

18 December 2020

DPTI Planning Reform – Draft Planning & Design Code
Phase Three – Urban Areas
Public Consultation Submission

By email - DPTI.PlanningReformSubmissions@sa.gov.au

In accordance with the advised opportunity to provide feedback on the revised draft Planning and Design Code (Code) from 4 November 2020 to 18 December 2020 we take this opportunity to reiterate our previous comments and confirm that we have subsequently had confirmation of this position from the gas regulator who has confirmed that the safe operation of the pipeline is a responsibility that lies with the gas pipeline operator, not planning. We refer to the attached letter from Michael Malavazos to SCAP dated 8 Dec 2020 in his capacity as Director of Engineering Operations, Energy Resources Division, Department for Energy and Mining and as the regulator of the pipeline operator.

As previously noted, we write regarding the proposed implementation of the new Planning & Design Code (the **Draft Code**) and specifically the reference in the Draft Code to the Strategic Infrastructure Gas Pipelines Overlay (the **Overlay**).

Arcadian Property, via subsidiaries of our business, owns and develops land for residential and mixed uses throughout South Australia. A major project of ours, Springwood, is located in Gawler East and portion of the land being redeveloped for this project includes the presence of a high-pressure gas pipeline (the **Pipeline**).

The Pipeline is maintained and operated by SEA Gas and is located within registered easements for purposes associated with SEA Gas' operation of the Pipeline. The land within which these easements are located was re-zoned by Ministerial DPA in 2010 for the purpose of residential and mixed use development and under the current Development Plan is located in Mixed Use Centre Policy Area 3 of the Residential (Gawler East) Zone (consolidated 18 July 2019).

The Pipeline was located on our land prior to the Ministerial DPA, which contemplated this infrastructure being in place when re-zoning the land.

We confirm that SEA Gas is a private business, regulated by the Department for Energy & Mining in South Australia (**DEM**) and is owned by the ASX listed APA Group and the Retail Employees Superannuation Trust.

We believe it is relevant that the ownership of SEA Gas is noted with regards the position put forward here, as it is a privately owned business operating to achieve profit for its shareholders.

It is of significant concern to Arcadian that the Draft Code proposes to create the Overlay, given the practical implications of the policy wording in the Draft Code. We also question how the extent of the Overlay has been established as it does not reflect any buffer or setback distance noted in any legislation governing the gas industry.

The stated Desired Outcome (DO) of the Overlay is the:

“Safe operation of high-pressure gas transmission pipelines and associated infrastructure.”

We acknowledge DPTI’s desire to ensure the safe operation of this infrastructure, an issue we as landowners have consistently sought to support with the licenced operator on our land.

We further note the Performance Outcomes noted in the Draft Code:

Land Division

PO 1.1 Land division preserves access to high pressure gas transmission pipelines for maintenance and emergency response purposes.

Land Use

PO 2.1 Development maintains safe operation of high-pressure gas transmission pipelines.

DTS/DPF 2.1 Development does not incorporate the following land uses: (a) educational establishment; (b) emergency services facility; (c) hospital; (d) industry; (e) pre-school; (f) retirement facility; or (g) supported accommodation.

With regards PO 1.1 and PO 2.2, I would draw your attention to the existence of easements on our land, easements we understand are replicated in every location where a high-pressure gas pipeline exists. When the Pipeline was constructed on our land, these easements were created specifically so as to ensure access to the Pipeline for maintenance and emergency response purposes. Further, the easements were created with sufficient land to ensure the safe operation of the high-pressure gas transmission pipeline.

The easements held by SEA Gas provide a defined legal tenure over our land to achieve the two statement aims within this Overlay of the Draft Code.

As such, when we have reviewed the extent of the Overlay proposed, it extends significantly beyond the land held by easement. Naturally, then, it does not make sense that the Draft Code would propose to inhibit a registered proprietor’s enjoyment and redevelopment potential of its own land, zoned for redevelopment and over which the pipeline operator - a private business - holds no tenure whatsoever.

Whilst the plan of the Overlay does not specifically state that this expanded area would be subject to an easement in the same way as was acquired by SEA Gas previously, the implications for determining what activities might be restricted in this zone are seriously fraught.

Is it DPTI’s intention that town planners, local Council or DPTI, would arbitrate on what is and is not possible in this expanded zone? How are these planners informed? If reliant on the pipeline operator or its regulator, would this not then give powers of direction to a third party over a planning outcome?

Other infrastructure holders, for example SA Water or SAPN or another private operator like Electranet, hold easements over land for preservation of similar rights to those noted in the Draft Code for the Overlay.

In every example where other infrastructure operators require additional land for exercise of their legislative obligations, such operators are required to either compulsorily acquire such land and/or negotiate tenure via easements with landowners, in each case with appropriate market based compensation payable.

Why, then, would DPTI propose to legislate that a privately owned business, in this case SEA Gas, could restrict development on land over which it has no legal rights, without appropriate compensation for land owners?

In this situation, it would appear the Draft Code is transferring the legislative obligations of the regulated pipeline operators to private landowners.

For background, I have set out below the relevant legislation governing high pressure gas pipelines:

- 1. The operation of a transmission pipeline for carrying petroleum or other regulated substances is a "regulated activity" under the Petroleum and Geothermal Energy Act 2000 (**the PGE Act**) (S10, PGE Act).*
- 2. A licence from the Minister is required to conduct a regulated activity such as the operation of a gas pipeline. (Sections 11 and 13, PGE Act)*
- 3. SEA Gas is the holder of Pipeline Licence PL13 (**PL13**) issued under the PGE Act. PL13 expires at midnight on 11 February 2023. (Pipeline Licence 13, Clause 2.)*
- 4. Condition 3.1 of PL13 requires SEA Gas to construct, maintain and operate the pipeline in accordance with the PGE Act and the Petroleum and Geothermal Energy Regulations 2013 (**the PGE Regulations**).*
- 5. Regulation 29 of the PGE Regulations requires that the design, manufacture, construction, operation, maintenance, testing and abandonment of pipelines are carried out in accordance with the requirements of Australian Standard AS 2885 Pipelines - Gas and Liquid Petroleum.*
- 6. AS 2885 is a series of standards that comprises 8 individual documents. AS 2885 requires a Safety Management Study (**SMS**) to occur at regular intervals and, relevantly, at any time that a new or changed threat to the pipeline occurs. (AS 2885.1 Pipelines - Gas and liquid petroleum Part 1: Design and construction, 2.2.4)*
- 7. Section 96 of the PGE Act states that "a licensee must not carry out regulated activities unless a statement of environmental objectives is in force for the relevant activities under this Part".*
- 8. It is a mandatory condition of every licence (including PL13) that the licensee must comply with an approved statement of environmental objectives (**SOE**) relevant to activities carried out under the licence. (Petroleum and Geothermal Energy Act 2000, s 104(1).*

9. The SOE for SEA Gas' pipeline is due to be reviewed by July 2020. (Statement of Environmental Objectives, Revision 8, Cover Page.)

10. Environmental Objective 8 of the SOE is "to minimise atmospheric emissions" and contains the goal of "to minimise impacts of gas venting activities". (Statement of Environmental Objectives, Revision 8, page 17.)

11. The Performance measure is listed as "gas venting activities to include consultation with stakeholders and emissions tracking for greenhouse gas abatement and reporting purposes". The Assessment criteria is "no reasonable complaints received in relation to gas venting activities" and "gas venting to be documented".

12. Environmental Objective 9 is "to minimise disturbance or damage to ... land use and to remediate where disturbance cannot be avoided". (Ibid)

13. Relevant performance measures are "Easement agreements outlining legal responsibilities of SEA Gas and landholders" and "measures implemented to minimise visual impact where appropriate".

14. The relevant assessment criteria is "no disturbance outside the ROW or approved access and work areas", "duration of disturbance does not exceed agreed timeframe, without prior consultation with stakeholders" and "no reasonable complaints received in relation to asset disturbance or reinstatement".

15. The balance of the goals with respect to environmental objective 9 concern the allowance of the continuation of "current land use activities post construction".

16. Environmental Objective 17 is "to minimise noise impacts due to operational activities". The goal is to "ensure that operational activities comply with noise abatement standards". (Statement of Environmental Objectives, Revision 8, page 27.)

17. The Performance measures are that "Operational activities in the near vicinity of sensitive areas (e.g. near residences) must comply with EPA noise abatement guidelines". The Assessment Criteria is "compliance with EPA noise abatement guidelines" and "no reasonable complaints received in relation to noise abatement issues".

18. Environmental Objective 18 is "to minimise atmospheric emissions" with a goal of "to minimise impacts of gas venting activities". (Ibid.)

19. The relevant performance measure is "gas venting activities to include consultation with stakeholders and emissions tracking for greenhouse gas abatement and reporting purposes". The assessment criteria is "no reasonable complaints received in relation to gas venting activities".

Accordingly, the provisions of the PGE Act and PGE Regulations protect the public from risks inherent in regulated activities. This is dynamic in that the need for an SMS is triggered by any event or circumstance which alters the pipeline environment. It is also dynamic in that the licence and the SOE have limited lifespans and must be reviewed on a regular basis (the terms of which expire shortly).

The link between development that inevitably occurs along the length of pipelines and the pipeline regulation system is straightforward. The grant of consent for development and the consequential change to the land use environment around a pipeline is a trigger for an SMS to be undertaken, in accordance with the PGE Act and PGE Regulations.

The PGE Act and PGE Regulations, therefore, regulate the issues which the Draft Code states it is seeking to achieve, importantly through the regulatory framework of DEM as expert in pipeline construction, operation and maintenance.

The Draft Code restrictions in DTS/DPF 2.1 will re-zone certain land to become undevelopable for uses which are appropriate and permissible in certain locations. Under the current Development Plan where such identified uses are permissible in planning terms it would be incumbent on the gas industry's legislation and regulatory framework to ensure pipeline operators undertake remedial work, implement protection measures or acquire land/easements if required by its legislation. As outlined above, there is a clear legislative framework for this to occur which ensures pipeline operators can continue to meet their legislative requirements.

We note that in our recent experience where SEA Gas required additional land to continue safe management of the Pipeline, it was directed by its regulator to acquire this land from us and expand its easement, following a SMS. Our interpretation of the implementation of the Draft Code would be that were this circumstance to reoccur in the future, it would become our responsibility, as a private landowner and developer, to forego land for development and meet costs of the pipeline operator.

This outcome surely cannot be the intention of the Draft Code. **This reflects a direct financial gain for the gas pipeline industry as the expense of private landowners.**

In certain circumstances, such works as outlined above may incur costs for the pipeline operators to continue to operate their businesses according to their relevant legislation. Were the Draft Code to be adopted as proposed in the Overlay, this would de-value privately held land rendering it unable to be redeveloped **for the direct economic benefit of a private gas pipeline operator** such as SEA Gas.

We strenuously object to the implementation of the Overlay in the Draft Code which would redirect the safety and financial responsibilities of the gas industry to private landowners.

The Overlay in the Draft Code has the potential to result in:

1. Effective expansion of easements potentially required for the operation of gas infrastructure without compensation being payable to private landowners
2. Confusion and inappropriate decision making from planning authorities without specialist understanding of the gas pipeline regulation and operation
3. A 'downgraded' re-zoning of private land restricting development so as to prevent gas pipeline operators having to invest in meeting their legislative obligations

We believe the gas industry has effective and clear legislation and regulation which does not require the Overlay and would request its exclusion from the Draft Code.

I would be happy to speak further on this issue with any member of your team.

Kind Regards

ARCADIAN PROPERTY



Warwick Mittiga

Chief Executive Officer



8 December 2020

To the State Planning Commission

SCAP Meeting 9 December 2020: Development Number 960/D024/20 and 490/D029/20

I refer to the above land division applications in the vicinity of Pipeline Licence (PL) 13, licensed to SEA Gas Pty Ltd for the Port Campbell to Adelaide gas pipeline (the pipeline) under the *Petroleum and Geothermal Energy Act 2000 (PGE Act)*. This Act is administered by the Energy Resources Division of the Department for Energy and Mining (DEM-ERD).

The *PGE Act* requires all transmission pipelines to be designed, constructed, operated and maintained in accordance with Australian Standard (AS) 2885: *Pipelines – Gas and Liquid Petroleum* (Regulation 29). This standard exists to ensure protection of the pipeline, which in turn ensures the safety of the community, protection of the environment and security of (gas) supply to users.

The Licensee must also develop and periodically review an Environmental Impact Report (EIR) and Statement of Environmental Objectives (SEO), against which DEM-ERD enforce compliance.

AS 2885 requires that the pipeline be designed (i.e. at construction stage) to ensure it will be compatible with the surrounding land use.

Regarding the above development applications, the pipeline was designed to be compatible with Rural land use in this location, based on the information available regarding the existing and planned land use at the time of construction.

Where there is a change in land use, the Pipeline Licensee must demonstrate that risks have been reduced to As Low as Reasonably Practicable (ALARP).

The proposed development will result in a change to the existing land use classification under AS 2885, from Rural to Residential.

In 2017, as required by AS 2885, a Safety Management Study (SMS) was undertaken by SEA Gas, involving the Gawler Council, the developer and DEM-ERD as the technical regulator of the transmission pipeline, to assess the change in risk associated with the new development and identify the controls required to ensure that the risk of the pipeline operation remains ALARP throughout and following completion of the proposed development. This SMS study identified controls to ensure that construction and activity in the vicinity of the pipeline as a result of this development does not introduce unacceptable risk to the pipeline operation.

If the land division applications are approved, DEM-ERD recommends a condition that the actions of the 2017 SMS are complied with. If there are any changes to the proposed land division or land use outside the scope of the 2017 SMS study, a new SMS for the development must be undertaken, and the proponent, licensee and relevant stakeholders must participate in a SMS validation workshop. The controls and actions identified in the SMS must then be implemented.

With regard to PDC 36 (a) and (b), as identified in the SMS, the development does have potential public safety impacts which may impact on the continued operation of the pipeline infrastructure if the controls and actions identified in the SMS are not implemented. It is DEM-ERD's understanding

these controls and actions have been implemented or agreed, with the exception of the change in land use near the Main Line Valve (MLV) vent (see below)

The MLV facility (MLV2) has been designed to enable depressurisation of the pipeline for both scheduled maintenance and emergency scenarios. The design and location of the vent was determined at the time of construction of the pipeline to be compatible with the identified and proposed land use. In the very unlikely event of a pipeline failure (depending on the nature of the incident) operation of this vent may significantly reduce the consequence and hence lower the risk to public health and safety of any such event.

The vent will generate significant noise when required to operate, and also create a flammable atmosphere in the area.

Introduction of new residential dwellings within the vicinity of the vent will impact the continued operation of this vent and/or increase the risk to public safety associated with its operation (refer to PDC 36 (a) and (b)).

To address the risk of ignition in the case of a gas venting event, SEA Gas have confirmed that no houses (or other sources of ignition) should be constructed within 45m of the vent. DEM understand that the proposed design is consistent with this requirement.

With regard to the exposure to noise in the case of an emergency gas venting event, SEA Gas have previously advised that noise exposure from all design venting scenarios is considered tolerable for occupants of residential properties constructed 220m or further from the vent. SEA Gas have undertaken a risk assessment to demonstrate that for the current, limited number of houses located within 220m of the vent, it would be reasonably practicable to organise rapid evacuation of the occupants to allow for timely use of the vent. This demonstrates that the risk to the public can be considered ALARP for the existing dwellings.

If the development was to proceed as proposed, further assessment will be required to determine if the risk will continue to be ALARP, or if additional controls are reasonably practicable to reduce the risk further. This is in line with both AS 2885 and the PGE Act itself (refer to section 95).

This is a complex assessment and through the processes under the PGE Act, DEM-ERD will require that the Licensee provide demonstration of the potential consequences, the anticipated frequency at which the vent will be required to be operated, and the viability of any controls to reduce the risk. ALARP requires demonstration of whether the cost or difficulty of implementing additional controls is grossly disproportionate to the reduction of risk achieved.

DEM recommend that if any additional dwellings are proposed to be located within 220m of the vent, further assessment must be conducted to demonstrate how the risk of operation of the SEA Gas pipeline will remain ALARP. Any additional controls identified as reasonably practicable must be implemented.

It was identified in a previous study that further investigation may be warranted into the feasibility of moving the MLV vent to different location. This should be explored further as a potential risk reduction method if an ALARP study is conducted, however long term potential for a similar development event to occur in the vicinity of the future vent site, and of other vents along the pipeline, must also be considered. While compromise of the operation of one vent may be acceptable in isolation, development near other vents may increase the risk rapidly to unacceptable.



If you have any queries in relation to this matter, please contact me on ([REDACTED]) or [REDACTED]

Yours sincerely,

A handwritten signature in black ink, appearing to read 'M. Malavazos'.

Michael Malavazos
Director Engineering Operations
Energy Resources Division
Department for Energy and Mining