

9 February 2022

Adam Moar
Manager - Development Services
Yarriambiack Shire Council
34 Lyle Street
WARRACKNABEAL VICTORIA 3393



Our Ref: REQ001685

Dear Adam,

RE: PLANNING SCHEME AMENDMENT – REZONE 21 SITES ACROSS YARRIAMBIACK SHIRE

Thank you for the opportunity to provide our written views in relation to a planning scheme amendment which proposes to re-zone 21 sites across the Yarriambiack Shire received by EPA on 27 January 2021.

Ministerial Direction 19

Ministerial Direction 19 (MD 19) requires planning authorities to seek early advice from EPA when undertaking strategic planning processes and preparing planning scheme amendments that may significantly impact Victoria's environment, amenity and/or human health due to pollution and waste.

EPA's consideration and advice on relevant planning matters is intended to support decisions made by planning authorities in the early stages of the planning process.

It is in this context that EPA provides the comments below.

Our Understanding of the Proposal

EPA understands that Council have identified 21 sites within the Shire to rezone where it is considered that the site is currently zoned incorrectly. Of particular interest to the EPA are the following sites:

- 11 Bruce Street, Hopetoun, to be rezoned from Public Use Zone 2 (Education)(PUZ2) to Township Zone (TZ)(former school site);
- 62 Lascelles Street, Hopetoun, to be rezoned from Public Use Zone 1 – Service and Utility (PUZ1) to Township Zone (TZ) (former CFA building);
- 3-7, 21, 23, 29 Gloucester Avenue, Woomelang, to be rezoned from Transport Zone 1 – State Transport Infrastructure formerly Public Use Zone 4 (PUZ41) to Township Zone (TZ) (rail land);
- 38 Mill Street, Minyip, to be rezoned from Farming Zone to either Industrial 1 Zone (INZ1) or Township Zone (TZ) (Minyip fuel site).

Potentially Contaminated Land

Ministerial Direction 1 (MD 1) requires that in preparing a planning scheme amendment that would have the effect of allowing “potentially contaminated land” to be used for a sensitive useⁱ, children’s playground or secondary school, a planning authority must satisfy itself that the land is, or will be, suitable for that use. Given this, MD 1 establishes two tests that must be met to trigger the requirements of MD 1 for an environmental audit or Preliminary Risk Screen Assessment (PRSA), being that the:

- zoning of the land allows a sensitive use, children’s playground or secondary school to be established, whether or not subject to a permit; and,
- land is potentially contaminated land.

Potentially contaminated land is most often the result of past uses of the land it’s associated effects from pollution and waste. Clause 73.01 of the Yarriambiack Planning Scheme (2022) defines ‘potentially contaminated land’ to be land:

- a) used or known to have been used for industry or mining;
- b) used or known to have been used for the storage of chemicals, gas, waste or liquid fuel (other than minor above-ground storage that is ancillary to another use of the land);
or
- c) where a known past or present activity or event (occurring on or off the land) may have cause contamination of the land.

Each parcels potential for contamination is discussed below.

11 Bruce Street, Hopetoun

Council have outlined that the land was previously used for a school. Under the current policy framework including Planning Practice Note 30 for Potentially Contaminated Land (2021), schools are not considered an activity with a high potential for contamination.

However, this is not to say that it does not pose a risk. Planning Practice Note 30 – Potentially Contaminated Land (DELWP, 2021) (PPN30) states that “[i]n some cases, while the land use onsite may be benign, an ancillary land use or even a one-off activity or event has the potential to cause contamination”.

As such, Council may wish to consider if the use of the land as a school had any ancillary land uses with the potential to contaminate, such as;

- Underground storage tanks;
- Waste storage and onsite disposal.

It is in the experience of EPA that some historic school sites have had underground storage tanks containing hydrocarbon products such as kerosene for heating, which poses a risk of land and groundwater contamination. As such, Council should seek to clarify whether any of the aforementioned activities have been undertaken on the land. The presence of any underground storage tanks and associated infrastructure may be identified by locating:

- associated infrastructure such as
 - piping;
 - fill points;

ⁱ Where sensitive use is defined in *Ministerial Direction no. 1*, the EAO and clause 13.04-1S as Residential use, childcare centre, kindergarten, preschool centre, primary school, even if ancillary to another use.

- venting points;
- ground depression or raising; or,
- distressed vegetation.

62 Lascelles Street, Hopetoun

Council have outlined that the land was previously used by the Country Fire Association. Under the current policy framework including PPN30, 'firefighting or training (use of foams)' is considered a land use with high potential for contamination. Council should seek to clarify whether 'firefighting or training (use of foams)' has been undertaken on the land.

3-7, 21, 23, 28 Gloucester Avenue, Woomelang

PPN30 lists 'railway yards' with a high potential for contamination. Council should seek to clarify whether residential properties are located on historical rail lines.

38 Mill Street, Minyip

Council have advised that the land is presently being used for a fuel station. It is presently a zoned Farming Zone, with Council proposing to rezone the land to either Township Zone or Industrial Zone 1.

Scenario 1: Council rezone to Township Zone. Zoning allows sensitive use and is potentially contaminated.

Under PPN30, 'service station / fuel storage' and 'underground storage tanks' are listed with a high potential for contamination. As such, the land is constituted as being potentially contaminated. EPA notes that the Township Zone has the stated purpose to "... provide for residential development...", and as such, the zoning of the land would allow a sensitive use to establish.

Given that the land is potentially contaminated, and the zoning of the land allows a sensitive use, children's playground or secondary school to be established, whether or not subject to a permit the planning authority must either sub-clause (1), (2) or (3):

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 an environmental auditor has issued a preliminary risk screen assessment statement stating that an environmental audit is not required for sensitive uses, children's playgrounds and secondary schools allowed by the amendment.
2. 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 an environmental auditor has issued an environmental audit statement stating that the land is suitable for sensitive uses, children's playgrounds and secondary schools allowed by the amendment.
3. Where a planning authority determines that complying with subclause (1) or (2) is difficult or inappropriate it may defer the requirements of those subclauses provided the requirements are included in the amendment through the application of an Environmental Audit Overlay or other appropriate measure.

EPA notes that if Council should seek to comply with the requirements of MD 1 by using "other appropriate measure", the planning control must make provisions both subclause (1) or (2) above.

When determining whether the requirements of MD 1 should be completed as part of the planning scheme amendment process or deferred via the EAO or another mechanism, PPN 30 provides guidance on what constitutes “difficult or inappropriate”.

Scenario 2: Council rezone to Industrial 1 Zone.

Given that the land is located within close proximity to zones that allow for sensitive uses, in this scenario, Council should consider the compatibility of the two land zonings. Generally, industrial land uses can cause adverse amenity impacts including noise, odour and dust which impact on the residential area.

As such, Council should consider the compatibility of the two land zonings, including the permissible future uses of the land allowed under the Industrial 1 Zone. Council should consider future uses within the Industrial Zone 1 may allow uses without a permit.

Summary

Based on the information provided, EPA recommends that:

- Council carries out further work to understand whether the sites at: 11 Bruce Street, Hopetoun; 62 Lascelles Street, Hopetoun; 3-7, 21, 23, 29 Gloucester Avenue, Woomelang and 38 Mill Street, Minyip are potentially contaminated.
- Regarding 38 Mill Street, Minyip and its' proposed rezoning:
 - should the site be rezoned to Township Zone, the planning authority must comply with either sub-clause (1), (2) or (3) of Ministerial Direction Number 1; or,
 - should the site be rezoned to Industrial Zone 1, Council should consider the compatibility of the two land zonings including the potential for noise, odour and dust which impact on the residential area.

Closing

EPA is willing to provide further input into this planning process as the amendment progresses.

If our assessment is not aligned with your view of the environmental risk, or if the proposal is amended, please contact Sibel Ali-Zwart on 1300 EPA VIC (1300 372 842), or at stratplan@epa.vic.gov.au.

Yours sincerely,



Trisha Brice
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