

MAJOR HAZARD FACILITIES

Government Response
to the Major Hazard Facilities Advisory Committee

JANUARY 2018



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Minister's foreword



The safety and amenity of residents living near major hazard facilities is a top priority for the Victorian Government, along with the viability and growth of these industries.

Victoria's major hazard facilities manufacture, store and process a wide variety of materials for the benefit of customers, communities and governments nationwide – supplying essential resources and products like petroleum, chlorine, paper, plastics and medical oxygen.

There are currently 38 major hazard facilities in Victoria registered or licensed and regulated by WorkSafe Victoria under the Occupational Health and Safety Regulations 2017 and four facilities managed by ComCare, the relevant Commonwealth Government department.

These facilities and their associated storage and transport infrastructure employ thousands of Victorians and play a key role in supporting our industries and economic growth. As Victoria plans for our growing population, it's essential that development around major hazard facilities is carefully managed to ensure their continued operation and to protect community safety.

In Victoria, we have stringent requirements for the design and operation of major hazard facilities, and WorkSafe Victoria closely oversees compliance with them. However, as more people live and work close to these facilities, we must ensure we have the right planning framework in place to minimise risk to community safety and provide certainty to industries so they can continue to provide the key services that support our growth.

In 2015, the Victorian Government established the Major Hazard Facilities Advisory Committee to advise on how to best manage land use planning around these facilities across the state. The committee consulted extensively, reported its findings and made recommendations, which the Victorian Government has broadly supported.

This response to the committee's recommendations sets out the government's strategic approach for managing development close to major hazard facilities in Victoria. Implementing the actions in this response will improve land management to ensure appropriate land use and development, while supporting the continued operation of these facilities.

I want to thank all those who contributed to the committee's processes and submitted their views. I look forward to working with all involved to implement the actions in this response.

The Hon Richard Wynne MP
Minister for Planning

Major Hazard Facilities Advisory Committee review

In September 2015, the Minister for Planning established the Major Hazard Facilities Advisory Committee (MHFAC) under section 151 of the *Planning and Environment Act 1987* to advise the government about issues and challenges arising from changes in land use close to major hazard facilities (MHFs) and in particular about the government's election commitment, 'to inquire into regulations for neighbourhoods near major hazard facilities to preserve residents' safety while allowing industry to grow'.

The MHFAC invited initial submissions, received 24 and used them to develop a discussion paper. It then invited submissions from the public about the discussion paper and received a further 78 responses. It also conducted hearings for submitters and workshops with key stakeholders.

Issues that written and verbal submissions raised included:

- the role of planning in identifying separation distances around MHFs including the role of government agencies such as WorkSafe Victoria and the EPA
- whether planning schemes should define sensitive uses and MHFs
- notification of MHFs' neighbours of the risks to communities and safety
- how to determine adequate buffers and separation distances
- the appropriate use of planning tools including zones, overlays and particular provisions
- amenity issues with buffer requirements
- buffer requirements around high-pressure gas and petroleum pipelines.

The MHFAC presented its final report — *Major Hazard Facilities Advisory Committee Final Report* — to the Minister for Planning in July 2016. It had 17 recommendations around three themes: planning for MHFs, amenity considerations and pipelines considerations.

Figure 1 shows the milestones in the process leading to the MHFAC's final report.

Figure 1: MHFAC milestones



Government response

The Victorian government is committed to minimising encroachment and to support their ongoing operation by providing a clear planning framework for what can occur around them.

In responding to the MHFAC’s recommendations, the government’s intention is that:

- MHFs and other land uses that potentially pose safety and amenity risks to their surrounding communities continue to operate to best-practice safety and environmental management standards
- there is adequate separation of new MHFs from existing or future urban areas, drawing on the best-available information about potential hazards and risks to their surrounding communities
- appropriate information to prepare, and keep current, an emergency management plan in relation to off-site consequences is made available to planning authorities and local communities
- planning decision-makers use the best-available information and advice to identify and seek to protect areas close to an MHF from sensitive-use encroachment.

The Victorian Government broadly accepts the intent of the MHFAC’s 17 recommendations. They provide a sound basis for further work to improve land use planning arrangements for areas around MHFs, aiming to minimise encroachment and to support MHFs’ ongoing operations by making clear what can occur around them.

Table 1 shows the government support relative to each recommendation. Table 2 shows, for each theme, each action, the timeframe for the action and the MHFAC recommendation the action addresses.

Table 1: Government response to MHFAC report recommendations

Government response	MHFAC recommendation
Supported	1, 2, 5, 10, 11
Supported in principle	3, 4, 6, 7, 8, 9, 12, 13
Deferred	14, 15, 16, 17

To respond to the recommendations, the government proposes seven actions, grouped under four themes:

- 1 Strengthen planning policy**
- 2 Better inform land rezoning**
- 3 Avoid sensitive-use encroachment**
- 4 Improve guidance and information**

Table 2: Actions, timeframes and MHFAC recommendation

Theme	Action	Timeframe	MHFAC Recommendation
Strengthen planning policy	1. Recognise the importance of MHFs and surrounding land management in planning policy.	0–1 year	1, 2, 10
	2. Consider response to pipeline issues response with the electricity and gas network safety framework review response.	1–3 years	14, 15, 16, 17
Better inform land rezoning	3. Require WorkSafe Victoria / EPA be notified of rezoning proposals.	0–1 year	1, 5
	4. Review threshold separation distances and operation.	1–3 years	11, 12, 13
Avoiding sensitive-use encroachment	5. Manage sensitive-use encroachment with a particular provision planning control.	1–3 years	3, 4, 7, 8, 9
	6. Investigate referral arrangements.	1–3 years	
Improve guidance and information	7. Develop a MHF planning practice note, determine best way to provide information.	1–3 years	1, 4, 5, 6, 7, 8, 9



Strengthen planning policy

1. Recognise the importance of MHFs and surrounding land management in planning policy

The State Planning Policy Framework (SPPF) sets out the general principles and specific policies for land use and development that planning authorities and responsible authorities consider as part of their decision making.

Action

The government will prepare and introduce into the SPPF a new policy that:

- articulates the importance of MHFs to the Victorian economy
- explains the need to manage land to avoid sensitive uses, or uses that could encourage large numbers of people to live and work close to a MHF, encroaching on MHFs
- identifies how separation distance requirements should be managed for existing and new MHFs.

2. Consider response to pipeline issues response with electricity and gas network safety framework review response

In January 2017, the Minister for Energy, Environment and Climate Change announced an independent review of Victoria's electricity network safety framework, chaired by Dr Paul Grimes. In May 2017, the minister expanded the review's terms of reference to include Victoria's gas network safety framework. This review is due to present its findings to government in late 2017.

During the MHFAC's review, stakeholders identified issues about separation distances with Victoria's extensive gas pipeline network. The MHFAC recommended establishing an advisory committee under section 151 of the Planning and Environment Act, amending referrals in the VPPs and applying overlay controls to manage sensitive-use encroachment.

Action

The government will consider the MHFAC recommendations with the recommendations of the Review of Victoria's Electricity and Gas Network Safety Framework.

Better-informed rezoning of land

3. Require WorkSafe Victoria / EPA be notified of rezoning proposals

Local government is best-placed to understand and manage land use change close to an MHF. A decision about a planning scheme amendment to rezone land within a prescribed distance of an MHF should be informed by the best-available information.

Currently, a planning authority can choose to seek or not seek advice from WorkSafe Victoria and/or from the EPA (where appropriate) when considering a planning scheme amendment that rezones land close to an MHF. The government accepts this discretionary approach has led to poor outcomes.

Action	A new ministerial direction will be issued, requiring a planning authority to notify WorkSafe Victoria, and where appropriate the EPA, of a proposed planning scheme amendment to rezone land close to an MHF.
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4. Review threshold separation distances and operation

Clause 52.10 – Uses with adverse amenity potential of the Victoria Planning Provisions lists industrial and materials storage uses with the potential to adversely affect the amenity of their neighbourhoods.

The Victorian Government agrees that the threshold distances and how they operate needs to be reviewed to make them clearer, address their interaction with other standards and incorporate the best-available evidence.

This response supports the delivery of Plan Melbourne 2017–2050, which identifies the need to review and update separation distances in the planning scheme in partnership with the EPA, the Victorian Planning Authority and councils. It also supports the government's response to the recent independent inquiry into the EPA, which also committed to strengthening land use planning mechanisms to more clearly identify separation distances around industries that pose health, safety and amenity risks.

Given the number of separation distance matters covered by clause 52.10, a first step will be to identify the separation distances that need reviewing first, as a priority, to be followed by a more detailed technical and scientific review.

Action	<p>DELWP will work with the EPA to review existing threshold distances for land uses with adverse amenity potential and how clause 52.10 operates through the planning system. The review will start by scoping priority areas for action.</p> <p>This review will draw on the best-available science and best-practice approaches. It will also examine threshold distances in the context of EPA's <i>Recommended Separation Distances for Industrial Residual Air Emissions</i> guidelines, to ensure the two mechanisms align.</p> <p>The review will also consult with local governments, industry and other stakeholders.</p>
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Avoiding sensitive use encroachment

5. Manage sensitive-use encroachment with a particular provision planning control

The Occupational Health and Safety Regulations 2017 have stringent requirements for the design and operation of MHFs, and WorkSafe Victoria closely oversees compliance with them. This ensures the safety of people living or working close to an MHF. However, incidents in Australia and overseas have shown there can be wide spread effects on local communities surrounding an MHF in the event of a major incident. Therefore, government policy must seek to minimise the number of people living and working close to a MHF, to limit the effects, should a major incident.

The Victorian government acknowledges that there is support for the application of a statutory control such as an environment significance overlay (ESO) to manage development in appropriate circumstances. Particular planning scheme overlays may be applied to a 'buffer' related issue where there is a need to manage the development aspects associated with a use, for example to minimise amenity impacts from exposure to noise, odour and/or dust, or to safeguard airspace in the example of airports or helipads.

However, achieving the government's commitment —preserving residents' safety while allowing industry to grow — means that minimising encroachment of sensitive uses close to a MHF is first and foremost a matter of managing land use. An environmental significance overlay cannot regulate the use of land, for example, prohibit a sensitive use such as a kindergarten or residential aged care facility close to an MHF.

Therefore, the government's preferred planning control in this instance is a particular provision. A particular provision can be designed to manage both the use of land and associated development within a specified separation distances of an MHF. A particular provision is also sufficiently flexible to be applied at a statewide level while providing for local referral arrangements.

Action

DELWP will work with WorkSafe Victoria, and where appropriate the EPA, to develop a particular provision planning control at Clause 50 of the VPP to manage sensitive-use encroachment and associated development close to an MHF.

6. Investigate referral arrangements

The Victorian Government acknowledges that the provision of timely and authoritative advice provided to decision makers must come from appropriate sources that have the understanding and expertise in issues relating to MHFs. The Victorian Government agrees that WorkSafe Victoria plays an integral role in providing appropriate advice to decision makers in relation to sensitive uses close to MHFs.

Action

DELWP will work with WorkSafe Victoria, and where appropriate the EPA, to determine available options and appropriate scope to the extent of referrals arrangements as part of implementation of the proposed particular provision planning control.

Improving guidance and information

7. Develop an MHF planning practice note, determine best way to provide information

In its March 2010 *Land use planning near a major hazard facility* information sheet, WorkSafe Victoria proposed presenting the extent of risk areas around an MHF as inner and outer planning advisory areas. This is a useful starting point for improving planning guidance and decision-making.

It is important that **planning authorities and local communities** have access to the information used to prepare and keep current an emergency plan that addresses the potential on-site and off-site consequences of a major incident occurring, as regulation 375 of the Occupational Health and Safety Regulations 2017 require.

Action

DELWP will work with WorkSafe Victoria to prepare a planning practice note as guidance to help councils when making rezoning decisions and applying the proposed ministerial direction and particular provision.

DELWP will work with WorkSafe Victoria to find the best way to provide information about MHFs to councils, to the general public where appropriate and where legislation requires.

Response to each MHFAC recommendation

No.	Advisory Committee Recommendation	Response / Comment
Major Hazard Facilities Recommendations		
1	The Minister for Planning consult with WorkSafe Victoria to facilitate the development of further land use planning guidance for Major Hazard Facilities on a priority basis; including the identification of WorkSafe Victoria's Inner and Outer Planning Advisory Areas and the use of a standardised methodology based on the EPA's air emissions assessment framework.	SUPPORT (Actions 1, 3, 7) DELWP will work with WorkSafe Victoria to prepare guidance as part of the planning response.
2	Amend the State Planning Policy Framework to include in Clause 13 –Environmental Risks the draft policy 05.08 – Hazardous Facilities from the Planning Policy Framework (review of the State Planning Policy Framework) included in Appendix F in this report.	SUPPORT (Action 1) The government will prepare and introduce an MHF policy into the SPFF.
3	Apply the Environmental Significance Overlay with separate schedules for WorkSafe Victoria's Inner and Outer Planning Advisory Areas to provide a more responsive approach to managing development associated with sensitive uses.	SUPPORT IN PRINCIPLE (Action 5) Action 5 addresses the need to manage the encroachment of sensitive uses on an MHF with a particular provision.
4	Consider the draft Schedule to the Environmental Significance Overlay provided in Appendix G as a model, together with the specification of application, notification and referral requirements.	SUPPORT IN PRINCIPLE (Action 5) Action 5 addresses the need to manage the encroachment of sensitive uses on an MHF with a particular provision.
5	Prepare a Ministerial Direction under Section 7(5) of the Planning and Environment Act 1987 and an associated Planning Practice Note to guide the development of local policy and the application of the Environmental Significance Overlay and schedules to planning around Major Hazard Facilities.	SUPPORT (Action 3, 7) The Minister will issue a Ministerial Direction to support the process for rezoning land.
6	Modify the Clause 65 Decision Guidelines to include an additional decision guideline to refer to hazards associated with Major Hazard Facilities.	SUPPORT IN PRINCIPLE (Action 7) The government recognises the need for land that may be subject to, or affected by, a buffer to be considered in clause 65 and this matter will be further explored together with recommendations 10–13.
7	Subject to further consultation on implementation, include WorkSafe Victoria as a determining referral authority and the Environment Protection Authority as a recommending referral authority in Clause 66 for permits required by an Environmental Significance Overlay applied to Inner Planning Advisory Areas for Major Hazard Facilities.	SUPPORT IN PRINCIPLE (Action 5, 6, 7) The government recognises the need to refer applications close to an MHF to WorkSafe Victoria and where appropriate the EPA to ensure decision-making is informed by expert advice.
8	Subject to further consultation on implementation, include WorkSafe Victoria and the Environmental Protection Authority as recommending referral authorities in Clause 66 for permits required by an Environmental Significance Overlay applied to Outer Planning Advisory Areas for Major Hazard Facilities.	

No. Advisory Committee Recommendation	Response / Comment
<p>9 Develop and apply the inner and outer planning advisory areas and associated Environmental Significance Overlays in accordance with the priority identified in Appendix H.</p>	<p>SUPPORT IN PRINCIPLE (Actions 5, 7)</p> <p>The government supports in principle the concepts and advice in Appendix H.</p> <p>Action 5 addresses the need to manage the encroachment of sensitive uses on an MHF with a particular provision.</p>
<p>Amenity consideration recommendations</p>	
<p>10 Update the references in the State Planning Policy Framework as relevant to include reference to the revised Recommended Separation Distances for Industrial Residual Air Emissions (2013) and Noise from Industry in Regional Victoria Guidelines (2011).</p>	<p>SUPPORT (Action 1)</p> <p>DELWP will consult with the EPA and address any revision required to the State Planning Policy Framework.</p>
<p>11 The Minister for Planning, in consultation with the Environment Protection Authority and stakeholders (industry, technical specialists and the planning and development profession) commission a comprehensive review of Clause 52.10 to:</p> <ul style="list-style-type: none"> • Review the head clause to clarify its application to risk (non Major Hazard Facility) and amenity. • Review the head clause to clarify its application and use, including diagrams to assist with interpretation and expand its use to include 'reverse amenity' situations. • Review the list of Type of Production, Use or Storage and the technical basis of threshold distances. 	<p>SUPPORT (Action 4)</p> <p>The government recognises the need to modernise how buffers are managed in the Victoria Planning Provisions. This work must be based on the best-available technical and scientific information available and be done in partnership with the EPA.</p>
<p>12 The Minister for Planning consult with the Environment Protection Authority to further consider the longer term development of a single instrument that combines clause 52.10 and the IRAE Guidelines.</p>	<p>SUPPORT IN PRINCIPLE (Action 4)</p> <p>This issue will be considered when reviewing Clause 52.10 (see rec. 11) and may require review of the separation distances outlined in the EPA's Recommended Separation Distances for Industrial Residual Air Emissions guidelines, together with the proposed reforms to planning controls for Victoria's animal industries.</p>
<p>13 Develop a Ministerial Direction, based on Ministerial Direction 14, which requires planning scheme amendments which would allow or intensify sensitive uses to explicitly consider the Types of Production, Use or Storage in clause 52.10.</p>	<p>SUPPORT IN PRINCIPLE (Action 4)</p> <p>This recommendation will be considered together with recs 11 and 12.</p>

No. Advisory Committee Recommendation	Response / Comment
Pipelines considerations recommendations	
<p>14 The Minister for Planning consult with the Minister for Energy with a view to formalising the membership and operation of the Land Development Around Pipelines Working Group as a Section 151 Advisory Committee with an independent Chairperson under the <i>Planning and Environment Act 1987</i>; and for this group to advise on improving planning around high pressure gas and liquid hydrocarbon pipelines.</p>	<p>DEFERRED (Action 2)</p> <p>The government plans to respond to the recommendations of the Review of Victoria's Electricity and Gas Network Safety Framework in early 2018. It will consider the MHFAC's advice regarding pipelines as part of that process.</p>
<p>15 The Land Development Around Pipelines Working Group nominate essential high pressure gas and liquid hydrocarbon pipelines and consider recognising them in the State Planning Policy Framework as being of State significance.</p>	
<p>16 Refer the following issues to the revised Land Development Around Pipelines Working Group for consideration:</p> <ul style="list-style-type: none"> • Clause 66.01 Subdivision referrals be amended to replace the gas supply authority as the determining referral authority for proposals to subdivide land crossed by a gas transmission pipeline or a gas transmission easement with Energy Safe Victoria as the determining referral authority. • For lower risk pipelines consider including a referral to the pipeline licensee in clause 66.02 for building and works within the pipeline measurement length. 	
<p>17 Refer the following potential planning responses to the revised Land Development Around Pipelines Working Group for consideration:</p> <ul style="list-style-type: none"> • The development of Environmental Significance Overlay schedules for urban residential areas and rural areas to reflect a more responsive approach to manage the balance between development control and 'at pipeline' protection. • The Environmental Significance Overlay schedules include sensitive uses to be protected including as a minimum the sensitive uses identified in AS2885. • The Environmental Significance Overlay schedules include application, referral and notice requirements to Energy Safe Victoria and the pipeline operator/owner as relevant. • The Environmental Significance Overlay schedules be mapped on a priority basis, with the pipeline measurement length being the starting point for the relevant area to be mapped. • The application of the Environmental Significance Overlay schedules to pipelines that do not meet the High Density T2 rating as defined in AS2885. • The preparation of a Planning Practice Note to assist in implementing an improved planning process. 	

