

## **Gunns' offer to landowners relating to the pipeline.**

This document was prepared by a Melbourne lawyer as a plain English guide for landowners who have been made offers by Gunns to purchase rights to install a pipeline across their land. 10/6/08

### **1. Summary of offer in the contract**

(a) Gunns wants to build a pipeline from Lake Trevallyn to the site of the proposed pulp mill.

(b) The land on which the pipeline is proposed to be constructed includes private land.

(c) Gunns is offering to pay money to landowners in exchange for a right to construct the pipeline on their land. This right is called an "easement". Easement is a legal term which means a right enjoyed by one person (Gunns) with regard to the land of another person (the landowner), which interferes with the normal rights of the landowner.

(d) An easement lasts forever. It is registered on the certificate of title of the property and so is on the public record. It is relevant to valuing the land on which the easement is granted. The right can only be taken away from Gunns if both Gunns and the landowner agree to terminate the easement or if a Court orders that the easement is terminated (for example, if there is no need for the pipeline anymore).

(e) Gunns is offering to pay the landowner for the grant of the easement. The purchase price is determined by a per hectare value of the land and increased by CPI as at the day that the payment of 80% of the purchase price is to be paid to the landowner.

(f) 80% of the purchase price is to be paid to the landowner 21 days after the later of:

i. Gunns' Board approving the contract by 30 June 2009; or

ii. the completion of the final design of the pipeline infrastructure; or

iii. the completion of the survey plan of the "pipeline easement land", which is the land in the map attached to the contract (it includes the part of the land that the pipeline is proposed to be constructed on or under, and land on either side of the pipeline. The easement is for the "pipeline easement land").

(g) The rest of the purchase price (20%) is to be paid to the landowner after construction of the pipeline is completed and when the landowner agrees that there is no damage to the landowner's land that Gunns needs to fix.

(h) When the 80% is payable, all documents required to register the easement on the certificate of title have to be sent from the landowner to Gunns' solicitors, so they are armed with everything they need to register the easement on the title to the property.

(i) The Board approval condition referred to at 1(f)(i) above can be "waived". This means that Gunns can decide that it is no longer a condition of the contract that the Board approve the contract by 30 June 2009. If that happens, payment of the 80% will be 21 days after 1(f)(ii) (completion of the design) or 1(f)(iii) (completion of the survey plan).

(j) Gunns has to complete the design and the survey plan within 4 months of the Board approval of the contract, or within 4 months of the waiver of the condition of Board approval of the contract. This suggests that, at the latest, Gunns' Board approves or waives the condition for Board approval on about 30 June 2009, the survey plan and design are completed in 4 months after that (end October 2009) and the 80% is paid 21 days after that (end November 2009).

### **2. Implications of the offer**

(a) Gunns will be interfering with the rights of the landowner.

(b) An easement lasts forever.

(c) This type of easement is likely to decrease the value of the whole of the landowners' land, not just that part of the land where the pipeline would be constructed. This will be relevant if the

landowner or the landowners heirs want to sell the land. Also, it might affect any existing mortgage on the land. A loan from a bank secured by a mortgage over the land may end up being more than the value of the land itself.

(d) There is no ongoing fee in consideration for the right, even though the right continues forever. There is just the once off payment in 2 parts (80% and 20%).

(e) There is no certainty as to when the 80% will be payable.

(f) There is less certainty as to when the 20% will be paid.

(g) The contract does not say when the pipeline construction will commence, by what date it has to commence or by what date it has to be completed, which creates uncertainty.

(h) Before the landowner receives any money and before there is any certainty that the landowner will ever receive any money at all, the landowner has to allow Gunns' access to the land to prepare the design and the survey plan any time that Gunns wants access.

(i) Gunns can change boundaries of where the pipeline will run through the landowner's land at any time that it wants to without the consent of the landowner.

(j) The landowner has no say as to who completes the design or the survey plan and the landowner has to accept the design and the survey plan even if the landowner doesn't agree with it.

(k) Gunns can cut down, clear or remove anything which *it* thinks interferes with the pipeline on the landowner's land without the consent of the landowner, even if the landowner thinks that something doesn't interfere with the pipeline.

(l) Gunns can put whatever signs it wants on the landowner's land where the pipeline would be constructed, even if the landowner doesn't agree to the signage.

(m) Gunns can put a gate on any fence on the land where the pipeline would be constructed, even if the landowner doesn't agree that the gate should be located there. There is no obligation for Gunns to pay for or maintain any fencing.

(n) Gunns can access the landowner's land on and around where the pipeline would be constructed, whenever it wants to and stay there for as long as it wants, even if the landowner doesn't want them to.

(o) Gunns can put any vehicles, materials or equipment on the landowner's land on and around where the pipeline would be constructed, even if the landowner doesn't want them to.

(p) Gunns can access any other part of the landowner's entire land at any time that it wants to without the consent of the landowner.

(q) Gunns only has to minimise the impact that Gunns and the pipeline will have on the rest of the landowner's land, so it is expected that there will be negative impact on the rest of the landowner's land.

(r) Gunns is only required to fix any damage to the landowner's land as best as it reasonably and possibly can, so there is no requirement to fully fix any damage.

(s) Gunns does not have to bury the pipeline. The pipeline can run above ground, further decreasing the value of the landowner's land.

(t) The landowner cannot do anything to its land where the pipeline will run, nor around it, without the consent of Gunns.

(u) The landowner is being offered a short term, once off financial benefit, for long term financial detriment and long term inconvenience.

## **Document status**

This document is only a summary and does not contain all of the terms that are contained in the contract or in the annexures to the contract. This document does not constitute legal advice and is a guide only. The author is not responsible for any loss or damage arising from reliance on the content of this document. Landowners should seek their own independent legal advice.