

6 June 2018

Our Ref: NLB AUS392-138452

Ms Kathy Mitchell
Planning Panels Victoria
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By email: planning.panels@delwp.vic.gov.au

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Dear Ms Mitchell

Fishermans Bend Planning Scheme Amendment GC81 Closing submissions on behalf of APA Group

Thank you for affording the opportunity to provide closing submissions to Planning Panels Victoria regarding the Fishermans Bend Planning Scheme Amendment GC81.

1 Introduction

- 1.1 We continue to act on behalf of APA GasNet Australia (Operations) Pty Ltd, APA Power Holdings Pty Ltd and APL O&M Services Pty Ltd (collectively referred to as **APA**), which together make up Australia's largest natural gas infrastructure business, owning and operating approximately \$19 billion worth of energy assets.
- 1.2 APA owns and operates three high pressure pipelines which traverse Fishermans Bend, and will be affected by Amendment GC81 (**Pipelines**). APA is required to operate the Pipelines in a manner that minimises adverse environmental impacts, and protects the public and property from health and safety risks.
- 1.3 We refer to our client's submissions provided to the Panel on 16 April 2018 in respect of Amendment GC81 (Document 231), and the Minister for Planning's revised Capital City Zone tabled with the Panel on 14 May 2018 (Document 307).
- 1.4 In our client's submissions, a number of requests were made to the Panel, including:
- (a) a recommendation that a Safety Management Study (**SMS**) be obtained prior to the adoption of the proposed planning controls, in order to safely manage areas surrounding the Pipelines;
 - (b) inclusion of a provision in the CCZ which controls the development of sensitive land uses within the measurement length of the Pipelines;
 - (c) inclusion of a provision in the CCZ which requires the development of a Construction Management Plan (**CMP**) for proposals within 50 metres of the Pipelines, irrespective of whether or not a planning permit is required; and

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- (d) a recommendation from the Panel that APA, as the owner and operator of the Pipelines, be nominated as a recommending referral authority for applications to develop sensitive uses within the measurement length of the Pipelines included in Amendment GC81.

- 1.5 The Minister's revised CCZ does not adequately accommodate our client's requests. It is inconsistent with previous recommendations from various Panels, as referred to in our client's submissions dated 16 April 2018, and it does not establish an effective framework to manage the risks associated with potential rupture of the Pipelines.
- 1.6 We acknowledge Direction No. 26 issued by the Panel on 17 May 2018, and accordingly we **attach** our client's proposed amendments to the revised CCZ which addresses some of these issues.
- 1.7 It is our client's view that adoption of these amendments is essential to ensure the integrity of the Pipelines and ongoing security of supply, and importantly, the safety of the precinct and the public.

2 Safety Management Study

- 2.1 Our client is concerned that the Minister has not included any provision in the CCZ which indicates that an SMS should be undertaken. Further, in respect of the Minister's Part C submissions dated 24 May 2018 (Document 350), despite our client's submissions, there is no discussion of the need for an SMS.
- 2.2 It is imperative that the planning scheme framework is underpinned by a thorough SMS process which considers the nature of the land upon which developments are to be proposed.
- 2.3 The SMS is a preliminary and essential step in the planning process. It involves consideration of all identifiable root causes of possible Pipeline failure, it considers the changing and evolving environment within which these assets are located, it allows mitigation and minimisation of risk where possible, including an assessment of any residual risk, and it provides for the development of appropriate controls.
- 2.4 An SMS provides an effective mechanism for collaboration between stakeholders such as DELWP, Council, VicRoads, other referral authorities and key landowners and developers to minimise risk and to enable the safe development of land within the area of the Pipelines.
- 2.5 A failure to establish an effective SMS process now will create a risk that will grow exponentially as the land development encouraged by Amendment GC81 continues to increase. The process must occur at an early stage to assess and minimise the risk associated with a change in land use, including construction risks and ongoing land use risks.
- 2.6 Additionally, if an SMS is carried out for the entire precinct, the measurement lengths of the Pipelines proposed in the revised CCZ could be significantly reduced to the benefit of future precinct development.
- 2.7 Where land use change occurs, it has become standard practice to undertake an SMS at an early stage to appropriately address the principal changes being made on a precinct-wide basis.

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- 2.8 Given the potentially severe consequences to life and property if the Pipelines were to rupture, it is essential that a comprehensive risk management framework is founded upon an SMS.
- 2.9 We request that the Minister ensure that an SMS is considered and conducted for the entire precinct before the planning controls are finalised. The SMS should be completed as part of the framework planning.
- 2.10 Any application for a permit for a sensitive use within the measurement lengths should be required to either comply with a precinct wide SMS (if any), or be accompanied by its own SMS, the outcomes of which need to be considered in any decision making and may need to be reflected in permit conditions.

3 Sensitive uses

- 3.1 The Minister's revised CCZ accommodates some sensitive land use triggers. However, the amendments do not adequately address our client's requests.
- 3.2 Regarding developments within the measurement length of the Pipelines, the CCZ does not address the following sensitive uses:
- (a) Education centres;
 - (b) Hospitals;
 - (c) Residential aged care facilities;
 - (d) Retail premises; or
 - (e) Service stations.
- 3.3 The failure to account for these sensitive uses creates significant risk. Each of these sensitive uses relates to areas where vulnerable people are located and generally and/or where large numbers of the community congregate. Regarding service stations, our client's concern is in respect of the combustibility of the site, and the resultant threat to safety that this poses.
- 3.4 Our client asserts that there is no rationale for the inclusion of certain land use triggers in the CCZ such as dwellings and child care centres, with an omission of others such as education centres and residential aged care facilities. The position under the CCZ is inconsistent.
- 3.5 Our client refers again to the Precinct Structure Plans for Mt Atkinson and Plumpton where, for example, residential aged care facilities, education centres and retail premises were included as sensitive land uses.
- 3.6 To ensure public safety, it is crucial that the CCZ is amended to account for the sensitive land uses outlined in paragraph 3.2 above. To this end, we have included these in the Table of Uses of our client's proposed amendment to the Minister's CCZ.
- 3.7 The controlled development of sensitive uses within the measurement length of the Pipelines should be consistent with the SMS if that process is undertaken.

4 Construction Management Plan

- 4.1 Our client acknowledges that the revised CCZ requires a CMP where a permit is necessary for a sensitive use on land within the measurement length of the Pipelines.
- 4.2 However, this does not adequately address our client's request. Our client reiterates that a CMP should be required for **all** proposals within 50 metres of the Pipelines, irrespective of the need for a permit.
- 4.3 We have amended the wording of the CMP requirement in the revised CCZ. Adopting this robust framework will ensure the safety of the precinct and the public.

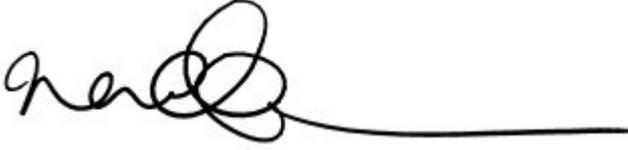
5 Recommended referral authority

- 5.1 The revised CCZ states that our client's views are to be considered in respect of an application for a permit to develop sensitive land uses within the measurement length (or any reduced notification zone as determined by an SMS) of the Pipelines. However, this does not satisfactorily address our client's requests for referral or at least formal notification.
- 5.2 We acknowledge that there is an intention to establish an 'associated mechanism for notifying the pipeline operator', as per the Minister's submissions.
- 5.3 Our client is willing to accede to the Minister's view that it is not to be nominated as a recommending referral authority for applications to develop sensitive land uses within the measurement length of the Pipelines.
- 5.4 Therefore, we have amended the wording of the revised CCZ to include a requirement for notification to APA as the licensee for the pipelines prior to an application to use or develop land for sensitive uses is determined.
- 5.5 The provision of such notice will act as an added safeguard to ensure that proper and orderly planning occurs.

Thank you again for providing us with the chance to present our client's closing submissions to the Panel.

If you have any questions please contact Natalie Bannister.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Natalie Bannister', followed by a long horizontal line extending to the right.

Natalie Bannister
Partner
Hall & Wilcox