

A Vibrant, Safe and Liveable City Accessible to All



Melton City Council Submission Making a Land Access Code of Practice: Consultation Paper

Melton City Council

3 March 2023

Introduction

Thank you for the opportunity to comment on the *Making a Land Access Code of Practice Consultation Paper*.

The City of Melton has a current population of over 216,000 people, which by 2051 is forecast to grow to 450,000, before reaching an ultimate population of over 500,000 people, which is greater than the current population of Canberra, and a similar population to Tasmania.

The Western Renewables Link (WRL) which is a 500kV overhead transmission line proposed to traverse the length of the municipality. The proposal is currently undergoing evaluation as part of the Environmental Effects Statement (EES) process. As such, the City of Melton has significant exposure to the challenges and issues arising from new major transmission lines which is detailed in this submission.

Should you have any questions about the above or the content of our submission, please contact Council's Manager City Design and Strategy, Darren Rudd [REDACTED] by email.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Darren Rudd', written over a light grey rectangular background.

Darren Rudd
MANAGER CITY DESIGN AND STRATEGY

Western Renewables Link (WRL)

The Western Renewables Link (WRL) (previously the Western Victoria Transmission Network Project) is a proposed 190km long double-circuit overhead transmission line from Sydenham in the east of the municipality to Bulgana in western Victoria. The project is being designed, constructed, and operated by AusNet.

The need for transition to renewable energy sources has exposed the absence of clear guidelines for the planning and delivery of major transmission line projects. The ambiguity left by the absence of clear guidelines to inform what is powerful legal rights by private companies under the Electricity Industry Act (1993) (referred to hereafter as the “the Act”) has resulted in negative impacts for host communities and equally for project proponents. The WRL is the largest major transmission project in Victoria in recent years and as a result, our community and has been the test case for failure in government agency and clear guidelines and procedures. This includes proper oversight and support of Electricity Corporations in consulting with impacted community and accessing private land.

The feedback provided in this submission principally relates to Melton City Council’s experience with the WRL. However, much of this feedback is relevant to improving the processes for future communities impacted by new major transmission projects.

ESC Statement of Expectations (SoE)

Melton City Council welcomes the Commission’s approach to provide a Statement of Expectations (SoE) as an interim step in the absence of a legally enforceable Code of Practice. This is due to the urgency of the need for further guidance around the appropriate use of Section 93 of the *Act*.

Overall, the SoE covers many of the issues that the City of Melton landowners have raised in relation to land access we thank the commission for its great work in acknowledging and attempting to address the problem. However, the underlying issue the SoE is responding to is the lack of State government guidance and agency in governing how an electricity company exercises their rights and manages the relationship with affected landowners, under S93 of the *Act*.

In addition, AusNet has made numerous public relations mistakes since it won the AEMO contract or the WVTNP in 2019. This includes poor communication with stakeholders, a lack of genuine consultation with impacted communities, and failing to have the right expertise at hand when engaging with landowners on access matters. This has generated widespread distrust and a lack of public confidence in the process.

Need for greater government involvement

Initial engagement on projects should involve a visible presence from state government to affirm and offer guidance on the land access rights under S93 of the *Act*. Major transmission line projects usually involve a significant footprint over private land, along with major impacts to landowners and residents.

Where the project proceeds to onsite investigations, there should be correspondence from an appropriate government agency to the landowner stating they may receive contact from the private company. It should set the expectations as well as outline their rights. This contrasts with the current reactive arrangement whereby government involvement in the process is dependent on receiving a complaint or contact initiated by the resident or landowner (e.g. to the Ombudsman). In some cases, this results in the first point of contact or knowledge about a major transmission project from a private company utilising powers to access their land. Communities need to be assured the agency of private electricity corporations to access private land is overseen by government involvement in the overarching process of planning and delivering new transmission alignments.

The trust and public confidence as part of the WRL project in the S93 process is has been significantly eroded under the oversight of AusNet as a private electricity company The early stages of public engagement will require the oversight and support of a public state agency, such as VicGrid.

Currently the *Act* provides almost unimpeded access to private land for the purpose of investigations by an Electricity Corporation. This results in a power imbalance between the privately owned Electricity Corporation and the resident who is usually un-prepared and sceptical about the land access powers of the private electricity

company. These access rights have been drafted with the intent of supporting a government led land access process and not private corporations. We agree that regulatory oversight is required and a nominated government agency should be responsible for compliance with these requirements.

Response to ESC consultation questions

Melton City Council offers the following responses to the questions in the '*Making a Land Access Code of Practice Consultation Paper*':

1. Do the principles in the Electricity Transmission Company Land Access Statement of Expectations (at Appendix B) provide an appropriate basis for enforceable obligations in a Land Access Code of Practice? If not, why not?

Broadly, the principles outlined in the Statement of Expectations (SOE) represents a good basis to underpin the Land Access Code of Practice. The principles strike a fair balance to exercising the powers in the Act.

2. Is the scope of the Electricity Transmission Company Land Access Statement of Expectations – applying to electricity transmission companies seeking to access land for new greenfields transmission projects – appropriate? Should other activities related to private land access undertaken by an electricity transmission company under section 93 of the Electricity Industry Act 2000 be included in the code?

The scope to the current arrangements is broadly appropriate. There is a need to regularly review the SoE and Code of Practice to ensure it is responsive to emerging needs and concerns of stakeholders, particularly in the current climate of rapid change in the electricity industry. It should be noted that new transmission projects could include both greenfield and brownfield land, should be included in the scope.

3. How has your experience with land access been following the release of the Electricity Transmission Company Land Access Statement of Expectations? Are there any issues you have experienced that could be further addressed in a code of practice with enforceable obligations?

Melton City Council is also a land owner impacted by the WRL and as a local government agency we are better equipped and able to have a good understanding of the legislation and the rights both the Electricity Industry Act and Land Acquisition and Compensation Act provide. Our dealings with AusNet to date in this capacity have been fair, reasonable, and professional. However, this has occurred post the release of the draft Statement of Expectations.

Council knows the experience for some landowners is very different to ours and there are a range of issues concerning unconsented access, a lack of empathy and compensation.

A key issue in the community relating to the WRL is one of 'peer pressure' amongst landowners to restrict access. Landowners, particularly in the areas where the proposed transmission line transects the properties, do not want to be seen to be 'facilitating' the process by giving access to their land. This centres on the issue of distrust and could be overcome by a greater level of agency by the State in visibly supporting a better landowner relationship.

An example of the distrust is demonstrated through an incident where the landowner had advised AusNet that access could be arranged on a future date when their horses had been relocated. This request was refused by AusNet and they gained access without permission. We understand the Commission are very familiar with this case and its root causes.

3.1. What do you consider are the most important problems that need to be addressed when electricity transmission companies access land under section 93 of the Electricity Industry Act 2000?

As outlined above, the lack of visible government oversight of the process is an overarching issue. This leads to significant imbalances of power and the perception that electricity corporations are acting outside the law.

3.2. What other options do you think the commission could consider in addressing the identified problems related to land access under section 93 of the Electricity Industry Act 2000? Are there alternative elements to consider within the code? What are the costs and benefits of those alternatives?

Again, there is a need for a visible State government presence to provide oversight to assurance to use of Section 93 of the Act by private electricity corporations.

3.3. Are there any elements of the Electricity Transmission Company Land Access Statement of Expectations that should be clarified in a Land Access Code of Practice?

A key source of uncertainty relating to the WRL is what constitutes an 'Electricity Corporation'. The *Electricity Act 2000* defines an Electricity Corporation as "...a distribution company, a transmission company or a generation company". Members of the community are questioning whether a private company such as Mondo which could be characterised as principally an electrical engineering and infrastructure company can exercise land access rights under s93 of the *Electricity Industry Act 2000*. This is a question of law that should be tested while finalising the Code of Practice.

There are also legal questions on how S93 powers can be exercised, including the notification process, the need to provide reasons, time of occupation, liabilities (if a contractor is injured), owners' rights where access is denied and clarification of compensation. There are a host of questions on how complaints are to be handled and resolved that go beyond a mediation process including timelines, escalation steps, roles and responsibilities in managing the complaint.

There is a need for further consideration of what constitutes 'relevant skills' that are required by an employee accessing the land. This for example could include a mandatory basic course for employees which familiarises them with the *Electricity Act 2000*, the SoE and the Code of Practice. Council has been made aware of an issue where there was an AusNet failing to understand the reasonable requirements of landowners and the sensitivities related to managing livestock. In this instance, AusNet did not have suitably qualified or experienced experts relating to the specific land management or livestock issue.

Other issues which should be clarified include:

- **Time of access** - Landowners have been left waiting all day waiting for AusNet to attend their site. AusNet have also not been clear on what time, and what part of a property would be accessed. AusNet need to organise a mutually agreeable time with the landowner and inform them of the particulars of the visit such as the area of the property they wish to view. This process can be better managed to avoid uncertainty or misunderstandings between the electricity corporation and the landowner.
- **Uncertainty regarding if operations need to cease to facilitate access** - This generally relates to agricultural production and associated activities such as chemical spraying, burning off, cultivation and lambing. If certain operations on the land don't cease to facilitate access, then this may present a safety issue. There needs to be clarification regarding how safe access should be provided. This also reiterates how important a mutually agreeable time is between the electricity corporation and the landowner to ensure the landowner's business operations are not hindered for a lengthy period.
- **Accumulative impact of visits** – Is there a limit on the frequency of visits and how can this be managed to reduce the impact and disruption to the landowner and resident? Equally is there a cost to the landowner, who may need to be compensated for their time.
- **Timeframe for reimbursement if damaged is caused by the electricity company** – The timeframes in the Act are lengthy and further guidance should be provided regarding how and when reimbursement is provided in the shortest reasonable timeframe.

4. What obligations do you think are needed to cater for the specific needs of private land (such as, and including, biosecurity protections and processes)?

Please refer to the issues raised in point 3.3 of this submission. A general outline could be provided to staff and the landowner relating to land use (e.g. farming, forestry etc.) which is refined in consultation with the landowner. This could be accompanied by a requirement for the Electricity Corporation to find out what specific issues may occur to the site.

5. ***Compared to the principles set out in the Electricity Transmission Company Land Access Statement of Expectations, should the Land Access Code of Practice have more prescriptive obligations about the time provided to landowners prior to accessing land, the transparency of processes when accessing land, or level of flexibility on the time to access land? If so, what specifically should be required of electricity transmission companies? What are the benefits and costs of having more prescriptive requirements?***

See our response to Question 3.3 relating to provide further certainty to stakeholders. Time of access and length of time should be specified in a mutually agreed manner.

6. ***The Energy and Water Ombudsman (Victoria) (EWOV) is the current complaints dispute resolution body for the resolution of disputes involving electricity transmission companies under the statement of expectations. Are there other options for complaint handling that we should consider as we develop the code of practice? What would be the costs and benefits of those options?***

VicGrid is a potential option for providing oversight and governance of the land access process of major transmission projects, as they are in a better position to proactively engage residents and landowners prior at commencement of the project. Irrespective of the designated body for regulating land access, the details of a complaint handling process should be easily accessible for the landowners and residents early in the process.

7. ***Is there anything else you want us to consider when drafting the Land Access Code of Practice?***

While not exclusively an issue for the Land Access Code of Practice, consideration should be given for how the code of practice fits into the wider governance structure of how major transmission projects are conceived, planned, and constructed. Specifically, this relates to the need for landowners to receive communication from State government agencies at the earliest stages of the project. Communication should be in a seamless and consistent way between agencies.

As mentioned earlier, the Code of Practice needs to be easily accessible and understood by all stakeholders, including the ability to have a responsive government agency that can explain the rights and obligations of all stakeholders in a timely matter.