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Planning Panels Victoria
Department of Environment, Land, Water and Planning
GPO Box 2392
MELBOURNE VIC 3001

To Whom It May Concern:

Re: Major Hazard Facilities Advisory Committee: Discussion Paper

CFA provides the following response to the release of the Major Hazard Facilities Advisory Committee Discussion Paper for public comment. In considering the issues relevant to the fire services and CFA specifically with regard to land use planning around Major Hazard Facilities and other high-risk infrastructure, we provide the following recommendations for consideration by the Committee:

- **RECOMMENDATION 1:** The development of a series of overlays (with supporting planning measures) incorporating off-site impacts for credible worst-case scenario incidents at new and existing MHFs and high-risk infrastructure.
- **RECOMMENDATION 2:** The development of planning policy that creates an integrated and sustainable state-based approach to the issues associated with the use and development of land around MHFs and high-risk infrastructure.
- **RECOMMENDATION 3:** Within purpose-built planning provisions concerning land use around MHFs and high-risk infrastructure, CFA is afforded the opportunity to be involved in strategic and statutory land use planning processes as a key stakeholder (i.e., as a recommending referral authority for relevant planning applications).
- **RECOMMENDATION 4:** The development of a clear framework and guidelines to ensure that risk is appropriately and consistently managed within the planning system, and that key stakeholders are routinely involved.
- **RECOMMENDATION 5:** That the current suite of planning provisions concerning bushfire is explored as a case study in regards to risk-based approach within the planning system, including its feasibility for application for MHFs and high-risk infrastructure sites.

- **RECOMMENDATION 6:** The adoption of a risk-based methodology in which to identify sites with the potential for off-site impacts during emergencies, that broadens the scope of the Committee's focus to 'high-risk infrastructure' as well as 'major hazard facilities'.
- **RECOMMENDATION 7:** That the scope of emergency management planning be extended to incorporate occupier responsibilities in regards to risk management for off-site impacts from credible worst-case scenario incidents.

The attached submission provides additional commentary on CFA's role in the planning and emergency management sector and provides our views on issues surrounding the incorporation of major hazard facilities into the planning system.

For further information or clarification, please don't hesitate to contact me on (03) 9262 8444.

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1. INTRODUCTION

CFA appreciates the opportunity to provide comment on the Advisory Committee Discussion Paper on Major Hazard Facilities. The Discussion Paper has been considered in terms of CFA's role as a relevant fire authority, referral authority on planning matters, and as an emergency service organisation with obligations under the regulatory framework for dangerous goods and major hazard facilities (MHFs).

CFA has a legislated general duty in the protection of life and property within Section 20 of the CFA Act 1958. In practice, this translates to a key role in the delivery of emergency services across the state through acting to protect communities and the economy from damaging disruption and loss arising from emergency events. Fire prevention and risk management are key parts of this role, where CFA has statutory functions in relation to addressing and minimising risk by working with agencies and communities.

Within the planning system, CFA acts as a referral authority on various matters, as required under Section 55 of the Planning and Environment Act 1987, and in some circumstances, may also provide informal advice to Councils (Responsible Authorities) on permit applications. Within the regulatory framework governing dangerous goods, CFA provides advice to occupiers of dangerous goods sites on their fire protection and emergency management planning, as required by the Occupational Health and Safety Regulations 2007 and the Dangerous Goods (Storage and Handling) Regulations 2012.

2. CFA AND THE PLANNING SYSTEM

CFA has a role as a referral authority for statutory planning applications where a site is located within the Bushfire Management Overlay (BMO) and where a new road is to be created in association with a subdivision proposal. An application may also be referred to CFA for comment under Section 52 of the Planning and Environment Act 1987.

CFA may also provide informed advice on in relation to strategic planning and state planning policy matters such as planning scheme amendments, settlement planning, regional growth plans or other matters of state significance. The Referral Authority may also seek comment from CFA for a range of other applications at their discretion.

Effective planning around MHFs and high-risk infrastructure can be achieved to an extent within the current land use planning system, via Section 52. This notification currently occurs for a variety of planning applications, but it is highly dependent on individual Council policies and is inconsistent across the state. CFA is rarely involved in planning decisions that relate to development around MHFs and other high-risk infrastructure, for example MHFs, large dangerous goods sites and other key state infrastructure. The current system allows WorkSafe to provide advice and conditions relating to land use around major hazard facilities and other high-risk sites, and involve the fire services if necessary, but again, CFA's involvement is rarely sought in this capacity.

The lack of key stakeholder involvement in planning processes around MHFs and high-risk infrastructure sites can also be attributed to the way that risk from these sites has been managed within the planning system; without a clear framework or guideline that ensures a consistent process.

CFA supports the development of planning policy that creates an integrated and sustainable approach to the issues associated with the use and development of land around MHFs and other high-risk sites. CFA encourages a state-led outcome that delivers a comprehensive suite of planning controls that cover the full spectrum of planning considerations from a strategic, state, local and site scale. For this reason, CFA is seeking reform to the planning system to ensure that mechanisms are created to identify development within a potential impact area of an MHF or other high-risk infrastructure is appropriately managed, and that as a key stakeholder, CFA is routinely involved in the process.

Mechanisms are required across both strategic and statutory land use planning processes to ensure that consideration is given to incident response requirements/implications for these developments, and for the MHF or high-risk infrastructure itself, at the earliest possible stage. The emergency services are a key stakeholder for development around all high-risk sites. Holistic, integrated risk management cannot be achieved without mandatory triggers that ensure the involvement of the fire services in the planning system, independently of other referral bodies.

Without considerations pertaining to response times, access, specialist resources (i.e., HAZMAT equipment) and water supply, the duration and extent of incidents cannot be accurately assessed and therefore mitigated against, potentially exposing surrounding communities, and emergency responders themselves, to avoidable risk.

The format of CFA's involvement in the planning system in the context of land use planning around MHFs and high-risk infrastructure should form part of the relevant stakeholder consultation. At this preliminary stage, CFA proposes no ideal model; we look forward to an opportunity to provide further input as the Committee progresses with any outcomes of this review. However, the specific reference in the Discussion Paper to the fire services' involvement in the planning system as it relates to bushfire is a useful starting point for discussion around the format of our involvement.

2.1 PLANNING FOR BUSHFIRE

The bushfire planning provisions are an example of a suite of planning controls forming planning policy that works across the Victorian Planning Provisions (VPPs) and of how the planning system can be used to capture and control the use and development of land in high-risk areas. The overarching strategy of the state planning policy at Clause 13.05 (Bushfire) is to prioritise the protection of human life over other policy considerations when assessing the risk from bushfire (DTPLI, 2014). This strategy underpins the remainder of the bushfire policy. This is achieved through Clauses in the State Planning Policy Framework that deal with bushfire; the Bushfire Management Overlay and Clauses in the planning scheme that deal with its application.

Specific planning controls containing development and subdivision requirements are found within Clause 52.47 of the VPPs. The development and assessment of applications are also informed by *Planning Practice 65 - Preparing and Assessing a Planning Application under the Bushfire Provisions*

in Planning Schemes. The decision guidelines at Clause 65 extends the consideration of bushfire issues to all applications.

The incorporation of bushfire within the Local Planning Policy Framework (LPPF) is undertaken at a municipal level and informed by *'Planning Practice Note 64: Local Planning for Bushfire Protection'* (DTPLI, 2014). Bushfire risk is a mandatory consideration for Planning Scheme Amendments.

The overarching bushfire policies to prioritise the protection of human life, determine the level of risk and whether the risk can be reduced to an acceptable level and directing development to areas of lowest risk are found throughout all levels of policy and supporting documents related to bushfire. CFA is of the view that this integrated policy approach would be transferable to the assessment of high risk infrastructure projects.

CFA is cognisant that there are differences between mitigating bushfire risk, and risk from high-risk infrastructure (such as an MHF); the most stark being the opportunity afforded to the property owner to address their own risk within the bushfire planning provisions. There may not be any protection measures that individual land owners can implement for MHFs and high-risk infrastructure; the obligation to manage risk must be assumed by the relevant authority through the planning system and MHF and high-risk infrastructure owners through their compliance, risk and emergency management processes.

CFA's central concern in regards to development around MHFs and high-risk infrastructure is the surrounding land use; our involvement seeks to ensure that appropriate protection measures are incorporated into the controls to ensure that land use is controlled in these areas and that where appropriate, encroachment is deterred and existing conflicts appropriately managed. CFA supports a consistency in policy that clearly prioritises the protection of human life, similar to that provided under bushfire policy, within a similarly formalised notice and referral structure.

2.2 PLANNING FOR RISK

In advocating for an expanded involvement of the emergency services in the planning system, CFA is also advocating for a formalised structure within the planning system in which risk from MHFs and high-risk infrastructure is dealt with consistently. As addressed within the Discussion Paper, the current planning system provides a number of mechanisms which may be triggered in relation to development around MHFs, but there is no standard or unified planning process at either state or local level in which to assess risk to proposed land use.

In addressing this inconsistency, CFA acknowledges the limitation in the status designation 'major hazard facility', which assumes a level of risk which inherently exists only by the presence of a large quantity of Schedule 9 materials, as defined within the Occupational Health and Safety (Major Hazard Facilities) Regulations 2007. This limits the scope of the Advisory Committee to approximately 40 sites across Victoria; potentially to the exclusion of other sites managing greater risk that may be related to location, processes or accidental damage.

The application of risk-based criteria in which to identify sites, in addition to MHFs, that have the potential to impact the surrounding land and communities in the event of an emergency is the first step in ensuring that land in potential 'impact areas' of existing high-risk sites is known to stakeholders. The criteria would allow the capture and assessment off-site impact risks through a holistic risk-management framework, to be then provided through mapping or other measures to

the relevant authorities within the planning system. The application of planning controls that ensure that the risks are considered for development in those areas should then be applied.

CFA acknowledges that an additional term may be required within the planning scheme as an identifier for these sites. Within this document CFA has adopted 'high-risk infrastructure' to capture sites that pose off-site risks, which may include in addition to MHFs, large (quantity) dangerous goods sites (i.e., above the ten percent of Schedule 9 quantities but under MHF threshold quantities), purpose-built large (size) dangerous goods sites (i.e., power stations and mines, water treatment plants) and gas and liquid hydrocarbon pipelines. It is important to emphasise that this designation only be applied to sites where potential off-site impact is demonstrated.

The Discussion Paper raises the question of whether risk is an appropriate tool to measure the assessment of an application and provides the bushfire controls within the State Policy Planning Framework as an example where risk is incorporated into the planning provisions. In this regard, CFA supports the incorporation of both the precautionary principle and risk based assessment criteria within any suite of controls to support the assessment of developments around MHFs and high-risk infrastructure.

3. PLANNING CONTROLS

Any suite of new controls should be consistent with existing legislation and provide adequate opportunities for the emergency management sector to comment on any relevant proposal. The development of such policy should be informed by various stakeholders to ensure relevant issues are covered, for example, that the appropriate application requirements form part of the policy. CFA welcomes the possibility of participating in any working group formed for this purpose.

CFA provides the following comments for consideration regarding potential planning controls.

3.1 ZONES AND OVERLAYS

CFA recommends the development of a suite of overlays to manage land development around MHFs and other high-infrastructure sites. CFA proposes that the overlays be applied to both new and existing MHFs and high-risk infrastructure, to ensure that potential impact areas are identified, and that planning applications within these areas trigger Section 55 notifications to the emergency services and other relevant authorities.

The development of such overlays would require the involvement of WorkSafe, the fire services, the Municipal Association of Victoria, Department of Economic Development, Jobs, Transport and Resources (DEDJTR) and the Department of Environment, Land, Water and Planning (DELWP). Overlays based on MHFs and high-risk infrastructure would need to be developed on a site/asset-specific basis, to ensure that the off-site risk is considered in relation to the hazard combinations and the conditions, facilities and emergency resources that affects them. The combined use of an overlay and schedule would create a set of overarching requirements and allow specific sites or areas to have a tailored set of controls, similar to operation of an Environmental Significance Overlay (ESO).

CFA supports the use of overlays rather than zones as they will provide a degree of certainty whilst allowing the required level of flexibility these issues and sites demand. The use of an overlay also

maintains the option to require specific application requirements and the referral of an application under Clause 66 of the VPPs.

CFA encourages the Committee to consider an integrated policy approach, where new controls are supported by changes to state policy, practice and advisory notes, strategic planning considerations and incorporated or reference documents within the provisions themselves.

3.2 NOTICE, REFERRAL AND COMMUNITY ENGAGEMENT

The Discussion Paper and supporting documents identify one of the potential benefits of the introduction of MHFs into the planning scheme is the potential for consultation between affected stakeholders. The Discussion Paper highlights the issues associated with the existing system (where it applies) and the implications of the introduction of different controls on the inclusion of notice provisions. The Discussion Paper also recognises the minimum notice requirements when reviewing 'reverse' applications.

Incorporating a suite of planning controls into the VPPs that addresses the land surrounding MHFs and high-risk infrastructure at both a site-specific and strategic scale will provide an opportunity to identify issues and requirements upfront, better inform the community and formalise existing referral processes. CFA strongly supports these policy outcomes.

CFA seeks that any new/amended draft planning controls turn on third party notice requirements and that CFA be considered as a recommending referral authority for relevant applications. As there are various options under consideration by the Committee, CFA would encourage further consultation with potential referral authorities, such as CFA, prior to the development of new controls to ensure that the right applications are referred to the right authority.

3.3 SENSITIVE USES

As the Discussion Paper states, the concept of 'sensitive use' has typically been associated with uses such as aged care, childcare and education facilities within the planning system. The examples used in the paper refer mainly to industrial zones, however, the same land uses are singled out for separate controls under other sections of the Scheme, including Clause 52.47 – Planning for Bushfire, although the clause does not specifically refer to the group as 'sensitive uses'.

In context of land in the vicinity of MHFs and high-risk infrastructure, CFA agrees that a residential land use should be included under the umbrella of a 'sensitive' use and that residential development should generally be discouraged on land adjacent to these facilities.

Any changes to the planning system (i.e. new definition or practice note) that specifically deals with the notion of 'sensitive use' should consider the wider implications of such a move on existing planning controls within the planning provisions and whether this 'other' policy will also need to be changed, for example the bushfire controls.

4. EMERGENCY MANAGEMENT PLANNING

While land use planning has been identified as the most effective form of bushfire mitigation (COAG, 2004), CFA acknowledges its limitations, particularly in regards to its solely prospective application, which would also apply to land use planning controls around MHFs and high-risk infrastructure. The planning system is unable to carry the entire burden of risk in relation to MHFs and high-risk infrastructure; there is a shared responsibility for risk management between the Relevant Authority and the site owner/occupier for limiting the off-site impacts of major incidents.

For this reason, CFA recommends that in addition to planning controls, emergency management plans (EMPs), and Safety Cases where applicable, for MHFs and high-risk infrastructure be utilised as platforms to consider the affect a major incident would have on property within the land use planning areas. CFA is advocating for the scope of EMPs to be extended to ensure they capture off-site impact from potential incidents, and that they include details of the roles, responsibilities and procedures with potentially involved stakeholders.

The imperative to consider the affects off-site impact already exists within the emergency management regulatory framework within the context of risk management. For major hazard facilities, the MHF Regulations specify a general duty that risks must be eliminated or reduced so far as reasonably practicable (WorkSafe, 2011), which is demonstrated in the Safety Case. Where off-site risk is appropriately identified and assessed within the Safety Case, the responsibility to manage it also applies.

With respect to larger dangerous goods sites (i.e., those with 'manifest' quantities or higher) the intent of emergency management planning is to minimise the effects of any emergency (WorkSafe, 2013) which indirectly applies to off-site impacts. In CFA's experience, at best, EMPs for large dangerous goods sites consider risk management as it relates to the on-site impacts of emergency incidents: what it means physically to the site, its people, and/or to the business. Procedures include incident management to the site boundary, and fire brigade interactions on-site. Off-site impacts are largely ignored; the responsibility presumed delegated to Council, the fire brigade, or other bodies.

Considering the off-site impact in emergency planning potentially means a broadening the scope of EMPs to encompass land use, infrastructure and third parties that are beyond the physical boundary and control of the facility owner/occupier. This will be a challenging shift that will require increased involvement by key stakeholders, including WorkSafe, EPA, the fire services and any industry-specific bodies to work towards comprehensive risk management. A move such as this will certainly increase the workload on the facility, and require relationships to be developed and maintained with relevant stakeholders to ensure correct and current information.

While the existing framework allows for consideration of off-site impacts, it is the application of any expanded requirements that will be problematic. Even with the current guidance available for the preparation of EMPs, the quality of EMPs between dangerous goods sites varies significantly; due in equal parts to inexperienced or unqualified personnel preparing emergency plans; emergency plans prepared without the involvement of the emergency services or other relevant stakeholders; the lack of understanding of risk and risk management processes; and the resource limitations faced by regulators.

It is likely that any changes in expectations in emergency management planning will require an increase in rigour applied to its development by regulatory authorities, through the provision of guidance rather than any direct changes in legislation; but this will need to be further explored by the relevant stakeholders. CFA supports changes to emergency management planning that further extends occupier's responsibilities to understand, and plan for, their own risk in conjunction with the fire services.

CONCLUSION

CFA recommends changes to the planning system that concern new MHF and high-risk infrastructure development, however at the present time a more urgent concern is the management of off-site impacts for existing MHFs and high-risk infrastructure within the country area of Victoria. CFA strongly supports the introduction of planning and other measures to ensure that sites posing off-site risk are identified, and their potential impact is acknowledged through the planning system to ensure that development in their vicinity is appropriately managed.

To this end, CFA supports the introduction of an overlay and related supporting mechanisms into the planning system. An overlay would ensure that the specific risks from these sites are adequately captured and mapped, with appropriate triggers for relevant stakeholder notification for planning applications that fall within these areas.

In any changes to the planning system, the advice of CFA, as a responding emergency service organisation, must be sought in relation to development around high-risk sites infrastructure to ensure that response implications are considered. CFA is advocating for the opportunity to be involved statutory land use planning processes as a recommending referral authority for relevant planning applications, and elsewhere with regards to strategic planning, as appropriate.

CFA advocates for the development and adoption of an assessment methodology to identify sites that pose off-site risks to surrounding land as determined by modelling for credible worst-case scenario emergency events. Described in this paper as 'high-risk infrastructure', they may be MHFs, large dangerous goods sites, and other key state infrastructure like mines and pipelines. The responsibility for potential offsite impact from these sites must be assumed by the Relevant Authority and managed through the planning system.

The risk posed by these sites to surrounding land must also be addressed by the owner/occupier through its emergency management planning and risk management processes, in addition to planning system controls. Extending the scope of EMPs for high-risk infrastructure to ensure they capture the risk of off-site impact from potential incidents, and consider and plan for any additional support that may be required in that event, must be considered as a complementary control measure to changes to the planning system.

CFA strongly encourages the Committee to further consider the comments provided in this response, and provides the following recommendations.

RECOMMENDATIONS

RECOMMENDATION 1: The development of a series of overlays (with supporting planning measures) incorporating off-site impacts for credible worst-case scenario incidents at new and existing MHFs and high-risk infrastructure.

RECOMMENDATION 2: The development of planning policy that creates an integrated and sustainable state-based approach to the issues associated with the use and development of land around MHFs and high-risk infrastructure.

RECOMMENDATION 3: Within purpose-built planning provisions concerning land use around MHFs and high-risk infrastructure, CFA is afforded the opportunity to be involved in strategic and statutory land use planning processes as a key stakeholder (i.e., as a recommending referral authority for relevant planning applications).

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RECOMMENDATION 7: That the scope of emergency management planning be extended to incorporate occupier responsibilities in regards to risk management, and response, for off-site impacts from credible worst-case scenario incidents.

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