

Date : 21/05/2021 2:18:44 PM

From : "EDDINGTON Ross"

To : "WARD Steven (Resources)" , "MUSGRAVE Kerrie"

Subject : FW: Requested feedback on Directional Drilling responses.

Attachment : Combined entry notice for private land and notices to landholders template v1_May2021.doc;image001.png;

Steve

Kerrie has produced the updated form attached for any comments you may have. It is associated with the new directional drilling factsheet

Ross

From: MUSGRAVE Kerrie <Kerrie.Musgrave@resources.qld.gov.au>

Sent: Friday, 21 May 2021 1:30 PM

To: EDDINGTON Ross

Subject: RE: Requested feedback on Directional Drilling responses.

Hi Ross,

I have attached the draft "Combined notice for entry for private and notices to landholders" that is referred to in the directional drilling fact sheet for your review.



Kerrie Musgrave

Acting Policy Manager

Georesources Policy | Georesources Division

Department of Resources

P: 3199 8105

E: kerrie.musgrave@resources.qld.gov.au

A: Level 4, 1 William Street, Brisbane QLD 4000 | PO Box 15216, CITY EAST, QLD 4002

W: www.resources.qld.gov.au

From: EDDINGTON Ross <Ross.Eddington@resources.qld.gov.au>

Sent: Thursday, 20 May 2021 9:36 AM

To: MUSGRAVE Kerrie

Subject: RE: Requested feedback on Directional Drilling responses.

Thanks I will review and then pass to Chirs

From: MUSGRAVE Kerrie <Kerrie.Musgrave@resources.qld.gov.au>

Sent: Thursday, 20 May 2021 9:31 AM

To: EDDINGTON Ross

Subject: FW: Requested feedback on Directional Drilling responses.

Hi Ross,

I have reviewed the letter provided track changed edits in the document provided by Alice – for your review.

I have been careful to be consistent with the fact sheet and as a result is also bit legalistic. However, the landholders are keen to understand the obligations of the resource authority holder as well as their rights and these come from the legislation.



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From: PRINCE Alice <Alice.Prince@resources.qld.gov.au>
Sent: Wednesday, 19 May 2021 11:11 AM
To: MUSGRAVE Kerrie; EDDINGTON Ross
Subject: RE: Requested feedback on Directional Drilling responses.

Thanks Kerrie

The time constraints we have is that arrow have issued NOE's without engaging with landholders first, so they are really upset, surprised and would like answers to their questions around rights, CCA and why prelim and not advanced etc.

Another big issue is the subsidence that they all believe they will be left to deal with.

Alice Prince
Manager
Engagement Team | Engagement and Compliance Unit | Georesources
Department of Resources

P: 07 4529 1330 **M:** sch4p4(6) Per
www.resources.qld.gov.au

From: MUSGRAVE Kerrie <Kerrie.Musgrave@resources.qld.gov.au>
Sent: Wednesday, 19 May 2021 11:06 AM
To: PRINCE Alice; EDDINGTON Ross
Subject: RE: Requested feedback on Directional Drilling responses.

Hi Alice,

I have been working on this and because it is the first response to be drafted that will likely be used for subsequent responses Chris Shaw would also like to review. I anticipate that this could happen by the end of the week.

Please let me know if you have any time constraints and need the reviewed copy back to you earlier.



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From: PRINCE Alice <Alice.Prince@resources.qld.gov.au>
Sent: Wednesday, 19 May 2021 11:02 AM
To: EDDINGTON Ross; MUSGRAVE Kerrie
Subject: RE: Requested feedback on Directional Drilling responses.

Hi Kerrie and Ross

Just touching base to see if you were ok with our suggested responses.

Alice Prince
Manager
Engagement Team | Engagement and Compliance Unit | Georesources
Department of Resources

P: 07 4529 1330 **M:** sch4p4(6) Per
www.resources.qld.gov.au

From: PRINCE Alice
Sent: Monday, 17 May 2021 1:43 PM
To: EDDINGTON Ross; MUSGRAVE Kerrie

Subject: Requested feedback on Directional Drilling responses.

Hi Ross and Kerrie

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Tim and I have drafted a response based on the information we had available and our discussions. I have also attached legal feedback on a similar issue in the same area around directional drilling. We would like to ensure our responses align with RS&P as we would be using the response as a basis to respond to other Directional Drilling enquiries.



Alice Prince

Manager

Engagement Team | Engagement and Compliance Unit | Georesources

Department of Resources


P: 07 4529 1330 **M:** sch4p4(6) Pe

E: Alice.Prince@resources.qld.gov.au


A: PO Box 318, TOOWOOMBA, QLD, 4350

W: www.resources.qld.gov.au

Published on Resources Disclosure Log
RTI Act 2009

Date : 21/05/2021 2:17:40 PM
From : "MUSGRAVE Kerrie"
To : "EDDINGTON Ross"
Subject : RE: Requested feedback on Directional Drilling responses.
Attachment : image001.png;
Probably just 

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Sent: Friday, 21 May 2021 1:44 PM
To: MUSGRAVE Kerrie
Subject: RE: Requested feedback on Directional Drilling responses.

Should we also send to  and QGFC for a look, or perhaps just Steve? Just seeking your views?

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Published on Resources Disclosure Log
RTI Act 2009

Date : 24/05/2021 10:19:35 AM

From : "MUSGRAVE Kerrie"

To : "EDDINGTON Ross"

Subject : Consultation draft - Fact Sheet - Notice of entry for private land for directional drilling on adjacent land

Attachment : CONSULTATION DRAFT - Fact Sheet - Notice of entry for private land for directional drilling on adjacent land.docx; Combined entry notice for private land and notices to landholders template v1_May2021.doc; CONSULTATION DRAFT - Fact Sheet - Notice of entry for private land for directional drilling on adjacent land.pdf; image001.png;

Hi Ross,

I have attached the consultation draft of the fact sheet and the combined entry notice for private land.



Kerrie Musgrave
Acting Policy Manager
Georesources Policy | Georesources Division
Department of Resources

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Accessing private land to carry out directional drilling on adjacent land

This fact sheet sets out the regulatory framework for resource authority holders to access private land to carry out directional drilling activities on adjacent land and landholder rights that apply in that scenario.

Other legislation may be applicable, for example, [Chapter 3 of the Water Act 2000](#), which provides a framework to ensure that a bore owner is not disadvantaged by resource operations. If that is the case, it is a matter for the resource authority holder to contact the relevant agency.

Regulatory framework

The Department of Resources administers the land access framework under Chapter 3 of the *Mineral and Energy Resources (Common Provisions) Act 2014* (MERC Act) and subordinate legislation.

The MERC Act must be read as if it formed part of the *Petroleum and Gas (Production and Safety) Act 2004* (P&G Act)¹ and the meaning of “land” in Schedule 2 Dictionary of the P&G Act includes subterranean land.

As such, resource authority holders should note that the land access framework applies to authorised activities that occur below the surface of the land, which include directional drilling, except where exemptions apply.

Definition of ‘petroleum wells’ includes directional drilling

Directional drilling refers to the practice of drilling non-vertical boreholes. Schedule 2 of the P&G Act defines ‘petroleum well’ as a ‘hole in the ground made or being made by drilling, boring or any other means to, amongst other things, explore for or produce petroleum; or through which petroleum or a prescribed storage gas may be produced’ and applies to both conventional and unconventional resources, such as coal seam gas.

On this basis, the definition of ‘petroleum wells’ in the P&G Act includes directional drilling and is not limited to vertical drilling.

Requirements for preliminary and advanced activities

Chapter 3 of the MERC Act outlines the circumstances and obligations for resource authority holders to give each owner and occupier of private land an entry notice to enter that land to:

- a) carry out an authorised activity for a resource authority; or
- b) cross access land for the resource authority; or
- c) gain entry to access land for the resource authority.

¹ Refer to section 6 of the *Mineral and Energy Resources (Common Provisions) Act 2014*.

The extent to which the authorised activity impacts the business or land use activities of any owner and occupier of the land will determine whether the activity is either a 'preliminary activity' or an 'advanced activity'.

Circumstances for categorising directional drilling as a preliminary or advanced activity

Chapter 3, part 2, division 2 of the MERC Act applies to an entry to private land for the purposes of carrying out an authorised activity for a resource authority, which includes a petroleum lease and an authority to prospect (see section 10(b) of the MERC Act).

Section 22 of the P&G Act states an authorised activity is an activity that its holder is, under the P&G Act or the authority, entitled to carry out in relation to the authority.

Under section 15B of the MERC Act, a 'preliminary activity' for a resource authority, is an authorised activity for the authority that will have no impact, or only a minor impact, on the business or land use activities of any owner or occupier of the land on which the activity is to be carried out.

Examples –

- *walking the area of the authority*
- *driving along an existing road or track in the area*
- *taking soil or water samples*
- *geophysical surveying not involving site preparation*
- *aerial, electrical or environmental surveying*
- *survey pegging'*

Note that under section 15B(2) of the MERC Act, the following are *not* preliminary activities:

- a) an authorised activity carried out on land that –
 - i. is less than 100 hectares; and
 - ii. is being used for intensive farming or broadacre agriculture (for example, land used for dryland or irrigated cropping, plantation forestry or horticulture or a dairy, cattle or sheep feedlot, piggery or poultry farm);
- b) an authorised activity that affects the lawful carrying out of an organic or bio-organic farming system.

Under section 15A of the MERC Act, an 'advanced activity' for a resource authority, is an authorised activity for the resource authority other than a preliminary activity for the resource authority.

Examples—

- *levelling of drilling pads and digging sumps*
- *earthworks associated with pipeline installation*
- *bulk sampling*
- *open trenching or costeaning with an excavator*
- *vegetation clear-felling*

- *constructing an exploration camp, concrete pad, sewage or water treatment facility or fuel dump*
- *geophysical surveying with physical clearing*
- *carrying out a seismic survey using explosives*
- *constructing a track or access road*
- *changing a fence line*

Directional drilling under a person's property where there is no infrastructure or activity occurring on the surface will be considered a preliminary activity for the land access framework if there is no, or only minor, impact on a landholder's business or land use activities. Where the impact on a landholder's business or land use activities is greater and falls under the category of advanced activity either a conduct and compensation agreement, a deferral agreement, or an opt-out agreement is required. Each circumstance should be assessed individually and considered on a case-by-case basis.

Under section 39 of the MERC Act, it is an offence for a person to enter private land for the purpose of carrying out an authorised activity for a resource authority, unless the resource authority holder has given each owner and occupier of the land an entry notice about the entry at least 10 business days before the entry, unless:

- the owner or occupier has agreed in writing to the shorter period, under section 39(3) of the MERC Act; or
- an exemption applies under section 40 of the MERC Act.

For directional drilling, the entry notice must be given to each owner and occupier of adjacent land at least 10 business days before the day calculated by the resource company as to when the directional drilling activities will occur beneath the surface of that adjacent land. However, resource companies are encouraged to engage early with the relevant landholders to provide sufficient information about the proposed location of wells and directional drilling activities. This will provide landholders the opportunity to negotiate the location of activities and assess the impact that the activities will likely have on their business and land use activities. It is best practice for the same level of detail to be included in the Notice of entry for private land. Guidance is provided in the Notice of entry for private land template.

Under section 40(1), a person is exempt from the obligation to give an entry notice about entry to private land for an authorised activity such as directional drilling only if:

- a) the resource authority holder owns the land; or
- b) the resource authority holder has an independent legal right to enter the land for the purpose (e.g. where an easement or other written permission has been given in relation to a pipeline licence under the P&G Act or a contractual arrangement allowing a party to a contract to enter particular land); or
- c) the entry is to preserve life or property or because of an emergency that exists or may exist; or
- d) the entry is authorised under the Resource Act for the resource authority; or
- e) the entry is of a type prescribed by regulation.

The obligation to give an entry notice also does not apply under section 40(2) of the MERCP Act, if the resource authority holder has one of the following with each owner and occupier of the land:

- a) a waiver of entry notice for the entry that is in effect;
- b) a conduct and compensation agreement which provides for alternative obligations for the entry and the holder complies with the alternative obligations;
- c) an opt-out agreement.

Under section 43 of the MERCP Act, a resource authority holder must not enter private land to carry out an 'advanced activity' for the resource authority unless, amongst other things, a conduct and compensation agreement about the advanced activity, a deferral agreement, or an opt out agreement has been entered into with each owner and occupier of the land. A conduct and compensation agreement would be required with the owners and occupiers of the adjacent land where directional drilling activities are advanced activities beyond the boundary of the land where the drill site is located.

A maximum penalty of 500 penalty units applies to the section 39 and section 43 offence provisions. If a body corporate is found guilty of the relevant offence, the court may impose a maximum fine of an amount equal to five times the maximum fine for an individual.²

Liability to compensate

Under section 81 of the MERCP Act, a resource authority holder is liable to compensate an owner or occupier of private land that is in the authorised area of the resource authority or that is access land for the resource authority for each 'compensatable effect' suffered by the claimant because of the holder's directional drilling activities.

The types of compensatable effects listed under section 81(4) include:

- deprivation of possession of the land's surface;
- diminution of the land's value;
- diminution of the use made, or that may be made, of the land or any improvement on it;
- severance of any part of the land from other parts of the land or from other land that the eligible claimant owns;
- any cost, damage or loss arising from the carrying out of activities under the resource authority on the land;
- consequential loss incurred by an eligible claimant arising out of a matter listed directly above.

The specific factual circumstances associated with the directional drilling would need to be considered to assess compensatable effects associated with the directional drilling.

Other notification requirements for resource companies

Under section 28 of the Petroleum and Gas (General Provisions) Regulation 2017 (P&G Reg), resource companies must give a copy of the following notices to each owner and

² *Penalties and Sentences Act 1992*, s 181B.

occupier of the land on which the authorised activities to which the notice relates have been or are to be carried out and by the time the notice is required to be carried out:

- Notice about intention to drill a petroleum well or bore³
- Notice about completion, alteration, or abandonment of petroleum well or bore⁴
- Notice about intention to carry out seismic survey or scientific or technical survey⁵
- Notice about completion of survey or scientific or technical survey⁶
- Notice about intention to carry out hydraulic fracturing activities⁷
- Notice about completion of hydraulic activities.⁸

A streamlined Notice of entry for private land template has been developed to facilitate multiple notifications to each owner and occupier of the relevant land for situations where resource companies intend to drill a petroleum well or bore or intend to carry out hydraulic fracturing activities during the entry notice period.

Further information

For further information, please contact the Resource Community Infoline on 13 71 07 or email resources.info@resources.qld.gov.au.

³ Petroleum and Gas (General Provisions) Regulation 2017, s29.

⁴ Petroleum and Gas (General Provisions) Regulation 2017, s30.

⁵ Petroleum and Gas (General Provisions) Regulation 2017, s31.

⁶ Petroleum and Gas (General Provisions) Regulation 2017, s32.

⁷ Petroleum and Gas (General Provisions) Regulation 2017, s33.

⁸ Petroleum and Gas (General Provisions) Regulation 2017, s34.

Date : 24/05/2021 2:30:52 PM

From : "EDDINGTON Ross"

To : sch4p4(6) Personal information

Cc : "MUSGRAVE Kerrie"

Subject : Consultation draft - Fact Sheet - Notice of entry for private land for directional drilling on adjacent land

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sch4p4(6) Personal information

Please find attached a draft version of a new factsheet (and accompanying combined form) which the department has prepared in relation to notices of entry and directional drilling.

We are seeking any comment you may have on this by mid-week if possible. I am aware that this is not as long as the usual cycle of consultation however the department is eager to publish the factsheet to address some recent land-holder concerns.

Please provide any feedback you may have by COB Wednesday 26th May to Kerrie Musgrave at Kerrie.Musgrave@resources.qld.gov.au or phone 3199 8105 if you would like to talk through any aspects of the factsheet

Kind regards

Ross Eddington

Published on Resources Disclosure Log
RTI Act 2009

Date : 24/05/2021 3:56:03 PM

From : "EDDINGTON Ross"

To sch4p4(6) Personal information

Subject : FW: Consultation draft - Fact Sheet - Notice of entry for private land for directional drilling on adjacent land

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Ross Eddington
Director
Regulatory Support and Performance

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Date : 24/05/2021 3:35:02 PM

From : "Marcus Rees"

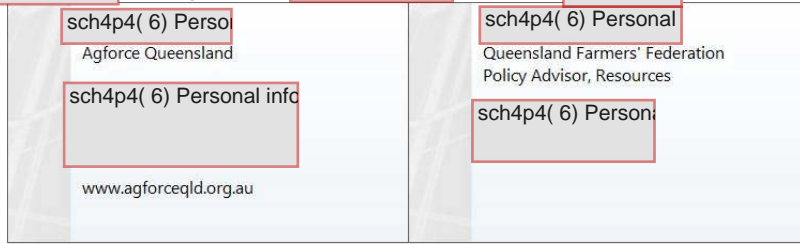
To : "Ross Eddington"

Subject : RE: QFF and AGforce contacts

Attachment : sch4p4(6) Personal information vcf;image001.jpg;image002.jpg;

I think the following:

sch4p4(6) Pfrom Agforce and sch4p4(6) Pers not sure if sch4p4(6) details are up to date – I think she is now the CEO?



From: EDDINGTON Ross <Ross.Eddington@resources.qld.gov.au>

Sent: Monday, 24 May 2021 11:45 AM

To: REES Marcus

Subject: QFF and AGforce contacts

Marcus

Could I get the departments principal contacts for Agforce and QFF please. Chris has asked that we share our directional drilling factsheet with them

Cheers

Ross

Published on Resources Disclosure Log
RTI Act 2009

Date : 25/05/2021 9:56:38 AM

From : "EDDINGTON Ross"

To : sch4p4(6) Personal info

Subject : FW: Consultation draft - Fact Sheet - Notice of entry for private land for directional drilling on adjacent land

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Date : 26/05/2021 11:46:42 AM

From : sch4p4(6) Personal i

To : "EDDINGTON Ross"

Cc : "SHAW Chris" , "FERRIS Shaun" , "MUSGRAVE Kerrie"

Subject : RE: Consultation draft - Fact Sheet - Notice of entry for private land for directional drilling on adjacent land

Attachment : Fact Sheet - Notice of entry to private land for directional drilling on adjacent land - APPEA comments.docx;image001.png;

Hi Ross

Thank you for sending this through, attached are suggested changes to the fact sheet. I've tried to minimise the changes to the text but have shifted around the content quite a bit.

The changes proposed are based on the following points:

- It is essential that the Department be as definitive as possible in stating that directional drilling will normally be a preliminary activity. A key point of reference is the experience to date – there are dozens of directional wells that have been in place for several years and to our knowledge landholders have not claimed any impact from those wells. This point should be stated in the fact sheet. The fact sheet should also say that on the basis of experience to date the Department expects that directional drilling activities on adjacent land that are at significant depth below the surface of the land will ordinarily be preliminary activities.
- Our understanding is that the new notice of entry requirement results from a changed interpretation of the law by the Department rather than government making a deliberate policy decision that landholders now have a legal interest in subsurface resources. It is therefore important to include in the fact sheet a statement on the overall government position on land ownership and in particular that the state retains ownership of the subsurface resources. A relevant guideline can be found here: https://www.resources.qld.gov.au/?a=109113:policy_registry/granting-land-volumetrically.pdf&ver=2.05. Amongst other things the guideline states:

“The State has decided that for some projects of State significance e.g. development of railway stations, tunnel tollway, specific legislation will provide for the required tenure arrangements, without certain provisions of the Land Act applying.

The idea that ownership of land goes from "heaven to hell" is not interpreted literally but is generally interpreted to mean that land ownership ceases at the point the landowner may no longer make actual, beneficial use of the airspace and sub-surface space. However, generally land ownership is three-dimensional with actual height and depth specifications not stated.

...

Land volume above and below the surface is still "land", and the principles and provisions of the Land Act and other Acts (e.g. the Native Title Acts, Coastal Protection and Management Act 1995) still apply.

However, as the volumetric area is likely to be used for some other purpose than the surface land, the basic requirement is that the use of the surface land must not be unduly interfered with.”

- There is a role for government in assisting landholders in determining whether there has been an impact from directional wells. Making that role explicit in the fact sheet would be a significant positive addition that would assist in addressing any landholder concerns.
- The fact sheet is quite long and complicated and much of the content is a restatement of the legal requirements. We suggest as much of this content as possible be moved to an attachment.

With regard to the combined entry notice form:

- On page 3 in the example on directional drilling, we would suggest changing “The **proposed** activity will be Directional Drilling with entry onto land...” to “The **preliminary** activity will be Directional Drilling with entry onto land...”
- We note the form is not mandatory and we expect proponents will therefore on use the relevant ‘notice of intention’ when notifying of directional drilling.

As always, happy to discuss this feedback.

Best regards,

sch4p4

sch4p4(6) Persor

A/g Queensland Director

m sch4p4(6) Personal infor

e



From: EDDINGTON Ross <Ross.Eddington@resources.qld.gov.au>

Sent: Monday, 24 May 2021 2:31 PM

To: sch4p4(6) Personal information

Cc: MUSGRAVE Kerrie <Kerrie.Musgrave@resources.qld.gov.au>

Subject: Consultation draft - Fact Sheet - Notice of entry for private land for directional drilling on adjacent land

sch4p4(6) Personal informatio

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Kind regards

Ross Eddington

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Published on Resources Disclosure Log
RTI Act 2009

Accessing private land to carry out directional drilling on adjacent land

This fact sheet sets out the regulatory framework for resource authority holders to access private land to carry out directional drilling activities on adjacent land. ~~Other legislation may be applicable, for example, Chapter 3 of the Water Act 2000, and if that is the case, it is a matter for the resource authority holder to contact the relevant agency.~~

~~This~~ fact sheet provides guidance that the sub-surface portions of directional drilling activities on adjacent land that are at significant depth below the surface of the land are ordinarily preliminary activities ~~as they are expected to have no impact, or only a minor impact, on the business or land use activities of any owner or occupier of the land.~~

Regulatory framework Key points

~~- As a general rule private land ownership ceases at the point the landowner may no longer make actual, beneficial use of the airspace and sub-surface space¹. Sub-surface resources are therefore normally owned by the State. Where subsurface resource production is authorised by government the basic requirement is that the use of the surface land must not be unduly interfered with or if there is impact at the surface it must be compensated for.~~

~~However, land volume above and below the surface is still "land" and for that reason the~~ The Department of Resources administers the land access framework under Chapter 3 of the Mineral and Energy Resources (Common Provisions) Act 2014 (MERCP Act) and subordinate legislation.

~~The MERCP Act must be read as if it formed part of the Petroleum and Gas (Production and Safety) Act 2004 (P&G Act)² and the meaning of "land" in Schedule 2 Dictionary of the P&G Act includes subterranean land.~~

~~As such, resource authority holders should note that the land access framework generally applies to authorised activities that occur below the surface of the land, including which include directional drilling, except where exemptions apply.~~

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~~Definition of 'petroleum wells' includes directional drilling~~

~~Directional drilling refers to the practice of drilling non-vertical boreholes. Schedule 2 of the P&G Act defines 'petroleum well' as a 'hole in the ground made or being made by drilling, boring or any other means to, amongst other things, explore for or produce petroleum; or through which petroleum or a prescribed storage gas may be produced' and applies to both conventional and unconventional resources, such as coal seam gas.~~

~~On this basis, the definition of 'petroleum wells' in the P&G Act includes directional drilling and is not limited to vertical drilling.~~

~~Requirements for preliminary and advanced activities~~

¹ https://www.resources.qld.gov.au/?a=109113:policy_registry/granting-land-volumetrically.pdf&ver=2.05

² Refer to section 6 of the Mineral and Energy Resources (Common Provisions) Act 2014.



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- Directional drilling under a person's property where there is no infrastructure or activity occurring on the surface will be considered a preliminary activity for the land access framework if there is no, or only minor, impact on a landholder's business or land use activities.

- The Department is not aware of any impacts on any landholder's business or land use activities from directional wells drilled to date, many of which have been in place for several years.

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- While each circumstance should be assessed individually and considered on a case-by-case basis, given that existing directional wells have had no impact, or only a minor impact, on the business or land use activities of any owner or occupier of the land, the Department's view is that directional drilling activities on adjacent land that are at significant depth below the surface of the land will ordinarily be classed as preliminary activities.

- Where the impact on a landholder's business or land use activities is greater and falls under the category of advanced activity either a conduct and compensation agreement, a deferral agreement, or an opt-out agreement would be required.

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- Landholders who believe a directional well that has been drilled is impacting on their land use or business should contact the proponent who drilled the well and/or the Department to discuss the issue. The Department is able to assist landholders in assessing whether there have been impacts from directional wells.

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- An entry notice for directional drilling must be given to each owner and occupier of adjacent land at least 10 business days before the day calculated by the resource company as to when the directional drilling activities will occur beneath the surface of that adjacent land. However, resource companies are encouraged to engage early with the relevant landholders to provide sufficient information about the proposed location of wells and directional drilling activities. This will provide landholders the opportunity to negotiate the location of activities and assess the impact that the activities will likely have on their business and land use activities.

Further information

For further information, please contact the Resource Community Infoline on 13 71 07 or email resources.info@resources.qld.gov.au.

[Further information on the legislative framework is also provided in the Attachment.](#)

Attachment

FURTHER INFORMATION ABOUT LEGISLATIVE REQUIREMENTS

Applicable legislation

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The Department of Resources administers the land access framework under Chapter 3 of the *Mineral and Energy Resources (Common Provisions) Act 2014* (MERC Act) and subordinate legislation.

The MERC Act must be read as if it formed part of the *Petroleum and Gas (Production and Safety) Act 2004* (P&G Act)¹⁰ and the meaning of "land" in Schedule 2 Dictionary of the P&G Act includes subterranean land.

Other legislation may be applicable, for example, Chapter 3 of the *Water Act 2000*, and if that is the case, it is a matter for the resource authority holder to contact the relevant agency.

Definition of 'petroleum wells' includes directional drilling

Directional drilling refers to the practice of drilling non-vertical boreholes. Schedule 2 of the P&G Act defines 'petroleum well' as a 'hole in the ground made or being made by drilling, boring or any other means to, amongst other things, explore for or produce petroleum; or through which petroleum or a prescribed storage gas may be produced' and applies to both conventional and unconventional resources, such as coal seam gas.

On this basis, the definition of 'petroleum wells' in the P&G Act includes directional drilling and is not limited to vertical drilling.

Requirements for preliminary and advanced activities

Chapter 3 of the MERC Act outlines the circumstances and obligations for resource authority holders to give each owner and occupier of private land an entry notice to enter that land to:

- a) carry out an authorised activity for a resource authority; or
- b) cross access land for the resource authority; or
- c) gain entry to access land for the resource authority.

The extent to which the authorised activity impacts the business or land use activities of any owner and occupier of the land will determine whether the activity is either a 'preliminary activity' or an 'advanced activity'.

Circumstances for categorising directional drilling as a preliminary or advanced activity

Chapter 3, part 2, division 2 of the MERC Act applies to an entry to private land for the purposes of carrying out an authorised activity for a resource authority, which includes a petroleum lease and an authority to prospect (see section 10(b) of the MERC Act).

¹⁰ Refer to section 6 of the *Mineral and Energy Resources (Common Provisions) Act 2014*.

Section 22 of the P&G Act states an authorised activity is an activity that its holder is, under the P&G Act or the authority, entitled to carry out in relation to the authority.

Under section 15B of the MERC Act, a 'preliminary activity' for a resource authority, is an authorised activity for the authority that will have no impact, or only a minor impact, on the business or land use activities of any owner or occupier of the land on which the activity is to be carried out.

Examples –

- walking the area of the authority
- driving along an existing road or track in the area
- taking soil or water samples
- geophysical surveying not involving site preparation
- aerial, electrical or environmental surveying
- survey pegging
- 'subterranean entry at significant depth to access private land to carry out directional drilling activities on adjacent land

Note that under section 15B(2) of the MERC Act, the following are not preliminary activities:

- a) an authorised activity carried out on land that –
 - i. is less than 100 hectares; and
 - ii. is being used for intensive farming or broadacre agriculture (for example, land used for dryland or irrigated cropping, plantation forestry or horticulture or a dairy, cattle or sheep feedlot, piggery or poultry farm);
- b) an authorised activity that affects the lawful carrying out of an organic or bio-organic farming system.

Under section 15A of the MERC Act, an 'advanced activity' for a resource authority, is an authorised activity for the resource authority other than a preliminary activity for the resource authority.

Examples –

- levelling of drilling pads and digging sumps
- earthworks associated with pipeline installation
- bulk sampling
- open trenching or costeaning with an excavator
- vegetation clear-felling
- constructing an exploration camp, concrete pad, sewage or water treatment facility or fuel dump
- geophysical surveying with physical clearing
- carrying out a seismic survey using explosives
- constructing a track or access road
- changing a fence line

Compensation agreements

Resource companies must record conduct and compensation agreements and opt-out agreements on the landholder's property title as an administrative advice with the Queensland Land Titles Registry to ensure future buyers can be made aware of the existence of such an agreement prior to purchase. Further information concerning recording land access agreements with the Titles Registry can be found on the department's website.

Entry to land

Under section 39 of the MERC Act, it is an offence for a person to enter private land for the purpose of carrying out an authorised activity for a resource authority, unless the resource authority holder has given each owner and occupier of the land an entry notice about the entry at least 10 business days before the entry, unless:

- the owner or occupier has agreed in writing to the shorter period, under section 39(3) of the MERC Act; or
- an exemption applies under section 40 of the MERC Act.

Entry notice requirements

Under section 40(1), a person is exempt from the obligation to give an entry notice about entry to private land for an authorised activity such as directional drilling only if:

- a) the resource authority holder owns the land; or
- b) the resource authority holder has an independent legal right to enter the land for the purpose; or
- c) the entry is to preserve life or property or because of an emergency that exists or may exist; or
- d) the entry is authorised under the Resource Act for the resource authority; or
- e) the entry is of a type prescribed by regulation.

The obligation to give an entry notice also does not apply under section 40(2) of the MERC Act, if the resource authority holder has one of the following with each owner and occupier of the land:

- a) a waiver of entry notice for the entry that is in effect;
- b) a conduct and compensation agreement which provides for alternative obligations for the entry and the holder complies with the alternative obligations;
- c) an opt-out agreement.

Under section 43 of the MERC Act, a resource authority holder must not enter private land to carry out an 'advanced activity' for the resource authority unless, amongst other things, a conduct and compensation agreement about the advanced activity, a deferral agreement, or an opt out agreement has been entered into with each owner and occupier of the land.

A maximum penalty of 500 penalty units applies to the section 39 and section 43 offence provisions. If a body corporate is found guilty of the relevant offence, the court may impose a maximum fine of an amount equal to five times the maximum fine for an individual.¹¹

¹¹ Penalties and Sentences Act 1992, s 181B.

Liability to compensate

Under section 81 of the MERCP Act, a resource authority holder is liable to compensate an owner or occupier of private land that is in the authorised area of the resource authority or that is access land for the resource authority for each 'compensatable effect' suffered by the claimant because of the holder's directional drilling activities.

The types of compensatable effects listed under section 81(4) include:

- deprivation of possession of the land's surface;
- diminution of the land's value;
- diminution of the use made, or that may be made, of the land or any improvement on it;
- severance of any part of the land from other parts of the land or from other land that the eligible claimant owns;
- any cost, damage or loss arising from the carrying out of activities under the resource authority on the land;
- consequential loss incurred by an eligible claimant arising out of a matter listed directly above.

The specific factual circumstances associated with the directional drilling would need to be considered to assess compensatable effects associated with the directional drilling.

Other notification requirements for resource companies

Under section 28 of the *Petroleum and Gas (General Provisions) Regulation 2017* (P&G Reg), resource companies must give a copy of the following notices to each owner and occupier of the land on which the authorised activities to which the notice relates have been or are to be carried out and by the time the notice is required to be carried out:

- Notice about intention to drill a petroleum well or bore¹²
- Notice about completion, alteration, or abandonment of petroleum well or bore¹³
- Notice about intention to carry out seismic survey or scientific or technical survey¹⁴
- Notice about completion of survey or scientific or technical survey¹⁵
- Notice about intention to carry out hydraulic fracturing activities¹⁶
- Notice about completion of hydraulic activities.¹⁷

A streamlined Notice of Entry to Private Land template has been developed to facilitate multiple notifications to each owner and occupier of the relevant land for situations where resource companies intend to drill a petroleum well or bore or intend to carry out hydraulic fracturing activities during the entry notice period.

¹² *Petroleum and Gas (General Provisions) Regulation 2017, s29.*

¹³ *Petroleum and Gas (General Provisions) Regulation 2017, s30.*

¹⁴ *Petroleum and Gas (General Provisions) Regulation 2017, s31.*

¹⁵ *Petroleum and Gas (General Provisions) Regulation 2017, s32.*

¹⁶ *Petroleum and Gas (General Provisions) Regulation 2017, s33.*

¹⁷ *Petroleum and Gas (General Provisions) Regulation 2017, s34.*

Date : 26/05/2021 1:21:21 PM

From : sch4p4(6) Personal information

To : "SHAW Chris", "REES Marcus"

Subject : RE: Consultation draft - Fact Sheet - Notice of entry for private land for directional drilling on adjacent land

Attachment : image001.jpg;

Thanks mate, sch4p4 discussed those matters with us yesterday.

Cheers

sch4p4

sch4p4(6) Personal information

GFCQ A/CEO

sch4p4(6) Personal information

www.gfcq.org.au

From: SHAW Chris <Chris.Shaw@resources.qld.gov.au>

Sent: Wednesday, 26 May 2021 1:13 PM

To: REES Marcus <Marcus.Rees@resources.qld.gov.au>; sch4p4(6) Personal information

Subject: FW: Consultation draft - Fact Sheet - Notice of entry for private land for directional drilling on adjacent land

FYI

From: sch4p4(6) Personal information

Sent: Wednesday, 26 May 2021 11:47 AM

To: EDDINGTON Ross

Cc: SHAW Chris; FERRIS Shaun; MUSGRAVE Kerrie

Subject: RE: Consultation draft - Fact Sheet - Notice of entry for private land for directional drilling on adjacent land

Hi Ross

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The changes proposed are based on the following points:

- It is essential that the Department be as definitive as possible in stating that directional drilling will normally be a preliminary activity. A key point of reference is the experience to date – there are dozens of directional wells that have been in place for several years and to our knowledge landholders have not claimed any impact from those wells. This point should be stated in the fact sheet. The fact sheet should also say that on the basis of experience to date the Department expects that directional drilling activities on adjacent land that are at significant depth below the surface of the land will ordinarily be preliminary activities.
- Our understanding is that the new notice of entry requirement results from a changed interpretation of the law by the Department rather than government making a deliberate policy decision that landholders now have a legal interest in subsurface resources. It is therefore important to include in the fact sheet a statement on the overall government position on land ownership and in particular that the state retains ownership of the subsurface resources. A relevant guideline can be found here: https://www.resources.qld.gov.au/?a=109113:policy_registry/granting-land-volumetrically.pdf&ver=2.05. Amongst other things the guideline states:

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However, as the volumetric area is likely to be used for some other purpose than the surface land, the basic requirement is that the use of the surface land must not be unduly interfered with.”

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[Redacted] (6) Personal

A/g Queensland Director

m [Redacted] Personal infor

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Sent: Monday, 24 May 2021 2:31 PM

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Date : 26/05/2021 8:40:29 AM

From : "EDDINGTON Ross"

To : "MOORE Debbie" , "KNIGHT Tony" , "MARLAND Kara"

Subject : Directional Drilling and Spatial Representation - Planning for a Solution

sch4p4(6) Personal information

The aim of this meeting is to design the simplest solution from legislation/reg/Practice direction to data submission and graphical representation of 3d Directional Drilling. This is to address an emergent concern amongst landholders and would represent the departments response to this issue.

Please involve others if required

Microsoft Teams meeting

Join on your computer or mobile app

[Click here to join the meeting](#)

Join with a video conferencing device

teams@itp.onpexip.com

Video Conference ID: 137 230 845 8

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Date : 26/05/2021 1:12:54 PM

From : "SHAW Chris"

To : "Marcus Rees", [sch4p4(6) Personal i]

Subject : FW: Consultation draft - Fact Sheet - Notice of entry for private land for directional drilling on adjacent land

Attachment : Fact Sheet - Notice of entry to private land for directional drilling on adjacent land - APPEA comments.docx;image002.jpg;

FYI

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Page 28 of 115

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GFCQ A/CEO

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www.gfcq.org.au

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- There is a role for government in assisting landholders in determining whether there has been an impact from directional wells. Making that role explicit in the fact sheet would be a significant positive addition that would assist in addressing any landholder concerns.
- The fact sheet is quite long and complicated and much of the content is a restatement of the legal requirements. We suggest as much of this content as possible be moved to an attachment.

With regard to the combined entry notice form:

- On page 3 in the example on directional drilling, we would suggest changing ◆ The **proposed** activity will be Directional Drilling with entry onto land ◆◆ to ◆ The **preliminary** activity will be Directional Drilling with entry onto land ◆◆
- We note the form is not mandatory and we expect proponents will therefore on use the relevant ◆ notice of intention ◆ when notifying of directional drilling.

As always, happy to discuss this feedback.

Best regards,

sch4p4(6) Personal information

A/g Queensland Director

m sch4p4(6) Personal information

e



APPEA2021
CONFERENCE AND EXHIBITION

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14-17 JUNE PERTH

EARLY BIRD PRICING CLOSES 30 APRIL 2021. DON'T MISS OUT.

From: EDDINGTON Ross <Ross.Eddington@resources.qld.gov.au>

Sent: Monday, 24 May 2021 2:31 PM

To: sch4p4(6) Personal information

Cc: MUSGRAVE Kerrie <Kerrie.Musgrave@resources.qld.gov.au>

Subject: Consultation draft - Fact Sheet - Notice of entry for private land for directional drilling on adjacent land

sch4p4(6) Personal information

Please find attached a draft version of a new factsheet (and accompanying combined form) which the department has prepared in relation to notices of entry and directional drilling.

We are seeking any comment you may have on this by mid-week if possible. I am aware that this is not as long as the usual cycle of consultation however the department is eager to publish the factsheet to address some recent land-holder concerns.

Please provide any feedback you may have by COB Wednesday 26th May to Kerrie Musgrave at Kerrie.Musgrave@resources.qld.gov.au or phone 3199 8105 if you would like to talk through any aspects of the factsheet

Kind regards

Ross Eddington

The information in this email together with any attachments is intended only for the person or entity to which it is addressed and may contain confidential and/or privileged material. There is no waiver of any confidentiality/privilege by your inadvertent receipt of this material.

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Date : 27/05/2021 1:29:50 PM

From : "MUSGRAVE Kerrie"

To : "SHAW Chris"

Cc : "EDDINGTON Ross" , "WARD Steven (Resources)" , "REES Marcus"

Subject : Updated Fact Sheet

Attachment : 210527 - CONSULTATION DRAFT - Fact Sheet - Notice of entry for private land for directional drilling on adjacent land.pdf;210527 - CONSULTATION DRAFT - Fact Sheet - Notice of entry for private land for directional drilling on adjacent land_TC.docx;210527 - CONSULTATION DRAFT - Fact Sheet - Notice of entry for private land for directional drilling on adjacent land_clean.docx;Fact Sheet - Notice of entry for private land for directional drilling on adjacent land - APPEA comments.docx;image001.png;

Hi Chris,

I have attached the updated draft fact sheet (TC, clean and PDF versions) after considering the feedback from APPEA (also **attached**). QFF have responded but did not have sufficient time to review the consultation draft, no feedback from AgForce or AMEC and Ross has left a message with QRC. Note that [sch4p4\(6\)](#) has track changed an earlier version, not the one that was sent formally out for consultation – the versions are quite similar however the version that he has worked on included the section about recording CCAs on title – removed from the consultation version.

In summary, I have:

- Adopted the format provided by [sch4p4\(6\)](#) with key points stated at the beginning and details of the statutory framework as an attachment.
- Included the detail about limited tortious liability for owners or occupiers in both the section on key points and the attachment.
- Included the explanation of ownership of subsurface land provided by [sch4](#) taken from [Land Allocation: Granting Land Volumetrically PUX/901/100](#)
- Have not included the following from APPEA:
 - (second paragraph of APPEA feedback) "The fact sheet provides guidance that the sub-surface portions of directional drilling activities on adjacent land that are at significant depth below the surface of the land are ordinarily preliminary activities" – this would indicate that the department has formed a position – certainly industry's perspective but a concern for landholders.
 - (4th key point in APPEA feedback) "The Department is not aware of any impacts on any landholder's business or land use activities from directional wells drilled to date, many of which have been in place for several years."
 - (7th key point in APPEA feedback) "...The Department is able to assist landholders in assessing whether there have been impacts from directional wells."
 - (Under "Circumstances for categorising directional drilling as a preliminary or advanced activity" in the attachment) have not included the addition of "*subterranean entry at significant depth to access private land to carry out directional drilling activities on adjacent land*" as an example of a preliminary activity, which is provided under section 15B of the MERC Act – would require a legislative amendment and would limit the opportunity for landholders to require a CCA – one of the main concerns for landholders.



Kerrie Musgrave
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Georesources Policy | Georesources Division
Department of Resources

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W: www.resources.qld.gov.au

Accessing private land to carry out directional drilling on adjacent land

This fact sheet sets out the regulatory framework for resource authority holders to access private land to carry out directional drilling activities on adjacent land and landholder rights that apply in that scenario.

Key points

- The land access framework applies to authorised activities that occur below the surface of the land, which include directional drilling, except where exemptions apply.
- The general rule is that land ownership ceases at the point the landowner may no longer make actual, beneficial use of the airspace and sub-surface space.¹ Sub-surface resources are therefore normally owned by the State. Where subsurface resource production is authorised by government the basic requirement is that the use of the surface land must not be unduly interfered with or if there is impact at the surface it must be compensated for.
- However, land volume above and below the surface is still “land” and for that reason the land access framework generally applies to authorised activities that occur below the surface of the land, including directional drilling.
- Directional drilling under a person’s property where there is no infrastructure or activity occurring on the surface will be considered a preliminary activity for the land access framework if there is no, or only minor, impact on a landholder’s business or land use activities.
- An entry notice for directional drilling must be given to each owner and occupier of adjacent land at least 10 business days before the day calculated by the resource company as to when the directional drilling activities will occur beneath the surface of that adjacent land.
- Where the impact on a landholder’s business or land use activities is greater and falls under the category of advanced activity either a conduct and compensation agreement, a deferral agreement, or an opt-out agreement would be required.
- Each circumstance should be assessed individually and considered on a case-by-case basis.
- Resource companies are encouraged to engage early with the relevant landholders to provide sufficient information about the proposed location of wells and directional drilling activities. This will provide landholders the opportunity to negotiate the location of activities and assess the impact that the activities will likely have on their business and land use activities.
- Landholders who believe a directional well that has been drilled is impacting on their land use or business should contact the proponent who drilled the well and/or the department to discuss the issue.
- A resource authority holder is liable to compensate an owner or occupier of private land that is in the authorised area of the resource authority or that is access land for the resource authority for each 'compensatable effect' suffered by the claimant because of the holder’s directional drilling activities.

¹ https://www.resources.qld.gov.au/?a=109113:policy_registry/granting-land-volumetrically.pdf&ver=2.05

- A landholder is not civilly liable to anyone else for a claim based in tort for damages relating to the carrying out of an authorised activity for a petroleum authority on their land. This will be subject to the extent to which the landholder, or a person authorised by the landholder caused, or contributed to, the harm.

Further information

For further information, please contact the Resource Community Infoline on 13 71 07 or email resources.info@resources.qld.gov.au.

Further information on the legislative framework is also provided in the Attachment.

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Attachment

FURTHER INFORMATION ABOUT LEGISLATIVE REQUIREMENTS

Regulatory framework

The Department of Resources administers the land access framework under Chapter 3 of the *Mineral and Energy Resources (Common Provisions) Act 2014* (MERC Act) and subordinate legislation.

The MERC Act must be read as if it formed part of the *Petroleum and Gas (Production and Safety) Act 2004* (P&G Act)² and the meaning of “land” in Schedule 2 Dictionary of the P&G Act includes subterranean land.

Other legislation may be applicable, for example, Chapter 3 of the *Water Act 2000*, and if that is the case, it is a matter for the resource authority holder to contact the relevant agency.

Definition of ‘petroleum wells’ includes directional drilling

Directional drilling refers to the practice of drilling non-vertical boreholes. Schedule 2 of the P&G Act defines ‘petroleum well’ as a ‘hole in the ground made or being made by drilling, boring or any other means to, amongst other things, explore for or produce petroleum; or through which petroleum or a prescribed storage gas may be produced’ and applies to both conventional and unconventional resources, such as coal seam gas.

On this basis, the definition of ‘petroleum wells’ in the P&G Act includes directional drilling and is not limited to vertical drilling.

Requirements for preliminary and advanced activities

Chapter 3 of the MERC Act outlines the circumstances and obligations for resource authority holders to give each owner and occupier of private land an entry notice to enter that land to:

- a) carry out an authorised activity for a resource authority; or
- b) cross access land for the resource authority; or
- c) gain entry to access land for the resource authority.

The extent to which the authorised activity impacts the business or land use activities of any owner and occupier of the land will determine whether the activity is either a ‘preliminary activity’ or an ‘advanced activity’.

² Refer to section 6 of the *Mineral and Energy Resources (Common Provisions) Act 2014*.

Circumstances for categorising directional drilling as a preliminary or advanced activity

Chapter 3, part 2, division 2 of the MERCPC Act applies to an entry to private land for the purposes of carrying out an authorised activity for a resource authority, which includes a petroleum lease and an authority to prospect (see section 10(b) of the MERCPC Act).

Section 22 of the P&G Act states an authorised activity is an activity that its holder is, under the P&G Act or the authority, entitled to carry out in relation to the authority.

Under section 15B of the MERCPC Act, a 'preliminary activity' for a resource authority, is an authorised activity for the authority that will have no impact, or only a minor impact, on the business or land use activities of any owner or occupier of the land on which the activity is to be carried out.

Examples –

- *walking the area of the authority*
- *driving along an existing road or track in the area*
- *taking soil or water samples*
- *geophysical surveying not involving site preparation*
- *aerial, electrical or environmental surveying*
- *survey pegging*

Note that under section 15B(2) of the MERCPC Act, the following are *not* preliminary activities:

- a) an authorised activity carried out on land that –
 - i. is less than 100 hectares; and
 - ii. is being used for intensive farming or broadacre agriculture (for example, land used for dryland or irrigated cropping, plantation forestry or horticulture or a dairy, cattle or sheep feedlot, piggery or poultry farm);
- b) an authorised activity that affects the lawful carrying out of an organic or bio-organic farming system.

Under section 15A of the MERCPC Act, an 'advanced activity' for a resource authority, is an authorised activity for the resource authority other than a preliminary activity for the resource authority.

Examples—

- *levelling of drilling pads and digging sumps*
- *earthworks associated with pipeline installation*

- *bulk sampling*
- *open trenching or costeaning with an excavator*
- *vegetation clear-felling*
- *constructing an exploration camp, concrete pad, sewage or water treatment facility or fuel dump*
- *geophysical surveying with physical clearing*
- *carrying out a seismic survey using explosives*
- *constructing a track or access road*
- *changing a fence line*

Entry to land

Under section 39 of the MERCP Act, it is an offence for a person to enter private land for the purpose of carrying out an authorised activity for a resource authority, unless the resource authority holder has given each owner and occupier of the land an entry notice about the entry at least 10 business days before the entry, unless:

- the owner or occupier has agreed in writing to the shorter period, under section 39(3) of the MERCP Act; or
- an exemption applies under section 40 of the MERCP Act.

Entry notice requirements

Under section 40(1), a person is exempt from the obligation to give an entry notice about entry to private land for an authorised activity such as directional drilling only if:

- a) the resource authority holder owns the land; or
- b) the resource authority holder has an independent legal right to enter the land for the purpose; or
- c) the entry is to preserve life or property or because of an emergency that exists or may exist; or
- d) the entry is authorised under the Resource Act for the resource authority; or
- e) the entry is of a type prescribed by regulation.

The obligation to give an entry notice also does not apply under section 40(2) of the MERCP Act, if the resource authority holder has one of the following with each owner and occupier of the land:

- a) a waiver of entry notice for the entry that is in effect;

- b) a conduct and compensation agreement which provides for alternative obligations for the entry and the holder complies with the alternative obligations;
- c) an opt-out agreement.

Under section 43 of the MERCP Act, a resource authority holder must not enter private land to carry out an 'advanced activity' for the resource authority unless, amongst other things, a conduct and compensation agreement about the advanced activity, a deferral agreement, or an opt out agreement has been entered into with each owner and occupier of the land.

A maximum penalty of 500 penalty units applies to the section 39 and section 43 offence provisions. If a body corporate is found guilty of the relevant offence, the court may impose a maximum fine of an amount equal to five times the maximum fine for an individual.³

Liability to compensate

Under section 81 of the MERCP Act, a resource authority holder is liable to compensate an owner or occupier of private land that is in the authorised area of the resource authority or that is access land for the resource authority for each 'compensatable effect' suffered by the claimant because of the holder's directional drilling activities.

The types of compensatable effects listed under section 81(4) include:

- deprivation of possession of the land's surface;
- diminution of the land's value;
- diminution of the use made, or that may be made, of the land or any improvement on it;
- severance of any part of the land from other parts of the land or from other land that the eligible claimant owns;
- any cost, damage or loss arising from the carrying out of activities under the resource authority on the land;
- consequential loss incurred by an eligible claimant arising out of a matter listed directly above.

The specific factual circumstances associated with the directional drilling would need to be considered to assess compensatable effects associated with the directional drilling.

Limitation of owner's or occupier's tortious liability for authorised activities

Section 563A of the P&G Act limits the tortious liability of an owner or occupier of land in the area of a petroleum authority if someone else carries out an authorised activity for a petroleum authority on the land. The owner or occupier is not civilly liable to anyone else for a claim based in tort for damages relating to the carrying out of the activity unless the owner

³ *Penalties and Sentences Act 1992*, s 181B.

or occupier or someone authorised by the owner or occupied caused or contributed to the harm.

Other notification requirements for resource companies

Under section 28 of the *Petroleum and Gas (General Provisions) Regulation 2017* (P&G Reg), resource companies must give a copy of the following notices to each owner and occupier of the land on which the authorised activities to which the notice relates have been or are to be carried out and by the time the notice is required to be carried out:

- Notice about intention to drill a petroleum well or bore⁴
- Notice about completion, alteration, or abandonment of petroleum well or bore⁵
- Notice about intention to carry out seismic survey or scientific or technical survey⁶
- Notice about completion of survey or scientific or technical survey⁷
- Notice about intention to carry out hydraulic fracturing activities⁸
- Notice about completion of hydraulic activities.⁹

A streamlined Notice of entry for private land template has been developed to facilitate multiple notifications to each owner and occupier of the relevant land for situations where resource companies intend to drill a petroleum well or bore or intend to carry out hydraulic fracturing activities during the entry notice period.

⁴ *Petroleum and Gas (General Provisions) Regulation 2017*, s29.

⁵ *Petroleum and Gas (General Provisions) Regulation 2017*, s30.

⁶ *Petroleum and Gas (General Provisions) Regulation 2017*, s31.

⁷ *Petroleum and Gas (General Provisions) Regulation 2017*, s32.

⁸ *Petroleum and Gas (General Provisions) Regulation 2017*, s33.

⁹ *Petroleum and Gas (General Provisions) Regulation 2017*, s34.

Accessing private land to carry out directional drilling on adjacent land

This fact sheet sets out the regulatory framework for resource authority holders to access private land to carry out directional drilling activities on adjacent land and landholder rights that apply in that scenario.

~~Other legislation may be applicable, for example, Chapter 3 of the Water Act 2000, which provides a framework to ensure that a bore owner is not disadvantaged by resource operations. If that is the case, it is a matter for the resource authority holder to contact the relevant agency.~~

Key points

- The land access framework applies to authorised activities that occur below the surface of the land, which include directional drilling, except where exemptions apply.
- The general rule is that land ownership ceases at the point the landowner may no longer make actual, beneficial use of the airspace and sub-surface space.¹ Sub-surface resources are therefore normally owned by the State. Where subsurface resource production is authorised by government the basic requirement is that the use of the surface land must not be unduly interfered with or if there is impact at the surface it must be compensated for.
- However, land volume above and below the surface is still “land” and for that reason the land access framework generally applies to authorised activities that occur below the surface of the land, including directional drilling.
- Directional drilling under a person’s property where there is no infrastructure or activity occurring on the surface will be considered a preliminary activity for the land access framework if there is no, or only minor, impact on a landholder’s business or land use activities.
- An entry notice for directional drilling must be given to each owner and occupier of adjacent land at least 10 business days before the day calculated by the resource company as to when the directional drilling activities will occur beneath the surface of that adjacent land.
- Where the impact on a landholder’s business or land use activities is greater and falls under the category of advanced activity either a conduct and compensation agreement, a deferral agreement, or an opt-out agreement would be required.
- Each circumstance should be assessed individually and considered on a case-by-case basis.
- Resource companies are encouraged to engage early with the relevant landholders to provide sufficient information about the proposed location of wells and directional drilling activities. This will provide landholders the opportunity to negotiate the location of activities and assess the impact that the activities will likely have on their business and land use activities.

¹ https://www.resources.qld.gov.au/?a=109113:policy_registry/granting-land-volumetrically.pdf&ver=2.05

- Landholders who believe a directional well that has been drilled is impacting on their land use or business should contact the proponent who drilled the well and/or the department to discuss the issue.
- a-A resource authority holder is liable to compensate an owner or occupier of private land that is in the authorised area of the resource authority or that is access land for the resource authority for each 'compensatable effect' suffered by the claimant because of the holder's directional drilling activities.
- A landholder is not civilly liable to anyone else for a claim based in tort for damages relating to the carrying out of an authorised activity for a petroleum authority on their land. This will be subject to the extent to which the landholder, or a person authorised by the landholder caused, or contributed to, the harm.

Further information

For further information, please contact the Resource Community Infoline on

13 71 07 or email resources.info@resources.qld.gov.au.

Further information on the legislative framework is also provided in the Attachment.

Regulatory framework

The Department of Resources administers the land access framework under Chapter 3 of the *Mineral and Energy Resources (Common Provisions) Act 2014* (MERC Act) and subordinate legislation.

The MERC Act must be read as if it formed part of the *Petroleum and Gas (Production and Safety) Act 2004* (P&G Act)² and the meaning of "land" in Schedule 2 Dictionary of the P&G Act includes subterranean land.

As such, resource authority holders should note that the land access framework applies to authorised activities that occur below the surface of the land, which include directional drilling, except where exemptions apply.

Definition of 'petroleum wells' includes directional drilling

Directional drilling refers to the practice of drilling non-vertical boreholes. Schedule 2 of the P&G Act defines 'petroleum well' as a 'hole in the ground made or being made by drilling, boring or any other means to, amongst other things, explore for or produce petroleum; or through which petroleum or a prescribed storage gas may be produced' and applies to both conventional and unconventional resources, such as coal seam gas.

On this basis, the definition of 'petroleum wells' in the P&G Act includes directional drilling and is not limited to vertical drilling.

² Refer to section 6 of the *Mineral and Energy Resources (Common Provisions) Act 2014*.

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Chapter 3 of the MERCP Act outlines the circumstances and obligations for resource authority holders to give each owner and occupier of private land an entry notice to enter that land to:

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- b) cross access land for the resource authority; or
- c) gain entry to access land for the resource authority.

The extent to which the authorised activity impacts the business or land use activities of any owner and occupier of the land will determine whether the activity is either a 'preliminary activity' or an 'advanced activity'.

Circumstances for categorising directional drilling as a preliminary or advanced activity

Chapter 3, part 2, division 2 of the MERCP Act applies to an entry to private land for the purposes of carrying out an authorised activity for a resource authority, which includes a petroleum lease and an authority to prospect (see section 10(b) of the MERCP Act).

Section 22 of the P&G Act states an authorised activity is an activity that its holder is, under the P&G Act or the authority, entitled to carry out in relation to the authority.

Under section 15B of the MERCP Act, a 'preliminary activity' for a resource authority, is an authorised activity for the authority that will have no impact, or only a minor impact, on the business or land use activities of any owner or occupier of the land on which the activity is to be carried out.

Examples—

- walking the area of the authority
- driving along an existing road or track in the area
- taking soil or water samples
- geophysical surveying not involving site preparation
- aerial, electrical or environmental surveying
- survey pegging'

Note that under section 15B(2) of the MERCP Act, the following are *not* preliminary activities:

- a) an authorised activity carried out on land that—
 - i. is less than 100 hectares; and
 - ii. is being used for intensive farming or broadacre agriculture (for example, land used for dryland or irrigated cropping, plantation forestry or horticulture or a dairy, cattle or sheep feedlot, piggery or poultry farm);
- b) an authorised activity that affects the lawful carrying out of an organic or bio-organic farming system.

~~Under section 15A of the MERCP Act, an ‘advanced activity’ for a resource authority, is an authorised activity for the resource authority other than a preliminary activity for the resource authority.~~

~~Examples—~~

- ~~• levelling of drilling pads and digging sumps~~
- ~~• earthworks associated with pipeline installation~~
- ~~• bulk sampling~~
- ~~• open trenching or costeaning with an excavator~~
- ~~• vegetation clear-felling~~
- ~~• constructing an exploration camp, concrete pad, sewage or water treatment facility or fuel dump~~
- ~~• geophysical surveying with physical clearing~~
- ~~• carrying out a seismic survey using explosives~~
- ~~• constructing a track or access road~~
- ~~• changing a fence line~~

~~Directional drilling under a person’s property where there is no infrastructure or activity occurring on the surface will be considered a preliminary activity for the land access framework if there is no, or only minor, impact on a landholder’s business or land use activities. Where the impact on a landholder’s business or land use activities is greater and falls under the category of advanced activity either a conduct and compensation agreement, a deferral agreement, or an opt-out agreement is required. Each circumstance should be assessed individually and considered on a case-by-case basis.~~

~~Under section 39 of the MERCP Act, it is an offence for a person to enter private land for the purpose of carrying out an authorised activity for a resource authority, unless the resource authority holder has given each owner and occupier of the land an entry notice about the entry at least 10 business days before the entry, unless:~~

- ~~• the owner or occupier has agreed in writing to the shorter period, under section 39(3) of the MERCP Act; or~~
- ~~• an exemption applies under section 40 of the MERCP Act.~~

~~For directional drilling, the entry notice must be given to each owner and occupier of adjacent land at least 10 business days before the day calculated by the resource company as to when the directional drilling activities will occur beneath the surface of that adjacent land. However, resource companies are encouraged to engage early with the relevant landholders to provide sufficient information about the proposed location of wells and directional drilling activities. This will provide landholders the opportunity to negotiate the location of activities and assess the impact that the activities will likely have on their business and land use activities. It is best practice for the same level of detail to be included in the Notice of entry for private land. Guidance is provided in the Notice of entry for private land template.~~

~~Under section 40(1), a person is exempt from the obligation to give an entry notice about entry to private land for an authorised activity such as directional drilling only if:~~

- ~~a) the resource authority holder owns the land; or~~

- ~~b) the resource authority holder has an independent legal right to enter the land for the purpose (e.g. where an easement or other written permission has been given in relation to a pipeline licence under the P&G Act or a contractual arrangement allowing a party to a contract to enter particular land); or~~
- ~~c) the entry is to preserve life or property or because of an emergency that exists or may exist; or~~
- ~~d) the entry is authorised under the Resource Act for the resource authority; or~~
- ~~e) the entry is of a type prescribed by regulation.~~

The obligation to give an entry notice also does not apply under section 40(2) of the MERCP Act, if the resource authority holder has one of the following with each owner and occupier of the land:

- ~~a) a waiver of entry notice for the entry that is in effect;~~
- ~~b) a conduct and compensation agreement which provides for alternative obligations for the entry and the holder complies with the alternative obligations;~~
- ~~c) an opt-out agreement.~~

Under section 43 of the MERCP Act, a resource authority holder must not enter private land to carry out an 'advanced activity' for the resource authority unless, amongst other things, a conduct and compensation agreement about the advanced activity, a deferral agreement, or an opt out agreement has been entered into with each owner and occupier of the land. A conduct and compensation agreement would be required with the owners and occupiers of the adjacent land where directional drilling activities are advanced activities beyond the boundary of the land where the drill site is located.

A maximum penalty of 500 penalty units applies to the section 39 and section 43 offence provisions. If a body corporate is found guilty of the relevant offence, the court may impose a maximum fine of an amount equal to five times the maximum fine for an individual.³

Liability to compensate

Under section 81 of the MERCP Act, a resource authority holder is liable to compensate an owner or occupier of private land that is in the authorised area of the resource authority or that is access land for the resource authority for each 'compensatable effect' suffered by the claimant because of the holder's directional drilling activities.

The types of compensatable effects listed under section 81(4) include:

- ~~• deprivation of possession of the land's surface;~~
- ~~• diminution of the land's value;~~
- ~~• diminution of the use made, or that may be made, of the land or any improvement on it;~~
- ~~• severance of any part of the land from other parts of the land or from other land that the eligible claimant owns;~~
- ~~• any cost, damage or loss arising from the carrying out of activities under the resource authority on the land;~~

³~~*Penalties and Sentences Act 1992, s 181B.*~~

- ~~consequential loss incurred by an eligible claimant arising out of a matter listed directly above.~~

~~The specific factual circumstances associated with the directional drilling would need to be considered to assess compensatable effects associated with the directional drilling.~~

~~Other notification requirements for resource companies~~

~~Under section 28 of the Petroleum and Gas (General Provisions) Regulation 2017 (P&G Reg), resource companies must give a copy of the following notices to each owner and occupier of the land on which the authorised activities to which the notice relates have been or are to be carried out and by the time the notice is required to be carried out:~~

- ~~Notice about intention to drill a petroleum well or bore⁴~~
- ~~Notice about completion, alteration, or abandonment of petroleum well or bore⁵~~
- ~~Notice about intention to carry out seismic survey or scientific or technical survey⁶~~
- ~~Notice about completion of survey or scientific or technical survey⁷~~
- ~~Notice about intention to carry out hydraulic fracturing activities⁸~~
- ~~Notice about completion of hydraulic activities.⁹~~

~~A streamlined Notice of entry for private land template has been developed to facilitate multiple notifications to each owner and occupier of the relevant land for situations where resource companies intend to drill a petroleum well or bore or intend to carry out hydraulic fracturing activities during the entry notice period.~~

~~Further information~~

~~For further information, please contact the Resource Community Infoline on 13 71 07 or email resources.info@resources.qld.gov.au.~~

⁴ ~~Petroleum and Gas (General Provisions) Regulation 2017, s29.~~

⁵ ~~Petroleum and Gas (General Provisions) Regulation 2017, s30.~~

⁶ ~~Petroleum and Gas (General Provisions) Regulation 2017, s31.~~

⁷ ~~Petroleum and Gas (General Provisions) Regulation 2017, s32.~~

⁸ ~~Petroleum and Gas (General Provisions) Regulation 2017, s33.~~

⁹ ~~Petroleum and Gas (General Provisions) Regulation 2017, s34.~~

Attachment

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Definition of ‘petroleum wells’ includes directional drilling

Directional drilling refers to the practice of drilling non-vertical boreholes. Schedule 2 of the P&G Act defines ‘petroleum well’ as a ‘hole in the ground made or being made by drilling, boring or any other means to, amongst other things, explore for or produce petroleum; or through which petroleum or a prescribed storage gas may be produced’ and applies to both conventional and unconventional resources, such as coal seam gas.

On this basis, the definition of ‘petroleum wells’ in the P&G Act includes directional drilling and is not limited to vertical drilling.

Requirements for preliminary and advanced activities

Chapter 3 of the MERC Act outlines the circumstances and obligations for resource authority holders to give each owner and occupier of private land an entry notice to enter that land to:

- a) carry out an authorised activity for a resource authority; or
- b) cross access land for the resource authority; or
- c) gain entry to access land for the resource authority.

The extent to which the authorised activity impacts the business or land use activities of any owner and occupier of the land will determine whether the activity is either a ‘preliminary activity’ or an ‘advanced activity’.

¹⁰ Refer to section 6 of the *Mineral and Energy Resources (Common Provisions) Act 2014*.

Circumstances for categorising directional drilling as a preliminary or advanced activity

Chapter 3, part 2, division 2 of the MERC Act applies to an entry to private land for the purposes of carrying out an authorised activity for a resource authority, which includes a petroleum lease and an authority to prospect (see section 10(b) of the MERC Act).

Section 22 of the P&G Act states an authorised activity is an activity that its holder is, under the P&G Act or the authority, entitled to carry out in relation to the authority.

Under section 15B of the MERC Act, a ‘preliminary activity’ for a resource authority, is an authorised activity for the authority that will have no impact, or only a minor impact, on the business or land use activities of any owner or occupier of the land on which the activity is to be carried out.

Examples –

- walking the area of the authority
- driving along an existing road or track in the area
- taking soil or water samples
- geophysical surveying not involving site preparation
- aerial, electrical or environmental surveying
- survey pegging

Note that under section 15B(2) of the MERC Act, the following are *not* preliminary activities:

- a) an authorised activity carried out on land that –
 - i. is less than 100 hectares; and
 - ii. is being used for intensive farming or broadacre agriculture (for example, land used for dryland or irrigated cropping, plantation forestry or horticulture or a dairy, cattle or sheep feedlot, piggery or poultry farm);
- b) an authorised activity that affects the lawful carrying out of an organic or bio-organic farming system.

Under section 15A of the MERC Act, an ‘advanced activity’ for a resource authority, is an authorised activity for the resource authority other than a preliminary activity for the resource authority.

Examples—

- levelling of drilling pads and digging sumps
- earthworks associated with pipeline installation

- bulk sampling
- open trenching or costeaning with an excavator
- vegetation clear-felling
- constructing an exploration camp, concrete pad, sewage or water treatment facility or fuel dump
- geophysical surveying with physical clearing
- carrying out a seismic survey using explosives
- constructing a track or access road
- changing a fence line

Entry to land

Under section 39 of the MERCP Act, it is an offence for a person to enter private land for the purpose of carrying out an authorised activity for a resource authority, unless the resource authority holder has given each owner and occupier of the land an entry notice about the entry at least 10 business days before the entry, unless:

- the owner or occupier has agreed in writing to the shorter period, under section 39(3) of the MERCP Act; or
- an exemption applies under section 40 of the MERCP Act.

Entry notice requirements

Under section 40(1), a person is exempt from the obligation to give an entry notice about entry to private land for an authorised activity such as directional drilling only if:

- a) the resource authority holder owns the land; or
- b) the resource authority holder has an independent legal right to enter the land for the purpose; or
- c) the entry is to preserve life or property or because of an emergency that exists or may exist; or
- d) the entry is authorised under the Resource Act for the resource authority; or
- e) the entry is of a type prescribed by regulation.

The obligation to give an entry notice also does not apply under section 40(2) of the MERCP Act, if the resource authority holder has one of the following with each owner and occupier of the land:

- a) a waiver of entry notice for the entry that is in effect;

- b) a conduct and compensation agreement which provides for alternative obligations for the entry and the holder complies with the alternative obligations;
- c) an opt-out agreement.

Under section 43 of the MERCP Act, a resource authority holder must not enter private land to carry out an 'advanced activity' for the resource authority unless, amongst other things, a conduct and compensation agreement about the advanced activity, a deferral agreement, or an opt out agreement has been entered into with each owner and occupier of the land.

A maximum penalty of 500 penalty units applies to the section 39 and section 43 offence provisions. If a body corporate is found guilty of the relevant offence, the court may impose a maximum fine of an amount equal to five times the maximum fine for an individual.¹¹

Liability to compensate

Under section 81 of the MERCP Act, a resource authority holder is liable to compensate an owner or occupier of private land that is in the authorised area of the resource authority or that is access land for the resource authority for each 'compensatable effect' suffered by the claimant because of the holder's directional drilling activities.

The types of compensatable effects listed under section 81(4) include:

- deprivation of possession of the land's surface;
- diminution of the land's value;
- diminution of the use made, or that may be made, of the land or any improvement on it;
- severance of any part of the land from other parts of the land or from other land that the eligible claimant owns;
- any cost, damage or loss arising from the carrying out of activities under the resource authority on the land;
- consequential loss incurred by an eligible claimant arising out of a matter listed directly above.

The specific factual circumstances associated with the directional drilling would need to be considered to assess compensatable effects associated with the directional drilling.

Limitation of owner's or occupier's tortious liability for authorised activities

Section 563A of the P&G Act limits the tortious liability of an owner or occupier of land in the area of a petroleum authority if someone else carries out an authorised activity for a petroleum authority on the land. The owner or occupier is not civilly liable to anyone else for a claim based in tort for damages relating to the carrying out of the activity unless the owner

¹¹ Penalties and Sentences Act 1992, s 181B.

or occupier or someone authorised by the owner or occupied caused or contributed to the harm.

Other notification requirements for resource companies

Under section 28 of the *Petroleum and Gas (General Provisions) Regulation 2017* (P&G Reg), resource companies must give a copy of the following notices to each owner and occupier of the land on which the authorised activities to which the notice relates have been or are to be carried out and by the time the notice is required to be carried out:

- Notice about intention to drill a petroleum well or bore¹²
- Notice about completion, alteration, or abandonment of petroleum well or bore¹³
- Notice about intention to carry out seismic survey or scientific or technical survey¹⁴
- Notice about completion of survey or scientific or technical survey¹⁵
- Notice about intention to carry out hydraulic fracturing activities¹⁶
- Notice about completion of hydraulic activities.¹⁷

A streamlined Notice of ~~Entry to Private Land~~entry for private land template has been developed to facilitate multiple notifications to each owner and occupier of the relevant land for situations where resource companies intend to drill a petroleum well or bore or intend to carry out hydraulic fracturing activities during the entry notice period.

¹² *Petroleum and Gas (General Provisions) Regulation 2017*, s29.

¹³ *Petroleum and Gas (General Provisions) Regulation 2017*, s30.

¹⁴ *Petroleum and Gas (General Provisions) Regulation 2017*, s31.

¹⁵ *Petroleum and Gas (General Provisions) Regulation 2017*, s32.

¹⁶ *Petroleum and Gas (General Provisions) Regulation 2017*, s33.

¹⁷ *Petroleum and Gas (General Provisions) Regulation 2017*, s34.

Date : 27/05/2021 11:47:14 AM

From : "EDDINGTON Ross"

To : "MUSGRAVE Kerrie"

Subject : FW: Consultation draft - Fact Sheet - Notice of entry for private land for directional drilling on adjacent land

Attachment : image001.jpg;image002.jpg;image003.jpg;image004.jpg;

QFF feedback

From: sch4p4(6) Personal information

Sent: Thursday, 27 May 2021 11:46 AM

To: EDDINGTON Ross

Cc: sch4p4(6) Perso

Subject: RE: Consultation draft - Fact Sheet - Notice of entry for private land for directional drilling on adjacent land

Hi Ross

Thank you for providing the opportunity for QFF to comment on the fact sheets. In future consultations, QFF would appreciate more time to review consultation drafts. The small window of opportunity for comment has limited QFF to consult more broadly with QFF members and provide detailed comments.

On reading these documents, it is pleasing to see agriculture is considered an advanced activity regardless of the scope of the works. A reasonable notice period is outlined, and your inclusion of compensation information is pleasing to see.

Regards

sch4p4(6) P

Policy Director Environment & NRM



T (07) 3837 4734 M sch4p4(6) Personal information

Level 3 183 North Quay

(PO Box 12009)

Brisbane Queensland 4003



From: EDDINGTON Ross <Ross.Eddington@resources.qld.gov.au>

Sent: Tuesday, 25 May 2021 9:57 AM

To: sch4p4(6) Personal information

Subject: FW: Consultation draft - Fact Sheet - Notice of entry for private land for directional drilling on adjacent land

sch4p4

As discussed we would appreciate any comments or view you may have about the attached directional drilling factsheet by COB Wednesday if possible

Please find attached a draft version of a new factsheet (and accompanying combined form) which the department has prepared in relation to notices of entry and directional drilling.

We are seeking any comment you may have on this by mid-week if possible. I am aware that this is not as long as the usual cycle of consultation however the department is eager to publish the factsheet to address some recent land-holder concerns.

Please provide any feedback you may have by COB Wednesday 26th May to Kerrie Musgrave at Kerrie.Musgrave@resources.qld.gov.au or phone 3199 8105 if you would like to talk through any aspects of the factsheet

Kind regards

Ross Eddington

Director

Regulatory Support and Performance

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21-461 File B Page 51 of 115

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Published on Resources Disclosure Log
RTI Act 2009

Date : 27/05/2021 1:29:50 PM

From : "MUSGRAVE Kerrie"

To : "SHAW Chris"

Cc : "EDDINGTON Ross" , "WARD Steven (Resources)" , "REES Marcus"

Subject : Updated Fact Sheet

Attachment : 210527 - CONSULTATION DRAFT - Fact Sheet - Notice of entry for private land for directional drilling on adjacent land.pdf;210527 - CONSULTATION DRAFT - Fact Sheet - Notice of entry for private land for directional drilling on adjacent land_TC.docx;210527 - CONSULTATION DRAFT - Fact Sheet - Notice of entry for private land for directional drilling on adjacent land_clean.docx;Fact Sheet - Notice of entry for private land for directional drilling on adjacent land - APPEA comments.docx;image001.png;

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Kerrie Musgrave
Acting Policy Manager
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Department of Resources

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Date : 27/05/2021 11:04:36 AM
From : "EDDINGTON Ross"
To : "MUSGRAVE Kerrie"
Subject : FW: Landholder concerns summary
Attachment : Landholders concerns summary_20210526.docx;image001.png;

From: WARD Steven (Resources) <Steven.Ward@resources.qld.gov.au>
Sent: Wednesday, 26 May 2021 6:33 PM
To: EDDINGTON Ross; REES Marcus; SHAW Chris; PRINCE Alice; BARTLETT Tanya
Subject: Landholder concerns summary

Hi

To inform tomorrow's meeting re landholder concerns, we've attempted to summarise (attached) the various concerns and assertions being made, and solutions being proposed by landholders.

There are some matters in the table that fall under the lead of other agencies (e.g. public liability insurance) but are included as landholders are linking to aspects under DoR's remit.

Cheers

Steve



Dr Steve Ward
Director, Engagement and Compliance
Divisional Support | Georesources
Department of Resources

P: 4529 1566 **M:** sch4p4(6) Pe
E: steven.ward@resources.qld.gov.au
A: 203 Tor Street, Toowoomba QLD 4350 | PO BOX 318
W: www.dnrme.qld.gov.au

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Deviated drilled wells – landholder issues

Landholder Issue Summary	Solution being sought by landholders	Potential links/dependencies	Discussion
<ul style="list-style-type: none"> - Prelim v's advanced activities – resource tenure holder determines which & not a level playing field for landholders. - No avenues for dispute resolution like other aspects of land access framework (e.g. disputes over restricted land can be determined by Land Court) and no coverage for reasonably incurred legal costs. - Impact(s) have to occur before landholder can seek Land Court determination (via s.81 MERCPC). 	<ul style="list-style-type: none"> - More say in determination of prelim V's advanced - Clear avenue(s) for escalation and dispute resolution 	<p>DoR factsheet on DD.</p>	
<ul style="list-style-type: none"> - To manage safety risk (e.g. collision) when drilling a water bore on land with directionally drilled well, separation distance at surface from DD well trajectory is required – limits landholder ability to drill on property that can be significant e.g. If, on a 130ha block, each DD well has a trajectory that incurs 500 metres into property and a 50m separation distance (each side of DD) is considered necessary, approx. 5ha that landholder feels cannot be utilised at surface per DD, in this example. Potential for multiple DD on 128ha blocks. - Suggestion that this would translate to a greater than minimal impact on the business and should trigger a CCA. 	<ul style="list-style-type: none"> - Clarity on whether separation distances are defined in QG regulatory framework or guidance materials. - DD is considered advanced activity. 	<ul style="list-style-type: none"> - Informal advice from RSHQ is that no separation distances are prescribed. Should be considered on a case-by-case basis and via risk-assessment of water bore driller. - Informal advice from DRDMW is that there may not be requirements for water bore driller to (a) check for resource tenure-related aspects and (b) need a risk assessment (under Water Act) - Replacement water bores as a make good measure under Ch3 of Water Act would typically involved the responsible tenure holder in 	

		the negotiations, providing an avenue to risk-manage DD in drilling a water bore.	
<ul style="list-style-type: none"> - Subsidence – Arrow have acknowledged there will be subsidence (100ml) with 10 years for PAA. Land is floodplain, sometimes laser levelled - the slightest subsidence (e.g. on an existing depressed zone) can have significant impacts for landholders business regarding water flow etc. - Suggestion that this would translate to a greater than minimal impact on the business and should trigger a CCA. - Lack of baseline for subsidence in the region means that impacts cannot be quantified/determined. - Technology being used to assess subsidence is of insufficient accuracy and applicability (on vertisols and cropping land for example) to provide adequate coverage to landholders for subsidence risk. 	<ul style="list-style-type: none"> - Determination that all PAA land require CCA for authorised activities to give greater negotiating ability to landholders on this and other risks. - Pause on Arrow’s activities until subsidence baseline is achieved, monitoring technologies are adequate and monitoring framework is finalised. 	<ul style="list-style-type: none"> - OGIA working with landholders in Dalby district to develop subsidence monitoring framework and technologies, including ground-based methods. OGIA also undertaking review of Arrow’s subsidence monitoring framework. 	
<ul style="list-style-type: none"> - Criteria for s15B(2) MERCP is outdated and unsuitable for high intensity, floodplain broadacre farming on PAA. <ul style="list-style-type: none"> o No evidence of why cut-off is 100ha (numerous blocks in Dalby district are approx.. 128ha) o Criteria does not account for PAA 	<ul style="list-style-type: none"> - Change 100ha criteria to accommodate old soldier plots (approx. 128ha) and/or justify. - Amend criteria to include PAA as automatic escalation to advanced activity with CCA required. 		

<ul style="list-style-type: none"> - The quality of Arrow's information on existing and proposed DD does not allow landholder's to have clarity on positioning etc. 	<ul style="list-style-type: none"> - Better quality information be provided to landholders by Arrow regarding DD. 	<p>3D DD information on GeoResGlobe.</p>	
<ul style="list-style-type: none"> - Where restricted land framework applies, does restricted land apply: <ul style="list-style-type: none"> o apply only laterally, vertically or in 3 dimensions. o From surface expression of restricted land or subterranean e.g. base of a ring tank/dam if vertical separation distance applies. 	<ul style="list-style-type: none"> - Clarity on how restricted land applies. 	<ul style="list-style-type: none"> - Awaiting clarification of IHL advice on this issue. 	
<ul style="list-style-type: none"> - Public liability insurance: <ul style="list-style-type: none"> o No coverage of preliminary activities o No coverage for post-tenure/residual risks. - Being asked to make significant, long-term decisions on highly-leveraged businesses without coverage that may have additional financial ramifications (lending, mortgaging etc.). - Uncertainty about Arrow's willingness cover public liability gaps 	<p>Moratorium/pause on Arrow operations until public liability insurance uncertainties are resolved.</p>	<ul style="list-style-type: none"> - Arrow have stated publicly they will cover any gaps in public liability insurance. Still working through the form and delivery of this. - GFCQ looking to address post-tenure/residual public liability issue. 	

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Date : 27/05/2021 1:29:50 PM

From : "MUSGRAVE Kerrie"

To : "SHAW Chris"

Cc : "Ross Eddington" , "Steven Ward (Resources)" , "Marcus Rees"

Subject : Updated Fact Sheet

Attachment : 210527 - CONSULTATION DRAFT - Fact Sheet - Notice of entry for private land for directional drilling on adjacent land.pdf;210527 - CONSULTATION DRAFT - Fact Sheet - Notice of entry for private land for directional drilling on adjacent land_TC.docx;210527 - CONSULTATION DRAFT - Fact Sheet - Notice of entry for private land for directional drilling on adjacent land_clean.docx;Fact Sheet - Notice of entry to private land for directional drilling on adjacent land - APPEA comments.docx;image001.png;

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Kerrie Musgrave

Acting Policy Manager

Georesources Policy | Georesources Division

Department of Resources

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W: www.resources.qld.gov.au

Date : 7/06/2021 9:17:22 AM
From : "MUSGRAVE Kerrie"
To : "SHAW Chris"
Cc : "EDDINGTON Ross" , "WARD Steven (Resources)" , "REES Marcus"
Subject : RE: Updated Fact Sheet
Attachment : image001.png;

Hi Chris,

Not that I am aware of.



Kerrie Musgrave
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Department of Resources

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From: SHAW Chris <Chris.Shaw@resources.qld.gov.au>
Sent: Monday, 7 June 2021 9:16 AM
To: MUSGRAVE Kerrie
Cc: EDDINGTON Ross; WARD Steven (Resources); REES Marcus
Subject: RE: Updated Fact Sheet

Thanks Kerrie – just checking whether we’ve had any feedback from ag sector peaks on the fact sheet?

Cheers

From: MUSGRAVE Kerrie <Kerrie.Musgrave@resources.qld.gov.au>
Sent: Thursday, 27 May 2021 1:30 PM
To: SHAW Chris
Cc: EDDINGTON Ross; WARD Steven (Resources); REES Marcus
Subject: Updated Fact Sheet

Hi Chris,

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Date : 8/06/2021 8:24:09 AM
From : "EDDINGTON Ross"
To : "SHAW Chris", "Kerrie Musgrave"
Cc : "Steven Ward (Resources)", "Marcus Rees"
Subject : RE: Updated Fact Sheet
Attachment : image001.png;

Yes we contacted both Ag force and QFF
No comments of significance, one had none, both grateful we consulted.
Ross

From: SHAW Chris <Chris.Shaw@resources.qld.gov.au>
Sent: Monday, 7 June 2021 9:16 AM
To: MUSGRAVE Kerrie
Cc: EDDINGTON Ross; WARD Steven (Resources); REES Marcus
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W: www.resources.qld.gov.au

Date : 14/06/2021 11:10:31 AM

From : "MUSGRAVE Kerrie"

To : "EDDINGTON Ross"

Subject : FW: Updated Fact Sheet

Attachment : 210527 - CONSULTATION DRAFT - Fact Sheet - Notice of entry for private land for directional drilling on adjacent land.pdf;210527 - CONSULTATION DRAFT - Fact Sheet - Notice of entry for private land for directional drilling on adjacent land_TC.docx;210527 - CONSULTATION DRAFT - Fact Sheet - Notice of entry for private land for directional drilling on adjacent land_clean.docx;Fact Sheet - Notice of entry to private land for directional drilling on adjacent land - APPEA comments.docx;image001.png;

Hi Ross,

This is the current version of the Directional Drilling fact sheet.



Kerrie Musgrave
Principal Policy Officer
Georesources Policy | Georesources Division
Department of Resources

P: 3199 8105

E: kerrie.musgrave@resources.qld.gov.au

A: Level 4, 1 William Street, Brisbane QLD 4000 | PO Box 15216, CITY EAST, QLD 4002

W: www.resources.qld.gov.au

From: MUSGRAVE Kerrie

Sent: Thursday, 27 May 2021 1:30 PM

To: SHAW Chris

Cc: EDDINGTON Ross; WARD Steven (Resources); REES Marcus

Subject: Updated Fact Sheet

Hi Chris,

I have attached the updated draft fact sheet (TC, clean and PDF versions) after considering the feedback from APPEA (also **attached**). QFF have responded but did not have sufficient time to review the consultation draft, no feedback from AgForce or AMEC and Ross has left a message with QRC. Note that [sch4p4\(6\)](#) has track changed an earlier version, not the one that was sent formally out for consultation – the versions are quite similar however the version that he has worked on included the section about recording CCAs on title – removed from the consultation version.

In summary, I have:

- Adopted the format provided by [sch4p4\(6\)](#) with key points stated at the beginning and details of the statutory framework as an attachment.
- Included the detail about limited tortious liability for owners or occupiers in both the section on key points and the attachment.
- Included the explanation of ownership of subsurface land provided by [sch4](#) taken from [Land Allocation: Granting Land Volumetrically PUX/901/100](#)
- Have not included the following from APPEA:
 - (second paragraph of APPEA feedback) "The fact sheet provides guidance that the sub-surface portions of directional drilling activities on adjacent land that are at significant depth below the surface of the land are ordinarily preliminary activities" – this would indicate that the department has formed a position – certainly industry's perspective but a concern for landholders.
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 - (Under "Circumstances for categorising directional drilling as a preliminary or advanced activity" in the attachment) have not included the addition of "subterranean entry at significant depth to access private land to carry out directional drilling activities on adjacent land" as an example of a preliminary activity, which is provided under section 15B of the MERCP Act – would require a legislative amendment and would limit the opportunity for landholders to require a CCA – one of the main concerns for landholders.



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Published on Resources Disclosure Log
RTI Act 2009

Date : 14/06/2021 11:10:31 AM

From : "MUSGRAVE Kerrie"

To : "EDDINGTON Ross"

Subject : FW: Updated Fact Sheet

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Cc: EDDINGTON Ross; WARD Steven (Resources); REES Marcus

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Published on Resources Disclosure Log
RTI Act 2009

Date : 14/06/2021 10:48:01 AM

From [redacted] Personal inform

To : "EDDINGTON Ross"

Subject : Re: Consultation draft - Fact Sheet - Notice of entry for private land for directional drilling on adjacent land

Thanks ross

[redacted]

From: EDDINGTON Ross <Ross.Eddington@resources.qld.gov.au>

Sent: Monday, June 14, 2021 10:28:21 AM

To [redacted]

Subject: Re: Consultation draft - Fact Sheet - Notice of entry for private land for directional drilling on adjacent land

Caution: External sender

[redacted] It's still stuck in approvals will send round final as soon as approved hopefully this week

Ross

Sent from my iPhone

On 14 Jun 2021, at 10:21 am, [redacted] wrote:

Hi Ross, has this been finalised and can you send me the link to finals?

[redacted]

From: EDDINGTON Ross <Ross.Eddington@resources.qld.gov.au>

Sent: Monday, May 24, 2021 2:30:52 PM

To: [redacted]

[redacted]

Cc: MUSGRAVE Kerrie <Kerrie.Musgrave@resources.qld.gov.au>

Subject: Consultation draft - Fact Sheet - Notice of entry for private land for directional drilling on adjacent land

Caution: External sender

[redacted]

Please find attached a draft version of a new factsheet (and accompanying combined form) which the department has prepared in relation to notices of entry and directional drilling.

We are seeking any comment you may have on this by mid-week if possible. I am aware that this is not as long as the usual cycle of consultation however the department is eager to publish the factsheet to address some recent land-holder concerns.

Please provide any feedback you may have by COB Wednesday 26th May to Kerrie Musgrave at Kerrie.Musgrave@resoruces.qld.gov.au or phone 3199 8105 if you would like to talk through any aspects of the factsheet

Kind regards

Ross Eddington

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Date : 16/06/2021 10:13:44 AM

From : "MUSGRAVE Kerrie"

To : "EDDINGTON Ross"

Subject : Webpage update - Directional drilling fact sheet

Attachment : Directional Drilling Fact Sheet update.docx;image001.png;

Hi Ross,

Please review the draft webpage update (**attached**) for the Directional Drilling Fact Sheet.



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Preliminary activity requirements

The information on this page applies from Friday 19 April 2019.

Preliminary activities are activities that have no impact or only a minor impact on the land use activities or business activities of a landholder. They can include:

- walking the area of the permit
- driving along an existing road or track in the area
- taking soil or water samples
- geophysical surveying not involving site preparation
- aerial, electrical or environmental surveying
- survey pegging.

However, these activities are not considered preliminary activities if they:

- are carried out on land that is being used for intensive farming or broadacre agriculture that is less than 100ha in size
- affect organic or bioorganic farming.

Who this applies to

The following requirements apply when resource companies enter private land within the area of their resource authority. It applies to all resource authority holders except holders of prospecting permits, mining claims or mining leases. This is because alternative requirements apply to prospecting permits, and to [mining claims and mining leases](#).

A special process applies to gain entry to [private land outside the area of the resource authority](#) and to [restricted land](#) around certain buildings, structures and areas.

Communicating with landholders – advice for resource operators

Good relationships between resource operators and landholders are built on early, transparent and respectful communication.

Before issuing an entry notice, you should contact or visit all impacted landholders to discuss the proposed activities. This will give you a clearer idea of the impacts and allow you to modify your plans, if required, to reduce these. The landholder might also be able to modify their own activities to minimise disruptions.

[Preliminary activity requirements | Business Queensland](#)

If you're planning an aerial survey, consider advertising it or holding a community hall meeting to engage with affected landholders.

[A fact sheet is available which sets out the regulatory framework for resource authority holders to access private land to carry out directional drilling activities on adjacent land and landholder rights that apply in that scenario.](#)

Commented [MK1]: Hyperlink to the Directional Drilling Fact Sheet.

Important: If your operations will have more than a minor impact on the landholder's land use or business activities, you should treat them as [advanced activities](#). You will then need to [negotiate an agreement with the landholder](#).

Entry notice requirements

Before entering private land to carry out preliminary activities, the resource company must give a written notice to each landholder at least 10 business days prior to entry.

The entry notice must include the following details:

- the land proposed to be entered
- the period during which the land is to be entered
- the activities proposed to be carried out on the land
- when and where the activities will be carried out
- the resource authority holder's contact details or those of their representative.

The initial entry notice should also include a copy of:

- the resource authority
- the relevant environmental authority
- the Land Access Code
- any relevant code or code of practice made under a resource Act that applies to the authorised activities for the resource authority
- [a guide to land access in Queensland \(PDF, 1.8MB\)](#).

Note: Resource companies are no longer required to provide copies of entry notices to the Department of Resources. In addition, the Mines Online system can no longer be used to generate entry notices.

Entry notice template

Resource companies can use the [entry notice template](#) to help meet the entry and access requirements. This template includes best-practice examples that will help ensure that landholders have enough information to assess the impact on their operations.

Waiver of entry notice

A landholder can choose to waive the requirements for entry notices by providing a written waiver. The waiver notice must include a statement that the landholder has been advised that they are not required to give a waiver.

Other land access requirements

Resource companies must comply with the mandatory conditions of the [Land Access Code](#) when carrying out authorised activities on a landholder's land. These conditions cannot be altered or waived by agreement. All parties are encouraged to comply with the code's best practice recommendations.

Entry to [restricted land](#) around certain buildings, structures or areas requires the written consent of the landholder.

Also consider...

- Find out about lodging [land access notifications for coal and mineral activities](#) and [land access notifications for petroleum and gas activities](#).
- [Make an enquiry or complaint](#) about land access.
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- **Previous** Accessing private land for resource activities
 - **Next** Advanced activity requirements

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- **Previous** Accessing private land for resource activities
 - **Next** Advanced activity requirements

Date : 17/06/2021 10:07:53 AM

From : "EDDINGTON Ross"

To : "FERRIS Shaun" , "SHAW Chris"

Subject : Factsheet and draft letter from MECS item 12640/21

Attachment : DMView_1623888377005_12640-21_1878399_Min_reply.docx;DMView_1623888335465_12640-21_1879448_210527_-_CONSULTATION_DRAFT_-_Fact_Sheet_-_Notice_of_entry_for_private_land_for_directional_drilling_on_adj.docx;

Attached is the draft factsheet for approval plus the cover letter which will be used to send to attendees of the meetings that the Minister attended last week.

Ross

Published on Resources Disclosure Log
RTI Act 2009



The Hon Scott Stewart MP
Minister for Resources

Ref [Min Office No]
CTS 12640/21

1 William Street Brisbane
PO Box 15216 City East
Queensland 4002 Australia
Telephone +61 7 3008 3500
Email Resources@ministerial.qld.gov.au
www.resources.qld.gov.au

Mail Merge Landholder List for Addresses

[Email]

Dear

I write today to thank you for meeting with me, my team and the GasFields Commission (the Commission) on our recent field trip to the Dalby/Chinchilla farming regions.

I acknowledge you are very busy, so I appreciate you taking the time out to meet with me to share the issues that are affecting you in regard to the development of Queensland's onshore gas industry.

Maintaining the gas industry's social licence and achieving sustainable coexistence with rural landholders and communities is essential for the industry's continued growth and for the prosperity of regional communities.

As I said to you when I visited, we must all continue to learn from our experiences in the growth of the sector – as gas exploration and development inevitably expands into other areas, we need to embrace the lessons learnt and apply them to all future endeavours.

Our discussions highlighted a number key issues that required action from both the Department of Resources (the department) and the Commission. The first of these was the need for clarification around resource companies' requirements when accessing private land to carry out directional drilling on adjacent land. Clear advice on this matter is critical. The department has developed a fact sheet, which I have enclosed, and which I believe clarifies the key requirements relating to this issue. This factsheet will also be published on the department's website and circulated to the peak industry bodies.

Commented [GA1]: Fact sheet to be approved by Minister week of 14 June 2021

A number of the other key issues are being investigated by the Commission. They are continuing to work on a number of projects that are designed to provide stakeholders clarity, relevant information and guidance relating to issues from current development activities in your region.

These include ongoing engagement with landholders via the Surat Stakeholder Advisory Group (SSAG). I believe the SSAG is an important way for the Commission continuing to deliver information about your rights as they relate to gas development, along with playing a critical role in advising myself and other key stakeholders on issues of concern and opportunities.

The Commission's current examinations of the *Regional Planning Interests Act 2014* assessment processes, remedies for neighbouring landholders and long-term liability and insurance are key bodies of work that relate to concerns and issues I heard raised at the field trip. I have emphasised to the Commission the importance of this work and the criticality of delivering these in a timely and transparent way.

Listening to the people on the ground is what I'm about and open dialogue is what we all strive for as coexistence is key for everyone in this industry. Our government, much like the GasFields Commission, is committed to continuing to promote coexistence.

I would also encourage you to make any further submissions on this or other resource related issues through the consultation process for the Resources Industry Development Plan, which is currently underway and is designed to shape the future of the resources industry in Queensland. Submissions can be made at <https://haveyoursay.resources.qld.gov.au/qridp> and are open until 30 June 2021.

If you have any questions, Dr Steve Ward, Director, Engagement and Compliance, Department of Resources, will be pleased to assist you and can be contacted on 4529 1566.

Yours sincerely

Scott Stewart MP
Minister for Resources

Enc

Commented [GA2]: Factsheet

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COMPLETE ENDORSEMENT BLOCK

Print only if required by next signatory

CTS 12640/21

Prepared by: Title: Division/Region: Telephone: Date Prepared:	Endorsed by: Title: Division/Region: Telephone: Date Endorsed:	Endorsed by: Title: Division/Region: Telephone: Date Endorsed:	Endorsed by: Title: Division/Region: Telephone: Date Endorsed:
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Published on Resources Disclosure Log
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Date : 18/06/2021 10:32:50 AM
From : "EDDINGTON Ross"
To : "FERRIS Shaun" , "SHAW Chris"
Cc : "MUSGRAVE Kerrie"
Subject : revised factsheet
Attachment : factsheet 2.1.docx;
Shaun

Please find attached a revised fact sheet as requested. We have accepted all your changes and removed minor track changes so the version you see just shows responses to your questions and how we have addressed them.

Have walked Chris through these changes in the chance it might still be able to go to COS today.

Ross

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Considerations when accessing private land to carry out directional drilling on adjacent land

This fact sheet sets out the regulatory framework for resource authority holders to access private land to carry out directional drilling activities on adjacent land and landholder rights that apply in that scenario.

'Land' in the context of the Land Access Framework

- The land access framework applies to authorised activities that occur below the surface of the land, which include directional drilling, except where exemptions apply.
- Generally, land ownership ceases at the point the landowner may no longer make actual, beneficial use of the airspace and sub-surface space.¹ Sub-surface resources are therefore normally owned by the State.
- Where subsurface resource production is authorised by government the basic requirement is that the use of the surface land must not be unduly interfered with or if there is impact at the surface it must be compensated for.
- However, land volume above and below the surface is still "land" and for that reason the land access framework generally applies to authorised activities that occur below the surface of the land, including directional drilling.

Directional Drilling – Preliminary or Advanced Activity?

- Directional drilling below the surface of the land on a neighbouring property will be considered a preliminary activity for the land access framework if there is no impact, or only a minor, impact on a landholder's business or land use activities.
- Where the impact on a landholder's business or land use activities is greater and falls under the category of advanced activity either a conduct and compensation agreement, a deferral agreement, or an opt-out agreement would be required.
- Each circumstance should be assessed individually and considered on a case-by-case basis.
- Landholders who believe a directional well that has been drilled is impacting on their land use or business should contact the proponent who drilled the well and/or the department to discuss the issue.

Entry Notice Requirements

- An entry notice for directional drilling must be given to each owner and occupier of adjacent land at least 10 business days before the day calculated by the resource company as to when the directional drilling activities will occur beneath the surface of that adjacent land.
- Entry notice must comply with the prescribed requirements as outlined in section 17 of the Mineral and Energy Resources (Common Provisions) Regulation 2016.

¹ https://www.resources.qld.gov.au/?a=109113:policy_registry/granting-land-volumetrically.pdf&ver=2.05

NOT GOVERNMENT POLICY – CONSULTATION DRAFT ONLY

Commented [ER1]: While factsheet is designed for landholders it will also be used by industry. We have sought to strike a balance with the language used and have attempted to soften it where it would not have a legal impact.

Commented [FS2]: The Land Allocation: Granting Land Volumetrically states:

The idea that ownership of land goes from "heaven to hell" is not interpreted literally but is generally interpreted to mean that land ownership ceases at the point the landowner may no longer make actual, beneficial use of the airspace and sub-surface space. However, generally land ownership is three-dimensional with actual height and depth specifications not stated.

So maybe lets not use language like the 'General rule', and instead lets use the exact language from the Policy (ie. Generally, land ownership ceases at the point the landowner may no longer make actual, beneficial use of the airspace and sub-surface space).

Commented [MK3R2]: Understood and changed

Commented [FS4]: Do we actually need this, as we talk to "if there is no, or only minor, impact on....."

Commented [MK5R4]: The wording is from section 15B of the MERC Act - What is a preliminary activity – we have reworded slightly to clarify

Commented [FS6]: The wording "where there is no infrastructure or activity occurring" immediately draws me to matters such as:

- What about where there is infrastructure such as a ring tank, farm dam, farm road etc? This is infrastructure, so does that flick us into being Advanced and requiring a CCA?
- What about "activity"? It could be argued that farming is an activity and therefore again this dot point becomes more ambiguous and less definitive given the issues we are currently dealing with.

Commented [MK7R6]: Reworded – the infrastructure and activity referred to previously was in relation to the petroleum well infrastructure and associated activity.

Commented [FS8]: Should we give examples of the kinds of impacts, or is that too difficult for us to do?

Commented [MK9R8]: The actual impacts would vary case by case and could relate to water bores, subsidence, land values, insurance etc. – so would be difficult. RE additional comments – I think inhouse legal would be opposed.

Commented [FS10]: We need to think about how we would determine whether an activity is prelim or advanced. Once this factsheet goes out, we will get complaints, and we will need to ensure how we consider these complaints

Commented [MK11R10]: Heading below encourages proponents to engage with landholder. Other solutions need further consideration.

- A template for an Entry Notice is provided on the Department of Resources website². This template is not compulsory, but serves as a readily available resource for companies to

Commented [FS12]: Just a thought – wondering if we should include this in here?

Also, worth detailing the notification requirements in the Attachment below.

Commented [MK13R12]: Understood and added to Attachment

Locating Directional Drilling Wells and Activities

- Resource companies are encouraged to engage early with the relevant landholders to provide sufficient information about the proposed location of wells and directional drilling activities.
- Early engagement will provide landholders the opportunity to negotiate the location of activities and assess the impact that the activities will likely have on their business and land use activities.
- It is important that the design and locating of directional wells takes account of landholder activities and input.

Compensation Liability

- A resource authority holder is liable to compensate an owner or occupier of private land that is in the authorised area of the resource authority or that is access land for the resource authority for each 'compensatable effect' suffered by the claimant because of the holder's directional drilling activities.
- Landholders are not liable to compensate for damages associated with carrying out resource activities occurring on their land, unless they, or someone authorised by them, caused or contributed to the harm.

Commented [FS14]: Remember, we are speaking to landholders here. Is there a more simplistic way we can say this?

Commented [MK15R14]: Re-worded

Further information

For further information, please contact the Resource Community Infoline on

13 71 07 or email resources.info@resources.qld.gov.au.

Further information on the legislative framework is also provided in the Attachment.

² https://www.resources.qld.gov.au/__data/assets/pdf_file/0018/441711/entry-notice-form-01.pdf

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Attachment

FURTHER INFORMATION ABOUT LEGISLATIVE REQUIREMENTS

Regulatory framework

The Department of Resources administers the land access framework under Chapter 3 of the *Mineral and Energy Resources (Common Provisions) Act 2014* (MERC Act) and subordinate legislation.

The MERC Act must be read as if it formed part of the *Petroleum and Gas (Production and Safety) Act 2004* (P&G Act)³ and the meaning of "land" in Schedule 2 Dictionary of the P&G Act includes subterranean land.

Other legislation may be applicable, for example, Chapter 3 of the *Water Act 2000*, and if that is the case, it is a matter for the resource authority holder to contact the relevant agency.

Definition of 'petroleum wells' includes directional drilling

Directional drilling refers to the practice of drilling non-vertical boreholes. Schedule 2 of the P&G Act defines 'petroleum well' as a 'hole in the ground made or being made by drilling, boring or any other means to, amongst other things, explore for or produce petroleum; or through which petroleum or a prescribed storage gas may be produced' and applies to both conventional and unconventional resources, such as coal seam gas.

On this basis, the definition of 'petroleum wells' in the P&G Act includes directional drilling and is not limited to vertical drilling.

Requirements for preliminary and advanced activities

Chapter 3 of the MERC Act outlines the circumstances and obligations for resource authority holders to give each owner and occupier of private land an entry notice to enter that land to:

- a) carry out an authorised activity for a resource authority; or
- b) cross access land for the resource authority; or
- c) gain entry to access land for the resource authority.

The extent to which the authorised activity impacts the business or land use activities of any owner and occupier of the land will determine whether the activity is either a 'preliminary activity' or an 'advanced activity'.

³ Refer to section 6 of the *Mineral and Energy Resources (Common Provisions) Act 2014*.

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Circumstances for categorising directional drilling as a preliminary or advanced activity

Chapter 3, part 2, division 2 of the MERC Act applies to an entry to private land for the purposes of carrying out an authorised activity for a resource authority, which includes a petroleum lease and an authority to prospect (see section 10(b) of the MERC Act).

Section 22 of the P&G Act states an authorised activity is an activity that its holder is, under the P&G Act or the authority, entitled to carry out in relation to the authority.

Under section 15B of the MERC Act, a 'preliminary activity' for a resource authority, is an authorised activity for the authority that will have no impact, or only a minor impact, on the business or land use activities of any owner or occupier of the land on which the activity is to be carried out.

Examples –

- *walking the area of the authority*
- *driving along an existing road or track in the area*
- *taking soil or water samples*
- *geophysical surveying not involving site preparation*
- *aerial, electrical or environmental surveying*
- *survey pegging*

Note that under section 15B(2) of the MERC Act, the following are *not* preliminary activities:

- a) an authorised activity carried out on land that –
 - i. is less than 100 hectares; and
 - ii. is being used for intensive farming or broadacre agriculture (for example, land used for dryland or irrigated cropping, plantation forestry or horticulture or a dairy, cattle or sheep feedlot, piggery or poultry farm);
- b) an authorised activity that affects the lawful carrying out of an organic or bio-organic farming system.

Under section 15A of the MERC Act, an 'advanced activity' for a resource authority, is an authorised activity for the resource authority other than a preliminary activity for the resource authority.

Examples—

- *levelling of drilling pads and digging sumps*
- *earthworks associated with pipeline installation*

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- *bulk sampling*
- *open trenching or costeaning with an excavator*
- *vegetation clear-felling*
- *constructing an exploration camp, concrete pad, sewage or water treatment facility or fuel dump*
- *geophysical surveying with physical clearing*
- *carrying out a seismic survey using explosives*
- *constructing a track or access road*
- *changing a fence line*

Entry to land

Under section 39 of the MERC Act, it is an offence for a person to enter private land for the purpose of carrying out an authorised activity for a resource authority, unless the resource authority holder has given each owner and occupier of the land an entry notice about the entry at least 10 business days before the entry, unless:

- the owner or occupier has agreed in writing to the shorter period, under section 39(3) of the MERC Act; or
- an exemption applies under section 40 of the MERC Act.

Entry notice requirements

Under section 40(1), a person is exempt from the obligation to give an entry notice about entry to private land for an authorised activity such as directional drilling only if:

- a) the resource authority holder owns the land; or
- b) the resource authority holder has an independent legal right to enter the land for the purpose; or
- c) the entry is to preserve life or property or because of an emergency that exists or may exist; or
- d) the entry is authorised under the Resource Act for the resource authority; or
- e) the entry is of a type prescribed by regulation.

The obligation to give an entry notice also does not apply under section 40(2) of the MERC Act, if the resource authority holder has one of the following with each owner and occupier of the land:

- a) a waiver of entry notice for the entry that is in effect;

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- b) a conduct and compensation agreement which provides for alternative obligations for the entry and the holder complies with the alternative obligations;
- c) an opt-out agreement.

Under section 43 of the MERC Act, a resource authority holder must not enter private land to carry out an 'advanced activity' for the resource authority unless, amongst other things, a conduct and compensation agreement about the advanced activity, a deferral agreement, or an opt out agreement has been entered into with each owner and occupier of the land.

A maximum penalty of 500 penalty units applies to the section 39 and section 43 offence provisions. If a body corporate is found guilty of the relevant offence, the court may impose a maximum fine of an amount equal to five times the maximum fine for an individual.⁴

Prescribed criteria for an entry notice

Under section 17 of the Mineral and Energy Resources (Common Provisions) Regulation 2016, an entry notice must state each of the following –

- a description of the land to be entered
- the period during which the land is to be entered
- the authorised activities proposed to be carried out on the land
- when and where the activities are to be carried out
- the contact details of -
 - the resource authority holder or another person the resource authority holder has authorised to discuss the matters stated in the notice.

If the notice is the first entry notice given to a particular owner or occupier of the land, the notice must be accompanied by a copy of each of the following –

- the resource authority to which the entry relates
- any relevant environmental authority for the resource authority
- the land access code
- any code or code of practice made under a Resource Act applying to the authorised activities for the resource authority
- the document called 'A guide to land access in Queensland' published on the department's website or the Queensland Government business and industry portal.

Liability to compensate

Under section 81 of the MERC Act, a resource authority holder is liable to compensate an owner or occupier of private land that is in the authorised area of the resource authority or that is access land for the resource authority for each 'compensatable effect' suffered by the claimant because of the holder's directional drilling activities.

The types of compensatable effects listed under section 81(4) include:

⁴ *Penalties and Sentences Act 1992*, s 181B.

- deprivation of possession of the land's surface;
- diminution of the land's value;
- diminution of the use made, or that may be made, of the land or any improvement on it;
- severance of any part of the land from other parts of the land or from other land that the eligible claimant owns;
- any cost, damage or loss arising from the carrying out of activities under the resource authority on the land;
- consequential loss incurred by an eligible claimant arising out of a matter listed directly above.

The specific factual circumstances associated with the directional drilling would need to be considered to assess compensatable effects associated with the directional drilling.

Limitation of owner's or occupier's tortious liability for authorised activities

Section 563A of the P&G Act limits the tortious liability of an owner or occupier of land in the area of a petroleum authority if someone else carries out an authorised activity for a petroleum authority on the land. The owner or occupier is not civilly liable to anyone else for a claim based in tort for damages relating to the carrying out of the activity unless the owner or occupier or someone authorised by the owner or occupier caused or contributed to the harm.

Other notification requirements for resource companies

Under section 28 of the *Petroleum and Gas (General Provisions) Regulation 2017* (P&G Reg), resource companies must give a copy of the following notices to each owner and occupier of the land on which the authorised activities to which the notice relates have been or are to be carried out and by the time the notice is required to be carried out:

- Notice about intention to drill a petroleum well or bore⁵
- Notice about completion, alteration, or abandonment of petroleum well or bore⁶
- Notice about intention to carry out seismic survey or scientific or technical survey⁷
- Notice about completion of survey or scientific or technical survey⁸
- Notice about intention to carry out hydraulic fracturing activities⁹

⁵ *Petroleum and Gas (General Provisions) Regulation 2017*, s29.

⁶ *Petroleum and Gas (General Provisions) Regulation 2017*, s30.

⁷ *Petroleum and Gas (General Provisions) Regulation 2017*, s31.

⁸ *Petroleum and Gas (General Provisions) Regulation 2017*, s32.

⁹ *Petroleum and Gas (General Provisions) Regulation 2017*, s33.

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- Notice about completion of hydraulic activities.¹⁰

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RTI Act 2009

¹⁰ *Petroleum and Gas (General Provisions) Regulation 2017, s34.*

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Date : 18/06/2021 10:18:00 AM
From : "EDDINGTON Ross"
To : "MUSGRAVE Kerrie"
Attachment : factsheet 2.1.docx;

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RTI Act 2009

Considerations when accessing private land to carry out directional drilling on adjacent land

This fact sheet sets out the regulatory framework for resource authority holders to access private land to carry out directional drilling activities on adjacent land and landholder rights that apply in that scenario.

'Land' in the context of the Land Access Framework

- The land access framework applies to authorised activities that occur below the surface of the land, which include directional drilling, except where exemptions apply.
- Generally, land ownership ceases at the point the landowner may no longer make actual, beneficial use of the airspace and sub-surface space.¹ Sub-surface resources are therefore normally owned by the State.
- Where subsurface resource production is authorised by government the basic requirement is that the use of the surface land must not be unduly interfered with or if there is impact at the surface it must be compensated for.
- However, land volume above and below the surface is still "land" and for that reason the land access framework generally applies to authorised activities that occur below the surface of the land, including directional drilling.

Directional Drilling – Preliminary or Advanced Activity?

- Directional drilling below the surface of the land on a neighbouring property will be considered a preliminary activity for the land access framework if there is no impact, or only a minor, impact on a landholder's business or land use activities.
- Where the impact on a landholder's business or land use activities is greater and falls under the category of advanced activity either a conduct and compensation agreement, a deferral agreement, or an opt-out agreement would be required.
- Each circumstance should be assessed individually and considered on a case-by-case basis.
- Landholders who believe a directional well that has been drilled is impacting on their land use or business should contact the proponent who drilled the well and/or the department to discuss the issue.

Entry Notice Requirements

- An entry notice for directional drilling must be given to each owner and occupier of adjacent land at least 10 business days before the day calculated by the resource company as to when the directional drilling activities will occur beneath the surface of that adjacent land.
- Entry notice must comply with the prescribed requirements as outlined in section 17 of the Mineral and Energy Resources (Common Provisions) Regulation 2016.

¹ https://www.resources.qld.gov.au/?a=109113:policy_registry/granting-land-volumetrically.pdf&ver=2.05

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Style Definition: Heading 1

Commented [ER1]: While factsheet is designed for landholders it will also be used by industry. We have sought to strike a balance with the language used and have attempted to soften it where it would not have a legal impact.

Commented [FS2]: The Land Allocation: Granting Land Volumetrically states:

The idea that ownership of land goes from "heaven to hell" is not interpreted literally but is generally interpreted to mean that land ownership ceases at the point the landowner may no longer make actual, beneficial use of the airspace and sub-surface space. However, generally land ownership is three-dimensional with actual height and depth specifications not stated.

So maybe lets not use language like the 'General rule', and instead lets use the exact language from the Policy (ie. Generally, land ownership ceases at the point the landowner may no longer make actual, beneficial use of the airspace and sub-surface space).

Commented [MK3R2]: Understood and changed

Commented [FS4]: Do we actually need this, as we talk to "if there is no, or only minor, impact on....."

Commented [MK5R4]: The wording is from section 15B of the MERC Act - What is a preliminary activity

Commented [FS6]: The wording "where there is no infrastructure or activity occurring" immediately draws me to matters such as:
-What about where there is infrastructure such as a ring tank, farm dam, farm road etc? This is infrastructure, so does that flick us into being Advanced and requiring a CCA?
-What about "activity"? It could be argued that farming is an activity and therefore again this dot point becomes more ambiguous and less definitive given the issues we are currently dealing with.

Commented [MK7R6]: Reworded – the infrastructure and activity referred to previously was in relation to the petroleum well infrastructure and associated activity.

Commented [FS8]: Should we give examples of the kinds of impacts, or is that too difficult for us to do?

Commented [MK9R8]: The actual impacts would vary case by case and could relate to water bores, subsidence, land values, insurance etc. – so would be difficult. RE additional comments – I think inhouse legal would be opposed.

Commented [FS10]: We need to think about how we would determine whether an activity is prelim or advanced. Once this factsheet goes out, we will get complaints, and we will need to ensure how we consider these complaints

Commented [MK11R10]: Perhaps the departmental policy could be that unless a resource company has engaged with landholders before giving an entry notice then a CCA is required. This would ensure early engagement between companies and landholders and the exchange of sufficient information to determine the level of impact.

- A template for an Entry Notice is provided on the Department of Resources website². This template is not compulsory, but serves as a readily available resource for companies to

Commented [FS12]: Just a thought – wondering if we should include this in here?

Also, worth detailing the notification requirements in the Attachment below.

Commented [MK13R12]: Understood and added to Attachment

Locating Directional Drilling Wells and Activities

- Resource companies are encouraged to engage early with the relevant landholders to provide sufficient information about the proposed location of wells and directional drilling activities.
- Early engagement will provide landholders the opportunity to negotiate the location of activities and assess the impact that the activities will likely have on their business and land use activities.
- It is important that the design and locating of directional wells takes account of landholder activities and input.

Compensation Liability

- A resource authority holder is liable to compensate an owner or occupier of private land that is in the authorised area of the resource authority or that is access land for the resource authority for each 'compensatable effect' suffered by the claimant because of the holder's directional drilling activities.
- Landholders are not liable to compensate for damages associated with carrying out resource activities occurring on their land, unless they, or someone authorised by them, caused or contributed to the harm.

Commented [FS14]: Remember, we are speaking to landholders here. Is there a more simplistic way we can say this?

Commented [MK15R14]: Re-worded

Further information

For further information, please contact the Resource Community Infoline on

13 71 07 or email resources.info@resources.qld.gov.au.

Further information on the legislative framework is also provided in the Attachment.

² https://www.resources.qld.gov.au/__data/assets/pdf_file/0018/441711/entry-notice-form-01.pdf

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Attachment

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Definition of ‘petroleum wells’ includes directional drilling

Directional drilling refers to the practice of drilling non-vertical boreholes. Schedule 2 of the P&G Act defines ‘petroleum well’ as a ‘hole in the ground made or being made by drilling, boring or any other means to, amongst other things, explore for or produce petroleum; or through which petroleum or a prescribed storage gas may be produced’ and applies to both conventional and unconventional resources, such as coal seam gas.

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- c) gain entry to access land for the resource authority.

The extent to which the authorised activity impacts the business or land use activities of any owner and occupier of the land will determine whether the activity is either a ‘preliminary activity’ or an ‘advanced activity’.

³ Refer to section 6 of the *Mineral and Energy Resources (Common Provisions) Act 2014*.

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Examples –

- *walking the area of the authority*
- *driving along an existing road or track in the area*
- *taking soil or water samples*
- *geophysical surveying not involving site preparation*
- *aerial, electrical or environmental surveying*
- *survey pegging*

Note that under section 15B(2) of the MERC Act, the following are *not* preliminary activities:

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 - i. is less than 100 hectares; and
 - ii. is being used for intensive farming or broadacre agriculture (for example, land used for dryland or irrigated cropping, plantation forestry or horticulture or a dairy, cattle or sheep feedlot, piggery or poultry farm);
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Examples—

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- *earthworks associated with pipeline installation*

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- *bulk sampling*
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- *constructing an exploration camp, concrete pad, sewage or water treatment facility or fuel dump*
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- *constructing a track or access road*
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- c) the entry is to preserve life or property or because of an emergency that exists or may exist; or
- d) the entry is authorised under the Resource Act for the resource authority; or
- e) the entry is of a type prescribed by regulation.

The obligation to give an entry notice also does not apply under section 40(2) of the MERC Act, if the resource authority holder has one of the following with each owner and occupier of the land:

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- b) a conduct and compensation agreement which provides for alternative obligations for the entry and the holder complies with the alternative obligations;
- c) an opt-out agreement.

Under section 43 of the MERC Act, a resource authority holder must not enter private land to carry out an 'advanced activity' for the resource authority unless, amongst other things, a conduct and compensation agreement about the advanced activity, a deferral agreement, or an opt out agreement has been entered into with each owner and occupier of the land.

A maximum penalty of 500 penalty units applies to the section 39 and section 43 offence provisions. If a body corporate is found guilty of the relevant offence, the court may impose a maximum fine of an amount equal to five times the maximum fine for an individual.⁴

Prescribed criteria for an entry notice

Under section 17 of the Mineral and Energy Resources (Common Provisions) Regulation 2016, an entry notice must state each of the following –

- a description of the land to be entered
- the period during which the land is to be entered
- the authorised activities proposed to be carried out on the land
- when and where the activities are to be carried out
- the contact details of -
 - the resource authority holder or another person the resource authority holder has authorised to discuss the matters stated in the notice.

If the notice is the first entry notice given to a particular owner or occupier of the land, the notice must be accompanied by a copy of each of the following –

- the resource authority to which the entry relates
- any relevant environmental authority for the resource authority
- the land access code
- any code or code of practice made under a Resource Act applying to the authorised activities for the resource authority
- the document called 'A guide to land access in Queensland' published on the department's website or the Queensland Government business and industry portal.

Liability to compensate

Under section 81 of the MERC Act, a resource authority holder is liable to compensate an owner or occupier of private land that is in the authorised area of the resource authority or that is access land for the resource authority for each 'compensatable effect' suffered by the claimant because of the holder's directional drilling activities.

The types of compensatable effects listed under section 81(4) include:

⁴ *Penalties and Sentences Act 1992*, s 181B.

- deprivation of possession of the land's surface;
- diminution of the land's value;
- diminution of the use made, or that may be made, of the land or any improvement on it;
- severance of any part of the land from other parts of the land or from other land that the eligible claimant owns;
- any cost, damage or loss arising from the carrying out of activities under the resource authority on the land;
- consequential loss incurred by an eligible claimant arising out of a matter listed directly above.

The specific factual circumstances associated with the directional drilling would need to be considered to assess compensatable effects associated with the directional drilling.

Limitation of owner's or occupier's tortious liability for authorised activities

Section 563A of the P&G Act limits the tortious liability of an owner or occupier of land in the area of a petroleum authority if someone else carries out an authorised activity for a petroleum authority on the land. The owner or occupier is not civilly liable to anyone else for a claim based in tort for damages relating to the carrying out of the activity unless the owner or occupier or someone authorised by the owner or occupier caused or contributed to the harm.

Other notification requirements for resource companies

Under section 28 of the *Petroleum and Gas (General Provisions) Regulation 2017* (P&G Reg), resource companies must give a copy of the following notices to each owner and occupier of the land on which the authorised activities to which the notice relates have been or are to be carried out and by the time the notice is required to be carried out:

- Notice about intention to drill a petroleum well or bore⁵
- Notice about completion, alteration, or abandonment of petroleum well or bore⁶
- Notice about intention to carry out seismic survey or scientific or technical survey⁷
- Notice about completion of survey or scientific or technical survey⁸
- Notice about intention to carry out hydraulic fracturing activities⁹

⁵ *Petroleum and Gas (General Provisions) Regulation 2017*, s29.

⁶ *Petroleum and Gas (General Provisions) Regulation 2017*, s30.

⁷ *Petroleum and Gas (General Provisions) Regulation 2017*, s31.

⁸ *Petroleum and Gas (General Provisions) Regulation 2017*, s32.

⁹ *Petroleum and Gas (General Provisions) Regulation 2017*, s33.

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- Notice about completion of hydraulic activities.¹⁰

A streamlined Notice of entry for private land template has been developed to facilitate multiple notifications to each owner and occupier of the relevant land for situations where resource companies intend to drill a petroleum well or bore or intend to carry out hydraulic fracturing activities during the entry notice period.

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¹⁰ *Petroleum and Gas (General Provisions) Regulation 2017, s34.*

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Date : 18/06/2021 5:43:07 AM

From : "EDDINGTON Ross"

To : "MUSGRAVE Kerrie"

Subject : Fwd: Factsheet and draft letter from MECS item 12640/21

Attachment : DMView_1623888335465_12640-21_1879448_210527_-_CONSULTATION_DRAFT_-_Fact_Sheet_-_Notice_of_entry_for_private_land_for_directional_drilling_on_adj(002)(SF).docx;

Will call you when sch4p4(6) Pet will need to work on this morning

Sent from my iPhone

Begin forwarded message:

From: FERRIS Shaun <Shaun.Ferris@resources.qld.gov.au>

Date: 17 June 2021 at 10:14:24 pm AEST

To: EDDINGTON Ross <Ross.Eddington@resources.qld.gov.au>, SHAW Chris <Chris.Shaw@resources.qld.gov.au>

Cc: ODDG GEO <ODDG.GEO@resources.qld.gov.au>

Subject: RE: Factsheet and draft letter from MECS item 12640/21

Chris and Ross

Comments and suggested amendments attached.

This is the first opportunity to review since APPEA provided comments.

I have sought to re-arrange the content to make it more logical to follow, however, there this fact sheet is still a little ambiguous so keen for us to turn our mind to that further (but also quickly).

We do need this fact sheet to hit our website soon.

Chris,

Directional Drilling is on the CoS agenda tomorrow. Best we say we are finalising the factsheet, as it needs some massaging.

Shaun

From: EDDINGTON Ross <Ross.Eddington@resources.qld.gov.au>

Sent: Thursday, 17 June 2021 10:08 AM

To: FERRIS Shaun; SHAW Chris

Subject: Factsheet and draft letter from MECS item 12640/21

Attached is the draft factsheet for approval plus the cover letter which will be used to send to attendees of the meetings that the Minister attended last week.

Ross

Accessing private land to carry out directional drilling on adjacent land

This fact sheet sets out the regulatory framework for resource authority holders to access private land to carry out directional drilling activities on adjacent land and landholder rights that apply in that scenario.

'Key points Land' in the context of the Land Access Framework

- The land access framework applies to authorised activities that occur below the surface of the land, which include directional drilling, except where exemptions apply.
- The general rule is that land ownership ceases at the point the landowner may no longer make actual, beneficial use of the airspace and sub-surface space.¹ Sub-surface resources are therefore normally owned by the State.
- Where subsurface resource production is authorised by government the basic requirement is that the use of the surface land must not be unduly interfered with or if there is impact at the surface it must be compensated for.
- However, land volume above and below the surface is still "land" and for that reason the land access framework generally applies to authorised activities that occur below the surface of the land, including directional drilling.

Directional Drilling – Preliminary or Advanced Activity?

- Directional drilling under a person's property where there is no infrastructure or activity occurring on the surface will be considered a preliminary activity for the land access framework if there is no, or only minor, impact on a landholder's business or land use activities.
- An entry notice for directional drilling must be given to each owner and occupier of adjacent land at least 10 business days before the day calculated by the resource company as to when the directional drilling activities will occur beneath the surface of that adjacent land.
- Where the impact on a landholder's business or land use activities is greater and falls under the category of advanced activity either a conduct and compensation agreement, a deferral agreement, or an opt-out agreement would be required.
- Each circumstance should be assessed individually and considered on a case-by-case basis.
- Resource companies are encouraged to engage early with the relevant landholders to provide sufficient information about the proposed location of wells and directional drilling activities. This will provide landholders the opportunity to negotiate the location of activities and assess the impact that the activities will likely have on their business and land use activities.
- Landholders who believe a directional well that has been drilled is impacting on their land use or business should contact the proponent who drilled the well and/or the department to discuss the issue.

¹ https://www.resources.qld.gov.au/?a=109113:policy_registry/granting-land-volumetrically.pdf&ver=2.05

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Commented [FS1]: Overarching comment – wondering how and if we can be a little less ambiguous and definitive? (eg. Language like 'general rule')

Commented [FS2]: I have had a crack at moving content around to make this a little easier to walk through – happy to discuss further, just seemed to layout the issues a little more logically.

Commented [FS3]: The Land Allocation: Granting Land Volumetrically states:

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Compensation Liability

- A resource authority holder is liable to compensate an owner or occupier of private land that is in the authorised area of the resource authority or that is access land for the resource authority for each 'compensatable effect' suffered by the claimant because of the holder's directional drilling activities.
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² https://www.resources.qld.gov.au/data/assets/pdf_file/0018/441711/entry-notice-form-01.pdf

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Further information

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Further information on the legislative framework is also provided in the Attachment.

DRAFT
Published on Resources Disclosure Log
RTI Act 2009

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Attachment

FURTHER INFORMATION ABOUT LEGISLATIVE REQUIREMENTS

Regulatory framework

The Department of Resources administers the land access framework under Chapter 3 of the *Mineral and Energy Resources (Common Provisions) Act 2014* (MERC Act) and subordinate legislation.

The MERC Act must be read as if it formed part of the *Petroleum and Gas (Production and Safety) Act 2004* (P&G Act)³ and the meaning of “land” in Schedule 2 Dictionary of the P&G Act includes subterranean land.

Other legislation may be applicable, for example, Chapter 3 of the *Water Act 2000*, and if that is the case, it is a matter for the resource authority holder to contact the relevant agency.

Definition of ‘petroleum wells’ includes directional drilling

Directional drilling refers to the practice of drilling non-vertical boreholes. Schedule 2 of the P&G Act defines ‘petroleum well’ as a ‘hole in the ground made or being made by drilling, boring or any other means to, amongst other things, explore for or produce petroleum; or through which petroleum or a prescribed storage gas may be produced’ and applies to both conventional and unconventional resources, such as coal seam gas.

On this basis, the definition of ‘petroleum wells’ in the P&G Act includes directional drilling and is not limited to vertical drilling.

Requirements for preliminary and advanced activities

Chapter 3 of the MERC Act outlines the circumstances and obligations for resource authority holders to give each owner and occupier of private land an entry notice to enter that land to:

- a) carry out an authorised activity for a resource authority; or
- b) cross access land for the resource authority; or
- c) gain entry to access land for the resource authority.

The extent to which the authorised activity impacts the business or land use activities of any owner and occupier of the land will determine whether the activity is either a ‘preliminary activity’ or an ‘advanced activity’.

³ Refer to section 6 of the *Mineral and Energy Resources (Common Provisions) Act 2014*.

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Chapter 3, part 2, division 2 of the MERC Act applies to an entry to private land for the purposes of carrying out an authorised activity for a resource authority, which includes a petroleum lease and an authority to prospect (see section 10(b) of the MERC Act).

Section 22 of the P&G Act states an authorised activity is an activity that its holder is, under the P&G Act or the authority, entitled to carry out in relation to the authority.

Under section 15B of the MERC Act, a 'preliminary activity' for a resource authority, is an authorised activity for the authority that will have no impact, or only a minor impact, on the business or land use activities of any owner or occupier of the land on which the activity is to be carried out.

Examples –

- *walking the area of the authority*
- *driving along an existing road or track in the area*
- *taking soil or water samples*
- *geophysical surveying not involving site preparation*
- *aerial, electrical or environmental surveying*
- *survey pegging*

Note that under section 15B(2) of the MERC Act, the following are *not* preliminary activities:

- a) an authorised activity carried out on land that –
 - i. is less than 100 hectares; and
 - ii. is being used for intensive farming or broadacre agriculture (for example, land used for dryland or irrigated cropping, plantation forestry or horticulture or a dairy, cattle or sheep feedlot, piggery or poultry farm);
- b) an authorised activity that affects the lawful carrying out of an organic or bio-organic farming system.

Under section 15A of the MERC Act, an 'advanced activity' for a resource authority, is an authorised activity for the resource authority other than a preliminary activity for the resource authority.

Examples—

- *levelling of drilling pads and digging sumps*
- *earthworks associated with pipeline installation*

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- *bulk sampling*
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- *geophysical surveying with physical clearing*
- *carrying out a seismic survey using explosives*
- *constructing a track or access road*
- *changing a fence line*

Entry to land

Under section 39 of the MERC Act, it is an offence for a person to enter private land for the purpose of carrying out an authorised activity for a resource authority, unless the resource authority holder has given each owner and occupier of the land an entry notice about the entry at least 10 business days before the entry, unless:

- the owner or occupier has agreed in writing to the shorter period, under section 39(3) of the MERC Act; or
- an exemption applies under section 40 of the MERC Act.

Entry notice requirements

Under section 40(1), a person is exempt from the obligation to give an entry notice about entry to private land for an authorised activity such as directional drilling only if:

- a) the resource authority holder owns the land; or
- b) the resource authority holder has an independent legal right to enter the land for the purpose; or
- c) the entry is to preserve life or property or because of an emergency that exists or may exist; or
- d) the entry is authorised under the Resource Act for the resource authority; or
- e) the entry is of a type prescribed by regulation.

The obligation to give an entry notice also does not apply under section 40(2) of the MERC Act, if the resource authority holder has one of the following with each owner and occupier of the land:

- a) a waiver of entry notice for the entry that is in effect;

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- b) a conduct and compensation agreement which provides for alternative obligations for the entry and the holder complies with the alternative obligations;
- c) an opt-out agreement.

Under section 43 of the MERCP Act, a resource authority holder must not enter private land to carry out an 'advanced activity' for the resource authority unless, amongst other things, a conduct and compensation agreement about the advanced activity, a deferral agreement, or an opt out agreement has been entered into with each owner and occupier of the land.

[\[Can we include the prescribed criteria of an entry notice?\]](#)

A maximum penalty of 500 penalty units applies to the section 39 and section 43 offence provisions. If a body corporate is found guilty of the relevant offence, the court may impose a maximum fine of an amount equal to five times the maximum fine for an individual.⁴

Liability to compensate

Under section 81 of the MERCP Act, a resource authority holder is liable to compensate an owner or occupier of private land that is in the authorised area of the resource authority or that is access land for the resource authority for each 'compensatable effect' suffered by the claimant because of the holder's directional drilling activities.

The types of compensatable effects listed under section 81(4) include:

- deprivation of possession of the land's surface;
- diminution of the land's value;
- diminution of the use made, or that may be made, of the land or any improvement on it;
- severance of any part of the land from other parts of the land or from other land that the eligible claimant owns;
- any cost, damage or loss arising from the carrying out of activities under the resource authority on the land;
- consequential loss incurred by an eligible claimant arising out of a matter listed directly above.

The specific factual circumstances associated with the directional drilling would need to be considered to assess compensatable effects associated with the directional drilling.

Limitation of owner's or occupier's tortious liability for authorised activities

Section 563A of the P&G Act limits the tortious liability of an owner or occupier of land in the area of a petroleum authority if someone else carries out an authorised activity for a

⁴ *Penalties and Sentences Act 1992*, s 181B.

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petroleum authority on the land. The owner or occupier is not civilly liable to anyone else for a claim based in tort for damages relating to the carrying out of the activity unless the owner or occupier or someone authorised by the owner or occupied caused or contributed to the harm.

Other notification requirements for resource companies

Under section 28 of the *Petroleum and Gas (General Provisions) Regulation 2017* (P&G Reg), resource companies must give a copy of the following notices to each owner and occupier of the land on which the authorised activities to which the notice relates have been or are to be carried out and by the time the notice is required to be carried out:

- Notice about intention to drill a petroleum well or bore⁵
- Notice about completion, alteration, or abandonment of petroleum well or bore⁶
- Notice about intention to carry out seismic survey or scientific or technical survey⁷
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- Notice about intention to carry out hydraulic fracturing activities⁹
- Notice about completion of hydraulic activities.¹⁰

A streamlined Notice of entry for private land template has been developed to facilitate multiple notifications to each owner and occupier of the relevant land for situations where resource companies intend to drill a petroleum well or bore or intend to carry out hydraulic fracturing activities during the entry notice period.

⁵ *Petroleum and Gas (General Provisions) Regulation 2017*, s29.

⁶ *Petroleum and Gas (General Provisions) Regulation 2017*, s30.

⁷ *Petroleum and Gas (General Provisions) Regulation 2017*, s31.

⁸ *Petroleum and Gas (General Provisions) Regulation 2017*, s32.

⁹ *Petroleum and Gas (General Provisions) Regulation 2017*, s33.

¹⁰ *Petroleum and Gas (General Provisions) Regulation 2017*, s34.

NOT GOVERNMENT POLICY – CONSULTATION DRAFT ONLY

Date : 18/06/2021 7:29:48 AM

From : "EDDINGTON Ross"

To : "MUSGRAVE Kerrie"

Subject : I have accepted all the minor changes so we can see his principal issues if you want to use this version to work on

Attachment : Factsheet SF partial comments accepted 18 June.docx;

Published on Resources Disclosure Log
RTI Act 2009

Accessing private land to carry out directional drilling on adjacent land

This fact sheet sets out the regulatory framework for resource authority holders to access private land to carry out directional drilling activities on adjacent land and landholder rights that apply in that scenario.

'Land' in the context of the Land Access Framework

- The land access framework applies to authorised activities that occur below the surface of the land, which include directional drilling, except where exemptions apply.
- The general rule is that land ownership ceases at the point the landowner may no longer make actual, beneficial use of the airspace and sub-surface space.¹ Sub-surface resources are therefore normally owned by the State.
- Where subsurface resource production is authorised by government the basic requirement is that the use of the surface land must not be unduly interfered with or if there is impact at the surface it must be compensated for.
- However, land volume above and below the surface is still "land" and for that reason the land access framework generally applies to authorised activities that occur below the surface of the land, including directional drilling.

Directional Drilling – Preliminary or Advanced Activity?

- Directional drilling under a person's property where there is no infrastructure or activity occurring on the surface will be considered a preliminary activity for the land access framework if there is no, or only minor, impact on a landholder's business or land use activities.
- An entry notice for directional drilling must be given to each owner and occupier of adjacent land at least 10 business days before the day calculated by the resource company as to when the directional drilling activities will occur beneath the surface of that adjacent land.
- Where the impact on a landholder's business or land use activities is greater and falls under the category of advanced activity either a conduct and compensation agreement, a deferral agreement, or an opt-out agreement would be required.
- Each circumstance should be assessed individually and considered on a case-by-case basis.
- Landholders who believe a directional well that has been drilled is impacting on their land use or business should contact the proponent who drilled the well and/or the department to discuss the issue.

Entry Notice Requirements

- An entry notice for directional drilling must be given to each owner and occupier of adjacent land at least 10 business days before the day calculated by the resource

¹ https://www.resources.qld.gov.au/?a=109113:policy_registry/granting-land-volumetrically.pdf&ver=2.05

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Style Definition: Heading 2

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- d) the entry is authorised under the Resource Act for the resource authority; or
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⁸ *Petroleum and Gas (General Provisions) Regulation 2017*, s32.

⁹ *Petroleum and Gas (General Provisions) Regulation 2017*, s33.

¹⁰ *Petroleum and Gas (General Provisions) Regulation 2017*, s34.

NOT GOVERNMENT POLICY – CONSULTATION DRAFT ONLY

Date : 18/06/2021 9:52:03 AM
From : "MUSGRAVE Kerrie"
To : "EDDINGTON Ross"
Subject : RE: Factsheet and draft letter from MECS item 12640/21
Attachment : image001.png;

sch4p4(6) Persona

From: EDDINGTON Ross <Ross.Eddington@resources.qld.gov.au>
Sent: Friday, 18 June 2021 9:51 AM
To: MUSGRAVE Kerrie
Subject: RE: Factsheet and draft letter from MECS item 12640/21

I'll read over it quickly then give you a call

When do you have to leave

From: MUSGRAVE Kerrie <Kerrie.Musgrave@resources.qld.gov.au>
Sent: Friday, 18 June 2021 9:51 AM
To: EDDINGTON Ross
Subject: RE: Factsheet and draft letter from MECS item 12640/21

Hi Ross,

I have reviewed Shaun's comments and made track changes – for your review.



Kerrie Musgrave
Principal Policy Officer
Georesources Policy | Georesources Division
Department of Resources

P: 3199 8105
E: kerrie.musgrave@resources.qld.gov.au
A: Level 4, 1 William Street, Brisbane QLD 4000 | PO Box 15216, CITY EAST, QLD 4002
W: www.resources.qld.gov.au

From: EDDINGTON Ross <Ross.Eddington@resources.qld.gov.au>
Sent: Friday, 18 June 2021 5:43 AM
To: MUSGRAVE Kerrie
Subject: Fwd: Factsheet and draft letter from MECS item 12640/21

Will call you when sch4p4(6) Pe will need to work on this morning

Sent from my iPhone

Begin forwarded message:

From: FERRIS Shaun <Shaun.Ferris@resources.qld.gov.au>
Date: 17 June 2021 at 10:14:24 pm AEST
To: EDDINGTON Ross <Ross.Eddington@resources.qld.gov.au>, SHAW Chris <Chris.Shaw@resources.qld.gov.au>
Cc: ODDG GEO <ODDG.GEO@resources.qld.gov.au>
Subject: RE: Factsheet and draft letter from MECS item 12640/21

Chris and Ross

Comments and suggested amendments attached.

This is the first opportunity to review since APPEA provided comments.

I have sought to re-arrange the content to make it more logical to follow, however, there this fact sheet is still a little ambiguous so keen for us to turn our mind to that further (but also quickly).

We do need this fact sheet to hit our website soon.