and closer to our operations. The safety of our operations is of utmost importance, from an employee, community, environmental, reputational and “licence to operate” perspective. However, greater protection needs to be enshrined in the Victorian Planning



Shell Licensee

Provisions to ensure that MHF and other State Significant Infrastructure is protected in a more formal, and less ad hoc manner.

We look forward to further participating in the Committee's review process.

Please contact myself at [Edwina.pribyl@vivaenergy.com.au](mailto:Edwina.pribyl@vivaenergy.com.au) or (03) 8823 4148 if you require clarification or any more information about this submission.

Yours faithfully

Edwina Pribyl  
External Communications Manager