



30 October 2015

Penny Armytage
Chairperson
Ministerial Advisory Committee
Inquiry into the Environment Protection Authority
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Dear Penny

Response to Examining the future task of the Victoria Environment Protection Authority

Hobsons Bay City Council welcomes the opportunity to contribute to Ministerial Advisory Committee for the inquiry into the Environment Protection Authority.

Responses to questions outlined in the discussion paper are provided in the attached document.

If you would like to discuss this submission further, please contact [REDACTED],
Manager Strategy and Advocacy on [REDACTED] or email
[REDACTED]

Yours sincerely,

[REDACTED]

Natalie Walker
Director Strategic Development



Hobsons Bay City Council submission to Examining the future task of the Victoria Environment Protection Authority Discussion Paper August 2015

In responding to the key questions outlined in the abovementioned discussion paper we advise the following.

Do you think the key environmental challenges which will impact the EPA in the future have been captured? Are there any others?

The environmental challenges faced by the EPA have been captured. However in relation to contaminated land, there needs to be an additional preliminary step in the planning process or EPA process to allow councils to seek a preliminary site assessment, or similar, from an applicant to show that prior contamination does not preclude what is being proposed. This is particularly important for former industrial parcels of land in inner Melbourne as there is pressure to rezone these parcels to allow residential and sensitive land uses.

What aspects of the EPA's work do you value and wish to preserve in the future?

The EPA has a wealth of information and knowledge that they should continue to provide to Local Governments, business and industry and the community. Some of the matters include the online database of contaminated land and fact sheets on key and emerging issues. When working, the air quality monitoring stations throughout Victoria provide valuable information to communities that may be most affected by air pollution. The referral advice (although at times doesn't provide the detailed required) is a key role that should continue.

How can the EPA effectively work in partnership with other government agencies to meet the environmental challenges of the future?

A more collaborative approach to dealing with environmental issues is required from the EPA this includes working with Councils, key State and Federal Agencies. In Hobsons Bay's experience, when dealing with environment issues (such as contaminated land and airborne emissions), the EPA are reluctant to take a lead role in rectifying these issues, despite the expertise within their organisation and legislative powers available to it.

How can the EPA's role in safeguarding the community against the health effects of pollution and pollution incidents be clarified or strengthened?

The EPA's role can be identified in the *Environment Protection Act 1970*. This will then filter down to the day to day operations of the EPA. As noted in the discussion paper, the EPA plays a regulatory role whereas the policy and legislation role is undertaken by the Department of Environment, Land, Water and Planning (DELWP). Clarifying the role of DELWP so that it is clear that this department takes the policy and legislative role is imperative to helping clarify EPA's role. However, as also noted in the discussion paper,



there will be overlap. In some instances, the EPA, as the regulator, will be best placed to determine the policy and legislative needs to address a particular issue.

It is acknowledged that the EPA and local government roles can overlap. However, local government authorities (LGAs) should not take on EPA duties as the EPA has the expertise and skill set required and should be resourced to achieve this. Further, with rate capping in place, LGAs will not be in a position to take on additional roles and it is considered that the EPA is not well resourced to take on additional roles.

How could environmental regulation and other statutory frameworks more effectively prevent future environmental risks and land use conflicts?

Encroachment of competing land uses such as residential onto landfill is a significant issue for councils and landfill operators. The Metropolitan Waste and Resources Recovery Group (MWRRG) will deliver the Local Government Buffer Support Program over four years (2014-17) in collaboration with local government, and key State Government agencies. This program aims to support local government to respond to land use planning challenges and opportunities and develop land use planning policies, tools and controls to define, protect and maintain buffers to waste and resource recovery facilities that will ultimately become part of the Victorian Planning Provisions.

The EPA's support for this program is essential.

Greater input from the EPA in the land use planning is critical. The EPA has the knowledge and expertise to make informed decision in relation to contaminated land, landfill BPEM, ground water contamination, buffer requirements and amenity issues. Council strongly encourages additional resources towards this especially given the push towards the densification of metropolitan Melbourne as encouraged by planning policy.

Site contamination requires greater up front consideration in the planning framework. Currently, the Environmental Audit Overlay (EAO) requires a statement or certificate of environmental audit be issued prior to a sensitive use taking place. The EAO is traditional applied when dealing with contaminated land and is not necessarily applied to land where groundwater contamination exist as this often does not impact on the ability of the land to be developed. When considering rezoning applications for former industrial sites, the EAO is applied but little information is provided on contamination by an owner or applicant. This can result in land being rezoned for an inappropriate use or development outcome. As noted above, a statutory tool is required to trigger the need for a preliminary site assessment to show that prior contamination does not preclude what is being proposed.

What role should the EPA play in emergency management?

It is the community's expectation that the EPA will be involved in an emergency situation caused by environment pollution or that creates a risk to human health. While in most cases it may not be for the EPA to take the lead role in emergency management, it is important that it undertake a support agency role and must be able to take part in a coordinated response. Therefore communication between authorities is important to ensure that the EPA is engaged in activities appropriately. Also that the EPA have a



tailored response to incidents that it may get involved in that other authorities are aware of.

How can the EPA better identify and, where necessary, address problems that are the result of past activity?

Council must consider constraints on land, including environmental issues such as contaminated land, landfill gas associated with disused landfill sites (Landfill BEPM) and Major Hazard Facilities. Council does not hold the expertise to deal with these types of issues, resulting in a significant amount of consultancy costs. Council requires greater assistance and direction from the EPA in resolving these issues, not only with providing the tools to assess land use applications but also in supporting decisions at Panel and VCAT Hearings.

Planning around potential landfill gas sites is a particular concern for Council. Council is investigating historical landfill sites within the municipality before establishing a policy to assess land use applications which may be affected by these sites. There is limited policy framework or statutory process to support policy creation for this issue. To assist with this, Council will look to the EPA for support and to recommend tools to assist Council in dealing with these issues. In addition, Council would request assistance from the EPA to provide any information it has to assist with determining places of potential contamination and landfill gas concerns. In the future, Council would hope the EPA would lobby the Victorian Government to bring these tools into the legislative framework.

What can the EPA do to minimise hazards for the future?

An increase and retention of technical expertise within the EPA would assist with minimising hazards into the future. For example within the waste and resource recovery field, technical expertise in the alternative waste treatment technologies would be an invaluable support to local government, industry and other Victorian Government agencies such as the Metropolitan Waste and Resource Recovery Group.

The EPA should have the ability and the tools to enable it to respond to an emerging issue or risk e.g. through interim measures, bans or management plans. A mechanism to allow this is critical to the EPA's ability to prevent a risk from forming.

If enforcement powers are the responsibility of another department, a coordinated approach to risk management is critical and mechanisms to ensure this takes place are required.

What role should the EPA play in improving environmental outcomes beyond those necessary to safeguard human health?

Locally, odour, dust and noise issues have been a concern for residents living in Brooklyn, Altona North, Laverton, South Kingsville and Newport. The predominant source of these issues has come from the Brooklyn Industrial Estate, commonly referred to as the 'Brooklyn Triangle' which is a parcel of land situated in the City of Brimbank, boarding the City of Hobsons Bay and the City of Maribyrnong. There are approximately sixty



businesses operating in the Brooklyn Triangle which include: quarrying, shipping container yards, demolition yards, recycling depots, transport logistics, abattoirs, tallow producers and hide processors.

Based on fixed air pollution monitors, the Brooklyn area demonstrates a high particulate matter level. This has been the case for many years, especially in high winds. In response to these issues and in an attempt to create some sustainable change, for at least 10 years the local communities of Hobsons Bay have raised amenity issues with the EPA and industries operating in the Brooklyn Triangle via the Brooklyn Community Reference Group (BCRG).

While the BCRG receives resourcing from the EPA, Council is concerned that, despite the best efforts from all concerned, dust, odour and noise issues continue to adversely impact upon residents in Brooklyn, Altona North, Laverton, South Kingsville and Newport. Council seeks stronger involvement of the EPA in community engagement, data collection, enforcement activities, and the implementation of strategies to reduce odour, dust and noise impacting the health and wellbeing of residents. In addition Council would like to see stronger partnerships across Victorian Government departments including Department of Health and Human Services, Department of Economic Development, Jobs, Transport and Resources, and Department of Environment, Land, Water and Planning.

What role should the EPA play in reducing greenhouse gas emissions?

With the recent review of the Climate Change Act it is considered that there are many State Government Departments and Agencies that play a key role in responding to the various impacts of Climate Change. The Act should be strengthened by making explicit links to other government departments and Acts to ensure that a comprehensive and holistic regulatory framework exists to cross-support related objectives within multiple Acts and to deliver multiple benefits that span across government departmental portfolios.

In terms of the EPA it is considered that they should continue their role on climate change mitigation through the licence agreement and works approval requirements for industry and business. They should also continue their role in disseminating key information to business and industry on carbon management within their operations as well as information of energy efficiencies and systems improvements.

How do you see environmental justice being applied to the work of the EPA?

Council strongly supports the use of the environmental justice principle. The EPA's regulatory role already includes an environmental justice element. Concessions are not and should not be made to polluters by virtue of location.

What can we adopt from other regulators and regulatory models to implement best-practice approaches and ensure that the EPA can rise to key future challenges?

Both planning scheme amendments and planning permits requires the consideration of a number of different issues by Local Government acting as a Responsible Authority or a Planning Authority. There are legislative frameworks in place that require the EPA to



provide a response to some land use planning assessments (such as clause 66 of the Hobsons Bay Planning Scheme) however these are generally limited.

This is particularly apparent when dealing with contaminated land issues. It is up to Local Government to make determinations on whether an environmental assessment or audit is required and if so, whether these documents are satisfactory. This often requires the appointment of an external consultant to assist Council in its decision making. The EPA, with their in house expertise should become a required referral authority in these instances and take a lead role in contamination issues.

Are there any other issues relevant to the Terms of Reference that you would like to raise that have not been covered in this paper?

No.

Other Comments

While Council recognise that this review is about the role of the EPA one of the other challenges for Councils is the application of the Groundwater quality restricted use zone (GQRUZ). Currently the GQRUZ cannot be applied until a statutory audit (53x or 53v) has been completed and there are challenges in using an Environmental Audit Overlay (EAO) to apply to land affected by ground water contamination. The EAO has traditionally only applied to contaminated soil on land and not contaminated groundwater. In the case of key sites in Hobsons Bay there are hundreds of homes and land titles affected by ground water contamination where no GQRUZ has been applied as these polluters only have clean up notices. This results in no full disclosure given to impacted land owners and residents. This is a risk issue that should be addressed by the EPA.