

Land Access Assistance and Guidance

What is happening?

As a part of the approvals process for the Western Victoria Transmission Network Project (WVTNP), AusNet has been directed by the Minister for Planning to complete an Environmental Effects Statement (EES). This process requires AusNet to complete approximately 21 areas of investigation which will be documented into reports that detail existing conditions, and then explain how these existing conditions may be affected by the construction of the WVTNP and what mitigations are proposed to minimise those impacts. Matters under consideration for the EES include visual amenity, agricultural practices, native flora and fauna, water and hydrology, geotechnical details, cultural heritage, bushfires and many more.

It is normal and necessary for any party undertaking an EES to access land proposed to be affected by the project to conduct surveys and investigations to inform the required reports.

How is AusNet proposing access?

AusNet in the first instance is seeking voluntary private consent agreements with landholders for such access. This is in the form of a one-page consent form with an appended access protocol that documents issues around notice, timing and concerns such as biosecurity, livestock and so on. No compensation for such access is offered. Voluntary means that landholders can withdraw such consent at any time.

If landholders do not sign up to a voluntary consent, AusNet have advised that they will enforce access powers under Section 93 of the Electricity Industry Act. These powers have already been used in a number of cases within this project.

After considerable recent intervention by the Australian Energy Infrastructure Commissioner assisted by Stop AusNet's Towers, AusNet have agreed to a 4-step process to obtain property access (noting this is not legally required and so may change):

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Land Access Consent Process with Landholders

Activity	Messages (high level)	Timing
Letter 1	<ul style="list-style-type: none"> You are in the final corridor. We want to discuss access arrangements. 	Sent to all Landholders in final corridor in late June
Follow up via phone & email. Meetings offered for project briefing. If this approach is unsuccessful, letter 2 will be sent.		
Letter 2	<ul style="list-style-type: none"> Reiterate message from letter 1. Outline why access is required and process for land access. 	If they refuse access or are not open to discussion
Follow up via phone & email. Meetings offered. If this approach is unsuccessful, letter 3 will be sent.		
Letter 3	<ul style="list-style-type: none"> We would like discuss voluntary consent if possible. If this cannot be reach - use statutory powers. 	If they refuse access or are not open to discussion
Follow up via phone & email. Meetings offered. Should this be unsuccessful, letter 4 will be sent.		
Letter 4 (Section 93 Notice)	<ul style="list-style-type: none"> Formal notification of use of statutory power. 	7 days prior to access date

Figure 1. Source: WVTNP CCG Minutes - Landholder Access Briefing - CCG #5

In our experience, AusNet has made a reminder call to the landholder the day before forced access.

In each of these letters AusNet will state that they will negotiate a voluntary consent with the landholder at any time up until the access occurs. If you do not feel this process has been followed, you must report it to Andrew Dyer the Energy Infrastructure Commissioner on 1800 656 395.

The Australian Energy Infrastructure Commissioner has also been able to get AusNet to agree to pay \$1,000+GST for landholders to obtain legal advice to support consideration of AusNet's consent process.



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What are my rights if I don't sign a voluntary consent and AusNet force Section 93 access?

AusNet are relying on section 93 of the Energy Industry Act 2000 (Vic) (the EIA) which states:

ELECTRICITY INDUSTRY ACT 2000 - SECT 93

Powers as to works etc.

(1) For the purposes of this Act, an electricity corporation, subject to this Act—

- (a) may enter upon any lands and sink bores and make surveys and do any other acts or things necessary for sinking bores or making surveys; and
[...]
- (e) may do all other things necessary or convenient for constructing, maintaining, altering, or using any works or undertakings of, or under the control of, the electricity corporation.

(d) subject to any access code applying in relation to the exercise of powers under this section issued by the Commission.

The Commission is the Essential Services Commission (ESC) who regulate and licence the electricity industry in Victoria, including AusNet's transmission and distribution businesses. The ESC has confirmed that no Access Code currently exists and so therefore cannot be applied at this time. Stop AusNet's Towers has obtained expert legal advice on Section 93 and this has identified issues with different AusNet entities, eg. Mondo, using these powers now when they don't appear hold the correct licences under the Act.

The MCHPA has written to the commission requesting that AusNet's cease exercising section 93 powers until the legality of those powers for the project is established. Stop AusNet's Towers has also requested that the ESC urgently implement a comprehensive Access Code. The Access Code should outline a clear and equitable process for AusNet to access landowners land in exercising its powers under the Act.

Our legal advice confirms that, in the event that AusNet establishes proper legal authority under Section 93 powers for the project, it does NOT require a court order or delivery of any formal legal documentation to enforce access – simply a notification in writing is all that is necessary – until such time as an Access Code is implemented which would be expected to clarify notice procedures.



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Can I say “No” or not respond?

Absolutely! But it does not stop AusNet accessing your property.

It might also serve as a barrier to the dialogue between AusNet and yourselves. Most importantly, if you choose not to engage with AusNet, it will prevent you as the landholder from having any input into how and when your land is accessed for surveys.

It is critical to get independent legal advice prior to saying “No” OR engaging with the consent process – engaging with this process doesn’t mean that you have to sign the consent, you can decide at the end, and doing this process will give you a lot more information.

What will happen if I say No or do not respond?

The 4-step process described above will apply. Given the lack of an ESC Access Code, there is no regulatory or legal framework that AusNet must work within.

What if I do work through the process?

This is the option that gives the landholder the greatest control over the timing and method of access by AusNet and its contractors – and gives you, the landholder and your legal advisor, the power to determine how and when AusNet contractors access your property and what controls are required – for example, specifying certain wash down chemicals to meet biosecurity or organic status requirements. Please read the Stop AusNet’s Towers’ handout “LAND ACCESS – YOUR RIGHTS AND OPTIONS” for a list of ideas or suggestions to consider.

Stop AusNet’s Towers strongly recommends obtaining independent legal advice prior to signing any access agreement. It is important that this remains a staged and iterative process where the landholder is given reasonable time to consider the implications at each step of the process.

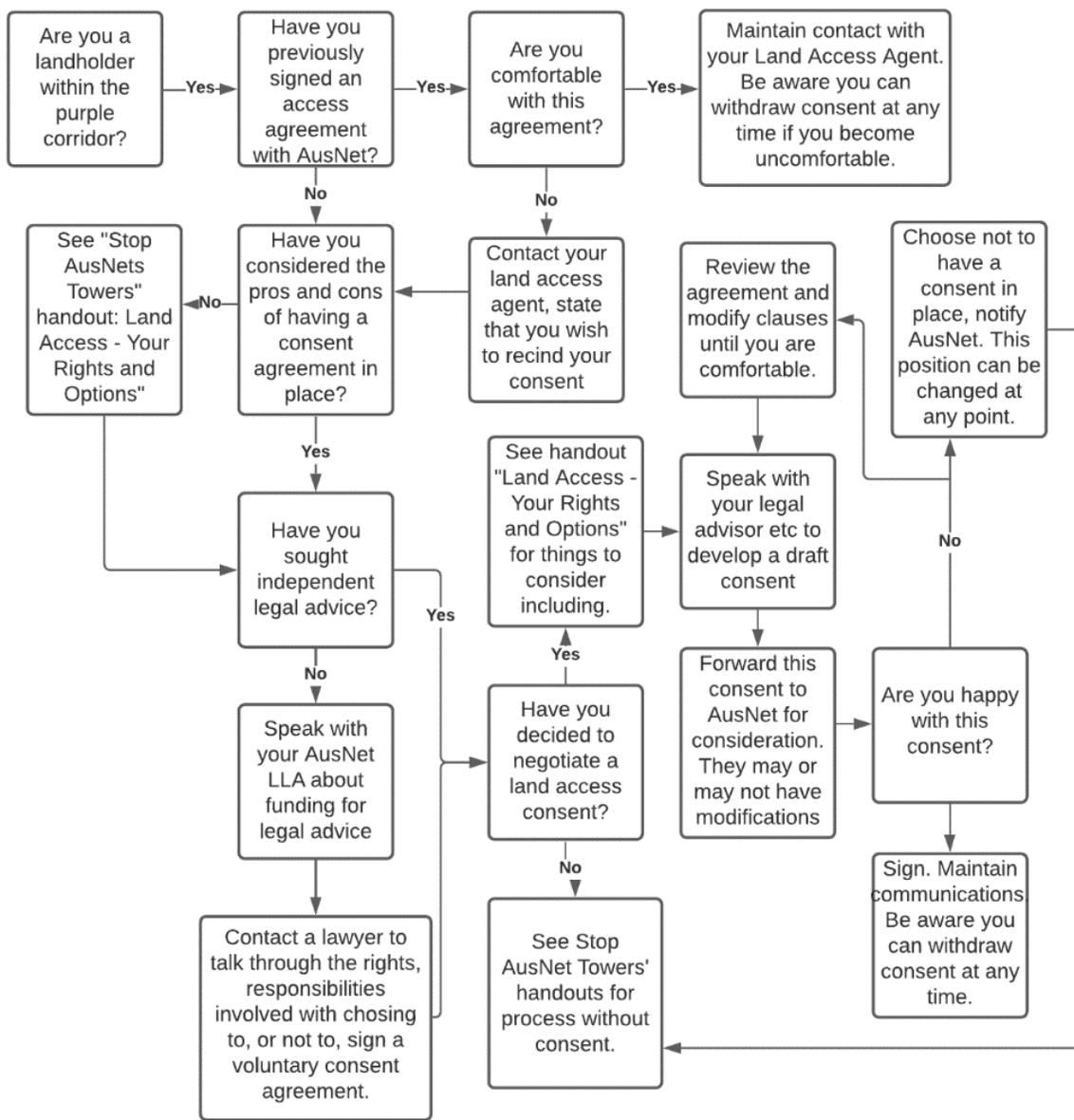
AusNet is offering reimbursement of \$1,000+GST for legal advice for the consideration and preparation of land access consents. Landholders can engage their own legal advisors, or take up the offer made by the legal firm Stop AusNet’s Towers have been using for this land access work.

To take up this funding for independent legal advice, speak to your land access agent, who will forward you a document called “Voluntary Land Access Consent Form – Landholder Legal Services Review” which details the process. You DO NOT have to sign the agreement for the funds to be made available from AusNet.

If you have an existing relationship with a lawyer experienced in this area of law – speak to them.

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Stop AusNet's Towers have an existing relationship with Harwood Andrews – whose staff are well-briefed on this project, are in direct legal engagement with AusNet and the ESC and are up to date on the current relevant law. They have a proposal in place with Stop AusNet's Towers – for advice on your personal circumstances, reviewing the draft consent prepared by AusNet and assistance in developing a consent that best addresses your concerns. Harwood Andrews will then negotiate directly with AusNet's legal firm on your behalf.





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A week before the proposed access:

AusNet Services should provide the following information:

- a) Purpose and detailed description of the work to be undertaken
- b) Anticipated arrival time on site (within an hour window of arrival)
- c) Anticipated time required on site (within an hour)
- d) List of people and roles of those who require access. Note: Only essential staff should access the property (those undertaking the study and one land liaison officer)
- e) The specified area, or areas, on your land which are requested to be accessed including a detailed map of property and areas they are seeking access to.
- f) The expected point, or points, of entry.

On the day:

With voluntary consent in place:

- a) Receive documentation to state the intention and purpose of the access – confirm it meets the agreed standard.
- b) Develop checklist to confirm all requirements of the agreed consent are met (ideally with support from independent legal advisor)
- c) Confirm all required protocols are completed – including biosecurity, weather appropriate to accessibility, chemical testing residues etc
- d) Prepare a Check-In QR code for your property which will allow you to confirm the vaccination status of those coming on site
- e) If applicable, undertake workplace induction with staff to confirm which parts of the property are to be accessed and the most appropriate way of getting there
- f) Before access takes place, ask AusNet's Land Liaison Agent (LLA) to provide proof of AusNet's and/or its agent's authority to enter your land. They are required to provide this. This must be in writing, and not just a verbal advice that they do have the authority.



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Without voluntary consent in place:

- a) Ensure there is one primary liaison representative from AusNet. This is the person who should engage directly with the landholder.
- b) The primary AusNet representative must sign a hard copy letter/document to acknowledge that they are utilising their s93 powers to access the property for the purposes previously detailed
- c) All persons entering or accessing the land are to provide full name (company identification), role, employer. These should be recorded on a log with photos taken. Stop AusNet Towers have a template log that can be used.
- d) Prepare a Check-In QR code for your property which will allow you to confirm the vaccination status of people. You may also request confirmation of a recent negative covid test for each person.
- e) Request permission to record all conversations and activities on farm. Once permission is given, record the asking and giving of permission at the beginning. This will help simplify any future questions around “he said, she said”.
- f) Request standard biosecurity procedures are followed – such as boot and vehicle washdown prior to entering the property. Record which procedures are followed.
- g) Ideally give all persons a workplace induction, noting risks, hazards, and suitable or unsuitable access locations (eg. Dry weather only tracks, wet patches, electric fences, recent chemical spraying etc)
- h) Recognise that any standard indemnity by AusNet does not cover illegal or intentionally damaging actions by the landholder.
- i) Again, as above, before any access takes place, ask for written proof of AusNet’s and/or their agent’s authority to access your land. State that the Essential Services Commission is currently investigating the legality of their powers and that you believe all access should be halted until the ESC investigation is completed.

Forcible access, while probably legal, may be a distressing time for landholders. Communication with AusNet at this time must always remain collaborative and respectful. If you feel this situation may be uncomfortable or distressing for you as a landholder, please reach out for support. Ask a neighbour, friend, or legal representative to be the designated person to meet AusNet staff and undertake the above steps on your behalf. Or to be with you on the day to take notes, photos or videos.



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Protection of Land Use:

- a) Where access may involve entry into sensitive business and/or agricultural operation areas, stipulation as to protective clothing being worn.
- b) Agreement for required environmental and biosecurity controls and plans, including ensuring that vehicle tyres and the shoes of persons entering the land are appropriately cleaned (including in appropriate locations) to avoid contamination by weeds, mud, seeds, faeces, or other toxic risk agents.
- c) Where you provide information regarding risks to your land, business, production, equipment and agricultural operations, that AusNet agrees to abide by any limitations to access that you specify.
- d) Suitable measures are identified and adhered to by anyone accessing your land, to protect water sources from contamination/pollution by any activities conducted on the land during the access.
- e) Maintenance of roads, tracks and access routes including safe use of same by vehicles entering the land, leaving gates, fences and grids as they were found.
- f) Managing testing and survey activities on the land to accommodate farming and agricultural activities and specifically not to interfere with livestock, farming and/or agricultural operations.
- g) Take all necessary steps to avoid or minimise damage to the land or cause disturbance of or interruption to business or domestic activities being conducted on the land.

What if an incident occurs during their access on my property, what are my rights and risks –

With voluntary consent in place:

Ideally the voluntary consent – when prepared with good independent legal advice – will provide clarity around the indemnity and resolution if there is an incident. It is this independent legal advice that will give the landholder the best protection – both in managing how and when their property is accessed and what protections and rights they are given.

Most of these indemnity clauses, however, do not protect against any deliberate acts by the landholder.

- a) Record as many details as possible
- b) Ensure you have images of before and after the damage
- c) Be accurate – AusNet staff are wearing body cameras so all actions will be corroborated.

Details of the Harwood Andrews offer:

Contact Person: Hugo Le Clerc (hleclerc@ha.legal or 03 5225 5213) or his assistant Tlena Stratton (tstratton@ha.legal or 03 5225 5242)



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No.	Task	Comments and assumptions	Fees (exc. GST & disbursements)
1	Video conference	<p>30-minute videoconference with you regarding the difference between:</p> <ol style="list-style-type: none"> entering into an access consent agreement with AusNet Services; or requiring AusNet Services to rely upon its powers under s 93 of the <i>Electricity Industry Act 2000 (Vic)</i>. <p>We note that the video conference will not include broader advice regarding AusNet Services' powers under the Electricity Industry Act 2000 (Vic), or any other legal advice.</p>	Fixed \$1,000 plus GST
2	Access consent	<p>Preparation of access consent agreement for your review which addresses:</p> <ol style="list-style-type: none"> the relevant scope of works to be undertaken by AusNet Services; indemnity/compensation (at least equivalent to that provided for under the <i>Electricity Industry Act 2000 (Vic)</i>); public liability insurance; communication protocols; and ability to retract consent to access your property, <p>Subject to your instructions, access consent agreement sent to AusNet Services on your behalf alongside cover letter advising that you consent to AusNet Services accessing your land (only on the terms set out in the access consent agreement).</p> <p>If required, includes one 'round' of correspondence with Ausnet Services and amendment to the access consent agreement.</p>	
3	Further negotiation or advice	Assistance with further negotiation with AusNet Services, additional amendments to access consent agreement or additional advice (further to task no. 1).	<i>Estimate:</i> TBC At Hourly Rates