

## 2.3 Submission to the Review of Planning for Land Use Buffers and Separation Distances

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Authorised By	Director - Planning and Building
Document ID	A9454072
Attachment(s)	<ol style="list-style-type: none"><li>1. Mornington Peninsula Shire Submission to the Major Hazard Facilities Advisory Committee</li><li>2. Changes to clause 13.07-1S</li><li>3. Draft clause 53.10</li></ol>

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### PURPOSE

The purpose of this report is to seek the Planning Services Committee's endorsement of the Mornington Peninsula Shire's (the Shire's) Submission to the review of Planning for Land Use Buffers and Separation Distances.

### BACKGROUND

The Department of Environment, Land, Water and Planning (DELWP) is currently seeking feedback on proposed updates to the Planning Policy Framework (clause 13.07-1S – Attachment 2) and clause 53.10 – Uses and Activities with Potential Adverse Impacts of the Victoria Planning Provisions (Attachment 3). The proposed changes aim to strengthen policy for managing buffers and clarify how industries and other uses are to respond to potential for off-site impacts. The updates respond to the recommendations provided by the Major Hazard Facilities Advisory Committee. Feedback is due by 16 December 2019.

In September 2015, the Minister for Planning established the Major Hazard Facilities Advisory Committee (MHFAC) *to provide advice to the Minister for Planning about improvements to land use planning for areas surrounding major hazard facilities (MHF), in order to better manage the interface areas between existing and new development and land use for MHF*. 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.

Issues that were raised as part of the MHFAC process included the following:

- The role of planning in identifying buffers around MHF, including the role of Government agencies;
- Whether there should be definitions of sensitive uses and MHF in planning schemes;
- Notification of neighbours near MHF;
- Risk to community and safety;
- The basis for determining appropriate buffers and separation distances;
- Appropriate use of planning tools including zones, overlays and particular provisions;

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- Amenity issues and clause 52.10 (as it was previously referred to – now clause 53.10 following VC148 which amended the Victoria Planning Provisions (VPPs) as a result of the Victorian Government’s Smart Planning Program); and
- Buffer requirements around high pressure gas and petroleum pipelines.

The Shire made a submission to the Discussion Paper on 9 February 2016 (Attachment 1 – The Shire’s Submission to the Major Hazard Facilities Advisory Committee). Two registered Major Hazard Facilities are located within the municipality of Mornington Peninsula, United Petroleum and Esso Australia Pty Ltd.

The submission acknowledged the significant weaknesses in the current planning system and provided suggested improvements relating to planning changes. Specifically relating to clause 52.01, the Submission suggested:

- The listed types of production, use and storage need to be reviewed given advances in technology particularly with regard to alternative waste technology;
- A review of threshold distances, including a written documentation of their justification – potential for this to be a Planning Scheme reference document. This should consider the hazard distance for uncontrolled risks and thresholds for controlled risks according to the controls that are in place; and
- Consideration should be given to whether threshold distances are required in relation to the impact of vibration, noise and escape of liquid waste.

The Submission also suggested the introduction of a new zone to be introduced into the VPPs that could be applied to MHFs and all hazardous pipelines and planning scheme mapping to identify MHFs.

The MHFAC released the Final Report on 19 July 2016 which made 17 recommendations to the Minister for Planning, including a comprehensive review of clause 53.10. Following the final report, the Government provided a response to the MHFAC’s recommendations. Action 4 of the Governments response commits to reviewing the separation distances (see below):

Action 4: Review threshold separation distances and operation:

DELWP will work with the Environmental Protection Agency (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. 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 Recommended Separation Distances for Industrial Residual Air Emission Guidelines, to ensure the two mechanisms align. The review will also consult with local governments, industry and other stakeholders.

Recommendation 10.3 of the Independent Inquiry into the Environment Protection Authority (March 2016) and Action 98 of the Plan Melbourne 2017-2050 Five-Year Implementation Plan also recommends developing strengthened planning mechanisms that establish buffers and review and update the guidelines for separation distances for sensitive uses.

**DISCUSSION**

Currently, planning approaches to buffer and separation distances are complex and inconsistent. Environmental Resources Management Australia Pty Ltd (ERM) was engaged to review how land use buffers and separation distances are managed in the current planning system. Their report provides an assessment of the current Planning Policy and

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tools in the VPPs and analyses local and international case studies to understand how planning currently manages conflicting land uses.

This work has fed into the review of planning for land use buffers and separation distances and the proposed updates to the Planning Policy Framework and clause 53.10 of the VPPs.

The following principles have been identified by DELWP to guide feedback and discussion regarding managing buffers and separation distances in Victoria:

<b>Best practice</b>	Priority should be given to preventing offsite impacts in the first place, acknowledging that even best practice emission control cannot guarantee such impacts will never occur.
<b>Accessible and visible</b>	Land used for a buffer or within a recommended separation distance should be easily identifiable and information in plain English about potential adverse impacts should be readily available.
<b>Transparent and evidence-based</b>	The intent of planning provisions and the way in which they operate should be transparent and based on reliable evidence and technical information. Associated responsibilities and decision-making criteria should be made clear.
<b>Consistent</b>	Requirements across planning and environment frameworks should be consistent and integrated.
<b>Proportional</b>	Regulatory requirements are proportionate to the planning and environmental risks.
<b>Balanced</b>	Land use planning outcomes balance the need to support industry and infrastructure with the need to minimise environmental and human health risks.

Specific changes to the Planning Policy Framework clause 13.07-1S include:

- Update the objective of the Policy to include regard to human health and safety;
- Additional and updated strategies ensuring compatibility and consideration of adjoining and nearby land uses and protection of existing uses from development that would compromise their function/safety;
- Reference to the current (EPA) publication – *Recommended separation distances for industrial residual air emissions* (EPA Industrial Residual Air Emissions (IRAE) Guidelines) (replaces the previous version); and
- Amends inconsistencies with EPA framework.

Specific changes to clause 53.10 include:

- Updated list of uses and threshold distances, aligned with current EPA advice;
- More production thresholds added to exempt smaller operations; and
- More clarity on operation of the clause and links to referral provisions, including the replacement of Note 1 and Note 2.

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Further consequential changes will also be required to other parts of the VPPs including zones and referral provisions. DELWP will also publish a practice note to accompany any new changes to planning provisions. This will provide further guidance on:

- The role of planning in protecting and managing buffers;
- The importance of strategic planning;
- Using clause 53.10; and
- The adverse off-site impacts relevant to uses and activities listed in clause 53.10.

The Shire's submission to the MHFAC made the following suggestions relating to clause 53.10:

- The listed types of production, use and storage need to be reviewed given advances in technology particularly with regard to alternative waste technology;
- A review of threshold distances, including a written documentation of their justification – potential for this to be a Planning Scheme reference document. This should consider the hazard distance for uncontrolled risks and thresholds for controlled risks according to the controls that are in place; and
- Consideration should be given to whether threshold distances are required in relation to the impact of vibration, noise and escape of liquid waste.

The proposed updates to the Planning Policy Framework and clause 53.10 have been informed by the ERM report, which provided an Assessment Matrix, which outlines the range of differences between 53.10 and the IRAE highlighting that there are substantial areas of difference between the two documents in terms of the range of applicable uses, the applicable distances and the application. Uses and activities listed in clause 53.10 have been updated in accordance with technical review, in consultation with DELWP and the EPA.

The ERM report also indicated that other forms of impact such as noise, vibration, ambient and hazardous air pollutants are currently not addressed in clause 53.10 or the IRAE Guidelines. The IRAE Guidelines are currently under review and will consider other forms of impact.

Council's Submission also requested the introduction of a new zone to be introduced into the VPPs that could be applied to MHFs. DELWP are currently investigating the introduction of a new planning mechanism into the VPPs to protect buffers for certain existing industries and activities.

**ISSUES**

Feedback on the changes are requested via survey format online. Council's recommended response is outlined below:

1. In relation to updates to the Planning Policy Framework:

Please indicate whether you agree or disagree (strongly disagree, disagree, neither agree nor disagree, agree and strongly agree) with the following statements:

- Including human health and safety impacts within the scope of the clause is important:
  - Strongly agree.

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- The additional and updated strategies adequately support the need to protect existing industrial, commercial and other uses from encroachment:
    - Agree.
  - It is helpful to include the current EPA guideline on separation distances as a policy document:
    - Strongly agree.
2. Do you have any other comments about elements of the draft Clause 13.07-1S?
- Objective;
  - Strategies;
  - Policy Documents; and/or
  - Other (please specify).

Mornington Peninsula Shire provides the following comments:

The draft clause 13.07-1S provides greater clarity in terms of providing State policy direction for potential adverse impacts. The inclusion of the EPA's IRAE: Policy Document is helpful in terms of providing guidance and direction in measuring separation distances. This also ensures consistency with EPA guidelines.

However, the definition of 'sensitive uses' remains unclear. It would be useful to include a definition of this term in the VPPs to avoid ambiguity and confusion.

3. In relation to updates to clause 53.10:

Please indicate whether you agree or disagree (strongly disagree, disagree, neither agree nor disagree, agree and strongly agree) with the following statements.

- The operation of the clause will be clearer than how it is now, including how it links to zones and referral provisions:
  - Agree.
- The updated list of "sensitive zones" where the threshold distance applies is relevant:
  - Agree.
- The list of uses and activities seems appropriate:
  - Agree.
- The threshold distances for uses and activities seem appropriate:
  - Agree.
- It is clear how to measure and apply the threshold distances:
  - Agree.

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- How referrals operate is clear with the replacement of Note 1 and Note 2:
  - Strongly agree.
- 4. Do you have any other comments about elements of the draft clause 53.10?
  - Title and purpose;
  - Operation and how it works;
  - 'Sensitive zones';
  - Uses and activities;
  - Threshold distances; and/or
  - Other (please specify).

The Shire provides the following comments:

The draft clause 53.10 provides greater clarity, in particular with the deletion of Note 1 and Note 2 in relation to referrals. It is understood that any application that does not meet the threshold or no threshold distance is specified must be referred to the EPA.

It is noted that currently the proposed clause does not apply to other Rural Zones such as the Green Wedge Zone. Whilst broader industry is prohibited, 'rural industry' is becoming more prominent. Consideration should be given as to whether the clause should also apply to the rural zones.

It would also be helpful to include reference to the EPA's IRAE: Policy Document in clause 53.10.

Submissions close on 16 December 2019 (DELWP has been advised of the late submission – to be submitted on 17 December 2019). Feedback received will then be considered and updated planning provisions approved and gazetted early 2020.

#### **OFFICER DIRECT OR INDIRECT INTEREST**

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

#### **CONCLUSION**

Currently, Planning Policy for managing land use between industries and sensitive uses is complex and inconsistent. Updates are proposed to planning policy relating to buffers and separation distances based on technical review undertaken by DEWLP and the EPA. The updates respond to the extensive review process undertaken to date and feedback received following the MHFAC. Further comments are provided relating to ensure greater consistency relating to planning policy for buffer and separation distances.

#### **RECOMMENDATION**

That the Planning Services Committee endorses the submission to the review of planning for land use buffers and separation distances as detailed in the 'Issues' section of this report.

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**COMMITTEE DECISION**

Moved: Cr Hearn  
Seconded: Cr Celi

That the Planning Services Committee endorses the submission to the review of planning for land use buffers and separation distances as detailed below:

1. In relation to updates to the Planning Policy Framework:

Please indicate whether you agree or disagree (strongly disagree, disagree, neither agree nor disagree, agree and strongly agree) with the following statements:

- Including human health and safety impacts within the scope of the clause is important:
  - Strongly agree.
- The additional and updated strategies adequately support the need to protect existing industrial, commercial and other uses from encroachment:
  - Agree.
- It is helpful to include the current EPA guideline on separation distances as a policy document:
  - Strongly agree.

2. Do you have any other comments about elements of the draft Clause 13.07-1S?

- Objective;
- Strategies;
- Policy Documents; and/or
- Other (please specify).

Mornington Peninsula Shire provides the following comments:

The draft clause 13.07-1S provides greater clarity in terms of providing State policy direction for potential adverse impacts. The inclusion of the EPA's IRAE: Policy Document is helpful in terms of providing guidance and direction in measuring separation distances. This also ensures consistency with EPA guidelines.

However, the definition of 'sensitive uses' remains unclear. It would be useful to include a definition of this term in the VPPs to avoid ambiguity and confusion.

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- The operation of the clause will be clearer than how it is now, including how it links to zones and referral provisions:

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- Agree.
- The updated list of “sensitive zones” where the threshold distance applies is relevant:
  - Agree.
- The list of uses and activities seems appropriate:
  - Agree.
- The threshold distances for uses and activities seem appropriate:
  - Agree.
- It is clear how to measure and apply the threshold distances:
  - Agree.
- How referrals operate is clear with the replacement of Note 1 and Note 2:
  - Strongly agree.
- 4. Do you have any other comments about elements of the draft clause 53.10?
  - Title and purpose;
  - Operation and how it works;
  - ‘Sensitive zones’;
  - Uses and activities;
  - Threshold distances; and/or
  - Other (please specify).

The Shire provides the following comments:

The draft clause 53.10 provides greater clarity, in particular with the deletion of Note 1 and Note 2 in relation to referrals. It is understood that any application that does not meet the threshold or no threshold distance is specified must be referred to the EPA.

It is noted that currently the proposed clause does not apply to other Rural Zones such as the Green Wedge Zone. Whilst broader industry is prohibited, ‘rural industry’ is becoming more prominent. Consideration should be given as to whether the clause should also apply to the rural zones.

It would also be helpful to include reference to the EPA’s IRAE: Policy Document in clause 53.10.

Carried Unanimously