13 November 2015

Major Hazards Advisory Committee
C/- Planning Panels Victoria
Level 5, 1 Spring Street
Melbourne

Dear Sir/Madam

MAJOR HAZARD FACILITIES ADVISORY COMMITTEE: DISCUSSION PAPER

Thank you for giving the Department of Economic, Development, Jobs, Transport and Resources (DEDJTR) the opportunity to provide an initial comment to the Major Hazard Facilities Advisory Committee.

Earth Resources Regulation (ERR) of DEDJTR wishes the following comments to be considered as part of the Discussion Paper to be released by Major Hazard Facilities Advisory Committee.

It is considered the following comments provided by the Department are particularly relevant to Part - 5(b) of the ‘Terms of Reference’ document provided by the Committee:

5. The Advisory Committee is to make recommendations on the following matters:

b) principles for applying land use buffers more broadly to other uses with adverse amenity potential.

LAND DEVELOPMENT AROUND HIGH PRESSURE GAS PIPELINES

Background

The Earth Resources Regulation Branch of DEDJTR, in collaboration with Energy Safe Victoria, is responsible for licensing, operational regulation and overseeing construction of high pressure transmission pipelines under the Pipelines Act 2005.

Decisions to change land use and intensify development around pipelines, licensed under the Pipelines Act 2005, are currently being made without the required public safety assessments, and are leading to inconsistent and unknown safety outcomes.

The process to assess public safety in these situations is detailed in the Australian Standard AS2885 (the pipelines standard) – Pipelines Gas and Liquid Petroleum, which all States adopted under a COAG communiqué dated 25 February 1994. The Pipelines Act 2005 obliges only the pipeline licensee to comply with the standard. However there is no commensurate obligation on planning authorities or developers to perform such an assessment as the standard is not referenced in either the Planning and Environment Act 1987 (PEA) or the Victoria Planning Provisions (VPP).
This lack of recognition of the pipelines standard in the VPP has been highlighted in recent Planning Panel Reports, feedback from councils and discussions with stakeholders such as the Municipal Association of Victoria (MAV) and the Metropolitan Planning Authority (MPA).

**Issues**

Planning decisions to change land use and develop land in Victoria are made by the planning departments (planning authority) of metropolitan and shire councils across the State. These decisions are made in a piecemeal sense through a planning permit process and a strategic sense through the ‘planning scheme amendment’ process. In the planning permit sense permission is sought to develop a particular piece of land in, usually, accordance with the current land zoning. In the strategic sense councils may decide to amend the planning scheme to rezone a strategic parcel of land from industrial to residential to reflect a new policy direction.

In making planning decisions planning authorities are guided by the Victoria Planning Provisions (VPP) and the Planning and Environment Act 1987. Within the VPP clause 19.03 of the State Planning Policy Framework acknowledges the need to “recognise existing transmission-pressure gas pipelines in planning schemes and protect them from further encroachment by residential or other sensitive land uses, unless suitable additional protection of pipelines is provided”. This clause is, not translated into local policies, zoning overlays or particular provisions within the VPP.

In the absence of a suitable mechanism in the VPP, the majority of planning permit applications for land use change and developments generally pass through the planning system without any notification to ESV, DEDJTR or the pipeline licensees. Consequently public safety assessments are not being carried out in accordance with the pipelines standard.

DEDJTR receives notice of major proposals to rezone land (planning scheme amendments) which may impact upon pipelines. Section of 19(1) (c) of the PEA requires that a planning authority (generally the council) give notice of the preparation of a planning scheme amendment to prescribed ministers. The Minister for Energy & Resources (the Minister) is a prescribed minister and as such under s35 (4) of the PEA the Minister can withhold consent to an amendment where there would be “Unreasonable prejudice to the use of a pipeline for which a licence has been granted under the Pipelines Act 2005”.

Typically DEDJTR, in conjunction with ESV, will provide advice and information to council where a pipeline runs through a proposed amendment area. However because of the lack of acknowledgement of pipelines and the pipelines standard in the VPP, planning authorities and Planning Panels Victoria have highlighted the difficulties in responding to this advice given.

Furthermore by the time the Minister receives notification of an amendment, significant cost and time has been expended by a proponent in preparing supporting technical reports and plans. Thus it is considered sensible that any potential objection is addressed before plans advance to planning scheme amendment notification.
It is also significant to note that the Minister for Planning does have the power to make exemptions from giving notice of a planning scheme amendment under s20 of the PEA if he/she considers that "the interests of Victoria or any part of Victoria make such an exemption appropriate". Accordingly significant land use decisions can be made without notification to the Minister. If s20 of the PEA is followed, the s35 consent powers of the Minister are not applicable.

DEDJTR primary concern is how to ensure that this situation is addressed to ensure that planning decisions throughout Victoria are being made with due consideration of any potential impact on high pressure transmission gas pipeline infrastructure.

DEDJTR considers the MHF Advisory Committee Discussion Paper to be a suitable forum to discuss the presence of issues posed by high pressure gas pipelines in the context of strategic planning and development decisions.

INVEST ASSIST

DEDJTR (Invest Assist) has an interest in providing a land use environment that encourages and stimulates investment opportunities to sustain long term economic growth. This can be jeopardised by the uncertainty created from land use conflict, particularly at the interface between industrial zones and residential zones. Just as new industrial users are required by the VPPs to respect existing sensitive uses, the encroachment of sensitive uses within close proximity to existing industrial activity should also recognise that in an environment where off-site impacts are present, a new use must respect the buffer of the established use to avoid future conflict.

To ensure that industrial precincts (whether it be an MHF facility or an industrial zone) are not compromised by encroachment from incompatible uses, the planning system should have an appropriate and consistently applied methodology that will trigger consideration of the 'reverse buffer' concept. To this end, DEDJTR has been working closely with the EPA, local government and other relevant agencies to formulate an agreed position on this matter. It would be of benefit to DEDJTR if the Advisory Committee gives this issue further consideration.

Should you require any further information on the above matter please contact Andrew Scott, Planning Program Manager - Earth Resources Regulation on (03) 8082 1977.

Yours sincerely

Mark Ritch
Manager Sustainable Development Unit
Earth Resources Regulation