

4 November 2015

Ministerial Advisory Committee
Inquiry into the EPA
PO Box 21428
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MELBOURNE VIC 8011

Enquiries to: [REDACTED]
Doc Set ID: 3763891

Dear Sirs,

Examining the Future Task of Victoria's Environment Protection Authority

Thank you for the opportunity to respond to the discussion paper, 'Examining the future task of Victoria's Environment Protection Authority' with the following comments for your consideration.

1. The EPA's role relating to the cumulative effects of pollution from small industries

Council receives an increasing number of notifications from residents relating to the discharge of pollutants from small industrial premises. For example, Council recently received notification of a forklift business discharging chemicals used to clean its machinery into stormwater drains.

The discussion paper, page 8, states that *'there is an increasing number in smaller, unlicensed sources of pollution'*. Whilst it is acknowledged that small scale industry may be more difficult to regulate, Knox stress the importance of the EPA to becoming more proactive in this sector; as the cumulative effects of pollution from small industries have the potential to cause adverse impact on the environment and the community. Adverse impact can include contamination of waterways, poor air quality and an impact on residential amenity.

Council asks whether the EPA can regulate and monitor small industrial premises through the use of evolving technologies, such as geographic information systems (GIS) mapping. Educational material and/or training programs could also be provided to small industrial premises in an attempt to reduce pollutants.

2. The EPA's role and local government's role relating to Domestic Wastewater Systems

Local government is responsible for approval and use of septic tank systems generating less than 5000 litre flow per day in unsewered areas. Local government is also responsible for moderating any problems that emanate from the approvals.

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While local government public and environmental health departments may be able to deal with small scale units, it does not have the expertise particularly within semi-rural and urban areas, to provide specialist advice on alternate domestic wastewater systems and larger units that fall outside local government's approval framework.

Local government agencies place high importance on being able to source specialist advice, when required and believe that the EPA is best positioned to provide this. The EPA, as the designated specialist agency, for the purposes of consistency, may enable access to training and education programs for local government agencies.

Council asks that the EPA continues to provide specialist advice in relation to the approval of domestic wastewater systems and provide access to training and education programs for local government.

3. Effects of emissions from industry

The discussion paper, page 6, identifies an increase in population, resulting in the reduction in buffer zones between commercial/industrial land and residential estates. In some cases, the change has resulted in residential allotments located close to or adjacent to commercial or industrial areas. As a result of this, residents are often adversely affected by emissions from nearby commercial or industrial premises.

The discussion paper, page 15, states that the EPA investigates complaints about noise from major industries and oversees the noisy vehicle compliance program. It is unclear how this position was formed. Further to this, the prescriptive EP Act only gives jurisdiction for local government to deal with domestic noise concerns.

While the Nuisance Provisions of the Public Health and Wellbeing Act 2008 are referred to as an option for local government to remedy nuisances between residential and commercial/industrial premises, Council believes that the EP Act should be the legislation relied upon in this instance. This being the case and contrary to what is demonstrated on the EPA website; this falls under the jurisdiction of the EPA.

There are occasions where planning controls are unable to moderate industrial premises found to be producing emissions which may affect nearby residents or other nearby industrial premises.

Council asks that the EPA demonstrate an increased involvement in such matters, including consultation with local government agencies in order for the most appropriate planning parameters to be set as part of any permit conditions issued.

4. The EPA's role surrounding Emergency Management

The discussion paper, page 11, highlighted the risks associated with the Hazelwood mine fire. The need for the EPA to implement adequate emergency management strategies to respond to future situations is required.

The EPA's role regarding other situations where a rapid response may be necessary, such as hail storms and heatwaves must also be considered. The EPA may need to review advice distributed to public and local government agencies. This review should consider clearly communicating the EPA role in the event of an emergency situation to emergency services and associated stakeholders.

For example, during a heatwave, local government agencies may provide information to vulnerable groups within the community about staying safe, provide assistance to vulnerable groups, establish relief centres where necessary and call upon other groups or organisations for assistance, such as the Red Cross. In this scenario, the EPA may also assist by ensuring drinking water supplies are safe, particularly in bushfire affected areas.

Council asks that the EPA become more involved in analysing pollution levels and/or other conditions which may impact on public health during emergency events.

5. EPA's role in protecting Public Health

The EPA environmental audit system provides a statutory process for managing the risks to human health. This system works very well for management of the impact of former and current landfill sites and should be retained. It provides Council with independent advice on the state of the landfills, which may be provided to residents living near the landfills who are concerned about the risk to their health.

Council asks the EPA to promote this as an independent role they provide to protect public health.

6. Potentially Contaminated Land

Most urban planners are generalists, not contamination experts; however they represent a responsible authority that makes decisions on development applications with land contamination implications with no formal referral to EPA for technical expertise when deciding on planning permits.

There was a Potentially Contaminated Land Advisory Committee appointed by the Planning Minister that published its final report on 9 March 2012. It highlighted the problems with the inflexibility of the potentially contaminated land framework (including the statutory environmental audit system) and examined problems with the related planning tools and processes. The Committee made recommendations on clarifications and improvements to the potentially contaminated land system - many of which were based on giving planners greater technical guidance and making the system more flexible in relation to the level of risk posed. Unfortunately it appears that none of the recommendations have been implemented by either the Planning or Environment Ministers to date. Without updated, clearer and detailed guidance and better processes, planners will continue to require significant ad-hoc technical guidance from the EPA.

We acknowledge the commitments made with the Cleaner Environments, Smarter Urban Renewal paper that was signed by the Environment and Planning Ministers of the former government. Relevant reform proposals outlined included improved guidance and training to support more consistent and efficient decision making by local government, funding for a 'high performance team' to work with local government in key urban renewal areas and support for councils to review existing application of the Environmental Audit Overlay. It is clear these reform proposals seek to fill a current gap in the regulatory framework specifically regarding increased support for local governments to carry out land use and development decisions and future planning for potentially contaminated land. Council welcomes these reform proposals; however it is unclear how the current government intends to proceed.

Council asks that EPA implement the Cleaner Environments, Smarter Urban Renewal commitments to better support councils in their dealings with potentially contaminated land.

7. Land use buffers and sites of adverse amenity potential

An emerging planning issue is residential encroachment of former landfills, quarries and waste recovery /transfer stations. A lack of a strong buffer can cause poor amenity, odour, noise and risks to the residential occupants and/or force existing facilities to close. There is currently no widely accepted practice on how to implement buffers in the planning system and in which circumstances they are justified. However the Metropolitan Waste Management Group is investigating options with their Local Buffer Support Program for landfills and transfer/waste recovery stations.

The Discussion Paper mentions the potential for EPA to evolve from a 'complaint response' model to one that allows for more strategic and integrated interventions. Council would welcome such a forward-thinking approach, and one that would facilitate greater collaboration between EPA and local government in policy development. We expect technical expertise will be required on long-term strategic planning exercises like implementation of buffers using planning controls. This will require technical information on the level of risk to new development (noise/odour/pollutant) and appropriate buffer distances to justify imposing controls that limit land development in these areas. This type of technical support for local government is also required when dealing with conflicts of land uses as they arise on a case-by-case basis.

Council asks that EPA consider evolving to a model that allows for more strategic interventions to facilitate greater collaboration between EPA and local government in policy development for planning for environmental risks.

8. EPA's role in protecting liveability - the importance of land use planning

The 500 metre buffer zone requires EPA and Local Government to interact on a site by site basis in order to protect residents and other users from pollution impacts of contaminated sites, such as landfills.

This works well for large development sites but places an onerous requirement on single residential allotments to undertake a 53V risk assessment for the site. This requirement is then being made of Local Government which is also becoming onerous based on the number of single dwellings being developed into dual occupancy properties.

Council asks the EPA to review the requirements for single residential properties to provide a 53V risk assessment when they are within the 500 metre buffer zone.

9. EPA response to notice of Planning Scheme Amendments

Council gives notice of planning scheme amendments to EPA that involve sensitive uses and potentially contaminated land or residential encroachment of industrial uses, land within 500m of landfills/quarries and larger redevelopment sites.

Council officers have experienced problems with the consistency and quality of expert advice from the EPA. Sometimes the EPA response to such matters is worded like a formal referral (where they have veto powers), but when this is followed up they advise it's only a suggestion/advice and that council officers need to make the final decision. It seems that in this regard, EPA has the expertise but no legal teeth.

This can also be a problem where EPA takes a conservative position across the board for certain types of amendments that involve risk (or in light of a lack of detailed information), yet they may not provide council with enough information on the particular circumstances to justify:

- changing or abandoning an amendment;
- requiring a developer to undertake costly site assessments or an environmental audit, or;
- requiring a peer review of a preliminary/detailed site assessment.

Council asks for further assistance from the EPA when they raise objections or identify a potential issue when making submissions in response to exhibited planning scheme amendments, rather than taking a very broad conservative position without working with the council and/or the proponent to fully assess the nature of the risk and determine a measured response to the situation.

10. Planning Permit Referrals

EPA is currently a formal referral authority (Clause 66) for use and development that requires a works approval or licence, such as large cattle feedlots, industry or warehouses where buffers cannot be met and stone extraction. Notice is required for broiler farms. Referrals are not required for residential encroachment of existing facilities, development of potentially contaminated land or any lighter industrial uses or mixed use developments.

The EPA should be cognisant of trends towards increased urban intensification, residential development in activity centres and mixed use development, including light industrial or larger commercial operations creating land use tensions with increased noise complaints and odour and other amenity risks. The recently introduced Commercial 1 Zone allows mixed residential and retail uses as of right, and light industrial uses with a planning permit. We encourage EPA to respond to these trends by increasing its capacity as a referral authority and by informing council policy for noise/odour/waste mitigation strategies at the planning stage of development.

There is opportunity within the planning system for EPA to request to be made a formal referral authority for particular types of uses or development that requires a planning permit. We'd welcome EPA to review its capacity in this regard in light of current and emerging land use conflicts and environmental risks.

The current planning referrals process works well and recent feedback from our statutory planning team is positive on referral response time and recommending practical permit conditions.

Council asks that EPA respond to current and emerging land use conflicts by increasing its capacity as a referral authority and by informing council policy for noise/odour/waste mitigation strategies at the planning stage of development.

11. Conclusion

Traditionally, the EPA has provided expert and specialist advice to local government regarding a range of environmental issues. However, in areas such as noise and odour, this expert and specialist advice is becoming increasingly difficult to access.

Council would like to see the EPA expand its role in land use planning with local government, as the current relationship sees a lack of leadership by the EPA on technical issues to do with conflicting land uses that arise during the course of land use planning and development. Long term land use planning and policy is weakened by a lack of technical evidence and strategic justification for implementing more restrictive planning controls, like buffer areas, which can be challenged during the planning panel process.

The Discussion Paper notes that EPA must focus the organisation on its task as a regulator - as separate to the policymaker - as this is an important element of regulatory best practice, noting its collaborative role in working with policymakers in the state and local government. However, the paper also notes that in recent times, the EPA has sought to have greater input into higher-level planning decisions, at a municipal or precinct level, to have greater strategic influence on ensuring environmental risks are adequately considered early in the planning process.

Council asks the EPA to take a more proactive rather than reactive approach by expanding its supporting role in the development of policy. This level of technical expertise in the planning stages will promote better decisions in land-use planning and prevent problems from arising further down the track.

Along with local government, the EPA has an obligation to protect the community through the provision of a safe environment. The scope of work undertaken by the EPA is significantly reducing without clear alternatives being identified. The EPA must maintain their status as a specialist information resource or provide relevant parties with the skills, knowledge and financial resources to adequately investigate environmental issues.

Council thanks the Committee for the opportunity to provide comment to this Inquiry. Should you have any queries or seek clarification on any points, please contact Sam Salamone, Coordinator Health Services on 9298 8536.

Yours Sincerely,



Angelo Kourambas
Director City Development