



City of
KINGSTON

30 October 2015

Ministerial Advisory Committee
Inquiry into the Environmental Protection Authority
PO Box 21428
Little Lonsdale Street
MELBOURNE VIC 8011

Dear Sir

Re: Submission to the Ministerial Advisory Committee for the Inquiry into the Environment Protection Authority

The City of Kingston welcomes the opportunity to make a submission to the Ministerial Advisory Committee for the Inquiry into the Environment Protection Authority (EPA).

Council has a keen interest in the EPA's role and powers and acknowledges the important role that community members, government agencies and non-governmental organisations play in maintaining a healthy environment for all of Victoria.

Council has reviewed the Discussion Paper released by the Ministerial Advisory Committee and offers the following preliminary feedback with a focus on matters most relevant to the City of Kingston:

Building effective partnerships with local government:

The City of Kingston believes the EPA needs to engage more proactively with local government and play a stronger statutory role in the decision making process. Councils often don't have the resources or expertise to deal with technical matters relating to pollution and contamination issues and rely heavily upon the technical guidance of the EPA.

Issues identified by Council relating to the EPA's interaction with local government include:

- Council's experience in dealing with the EPA indicates a significant resourcing issue that severely limits the agency's ability to respond to Council requests for assistance or information. These limits on resourcing are directly relevant to many of the comments offered in this submission.
- The culture of the organisation is risk adverse and there has been a tendency to push issue resolution to Council in areas the EPA is more able to assist.
- The EPA's role has evolved over time into an advisory body. Council believes its primary legislative function is as the environmental regulator.
- Council is aware of a number of instances in which the EPA has not become involved in issues that fall within the scope of the Environment Protection Act. Concern exists about operational processes that rely upon automated responses by the customer service and call centre staff to refer complainants directly to Council.
- There has been an ongoing lack of engagement with Councils and other stakeholders about changes in work-practices.
- There has been declining technical expertise and an unwillingness to provide definitive advice to Council or reluctance to engage and resolve issues referred to them by Council.

Input in statutory planning issues and referrals:

Council would like more assistance from the EPA in its consideration of amenity based planning issues. For example, in Clause 52.43 Live Music and Entertainment Noise, the EPA should be a section 55 referral to assist / assess the acoustic engineers report given their technical expertise in this area. Council also suggests that the EPA should have a statutory referral requirement (section 52 or 55) to comment on known contaminated land where the Environmental Audit Overlay is applicable.

Although acknowledging the EPA generally responds within prescribed periods, it is considered that resource limitations negatively impact on the EPA's ability to use the referral process to genuinely add value to the decision making process.

Lack of clarity around roles and responsibilities under current environmental legislation:

Clarifying and strengthening current legislation, and removing duplicate provisions in legislation that currently exists, will safeguard the community and provide clarity of roles and responsibilities. Examples of this could include:

- Removing noise out of the Public Health and Wellbeing Act Nuisance provisions which is creating very disparate levels of service across the Local Government sector without any centralised regulatory focus that the EPA could and should provide;
- Clarifying and strengthening the noise provisions in the Environment Protection Act and Regulations to make them clearer and easier to enforce;
- Strengthening the various legislative provisions by putting in place clear definitions, clear enforcement responsibilities and more effective requirements for the management and completion of referrals between statutory authorities.

The EPA needs to have the legislative basis to provide Officers with the confidence to use the raft of enforcement tools (notices, infringements, prosecution) to gain compliance and where necessary punish offenders. The EPA needs to see itself as a regulator and not just a referral and advisory body. In this regard there is a need to have a balanced approach between education and enforcement, as well as a proportional action based on the severity of the offence or history of offender. The EPA have taken some steps through its work in the Clayton South Waste Forum to increase its regulatory oversight and enforcement but this would be an interesting area for the Committee to review based on the extent of resources the EPA has devoted to this task to enhance compliance expectations.

With a significant increase in higher density living across metropolitan Melbourne it is appropriate to look at introducing noise provisions under the residential noise legislation similar to that of the SEPP N1 provisions setting out times and maximum levels allowable from residential premises. Along with removing noise provisions from other legislation (Public Health and Wellbeing Act) this approach would provide more clarity to the person causing the noise and the person affected by the noise on what is an appropriate level. A centralised regulatory context that is policed consistently across the inner and middle municipalities of Melbourne is critical as the City continues to evolve.

There are a number of issues related to compliance that are not adequately addressed under the existing legislative framework. Specifically, these include:

- Construction times (with and without Planning Permits). It is unclear who is best suited to enforce/follow-up works occurring outside of permitted hours.
- Councils have no enforcement powers in relation to Commercial or Industrial noise under the EP Act (SEPP N1) and must rely on broad, undefined definitions of a 'nuisance' in the Public Health and Wellbeing Act or 'amenity' in the Planning and Environment Act.
- The role of SEPPs and their status. While the policies are subordinate legislation, they appear to have the ability to allocate responsibilities to local government without any consideration of resources. Council does not support a decentralised model as it does not ensure that resources across the metropolitan area are being focussed equitably or into the areas of highest need.

- There is an absence of an enforcement framework around SEPPs. It is unclear whether they can be enforced, by whom and in what circumstances.
- There is a lack of clarity around who determines what can be classified as a nuisance or amenity issue (dust, noise, sediment controls). More clarity is required to define appropriate noise levels.

Council also believes that the EPA need to perform a much more significant role in ensuring that Government Policy settings associated with Airport Noise are thoroughly considered in the context of other noise generating activities in urban areas. The Council is very concerned that the National Airport Safeguarding Framework is being considered in absolute isolation to other noise generating activities and the level of complaints received relative to other amenity considerations needs very careful consideration before additional regulatory changes to the planning system occur. The EPA can provide significant technical assistance in this regard.

Council owned and legacy landfill issues:

Whilst the scope of the inquiry does not specifically reference the EPA's appropriate role in relation to its authority and control in licensing landfill sites, it does refer to the community's expectation of the EPA as an environmental regulator. Council was left with no choice but to go to VCAT in 2014 where we challenged Post PAN notices issued by the EPA in relation to former landfills located at Heatherton Park, Heatherton and Spring/Rowans Road, Dingley. Council challenged the EPA's approach to former landfills where the EPA effectively applied Best Practice Environmental Management practices retrospectively. Treating former landfill sites which had closed many years ago and where the cost of meeting the BPEM standards requires significant review. Council suggests that the EPA's new standards for closed landfills are not proportionate to the risk of harm to the environment or human health.

Recent experience has prompted Council to call for a more collaborative approach when dealing with government agencies in achieving safe environments for closed landfills. In dealing with all tiers of government including Councils, the EPA should approach their role in a collaborative manner, working to achieve a safe and enduring outcome, without creating a litigious environment which comes at such a high cost to both Council and the EPA.

The availability of accurate and credible information from the EPA regarding closed landfills furthers the ability to address rehabilitation requirements. In particular, access to licenses issued under the Environment Protection Act 1970 that have been revoked are not available despite VCAT orders and requests under freedom of information. This does not assist in achieving desired outcomes. Noting the EPA's obligation under Section 23 of the Act is to maintain a register of all licenses this response is not satisfactory noting this legislation has been in force since December 1970.

As a minimum, Council wishes to see more comprehensive and up-to-date records on the EPA website, identifying where former landfills (private and publically owned) are located, when they were closed, their PAN status and other relevant technical data made available.

The cost of compliance for Local Government in relation to closed landfill sites:

The new EPA standards are onerous and have the potential to substantially increase the cost of compliance to the occupiers of closed landfills which are often Local Governments. These compliance costs are ultimately unsustainable and as mentioned need very careful technical assessment to determine the actual level of human health and environmental risk. Council believes that some notices issued by the EPA for closed landfills are potentially invalid on grounds which include:

- Notices which do not comply with the environment protection principles (section 1A of the Act) as they were issued to a municipal council that now owns the land post local government amalgamations (1994), but is not the successor in law to the entity that operated the landfill (i.e. polluter);
- Notices that have been issued without an appropriate assessment on which an authority could be satisfied that the prerequisites to issuing a pollution abatement notice have been undertaken;
- Circumstances under which the EPA has issued a notice that seeks to retrospectively impose standards for rehabilitation and aftercare of a closed landfill.

The EPA's practice of consultation with a recipient of a notice that imposes the increased standard for a closed landfill is confined to deadlines for compliance and does not properly consider or take account of the financial impact on local government. The methodology for engagement needs to be reconsidered in light of this.

It also appears that the EPA has focused on local government in issuing notices for closed landfills. It is not clear if the EPA has issued notices to the State Government for Crown land or private land owners for closed landfills, particularly where a private entity is impecunious.

In many instances the EPA has taken a simplistic approach and issued notices to a municipality that now owns the land after local government amalgamations. Many former municipal landfills were operated by or on behalf of sub groups of former regional waste management groups with specific cost sharing arrangements across the participating municipalities. This approach imposes an enormous cost burden on a single municipality with limited or no ability to recover contributions from other municipalities due to difficulties with contacts and the like. This is particularly difficult for landfills which have been rehabilitated in the 1980s and 1990s to the standard applicable at that time.

It is Council's view that the State Government should urgently review the EPA's program of imposing these increased standards on closed landfills and the apparent focus on issuing notices to the Local Government sector.

The collection and allocation of landfill levies:

The distribution of the landfill levy is disproportionate with very limited funding available to local government. The distribution of the landfill levy appears inconsistent with the purpose for which the levy is collected; that is to promote and support recycling, waste reduction and waste management.

The EPA, as the independent State Government authority responsible for regulating landfills, approving the design and construction of new landfill infrastructure and regulating the rehabilitation and aftercare of closed landfills should not be funded via revenue collected under the landfill levy. EPA's Annual Report 2012-2013 confirms that for the financial year 2012-13 cash receipts for the landfill levy totaled \$144.72 million, which was distributed to:

- EPA (\$24.54 million);
- Sustainability Victoria (\$24.24 million);
- Regional Waste Management Groups (\$7.33 million); and
- Sustainability Fund (\$88.61 million).

For this same period \$4 million in funding was made available to local government to offset the costs of complying with the increased standards for operating landfills. This funding was available to regional Councils however no funds were made available to metropolitan Councils.

The distribution of the landfill levy should be reconsidered and greater focus given to:

1. Assisting the Local Government Sector with any additional regulatory requirements the EPA are seeking to impose on landfill site rehabilitation; and
2. Most importantly, creating a funding stream to support the transition of landfills to parkland as envisaged through the Sandbelt Open Space Project (Chain of Parks) in Kingston.

Communities who have lived with the legacy of landfill amenity issues for several decades expect and deserve from Government an available funding stream to facilitate the development of planned parkland on former landfill sites that are identified for public acquisition. The landfill levy should play a more pivotal role in providing this funding stream.

The Local Government sector should be significantly more engaged as to how the distribution of the landfill levy occurs to balance the funding for 'new resource recovery investment' while ensuring the legacy of historical landfilling is appropriately addressed.

Emergency Management response

The EPA have a key role in emergency management and should have the processes and training in place to allow them to effectively support response and recovery agencies and in some cases take a lead role in incidents. The EPA are technical experts in particular areas and have a major role in recovery from some incidents that can have a major impact on the community. The recent Ball Road, Heatherton closed landfill gas incident, covered very broadly in the discussion paper, highlighted a number of issues for the EPA in relation to the all-hazard, all-agency approach now in place in Victoria.

In examining this incident firstly, EPA staffs' understanding of the emergency command and control arrangements in the State led to a great deal of frustration from the Municipal Fire Brigade (MFB) and other support agencies. The MFB were clearly the first responders but the EPA should have been prepared to take over the incidents management. Opportunities may exist for the EPA to work with Emergency Management Victoria (EMV) to upgrade their internal training and actively look at sponsoring and participating in suitable exercises to assist EPA staff to understand the management of incidents.

Secondly, EPA internal processes, procedures and documentation are not in-line with current emergency management practice. The Heatherton incident required substantial support from MFB and Kingston City Council to manage the incident and related resources. Council officers wrote the Incident Management Plan for EPA because of an apparent lack of practical experience in this area. It is recommended that EPA work with EMV to establish a comprehensive emergency management plan that is wholly consistent with the Emergency Management Manual Victoria (EMMV) to ensure its agency operates consistently with those that work closely with it.

The Advisory Committee may benefit from engaging with the representative agencies to use this as an effective case study.

Assistance in identifying privately managed contaminated land

Council is working to respond to the Victorian Auditor-General Report (VAGO) recommendations and has drafted a policy to establish guiding principles for the management of Council land that is impacted by contamination.

Assistance from the EPA in identifying such sites across the city would be invaluable. However, it remains unclear as whether or not the EPA has a comprehensive database which would assist Council in identifying contaminated sites both private and publically owned.

Landfill and land use buffers

Clause 52.10 of the Kingston Planning Scheme sets out threshold distances between particular uses and zones nominating the EPA as a referral authority in certain circumstances. The issues that have arisen for Councils in the administration of Clause 52.10 include:

- Ongoing awareness of the threshold distances to be maintained to industries when making rezoning decisions.
- Ensuring the EPA is actively contributing to the methodology required to assess rezoning amendments that may seek to reduce the threshold distances.
- Dealing with legacy situations where the distances have not been established particularly relevant to middle Melbourne municipalities like Kingston.
- Understanding the differences in the threshold distances and those set out in the *Recommended Separation Distances for Industrial Residual Air Emissions Guideline*.

Through the State Government Local Buffer Support Program (LBSP) Council has been involved in exploring a range of land use planning policies and other measures to protect and manage buffers between waste and resource recovery facilities and adjacent sensitive land uses. In the case of the Clayton South Precinct which has been identified as a priority area for investigation under this program, the retrospective application of planning controls needs very careful consideration particularly given objectives around the Sandbelt Open Space Project and the established patterns of development that often proceed landfilling. In this regard, it is critical that EPA continue to play a proactive role in the LBSP arrangements to provide direct technical assistance in finding appropriate and justifiable solutions that give rise to potential changes to planning controls.

The Kingston City Council appreciates the opportunity to provide a submission to the Ministerial Advisory Committee's Inquiry into the Environment Protection Authority.

Yours sincerely



John Nevins
CHIEF EXECUTIVE OFFICER