

27 February 2020

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

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

I 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



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Chief Executive Officer