

Department of Environment, Land, Water and Planning  
Smart Planning  
Level 5, 1 Spring Street  
MELBOURNE VIC 3000

December 1, 2017

Dear Policy and Strategy Team

### **Discussion paper - “Reforming the Victoria Planning Provisions”**

On behalf of Viva Energy Australia Pty Ltd (**Viva Energy**), we are pleased to provide this submission in relation to the Discussion Paper released by Smart Planning on Reforming Victoria Planning Provisions.

As the exclusive distributor of Shell branded fuels and lubricants in Australia, Viva Energy supplies around 55% of Victoria’s, and 25% of Australia’s, fuel needs. We are the owner and operator in Victoria of three Major Hazard Facilities (**MHF**) and seven licenced pipelines covering more than 290km, traversing 12 local government areas. In addition, Viva Energy’s business in Victoria also comprises a 250 site-retail network and a bulk fuels, aviation, bitumen, chemicals, marine and lubricants business supported by our major fuel storage and distribution terminal in Newport. We therefore have a natural interest in any proposals to reform the Victoria Planning Provisions (**VPP**) and the Discussion Paper you have released.

We wish to highlight the Major Hazard Facilities Advisory Committee review that Viva Energy participated in via a submission made in February 2016. The Advisory Committee provided its report (**MHF Advisory Committee Report**) to the Minister for Planning in July 2016, which included advice and recommendations about improvements to land use planning for areas surrounding Major Hazard Facilities (MHFs). Through the course of this review, it was also brought to the Committee’s attention that, similar to MHFs, there are planning issues in the vicinity of high pressure pipelines.

We have not seen a recent update of where this process is sitting however, we agree with the recommendations made in the Committee’s Report and wish to re-state and highlight areas of particular relevance with reforming of the VPP throughout our submission.

#### **1. Overview of our Major Hazard Facilities**

As noted above, Viva Energy is the owner and operator of three MHF in Victoria:

- **The Newport Terminal** in Douglas Parade, Spotswood is one of the State’s primary fuel distribution centres. It services the Melbourne and greater Victorian marketplace for fuels (including Melbourne and Avalon airports). The terminal operates 24 hours per day, 365 days of the year. It has 40 storage tanks with a total capacity of 140 million litres and vehicle filling gantries for fuels, solvents and lubricating oils.
- **The Geelong Refinery** in Refinery Road, Corio occupies 120 hectares of land adjacent to Corio Bay and is one of the largest refineries remaining in Australia. The refinery currently supplies about 55% of Victoria’s fuel needs. While primarily a manufacturing facility, there

is also substantial fuel storage on site and a vehicle filling gantry for fuel deliveries into Victoria. The refinery receives some crude oil via the Western Port-Altona-Geelong (WAG) pipeline and transfers finished fuel products via two pipelines to the Newport Terminal. The Geelong Refinery is the last manufacturer in Australia of bitumen, avgas (for propeller airplanes) and hydrocarbon solvents.

- **The Lara LPG Terminal** in McManus Road, Lara, stores and distributes Liquid Petroleum Gas (LPG) products. The facility can store up to 5,000t of butane, 1,200t propane and 1,000t of propylene (chemical feedstock). The Lara facility is connected to the Geelong Refinery by a licensed LPG pipeline.

In addition to these MHF's, Viva Energy also owns and operates around 290km of licenced pipelines that are used for conveying hydrocarbon products in and around the greater Melbourne area, including three major pipelines, as follows:

- **Western Port-Altona-Geelong (WAG) Pipeline** which conveys crude and condensate from Western Port to both Altona and Geelong Refineries; and
- **Two pipelines** which convey finished fuel products from Geelong Refinery to Newport Terminal.

## 2. Viva Energy Supports Reforming the VPP

The location of our MHFs and the associated liquid fuel infrastructure in Victoria means we are well placed to deliver fuel to customers in a safe, efficient and cost effective way. It is therefore imperative that these facilities and associated infrastructure are protected from encroachment from inappropriate land use and development which has the potential to adversely affect our viability, limit further growth and potentially impact on the security of fuel supply in Victoria. In the recent Infrastructure Capability report for Energy, for Infrastructure Victoria, Viva Energy's pipelines are recognised as 'major infrastructure' and 'strategically important'.

Furthermore in its report, Recommendation 15 of the Major Hazard Advisory Committee states that "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."

The VPP have a significant role to play in managing land use situated adjacent to or proximate to our facilities to ensure that, we continue to be able to operate safely, with minimal impact on the community, have the capacity to grow to meet future liquid fuel demand and without the added time, administration and cost burden in managing proposed developments and associated planning issues. In addition, we support the introduction and implementation of controls over land use proximate to those assets and our pipelines which is also vital for protecting the safety of Viva Energy's operations as well as nearby residents and local businesses.

In the MHF Advisory Committee Report, the Committee recommended that, in addition to improving State policy, the planning advisory area approach developed by WorkSafe be extended on a priority basis to (other) MHF, and then implemented in planning schemes through the application of the Environmental Significance Overlay and schedules. The Committee identified an initial list of 15 MHF that should be considered first and Viva Energy's Geelong Refinery and Newport Terminal are part of this initial list.

In light of this, Viva Energy welcomes reforming the VPP and encourages further discussion around the regulation of land use in the vicinity of MHFs and Licenced Pipelines. Some of the key issues that Viva Energy would like considered are set out below.

### 3. Uses with Adverse Amenity Potential - Clause 52.10

Currently, there is a disparity in the way in which new industrial and residential developments are currently regulated under the Victorian Planning Provisions.

Existing planning controls place greater scrutiny on the effect of new industrial development on existing residential or sensitive uses. For example, clause 52.10 (uses with adverse amenity potential) acts as a planning permit trigger when certain types of new industrial developments fall within a prescribed threshold distances to prescribed sensitive uses.

However, the reverse is not true. Clause 52.10 does not apply to new residential or other sensitive developments that are located near existing industrial developments. This therefore leaves open the possibility for residential or other sensitive developments inappropriately encroaching on those industrial developments if they occur in a zone or overlay where such developments are 'as of right'.

Such encroachment may mean that the efforts by the owners of such industrial developments to mitigate their potential environmental effects (e.g. noise or odour) on the surrounding neighbourhood are rendered ineffective due to the close proximity of Sensitive Developments.

The Discussion Paper recommends that Clause 52.10 - Uses with Adverse Amenity Potential (Clause 52.10) be reviewed. The MHF Advisory Committee Report also recommended a comprehensive review of Clause 52.10 which we support. Recommendations made in the MHF Advisory Committee's Report which provide additional considerations for the VPP to include as part of its review of Clause 52.10 are referenced below.

The Discussion paper identified:

**a) Review buffer distances taking into account the Environment Protection Authority's Recommended Separation Distances for Industrial Residual Air Emissions – Guideline (2013)**

Recommendation 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's Inner and Outer Planning Advisory Areas and the use of a standardised methodology based on the EPA's air emissions assessment framework

Recommendation 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) (IRAE Guidelines) and *Noise from Industry in Regional Victoria* Guidelines (2011).

**b) Review and clarify the clauses application in 'reverse amenity' matters.**

Recommendation 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:

- 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.

In addition to the above, the review should also encompass the following recommendations:

Recommendation 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.

Recommendation 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.

#### 4. Referral and Notice Provisions - Clause 66

Viva Energy notes that new or expanding industrial developments that fall within the threshold distances to prescribed sensitive land uses in clause 52.10 may also require mandatory referral to determining referral authorities such as the EPA or WorkSafe.

The criteria for such referrals is set out in clause 66 (referral and notice provisions). However, there is no mandatory requirement for referral in the case of Sensitive Developments that are proposed to be located near MHFs and similar industrial or hazardous facilities such as pipelines. It is at the responsible authority's discretion (generally the local council) whether to consult with either EPA or WorkSafe in this situation. This should not be the case. It is further noted that in this context, neither the EPA or WorkSafe have a formal function under the planning provisions when it comes to development near a MHF.

Viva Energy believes that it would be prudent for responsible authorities to have to formally refer these applications for development in proximity to MHF and licenced pipelines to the EPA and WorkSafe in particular any Sensitive Developments that are proposed near existing MHFs. Regulator such as EPA, ESV and Worksafe have experience in assessing the environmental and safety risks of development proposals and would provide valuable input into these processes.

Viva Energy supports further investigation into what the appropriate threshold distances would be to trigger that referral requirement.

Viva Energy also notes that both WorkSafe and EPA have turned their mind to the issue of industrial land encroachment and have guidelines about how the interface between industrial and sensitive uses should be managed. Viva Energy supports further discussion into how the recommendations in EPA publication *Recommended Separation Distances for Industrial Residual Air Emissions* and WorkSafe publication *Land use planning near a major hazard facility* can be best adapted into the planning framework with the potential to regulate developments occurring near industry/MHFs.

In the case of pipelines, there is little consideration given in the existing Victorian Planning Provisions for how to regulate the impact of developments around pipelines as defined in the *Pipeline Act 2005* (Vic) (**Pipelines Act**).

All works associated with licensed pipelines in Victoria are regulated in accordance with the Pipelines Act which requires all pipelines to be maintained in accordance with Australian Standard 2885-2012 for pipelines – Gas and Liquid Petroleum and Pipeline Regulations 2017. The Pipelines Act also contains several restrictions on building on land near pipelines, digging near pipelines and obstructing the operation of pipelines.

The Discussion Paper recommends that Clause 66 - Referral and Notice Provisions (Clause 66) is reviewed. The MHF Advisory Committee Report also made recommendations in regards to Clause 66. We support the recommendations made in their Report which provides additional considerations for the VPP to include as part of its review including:

The Discussion Paper identified:

- a) **Remove references to seeking the views and comments of referral authorities throughout the VPP and use formal processes of Clause 66 instead**
- b) **Review the classification of referral agencies as ‘recommending’ authorities or determining authorities**

Recommendation 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

Recommendation 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

Recommendation 9: Develop and apply the inner and outer planning advisory areas and associated Environmental Significance Overlays in accordance with the priority identified [in the Advisory Report].

Recommendation 16 (part): ...consider including a referral to the pipeline licensee in Clause 66.02 for building and works within the pipeline measurement length.

## 5. Decision Guidelines – Clause 65

The Discussion Paper recommends that Clause 65 – Decision Guidelines (Clause 65) is reviewed. The Advisory Committee Report also made a recommendation in regards to Clause 65. We support the recommendation made in the Advisory Committee’s Report for the VPP to include as part of its review and have referenced this below.

The Discussion Paper identified:

- a) Review all decision guidelines across the VPP and consolidate under Clause 65, similar to Clause 66 Referral and Notice provisions

Recommendation 6: Modify the Clause 65 *Decision Guidelines* to include an additional decision guideline to refer to hazards associated with Major Hazard Facilities.

## 6. All overlays Clause - 40

We highlighted earlier the issues surrounding inappropriate encroachment of sensitive land uses on industrial facilities. In the case of Sensitive Developments near MHFs, it may mean therefore that those Sensitive Developments are located within an inner planning advisory area which WorkSafe recommends against in its 'Land Use Planning Near a Major Hazard Facility' publication.

Therefore, Viva Energy supports further consideration of how the 'reverse amenity' and agent of change principles can be implemented into the current planning framework. There should be increased oversight of Sensitive Developments near MHFs and other industrial developments so that the efforts already expanded by industrial development operators to minimise safety risk and environmental effect on the surrounding environment are not affected due to encroachment by Sensitive Developments.

This approach appears to have been successfully achieved with the new Port Zones and the Environmental Significance Overlays (ESO) that were introduced in Port Areas following the Minister's Ports Review. It means in effect, that proponents for any new residential or industrial developments within the ESO area around the Ports need to demonstrate to the Council how they have protected themselves from the amenity issues and risks posed by the Port's operations. This allows the Ports to object to that development if the application for planning approval indicates insufficient protection.

Apart from developing permit triggers when Sensitive Developments are proposed near MHFs, there needs to be some analysis of how those Sensitive Developments are subsequently assessed.

Currently, there are no specific planning controls that deal with how MHFs should be protected from encroachment by Sensitive Developments.

The Discussion Paper recommends that Clause 40 – All overlays (Clause 40) is reviewed. The Advisory Committee Report also made recommendations in regards to the application of Environmental Significance Overlays around MHFs. We support the recommendations made in the MHF Advisory Committee's Report which provide additional considerations for the VPP to include as part of its review and have referenced these below.

### **c) Review the approach of using overlays to identify buffers, such as the Environmental Significance Overlay, and examine how the VPP can transparently and consistently identify and protect significant sites requiring buffers (for example, landfills, treatment plants, water supply catchments and quarries)**

Recommendation 3: Apply the Environmental Significance Overlay with separate schedules for WorkSafe's Inner and Outer Planning Advisory Areas to provide a more responsive approach to managing development associated with sensitive uses.

Recommendation 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.

Recommendation 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

Recommendation 17:

- 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 the implementation of an improved planning process.

7. **All Residential Zones – Clause 32 and Mixed Use Zone – Clause 32.04**

The Discussion Paper recommends that Clause 32 – All Residential Zones (Clause 32) and Clause 32.04 Mixed Use Zone (Clause 32.04) are reviewed:

**Make 'Childcare Centre' a Section 1 (as of right) land use within the Residential Growth zone, subject to conditions, such as relating to size**

Viva Energy does not support this recommendation as it would allow inappropriate development of child care centres (a sensitive use) in residential zones near MHF facilities and licenced pipelines.

Importantly, and as we stated previously, there are no specific planning controls that deal with how MHFs and licenced pipelines should be protected from encroachment by Sensitive Developments.

In circumstances where Viva Energy has objected to such developments, we rely upon the responsible authority to understand the potential risks associated with our MHF or pipeline and to manage the response appropriately.

Having clear and consistent provisions contained in the VPP would make it easier for responsible authorities to refer applications to MHF and pipeline owners and then to have clear decision guidelines against which to assess the proposed development, including the response from Viva Energy and the other MHF / pipeline owners and regulators.

Such land use conflicts can be difficult for responsible authorities (e.g. local councils) and other industry groups to address, given they are often very supportive of a new development proposed for their areas due to their predicted economic contribution and new jobs. A consequence of this can be that important guidance such as WorkSafe's Guidelines on land use planning near MHF (which states that "it is...important that land use planning minimises exposure of people close to an MHF.") can be overlooked or ignored which leaves it to MHF owners to object and potentially refer the matter to VCAT if the objection is not successful.

8. **Additional Recommendations**

In addition to the above recommendations, we would like to make the following points:

- State significant industries and their associated infrastructure such as MHFs should be identified (and included in a definition or Land Use Terms in the VPPs) and are then protected in the Victorian Planning Provisions.
- As recommended in the MHF Advisory Committee Report, Recommendation 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
- Modify Clause 19.03-6 Pipeline Infrastructure “To Recognize existing transmission-pressure gas pipelines and **Pipelines Licenced under the Victorian Pipelines Act**” in planning schemes
- Further consultation is required to determine appropriate land use planning controls for land in the vicinity of pipelines. For example, one strategy might be to include a schedule or overlay in areas affected by pipelines that:
  - trigger the requirement for a planning permit
  - set out the design and construction requirements that will need to be addressed as part of the planning permit application; and
  - require the applicant to work with the relevant pipeline licensee / Energy Safe Victoria
  - to satisfy the requirements of the Pipelines Act and Australian Standard 2885-2012.

## 9. Conclusion

The business that we operate and the associated liquid fuel infrastructure (refinery, pipelines and terminals) is well established and well placed to deliver fuel to customers in a safe, efficient and cost effective way. While we appreciate the pressure on land use and the need to develop land, planning around our facilities, given the enormous contribution we make to the State economy, needs to be structured, consistent and sympathetic to our operations.

Viva Energy always aims to work in harmony with our neighbours who have over time, become physically closer to our operations. The safety of our operations is of utmost importance, from an employee, community, environmental, reputational and “licence to operate” perspective. However, greater protection needs to be enshrined in the Victorian Planning Provisions to ensure that MHF and other State Significant Infrastructure is protected in a more formal, and less ad hoc manner.

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