

30 October 2015

Dr Peter Boxall AO
Chairman
Independent Pricing and Regulatory Tribunal
PO Box K35
HAYMARKET POST SHOP NSW 1240

Dear Dr Boxall,

Draft report of IPART's Landholder Compensation Review

The Australian Petroleum Production & Exploration Association (APPEA) is the national peak body representing the oil and gas exploration and production industry. APPEA's members account for around 98 per cent of Australia's oil and gas production. In NSW, APPEA is active in supporting our members in their pursuit of onshore exploration and natural gas production.

APPEA welcomes the release of IPART's draft report *Landholder benchmark compensation rates: Gas exploration and production in NSW* as we support a framework to guide industry and landholders during the negotiation of a land access agreement to reach a positive outcome for all parties involved.

APPEA offers the following comments based on the recommendations of the draft report:

Recommendation 1:

When negotiating land access agreements with gas companies, landholders use IPART's spreadsheet model to estimate compensation benchmarks that take into account their individual circumstances.

- APPEA supports IPART's preliminary view that as severance is site-specific and highly variable, providing benchmark compensation would be of limited use to landholders as it is unlikely to reflect the true value of a landholder's circumstance.
- For this reason, we submit that the quantification of general benchmarks for compensable effect in the proposed spreadsheet model misrepresents what any individual landholder could expect and the spreadsheet model should therefore not be adopted.
- Notably, the industry has to date entered into over 5,000 land access agreements in Queensland and NSW without recourse to a generic spreadsheet model. Based on the industry's extensive experience in this area, it is significantly more beneficial for government to focus its efforts on ensuring that landholders are equipped with information and support to enable them to undertake an effective negotiation. Given independent and factual information regarding the development of a natural gas exploration project, the likely impacts on the landholder's property and the methods to calculate appropriate compensation, the landholder will be well placed to negotiate a land access agreement.

- If a spreadsheet model is to be used, APPEA strongly recommends that it only includes heads of compensation which can be objectively quantified. Loss due to injurious affection such as a loss of visual amenity, for example, is subjective and varies according to individual preferences. In this regard we note the issue of compensation for visual amenity was considered in some detail by the most recent review of land access and compensation in Queensland, which did not support explicit compensation for loss of visual amenity. The review concluded that social amenity issues impacting on landholders can be addressed through mechanisms other than compensation. This includes resource authority holders working with the landholder to better plan and design resource activities to mitigate and minimise potential impacts. For example, landholders can negotiate to influence the placement of resource infrastructure on their land so that it has less impact on their lifestyle and agricultural operations. This finding was supported by peak resource and agricultural industry bodies, the Queensland GasFields Commission, and the independent Chair of the review¹.
- We further note that the proposed spreadsheet includes figures that suggest a loss in value of residual land of up to 30%. We submit that available evidence indicates these figures to be excessive. For example, as noted in APPEA's submission to the IPART issues paper:
 - The NSW Valuer-General's report *Study on the impact of the Coal Seam Gas industry on land values in NSW* released in February 2014, determined there was "no observable difference in the values of the comparable sales based on their distance from the CSG activity"².
 - The Productivity Commission reiterates these findings in their April 2015 report *Examining Barriers to More Efficient Gas Markets* by saying "The Commission does not find onshore gas developments cause a decline in land prices"³.
 - The Queensland GasFields Commission has established a dialogue with the Queensland rural valuation industry to share information and discuss the impact of the gas industry on rural property values. The Commission believes there is insufficient evidence of a trend in rural property values as a result of the onshore gas industry⁴.
- We believe the key to achieving a fair outcome is to establish appropriate conduct arrangements, as recommended by IPART. Once a gas company and landholder negotiate the conduct arrangements, suitable to both parties, the compensation amount is relatively simple to calculate.

Recommendation 2:

That gas companies fund benefit or incentive payments to landholders as part of their compensation arrangements.

- APPEA does not support a mandated benefit or incentive payment as part of a compensation agreement. The decision by individual companies to offer a 'production

¹ https://www.dnrm.qld.gov.au/_data/assets/pdf_file/0003/193089/land-access-implementation-committee-report.pdf

² http://www.valuergeneral.nsw.gov.au/about_us/announcements/2014/valuer_general_releases_coal_seam_gas_industry_report

³ <http://www.pc.gov.au/research/completed/gas-markets>

⁴ <http://www.gasfieldscommissionqld.org.au/whats-happening/rural-valuers-share-insights-on-gas-impacts.html>

bonus' or similar is a commercial decision specific to each project and should not be legislated.

- Landholders may also receive benefits from gas exploration and production in the absence of an entitlement to a direct royalty stream. For example, upgrades to a landholder's property are a common part of a compensation agreement.
- APPEA recommends that if the Government wishes to directly compensate landowners during the production phase, it should be sourced from the Government's share of royalties.

Recommendation 3:

That gas companies pay compensation to neighbours in the event that impacts on them (e.g., noise levels or hours of operation) exceed reasonable levels set out in licences or approvals. Written agreements should be in place in these instances, and minimum compensation should be paid equivalent to an allowance to relocate neighbours for the period that impacts exceed reasonable levels.

- APPEA agrees with IPART's preliminary view that compensation should be limited to landholders who host gas activities on their properties. APPEA believes that secondary impacts on neighbours (such as noise and dust) should not be compensated under the land access compensation regime given that these are already regulated under other instruments.
- As stated in our submission, some of the impacts referred to in the issues paper (e.g. noise) are subject to additional and separate regulation (such as exploration licence title conditions), that require companies to mitigate impacts to a "satisfactory" level. Mitigating steps in this regard can include providing financial or in-kind compensation to an affected landholder and APPEA supports these provisions.
- However, requiring additional compensation under the land access regime for these same impacts would amount to double counting, and would establish an inconsistent approach between gas activities and other activities that may cause noise and dust disturbance, such as farming.

Recommendation 4:

That the provisions for landholder compensation in the *Petroleum (Onshore) Act 1991* be amended prospectively to align with the *Queensland Petroleum and Gas (Production and Safety) Act 2004* and recognise special value of land.

- APPEA supports alignment with the Queensland heads of compensation, however we note that these do not explicitly include "special value of land".
- Consideration of special value of land should be considered as part of the land access negotiation but this does not require an explicit legislative head of compensation.
- The extent to which there is any 'special value' of land is dependent on the particular circumstances of the landholder. It is standard practice for gas companies to negotiate any special value of land during discussions prior to a land access agreement being finalised or gas activity commencing. Gas companies will provide mitigating strategies to counter impacts of their activity as part of the agreement with the affected landholder.

Recommendation 5:

That, in amending the *Petroleum (Onshore) Act 1991* to require gas explorers to pay for landholders' time spent negotiating and arbitrating an access agreement and for legal and other professional fees, the NSW Government provide for landholders' reasonable costs to be paid rather than set caps for these costs.

- As noted above, APPEA supports alignment with the Queensland heads of compensation, however these do not include a requirement to pay for landholder time.
- Notably, the most recent review of the Queensland land access and compensation regime explicitly considered and rejected an expansion of the heads of compensation to include landholder time⁵. That review noted:
 - No other jurisdiction provides in legislation for compensating landholders for the time they spend negotiating a land access agreement.
 - Most resource authority holders indicated they are already providing some voluntary compensation for landholder negotiation time – however, this is often not made clear to the landholder as part of the CCA negotiation process.
 - Legislating without clear guidelines on what is 'reasonable and necessary landholder negotiation time' may create similar issues to those affecting reasonable and necessary professional service adviser costs, including exacerbating the uncertainty around what is reasonable and necessary.
- In 2014, the NSW Government requested Mr Bret Walker SC to review the arbitration arrangements for landholder compensation in NSW. Mr Walker recommended the *Petroleum (Onshore) Act 1991* be amended to provide that a landholder is entitled as part of the negotiation and arbitration of an access arrangement to have the following costs paid by an explorer:
 - Their time spent negotiating and arbitrating the access arrangement up to a capped amount;
 - Their legal costs up to a capped amount; and
 - Costs of any experts the landholders engage as part of this negotiation and arbitration process up to a capped amount⁶.
- APPEA supports the payment of reasonable costs associated with land access negotiation and arbitration. However, the industry's experience is that if such costs are not capped the result is such costs will increase significantly and become unpredictable with no benefit to the landholder. We therefore strongly support the above noted recommendation by Mr Walker.

⁵ https://www.dnrm.qld.gov.au/_data/assets/pdf_file/0003/193089/land-access-implementation-committee-report.pdf

⁶ http://www.resourcesandenergy.nsw.gov.au/_data/assets/pdf_file/0018/527112/Brett-Walker-Examination-of-the-Land-Access-Arbitration-Framework.pdf

Recommendation 6:

That the NSW Farmers Association provide independent workshops funded by the NSW Government and the gas industry that assist landholders in understanding land access for coal seam gas and negotiating land access and compensation agreements.

- APPEA supports the provision of high quality, objective advice and information to landholders on how to successfully complete a land access and compensation negotiation.
- We submit that successfully achieving this objective requires the entity providing the service undertakes this responsibility in an apolitical manner, and with the support of government and the industry to ensure the information presented is accurate in all respects.
- APPEA recommends this function be allocated to the NSW Land and Water Commissioner as the Commissioner was established to provide independent advice to landholders on gas activities.
- APPEA further submits that the activities, funding, and forward program for this project be reviewed annually to ensure it meets its objectives on an ongoing basis.

Recommendation 7:

That the NSW Farmers Association develop and maintain a voluntary and non-identifying public register of CSG compensation payments.

- A voluntary and non-identifying public register may help inform those landholders who are considering a land access agreement. However, if property specific information and other circumstances which inform a property specific compensation value are not included it may lead to a misrepresentation of the compensation due.
- We note that the industry does not require confidentiality from landholders and it is at the landholder's discretion whether or not to disclose the specifics of a given agreement.
- APPEA submits that the NSW Land and Water Commissioner or the Division of Resources and Energy would be better suited to manage a register given the Commissioner has been established to provide independent advice to landholders on gas activities.

APPEA appreciates IPART's commitment to its consultation process and we look forward to the release of the final report.

Yours sincerely

Alexandra Gibson
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