

Hazelwood Mine Fire Inquiry

REGULATORY OVERVIEW

Open cut mining of brown coal in the Latrobe Valley is subject to several regulatory schemes that bear on the management of fire risk. These are:

1. mining regulation;
2. occupational health and safety;
3. emergency management;
4. fire prevention; and
5. land use planning.

Each of these schemes is described below, together with aspects of each scheme's application to the Hazelwood Mine.

1. MINING REGULATION

Legislation: *Mineral Resources (Sustainable Development) Act 1990*

Mineral Resources (Sustainable Development) (Mineral Industries) Regulations 2013

Mineral Resources (Sustainable Development) (Extractive Industries) Regulations 2010

Key Documents: Mining Licence MIN 5004 issued 10 September 1996 (as varied on 11 July 2006)

Hazelwood Coal Mine Work Plan variation approved May 2009

Regulator: Department of State Development, Business and Innovation (formerly Department of Primary Industries)

- 1.1. Regulation of the mineral resources of the State of Victoria (**State**) is undertaken pursuant to the principal legislation, the *Mineral Resources (Sustainable Development) Act 1990* (**MR(SD) Act**) and related regulations *Mineral Resources (Sustainable Development) (Mineral Industries) Regulations 2013* (**MR(SD)(MI) Regulations**) and *Mineral Resources (Sustainable Development) (Extractive Industries) Regulations 2010* (**MR(SD)(EI) Regulations**). This legislation, and thus the regulation of mining in the State, is administered by the Department of State Development, Business and Innovation (**DSDBI**) and provides for the granting of licences for exploration and mining, compensation, rehabilitation, royalties for mining exploration, development activities and enforcement.
- 1.2. The stated purpose of the MR(SD) Act is "to encourage mineral exploration and economically viable mining and extractive industries which make the best use of, and exact the value from, resources in a way that is compatible with the economic, social and

environmental objectives of the State"¹. The primary instruments by which the purpose and related objectives of the MR(SD) Act are pursued are licences, work plans and work authorities. The provisions relating to work authorities do not apply to the Hazelwood Coal Mine.²

Licences

- 1.3. Only a person with a mining licence may carry out mining in the State³. Such a licence is issued by the Minister for Energy and Resources on satisfaction of various requirements⁴ and on conditions as may be imposed by the Minister⁵.
- 1.4. The current mining licence for the Hazelwood Coal Mine, being mining licence MIN 5004, was issued on 10 September 1996 pursuant to section 47A of the *Electricity Industry Act 1993* and is now held by the Hazelwood Power Corporation Pty Ltd (**HPC**) (**Hazelwood Mining Licence**). The Hazelwood Mining Licence has been varied once on 11 July 2006.

Work plans

- 1.5. The MR(SD) Act provides that a person, other than the Crown, must not do any work under a licence other than in accordance with the licence or approved work plan or as authorised by a minerals exemption.⁶ The requirements for a work plan are set out in the legislation,⁷ including the regulations,⁸ in particular Schedule 15 to the MR(SD)(MI) Regulations which lists the Information Required In Work Plan For A Mining Licence and Declared Mine Stability Requirements And Processes (as is also applicable the Hazelwood Coal Mine).
- 1.6. Amongst the requirements for a work plan identified in Schedule 15 are:
- (a) a rehabilitation plan that addresses concepts for the end utilisation of the site, includes a proposal for the progressive rehabilitation and stabilisation of excavation areas amongst other things and includes proposal for the end rehabilitation of the site, including final security of the site and the removal of plant and equipment;
 - (b) an environmental management plan which identifies key environmental issues for the proposal, includes proposals for the management of environmental impacts, includes proposals for the management of wastes, includes a proposed monitoring

¹ s.1, MR(SD) Act

² The provision for the requirement of a work authority (in place of an authority to commence work) was first introduced in the amendments to the MR(SD) Act in 2000, which post-dated the authority to commence in respect of the Hazelwood Coal Mine which was registered on 13 September 1996.

³ s. 8(1)(a), MR(SD) Act

⁴ s. 15(6), MR(SD) Act

⁵ s. 26(2), MR(SD) Act

⁶ s. 39(1), MR(SD) Act

⁷ s. 43(1), MR(SD) Act

⁸ r. 32(b), MR(SD)(MI) Regulations

program and includes a proposal for reporting outcomes of the plan to the local community;

- (c) a community engagement plan that identifies any community likely to be affected by mining activities authorised by the licence, includes proposals for identifying community attitudes and expectations, providing information to the community, receiving community feedback, analysing community feedback and includes a proposal for registering, documenting and responding to complaints and other communications from the community.

- 1.7. The work plan for the Hazelwood Coal Mine was approved on 13 September 1996 and has subsequently been revised 5 times, most recently on 11 May 2009 (**Hazelwood Coal Mine Work Plan**).

Rehabilitation

- 1.8. In addition to the requirements for a rehabilitation plan in the work plan, the MR(SD) Act also contains specific provisions governing the need for, and contents of, a rehabilitation plan. The holder of a mining licence is required to rehabilitate land in accordance with the rehabilitation plan approved by the Department Head⁹ (i.e. the Secretary of DSDBI) with the requirements of such a plan also set out in the Act.¹⁰ The licence holder is required to rehabilitate the land in the course of doing work under the licence and must, as far as practicable, complete the rehabilitation of the land before the licence or any renewed licence ceases to apply to that land.¹¹
- 1.9. The MR(SD) Act requires the holder of a mining licence to enter into a rehabilitation bond for an amount determined by the Minister and there are provisions for an assessment of the bond to be undertaken and increased by the Minister.¹² If satisfied that the land has been rehabilitated as required (including on receipt of certification from an auditor¹³) the Minister must return the bond to the licence holder.¹⁴
- 1.10. With respect to the Hazelwood Coal Mine:
- (a) the Hazelwood Coal Mine Work Plan includes the relevant rehabilitation plan;
 - (b) a rehabilitation bond of \$15,000,000 was lodged for the Hazelwood Coal Mine on 1 October 1996 and was re-lodged for the same amount on 8 June 2001;

⁹ s. 78, MR(SD) Act

¹⁰ s. 79, MR(SD) Act

¹¹ s. 81(1), MR(SD) Act

¹² ss. 79A and 80, MR(SD) Act

¹³ s. 81A, MR(SD) Act

¹⁴ s. 82, MR(SD) act

- (c) HPC has never been required by the Minister to undertake, and so has not undertaken, an assessment of its rehabilitation liability under the provisions of the MR(SD) Act.

Notification of fire

- 1.11. The MR(SD) Act¹⁵ require the holder of a mining licence to notify the Chief Inspector of Mines of a “reportable event” as soon as practicable after the event occurs. The MR(SD)(MI) Regulations¹⁶ defines a “reportable event” to include an explosion or a major outbreak of fire. The report may be made orally or in writing, and must include the date, time and place of the event, a description of the event; and the steps taken to minimise the impact of the event.¹⁷ The Chief Inspector of Mines may request a more detailed written report, which must include: the date, time and place of the event; the details of the event, including the impact, or likely impact of the event on public safety, the environment or infrastructure; any known or suspected causes of the event; details of the actions taken to minimise the impact of the event; and details of actions taken or to be taken to prevent a recurrence of the event.¹⁸
- 1.12. This requirement to notify reportable events was inserted into the MR(SD) Act in 2010,¹⁹ To date there has only been one notification to the Chief Inspector of Mines of a major outbreak of fire, which was in relation to the fire that broke out on 9 February 2014.

2. OCCUPATIONAL HEALTH AND SAFETY

Legislation: *Occupational Health and Safety Act 2004*
Occupational Health and Safety Regulations 2007

Key Documents: Safety Management System prepared by operator of Hazelwood Coal Mine
IPR-GDF Suez Major Mining Hazard 7 – Mine Fire (Major Fire) dated 22 October 2012 (Safety Assessment of Major Mine Fire)

GDF Suez Hazelwood Mine, Emergency Response Plan Hazelwood Mine (Revised May 2013)

Regulator: Victorian Workcover Authority

- 2.1. The *Occupational Health and Safety Act 2004 (OHS Act)* regulates occupational health and safety in Victoria. The OHS Act and the *Occupational Health and Safety Regulations 2007 (OHS Regulations)* set out the key principles, duties and rights for occupational

¹⁵ s. 41AC(2), MR(SD) Act

¹⁶ r. 33(2)(b), MR(SD)(MI) Regulations

¹⁷ r. 33(1)(a), MR(SD)(MI) Regulations

¹⁸ r. 33(1)(b), MR(SD)(MI) Regulations

¹⁹ Energy and Resources Legislation Amendment Act 2009

health and safety in the State and impose obligations on employers at workplaces and those persons (including corporations) that have management or control of workplaces. A "workplace" is defined in the OHS Act to mean "a place, whether or not in a building or structure, where employees or self-employed persons work"²⁰ and includes the Hazelwood Coal Mine.

- 2.2. The Victorian WorkCover Authority (**VWA**) has various functions, including to monitor and enforce compliance,²¹ with respect to the OHS Act and the OHS Regulations.
- 2.3. The OHS Act imposes a duty on an employer to provide and maintain a working environment for their employees (which, for this purpose, generally includes sub-contractors and their employees²²) that is, so far as is reasonably practicable, safe and without risks to health²³.
- 2.4. The obligation is owed by all employers. It means that at the Hazelwood Coal Mine, it is an obligation owed by HPC to its employees, contractors and subcontractors.
- 2.5. In addition, an employer such as HPC owes a duty under the OHS Act to anyone other than its employees and contractors to ensure so far as is reasonably practicable that such people are not exposed to risks arising from the conduct of HPC's undertaking.²⁴ The undertaking for these purposes includes not just the operation of the mine but also fire prevention and suppression.
- 2.6. People who are protected by the section 23 duty include:
 - (a) Firefighters (paid and volunteer);
 - (b) Visitors to the undertaking (such as government inspectors); and
 - (c) Members of the Morwell community.
- 2.7. The concept of reasonable practicability is central to these duties. Section 20 of the OHS Act explains its meaning. The section is set out in full:

20. The concept of ensuring health and safety

- (1) *To avoid doubt, a duty imposed on a person by this Part or the regulations to ensure, so far as is reasonably practicable, health and safety requires the person—*
 - (a) *to eliminate risks to health and safety so far as is reasonably practicable; and*

²⁰ s. 3, OHS Act

²¹ s. 7(1)(c), OHS Act

²² s. 21(3), OHS Act

²³ s. 21(1), OHS Act

²⁴ S. 23, OHS Act

- (b) *if it is not reasonably practicable to eliminate risks to health and safety, to reduce those risks so far as is reasonably practicable.*
- (2) *To avoid doubt, for the purposes of this Part and the regulations, regard must be had to the following matters in determining what is (or was at a particular time) reasonably practicable in relation to ensuring health and safety—*
- (a) *the likelihood of the hazard or risk concerned eventuating;*
 - (b) *the degree of harm that would result if the hazard or risk eventuated;*
 - (c) *what the person concerned knows, or ought reasonably to know, about the hazard or risk and any ways of eliminating or reducing the hazard or risk;*
 - (d) *the availability and suitability of ways to eliminate or reduce the hazard or risk;*
 - (e) *the cost of eliminating or reducing the hazard or risk.*
- 2.8. Section 20(1) of the Act makes it clear that a risk must be eliminated if it is reasonably practicable to do so; if it is not reasonably practicable to eliminate a risk, the risk must be reduced so far as is reasonably practicable. There is no distinction in the OHS Act between what is reasonably practicable for the purposes of protecting employees under section 21 and what is reasonably practicable for protecting others under section 23. In each case it is necessary to apply the criteria set out in s. 20(2) of the OHS Act to determine what the statute requires of a duty holder in a given set of circumstances.
- 2.9. The OHS Act imposes a duty on an employer to notify the VWA immediately on becoming aware that an incident has occurred at a workplace under the management and control of the employer.²⁵ Reportable incidents include ones that expose a person in the immediate vicinity to an immediate risk to the person's health or safety through, amongst other things, a fire.²⁶
- 2.10. In addition to providing a report of such an incident, the employer is required to provide the VWA with a written report concerning the incident within 48 hours of its occurrence.
- 2.11. There are also specific provisions of the OHS Act that:
- (a) impose duties on persons (whether as owner or otherwise) who have, to any extent, the management or control of a workplace to ensure so far as is reasonably practicable that the workplace and the means of entering and leaving it are safe and without risks to health.²⁷

²⁵ s. 38(1), OHS Act

²⁶ s. 37(2)(b), OHS Act

²⁷ s. 26(1), OHS Act

- (b) may attribute liability to officers of bodies corporate that contravene a provision of the OHS Act in circumstances where the contravention by the body corporate is attributable to its officer failing to take reasonable care;²⁸
- (c) impose a duty on persons not to recklessly engage in conduct that places or may place another person who is at a workplace in danger of serious injury;²⁹

OHS Regulations

- 2.12. Part 5.3 of the OHS Regulations apply to workplaces at which work is being done under a mining licence within the meaning of the MR(SD) Act and thus have application to the Hazelwood Coal Mine. Additional provisions in Part 5.3 apply to a "prescribed mine" within the meaning of Regulation 5.3.3. The Hazelwood Coal Mine is a prescribed mine.
- 2.13. The OHS Regulations require the operator of a mine to, amongst other things:
- (a) identify all mining hazards at the mine (defined in the OHS Regulations to be "any activity, procedure, plant, process, substance, situation or other circumstance that could pose a risk to health or safety"³⁰ in relation to a number of listed hazards including "mine fires or hazards"³¹) and assess the risks to health or safety associated with all mining hazards at the mine;³²
 - (b) adopt risk control measures that eliminate (or reduce) so far as reasonably practicable risks to health and safety associated with any mining hazards at the mine;³³
 - (c) ensure compliance with the requirement that it adopt appropriate risk control measures, review and, if necessary revise, the identification of mining hazards, the assessment of mining hazards and risk control measures adopted.³⁴
- 2.14. Additionally, the OHS Regulations require prescribed mines to, amongst other things, establish and implement a Safety Management System (**SMS**) for the mine, in accordance with certain requirements³⁵ including that the SMS:
- (a) provide a comprehensive and integrated management system for all risk control measures;³⁶

²⁸ s. 144(1), OHS Act

²⁹ s. 32, OHS Act

³⁰ r. 5.3.2, OHS Regulations

³¹ r. 5.3.2(j), OHS Regulations

³² r. 5.3.7(1), OHS Regulations

³³ r. 5.3.8(1), OHS Regulations

³⁴ r. 5.3.9(1), OHS Regulations

³⁵ r. 5.3.21(1), OHS Regulations

³⁶ r. 5.3.21(3)(b), OHS Regulations

- (b) contain a comprehensive and systematic Safety Assessment³⁷ in order to assess the risks associated with "major mining hazards"³⁸ (being those mining hazards that have the potential to cause an incident that would cause, or pose a significant risk of causing, more than one death³⁹);
 - (c) contain a description of the operator's safety policy;⁴⁰
 - (d) set out the systems, procedures and other risk control measures by means of which risks to health or safety associated with mining hazards are to be controlled⁴¹ (with those risk control measures in turn required to be tested as often as necessary to ensure compliance with relevant OHS Regulations⁴²);
 - (e) set out performance standards for measuring the effectiveness of the SMS⁴³ and the way in which those performance standards are to be met;⁴⁴
 - (f) set out the process, including method and frequency, for the audit of the effectiveness of the SMS against the performance standards.⁴⁵
- 2.15. As required by the OHS Regulations, HPC has a Safety Management System in relation to the Hazelwood Coal Mine in which "Mine fire" is one of the mining hazards identified and said to be managed.
- 2.16. HPC also assessed "major mine fire" at the Hazelwood Coal Mine as a "major mining hazard" under the OHS Regulations and undertook a Safety Assessment in relation to it (refer document entitled "IPR-GDF Suez Major Mining Hazard 7 – Mine Fire (Major Fire)" dated 22 October 2012. This document consists of:
- (a) A 2-page 'bow-tie' diagram that identifies various risks and control measures "system controls" by number; and
 - (b) A large bundle of those system controls. Not all of the controls mentioned in the diagram have been provided to the Inquiry (e.g. 0288 is missing).
- 2.17. Of the ones that have been provided, system controls numbered 0070 (Maintenance – Grass Cutting); 0071 (Fire Breaks); 0073 (Weather Monitoring); 0074 (Spontaneous Combustion); 0075 (Covering waste coal on the overburden dump); 0167 (Fire Suppression Systems); 0284 (Fire Hydrants); 0288 (Audits of Fire Safety Systems); 0289

³⁷ See r. 5.3.23 for the requirements of a Safety Assessment

³⁸ r. 5.3.21(3)(d), OHS Regulations

³⁹ r. 1.1.5, OHS Regulations

⁴⁰ r. 5.3.21(3)(e), OHS Regulations

⁴¹ r. 5.3.21(3)(f), OHS Regulations

⁴² r. 5.3.24, OHS Regulations

⁴³ r. 5.3.21(3)(g), OHS Regulations

⁴⁴ r. 5.3.21(3)(h), OHS Regulations

⁴⁵ r. 5.3.21(3)(i), OHS Regulations

(Fire Preparedness Plan); 0291 (Training Fire); 0303 (Visual Hot Spot Monitoring); 0447 (Fire Response Provider) are particularly relevant.

- 2.18. The OHS Regulations also require the operator of a prescribed mine to prepare an emergency plan (with certain prescribed elements) and use that plan as the primary means of responding to incidents involving significant risk of serious injury or death.⁴⁶

3. EMERGENCY MANAGEMENT

Legislation: *Emergency Management Act 1986*

Country Fire Authority Act 1958

Fire Services Commissioner Act 2010

Key Documents: Emergency Management Manual Victoria

- Part 2 - Emergency Risk Management and Mitigation in Victoria
- Part 5 - State and Regional Emergency Management Planning
- Part 6 – Municipal Emergency Management Planning – Guidelines for Committees
- Part 6A – Municipal Fire Management Planning – Guidelines for Committees

Integrated Fire Management Planning Framework for Victoria

State Fire Management Strategy 2009

Gippsland Regional Strategic Fire Management Plan 2011

Latrobe Municipal Fire Prevention Plan 2011 (superseded)

Latrobe Municipal Fire Management Plan 2013 (current)

Regulator: Fire Services Commissioner

Country Fire Authority

Latrobe City Council

- 3.1. Victoria has a multi-agency framework for emergency management that is said to enable the exercise of roles and responsibilities and the capacity to adapt to new or changed circumstances with a systemic framework, some elements of which are legislated and others established by agreement.⁴⁷ A key component of Victoria's emergency management arrangements is emergency risk management, which involves the

⁴⁶ r. 5.5.34(1), OHS Regulations

⁴⁷ p. 1-8, EMMV (2013)

systematic identification of risks and measures that can be taken to prevent or mitigate the risk. This takes place at State, regional and municipal levels both generally, and specifically in relation to the risk of fire.

Legislation and Control Arrangements

- 3.2. There are various pieces of legislation that collectively form the emergency management framework in the State.
- 3.3. The *Emergency Management Act 1986 (EM Act)* is the principal Act applying to emergency management in Victoria. It defines most of Victoria's emergency management structure and assigns roles and responsibilities within it. Amongst other things the EM Act provides that the:
- (a) role of the Minister (being the Minister for Police and Emergency Services) is to ensure that satisfactory emergency management arrangements are in place to facilitate the prevention of, response to and recovery from emergencies, but has no operational responsibilities in relation to emergency management.⁴⁸ The Minister is advised on such matters by the Victoria Emergency Management Council⁴⁹. The VEMC Coordination Group supports the Minister in providing coordination for response and recovery activities and in providing information flow during significant emergencies;⁵⁰
 - (b) State Emergency Response Coordinator (**SERC**) (being the Chief Commissioner of Police) is responsible under the state emergency response plan (see below) for co-ordination of the activities of agencies having roles or responsibilities in relation the response to emergencies⁵¹. The EM Act requires the SERC, amongst other things, to appoint a member of the police force to be an emergency response Coordinator for each region and municipal district⁵²;
 - (c) Fire Services Commissioner (**FSC**) has the overall control of response activities to a major fire which is burning or which *may* occur or which has occurred in any area of the State.⁵³ The FSC may appoint other persons as assistant controllers⁵⁴ (known as Deputy State Controllers, Regional Controllers and Deputy Regional Controllers). In the overall control of response activities, the FSC (or a person appointed to perform that role⁵⁵), may exercise the powers and authorities conferred by the

⁴⁸ s. 5, EM Act

⁴⁹ s. 8, EM Act

⁵⁰ p. 1-9, EMMV (2013)

⁵¹ s. 11(1), EM Act

⁵² s. 13(1), EM Act

⁵³ s. 16(1), EM Act

⁵⁴ s. 16(5)(a), EM Act

⁵⁵ s. 16(3), (4), EM Act

Country Fire Authority Act 1958 (CFA Act) on the Chief Officer of the Country Fire Authority (CFA);⁵⁶

- 3.4. The FSC also acts pursuant to the *Fire Services Commissioner Act 2010 (FSC Act)* which provides that the functions of the FSC include to work with fire service agencies to enhance their individual and collective capacity to prepare for the response to days on which it is forecast there is a high risk of major fires occurring⁵⁷ and to develop and maintain incident management operating procedures.⁵⁸ Amongst the FSC's duties is one to provide warnings and information to the community in relation to fires⁵⁹. The FSC Act also requires the FSC to develop a fire services reform action plan for the purpose of enhancing the operational capacity and capability of fire services agencies and improving the capacity of fire services agencies to operate together in planning and preparing for the response to, and in responding to, major fires⁶⁰;
- 3.5. The CFA Act and the *Metropolitan Fire Brigades Act 1958* provide for the establishment of the CFA and the Metropolitan Fire and Emergency Service Board respectively. The CFA Act imposes a general duty on the CFA "of taking superintending and enforcing all necessary steps for the prevention and suppression of fires and for the protection of life and property in case of fire ... so far as relates to the country area of Victoria"⁶¹. The CFA Act provides that the brigades of the CFA are under the order and control of the Chief Officer of the CFA⁶² exercising the powers set out in the CFA Act⁶³, save when such powers are exercised by the FSC pursuant to the FSC Act (see above).
- 3.6. The *Forests Act 1958 (Forests Act)* confers on the Secretary of the Department of Environment and Primary Industries (DEPI) the responsibility for fire suppression and prevention in state forests, national parks or protected public land⁶⁴ whilst the Secretary may also authorise the Chief Fire Office of DEPI to exercise functions in respect of fire related activities⁶⁵.
- 3.7. In relation to the Hazelwood Coal Mine:
- (a) the CFA is the control agency for responding to a fire, except in circumstances where the fire is or may become a "major fire" in which case the FSC may assume the role of State Controller;

⁵⁶ s. 16(7), EM Act

⁵⁷ s. 10(1)(a), FSC Act

⁵⁸ s. 10(1)(d), FSC Act

⁵⁹ s. 24, FSC Act

⁶⁰ s. 12(1), FSC Act

⁶¹ s. 20, CFA Act

⁶² s. 27, CFA Act

⁶³ s. 30, CFA Act

⁶⁴ s. 62(2), Forests Act

⁶⁵ ss. 61A and 61B, Forests Act

- (b) on account of fires already burning in the State and the forecast for dangerous weather conditions, on 9 February 2014, the FSC had already assumed the role of State Controller and in that capacity had already appointed a Regional Controller for Gippsland and an Incident Controller for the fires already burning around Morwell.

Fire Management Planning

3.8. Under the EM Act:

- (a) a municipal council must prepare and maintain a municipal emergency management plan (**MEMP**)⁶⁶ that must contain provisions including identifying the municipal resources and other resources available for use in the municipal district for emergency prevention, response and recovery⁶⁷;
- (b) a municipal council must also appoint a municipal emergency resource officer (**MERO**) (or officers)⁶⁸ and a municipal emergency planning committee (**MEPC**) (who in turn must prepare a draft of the MEMP for consideration by the council)⁶⁹.

3.9. Fire management planning takes place under the rubric of Integrated Fire Management Planning (**IFMP**), a process that was commenced following recommendations made by the Report of the Inquiry into the 2002-2003 Victorian Bushfires, chaired by then Emergency Services Commissioner Bruce Esplin.⁷⁰ IFMP was encouraged in the final report of the 2009 Victorian Bushfires Royal Commission.⁷¹

3.10. IFMP takes place in accordance with the Integrated Fire Management Planning Framework for Victoria, which sets out 22 planning strategies. It involves bringing together a range of agencies and organisations responsible for fire prevention, preparedness, response, recovery and cultural and environmental uses of fire. Its objective is to ensure a more strategic and integrated approach to fire management planning, reducing the impact of fire in Victoria, and assisting in establishing a statewide planning approach and developing processes for continuous improvement. It takes place through committees established at state, regional and municipal level, which until recently were supported by the State Fire Management Planning Support Team.

3.11. At State level, IFMP is the responsibility of the State Fire Management Planning Committee, a sub-committee of the Victorian Emergency Management Council. Its role and responsibilities are set out in the EMMV, Part 5 at 5.6, and include leading the State

⁶⁶ s. 20(1), EM Act

⁶⁷ s. 20(2)(a), EM Act

⁶⁸ s. 21(1), EM Act

⁶⁹ s. 21(4), EM Act

⁷⁰ Report of the Inquiry into the 2002-2003 Victorian Bushfires

⁷¹ 2009 Victorian Bushfires Royal Commission, Final Report, Part 2, Chapter 1 – Victoria's Bushfire Safety Policy, Part 1.8.4 Local Planning For Bushfire Safety

in fire management planning and establishing the structures to support fire management planning.

- 3.12. The State Fire Management Strategy 2009 is largely concerned with the structures and processes for fire management planning, and does not extend to the identification and treatment of risks.
- 3.13. The role and responsibilities of Regional Strategic Fire Management Planning Committees is set out in the EMMV, Part 5, at 5.34.
- 3.14. The Gippsland Regional Strategic Fire Management Planning Committee has produced the Gippsland Regional Strategic Fire Management Plan 2011. Attachment A of the Regional Strategy lists regional assets at risk of fire, including "Power generation facilities: coal mines".
- 3.15. Guidelines for Municipal Fire Management Planning Committees are contained in Part 6A of the EMMV.
- 3.16. The Latrobe Municipal Fire Management Planning Committee has recently published the Latrobe Municipal Fire Management Plan 2013, which replaced the Latrobe Municipal Fire Prevention Plan 2011. The risk of fire in the Hazelwood Power Precinct is identified in Attachment A1 – Register of Assets at Risk – Bushfire, at page 50.
- 3.17. The Latrobe Municipal Fire Management Plan is a sub-plan of the Latrobe MEMP.

4. MUNICIPAL FIRE PREVENTION

Legislation: *Emergency Management Act 1986*

Country Fire Authority Act 1958

Key Documents: State Emergency Response Plan

Regional Strategic Fire Management Strategy for the Gippsland area

Latrobe City Council's municipal fire prevention plan

Regulator: Latrobe City Council

Country Fire Authority

- 4.1. Under the CFA Act the CFA may appoint a regional fire prevention committee (**RFPC**) for each region⁷² and that RFPC will include the officer appointed by the CFA to be the officer

⁷² s. 52(1), CFA Act

in charge of that fire control region (who sits as the executive officer)⁷³ and representatives of brigades in the region⁷⁴, amongst others.

- 4.2. The functions of the RFPC include to submit to appropriate authorities recommendations and plans for the burning and clearing of a co-ordinated system of major firebreaks for the protection of the region⁷⁵ and to co-ordinate fire prevention planning in the region.⁷⁶
- 4.3. The CFA may appoint a municipal fire prevention committee (**MFPC**) in respect of any area being within the country area of Victoria and being the municipal district or part of the municipal district of a municipal council;⁷⁷
- 4.4. Each municipal council, district or part of a district that is in the country area of Victoria must appoint a municipal fire prevention officer (**MFPO**).⁷⁸
- 4.5. A MFPO is empowered to issue to the owner or occupier of land in the municipal district a Fire Prevention Notice (**FPN**) in relation to a fire danger under the control of the owner or occupier.⁷⁹ It is an offence against the CFA Act, for the recipient of a FPN to fail to take the action directed by the FPN.⁸⁰
- 4.6. The MFPC must consist of persons including the fire prevention officer of the municipal council, a representative of each CFA and industry brigade in the area and a representative of the municipal council.⁸¹ The functions of the MFPC include:
 - (a) to advise the appropriate authorities as to the existence of and steps to be taken for the removal of fire hazards within the area;⁸²
 - (b) to advise the MFPO concerning the removal of fire hazards;⁸³ and
 - (c) to recommend to the CFA or to the appropriate authorities any action which the committee deems necessary or expedient to be taken for reducing the risk of an outbreak of fire or for suppressing any fire which may occur within the area.⁸⁴

⁷³ s. 52(2)(a), CFA Act

⁷⁴ s. 52(2)(b), CFA Act

⁷⁵ s. 53(a)(1)

⁷⁶ s. 53(b), CFA Act

⁷⁷ s. 54(1), CFA Act

⁷⁸ s. 96A(1), CFA Act

⁷⁹ S. 41(1), CFA Act

⁸⁰ S. 41D, CFA Act

⁸¹ s. 54(2), CFA Act

⁸² s. 55(b), CFA Act

⁸³ S. 55(b), CFA Act

⁸⁴ s. 55(d), CFA Act

- 4.7. A municipal council must prepare and maintain a municipal fire prevention plan (**MFPP**) for its municipal district in accordance in the advice and recommendations of the MFPC⁸⁵. As the appointment of a MFPC is not mandatory, the MFPP may be prepared by the Municipal Emergency Management Planning Committee or the MFPP, but in any event will be a sub-plan of the municipal emergency management plan.⁸⁶ A MFPP must contain provisions in accordance with prescribed requirements including identifying areas and land use in the municipal district which are at particular risk in case of fire⁸⁷, specifying how each identified risk is to be treated⁸⁸ and specifying who is responsible for treating those risks.⁸⁹
- 4.8. The Latrobe City Council has a Municipal Emergency Management Planning Committee (which, it may be assumed, is a MEPC for the purposes of the EA Act) and a sub-committee being the Municipal Fire Management Planning Committee (**Latrobe's MFMP**). Presumably Latrobe's MFMP is the MFPC for the purposes of the CFA Act. Latrobe's MFMP has prepared a MFMP that was endorsed by the Latrobe City Council on 31 October 2013.
- 4.9. There is considerable overlap between the municipal fire prevention scheme in the CFA Act and Integrated Fire Management Planning. The interaction between the two schemes is unclear.
- 4.10. There is an employee of Latrobe City Council who is both the MERO, under the EM Act, and the MFPO, under the CFA Act.

5. LAND USE PLANNING:

Legislation: *Planning and Environment Act 1987*

Key Documents: Latrobe Planning Scheme

Regulator: Latrobe City Council
Minister for Planning

- 5.1. The framework for land use, development planning and environment protection in Victoria is set out in the *Planning and Environment Act 1987 (PE Act)*. The PE Act requires the relevant planning authority to take into account significant environmental effects when

⁸⁵ s. 55A(1), CFA Act

⁸⁶ p. 6A-I, EMMV

⁸⁷ s. 55A(2)(a), CFA Act

⁸⁸ s. 55A(2)(b), CFA Act

⁸⁹ s. 55A(2)(c), CFA Act

preparing a planning scheme or an amendment⁹⁰ and to take into account significant environmental effects when making a decision on a planning permit application.⁹¹

- 5.2. Under the PE Act, planning schemes and amendments are prepared, administered and enforced by a planning authority, relevantly the Latrobe City Council and the Minister for Planning. Planning permits are issued and enforced by the Latrobe City Council as the responsible authority.
- 5.3. The Latrobe Planning Scheme comprises both Victoria Planning Provisions (**VPPs**), determined at State level, and Local Planning Provisions (**LPPs**), determined by the Latrobe City Council. The parts of the Latrobe Planning Scheme that bear on fire risk management are:
- (a) VPP clause 10 - Operation of The State Planning Policy Framework
 - (b) VPP clause 13 – Environmental Risks
 - (c) VPP clause 20 - Operation Of The Local Planning Policy Framework
 - (d) LPP clause 21 – Municipal Strategic Statement, comprising:
 - LPP clause 21.01 – Municipal Profile
 - LPP clause 21.02 – Municipal Vision
 - LPP clause 21.03 – Natural Environment Sustainability
 - LPP clause 21.04 – Built Environment Sustainability;
 - LPP clause 21.05 – Main Towns
 - LPP clause 21.06 – Small Towns
 - LPP clause 21.07 – Economic Sustainability.
 - LPP clause 21.08 – Liveability
 - (e) VPP clause 37.01 – Special Use Zone
 - (f) LPP clause 37.01 – Schedule 1 to the Special Use Zone – Brown Coal
 - (g) VPP clause 42.01 – Environmental Significance Overlay
 - (h) LPP clause 42.01 – Schedule 1 to The Environmental Significance Overlay – Urban Buffer
 - (i) VPP clause 44.06 – Bushfire Management Overlay

⁹⁰ s. 12(2)(b), PE Act

⁹¹ s. 60(1)(e), PE Act

- (j) VPP clause 52.08 – Earth and Energy Resources Industry
 - (k) VPP clause 52.47 – Bushfire Protection: Planning Requirements
 - (l) VPP clause 52.48 – Bushfire Protection: Exemptions
- 5.4. The Latrobe Municipal Strategic Statement, LPP clause 21.07 – Economic Sustainability, provides for a buffer of at least 750 m between urban development and existing or future coal resource development, based on the known impacts of earth subsidence, noise, dust, fire hazard and visual intrusion. The coal buffer policy provides that the distance between urban settlement and any future open cut coal mine should be at least 1 km.
- 5.5. LPP clause 42.01 – Schedule 1 to The Environmental Significance Overlay – Urban Buffer provides for a buffer zone around open cut coal mines, within which a permit is required for certain uses. A development within 1 km of a mining licence is required to have a fire management plan.
- 5.6. The Hazelwood Coal Mine falls within Special Use Zone 1 under the Latrobe Planning Scheme (**SUZ1**), which is a Schedule to the Special Use Zone and for which the Latrobe City Council is both the planning authority and the responsible authority.
- 5.7. The primary purpose of SUZ1 is to provide brown coal mining, electricity generation and associated uses. The secondary purpose of SUZ1 is to allow interim non-urban uses that will protect brown coal resources and discourage the use or development of land that is incompatible with future mining and industry. Dwellings are allowed within SUZ1 in restricted circumstances only.
- 5.8. Both State and local policies guide decision making in the Latrobe Planning Scheme. The use of land in SUZ1 must not adversely affect the amenity of the neighbourhood, including through the emission of noise, odour, fumes, smoke, vapour, steam, soot, dust and waste products amongst other things. The Latrobe City Council must consider in deciding on an application to use land in SUZ1 various factors including measures to cope with fire, particularly in the vicinity of a brown coal mine.
- 5.9. However, VPP clause 52.08 – Earth and Energy Resources Industry provides that no permit is required to use or develop land for mineral extraction licensed under the *Mineral Resources (Sustainable Development) Act 1990*. The effect of this exemption is that the mine regulator (DSDBI) rather than Latrobe City Council is the relevant authority in relation to the use and development of land within the Hazelwood Mine boundaries