

Land Access Agreements

Chapter 05

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Current as of February 2022

Land Access Agreements

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If a resource company wishes to undertake advanced activities on private land, it must first negotiate a CCA with the landholder.

This sets out the proposed activities and conduct to be undertaken by the resource company and the compensation arrangements for impacts their activities will have.

Alternatives to a CCA are a Deferral Agreement, where the resource company and landholder agree to defer the negotiation of a CCA until a later date, and an Opt-out Agreement where, at their discretion, a landholder can elect to 'opt-out' of negotiating a CCA.



LANDHOLDER TIP:

Keep talking. Maintain communication, even if negotiations hit roadblocks. This will help both sides to better understand each other and find solutions to move forward.



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The GasFields Commission Queensland, PO Box 15266 City East QLD 4002

Phone: +61 7 3067 9400

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The negotiation framework

Before entering private land and starting advanced activities, a resource company must negotiate the terms of access, conduct and compensation 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 conduct and compensation arrangements for any impacts arising from those activities.

Landholders also have the options 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 instances where the terms of a CCA cannot be agreed on, the parties have several options for dispute resolution, without the need for a public court hearing. These options are explained further in [Chapter 10 – Dispute Resolution](#).

01 CONDUCT AND COMPENSATION AGREEMENT

02 DEFERRAL AGREEMENT

03 OPT-OUT AGREEMENT



Conduct and Compensation Agreement (CCA)

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.

A CCA is a legal requirement – without a CCA a resource company cannot enter private land to conduct advanced activities.

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 effects means 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 CCA. The recoverable costs are limited to accounting, legal, agronomy and valuation advice/fees.

Visit the GasFields Commission website for more information regarding 'Land Access Negotiation Tips': www.gfcq.org.au/landholders/land-access/land-access-negotiation-tips/

NOTE:

Compensatable effects do not include the costs of an Alternative Dispute Resolution (ADR) facilitator that may be incurred during the negotiation process (dispute resolution processes are outlined in [Chapter 10 – Dispute Resolution](#)).



LANDHOLDER TIP:

Professional advisors bring their own set of 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 can help advise on business impacts due to changes in yield resulting from construction, operation, decommissioning and rehabilitation of gas activities.



CCA – Landholder information

It is important that a landholder[s] who is preparing for negotiations with a resource company be fully prepared in advance. There are three key items a landholder[s] should have finalised before any discussion commences:

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 no-go zones such as vegetation, waterways, erosion prone areas and overland groundwater flow areas
- Any plans for expansion or improvement the landholder may have underway

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 stockyards and watercourses.

It is often in the interests of both parties to attach an agreed property/facility map to the CCA (*for more detail see Chapter 4 – Engagement Phase*).

Visit the GasFields Commission website for more information relating to 'Farm Biosecurity': www.gfcq.org.au/landholders/farm-biosecurity/

02 BUSINESS PLAN

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

A landholder should discuss the way the property currently operates and explain any plans for how the land is to be used or operated in the future. This may include future house sites, changed management practices, a transition to organics or new technologies. The plan should also indicate preferred property access timings (e.g. avoiding access during harvesting of cropped land, planting, spraying or irrigating). Gaining a common understanding of these plans will assist in identifying suitable locations for petroleum and gas infrastructure.

A copy of the business plan (or summary of the plan) and the supporting Biosecurity Management 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.

03 BIOSECURITY MANAGEMENT PLAN

While everyone has a General Biosecurity Obligation, the landholder is ultimately accountable for any certifications relating to their property. Any visitor, worker or contractor entering the property must abide by the tenure holder'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.



CCA – Resource company information

It is important that the resource company assists the landholder 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).

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

- 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 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 SDSs 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.



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 impact of resource activities and other regulated activities on areas of regional interest; and support coexistence of resource activities with other activities, including highly productive agricultural activities.

The purpose of the *Regional Planning Interests Act 2014* (RPI Act 2014) is to identify areas of Queensland that are of regional interest because they contribute, or are likely to contribute, to Queensland's economic, social and environmental prosperity. The RPI Act 2014 also manages the impacts of resources activities in areas of regional interest to maximise the opportunity for coexistence.

To achieve its purposes, this Act provides for a transparent and accountable process for the impact of proposed resource activities and regulated activities on areas of regional interest to be assessed and managed.

The RPI Act 2014 manages impacts of resource activities in the following areas:

- Priority agricultural areas (PAAs)
- Priority living areas (PLAs)
- Strategic cropping areas (SCAs)
- Strategic environmental areas (SEAs).

If a resource company wishes to operate in areas defined under the RPI Act 2014, it must factor in the priority land use interests when negotiating a CCA with a landholder. Any new resource development seeking to operate in PAAs will need to meet assessment criteria ensuring no material loss of land, no threat to continued agricultural use and no material impact on declared regionally significant irrigation aquifers or overland flow.

Several guidelines have been developed to provide more information about the RPI Act 2014. You can access these guidelines and associated maps by visiting the Department of State Development, Infrastructure, Local Government and Planning website at: www.statedevelopment.qld.gov.au



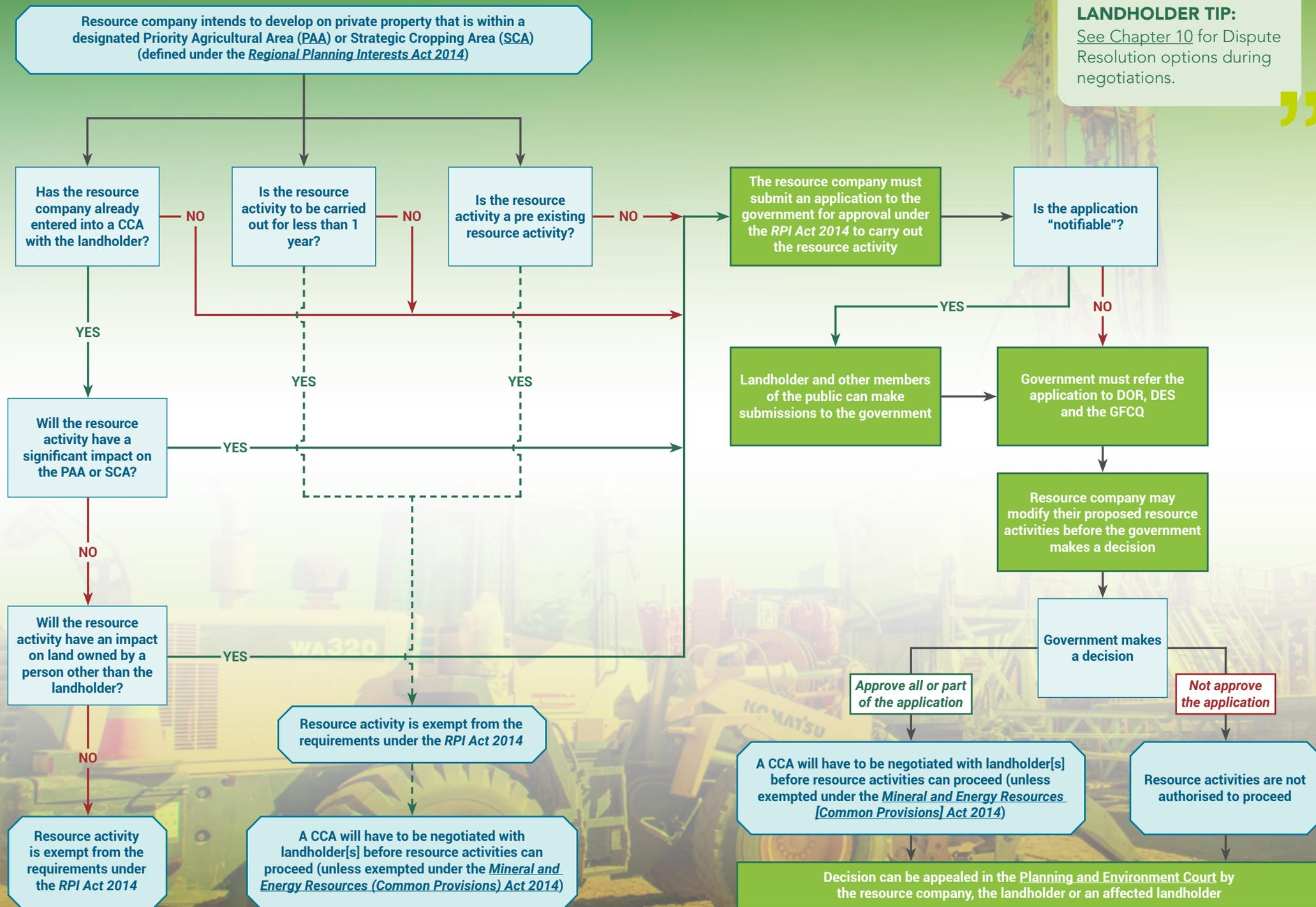
LANDHOLDER VIDEO:

The GasFields Commission hosted a public webinar – [Navigating Land Access](#) – that brought together subject matter experts from the Queensland State Government and associated 'land access' organisations to present and discuss the latest relevant information on laws, best practice, environmental management and what support is available to landholders dealing with land access issues. Click here to view the 'Navigating Land Access' webinar.



Link between RPI Act & negotiating a CCA

LANDHOLDER TIP:
See Chapter 10 for Dispute Resolution options during negotiations.



CCA – Ongoing disturbance

Petroleum and gas infrastructure requires regular maintenance, which means there will be activities carried out on your property for the life of the resource tenure.

Compensation may allow for ongoing activities, such as:

- Liaising with resource company representatives
- Workover of wells
- 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 (disturbance of a previously quiet rural locality) and landholder management time (the time required on additional activities during construction such as mustering, checking fences and weed monitoring). These are explained in full on the [Commission's website](#).



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 to be monetary)
- 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)
- The agreement must be signed for/by both parties
- A process by which any disputes can be resolved
- Provision for compensation following a material change in circumstances for the resource authority, including a change to the extent of authorised activities.

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.

REGISTRATION OF AGREEMENT ON LAND TITLE

The existence of a CCA or Opt-Out Agreement (discussed in detail 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.



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 these services it is important to engage each one directly, provide clear instructions and manage the work that is done.

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 be willing to reimburse.

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



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

All documentation produced by your professional advisors should contain information to support your claim.

It is best practice that you personally engage each professional advisor on your team rather than appoint another person to manage all 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 professional indemnity 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.

For more information see DOR's [A Guide to Land Access in Queensland](#).

How they can help

Tips

Valuer

- Provide a valuation on your property to identify diminution of value based on the impact 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 you a valuation report identifying the value of your land and other information that can be used for your compensation negotiations.

- Engage a registered 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 registered and 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 **signed and dated final valuation report** to assist in your negotiation – a draft document cannot be relied upon to assist in a negotiation and may become an issue if the valuation has to be relied upon as evidence in a dispute, if it reaches the Land Court
- 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.

- 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.

- 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, construction 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.

- 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.

Deferral agreement

A Deferral Agreement⁽¹⁾ is when 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 any authorised, advanced activities undertaken by the resource company.

WHAT MUST BE INCLUDED 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.

1 No professional fees are paid for entering into a Deferral or Opt-out agreement.

2 A landholder should seek legal advice prior to signing either a Deferral or Opt-out agreement as there are implications for their rights.

OPT-OUT AGREEMENT TEMPLATE

www.business.qld.gov.au/industries/mining-energy-water/resources/minerals-coal/authorities-permits/forms

OPT-OUT AGREEMENT INFORMATION SHEET

https://www.resources.qld.gov.au/__data/assets/pdf_file/0019/442621/opt-out-agreements-landholder-information.pdf

Opt-out agreement

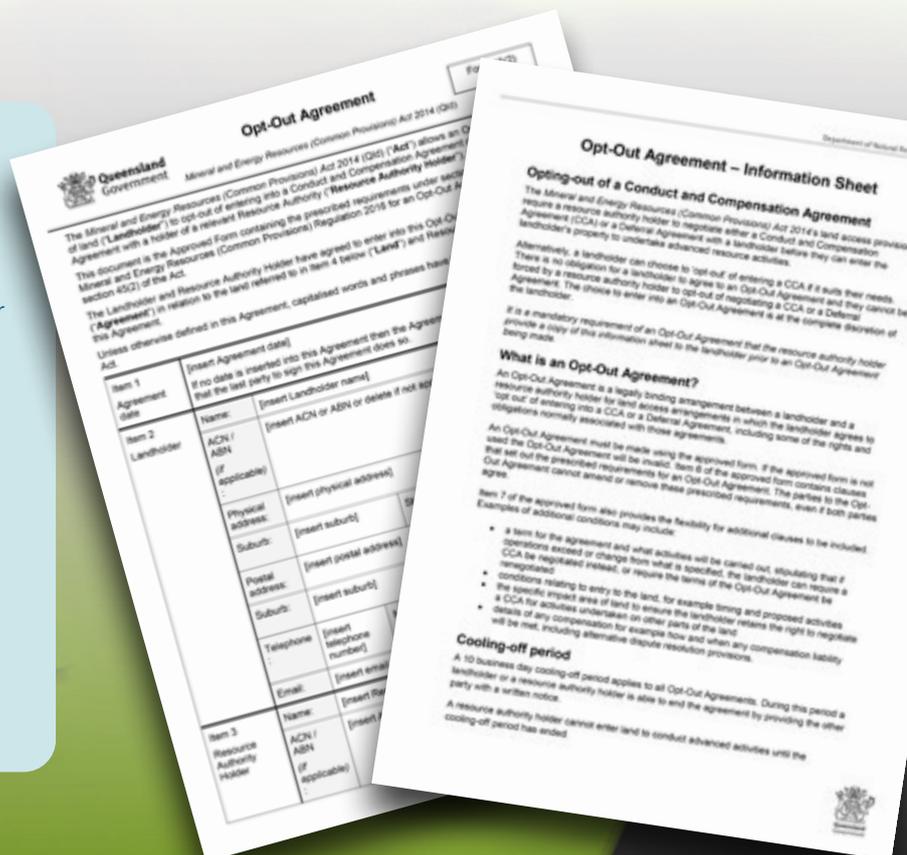
This legal agreement enables a landholder to opt-out of negotiating a CCA, thereby allowing them flexibility to reach an agreement in a way that best suits them.

An Opt-Out Agreement⁽²⁾ 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.

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.

An Opt-Out Agreement must be made using the approved form provided by DOR, 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 DOR's A Guide to Land Access in Queensland.





LANDHOLDER TIP:

DOR's A Guide to Land Access in Queensland, and the department's Engagement and Compliance Unit (Phone 13 71 07 or resources.info@resources.qld.gov.au), are great value for any landholder preparing for land access negotiations with a resource company.

LANDHOLDER TIPS FOR SUCCESSFUL CCA NEGOTIATIONS:

1. Do your homework – inspect gas fields, talk to other landholders.
2. Work with your neighbours and support each other.
3. Be firm but reasonable in your negotiations.
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 resource 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. Suggest negotiating on being paid for your time – all of it at an appropriate rate.
13. Keep good written records via email and diary notes of all communications and impacts e.g. dust, noise, traffic.



Seven tips for CCA success

01

TAKE TIME

Commit time upfront to understand the resource company you are dealing with, their proposed timeline and program of activities on your property. Take time to work with the resource company to plan the layout and location of infrastructure on your property.

02

GET ADVICE

Put together your own advisory team of experts across a wide range of disciplines and share experiences with your neighbours. Reasonable costs for legal, accounting, valuation and agronomist advice are required to be reimbursed by the resource company.

03

KEEP TALKING

Maintain communication, even if negotiations hit roadblocks or get stressful or frustrating. This will help both sides better understand each other and find solutions to move forward.

04

THINK BUSINESS-TO-BUSINESS

Treat negotiations with resource companies like any other business partnership. Focus on opportunities to diversify your business and positively align resource company activities with your business plans.

05

USE YOUR PROPERTY PLAN

Have on hand a documented plan for the future development of your property and business when undertaking negotiations. Provide maps of your property detailing all infrastructure, no-go zones, production cycles and any biosecurity risks.

06

MEASURE BASELINE IMPACTS

Keep a simple record of the state of your land, soils, pastures, weeds, vegetation, roads and infrastructure before and after a resource company undertakes activities. This will help quantify and measure impacts and disturbance to your business over time.

07

KNOW KEY CONTACTS

Seek details of key contacts for sources of information such as your local compliance officer. Phone 137 107 or email resources.info@resources.qld.gov.au.