

2 STRATEGIC PLANNING REPORTS

2.1 Feedback on Department of Environment, Land, Water and Planning's Proposed Draft Buffer Area Overlay

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Document ID	A9547207
Attachment(s)	<ol style="list-style-type: none">1. Proposed draft Buffer Area Overlay2. Mornington Peninsula Shire's Submission to Major Hazard Facilities Advisory Committee3. Council Report 16 December 2019

PURPOSE

The purpose of this report is to seek endorsement of the Mornington Peninsula Shire's (the Shire's) submission to the proposed draft Buffer Area Overlay (draft BAO).

BACKGROUND

The Department of Environment, Land, Water and Planning (DELWP) is currently seeking feedback on a proposed draft BAO (Attachment 1). The proposed overlay has been developed as part of the Planning for Buffers and Separation Distances Project (the Project). The project responds to the recommendations provided by the Major Hazard Facilities Advisory Committee (the MHFAC).

In September 2015, the Minister for Planning established the MHFAC *to provide advice to the Minister for Planning about improvements to land use planning for areas surrounding major hazard facilities (MHFs), in order to better manage the interface areas between existing and new development and land use for MHFs*. The MHFAC undertook an extensive consultation process, which included the release of a Discussion Paper for public comment in late 2015-early 2016. The Discussion Paper was prepared based on preliminary consultation undertaken with key stakeholders and identified the need for an extensive review into the planning system relating to buffers and separation distances.

The Shire made a submission to the Discussion Paper on 9 February 2016 (Attachment 2). Two registered MHFs are located within the municipality of the Shire – United Petroleum and Esso Australia Pty Ltd.

The submission acknowledged the significant weaknesses in the current planning system and provided suggested improvements. Specifically, the submission suggested the following:

- A new Major Hazard Zone to be applied to MHFs and any surrounding land where it is deemed that population density ought to be restricted for safety reasons;
- All hazardous pipelines to have the option of the new Major Hazard Zone being applied where warranted (i.e. land is owned by relevant pipeline company or there is a need to prohibit sensitive land uses on particular land that is owned by others). For other pipelines, a Pipeline Hazard Overlay would be appropriate. If possible, it should include standard development requirements that avoid the need for referrals and provide greater certainty about acceptable development; and

2.1 (Cont.)

- A new Ministerial Direction for applying the Major Hazard Zone and the Major Hazard Zone schedules; Major Hazard Overlays and Public Acquisition Overlay (PAO) for Major Hazard purposes.

The MHFAC released the Final Report on 19 July 2016 which made 17 recommendations to the Minister for Planning recommending improvements to land use planning for areas surrounding MHFs.

The need for the draft overlay was flagged during recent public consultation on proposed updates to the Planning Policy Framework and *Clause 53.10 – Uses with adverse potential*. The proposed updates aim to strengthen policy for managing buffers, clarify how industries and other uses need to respond to the potential for off-site impacts and include up to date standards and guidelines.

The Shire made a submission to this review which was endorsed by the Planning Services Committee on 16 December 2019 (Attachment 3). The submission provided comments relating to greater consistency relating to planning policy for buffer and separation distances.

DISCUSSION

Currently, planning approaches to buffer and separation distances are complex and inconsistent. The proposed draft BAO aims to strengthen planning tools to better manage land use and development in areas potentially affected by a range of health and safety impacts from industry and other uses. The overlay will be introduced into the Victoria Planning Provisions as an available planning tool for ensuring land use compatibility. The draft BAO will include a schedule that can be applied to ensure that new use and development within the buffer area is compatible with potential off-site impacts. The overlay:

- Addresses encroachment of incompatible uses;
- Can be tailored to protect different industrial or other uses through schedules;
- Requires an evidence base; and
- Can only be used if the required criteria are met.

Prior to application of the proposed draft BAO, the following steps would need to be followed to ensure appropriate use and application of the tool.

1. Criteria for Use

It is proposed that the draft BAO can only be applied when an industry or other use meets the following criteria. The use must be compliant with relevant regulations and standards, such as those of the Environmental Protection Agency Victoria (EPA), Worksafe and other regulatory authorities. This could include:

- Licences issued under the *Environment Protection Act 2017*;
- Planning and building permits;
- State Environment Protection Policies;
- Siting, design, operation and rehabilitation of landfills; and
- Dangerous goods and occupational health and safety regulations.

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The proposed draft BAO is designed to only protect industries and other uses that meet relevant regulations and standards. The overlay is not an alternative to controlling impacts from uses at the source. The use must have potential for off-site impacts on safety or human health.

The current zoning must have the potential to provide for incompatible use and development to occur (either with or without a permit) within the defined buffer. The proposed draft BAO should only be applied where incompatible use and development is not already adequately controlled by current zoning. For example, if an incompatible use is listed as section 1 or section 2 under a zone, it may be appropriate to apply the draft BAO. This ensures the overlay is not only used to regulate where needed and is not applied simply to identify a use.

2. Information Required

When considering the application of the proposed draft BAO, the following information would be required to demonstrate the need for the overlay and justify the application of planning requirements:

- A statement of risk for the buffer area that identifies the potential off-site human health or safety impacts of the industry or other use;
- The spatial extent of relevant off-site impacts on human health or safety, such as blast, hazardous air pollutants, noise or odour (reflecting current or approved operations), i.e. the buffer area;
- Objectives to be achieved for the buffer area;
- How proposed land uses need to be managed or prohibited (if necessary);
- How proposed buildings and works need to be managed or prohibited (if necessary);
- How proposed subdivision needs to be managed or prohibited (if necessary);
- What information will need to be provided with permit applications, i.e. application requirements; and
- Whether the views of any agencies are required to inform decision-making.

A proponent would need to seek the advice of relevant expert agencies, such as the EPA, on the above information. It will be important for councils, industry operators and regulatory agencies to work together to develop and endorse the evidence base supporting application of the overlay.

3. Prepare Overlay Schedule

The information required (as indicated above) would be needed to prepare a schedule to the proposed draft BAO.

Requirements for use and development identified by relevant expert agencies should be built into the schedule to the overlay where possible, rather than left for referral on a case by case basis. For example, rather than referring applications for land use proposals that will always be opposed by referral authorities, these land uses should be prohibited through the schedule to the overlay.

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Responding to change over time

The nature of industrial activities may change over time due to modified operations, improvements in technology and changing practices. Industries with potential off-site impacts may also close or relocate. BAOs would need to be reviewed regularly to ensure they still reflect the risk profiles of the land uses they are applied to. Review of BAOs could involve changes to mapping, ordinance or both. This could form part of regular planning scheme reviews conducted by councils. The draft BAO should be implemented to reflect the potential off-site impacts of current industry operations. Later proposals to expand industry operations will often need to respond to Clause 53.10 of the Victoria Planning Provisions.

ISSUES

DELWP has requested feedback from a range of stakeholders via email by 17 February 2020. This feedback will be used to further develop and inform future decisions with regard to the draft overlay. Council's recommended response is outlined below:

- **Are there other relevant regulations and standards that land uses should be compliant with to use the proposed overlays?**

It is considered appropriate for the draft BAO to apply only when an industry or other use meets the listed criteria. Any use that does not comply with the criteria should not be considered for application of the draft BAO.

Further clarification is required as to how the EPA's Recommended Separation Distances for Industrial Residual Air Emissions Guideline relates to the criteria and how it should be considered when considering application of the draft BAO (noted this document is a guideline only).

- **'Impacts on safety or human health' is a broad term. How would you interpret these impacts? Should the proposed overlay also cover significant amenity impacts? If so, how would you define significant amenity impacts?**

It is agreed that 'impacts on safety or human health' is a broad term and should be more clearly defined. This could be interpreted in a number of ways including any impact on amenity as a result of the use or development.

It would be considered useful for the overlay to also cover more specific significant amenity impacts such as dust, noise and odour. Guidance as to how this is measured/assessed and level of risk would also be required to be set by the EPA.

The definition of sensitive uses remains unclear. It would be considered useful to include a consistent definition in the Victoria Planning Provisions.

- **Do you agree that the proposed overlay should only be applied where current zoning within an identified buffer could allow incompatible uses to establish (either with or without a permit)? Should the proposed draft BAO apply in other instances, and if so, for what reason?**

After reading through the criteria, is it clear when the proposed overlay should be used?

It is agreed that the overlay should be applied where incompatible uses could be allowed, with or without a permit. Further clarification is required as to how these incompatible uses are determined.

2.1 (Cont.)

Following review of the overlay, it is unclear where the overlay should be used or applied. Further clarity is required with regards to the following:

- Does the overlay apply to the facility itself or the buffer area only;
- Can the overlay apply to high pressure gas pipeline hazard areas; and
- How will sensitive interfaces be treated – for example, can the overlay be applied to existing sensitive uses such as land in a Residential Zone and if so, will restrictions be placed on use and development.

- **Is the information required to prepare a schedule to the proposed overlay appropriate? Is there anything missing?**

It is considered imperative for the views of relevant expert agencies, such as the EPA and Worksafe, to be sought and considered through the process. This should be clearly stated in the information required criteria.

A Statement of Risk is proposed to be required to justify the application of the proposed draft BAO. Further clarification is required as to who will prepare this statement (i.e. Is Council required to source a statement of risk from a relevant environmental/risk professional).

- **Does the structure of the proposed overlay and schedule make sense?**

It is considered that the structure of the proposed overlay and schedule makes sense and that full notice and review requirements should be applied, without any exemptions.

The overlay requires that an application must be accompanied by any information specified in a schedule. Council may be limited in resources to review and assess the technical information. It may be useful for the EPA and/or Worksafe to review the information and provide their technical advice to Council. This will also ensure consistency in advice across all Councils within the state that meet the criteria to introduce the proposed draft BAO.

Further clarification is required about the overlay's relationship with *Clause 53.10 – Uses with Adverse Amenity Potential* and how the two provisions will work together.

- **Has the Environmental Significance Overlay (ESO) been an effective tool to manage buffers? Do you see the proposed draft BAO as an effective replacement control for the ESO to identify and control land within buffers?**

Currently, Mornington Peninsula Planning Scheme does not utilise the ESO for buffer areas.

Design Development Overlay – Schedule 8 (DDO8) (Pipeline Policy Area) applies to buffer distances from Oil and Gas Pipeline within the Mornington Peninsula municipality. Although it is now considered that the existing provisions of the schedule are outdated and have no effect on decision making due to the Major Hazard Facilities Advisory Committee report and *Pipelines Act 1967* affording protection to the pipelines.

OFFICER DIRECT OR INDIRECT INTEREST

No person involved in the preparation of this report has a direct or indirect interest requiring disclosure.

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CONCLUSION

Currently, planning policy for managing land use between industries and sensitive uses is complex and inconsistent. The draft BAO is considered an appropriate and effective tool to identify buffer areas and reduce land use conflict between existing industry and proposed sensitive uses. Further clarification is sought and comments made with regard to the application of the overlay and how it will be used.

RECOMMENDATION

That the Planning Services Committee endorses the submission to the Department of Environment, Water, Land and Planning regarding the proposed draft Buffer Area Overlay, as outlined in this report.

COMMITTEE DECISION

Moved: Cr Colomb
Seconded: Cr Celi

That the Planning Services Committee endorses the submission and forward to the Department of Environment, Water, Land and Planning regarding the proposed draft Buffer Area Overlay, as outlined in this report.

Carried Unanimously