



27 August 2021

Henry Kassay  
Planner – Planning Services  
Victorian Planning Authority  
Level 25, 35 Collins Street  
MELBOURNE VIC 3000

Our Ref: 5011817

Dear Henry,

**RE: WONTHAGGI NORTH EAST PRECINCT STRUCTURE PLAN**

The Environment Protection Authority (EPA) is in receipt of your email dated 12 August 2021, seeking the written views of the EPA in relation to the Wonthaggi North East Precinct Structure Plan.

It is our understanding that VPA are considering a revised approach for further assessment of land that has been determined to be potentially contaminated within the proposed Wonthaggi North East Precinct (the Precinct), consistent with the revised contaminated land framework in accordance with the *Environment Protection Act 2017*.

This project is a VPA fast track project and is currently half-way through a Standing Advisory Committee (SAC) process.

**Previous Advice**

In our previous advice dated 7 June 2020 (EPA Ref. 5011718), EPA provided recommended wording to Clause 3 in the proposed Schedule 1 to the Urban Growth Zone (UGZ1) (also to be translated across to Schedule 21 of Development Plan Overlay (DPO21)), relating to the application requirement for a Preliminary Site Investigation (PSI) for properties within the Precinct that had been identified as having a medium potential for contamination.

With regard to properties identified as having a high potential for contamination, VPA had determined to apply the Environmental Audit Overlay (EAO) to these properties. EPA advised that this position was consistent with previously provided advice.

As outlined in our response, this advice focused on the drafted planning controls, rather than a review (or endorsement) of the list of properties noted as requiring further environmental

assessment (that may be incomplete or inaccurate) included in the PSI (prepared by GHD, dated May 2019).

### **VPA revised approach – post Amendment VC203**

The VPA now propose to apply the EAO to properties with a medium potential for contamination that were previously identified in the UGZ1 and the DPO21 as requiring a PSI. As a result, the VPA have amended the UGZ and DPO schedules to remove the PSI requirement and related content.

VPA's approach to apply the EAO to properties with a high potential for contamination remains unchanged.

In addition, VPA has advised that properties requiring a PSI in the Schedule to the Incorporated Plan Overlay (IPO), which are limited to industrial properties, have been retained because of the intended future use for these sites.

### **Planning Scheme Amendment VC203**

Planning Scheme Amendment VC203 (gazetted on 1 July 2021) updated the Victoria Planning Provisions (VPP), to integrate the planning system with the new environment protection framework which commenced on 1 July 2021.

These changes updated the VPP to align with the *Environment Protection Act* 2017 and associated subordinate legislation to enable greater prevention and mitigation of risks to human health and the environment.

The updated framework for the management of potentially contaminated land was also introduced under this amendment, including the updated EAO, and Planning Practice Note 30 – Potentially Contaminated Land (DELWP, 2021) (PPN30 2021).

Relevant to this proposal is the addition of the Preliminary Risk Screen Assessment (PRSA) as an additional way the requirements of the EAO can be satisfied.

We also note the updated Ministerial Direction No. 1 (MD1), which informs the appropriate application of the EAO has not yet been released. However, we understand (based on DELWP's website) the current MD1 will be replaced by an updated direction that will:

- include secondary schools and children's playgrounds, as other sensitive uses;
- allow for a preliminary risk screen assessment to determine whether an environmental audit is required; and
- include other general changes to improve the operation of the direction.

### **Current Advice**

In considering the above, VPA should review and become familiar with PPN30 2021 and consider any changes in accordance with the *Environment Protection Act* 2017 and

subsequent policy post 1 July 2021, in terms of any assessment undertaken to date that was aligned with PPN30 2005.

#### Properties with a high potential for contamination

The proposal to apply the EAO to properties identified as having a high potential for contamination is consistent with PPN30 2021 which states that sites with a high potential for contamination, and where a new sensitive use is established, the recommended level of assessment is a Preliminary Risk Screen Assessment (PRSA) or an environmental audit. In consideration of the appropriate level of assessment in accordance with PPN30 2021 and the provisions for deferring an environmental audit via an EAO where it is difficult or inappropriate to meet environmental audit system requirements at the amendment stage, it appears that VPA's proposal to apply the EAO is consistent with policy.

#### Properties with a medium potential for contamination

PPN30 2021 now recommends a PRSA to determine the need for and audit, (or straight to an audit is also an option), where a site is identified as having a medium potential for contamination and the zoning of the land allows sensitive uses to be established.

On this basis, giving consideration to the updates to the EAO under Amendment VC203, it would appear that the EAO is the appropriate mechanism for deferring this requirement, rather than requiring further assessment via additional provisions to the UGZ1 and DPO. As such, applying the EAO to all sites previously identified in the UGZ1 and DPO as requiring a Preliminary Site Investigation (as an application requirement, and condition), and then deleting those additional provisions from the Schedule would appear consistent with policy.

As outlined in your email, VPA have also received confirmation from DELWP's Planning Systems team that they support the application of the EAO over properties that have been identified as having a medium potential for contamination, and new sensitive uses are proposed to be established.

#### Schedule 2 to the Incorporated Plan Overlay (IPO2)

In addition, VPA has advised that properties requiring a PSI in the IPO2, have been retained because of the intended future use for these sites as industrial uses. Reviewing the spreadsheet sent by the VPA on 18 June 2021 titled '*Wonthaggi Ordinance and GHD Contamination Spreadsheet*', EPA note that these properties have been determined to either have a high or medium potential for contamination. In accordance with PPN30 2021, the recommended level of assessment for a property with a high potential for contamination which will allow an industrial use to be established, is a PSI, to inform the need for an audit. Therefore, VPA's proposed approach is consistent with policy.

For a property with a medium potential for contamination, PPN30 2021 recommends the Planning Authority document consideration of the potential for contamination to impact the proposal. In this instance, VPA are also requiring a PSI for these properties, which is a satisfactory outcome, albeit a higher level of assessment that PPN30 2021 recommends.

## Preliminary Risk Screen Assessment

Under the new *Environment Protection Act 2017*, the PRSA is a new form of environmental assessment which can be undertaken to consider the presence of contaminated land, and which is proposed to be used for sensitive uses. PPN30 2021 also describes the PRSA.

The PRSA was introduced to assist stakeholders, including planning and responsible authorities, EPA and landowners, in understanding the likelihood for contaminated land to be present and the need for more detailed assessment through the conduct of an environmental audit.

PRSA's are undertaken by EPA appointed environmental auditors, however gathering of the information to be reviewed can be undertaken by a suitably qualified environmental consultant.

It should be noted that a PRSA does not replace an environmental audit, however it may assist in resolving uncertainty about the potential for land to be contaminated.

## Audit Outcomes

Under the *Environment Protection Act 2017*, an environmental audit which assesses a proposed use of a site will result in one of the following statements:

1. The site is suitable for the purposes specified in the statement.
2. The site is suitable for the purposes specified in the statement if the recommendations made in the statement are complied with.
3. The site is not suitable for the purposes specified in the statement at the time the statement was prepared.

While the application of the proposed EAO will ensure that an environmental audit is undertaken prior to a sensitive use occurring, a limitation of the EAO is that it does not compel compliance with any audit recommendations. Once an audit is completed, it is within the planning system that the recommendations by an audit must be translated into suitable planning controls.

Where an amendment includes rezoning of land where the proposed zone allows a sensitive use to occur as a Section 1 use (no permit required), a critical gap exists. This gap relates to the scenario where there is no permit in place to which conditions can be attached and therefore, no ability to ensure that recommendations in the audit are implemented and no ability to monitor their compliance.

In this case, it is noted that under the proposed UGZ1, several sensitive uses are a Section 1 use provided they meet a condition relating to the required distance from the pipeline easement. In acknowledgement of this and the limitations expressed above, EPA recommends the UGZ1 includes a provision for ensuring any recommendations of an audit are complied with, and we direct VPA to the example conditions in PPN30 2021 in '*Requirements where an environmental audit is a condition of permit*' which in part read:

*2. All the recommendations of the environmental audit statement must be complied with to the satisfaction of the responsible authority, prior to commencement of use of the site. Written confirmation of compliance must be provided by a suitably qualified environmental consultant or other suitable person acceptable to the responsible authority.*

*Compliance sign off must be in accordance with any requirements in the environmental audit statement recommendations regarding verification of works.*

*3. In the absence of a site management order and where there are recommendations on an environmental audit statement that require significant ongoing maintenance and/or monitoring, the following condition may also be used:3. The applicant must enter into a Section 173 Agreement under the Planning and Environment Act 1987. The s 173 Agreement must be executed on the title of the relevant land prior to the commencement of the use and prior to the issue of a statement of compliance under the Subdivision Act 1988. The applicant must meet all costs associated with drafting and execution of the Agreement, including those incurred by the responsible authority.*

More detail is at: <https://www.planning.vic.gov.au/policy-and-strategy/planning-for-environment-protection>.

### **Environment Protection Act 2017 and the General Environmental Duty (GED)**

The Environment Protection Act 2017 came into effect on 1 July 2021. The GED is a centrepiece of the new laws. It applies to all Victorians. If you engage in activities that may give rise to a risk to human health or the environment from pollution or waste, you must understand those risks and take reasonably practicable steps to eliminate or minimise them. EPA will continue to work with industry and the community to help them understand how to fulfil their obligations, by providing guidance, advice, and other support.

For further information on what the new laws will mean for Victorian businesses go to <https://www.epa.vic.gov.au/for-business/new-laws-and-your-business>

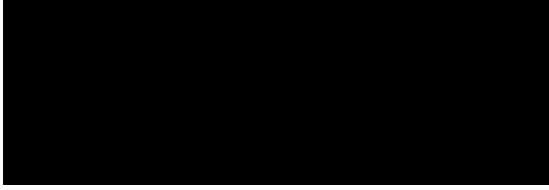
For further information on what the new laws will mean for individuals and the community go to <https://www.epa.vic.gov.au/about-epa/laws/new-laws/the-new-act-for-the-community>

### **Summary**

EPA supports the revised approach outlined by the VPA as outlined above however we recommend the UGZ1 includes a provision for ensuring any recommendations of an audit are complied with, consistent with the example conditions in PPN30 2021. We would be happy to engage in a discussion with you regarding the comments above.

If our assessment is not aligned with your view of the environmental risk, or if the proposal is subsequently amended, please contact [REDACTED] on 1300 EPA VIC (1300 372 842).

Yours sincerely,



EPA Victoria