

This brief submission responds to the August 2015 Discussion Paper *Examining the future task of Victoria's Environment Protection Authority* (Independent Inquiry into the EPA) regarding the how the EPA might perform more effectively in the future. The Discussion Paper states that experiences are important in identifying how the EPA can perform more effectively. As a town planning consultant, this position affords me an overview of the current regulatory system and its operational efficiency and effectiveness.

From my perspective as a consultant, it is clear that the EPA's role intersects with local government. However, in many instances, both authorities seem to operate independently and without the level of connection required for optimum environmental protection outcomes.

A less than optimum environmental outcome is demonstrated in the following example which occurred at a refuse disposal (landfill) site. The community raised concerns regarding the inappropriate disposal of asbestos at the site (and waste on an adjoining site) with both the EPA and local Council. For a period of two years, the EPA were purportedly unable to take action regarding certain aspects of the landfill issues whilst the Council advised that whilst an EPA investigation was underway, they were not able to take any action.

Result: The tip kept dumping asbestos inappropriately for a period of 2 years. The matter remains unresolved as far as the community is concerned.

Result: The tip operators were able to manipulate the two authorities and continue to dump asbestos and other rubbish on and next to the site in an inappropriate manner.

Result: The local community suffered the effect of scattered rubbish, odour and the 'unknown' legacy of potential asbestos contamination.

This example demonstrates the outcomes of an ineffective working relationship between the EPA and local government. It also demonstrates the ineffective working relationship with the community when environmental problems are identified. There needs to be clear definition of the role of each authority and each has to perform to task. The EPA maintain that they can only enforce EPA Licence conditions, not planning conditions or those linked to amenity impact. However, a combined effort from authorities is required in order to ensure environmental justice for communities.

Local government planning has similar aims to the EPA. Town planning exists to prevent negative amenity impacts, which are also at times environmental issues such as noise, odour etc. Pare planning back to the basics and its *raison d'être* is protection of amenity based on two main questions:

1. Is this location the right location for this land use?
2. Can this site accommodate this land use effectively without off site impact?

If the answer to (1) is no, then there is no need to ask the second question. If the answer to (1) is yes and the answer to (2) is no, then this is not the right site for a specified land use. If the answer to both questions is yes, then the detailed planning assessment progresses and conditions of planning permit are developed to ensure (1) and (2) questions can be answered affirmatively.

For example, if an application for a planning permit for a Waste Disposal Facility is lodged and questions (1) and (2) can be answered positively then a permit could be issued with myriad conditions which allow for environmental protection such as limits to hours of operation, odour control, dust suppression, noise controls, compliance with EPA legislative requirements, establishment of buffers etc. Yet, it appears that the EPA do not effectively recognise or utilise the role of planning in environmental protection. The nexus between the EPA and local government is not strong. Is it that the EPA does not utilise the legislative pathways available or perhaps the legislative foundations make it difficult to establish strong links with local government authorities?

For most land uses with off-site amenity potential, the primary authorisation obtained is the planning permit. Any EPA licence or other authorisation cannot be issued until a planning permit is issued that **allows** for a land use and/or development **subject to conditions**. Yet there are instances where EPA licences permit actions or activities that contradict (and contravene) planning permit conditions. An example witnessed was the authorisation of an asbestos pit on a site boundary (in fact over the property boundary) under an EPA licence which contravened the minimum setback requirements for works that were allowed under the planning permit. The Council were unable to take action as the EPA Licence permitted the asbestos pit.

For many land uses, the planning permit establishes the site parameters including some operational requirements. The EPA Licence establishes operational requirements and some site parameters. Both authorisation should be consistent, supportive with a combined strength. This does not always occur. Authorisations which are contradictory lead to inertia from authorities when an environmental issue arises. They can also lead to a culture of 'blame' between the authorities.

The EPA needs a regulatory framework that will strengthen the nexus between the EPA and local government. This will provide both authorities with the combined strength they require in order to be effective protectors of the environment for the community.

The Planning regulatory framework perhaps needs to specify expectations of the EPA in a clearer manner. The current planning system was designed to be a co-ordinator of authorisations in some respects. This does not seem to occur with the EPA to the same extent perhaps as other authorities.

Unless the nexus between the EPA's role and local government's role is clarified, even if a single authority has to be given the role of primary environmental regulator, then environment protection cannot be guaranteed. Unless the issued authorisations (planning permits, licenses, works approvals,) are consistent, environment protection cannot be guaranteed. It is requested that the Inquiry assess the current EPA legislative framework with a view to improvements designed to strengthen the EPA's role within the planning framework and ultimately outcomes that will contribute to improved environmental protection via a smoother, clearer and consistent process.