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5 November 2015

The Chairperson
Independent Inquiry into the EPA
PO Box 21428
Little Lonsdale Street
MELBOURNE VIC 8011

Dear Sir/Madam

City of Port Phillip's Submission to the Independent Inquiry into the EPA

On behalf of the City of Port Phillip (CoPP) I would like to thank you for the opportunity to make this submission to the Independent Inquiry into the EPA.

We are aware that a Local Government roundtable meeting was conducted by the Ministerial Advisory Committee (MAC) for the Inquiry into the EPA on 20 August 2015. Unfortunately the City of Port Phillip was not represented at that meeting, though we have had the opportunity to review the meeting summary documentation that was prepared following that meeting.

In line with the views of the MAC at that time, the CoPP believes that given our strong connection with local communities and understanding of local issues, that local governments are often best placed to work with the EPA on a diverse range of local environmental issues such as:

- land use planning
- the collection and disposal of waste
- dealing with litter and illegal dumping
- managing noise, and
- the provision of health advice.

From that perspective the CoPP believes there are several opportunities for improving the EPA's role in:

- the response phase
- the resolution phase, and if needed,
- the enforcement phases

of an environmental issue.

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Below are three interrelated issues where we see opportunities to clarify and refine our practice in the management of environmental issues to better serve the residents of this community and Victoria generally.

Fragmentation of jurisdiction

The CoPP believes that there is a fragmentation of responsibility for environmental issues across government. This is further compounded by an apparent lack of clarity regarding the jurisdiction of the EPA, and a lack of overall coordination of an issue between the EPA, local government and other agencies.

This fragmentation is further highlighted where more than two areas of government co-regulates a part of the *Environment Protection Act 1970* (the Act).

For example the EPA, Victoria Police, and local government are all responsible for the noise provisions found in the Act. This co-regulatory environment often results in issues escalating until they had become serious health nuisance concerns, and has involved large sums of ratepayers dollars being spent on costly enforcement and court action by the CoPP. Four such cases in CoPP in the last 3 years have cost approximately \$240,000. We believe that the EPA may have been able to act sooner significantly decreasing the harm caused to the community.

The CoPP also believes that this co-regulatory approach may also lead to a system where regulatory gaps can occur, meaning that no agency is addressing a particular level of concern.

Clearly defining and publishing the EPA's regulatory jurisdiction and its enforcement role and responsibilities would significantly enhance transparency and assist the community in seeking redress at the most appropriate agency.

From the community perspective the lack of clarity and coordination gives rise to broad dissatisfaction, with what the community experiences as "buck-passing". For example the serious ongoing noise complaints that occur out of hours, are passed by CoPP to the Police, who may not have the resources to attend and then back to CoPP, with the EPA not become involved. This has also led to relationships between officers of CoPP and the EPA being strained, or even non-existent, as staff believe that the enforcement arm of the EPA is not taking appropriate action in relation to the issues it is responsible for under the Act.

Sharing Technical Expertise

The CoPP would like to see the technical expertise that the EPA possess far more accessible to local governments, particularly when it comes to matters involving pollution or contamination. This need is particularly evident in complex matters when in order to buy in the technical expertise, councils are forced to expend their resource on expensive external consultants.

An example of where EPA assistance would have been beneficial is a recently reported case at the Symex site in Port Melbourne, which in the past was an EPA licenced site.

This site is now a development site, and was the subject of complaints to council regarding dust and soil discharge from it, as part of the early construction/earthwork phase associated with the new development.

Council was aware through its investigations that this is an old contaminated site, which requires EPA auditor signoff to ensure it is suitable for its future intended use.

Council officers were unaware of the contamination levels and the status of the clean-up works that had been conducted on the site. They sought assistance from EPA officers to clarify if there was potential for contaminated material, entering the environment.

On contacting the EPA we were advised to submit a complaint, which would then be considered by the EPA.

Officers did not hear from the EPA, and when recontacted the EPA advised the investigation was closed, and that no officer from the EPA would be attending, as they viewed this as a council matter.

Council officers then contacted the appointed EPA auditor, who advised us to contact the EPA.

As council has no capacity to test the site, we have only been able to rely on the advice from the developer/site manager that the site is clean. This has left us with no alternative but to manage the site as best we can via the provisions of our local laws and planning controls, and still uncertain whether contaminants are escaping the site.

In this example, Council would suggest that if the EPA's response had been to conduct a joint inspection with council's officers, that the expertise of the EPA's officers would have greatly helped resolve the matter, in a more satisfactory manner.

Legacy Contamination issues

The CoPP would like to see the EPA become actively involved in matters relating to legacy contamination issues, which in the CoPP often involves contamination caused through or by the State's past activities.

We note the positive relationship and response from the Chair and CEO at EPA in relation to the Gasworks Arts Park in Albert Park. A meeting between the EPA and CoPP occurred at CEO and Chair / Mayor level with strong alignment and commitment to working well together to deal with a local park that has significant legacy contamination. These relationships continue to be strong and this is an example of where a partnership approach has worked well.

Unfortunately officers report that the Gasworks Arts Park example is unusual and that they generally experience a lack of willingness to act and take action to resolve issues by the EPA's officers. The CoPP believes that this has impacted the EPA's reputation within the local government sector. Quite often this is seen by some in the sector as a cost shifting exercise, with local government being left to attempt to resolve often complex issues alone, and with very limited expertise and resources.

A complex diesel fuel leak was detected in the Williamstown Rd drains in Port Melbourne two years ago. The EPA, Melbourne Water and the CoPP have been involved in the clean-up, investigation and a legal case around the issue has been worked through. The leak and significant fumes continue to this day, in an area with a large residential community. The distress that this has caused, and continues to cause residents is significant.

Whilst acknowledging that delays have occurred due to parties exercising their legal rights, we believe that this is a good case study for how the EPA, local government and other government agencies could come together to address issues in a more timely manner. Perhaps a joint agency committee tasked with the responsibility for allocating who is responsible for managing the clean-up, overseeing the investigation, and managing communications, could help clarify roles and mitigate costs better than in duplicated efforts.

Issues of amenity, health and environmental conditions will continue to compound as our urban areas expand and residential density increases. In line with this forecast the COPP believes that this independent inquiry will play a crucial role in ensuring our community is properly protected from the impacts of environmental matters.

The City of Port Phillip thanks the inquiry for the opportunity to make this submission, we are happy to expand on the issues that we have raised and provide further details of the examples. We look forward to seeing the outcomes of your work.

Yours sincerely

A solid black rectangular box used to redact the signature of Amanda Stevens.

Amanda Stevens
Mayor