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Dear Mr Wimbush

**Major Hazard Facilities Advisory Committee**

Thank you for the opportunity for Port of Melbourne Corporation (PoMC) to provide a submission to the Major Hazard Facilities (MHF) Advisory Committee Discussion Paper. PoMC welcomes the review as an opportunity to build upon the outcomes of the Ports and Environments Advisory Committee (PEAC) and further strengthen planning protection for ports, including associated industry such as MHF.

The current planning framework affords the port (including MHF) a reasonable level of protection against encroachment of sensitive and incompatible land uses. However, there remains some potential for sensitive development to incrementally encroach upon MHF risk and amenity buffer areas largely due to the discretionary nature of the current decision making framework. Further, it is noted that MHF outside the port boundary (but directly related to the port) are not necessarily afforded the same protection as port MHF. PoMC has thus identified a number of opportunities for improvements to the current planning framework to provide greater planning certainty to the community and industry regarding development in the vicinity of MHF.

PoMC’s submission will outline:

- The location and nature of MHF and associated infrastructure within the port, as well as related MHF outside the port boundary and the significance of relevant connecting infrastructure (both pipeline and road)
- Matters relevant to port related MHF and associated infrastructure under the current planning regime
- Potential improvements to land use planning around MHF
Port related MHF and associated pipeline infrastructure

There are two MHF within the Port of Melbourne. These are identified on the attached map (Port related Major Hazard Facilities) and described below:

1. Coode Island MHF, West Melbourne

Coode Island MHF is located on the east side of the Maribyrnong River in West Melbourne. It is a bulk liquid hazardous chemical storage facility operated by Terminals Pty Ltd and Stoltthaven Coode Island Pty Ltd. The facility was first established in the 1960's and stores chemicals that are important inputs to a range of everyday household products including paints, plastics, lubricating oils, detergents, pharmaceuticals and health care products. The closest residential development is approximately 800m to the west of the site in Yarraville.

2. Gellibrand Pier MHF, Williamstown

Gellibrand Pier MHF is located at the eastern end of Nelson Place in Williamstown (accessed via Battery Road) and is a crude oil storage and distribution facility operated by Mobil Oil Australia. The facility was first established in 1953 and supplies crude oil to the Altona Refinery via approximately 6.5km of pipelines (mostly above ground). These pipelines are not located on port land and run parallel to the railway line through the established residential suburbs of Williamstown, Newport and Altona North. The closest proposed residential development is approximately 250m west of the MHF at the site of the former Port Phillip Woollen Mills.

In addition to the two MHF on port land, numerous other MHF in Spotswood, Newport and Yarraville are directly connected to the port via pipeline from Holden Dock in Yarraville. These MHF are petroleum storage and distribution terminals operated by the major petroleum suppliers. Refined petroleum product is imported via Holden Dock and pumped directly to storage tanks at each of the distribution terminals via a 12m wide (approx.) pipeline corridor on port land (to the west of the Yarra River). The Holden Dock import facility, the privately owned MHF and the connecting pipelines cannot operate independently.

It is noted that MHF on port land are not operated or controlled by PoMC and the facility operators are required to deal directly with Planning Authorities and other Agencies for any licences and approvals. This is also the case with pipeline infrastructure on port land which is owned by the various petroleum industry suppliers. The network of infrastructure that supports and facilitates the efficient and effective MHF operations include:

1. The ship to shore interface
2. Pipeline connections to the storage terminals
3. Storage MHF
4. Road/Pipeline distribution networks.

It is difficult to isolate specific economic effects from MHF activities of the port of Melbourne however an assessment undertaken in 2012-13 demonstrated that liquid bulk cargo throughput (which is related to nearby MHF) had an output of $139 million and generated 529 full time equivalent positions. The interdependence of the significant fixed infrastructure associated with
port related MHF (which includes transport corridors, pipelines and berth access) means that these facilities cannot be easily or readily relocated.

In light of the significant economic contribution associated with MHF and the challenges associated with relocating such facilities, it is important that the planning framework applying to MHF and their surrounds:

- Ensures public safety and community amenity expectations can be realised
- Provides certainty and clarity to both the community and industry regarding development in the vicinity of MHF
- Does not limit market entry and access to existing open access infrastructure and facilities
- Maximises private sector investment
- Supports the economic growth and efficiency of the State
- Provides reasonable capacity for growth and development of existing fixed infrastructure and supporting networks.

Overview of current planning framework and issues

The current planning framework adequately recognises the state significance of the Port of Melbourne and affords a level of primacy to the port (including port MHF) over other types of development. This is reflected in the fact that the port of Melbourne has its own planning scheme which facilitates port development and the Minister for Planning is the Responsible Authority.

The port is afforded a reasonable level of protection against encroachment of sensitive and incompatible land uses largely as a result of appropriate zoning in most port environs areas as well as the outcomes of the Ports and Environs Advisory Committee (PEAC).

PoMC participated in the PEAC in 2010 which reviewed the planning scheme controls relating to Victorian commercial trading ports and their environs and recommended changes to the planning system to protect ports from encroachment of sensitive and incompatible land uses. The PEAC resulted in implementation of a range of planning improvements, including but not limited to:

- Revised State planning policy recognising the significance of ports and the need for two way consideration of potential amenity and risk impacts in the port environs
- Introduction of an Environmental Significance Overlay over some port environs areas which triggers the need for a planning permit for development of certain sensitive land uses
- Ministerial Direction 14 – Port Environs which requires Responsible Authorities to ensure that an amendment to a planning scheme will not introduce or intensify sensitive or incompatible land uses in areas designated as port environs
- Planning Advisory Note 56 which provides guidance in relation to planning around ports, including specific guidance for planning around MHF
• Rezoning of land in Yarraville adjacent to Coode Island to effectively prohibit residential and large scale commercial land uses (a further recommended rezoning adjacent to Mobil Yarraville MHF has not yet been implemented)

Despite the protection afforded to the port under the current planning regime, PoMC has identified some matters relevant to planning around MHF that could be addressed through the current review.

Much of the land in the vicinity of MHF is zoned industrial, where sensitive land uses are either discouraged or prohibited, however there are some areas of mixed use zoning where sensitive land uses remain a section 2 use (that is, permissible with a permit).

The current planning framework requires broad consideration of MHF risk and amenity impacts for proposals in the port environs, however the planning scheme does not clearly articulate the extent of land that may be subject to such impacts, nor does it require 'reverse buffers' to be created (that is, the requirement for new sensitive land uses to achieve adequate separation from potential risk and amenity impact areas). While detailed guidance exists from Environment Protection Authority (EPA) and WorkSafe in relation to risk and amenity impacts and recommended buffer distances, these guidelines currently sit outside the planning scheme and are not effectively translated into prescriptive planning scheme controls to guide land use and development in the vicinity of MHF.

The WorkSafe advisory note for ‘Land Use Planning around Major Hazard Facilities’ identifies potential risk areas (inner and outer planning advisory areas) and provides general guidance for development in these areas. However, the advisory note is not a statutory document and there is no formal requirement for local Councils to refer permit applications for use and development within the advisory areas to WorkSafe for comment. The non-statutory nature of the WorkSafe advice and absence of prescriptive planning controls to guide land use and development within potential risk areas means that decision makers must exercise discretion in the assessment of proposals within the identified risk areas of MHF.

The discretionary nature of the current decision making framework creates uncertainty for industry and the community and means that many proposals are ultimately determined at VCAT. This is a costly and time consuming exercise for all parties as it generally involves lengthy consideration of detailed risk evidence and debate over what is an ‘acceptable’ level of societal risk.

To this end, PoMC has seen the approval of two developments that it regards as unsuitable within the planning advisory areas of MHF including:

• approval of townhouses within the outer planning advisory area of the Gellibrand Pier MHF at the former Port Phillip Woollen Mills site; and

• a tertiary institution, rehearsal and artist’s studio and place of assembly (for up to 150 people) at 212 Whitehall Street within the outer planning advisory area of the Coode Island MHF

PoMC considers both developments to be at odds with the advice contained within the Worksafe advisory note and numerous other VCAT decisions that have sought to avoid any increase in population density within the planning advisory areas of MHF. The approval of residential land

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11 Sandbar Properties Pty Ltd v Maribyrnong CC, Shell Company of Australia v Hobsons Bay CC & Ors and V/A Consultants Pty Ltd v Hobsons Bay CC & Ors
use at the Port Phillip Woollen Mills site would also appear to be at odds with the outcomes of the PEAC, which included rezoning land adjacent to Coode Island MHF to effectively prohibit residential development.

In addition to the potential increased risk associated with approval of such developments, PoMCoC is concerned about the long term cumulative impact of individual planning decisions (i.e. ‘tyranny of small decisions’) on the ability of industry to comply with the required threshold distances from sensitive land uses prescribed under clause 52.10 – Uses with adverse amenity potential. It is noted that this clause is only triggered in the assessment of new industrial development, and hence it places the onus on industry to achieve the required threshold distance from sensitive land uses. There is currently no requirement in the planning scheme for new sensitive land uses to achieve the required separation distance in reverse.

In addition to the threshold distances specified at clause 52.10 of the planning scheme, the EPA recommends separation distances for land uses that reduce amenity in its guideline titled ‘Recommended Separation Distances for Industrial Residual Air Emissions’ (IRAE Guidelines). The IRAE Guideline is referenced as a policy guideline at clause 13.04-2 Air Quality. Unlike clause 52.10, the IRAE Guideline appropriately considers reverse amenity, taking into account the potential impacts of industry on sensitive land uses as well as the potential impacts of sensitive uses encroaching on industry. The IRAE Guidelines note that it should be the responsibility of the agent of change to provide evidence to the planning authorities that a variation from the recommended separation distance (specified in the Guideline) is appropriate. The reverse buffer and agent of change principles enshrined within the Guideline are strongly supported by PoMCoC, but not always implemented in planning decisions as the guideline is non-statutory and not effectively translated into appropriate planning scheme provisions.

The relationship between the IRAE Guidelines and clause 52.10 is also somewhat unclear. Both nominate separation distances between sensitive land uses and amenity impacting industries. The separation distances in the IRAE Guidelines are based on potential amenity impacts relating to odour and dust, whereas clause 52.10 does not specify which amenity impacts have informed the nominated threshold distances. In PoMCoC’s view, this policy uncertainty (combined with the focus on risk matters), means that amenity impacts associated with MHF can often be overlooked in planning decisions.

A further issue relates to the current Industrial 1 and 3 zones that apply to most of the port environs areas. The protection afforded to the port through these zones was somewhat weakened as a result of the reform of industrial and commercial zones in 2013. As part of this reform process, the 500sqm restriction on office floor space was removed from the Industrial 1 and 3 Zones and it is now up to individual councils to specify a maximum leasable floor area for ‘office’ in the schedule to these zones. Maribyrnong City Council and Hobsons Bay City Council have not included a restriction on office floor area in the schedule to either of these zones. PoMCoC is of the view that without a specified restriction, there is potential for large scale office uses to encroach into the ports industrial buffers (including in close proximity to port MHF). This presents concerns from both an amenity and safety perspective as large scale offices have the potential to attract higher densities of workers with higher amenity requirements or expectations than other industrial land uses.

**Potential improvements to Land Use Planning around MHF**

PoMCoC supports a prudent approach to land use planning around MHF and associated pipeline infrastructure that takes into account the principles of ‘reverse buffers’ and ‘agent of change’. In
light of the matters outlined above, the current planning framework could be strengthened to provide greater clarity and planning certainty and better protect communities from potential safety and amenity impacts.

PoMC supports the inclusion of more prescriptive planning controls to guide land use and development in areas adjoining MHF, including:

- Stronger State planning policy relating to hazardous industry that takes into account the principals of ‘agent of change’ and ‘reverse buffers’ (i.e. the need for new sensitive and incompatible land uses to not encroach within required risk and amenity buffers associated with an MHF);

- The WorkSafe advisory note for ‘Land Use planning around Major Hazard Facilities’ given statutory effect, either through:
  - inclusion of the advisory note as a policy document at clause 81 of planning schemes; or alternatively
  - the development of a specific overlay to identify MHF inner and outer planning advisory areas

An overlay is the preferred tool as it would enable land use and development controls to be tailored to inner and outer planning advisory areas (or to individual MHF) through the use of schedules. Additionally, as overlays are specified on planning certificates and section 32 statements, it would provide a suitable mechanism to alert potential purchasers of land to a sites location within an identified area of risk. Regardless of the option chosen, PoMC considers that mapped risk areas should be developed by WorkSafe based on a consistent methodology that takes into account the potential growth and future capacity of individual MHF.

- Nomination of WorkSafe as a determining referral authority at clause 66.02 of the planning scheme for land use and development within the planning advisory areas of an MHF. This will ensure that Worksafe’s views are considered in planning decisions and allow the opportunity for WorkSafe to impose conditions on permits (or refuse a permit altogether) where a development poses an unacceptable risk to public health and safety.

- Clause 52.10 to be updated to better reflect the principles of agent of change and reverse amenity contained within the IRAE Guidelines. The relationship between clause 52.10 and the IRAE Guidelines should also be clarified.

- Reintroduction of the 500 square metre restriction on office floor space within the Industrial 1 and 3 zones of the Maribyrnong Planning Scheme and Hobsons Bay Planning Scheme to effectively prohibit the development of large scale offices in areas adjoining port related MHF.

In addition to the above improvements, PoMC notes that one of the outcomes of the PEAC was a recommendation to rezone land within the advisory area of the Mobil Yarraville Terminal from the current Mixed Use Zone (which permits residential land use) to a combination of Industrial 3, Business 3, Residential 1 (outside the MHF advisory areas) and Public Use zones. This rezoning has not yet occurred despite local planning policy (clause 22.02-2) in the Maribyrnong Planning Scheme that indicates Council’s intention to rezone the land. A planning scheme amendment should be
progressed at the earliest opportunity to implement this rezoning to prevent encroachment of sensitive land uses in this area and finalise the PEAC outcomes.

**Pipelines**

While outside the Terms of Reference for this review, the Advisory Committee is inviting comments in relation to planning around pipeline infrastructure. As discussed earlier in this submission the petroleum distribution network in inner western Melbourne relies on an integrated network of pipeline infrastructure that provides connectivity between Holden Dock, the various crude oil and petroleum storage and distribution terminals, the oil refineries in Altona and Geelong and the airport. These pipeline connections are critical to the ongoing operation and viability of MHF within and adjoining the port and provide considerable advantage to transport through the road network.

The pipeline corridor on port land is well protected from encroachment of sensitive land uses by surrounding open space buffers that are suitably zoned (Special Use Zone 1) and under the control of PoMC, however pipelines outside the port boundaries are not necessarily afforded the same protection. In the case of the pipelines connecting the Spotswood/Newport distribution terminals to Altona Refinery, residential properties encroach within 2m of the refined product pipelines in some locations.

Clause 19.03-6 of the State planning policy framework ‘Pipeline Infrastructure’ aims to ensure that gas, oil and other substances are delivered safely from ports, and calls for planning schemes to recognise and protect existing gas pipelines from residential encroachment and for new pipelines to have adequate buffers. However this clause is not effectively translated into policies, zones, overlays or particular provisions that require new sensitive land uses in the vicinity of pipelines to create reverse buffers.

PoMC considers that a risk based spatial overlay for pipelines (similar to that proposed in this submission for MHF) would be a suitable tool for recognising pipeline routes within the planning scheme and providing protection from further encroachment of sensitive land uses such as residential development.

PoMC understands that there will be a number of public hearings and workshops commencing on 18 February 2016. PoMC will be pleased to provide clarification of any points made within this submission if required.

Yours sincerely

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