

**IN THE WARDEN'S COURT OF QUEENSLAND
HELD AT BRISBANE**

IN THE MATTER OF: DETERMINATION OF COMPENSATION
PURSUANT TO SECTION 98 OF THE *PETROLEUM
ACT 1923* IN RESPECT OF PETROLEUM LICENCE
NO 32

BEFORE: F W WINDRIDGE, MINING WARDEN

APPLICANTS: (1) LEONARD J BENDELL AND MARY V URSIC
(2) NORMAN EATON
(3) JOHN S STEWART AND SUSAN B STEWART
represented by Mr Gallagher with Mr Cochrane,
instructed by Messrs Anderssen & Co

RESPONDENT: ALLGAS ENERGY LIMITED
represented by Mr R Jones with Mr Oliver,
instructed by Lees Marshall Warnick

CATCHWORDS: COMPENSATION – GAS PIPE LINE – PIPELINE –
DETERMINATION – EASEMENT – AUSTRALIAN
STANDARD FOR PETROLEUM PIPELINES –
AS2885 – BUFFER ZONES – BUFFERING – PASSIVE
RECREATIONAL USE – GRAZING – SEVERANCE –
INJURIOUS AFFECTION – BEFORE AND AFTER
VALUATION – PIECEMEAL ASSESSMENT –
DISCOUNT APPROACH – VISUAL IMPACT –
VISUAL AMENITY – ACCESS – THIRD PARTY
DAMAGE – INSPECTIONS – TIMBER –
HYPOTHETICAL PRUDENT PURCHASER –
SUBDIVISION – TRANSMISSION LINE EASEMENT

Petroleum Act 1923 ss 75(1), 75(5), 76(1), 98, 98(3), 99,
99(1)

Mining Act s. 431A(5)

Mineral Resources Act 1989 s. 281(3)

Inglis v Department of Lands (1996) 16 QLCR 474.

Joyce v The Northern Electricity Authority of Queensland
(1974) 1 QLCR 171.

Smith v Cameron (1986) 11 QLCR 64.

Mitchell v Oakhill and Mitchell (Land Court, 10 March
1998, Unreported).

Gold Coast City Council v Suntown Pty Ltd (1979) 6
QLCR at 46-61, 196-212.

Commissioner for Main Road v North Shore Gas Co Ltd
(1967) 120 CLR 118.

***Mole v Gas Transmission Corporation* (Victorian Civil
and Administrative Appeals Tribunal, 16 April 1997,
1993/14643, Unreported)**

DETERMINATION:

Before considering the evidence, it is necessary to set out a number of matters.

The Licence Holder

ALLGAS ENERGY LIMITED (hereinafter referred to as ALLGAS or the licence holder) is the holder of pipeline Licence Number 32 (hereinafter referred to as the licence) granted by Governor-in-Council on 24 April 1998 under the *Petroleum Act 1923* (the Act). The licence holder desires to lay a gas pipeline from Gatton to Gympie. The length of the pipeline is considerable, and it crosses land within a corridor by means of an easement which will be 25 metres wide.

Obviously a large number of properties are involved, and as at the date of hearing, we are informed that there has been negotiated agreements with 70 per cent of landowners. The current applicants are 3 of the group that have not reached settlement with the licence holder over compensation in respect of the easement.

The Act

In relation to entry and construction, Section 75(1) states:

“75(1) A licensee shall, as soon as practicable after the grant of the licence, make all proper endeavours to acquire by agreement with owners, holders and occupiers all rights required by the licensee in respect of lands (other than unallocated State land) for the purposes of the pipeline.”

Section 75(5) gives the licence holder certain rights, namely:

“(5) A licensee may, subject to this Act and with the prior approval of the Governor in Council, declared by gazette notice-

- (a) construct, maintain and use a pipeline on, over or under land described in the licence and specified in the approval; and
- (b) for any of those purposes or purposes incidental to those purposes, enter upon and occupy temporarily such land;

Notwithstanding that at the time of such entry, occupation, construction or use the licensee had not acquired any right pertaining to or any estate or interest in the land in question other than the right conferred by this subsection.”

In relation to acquisition of land for pipeline purposes, Section 76(1) provides;

“76(1) A licensee shall, as soon as practicable after obtaining the approval of the Governor in Council under Section 75(5), take all such steps as are necessary to acquire, in accordance with this section, the land, or a lease of or an easement or right of way upon the land the subject of such approval.”

Failing agreement, Section 98 is enlivened, and subsection 3 of Section 98 provides;

“(3) If within such time as may be prescribed the parties are unable to agree upon the amount of compensation to be paid, then either party may, upon a plaint in that behalf, have the amount determined in the Warden's Court.”

Quantum of Compensation

The matters that must be considered are set forth in Section 99 of the Act which states:

“99.1(1) Save as is by this Act otherwise provided, the compensation to be made under this Act shall be compensation for:-

- (a) deprivation of the possession of the surface or of any part of the surface; and
- (b) damage to the surface or any part thereof, and to any improvements thereon, which may arise from the carrying on of operations by the Minister or the permittee or lessee thereon or thereunder; and
- (c) severance of the land from other land of the owner or occupier; and
- (d) surface rights of way; and
- (e) all consequential damages.

(2) However, in determining the amount of compensation no allowance shall be made for any petroleum known or supposed to be in or under the land.

(3) In determining the amount of compensation, the Wardens Court shall take into consideration the amount of any compensation which the owner and occupier or either of them or their predecessors in title have or has already received for or in respect of the damage or loss for which compensation is being determined, and shall deduct the amount already so received from the amount which they or either of them would otherwise be entitled to for such damage.”

The Hearing

The hearing in relation to the three applications took place at Brisbane on 10th, 11th, and 12th of August 1998 with an inspection on 12 January 2000 of the Cooran area which relates to the land owned by J S & S B Stewart. A recent decision of the Land Court of Queensland (*Inglis v Department of Lands* (16QLCR 474) reported in 1996-1997 was submitted for consideration of the Court by Counsel for the applicants on 7 October 1999. All applications were heard together. There were 34 exhibits, including valuation reports. Written submissions from the applicants were received on 7 December 1998. Written submissions from the respondent were received in May 1999.

The Land

The land of each applicant is described on pages 2 and 3 of Todd's valuations (Exhibits 29, 30 and 31) and on pages 2 and 3 of McLennan's valuations (Exhibits 8, 9 and 10). However, for convenience, the tables hereunder are taken from the opening submissions of Mr Gallagher (t/s p9/10). The details are re-stated on pages 1 and 2 of the written submissions of the applicants.

Norman Eaton (The Eaton Land)

- a) Property description: Lots 177 and 389 on CG85 County of Canning, Parish of Durunder;
- b) Address: Eaton Lane, Stoney Creek, Caboolture;
- c) Area of Property – 98.91 hectares;
- d) Area of Easement – 3.1 hectares (1150m x 25m);
- e) Local Authority Area – Caboolture Shire;
- f) Zoning – Rural;
- g) Present land use – hobby farm;
- h) Future use – rural subdivision into 16 ha lots;
- i) Compensation claimed - \$67,000.00

John James Stewart and Susan Barbara Stewart (The Stewart Land)

- a) Property description: Lot 10 County of March, Parish of Woondum;
- b) Address: Brewers Road, Cooran;
- c) Area of Property – 12.51 hectares;
- d) Area of Easement – 0.85 hectares (340m x 25m);
- e) Local Authority area – Noosa Shire;
- f) Zoning – Rural until 14.12.92; Village Residential
- g) Present land use – residential subdivision;
- h) Future use – residential;
- i) Compensation claimed - \$182,500.00

Leonard J Bendell and Mary Ursic (The Bendell Land)

- a) Property description: Lot 6 on RP 204278 County of Cavendish, Parish of Clarendon
- b) Address: Lot 6 Bartleys Road Gatton;
- c) Area of Property – 49.87 hectares;
- d) Area of Easement – 3.0 hectares (1212m x 25m);
- e) Local Authority area – Gatton Shire;
- f) Zoning – Rural;
- g) Present land use – Orchard and Grazing;
- h) Future Use – Distant potential for future subdivision;
- i) Compensation claimed - \$61,000.00

The Claims

Set out hereunder is a table of the area, easement taken, and the valuations of the respective valuers.

	Total Area	Easement Area	McLennan	Todd
EATON	58.37	3.1 ha	\$67,000.00	\$6,820.00
STEWART	12.51	0.85 ha	\$182,500.00	\$10,000.00
BENDELL	49.82	3 ha	\$61,000	\$2,250.00

It will be noted there is a considerable separation between "claim" (McLennan) and "offer" (Todd).

The Pipeline

Before proceeding any further, it is of some importance that some facts in relation to the pipeline and its construction, safety and maintenance are set down.

Pursuant to the licence agreement held by Allgas, it is proposed to construct a high pressure low temperature gas pipeline from Gatton to Gympie.

A description of the pipeline appears at p2 of the statement of George Sidney HARRIS (Exhibit 27) and reads as follows;

"5. The gas pipeline in question, is to commence at Gatton where it will join the line coming in from Wallumbilla and then proceed to Gympie. The pipeline itself will be constructed of 200 mm (8 inch) pipe commencing in Gatton and reducing to 150 mm (6 inch) pipe at Angledale and 100mm (4 inch) at Nambour. The reason the pipe size is being reduced is because the major distribution will come out of Nambour and a larger pipe is not necessary to take the gas to Gympie. The pipe will be constructed underground with a minimum depth of 900mm to the top of the pipe. Usually an excavation trench is dug to 1.4m, bedding sand is laid and the pipe usually has a cover of about 1 m. The pipe itself is made of high grade carbon steel and electric resistance welded. It is coated with polyethylene jacket. It has cathodic protection which in this case has a very low voltage applied to the pipe which prevents and monitors corrosion problems. All joints are x-rayed after being welded to ensure quality control and when the pipeline is completed, it is filled with water and pressurised to 1.5 times its design pressure. This is referred to as the strength test. There are block valves at intervals along the pipeline but these are always placed on freehold land either owned by the gas company or the government being public land or on road reserves. There is no above ground structure on any private land. At a depth of approximately 300mm to 400mm there is a market (sic) tape warning of the existence of the pipe.

No fences will be constructed around the pipeline. Access gates may be installed in existing fences. If the landowner wanted locks these could be provided.

Any likely erosion from the work will be rectified."

Under the heading of "MAINTENANCE", the statement continues:

"6. The pipe is maintained in accordance with the requirements of Queensland Mines and Energy as set out in the licence agreement we have with that government department. To get such a licence you must comply with the safety, and emergency procedures. There is a weekly inspection of the pipe from a vantage point or alternatively a helicopter might be used to fly the pipelines. For instance on Eaton's property the pipe would be viewed from Eton's Lane to simply inspect it for third party activity.

7. There is a biannual cathodic protection test. This is carried out by using the cathodic test boxes which are located every 2klms. Again these are usually located on public land or road reserves.

8. At least once per year there is a physical walk along (sic) the line with two poles which test for damage to the pipe. These are in the nature of ski poles and the individual simply walks along the line putting the ski poles on the ground which then detects any damage to the pipe.

9. The easement is 25m wide and the pipe is constructed in the middle of the easement. No further pipelines will be constructed on this easement.”

Kenneth John Maynard BILSTON gave oral evidence and tendered a statement (Exhibit 33) on behalf of the licence holder in relation to the Australian Standard for Petroleum Pipelines. The current standard is known as AS 2885. At page 2 of his statement, Bilston states at points 7, 8, 9, and 10:

“7. The safety performance of pipelines is no accident. AS 2885 has many provisions which must be met to ensure the safety of the pipeline and the safety of the public. In this respect, AS 2885 is the most advanced and systematic pipeline standard currently in use in the world. It includes, in addition to the requirements which exist in similar standards in other countries, specific requirements for:-

- (a) the detailed assessment of risks associated with high pressure pipelines;
 - (b) the engineering design of pipelines to eliminate identifiable threats; and
 - (c) operation and maintenance practices to be implemented to monitor high pressure pipelines specifically directed at the safety of the pipeline and the public.
8. High pressure pipelines on private land usually involve an easement over the land with restrictions on future activities on that land. The major restrictions associated with the easement relate to construction of structures and buildings on the easement. Farming, grazing and agriculture activities which do not affect the shape of the land are normally unrestricted. Where land shaping operations are projected at the time of pipeline construction, provision is made for the future activity. Where land-shaping activities are to be implemented after the pipeline is constructed, liaison between landowner and pipeline easement holder is necessary to ensure the protection afforded to the pipeline and the public is not adversely affected.
9. Urban areas represent a small proportion of the length of high pressure pipelines compared to undeveloped land, but there are many examples in Australia of high pressure pipelines with urban development immediately adjacent to the pipeline easement and also of older high pressure pipelines where the easement overlaps urban house blocks and the pipeline is located within the house block (but not under the buildings).
10. High pressure pipelines designed, constructed, operated and maintained in accordance with AS 2885 and licensed by any of the state regulators in Australia have an inherent safety equal to or better than those in any country in the world.

The risks to the public associated with such pipelines are so low that it is not feasible to make a meaning full numerical assessment of such risks. Where such assessments have been attempted the assessment for pipelines of much larger diameters (DN450 and DN650) has suggested risks below one in one million of fatality per year to any individual over one kilometre length of a high pressure pipeline traversing suburbia on both sides.”

Buffer Zones

To substantiate the claims of the landowners, the need for “buffer zones” or “buffering” was raised by the applicant landowners.

The Planning Scheme for the Shire of Gatton Planning Study Report 1994 at p.78 reads:

“There are several measures which can be adopted to reduce any potential safety risk. Broadly, these include:

- engineering measures
- operational measures
- buffering

The pipeline code suggests that any development within 200m of a high pressure pipeline (or easement) should be examined in the light of public safety considerations. While the ideal safety buffer would be a 200m strip of land either side of the easement devoted to passive recreational or non-intensive rural uses, this is not always practicable or achievable. The width of any buffer will thus depend on the type of land use being proposed, the topography of the area, and the measures employed to offset the additional risk created by locating a development closer to the pipeline. If a particular development is to proceed, the cost of maintaining the existing level of safety and pipeline capacity should generally be borne by the developer.”

The Planning Study for the Jondaryan Shire Council (November 1993) at p.30 under 6.10 states:

“To avoid compromising the safety of the pipelines’ operations as well as the property and public in close proximity to it, a 200 m wide “Development Impact Area” has been nominated on either side of each pipeline. In accordance with the recommendations of the local Government Bulletin of July 1986, covering “Urban Development Adjacent to High Pressure Pipeline Easements”, development in this area should be subject to the requirements of the Department of Minerals and Energy and advice from the owners of the pipeline.”

It therefore appears that much of the language in the Shire Plans mentioned above had its origin in a bulletin issued by the Department of Local Government in July 1989. The evidence of Bilston, Harris and Humphreys relates to Australian Standards drawn up at a later date, and these standards tend to make the information put forward in the bulletin look outdated. In particular, Bilston, at parts 7, 8, 9 and 10 of his statement, clearly throws grave doubts on the relevance of the 1986 bulletin to current practices.

Mr McLennan was so reliant on the “200 metre buffer” that his evidence invoked a closer reading of the bulletin. I find I am not persuaded that there is any legal requirement for a buffer in relation to an underground gas pipeline apart from the standard 25 metre easement or that there is any similar requirement by local government. It appears that the reference to a 200 metre buffer (the development impact area) merely triggers further consideration in relation to the suitability of certain development within that 200 metre zone as far as planning or local authority approvals are concerned. There is no evidence that the local authorities referred to in evidence actually impose buffer zones. To convert the “buffer” to layman terms, the buffer is twice the length of the playing surface of Suncorp Stadium, on both sides of the easement. This is clearly untenable, and the bulletin itself admits the 200 metre buffer is not always practicable or achievable.

However, it is apparent that there are certain restrictions and limitations as to what can occur within some distance of a buried gas pipeline. Obviously, construction of any dwelling or building on top of any buried pipeline, even water, could lead to complications, and should be avoided, if only on the ground of inconvenience. It is also obvious that there would be other restrictions, but it is also clear that there are other permitted activities such as passive recreational uses or limited rural use such as grazing. While I consider that is the legal reality of the situations we have before us, the public perception over the existence of a buried gas pipeline is somewhat different, and that warrants consideration of each case on an individual basis.

Methodology of the Valuers

To support the methodology adopted by Mr McLennan the valuer for the applicant landowners, the applicants tendered a report compiled by Michael Slater.

There can be little dispute with Mr Slater's comment that “the itemised format of s.99(1) tends to lead towards a piecemeal approach to compensation and this approach is consistent with some of the decisions of the Courts in easement compensation cases such as *Joyce v The Northern Electricity Authority of Queensland* (1974) 1 Q.L.C.R.”

The witness Slater also referred to *Smith v Cameron* (1986) 11 QLCR 64 where the Court commented:

“It is well recognised that where damage by way of severance or injurious affection is involved the assessment of compensation may be made on a “before” and “after” method of calculation of the property in which the cumulative effect is reflected in the “after” valuation or alternatively by the summation or piecemeal assessment of all relevant effects”.

Mr Slater advances the opinion that “a piecemeal assessment” is generally more appropriate for primary production country. In other circumstances however, a “before” and “after” assessment may be more likely to properly assess the loss, particularly when severance and injurious affection arises”.

Mr Trickett, President of the Land Court, in his decision *Mitchell v Oakhill and Mitchell* (unreported) 10 March 1998 said:

“In *Smith v. Cameron* (1986) 11 Q.L.C.R. 64, the Land Court considered provisions similar to those of Section 281(3)(a) of the present Act, which were contained in its predecessor, the *Mining Act 1968*. In that case, the Court

likened the use of land for mining purposes to compulsory acquisition of land for a limited period and applied the various principles and practices of valuation which are applied in determining compensation for the taking of limited rights over land for public purposes.”

In this regard the Court said at pp.73/74:

“These similarities are evident in the principles laid down by the Land Appeal Court for consideration in the latter and no better set out than in the case of *P. Joyce v. The Northern Electric Authority of Queensland* (1974) 1 Q.L.C.R. p.171 were in dealing with the taking of an easement for electric line purposes the Court at page 177 said –

‘The test is the attitude of the hypothetical prudent purchaser and the extent to which in the opinion of such a person the claimant has suffered diminution in the value of his property resulting from the erection of the transmission line over his land and the creation of the easement including where appropriate severance and injurious affection damage.’

and at page 178 –

‘Each case must be considered according to the terms and conditions of the easement created and the frequency and magnitude of the disturbance likely to result in consequence to the claimant’s proprietary rights.’ ”

The Court recognised that the *Mining Act* did not use the same terminology as was generally applied in relation to compensation for compulsory acquisition of land. The Court said at p.74:

“I should say however in qualification of my use of the words injurious affection and disturbance which are not used in the Act that paragraphs (a) to (d) of Section 431A(5) appear to recognise diminution in value of the other lands of the owner. But if they are not wide enough to specifically cover this form of damage which in some instances is used in the alternative of the headings mentioned then such would appear to me to be provided for in paragraph (g) - ...”

The provisions of Section 431A(5) of the *Mining Act 1968* referred by the Court do not differ materially from those contained in Section 281(3)(a) of the present Act.

The Court continued at p.74:

“It is well recognised that where damage by way of severance or injurious affection is involved the assessment of compensation may be made on a ‘before’ and ‘after’ method of valuation of the property in which the cumulative effect is reflected in the ‘after’ valuation or alternatively by the summation or piecemeal assessment of all relevant effects. ... The section in my opinion merely identifies matters which shall be taken into consideration in making the assessment. It does not prescribe a method of valuation. No doubt each case will depend on its own facts and circumstances but it seems to me that either method is open to the valuer.”

In my opinion the same reasoning can be applied to the provisions of Section 281(3) of the present Act. Although the section of the *Mining Act* directed the Warden to take those matters into consideration and the *Mineral Resources Act* provides that an owner of land is entitled to compensation for those particular matters, the latter section does not prescribe a method of valuation. In my view, as long as the amount of compensation finally determined sufficiently accounts for each of the matters referred to in the subsection, it is not necessary to quantify an amount in respect of each of the matters referred to.

Therefore, the “before” and “after” method of valuation is still open under Section 281(3) of the *Mineral Resources Act*. As explained in *Smith v Cameron*, the “before” and “after” method would adequately provide for each of those heads of claim set out in Section 281(3) of the *MRA*. I might add, as an aside, that the before and after valuation principle has not been argued for short term mining leases, ie three to five years, to date.

Section 99(1) of the *Petroleum Act* mirrors section 281(3)(a) of the *Mineral Resources Act 1989*.

The Court went on to state further (at p.10) in *Mitchell v Oakhill and Mitchell* (supra) –

“In my opinion that piecemeal assessment of compensation by separately addressing each of the matters for which Section 281(3) provides that an owner of land is entitled is not validly based. The assessment of the individual matters is inconsistent and, in part, represents a doubling up of some claims. For example, paragraphs (i) and (ii) are calculated on the basis of productivity on the one hand and percentage loss on the other. Such a piecemeal assessment demonstrates to me the difficulty of attempting to address each of the matters separately, rather than an accepted method of valuation, preferably the “before” and “after” method. If circumstances force a valuer to adopt a summation approach, then care must be taken to ensure that there is no over-lapping or doubling up in the assessment of compensation.”

I find that I am not in disagreement with the bulk of the opinion expressed by Mr Slater. Taking into account the current determinations of the Wardens Court and the appeal determinations handed down by the Land Court, I am of the opinion that the “before” and “after” method of valuation properly accounts for severance or injurious affection in certain instances, but in other instances a piecemeal assessment is generally more appropriate eg primary production land, provided there is awareness of the danger of “doubling up”. Injurious affection calculated as a result of the “before” and “after” approach would account for all heads of claim under paragraphs (a) to (e) inclusive of Section 99(1) of the *Petroleum Act* and incidentally, of Section 281(3)(a) of the *Mineral Resources Act 1989* as well where that section is under consideration.

However, one governing factor of importance is the size and term of the lease where the *Mineral Resources Act 1989* is concerned, and the location, type of pipeline and terms of the easement where a pipeline is concerned. The effect of the easement on the different classes of land warrants consideration on an individual basis, as the effect will vary from owner to owner dependent on the current use, potential use to which the land may be put, or class of land involved. In easement matters, it is generally accepted that the discount approach is appropriate. Of critical importance to the case of the landowners is the concept that buffering is required and desirable, and therefore injurious affection flows on to the buffer area to some degree, and to the balance of the land, perhaps to a lesser

degree. The license holder resists the "buffer" concept and disputes injurious affection will flow, or in the alternative, if it does flow, the effect is very minimal.

The Bendall/Ursic Land

The Bendall/Ursic land is a total of 49.82 hectares in area, described as Lot 6 on RP 204278, County of Cavendish, Parish of Clarendon. Three hectares are required for easement purposes. The land is currently valued for local authority rating and land tax purposes at \$74,000 as at 30 June 1997. The land is zoned "rural general farming". The owners reside on the property in temporary accommodation. A house pad has been established with the intention of erecting a dwelling.

It is proposed that the pipeline will enter the property and run north to south 12.5 metres from the eastern boundary, having a total easement width of 25 metres.

Mr McLennan's assessment of compensation is \$61,000 as set out hereunder (point 8.3 at 9.9 of Exhibit 8)

Compensation for the deprivation and possession of the surface area	
3 hectares @ \$3500 per hectare @ 50%	\$ 5,250
Access track (4 metres wide) 0.5 ha @ \$3500	\$ 1,750
Timber on easement - mixture of mill pole and fencing 20 @ \$100	\$ 2,000
Severance: 22 ha @ \$3500/ha @ 15%	\$11,550
Effect on house - Move building in curledge area to NW corner re-establish power, water and road to the site - say	<u>\$40,000</u>
	\$60,500

Mr McLennan relies on 2 sales (at 7.2 on p.8 of Exhibit 8):

- 1) Coulter and Pohlman to Dowling - 88.47 ha for \$240,600, assessed at \$2713/ha
- 2) Kubinski to Marriott - 40.17 ha for \$115,000, assessed at \$2863/ha.

Mr Todd's valuation (at item 5 on p.6 of Exhibit 30) assesses compensation at \$2250, made up as hereunder:

Property value/ha	\$2500
Easement land value - 3ha @ \$2500	\$7500
diminution in value	30%
<u>Compensation</u>	<u>\$2250</u>

Mr Todd relies on two recent sales:

1. Lot 76 on RPCA311429 some 7.5 klms south east of the subject property for \$160,000. He states this represents a cleared, fenced and watered value of approximately \$2300/ha.
2. Lot 3 on RP229160 (Kubinski to Marriott) located 800 metres south of the subject property, being 40.17 hectares in area for

\$115,000 - representing a cleared, fenced and watered value of \$2614/ha.

Mr Todd makes no allowance for diminution of value in a buffering zone or for the balance of the land.

Mr McLennan's advancement of the buffering zone concept is based on the Local Government Bulletin of 1987 and the decision in *Gold Coast City Council and Suntown Pty Ltd* (Land Court 12 September 1979)("Suntown") LCR 1979 Vol 6 at 46-61, and 196-212 (on appeal) .

I consider "Suntown" can be distinguished from the subject land in that the acquisition was for sanitation purposes (rubbish depot), there was separation by a public road, and there was a high probability of effect on amenity through visual impact with the additional downgrading factors such as noise, dust, odour and traffic. The nearest land of the owner although on a separate title was designed for subdivision into housing lots. The Land Court allowed a diminution of 50 per cent of the land in a 100 metre buffer. This was not disturbed on appeal.

In the case of the Bendall/Ursic land, we have none of those factors. The pipe will not be visible and will not cause dust, noise, odour or loss of visual amenity apart from some temporary disturbance caused by initial construction.

I am satisfied the easement will have a low impact upon the property in that:

- only one pipe will be installed
- the pipe will be buried at least 0.9 metres below the surface of the land
- the pipe will be located along the eastern boundary of the property
- physical inspections will be bi-annual
- other visual inspections to guard against third party interference can be conducted from vantage points outside the property.

The best comparable sale showed a value of \$3863/hectare. A factor that seemed to impress Mr McLennan was the presence of a creek on the northern boundary giving a "creek frontage" although it appears there is no permanent water supply in the creek. I accept his assessment of \$3500/hectare.

There appears to be some confusion over the aspect of access. The evidence does not disclose the requirement to take additional land for access purposes. As I understand the evidence access will be along the 25 metre easement already defined. The claim for access is dis-allowed.

The landowners through Mr McLennan made a claim for timber on the easement that will be lost. Mr Todd acknowledged that some timber will be cleared but this can be cut and stacked for sale by the landowner. It appears the "timber" is so insignificant that there was little objective measurement, no independent valuation by an expert, and no photographic evidence tendered. While there is room for some doubt over the quantity, quality and value of the timber, I will allow that claim to stand.

I do not accept that there is any legal or local government requirement for an off-set of 200 metres as a buffer. It follows therefore that there is no need or requirement to relocate the dwelling. If the owners desire to do so, that is a matter of personal choice for them. That portion of the claim is disallowed.

On the subject land it is highly unlikely that there will be any sub-division, and I am reinforced in that opinion by the tenor of Mr Bendall's evidence. There is also no evidence that the current position of the improvements on the land lean towards sub-division. I am therefore of the opinion that the owners will not suffer any loss from any lost opportunity to subdivide, and the claim of 15% diminution in respect of land within any "buffer" is disallowed.

I turn now to the loss of land in the easement corridor. This type of easement differs from others eg open drainage channels where alternate use is nil. In this case, there is the possibility of partial or limited use eg grazing or orchard purposes up to a certain distance within the easement but a certain distance from the pipe. However, Mr Bendall does not indicate any desire to consider such matters. On the one hand we have a buried utility with none of the visual impact or restrictions of transmission lines, drainage channels or aboveground water supply pipes. On the other hand, it must be accepted that the owners have lost a measure of control over the land in the corridor, but have not lost possession or partial use. It is accepted that there is diminished use and diminished control, and therefore the discount approach is appropriate for land within the easement (Joyce's case). I accept the laying of the pipe does not make for the better and full enjoyment of the land. (*Commissioner for Main Roads v North Shore Gas Co Ltd* (1967) 120 CLR118). The matter to be determined is the rate of discount. The rate determined in "Suntown" was 50% but it is clearly seen that the impact of the use of the resumed land on the adjoining land was very high, and that is certainly not the case here. In an unreported Victorian case of *Mole v Gas Transmission Corporation* (Claim No. 1993/014643), discounts of 5% for the balance of land most severely affected and 2.5% for less affected land where there was potential for subdivision of up to 72 lots was allowed. Apart from "Suntown", there is no Queensland case referred to the Court which supported "buffering".

Having taken all that into consideration, I am of the opinion that a discount for the easement of 50% is not supported by any evidence, but a discount above 5% is warranted.

While I have found Mr Todd's valuation to be not unrealistic, his evidence indicates that he arrived at that assessment on comparable sales and bare of any other considerations in respect of the effect of the pipeline on the balance of the land. I consider Mr McLennan's assessment of \$3500 per hectare sits at the higher end of the scale, but would be a reasonable asking price. I am therefore of the opinion that the valuation of \$3500 per hectare is reasonable and propose to adopt \$3500 per hectare as the value of the land in the easement.

Diminution of value of the balance of the land has been considered and granted in a number of cases, particularly in relation to compensation under the *Mineral Resources Act 1989* and a number of appeals arising from Warden's Court determinations by the Land Court. The facts surrounding those awards can be distinguished from the facts attached to the Bendall easement. However, the "before" and "after" approach usually accommodates such diminution and therefore there is no practice of applying a rule or

common percentile to determine such diminution. Counsel for the licence holder points out that there are no examples brought forward to demonstrate such diminution in relation to pipelines, and given the extent and number of pipelines in Queensland, that is unusual. That fact, however, is not a bar to any award being made. I note that the only two cases where a percentile discount was accepted related to subdivision involving quite a number of housing allotments. The factor working against the Bendall/Ursic land is that the likelihood of subdivision is very remote. The use of the land by Bendall is more intensive than general grazing use. Accommodation is constructed nearby. If there is some diminution in value of the balance of the land, who can say by what real extent, given the nature of the easement, and how does one quantify that perception, bearing in mind the area to be used in the easement is a small portion of the total area. I disallow the claim for severance.

I recognise that there may be some concern held by the owners in relation to the location of the pipeline and the location of the dwelling. I consider that concern can be best accommodated, in the absence of any other objective method of measurement, by adjusting the discount in relation to the land used for easement purposes.

The claim in respect of land in the easement is dis-allowed. In lieu thereof I award compensation as hereunder –

3 hectares @ \$3,500 per hectare @ 40 per cent	\$ 4,200.00
Timber on easement	\$ 2,000.00
TOTAL	\$ 6,200.00

I award compensation in the sum of \$6,200.00.

The Eaton Land

The Eaton land is 58.376 hectares in area, and is described as freehold land, being Lot 177 on Registered Plan No. CG85, County of Canning, Parish of Durundur.

This land, together with Lot 389 to the north, is valued at \$89,000, being a total area of 98.91 hectares, as at 30 June 1997 for local authority rating and land tax purposes.

The land is zoned "rural" and under the current Caboolture Council Town Planning Scheme, is capable of being sub-divided into lots of about 16 hectares each.

The owner does not reside on the property and there are no structural improvements on the property.

It is proposed that the pipeline will run through the middle of Lot 177 from west to east. The easement having a total width of 25 metres. The area to be used for the pipeline easement is 3.1 hectares.

Mr McLennan's assessment of compensation is \$67,237, as set out hereunder (point 8.3 at p.10 of Exhibit 9).

Compensation for deprivation of possession of surface area	
3.1 hectares @ \$7500/ha @ 50%	\$11,625
Access track (4 metres wide) 0.5 ha @ \$7500/ha	\$ 3,750
Severance including portion of the S E corner of	

Lot 389 to the north owned by Mr Eaton 46.1 ha @ \$7500/ha @ 15%	<u>\$51,862</u>
<u>Total</u>	<u>\$67,237</u>

Adopt \$67,000

Mr McLennan puts forward 4 sales (at 7.2 on p.9 of Exhibit 9)

- 1) Byrne to Marshland & Zawalla – 41 ha improved at \$312,000 \$7609/ha
Sale 2 ½ years old.
Klein to Walshaw – 27.42 ha improved at \$330,000 - \$12,035/ha.
Sale 2 years old and too small to subdivide.
- 3) Quarterman to Woodland Enterprises – 16 ha at \$14,000.
\$8750/ha. Vacant sale 2 years old to adjoining L/owner.
- 4) Stapleton to Churches. 32.11 ha improved at \$9400/ha

Mr Todd's valuation (at item 5 on p.6 of Exhibit 31) assesses compensation at \$6,820 made up as hereunder:

Property value/ha	\$ 5,500
Easement land value 3.1 ha @ \$5,500	\$17,050
Diminution in value 40%	
<u>Compensation assessed</u>	<u>\$ 6,820</u>

Mr Todd refers to one sale in 1996 of 41 hectares with structural improvements and suitable for sub-divisional purposes. He assessed this sale at \$5,658/ha cleared, fenced and watered and states this land is superior to the subject land.

Mr Todd acknowledges the sub-division potential of the subject land, particularly with the adjoining land in Lot 389, this lot being held by the same owner. There appears to be the potential to sub-divide the land into 6 sub-divisions of 16 ha to 17 ha in area. The pipeline would then run down the boundary of one lot if the titles were amalgamated and subdivision proceeded.

As in the Bendall/Ursic valuation, Mr Todd makes no allowance for diminution of value in a "buffering" zone or the balance of the property.

I consider "Suntown" can be distinguished from the subject land for the same reasons as stated in Bendall/Ursic.

Given the current use of the land, the easement will have a low impact, apart from initial construction. If sub-division proceeds in the future, one lot only will be physically affected, ie the lot where the easement is located. I do not accept that the effect will be the loss of one sub-division block (McLennan 8.1). The presence of the pipeline on the neighbouring lot would not be a factor that a hypothetical prudent purchaser would consider an impediment, in my opinion.

In assessing compensation, I take into account that even if the licence holder conducts visual inspections from the boundary, the licence holder still retains the right to enter the land and will probably do so several times a year as part of the inspection process.

However, the owner does not reside on the property and there are no improvements on the property. Disturbance will therefore be very minimal, and if subdivision does occur, disturbance will affect only one subdivided block of 16 hectares.

Access is to be along the designated easement, and no separate access is required. That part of the claim is dis-allowed.

If subdivided, one lot only would be affected, and the impact would be minimal. The land is currently used for grazing purposes and I do not consider there is any evidence to show that severance or injurious affection would flow to any measurable degree, but any possible future effect can be accommodated by increasing the discount for the land taken. The claim by Eaton is dis-allowed, and in lieu thereof, I award compensation as follows –

Compensation is assessed as hereunder:

3.1 ha @ \$7500 @ 40%	\$ 9300.00
<u>TOTAL</u>	<u>\$ 9,300.00</u>

Compensation in the sum of \$9,300 is awarded.

The Stewart Land

The Stewart land is described as Lot 10 on Registered Plan No. 881328, County of March, Parish of Woondum, and has an area of 12.51 hectares. The easement will require 0.85 hectares. The easement is within the local authority area of Noosa. Zoning was rural until 14.12.1992, then Village Residential under the current Noosa Council Town Planning Scheme. Present land use is residential subdivision.

The Stewart land is being subdivided in stages. Stage 1 comprises 25 lots of which approximately 75% have been sold. Stage 2 is ready to proceed, and Stage 3 will be completed in the future.

The easement will have a total width of 25 metres and an approximate area of 0.85 hectares.

Mr McLennan, in his valuation report (Exhibit 10 at point 6.2 (p5) to 6.5 (p8)) describes the easement and its general affect. McLennan states the easement will force the re-design of Stages 2 and 3, reducing the number of lots from 42 to 18 village residential allotments, and one acreage block. In his methodology, McLennan proposes the “before” and “after” method as appropriate, takes *Suntown* into account and makes allowance for a “buffer” area.

In his before assessment, McLennan values the remaining lots at a total of \$1,680,000. After calculation of all costs and charges, a net valuation of \$281,862 is achieved. In his “after” assessment, a gross value of \$770,000 is put forward. After calculation and adjustment of all costs and charges, a net valuation of \$159,314 is achieved. After adding the valuation of lots 61 to 65, and lot 54, a figure of \$182,500 is claimed as compensation.

Todd, valuer for the licence holder, in his valuation report (Exhibit 29 at 2.7 on p4) describes the easement as being 340 metres in length, 25 metres wide and comprising an area of 0.85 ha. In his description of the easement, Todd describes the purpose as "Easement for one (1) underground high pressure gas pipeline" and further states:

"the easement is to be located within and upon an existing 40 m wide SEQ transmission line easement. This easement follows a gully from the elevated easterly boundary of the property. A steel transmission tower with 25m² base is located on this elevated part with the power line following down the gully area over a drainage area at the bottom.

Because of the power line easement this area is not available for allotment purposes and is required as part of the Open Space as per the Strategic Plan."

In summary (at p5 of his valuation), Todd states:

"The easement as stated above is to be over an existing transmission line easement and will have minimal impact on the property as a 12.51 ha single residential lot. Similarly, the pipeline easement will have minimal effect over the potential of the lot for subdivisional purposes."

After referring to a 1993 sale that related to a subdivision containing 13 lots, Todd proposes a value of the easement land at \$10,000/ha. The value of the easement land (0.85ha) is therefore \$8500.00. After allowing for a diminution in value of 15%, Todd assesses compensation at \$1275.00. (Page 6 Exhibit 29)

The basis of McLennan's assessment of compensation appears to be hinged on his acceptance of a 200 metre buffer zone, and the consequent loss of a number of subdivision allotments. McLennan also refers to "*Suntown*" and states the buffer area in this case has been incorporated as an acreage residential block. However, I do not accept that buffering is required, apart from the standard width of 25 metres easement, and that rather leaves most of the base of McLennan's valuation unsupported.

A fact which must be taken into account is that this easement of 25 metres will run inside an existing 40 metre SEQ transmission line easement. The gas line will be buried approximately 1 metre below the surface. Visual amenity is not an issue, and both easements (the existing transmission line and the proposed gas line) are along a sloping gully. This is all reflected in the valuation of Todd.

The Registered Plan 851328 attached to Todd's valuation shows the subdivision plan of Stage 1 with the transmission line easement obviously noted. The plan approved by the Noosa Shire Council (on 8 July 1993) and included in McLennan's valuation as Annexure "A" clearly shows other lots in other stages of the proposed subdivision designed up to or near the edge of the electricity easement. Therefore, the design had already accommodated an electricity easement of 40 metres.

Some evidence was tendered in relation to the cost of construction of a road in the estate, and the problems associated with the construction of a replacement road for access to the estate, given restrictions imposed by the easement document. However, I am satisfied that re-design of the road is unnecessary provided usual engineering solutions are applied.

I take note of the evidence that indicates that one sale on the estate has been cancelled allegedly due to the presence of the pipeline, and that another sale not involving the estate was also lost, allegedly because of the pipeline. However, only 75% of Stage 1 has been sold, and it is conceded that the market was "slow" in this area at the time when knowledge of the location of the pipeline became public. There is a lack of probative evidence about lost sales through gas or other pipeline construction, given the extent of pipeline construction in Queensland in recent years.

The approach of McLennan, being on a "before" and "after" basis, and taking account of those lots that would be lost by buffering, did not advance any discount percentile as an alternative for consideration. Todd settles on a discount of 15% .

The parties were notified that an inspection of the Cooran land would be carried out. No particular point or issue was the subject of the inspection. For that reason legal representation was not necessary and no legal representatives attended and that also minimised costs to the parties. Mr Todd arrived on the scene to check I was in the right location I suspect, and then departed. I took the opportunity to walk over part of the developed estate and the proposed Stage 2.

Some assistance was gained from the inspection in that it put the views of the respective valuers into perspective and clarified the impressions put forward in the photographic exhibits.

The inspection indicated that the visual impact of the transmission lines was not as great as I had anticipated, and therefore the electricity easement may not have had a significant impact on the sales of allotments in the subdivision, the land being set aside as open space (Todd, P4 Exhibit 29). However, that has no effect on my considerations of these matters, except to note that the pipeline easement is wholly contained within the transmission line easement.

The inspection also indicated, albeit to my untrained eye, that the best allotments of Stage 1 had been sold, and the balance of the allotments had certain factors which mitigated against their sale. In particular, the slope of the land away from the kerb side to the back boundary, indicated by pegs, was noticeable, and in my opinion that factor alone would influence intending purchasers to a large degree. The transmission line, while not crossing the allotments, adds to the problems, and the buried gas line in all probability, is also a detrimental factor an intending purchaser would consider. Russell, in his statement dated 10 August 1998, puts the position from his perspective at paragraph 7:

" I am of the opinion that the pipeline easement over Mr Stewarts subdivision has greatly affected the viability of the remaining subdivisional stages. From the point of view of a real estate agent the remaining blocks will be significantly devalued and difficult to sell at any price."

The President of the Land Court in considering the effect of a gravel quarry and high voltage power lines on certain land (*Inglis v Department of Lands* supra) said (at 483) that:

"It is immaterial whether the public concerns about the health effects of high voltage powerlines on man or beast have any factual foundation. The fact is that such concerns are widespread and must influence the price paid for land potentially affected by such large scale electrical installations."

However, the relevant point here is that the pipeline will not enter the unsold allotments or the allotments proposed in the next stage of the subdivision.

The sales data put forward by Russell indicates sale prices (in 1994) in Stage 1 which range from \$38,000 to \$41,700. I adopt \$40,000 as a fair and reasonable sale price for each block on average.

I am not suggesting that the valuation of Mr Todd is out of line to any great degree. On the matters that he has taken into account, his valuation is supportable. Had the allotments been sold and held by third parties, there would be no injurious affection flowing to those owners from the installation of the pipeline. The particular circumstances surrounding this particular development are unique and may never be repeated. In arriving at this determination, I have taken these particular circumstances into account. I can only assume that Mr Todd also has made allowances for the nature of the land and the existing electricity easement, and the location of the pipeline easement within that existing easement.

McLennan's comparative market data (item 7, p8) refers to sales of acreage blocks to the north of the subject area up to a hectare in area have a value of \$70,000. He indicates smaller blocks in Stage 1 have sold for prices ranging from \$36,000 to \$41,700. I would not regard 0.85 of a hectare as a small village residential block. I therefore consider that the land lost to the easement, notwithstanding the other encumbrances and contours of the site, should be assessed at \$40,000 per hectare. I am of the opinion that the owners (Stewart) will have some difficulties when offering the unsold lots in Stage 1 for sale where the rear boundary comes into contact with the electricity easement containing the gas pipeline, and the lots in the next stage which also will have a boundary with the electricity easement that contains the gas pipeline, at a lower price, but assessment of that price is the difficulty.

As I have intimated, had the allotments been held by individual owners, no severance of injurious affection would flow. The pipeline does not cross those allotments or proposed allotments. Any effect can be accommodated in adjusting the discount rate to reflect any perceived effect.

The claim for compensation is dis-allowed and in lieu thereof I assess compensation as follows -

0.85 ha @ \$40,000.00 per ha = \$ 34,000.00

Diminution in value 50% = \$ 17,000.00

Compensation is awarded in the sum of \$ 17,000.00.

Dated at Brisbane this 18th day of February 2000.

F W WINDRIDGE
MINING WARDEN