

Native Title Guideline

Native Title process for Pipeline licences

A guide about native title for pipeline licences under the *Petroleum and Gas (Production and Safety) Act 2004*

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1 About this Guideline

The purpose of this document is to provide petroleum pipeline licence applicants with a guide to be followed in respect to the native title process for grant and obtaining pipeline land under the *Petroleum and Gas (Production and Safety) Act 2004* (P&G Act).

The information provided in this guideline **does not limit the exercising of discretion** nor does it override legislative requirements however it reflects current practices within the department which may change from time to time. All changes will be published through a revised version of this guideline.

This document should be read in conjunction with the Native Title Process Guide.

2 The grant process for pipeline licences

A pipeline licence (PPL) under the P&G Act authorises the holder to carry out activities including the construction and operation of the pipeline, and incidental activities necessary for the construction or operation of the pipeline. A PPL may be granted over a stated area (*an area pipeline licence*); or from one stated point to another point (*a point-to-point pipeline licence*).

The department will undertake a native title assessment for the grant of a PPL and if land subject to native title is identified, the native title party in relation to the land or water affected by the PPL must be given the same procedural rights as a Freehold landowner under the P&G Act in accordance with s.24MD(6A) of (the *Native Title Act* (Cth) (NTA))¹

The procedural rights that are provided to owners and occupiers with respect to the grant of a PPL are contained within Chapter 4 Part 2 of the P&G Act; therefore, the responsibilities relative to native title rights and interests will be addressed by the PPL application/holder fulfilling the requirements of these provisions.

3 Public Notice Requirement

A PPL applicant must publish a notice in a newspaper circulating throughout the State or, if the proposed licence is an area pipeline licence, generally in the area². The notice must state:

- that an application has been made,
- the applicant's name,
- the area of the proposed licence,
- where further details about the application can be obtained,
- a period of at least 30 business days during which anyone may make submissions about the application, and
- where the submissions may be lodged³.

Native title parties may make submission under this provision to the Minister in relation to the grant of the PPL.

¹ Section 24MD(6A) of the NTA and Module M of the Native Title Work Procedures

² Section 411 P&G Act

³ Section 411(2)(a) P&G Act

The Minister must not grant the PPL unless a notice has been published and the Minister has considered any submissions in response to the notice.

4 Obtaining pipeline land

Under s.401(2) of the P&G Act, where native title has been determined, or may continue, to exist on land subject to a granted PPL, the pipeline can only be constructed or operated on designated pipeline land; the PPL holder and native title party will be required to decide the appropriate option for obtaining the pipeline land under s. 399 of the P&G Act.

Pipeline land may be obtained under s.399 of the P&G Act through the following mechanisms:

- **an appropriate easement for the construction or operation of the pipeline⁴**
Under s.437A of the P&G Act an easement over pipeline land or public land may be created for a PPL holder by registering a document creating the easement under the *Land Act 1994* or an instrument of easement under the *Land Title Act 1994*.
- **the owner's written permission to enter to construct or operate the pipeline⁵**
Under s.399A of the P&G Act a pipeline licence holder may obtain the written permission of the owner of land to enter the land to construct and operate a pipeline the subject of the licence.
- **Holds a part 5 permission to enter to construct or operate a pipeline⁶.** See section 4. of this guideline - Obtaining a part 5 permission.

4.1 Native Title Requirements for Pipeline land

When obtaining pipeline land that is subject to native title the PPL holder must consider native title rights and interests pursuant to the future act requirements under the following provisions of the NTA listed below.

- **s.24CA Indigenous land use agreement (ILUA)** - Securing the written permission is achieved through negotiating and registering an ILUA. An ILUA gives consent to the grant, operation, maintenance, repair and any other approvals required to undertake activities associated with the PPL. The department encourages the use of ILUA's to obtain agreement to the construction and operation of pipelines as it is considered the most effective way to address the native title rights and interests of native title parties.
- **s.24KA facilities for services to the public** – This is applicable where the pipeline is to be operated for the general public and the licence does not prevent native title holders from having access to the vicinity of the pipeline except while it is being constructed or for reasons of health and safety.

Important Note:

The permit holder will be required to meet any notice or compensation obligations that may apply under the legislation to an owner of the land in the area of PPL, for example the Land Access notice and compensation provisions.

4.2 Obtaining Part 5 Permission

If the PPL holder is unable to obtain an easement agreement or consent, they may apply for a Part 5 Permission under the P&G Act. The effect of the Part 5 Permission is that the land the subject of the permission becomes pipeline land⁷.

⁴ Section 399(1)(b)(i) P&G Act

⁵ Section 399(1)(b)(ii) P&G Act

⁶ Section 399(1)(b)(iii) P&G Act

⁷ Section 399 P&G Act

An application for a Part 5 Permission must include a statement of the steps the PPL holder has taken to seek consent or an agreement with the native title parties. The application should also provide supporting evidence of the steps that have been taken by the PPL holder to meet these requirements (e.g. evidence of their consultation/negotiation process such as copies of correspondence with native title parties, minutes of meetings). The application should also provide sufficient evidence to satisfy the decision-making criteria under s.468 of the P&G Act.

The PPL holder must give notice of the proposed Part 5 Permission to the native title parties⁸. They will also be required to consult with the native title parties in a period of at least 20 business days (the consultation period), and the native title parties may lodge a submission in response to the application before the end of the consultation period.

The PPL holder must ensure that they provide the native title parties with all of the information required under s.465 of the P&G Act, and the information should be sufficient enough to enable the native title parties to make submissions in response to the application. This includes accurate and detailed descriptions of the proposed land they are seeking to be made pipeline land under the Part 5 Permission.

At the end of the consultation period the applicant is required to provide the department with evidence that satisfies that there has been reasonable attempt to consult with the native title parties or an agreement to the grant of the Part 5 Permission or permission to enter the pipeline land has been obtained. Any changes to the material previously provided as a result of the consultation, should also be submitted to ensure the decision made under s468 of the P&G Act is made on up to date and correct information.

Failure to meet the requirements of the Part 5 Permission provisions may result in the refusal to grant the permission.

The part 5 permission only has the effect of creating pipeline land, the PPL holder still must comply with any requirements for carrying authorised activities e.g. land access notice and compensation requirements. Furthermore, the Part 5 Permission will expire after 9 months⁹ or upon when the PPL holder obtains agreement or consent from the native parties¹⁰. The part 5 permission may also be cancelled under s.473 of the P&G Act¹¹.

An agreement or consent obtained after the grant of a Part 5 Permission will still need to have consideration for native title rights and interests pursuant to the future act requirements under the NTA.

Important Note:

In addition, the holder of a PPL is also subject to the 'duty of care' provisions within the *Aboriginal Cultural Heritage Act 2003* (ACHA). Section 23 of the ACHA states "A person who carries out an activity must take all reasonable care and practicable measures to ensure the activity does not harm Aboriginal cultural heritage (the cultural heritage duty of care)". PPL holders should refer to the ACHA to ensure they are abiding by their duty of care.

⁸ Section 465 P&G Act

⁹ Section 472(1)(c) P&G Act

¹⁰ Section 472(1)(a) P&G Act

¹¹ Section 472(1)(b) P&G Act

5 Document information

Availability: External

Location: Business Industry Portal

Owner and approver: Deputy Director-General, Georesources Division

Review date: June 2023

Related documents:

Contacts: For help and information about this policy, please use the following contacts

Petroleum Assessment Hub on (07) 3199 8118 or email

PetroleumHub@resources.qld.gov.au.

For help with MyMinesOnline please contact the MyMinesOnline Helpdesk on

(07) 3199 8133 or email minesonline@resources.qld.gov.au.