

# Integrating Environment Protection Reform into Land Use Planning - Submission to Victorian Government Consultation



MORNINGTON  
PENINSULA  
Shire

## **A. Feedback on proposed changes to VPP Clause 13.04-1S Potentially contaminated land.**

In addition to the proposed updates to the Clause, the Shire considers that specific reference needs to be made in relation to landfill gas risk and the associated buffer areas from a contamination source. EPA Publication 1642 – Assessing Planning Proposals within the buffer of a landfill should be specifically referenced in the Clause to clearly highlight this issue to all users of the planning system.

The issue of contaminated land, particularly from former landfills, is considered to be hidden in the planning system and such references will assist in bringing this issue to the forefront of development considerations. The Shire has experienced resistance from permit applicants when this issue arises during the course of an application and currently there is insufficient policy guidance on this matter.

The Clause should also highlight that buffer areas from contaminated land may be reduced if there is sufficient scientific data to support the reduction.

Council's submission in response to the new legislation and regulations raised the fact that the concept of unreasonable noise and the need to satisfy the general environmental duty applied to the Tyabb Airfield, although aircraft in flight are not subject to the controls regarding 'aggravated noise'.

Clause 18.04-1S Planning for airports and airfields is written with an emphasis on protecting aviation facilities from encroachment and safeguarding their capacity for further growth, rather than highlighting the need for the management of aviation activities to limit the impacts on surrounding areas. The National Airports Safeguarding Framework similarly focuses on avoiding constraints on existing aviation facilities and limiting new sensitive development in their vicinity.

It would be appropriate to expand the VPP Clause 13.07-1S Land use compatibility to include reference to the new 2017 Act provisions and to explicitly provide that the operation of aviation facilities, other than registered airports (which are subject to Commonwealth regulation), are required to meet the requirements of the new Amendment Act in relation to the management of unreasonable noise and meeting the general environmental duty. One means for facility operators to demonstrate compliance with these requirements would be through the provision, approval and regular review of an Aircraft Noise Management Plan.

Given that the drafted EAO purpose is "to ensure that potentially contaminated land is suitable for a sensitive use, agriculture or public open space which could be significantly adversely affected by contamination", it is considered that the last strategy within the Clause "Facilitate the remediation of contaminated land, particularly on sites with potential for development for a residential use, child care centre, kindergarten, pre-school centre, primary school, secondary school and children's playground, even if ancillary to another use", should be amended to include reference to public open space and agriculture to ensure the health and safety of the community and consumers of the agriculture production.

## **B. Feedback on proposed changes to VPP Clause 45.03 EAO.**

It is questioned why a requirement of an environmental audit statement be included as a 'permit condition when a permit to use, develop or subdivide land for a sensitive use is granted'. This issue should be addressed prior to a permit being granted. It is however agreed

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that a condition needs to be included in the event the land is suitable for a sensitive use/agriculture that captures the requirements of the environmental audit statement.

'Exemption from Requirement' dot point two, states that the following is exempt from the requirement of an environmental audit:

- The construction or carrying out of buildings and works is not associated with a change in land use and does not include soil disturbance; and
- It is questioned what constitutes 'soil disturbance', the VPPs do not provide a term that provides a clear threshold. To ensure that consistency is applied or if a matter was to be heard at the Victorian Civil and Administration Tribunal (VCAT), it is suggested that a term or a maximum depth be defined.

## **C. Feedback on proposed changes to VPP Clauses 65.01 and 65.02.**

It is useful that the Decision Guidelines, Clauses 65.01 and 65.02 will make specific reference to contaminated land. This addition will ensure that permit applicants are clear that responsible authorities must have regard to this issue and will not make a decision until they are satisfied. The inclusion also ensures that the consideration applies to all applications and not simply those located within an EAO.

## **D. Feedback on proposed changes to VPP Clause 73.01 General Terms – definition of 'potentially contaminated land'.**

No comment.

## **E. Feedback on changes to Ministerial Direction No. 1 – Potentially Contaminated Land.**

The existing Ministerial Direction provides an 'Explanatory Statement' to provide further context on what is considered 'Potentially Contaminated Land'. It is suggested that this content be amended as appropriate and included in the revised Ministerial Direction to ensure that the processes are transparent and interpretable for all.

## **F. Feedback on changes to Planning Practice Note 30 – Potentially Contaminated Land**

Given that the drafted EAO purpose is "to ensure that potentially contaminated land is suitable for a sensitive use, agriculture or public open space which could be significantly adversely affected by contamination", public open space and agriculture should be included within the 'What is potentially contaminated land' subheading, to ensure the health and safety of the community and consumers of the agriculture production.

The acronyms used within Table 3 on page 11 should be provided in full within the document so to ensure that it is clear for all users with varying experience/qualifications with the subject matter.

The criteria provided within Table 3 for Planning Permit, Use of Land, Sensitive, fails to mention public open space, criteria should be explicit within the PPN30 consistent with the EAO purpose which includes public open space, agriculture is mentioned within the table.

For audience context, there is no preamble provided to Table 1 on page 12, it is suggested that details be included.

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It is noted that on page 16 the drafted condition 3. states that the applicant “may enter into a 173 Agreement” whilst the existing PPN30 condition suggests that the applicant “must enter into a section 173 Agreement”. The need for changing the wording is not understood when considering that the responsible authority should have pre-determined if it is appropriate or not for the Statement of Environmental Audit to require significant ongoing maintenance and/or monitoring. Given that the condition is not mandatorily to be applied, the wording should remain as is with the condition to be applied as appropriate by responsible authorities.

## **G. Do you have any other comments on the proposed changes?**

The focus for the current consultation is on Clause 13.04-1S – Contaminated and potentially contaminated land, with limited reference to other sections of the Planning Policy Framework which will be affected, such as:

- 13.05-1S Noise abatement;
- 13.06-1S Air quality management;
- 13.07-1S Land use compatibility;
- 13.07-2S Major hazard facilities;
- 14.02-1S Catchment planning and management;
- 14.02-2S Water quality;
- 17.03-2S Sustainable industry;
- 19.03-03S Integrated water management; and
- 19.03-5S Waste and resource recovery.

The document library includes ‘Summary of other proposed VPP changes’, but aside from indicating that various references to the EPA policies and guidelines will be updated, the document only indicates that details will be provided in the final amendment package.

It is expected that updating of references will be the main change required to the VPPs, however, the 2017 Act and associated regulations does introduce some significant new environmental management concepts, including the use of environment reference standards, the principle of a general environmental duty and definitions of both unreasonable noise and aggravated noise.

For ease of comparison of all existing and proposed changes to the planning policies, it would have been useful if all changes were highlighted within all documents i.e. as demonstrated by draft Clauses 65.01 and 65.02.