Pipeline Easement Guidelines
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FOREWORD

It is with much pleasure that the Victorian Water Industry Association (VicWater) and the Victorian Farmers Federation (VFF) jointly launch the VicWater VFF Pipeline Easement Guidelines.

The document is designed to provide information for water corporations and landowners about their rights and obligations. The document provides valuable background material, as well as covering land access issues and compensation processes.

The VFF and VicWater believe that this document is important for both water corporations and landowners. By providing an outline of the pipeline development and land access processes, including the rights and obligations of both parties, the guidelines will assist a better understanding of the needs of our respective members and will foster a positive relationship.

We encourage water corporations and landowners to make full and effective use of this guideline so they can be informed participants in the pipeline development and land acquisition process.

We call on our respective members to abide by the spirit of this guideline document and would welcome feedback on its value.

VicWater and the VFF also wish to record our appreciation of the Victorian Government through the Department of Sustainability and Environment for their support and participation in our development of these guidelines.

Terry Larkins
Chairman - VicWater

Simon Ramsay
President – VFF
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1.0 INTRODUCTION

Investment in and construction of water pipelines and associated infrastructure has increased dramatically arising from new Victorian and Australian Government water policies. The impact of drought on communities and business awareness of water scarcity have both influenced the rate of change in implementing these new policies.

Storage management, distribution systems and water allocation within Victoria is undergoing a major change as a result of these new policies and an integral part of this change is the planning and implementation of new pipelines.

The impacts of changed infrastructure and management arrangements are far reaching, not least because of the disruption to landowners before and during construction.

These guidelines are intended provide landowners and water corporations with basic information about what is expected of each, before, during and after construction of the pipeline.

1.1 BACKGROUND

The Victorian Water Industry Association (VicWater) and the Victorian Farmers Federation (VFF) aim to promote best practice and to encourage positive relationships between landowners and water corporations. VFF and VicWater have developed a set of pipeline guidelines to inform landowners and water corporations (and their agents) about the formal procedures. The guidelines will outline the water corporation’s responsibilities when dealing with rural landowners affected by pipeline projects. The guidelines are voluntary but water corporations are encouraged to apply these guidelines when dealing with the rural community.

The use of external contractors in planning, developing and constructing pipeline projects has changed the traditional relationship between the landowner and water corporations. Landowners are now more likely to deal directly with representatives from private construction organisations. This does not change the legal responsibilities between the landowner and the water corporation. The contractor is bound to observe exactly the same requirements.

The communication of information to project stakeholders must meet the needs of all stakeholders, including landowners potentially affected by development plans. In this respect it is essential that water corporations:

- Communicate effectively with landowners.
- Ensure that landowners are aware of their rights.
- Treat each landowner in a co-operative manner.

A copy of this document will be held by the Victorian Farmers Federation for reference when approached by a member for information on a pipeline issue. It will also be available to Victorian water corporations as a reference guide.
1.2 GUIDELINE STATUS

This document is a guideline only and should be interpreted as such. There are many instances involving landowners and pipelines that must be treated on the relative merits of the situation. It is impracticable to develop a set of procedures to deal with each case.

The purpose of this document is to provide an outline of the pipeline processes and land access processes so that those involved will pause and consider each step and how it may affect the other party, with a view to minimising any negative impact. VicWater will encourage the application of these guidelines.

1.3 SUPPORT DOCUMENTS

It is suggested that water corporations actively involved in pipeline projects prepare easy-to-read brochures and/or fact sheets for landowners which clearly outline information concerning each phase of the pipeline project. As a general guide the following phases should be addressed:

- General Information, summarising the pipeline process.
- Access agreements for survey, cultural heritage and environmental assessments, geotechnical investigations, etc.
- The Permit and Easement Negotiation.
- Construction and restoration.
- Easement Management Post Construction, of the area.

As each project will have different characteristics, the water corporation will provide information specific to the project being undertaken. The key requirement is to ensure the landowner remains fully informed about all aspects of the activities being undertaken on their land.

1.4 GLOSSARY OF TERMS

<table>
<thead>
<tr>
<th>Term</th>
<th>Definition</th>
</tr>
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<tbody>
<tr>
<td>Victorian Water Industry Association (VicWater)</td>
<td>Is the industry association representing the interests of the water corporations. Its membership is composed of the nineteen Victorian water corporations.</td>
</tr>
<tr>
<td>Victorian Farmers Federation (VFF)</td>
<td>The peak representative group for Victoria’s farmers, serving and advancing the commercial, environmental and social interests of its 19,000 members across a range of commodities and issues.</td>
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<tr>
<td>Water corporation</td>
<td>A water corporation is generally the owner of the pipeline or proposed pipeline. Water corporations are corporations created under the Water Act 1989. The metropolitan businesses are corporations under corporate law who are licensees under the Water Industry Act 1994.</td>
</tr>
<tr>
<td>Water corporation representative or land agent or property officer</td>
<td>The water corporation representative will be an employee or agent representing the water corporation in the course of the pipeline project as far as landowner issues are concerned.</td>
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<tr>
<td>Landowner</td>
<td>Is the person(s) or company whose name is registered on the title of the land likely to be affected by the proposed pipeline.</td>
</tr>
<tr>
<td>Right of Way (ROW) (Also referred to as the construction corridor).</td>
<td>Another term for easement. Under construction conditions ROW will also include any additional working width.</td>
</tr>
<tr>
<td>Occupier</td>
<td>Is the person occupying or managing the land during the pipeline project.</td>
</tr>
<tr>
<td>The Department of Planning and Community Development (DPCD)</td>
<td>The government department responsible for planning.</td>
</tr>
<tr>
<td>Department of Sustainability and Environment (DSE)</td>
<td>The government department responsible for environmental management and planning throughout Victoria.</td>
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## 2.0 WATER CORPORATION DEALINGS WITH LANDOWNERS

In their dealings with landowners affected by their works, water corporations and their agents will:

- Act in an honest and transparent manner.
- Cooperate as far as is reasonably possible.
- Provide full and accurate, reliable information.
- Provide full information to those affected by the process.
- Abide by all relevant codes and legislation.
- Endeavour to negotiate a written access agreement with the Landowners.
- Survey entry conditions to reflect landowner requirements as far as possible.
- Negotiate a fair and reasonable compensation.
- Take all reasonable precautions to minimise the possibility of the transfer of weeds, disease, pests and other potential hazards to the farm's operations.
- Take all reasonable precautions to minimise the possibility of starting a fire.
- Liaise with the landowner to minimise damage to the land and its infrastructure, including the preservation of topsoil. Any damage must be remedied to a comparable condition to the extent practical.
• Disruption to normal farm activities to be minimised by mutual arrangement.
• Provide adequate time for stakeholder consideration.
• Negotiate in good faith with mutual respect.

2.1 CONSULTATION

The water corporation will endeavour to consult widely with affected landowners throughout the planning, design, construction and remediation stages of the project. This consultation can take a number of forms and include:

• Written brochures.
• Direct mail.
• Surveys.
• Public meetings.
• Stakeholder group meetings.
• Individual consultations.

3.0 OUTLINE OF CROSS COUNTRY TRANSMISSION PIPELINE PROCESS

The processes associated with a cross country pipeline are broadly broken into four major stages:

• Feasibility - a business process in which all social, natural and economic costs and benefits associated with the project are assessed on a whole-of-life basis. This is an internal water corporation process.
• Approvals - consists of selecting an appropriate route, designing the pipeline to appropriate engineering standards, obtaining stakeholder and government approval in accordance with the various statutory requirements.
• Construction - is the physical building and commissioning of the pipeline in accordance with the design criteria.
• Operation - is the ongoing functioning and maintenance of the asset.

3.1 DEMAND-FEASIBILITY STUDY

The feasibility stage requires an analysis of the water supply requirements, driven by existing and potential demand, load analysis to size the pipeline, economic analysis taking into account the capital expenditure and pricing models based on cost estimates for the project. The overall business strategy of the water corporation may have a significant bearing on the viability of a specific project. Pipelines are now being planned and built to service existing demand, develop new demand, or to reinforce supply and a combination of the above.
3.2 ROUTE SELECTION

The route selection process commences with identification of a broad corridor which matches the general objectives of the proposal. Route options are identified and initial assessments made at a desk top study level, using aerial photographs, geological maps, topographic maps, planning overlays and economic data. Aerial or roadside viewing may also take place to physically confirm information gathered as part of the initial corridor selection process.

3.2.1 FACTORS TAKEN INTO ACCOUNT

The following matters are the key principles supporting sound route selection:

- Safety - the route must provide a safe and secure environment for the pipeline during construction and the operational life of the pipeline.
- Planning and Environment - the route must have a minimum negative impact on the environment and land use.
- Economic - the route must meet the economic objectives of the project, and ideally is the shortest practicable route between supply and delivery points.
- The local economy - the economic impact on individual farms and the local community.
- Constructability - the route must be reasonable with respect to ability to be constructed.

3.2.2 ROUTE SELECTION ACTIVITIES

The following steps which involve landowners are taken following identification of the proposed corridor of interest. Registered proprietors (landowners) likely to be affected are identified from title searches and information concerning each property is gathered by property officers visiting each landowner.

If the landowner has development plans for the property it is important to bring this to the notice of the property officer, so that features such as proposed water storage sites, irrigation systems, excavations, buildings, plantations and vineyards may be taken into consideration at the design phase.

3.2.3 ENTRY TO PRIVATE LAND

In certain circumstances, water corporations have the power to enter land as required with specific notification requirements. However, they will endeavour to seek written agreement for permission to enter properties at an appropriate time. Survey activities typically include entering the property with vehicles or on foot, the placement of survey pegs, the testing and sampling of ground conditions, undertaking cultural and heritage surveys, completing environmental surveys and inspections by contractors bidding for the construction of the pipeline.

The water corporation is required to co-operate with the occupier and cause as little damage, harm or inconvenience as possible, leaving the land in the same state as prior to entry. The water corporation must only remain on the land for as long as is necessary.

Where cropping ground is affected, in most instances it is possible to complete the survey work from headlands. On long traverses, however it may be necessary to enter a crop.
Progress is made quicker if it is possible to have electric fences turned off when surveyors are active in areas where electric fencing is used. Arrangements for this should be made when Property Owner Information is gathered.

3.2.4 LANDOWNERS’ RIGHTS

Water corporations will seek written agreement for permission to enter properties at an appropriate time.

In completing the survey work, the water corporation will observe and ensure the conditions of entry previously agreed to are followed. In the event that the occupier suffers a financial loss arising from the survey activity or incurs expenses directly attributable to the water corporation entering the land, compensation may be claimed by providing the water corporation with a notice for claim for the loss or costs.

The organisation responsible for the survey activities is required to carry sufficient insurance to indemnify itself against claims for loss and damages, which may arise as persons enter private property.

ENGINEERING SURVEYS

Selection of the route usually requires several visits by the engineering survey crew which will mark out the pipeline centreline and will gather data on the features of the proposed route. It is often necessary to revisit a property to make adjustments to the line as a result of the impact of a feature encountered further along the line. The selection of the route is an iterative process of constantly refining the route taking into account the physical, environmental, safety and land use constraints which become apparent as the process progresses.

CADAstral SURVEY

In order to have the easement registered on title it is necessary to prepare an easement plan which relates the position of the easement to the property title. A copy of the easement plan will be provided to the landowner as soon as it is available. The easement plan will provide information with respect to easement width, area of easement, title particulars and bearings and distances of the easement where it traverses the property. The plan will also provide dimensions enabling location of the easement with respect to the property boundaries.

Upon receipt of the easement plan, it is vital that the landowner understands where the proposed pipeline route will traverse the property. Landowners should not hesitate to have the route explained to them by representatives of the water corporation. Often the easement plan will be accompanied by an aerial photograph with the pipeline route superimposed on it.

Water corporations will work with the landowner to take into account any difficulties with the proposed route and seek to minimise the impact on the property and on the operation of the farm business. Issues relating to construction can be dealt with at a later stage, however issues of a permanent nature, such as proposed water storage sites, extractive industry activities and building sites require addressing early in the process.

3.3 APPROVALS PROCESS

The extent of approvals required for the installation of pipelines is dependent on the prevailing local conditions.
The water corporation needs to identify relevant authorities and groups with an interest in the project and ascertain their likely requirements. It is these requirements that will influence the location of pipelines.

In addition to landholders, those with an interest in the project may include;

- Local Councils,
- Department of Sustainability and Environment,
- Catchment Management Authority,
- Aboriginal Affairs Victoria,
- Heritage Victoria,
- Gas and Telecommunications Companies,
- VicTrack,
- VicRoads,
- Department of Planning and Community Development,
- Water Corporations, and
- Local Interest Groups e.g., LandCare, VFF.

Requirements may vary from satisfying simple conditions to more formal approvals and permits.

On large scale projects it may be necessary to obtain planning approvals that may include planning permits, rezoning or planning amendments. Any planning requirements generally need to be supported by environmental investigations and assessments of cultural and European heritage. If planning approval is needed the requirements of stakeholders will need to be addressed by the water corporation. Landowners also have the opportunity to make formal submissions to the planning authority at this stage.

Due to the site specific nature of stakeholder requirements it is not practicable to detail them here, however, the relevant legislation that may be applicable to the project may include:

- Water Act 1989,
- Water Industry Act 1994,
- Planning and Environment Act 1987,
- Native Title Act 1993,
- Flora and Fauna Guarantee Act 1988,
- Environment Effects Act 1978,
- Environmental Protection and Biodiversity Conservation Act 1999,
• Road Management Act 2004,
• Catchment and Land Protection Act 1994,
• Aboriginal Heritage Act 2006,
• Aboriginal Heritage Regulations 2007,
• Local Government Act 1989, and
• Land Acquisition and Compensation Act 1986.

It will generally take several months to undertake the required investigations to support approval applications and to receive any approvals issued. Approvals are often issued with conditions or requirements that have to be satisfied by the water corporation. Any approvals granted and conditions issued may result in changes to the initial pipeline alignment.

The final alignment is determined once all factors are considered including impacts on landholders and stakeholder requirements.

Authorities including Vicroads, Catchment Management Authorities, local councils, water corporations, rail companies and other utilities will be advised and comments sought from them regarding the proposed pipeline.

3.4 DETAILED DESIGN

The process of detailed design will depend on how the water corporation intends to manage the project. Detailed design consists of preparing a specification on how the pipeline will be constructed. It includes drawings of special sites, road and water course crossings, and specific details relating to the terrain, trenching requirements, welding, testing and restoration.

3.5 EASEMENT ACQUISITION PROCESS

The following section describes what an easement is, why an easement is usually suitable, other forms of land tenure, the easement negotiation process, landowners’ rights and entitlements. It also addresses compensation assessments and the compulsory acquisition process.

It is during the easement acquisition phase that the conditions expressed within the easement documentation and the water corporation’s policies will be explained to the landowner. It is during this phase that landowners have the opportunity to clarify any issues which they do not understand.

3.5.1 WHAT IS AN EASEMENT?

An easement is a legal right to use another’s land in a particular manner and may restrict an owner from using the land in a particular way. Most pipeline easements contain a number of conventional rights and/or terms including the following:
• Access rights, the right to install one or more pipelines, to clear the easement of obstructions, to install facilities and to control excavations, tree planting, use of explosives and the placing of structures on the easement.

Once the easement is registered on title it remains in place irrespective of changes in ownership.

It is important to understand that the water corporation acquires only certain rights along a specified location. Ownership of the land still remains with the landowner who is free to enjoy and use the land subject to the conditions of the easement.

Where a further loss of enjoyment of the land arises due to a future action by the water corporation, it may be necessary to further compensate the landowner.

**EASEMENT CONDITIONS OR OBLIGATIONS TO LOOK FOR**

Incorporated in the easement document, there should be a statement that refers to the doing of as little damage as possible, restoring the land to the condition that it was, prior to the pipeline, payment of compensation for damages, and a statement of clear indemnity protecting the landowner in the remote event of a pipeline failure. The document may also include a mechanism for solving disputes should they arise.

Most of the conditions included within an easement document are already covered by either the *Water Act* or the *Land Acquisition and Compensation Act*. They are re-stated to confirm the landowner’s position, who may not have easy recourse to legal advice.

**3.5.2 OTHER FORMS OF TENURE**

Water corporations are frequently asked why easements are acquired rather than other forms of tenure such as a leasehold, licence or freehold. The following paragraphs explain the other forms of interest available and why they are not preferred by the industry for cross-country pipeline applications.

**LEASE**

A lease generally grants the leaseholder exclusive occupation of the site. Leasehold is appropriate for activities such as minerals exploration, commercial sites where exclusive rights are necessary by the nature of the operation. Once the pipeline is installed, there is only a very limited requirement to use the surface of the land. It is better made available to the landowner to enjoy.

Lease agreements have a finite term at which time a new lease must be entered into. They may be short term eg. a residential lease is often for one year.

For leases to be practicable for a pipeline it would be necessary for them to:

• Be long term, (at least for the period associated with the pipeline operation).

• Have an automatic renewal clause at expiry.

• Be struck at a rental rate commensurate with the occupation of the ground below the surface of the land.

• Have the rights associated with an occasional entry over the surface.
FREEHOLD

Freehold is appropriate where permanent and exclusive occupation is necessary. Freehold acquisitions generally involve a plan of subdivision and the related subdivision procedure. Ultimately the title boundaries of the freehold are likely to be fenced off. Obtaining the freehold to a long narrow strip of land, such as a pipeline easement, would create a de-facto subdivision of the parent title and create unnecessary management difficulties for the abutting landowners.

3.5.3 COMPULSORY ACQUISITION

Water corporations are generally reluctant to use the process and prefer to reach agreement by negotiation relying on the relevant legislation. However, where it has not been possible to reach agreement compulsory acquisition is an option available to the water corporations.

The Compulsory Acquisition process is described in detail in the *Land Acquisition and Compensation Act* 1986, and associated regulations which prescribe the form of the various notices required. It is a very formal procedure and includes various strict time frames for all parties to abide by.

The first step is the service of a Notice of Intention To Acquire, accompanied by a Statement of Rights and Obligations. Following this step the parties are required to endeavour to reach agreement.

A minimum period of two months must transpire from the service of the Notice of Intention To Acquire, before an application can be made to the Minister seeking permission to compulsorily acquire the required easement.

If the only way the issue can be resolved is through a formal process, a Notice of Compulsory Acquisition and Statement will be served upon all parties having an interest in the subject land and a notice advertising the acquisition will be placed in a local newspaper and the Government Gazette.

Under most circumstances, where acquisition is done under the *Land Acquisition and Compensation Act*, entry for construction may take place seven (7) days from the gazette notice. Other acts allow access in a range of circumstances (emergency etc) but water corporations will endeavour to provide (7) days notice.

It is beyond the intention of this document to describe the procedures associated with the resolution process. It should be noted that if the matter requires formal determination by a court or the Victorian Civil and Administrative Tribunal, that the landowner’s professional costs may not necessarily be awarded to the claimant.

3.5.4 EASEMENT DOCUMENTATION

The easement acquisition process utilises the following documents:

- Option For Easement Agreement,
- Easement plan, and
- Easement terms and conditions.
OPTION FOR EASEMENT

The Option To Purchase an Easement is the document generally used to legally bind the landowner and water corporation in an agreement to provide an easement in exchange for an agreed sum of money. It is the document used where easements are acquired by agreement.

The Option For Easement agreement is regularly used as a means of providing easement rights during the often protracted process of registering the easement. The Option document will include a clause which allows for construction despite the easement not being registered. The Option For Easement will also include a copy of the Creation of Easement document.

Due to the time it takes to obtain all the required easement rights and necessary government approvals, the water corporation cannot be absolutely sure that the proposed easement will be the route along which the pipeline is finally constructed. The Option Agreement provides a mechanism for the water corporation to lock into a route, whilst not having the obligation to proceed to easement registration, should the route or unforeseen events dictate changes to the project, or the project not proceed.

The Option Agreement will include clauses which require the performance of parties to the agreement should the option be exercised by the Exercise Date, which will be clearly stated in the document. Should the water corporation fail to exercise the Option by the due date, the agreement will have expired and it will be necessary to renegotiate if the water corporation intends to proceed with the proposal.

The Agreement should clearly identify the parcels of land to which it relates and what compensation will be payable upon the registration of the easement.

Option Agreements can provide for flexibility with respect to the pipeline route. Landowners should ensure that they understand the degree of flexibility they are agreeing to and that there is a fair and reasonable mechanism to adjust the amount of compensation payable in the event of changed circumstances. Before signing the Option Agreement, the landowner should be satisfied that methods to address any concerns are satisfactorily addressed.

If the land subject to the Option For Easement is disposed of during the currency of the Option, the purchaser must be made aware of the Option, and an agreement made between the vendor and the purchaser with respect to entitlement to the compensation payable. Most Option documents contain a provision with respect to assignment. The water corporation holding the Option should also be advised of any intended disposal. Normally the Option will not be a barrier to a sale, and the matter is not complex as long as there is agreement with respect to compensation payments.

EASEMENT PLAN

The Easement plan will form part of the Option For Easement Agreement. It should include details which identify the parcel(s) of land affected, how the proposed easement relates to title boundaries, the easement width, the easement area and an easement identifier which can be cross referenced to the Option document.

EASEMENT TERMS AND CONDITIONS

The easement terms and conditions will set out the rights and obligations of the water corporation and the landowner. In the case of pipeline easements, common conditions for discussion are:
• The right to install one or more pipelines and other ancillary facilities.

• The right of the water corporation, its agents, contractors and associates to enter the land.

• Often the right to undertake aerial patrol.

• The right to keep the easement land clear of obstructions, install gateways.

Decommissioning and term of easement

• The exercise of the above rights will be conditional upon the following:
  • Causing as little damage as is reasonable.
  • Restoring the land to a condition as near as practicable to its condition prior to the exercising of the rights.
  • Usually a condition that compensation is payable for losses incurred as a result of the exercising of the rights. See section 3.5.5.

The Easement document will also include some restrictions placed upon the landowner including:

• A restriction on excavation without prior consent from the water corporation.

• A restriction on the erection of structures on the easement without prior consent from the water corporation.

• A restriction on the planting of trees without prior consent from the water corporation.

• A restriction on the use of explosives which may compromise the integrity of the pipeline.

• Altering the contour of the land.

It is important to understand that these restrictions are necessary for the safe operation of the pipeline and the safety of those working within its proximity. Where it is necessary to install underground facilities, such as a power-line, irrigation or drainage pipe, providing adequate clearances from the pipeline are possible, consent will not be unreasonably withheld. "Onecall" (Dial before you Dig) system operates in Victoria as a measure to protect the integrity of buried assets such as pipelines. The water corporation may impose conditions in order to protect the pipeline and to ensure it is not damaged by the installation of the facility.

If proposing to undertake an activity normally restricted on the easement area, it is vital that the landowner makes early contact with the water corporation to establish what conditions will be applicable in order to obtain consent if it is feasible. Each case must be treated on its merits. The first point of contact should be the Asset Manager responsible for infrastructure (pipelines).

The above terms and conditions will be set out in the Creation of Easement document which is ultimately registered on the land to be encumbered.
WHAT CAN BE DONE ON THE EASEMENT?

Water corporations have various policies with respect to what can be done on a pipeline easement and will be happy to provide a brochure or details with respect to their respective policies.

The presence of a pipeline easement will not prevent the future subdivision of land. An easement may however influence how the lots are arranged in order to maximise the subdivisional potential.

SURRENDER OF EASEMENT

On very rare occasions perhaps where a project is abandoned or a pipeline is re-routed due to a major infrastructure project, or if the need for the pipeline no longer applies, the water corporation may consider surrendering its easement rights. Due to the damage likely to be done to the environment, it is highly unlikely that the pipeline(s) would be removed from the easement.

Surrender of easement is essentially an administrative matter requiring the production of the burdened title at the Land Titles Office and the completion of a Surrender of Easement application.

3.5.5 COMPENSATION

The underlying concept of compensation is to place the party who has suffered a loss in a position as close as possible to that prior to the loss. For practical reasons, society has accepted that in most instances compensation is made in a financial form. There will be occasions where the physical replacement of a loss is deemed more appropriate. Generally this is agreed to between the parties involved.

Compensation associated with pipeline easements falls into two main categories;

- Compensation for the acquisition of the easement - See Section 3.5.5.1.
- Compensation for losses arising from the exercising of rights granted in the easement. This compensation is paid each time a pipeline is installed in the easement.

EASEMENT COMPENSATION

Compensation for easement rights should be assessed by a professional valuer with appropriate qualifications for valuing in Victoria. How the valuer is instructed by the water corporation, may have a bearing on the final outcome of the valuer’s assessment. The Landowner should have the opportunity to advise the valuer on relevant issues for the property. Usually water corporations instruct valuers to assess compensation to accord with the legislative requirements, should it be necessary to compulsorily acquire the easement at a later stage. How valuers present their reports is a matter between the valuer and the water corporation.

The following matters are normally taken into account when a valuation is prepared:

Severance

Refers to any reduction in the market value of any other land associated with the acquisition, which may have been cut off by the easement.
Market Value
Refers to the amount of money that would have been paid for that interest acquired (easement) at the time of the acquisition, if it had been sold by a willing but not anxious seller to a willing but not anxious purchaser.

Special Value
Refers to any pecuniary advantage in addition to market value, to a landowner, which is incidental to the ownership or occupation of the land. This also covers future loss of land uses.

Disturbance
Provides for a pecuniary loss which is not otherwise assessable. This is the catch-all provision for compensation. It frequently applies to claims arising from loss of production arising from construction which is dealt with under the next subsection.

Professional Costs
Refers to any legal, valuation and other professional expenses necessarily incurred by the landowner by reason of the acquisition.

VALUATION PROCESS

In order to carry out a valuation, the valuer should inspect the site and discuss with the landowner any special features or concerns which the landowner feels may affect the valuation report.

A copy of the valuation report should be made available to the landowner prior to commencing negotiations for easement rights. The date of the report should be relevant to the negotiation period.

Second Opinion
The landowner has the right to arrange their own valuation to assess the compensation offer and will be required to pay all reasonable fees. On occasions, water corporations will offer to meet the reasonable costs of the second valuation.

OTHER COMPENSATION

Compensation arising from the use of the easement is usually paid following successful restoration of the area disturbed during pipeline construction. It is usually known as “Loss of Production” and relates directly to the area disturbed, the nature of the enterprise undertaken adjacent to the easement.

To assess loss of production, it is necessary to know the stocking rate, if grazing; the crop yield, if cropping and the value of the commodity being produced. Generally there is an allowance in this compensation which recognises that it will be some time before the disturbed area returns to full production. Discounted cash flow analysis is used to assess losses associated with long term crops such as plantations and orchards.

If landowners are asked to prepare loss of production estimates, which can be complex, they should approach the water corporation to determine if it agrees to pay the reasonable costs. They should also consult the services of a qualified accountant with experience in agriculture, to prepare the estimate.

Often in intensive rotational cropping situations such as market gardens, production losses can be minimised by treating the area as a special crossing which means engaging a special construction crew to install the pipeline across the subject land, preferably at a low production point in the production cycle. Because of the expenses involved in mobilising a special crossing crew, the potential losses must be significant to justify such a strategy. Landowners should consult the water corporation for assistance and advice.
Other compensation for physical damages, time spent attending to livestock escapes or extra time taking in working paddocks are also matters which should be raised initially at the time of the event and addressed at the Damage Release stage.

Rental for occupation of temporary working width and other facilities are normally settled at the time that Loss of Production is considered.

It may not be advisable for occupiers/landowners to agree to an up front lump sum, Loss of Production payment, prior to the commencement of pipeline construction. Issues to consider include whether the anticipated construction timetable will be met (e.g. delays due to bad weather) and whether the occupier of the land may be out of pocket due to the inability to use the area of land required for construction at a critical time in the annual land-use cycle.

3.5.6 DAMAGE RELEASE (FINAL)

This is the stage when the landowner is requested to acknowledge that restoration of the land has been completed to an acceptable standard and that the landowner is prepared to accept the disturbed area. It is the time when all other outstanding matters with the landowner should be addressed. These matters may include:

- Loss of grazing and crop.
- Loss of livestock.
- Time spent attending to construction mishaps such as mustering or security.
- Weed control.
- Agreed to additional restoration works.

Note that for claims to be successful it is imperative that the water corporation be notified of the event leading to construction-related claims, so that they are properly documented for subsequent compensation.

It is important for the water corporation to recognise that not all damage during construction can be foreseen by the landowner.

Water corporations can expect to be required to provide landowners with objective assessments, as far as is practicable, that the land has been restored to a condition similar to that prior to the exercising of the rights granted. Many water corporations require their construction contractors to visit each landowner to establish a list of outstanding matters requiring attention before seeking Damage Release.

This is also the stage when the final compensation is made for losses associated with construction activities is agreed.

The Damage Release will release the water corporation from any further obligations with regard to compensation or restoration works for the project. Landowners should be sure that the corporation has met its rehabilitation obligations before signing off on this document.

Landowners should also consider damages or losses stemming from issues that can take some time to manifest. In this regard the introduction of disease and weeds must be considered.

The release does not cover future activities that the corporation may do on the easement land.
3.6 CONSTRUCTION PROCESS

Cross country pipelines are preferably constructed during the drier months of the year, although this may not always be possible. Specialist pipeline construction contractors are deployed to undertake the work. To ensure a high standard of workmanship, inspectors are also usually engaged to inspect the critical functions carried out by the construction crew.

Pipeline construction is completed on a production line process with a sequence of activities progressing along the route. As some activities take longer to complete than others, the leading section of the process will advance at a greater rate, and the task will gradually spread out along the proposed route.

Access to the working area is usually via existing roads and tracks and along the easement, construction corridor or Right of Way (ROW). Where access is necessary over private property other than by the ROW, it will only be made following negotiation and agreement with the property owner or occupier. In this case, ROW refers to the easement area plus a negotiated work area for the term of construction only.

3.6.1 BRIEF DESCRIPTION OF CONSTRUCTION ACTIVITIES

Physical construction activity commences with a check survey to reinstate centreline pegs and identify the route for the construction phase. This is closely followed with the installation of temporary gateways involving the placement of temporary strainer assemblies either side of the working area and the insertion of a prefabricated wire fence between them, which can be opened to allow the passage of construction equipment, whilst maintaining livestock security.

Clearing of the Route consists of grading the surface soil to one side and preserving it for subsequent restoration. The clearing of timber is generally minimised and will be limited to what is essential to clear to allow for construction. Significant trees or isolated trees will where possible be identified and protected from clearing. Treatment of felled trees depends on the location and environmental conditions.

This timber will either be chipped for restoration use, dragged back over the site to prevent vehicle access and encourage wildlife, removed from site or left for the landowner’s use.

Under certain conditions, due to side slope conditions and the pipeline alignment, it may be necessary to build a bench by cut and fill methods in order to provide a level site suitable for trenching equipment.

The clearing operation will also include the provision of creek and river crossings. For smaller creeks, this usually consists of a flume pipe to maintain water flow. For significant streams and rivers, dams may be necessary and pumps will maintain the flow.

Trenching operations, using bucket excavators, wheeled trenchers, rock pickers and rock saws (equipment with hardened teeth on either a wheel or endless track like belt), open up a trench along the centreline, throwing the excavated material (spoil) to the non working side of the ROW. To provide access to each side of the trench depending on the relationship of the pipeline with the paddocks through which it passes, and the location of water points, stock crossings can be arranged by back filling the trench. It is preferable to minimise the number of crossings because they interfere with long production runs.
Pipe is strung out along the ROW either adjacent to the existing trench or proposed trench line. To protect the corrosion protective coat, pipes are off loaded onto lengths of timber supports. Gaps should be left within the strung pipe to provide access for livestock. Pipe stringing is a comparatively swift activity and usually overtakes the trenching function early in the project.

In most cases when the pipeline is in optimum lengths for the equipment being deployed, each section is checked before being lowered into the trench by crawler tractors with booms mounted on one side and a counter weight on the other.

In unusual soil conditions back fill will be in accordance with manufacturers’ recommendations and current pipeline practices.

The pipe is lowered into the trench and immediately covered with either the above padding material and or excavated spoil. Surplus spoil is removed to suitable dump sites, often nominated by the landowner. The trench is mounded slightly to allow for some settlement.

Topsoil is then replaced and the compacted working side of the ROW ripped. Soil erosion control measures are put in place marker posts indicating the general pipeline alignment are located and when seasonal conditions are suitable, sowing down of pasture land and restoration of native bushland is undertaken in accordance with recommendations of the managing authorities.

Boring or drilling under specific crossings or sites, such as roads, waterways and vegetation areas may be considered to minimise construction impacts.

Small diameter pipelines may be ‘ploughed’ avoiding topsoil removal and minimising the impact of trenching operations.

3.6.2 PRE-CONSTRUCTION NOTIFICATION

Prior to commencing construction activities, occupiers can expect a visit from a representative of the construction company and possibly the water corporation to discuss matters which may minimise the impact of the construction process on the day to day farming operations during the construction phase. By this stage issues of a permanent nature should have been resolved during earlier consultation.

3.6.3 CONSTRUCTION ARRANGEMENTS

Matters to be addressed during the pre-construction notification may include the following:

- A contact number for construction emergencies (both landowner and water corporation.
- Location of underground assets such as water pipelines, powerlines, drains and channels, drains and contour banks.
- Preferred location of vehicle and livestock access across the ROW, including trench and pipe strings.
- Arrangements with respect to management of road use, dust, noise and safety issues.
- Arrangements with respect to electric fencing and temporary fencing, if necessary.
• Land use and areas under crop which will be disturbed.
• Disposal requirements of surplus spoil and timber.
• Condition reports on assets which it may be necessary to temporarily disturb.
• Agreement to the proposed reseeding mixture.
• Special arrangements pertinent to the operation of the property.
• Implementation of prior arrangements which may have been agreed to during the easement negotiation phase.
• Biosecurity arrangements to minimise the risk of disease and weed transfer.
• Intended construction period.

A copy of a report completed during the interview will be provided to the landowner/occupier, if required. Depending on the scale of the project, in more closely settled districts pipeline construction contracts include a Landowner Complaint handling process, which may be entered into between the water corporation and the landowner.

Landowners are advised to maintain a record of events which cause them problems and details of when contact was made to the construction party, for verification of claims at the Damage Release stage. It is vital that all problems related to the project are brought to the attention of the party responsible for handling such matters, if only to enable satisfactory resolution later in the project.

TEMPORARY WORKING WIDTH/CONSTRUCTION CORRIDOR

To minimise the area of permanent easement required, water corporations will often seek to acquire on a temporary basis for the construction period an area to facilitate construction. Where a new easement is also being acquired, it is normal practice to include a rental rate based on area and time for the temporary working area. If additional working area is required beside the existing easement, compensation will be paid to the landowner. Conditions of occupation, restoration and loss of production should be similar to those relating to the formal easement area.

ADDITIONAL CONSTRUCTION ARRANGEMENTS

The construction contractor and landowner are free to make additional arrangements. Typically these will be about access arrangements, use of facilities such as farm water storage for hydrostatic testing and extra areas for storing bedding and padding material. Often these arrangements are made in return for a favour such as use of heavy earth moving equipment, grading of driveways etc.

Landowners should consider carefully any approach made by construction contractors and ensure that what is being sought and offered in return suits the landowner. All arrangements should be in writing and agreed to by a representative of the contractor with authority to enter into such an arrangement. It is difficult for the water corporation to assist in resolution of a problem which has arisen as a result of arrangements made directly with the contractor.

3.6.4 ASSESSMENT OF CONSTRUCTION LOSSES

Refer to Section 3.5.5.3.
4.0 EASEMENT MANAGEMENT

4.1 WORKS ON EASEMENT

Prior to consent being provided, the water corporation will usually require design details to be provided which are associated with the proposed works. In particular, the proposed separation distance between the existing pipe and an intended excavation, precise details of location as well as any load characteristics and timing. Plans, often a sketch plan will suffice, should also be provided with any application. If proposing an activity over the easement area, which requires written consent, it is recommended that landowners discuss it first with the Land Liaison Officer, who will have a procedure on how to deal with the request.

4.2 SALE OF PROPERTY

There is no requirement for a landowner to advise the water corporation of any change in ownership of the land. This will be identified either through the patrol officer’s visit or through Titles Office searches.
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