NEGOTIATING PIPELINE EASEMENTS IN SOUTH AUSTRALIA*

By Jon Gregerson**

THE EXISTING LICENCES

To date in South Australia only four pipeline licences have been granted. Three have been granted to the Pipelines Authority of South Australia ('PASA') which came into being in 1967 to construct and operate the first pipeline from Moomba to Adelaide at the Torrens Island power station. This was a 22 inch natural gas pipeline approximately 780 km long. There have been a number of variations and modifications since the licence was originally granted. Numerous spur lines or 'laterals' running off the mainline have been added including ones to Angaston and to Burra and more importantly a major lateral to Port Pirie. The Port Pirie lateral was subsequently extended to go across the floor of Spencer Gulf to enable Sagasco to service Whyalla and Port Bonython. All licences are for 21 years and Pipeline Licence No 1 was renewed for a furhter period of 21 years in April last year.

In 1981, Pipeline Licence No 2 was granted to the Cooper Basin producers for the Moomba to Port Bonython Liquids Pipeline. For a substantial portion of its distance the liquids pipeline follows the same corridor as the natural gas pipeline. Pipeline Licence No 3 was granted last year to PASA in the South East of South Australia to take natural gas from Katnook near Penola to Safries Pty Ltd's potato chip factory. This pipeline is only approximately four kilometres long and six centimetres in diameter. Pipeline Licence No 4 was also granted last year to PASA in the South East of South Australia to take natural gas from Katnook to Mount Gambier to be reticulated in the Mount Gambier system and, on the way, to provide fuel for the Apcel paper mill.

The logic as to what constitutes a separate pipeline for pipeline licensing purposes is not always clear. Extensions and modifications require the consent of the Minister but avoid some of the more onerous requirements of an application for a new licence. The fact that there are two licences commencing at Katnook is at least partly due to a timing difference. The route of Licence No 3 was fixed before that of Licence No 4 was finalised and there was a need to commence construction on No 3 without delay to meet the customer's requirements. Gas has been supplied to Safries since February this year and to the Apcel paper plant since March. Conversion of Mount Gambier township to natural gas commenced on 15 April.

Pipelines tend to be as straight or direct as possible for construction cost reasons. In South Australia, the annual pipeline licence fee is based on length. At the moment the annual fee is $50 per kilometre although an

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upcoming amendment to the Petroleum Act indicates that it is under review and will be dealt with in new regulations which will prescribe 'a licence fee calculated in accordance with the prescribed scale.' I have not seen the proposed regulations and consequently do not know what 'scale' the Government has in mind.

The only other pipeline in South Australia is the natural gas pipeline from Moomba to Sydney which is set up under the Commonwealth's pipeline legislation.

THE FUTURE

As to the future, there has been plenty of talk about piping gas into South Australia from the Northern Territory. In March, Magellan Petroleum issued a study of its gas reserves which showed substantially increased probable and possible recoverable reserves of 1,541 billion cubic feet. However, recent press reports suggest that although South Australia would like to purchase Northern Territory gas and run a new pipeline from the central Australian gas fields to Port Augusta, the Northern Territory is not in favour. One of the priorities from the Northern Territory Government's point of view is to see Nabalco Ltd convert its Gove alumina refinery from oil field electricity generation to gas. Furthermore, if the Northern Territory joined its fields to Moomba it would then have access to both the Adelaide and Sydney markets. The other alternative from South Australia's point of view, which will most probably now go ahead, is the connection of the Moomba gas pipeline with the natural gas network in South-West Queensland.

In anticipation of some interstate connection, the State Government of South Australia late last year amended the Pipelines Authority Act to make it clear that PASA had power to be involved in pipelines that carried gas and oil to and from and through South Australia and not just within South Australia. There is also an amendment to the Petroleum Act due for introduction to Parliament shortly which, amongst other things, amends the definition of a pipeline to make it clear a licence can be granted for a pipeline that starts or terminates (or indeed starts and terminates) outside the boundaries of South Australia. It would seem that Rex Connor's dream of a national grid of oil and gas pipelines around Australia is becoming a reality.

THE LEGISLATON

Pipelines can only be constructed and operated pursuant to a pipeline licence granted under Part IIB of the Petroleum Act. While there is no reason why a party other than PASA could not apply for and be granted a licence, in actual fact Government policy favours PASA as the licensee for the very good reason that that is where the expertise is. To date, PASA is the only licensee of natural gas pipelines and in each case it purchases the gas at source and sells it at the various delivery points. However, different considerations apply to liquid hydrocarbons which need to be treated and on-sold to a variety of customers. In those circumstances, PASA has not wished to become purchaser and seller. So in relation to Pipeline Licence

No 2 which was granted to the Cooper Basin Producers rather than to PASA, the producers took the view that as they were going to have to pay for that pipeline they wanted to own it and the licence. However, PASA acquired the pipeline corridor at its own cost and made it available to the producers under the Producers (Right of Way) Agreement. PASA in fact maintains the pipeline although the producers operate it. The producers no doubt found it easier to raise their own funds with their bankers by being the owner of the pipeline and the holder of the licence.

The power compulsorily to acquire land is obviously essential to put together the pipeline corridor. While to date all corridors in South Australia have been acquired by PASA, which has its own powers of compulsory acquisition, the power nevertheless exists in s. 80j of the Petroleum Act to assist any other pipeline licensee.

Section 80j provides that a licensee shall, as soon as practicable, make all proper endeavours to acquire by agreement with the owners or occupiers all land that he requires for the purposes of the construction or operation of the pipeline. It further provides that if, after diligent endeavours, the licensee fails to acquire the land that he requries for the construction or operation of the pipeline by agreement, the licensee may apply to the Minister for his approval for the compulsory acquisition of the land and if he receives such approval, he may proceed compulsorily to acquire the land. Section 80k provides that the Governor may upon such terms as may be recommended by the Minister of Lands grant to the licensee any right to, over or affecting Crown lands which the licensee requires for the purpose of the construction or operation of the pipeline.

Section 12 of the Pipelines Authority Act provides that PASA may, with the approval of the Governor, acquire land, either by agreement or compulsorily, for the construction, operation, maintenance or repair of a pipeline and related petroleum storage facilities or for purposes incidental thereto. Section 12(2) provides that the Land Acquisition Act shall apply in relation to the acquisition of land under this section. The rather special arrangements of Pipeline Licence No 2 were specifically accommodated by sub-section (1a) which provides that land may be acquired by PASA irrespective of whether PASA *or some other person* is to construct or operate the pipeline. Furthermore, s. 17 was amended specifically to provide that PASA could grant licences over its property or authorize others to use its easements for the purpose of facilitating the construction, operation, maintenance or repair of a pipeline by some other person. At common law, it is not possible for the proprietor of an easement to transfer the benefit of an easement by itself because the grant is made appurtenant to a dominant tenement and the two need to be dealt with together. An authorisation to use a PASA easement under this section confers to the extent set forth in the authorisation, the rights of the proprietor of the easement.

Where PASA is involved there is yet a further power available in s. 17 of the Pipelines Authority Act which provides that any land which is held under a lease granted under the Crown Lands Act or the Pastoral Act and which may be resumed thereunder for any public purpose may also be

resumed under those Acts for the purposes of the Pipelines Authority Act as if the purpose of the Pipelines Authority Act were a public purpose.

Powers of resumption of Crown leasehold land are to be found in the Crown Lands Act (s. 53) and the Pastoral Land Management and Conservation Act (s. 32).

It is also worth noting the rather interesting power contained in s. 17 of the Pipelines Authority Act which provides that any body corporate can grant to PASA any *easement, lease, licence or other authority* over any land owned by the body corporate to enable PASA to construct a pipeline whether the body corporate has power to do it under its memorandum and articles of association or not. A similar enabling power appears in s. 80j of the Petroleum Act. Notwithstanding anything contained in the memorandum and articles or constitution of any body corporate, it shall be lawful for a body corporate to *transfer* to the pipeline licensee any land which the licensee requires for the construction or operation of the pipeline. Although it has not been tested, one would presume that the *transfer* of any land would extend to the grant of any interest in land such as an easement or lease. These powers were designed to avoid a company insisting on compulsory acquisition because it did not have power to agree to a grant without amending its memorandum of association. However, these days companies tend to have all the powers of an individual anyway.

There is a subtle difference between the procedure that needs to be adopted depending on whether PASA is the pipeline licensee or not. Section 80j requires the licensee to make all proper endeavours to acquire *by agreement.* PASA is exempted from this requirement of the Petroleum Act, and quite a few others, by proclamation made on 23 May 1968. Section 12 of the Pipelines Authority Act provides that PASA may acquire the land *either by* agreement or compulsorily. In practice the difference is probably not important because PASA attempts to acquire by agreement if possible. This creates better relations with the land owner and is normally much quicker and cheaper because legal costs and valuer's fees will be less.

ACCESS

Obviously it is preferable if the licensee can obtain access to conduct its investigations by obtaining consent from the land owner. If the licensee is denied access by the land owner it does not have the right to insist upon immediate entry. In relation to freehold land, it can be obtained by use of s. 27 of the Land Acquisition Act. This involves service of a notice of intention to enter on the occupier of the land (or the owner if there is no occupier). Under s. 27(3), any person who interferes with the authorised person's (ie the licensee's) survey pegs or marks or wilfully obstructs the authorised person or any of his agents will be guilty of an offence and liable to penalty. The authorised person can enter into temporary occupation of the land for certain purposes if more than surveying is required. Any person with an interest in the land can claim compensation.

Alternatively, power is provided by the Surveyors Act; Section 40(1) of which provides as follows:

> A registered surveyor or any person authorised in writing by a registered surveyor may at any reasonable hour enter any land for the purpose of performing a survey and be accompanied by such other persons and do all such things as are reasonably necessary for that purpose.

In relation to pastoral leases, there is specific power of entry available in s. 61 of the Pastoral Land Management and Conservation Act.

THE EASEMENT

The fundamental principle to remember about pipelines is that licensees need to be assured that they have security of title. This is necessary to protect their investment, ensure they can meet their contractual obligations to their customers, and to assist in obtaining funding.

The land that the pipeline licensee has to deal with in South Australia usually falls into one of three categories:

— Crown lease — pastoral or perpetual;
— Freehold;
— Other — roads, railways, reserves.

Where the land is Crown land, the Crown could actually transfer the land in fee simple to the pipeline licensee. However, the practice has been only to grant easements by way of lease or, where the land is already leased to Crown lessees, to consent to easements by way of under-lease. Pipeline licences are for limited periods (21 years) and public policy does not favour a licensee owning a pipeline corridor other than for the purposes of operating a pipeline. It is not intended that anyone should own what may become a non-operating corridor at some time in the future.

Where the land is in private ownership an attempt could be made actually to purchase the land. However, this would involve applications for land division which would be made complex, if not impossible, in many areas because of the lack of access to the corridor. In other words, the only access to the corridor owned by the pipeline licensee is the corridor itself and where this passes through Crown land which the Crown leases to say a pastoral lessee so that it is only under-leased to the pipeline licensee, the possibility arises that in the future, when an under-lease expires, that some land-locked freehold blocks will have been created.

In any event, from a practical point of view, the licensee really only wants an easement and not full ownership rights. The licensee does not want to have to fence off his land or look after it or pay land tax. He does not wish to exclude the land owner who in most cases acts as an unpaid caretaker of the corridor. However, where a pumping station or other above-ground facilites are concerned different considerations apply. The licensee will normally want to be able to fence them off and exclude everybody from them. Consequently, freehold title is desirable for all such facilities.

The capital cost of acquiring a freehold corridor would be substantially in excess of that of obtaining an easement because of the extra headings of compensation which would have to be taken into account. It

might be suggested that a pipeline licensee who owns his corridor is in a better position to give security to his bank for the purpose of funding the project but I doubt if this is really so.

At common law, an easement needs to be appurtenant to land, the so-called dominant tenement. This could be satisfied by the pipeline licensee owning some land at or near the collection point or the discharge point of the proposed pipeline. Section 41a of the Law of Property Act provides that it shall be possible to create in favour of the Crown or of any public or local authority constituted by an Act an easement that is not appurtenant to any other land, an easement in gross, and further to make an easement appurtenant to another easement. PASA is a public authority constituted by an Act. Thus, while PASA is able to hold an easement in gross a private pipeline licensee will not be able to. He would be able to make an easement appurtenant to another easement if this suited his purpose.

Obviously, the first thing to do in any attempted negotiation is to work out the value of the land or more accurately the amount of compensation you are prepared to offer. A reasonable rate of compensation should be offered because:

— the land owner is best kept on side;
— there is more chance of reaching a negotiated settlement;
— there are time and cost savings if successful:

and in the ultimate result, if agreement is not reached, it will be fixed by the Land and Valuation Court with all the attendant expense that would involve.

The land valuation falls to a qualified valuer and I understand that he would normally look at all the possible headings for compensation set out in s. 25 of the Land Acquisition Act. It is only realistic for the valuation to be conducted taking into account those principles including such matters as loss occasioned by reason of severance, disturbance and injurious affection because that is what the court will do if the matter proceeds to compulsory acquisition. While the Land Acquisition Act does not directly apply to compulsory resumptions of Crown leases, it is generally assumed that the same principles apply. Both the Crown Lands Act (s. 53) and the Pastoral Land Management and Conservation Act (s. 39) provide generally for compensation to be payable in the case of resumption without listing detailed headings for compensation. There is no reason to believe all the normal components of compensation known to valuers will not apply.

Under the Land Acquisition Act (s. 34) compensation can be offered in terms of works that may be appropriate to protect, re-instate or improve the land.

Whether the land is Crown leasehold or freehold, the practice has been to fix on a lump sum once-only payment. This is obviously most appropriate for an easement over freehold land but has been considered preferable for an easement by way of under-lease as well. The ongoing under-lease rental is made a nominal figure. This was done in the pre-capital gains tax days for simplicity. It amounted to a once-only payment and incidentally did not give the land owner income. Now of course with

capital gains tax different considerations apply. Since *Gray's Case*,[1] it has been clear that the grant of a lease amounts to the creation of a new asset by the land owner which is deemed to be acquired by him on creation. The reasoning seems to apply to an under-lease as well. Thus, it will have no cost base (other than the costs of the lease preparation which would be borne by the licensee anyway) and consequently the land owner will be liable for capital gains tax on the full amount of the compensation paid by the licensee. Following this case, the Commissioner issued a ruling IT2561 extending these principles to easements. If the grant of an easement occurs after 20 September 1985, there is the acquisition by the grantor of a new asset created after that date. Therefore, the CGT provisions apply on the disposal of the new asset. This is so notwithstanding that the underlying asset, for example the land or head lease, may have been acquired before 20 September 1985. I am not sure how a valuer takes this into account if at all. I consider he probably should make allowance for it because after all he is meant to be assessing compensation rather than valuing the easement. No doubt much more thought will need to be given to this issue in future because it obviously has a wider implication than simply pipeline easements. It applies to any easements, for example, for electricity lines or sewer lines.

It is normal for the land owner to seek his solicitor's costs and valuer's costs as well as the cost of the easement. It is also worth noting that in South Australia at least, pipelines are almost entirely underground and are not fenced off so that the land can be used again for growing crops, vines, etc. A service road may be left on the easement in some areas which are not adequately serviced by existing tracks but generally PASA's philosophy has been to disturb the land and interfere with the land owner as little as possible.

One matter which can adversely affect land owners is a broad right to enter on to their land to get access to the easement and to work on the easement. Usually the easement is broad enough physically to enable contractors to work entirely on the easement. Access can obviously be gained along the easement itself. However, sometimes for reasons of efficiency in delivery of materials and manpower it is necessary to try to provide as an addition to the easement for the right (together with servants, agents, contractors etc. and with or without vehicles, plant and equipment) of access over the land of the land owner between the easement and the nearest surveyed road. You also need to consider whether because of construction difficulties in some areas or storage requirements for materials, extra rights are required over land immediately adjoining the easements, whether in the construction phase or for the later repair and maintenance of the pipeline.

The term of the under-lease depends on the term of the Crown lease. If the Crown lease is a perpetual lease, the practice has been to take a 99 year under-lease. If the Crown lease is a pastoral lease, the practice has been to make the term a day or two short of the term of the pastoral lease. As a matter of practice, the Minister of Lands did not renew a pastoral lease without providing for the necessary under-lease for the pipeline cor-

1. *Gray v. Federal Commissioner of Taxation* (1989) 20 ATR 649.

ridor. However, recently the legislation controlling pastoral leases was changed to introduce a 42 year term with the right every 14 years to top it up to 42 years again. It seems that in future with pastoral leases, we should provide for similar rights in relation to the under-lease.

Security dictates that the memorandum of under-lease or the easement is to be registered. Under s. 118 of the South Australian Real Property Act, a lease of mortgaged or encumbered land shall not be valid and binding against any mortgagee or encumbrancee of the land unless such mortgagee or encumbrancee shall have consented in writing to such lease prior to the same being registered. Very often the consent of a bank will need to be sought. If the mortgagee or encumbrancee requires compensation (which is unlikely), this would normally come out of the land owner's total compensation package. In other jurisdictions, a similar result may need to be achieved by obtaining a lifting of the mortgage and its replacement after the under-lease had been registered. With freehold land, a mortgage needs to be partially discharged to allow registration of the easement. A lease on freehold land needs to be partially surrendered and both the freeholder and the lessee are entitled to compensation.

TERMS OF THE GRANT

It is best if all parties will accept the same form of documentation. This helps from an administrative point of view. Agreeing to variations with one land owner is likely to become known to others and consequently your ability to restrain changes is limited. It is quite common for land owners to seek the advice of solicitors and in the case of pastoralists their accountants. It is unrealistic when dealing with these people to suggest that requested changes cannot be made. The reality is that you need to be prepared to negotiate changes to the terms.

The extent of the grant whether by way of underlease or easement would be similar to the following:

> The easement shall mean a full free and unrestricted right and liberty for the pipeline licensee and its agents servants workmen contractors and others authorised by the pipeline licensee from time to time and at all times hereafter to enter and remain upon and to break the surface of dig up and use that portion of the said land above described marked ... in Lands Titles Office File Plan Number ... for the purpose of laying down constructing fixing taking up maintaining repairing relaying or examining one or more pipelines therein together with all such apparatus and equipment communications and power systems drips valves fittings meters connections and other equipment whether on over or below the surface of the said land as in the opinion of the pipeline licensee shall be necessary or useful in connection with or incidental to the said pipeline or pipelines or its undertaking (all sometimes hereinafter referred to as "the pipeline") *and of* using and maintaining the pipeline for conveying oil natural gas and any derivative thereof and artificial gas and other gaseous or liquid hydrocarbons and any products or by-products thereof and any other substance which in the opinion of the pipeline licensee may be transported by pipeline *and further for such purposes aforesaid* a full free and unrestricted right and liberty of ingress egress or regress from time to time and at all times hereafter for the pipeline licensee and any its agents servants workmen contractors and others authorised by it with or without vehicles plant and equipment of any description through over across and along the said portion of land.

Apart from the compensation, the most important issue usually from the land owner's point of view is the indemnity that he gets. The

pipeline licensee ideally simply gives an indemnity against all loss damage or expense caused by the pipeline licensee in the exercise of his rights under the easement. However, advisers to land owners have expressed fears about the possibilities of explosion and rupture which are not caused by the pipeline licensee's exercise of its rights but really by some act of God or inevitable accident such as earthquake or lightning strike. In the circumstances, it seems reasonable to accede to such a broad indemnity and in any event such occurrences should be capable of being covered by insurance. Furthermore, it is arguable that the licensee is subject to strict liability as a matter of law under the principle of *Rylands v. Fletcher* because both natural gas and liquid hydrocarbons are most probably inherently dangerous substances. However, with a statutory body such as PASA negligence may still need to be proved although this is by no means clear.[2] If such an accident eventuates, then the licensee or his insurers will need to fix the amount of compensation and it is probably helpful to provide for a relatively simple arbitration process as land owners tend to see this as preferable to litigation in the courts. The licensee should discuss the scope of the indemnity and the reference to arbitration with his insurers so that proper cover is obtained.

The pipeline licensee have the right to clear the easement, cut and remove timber, trees, undergrowth, crops and fences but the pipeline licensee must replace gates and fences crossing the easement. The pipeline licensee would normally covenant to bury and maintain the pipeline so as not to interfere unreasonably with the known use and enjoyment of land or the drainage or ordinary cultivation of the easement. The land owner would normally be given the right to use and enjoy the easement once construction was complete so long as he did not interfere with the rights and privileges of the pipeline licensee and he must not of course excavate or erect any structure nor alter or disturb the present grades and contours of the easement.

There is a presumption that things affixed to the land become, in law, part of the land. This is a rebuttable presumption and involves a consideration of the degree and purpose of annexation. It might be argued that the pipeline does not become a fixture, because, despite the degree of affixation, the purpose of affixation was not to effect any improvement to the land but merely to use effectively the pipeline as a pipeline. To avoid argument, the easement should contain a provision to stop the pipeline and associated installations from becoming a fixture. This means that the pipeline licensee can remove it if necessary. The normal provision on determination of the easement is for the pipeline licensee to have the option of leaving the pipeline or any part of it which is buried in the ground. Surface structures should normally be removed so that the land is returned to its original condition.

Stamp duty is payable at ad valorem rates on the amount paid for the easement. It is also payable at ad valorem rates on the amount paid for easement by way of under-lease because it falls within the definition of 'conveyance' rather than under the lease duty head on the annual rental which is only nominal.

2. *Benning v. Wong* (1969) 122 CLR 249.

COMPULSORY ACQUISITION

If negotiations cannot be concluded amicably we need to fall back on the compulsory procedures provided for in the Land Acquisition Act for freehold land and in the Crown Lands Act and Pastoral Land Management and Conservation Act for Crown leashold land. These procedures vary in detail but all take some months to follow through. For freehold land, the land cannot be compulsorily acquired until after the expiration of three calendar months from the day upon which a Notice of Intention to Acquire the Land under s. 10 is served upon the land owner and every other person who has an interest in the land. The land owner, after receiving a notice, may require the pipeline licensee to furnish him with an explanation of the reasons for the proposed acquisition and such details of the scheme as are reasonable to request. After getting the notice, or after receiving the further information if requested, he may then request the Authority not to proceed with the acquisition of the land or that an alteration be made to the boundaries of the land to be acquired. Where the notice is served, the pipeline licensee must cause a copy of the Notice of Intention to Acquire Land to be served upon the Registrar of the Lands Titles who must thereupon enter a caveat upon the title to the subject land forbidding all dealings with the land without the consent in writing of the pipeline licensee.

The Section 10 Notice must be served whether the pipeline licensee thinks he can negotiate an amicable agreement or not. However, serving such Notice does not stop you proceeding to negotiate an agreement and that is what usually happens.

CONSTRUCTION

The easements provide an undertaking by the easement holder to compensate a landowner for any damage that is caused to his property in the course of the construction, operation or repair of the pipeline system. It is good practice immediately following the clean-up work associated with the construction programme to seek and obtain a release which absolves the easement holder from responsibilities to that date. Such a release does not prevent a land owner from obtaining subsequent compensation in relation to operation, maintenance or repair activities. As the construction contractor is not normally the pipeline licensee or the easement holder, it is also good practice for the construction contractor to be obliged to obtain a release from all land owners. Sub-contractors can be included in the contractor's release. As a practical matter, it is sensible for a representative of the easement holder or pipeline licensee and the construction contractor to hold discussions with each particular land owner as soon as practicable after clean-up works are completed on particular properties. The land owner should be asked to inspect the clean-up and restoration work with the representatives and to let them know if there is anything that he is not happy with. If there is anything in dispute, it will usually fall to the contractor to fix it under the terms of his contract because, in general terms, he has the obligation to return the surface of the land and any facilities thereon to their condition prior to laying of the

pipe. Subject to any outstanding on matters requiring attention, the land owner is then asked to sign both the construction contractor release and the pipeline licensee release.

MISCELLANEOUS PRACTICAL DIFFICULTIES

A practical difficulty occurs where couples have separated. The parties can be suspicious of each other and refuse to grant easements by agreement or simply refuse to co-operate under the Land Acquisition Act.

In South Australia, it was interesting how many deceased estates had to be dealt with. These matters took some time as executors and trustees did not always feel that had the necessary power to grant easements or under-leases by agreement under the terms of the wills. In these circumstances, the executors and trustees would seek the consent of all the relevant beneficiaries. In one case of a deceased estate, there were a number of parties contesting the will. In those circumstances, it proved extremely difficult to obtain the agreement of all parties, both the named beneficiaries and the parties contesting the will.

Another area of timing difficulties results from absentee land owners or waiting for land owners to obtain advice from their solicitors or accountants or to arrange board meetings in the case of companies.

USE OF OPTIONS

There is always the possibility of using options for a rather cheap option fee if you have not settled on the route of your pipeline corridor and several alternatives are in mind. It may be attractive for land owners to take a small option fee when there is no guarantee at all that the route will pass through their property. Options can provide for rights of access which will enable the necessary work to be done to finalize the route of the corridor. Also options may be a way of proceeding when there are some mechanical hurdles still to overcome, for example, the Governor approving the pipeline corridor. This can take quite some time for political reasons when the route is really fixed at least so far as the engineers are concerned. However, under the Pipeline Authority Act the power of acquisition does not apply until the Governor has approved of the route. In these circumstances, an option can be taken or if an option is thought to be an acquisition, you can arrange for an offer from the land owner which can be accepted by PASA or other pipeline licensee after the final approval is given.

ROADS, RAILWAYS ETC

The pipeline may need to pass under roads in both council districts and districts which are out-of-council areas. Within council areas, the pipeline licensee will need to negotiate with the local council involved. An easement is not obtainable. What is granted is a licence which gives no interest in the land. It is simply an agreement which makes something lawful which would otherwise be unlawful. Different councils may submit different forms of licence for consideration and generally speaking they

are free to negotiate the terms of their own licence. The pipeline licensee can of course have a pro forma to submit to the council but there is nothing in the legislation providing for the grant of pipeline licences which enables the pipeline licensee to insist upon a licence in any particular form. It is also worth noting that under s. 366 of the Local Government Act, the council is given the power to revoke a licence at any time. However, it is not thought that this power makes the licence one terminable at will. If a council purports to grant a licence for 21 years, or whatever the term of the pipeline licence may be, the council would probably be estopped from revoking it earlier unless of course it was revoked in accordance with the licence's own terms as, for example, for breach. In an out-of-council district, application is made to the Highways Department. The pipeline licensee is responsible for the safety of all traffic during the installation of the pipe and in relation to roadways approximately one-half of the road is to remain open at all times. With sealed roads you may be obliged to bore underneath them rather than breaking them up.

Australian National also grants permits or licences to install pipeline licences under railway lines. With the railways, because of the more specialised nature of the installation involved, Australian National will usually carry out the work itself and charge the pipeline licensee. Speaking basically you can expect all three types of permit or licence to contain fundamentally the same terms, most notably a very broad indemnity in respect of all claims that the council, Comissioner of Highways or Australian National may suffer because of the presence of the pipe under the road. It does not matter that any damage may be contributed to by the body or its employees. The indemnity purports to cover everything that arises simply because the pipeline is there. Also the permit requires all reinstatement to be carried out by or at the cost of the pipeline licensee.

Crossing certain waterways such as the Port River and Spencer Gulf require a licence from the Minister of Marine.

ZONING

As far as I am aware the question of running pipelines through zoned areas has never really had to be considered in South Australia because of overriding State legislation. For example, in relation to the Port Bonython Liquids Project, the licensees under the Stony Point (Liquids Project) Ratification Act were effectively exempted from any of the requirements of the Planning Act.

Acts and activities associated with a 'mining production tenement' which is defined to include a pipeline licence fall outside the normal planning processes. They fall within the special regime set up under Part VI of the Planning Act.

PASA for its part is virtually exempt from the total planning processes for its pipelines under Part 12 of the Development Control Regulations. Thus the potential for a clash between a pipeline and zoning regulation has so far been avoided by exemption.