In this chapter we cover:

- The negotiation framework
- Conduct and Compensation Agreement (CCA)
  - Landholder information
  - Resource company information
  - Ongoing disturbance
  - Vital components
  - Registration of agreement on land title
- Engaging professional services
- Deferral Agreement
- Opt-Out Agreement
- Tips for CCA success

Current as of April 2019
The negotiation framework

Before entering private land and starting advanced activities, a resource company must negotiate and discuss access and compensation issues with the landholder.

THERE ARE THREE LEGALLY BINDING LAND ACCESS AGREEMENT OPTIONS:

The most common land access agreement is a CCA that sets out the activities and conduct proposed to be undertaken by a resource company along with agreed compensation arrangements for any impacts arising.

Landholders also have the option of delaying their endorsement of a CCA until after the land has been accessed (Deferral Agreement) or voluntarily opt-out of negotiating a CCA (Opt-Out Agreement).

In those increasingly rare instances where the terms of a CCA cannot be agreed, the parties have several options for dispute resolution without the need for a public court hearing. These options are explained in detail in Chapter 11 (Dispute resolution).

01 CONDUCT AND COMPENSATION AGREEMENT (CCA)

02 DEFERRAL AGREEMENT

03 OPT-OUT AGREEMENT
A CCA is the most widely used agreement in Queensland between a landholder and a resource company seeking access to and conducting authorised activities on private land.

It is a legally binding document that specifies the company’s activities and behaviours, respective obligations and protections while ensuring the landholder is properly compensated for the effects and impacts of authorised activities.

Compensatable effect means all or any of the following:
- All or any of the following relating to the eligible claimant’s land:
  - Deprivation of possession of its surface
  - Diminution of its 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 landholder owns
  - Any cost, damage or loss arising from the carrying out of activities under the resource authority on the landholder’s land
  - Consequential damages the eligible landholder incurs because of a matter mentioned above

Landholders are also entitled to receive reimbursement for negotiation and preparation costs reasonably incurred for a Conduct and Compensation Agreement. These costs include accounting, legal, agronomy or valuation.

NOTE:
Compensatable effects do not include the costs of an Alternative Dispute Resolution facilitator that may be incurred during the negotiation process (dispute resolution processes are outlined in Chapter 11).

LANDHOLDER TIP:
Professional advisors bring their own skills to the table but landholders are best qualified knowing their business and taking the lead in CCA negotiations.
- A lawyer can confirm the legal status of a draft agreement
- A registered and accredited valuer experienced in petroleum and gas legislation and the basis for compensation entitlements can provide insights into appropriate compensation levels, assuming a full understanding of ‘compensatable effects’
- An accountant can supply important financial documentation to support a landholder’s compensation claim and provide taxation and accounting advice specific to your circumstances
- An agronomist is a specialist in soil productivity helping landholders to raise more food on the same amount of soil. They also work to improve the quality of seed and the nutritional value of crops
**01 PROPERTY MAP**
A landholder should have a clear map of their property showing the location of key areas and infrastructure, such as:

- Access points, formed roads and tracks
- Gates and fences
- Stockyards
- Homes and other buildings
- Areas or structures of sentimental value (e.g. unused remains of historic homesteads)
- Key agricultural areas and infrastructure (e.g. cattle yards, crops, dams, levees, irrigation channels, shade clumps)
- Water bores and key watering points or other important infrastructure
- Sensitive areas such as vegetation, waterways, erosion prone areas and overland groundwater flow areas
- Any plans for expansion or improvement the landholder may have under way
- Indication of preferred property access timing (e.g. avoiding access during harvesting of cropped land)

**LANDHOLDER TIP:**
Add known infestations of declared and non-declared weeds and other priority biosecurity matters to the property map. Include known risk areas of high sensitivity such as stock yards and watercourses.

It is often in the interests of both parties to attach an agreed property/facility map to the Conduct and Compensation Agreement.

*(Also see Chapter 4: Knock knock: Restricted land protections)*

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**02 BUSINESS PLAN**
A landholder should be prepared to discuss the way the property operates and explain any current plans for the way the land is used or operated in the future. This may include future house sites, changed management practices, a transition to organics or new technologies/efficiencies. A common understanding of these plans will assist in identifying appropriate locations for the petroleum and gas infrastructure.

Business plans vary from a series of maps illustrating changes over time to very detailed documents. A plan generally spans 5-10 years.

A copy of the business plan - or a summary of the plan - should be included in the CCA to provide a clear record of your intentions at the time the CCA is negotiated.

This information can assist in decreasing the chance of a dispute in the years after signing, particularly in relation to any material changes.

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**03 BIOSECURITY MANAGEMENT PLAN**
While everyone has a General Biosecurity Obligation, the landholder is ultimately accountable for any certifications relating to their property and produce.

Any visitor, worker or contractor entering the property must abide by the landholder’s Biosecurity Management Plan, including the resource company.

The Biosecurity Management Plan should be referenced in the CCA and a copy provided to the resource company to ensure that appropriate procedures and processes are put in place.
It is important that the resource company assists the landholder to understand the nature, location and duration of activities. There are two key areas for discussion -

**01 GENERAL INFORMATION ABOUT ACTIVITIES**

The resource company provides the landholder with details of:

- What activities they plan to carry out on the private land
- Where the activities will be carried out
- When activities will be carried out (including day/night, time period etc.)

Other information that a landholder might reasonably request from a resource company include:

- Who will carry out activities on the property and how many workers are likely to be involved
- Work programs for each activity and potential impacts (noise, dust, lights, vibration, impact on water supply etc.)
- Any future plans the resource company anticipates it might have for further development on your property in the years to come
- Any safety considerations, proposed emergency plans and important contacts
- What the resource company proposes for the decommissioning of wells, pipelines and related infrastructure

**02 OTHER INFORMATION FOR DISCUSSION**

The resource company may discuss additional land access topics with the landholder such as:

- What controls the company has in place for access during or after inclement weather (e.g. high rainfall)
- Chemical use:
  - the resource company must provide Safety Data Sheets (SDS) for any chemicals they plan to use and discuss any restrictions you may have based on accreditation requirements for your farm business (clearly outline these requirements in your discussions with the resource company)
  - it is the landholder’s responsibility to check the Safety Data Sheets and ensure that they understand the withholding periods of any of the chemicals that may be used. It is important to understand if the application of any of these chemicals (which will be stored and applied in line with the same Chemical Accreditations that landholders need to abide by) may cause any implications to your business (i.e. chemical spray drift in weed control)
- Safety training that covers associated infrastructure owned and operated by a resource company such as powerlines
TECHNICAL NOTE: PROTECTING AGRICULTURAL LAND

In Queensland, agricultural land is protected by environmental and regional planning legislation.

These protections do not aim to prevent resource development. They do however seek to manage the impacts of these developments and support coexistence of resource activities with other priority land uses, including agriculture.

The Regional Planning Interests Act 2014 (RPI Act) identifies and protects areas of Queensland that are of regional interest.

The RPI Act protects:
• high-quality agricultural areas from dislocation
• strategic cropping land
• regionally important environmental areas

If a resource company wishes to operate in areas defined under the RPI Act, it must factor the priority land use interests when negotiating a CCA with a landholder.

A number of guidelines have been developed to provide more information about the RPI Act. You can access these guidelines and associated maps by visiting the Department of State Development, Manufacturing, Infrastructure and Planning website at
www.planning.dsdmp.qld.gov.au

“Suddenly you can make things work with a good relationship and a bit of horse trading – but don’t be stupid, because they aren’t stupid people.”

– Maranoa grazier

LANDHOLDER TIP:
Keep talking. Maintain communication, even if negotiations hit roadblocks.

This will help both sides better understand each other and find solutions to move forward.

Add value to negotiations with the Compensation Estimator – a step-by-step guide to help you understand your entitlements. Available via our phone application GasApp
http://www.gasfieldscommissionqld.org.au/GasApp
Landholder Tip: See Chapter 11 for dispute resolution options during negotiations.

Link between the RPI Act and negotiating a CCA.

1. Resource company intends to develop on private property.
2. Is the property covered by a Priority Agricultural Area or a Strategic Cropping Area (under the RPI Act)?
   - YES: CCA that addresses strategic cropping and priority agricultural interests* is drafted and negotiated.
   - NO: CCA is drafted and negotiated.
3. Agreement reached?
   - NO: Resource company submits development application (RIDA) to government.
     - Proposed development may need to be changed or reconsidered.
     - CCA is negotiated.
   - YES: Government makes decision.
Petroleum and gas infrastructure requires regular maintenance, which means there will be activities including work-overs carried out on your property for the life of the resource infrastructure.

Compensation may include an ongoing allowance for relevant activities such as:
- Liaising with resource company representatives
- Weed monitoring and management
- Security
- Construction and maintenance of firebreaks around resource infrastructure
- Disruptions to other regular activities

Generally, disturbance levels are lower during production, as opposed to the construction phase when activity peaks. Professional advisors and the resource company can provide further guidance on the relevance of these aspects when estimating any potential costs or losses.

Other considerations for negotiation during construction include loss of quiet enjoyment and landholder management time. These are explained on the GasFields Commission website.

In addition, the Commission’s GasApp (available to download via Apple or Google Play) includes a Compensation Estimator that can provide further insights for landholders.
Conduct and compensation agreement (CCA) vital components

You should check to make sure the following components are clearly included in the CCA:

- How and when a resource company can enter the land
- How authorised activities must be carried out, including behaviours and conduct
- The resource company’s compensation liability or future compensation liability
- If the agreement is for all or part of the compensation liability
- How long the agreement is for
- The amount of compensation and how and when the liability will be met (if compensation is monetary)
- That the resource company must provide the registrar with notice of the agreement
- The agreement must be signed for/by both parties
- If compensation under the CCA is to be monetary, non-monetary or a combination of both (e.g. construction of a road for the landholder is non-monetary or in-kind)
- A process by which any disputes can be resolved
- A process by which the agreement may be enforced (e.g. referral to the Land Court, the Land Access Ombudsman or a duly appointed arbitrator)
- Provision for compensation following a material change in circumstances for the resource authority, including a change in the extent of authorised activities

REGISTRATION OF AGREEMENT ON LAND TITLE
An agreed CCA or Opt-out agreement (described later in this chapter) has to be registered on the title of the property by the resource company.

A valid CCA is binding on future landholders of the property as well as any new holder of the resource authority.

PERMITTED CONDUCT
A CCA can specify property entry times, the conduct of authorised activities by the resource company and where and when they can be carried out.

Further information can be found in the Queensland Land Access Code, a copy of which must accompany an entry notice.

“Don’t be pushed. Take your time.”
- Maranoa grazier
Engaging professional services

Section 91 (2) of the Mineral and Energy Resources (Common Provisions) Act 2014 states that: “The resource authority holder is liable to pay to the eligible claimant the negotiation and preparation costs necessarily and reasonably incurred.”

Negotiation and preparation costs are defined as accounting costs, legal costs, valuation costs and the costs of an agronomist.

However when you engage one of these services you are initially responsible for the costs that will be incurred so it is important to engage each one directly, manage the work that is done and provide clear instructions.

It is best practice that you discuss these costs with the resource company to agree on ‘reasonable costs’ upfront and get written confirmation of what they will reimburse.

Note: You may be personally liable for costs that are incurred outside the CCA negotiation process.

“Every single one of them was critical and fortunately I was able to draw on my own formal land management background and practical experience to brief these experts on what we needed.

I understand not every landholder might have the desire or the capacity to pull together such a team but there are more such experienced people out there now and I was confident I would get reimbursed for all reasonable costs.”

- Wandoan grazier.

THERE ARE A FEW CONSIDERATIONS IF YOU CHOOSE TO USE A PROFESSIONAL ADVISOR

All documentation produced by your professional advisors should contain information to back up your claim including any assumptions applied.

It is best practice that you personally engage each professional advisor on your team rather than appoint another person to manage all of the necessary experts and the negotiation.

Your professional advisor should clearly document:
- what you want them to do (this can apply to stages of the process or the whole process)
- the date for delivery (or the milestone for each deliverable)
- the cost
- that the professional advisor has insurance

By engaging an expert you will receive professional advice but at the end of the day you make the final decisions. A valuer, agronomist, accountant or lawyer are there to provide you with advice. It is up to you whether you take it or not.

When seeking to engage professional experts, do some research, ask questions of friends, family and extended networks for recommendations based on their experience, in particular:
- how streamlined, timely and cost-effective the service was
- did the professional advisor simplify the process or did they feel it was cumbersome and overwhelming
- did the professional advisor listen to their needs, provide advice and only act on instructions
- whether they would use them again
How they can help

Valuer

- Provide a valuation on your property to identify diminution of value based on the intensity of proposed petroleum and gas infrastructure
- Document productivity losses in your business as a result of petroleum and gas construction and operation on your property
- Deliver a valuation report documenting compensation entitlements and information to substantiate the stated amount

Tips

- Engage a valuer if you would like professional advice on the amount of compensation relating to proposed petroleum and gas activities on your property
- Ideally the valuer you choose should be experienced in both agribusiness and the petroleum and gas industries – valuation principles relevant to this sector will be applied
- In the agreement, ensure that the valuer produces a final valuation report to assist in your negotiation – a draft document cannot be relied upon to assist in a negotiation
- Valuers with experience in the petroleum and gas industry will talk you through the components of the valuation report and may identify areas for inclusion that you had not previously considered

Agronomist

- Report on the productivity of your land
- Advise on business impacts due to changes in yield resulting from construction, operation, decommissioning and rehabilitation
- Develop a biosecurity management plan specific to your property

Tips

- Engage an agronomist if you would like professional advice on the productivity of your property and operational impacts to support compensation negotiations
- If operational impacts are identified and actions recommended, discuss these items with the company to find solutions. Remember solutions may include changes to the way you operate your land, changes to the company’s activities or compensation
- You know your business. Make sure you remain focussed on practical solutions and take ‘reasonable’ steps to mitigate any losses – understand the company’s perspective before moving to costs

Accountant

- Provide accounting advice on business income and impacts on financial arrangements
- Provide tax advice and implications of compensation

Tips

- Engage an accountant before you commence negotiations if you would like professional advice on any potential issues for your financial arrangements
- Choose an accountant who has experience in agribusiness and the petroleum and gas industries, your business structure and tax implications of compensation. This may not be your usual accountant
- Ask your accountant about what compensation payment structure (upfront or annual) aligns with your financial arrangements. You will need to be prepared to agree this with the company
- If you have a succession plan, consider any implications

Lawyer

- Provide legal advice on the structure and legality of the draft agreement

Tips

- As with any property transaction it is normal practice to engage a lawyer to review the terms and conditions of an agreement that you have negotiated directly with the company
- Engage a lawyer who has experience in the petroleum and gas industry
- As you are initially responsible for the costs of engaging a lawyer, ask for a “Costs Agreement”. This will involve you negotiating with the lawyer how much you will pay for the work they do
- A Costs Agreement is a document which details a break down of what you have engaged the lawyer to do in relation to a matter and for what cost
- Make sure you understand what you are agreeing to with your lawyer and ask questions if you are not sure about anything
- You know your property and your business better than anyone. You should lead and be involved in all conversations with the company. Only you can ensure that all of your interests and needs are addressed

“There are now more experienced lawyers on the ground and you should talk to your neighbour or somebody who’s used them.”

– Maranoa grazier
Deferral agreement

Under a deferral agreement a resource company and landholder agree to defer the creation of a CCA until a later date, as agreed by both parties.

This option allows the landholder additional time to collect information on the actual impacts of authorised advanced activities undertaken by the resource company.

WHAT’S IN A DEFERRAL AGREEMENT

• Signed confirmation the resource company has informed the landholder that endorsing a deferral agreement is voluntary
• The period during which the land is to be entered
• The authorised activities proposed to be carried out; when and where the activities are to be carried out
• The period for which the deferral agreement has effect
• When a CCA will be entered into.
This legal agreement enables a landholder to opt-out of negotiating a CCA, thereby allowing them flexibility to reach an agreement in a way that best suits them.

An opt-out agreement is at the sole discretion of the landholder. Land access laws require a resource company to formally notify a landholder that they are under no obligation to enter into an opt-out agreement.

Circumstances in which a landholder may consider an opt-out agreement appropriate include:
- The resource authority holder is the owner of the private land
- The proposed authorised activities are likely to have little or no impact upon a landholder’s business
- There are minimal conduct and compensation-related conditions requiring negotiation
- The proposed authorised activities are being undertaken in a remote, unused area of the landholder’s property
- A long-standing positive relationship exists between the landholder and resource authority holder.

This agreement does not absolve the resource company of compensation liability. However, because there is no statutory negotiation process or dispute resolution process, the Land Court of Queensland cannot examine the issue of compensation liability.

With an opt-out agreement in place, there is also no requirement for the resource company to provide the landholder with an entry notice.

An opt-out agreement must be made using the approved form provided by DNRME, available from www.business.qld.gov.au. The resource company must provide a copy of the opt-out information sheet to the landholder before the landholder signs the agreement.

More information on the components of an opt-out agreement can be found in DNRME’s A Guide to Land Access in Queensland.

OPT-OUT AGREEMENT TEMPLATE

OPT-OUT AGREEMENT INFORMATION SHEET
LANDHOLDER TIP:
DNRME’s A Guide to Land Access in Queensland and the department’s resource community infoline (phone 13 71 07 or email resources.info@dnrme.qld.gov.au) are great value for any landholder preparing for land access negotiations with a resource company.

LANDHOLDER TOP TIPS FOR SUCCESSFUL CCA NEGOTIATIONS
1. Do your homework – inspect gas fields, talk to other landholders.
2. Work with a neighbour – one you get along with, and support each other.
3. Be firm but reasonable in your negotiations – don’t ever state your price first.
4. Communicate your own requirements early on – no surprises.
5. Be careful choosing your own professional advisory team.
6. Know your own role within your negotiating team, but you are still the captain.
7. Manage your lawyer – determine when and how best to use them.
8. Get to know who’s who in the gas company – identify the right decision-makers.
9. A good working relationship can create additional opportunities.
10. If you have a dispute, make sure you have proper evidence to back your claims.
11. Don’t take it personally – take a business approach.
12. Insist on being paid for your time – all of it at an appropriate rate.
13. Keep good written record via email and diary notes of all communications and impacts e.g. dust, noise, traffic.

RIGHTS & OBLIGATIONS

FOR RESOURCE COMPANIES
• Entering into an opt-out agreement does not negate the resource company’s liability to compensate an eligible landholder
• The resource company must advise the landholder that they are under no obligation to agree to enter into an opt-out agreement

FOR LANDHOLDERS
• The decision to enter into an opt-out agreement is at the complete discretion of the landholder
• The landholder has the right to negotiate additional provisions in the opt-out agreement

Source: DNRME’s A Guide to Land Access Queensland