

Native Title guideline – Pipeline licences

A guide about the native title process for pipeline licence applications under the *Petroleum and Gas (Production and Safety) Act 2004*

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About this guideline

The purpose of this guideline is to provide guidance and set out the principles to be followed in relation to the native title process for the grant of a pipeline licence and obtaining *pipeline land*. This guideline is written to:

- provide guidance and clarity to applicants, native title parties and departmental officers.
- promote consistency of permit administration and regulation
- promote the purpose and objectives of the resource legislation
- reduce red tape with respect to pipeline licences
- balance the department's objective for the grant of pipeline licences with the requirements under the *Native Title Act 1993 (Cth)* (NTA)

The information provided in this guideline **does not limit the exercising of discretion** nor does it override legislative requirements however it reflects current practices within the department which may change from time to time. All changes will be published through a revised version of this guideline.

This document should be read in conjunction with the Native Title Process Guide.

1. The grant process for a pipeline licence

- 1.1 A pipeline licence (PPL) under the *Petroleum and Gas (Production and Safety) Act 2004* (P&G Act) authorises the holder to carry out activities including the construction and operation of the pipeline, and incidental activities necessary for the construction or operation of the pipeline. A PPL may be granted over a stated area (an area pipeline licence); or from one stated point to another point (a point to point pipeline licence).
- 1.2 The department does not need to assess each land parcel for the grant of a pipeline licence. Registered native title holders and registered native title claimants in relation to the land or water affected by the PPL must be given the same procedural rights as the holders of ordinary title to the land under s.24MD(6A) of the NTA.
- 1.3 The procedural rights that are provided to owners and occupiers with respect to the grant of a PPL are contained within Chapter 4 Part 2 of the P&G Act, therefore the responsibilities relative to native title rights and interests will be addressed by the PPL application/holder fulfilling the requirements of these provisions of the P&G Act.

2. Public notice requirement

- 2.1 Under section s.411 of the P&G Act, the PPL applicant must publish a notice in a newspaper circulating throughout the State or, if the proposed licence is an area pipeline licence, generally in the area. The notice must state;
 - That an application has been made;
 - the applicant's name;
 - the area of the proposed licence;
 - where further details about the application can be obtained;
 - a period of at least 30 business days during which anyone may make submissions about the application; and

- where the submissions may be lodged.
- 2.2 Any member of the community and any landholder, including registered native title holders and claimants, may make submission under this provision to the Minister in relation to the grant of the PPL.
- 2.3 The Minister must not grant the PPL unless a notice has been published and the Minister has considered any submissions in response to the notice.

3. Obtaining pipeline land

- 3.1 Under s.401(2) of the P&G Act, where native title exists on private or public land subject to a granted pipeline, the pipeline can only be constructed or operated on designated pipeline land, the PPL holder and native title party will be required to decide the appropriated option for obtaining the pipeline land under s.399 of the P&G Act.
- 3.2 Pipeline land may be obtained under s.399 of the P&G Act through the following mechanisms;
- **An appropriate easement for the construction or operation of the pipeline.** Under s.437A of the P&G Act an easement over pipeline land or public land may be created for a PPL holder by registering a document creating the easement under the *Land Act 1994* or an instrument of easement under the *Land Title Act 1994*.
 - **The owners' written permission to enter to construct or operate the pipeline.** Under s 399A of the P&G Act a pipeline licence holder may obtain the written permission of the owner of land to enter the land to construct and operate a pipeline the subject of the licence.
- 3.2.1 Consent from the native title party is usually obtained through an indigenous land use agreement (ILUA).

4. Native title requirements for pipeline land

- 4.1 When obtaining land the parties will generally need to consider native title rights and interests pursuant to the future act requirements under the following provisions of the NTA:
- **24CA Indigenous land use agreement (ILUA)** – One way of securing the owner's written permission may be through negotiating a registered ILUA. An ILUA gives consent to the grant, operation maintenance, repair and any other approvals required to undertake activities associated with the PPL. The department encourages the use of ILUA's to obtain the agreement to the construction and operation of pipelines as it is considered the most effective way to address the native title rights and interests of claim groups.
 - **24FA protection** – This is only applicable where there is a current non-claimant application for a determination. If s.24FA of the NTA applies, this means the future act can be done, even if the act affects native title.
 - **s.24JA reservations** – This is applicable to pre-23 December 1996 reserve land. The land can be used for the reserved purpose or a similar purpose with no reference to native title holders so long as the impact on native title is no greater than the impact that any act that could be done under or in accordance with the reservation or the future act is not a **public work**.
 - **s.24KA facilities for services to the public** – This is applicable where the pipeline is to be operated for the general public and the licence does not prevent

native title holders from having access to the vicinity of the pipeline except while it is being constructed or for reasons of health and safety.

Important note:

The permit holder will be required to meet any notice or compensation obligations that may apply under the legislation to an owner of the land in the area of PPL, for example the land access notice and compensation provisions.

5. Obtaining a 'Part 5 Permission'

- 5.1 If the holder is unable to obtain the easement agreement or consent, the holder may apply for a Part 5 Permission under the P&G Act. The effect of the Part 5 Permission is that, under s.399 of the P&G Act, the land the subject of the permission becomes pipeline land.
- 5.2 An application for a Part 5 Permission must include a statement of the steps the PPL holder has taken to seek consent or an agreement with the native title holders. The application should also provide supporting evidence of the steps that have been taken by the PPL holder to meet these requirements (e.g. evidence of their consultation/negotiations process such as copies of correspondence with native title holders. They will also be required to consult with the native title holder in a period of at least 20 business days (the consultation period), and the native title holder may lodge a submission in response to the application before the end of the consultation period.
- 5.3 The PPL holder must ensure that they provide the native title holder with all the information required under s.464 of the P&G Act, and the information should be sufficient enough to enable the native title holder to make submissions in response to the application. This includes accurate and detailed descriptions of the proposed land they are seeking to be made pipeline land under the Part 5 Permission.
- 5.4 At the end of the consultation period the applicant is required to provide the department with evidence that satisfies that there has been reasonable attempt to consult with the native title holders or an agreement to the grant of the Part 5 Permission or permission to enter the pipeline land has been obtained. Any changes to the material previously provided, as a result of the consultation, should also be submitted to ensure the decision made under s.468 of the P&G Act is mad on up to date and correct information.
- 5.5 Failure to meet the requirements of the Part 5 Permission provisions may result in the refusal to grant the permission.
- 5.6 The part 5 permission only has the effect of creating pipeline land, the PPL holder still must comply with any requirements for carrying authorised activities e.g. land access notice and compensation requirements.
- 5.7 Furthermore the Part 5 Permission will expire after 9 months or upon when the PPL holder obtains agreement or consent from the native title holder. The part 5 permission may also be cancelled under s.473 of the P&G Act.
- 5.8 An agreement or consent obtained after the grant of a Part 5 Permission will still need to have consideration for native title rights and interests pursuant of the future act requirements under the NTA.

Important note:

In addition, the holder of a PPL is also subject to the 'duty of care' provisions within the *Aboriginal Cultural Heritage Act 2003* (ACHA). Section 23 of the ACHA 'A person who carries out an activity must take all reasonable care and practicable measures to ensure the activity does not harm Aboriginal cultural heritage (the cultural heritage duty of care). Holders should refer to the ACHA to ensure they are abiding by their duty of care.

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Related documents	
Contact:	<p>For help and information contact the Petroleum Assessment Hub:</p> <p>Phone: (07) 3199 8118 Email: PetroleumHub@dnrme.qld.gov.au</p> <p>For technical support contact the MyMinesOnline Helpdesk. Telephone: +61 7 3199 8133 Email: mines_online@dnrme.qld.gov.au</p> <p>8.30am – 4.30pm (AEST) Monday to Friday on Queensland business days.</p>