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Environment Protection Authority Victoria
guidelines@epa.vic.gov.au

Ask for: Kathleen McClusky
Phone: 9932 1000
Our Ref: A2411273

To whom it may concern

Draft Guideline for Assessing Planning Proposals near Landfills

Hobsons Bay City Council welcomes the opportunity to provide feedback on the Environment Protection Authority's (EPA) draft guideline for assessing planning proposals near landfills (the draft guideline).

Planning around existing and closed landfills has been identified as a major issue affecting Hobsons Bay as detailed in the Hobsons Bay City Council's Advocacy Strategy 2014-18. Council has the responsibility to ensure that sound land use planning decisions are made regarding waste and resource recovery facilities, past, present and future. Encroachment of competing land uses such as residential development on operating or closed landfill is a significant issue for councils and landfill operators.

It is pleasing to note that the EPA has begun to address this very important issue.

The key issue is that the draft guideline is of limited value primarily because there is a severe information deficit about the location, size, type and age of closed landfills within and outside the boundaries of Hobsons Bay. The guideline is also not legally binding and not enshrined in planning policy. It has resource implications for Council and is reliant on diversifying the expertise of strategic and statutory planners.

Council has based its feedback on prior submissions to the Victorian Government and a review of the recently released report of the Ministerial Advisory Committee for the inquiry into the Environment Protection Authority.

If you would like to discuss this submission further, please contact Kathleen McClusky, Manager Strategy and Advocacy on 9932 1004 or email kmccclusky@hobsonsbay.vic.gov.au.

Yours sincerely,

Chris Eddy
Chief Executive Officer



Hobsons Bay City Council submission to the draft guideline for assessing planning proposals near landfills (Environment Protection Authority Victoria) June 2016

Purpose

The purpose of this document is to provide feedback to the Victorian Environment Protection Authority's (EPA) draft guideline for assessing planning proposals near landfills (draft guideline).

The draft guideline provides an overview of what legislative and Victorian Planning Provisions apply around operating or closed landfills and what guidance the Best Practice Environmental Management: Siting, Design, Operation and Rehabilitation of Landfills (the Landfill BPEM) provides to planners.

Section 5, 6, and 7 of the draft guideline provides advice on the staged risk score based approach to assist statutory or strategic planners to determine what level of consideration should be implemented when determining planning proposals near landfills.

Council understands the draft guideline has been developed in response to the Victorian Auditor-General's (VAGO) Report (the VAGO Report) on Managing Landfills and its audit recommendation 13 "*(EPA) works with the Metropolitan Waste and Resource Recovery Group to develop an appropriate planning process/tool to ensure the Environment Protection Authority's involvement in rezoning or application process across Victoria where development adjacent to active or closed landfills may be involved*".

Background

Council has the responsibility to ensure that sound land use planning decisions are made regarding waste and resource recovery facilities, past, present and future. Encroachment of competing land uses such as residential onto operating or closed landfill is a significant issue for councils and landfill operators.

Council has previously raised concerns to the Victorian Government in response to discussion papers, strategic plans and Ministerial inquiries. These include responses to the Ministerial Advisory Committee for the inquiry into the Environment Protection Authority (2015) (the Ministerial EPA Inquiry), the draft Metropolitan Waste and Resource Recovery Implementation Plan (2015) (the Metro Plan) and draft Sustainability Fund Priority Statement (2015) (draft Sustainability Fund).

Prior responses have centred on Council's concern with regard to the following:

- the lack of information about the location, size, type and age of landfills
- the need for planning policies, tools and controls to define, protect and maintain buffers to waste and resource recovery facilities but also to protect the health and safety of the current and future community
- the lack of expertise and resources within Council to appropriately assess planning proposals that may be within proximity to a closed landfill
- the need for greater technical and financial support from the Victorian Government to support councils

These concerns are expanded upon throughout this submission.



Council's response to the draft guideline for assessing planning proposals near landfills

The key issue is that the draft guideline is of limited value primarily because there is a severe information deficit about the location, size, type and age of closed landfills within and outside the boundaries of Hobsons Bay. The guideline is also not legally binding and not enshrined in planning policy. It has resource implications for Council and is reliant on diversifying the expertise of strategic and statutory planners. It is ambiguous and does not use clear language. It also appears that the guideline has had no consideration to recommendations of the more recent Ministerial EPA Inquiry with respect to land use planning around landfills.

Information deficit

Information is lacking with respect to closed landfills and will require mapping and in some cases, environmental testing of landfills. It will also require detailed information from neighbouring councils, which may or may not be forthcoming. This mapping and environmental testing will have significant financial implications for Council particularly in a rate capped environment.

This information deficit is not isolated to one council. As previously mentioned in Council's submission to the draft Sustainability Fund Priority Statement, it would be beneficial if the Victorian Government invested in a centralised, state-wide government coordinated and holistic program that includes research into the issue. This includes collation of information and mapping, a literature and legislative review, benchmarking locally, nationally and internationally, the development of planning policies and tools, training programs and recommendations for future action. The initiative would include collaboration with local government and government agencies including the EPA, Department of Environment, Land, Water and Planning (DELWP) and regional and metropolitan waste and resource recovery groups. This concept could be funded through the Sustainability Fund as a strategic project and is also supported by the Ministerial EPA Inquiry recommendation that the EPA should have more strategic interventions in land use planning (page 186).

The VAGO report also recommends that the EPA develop a public register of landfills. This register would assist Council with information pertaining to closed landfills within Hobsons Bay but also outside its boundaries. Council understands that this work has begun with the focus on EPA data that is publically available. Progressing this work as a matter of priority is important to support the draft guideline and future planning policy.

Land use planning policy

Council has raised concerns in its submission to the EPA Inquiry and Metro Plan feedback that there is limited policy framework or statutory process to support policy creation for this issue. There are no zones, overlays or particular provisions in the Victorian Planning Provisions (VPP) with specific requirements or guidance on making planning decisions in relation to land near landfills. The provisions within the State Planning Policy Framework (SPPF) are very general and lack clarity. Council has looked to the EPA for support and to recommend tools to assist Council in dealing with these issues. Council also encouraged the EPA to advocate within the Victorian Government to bring these tools into the legislative framework. The draft guideline is a planning tool but not a legally binding one. Therefore Council believes that the guideline should be incorporated into the VPP (specifically the SPPF) and that the Victorian Government look at opportunities to incorporate specific overlays in the VPP and specific improvement to SPPF provisions.

The Ministerial EPA Inquiry states that current arrangements for EPA advice on land use planning matters is 'hit and miss' and lacks authority. That there are no triggers for EPA



involvement and therefore the process relies on responsible authorities recognising potential future environmental impacts and risks (page 190). The Ministerial EPA inquiry considers that the Victoria's planning system can be improved to support better decision making by planners (page 186) and that it must change for the EPA to be effective and influential.

The Ministerial EPA Inquiry recommends a statutory mechanism in the planning system to give the EPA a formal role within strategic land use planning and triggers to seek advice (page 189). Also that buffers are 'visible' in the planning system through zones or overlays (page 193).

The Ministerial EPA Inquiry acknowledges a number of processes already underway across government examining land use buffers and how to better manage encroachment issues. They are complex and detailed investigations that should be progressed as a priority (page 192). These processes include the Local Government Buffer Support Program led by the Metropolitan Waste and Resources Recovery Group's (MWRRG). This aims to support local government to respond to land use planning challenges and opportunities and develop land use planning policies, tools and controls to define, protect and maintain buffers to waste and resource recovery facilities that will ultimately become part of the Victorian Planning Provisions. The EPA involvement in this program is also essential.

Resource implications

Other issues that pertain to the use of this guide and generally the Landfill BPEM include the impact on already stretched resources of strategic and statutory planners who will have the most direct involvement in applying the guideline on a regular basis, through planning permit applications and planning scheme amendments. There is also an expectation of the EPA and broadly the Victorian Government for council planners to be experts in a variety of planning issues.

Implementation of the draft guideline and the Landfill BPEM will have resource implications on Council's planning teams. This additional requirement, will add to the already demanding workload particularly for the statutory planning team who are now required to manage planning permit applications within a very short timeframe. In an environment of rate capping these pressures will heighten the impact on councils and officers.

For example in a neighbouring Council's experience, approximately 20 to 30 per cent of planning permit applications were affected by the Landfill BPEM requirements, although this figure is reducing as some sites have been investigated and proved to be safe. Further investigation into Hobsons Bay's landfills will help to inform what additional resources may be required to meet the higher demand for permits.

Council has raised concerns in its submission to the EPA Inquiry and Metro Plan feedback regarding the significant costs to planning applicants to resolve contamination and more specifically landfill gas issues. Council requires greater assistance and direction from the EPA in resolving these issues, not only with providing the tools to assess land use applications but also in supporting decisions at Panel and Victorian Civil and Administrative Tribunal (VCAT) hearings. Greater input from the EPA in land use planning is critical. The EPA has the knowledge and expertise to make informed decision in relation to contaminated land, landfill BPEM, ground water contamination, buffer requirements and amenity issues. The Ministerial EPA Inquiry suggests that encroachment pressures and managing effective buffers around facilities that create health and amenity impacts must be a critical priority for the EPA of the future (page 186). That the EPA's role in land use planning should be to provide advice to inform strategic planning processes about environmental risks to avoid or mitigate potential impacts (page 188).



Ambiguity

The draft guideline is quite ambiguous and lacks clarity as to the meaning of descriptions throughout. For example the draft guideline states that a planning proposal for “non-intrusive works” do not need a risk assessment of landfill gas impacts. The meaning of “significant ground disturbance”, “ground disturbance” or “adjoin” in the context of planning proposals in proximity to a landfill is not clear enough. Reference to gas mitigation measures needing verification by a suitably qualified professional is also ambiguous in that the guideline lacks clarity around who requests the verification and who the verification is provided to. The Ministerial EPA Inquiry supports this concern and recommends that planning controls are more readily understood and applied (page 197).

The nature of urban development in Hobsons Bay and most likely across metropolitan Melbourne, suggests that most planning applications received by Council would result in “ground disturbance”. Due to the lack of information of landfills this may then require either landfill gas mitigation or a landfill gas risk assessment by the planning permit applicant. This is a significant imposition on planning proponents who are likely to abandon the process due to cost. The Ministerial EPA Inquiry states that “often, there are few options for mitigating problems when land use is already established” (page 185). This is particularly the case in areas where closed landfills are predominant.

Further improvements – timeframes, enforcement, post assessment tools and training and development

The draft guideline states that Council can request EPA’s advice on specific planning proposals by providing notice to EPA of relevant planning scheme amendments or planning permit applications under the *Planning and Environment Act 1987*. Councils have obligations under the *Planning and Environment Act 1987* to make decisions within specified timeframes. Further details regarding EPA’s response timeframes is essential to ensure Council’s timeframes can be met. As previously mentioned in prior submissions greater EPA support in decisions presented to Panel and VCAT hearings is required.

The draft guideline lacks detail about what councils are obligated to do with information received and how to enforce requirements of mitigation actions or recommendations of risk assessments or section 53V audits. An obligation to manage this information, make decisions and enforce conditions is hampered by the lack of expertise and resources in planning teams. The process may also require peer review of information which can be costly to Councils if costs are not returned.

The draft guideline would also benefit from examples of planning conditions for the outcomes of the risk assessments and section 53V audits.

In addition ongoing training and development with support from the EPA is essential to ensure consistency and appropriate resourcing. There is further potential for the EPA to extend its partnership with the Planning Institute of Victoria to deliver ongoing training and development.

Another improvement would be to develop a template checklist that planners could complete when assessing proposals that could also be used as a record against the planning proposal.

Conclusion

In conclusion, in the absence of these considerations it is Council’s view that this draft guideline will become another process which largely sits outside the planning system on a significant issue for which councils are not experts within. It also requires a large degree of familiarity with the Landfill BPEM by already stretched resources of Council’s planning teams and as such has the potential to be overlooked or not fully considered.