

**Latrobe City Council**  
**Submission to Advisory Committee**  
**Discussion Paper –**  
**Major Hazard Facilities**



January 2016



<b>Revision</b>	<b>Date</b>	<b>Written by</b>	<b>Reviewed by</b>
1.0	22 January 2016	J Pullman, D Smith, F Farrand	G Gatt
1.1	28 January	J Pullman, D Smith, F Farrand, L King, G Gatt	J Pullman

## 1.0 INTRODUCTION

Latrobe City Council wishes to thank the Advisory Committee for the opportunity to make a submission to the Major Hazards Facilities Advisory Committee Discussion Paper.

The issues of applying appropriate land use buffers is of particular interest to Latrobe City Council and the community due to the large presence of industrial development within the municipality. Of particular note is the Australian Paper Mill Major Hazard Facility (MHF) located between Morwell and Traralgon, and the presence of coal mines and their associated operations and resources.

The Australian Paper Mill employs 4200 people directly and indirectly and makes a significant contribution to Victoria's economy. The Australian Paper Mill is Latrobe City's only MHF and is located in one of Victoria's few Industrial 2 Zones. Latrobe City has been working with Australian Paper (AP) and the community to apply an urban amenity (odour) buffer around the Mill as part of the Latrobe C87 Planning Scheme Amendment process.

The three open cut brown coal mines of Hazelwood, Loy Yang and Yallourn supply over 90% of Victoria's power generation needs. The brown coal resource is located in large deposits throughout Latrobe City and adjoining municipalities where urban and coal interface buffers are required.

There are many other industries within Latrobe City that require separation buffers from sensitive uses.

The submission is set out in the following four sections:

- Introduction
- General Discussion
- Key Issues and Advisory Committee Questions
- Conclusion

On behalf of Latrobe City Council, I respectfully request that Council be involved in any relevant ongoing Major Hazards Facilities Advisory Committee discussions and requests a copy of the Advisory Committee report to the Minister for Planning when it becomes available.

It is noted that due to the tight timeframes in which submissions were required, this submission has been prepared by Council Officers and has not been formally endorsed by Council resolution. Council may therefore require the opportunity to provide an addendum to this submission, following a Councillor briefing session to be held 22<sup>nd</sup> February 2016.

Should the Committee have any questions regarding this submission, please contact myself Jason Pullman, Coordinator Strategic Planning via phone 5128 6151 or email [Jason.Pullman@latrobe.vic.gov.au](mailto:Jason.Pullman@latrobe.vic.gov.au). Alternatively, you may contact Gail Gatt, Manager Future Planning via phone 5128 5446 or email: [Gail.Gatt@latrobe.vic.gov.au](mailto:Gail.Gatt@latrobe.vic.gov.au).

## 2.0 GENERAL DISCUSSION

The relevance of the MHF Advisory Committee is broader than the implications for Latrobe City Council's only MHF (i.e. AP Mill). This is evident in the second dot point below where the purpose of the Advisory Committee is to consider:

- How risks and amenity around MHFs might be better managed; and
- How the principles for applying land use buffers may be applied to other land uses with adverse amenity.

Therefore, the MHF Advisory Committee consideration appears to be relevant to the coal mine buffers and other industrial buffers that are prominent in Latrobe City.

*Clause 14.03 Resource exploration and extraction* of the State Planning Policy Framework (SPPF) refers to coal, natural resources, and extractive industries. It identifies the importance of buffers and provides criteria for determining the buffer areas between extractive industries and sensitive land uses. Noting the second element of the purpose of the Advisory Committee, it is disappointing that this clause is not considered in the Major Hazards Facilities Discussion Paper.

It is agreed that coal mine buffers may not be directly MHF relevant, but the MHF Advisory Committee is considering the relationship between MHF and other land use buffers. It is noted that the land use buffers for coal were originally established for the protection of the coal asset, but increasingly coal buffers are also considered appropriate for the protection of residential amenity.

It is suggested that the Advisory Committee consider the 2014 and 2015 Morwell/Hazelwood Mine Fire Enquiry components and the C87 Traralgon Growth Areas Review Planning Panel Report of June 2015 that all consider coal buffer issues around mines near Morwell and Traralgon. The C87 Traralgon Growth Areas Review Planning Panel Report also considers a proposed urban amenity (odour) buffer around the Australian Paper Mill and it is noted that this matter wasn't identified in the Major Hazards Facilities Advisory Committee Discussion Paper as a noteworthy panel report.

It is acknowledged that in relation to industrial buffers and coal buffers, "Earth and Energy Resources" are distinct from "Industry" in the planning scheme, but Earth and Energy Resources can include processing and any activity incidental to this purpose. A planning trigger wouldn't necessarily be required in most instances and issues such as hazard risks and amenity concerns are left to the consideration by The Department of Economic Development, Jobs, Transport and Resources (DEDJTR) with limited involvement by local government in the decision making process. It appears that the consideration of MHF and Industry clauses needs to be broadened to include MHF and Earth and Energy Resources as well.

### 3.0 KEY ISSUES AND ADVISORY COMMITTEE QUESTIONS

**1. Does the planning system effectively address the existence of greenfield MHF or other hazardous industry that poses a risk to the safety of surrounding areas?**

No - the Planning Scheme does not facilitate a collaborative approach to the planning of the MHF or other hazardous industry. This is partly because of the reactive approach to planning taken within Local Government, as a direct result of the statutory planning process and Council-driven priorities.

There is no land use definition of an MHF which weakens the emphasis that can be placed on the use and this results in the reliance of interpretation of other legislation outside of planning. There is no clear definition of when a planning permit is required for a new MHF or the expansion of an existing MHF. In some cases there may be no planning permit requirement at all, therefore negating any involvement of land use planning in the decision making process.

To ensure that Local Government is active in the decision making process, there needs to be a statutory requirement for participating in the collaborative approach to planning. The consultation in carrying out the planning of the MHF needs to define which functions of local government are to be consulted, and given the strong link to land use planning – the roles of statutory planning and strategic planning should be clearly identified. Otherwise consultation will generally only occur with Economic Development and Emergency Management sectors of the Local Government.

**2. How should planning address areas surrounding existing or proposed MHF or other hazardous industry that poses a risk to the safety of surrounding areas?**

The State Planning Policy Framework (SPPF) provides a broad reference to the need for buffer separation distances from industry and sensitive uses. However clause 17.02-2 does not include a policy guideline in relation to MHF regulations. This clause or the SPPF could be further strengthened to better address policy guidance for areas surrounding existing or proposed MHF. Additional SPPF policy guideline documents should be inserted in the relevant SPPF clause.

The Municipal Strategic Statement (MSS) should identify MHF areas and this would provide the direction to then look further for information. Site specific objectives, strategies or requirements could also be identified in the MSS.

**3. Should there be greater consultation when a new MHF is proposed or changes made that would require changes to its safety assessment? Who should be involved in that consultation?**

There is already a high degree of consultation that occurs, however this does not formally involve Local Government. Therefore, greater consultation could occur with the community and stakeholders if a planning permit was required through the public notification process. Whilst there are requirements under other legislation, this paper is looking at the impacts of

MHF on land use and development and any new or expanding site should therefore be subject to consultation under the Planning Scheme.

Relevant non Local Government agencies, such as the fire service, are engaged in this conversation and are tasked with the role of considering impact and safety of the broader community. The safety assessment is audited annually by Worksafe, and is reviewed formally every three years. Where changes to the safety assessment would increase the extent and/or severity of the impact to the broader community, then it would be appropriate for Local Government to have more involvement in the consultation. It is acknowledged that a balance has to be found between being involved in any and every change to a safety assessment, and being involved in the ones that really matter.

**4. Should a definition for MHF be included in planning schemes, and if so, what might a definition, include?**

Yes – the definition should be consistent with the definition used in other legislation (e.g. OH&S) or the planning scheme should refer to a definition in other relevant legislation. This would avoid multiple definitions for a MHF that could result in confusion and VCAT challenges.

**5. Should MHF emergency plans also be required to consider the effect a major incident would have on a property within the land use planning areas and provide this in information given to the local community?**

The MHF emergency plans currently do some of this, and the community consultation group attached to each MHF has access to a large degree of this information. The MHF emergency plans only identify some of the risk situations and are an internal industry process. The planning permit process is also ideally set-up to consider such an effect of a major incident.

Work could be done to provide more transparency on MHF emergency plan risk such as MHF emergency plans being better linked to Municipal Emergency Management Planning and Regional Emergency Management Planning. However there are also challenges linked to terrorism (dealt with by the Victorian Police and Emergency Management Victoria – Critical Infrastructure) as many of the MHFs are designated Critical Infrastructure.

**6. Should the Worksafe methodology for Inner and Outer Planning Advisory Areas continue to be the basis for identifying risk areas around MHF and be used for the land use planning system?**

Yes – risk mapping relates directly to the type of hazard presented by the site (and these vary for every site). Risk mapping provides clear guidance on the risk areas around a MHF, so it would seem reasonable to apply the same for land use planning. This approach would be consistent with the approach taken for environmental risks, e.g. flooding, bushfire etc. Environmental risk management mapping and community emergency risk assessment processes should be inclusive in the risk management process as risk mapping is only one tool that can be accessed.

However, the risk threshold needs to be well understood so that it can be communicated in a transparent way and defended at VCAT or through a planning panel process. This would provide clear direction for existing and future land use and development affected by the risk mapping of Inner and Outer Planning Advisory Areas.

**7. Should risk areas around MHF, through Inner and Outer Planning Advisory Areas, be identified in planning schemes?**

Yes – but it might be better to have only one overlay that combines both inner and outer (i.e. those above the threshold to be considered). This would be consistent with the approach taken to bushfire in Victoria – above a certain threshold the Bushfire Management Overlay (planning control applies), below the threshold the Bushfire Prone Area (building control applies) and external to both an integrated approach to bushfire management applies (i.e. joint-agency collaboration).

Another option is to have two schedules to an appropriate overlay that helps to spatially define the Inner and Outer Planning Advisory Areas that is currently defined in the Worksafe Victoria *Major Hazard Facilities Guidance Note*. This would be a similar approach to that recommended by the C87 Traralgon Growth Areas Review Planning Panel Report of June 2015 when considering the urban amenity (odour) buffer around the Maryvale Pulp Mill near Morwell and Traralgon.

Risk areas around a MHF, through Inner and Outer Planning Advisory Areas should also have stronger linkages with Municipal and Regional Emergency Management Plans relating to prevention, response and recovery.

**8. Are there other more appropriate mechanisms other than the planning system that could be used to identify risk areas around a MHF that would alert landowners, tenants, permit applicants, facility operators and prospective purchases and other about a MHF and the risk potential?**

The planning system doesn't alert tenants about the risk potential and only alerts prospective purchases and landowners if they look at the planning scheme when buying and selling land. If prospective purchasers were to be aware, it would need to be in the Section 32 vendor document similar to land in a bushfire or flood prone area. Notification of any new MHF or expansion of an existing MHF should occur as part of the planning application process. The extent of the notification (e.g. sign on site, notification to adjoining owners, notice in newspaper) would be determined by the Responsible Authority.

In the absence of any specific zone or overlay, integrated emergency management planning should be used (via Emergency Management Victoria) to identify the risk areas, thus showing up in the Municipal Emergency Management Plan (MEMP). The MEMP should be referred to in the Planning Scheme so it can be given relevant consideration. However, it is acknowledged that a planning permit trigger would be needed to give the MEMP any force or effect as part of the planning permit process.

Therefore alongside changes to the SPPF, MSS and the introduction of a new zone or overlay, the MEMP is the missing link that has spatial risk shown that can inform land use

planning. The MHF in its responsibility for any emergency it causes beyond its boundaries should be held to account to ensure it liaises with those potentially affected prior to any new MHF or expansion of an existing MHF.

**9. Should modelled risk areas around MHF be translated into planning schemes, and if so, how could this best be achieved?**

Yes – as an overlay or zone and through changes to the SPPF and the MSS (see discussion in the above questions).

However, it should be noted that as technology changes, sometimes the modelled risk area decreases. This is in-line with the aims of industrial manufacturing and processing, i.e. to move towards less dangerous products and processing. Guidance needs to be given as to when the mapping would be changed to align with any reduction in risk. This could be achieved through a Ministerial Direction that links the change in planning scheme control with the OH&S legislation approval changes to any MHF. This would be similar to the general process with changes to Heritage Overlays where Heritage Victoria requires a change and this is considered as a part of a Section 20(4) planning scheme amendment often run by the Minister for Planning that makes a procedural change to the heritage provisions in local planning schemes.

**10. Is the treatment of MHF in State policy adequate/appropriate?**

The development of an appropriate overlay or zone and changes to the SPPF and the MSS are required (see discussion in the above questions).

It is noted that the Regional Growth Plan for Gippsland does not provide for industry protection like the Great South Coast Regional Growth Plan does. Clause 11.09-9 applies to the Great South Coast Regional Plan and is titled “Integrated Planning” and has strategies to protect industrial activity from sensitive land uses. The Gippsland Regional Plan is not picked up by such a clause, and has no strategies to protect industrial activity from sensitive land uses.

The Integrated Planning clause could be included in all Planning Schemes, and not just sitting at the level of one example of a Regional Growth Plan. This would link to the push toward Integrated Emergency Planning, and other such philosophies of Government.

Given the large presence of industrial development within the municipality, the absence of strong industry protection in the Gippsland Regional Growth Plan may be considered an oversight and may need to be strengthened.

Clause 14.03 (not mentioned in the discussion paper) requires consideration of any relevant SEPP but the wording is not as strong as the wording in clause 17.02-2 and there should be consideration to ensure the same strength in decision making in both clauses.

Clause 18.03-2 of the SPPF attempts to “ensure that the use and intensity of development does not expose people to unacceptable health or safety risks and consequences associated with an existing MHF”. This should be in the broader SPPF and not just in the clause relevant to ports.



**11. Should policy more clearly prioritise the protection of human life in areas around MHF similar to that provided under Bushfire policy?**

Yes - (see discussion in the above questions 6 - 8).

**12. Could local planning policy play a greater role in managing conflicting land use and sensitive land use near MHF and provide strategic guidance on how such areas are developed?**

Yes – but it must be linked with planning permit triggers through zones or overlays, otherwise any new policy in an MSS will be ineffective and not be able to contribute to the decision making process (see discussion in the above questions).

Local planning policy also needs to be clear as to the need and application for a MHF buffer. For example, Latrobe Clause 21.07-4 of the Latrobe MSS refers to a 1km buffer wide area on the western end of the AP Mill site at Maryvale so as to protect the mill from coal operations in the Yallourn Mine as well as providing for future mine expansion. Another urban amenity (odour) buffer of 5 kilometres applies to the AP Mill site due to AP manufacturing paper and paper products. The coal buffer and urban amenity (odour) buffer acts as a defacto MHF buffer, but it is not designed for that purpose. The location of fire risk from plantations in close proximity to MHFs should also be given some further consideration.

**13. Should a specific zone be considered and applied to all MHF such as the SUZ or a new zone?**

An existing zone in the VPP suite should be used to avoid overcomplicating the Victorian Planning System that was present prior to the introduction of the new format planning schemes. The Special Use Zone (SUZ) could be used with a tailored schedule. The new zone with schedule would clearly identify that there is a risk from a proposed or expanding MHF. This would also need to be linked with changes to the SPPF and MSS and the introduction of reference document and Ministerial Directions etc. In other words, the most appropriate way to address the land use policy void and give due consideration to the risk from a MHF, is to consider providing an integrated approach with differing agencies that uses a package of planning tools for effective implementation.

**14. Could or should SUZ or other zone boundaries extend off-site from MHF and Schedules use to allow certain use and development to occur?**

No - the SUZ should be limited to the use and development for which the MHF is located. An overlay is the more appropriate mechanism to control development and in this instance - use, if it extends off-site. While it is acknowledged that overlays predominantly control development and not use, the Airport Environs Overlay (ESO) is an example where use is sometimes controlled. Again, the open cut mines in Latrobe are covered by SUZ with overlays applying to off-site coal reserves and coal township buffers. These might be appropriate models to consider.

Any proposed controls that extend off-site would need to consider other existing off-site controls. For example, the Maryville Paper Mill is a MHF and is proposed to have applied a new urban amenity (odour) buffer around the site. Any new MHF zone or overlay would need

to be drafted so as to ensure it was clear why another zone or overlay was required and existing controls were not able to be updated to suit the MHF.

The interface between existing zones also needs to be considered and how any new zone or overlay may be retrofitted and the subsequent impact on future land use and development at these points.

**15. Could any new or modified zone include purposes, permit requirements, decision guidelines that identify and manage sensitive uses?**

Yes – through the use of a carefully drafted schedule. Clause 52.10 of planning schemes is not strong enough in this instance as it only sets out permit triggers that are linked to a relevant zone (e.g. Industrial Zone) that has its own purpose, permit triggers and decision guidelines. Again, this may be better set out in an overlay or a tailored zone as then it can be applied more specifically within each local government area.

**16. Should zones prohibit intensification of use or should they maintain a discretionary permit process?**

There are not many zones in the VPP suite with a purpose of prohibition of intensification. Possibly the Urban Floodway Zone may be an exception. Prohibition may be easier than discretion, but will lock-up (i.e. blight) land and remove most third party appeal rights. If risk to life is a serious consideration then prohibition of intensification could be pursued but only in conjunction with realistic and accurate mapping of the risk. If the risk mapping has a low or medium reliability rating and is not updated regularly, then discretion is more appropriate. The mapping needs to clearly define the hazard, and the risk it poses, so that the mapping is informed mapping and directly links the hazard and the affected.

**17. Could or should an existing or new overlay be used to identify risk and manage development on land surrounding a MHF?**

Yes - see discussion in the above questions.

Given it is risk to life, a new overlay is probably most appropriate. However, such an overlay would need to control use and development. Therein lies the dilemma between choosing a Zone versus an Overlay. Overlays that may be considered relevant often control an environmental risk, so an ESO may not be directly relevant in this instance. Probably a new overlay specific to a MHF should be identified as there are different risks emanating from such a facility which are not necessarily covered with the existing overlays, and each MHF has its own unique inherent risks.

**18. Should both use and development of land around a MHF be managed in an overlay?**

Yes - see discussion in the above questions.

The problem with many overlays such as the Bushfire Management Overlay (BMO) for example, is that it doesn't manage use when there is no development. For example, if a large house exists and is used for accommodation (i.e. B&B) or restaurant and if there is no

works to be carried out then the BMO is not triggered even though there is introduction of non-related occupants with no familiarity of the area.

Any applicable overlay would need to control use and development and this should consider both new facilities and expansion of existing facilities as the potential risk impact may increase.

**19. Could an overlay identifying inner and outer hazard areas be applied to identified areas (whether default or modelled)?**

See discussion in the above question 7.

**20. Is notification of the risk status of land in proximity to a MHF important and how might it be achieved?**

Yes – notification of the risk status is important.

If the suggested changes to the VPPs and local planning schemes in this submission are not made then notification to vendors and prospective purchasers will only be achieved through a Section 32 vendors statement. Changes to the Sale of Land Act may be required for vendors to declare if land is affected by MHF risk mapping. This would need to be done in a way that the risk is clearly articulated, for example risk of explosion, risk of noxious gas cloud.

If the suggested changes to the VPPs and local planning schemes in this submission are made then any changes to the planning scheme, such as rezoning or introducing new overlays would be subject to public consultation and should highlight the impacts and risks where these risks will be given relevant consideration.

**21. Would it be appropriate or beneficial to include key agencies such as the EPA and Worksafe as referral authorities for permit application lodged with identified risk areas around MHFs?**

Yes – however this would depend on whether these areas would trigger a planning permit requirement and whether the referral body was categorised as a Determining or Recommending Referral Authority.

However, there could be potential implications with this where often Determining or Recommending Referral Authority's object to a new use when there is no permit trigger under the overlay for that particular use. Therefore it is important that any new controls consider both use and development permit triggers.

**22. Would the use of a zone or overlay provide the mechanism for engaging the EPA and or Worksafe as a referral authority for areas of risk around Major Hazard Facilities?**

See discussion in the above question 21.

**23. Should Clause 52.10 be reviewed to provide more than just an advisory role in determining the need for permits for industrial and warehousing uses?**

Yes - See discussion in the below question 24.

**24. If so what should such a review seek?**

Clause 52.10 needs more clarification and could take on a greater role. At the moment the clause is linked to a zone by setting out whether a use requires a planning permit or if a development triggers a referral to the relevant body. However, some of the knowledge required to make such a determination is quite technical and potentially outside the limits of planning expertise. There is a reliance on the permit applicant to provide this information which the planner may have to take on good faith.

Clause 52.10 determines when to refer to Worksafe and this is not easy for a planner as they may not have all the information in front of them. One trigger in this referral would require them to know if the proposal will exceed the fire protection quantity (FPQ) – the FPQ applies to the whole site, not the building as Dangerous Goods regulations work to site boundaries, whereas MHF regulations work to the boundary of the MHF (which could be more than one property parcel). It is hard enough for a building surveyor to consider the extent of dangerous goods storage when issuing a building permit, let alone a planner considering it at planning permit stage. The FPQ can only be determined by the proponent knowing and having designed the maximum quantity of on-site storage and knowing the mix of dangerous goods they plan to hold.

A second issue exists - where there is no planning permit trigger, the fire protection quantity is reached through modification at a later stage – e.g. the owner or operator decides to put in increase storage capacity. The proponent may also have to seek design advice from the fire service once they reach FPQ and there is not a mechanism (other than informal notification) to refer this through the planning scheme, even though this advice might change the siting of buildings, size of buildings, water quantity on site, site access, etc. Planning and dangerous goods regulations do share a common issue that they only relate to the parcel of land on which the proposal exists, even if the operation goes across multiple parcels of land in separate buildings separated by a minimum distance. This issue may be outside the planning process but could be addressed by a new Ministerial Guideline, State Environment Protection Policy or other mechanism.

Clause 52.10 can sometimes be in conflict with the EPA IRAE Guidelines. These two policy documents could be better integrated to provide clearer policy guidance, particularly around MHFs where both documents provide little, if any, guidance on MHFs. Thought may need to be given to whether some of the WorkSafe's Guidance Notes may need to be integrated with the SPPF, Clause 52.10 or the EPA IRAE Guidelines. In most instances, the policy documents in this arena are for guidance only. There may need to be some consideration given to providing more weight to the application and consideration of these guidelines in their current form.

The advice of the EPA is often sought in interpreting Clause 52.10 and EPA is a Determining Referral Authority for Clause 52.10 (as defined by Clause 66.02-7) – given this, they are

determining the risk to the sensitive use (i.e. is the sensitive use development appropriate), the EPA are not necessarily considering the MHF issues, nor protection of the industry from encroachment.

Under Clause 52.10, a default 5km buffer applies to the MHF AP Mill site between Morwell and Traralgon due to the MHF manufacturing of paper and paper products. This buffer is applied to the AP mill site because of its processing activities and not because of its MHF status. The buffer does not necessarily deal with the MHF hazard directly, and arguably is not the reason for the buffer. Clause 52.10 highlights the issues with Australian Paper as it is not a reverse buffer and really doesn't protect the industry. The issue with the MSS defining a lesser or different sized buffer is problematic, as the modelling was odour modelling and was not the MHF modelling used in AP's MHF Safety Case.

The current policy environment makes it difficult to navigate the planning system relating to clause 52.10, industrial buffers and MHFs. Any revision to Clause 52.10 and other parts of the VPPs will assist in MHF and industrial buffer interpretation and application.

**25. Should the EPA IRAE Guidelines be better articulated in the VPP to accord greater weight to separation distances for industry or sensitive use expansion?**

Yes - See discussion in the above question 24.

The EPA IRAE Guidelines need to be better integrated with the SPPF and Clause 52.10. This will assist with the application of the Guidelines not only by applicants and the responsible authority but also by the EPA who are often relied upon to interpret the guideline on behalf of the community. The guidelines are often given limited weight until there are objections from the community to an industrial activity or from an industry concerned with encroachment into the buffer by sensitive uses. This results in a retrofit of a buffer to an existing use where conflict is inevitable – see C87 Traralgon Growth Areas Review Planning Panel Report of June 2015 that considered the urban amenity (odour) buffer around the Maryvale Pulp Mill near Morwell and Traralgon.

**26. Are the separation distances/buffer distances in Clause 52.10 and the IRAE Guidelines clearly justified and appropriate?**

No – most of the buffer distances are derived from historic buffers defined in the 1970s despite the advances in technology that has occurred since that time. The difficulty comes about when environmental modelling is undertaken to justify departing from the buffer distances in the IRAE Guidelines and Clause 52.10. This is something that is permitted under the IRAE Guidelines but can be difficult to justify to landowners affected by the buffer, particularly when the change in buffer is not mapped in the planning scheme.

**27. Might a clearer articulation in the planning system of principles around the need for buffers be useful?**

Yes - the real issue is not so much in the buffer distances specified in Clause 52.10 or any EPA or Worksafe Guideline. The absence of associated buffer mapping for key industries in the planning scheme creates confusion if policy wording in the scheme or Guidelines is to be

relied upon alone. It is often difficult to retrofit buffer mapping to an existing key industry that is surrounded by sensitive uses, see South Gippsland C99 Burra Food Amenity Buffer and Latrobe C87 Traralgon Growth Areas Review.

Clarification around a definition of a MHF and the potential impacts of a MHF activity need to be clearly articulated in the planning system.

**28. Does the planning system currently allow and/or facilitate appropriate responses to the provision of buffers whilst ensuring the most efficient land use and land value capture outcomes around a MHF and industry?**

The answer to this question is specific to an industry and the type of buffer required for that particular industry. In broad terms, there is probably room for further investigation around the type of uses that may be appropriate in buffers around a MHF and industry. Often the application of large buffers result in planning blight where land values may be affected. Further research in this area may be beneficial.

**29. Could the ‘agent of change’ principle be introduced to planning schemes for industry to ensure that the onus on ensuring appropriate buffers rests with the encroaching sensitive use.**

Yes – this would apply both ways and is the principle behind section 60 of the Planning and Environment Act 1987 when considering planning permits. The principle should also apply to large expansions of existing uses and not just new uses. It is acknowledged that land use planning case law will have a bearing on the effectiveness of these principles.

**30. Should sensitive uses be formally defined in the planning scheme?**

Yes – it would provide greater clarity when considering Ministerial Directions, Advisory Notes and the relevant clause of the VPPs and with any new definition of a buffer for a MHF. It would also make the use of the term more understood by bringing the definition into the Planning Scheme, rather than being somewhat removed by only being in a Ministerial Direction.

**31. Would a Planning Practice Note for interface planning between industry and sensitive uses be useful?**

Yes - the interface between zones / land uses can be highly problematic, so some form of clear guidance would be beneficial. The Practice Note would need to ensure that conflict didn't arise with other established Ministerial Directions, Advisory Notes and the relevant clause of the VPPs. An overhaul of how buffers are treated in the Victorian Planning system would need to be undertaken with a holistic view to making changes to planning schemes where consistency could be achieved.

**32. Given there is already a legislative framework for pipeline protection, does the planning system need to include additional provisions?**

The Latrobe Planning Scheme already applies a Design and Development Overlay (DDO) over key pipelines and the pipelines are well represented in the MSS through framework and structure plans. This approach may be useful to apply to other municipalities. It is noted that

there appears to be a level of inconsistency of applying appropriate planning provisions to the location of significant pipelines in local Gippsland planning schemes. This often leads to frustration from developers, particularly where adjoining municipalities may have different approaches to providing advice on the same issue.

**33. Could a risk based spatial overlay developed for MHF and industry with a specific schedule for pipelines be a potential tool for use in identifying major pipelines in planning schemes.**

The approach outlined above in the Latrobe Planning Scheme works well and it is considered that a new schedule may not be warranted because relevant referral responses are required to be obtained during the planning permit application process. However, if risk analysis information was to accompany the DDO, then this information could be useful.

#### **4.0 CONCLUSION**

The issues of applying appropriate land use buffers is of particular interest to Latrobe City Council and the community due to the large presence of industrial development within the municipality. Of particular note is the Australian Paper Mill Major Hazard Facility (MHF) located between Morwell and Traralgon and the presence of coal mines and their associated operations and resources. It is understood that this MHF is one of very few, if not the only, MHF located in a Bushfire Management Overlay.

The MHF Advisory Committee consideration appears to be relevant to the coal mine buffers and other industrial buffers and not just MHF buffers. It appears that the consideration of changes or additions to MHF and industry clauses in the planning scheme by the Advisory Committee needs to be broadened to include MHF and Earth and Energy Resources (i.e. coal resource and urban interface buffers).

The MHF Advisory Committee is encouraged to read the C87 Traralgon Growth Areas Review Planning Panel Report of June 2015 that considered the urban amenity (odour) buffer around the Maryvale Pulp Mill near Morwell and Traralgon and the application of the urban coal buffer near Loy Yan open cut coal mine to the south east of Traralgon. The Committee is also encouraged to consider Latrobe Planning Scheme MSS and Design and Development Overlay provisions that apply to key pipelines across Latrobe City.

There is no clear definition of when a planning permit is required for a new MHF or the expansion of an existing MHF. In some cases there may be no planning permit requirement at all, therefore negating any involvement of land use planning in the decision making process. To address this issue, Integrated Planning provisions could be included in all Planning Schemes as this would link to the push toward Integrated Emergency Planning, and other such philosophies of Government. The most appropriate way to address the land use policy void and give due consideration to the risk from a MHF, is to consider providing an integrated approach with differing agencies that uses a package of planning tools for effective implementation.

The relevant Municipal Emergency Management Plan (MEMP) should be referred to in the Planning Scheme so it can be given relevant consideration. However, it is acknowledged that a planning permit trigger would be needed to give the MEMP any force or effect as part



of the planning permit process. Alongside changes to the SPPF, MSS and the introduction of a new zone or overlay, the MEMP is the missing link that has spatial risk shown that can inform land use planning.

The current policy environment makes it difficult to navigate the planning system relating to clause 52.10, industrial buffers and MHFs. Any revision to Clause 52.10 and other parts of the VPPs will assist in MHF and industrial buffer interpretation and application. This should be examined in light of the need for an overhaul of how buffers are treated in the Victorian Planning system and would need to be undertaken with a holistic view to making changes to planning schemes where consistency and transparency in decision making could be achieved.