

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 land is 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" under the petroleum legislation 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. Directional drilling below the surface of land on a neighbouring property will be an advanced activity where:
 - (a) the neighbouring property is less than 100 hectares and is being used for intensive farming or broadacre agriculture; or
 - (b) the directional drilling has a major impact on a landholder's business or land use, or where it affects the lawful carrying out of an organic or bio-organic farming system.
- Conduct and compensation agreements, deferral agreements, or an opt-out agreements are required for advanced activities.
- Landholders who believe that part of a directional well that has been drilled beneath the surface of their property 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.

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

- An entry notice must comply with the prescribed requirements as outlined in regulation 17 of the Mineral and Energy Resources (Common Provisions) Regulation 2016.
- A template for an Entry Notice is provided on the Department of Resources website². This template is not compulsory, but does serve as a readily available resource for companies to utilise.
- It is also noted that a first entry notice relating to directional drilling activities is also required to include a copy of the Code of Practice for the construction and abandonment of petroleum wells and associated bores.

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 work with proponents regarding the proposed location of activities and assess any impact that the activities may have on their business and land use activities.
- It is important that the design and location of directional wells takes account of landholder input, and the landholder's business or land use activities.

Compensation Liability

- Regardless of whether an activity is a preliminary or advanced activity, 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 for each 'compensatable effect' that occur because of the holder's directional drilling activities undertaken within the cadastral boundaries of the adjacent owner's or occupier's land. Potential impacts that may or may not occur in the future are not compensatable at the time of drilling, and would only be compensatable if realised.
- A 'compensatable effect' is defined in section 81 of the *Mineral and Energy Resources (Common Provisions) Act 2014* (MERC Act). Further details are provided in the attachment to this factsheet.
- Landholders are not liable to any person for damages associated with the resource authority holder carrying out its activities occurring on a landholder's land, unless the landholder, or someone authorised by them, 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.

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

Attachment

FURTHER INFORMATION ABOUT LEGISLATIVE REQUIREMENTS

Regulatory framework

The Department of Resources administers the land access framework under Chapter 3 of the 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)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 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:

- 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 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.

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

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 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.⁴

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

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:

- 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 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
- Notice about completion of survey or scientific or technical survey⁸
- Notice about intention to carry out hydraulic fracturing activities⁹
- Notice about completion of hydraulic activities.¹⁰

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.