9 February 2016

Mr Nick Wimbush
Major Hazard Facilities Advisory Committee
c/o Planning Panels Victoria
Level 5, 1 Spring Street
Melbourne Vic 3000

Dear Mr Wimbush,

**Major Hazard Facilities Advisory Committee Discussion Paper**

Council welcomes the opportunity to provide a submission to the Major Hazard Facilities Advisory Committee Discussion Paper.

Planning around Major Hazard facilities is a key priority area as identified in the Hobsons Bay Advocacy Strategy 2013–17. Council is pleased to see the establishment of the Major Hazard Facilities Advisory Committee and is looking forward to partaking in this process to ensure an appropriate, holistic and balanced approach to land use planning around Major Hazard Facilities.

Please find attached the Council’s submission. If you would like to discuss this submission further please contact Bill Millard, Director Strategic Development on 9932 1096 or email, bmillard@hobsonsbay.vic.gov.au.

Yours sincerely,

Chris Eddy
Chief Executive Officer
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EXECUTIVE SUMMARY

1. Land use planning around Major Hazard Facilities (MHFs) and pipelines is an important issue for Council. There are eight MHFs in the municipality, numerous pipelines and increasing pressure to redevelop redundant industrial land in proximity to MHFs. Council has been advocating for a state led approach to land use planning around MHFs for some time. The matter is a key priority for Council identified in Hobsons Bay Advocacy Strategy, 2013-17.

2. This submission will provide an overview of MHFs in Hobsons Bay (the municipality) and will then discuss each of the Major Hazard Facility Advisory Committee’s (advisory committee) ‘thought starter’ questions. Finally this submission will discuss other key matters the advisory committee should consider as they are relevant to land use planning around MHFs.

3. As a starting point, it is essential that the roles and responsibilities of Council are clearly defined and understood. Similarly, the roles and responsibilities of Worksafe MHFs, Energy Safe Victoria (ESV) and the pipeline licensees need to be clearly understood. Council does not support taking on a risk assessment, mitigation or an enforcement role in either the MHF or pipeline frameworks. Council does not have the expertise, access to information, staff or financial resources to undertake such a task. A dedicated appropriately resourced team that sits within the Department of Environment, Water, Land and Planning (DEWLP) that bridges the gap between land use planning and MHFs is required. A similar team is also required within Worksafe and the Environmental Protection Authority (EPA) to ensure that risk e.g. associated with dangerous goods (Worksafe) and amenity, noise and dust (EPA) concerns are also addressed. The final arrangement between these three stakeholders must ensure an integrated, balanced and holistic planning outcome.

4. While as noted in this submission, the MHFs all have a commercial interest to protect, they are best placed to advise on their current operations and future uses. The MHFs should be given recommending referral status. This allows Council the ability to choose not to agree with their recommendations if they are unreasonable or unjustified.

5. New state policy which provides clear direction is required in the State Planning Policy Framework (SPPF) to guide land use planning around MHFs. This can be supported by municipal specific local policy in Local Planning Policy Framework (LPPF).

6. Consideration should also be given to the introduction of a new tool that addresses both land use and built form in the Victorian Planning Provisions (VPP) to guide planning around MHFs. While Council’s preference is an overlay tool overlay tool similar to the Melbourne Airport Environs Overlay which addresses both land use and built form outcomes, it is acknowledged that generally overlays do not control land use.

7. This policy must be informed by evidence based strategic justification. Further work is required to determine exactly what the level of risk is in areas around a MHF or from pipelines.
8. The municipality has a number of existing established residential, commercial and open space areas around MHFs. Council does not support the blanket sterilisation of large tracts of land around an MHF or pipeline. It’s imperative that a coordinated, holistic and balanced approach is taken.

9. Council supports the establishment of the advisory committee to consider land use planning around MHFs and is looking forward to contributing to this process.
THE MUNICIPALITY AT A GLANCE

1. The municipality is situated approximately seven to 20 kilometres south west of the Central Business District, covering an area of 66 square kilometres. The municipality has a population of approximately 91,148 people which is forecast to increase by 18 per cent by 2036.

2. The municipality has:

   a. some of the State’s most significant industries including petrochemical storage and refinement and resin manufacturing. These include eight MHFs, being,

      i. Caltex Newport at 411 Douglas Parade, Newport
      ii. Dow Chemical Altona at 541 – 583 Kororoit Creek Road, Altona
      iii. Mobil Refining, Yarraville at 29 Francis Street Yarraville
      iv. Mobil Refining Altona at the corner of Kororoit Creek and Millers Road, Altona
      v. Mobil Refining Williamstown at Nelson Place, Williamstown
      vi. Mobil Refining Altona at Kororoit Creek Road, Altona
      vii. Qenos Altona at 471 – 513 Kororoit Creek, Altona
      viii. Viva Newport at Burleigh Street, Spotswood

      Map one at appendix one illustrates the location of these MHFs. Three of these MHFs manufacture and five store.

   b. some MHFs located next to established residential areas. The ‘WorkSafe: Major Hazard Facilities: Land use Planning near a Major Hazard Facility’ advisory note (the WorkSafe planning advisory note) guides land use development around these MHFs and has implications on the density and uses allowable in these areas. This includes residential and commercial densities (e.g. offices and other uses that cater for increased numbers of people).

   c. the Somerton to Altona Petroleum pipeline (petrol pipeline) and the Western Port, Altona, Geelong Pipeline (WAG pipeline). These pipelines are regulated by their own legislative framework but have an effect on land use planning in certain areas of the municipality.

   d. established residential areas such as Williamstown, Laverton, Newport and Altona and portions of the municipality within proximity of MHFs and existing pipelines.

   e. activity centres identified under Plan Melbourne either on the fringe of an MHF advisory area or have underground pipelines running through them.

   f. an extensive coastline onto Port Phillip Bay and Hobsons Bay which may be impacted by climate change induced sea level rise in the future which will affect the municipality including its existing residential areas, activity centres and industrial areas including MHFs.

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g. nine Strategic Redevelopment Areas (SRAs) identified in the Hobsons Bay Industrial Land Management Strategy, 2008 (ILMS). Six of these areas have been identified as potentially suitable for residential redevelopment subject to strategic justification and the consideration of key matters such as pipeline and MHF risk.

h. an ageing population that will require aid if an incident takes place at a MHF or to a pipeline. With only six key access routes in and out of the municipality and routes that run along MHF areas or pipelines, this presents an added challenge to emergency management.

3. Other constraints affecting the municipality include contaminated land, foreshore flooding, rail and freeway interfaces, a constrained local and arterial road network. Like other Councils, Hobsons Bay faces the challenge of balancing these constraints against the pressures of urban consolidation. Land use planning around MHFs and pipelines adds another layer of complexity to the equation.

RESPONSES TO ‘THOUGHT STARTER’ QUESTIONS

HAZARD, RISK AND CONSEQUENCE

‘Does the planning system effectively address existing or greenfield MHF or other hazardous industry that poses a risk to the safety of surrounding areas?’

1. Neither the planning framework or MHF framework address land use planning around MHFs or other facilities in an appropriate, integrated, balanced or efficient manner. The key issues are the absence of:

   a. state government policy and process addressing land use planning around MHFs
   b. tools in the Victorian Planning Provisions (VPP) that consider risk
   c. use of the reverse buffer concept
   d. a statutory mechanism to enable notice or referral of a planning permit application to be given to relevant MHF stakeholders
   e. spatial mapping tools
   f. information, resources and expertise to appropriately consider land use planning around MHFs
   g. a consistent approach to land use planning around MHFs and pipelines from the operators, regulators and Councils.

   These matters are discussed in greater detail below.
State Government policy and process

2. The Buncefield incident in the United Kingdom and *Sandbar Properties Pty Ltd v Maribyrnong City Council (No2) [2010]* VCAT 678 decision triggered greater consideration of land use planning around MHFs.

3. Consideration of land use planning around MHFs in the municipality takes place on a site by site, basis. This has commonly led to Planning Panels Victoria (PPV) and the Victorian Civil and Administrative Tribunal (VCAT) making decisions on proposals near MHFs in the municipality including the following:
   a. Former Port Phillip Woollen Mills Advisory Committee (FPPWMAC)
   b. Ports and Environ Advisory Committee (PEAC)
   c. Amendment C76: Former Newport Flour Mill noting that this amendment lapsed.
   d. *Shell Company of Australia v Hobsons Bay CC & Ors* (includes Summary) (Red Dot) [2012] VCAT 1184
   e. *VJA Consultants Pty Ltd v Hobsons Bay CC & Ors* [2012] VCAT 1846

4. Such an approach should be avoided as it risks resulting in inconsistent decisions or conservative decisions inappropriately being used as the ‘yard stick’ for future applications. Council has since developed the ‘*Interim management of land use planning around Major Hazard Facility Guidelines*’ (the interim guidelines) which outlines a process to facilitate consistent consideration of planning permits around MHFs (attached at appendix two). These were in use when Council considered:
   a. *JB and DP Milgate Property Pty Ltd v Hobsons Bay CC* [2015] (3 August 2015)
   b. *NP Development Pty Ltd v Hobsons Bay CC & Ors* (Red Dot) [2014] VCAT 861
   c. *Mary Day v Hobsons Bay City Council* VCAT 1402/2015 which is currently being considered by VCAT
   d. Amendment C96: which rezoned land at 222 and 240-258 Kororoit Creek Rd, Williamstown from Industrial 3 to General Residential Zone, Schedule 3 and applied an Environmental Audit and Schedule 14 to the Design and Development Overlay and construction of a residential aged care facility, noting that this site is outside the inner and outer advisory areas as defined by Worksafe.

5. The MHFs in the state are of such significance to warrant a coordinated, holistic and balanced approach to land use planning around them.

6. As the objectives of the *Planning and Environment Act 1987* (P and E Act) specify, planning must consider a range of matters and it is up to the Responsible Authority (or Planning Authority) to balance competing interests. This is illustrated by the push for urban consolidation, particularly in those areas that are well serviced by transport and activity centres that are also affected by the risk associated with MHFs. Map two of appendix one shows the location of MHFs in the municipality. This map illustrates the portions of the municipality that are affected by the MHF inner and outer advisory areas.
Any state government policy must ensure a balance and not sterilise large tracts of land. This is a crucial matter for Council.

7. It is imperative that any land use policy developed for MHFs is written in land use and amenity terms and that any potential mitigation measures required are addressed in their relevant frameworks. Council is not equipped to take on responsibilities or make decisions regarding the responsibilities of other stakeholders (such as Worksafe, the Environment Protection Authority (EPA) or the MHFs). A new dedicated team that sits within the Department of Environment, Land, Water and Planning (DELWP) to address the gap between land use planning and MHFs is required. This team must be appropriately resourced with the relevant risk and planning expertise and tasked with considering land use planning around MHFs and net community benefit as whole.

8. It is acknowledged that Worksafe and the EPA are governed by different legislative frameworks and consider different matters. Worksafe considers matters including explosive environments, dangerous goods and the EPA considers dust, amenity and noise issues. Therefore both these organisations should be recommending referral authorities and provide input to DELWP. This may require dedicated teams in each authority that are able to consider land use planning, risk and amenity to ensure a holistic response needed is provided.

9. The final arrangement between these three stakeholders must ensure an integrated, balanced and holistic planning outcome. These teams must be appropriately resources, have the relevant expertise and be tasked with considering land use planning around MHFs and net community benefit as a whole.

**RECOMMENDATION:** A new team within DELWP or Worksafe and the EPA and is provided input from the MHFs is required to address the policy gap between land use planning and MHFs. This must be appropriately resourced and have the correct planning and risk expertise. It must have regard to the MHFs and net community benefit, ensuring a balanced approach. Worksafe and the EPA should be recommending referral authorities and have dedicated teams that are able to consider land use planning, risk and amenity to ensure a holistic response is provided.

### Tools in the Victorian Planning Provisions that address land use planning around Major Hazard Facilities

10. There is broad direction in the State Planning Policy Framework (SPPF) at Clause 10, 11, 12, 14, 17 and 18 however there is no specific MHF related clause that guides land use planning around these facilities. The draft clause 05.08 of the proposed Planning Policy Framework (PPF) provided a good starting point. This clause is derived from the Worksafe guidance note with state policy for this clause being:

    ‘WorkSafe Victoria sets standards to ensure that industrial operations are carried out in a safe manner, but it is prudent to limit sensitive uses close to hazardous facilities to reduce any adverse outcomes should an accident occur.’
Clause 52.10 is cited as the relevant particular provision for this clause. The guide for decision makers is that,

‘the use and intensity of development should not expose people to unacceptable health or safety risks and consequences associated with an existing MHF.’

11. The Worksafe advisory note and the EPA Recommended Separation Distances for Industrial Residual Air Emissions (EPA guidelines) are cited as background documents that provide additional information about the objectives and strategies of the clause and have the same status as a reference document in planning schemes. Clause 05.08 provides a starting point for the consideration of MHFs on a state level however progress on the PPF has stalled.

12. Currently, there are specific controls in the VPPs that consider MHFs. In the absence of this, a mix of tools are used to address the matter including the Environment Significance Overlay (ESO), Special Use Zone (SUZ) and the Local Planning Policy Framework (LPPF) but this mix of tools does not provide an appropriate outcome as it results in an inconsistent approach to what is a state issue. A state wide planning tool that considers land use and built form and that appropriately addresses MHFs is required. This tool will need to be flexible to allow site responsive planning.

13. This approach must consider the varied nature of the MHFs, e.g. oil refineries, chemical manufacturing sites and water treatment plants that may have different needs and pose different risks to their surrounds. Such a tool will also have to address different scenarios, e.g. MHFs that have existing established buffers will require a tool that ensures buffers are protected, whereas MHFs that have established encroachments will require a tool that manages the encroachment.

**RECOMMENDATION:** A new planning tool in the VPPs to address land use planning around MHFs is required. It must address land use and built form, the varied nature of MHFs and the various land use scenarios existing.

**Use of the reverse buffer concept**

14. Aside from Clause 52.43: Live Music and Entertainment Noise, there is little in the VPPs that requires the implementation of an agent of change principle. Clause 13.04-2: Air Quality arguably requires this if reference to EPA publication 1518 were to replace AQ2/86. When sensitive uses encroach on existing industrial buffers or MHF advisory areas, there is no statutory provision to require the agent of change, the residential encroacher, to consider and mitigate their impacts on the MHF. To address this policy gap, Council has introduced the interim guidelines which require notification to Worksafe, the MHF and the EPA when a planning permit for a sensitive use is considered. However councils should not be required to administer mitigation measures that do not relate to land use planning. Additionally Council should not be required to take on mitigation measures specified by another agency that are complicated, resource intensive, require significant enforcement capability or expertise that Council does not possess.
RECOMMENDATION: The VPPs must be amended to update reference to EPA publication 1518. Given that this publication will be updated in future, reference should include the statement, ‘as amended from time to time.’ ² The agent of change principle must be introduced to address land use planning around MHFs however councils should not be required to take on mitigation measures that are complicated, resource intensive, require significant enforcement or not within their legislative obligations. A new dedicated team that sits within DELWP or Worksafe and the EPA should be created to address the gap between land use planning and MHFs. This must be appropriately resourced and have the correct planning and risk expertise. It must have regard to the MHFs and net community benefit ensuring a balanced approach. Worksafe and the EPA should be recommending referral authorities and have dedicated teams that are able to consider land use planning, risk and amenity to ensure a holistic response is provided.

Statutory mechanism to enable notice or a referral to relevant stakeholders

15. Worksafe does not have recommending referral or notification status at Clause 66: Referrals for use and development of land near MHFs. Council currently provides voluntary notice to Worksafe, the EPA and the MHF operator when development of a sensitive land use is proposed near a MHF as set out in the interim guidelines. However, tools such as a Development Plan Overlay (DPO) do not allow for such voluntary notice and remove appeal rights.³

16. A new dedicated team that sits with DELWP or Worksafe and the EPA could be created to address the gap between land use planning and MHFs and be included as a referral authority at Clause 66. This must be appropriately resourced and have the correct planning and risk expertise. It must have regard to the MHFs and net community benefit ensuring a balanced approach. The extent of the referral provision must be informed by evidence based strategic justification.

17. Worksafe, the EPA and the MHFs should not be determining referral authorities. The capacity and ability of Worksafe to address land use planning is questioned. The MHFs are fundamentally part of a bigger commercial entity that is not statutorily required to consider ‘community good’ and should not be given more than recommending referral authority status given that they know their own operations and implications associated with them. Recommending referral status allows Council the ability to choose not to agree with their recommendations if they are unreasonable or unjustified.

18. As noted throughout this submission, a team within Worksafe and the EPA should be created and both authorities should be recommending referral authorities. This dedicated team in each authority must be appropriately resourced and have the relevant expertise

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² It is noted that it is not common practice to reference documents in planning schemes without a date. Including a date can limit reference to the document and potentially preclude reference to an updated document however inserting ‘as amended from time to time’ addresses this concern. Further, the Interpretation of Legislation Act 1984 ensures that the up to date guidelines apply.

³ It is acknowledged that the Development Plan Overlay does not stop a Responsible Authority from seeking comments to inform itself as per s60 of the Planning and Environment Act 1987. However any comments received by a responsible authority do not have statutory weight and there are no appeal rights available to stakeholders pursuant to the DPO.
to consider land use planning, risk and amenity to ensure the holistic response needed is provided.

**RECOMMENDATION:** A new team that sits within DELWP or Worksafe and the EPA, that is informed by the MHFs be created and included as a recommending referral authority. This must be appropriately resourced and have the correct planning and risk expertise. It must have regard to the MHFs and net community benefit ensuring a balanced approach and the extent of its referral provision informed by evidence based strategic justification. A team within Worksafe and the EPA should be created and be recommending referral authorities. This dedicated team in each authority will have to consider land use planning, risk and amenity to ensure the holistic response needed is provided. The MHFs should be made recommending referral authorities as they know their operations and are best placed to advise on this. Recommending referral status allows Council the ability to choose not to agree with their recommendations if they are unreasonable or unjustified.

**Spatial mapping tools**

19. The inner (usually 185 metres from tank bunds) and outer advisory areas (usually 300 metres from tank bunds) for MHFs are not defined in the Worksafe planning advisory note, but are defined in the Worksafe discussion paper titled ‘Determination of land use planning advisory areas for ‘Buncefield type storage facilities’ (20 May 2015) (Worksafe discussion paper). These advisory distances are for a Buncefield type storage facility – a refinery and tank farm, not other types of MHFs. Further investigation is required by the MHF operators and Worksafe to determine if more appropriate distances are required for other types of MHFs.

20. Council has obtained inner and outer advisory area maps (not GIS layers) from Worksafe or the relevant MHFs through various planning processes for the following MHFs in the municipality:

   a. Mobil at Nelson Place, Williamstown
   b. Yarraville Fuel Terminal – Mobil Refining, Yarraville at 29 Francis Street, Yarraville
   c. Newport Fuel Terminal - Caltex Newport at 411 Douglas Parade, Newport and Viva at Burleigh Street, Spotswood

21. Correspondence from Worksafe has also clarified that processing units for the Mobil Altona Refinery at Kororoit Creek Road and Millers Road are 300 metres from the inner advisory area and 500 metres for the outer advisory area. Worksafe has also advised that both Dow Chemicals and Qenos do not require advisory areas as they are surrounded by the Special Use Zone 4: Altona Special Industrial Area (SUZ4) which

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limits employee populations and prohibits residential uses other than a caretaker’s dwelling.

22. Worksafe and/or MHF issued maps and associated GIS layers should be provided to Councils for all MHFs to ensure that they are able to correctly identify sites in the inner and outer advisory areas of MHFs. As part of this, Worksafe and the MHF should justify the advisory area measurements and either confirm or amend distances for each MHF. The extent of the advisory areas around a MHF should be the result of evidence based strategic justification. Worksafe and the MHFs are best places to undertake this work.

23. This work should inform the basis of any state policy, zone, overlay and/or particular provision that applies to land use planning around an MHF.

24. The maps and GIS layers should be explicit in identifying where measurements are taken from; whether it is edge of bund, processing unit or edge of the MHF site. Generally, the maps Council has prepared take measurements from the bund area and are an approximate. Council maintains that measurements should be taken from edge of bund/processing unit; not the site.

**RECOMMENDATION:** The extent of the advisory areas around MHFs must be the result of evidence based strategic justification. Worksafe and the MHFs must prepare and provide Councils with maps and GIS layers that determine where advisory areas are located. Measurements should be taken from edge of bund/processing unit, not site.

### Information, resources and expertise to appropriately consider land use planning around MHFs

25. Council’s duties are defined at section 12 and 14 of the P and E Act. While Councils are responsible for land use planning and required to ‘secure a...safe working, living and recreational environment for all Victorians...’ Hobsons Bay does not consider that Councils should be responsible for the management of risk to the extent of considering, assessing and enforcing risk mitigation measures. A dedicated, resources authority or team with the correct expertise or team that sits within DELWP is best placed to undertake this. Such an exercise will require input from Worksafe, the EPA and MHFs.

26. In the instance that the MHF advisory committee considers Councils have a role to play in this framework; past experiences illustrate the difficulty in obtaining information about an MHF’s operations. The FPPWM advisory committee hearing illustrates this. A qualitative risk assessment was submitted as part of the applicant’s submission for redevelopment of that site and the author called as an expert witness for the applicant on the matter of risk from the Point Gellibrand Tank Farm. After significant cross examination, it became clear that the applicant’s risk report was based on a desk top analysis of the Point Gellibrand Facility rather than an accurate assessment of what takes place on the site. The amount of assumptions made in the expert evidence

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5 Planning and Environment Act 1987, s4(c).
resulted in questions being raised about the reliability of its conclusions. While the absence of readily accessible information about the detailed operation of MHFs is understandable from a security perspective, it is exceptionally difficult for Councils to make an informed decision if they do not have all the information before them or the expertise to determine if information is satisfactory.

27. As part of the planning scheme amendment process, Council has engaged risk consultants to provide advice which is a costly and resource intensive exercise. Given that this is a niche area of expertise, Council has encountered numerous instances of perceived or existing conflict of interest; ruling out use of particular consultants. There must be an ability to obtain funds from an applicant to peer review risk assessment documents and reports similar to the contaminated land framework. In the past, Council has relied on the EPA, Worksafe and the MHF operators to guide it when making decisions on planning permits. Seeking advice or representation at VCAT is a costly and resource intensive exercise. Indicative fee proposals provided to Council in 2010 indicate that a risk assessment will cost more than $15,000. However if it is critical of the inputs provided, it becomes a desktop analysis. Such an analysis would only consider loss of life, not property damage and other secondary impacts. The added expense is excessively onerous for Councils especially with the introduction of rate capping.

28. Council’s experience in dealing with Worksafe and the MHF operators is varied. While these stakeholders provide advice to Council, the practicality of this advice or consequences of the implementation associated with it is not appropriately considered from a land use perspective. A well resourced team with the appropriate expertise that sits within DELWP or Worksafe and the EPA is required to bridge the gap between land use planning requirements and the requirements of MHFs and to consider land use planning around MHFs in a holistic perspective. Both Worksafe and the EPA should be recommending referral authorities. This may require dedicated teams in each authority that are able to consider land use planning, risk and amenity to ensure the holistic response needed is provided.

29. Irrespective of which authority address the matter, a timely response is critical to ensure planning decisions are made in an efficient and timely manner. Council’s expectation is that a recommending referral authority is still required to respond to a referral within a stipulated timeframe.

RECOMMENDATION: A new team that sits within DELWP is required to bridge the gap between land use planning and MHFs. Worksafe and the EPA should be recommending referral authorities. They must be appropriately resourced and have the expertise to consider land use planning, risk and amenity to ensure a holistic response.

A consistent approach to land use planning around MHFs and pipelines from the operators and regulators
30. MHFs have approached land use planning around their facility differently. This is also the case for pipeline operators. A consistent approach is essential to a coordinated and effective response.

‘How should planning address areas surrounding existing or proposed MHF or other hazardous industry that poses a risk to the safety of surrounding areas?’

31. Planning should address areas surrounding existing or proposed MHFs or other hazardous industry, however the approaches to existing and proposed MHFs will vary. The below response focuses on existing MHFs as this is Council’s experience. It is noted that given the agent of change principle, new MHFs should have regard to existing uses including existing sensitive uses.

State policy

32. Acknowledging the discussion at paragraph ten in this section of this submission, any approach to land use planning around MHFs must start with state policy in the SPPF. The draft clause 05.08 of the proposed PPF provides a good starting point. This clause is derived from the Worksafe guidance note with state policy for this clause being:

‘WorkSafe Victoria sets standards to ensure that industrial operations are carried out in a safe manner, but it is prudent to limit sensitive uses close to hazardous facilities to reduce any adverse outcomes should an accident occur.’

Clause 52.10 is cited as the relevant particular provision for this clause. The guide for decision makers is that:

‘the use and intensity of development should not expose people to unacceptable health or safety risks and consequences associated with an existing MHF.’

33. The Worksafe advisory note and the EPA Recommended Separation Distances for Industrial Residual Air Emissions (EPA guidelines) are cited as background documents that provide additional information about the objectives and strategies of the clause and have the same status as a reference document in planning schemes. If introduced into the final version of the PPF, Clause 05.08 provides a starting point for the consideration of MHFs on a state level.

**RECOMMENDATION:** Specific state policy should be introduced into the SPPF to address land use planning around MHFs.

Local policy

34. The SPPF will in turn provide support for the potential introduction of local planning policy in planning schemes to ensure further site specific guidance to land use planning around MHFs. Hobsons Bay is currently reviewing its Municipal Strategic Statement (MSS). The draft MSS proposes to include the following:

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6 Or alternative wording being ‘the use and density of development’
Clause 21.05 Environmental Risk

Clause 21.05-4 Major Hazard Facilities

Objective 1 To plan for and manage land around MHF’s so that development and use is compatible with the MHF’s operations and provides reasonable amenity expectations.

Strategy 1.1 Provide notice of an application for use and development to WorkSafe, the Environment Protection Authority and the MHF of any proposal within 300 metres from the tank bund within the MHF and where applicable, 500 metres from processing units of MHFs.

Strategy 1.2 Consider advice from WorkSafe, the Environment Protection Authority and the MHF Council when deciding on the application.

Clause 21.07- Housing

Objective 4: To minimise impacts of Major Hazards Facilities on residential amenity.

Strategy 1: Limit residential development within the inner and outer advisory areas of Major Hazard Facilities as defined by WorkSafe Advisory Note and apply the Neighbourhood Residential Zone.

RECOMMENDATION: Clear state policy is required to facilitate the introduction of local policy into planning schemes e.g. via the MSS to address land use planning around MHFs.

Zones and overlays

35. Use of a zone or overlay provision enables a visual presentation of what land is affected by MHF considerations removing ambiguity. A new zone or overlay would highlight to potential and existing owners that an MHF exists, identifying and communicating what is already there. Worksafe, the EPA, the MHFs and Councils should all inform where any zone or overlay should apply. Additionally it should include recommending referrals to Worksafe, the EPA and the MHF or any new authority created to address land use planning around MHFs.

Zone

36. A standard zone would require complicated drafting as it will have to consider existing land uses and zones, transitional provisions and interface management between new acceptable uses and existing sensitive uses.

37. Of the existing VPP tools, the SUZ may be the most appropriate tool as it allows site/issue responsive drafting however this zone does allow exemptions from the notice and review provisions of the P and E Act. The Comprehensive Development Zone (CDZ)

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7 Hobsons Bay City Council, draft Municipal Strategic Statement (MSS), Clause 21.xx, January 2016.

Note that the draft MSS is yet to be finalised and go through the exhibition process.
is also flexible but does require a Comprehensive Development Plan to be incorporated into planning schemes. Using this zone will require planning authorities to master plan land around MHFs which is an expensive and exhaustive exercise and may not result in a consistent approach.

38. Council’s experience with the SUZ4 highlights that any new zone or overlay provision that applies to land around MHFs must have evidence based strategic justification, be consistently applied and have an inbuilt review mechanism that responds to any progresses in technology or change in the mode of operation (e.g. the cessation of transport of butadiene by road between Altona and Geelong). Transitional provisions and provisions that address extensions to existing dwellings and the like must be considered.

39. Further, as map two of appendix one illustrates, land around a number of the MHFs in the municipality is zoned for residential land uses; a sensitive use. Any zone provision must be able to manage sensitive uses rather than applying a blanket prohibition as this will effectively sterilise land.

40. SUZ4 of the Hobsons Bay Planning Scheme (HBPS) surrounds Dow Chemicals and Qenos in Altona. Map three of appendix one illustrates the extent of this zone. The zone does include exemptions from the notice and appeal rights in the P and E Act. The SUZ4 provisions include the following:

<table>
<thead>
<tr>
<th>Permit requirement</th>
</tr>
</thead>
<tbody>
<tr>
<td>Employee density is controlled by reference to the map entitled Altona Employee Population Density Controls. For the purpose of this Clause, one employee is equivalent to a person spending 44 hours on the site in any week.</td>
</tr>
<tr>
<td>A permit is required for the use of land designated on the map with a PD description unless the minimum floor area per employee as set out opposite that description in the following table is met.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Pd Description</th>
<th>Minimum Floor Area Required Per Employee</th>
</tr>
</thead>
<tbody>
<tr>
<td>PD10</td>
<td>315 m²</td>
</tr>
<tr>
<td>PD30</td>
<td>105 m²</td>
</tr>
<tr>
<td>PD60</td>
<td>52 m²</td>
</tr>
</tbody>
</table>

A permit is required for the use of land designated on the map with a PD description unless the number of persons employed on the land (calculated on a lot by lot basis) does not exceed that calculated using the ratios in the following table.

<table>
<thead>
<tr>
<th>Pd Description</th>
<th>Minimum Floor Area Required Per Employee</th>
<th>Maximum Number Of Employees Per Hectare</th>
</tr>
</thead>
<tbody>
<tr>
<td>PD 10</td>
<td>315 m²</td>
<td>19</td>
</tr>
<tr>
<td>PD 30</td>
<td>105 m²</td>
<td>57</td>
</tr>
</tbody>
</table>

Clause 5.0 specifies employee population density guidelines and decision guidelines include:


b. Any measures to protect the health and safety of persons on the land or on land nearby.
c. Whether the use or development would prejudice the continued operation and expansion of the Altona petrochemical industry.

d. The effect on the amenity of any nearby Public Park and Recreation Zones, Public Conservation and Resource Zones, Public Use Zones or Urban Floodway Zones.

41. The provisions are designed to protect the ongoing viability of these industries by keeping the number of employees in the surrounding areas to a density which is of an acceptable risk level. The controls are based on a risk assessment of the operation and the assumed future expansion of the complexes. As map two of appendix one, these provisions were inconsistently applied and do not align with cadastral boundaries. Sites that are similar distances away from the petrochemical industry are affected by different rates of population density control which makes application of this provision difficult to understand and illogical.

42. Given the amount of time that has lapsed since the introduction of the SUZ4 and the advances in technology, it can reasonably be expected that the ‘risk’ arising out of the operations of the petrochemical industry has reduced. Therefore, it is appropriate to re-establish the strategic justification for the population density controls and seek their more logical application. The application of population density controls should be informed by level of risk exposure. Employees are typically at work for eight hours, whereas the exposure time for a resident can be 24 hours. Attempting to control employee numbers on land around MHFs contradicts the fact that an MHF itself has to have employees on site. In the event of an emergency management evacuation, employees are less likely to experience difficulties when evacuating whereas residents may not be familiar with what is required in such situations.

43. Council has requested a review of these controls for a number of years and as part of a number of amendments but has been unsuccessful to date. The SUZ4 impacts what industry can establish in the zone and has inadvertently created a freight hub in the municipality - a low employment generating use. This presents challenges like management of industrial and residential traffic; increased servicing of roads due to increased wear and tear created by truck traffic and increased amenity concerns from residents in the area. Additionally, it stifles employment generating land uses from establishing in parts of the municipality. The potential unintended consequences of any new tool that addresses land use planning around MHFs must be appropriately considered and managed.

44. Given the discussion above, the rezoning of land around MHFs and introduction of a new zone is a complex exercise that requires consideration of existing uses, consequences of a rezoning and must ensure that it does not sterilise large tracts of land. Council’s preference is for an overlay, not a zone.

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Hobsons Bay Planning Scheme (HBPS), Clause 37.01: Special Use Zone – Schedule 4 (SUZ4)
Overlay

45. An overlay similar to the Melbourne Airport Environs Overlay, (MAEO) and Bushfire Management Overlay (BMO) may assist land use planning around a MHF. An overlay containing schedules would enable a localised site responsive approach; however its application is not without challenges. Generally overlays may only make requirements about development, not use. The MAEO is a notable exception.

46. The MAEO – Schedule 1 of the Brimbank Planning Scheme has the following provision:

   a. ‘Land must not be used for:
      i. More than one Dwelling on a lot.
      ii. More than one Dependent person’s unit on a lot.’

   Subdivision in the MAEO1 is prohibited.

47. Whereas the MAEO – Schedule 2 of the Brimbank Planning Scheme has the following provision:

   a. ‘A permit is required to use land for a Dwelling.
      i. The development of a single lot for two or more Dwellings must not exceed a density of
      ii. one dwelling per 300 square metres.’

   Subdivision in the MAEO2 is subject to a permit, lot size and requires the applicant to enter into an agreement pursuant to section 173 of the P and E Act to stipulate that land will not be further subdivided.


49. All planning permit applications are exempt from sections 52(1)(a), (b) and (d) of the P and E Act. Notification to the airport licensee must be given pursuant to section 52(1)(c) of the P and E Act. There is the ability for the airport and responsible authority to agree in writing to conditions etc. and remove the need for notification.

50. A similar tool could be drafted to address land use planning around MHFs. However, there may be the ability to include a recommending referral mechanism to any new dedicated entity, the MHF, Worksafe and EPA rather than notification.

51. The ability to control ‘sensitive uses’ would also be required. The inclusion and development of a definition of ‘sensitive uses’ in the planning scheme would be required to support this. The definition of ‘sensitive uses’ must be consistent across both the planning and MHF legislative frameworks but essentially be in land use planning terms.

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Brimbank Planning Scheme, Clause 45.08: Melbourne Airport Environs Overlay – Schedule 1.

Brimbank Planning Scheme, Clause 45.08: Melbourne Airport Environs Overlay – Schedule 2.
The unintended consequences of an overlay which controls sensitive uses will need to be explored and carefully considered.

52. The BMO is another example. It also requires permits for buildings and works associated with particular uses such as accommodation, includes referral and notification to the relevant fire authority but also includes a set of mandatory conditions that must be placed on permits. Depending on the conditions, this may be an approach that ensures consistency. However it is highlighted that conditions must not be onerous and must be enforceable.

53. Both the MAEO and BMO include the following provisions to address alterations to a dwelling:

a. ‘An alteration or extension to a Dwelling which existed as at 14 May 2007 provided the extension is less than 50% of the floor area of the Dwelling at that date.’

RECOMMENDATION: An overlay tool containing provisions to control ‘sensitive uses’ similar to the MAEO should be explored for introduction to the VPPs to assist land use planning around MHFs. It would need to be supported by the development of a consistent definition of ‘sensitive uses’ for inclusion in the VPP’s. The definition must be consistent across the planning and MHF’s legislative frameworks.

Practice notes, advisory notes and Ministerial Directions

54. A suite of practice notes, advisory notes and Ministerial Directions should be prepared to assist Councils and stakeholders (any new dedicated entity or team, Worksafe, EPA and MHFs) in applying and using any land use tools the MHF advisory committee recommends.

‘Should there be greater consultation when a new MHF is proposed or changes made that would require changes to its safety assessment? Who should be involved in that consultation?’

55. There are many variables to this question which makes it difficult to answer. It is anticipated that changes at a MHF or a proposed MHF require approvals from Worksafe e.g. via the safety case framework or the MHF framework. Referral to Councils should be given in such instances and comments appropriately considered. If changes proposed or a proposed MHF triggers planning permits, Council should notify the surrounding landholders and any feedback received should be considered.

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12 State Government of Victoria, Victorian Planning Provisions, Clause 44.06: Bushfire Management Overlay; Brimbank Planning Scheme, Clause 45.08: Melbourne Airport Environments Overlay – Schedule 1; 2.
'Should a definition for MHF be included in planning schemes, and if so, what might a definition include?'

56. Ideally, MHFs should be defined in planning schemes. The difficulty here is MHFs may be nested under different land use terms at Clause 74 of the HBPS including industry and warehouse. The definition should be generally consistent with the *Occupational Health and Safety Regulations 2007* (OHS Regulations), being:

   a. a facility where materials (defined in Schedule 9 of the OHS Regulations) are presented or are likely to be presented in a quantity exceeding their threshold or
   b. facilities as determined by WorkSafe.\(^\text{13}\)

However it is critical that the definition in the VPPs must be in ‘planning terms’ as ultimately it is being inserted into planning schemes. The introduction of above wording as the definition in the VPPs is not supported as it requires planners administering the scheme to have knowledge of Schedule 9 of the OHS regulations.

57. The interplay between any new definition and existing VPP definitions such as industry and fuel depot must be appropriately considered.

58. Worksafe should be required to continue to maintain an easily accessible list of MHFs such as that already available on their website.

**RECOMMENDATION:** The VPPs should define ‘MHF’ and the definition should be generally consistent with the OHS Regulations. However it is critical that the definition is in ‘planning terms.’

'Should MHF emergency plans also be required to consider the affect a major incident would have on property within the land use planning areas and provide this information to the local community?'

59. Given that MHFs do not exist in isolation and emergency’s impacts do not stop at site boundaries, it is appropriate for MHF emergency plans to consider the effect of a major incident on all surrounding areas and the local community. However, the release of this information may create unnecessary hysteria and angst, this matter needs to be carefully considered. A risk matrix may provide a context for consideration of public interest.

60. Under the *Emergency Management Act 1986*, Council is required to prepare an emergency management plan.\(^\text{14}\) The MHF emergency plans should inform Council’s emergency management plans.

**RECOMMENDATION:** MHF emergency plans should consider the effect of a major incident on all surrounding areas and the local community and integrate and inform Council’s emergency management and recovery plans.

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\(^\text{13}\) *Occupational Health and Safety Regulations 2007*, r1.1.5.

‘Should the WorkSafe methodology for Inner and Outer Planning Advisory Areas continue to be the basis for identifying risk areas around MHF and be used for the land use planning system?’

61. Council has used the inner and outer advisory areas as the guide to trigger notice to Worksafe, EPA and the MHF as it is the best available information Council can access. If more relevant, site and/or MHF type advisory area distances are available, then these latter distances should be used. Any methodology for identifying advisory areas in the planning scheme should be supported by evidence based strategic justification. It is noted that clause 52.10 and the EPA air emissions guidelines do not consider risk. Rather, note two outlines that a risk assessment may be needed. Therefore it is not an appropriate guide to determine what areas require input from Worksafe and the MHFs. However as the discussion at the Amendment C96 Panel highlights, air emission impacts from the Mobil refinery can be present up to two kilometres away if the receiver is six metres high or more i.e. if it is built form higher than two storeys.

RECOMMENDATION: Any risk areas identified must be supported by evidence based strategic justification.

‘Should risk areas around MHF, through Inner and Outer Planning Advisory Areas, be identified in planning schemes?’

62. Planning schemes should identify areas that require input from Worksafe, the EPA and MHFs if planning permit applications are lodged. The inner and outer advisory areas provide guidance on these areas. However, as noted throughout this submission, Council should not be required to take on roles that sit outside its legislative framework. Identification of areas should be supported by policy in the remainder of planning schemes and be as a result of evidence based strategic justification.

‘Are there other more appropriate mechanisms other than the planning system that could be used to identify risk areas around a MHF that would alert landowners, tenants, permit applicants, facility operators and prospective purchasers and others about a MHF and the risk potential?’

63. Amendments to the building codes could be explored similar to the local flood plain management authority finished floor level requirements some areas have for declared flood areas.

‘Should modelled risk areas around MHF be translated into planning schemes, and if so, how could this best be achieved?’

64. It is emphasised that risk is better addressed under the MHF framework, not the planning framework. Council is opposed to taking on roles and responsibilities better suited to Worksafe and the MHFs. It does not have the expertise and resources to assess, mitigate or enforce risk management particularly if conditions are onerous or reports technical. A new dedicated team within DELWP or Worksafe and the EPA should be
required to bridge the gap between land use and MHFs. However Council is not opposed to the modelled risk areas forming the basis for what areas are impacted by MHFs and require particular land use guidance through more direct policy in the SPPF and specific controls.

‘Is the treatment of MHF in state policy adequate/appropriate?’

65. As discussed throughout this submission state policy does not adequately address planning around MHFs and new more specific state policy is required. However it is noted that land use planning and the MHF frameworks are extensive in their own right. The issue is that there is little that bridges the gap between the two in an appropriate manner. It is emphasised that MHFs are regulated under a different legislative framework and the planning framework should not take on aspects of it.

‘Should policy more clearly prioritise the protection of human life in areas around MHF similar to that provided under Bushfire policy?’

66. It is imperative that evidence based strategic justification support the introduction of any new MHF policy especially one that prioritises the protection of human life. Council has used the Worksafe advisory area for a Buncefield type incident as a guide as it is the best available information Council can access. Council’s prior experience is that any densification e.g. two dwellings on a lot, will be resisted by Worksafe and the MHFs. Greater work must be done by Worksafe and the MHFs to determine what is an acceptable level of risk and how it can be managed so as to avoid sterilising large tracts of land. Locking up viable land especially existing commercial and residential areas is not the best or most effective use of the land and should be avoided.

67. The risk associated with being near an MHF must also be considered from a practical perspective. Currently the individual risk of fatality from potential foreseeable incidents is greater than or equates to one chance in 10 million years ($1 \times 10^{-7}$). The possibility of being struck by lightening is 300,000 to one.\(^\text{15}\)

68. The use of a risk matrix might be a useful tool to determine the level of consequence versus the level of frequency. For example when considering the risk posed by bushfire, if a risk matrix is used, a bushfire is a high consequence, high frequency event whereas a Buncefield type incident is a high consequence low frequency event. The use of a risk matrix in the development of any future VPP tool should be explored.

RECOMMENDATION: The risk associated with being near an MHF must be considered from a practical and realistic perspective.

‘Could local planning policy play a greater role in managing conflicting land uses and sensitive land use near MHF and provide strategic guidance on how such areas are developed?’

69. Local policy can be used to play a greater role in managing the conflict however it must be supported by state policy which provides clear direction. Given that there are a number of MHFs in the state, a state led response is required rather than individual local policies. Various municipalities may view the matter differently. For example Council may not agree with the approach Maribyrnong City Council has undertaken in addressing land near 29 Francis Street, Yarraville.

‘Should a specific zone be considered and applied to all MHF such as the SUZ or a new zone? Could or should SUZ or other zone boundaries extend off site from MHF and Schedules used to allow certain use and development to occur?’

70. The MHFs in the municipality use a range of SUZ and industrial zones. A SUZ does allow the ability to write a site specific or use specific zone. However land surrounding the MHFs includes industrial zones, public use zones, public park and recreation, residential and commercial zones. Council does not support extending existing MHF SUZ or industrial boundaries to cover buffer areas. Existing residential, commercial and open space uses are established and should not be phased out through a rezoning that allows them to continue to operate on existing use rights. Such an outcome is not fair or orderly planning. It creates land use conflicts, stifles growth and creates implementation difficulties e.g. a dwelling with existing use rights that may require an extension.

‘Could any new or modified zone include purposes, permit requirements, decision guidelines that identify and manage sensitive uses?’

71. As discussed throughout this submission a new zone is not supported. A new overlay containing local schedules that controls ‘sensitive uses’ may be able to assist and warrants further investigation.

‘Should zones prohibit intensification of use or should they maintain a discretionary permit process?’

72. A prohibition within a zone or overlay will result in a scorched earth approach and sterilise land. Council does not support such an approach. A discretionary permit process should be pursued as this is more flexible and has the ability to better address any changes in technology and new information that comes to light.

‘Could or should an existing or new overlay be used to identify risk and manage development on land surrounding a MHF?’ and ‘Should both use and development of land around a MHF be managed in an overlay?’

73. The MAEO and BMO provisions provide a starting point.

74. A suggested purpose can include:

a. ‘To identify areas where development of land that are within the vicinity of a Major Hazard Facility.”
b. To ensure use and development are compatible with the operations of the Major Hazard Facility\textsuperscript{16}

75. Uses that require planning permits can include:

a. Camping and Caravan park
b. Corrective institution
c. Dependent persons unit
d. Dwelling if it is an intensification of the existing use – e.g. more than one dwelling on a lot. Refer to the MAEO discussion at (paragraph 45 onwards) as an example of how this can be managed.
e. Group accommodation
f. Host farm
g. Residential building including backpackers lodge, boarding house, hostel, nurses home, residential aged care facility, residential college, residential hotel including model
h. Retirement village
i. Residential village
j. Place of assembly
k. Education centre
l. Childcare centre
m. Office
n. Hospital

76. The use provisions should only be triggered if an existing use intensifies e.g. land used for a dwelling can be still be used for a dwelling but the MHF consideration is triggered if there is an intensification of this use such as more than one dwelling on a lot. As noted previously, both the MAEO and BMO include the following provisions to address alterations to a dwelling:

a. ‘An alteration or extension to a Dwelling which existed as at 14 May 2007 provided the extension is less than 50% of the floor area of the Dwelling at that date.”\textsuperscript{17}

77. A recommending referral authority provision should be triggered in the control. Referrals should be to Worksafe, the EPA and any new team with DELWP.

78. Decision guidelines can include:

a. The views of Worksafe, the MHF, the EPA and (“X”) – a new team within DELWP

79. Any overlay should also include details of application requirements and what must be provided to the recommending referral authority.

\textsuperscript{16} State Government of Victoria, Victorian Planning Provisions, Clause 44.06: Bushfire Management Overlay; Brimbank Planning Scheme, Clause 45.08: Melbourne Airport Environs Overlay.

\textsuperscript{17} State Government of Victoria, Victorian Planning Provisions, Clause 44.06: Bushfire Management Overlay; Brimbank Planning Scheme, Clause 45.08: Melbourne Airport Environs Overlay – Schedule 1; 2.
RECOMMENDATION: The introduction of a new overlay should be explored further. It must include consideration of “sensitive uses”. The MAEO and BMO provide a starting point for what an overlay control could include.

‘Could an overlay identify inner and outer hazards areas or be applied to identify areas (whether default or modelled)?’

80. If the inner and outer advisory areas are appropriate guidance areas for all MHFs, they can guide the application of the overlay tool however it is noted that distances of 185 metre and 300 metres are based on a Buncefield type incident. If more appropriate information is available then this should guide the application of the overlay such as specific information in relation to operations of an MHF. The Mobil Altona Refinery is an example of this; it requires 300 metre to 500 metre advisory areas around the processing units rather than the 185 metre and 300 metre advisory areas. Worksafe, the MHF and, to a certain extent, the EPA must provide input to this.

RECOMMENDATION: Inner and outer advisory areas should be identified using an evidence based approach.

‘Is notification of the risk status of land in proximity to a MHF important and how might it be achieved?’

81. Notification of risk status of land in proximity to an MHF is considered important as it allows purchasers to make an informed choice on whether to locate in proximity to it or not. An overlay tool that includes a purpose that references an MHF would achieve this as it will appear on planning certificates. These must be provided by vendors as per section 32 of the Land Act 1958. As discussed at paragraph 63 amendments to the building codes similar to the local flood plain management authority finished floor level requirements some areas have for declared flood areas could be explored.

‘Would it be appropriate or beneficial to include key agencies such as the EPA and WorkSafe as referral authorities for permit applications lodged with identified risk areas around MHF?’

82. It is imperative that key organisations such as Worksafe, the EPA and any new team with DELWP are recommending referral authorities for land in the vicinity of an MHF. It is noted that a DPO overrides all notice and associated appeal provisions in Planning Schemes, hence the requirement for a recommending referral authority status.

83. While as noted in this submission, the MHFs all have a commercial interest to protect, they are best placed to advise on their current operations and future uses. The MHFs should be given recommending referral status. This allows Council the ability to choose not to agree with their recommendations if they are unreasonable or unjustified.
RECOMMENDATION: Relevant organisations should be recommending referral authorities in the VPPs.

‘Would the use of a zone or overlay provide the mechanism for engaging the EPA and/or WorkSafe as a referral authority for areas of risk around Major Hazard Facilities?’

84. As discussed throughout this submission, a new zone is not supported. An overlay may be able to address land use planning around MHFs, but it is not without its challenges. It should include a mechanism to refer an application to Worksafe, the EPA or any new team established within DELWP to bridge the gap between the planning and MHF legislative frameworks and decision guidelines that require the consideration of their comments.

Adverse amenity

‘Should Clause 52.10 be reviewed to provide more than just an advisory role in determining the need for permits for industrial and warehousing uses? If so, what should such a review seek?’

85. The EPA guidelines that provide the basis for Clause 52.10 only consider air emissions. These guidelines do not consider risk but rather require a risk assessment if affected by note two. The scope of the EPA guidelines explicitly states that they apply to off site residual odour and dust emissions from industries that have an impact on human health and wellbeing, local amenity and aesthetic enjoyment. The EPA guidelines do not consider noise, vibration and ambient hazardous air pollutants.18

86. Clause 52.10 should be reviewed to play a greater role in determining the need for permits for industrial and warehouse uses. Council’s most recent experience during the Planning Panel for Amendment C96 has highlighted that a site specific approach informed by local meteorology and the lack of EPA objection can allow for encroachments into air emission buffers.19 This highlights the need to review the distances to ensure they are adequate, address modern technology and metrological conditions.

87. An amendment to the VPPs is required to ensure that reference is made to the updated 2013 EPA guidelines rather than the 1999 EPA guidelines. However as noted in this submission, reference should include ‘as amended from time to time.’

RECOMMENDATION: Clause 52.10 should be reviewed to play a greater role in determining the need for permits for industrial and warehouse uses and the VPPs amended to make reference to the updated EPA guidelines.

‘Should the EPA IRAE Guidelines be better articulated in the VPP to accord greater weight to separation distances for industry or sensitive use expansion?’ and ‘Are the separation distances/buffer distances in Clause 52.10 and the IRAE Guidelines clearly justified and appropriate?’

88. The introduction of the reverse buffer concept the EPA guidelines utilise should be introduced into the VPPs. This can be an amendment to clause 52.10 or a specific particular provision that addresses reverse buffer concept/agent of change. Irrespective, the separation distances in the EPA guidelines should be informed by evidence strategic justification updated regularly to ensure that it is up to date and relevant.

RECOMMENDATION: The EPA guidelines should be given greater weight and be informed by evidence based strategic justification.

‘Might a clearer articulation in the planning system of principles around the need for buffers be useful?’

89. Clearer articulation in the planning system is imperative. Council does not support sterilising large portions of land for buffers given the long history of peaceful co-existence. However, uses that have established buffers or new uses that require buffers (e.g. in a rural setting) should have their buffers supported and protected by the planning system. Principles around buffer management and protection can ensure this. Clause 52.10 may be amended to include the principles. Alternatively, a separate particular provision may be introduced into planning schemes. A repeat of the Brooklyn Green scenario must be avoided in future.

‘Does the planning system currently allow and/or facilitate appropriate responses to the provision of buffers whilst ensuring the most efficient land use and land value capture outcomes around MHF and industry?’

90. The planning system does not allow for or facilitate appropriate responses to the provision of buffers while ensuring the most efficient land use and value capture. There is an inherent conflict in ensuring the most efficient use of land versus maintaining buffer areas to protect industry and MHFs. State policy does not effectively address this conflict and it is often left for PPV and VCAT to determine the best way to proceed. This can result in an inconsistent and at times inappropriate outcome.

91. As Council’s past experience and this submission highlights, the municipality is a mix of land uses with established residential abutting MHF boundaries in some areas. Addressing this conflict while ensuring existing uses continue in a viable manner is a significant challenge for Council. Council does not support portions of its existing residential areas or commercial areas being slowly converted to large tracts of industrial or buffer land. This is not orderly planning as it creates temporary long term interface conflicts and creates its own set of significant challenges for Council. This also does not achieve the best use of land; making its economic value obsolete. Council strongly objects to such an outcome.
92. The need to protect state significant industry should not be the sole driver for land use planning in the municipality.

‘Could the ‘agent of change’ principle be introduced to planning schemes for industry to ensure that the onus on ensuring appropriate buffers rests with the encroaching sensitive use.’

93. As noted throughout this submission, the agent of change principle should be introduced into planning schemes.

Sensitive uses

‘Should sensitive uses be formally defined in the planning scheme?’

94. The definition of ‘sensitive uses’ is scattered throughout the VPPs including at the industrial zones and clause 52.15: Helipad and Helicopter Landing Site. These uses should formally be defined at Clause 74: Land Use Terms. Currently the term ‘sensitive uses’ varies. For example, the contaminated land framework defines sensitive uses as open space, childcare centre and dwelling, whereas the MHF framework includes office and industry if a significant number of people are present on site. To address this, a consistent definition of ‘sensitive uses’ is required.

RECOMMENDATION: A consistent definition of ‘sensitive uses’ should developed and introduced into the VPPs

Navigating the planning system

‘Would a Planning Practice Note(s) for interface planning between industry and sensitive uses be useful?’

95. Planning practice notes are useful when considering this matter however greater policy and support in the VPPs is required.

Pipelines

‘Given there is already a legislative framework for pipeline protection, does the planning system need to include additional provisions?’

96. There are a significant number of pipelines in the municipality.

97. Petrol and gas pipelines are governed by the Pipelines Act 2005 (Pipelines Act) that prohibits construction within three metres of a licensed pipeline. To do so is an offence. This effectively creates a six metre buffer around a licensed pipeline.

98. Each pipeline also has a measurement length; the region that can be affected by the worst case scenario pipeline failure. A pipeline’s diameter and its operating pressure determine the measurement length. Measurement lengths can range extensively over the length of a pipeline. In Council experience pipelines lengths range from 175 metres
to 450 metre but Council is aware that they can vary considerably.\textsuperscript{20} Land use and development applications for sensitive uses in these distances should be referred to pipeline operators, which can require an applicant to complete a Safety Management Study (SMS) in accordance with Australian Standard AS2885. Generally, a detailed proposal, not concept plan, gives more specific SMS outcomes. Further, high density\textsuperscript{21} (e.g. in excess of three storeys according to some pipeline stakeholders), sensitive (e.g. residential, hospital, aged care and office uses) land uses are not encouraged in the measurement length areas. To date, Council has taken part in three SMS workshops.

99. The SMS process is a costly case-by-case approach to a matter that affects every licensed pipeline in the state. Its outcome may also result in land being sterilised from development or inconsistent outcomes for land that is identical or side by side as a result of different people or opinions being expressed in the SMS workshop. If sensitive uses were significantly restricted or prohibited in measurement length areas, large portions of the municipality risk being sterilised including key activity centres such as Newport as pipelines are generally located along rail reserves.

100. Land use policy supports the densification of land within and around key transport hubs such as train stations, which as noted above, do have pipelines running through them that require protection. It is recommended that research be done to identify how other jurisdictions (national or international) such as the Western Australia approach\textsuperscript{22} address such a conflict as this is not a conflict only this Council or Melbourne is grappling with. The Western Australian provision also considers bulk material loading and unloading from vessels, includes details of which government agencies can be contacted for advice or approvals, identifies noise, dust and risk as impacts associated with the activity and includes a buffer distance of 1000 to 2000 metres. The Victorian provision do not address this activity even though bulk loading and unloading takes place at Point Gellibrand and at Holden Dock within the Port of Melbourne.\textsuperscript{23} A balanced approach to addressing this conflict is essential.

101. Currently, the P and E Act require Councils to notify the Minister responsible for administering the Pipelines Act when amending the planning scheme. Council’s experience has highlighted that such notification does not guarantee a pipeline stakeholder; Energy Safe Victoria (ESV) or the Minister will respond to the notice or advise that the amendment will impact their pipeline assets. In the instance of planning for the Former Caltex Site at 38 to 48 Blackshaws Road, South Kingsville (Caltex Site), Council contacted Mobil, ESV and the Minister at the planning scheme amendment stage. The outcome of that is a specific notice provision in Design and Development Overlay – Schedule 10: Former Caltex site of the HBPS. This requires notice to be given to the owner and operator of the petrol pipeline, the regulator being ESV and Minister responsible for administering the Pipelines Act. At the master plan stage when Council

\textsuperscript{20} These are the measurement lengths Council is aware of. These may be greater.
\textsuperscript{21} It is noted that the pipeline framework does not define what is a ‘high density’ use or development. Guidance from Energy Safe Victoria on this matter will be welcome.
was preparing notification, Council was made aware of two other pipelines in the vicinity of the Caltex site; an APA Gas pipeline and an Austen gas pipeline and gave notice to these pipeline stakeholders. Council’s experience illustrates that even with a notification requirement, clear communication, identification of roles and responsibilities and understanding of processes are imperative to a holistic planning outcome.

102. The planning system should require recommending referral provisions to pipeline stakeholders and ESV. Similar to MHFs, Council does not have the expertise, information or resources to consider pipeline risk or impacts on and from pipelines. In the past, Council has engaged experts to peer review reports, SMS outcomes and provide ongoing guidance during the planning process where pipelines have been a known issue. This is a costly and resource intensive exercise. There are also a limited number of experts that provide this service so a perceived conflict or conflict of interest also hinders Council’s ability to engage experts.

103. Council’s role is not to take on the obligations outside its legislative framework including pipeline operators and ESV. It is not Council’s role to enforce the day to day protection of pipelines during construction or development of land for a sensitive use in measurement length distances. This is the responsibility of the operators who have systems in place to protect their pipelines (such as daily or scheduled walks along the pipeline to see if any encroachments works have occurred). By way of example, in the instance of the Caltex site, Mobil, as part of its submission to VCAT have highlighted that their concern is not the risk the pipeline poses to the future residents but rather the risk that future residents’ will pose on the operation of the pipeline. Mobil has expressed concern that its compliance with the relevant pipeline framework requirements is hindered by virtue of future high density residential development on the Caltex site. In such an instance, Council does not have a significant role to play. Rather, protection of the pipeline within its surrounding context is a matter for the pipeline framework.

104. Mobil and the applicant of the Caltex site have proposed the insertion of conditions at appendix three into the Master Plan for the Caltex site. These conditions effectively require Council to consider and assess matters that are beyond the planning framework. Matters such as:

   a. ground borne drilling
   b. impact of vehicles of a particular tonne and ground borne pressure
   c. impacts on earthing beds and lighting protection

are not matters Councils have the expertise or resources to consider, assess or enforce. This is particularly the case in a rate capping environment. The pipeline stakeholders and ESV are better informed, have the appropriate expertise and resourced to address these matters. The inclusion of such conditions on a planning permit significantly and unnecessarily blurs the lines between the roles and responsibilities set out in the planning framework and those under the pipeline framework. It has been Council’s experience that pipeline operators and developers use VCAT to rule on the provisions of the Australian Standards despite this matter being outside the realm of the planning system.
105. As Council highlighted during the VCAT hearing, the placement of such conditions on planning permits is not supported given that Council will be required to enforce them. The enforcement associated with conditions that prohibit the use of ‘tiger teeth’ excavators or horizontal drillers are onerous and not practical. It is not enforcement that Council should or can undertake.

106. Consideration of pipelines is a more complex matter than MHFs.

**Could a risk based spatial overlay developed for MHF and industry with a specific schedule for pipelines be a potential tool for use in identifying major pipelines in planning schemes?**

107. As discussed above, consideration of pipelines is a more complex matter. There are a significant number of ‘major’ pipelines in the municipality that will require consideration. A significant portion of the municipality will be affected if measurement lengths are used as the guide for where an overlay tool applies.

**OTHER MATTERS THAT SHOULD BE CONSIDERED**

**Application of the new residential zones**

108. The neighbourhood residential zone allows Councils to set a limit on the number of lots it can be subdivided into. This zone provides the ability to inadvertently control densities and may be an additional tool that can be used in areas were density should be discouraged.

**Contribution towards peer reviews and assessments**

109. As noted throughout this submission, Council has previously engaged experts to peer review risk assessments and provide advice to Council when considering applications near an MHF or pipeline. A mechanism should be in place to allow Council to recoup the costs associated with this similar to the contaminated land framework.

**Permit conditions**

110. As the discussion in this submission has touched on, any conditions requested by any new entity or team that may be established, MHF, Worksafe, ESV or a pipeline operator must be practical, enforceable reasonable and relate to the permit preamble and reasonable. Council will not support conditions as extensive as those at appendix three. Council also does not want to create a framework that holds Council liable for the decisions of other authorities and stakeholders. For example an outcome similar to the Brooklyn Green where Council was held liable/ settled the court proceedings because it had issued the planning permit at the direction of VCAT.
Interim controls

111. Given the complexity of this matter, it is suggested that the advisory committee recommend the introduction of interim controls around MHFs to guide land use planning. These should have a review provision to allow stakeholders to consider whether the land use controls are effective or whether they require amendments.

CONCLUSION

112. As this submission highlights, land use planning around MHFs and pipelines is an important issue for Council. This submission has provided an overview of the municipality and has discussed each of the MHFs advisory committee’s ‘thought starter’ questions.

113. It is imperative that the roles and responsibilities of Council are clearly defined and understood. The roles and responsibilities of Worksafe, the MHFs, Energy Safe Victoria and the pipeline licensees also need to be clearly defined and understood. Council does not support taking on a risk assessment, mitigation or enforcement role in either the MHF or pipeline frameworks. Council does not have the expertise, access to information, resources or finance to undertake such a task. A team within DELWP that bridges the gap between land use planning and MHFs is required. A team within Worksafe and the EPA should be created and both authorities should be recommending referral authorities. This dedicated team in each authority will have to consider land use planning, risk and amenity to ensure the holistic response needed is provided. The final arrangement between these three stakeholders must ensure an integrated, balanced and holistic planning outcome. These teams must be appropriately resources, have the relevant expertise and be tasked with considering land use planning around MHFs and net community benefit as a whole.

114. New direct state policy is required in the SPPF to guide land use planning around MHFs. This can be supported by more municipal specific local policy. A new overlay tool similar to the MAEO or BMO should be investigated to guide land use around an MHF. This policy must be informed by evidence based strategic justification. Greater work is required to determine exactly what the level of risk is in areas around an MHF or from pipelines.

115. The municipality has a number of existing established residential, commercial and open space uses around MHFs. Council does not support the blanket sterilisation of large tracts of land around an MHF or pipeline. It imperative that a coordinated, holistic and balanced approach is taken.

116. Council is looking forward to partaking in this process to ensure an appropriate, holistic and balanced approach to land use planning around MHFs.
APPENDIX ONE: MAPS

Map one illustrates the location of MHFs in the municipality.

Map one: Major Hazard Facilities in Hobsons Bay
Map two illustrates the location of the MHF, their advisory areas and the existing zones in the municipality.

**Map three: Location of Major Hazard Facilities, inner and outer advisory areas and existing land use zones**

These maps are intended as to provide an approximate visual representation of the advisory areas around MHF in the municipality. They are based on the best available information provided to Council at the time. Further information may be required to refine these boundaries.
Map three illustrates the extent of the SUZ4 in the municipality.

**Map four: Extent of the Special Use Zone 4 land in the municipality**
APPENDIX TWO: HOBSONS BAY INTERIM MANAGEMENT OF LAND USE PLANNING AROUND MAJOR HAZARD FACILITIES

INTERIM MANAGEMENT OF LAND USE PLANNING AROUND MAJOR HAZARD FACILITIES (OCTOBER 2014)

The aim of these guidelines is to outline a process for considering planning permit applications for land in the vicinity of Major Hazard Facilities (MHFs).

What is a major hazard facility?

A Major Hazard Facility (MHFs) is defined by the Occupational Health and Safety Regulations 2007 (Vic) (OHS Regulations) as:

- a facility where materials (defined in Schedule 9 of the OHS Regulations) are presented or are likely to be presented in a quantity exceeding their threshold quantity
- facilities as determined by the Victorian WorkCover Authority (VWA) (formerly the Victorian WorkSafe Authority)

Generally, MHFs are industrial land uses that store, handle or process large quantities of hazardous chemicals and dangerous goods, including petroleum products.

Examples of MHFs include:

- oil refineries
- chemical manufacturing sites
- gas processing plants
- LPG facilities
- some warehouse and transport depots

Major hazard facilities in Hobsons Bay

Victoria has 45 MHF sites. Of these, eight are located in the municipality. These are:

- Caltex Newport at 411 Douglas Parade, Newport
- Dow Chemical Altona at 541 – 583 Kororoit Creek Road, Altona
- Mobil Refining, Yarraville at 29 Francis Street Yarraville
- Mobil Refining Altona at the corner of Kororoit Creek and Millers Road, Altona
- Mobil Refining Williamstown at Nelson Place, Williamstown
- Mobil Refining Altona at Kororoit Creek Road, Altona
- Qenos Altona at 471 – 513 Kororoit Creek, Altona
- Shell Newport at Burleigh Street, Spotswood

The attached map illustrates the location of these MHFs.

When does this fact sheet apply?

The checklist in this fact sheet applies to land within the inner and outer advisory areas of MHFs as per the VWA Advisory Note with the exception of Dow Chemical and Qenos Altona which are already surrounded by land that is zoned Special Use Zone 4 (SUZ4). Clause 5 of the SUZ4 has employee population density guidelines.

Inner advisory area

In these areas the individual risk of fatality from potential foreseeable incidents is greater than or equates to one chance in 10 million years (1x10^-5). Generally, the inner advisory area extends for 185 metres from the tank bund and where applicable, 300 metres from processing units of MHFs.
INTERIM MANAGEMENT OF LAND USE PLANNING AROUND
MAJOR HAZARD FACILITIES (OCTOBER 2014)

Outer advisory area

In these areas the consequence of a credible incident is not likely to cause a fatality but persons present may suffer some adverse effects or have difficulty responding to an emergency that may result in injury and harm. Generally, the outer advisory area extends for 300 metres from the tank bund within the MHF and where applicable, 500 metres from processing units of MHFs.

The process for considering planning permit applications in the inner and outer areas of MHFs

In light of advice received from the VWA and Environment Protection Authority (EPA) about increased development in the MHFs advisory areas, Council has developed a procedure for determining the planning applications received for development in the buffer areas. This process is as follows:

- notice of the application is give to the VWA, the EPA and MHF as per the Planning and Environment Act 1987
- the VWA, EPA and MHF provide commentary or advice or both in regards to the application
- having considered all the documents and advice provided, Council makes a decision on the application

For more information

The following documents provide further information:

- Land Use Planning near a Major Hazard Facility, WorkSafe (now VWA), 7 April 2010.

- Occupational Health and Safety Regulations, 2007

A State Government led approach is still required

Council will continue to advocate for a coordinated, holistic and balanced approach to land use planning around MHFs prepared by the State Government. A State Policy addressing land use planning around MHFs is critical.

Advocacy for such an approach is important and is part of the Council’s Advocacy Strategy 2014-18.
INTERIM MANAGEMENT OF LAND USE PLANNING AROUND MAJOR HAZARD FACILITIES (OCTOBER 2014)
APPENDIX THREE: CALTEX SITE PIPELINE CONDITIONS

Newport Village is within the vicinity of three existing pipelines:

- Somerton Pipeline (Licensed Pipeline No.118);
- West Footscray to Williamstown Pipeline (Licensed Pipeline No.19); and
- South Melbourne to Brooklyn Pipeline (Licensed Pipeline No. 108).

If a planning permit application seeks approval for buildings and works within 20 metres of these pipelines (‘the Precaution Zone’), the application must include the following to the satisfaction of the responsible authority:

1. A report demonstrating how effective physical barriers on the southern side of Licensed Pipeline No.118 in the form of concrete bollards, road barriers, or other suitable barriers will be in place at all times during construction and afterwards (which may include parts of the permitted buildings) to ensure that:
   a. no unauthorised vehicles, excavators or machinery from the Site, are permitted within 3 metres of Licensed Pipeline No.118; and
   b. no unauthorised material is placed within 3 metres of Licensed Pipeline No.118.

2. A report by a suitably qualified person concerning ground borne drilling related vibration impact on the Licensed Pipeline No.118 to ensure that any ground borne drilling within the Precaution Zone will not unreasonably impact upon the Pipeline. Before determining if it is satisfied with the report, the responsible authority must seek the input of the Pipeline Licensee and provide a period of 20 business days for the Licensee to provide comment.

3. A report by a suitably qualified person concerning ground pressure impact from the loading of buildings, foundations or associated support works on the Licensed Pipeline No.118 to ensure that any ground pressure will not unreasonably impact upon the Pipeline. Before determining if it is satisfied with the report, the responsible authority must seek the input of the Pipeline Licensee and provide a period of 20 business days for the Licensee to provide comment.

4. A report by a suitably qualified person concerning the impact from electrical substation(s) and/or associated earthing bed(s) and earthing from lightning protection on the Licensed Pipeline No.118 to ensure that such will not unreasonably impact upon the Pipeline. Before determining if it is satisfied with the report, the responsible authority must seek the input of the Pipeline Licensee and provide a period of 20 business days for the Licensee to provide comment.

Any planning permit issued in relation to buildings and works within 20 metres of these pipelines (‘the Precaution Zone’), must include conditions to the following effect:

1. Before the development starts, the following documents to the satisfaction of the responsible authority must be submitted to and approved by the responsible authority. When approved, they will be endorsed and will then form part of the permit:
   a. The report demonstrating how effective physical barriers on the southern side of Licensed Pipeline No.118 in the form of concrete bollards, road barriers, or other suitable barriers will be in place at all times during construction and afterwards (which may include parts of the permitted buildings) to ensure that:
      a) no unauthorised vehicles, excavators or machinery from the Site, are permitted within 3 metres of Licensed Pipeline No.118; and
b) no unauthorised material is placed within 3 metres of Licensed Pipeline No.118.

b. The report by a suitably qualified person concerning ground borne drilling related vibration impact on the Licensed Pipeline No.118 to ensure that any ground borne drilling within the Precaution Zone will not unreasonably impact upon the Pipeline.

c. The report by a suitably qualified person concerning ground pressure impact from the loading of buildings, foundations or associated support works on the Licensed Pipeline No.118 to ensure that any ground pressure will not unreasonably impact upon the Pipeline.

2. The developer must advise the relevant Pipeline licensee(s) that construction of buildings and/or works will be commencing pursuant to that permit, at least 20 business days before such commencement.

3. No excavation, bores or opening of ground is permitted within 3 metres of the relevant Pipeline(s) without obtaining the authority of the relevant Pipeline licensee(s) under section 118 of the Pipelines Act 2005.

4. No excavators/machinery over 15 tonnes and/or using penetrating tiger teeth permitted within 10 metres, but in any case no closer than within 3 metres, of the relevant Pipeline(s) without a minimum of 48 hours’ notice to the relevant Pipeline licensee(s) so that arrangements can be made to have any relevant Licensee’s representative present during the excavation if the relevant Licensee chooses to do so.

5. All ground borne drilling in the Precaution Zone must be in accordance with the approved report concerning drilling related vibration impact on the Licensed Pipeline No.118.

6. All construction within the Precaution Zone must be in accordance with the approved report concerning ground pressure impact from the loading of buildings, foundations or associated support works on the Licensed Pipeline No.118.

7. All structures within the Precaution Zone must be designed and constructed so as to allow excavation, centred over the Licensed Pipeline No.118, to a depth of 4 metres and a width of up to 1 metre from any structure and otherwise 3 metres either side of the Pipeline without the necessity for additional shoring of adjacent structures during or after excavation.

8. All electrical substation(s) and/or associated earthing bed(s) and earthing from lightning protection must be in accordance with the approved report concerning the impact from electrical substation(s) and/or associated earthing bed(s) and earthing from lightning protection on the Licensed Pipeline No.118.
# ACRONYMS AND ABBREVIATIONS

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