

## Council against using Water Act to gain pipeline access

An advertisement, placed in the Yea Chronicle last week (6 August) by the Sugarloaf Pipeline Alliance, headed 'The Facts about Land Entry' referred to specific legislation which authorised the alliance and those authorised by the alliance to enter private land. This authority to enter private land along the proposed alignment of the Sugarloaf Pipeline has been given by Melbourne Water, under Section 133 of the Water Act (1989), as shown in the fine print at the bottom of the advertisement.

On the previous day, at their 5 August meeting, Murrindindi Shire councillors heard a presentation from a certified practising valuer, Gerald McMahon, on land acquisition and compensation issues. Mr McMahon is representing landowners impacted by the Sugarloaf Pipeline (north south pipeline).

Mr McMahon said that Melbourne Water's excuse that it was working under the Water Act 1989 due to time constraints was a 'Furphy'. He believed that landowner should not bear the burden of timing constraints, particularly when the legislation provided by the Land Acquisition and Compensation Act (LACA) gave better protection for the landowner and provided the abridgement of time provisions as if it were the Water Act.

Mr McMahon said the Water Act was a very powerful act and the experience for landowners of having to deal with all the contractors on their property—construction, trenching, fencing etc—was quite enough without having to deal with all the other matters, such as notices to purchase, notices of acquisition and claims for compensation.

He also suggested that things actually looked quite good on the Melbourne Water fact sheet, however the steps they take will not necessarily occur in the order outlined, hence there may not be the opportunity to object or seek reasonable and appropriate compensation.

Later in the meeting councillors passed a resolution moved by Cr

Peter Beales and seconded by Cr Leanne Pleash: To ensure that the interests of affected landowners are upheld, a letter be forwarded to Melbourne Water, with a copy to Ben Hardman, asking that any future activities of the Sugarloaf Alliance occur under the process set out in the Land Acquisition and Compensation Act (LACA).

### Valuer's letter

Mr McMahon also circulated to councillors a written summary of his concerns as a letter addressed to the mayor.

In that letter Mr McMahon said he was not giving his opinion on the merits or otherwise of the project, but focusing on the process being undertaken by the acquiring authority, Melbourne Water.

His main issue of concern was that Melbourne Water intended to commence construction of the pipeline under its Power to Enter Land provisions pursuant to Section 133 of the Water Act 1989.

Mr McMahon believed that to be balanced, the construction process should only occur under the Notice of Acquisition Act, served under the provisions of the Land Acquisition and Compensation Act 1986 (LACA).

Mr McMahon's written summary listed the advantages of the LACA 1986 and the affected landowner, and the disadvantages of the Water Act 1989 and the affected landowner.

### LACA Advantages

The LACA is the only piece of legislation that protects the landowner in an adequate manner.

The LACA clearly sets out all the heads of claim under Section 41.

Upon the serving of the Notice of Acquisition, the acquiring authority must make an initial offer within 14 days.

The claimant (Landowner) must serve on the authority a claim within three months.

There is the capacity to seek professional costs.

The easement is registered on title with all the rights clearly defined in the easement documents.

### Disadvantages—Water Act 1989

The landowner's full rights to compensation are limited.

The acquiring authority is only required to make good financial loss (\$155).

Unless the LACA is triggered there is no other avenue for other claims of compensation.

There are no prescribed dates as to when the acquiring authority must fulfill obligations.

The Act does not allow the landowner to seek professional costs in relation to the occupation.

There is no registered easement with rights buried within a 736 page document.

The Joy Talbot story (a landowner on the Wimmera-Mallee pipeline route who got no compensation—described by Mr McMahon as a live example of a worst case scenario).

Mr McMahon stated, "The landowner is not a powerful adversary but rather an innocent bystander who must bear the physical aspect of the acquisition."

Mr McMahon's letter concluded: "At the very minimum (Melbourne Water should) at least afford the landowner the full protection of the Land Acquisition Act 1986, prior to the commencement of any construction."