

Tips for negotiating coal seam gas access agreements

Landholder guidelines

Office of Agricultural Sustainability and Food Security
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Introduction

Purpose of these guidelines

These guidelines aim to assist landholders to identify the issues that need to be considered in the development of land access agreements for coal seam gas exploration or production activities.

While the NSW Government is developing a standard template for access agreements, it is acknowledged that 'one size won't fit all'. This guideline aims to assist landholders to tailor the standard access agreement to suit their farm operations and individual situation and aspirations.

The purpose of the access agreement

Before commencing activities on private land, coal seam gas operators are required to negotiate an access agreement with you, the landholder.

There are two key purposes to an access agreement. The first is to establish the 'codes of conduct' or ground rules under which the coal seam gas operators can access your property (what they can do, where they can do it and when they can do it). Refer to Appendix 1 for a list of what should be contained in an access agreement. This is an extract of the draft code of practice for coal seam gas exploration.

The second purpose is to establish the compensation arrangements agreed to between you and the coal seam gas operator. Compensation occurs to offset the loss of access to part of your land, as well as the inconvenience and loss of amenity (noise, dust impacts) associated with the coal seam gas activities. Given the requirement to negotiate an access agreement is not of your making, coal seam gas operators are also required to cover reasonable costs associated with seeking legal advice for negotiating the agreement.

The initial contact from the coal seam gas operator

Coal seam gas operators are required to inform you that they have a licence/approval to undertake coal seam gas activities on your land. This may occur by mail, phone or in person. An access agreement must be negotiated before any activities can commence.

This initial contact will be followed up by the coal seam gas operator, who will meet with you to explain more about the proposed coal seam gas activities in your local area and the type of activities they are considering undertaking on your land.

The coal seam gas operator should identify a single point of contact, who has the authority and experience to make decisions on behalf of the operator and who is able to answer questions on the spot, or is prepared to provide an answer as soon as practicable.

If you do not wish to meet with the coal seam gas operator in your home, you can suggest an alternative venue.

Steps to developing an access agreement

Development and implementation of a successful access agreement requires open and effective communication, and mutual respect and trust between you and the coal seam gas operator. Two-way communication, the provision of clear, accurate and relevant information, timeliness of discussions and information provision are important aspects of ensuring a good working relationship.

A key first step in achieving this is for both parties to develop an understanding of the nature and timing of each others planned activities over the life of the project.

Sharing of this information will ensure that the pre-planning and access agreement negotiations can be undertaken based on full knowledge of your activities and aspirations and the coal seam gas operators proposed work program.

Information sharing will assist both parties to identify potential concerns/points of conflict and work out what changes can be made to the location, timing and nature of the proposed coal seam gas activities and access routes to minimise the potential for impacts to occur.

As the landholder, you want to be able to negotiate that coal seam gas activities are located and conducted in a manner that minimise the impact on your farming activities, the environment, you and your family's lifestyle and personal enjoyment of your property.

Figure 1: Coal seam gas well have been operating at Camden NSW since 1999



Photo: T Hulme

Develop an understanding of the proposed coal seam gas activities

To help you identify potential impacts you need to develop a good understanding of what is involved with the proposed coal seam gas activities.

The coal seam gas operator should provide you with a description of their proposed activities. This should include:

- maps and plans showing location of proposed activities
- description of the nature of proposed activities for both establishment and operational phases of coal seam gas activities; including information about the what is involved in undertaking the proposed activities
- the duration and projected timing of each proposed activity
- who will carry out the proposed activities and number of people involved (including sub-contractors)
- potential impacts on your continued use and enjoyment of the land

- steps undertaken to minimise environmental impact of proposed activities and remediation post development
- safety considerations and emergency plans for the proposed activities
- points of contact for coal seam gas operator.

Ask the coal seam gas operator to provide this information before commencing formal access agreement negotiations, so you have time to consider how these activities interact with your farm activities and lifestyle.

Figure 2: Drilling of coal seam gas wells requires a cleared area of about 75 m x 75 m to house the drilling rig and associated equipment



Photo: S Clipperton

Different activities occur in each of the stages of coal seam gas well development through exploration, establishment and production/operational phases. It is important to have clear understanding of the activities associated with each of these stages, as the area they require and likely impact will vary with each stage. For example:

- the coal seam gas exploration program may include the drilling of core holes and if the core holes prove successful, the drilling of pilot test wells.
- a typical coal seam gas drill site requires a cleared area of about 75m by 75m,
- once the operation proceeds to the pilot test or production stage the area required will be considerably smaller.
- pilot test wells and production wells require regular inspection and monitoring by the coal seam gas operator over the life of the well.

Articulate what happens on your property and what is important to you

It is important that you are able to communicate clearly to the coal seam gas operator the nature of your current farming activities and any future planned developments. Your goal is to have coal seam gas activities located and conducted in a manner that minimise the impact on your farm operations and you and your family's lifestyle and enjoyment of the property.

You want the coal seam gas activities to be located and conducted so they minimise the potential for them to impact on:

- your ability undertake farm activities
- farm infrastructure (roads, fences, access, dams, irrigation)
- your family's lifestyle, safety and enjoyment of the property
- farm biosecurity

- farm certification schemes (organic, quality assurance schemes)
- environmentally and culturally sensitive areas.

Before you start your negotiations with the coal seam gas operator it would be beneficial for you to document the activities of your property as well as your personal goals and future farm development plans.

If you have a farm plan, this will provide a good starting point. If you don't it may be worthwhile considering developing one.

If you don't want to develop a farm plan it would be beneficial if you could prepare a map of your property, or use an aerial photo (the coal seam gas operator may be able to provide you with one). This map should mark:

- farm buildings: house, sheds
- location of roads, fence lines, powerlines
- dams, watering points, irrigation infrastructure
- any cultural significant locations (old homesteads, family graveyards)
- natural features such as watercourses, remnant vegetation
- main production areas and their uses
- topography
- soil types and conditions
- any future planned development.

You should also consider providing the coal seam gas operator with a description of your farm production systems which includes the timing of significant activities (eg sowing, harvest, lambing, mustering).

The farm plan/map and farming production systems information will assist in identifying the times of the year, and also the areas of your property that will be more sensitive to potential impacts from coal seam gas activities.

You should also consider what your main concerns are from a personal /lifestyle point of view, such as loss of privacy, loss of amenity (noise, dust), safety of family members such as concerns over children accessing bus routes or undertaking activities on the property.

Identify potential issues

Once you have developed a map of your farm, overlay the location of the proposed coal seam gas activities (drill sites, wells and access routes). Consider the potential for these suggested locations to impact on your farm activities and family's lifestyle. You may wish to seek professional advice from agronomists or farm management consultants to help you identify the impacts

The following sections on coal seam gas wells, access roads and associated issues lists some questions to assist you in identifying potential impacts.

Location of coal seam gas wells

Are the coal seam gas wells located in areas where they minimise impact on farming activities or your family's lifestyle?

For example are they located where they will impact:

- on the operation of farm machinery or irrigation equipment?
- on your family's enjoyment of the property (eg within line of site to homestead or main farm buildings)?
- To help minimise any potential impacts consider
- restricting well location to the corner of paddocks, or on land that is not used for cultivation
- restricting well location within a certain distance of the homestead and other major farm buildings
- asking the coal seam gas operators what they will do to minimise the site disturbance of the drilling sites and maximise the success of site rehabilitation.

Any exploration activity that is classified as having a medium or high intensity, including those that have the potential to adversely affect threatened species or ecological communities, require specific notices and

approvals. This applies to all coal seam gas drilling and related applications (including hydraulic fracturing).

Figure 3: Use of directional drilling technology enabled the surface infrastructure for this yet to be commissioned coal seam gas well to be located on an area not used for cultivation while the gas will be extracted from under the adjacent cropping land



Photo T Weaver

Access routes

Are the proposed access routes located in areas where they minimise impact on farming activities or your family's lifestyle?

For example will the proposed access routes:

- run along existing fence lines or existing access routes?
- result in increased traffic near the homestead, or along routes used by children accessing bus routes?
- result in risk of issues about gates being left open/not closed?
- need to be upgraded to carry the proposed number and type of vehicle movements?
- cut across 'flow lines' or path used by stock to access water?
- cut across utilities supply lines (power, telephone, water)?
- cut across irrigation infrastructure or stock water supply?

It is important to remember that in addition to supplying road access to the coal seam gas wells, the pipes to remove the gas and water from the well are also buried in the access routes. So you will also need to consider the location of any below ground infrastructure on your property that would be impacted by the laying of these pipes.

Livestock can be panicked or stressed by rapid vehicle movements or sudden movements which may result in injury or escape. There may also be an increased risk of straying stock, or stock not being able to access water, especially if gates are not left 'as found' or if fences are cut.

Increased vehicle movements can also result in increased dust. This can reduce palatability of pastures and product quality of crops and horticultural produce.

Develop site access protocols for inclusion in the access agreements. Issues that you could consider including are:

- your preferred access routes. Can access routes be changed so they don't go past the more sensitive areas of the property, are there areas of the property that you don't want coal seam gas operators to access;
- impose speed restrictions when moving past homestead, sheds;
- restrict times of access;
- leave gates as found. Will installing a cattle grid reduce the problem of gates no being left as found;
- establish guidelines about behaviour around stock and driving carefully to minimise disturbance to livestock crops and pastures;
- establish that farm machinery has right of way;
- establish rules about wet weather access; and
- minimise disturbance to the environment (eg clearing).

Figures 4 and 5: Access roads can be upgraded and cattle grids installed as part of an access agreement



Photos: S Clipperton

Other associated issues

Coal seam gas activities have a relatively small physical footprint (they don't take up much land areas). They do have the potential to impact on your farm activities and lifestyles in other ways.

The increase vehicle movements and number of people entering your property may impact on your:

- ability conduct farm activities
- scenic amenity and your personal enjoyment of the property
- farm biosecurity: increased risk of spread of weeds and plant and animal diseases
- ability to meet market or other compliance schemes may be compromised (eg organic certification, non- genetically modified organisms status, quality assurance schemes)
- pest animals levels: pest animals may be encouraged by food sources from drilling sites and new access routes
- bushfire or other emergency management risks
- farm security: vehicles coming on site should be authorised and carry evidence of such approval.

Consider:

- restricting the timing of major coal seam gas activities (eg well drilling) so they don't coincide with major activities on your farm (eg lambing, harvest)
- if there are significant weed species within the coal seam gas operators broader project area that could be potentially spread by heavy machinery and vehicles establish appropriate decontamination procedures for vehicles, especially for heavy machinery.
- if there is a need to implement hygiene procedures to minimise the potential for spread of plant or animal disease. If disease outbreaks occur it is important to be able to trace vehicle, people and stock movements
- if there is a pest animal activity in your area, specifying that activities are conducted so as to minimise attraction of pest animals (eg food and waste products are not left on site)

- working with the coal seam gas operators to develop an emergency management plan for your property which covers what happens in the event of emergencies such as flood, bushfire as well as incidents associated with coal seam gas activities.
- obtaining from the operator evidence of the Workplace Health and Safety plan for the site to satisfy yourself that these issues have been appropriately considered from a risk perspective.

Site rehabilitation and environmental management

While gas wells only requires a small surface area, the drilling of the well requires a much larger area. Surface disturbance occurs for the laying of the gas and water pipes and the building of access roads.

Rehabilitation works will need to be undertaken after the establishment phase of the wells (well drilling) and after the wells have ceased operation.

Ask the coal seam gas operators what technology and options exist to minimise surface disturbance and maximise the success of rehabilitation of the site from these activities

Consider specifying in the access agreement that activities are to be conducted to so as minimise surface disturbance, soil degradation including compaction and increase the success of rehabilitation. For example:

- minimise cleared areas. For example if the proposed drilling site is fairly level can the surface vegetation just be slashed, rather than cleared, to give clear view of the surface
- minimise surface disturbance associated with pipe laying
- stockpile topsoil and subsoil separately and refill in correct order
- decompaction of areas traversed by heavy machinery
- consider seasonal conditions and timing of activities to minimise impacts and maximise success of rehabilitation
- clarify how is waste (soil, water) from the well drilling to be managed.

Development of compensation terms

Coal seam gas operators are required by law to compensate landholders for impacts associated with their activities. Any compensation terms should be specified in the access agreement.

Given that the requirement for you as the landholder to be involved in negotiating the access agreement is not of your doing, the coal seam gas operator should compensate you for reasonable costs associated with your time and legal costs in developing the agreement. Compensation should also be paid to offset the inconvenience, noise, dust and deprivation of access to part of your land.

In NSW under the *Petroleum (Onshore) Act 1991* you are entitled to be paid compensation for:

- damage to the surface of land, to crops, trees, grasses or other vegetation (including fruit and vegetables) or to buildings and improvements, being damaged, which has been caused or which may arise from the activities
- deprivation of the possession or of the use of the surface of land or any part of the surface
- severance of land from other land of the landholder
- surface rights of way and easements
- destruction or loss of, or injury to, disturbance or interference with stock
- damage consequential on any matter referred to in the above dot points

It is worthwhile considering that not all the compensation need be monetary in nature. Often what is provided in-kind by the coal seam gas operator may be worth more than the actual monetary compensation. For example, the coal seam gas operator might agree to do some additional earthworks while the earthmoving equipment is on site.

You may need to seek advice from your accountant on how compensation payments are structured so you avoid any excess taxation.

Resolving disputes and reviewing negotiations

The coal seam gas operator should provide you with a single point of contact:

- who can keep you informed about the coal seam gas activities that are occurring on your property; and
- with whom you can raise any concerns over the implementation of the access agreement.
- negotiate compensation for breaches to the access agreement
- who is contactable 24/7.

Establish baseline information

Consider taking photograph of areas of your property where the coal seam gas activities are planned to occur before they commence. This will give you base-line information for future reference, especially with regard to site-rehabilitation.

If you have concerns over the impacts of the coal seam gas activities on your groundwater access and supply you need to ensure that baseline information on ground water quality and quantity will be established.

Recording breaches

To assist with the resolution of any issues you have in relation to the implementation of the access agreement, it is important that you keep a record of any issues or potential breaches.

As well as the nature of the breach, keep a record of the date (and time) you notice any potential breaches to the access agreement. If possible take photographic evidence of the breach.

The access agreement should set out what happens when the terms of the access agreement are breached and an appropriate time frame for reviewing and renegotiating the agreement.

Mutual respect of operations

To help develop a harmonious working relationship it is important that both you and the coal seam gas operator have a respect for each others activities and the conditions set out in the access agreement.

It is important to appreciate that the access agreement may also contain provisions with which you the landholder are expected to comply, particularly with regard to accessing the coal seam gas drill, and well sites.

While the coal seam gas operators and their contractors are visitors on your property you expect them to comply with the conditions set out in the access agreement (eg right of way of farm activities, speed of vehicles and routes that can be driven, weather conditions under which activities much cease).

Equally it also important for you to understand that the coal seam gas activities being conducted on your land have potential risks associated with them (especially during drilling phases) and that you should respect and comply with the coal seam gas operator's safety requirements around these sites.

Appendix 1

What your access agreement should contain

The following is an extract from draft code of practice for coal seam gas explorers. The full draft of the code is available at www.resources.nsw.gov.au/community-information/coal-seam-gas/code-of-practice-for-coal-seam-gas-explorers

An access arrangement is an agreement prescribed under the *Petroleum (Onshore) Act 1991* between the landholder and the explorer and establishes the ground rules for the explorer's access to the property.

The Act specifies the following matters for possible inclusion in the agreement:

- when and how the explorer can access the land
- where the explorer can go
- what sort of activities may be carried out (where the drill sites are locate etc)
- how the environment will be protected
- times of entry and of operation (including busy periods of agricultural production when access should be minimal)
- compensation to the landholder
- dispute resolution
- varying the agreement
- notification of additional landholders (people who become landholders during the term of arrangement ie a person who leases part of the land)

Additionally, where appropriate, access arrangements must address matters such as

- acceptable noise level and times
- acceptable dust levels
- use of water on the property
- notification of the drilling and stimulation methods to be used, where applicable
- land use after rehabilitation
- identification of the explorers employees, contractors and visitors
- induction of the explorer's employees, contractors and visitors with respect to the provisions of the access arrangements and the landholders operations on land
- keeping the landholder informed of work progress and variations
- providing the landholder with details of all chemicals been brought onto or stored on the land
- what the explorer intends to do with the cuttings (ground up rock material from drilling) left over from drilling
- speed limits on farm roads. Some explorers use GPS tracking to ensure their vehicles do not exceed predetermined speed limits when accessing drill sites
- how many vehicle movements a day are envisaged
- how occupational health and safety issues involving working at the drill site and possible interactions with farm workers will be addressed
- location and impact of temporary work camps, if needed
- emergency management plans
- reference to the explorers safety, environmental, fire (with reference to local fire restrictions where appropriate) companion animal (esp. dogs), drugs and alcohol policy.

Additional information

Additional information on the coal seam gas industry in NSW is available at:

<http://www.resources.nsw.gov.au/landholder-information>

<http://www.resources.nsw.gov.au/community-information/coal-seam-gas>

For updates go to www.dpi.nsw.gov.au/factsheets

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