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**Request to be heard?:** Yes

**Full Name:** Kaylee Thompson

**Organisation:** EPA Victoria

**Affected property:**

**Attachment 1:** Signed\_EPA\_Response\_-\_Yarra\_Bulleen\_Precinct\_Manningham\_C125\_-\_20200924.

**Attachment 2:**

**Attachment 3:**

**Comments:** see attached submission



Our Ref: 5011094

24 September 2020

Steven Elliot  
Manager of Places and Precincts  
Department of Environment, Land, Water and Planning  
Level 13 8 NICHOLSON ST  
EAST MELBOURNE

Dear Steven

**RE: DRAFT YARRA BULEEN PRECINCT FRAMEWORK PLAN AND DRAFT MANNINGHAM PLANNING SCHEME AMENDMENT C125**

We refer to the draft Yarra Bulleen Precinct Framework Plan and draft Manningham Planning Scheme Amendment C125 currently available for public consultation on Engage Victoria.

**Ministerial Direction 19**

Ministerial Direction 19 requires planning authorities to seek early advice from EPA when undertaking strategic planning processes and preparing planning scheme amendments that may significantly impact Victoria's environment, amenity and/or human health due to pollution and waste.

EPA's consideration and advice on relevant planning matters is intended to support decisions made by planning authorities in the early stages of the planning process.

EPA was not referred the proposal under Ministerial Direction 19 but came across the matter of our own accord.

**Summary of EPA's Position**

EPA wishes to be kept informed about the implementation of the Framework Plan and related implementation including planning scheme amendments where there is a risk of harm to the environment, human health and amenity from pollution and waste.

EPA is concerned that the potential risks of harm from potentially contaminated land and nearby industry have not been adequately assessed in regard to the proposed amendment. EPA considers that further work is needed to understand the potential impact on the establishment of sensitive uses at this location.

**Draft Framework Plan**

EPA understands an Advisory Committee has been appointed to provide strategic and statutory planning advice on the draft Framework Plan and a draft Planning Scheme Amendment.

The draft Bulleen Land Use Framework Plan sets a vision and planning objectives to guide future land use and development in the area. It includes recommendations regarding open space, recreation areas and pedestrian and cycling links.

EPA wishes to be kept informed about the implementation of the Framework Plan and related implementation including planning scheme amendments where there is a risk of harm to the environment, human health and amenity from pollution and waste.

### **Planning Scheme Amendment**

The Amendment proposes to rezone land from Special Use Zone – Schedule 1 to partially Residential Growth Zone and partially Public Parks and Recreation zone in a two stage process. The amendment also seeks to apply a Development Plan Overlay and makes other associated amendments to the Manningham Planning Scheme.

It is understood that this rezoning will allow for the establishment of sensitive uses (residential) on land previously used for the Yarra Valley Country Club.

### ***Potentially Contaminated Land***

The Planning & Environment Act 1987 specifies that the requirement to consider the effects of the environment, including contamination, rests with the planning authority through:

- Section 12(2)(b) whereby a planning authority must consider effects the environment might have on any use or development envisaged in the scheme or amendment, and;
- Ministerial Direction No. 1 whereby a planning authority must satisfy themselves that the environmental conditions of the land are, or will be, suitable to accommodate any use allowed under the proposed zoning.

EPA's role, with respect to potentially contaminated land and land use planning decisions, is to advise planning authorities about the appropriate level of assessment required to inform risk in accordance with guidance. Importantly, this advice aims to ensure that the form of environmental assessment is proportionate to the level of risk. Secondly, the advice is intended to assist the planning authority to arrive at that position, not dictate it. It is on this basis that EPA advises the following.

It is noted that a Preliminary Site Investigation (*Preliminary Site Investigation, 9-33 Templestowe Rd, Bulleen, Alpha Environmental, 9 April 2019*) has been undertaken on the site. Whilst EPA is not able to provide a full technical review of the assessment, or attest to the quality of the assessment, EPA can offer the following comments:

- Based on the information provided, it appears that the site has been previously used for agricultural activities (market garden) and has imported fill, which has a medium potential for contamination according to Table 1 of the General Practice Note for Potentially Contaminated Land, DSE 2005 (PPN 30).
- The proposed use of the site is residential which is a sensitive use. It therefore appears to us that this use is Category B according to Table 2 in the PPN 30 and therefore an Environmental Site Assessment, also known as a Preliminary Site Investigation (PSI) is required to identify if an audit is warranted.
- The assessment concludes that due to potentially contaminating historical land uses, identified uncontrolled filling and previously detected soil contamination onsite, it is recommended that a soil investigation be undertaken in areas of proposed residential development to ensure the soil's suitability for the intended future use.
- However, it is EPA's view that the assessment does not meet the purpose of a PSI in that it does not provide a clear conclusion as to whether an audit is required. Generally, in EPA's

experience, and consistent with the *National Environment Protection (Assessment of Site Contamination) Measure 1999 (amended 2013)* (NEPM), a PSI should make an unequivocal statement that either:

- The site is not likely to be contaminated to a level which would pose a significant risk to the environment or human health under the proposed use/development scenario. No further assessment is required, or,
  - The site is potentially contaminated, or there is likelihood of contamination, that would pose a risk to the proposed use/development scenario. There is enough information to classify the site as potentially contaminated. Further assessment is required.
- If the site history is incomplete and contaminating activities are suspected to have occurred, it may be necessary to undertake a limited preliminary sampling and analysis program to determine whether to require a Detailed Site Investigation (DSI) or environmental audit.

#### *Timing of assessment*

It is further noted that the requirement for further assessment appears to be deferred through a condition on a planning permit for subdivision or development as noted in the proposed Development Plan Overlay which states:

*Any permit to subdivide use or develop land should include, where relevant, conditions requiring the following:*

- *The pre-commencement submission and then compliance with a Soil Management Plan (or similar) to the satisfaction of the Responsible Authority. This plan should address the management of any potential contaminants, details of any fill and movement of soil/materials, and any associated land management requirements.*

It is EPA's preference and consistent with Ministerial Direction 1 to have any further assessment done as early as possible in the planning process.

The planning authority should note that:

- A key purpose of an audit is to validate that the land is suitable for a use/ development following any necessary remediation, whereas the purpose of a PSI is to determine whether an audit is required.
- In most cases, where contamination exists, it will be possible to clean up the site to suit the proposed development. In some instances, due to financial or technical reasons, it will not be possible to do so and the audit will either not be completed, or will be issued stating that the site is not suitable for the use allowed in the planning decision (it may be suitable for other uses)
- This is particularly the case for low density residential uses where options for managing contamination going forward will be limited and potential for exposure is higher.
- In some cases, only parts of the site will be suitable for sensitive uses. If this is known early in the planning process, planning approvals and plans for the development of the site can respond to this.

In this case, there does not appear to be a valid reason for deferring this assessment to a planning permit condition.

For the reasons noted above, EPA is of the view that carrying out an assessment of contamination prior to rezoning is preferable as it allows the planning authority to have relevant information about the condition of the site to inform decisions as to the nature and location of future suitable land uses. It also enables the planning authority to implement any necessary planning controls into the amendment.

## Recommendation

EPA recommends the PSI already undertaken be revised to be clear on the conclusions for further assessment aligned with the purpose of a PSI in accordance with NEPM.

Should further assessment, i.e., a DSI or environmental audit be recommended, this should be undertaken early in the planning process to confirm the suitability of the site for the intended use.

## **Amenity**

Directly adjacent to the subject site is an existing industrial use known as Sonoco. It is EPA's understanding that the site manufactures cardboard and plastic packaging tubes as well as undertakes slitting and rewinding of printing and packaging material.

EPA has concerns that the amendment does not appear to have considered potential amenity impacts including noise, dust, and odour from this industry on the intended residential uses.

Without further information on the industrial use, it is unclear what recommended separation distance may apply in accordance with EPA Publication 1518, *Recommended Separation Distances for Industrial Residual Air Emissions, 2013*.

## Recommendation

Consistent with the 'agent of change' principle, Table 3 and Table 4 of EPA Publication 1518, EPA recommends an assessment of potential amenity impacts to determine whether a site specific variation is justified having regard to potential noise, odour and dust impacts from Sonoco (and any other industry located nearby which have the potential to generate offsite impacts).

## **Summary**

EPA has concerns regarding the approach towards potentially contaminated and the consideration of amenity impacts from the existing adjacent industrial use.

To resolve outstanding matters regarding potential contamination, EPA recommends the PSI already undertaken be revised to be clear on the conclusions for further assessment aligned with the purpose of a PSI in accordance with NEPM. We also recommend an assessment of potential amenity impacts having regard to EPA Publication 1518. These matters must be resolved before the land can be considered suitable for the intended use.

EPA is willing to meet with the planning authority to discuss our comments and our ongoing involvement in this process to ensure that EPA supports this planning process effectively. We intend to speak in support of this submission.

If you require any assistance with the matters raised in this submission, please contact Kaylee Thompson, Senior Planning Officer on [REDACTED] or at [REDACTED]

Yours sincerely,

[REDACTED]  
**Trisha Brice**  
Planning Team Lead (Strategic)  
Major Projects & Planning Unit  
**EPA Victoria**