

23 November 2017

SMART Planning

Department of Environment Land Water and Planning

8 Nicholson Street

East Melbourne Vic 3002

**To Whom It May Concern:**

**RE: Submission: Reforming the Victoria Planning Provisions – a discussion paper (October 2017)**

Thank you for the opportunity to provide a submission to the Department of Environment Land Water and Planning with respect to the discussion paper, Reforming the Victoria Planning Provisions (October 2017). This submission focuses on 'Proposal 5: Improve Specific Provisions' as set out in the discussion paper (October 2017).

ExxonMobil Australia Pty Ltd (ExxonMobil) submit this response on behalf of:

- Esso Australia Resources Pty Ltd (EARPL), on behalf of the Gippsland Basin Joint Venture (GBJV) between EARPL and BHP Billiton (Bass Strait), and Esso Australia Pty Ltd (EAPL) who is the operator of the GBJV, including all onshore licenced pipelines;
- Mobil Oil Australia Pty Ltd (Mobil), operator of Yarraville Terminal and the operator of the licenced pipelines associated with the Somerton Pipeline and the Tullamarine Pipeline joint ventures, and
- Mobil Refining Australia Pty Ltd, operator of the Altona Refinery and associated licenced pipelines.

'Proposal 5' acknowledges that the VPP capture a wide variety of matters. Specifically, 'Proposal 5.1 – Improvements to specific provision' outlines a number of 'potential improvements to specific VPP and related provisions that have been identified through the Smart Planning consultation program and previous reviews'. These proposals have been included in Appendix 2 of the discussion paper.

A key area that the VPP currently do not adequately capture, and that has not been identified for review as part of the reform, is planning around gas and liquid hydrocarbon pipelines.

The current VPP have limited requirements for new uses and developments to acknowledge existing high-pressure gas and liquid hydrocarbon pipelines and for new uses and developments to recognise the risks associated with the pipeline.

Implementation and utilisation of planning provisions that address planning around pipelines will ensure appropriate outcomes are achieved in and around the infrastructure and importantly will ensure risks associated with the pipelines are appropriately mitigated, managed and maintained.

This matter has been considered by a number of Advisory Committees, Planning Panels and combined stakeholder working groups. As such ExxonMobil states that the proposed review of the VPP must include provisions that address planning around pipelines.

## ***Background***

In September 2015, the Minister for Planning Richard Wynn appointed the 'Major Hazards Facilities Advisory Committee' (the Advisory Committee). The 'purpose of the Advisory Committee is 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 of MHFs'.

ExxonMobil, in its submission (dated 13 November 2015) to the Major Hazard Facilities Advisory Committee stated that 'licenced pipelines, especially those in metropolitan Melbourne, are subject to the same planning issues and challenges that face MHFs, namely increased urban growth and renewal coupled with lack of enforceable planning scheme mechanisms'. Furthermore ExxonMobil stated that 'while licenced pipelines have different amenity issues to MHFs their ongoing protection from inconsistent adjacent land use is important both to protect their safe operation, and the on-going viability of the MHFs and other services that they connect'.

Energy Safe Victoria supported the notion that Licenced Pipelines also be considered by the Major Hazard Facilities Advisory Committee (13 November 2015). In its submission to the Advisory Committee, Energy Safe Victoria stated 'the consequences of the failure of a Licensed Pipeline are potentially catastrophic, as is the case with major hazard facilities. When developments and land use changes occur around a Licensed Pipeline, the safety and risk profile of the pipeline and the surrounding land users may be impacted, for instance through the long term risk of third party interference and increasing the consequences of a failure in the pipeline'.

Energy Safe Victoria also expressed to the Advisory Committee that 'it is therefore prudent to consider the presence of and constraints posed by Licensed Pipelines in the context of strategic planning and development decisions. Currently, planning schemes largely fail to recognise or address these constraints. The committee's advice on the better management of the interface between existing and new development and land use for MHFs could help provide greater clarity of responsibilities and facilitate the coming together of pipeline licensees, planning authorities, developers and the community. This would help ensure that the requirements of AS2885 (stipulated by the Pipelines Act) and State Policy Framework clause 19.03-6 are complied with, and that the safety of pipelines, the supply systems they constitute, people, property and the environment is maintained'. The Advisory Committee made the following recommendation.

- 14. The Minister for Planning consult with the Minister for Energy with a view to formalising the membership and operation of the Land Development Around Pipelines Working Group as a Section 151 Advisory Committee with an independent Chairperson under the *Planning and Environment Act 1987*; and for this group to advise on improving planning around high pressure gas and liquid hydrocarbon pipelines.**

Since the Advisory Committee report has been issued no changes to the VPP regarding planning around pipelines has been undertaken.

## ***Current Situation***

At present some municipalities acknowledge the importance of recognising existing pipelines with regards to new uses and developments.

Hobsons Bay and Wyndham currently provide notice of planning permit applications to Pipeline Licencees for new uses and developments that are located within close proximity to pipelines. This can be extremely beneficial for all parties.

That said, it is often once an application has begun the planning permit approval process that applicants are made aware of the presence and the proximity of the pipeline to the subject site. As a result, changes to proposals are often required post lodgement, and in some cases applications can be considered totally inappropriate with regards to planning for pipelines.

Hobsons Bay City Council are also seeking to undertake a strategic approach with regard to planning around pipelines. In its current planning scheme amendment (Amendment C88 which seeks to rezone land in Altona North to the Comprehensive Development Zone), Council have prepared a schedule that includes details regarding the pipeline and planning permit application requirements for new uses and developments that are within proximity to the pipelines.

For Councils that do not recognise pipelines as part of the planning process complications can arise when applicants seek to commence building. There are recent examples of planning permits being issued that result in a conflict between what a planning permit allows with regards to development siting and what is permitted under the Pipelines Act 2005.

Specifically the Pipelines Act 2006 Section 120 (1) states that:

‘A person must not construct a building so that any part of it is situated less than 3 metres from a point on the surface of the land whose position is vertically above a part of a pipeline below the surface unless the Minister has first consented to that construction’.

Endorsed plans associated with planning permits can show development within this required 3 metre setback.

Overall, ExxonMobil submit that without the appropriate tools and provision within the VPP to address planning around pipelines, conflict between planning and the Pipelines Act 2006 will continue.

### ***Proposed actions***

ExxonMobil considers the key issue for planning around pipelines is determining the most appropriate tool within the VPP for identifying pipelines and facilitating appropriate uses and developments.

As identified above, pipelines are recognised within State Planning Policy Framework clause 19.03-6. This clause, however, provides little guidance with regard to the specific requirements of planning for pipelines. No application requirements are specified, no notice provisions identified and no referrals are required to referral authorities.

To address this issue the MHFs Advisory Committee recommended that consideration be given to the application of an Environmental Significance Overlay (ESO) over some pipelines. An ESO Schedule specific to pipelines could then be drafted that specify application requirements, notice requirements and an appropriate set of Decision Guidelines for new uses and development around pipelines.

ExxonMobil proposes that rather than the Environmental Significance Overlay a ‘Particular Provision’ could be prepared that addresses planning around pipelines. The particular provision would be activated for any new uses and developments that are located within a specified distance set out in the provision from a gas or liquid hydrocarbon pipeline.

The Advisory Committee also recommended that the ESO schedule could include referral requirements to Energy Safe Victoria and/or Pipeline Licensees as part of the planning permit application process. ExxonMobil supports the need for referral of applications to appropriate authorities and/or licencees. The difficulty is determining the trigger for referrals and the most appropriate authority and/or licencees, without increasing 'red tape' and delaying the processing time of planning permits.

ExxonMobil state that although the introduction of a pipeline provision within the VPP may add additional requirements to planning permit applications, the outcome would result in a significant reduction of conflicted outcomes, and most importantly, ensure risks are appropriately mitigated and managed with regard to new uses and developments within the early stages of a proposal.

Previously, the Advisory Committee recommended that the 'Land Development Around Pipelines Working Group be formalized as a Section 151 Advisory Committee with an independent Chairperson under the *Planning and Environment Act 1987*; and for this group to advise on improving planning around high pressure gas and liquid hydrocarbon pipelines'. ExxonMobil submit that as an alternative to this proposal this group would work with SMART Planning Program Unit to prepare any proposed new pipeline provisions.

### *Closing*

ExxonMobil seek to work with the SMART Program Unit to determine the most appropriate form of provision to be included in the reformed VPP.

ExxonMobil consider the planning for pipelines of the utmost importance and as such strongly submit that the current reform must address this issue. The SMART Program Unit has stated that the reform is not about reviewing past documents and producing a discussion document, but about creating solutions and implementing outcomes. As outlined above reviews and discussions regarding pipelines and their inclusion in the planning process has been occurring for a number of years, and as such now is the time for decisions to be made regarding planning for pipelines.

We would welcome the opportunity to meet with the team and discuss past work that has been undertaken, examples of possible outcomes and a program for moving forward.

