



Department
of Industry
Resources & Energy

EXPLORATION GUIDELINE: PETROLEUM LAND ACCESS



Title: Exploration Guideline: Petroleum Land Access

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Disclaimer The information contained in this publication is based on knowledge and understanding at the time of writing. However, because of advances in knowledge, users are reminded of the need to ensure that information on which they rely is up to date and to check the currency of the information with the appropriate officer of the Department of Industry, Skills and Regional Development or the user's independent advisor.

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- The NSW Land and Water Commissioner
- Agricultural industry peak stakeholder bodies:
 - Cotton Australia
 - Hunter Thoroughbred Breeders Association
 - NSW Farmers
 - NSW Irrigators Council
 - NSW Wine Industry Association
 - Ricegrowers' Association of Australia
- The NSW Petroleum and Natural Gas Drilling Industry, including:
 - Australian Petroleum Production and Exploration Association (APPEA)
 - AGL
 - Santos.

Part A: Introduction

This Guideline

The NSW Government intends to introduce a Land Access Code containing provisions that explorers must follow when negotiating land access arrangements for petroleum exploration. Pending legislative reform, this Guideline seeks to assist landholders and explorers with petroleum exploration land access negotiations. Upon law reform, this Guideline will be amended and reissued as a Land Access Code having legal effect.

This Guideline has been prepared in consultation with the Land and Water Commissioner and agricultural and petroleum industry stakeholders to provide guidance for landholders and explorers when negotiating land access arrangements. It has been developed on the premise that all parties will act in a spirit of co-operation and good faith when negotiating access arrangements.

Part B of this Guideline provides guidance to explorers when initiating land access negotiations.

Part C of this Guideline sets out provisions which explorers and landholders should consider including in all land access arrangements. Pending legislative reform, it is recommended that provisions in Part C of the Guideline are included in all access arrangements for petroleum exploration, unless parties expressly agree otherwise.

Until such a time as this Guideline is reissued as a Land Access Code with legal effect, it is recommended that explorers work towards developing systems or processes to ensure they can comply with the provisions in this Guideline.

Purpose

- Under [section 69C](#) of the *Petroleum (Onshore) Act 1991* (the Act), explorers must not carry out prospecting operations on any land, except in accordance with an access arrangement applying to that land.

- The purpose of this Guideline is to establish a best practice framework for explorers when negotiating these access arrangements with landholders.
- This Guideline does not amend or override any provision of the Act or the *Petroleum (Onshore) Regulation 2007* (Regulation). To the extent that any provision of this Guideline is inconsistent with the Act or Regulation, the provisions of the Act or Regulation will apply.
- This Guideline also recommends provisions for inclusion in access arrangements. These are set out in Part C.
- Once finalised, access arrangements are legally binding on all parties.

Including provisions in land access arrangements

The provisions in Part C of this Guideline have been drafted to allow them to be inserted directly into an access arrangement, if agreed by the relevant parties.

Alternatively, parties may agree to include these provisions with some minor changes to suit their particular situation.

Review

This Guideline will be reviewed as part of proposed law reform, at which time it may be amended and reissued as a Land Access Code having legal effect.

Otherwise, the Guideline will be reviewed by the Land and Water Commissioner as necessary, and no later than one year after it commences.

Stakeholders are continuing to discuss the potential inclusion of a provision which deals with water testing. Once agreed, the Guideline may be amended to include a water testing clause.

Interpretation and definitions

Notes in this Guideline are provided for guidance only and are not intended to form part of provisions to be included in an access arrangement.

The definitions of terms used in this Guideline are set out in **Appendix 1**.

Variation of access arrangements

Over time, exploration activities may change from what was initially contemplated during the negotiations of the access arrangement, or it may become apparent that what the parties originally agreed to isn't working as well as it could. For this reason, the Act provides that agreements can be easily varied, simply by agreement between the parties.

If a party wants to vary an access arrangement, they can initiate those negotiations informally (e.g. verbally by telephone) or formally (e.g. by a written letter). The same goes for making an agreement to vary the arrangement. For example, if the parties wanted to change rights on a one-off basis, then a verbal agreement may suffice. But if the change is to be on an ongoing basis (i.e. permanent) then it may be preferable for the agreed variation to be in writing.

Note: [Section 69T](#) of the Act states that an access arrangement may be varied or terminated.

Supporting Guidelines

Supporting guidelines may be available to provide additional information to support landholders and explorers in negotiating access arrangements.

Those guidelines do not form part of this Guideline.

Note: Contact the relevant peak body or organisation for your agricultural industry for further information.

Contact details

Land and Water Commissioner

Locked Bag 21, Orange, NSW 2800

Telephone 02 6391 3429

Email commissioner@landandwater.nsw.gov.au

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Website www.resourcesandenergy.nsw.gov.au

Summary of legislative framework for petroleum and coal seam gas (CSG) in NSW

Exploration and production activities for petroleum and CSG are regulated under several pieces of legislation¹, including the following:

| | |
|--|--|
| <i>Petroleum (Onshore) Act 1991</i> | Petroleum and CSG approvals under the <i>Petroleum (Onshore) Act 1991</i> are granted by the Minister for Industry, Resources and Energy and regulated by the Division of Resources and Energy and the Environment Protection Authority (EPA). |
| <i>Protection of Environment Operations Act 1997</i> | All petroleum and CSG activities, from exploration to assessment to production, are to be carried out in accordance with an environment protection licence issued by the EPA. |
| <i>Water Management Act 2000</i> and/or the <i>Water Act 1912</i> | Explorers must comply with the relevant requirements of these Acts. Applications for approvals will be assessed against the criteria in the NSW Aquifer Interference Policy, when that policy applies. ² |
| <i>Work Health and Safety Act 2011</i> (WHS Act) | Explorers must comply with the requirements of the WHS Act. Contractors and subcontractors must fulfil their health and safety duties under the WHS Act to anyone who may be affected by their operations. |
| <i>Water NSW Act 2014</i> | Explorers must comply with the requirements of this Act, including the need to obtain consent if their surface activities are located within the declared catchment for Sydney's drinking water. |
| <i>Environmental Planning and Assessment Act 1979</i> (EP&A Act) | A proponent will be required to obtain development consent for production activities under the EP&A Act. |
| <i>Commonwealth Environmental Protection and Biodiversity Conservation Act 1999</i> (EPBC Act) | In addition to the NSW statutory requirements, some petroleum and CSG activities will also require assessment and approval under the EPBC Act. |

Note: From 1 July 2015, under the [NSW Gas Plan](#), the Environment Protection Authority (EPA) is the sole authority to regulate compliance with and enforcement of all conditions (excluding work health and safety) contained within petroleum titles and associated activity approvals. However, this change will not impact the negotiation of land access arrangements. The EPA will not regulate compliance with this Guideline or any land access arrangement.

1 To search for NSW legislation, visit www.legislation.nsw.gov.au. Commonwealth legislation can be found at www.comlaw.gov.au.

2 The *Aquifer Interference Policy* can be accessed at www.water.nsw.gov.au/water-management/law-and-policy.

Part B: Guidance for initiating land access negotiations

Note: This part of the Guideline sets out best practice guidelines for how explorers should initiate and negotiate land access arrangements. It applies to the period before an access arrangement is finalised.

Landholders or explorers can also seek assistance from the Land and Water Commissioner about how this Guideline may apply to them.

1. Principles

- 1.1. Explorers should act in accordance with the following principles when initiating negotiations for land access under [Part 4A](#) of the Act with a landholder:
 - a. the development of good relations between landholders and explorers requires good communication, including the provision of clear, accurate and easy to understand information
 - b. the development of good relations between landholders and explorers requires recognition of the rights and responsibilities of both parties
 - c. in particular, respect for the privacy, property rights and water entitlements of landholders is critical to building trust and good long-term relationships
 - d. explorers should be courteous, consult regularly with landholders, and comply with statutory and contractual obligations
 - e. explorers should negotiate in good faith
 - f. an access arrangement should clearly state what is agreed between the parties and must comply with the Act.

2. Appointing a responsible person

- 2.1. To facilitate effective communication when seeking to initiate negotiations for land access under Part 4A of the Act, the explorer should appoint a 'responsible person'.
- 2.2. The responsible person should be authorised to negotiate an access arrangement on behalf of the explorer and be the primary point of contact for all communications for the landholder until an access arrangement is executed.
- 2.3. The responsible person should have appropriate knowledge of the project and the proposed exploration activities and experience in liaising with landholders.

3. Initial contact

- 3.1. The first contact between the explorer and the landholder will depend on the circumstances and may be initiated by the explorer or the landholder. For example, it may be by phone, at a community information session, or at a formal meeting initiated by the landholder's representative.

4. Initiating negotiations

- 4.1. If, following the initial contact, the landholder and the explorer agree that negotiations for a land access arrangement should commence, the explorer should write to the landholder and provide the following information:
 - a. the contact details for the explorer's responsible person
 - b. a clear map of the title area
 - c. an acknowledgement that the explorer will pay the reasonable legal costs of the landholder in obtaining initial

advice about the making of the access arrangement, if requested to do so, as required by [section 69D](#) of the Act

- d. a copy of this Guideline, any current access arrangement template, and any information package approved by the Land and Water Commissioner
- e. a proposed time, date and place for the first meeting.

5. First meeting

- 5.1. At the first meeting between the landholder and the explorer, the explorer should seek information from the landholder about the way the landholder uses their land and the general terms on which the landholder would be willing to allow access to their land for the proposed exploration activities.
- 5.2. At the first meeting the explorer should be prepared to provide the landholder with the following information:
 - a. details of the petroleum exploration licence, assessment lease or special prospecting authority, including the number and term of the licence, lease or authority and the area it covers
 - b. a description of the work program for the proposed exploration activities to be carried out on the landholder's land, including:
 - i. the extent and type of exploration activities proposed to be conducted
 - ii. the duration and likely timing of the program
 - iii. whether chemicals are to be used for the purpose of undertaking the proposed or approved activity and, if so, provide a plain language list of the general types of chemicals that may be used
 - iv. relevant documentation relating to proposed or approved exploration activities, such as a map that includes:
 - the proposed location of any exploration activities
 - proposed access routes and, if required, camp locations
 - any other relevant spatial information.

- v. a general description of any vehicles or equipment proposed to be used
- vi. a copy of any activity approval, Agricultural Impact Statement, Review of Environmental Factors or Environmental Impact Statement (when available)
- vii. an overview of any environmental management plan(s), including proposed remediation or rehabilitation works
- c. a plain language explanation of the water regulatory framework which applies to the proposed activities to be undertaken in the title area
- d. details of the explorer's insurance cover.

Note: More than one meeting may be required to negotiate an access arrangement.

6. Duration of access arrangements

- 6.1. The duration of an access arrangement should be negotiated by the explorer and landholder.
- 6.2. The duration of an access arrangement, at a minimum, should be consistent with the explorer's work program (which is required under [section 14](#) of the Act and [clause 5](#) of the Regulation), and include sufficient time for the explorer to carry out rehabilitation of the landholder's land at the conclusion of the exploration activities.

Part C: Provisions for land access arrangements

Note: This Part of the Guideline sets out the provisions that are recommended to be included in all access arrangements, unless both the parties decide that the provisions do not suit their particular situation. Explorers and landholders may alternatively decide to adopt more stringent or rigorous requirements than the provisions in this Guideline.

Where words in Part C of the Guideline are defined in the Definitions section in Appendix 1 of this Guideline, those definitions should also be included in an agreed access arrangement.

Notes in this section do not form part of the provisions which should be included in an access arrangement, but have been provided to clarify and provide additional information in relation to those provisions.

1. Compensation and access arrangements

- 1.1. The explorer must:
 - a. pay the reasonable legal costs of the landholder in obtaining initial advice about the making of this access arrangement, if the landholder so requests, as required by [section 69D](#) of the Act
 - b. promptly pay the compensation as agreed in this access arrangement. Unless otherwise agreed, compensation should be paid at the time of, or before, the explorer accesses the landholder's land for the first time
 - c. treat as confidential any information of a personal nature obtained about the landholder, or about the landholder's land or operations, and
 - d. determine with the landholder (in writing) whether any or all provisions of this access arrangement are to be treated by the parties as confidential.

Note: [Section 69C\(3\)](#) of the Act provides that separate access arrangements may be made to preserve the confidentiality of provisions of the access arrangements, for example to deal with persons becoming landholders at different times or for any other reason.

2. Notice period

- 2.1. The explorer must notify the landholder in the manner required in this access arrangement when accessing the landholder's land.
- 2.2. Unless otherwise agreed by the landholder, the explorer must give the landholder at least five business days' notice prior to accessing the landholder's land to commence exploration activities under this access arrangement, except in the case of an emergency.
- 2.3. In an emergency, an explorer must use its best endeavours to notify the landholder prior to entry onto the landholder's land.

3. Before and during exploration activities

- 3.1. The explorer must:
 - a. keep the landholder informed of the progress of, and variations to, any exploration activity on their land
 - b. minimise the potential to cause any unauthorised impacts to the landholder's land, livestock or property during any exploration activity
 - c. be responsible for all actions undertaken by employees and contractors of the explorer
 - d. notify the landholder of any unauthorised impacts to the landholder's land, livestock or property caused or contributed to by the carrying out of any exploration activity, and

- e. unless otherwise agreed, rectify, or compensate, without undue delay, any unauthorised impacts to the landholder's land, livestock or property to the extent caused or contributed to by the carrying out of any exploration activity.

4. Access points, roads and tracks

- 4.1. The explorer must:
 - a. where practicable and unless otherwise agreed with the landholder, use an existing access point, road or track to enter a landholder's land (provided these are suitable for the intended traffic loads)
 - b. design and construct any new access points, roads or tracks (whether required because there is no suitable existing access point, road or track, or because the landholder does not agree to the explorer's use of existing access points):
 - i. as agreed with the landholder, and
 - ii. in a manner which minimises any unauthorised impact on the landholder's business or land use activities
 - c. unless otherwise agreed with the landholder, ensure that all existing access points, roads or tracks used by the explorer for any exploration activity are maintained in, and rehabilitated to, the same or a better condition than they were in prior to commencement of any exploration activity

Note: Any rehabilitation works must be done in accordance with the *Exploration Code of Practice: Rehabilitation*. See also clause 11.1 in Part C of this Guideline.

- d. unless otherwise agreed with the landholder, restrict the use of any unsealed road or track during wet weather to prevent damage to that road or track unless the road or track has been designed and constructed for use in wet weather.

5. Induction training

- 5.1. The explorer must ensure that each of its employees and contractors who enter the landholder's land receives information and training on the obligations of the explorer, its employees and contractors under:
 - a. the Act
 - b. the Guideline (as it applies to this access arrangement)
 - c. this access arrangement
 - d. any relevant approvals and licences, and
 - e. any relevant emergency plans and safety procedures as set out by the landholder in relation to the landholder's land.

6. Water regulation

- 6.1. The explorer must provide the landholder with a written plain language explanation of the way in which the water regulatory requirements are being complied with in relation to the landholder's land.
- 6.2. If requested by the landholder, the explorer must provide to the landholder (or his or her representative), any available monitoring and testing results carried out under the water regulatory requirements referred to in clause 6.1.

7. Obligation to prevent spread of weeds, pests and diseases

- 7.1. The explorer must:
 - a. take reasonable steps to prevent the spread of weeds, pests or diseases to, on or from the landholder's land
 - b. take reasonable steps to ensure that, in entering or leaving the landholder's land, the explorer does not introduce or spread weeds, pests or diseases
 - c. ensure that each employee or contractor washes down vehicles and machinery before entering and leaving the landholder's land, if the risk of introducing or spreading a weed, pest or disease is likely to be reduced by the wash-down

- d. keep a record (the wash-down record) of all wash-downs under subsection (c) carried out during the period(s) in which the explorer accesses the landholder's land
- e. if requested by the landholder, provide a copy of the wash-down record to the landholder, and
- f. comply with all obligations imposed by or under the [Noxious Weeds Act 1993](#), [Stock Diseases Act 1923](#), [Plant Diseases Act 1924](#), [Local Land Services Act 2013](#), and [Animal Diseases and Animal Pests \(Emergency Outbreaks\) Act 1991](#), where the landholder has advised the explorer that notifiable weeds, pests and diseases are present, and the provisions of these Acts apply to the land or the crops or livestock on the land.

Note: For the purpose of 7.1 (c) and (d) in Part C, the meaning of 'wash-down' is to be agreed between the parties.

8. Livestock and property

- 8.1. The explorer must access and use the landholder's land in a way that minimises any disturbance to existing land uses (including crops), livestock or property, including roads, gates, grids and fences.

9. Gates, grids and fences

- 9.1. The explorer must, after using any gate, return the gate to its original position, as found, unless otherwise agreed with the landholder.
- 9.2. The explorer must:
 - a. obtain the landholder's consent before erecting any gate or grid on the landholder's land
 - b. ensure that any gate or grid erected is stock-proof, unless otherwise agreed by the landholder, and
 - c. notify the landholder if livestock stray as a result of any exploration activity.
- 9.3. The explorer must not cut a fence on the landholder's land without the landholder's consent.

- 9.4. If the landholder allows a fence to be cut by the explorer, unless otherwise agreed with the landholder, the explorer must, as soon as possible after carrying out the relevant exploration activity:
 - a. repair the fence to the pre-existing standard, or
 - b. erect a stock-proof gate where the fence was cut, if requested by the landholder.

10. Items brought onto land

- 10.1. The explorer must:
 - a. unless otherwise agreed by the landholder, ensure that any waste brought onto the landholder's land by the explorer or produced in carrying out any exploration activity is removed from the landholder's land, and
 - b. not bring firearms, domestic animals, alcohol or recreational drugs onto the landholder's land.
- 10.2. Where fracture stimulation forms part of an approved activity, the explorer must give the landholder a copy of the Fracture Stimulation Management Plan at the request of the landholder.
- 10.3. The explorer must:
 - a. unless otherwise agreed by the landholder, not bring any chemicals onto the landholder's land without the landholder's prior written consent, and
 - b. if requested by the landholder, provide a plain language list and safety data sheets for any chemicals proposed or agreed by the landholder to be brought onto the landholder's land.

Note: If the explorer wants to obtain the landholder's consent to bring additional chemicals onto the landholder's land after this access arrangement commences, for that purpose, the explorer should give the landholder a written plain language list and the safety data sheets for those additional chemicals.

11. Rehabilitation

- 11.1. The explorer must:
- a. agree with the landholder on the intended final land use goal for the areas disturbed by any exploration activity on the landholder's land
 - b. invite the landholder to inspect the work area when any exploration activity is finished so that any preferences or problems can be discussed prior to rehabilitation
 - c. rehabilitate the land, in consultation with the landholder, to a standard that is capable of supporting the intended final land use goal agreed by the parties on a sustainable basis in accordance with the *Exploration Code of Practice: Rehabilitation*
 - d. if lawful, leave in place such works as agreed by the landholder in accordance with the *Exploration Code of Practice: Rehabilitation*, and
 - e. use all reasonable endeavours to obtain the landholders sign-off on the rehabilitation.

Note: The explorer must comply with the *Exploration Code of Practice: Rehabilitation* when developing and complying with rehabilitation obligations.

12. After completion of activities

- 12.1. The explorer must undertake all required rehabilitation work in consultation with the landholder, having regard to the requirements of:
- a. the Act
 - b. this access arrangement
 - c. the *Exploration Code of Practice: Rehabilitation*, and
 - d. any relevant approvals.
- 12.2. Upon completion of any exploration activity on the land, the explorer must:
- a. inform the landholder about the potential ongoing use of any equipment or infrastructure (e.g. drill pads, access

tracks, borrow pits, wells, casing, etc.) for future exploration activities

- b. inform the landholder about the likelihood of any subsequent exploration activities being proposed on the landholder's land (e.g. seismic program, further drilling) and the likelihood of any production activities, pending the results of the exploration activities, unless the information is commercial in confidence
- c. if the landholder requests, provide general information about the outcomes of the exploration activities, unless that information is commercial in confidence, and

Note: This information may not be available for several months after any exploration activity is completed.

- d. if the landholder requests, provide to the landholder copies of any Australian Stock Exchange announcements made in relation to exploration results relating to the exploration activity on the landholder's land.

Appendix 1: Definitions

In this Guideline:

1. reference to a document in this Guideline is a reference to that document as amended or replaced from time to time
2. terms in column 1 of the following table have the meaning set out in column 2.

| COLUMN 1 | COLUMN 2 |
|--------------------------------------|--|
| Access arrangement | Means an access arrangement under Part 4A of the Act. |
| Act | Means the <i>Petroleum (Onshore) Act 1991</i> . ³ |
| Activity approval | Means an approval to carry out assessable prospecting operations required under the conditions of a petroleum exploration licence or a petroleum assessment lease or the Act. |
| Approval | Means a petroleum exploration licence, assessment lease or special prospecting authority, a development consent under the <i>Environmental Planning and Assessment Act 1979</i> , or an activity approval. |
| Approved activity | Means an exploration activity the subject of an approval. ⁴ |
| Coal Seam Gas (CSG) | Means a form of natural gas (predominantly methane) that is extracted from coal beds. |
| Emergency | Means an event which causes: <ul style="list-style-type: none"> • an imminent or actual serious risk to the health and safety of workers, the landholder or the public • an imminent or actual risk of material harm to the environment (as defined under section 147 of the <i>Protection of the Environment Operations Act 1997</i>), or • an imminent or actual risk from a natural hazard, e.g. fires, floods and adverse weather conditions. |
| Exploration activity | Means any activity to be carried out in connection with prospecting pursuant to a petroleum exploration licence or assessment lease granted under the Act. |
| Explorer | Means the holder of a petroleum exploration licence, assessment lease or special prospecting authority granted under the Act. |
| Guideline | Means the <i>Exploration Guideline: Petroleum Land Access</i> published by the Department of Industry, Skills and Regional Development, dated July 2015, as amended, revoked or replaced from time to time. |
| Landholder | Has the same meaning as it has in the Act. |
| Petroleum | Has the same meaning as it has in the Act. ⁵ |
| Petroleum assessment lease | Means a petroleum assessment lease granted under Division 3 of Part 3 of the <i>Petroleum (Onshore) Act 1991</i> . |
| Petroleum exploration licence | Means a petroleum exploration licence granted under Division 2 of Part 3 of the <i>Petroleum (Onshore) Act 1991</i> . |

| COLUMN 1 | COLUMN 2 |
|--------------------------------------|---|
| Prospect | Has the same meaning as it has in the Act. |
| Regulation | Means the <i>Petroleum (Onshore) Regulation 2007</i> , as amended or replaced from time to time. ⁶ |
| Special prospecting authority | Means a special prospecting authority granted under Division 4 of Part 3 of the Act. |
| Waste | Has the same meaning as it has in the <i>Protection of the Environment Operations Act 1997</i> . |

³ The current version of the Act is available at www.legislation.nsw.gov.au.

⁴ This involves consideration of an environmental assessment prepared in accordance with the *Environmental Planning and Assessment Act 1979* and the NSW Department of Industry, Skills and Regional Development's *Environmental Impact Assessment Guidelines* (ESG2).

⁵ This includes both coal seam gas and conventional petroleum.

⁶ The current version of the Regulation is available at www.legislation.nsw.gov.au.

