

PSP 74 & 75 Sunbury South & Lancefield Road



Amendments C207 and C208 to the Hume Planning Scheme

Response to Panel Queries – Week 1

4 September 2017

1. Introduction

During the first week of the hearing, the VPA took a number of questions on notice from the Panel. This submission sets out the VPA's responses to those questions.

2. Zoning within pipeline measurement length

The Sunbury South precinct is traversed by the Deer Park-Sunbury high pressure gas transmission pipeline, which runs north-south adjacent to the railway corridor in the west of the precinct.

Plan 2 (Precinct Features) in the Sunbury South PSP depicts the location of both the 'gas pipeline' and the 'gas pipeline buffer', also known as the pipeline measurement length.

The gas pipeline is owned and operated by APA VTS Australia (Operations) Pty Ltd (**APA**). The VPA consulted with APA during the pre-exhibition, agency consultation stage of preparing the Sunbury South PSP and provided notice to APA as part of formal exhibition of Amendment C207. APA provided submission 34 in response to exhibition.

The APA submission identifies the pipeline as follows:

Table 1: Transmission gas pipelines in the area of consideration

Pipeline	Pipeline Licence	Easement Width (m)	Diameter (mm)	Measurement Length (m)
Deer Park - Sunbury	PL122(T062)	20	150	164

Note: measurement length is applied to either side of the pipeline.

Amendment C207 proposes to apply the Residential Growth Zone and General Residential Zone within the measurement length.

The APA submission states as follows:

Plan 3 indicates that the gas pipeline will be contained within the "walkable catchment boundary". Requirement R9 states that a minimum averaged density of 17 dwelling per net developable area must be achieved in this "walkable catchment". APA is comfortable with this density as identified in the PSP but observes that given the location of the railway station and surrounding amenities there may be pressure for higher densities to be considered. Depending on that increased density it may trigger the need for further consideration of the risk profile of the pipeline.

The current proposed risk profile of the gas pipeline measurement length is 'Residential' having regard to the definitions in *Australian Standard 2885 for Pipelines – Gas and Liquid Petroleum (AS2885)*. The 'Residential' definition states as follows:



Residential land use may include isolated higher density areas provided they are not more than 10% of the land use.

The VPA understands that APA considers densities above 30 dwellings per hectare to be 'high density' and that development yielding an average density in excess of that may change the risk profile of the pipeline.

The VPA does not anticipate that more than 10% of the pipeline measurement length would yield more than 30 dwellings per hectare, due to the undulating topography in this area and other constraints, including waterways and access.

At Plumpton and Kororoit (Melton C46 & C147) the Panel stated:

The Panel notes that no land with an applied RGZ is included within the pipeline measurement length, and it is unlikely that buildings greater than four storeys or 30 dwellings per hectare (being the originally suggested density control by APA) will be sought within the GRZ land.

On this basis, the Panel does not seek to include a density control, however does suggest that all parties give more thought to this for future PSP processes in areas that contain pipeline assets.

It is noted that APA has not elected to be part of the current Panel process in the manner that it has at times previously been involved.

The VPA observes that it has proposed inclusion of notice to APA in respect of applications within the pipeline measurement length for:

- Residential aged care facility
- Child care centre
- Cinema based entertainment facility
- Education centre
- Hospital
- Place of assembly
- Retail premises

A safety management study (SMS) workshop was completed on 28 August 2017. It is anticipated that the SMS process will be completed within the timeframe of this hearing and the VPA will report back at the appropriate time.

Finally the VPA notes that the recent Major Hazard Facility Advisory Committee Report suggested the establishment of a working group around gas pipelines and further that the working group



consider the appropriateness of an ESO as a control for pipelines areas.¹ The Committee also recommended a change to the referral provisions at Clause 66 to nominate ESV as the referral body for subdivision. It is the VPA's understanding that these processes have not been finalised.

3. PSP reviews

The VPA is not tasked with reviewing PSPs. The VPA expects PSPs to be reviewed by councils in accordance with their broader statutory obligation to review their planning scheme every four years.² As incorporated documents, PSPs form part of planning schemes.

The VPA expects to be consulted, together with other relevant State government agencies, during planning scheme reviews where planning schemes incorporate one or more PSPs.

The VPA does not consider there to be a defined scope for PSP reviews.

The *Precinct Structure Planning Guidelines – Part Two (Preparing the Structure Plan)* state relevantly as follows:³

5.4 Monitoring and Review

The Precinct Structure Plan should be written in a flexible manner in order to facilitate innovative development proposals and to avoid as far as possible the need for future planning scheme amendments.

The council will be responsible for monitoring and reviewing the development of the precinct in consultation with the Growth Areas Authority and other agencies such as the Department of Planning and Community Development, the Department of Transport and the Department of Sustainability and Environment. ...

A PSP review will not necessarily result in the need for changes to the PSP. If changes are required, the council in question will need to consider a planning scheme amendment, under section 20A or 20(4) of the *Planning and Environment Act 1987* if it would be appropriate to waive or modify the exhibition process, or otherwise with notice provided under section 19.

The VPA does undertake PSP reviews in particular circumstances. Examples of this include:

- the Cranbourne East PSP, where the VPA initiated a review as a model exercise to consider how future PSPs could be improved;

¹ Recommendations 15 and 17.

² Section 12B of the *Planning and Environment Act 1987* and section 125 of the *Local Government Act 1989*.

³ Growth Areas Authority, page 52.

- the Botanic Ridge PSP, where the VPA was requested by DELWP to consider amendments to address biodiversity changes; and
- the Officer PSP, where the Minister for Planning requested the VPA consider issues discouraging investment in the town centre.

A current PSP review example is Casey C219.

The explanatory report for that amendment confirms that it seeks to:

The amendment proposes to facilitate the future use and development of the Amendment Area for residential purposes by amending the applied zoning of the Amendment Area from Commercial 2 Zone to General Residential Zone Schedule 1; applying a 5.9% public open space contribution to the same land; updating and replacing the Cranbourne West Precinct Structure Plan (the Incorporated Document) and making consequential changes to Schedule 1 to Clause 37.07 - Urban Growth Zone and Clauses 21.02, 21.18-3, 21.18-5 and 22.03-6.

Additionally, Amendment C219 proposes to amend the Cranbourne West Precinct Structure Plan and Schedule 1 to Clause 37-07 - Urban Growth Zone to reflect Amendment C199 to the Casey Planning Scheme (gazetted on 14 January 2016). Amendment C199 amended the application of the Public Acquisition Overlay within the Cranbourne West Precinct Structure Plan area to land required for the proposed Western Port Highway Upgrade Project.⁴

The explanatory report goes on to confirm that:

The Cranbourne West Precinct Structure Plan (PSP) was given effect in the Casey Planning Scheme on 3 February 2010 via Amendment C102. The Cranbourne West PSP applies to 791 hectares and sets out a land use planning framework to deliver an integrated employment and residential precinct. Council commenced a review of the Cranbourne West PSP in 2014, with a particular focus on the interface between the residential and employment areas.

This represents a current example of the process at work which will go to Panel in late 2017.

4. ICP Implementation

The Panel has sought advice on the basis upon which the inclusion of an item in the Precinct Infrastructure Plan (PIP), compels a relevant agency to provide that item. It is first necessary to consider the legislative framework under which contributions are made and expended.

Section 46GA includes definitions relevant to infrastructure contributions. This includes:

⁴ Explanatory report.



"collecting agency" means a person specified in an infrastructure contributions plan as a person to whom or to which an infrastructure levy is payable under this Part;

"development agency" means a person specified in an infrastructure contributions plan as a person responsible for the provision of works, services or facilities or for the plan preparation costs for which an infrastructure levy or part of that levy is payable under this Part;

The VPA notes that the roles of a collecting agency and a development agency are defined roles under the PE Act and impose distinct obligations upon the nominated body separate to other parts of the PE Act or indeed other enactments such as the Local Government Act 1989. It is noted that there is nothing in section 46GA that requires that the relevant agency be a municipal Council (though there are specific provisions which consider this circumstance considered below). Section 46GE(k) and (l) both contemplate that the collecting agency and the development agency by be the Minister, a public authority or a council and that there may be more than one development agency.

Section 46H of the PE Act also includes similar definitions in relation to Development Contributions Plans:

"collecting agency" means a person specified in a development contributions plan as a person to whom a community infrastructure levy or development infrastructure levy is payable under this Part;

"development agency" means a person specified in a development contributions plan as a person responsible for the provision of works, services or facilities or for the plan preparation costs for which a community infrastructure levy or development infrastructure levy or part of a levy is payable under this Part;

This is relevant in so far as the ICP system has not yet been the subject of legal consideration in the Tribunal or to any great, Panels.

Section 46GG imparts an obligation on a responsible authority to impose a condition securing the collection of the ICP levy on any relevant development permits and further imparts an obligation on a person undertaking development where no permit is required to make the contribution. It follows that once the ICP is in place the collection must occur.

Section 46GI outlines the responsibility of councils. In part it provides that:

(3) *Subject to this section, a municipal council to which an amount of infrastructure levy is paid as a development agency under this Part must apply that amount only—*

(a) *for a purpose relating to plan preparation costs or the provision of works, services and facilities in respect of which the levy was imposed; and*

(b) *in accordance with the approved infrastructure contributions plan.*



(4) *A municipal council may refund any amount of infrastructure levy paid to it as a development agency under this Part in respect of a development if it is satisfied that the development is not to proceed.*

A provision relating to the development contributions plan system on substantively the same terms is found at Section 46Q:

(2) *Subject to this section, a municipal council to which an amount of levy is paid as a development agency under this Part must apply that amount only—*

(a) *for a purpose relating to plan preparation costs or the provision of works, services and facilities in respect of which the levy was imposed'*

(b) *in accordance with the approved development contributions plan.*

(3) *A municipal council may refund any amount of levy paid to it as a development agency under this Part in respect of a development if it is satisfied that the development is not to proceed.*

The provisions at 46Q were considered in the decision of *Dennis Family Corporation v Casey CC* [2006] VCAT 2372 (23 November 2006). In that matter the Tribunal consider the Act, Ministerial Direction and then the Development Contributions Guidelines concluding that:

69 *In our view, when the provisions of Part 3B of the Act are read in conjunction with the Development Contributions Guidelines, it is quite clear that once an infrastructure item is included in a development contributions plan, the council is responsible in its role as development agency to provide that item of infrastructure in accordance with the development contributions plan. This means that the infrastructure must be provided in accordance with any staging or timing included in the development contributions plan and the infrastructure must be in accordance with the specifications relating to standards of construction etc set out in the plan. If there are insufficient funds in the DCP account then the council, as development agency, must provide funding from other sources to pay for the infrastructure.*

In respect of the ICP system, the VPA notes:

- The legislative framework between the DCP and ICP systems are substantially the same. (a point noted at Page 36 of the ICP Guidelines).
- The reporting requirements of each framework are substantially the same.
- The content of the guidelines while different in format is substantially the same if somewhat clearer in its intent surrounding completion of infrastructure. Section 1.2 of the *Infrastructure Contribution Plan Guidelines, 2016* (Department of Environment, Land, Water and Planning) states:

“Once an ICP is approved, this imposes a binding obligation on the infrastructure provider to deliver the infrastructure set out in the plan.”



The VPA concludes that the rationale provided for in the *Dennis Family* decision applies equally to the ICP system as it does to the DCP system considered in that matter.

It follows that once included within an PIP and ICP, the Council (if it is the development agency) is responsible for the completion of items.

Where a change is proposed to the PIP or ICP then this would require an amendment to the Planning Scheme.

5. Ministerial Direction No. 1 and management of buffer issues

Ministerial Direction No.1 relates to Potentially Contaminated Land. The purpose of this Direction is to ensure that potentially contaminated land is suitable for a use which is proposed to be allowed under an amendment to a planning scheme and which could be significantly adversely affected by any contamination.

The Panel has requested that the VPA consider the potential application of this Direction to the land to be affected by the landfill gas migration buffer. The VPA note that the land does not meet the definition of “potentially contaminated land” at Part 3 of Direction No.1, which direction concerns the contamination of soil or groundwater as a result of industrial, mining or the storage of chemicals, gas, wastes or liquid fuel results in existing contamination which can be tested and possible remediated if required. In the instance of a buffer for landfill gas, the potential contaminant is unlikely to exist at present, nor in the short-term future.

Nonetheless, the VPA has considered the intent of this Direction.

Clause 4 of the Direction states:

“In preparing an amendment which would have the effect of allowing (whether or not subject to the grant of a permit) potentially contaminated land to be used for a sensitive use, agriculture or public open space, a planning authority must satisfy itself that the environmental conditions of that land are or will be suitable for that use.”

Clause 5 of the Direction states (emphasis added):

In satisfying itself in relation to an amendment allowing a sensitive use, a planning authority must comply with either sub-clause (1) or (2):

(1) Before it gives a copy or notice of the amendment under Section 17, 18 or 19 of the Act, a planning authority must ensure that:

a) A certificate of environmental audit has been issued for the land in accordance with Part IXD of the Environment Protection Act 1970, or



b) If the amendment allows a sensitive use only in accordance with plans included or referred to in the amendment an environmental auditor appointed under the Environment Protection Act 1970 has made a statement in accordance with Part IXD of that Act that the environmental conditions are suitable for the sensitive use in accordance with those plans.

(2) A planning authority must include in the amendment a requirement to the effect that before a sensitive use commences or before the construction or carrying out of buildings or works in association with a sensitive use commences:

a) A certificate of environmental audit must be issued for the land in accordance with Part IXD of the Environment Protection Act 1970, or

b) An environmental auditor appointed under the Environment Protection Act 1970 must make a statement in accordance with Part IXD of that Act that the environmental conditions of that land are suitable for the sensitive use

The EAO is the tool frequently utilised by planning authorities to give effect to the Direction. It is more common that the EAO is utilised as the relevant tool in combination with application of a zoning that would permit a sensitive use, frequent being a residential zoning, than an audit being undertaken in the first instance. The approach of applying a zone with a suitable control is the commonly accepted approach.

In the case of the landfill gas buffer, the VPA cannot undertake works to satisfy Clause 5(1)(a) or (b) as the contaminant (landfill gas) at this time as it is unlikely to pose a risk to the site for some years, if ever. The relevant cells are not yet constructed or filled. The EPA has advised that the appropriate time to undertake assessments for landfill gas is post-closure of the landfill.

The VPA has therefore sought to apply the principle contained in Clause 5(b)(a) of the Ministerial Direction. In the case of landfill gas, the Environment Protection Authority (and experts) have advised that a 53V audit is the appropriate tool to assess the risk under Part IXD of the Environment Protection Act 1970.

The Urban Growth Zone Schedule 9 is proposed to include the following at Clause 3.8 (emphasis added):

3.8 All applications within Landfill Buffer

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Proposed C207

Any application to subdivide land, use land or construct a building or carry our works on land within the Landfill Buffer as shown on Plan 3 of the incorporated *Sunbury South Precinct Structure Plan* must:

- Demonstrate that the development will not have any material adverse effect on the ability of the operator of the Hi-Quality landfill at 600 Sunbury Road to comply with the Best Practice Environmental Management: Siting Design, Operation and



Rehabilitation of Landfills (Environment Protection Authority, August 2015) to the satisfaction of the Responsible Authority, in consultation with the Environment Protection Authority; and

- **Be accompanied by a 53V (risk of harm) audit under the Environment Protection Act 1970, at the discretion of the responsible authority in consultation with the Environment Protection Authority.**

The scope of any proposed 53V (risk of harm) audit must be submitted to the responsible authority for review prior to conducting an audit. The responsible authority may consult with the Environment Protection Authority.

Proposed Clause 3.8 is to apply to any application to subdivide land, use land or construct a building or carry out works. This is more onerous than the recommendations of Ministerial Direction No.1, which only applies the requirement for an audit to sensitive uses or the construction or carrying out of buildings or works for sensitive uses.

Landfill gas poses a unique risk to land, and all works which involve ground disturbance have the potential to be hazardous. Accordingly, the UGZ9 also incorporates additional buildings and works permit triggers at Clause 2.8.

This Panel is in receipt of the evidence of Mr Clarke on landfill gas which has provided that:

- The buffers of 500 metres for landfill gas in the BPEM are directed at putrescible landfill risks.
- The buffers identified in the PSP can be reduced to distances of between 200 and approximately 300 metres, but that this still represents a conservative approach.
- In the longer term the buffers can be further reduced.

The Panel is also in receipt of evidence from Mr Ramsey that the amenity buffer arising from truck movements etc. is not required after cell closure.

Ministerial Direction No.1 rarely applies to PSP land, as it typically has a farming history rather than an industrial history. Irrespective, a similar approach to that which is outlined in MD1 is followed.

The usual process, and that which has been followed for the Sunbury Amendments, is that a preliminary assessment is undertaken which identifies those land parcels which show potential for contaminated land as a result of the previous land uses, carried out by a suitably qualified person. The UGZ then directs further assessment of those areas identified in the preliminary assessment be undertaken, and appropriate conditions be included on planning permits as necessary. The EPA has endorsed the approach taken within the Sunbury PSPs in relation to land contamination.

The VPA (then GAA) made an organisational decision in 2011 that the most appropriate way to address the matter of potential land contamination is within the UGZ, and through deferred detailed assessment. The rationale for this includes:

- It is usually difficult to obtain comprehensive access to all properties to undertake a full assessment. In the case of the Sunbury amendments this would involve obtaining and co-ordinating access permission from approximately 150 individual landowners.



- It is cost-prohibitive to undertake this detailed assessment at a precinct-wide scale
- The application of an EAO is considered inappropriate due to:
 - The ability of the PSP and UGZ to deliver these controls in a transparent and co-ordinated fashion,
 - The difficulty in determining the exact extent of the EAOs required. This was exemplified in the Clyde North PSP (Casey Amendment C153) where significant discussion occurred during the Panel hearing as to the appropriate extent of an EAO to a sheep dip, which impacted a minor portion of a large land parcel. It was unnecessary to apply the EAO to the entire land parcel, and the task of identifying this level of detail at the PSP stage is an onerous exercise.
 - An EAO as per Ministerial Direction No.1 is often too onerous given the types of contamination that are typically found in growth areas i.e. farming contaminants rather than industrial contaminants.

Examples of previous PSPs which have included residential land within buffers

It is common for precinct structure plans to accommodate buffers to land uses with potential adverse amenity impacts.

Within the growth areas, the most common land use with notable off-site odour impacts is broiler farms. Whilst it is acknowledged that the odour emissions from a broiler farm will differ from those of a composting facility or landfill the intersect of residential zones with buffers is a matter frequently considered by the VPA.

Of particular relevance to odour, the following precinct structure plans have all shown residential land uses underlying odour buffers to broiler farms:

- Black Forest Road South Precinct Structure Plan
- Greenvale Central Precinct Structure Plan
- Wollert Precinct Structure Plan
- Tarneit North Precinct Structure Plan
- Alfred Road Precinct Structure Plan
- Truganina Precinct Structure Plan
- Casey Fields South Residential Precinct Structure Plan
- Armstrong Creek East Precinct Structure Plan

The provision of residential land uses within quarry buffers has been included in the following PSPs:

- Manor Lakes Precinct Structure Plan
- Black Forest Road South Precinct Structure Plan



- Westbrook Precinct Structure Plan
- Quarry Hills Precinct Structure Plan
- Thompsons Road Precinct Structure Plan
- Clyde Creek Precinct Structure Plan
- Brompton Lodge Precinct Structure Plan

The provision of mixed use land within proximity to a landfill occurred in the Toolern Precinct Structure Plan.

The test in the Direction is a test of 'satisfaction' of the planning authority that the conditions are or will be suitable to the proposed use. The clear evidence is that land landfill operational impacts will not be an impediment to the fulfilment of future residential use and that landfill gas is not a barrier to the ultimate (or subject to the Clarke buffers the current) residential use of land surrounding the landfill.

It follows that the test of satisfaction is met.

