

Changes to protect fuel pipelines

Submissions feedback – August 2024

Introduction

The department is proposing changes to planning rules for developments located close to High Pressure Dangerous Goods (HP DG) pipelines. The changes will strengthen measures to manage potential risks earlier in the planning process.

The proposed changes would apply to developments that increase the number of people in the area near pipelines and/or include sensitive land uses such as centre-based childcare or hospitals.

The department exhibited an explanation of intended effect (EIE) and *Draft Guideline for planning proposals near High Pressure Dangerous Goods pipelines* (Guideline) in April-May 2022 to detail the proposed changes and benefits.

Submissions summary

The department received 19 submissions: 1 from a NSW government agency, 11 from council, 3 from pipeline operators (POs), and 3 from private consultancies.

Almost all stakeholders broadly supported the changes, with submissions acknowledging the need for the proposed measures to manage safety and property risks.

Key issues raised

Common issues raised are summarised below, along with the department's response.

Distance, population and sensitive use criteria

The department's proposal uses the terms 'significant population increase' and 'sensitive land uses' for the development application (DA) notification trigger and for application of the local planning direction (Ministerial direction) to planning proposals. The requirements are proposed to apply within a specified distance from the pipelines.

Feedback summary

Stakeholders made a range of suggestions on the definitions for significant population increase and sensitive land uses. Some stakeholders wanted precisely defined terms for clarity. Stakeholders were concerned with the differences in the distance and sensitive use criteria currently used by

some POs compared to the department's proposal. POs may use distances identified in Australian Standard AS 2885 – Pipelines – Gas and Liquid Petroleum (AS 2885).

A request was made to increase the DA notification buffer to reflect AS 2885. Suggestions were made for what should be included as a 'sensitive use', based on AS 2885, PO policies and the Standard Instrument – Principal Local Environmental Plan.

Department response

The department developed the proposal in consultation with the POs and NSW pipeline regulator. It aims to provide a balanced, consistent approach for land use planning across NSW.

The DA notification and local planning direction are formal measures to manage pipeline risks. Other ways to manage pipeline risks include proponents engaging with POs during the early stages of preparing a DA or planning proposal. Pipeline safety risks can be identified and managed early on when preparing a DA or planning proposal, through a comprehensive impact assessment considering surrounding land uses.

Sensitive use and population

The department has developed a clearly defined trigger for DA notifications. This formulaic approach is essential to facilitate automation of the NSW Planning Portal notification. When submitting a DA, applicants will select the development type[s] which are the subject of their DA. Some of these types are sensitive uses, and some identified as being likely to result in a significant increase in population.

The Guideline will retain the flexible approach outlined in the exhibited version. It will use only examples of sensitive uses and scenarios which would increase population significantly. Sensitive uses will be described in the Guideline to assist understanding. This approach is appropriate to accommodate changes to development types and technology over time. It also accommodates the diverse range of scenarios which require judgement by the planning proposal authority as to whether they constitute a sensitive use.

Distances from pipelines

While the DA notification buffer and AS 2885 measurement distance are used to broadly manage risks around pipelines, they do not perform the same specific function.

The DA notification buffer takes a risk management approach and is focused on managing land use planning issues for individual development proposals. Where two or more pipelines run in parallel and have different notification distances, the greater distance would apply.

AS 2885 outlines a measurement length area from a specific pipeline based on the worst-case impact distance from the pipelines without consideration of the likelihood of occurrence of such an event.

The DA notification buffer is established based on the current NSW land use safety planning framework. The measurement lengths are referenced under the NSW *Pipelines Act 1967*, which provides the legislative framework for managing construction, operation and maintenance of pipelines.

Therefore, the DA notification buffer will remain as exhibited.

Variation to criteria used by pipeline operators

Where distance and sensitive use criteria used by POs differ from the department's proposal, stakeholders:

- would apply the department's requirements as a minimum, and
- can consult with the PO on what additional measures they recommend for a specific DA or planning proposal. These recommendations could be addressed during the design and assessment stage. They may also be considered in drafting any approval conditions, if the consent/planning authority deems appropriate.

Alternative policy options proposed

An alternative option of imposing individual pipeline-specific criteria as triggers for the DA notification and local planning direction would be complicated and costly to implement. Another option of an optional local environmental plan (LEP) clause to manage pipeline risks for DAs may result in a complex and inconsistent approach across NSW. These options do not align with NSW Government's objective for a simpler and more efficient planning system, and are not the preferred option.

Suggested improvements to Guideline

Feedback summary

A small number of comments requested further information on how the Guideline's setback distances were determined, and why it was different to AS 2885 and section 2.77(2) of the T&I SEPP.

Other comments made on the Guideline included:

- clarity on what a qualified risk specialist would be, and their availability
- inclusion of contact details for pipeline operators

- a suggestion to reference relevant legislation in the Guideline, and reference the Guideline in the local planning direction
- requests for clarity on the process for checking the adequacy of the proponent's risk assessment
- further detail on engineering controls and planning matters
- expanding scope to cover hydrogen pipelines.

The Guideline also recommends a planning authority gather advice from POs as early as possible on planning proposals where risks need to be considered. Stakeholders sought clarity on how they would obtain information from the POs as recommended in the Guideline, and whether this could be shared with applicants.

Department response

A generic quantitative risk assessment was undertaken for the representative pipelines. This analysis was carried out in accordance with HIPAP 6 and adopted the realistic but conservative assumptions on pipeline operating conditions. These setback distances are established from the risk analysis result. They are measured from the centreline of the pipeline at the relevant risk criterion.

Variations to the AS 2885 and T&I SEPP distances are discussed further in the section above.

The consequence from pipeline failure is usually far reaching and a quantitative risk analysis is usually required. In accordance with HIPAP 6, a hazard analysis should only be undertaken by someone with the qualifications and experience to deal with the scale and complexity of the development and its associated hazards. This will typically require a specialist who possesses professional qualifications and practical experience in a relevant scientific or engineering discipline. Basic competencies include:

- knowledge and in-depth understanding of the hazards associated with the storage, handling and processing of hazardous substances, including dangerous goods
- knowledge and experience in the area of hazard identification, risk evaluation, risk assessment and risk control
- knowledge and understanding of safety management systems, relevant legislation, codes of practice and standards, including relevant HIPAPs
- report writing.

The department has referenced the Guideline in the local planning direction. Relevant legislation is referenced throughout the Guideline.

The department's Hazard team supports the relevant regional planning team on pipeline risk assessments, such as by reviewing documentation. Council should continue to liaise with the relevant departmental regional team regarding the relevant studies to be conducted for planning proposal review. Adequacy checks and detailed reviews of risks assessments are usually undertaken prior to the gateway process.

The department has been consulting with POs during this reform process, and the Guideline outlines the information sharing process between pipeline operators and applicants.

The Guideline is not intended to detail engineering safeguards or provide advice on how to decide on the overall planning merit of a proposal. The risk consultant will provide recommendations based on site-specific details.

If a hydrogen pipeline is operating at a pressure that requires licensing under the NSW *Pipeline Act 1967*, the principles of the Guideline are relevant for consideration in the planning proposal process. Currently, hydrogen pipelines are not affecting any metropolitan areas in NSW. When a relevant hydrogen pipeline exists in future, the T&I SEPP may be amended to capture this or other new licensed pipelines, and the Guideline may be updated accordingly.

Impact on development

Feedback summary

A small number of stakeholders were concerned the proposal may inappropriately restrict development on land near HP DG pipelines. Clarity was sought on whether the Guideline needs to be included on planning certificates.

Department response

The proposal is not intended to prohibit development and does not mandate building setbacks. It supports faster planning decisions through better risk analysis earlier in the process. It also reduces the likelihood of developers having to bear the costs of avoidable mitigation or remediation measures later on.

As explained in the exhibited EIE, an automatic notification to POs will occur in scenarios such as when a DA for residential development proposes to significantly increase the population on land within the notification buffer. This could include proposing to replace individual dwellings with high rise apartments. The DA notification proposal provides the PO with an opportunity to comment during DA exhibition, and assists proponents and consent authorities to proactively identify and manage potential safety risks.

The Guideline includes recommended setback distances and/or population densities. However, it clarifies that a planning proposal is not necessarily inconsistent if it does not align with these criteria. The proposal can still be supported by a planning authority.

Planning certificates

The department considers the Guideline does not restrict development of land and so does not need to be included as an 'adopted policy' in planning certificates issued by councils. The term 'adopted policy' is defined in section 10 of Schedule 2 to Environmental Planning and Assessment Regulation 2021.

Under section 10.7(5) of the *Environmental Planning and Assessment Act 1979* (EP&A Act), a council may include advice on such other relevant matters affecting the land of which it may be aware. Councils may choose to include such advice on HP DG pipelines in planning certificates related to land near or intersected by these pipelines.

Application to other planning pathways

Feedback summary

A small number of submissions asked to expand application of the reform proposal to other planning approval pathways, including complying development and activities under Part 5 of the EP&A Act (development without consent).

A request was also made to expand the automatic DA notification to planning proposals.

Department response

Application to complying development is not proposed at this stage, but may be considered in future for larger proposals. Other complying developments are typically lower risk, smaller-scale, and less likely to constitute a sensitive use.

Some sensitive land uses are permitted as development without consent under SEPPs. Therefore, application to development without consent activities may be considered in future. In the meantime, it is expected that public authorities will consult with POs where necessary as part of the design and assessment stage of infrastructure activities.

Expanding the automatic notification for planning proposals would not be possible due to the way the criteria are defined – see discussion earlier under 'Distance, population and sensitive use criteria'.

Commencement of changes

Feedback summary

Clarity was sought on whether the proposals would apply to existing or future development.

Department response

The notification will only apply to new local and regional DAs submitted after activation of the notification service. It will apply to any subsequent modification applications for those DAs. This means it will not apply to:

- existing development where consent has been granted
- DAs currently under assessment
- modification applications for DAs, where the original DA was submitted before commencement of the notification service.

Likewise, the local planning direction only applies to new planning proposals submitted after the direction commences (expected August 1, 2024). It does not impact strategic planning processes in progress or completed, unless a new planning proposal is submitted after the commencement date.

The notification and local planning direction only apply if located within the distance criterion and the proposal triggers the population and/or sensitive use criteria.

Other issues

A request was made to copy in council when a DA is automatically notified to the PO. The department will consider this when designing the notification.

Requests for pipeline wide studies and a professional certification scheme are not supported due to cost and practicality implications.

The department considers the exhibited materials sufficiently explain the proposal, and so does not intend to publish the draft notification requirement and draft local planning direction.

Clarification of proposed changes

This section clarifies the proposed changes in response to the feedback:

- The distances in section 2.77(2) of the T&I SEPP are not being amended. The consultation referral and requirement to consider pipeline-related risks in section 2.77 will be retained – and apply in addition to the new DA notification, which applies to a larger distance from the pipeline. The smaller distances in the T&I SEPP compared to the new DA notification reflects their different purposes (see discussion earlier regarding the DA notification, and the distinct requirements in T&I SEPP section 2.77(1)).

- There are two *separate* criteria which can trigger the DA notification or application of the local planning direction, if located within the specified distances from a HP DG pipeline:
 1. a significant increase in population
 2. sensitive use development.If only one (or both) of these criteria apply, a DA will be notified and a planning proposal will be subject to the local planning direction.
- The notification applies only to *DAs* and the local planning direction applies only to *planning proposals*. While no automated notification is proposed for planning proposals, the Guideline says a planning authority should seek to notify and gather advice from POs as early as possible.

DAs are distinct from planning proposals

A DA is submitted as part of the development assessment process. For example, a DA could seek approval for building a childcare centre or aged care facility. A planning proposal is a strategic planning process which may seek rezoning of land, such as from a rural use to an industrial use.

The proposed reform therefore addresses both strategic planning processes and development approval processes.