Investigation into complaints concerning use of the Authority to Survey – Hunter Gas Pipeline

Report to Department of Climate Change, Energy, the Environment and Water

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Contents

1 Executive Summary

This inquiry, established by the NSW Department of Climate Change, Energy, the Environment and Water, was asked to investigate, report on and where thought desirable make recommendations as to allegations that Hunter Gas Pipeline Pty Ltd or related parties (**Santos**) have acted inconsistently with three conditions of an Authority to Survey (**Authority**) granted under the *Pipelines Act 1967* (NSW):

- condition 4 (about reasonable level of negotiation and/or communication and providing written notice of intent to access under the powers of the Authority)
- condition 8 (about exhausting reasonable attempts to resolve disputes regarding the Authority)
- condition 12 (about the process of informing parties regarding possible compulsory acquisition).

The Investigators' findings are detailed in this report but, in summary, regarding these three conditions:

- Santos is not 'in breach' of condition 4 because it has not yet sought to use the Authority powers. If, at any stage in the future, Santos does propose to use these powers, then Santos will need to demonstrate: (a) when and how it has provided the particular owner/occupier with clear information of the potential impacts of what the Authority use will involve; and (b) that owner/occupier had adequate time to engage with Santos after the provision of that information.
- Santos is not 'in breach' of condition 8 because there is no evidence of Santos refusing to engage with landholders seeking to raise disputes about compliance with Authority Conditions. Santos cooperated in full with this dispute resolution process initiated by the Department, and has also provided a point of contact for continued engagement with landholders who have raised concerns as part of this investigation.
- There is insufficient evidence of Santos or its agents expressly breaching Condition 12. It is a question of balance as to when the reference to Compulsory Acquisition can be made in land access negotiations, and the Investigators note that no mention of Compulsory Acquisition is also not appropriate. It is important for landholders to have complete information in entering negotiations about land access, and this extends to understanding the compulsory acquisition process, in full, and its relevance to the matters being negotiated.

2 Background

[1] The Hunter Gas Pipeline Pty Ltd (**HGP**) owns an approved underground gas pipeline route from Wallumbilla in Queensland to Newcastle in New South Wales. HGP was acquired by Santos in August 2022.[1] On 13 January 2023 an Authority to Survey (**Authority**) was granted to HGP. The Authority specified several land holdings along the proposed pipeline route (schedule 2 to Annexure 5.2).

[2] An Authority is an instrument available under the *Pipelines Act 1967* (NSW) which allows the Authority holder entry onto private land to conduct survey activities. Further information about an Authority is available from the New South Wales Climate and Energy Action Website[2] which states:

> *An Authority to Survey is separate to a pipeline licence. It is not a requirement for developing a pipeline, but the pipeline proponent may apply to the Minister for Energy, under Part 2 of the Pipelines Act 1967, for an Authority to Survey (ATS) to access lands along the proposed pipeline route.*
>
> *An ATS can only be used by the proponent where there is evidence all reasonable steps have been taken to negotiate access, but an agreement could not be reached. Should an ATS be used, there are strict terms the proponent must follow to allow lawful entry.*
>
> *An Authority to Survey authorises the holder, subject to any conditions of the Authority to Survey, to enter lands specified to undertake works including to:*
>
> - *take soil and vegetation samples for examination and testing*
> - *consider technical and safety considerations as part of the investigation into possible pipeline routes, including set up and use of any supporting equipment*
> - *carry out surveys to support route selection and engineering, environmental, geotechnical and heritage considerations for the pipeline.*
>
> *This vital information can assist in any submission made as part of the Environmental Impact Statement, and act as part of the planning process to determine the proposed pipeline route.*

[3] It is important, at the outset of this report, to distinguish between the optional Authority process (which is about initial engagement and survey) and any subsequent processes which may address construction or maintenance of a pipeline or the adjustment of landholders' rights to enable that to occur. This Authority process is also separate to any environmental assessment or approval process. The Authority process does not cover these other matters of more significant impact to land and landholders. It offers a pathway by which information can be gathered to input into these other processes.

[4] Following the Authority approval, Santos published the following message on its website:

> *Santos hopes to reach voluntary access agreements with all landholders and will only use an approved Authority as a last resort, once reasonable attempts to negotiate access with the landholder or resident have been unsuccessful.*
>
> *Santos will continue to meet with landholders to secure voluntary agreements that will allow us to access properties to carry out field survey works. These surveys and studies,*

[1] Santos acquires Hunter Gas Pipeline Pty Ltd to get Narrabri gas to domestic market as soon as possible | Santos accessed on 8 June 2024.

[2] Pipelines | NSW Climate and Energy Action accessed on 11 June 2024.

along with landholder feedback, will help us to finalise the pipeline alignment in a way that minimises impacts on both landholders and the environment.

[5] In this case, noting that the complaint has been supported by the Lock the Gate group, the following information is published on the Lock the Gate website:[3]

> *The Hunter Gas Pipeline has received development approval from the NSW, Queensland and Commonwealth governments but – thanks to strong and sustained community opposition – progress has been delayed and the proponent has still not applied for an authority to survey (permission to enter private land).*

2.1 Concerns raised with Department

[6] On 19 October 2023 a complaint was made to the Honourable Penny Sharpe, Minister for Energy written by the Environmental Defenders' Office (**EDO**). EDO submitted the complaint on behalf of Lock the Gate as its client. The Complaint listed allegations that originated from individual landholders whose complaints were collated by Lock the Gate (**Complaint Letter**). At a high level, these allegations relate to the misuse of the Authority and breach of Authority conditions. Concerns were also raised about whether the Authority should have been issued by the Minister.

[7] Relevant to this investigation is those parts of the Complaint Letter that raise concerns about the actions of Santos. Specifically, that Santos or its agents have acted inconsistently with three conditions of the Authority, being:

(a) *Condition 4 - HGP, as holder of the Authority, must have attempted a reasonable level of negotiation and/or communication prior to using the powers of the Authority. HGP must demonstrate this to the Department prior to providing written notice to owners or occupiers of Lands of intent to access Lands under the powers of the Authority.*

(b) *Condition 8 - HGP, as holder of the Authority, must exhaust reasonable attempts to resolve a dispute with owners or occupiers of Lands in relation to compliance with the conditions of the Authority. On the request of owners or occupiers of Lands and/or HGP, the Department will determine the validity of the dispute. The Department will review and provide direction to resolution.*

(c) *Condition 12 - HGP, as holder of the Authority (or their agents), must not inform the owner or occupier of any Lands that their land may be subject to compulsory acquisition, unless the owner or occupier is in-formed at the same time that acquisition must be approved by the Minister and the owner or occupier will be able to state their case opposing acquisition, before the Minister will make any decision on the matter.*

[8] At a high level, the allegations are that Santos staff and agents are using the Authority as leverage for negotiating with landholders, and that the Authority has enabled Santos to employ threatening and coercive practices to pressure landholders to sign entry agreements – which in itself, is a breach of the Authority conditions.

[9] Allegations were also made about Santos misrepresenting landholder engagements that had occurred, for example, by sending letters that referred to meetings between landholders and Santos representatives that did not occur, or Santos agents encouraging landholders to directly communicate with the Minister about the pipeline route.

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[3] CSG Pipelines NSW - Lock the Gate last accessed on 13 June 2024

[10] The specific allegations, as clarified by landholders or their representatives are set out in this Report. This investigation report makes findings on whether specific Authority conditions have been breached by Santos or its agents. It does not comprise legal advice to the Department on whether the Authority should have been issued.

2.2 Investigation Terms of Reference and Process

[11] On 4 March 2024 the Department of Climate Change, Energy, the Environment and Water (**Department**) engaged Ms Shiv Martin and Mr John Southalan (**Investigators**) to investigate and report regarding allegations of non-compliance with the Authority.

[12] A Terms of Reference specifying the scope of the investigation was established and provided to Santos and EDO on 8 April 2024. The Terms of Reference sets out the procedure and scope of this investigation. A copy of the terms of reference is included as Annexure 5.1 to this report.

[13] In summary, the Terms of Reference outlines scope of this Investigation is to:

> *…report on and where thought desirable make recommendations as to allegations that Hunter Gas Pipeline Pty Ltd or related parties have acted inconsistently with three conditions of the Authority:*
>
> - *condition 4 (about reasonable level of negotiation and/or communication and providing written notice of intent to access under the powers of the Authority)*
> - *condition 8 (about exhausting reasonable attempts to resolve disputes regarding the Authority)*
> - *condition 12 (about the process of informing parties regarding possible compulsory acquisition).*

[14] Following confirmation of the terms of reference, the Investigators explained to EDO that individual meetings would occur with each complainant landholder to understand the specific concerns and to establish relevant facts and obtain any specific evidence. EDO was requested to nominate the specific concerned landholders and their emails or contact phone numbers.

[15] The Investigators notified Santos that they would consult with Santos after obtaining specific information about the allegations. The investigators explained to both landholders and EDO that any information considered as part of this investigation would be provided to both parties for comment and response, in accordance with the principles of procedural fairness. For this reason, specific consent was sought from individual landholders to disclose information that may identify them to Santos.

[16] From 8 April to 1 May 2024 the Investigators contacted EDO and all identified landholders (or their representatives) to understand the specific allegations made in relation with the Investigation Terms of Reference. Consultations with landholders occurred at times arranged with the landholders by phone and via virtual meetings. Specific allegations and evidence provided by the landholders for inclusion in this investigation report were confirmed by email between the Investigators and specific landholders. The allegations, from the EDO letter and the Investigators' contact with landholders, which were relevant to the Terms of Reference, were provided to Santos in writing.

[17] Santos, EDO and each consulted landholder were informed by the Investigators both verbally and in writing that any information considered in this Investigation will be provided to all parties for response, in accordance with the principles of procedural fairness, and recorded in this Report. In some circumstances, Landholders asked that information identifying them personally not be included as part of the investigation. This has been accepted by the Investigators, and this

information has not been put to Santos for response, and excluded from consideration in this Investigation. A draft of this report was provided to the EDO and to Santos, with the invitation and opportunity to comment or correct any matters. Responses were received from both parties, and where concerns raised, these have been considered and addressed by the Investigators in the following report.

3 Findings

3.1 Authority Condition 4 - Reasonable negotiation before exercising Authority powers

3.1.1 Summary

[18] Santos is not 'in breach' of condition 4 because it has not yet sought to use the Authority powers. If, at any stage in the future, Santos *does* propose to use these powers, then Santos will need to demonstrate: (a) when and how it has provided *the particular owner/occupier* with clear information of the potential impacts of what the Authority use will involve; and (b) that owner/occupier had adequate time to engage with Santos after the provision of that information. Given the limited rights which the Authority enables Santos to undertake,[4] more extensive engagement is not necessary to establish 'a reasonable level of negotiation and/or communication'.

3.1.2 Detail of condition 4, and the parties' contentions

[19] Authority Condition 4 provides as follows (emphasis added):

> *HGP, as holder of the Authority, must have attempted a reasonable level of negotiation and/or communication prior to using the powers of the Authority. HGP must demonstrate this to the Department prior to providing written notice to owners or occupiers of Lands of intent to access Lands under the powers of the Authority.*

[20] The landholders contend that the negotiation and communication by Santos has not been reasonable –in summary:

(a) the EDO letter written on behalf of the Lock the Gate Alliance, alleges there is 'a systemic problem – in which Santos staff and land agents are using the Authority, issued by the Minister, as leverage to achieve entry to private land';

(b) there have been some inaccuracies in information provided to some landholders (eg. wrong addresses/property details, summaries/descriptions of proposed agreements) and references to meetings which have not occurred;

(c) Santos has not provided paper copies of maps and other material to some persons who requested this; and

(d) there have been changes in personnel approaching landholders on behalf Santos, and failure to keep people updated.

[4] Under s5H of the *Pipelines Act 1967*, an Authority authorises the holder to enter the specified lands, carry out surveys and take samples. This is discussed further in [26] below.

[21] Santos contends that it has not sought to use the powers of the Authority and therefore cannot be in breach of condition 4, but it also responded to the above allegations. In summary, Santos' response is:

(a) Santos says there are 288 landholders along the proposed pipeline route and Santos' representatives have conducted 'extensive landholder and community engagement along the Narrabri to Newcastle section of the pipeline corridor…[involving] one-on-one engagement with directly affected landholders, community sessions and a broader campaign to raise awareness about the HGP project';

(b) since acquiring the HGP, Santos has conducted over 6500 personal landholder engagements and held 36 community information sessions at various locations along the pipeline route – and it currently has over 160 easement/survey agreements with landholders;

(c) Santos says that, since most of the events in the EDO allegations in 2023, Santos has 'restructured the land access function to be less reliant on external service providers; engaged new land access personnel; provided additional training to the land access personnel as well as improved the systems supporting the land access process…[and] provided information to landholders and the broader community via mailouts, advertising, Santos' attendance at community events, and at the Santos Shopfront in Narrabri';

(d) Santos has modified some wording and terms in its template letter and agreement, after the matters raised by the EDO allegations and the Investigators' letter; and

(e) Santos says 'In relation to Santos' approach to the use of the Authority, Santos has maintained publicly available information, including a detailed fact sheet that is available on the HGP website and provided to landholders during engagements *Landholders and community - Hunter Gas Pipeline*'[5].

3.1.3 Investigators' observations

[22] The Investigators acknowledge that, if Santos has not sought to exercise the Authority powers, then Santos cannot currently be in breach of condition 4. However, if, at any time in the future, Santos *does* wish to exercise those powers, the condition's wording indicates there are three pre-conditions, being that Santos must:

(a) 'have attempted a reasonable level of negotiation and/or communication';

(b) 'demonstrate this to the Department'; and then

(c) 'provid[e] written notice to owners or occupiers of Lands of [Santos'] intent to access Lands under the powers of the Authority'.

[23] These necessarily apply in relation to the particular land and owner/occupier. That is, Santos will need to demonstrate to the Department that, *in relation to that land and owner/occupier*, how Santos has 'attempted a reasonable level of negotiation and/or communication' and also ensure that that owner/occupier is provided with the relevant notice.

[24] In many respects, what Santos has done and described demonstrates a reasonable level of negotiation and communication. Relevant concepts, in understanding those terms, are summarised below (see [46] & [47] below). Santos has provided, and continues to make available, considerable information and confirmed the details of how any potentially affected landholders can contact Santos with any questions. The refusal of owners/occupiers to engage with Santos, and rejecting or prohibiting Santos representatives from making contact with them, does not mean that Santos has not attempted a reasonable level of negotiation and/or communication.

[5] https://www.huntergaspipeline.com.au/landholders-and-community/ (accessed 11 June 2024).

Equally, that does not arise from Santos not having providing paper materials to any individuals who request these.

[25] There are, however, some aspects of previous engagement where representatives of Santos may have provided or relayed information which is unclear or no longer accurate. Accordingly, the Investigators recommend that, if Santos is proposing use of the Authority powers regarding a particular land/owner/occupier, then Santos should ensure it can show:

(a) when and how it has provided *that* owner/occupier with clear information of its proposed activities under the exercise of Authority powers on their land; and

(b) that owner/occupier had adequate time (at least 10 business days) to engage with Santos, after the provision of that information.

[26] The Investigators note the steps identified above are limited, compared to the potential engagement and dispute resolution measures which *could* occur (summarised in *4 Contemporary Practices in Land Access Negotiations*). This is because the powers of the Authority are limited, enabling Santos only to enter the land, conduct surveys to investigate possible routes, and take samples for testing.[6] The Authority, of itself, does not enable activities beyond entry, surveying and sampling, and so the extent of a 'reasonable level of negotiation and/or communication' before exercising those powers, is also limited.

[27] In commenting on the draft of this report, the EDO indicated there may be different views as to what activities could be comprised (and therefore authorised) by the Authority's permitted concepts (of 'carry out surveys' and 'take samples from the lands for examination') and invited the Investigators to clarify this. It would be inappropriate for this report to opine on what activities may be within those concepts because that is essentially a question of law. What the Investigators do emphasise, however, is that the greater the impact which may arise from a proposed activity, the more engagement and negotiation is necessary to be 'reasonable' (within the understandings explained in *4 Contemporary Practices in Land Access Negotiations*). There is, for example, a difference in impact between drilling core holes in areas which impede or damage an owner/occupier's current use of that particular area, and entry/ground-disturbance in areas not currently used by the owner/occupier. Both should be preceded by the steps identified above ([25](a)&(b)) but the former (drilling which impedes/damages current use of an area) may require further engagement depending on the response of the owner/occupier. The points about 'reasonable communication and attempt to resolve disputes' (summarised in [48] below) would be relevant considerations in such a case.

3.2 Authority Condition 8 - Reasonable attempts to resolve disputes regarding the Authority

3.2.1 Summary

[28] Santos is not 'in breach' of condition 8 because there is no evidence of Santos refusing to engage with landholders seeking to raise disputes about compliance with Authority Conditions. Santos cooperated in full with this dispute resolution process initiated by the Department, and has also provided a point of contact for continued engagement with landholders who have raised concerns as part of this investigation. Given the lack of any other specific dispute resolution mechanisms outlined in the Authority, there is no evidence of unwillingness or non-cooperation on behalf of Santos to resolve disputes that are brought to its attention.

[6] Authority, para d).

3.2.2 Details of condition 8 and the parties' contentions

[29] Condition 8 of the ATP requires that:

> *'HGP… must exhaust reasonable attempts to resolve a dispute with owners or occupiers of Lands in relation to compliance with the conditions of the Authority. On the request of owners or occupiers of Lands and/or HGP, the Department will determine the validity of the dispute. The Department will review and provide direction to resolution.*

3.2.3 Investigator's observations

[30] In this case the complaints regarding the Authority have been provided via Lock the Gate Alliance, on behalf of particular landholders, to the EDO. The EDO has addressed the complaint to the Department, and compiled a number of concerns raised by individual landholders in its complaint. There is no indication that complaints in relation to compliance with the conditions of the Authority have been raised directly with Santos and Santos not engaging in reasonable attempts to resolve such complaints.

[31] Interviews with landholders in this investigation indicate a general reluctance by some landholders to engage with Santos directly. Notwithstanding this, Santos has provided a contact email and officer name for provision to concerned landowners so that it may directly engage with the owners and occupiers of properties subject to the Authority, to resolve specific disputes. Santos indicates that it remains open and willing to continue to negotiate with landowners regarding the survey access.

[32] In regard to this condition, this investigation concludes that there is insufficient evidence to conclude that Santos has breached this condition. It is also noted that there remains a lack of clarity as to what appropriate dispute resolution mechanisms are available to the landholder or Santos for disputes arising under in relation to the Authority.

[33] Further, this investigation has identified that effective dispute resolution is difficult where some landholders indicate that they do not wish to be contacted by or engage in negotiations with Santos. These are matters for the Department's consideration, however, establishing an easy manner to access a complaints resolution process that assists landholders to distinguish between the Authority process and other processes associated with the broader Hunter Gas Pipeline project is likely to assist. The discussion in para's [46]–[48] below, have observations relevant to contemporary engagement and dispute resolution processes.

3.3 Authority Condition 12 - Informing parties regarding possible compulsory acquisition

3.3.1 Summary

[34] There is insufficient evidence of Santos or its agents expressly breaching this condition. This Investigation accepts that it is a question of balance as to when the reference to Compulsory Acquisition can be made in land access negotiations, and that no mention of Compulsory Acquisition is also not appropriate. It is important for landholders to have complete information in entering negotiations about land access, and understanding the compulsory acquisition process, in full, and its relevance to the particular negotiation.

3.3.2 Detail of condition 12 and the parties' contentions

[35] Condition 12 of the Authority provides that:

> *HGP…(or their agents), must not inform the owner or occupier of any Lands that their land may be subject to compulsory acquisition, unless the owner or occupier is informed at the same time that acquisition must be approved by the Minister and the owner or occupier will be able to state their case opposing acquisition, before the Minister will make any decision on the matter.*

[36] Part of the EDO's complaint includes an allegation that a Santos agent threatened compulsory acquisition in a conversation with a landholder. Santos submissions indicate that the individual making this allegation is not an affected landholder and that negotiations are ongoing with the relevant landholder. The relevant individual provided a statutory declaration of the conversation in issue. The investigation accepts this statutory declaration as evidence and has considered it carefully and in the context of the wording of Condition 12.

[37] Santos provides the following public information in its website, which appears to be consistent with the requirements of Condition 12.

> *LANDHOLDER REFERENCE MATERIAL & FREQUENTLY ASKED QUESTIONS'*
>
> *'What if an agreement between a landholder and Santos cannot be reached?*
> - *Santos is committed to reaching voluntary agreement with landholders wherever possible.*
> - *If agreement cannot be reached after Santos has taken all reasonable steps to reach agreement, the easement may be acquired and vested in Santos as part of the grant of the pipeline licence.*
> - *This acquisition must be approved by the Minister and landholders will have the opportunity to object to the acquisition before the Minister will make any decision.*[7]

[38] As part of its submissions in this Investigation, Santos has also explained the following:

> *Santos can say that its consultants do explain to landholders that:*
> - *reaching agreement is voluntary;*
> - *if agreement is not reached, compulsory acquisition of an easement may be approved by the Minister and that the landholder will be able to state their case opposing the acquisition before the Minister makes any decision on the matter;*
> - *Santos has flexibility as to the final location of a pipeline and we encourage landholders to engage with us to ensure that the final location of the pipeline minimises any impact;*
> - *Santos is offering what it believes to be much higher levels of compensation to landholders as an incentive to reach a voluntary agreement compared to if no agreement is reached and an easement is compulsory acquired and a claim for compensation is made by the landholder under the Pipelines Act; and*
> - *Santos is paying the reasonable legal and valuation costs of landholders. This is to ensure they receive expert and independent advice in relation to the access Santos is seeking, the process generally, as well as the amount of the compensation offered. Santos would encourage landholders to seek their own advice to enable them to best respond to the process and understand their rights and obligations in relation to the process.*
>
> *Santos aims to address the above points through a combination of materials provided and made available to landholders and in the scripts and documents used by Santos' land access advisors.*

[7] 2023_Santos_Hunter_FAQ_A4_v21-WEB.pdf (huntergaspipeline.com.au) last accessed on 12 June 2024.

Santos is also conscious that there is a balance as to how and when it mentions the potential of compulsory acquisition.

Santos believes that it would be incorrect for Santos not to mention compulsory acquisition as part of the land access process. Were Santos to make no mention of compulsory acquisition, Santos could quite rightly be criticised as it would (potentially) then be a surprise to a landholder. Such an outcome would be very disadvantageous to a landholder.

However, Santos accepts that if compulsory acquisition is mentioned too early in the process of engagement with landholders or how it is mentioned is handled poorly, a landholder may perceive it as Santos putting pressure on the landholder.

How and when compulsory acquisition is mentioned and at what stage of the land access process is therefore a challenge. However, Santos' land access advisors seek to get the balance correct for every landholder.

3.3.3 Investigator's observations

[39] This condition makes clear that Santos or its agents must not threaten landholders with reference to compulsory acquisition, without informing the landholders of the full extent of their rights in each case. The intent of the clause is presumably to avoid coercion through misrepresentation that land will be compulsorily acquired without any process/opportunity for the landowner/occupier.

[40] The information provided on Santos' website appears consistent this condition. It is expected that the same information is provided by Santos agents in verbal communications with land holders and occupiers. Santos must make clear to its agents or officers that when engage with landowners or occupiers that correct and complete information is provided regarding the compulsory acquisition process. It is possible that insufficient information has been provided by Santos agents in the past. This investigation cannot conclusively rule this out without asking each landholder and Santos agent whether compulsory acquisition was discussed, and what specific information was provided in relation to it.

[41] It is important to clarify here that Santos, or its agents are not prevented from talking to landholders about compulsory acquisition, rather they must do so in a way that correctly represents the process and the landholder's rights in that process and must not refer to compulsory acquisition in a manner that is incomplete. In this regard, the investigators recommend that Santos ensure any communication that its officers or agents have with landholders ensures correct information is provided regarding compulsory acquisition.

[42] This investigation acknowledges that a conversation occurred between an individual concerned with the Hunter Gas Pipeline development and Santos representatives referencing compulsory acquisition. There is insufficient evidence to indicate that this conversation occurred in a way that is inconsistent with Condition 12. This is because a general comment appears to have been made by a Santos agent, in response to a line of questions from the individual about what would occur if landowners, as a group, refused to cooperate with negotiations. The conversation about compulsory acquisition does not appear to have been initiated by the Santos agent in reference to the compulsory acquisition of a particular property, in the context of a specific land access negotiation.

[43] Further to this, Santos contends that investigations are ongoing with the relevant owner and the individual making the allegation is not a landowner with whom Santos is required to negotiate. Regardless of the status of the individual making the allegations, it is noted that Santos officers and agents have the same obligation to ensure correct and complete information is provided about a compulsory acquisition.

[44] The information provided by Santos around the approach by its officers and the information provided on Santos' public website is consistent with the Authority conditions.

4 Contemporary Practices in Land Access Negotiations

4.1 Summary

[45] The following (para's [46]-[48]) summarises contemporary practice in land access negotiations and dispute resolution relevant to pipeline development, drawn from materials outlined in section*4.2 Australian legal and policy approaches* and*4.3 International and industry standards and Guidance*. These all broadly align in their approach that the extent of rights and processes should correspond to the extent of potential impact. That is: greater impacts should only occur after more extensive processes and rights for landowners / users and engagement by the developer, than what should occur where there are less significant impacts. This does not mean that, however, that even where there is little immediate impact, there are not important processes and transparency. The three paragraphs below summarise approaches to (a) access negotiations, (b) dispute resolution, and (c) what is 'reasonable' for these.

[46] Where a developer seeks to access others' land to plan/install underground piping (with ongoing permanent restrictions about what can then occur on the relevant land), **land access negotiations** should involve:

(a) early engagement between the developer and landholders;

(b) clear notification of potential impacts – provision of material information in a timely manner, and that the target audience is able to understand (this can include explaining the project in multiple media, such as brochures, pictures and maps, and communicating important information several times to ensure stakeholders understand it);

(c) clarify how good faith engagement is defined in terms of the developer's own actions as well as what is expected in return;

(d) sharing findings of impact assessment and the process by which impacts will be addressed;

(e) non-engagement by landowners/users cannot, of itself, prohibit the developer from continuing PROVIDED the developer has (i) provided adequate information, (ii) taken reasonable attempts to engage, and (iii) provided reasonable opportunities for engagement;

(f) government provision of standard template/terms for land access agreements (which have been earlier developed with peak bodies representing all main stakeholder interests, and are publicly available) can help to set expectations for landholders and resources companies, reduce information asymmetry and transaction costs, and improve confidence in the regulatory system; and

(g) there should be some process for resolution if negotiations between the parties do not achieve an agreed outcome.

[47] **Arrangements for resolution of disputes** arising from the above negotiations, should involve:

(a) providing a predictable, transparent, and credible process to all parties, seeking to contribute to outcomes that are seen as fair, effective, and lasting (this could include seeking the assistance of a neutral mediator to assist each side having a clear and objective understanding of their own best interests, and to facilitate collaborative decision making between diverse stakeholders);

(b) building trust as an integral component of broader community relations activities;

(c) enabling more systematic identification of emerging issues and trends, facilitating corrective action and pre-emptive engagement; and

(d) government can usefully provide options for low-cost dispute resolution methods that take an investigative approach to resolving problems.

[48] Drawing from these above two paragraphs, and other Australian practices (such as native title's "good faith negotiation" and the Queensland Land Ombudsman's "reasonable attempt to resolve a dispute") it is possible to identify aspects of contemporary practice and approach on what is **reasonable communication and attempt to resolve disputes**:

(a) not unreasonably delaying in communicating, or in attempting to facilitate and engage in discussions between the parties;

(b) clearly identifying the issues in dispute/difference, and offering to engage on resolving these;

(c) making proposals for resolution and not adopting a rigid non-negotiable position or failing to make counter-proposals;

(d) do not use negotiators without authority to do more than argue or listen;

(e) avoiding unilateral conduct which harms the negotiating process, for example, issuing inappropriate press releases;

(f) being open to participate in good faith in a non-binding alternative dispute resolution process facilitated by an independent person; BUT

(g) these all need to be understood in the particular context of (i) how all parties have conducted themselves at any meetings or conferences, and (ii) the nature and complexity of the dispute.

[49] Further information on various mechanisms and standards is outlined in the sections below. The Investigators realise, and emphasise, that *many of the following regimes are designed for different contexts* (eg. the specific legal requirements of that jurisdiction, resettlement of communities, broad government approaches to extractives regulation, large extractives projects, addressing human rights impacts, designing an entire impact assessment process) and so they are not directly applicable to the situation here. However, *parts* of these processes are useful in informing contemporary approaches to negotiation between developers and landowners/users, and also dispute resolution where those negotiations fail.

[50] The additional commentary and material in this section three is to inform the Investigators' understanding of terms such as 'a reasonable level of negotiation and/or communication' (condition 4) and 'reasonable attempts to resolve a dispute' (condition 8). *The Investigators are not measuring Santos' conduct directly against the materials and standards summarised here*. The Investigation, per the Terms of Reference, is of Santos' compliance with the Authority, which can include recommendations to the Department as to 'the validity of the dispute … [and also what the Department may wish to consider, if it wishes to] review and provide direction to resolution'.

4.2 Australian legal and policy approaches

4.2.1 Overview / summary

[51] The predominant legal and policy position is that, for most impacts from resources development, there is no 'veto' right by landholders. That is certainly the case for construction of gas pipelines, also more broadly for extractives, and is also as recommended in the recent Productivity Commission review. There have been cases ruling that the provision of rights to access, construct and maintain an underground pipeline on others' land (and the corresponding limitations on the future surface land-use) is not a compulsory acquisition of the freehold rights in that land because many of the landholders' rights and uses remain unaffected.[8]

4.2.2 New South Wales

[52] NSW's Mining Act and regulations have detailed provisions for land access arrangements, explained as introduced in 2016 'to provide a clearer pathway to resolve land access disputes'.[9] These include a tiered process to be followed by the developer:

(a) negotiate a land access arrangement with the landholder;

(b) if an access arrangement cannot be agreed, the explorer may give the landholder written notice of intent to enter into an access arrangement;

(c) both parties are legally obliged to negotiate in good faith to try and reach an agreement;

(d) the NSW regulator provides a template agreement,[10] which is not mandatory, but the parties can consider using some or all of that, if it suits their situation (the template was developed by the government regulator in consultation with the NSW Farmers' Association and the NSW Minerals Council);

(e) if no agreement is reached, the next step is mediation (through appointment of a mediator themselves or, if unable to agree, appointment by the Secretary of the Department of Regional NSW from a panel);

(f) if no agreement is reached at mediation, then an arbitrator will make a final determination (and these are publicly available an NSW Government website[11]) – potentially the same person can provide the mediation and, if no agreement reached, then hear and provided an arbitrated decision; and

(g) an arbitrator's determination can be appealed in the Land and Environment Court.

4.2.3 Northern Territory

[53] The Northern Territory has a similar tiered process for petroleum operations (other than low impact activities) and prevents operations commencing without an 'access agreement'[12] which is achieved through engagement; failing which then mediation; and failing which then an arbitrated decision. The Northern Territory law also includes 'Standard Minimum Protections … which must

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[8] eg. *Auld -v- Pipeline Access Minister* (2005). The Investigators note this is not a NSW decision but it is an indication of the legal distinction between underground pipeline construction and maintenance, and more significant impacts and incursions onto property).

[9] NSW Gov 2024. The following description in the text (from (a) to (g)) also draws from the explanation in NSW Gov 2024.

[10] Available at https://meg.resourcesregulator.nsw.gov.au/sites/default/files/2022-11/Land-Access-Arrangement-Template-for-Mineral-Exploration.pdf

[11] Available at https://www.resourcesregulator.nsw.gov.au/meg.site/mining-and-exploration/land-access/mediation-and-arbitration/arbitration-process-for

[12] *Petroleum Regulations* (AUS), r 12.

be included, replicated or exceeded within' any access arrangement[13] – whether agreed by the parties or determined and as decided by the tribunal if the parties could not agree. The Standard Minimum Protections cover subjects such as Minimum notice periods, Access, Minimising disturbance, Notification of damage, Obligation to repair, Compensation, and Dispute resolution.[14]

4.2.4 Queensland

[54] Queensland has a detailed regime about land access (including by pipelines), with government agencies and resources addressing both negotiation and dispute resolution. Of most direct comparison to the issues here, the process for access by a developer wishing to construct a pipeline on private land requires the developer to first negotiate with the landowner (regarding access rights and usually compensation). If no agreement is reached, the developer can apply for Government permission,[15] which involves the developer having to demonstrate:

(a) where the pipeline will be located;

(b) why it is reasonable to site the pipeline on that land;

(c) why that area is no more than the minimum area needed;

(d) the steps taken to obtain the owner's permission to enter the land for the purpose of constructing or operating a pipeline; and

(e) why the granting of this permission would be in the public interest.[16]

[55] Where these basics are not demonstrated/complied with, the Queensland Supreme Court has quashed the Minister's permission which allowed the company to access private land.[17]

[56] The Queensland Government explains its approach to these permissions:

> *If, after reasonable consultation with the landowner, you cannot agree about acquiring land for your pipeline or facility, you can apply for a Part 5 permission. This gives the Queensland Government the right to resume the land. An application for a Part 5 permission should be a last resort. You will need to show strong reasons in support of your application, and we will need to be satisfied that there has been continuing negotiation and consultation with the landowner. It is therefore in your best interest to negotiate a fair and reasonable compensation agreement.*[18]

[57] More broadly – regarding land access by resources companies – Queensland has considerable guidelines and assistance for resources companies and landholders, including the following.

(a) A *Land Access Code*[19] which specifies 'coexistence principles that reflect minimum expectations for behaviours between resource companies and landholders, best practice guidelines for communicating and negotiating with landholders, [and] mandatory

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[13] *Sweetpea Petroleum -v- Rallen Australia* (2022), [33] (decision upheld on appeal in *Rallen Australia -v- Sweetpea Petroleum* (2023)).

[14] Schedule 2 of *Petroleum Regulations* (AUS) and r14 requires that any agreement be similar or a greater standard than these.

[15] *Petroleum and Gas (Production and Safety) Act* (AUS), ss463-465 (Permission to enter land to exercise rights under a Pipeline or Petroleum Facility Licence).

[16] *Petroleum and Gas (Production and Safety) Act* (AUS), s468 and also the prescribed form: QLD Gov 2016.

[17] eg. *Baker -v- Minister for Mining* (2012), [40]-[43] (because the land owner was not given sufficient information with the minimum time period).

[18] https://www.business.qld.gov.au/industries/mining-energy-water/resources/petroleum-energy/authorities-permits/applying/petroleum-gas-authorities/pipeline-licences

[19] QLD Gov 2023b

conditions about conduct when entering and carrying out authorised activities on private land'.[20]

(b) The Resources Department has also produced an accompanying *Guide to land access*, detailing the various procedures and rights between mining-tenements holders and land users.[21] This regime broadly separates two types of access to private land: *Preliminary activities* (where no impact or only a minor impact on the business or land use activities of a landholder on which the activity is to be carried out), and *Advanced Activities*. (which includes ground-disturbing work). The former can occur after various notification requirements, while the latter requires agreement or a court determination of the terms of access. But access under either pathway both require the developer to follow the provisions of the Land Access Code.

(c) The Queensland Government also has a **Land Access Ombudsman** (an independent body[22] which investigates and advises on resolving disputes about alleged breaches of various access agreements, and advises government departments about systemic issues arising from land access disputes[23]) and a **Gas Fields Commission** (focussed on gas exploration and development activities and seeking to contribute to 'coexistence of Queensland landholders, rural and regional communities, and the onshore gas sector'[24]). These bodies produce and maintain relevant documents and information such as *Land Access Negotiation Tips*.[25]

[58] The Land Access Ombudsman has a statutory requirement that a dispute cannot be referred to it for attention unless the party referring the dispute 'has made a reasonable attempt to resolve the dispute with the other party to the dispute'.[26] The Ombudsman has issued the following guidance about what is 'a reasonable attempt to resolve the dispute with the other party to the dispute'.

> *Although not an exhaustive list, the following are examples of what may constitute a reasonable attempt to resolve the dispute:*
>
> *(a) attempting, at reasonable times, to contact the other party to discuss the dispute — via phone, email or in person*
>
> *(b) notifying the other party of the issues in dispute, and offering to discuss them, at a reasonable location and time, to try to resolve*
>
> *(c) following up with the other party if no response is received*
>
> *(d) providing relevant information and documents to the other party to enable them to understand the issues involved and how the dispute might be resolved*
>
> *(e) reasonably attempting to negotiate with the other party about the disputed issues*
>
> *(f) participating in good faith in a non-binding alternative dispute resolution (ADR) process — such as a case appraisal, conciliation or mediation — facilitated by an independent person*
>
> ...
>
> *The Land Access Ombudsman will consider all the circumstances of the case in order to determine whether a reasonable attempt has been made to resolve the dispute. This may include but is not limited to:*
>
> *(a) how and when approaches were made to the other party*

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[20] https://www.business.qld.gov.au/industries/mining-energy-water/resources/landholders/accessing-private-land/land-access-code
[21] QLD Gov 2023a.
[22] Established under the *Land Access Ombudsman Act 2017* (Qld).
[23] https://www.lao.org.au/about-us/our-role
[24] https://gfcq.org.au/about-us/how-can-we-help/
[25] https://gfcq.org.au/landholders/land-access/land-access-negotiation-tips/
[26] *Land Access Ombudsman Act* (AUS), s32.

(b) the number of approaches made

(c) the reasonableness of proposals to convene face-to-face meetings

(d) the reasonableness of proposals to arrange a … ADR process to be facilitated by a third party

(e) whether any face-to-face meetings occurred

(f) how parties conducted themselves at any meetings or conferences

(g) the nature and complexity of the dispute.[27]

4.2.5 Victoria

[59] Victoria's Essential Services Commission published a 'Land Access Code of Practice',[28] outlining processes that transmission companies must follow when accessing, or seeking to access, private land using statutory powers under Victoria's *Electricity Industry Act 2000*. This came into operation in March 2024, and matters or interest include provisions regarding Communication and engagement, Information on proposed access, and the following regrading complaint handling and dispute resolution.

An electricity transmission company who has an obligation under this Code of Practice must take the following actions in respect of complaints and disputes raised by an affected party in relation to access or proposed access to private land under section 93 of the Act, or compliance with the Code of Practice:

(a) provide timely responses to complaints received from affected parties;

(b) develop, implement, publish on its website and regularly review complaint-handling processes specific to land access. These processes must be consistent with the Australian Standard AS ISO 10002:2022 Guidelines for complaint management in

(c) publish clear information on the steps to follow and relevant people to contact to escalate complaints within the electricity transmission company's management structure, for affected parties who have concerns or are not satisfied with an electricity transmission company's response or actions;

(d) when providing a response to a complaint, inform affected parties in writing about their right to refer a complaint to the energy ombudsman if affected parties are not satisfied with an electricity transmission company's response in relation to the complaint; and

(e) when providing a response to a complaint, provide affected parties with the contact details of the energy ombudsman.[29]

4.2.6 Western Australia

[60] Western Australia has a similar regime to NSW in relation to pipeline construction and related access to private land. That is the Minister has power to authorise entry onto any land (including private) for the purpose of making surveys and preliminary investigations.[30] The statute enabling this imposes conditions on the developer, including that they must give reasonable notice to the owner/occupier of the land before entering, repair any damage caused 'as soon as practicable', and compensate the owner/occupier where that entry has 'injuriously affected or suffering any damage thereby, is entitled to full compensation, the amount thereof to be as agreed between the

[27] QLD Gov 2018.
[28] https://engage.vic.gov.au/making-a-land-access-code-of-practice
[29] VIC Gov 2024, 11.1.2.
[30] WA Gov 2014, 121.

person making the entry and the person claiming compensation, or, failing agreement, to be determined by a court of competent jurisdiction'.[31]

4.2.7 COAG Multiple Land Use Framework (2013)

[61] In 2013, all Australian mining & energy ministers agreed a *Multiple Land Use Framework*[32] through the Council of Australian Governments. This is aimed more broadly at overall system design, rather than particularly at individual dispute resolution, as it explains it 'consists of eight guiding principles and nine components (methods and tools), providing a clear direction for policy, planning and development'. Of most relevance here are five of the *principles* (explained as needing to 'be embodied into the mindset of governments, community and industry in land use planning, policy and development'[33]) and two of the *components* ('to consider in planning, preparing and assessing land access and land use decisions'[34]).

- ***Best use of resources*** *- Maximise the social, economic, environmental and heritage values of land use for current and future generations.*
- ***Coexistence*** *– The rights of all land users are recognised, and their intentions acknowledged and respected. Ensure land use decision making does not exclude other potential uses without considering the benefits and consequences for other land users and the wider Australian community.*
- ***Tailored participation of communities and landholders*** *– Directly affected landholders should be informed and consulted on multiple land use options and potential for coexistence to promote a greater understanding of mutual benefits and to resolve problems.*
    - *Information – Education and adoption of evidence-based approaches is an important feature of successful multiple land use planning approaches. Inform the broader community, industry and media about the importance of land access and land use to the future viability of all industries and the ongoing sustainability of regions. Inform media and industry about what governments are doing to protect the public interest with respect to regulating industry and protecting social and environmental values.*
- ***Engagement and information*** *– Open and constructive debate and analysis of different multiple land use options. Stakeholders should be willing to listen and appreciate the views, concerns and needs of all land users.*
    - *Engagement – Early engagement to enable stakeholders to clearly understand any proposed land use activity. Progress a tripartite approach, with government, industry and community working, to resolving policy, planning and investment conflict. Guidance as to how to engage with key stakeholders with an interest or involvement in land access and usage issues.*
- ***Decision making and accountability*** *– Risk-based approach in the assessment of land use capability, including the benefits and consequences. Clear accountability and governance around the decision-making process.*

4.2.8 Productivity Commission's 2020 Resources Regulation Report

[62] The Productivity Commission held a multi-year review into resources regulation in Australia and produced a report on this in 2020. The Commission summarised its understanding of the 'normal' process of obtaining access for resources projects in Australia.[35]

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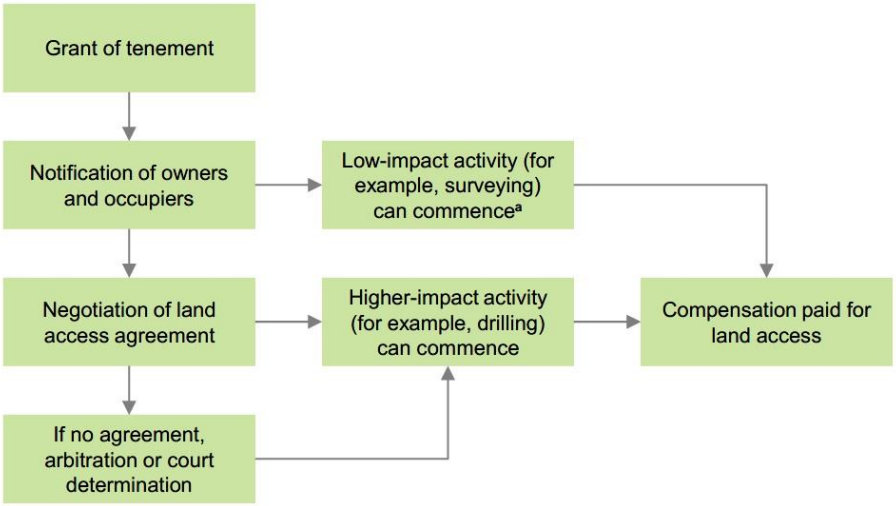
[31] *Petroleum Pipelines Act* (AUS), s7.
[32] AUS Gov 2013a
[33] AUS Gov 2013a, 3.
[34] AUS Gov 2013b, 2.
[35] The following diagram is from AUS Gov 2020, 125.

The process of obtaining land access for resources projects



[a] Except in New South Wales and Victoria, where a negotiated agreement is required before undertaking any exploration activity.

[63] Key points emphasised by the Productivity Commission included the following

- *A resources company must have permission to access the land where resources are located before other approvals can be granted.*
- *Resources companies and private landholders are required to negotiate conditions of land access across the different types of land tenure. However, landholders cannot generally refuse consent to a development.*
- *Resources are owned by the Crown on behalf of the community, and consequently, there is a public interest in resources development. A right of veto over resources activity on private land would be inconsistent with Crown ownership of resources and significantly affect distribution of the benefits of resources.*
- *Leading practice policies seek to balance the trade-offs between resources development and other land uses to maximise economic benefits for the community. These policies should thoroughly consider the costs and benefits of allowing resources development, and have approval processes proportionate to the risks of resources development on the relevant land.*
- *Early engagement between resources companies and landholders should be encouraged (institutions such as the Queensland GasFields Commission facilitate this). Formal negotiation should only be required at the stage when exploration is likely to have an impact on the land.*
- *Many landholders likely enter land access negotiations with resources companies with little prior experience or relevant knowledge. A standard template for land access agreements can help to set expectations for landholders and resources companies, and improve confidence in the regulatory system.*
- *Low-cost dispute resolution methods that take an investigative approach to resolving problems appear effective in reducing tensions between landholders and resources companies.*

4.2.9 Native Title "good faith negotiation"

[64] Australia's national native title regime established a process whereby, when a proposed action (such as a government grant of a resources permit to enables a developer to use/impact land) will affect native title interests in that land, then the parties have to negotiate to endeavour to reach agreement. The Native Title Act specifies that the developer must 'negotiate in good faith' with the native title group for at least six months to try to reach agreement about that proposed action. If no agreement is reached, then the matter can be referred to the National Native Title Tribunal who can decided whether the proposed action can occur.[36] So, the Tribunal six-monthmake a decision *if* there has been six months' negotiation in good faith.[37] Technically, provided there is no sharp practice (or failure to respond) this can be merely the elapse of that six month period – that is, there is no requirement that the company must have undertaken six months of good faith negotiations.[38]

[65] There have been many arguments, and Tribunal and court decisions about what is required for 'good faith negotiation'. The way the Tribunal has approached these, over many cases, is to develop a list or 'indicia' of what they consider in determining whether good faith negotiation has occurred. These are often termed the 'the Njamal indicia' (from the case in which they were first enumerated[39] regarding the Njamal People in north-western Australia) and have been subsequently approved by the Federal Court[40] and applied many times by Tribunal. The main determinants of a failing to negotiate in good faith is assessment against 'the Njamal indicia':

(i) Unreasonable delay in initiating communications in the first instance;

(ii) Failure to make proposals in the first place;

(iii) The unexplained failure to communicate with the other parties within a reasonable time;

(iv) Failure to contact one or more of the parties;

(v) Failure to follow up a lack of response from the other parties;

(vi) Failure to attempt to organise a meeting between the native title and grantee parties;

(vii) Failure to take reasonable steps to facilitate and engage in discussions between the parties;

(viii) Failure to respond to reasonable requests for relevant information within a reasonable time;

(ix) Stalling negotiations by unexplained delays in responding to correspondence or telephone calls;

(x) Unnecessary postponement of meetings;

(xi) Sending negotiators without authority to do more than argue or listen;

(xii) Refusing to agree on trivial matters, for example, refusal to incorporate statutory provisions into an agreement;

(xiii) Shifting position just as an agreement seems in sight;

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[36] Native Title Act, ss 31 & 35.

[37] Although the onus is on the native title party to establish the developer has not negotiated in good faith (that is – the developer does not have to prove that it has negotiated in good faith): *Rusa Resources -v- Gnulli* (2018), [24]. Recent cases where the Tribunal ruled the developer has not acted in good faith (and therefore the Tribunal cannot continue) include these: *Mobile Concreting v Wintawari RNTBC* [2022] NNTTA 56, [107]; *Pathfinder Exploration v Malarngowem RNTBC* [2022] NNTTA 52, [136]-[139]; *Kevin De Roma v Western Yalanji RNTBC* [2022] NNTTA 40, [161]-[166]; *David Trow v Banderson (Wagiman People)* [2021] NNTTA 68, [55]; *Sunstate Sands v First Nations RNTBC* [2021] NNTTA 44, [47]-[48]; and *Norwest Sand v Ngarluma RNTBC* [2020] NNTTA 68, [176]-[178].

[38] *Adani Mining -v- Diver (Wangan and Jagalingou People)* (2013), [307]; *Rusa Resources -v- Gnulli* (2018), [14].

[39] *WA -v- Taylor (Njamal people)* (1996).

[40] eg. Walley [1999] FCA 3; *Charles (Mount Jowlaenga Polygon # 2) -v- Sheffield Resources* (2017), [95]) and applied many times by National Native Title Tribunal.

(xiv) Adopting a rigid non-negotiable position;

(xv) Failure to make counter proposals;

(xvi) Unilateral conduct which harms the negotiating process, for example, issuing inappropriate press releases;

(xvii) Refusal to sign a written agreement in respect of the negotiation process or otherwise; and

(xviii) Failure to do what a reasonable person would do in the circumstances.

[66] Assessment about whether a party has negotiated in good faith requires consideration of the total conduct constituting the negotiations.[41]

[67] In assessing the adequacy of a developer's conduct, the Tribunal will consider what that party faced in the negotiations (because that may justify a position which could otherwise indicate a lack of good faith).[42] Good faith negotiation can still involve a party acting to further its interests, provided there is no dishonest / misleading / unconscionable conduct.[43] But it will not be good faith for a party 'to shut its eyes to the obvious, or deliberately refrain from asking questions in case information comes to their attention that they might prefer not to know'.[44]

[68] There has been a Full Federal Court decision ruling that the provision of limited information, and lack of negotiations is not, of itself, sufficient to evidence an absence of good faith. More is required than mere lack of progress –the failure of progress needs to have been 'caused by some breach of or absence of good faith such as deliberate delay, sharp practice, misleading negotiating or other unsatisfactory or unconscionable conduct'.[45]

[69] The Full Federal Court has recently reflected on the difficulty in assessing a 'reasonable offer' in the absence of standards or perspectives which are objective or at least shared between the parties. So, the native title regime does not mandate conduct 'which is objectively reasonable. It requires only negotiation in good faith'.[46] One of the Judge's expanded on this, in dismissing an argument that the Tribunal (and Court) needed to determine whether the developer made a 'reasonable offer'.

[406] ...[T]he obligation to negotiate in good faith involves both subjective and objective standards. However, the reference to objective standards can be misunderstood. It does not import an obligation to make "reasonable offers", a concept which, in the context of para 31(1)(b), cannot be given any content by reference to statutory criteria. The reference to objective standards is a reference to the objective standard of honesty against which a negotiating party's conduct is to be assessed. The obligation to negotiate in good faith is principally concerned with a negotiating party's intention: whether the party has negotiated with the aim of reaching an agreement, which is to be considered by reference to what the party did or failed to do in the course of the negotiations.

[407] The obligation to negotiate in good faith was considered by the Full Court (Spender, Sundberg and McKerracher JJ) in FMG Pilbara Pty Ltd v Cox [2009] FCAFC 49; (2009) 175 FCR 141. ... In respect of the obligation to negotiate in good faith, the Full Court explained (at [20], emphasis added): "It has been repeatedly recognised that the requirement for good faith is directed to the quality of a party's conduct. It is to be assessed by reference to

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[41] *Gomeroi People -v- Santos NSW* (2024), [77] per Mortimer CJ (agreed by O'Bryan J at [317]).
[42] *Rusa Resources -v- Gnulli* (2018), [16] & [130].
[43] *Rusa Resources -v- Gnulli* (2018), [19] & [81].
[44] *Gomeroi People -v- Santos NSW* (2024), [41]
[45] *FMG Pilbara -v- Cox* (2009), [27].
[46] *Gomeroi People -v- Santos NSW* (2024), [41] per Mortimer CJ (agreed by O'Bryan J at [317]) approving the Tribunal's reasoning).

what a party has done or failed to do during negotiations and is directed to and is concerned with a party's state of mind as manifested by its conduct in the negotiations"

[409] ...[T]he Full Court cited with approval statements made in the earlier decisions ...[including] ... that, in a civil context, there is an objective standard by which a person is judged to have acted dishonestly or not. ...[W]hile for the most part dishonesty is to be equated with conscious impropriety, those subjective characteristics of honesty do not mean that individuals are free to set their own standards of honesty in particular circumstances – honesty is not an optional scale with higher or lower values according to the moral standards of each individual. ...

4.3 International and industry standards and guidance

4.3.1 Industry

[70] IPIECA (formally the International Petroleum Industry Environmental Conservation Association) is a global oil and gas association focussed on sustainability, environmental responsibility and social performance in oil, gas and renewables activities. Its members include many large petroleum and energy companies which have operated in Australia (eg. BP, Chevron, Conoco Phillips, ENI, ExxonMobil, Inpex, Shell, Woodside Energy), but it does not appear that Santos is a member.[47] A condition of IPIECA membership is supporting the IPIECA principles and, as of 2024, these include the following principles (with some including additional text where relevant, from what IPIECA describes as 'Practical examples').

4. *Responsibly manage operational impacts on the natural environment and ecosystem services.*[48]

5. *Support the UN Guiding Principles on Business and Human Rights.*
   - *Embed a corporate policy commitment to respect human rights consistent with internationally recognised human rights frameworks or standards.*
   - *Implement community grievance mechanisms to facilitate access to remedy.*[49]

6. *Promote the health, wellbeing and social inclusion of workforces and local communities relating to operations, and contribute to the social and economic development of host communities and countries.*
   - *Build mutual respect, trust, and confidence with local communities through early, ongoing, transparent and accessible engagement programmes.*[50]

8. *Integrate sustainability across activities, increase transparency and engage with key stakeholders.*
   - *Conduct environmental, social and health impact assessments (ESHIAs) for new projects and significant developments to accurately communicate potential impacts to stakeholders.*
   - *Engage a broad range of stakeholders through a variety of channels to better understand and account for their perspectives, expectations, concerns and needs in decision-making processes.*[51]

[47] https://www.ipieca.org/membership (accessed 12 June 2024).
[48] IPIECA 2024, 11.
[49] IPIECA 2024, 12.
[50] IPIECA 2024, 13.
[51] IPIECA 2024, 16.

4.3.2 Inter-governmental and international

4.3.2.1 OECD Guidelines

[71] The *OECD Guidelines for Multinational Enterprises on Responsible Business Conduct*[52] are internationally agreed standards for responsible business conduct, covering human rights, labour relations, environment, consumer interests and other areas. The OECD summarises these as 'recommendations by governments for businesses to align their activities with sustainable development and conduct due diligence to avoid adverse impacts on people, planet and society'.[53] The 'Australian Government expects multinational businesses operating in Australia … to act in accordance with the OECD Guidelines'.[54]

[72] A key element of responsible business conduct under the Guidelines is *due diligence*, being the process through which businesses identify, prevent and mitigate their actual and potential negative impacts and account for how those impacts are addressed. The essence of due diligence is summarised in chapter II of the Guidelines.

A. Enterprises should:

11. Carry out risk-based due diligence, for example by incorporating it into their enterprise risk management systems, to identify, prevent and mitigate actual and potential adverse impacts as described in paragraphs 12 and 13, and account for how these impacts are addressed. The nature and extent of due diligence depend on the circumstances of a particular situation.

12. Avoid causing or contributing to adverse impacts on matters covered by the Guidelines, through their own activities, and address such impacts when they occur, including through providing for or co-operating in the remediation of adverse impacts.

13. Seek to prevent or mitigate an adverse impact where they have not contributed to that impact, when the impact is nevertheless directly linked to their operations, products or services by a business relationship. This is not intended to shift responsibility from the entity causing an adverse impact to the enterprise with which it has a business relationship.

14. In addition to addressing adverse impacts in relation to matters covered by the Guidelines, encourage, where practicable, entities with which an enterprise has a business relationship to apply principles of responsible business conduct compatible with the Guidelines.

15. Engage meaningfully with relevant stakeholders or their legitimate representatives as part of carrying out due diligence and in order to provide opportunities for their views to be taken into account with respect to activities that may significantly impact them related to matters covered by the Guidelines.[55]

4.3.2.2 OECD Extractives Sector guidance

[73] In 2017, the OECD released a *Due Diligence Guidance for Meaningful Stakeholder Engagement in the Extractive Sector.*[56] This document seeks 'to offer practical guidance for the extractive sector in line with the provisions of the OECD Guidelines on due diligence for stakeholder engagement', and expressly indicates that by 'Extractive sector enterprises' it includes enterprises conducting processing, transport, and/or storage of gas.[57]

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[52] OECD 2023.
[53] OECD ud.
[54] AUS Gov 2024, 4.
[55] OECD 2023, ch II. General Policies.
[56] OECD 2017.
[57] OECD 2017, 15.

[74] This 2017 guidance was drafted with the consultation and feedback of governments with significant extractive sectors,[58] various industry associations and companies,[59] and civil society representatives, [60] as well as representatives of the International Labour Organization and International Finance Corporation. As a result, it represents a considered and credible approach to these issues. Of most relevance – identified the following as best practice in engagement activities.

Information sharing

- *All material information should be shared in a timely manner.*
- *The target audience should be able to access information and be able understand it.*
- *Material information, particularly with respect to the risk of adverse impacts should be provided in a written form so that community members can share it with experts of their choosing.*
- *Information should be accurate and objective with explanation of any uncertainties.*
- *Provision of information should not violate privacy or generate risks for stakeholders (such as security risks or risks of retaliation in hostile or repressive contexts).*
- *Upon provision of information stakeholders themselves should be consulted to help determine what information is most useful to them and in what form to avoid information fatigue.*
- *Information sharing should generally be used in combination with other modes of engagement (e.g. consultation).*

Consultation / learning

- *The specific purpose of the consultation should be made clear and participation in consultation should be informed and voluntary.*
- *Information gathered from consultations should be verified.*
- *Use of collected information should be accessible by those that provide it and should not violate privacy or generate risks for stakeholders (such as security risks or risks of retaliation in hostile or repressive contexts).*

Negotiation

- *Terms of and structure of negotiation should be mutually agreed to in advance and should conform to all relevant legal obligations.*
- *Negotiation should take place under equitable terms.*
- *Support should be provided as necessary to allow stakeholders to adequately represent their perspectives and interests.*
- *All relevant parties should be party to the negotiation.*
- *Negotiation processes, including ideas, questions and concerns raised should be documented to the extent possible.*
- *Final agreements and outstanding issues should be recorded and should be verified and validated by those present during the engagement activity.*

...

[58] Including Canada, Norway, France and the Netherlands: OECD 2017, 5.

[59] Including the Business and Industry Advisory Committee to the OECD (BIAC), Canadian Association of Petroleum Producers (CAPP), International Council on Mining and Metals (ICMM), Prospectors & Developers Association of Canada (PDAC), European Association of Metals (EUROMETAUX), Euromines, Mining Association of Canada (MAC), World Gold Council, AngloAmerican, Cameco, Chevron, Cerrejon, Shell, Talisman Energy and Vale: OECD 2017, 5.

[60] Including the Trade Union Advisory Committee to the OECD (TUAC), OECD Watch, Oxfam Australia, Partnership Africa Canada, Project of Economic, Social and Cultural Rights (ProDESC), International Work Group for Indigenous Affairs, Green Advocates, International Federation for Human Rights (FIDH), Mining Watch Canada, the Centre for Research on Multinational Corporations (SOMO), Rights and Accountability in Development (RAID) and IndustriALL: OECD 2017, 5.

Consent

- *Clear criteria should be established by the relevant rights-holder as to who should grant consent, what constitutes consent, what constitutes a clear lack of consent.*
- *Consent should be given on an informed and voluntary basis and sought in a timely manner.*
- *What consent is being given for should be clearly defined and the process of seeking consent should be renewed as necessary.*
- *The conditions of consent and for withdrawing consent should be clearly defined.*
- *Engagement processes, including ideas, questions and concerns raised should be documented as far as possible.*
- *Final agreements and outstanding issues should be recorded and should be verified and validated by those present during the engagement activity.*

Implementing commitments

- *As far as possible, timelines and deliverables should correspond to what was agreed to with stakeholders or initially promised.*
- *Misalignment in expectations should be addressed as soon as possible. Synergies with regard to community development should be optimised.*
- *Engagement processes, including ideas, questions and concerns raised should be documented to the extent possible.*
- *Agreements stipulating commitments should be formalised, monitored and reported on.*

Addressing adverse impacts

- *As far as possible remedies for adverse impacts should adequately address the harm done and underlying causes for the harm in a timely and transparent manner.*
- *Any legal obligations regarding mitigation and remedy should likewise be respected and the terms of remediation should, at a minimum, meet international guidelines on remediation where available.*
- *Remedies should put stakeholders in a position that leaves them as well off as they were before, or better off than before the impact.*
- *Stakeholders should be involved in deciding how adverse impacts are addressed and in assessing the value of damages.*
- *Remedy and mitigation should be culturally appropriate and risks and benefits of different forms of remedy should be considered.*
- *Engagement processes, including ideas, questions and concerns raised should be documented as far as possible.*
- *Final agreements and outstanding issues should be recorded and should be verified and validated by those present during the engagement activity. Such agreements should not preclude access to judicial or non-judicial grievance mechanisms (e.g. through waivers).*
- *Satisfaction with how adverse impacts are addressed should be evaluated.*

Benefit sharing

- *Strive to identify opportunities for optimising benefits.*
- *Strive to ensure that operations are in line with the development priorities and social objectives of the government and community where operations are located and that differing priorities amongst men and women are considered.*
- *Share benefits on the basis of the consultation process and impact assessments, in a way that does not unfairly benefit specific groups, but that fosters equitable and sustainable social development.*

[75] The Guidance also addresses 'Responding to common challenges to meaningful stakeholder engagement' and this also addressed a number of relevant issues and identified recommended strategies as response.

Power dynamics

- *Hold face-to-face meetings with people in private so that they are less likely to feel inhibited in expressing their opinions due to the presence of locally influential or powerful people.*
- *Have policies on confidentiality and assure people that the information they provide will be treated anonymously and confidentially to protect their privacy.*
- *Have anonymous voting procedures or avoid keeping written records of very sensitive information.*

...

- *Power dynamics between stakeholders and extractive enterprises may be highly unbalanced and efforts should be made to equalise these dynamics in order to avoid implicitly hostile engagement situations (e.g. paying attention that the venue and layout of negotiation space makes the stakeholder(s) feel comfortable).*

Socio-economic constraints

...

- *Communicate in plain, non-technical language so that those with little education can understand; provide materials explaining the project in multiple media, such as brochures, pictures and maps.*
- *Communicate important information several times to ensure stakeholders understand it.*

Capacity constraints

- *Consider the capacity of the group and make necessary adjustments when providing information, consulting with groups, or throughout negotiation (e.g. through training, providing external support, etc.).*
- *Provide direct support, or provide support through other agencies such as sectoral national and global trade unions or NGOs to build capacity.*

Competing interests and expectations amongst stakeholders

- *Consider the context in which engagement is to take place, including pre-existing relationships within and between stakeholder groups and adopt an inclusive approach to engagement.*
- *The criteria and process for distribution of benefits should be made clear, the interests and expectations of opposing groups should be understood, there should be transparency in decision making and dissatisfied groups should have an opportunity to have their concerns considered through strong objective remediation processes.*
- *The assistance of a neutral mediator could be sought; the role of such a mediator should not be to ensure consensus is reached between the parties, but rather that each side has a clear and objective understanding of their own best interests and to facilitate collaborative decision making between diverse stakeholders.*
- *All points of views of stakeholders should be accommodated and responded to as far as possible. Without ignoring dissent, stakeholders should be prioritised according to those most and least impacted by the project.*

Bad-faith on the part of stakeholders or other groups

- *Clarify how good faith engagement is defined in terms of an enterprise's own actions as well as what is expected in return, making sure that "bad faith"' is not equated simply with a lack of support or approval of the enterprise's proposed activities.*

- *Consult with the local community and build a solid knowledge base prior to engaging with stakeholders.*
- *Share the findings of impact assessment and the process by which impacts will be addressed.*
- *Establish a transparent and fair grievance mechanism which can allow for all sides to be heard and issues to be resolved objectively.*

Violence and opposition

- *Consider the underlying cause of the opposition as opposed to taking legal actions against community members that could result in further exacerbating the situation and contribute to the criminalisation of non-violent rights defenders.*
- *Avoid making public statements questioning the work of such groups or blaming them for any supposed delays or other disruptions to the project.*

…

- *Reach out to opposition groups and renew invitations to engage in good faith regularly.*
- *In contexts where the opposition is widespread, not based on misinformation or bias, and ongoing despite attempts to meaningfully engage, an enterprise should consider the risks involved with continuing an operation.*

Inherited issues stemming from poor stakeholder engagement

- *Identify such issues as part of understanding context from the first point of entry, and, if applicable, identify legacy issues prior to making any commitments and investments in a project.*
- *Clearly communicate the relationship between the enterprise and previous operators. Acknowledge up front the perceived issues around previous engagement or lack thereof.*
- *…*
- *Make clear what can be done going forward, what issues remain negotiable, whether there is ability to address adverse impacts from past operations, how the management and engagement strategy will differ from that of the predecessors.*
- *In the case of human rights impacts, if no other remedy is available, the acquiring enterprise should provide, enable or support remediation itself, to the extent of its contribution to the impacts of its predecessor.*

Misalignment between expectations and reality

- *Throughout engagement encourage stakeholders to share their expectations and likewise share expectations of the enterprise regarding the operation to identify any misalignment and to ensure that all sides understand one another's positions.*
- *Transparency regarding the operation and commitments can also be helpful in managing expectations. For example, disclosing contracts and reporting revenues and tax payments can help to provide stakeholders with a realistic understanding of the operation.*
- *Provide needed support for stakeholders to understand the operational realities of the project.*

Elite capture

- *When negotiating agreements, implementing commitments or providing remediation, the value to and interests of the stakeholder group as a whole should be considered.*
- *When red flags have been identified by the enterprise with regard to representatives selected by stakeholders, they should consult more widely with stakeholder groups as to how to proceed.*

4.3.2.3 UN Guiding Principles on Business and Human Rights

[76] The *UN Guiding Principles on Business and Human Rights* (**UNGP**s) guidelines for States and companies to prevent, address and remedy human rights impacts from corporate activity. The UNGPs were adopted in 2011[61] and have been accepted and implemented by many governments and business. Relevant here this includes IPIECA (see [70] above) and the Australian Government and many others through the OECD Guidelines (see [71]–[75] above).

[77] The UNGPs provide a broad framework and guidance on the 'responsibility to respect human rights' by business and what and how that operates. There are, however, two aspects of the UNGPs which have more specific relevance here: communication and grievance mechanisms.

[78] Guiding Principle 21 indicates that communication is merited not only with directly impacted parties but also their representatives: 'In order to account for how they address their human rights impacts, business enterprises should be prepared to communicate this externally, particularly when concerns are raised by or on behalf of affected stakeholders'.[62]

[79] Guiding Principle 31 addressing effective grievance mechanisms.

> *31. In order to ensure their effectiveness, non-judicial grievance mechanisms, both State-based and non-State-based, should be:*
>
> *(a) Legitimate: enabling trust from the stakeholder groups for whose use they are intended, and being accountable for the fair conduct of grievance processes;*
>
> *(b) Accessible: being known to all stakeholder groups for whose use they are intended, and providing adequate assistance for those who may face particular barriers to access;*
>
> *(c) Predictable: providing a clear and known procedure with an indicative timeframe for each stage, and clarity on the types of process and outcome available and means of monitoring implementation;*
>
> *(d) Equitable: seeking to ensure that aggrieved parties have reasonable access to sources of information, advice and expertise necessary to engage in a grievance process on fair, informed and respectful terms;*
>
> *(e) Transparent: keeping parties to a grievance informed about its progress, and providing sufficient information about the mechanism's performance to build confidence in its effectiveness and meet any public interest at stake;*
>
> *(f) Rights-compatible: ensuring that outcomes and remedies accord with internationally recognized human rights;*
>
> *(g) A source of continuous learning: drawing on relevant measures to identify lessons for improving the mechanism and preventing future grievances and harms;*
>
> *Operational-level mechanisms should also be:*
>
> *(h) Based on engagement and dialogue: consulting the stakeholder groups for whose use they are intended on their design and performance, and focusing on dialogue as the means to address and resolve grievances.*[63]

[61] UN 2011.
[62] UN 2011, p20; and further information is available on this in UN 2012,52-56.
[63] UN 2011, p26-27; and further information is available on this in UN 2012, 74-76.

4.3.2.4 World Bank's Compliance/Advisor Ombudsman

[80] The Office of the Compliance/Advisor Ombudsman (CAO), of the World Bank / International Finance Corporation produce a guide about developing project-level grievance resolution mechanisms.[64] The Guide explains:

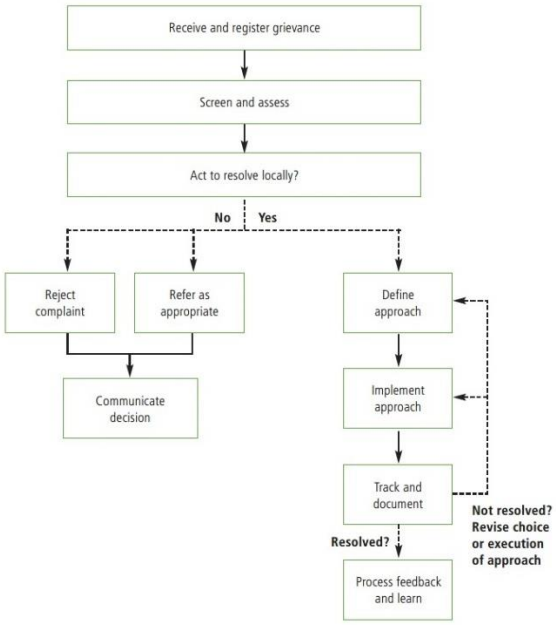
> *Grievance mechanisms are increasingly important for development projects where ongoing risks or adverse impacts are anticipated. They serve as a way to meet requirements, prevent and address community concerns, reduce risk, and assist larger processes that create positive social change. Today, many companies employ ad hoc or exclusively internal processes to address grievances. Unfortunately, these systems often produce less than satisfactory outcomes from the perspective of the company and/or the community. Recognizing this, and noting a lack of effective alternatives, companies and communities are becoming more proactive in their efforts to design and build more proactive in their efforts to design and build more effective strategies for addressing community grievances.*[65]

[81] The CAO's Guide outlines what it considers should exist in a well-functioning grievance mechanism:

- *Provides a predictable, transparent, and credible process to all parties, resulting in outcomes that are seen as fair, effective, and lasting*
- *Builds trust as an integral component of broader community relations activities*
- *Enables more systematic identification of emerging issues and trends, facilitating corrective action and pre-emptive engagement.*[66]

[82] The CAO Guide also offers this conceptualisation of grievance mechanisms.[67]

Figure 0.1. The Typical Steps of a Grievance Mechanism



[64] CAO 2008
[65] CAO 2008, v.
[66] CAO 2008, 1.
[67] Following diagram from CAO 2008, 4.

5 Annexures

5.1 Terms of Reference

Investigation into complaints concerning use of the Authority to Survey – Hunter Gas Pipeline

On 4 March 2024 the NSW Department of Climate Change, Energy, the Environment and Water (DCCEEW) engaged Ms Shiv Martin and Mr John Southalan (**Investigators**) to investigate and report regarding allegations of non-compliance with the 13 January 2023 Authority to Survey [**Authority**] granted to Hunter Gas Pipeline Pty Ltd for the Queensland Hunter Gas pipeline (**Inquiry**).

1. The scope of the Inquiry (**Scope**) is to investigate, report on and where thought desirable make recommendations as to allegations that Hunter Gas Pipeline Pty Ltd or related parties have acted inconsistently with three conditions of the Authority:
   - condition 4 (about reasonable level of negotiation and/or communication and providing written notice of intent to access under the powers of the Authority)
   - condition 8 (about exhausting reasonable attempts to resolve disputes regarding the Authority)
   - condition 12 (about the process of informing parties regarding possible compulsory acquisition).

2. The Inquiry activities will be determined by the Investigators and are expected to include the following:
   - offering and (where accepted) meeting with the parties who have already raised concerns with DCCEEW about matters identified in the Inquiry's Scope
   - offering and (where accepted) meeting with Hunter Gas Pipeline Pty Ltd or related parties about matters in the Inquiry's Scope
   - review of documents from DCCEEW, Hunter Gas Pipeline Pty Ltd and related parties, and material identified by any parties in meetings or engagement with the Investigators
   - review, relevant to the Scope, the Authority and enabling legislation including the Pipelines Act 1967 (NSW)
   - review, relevant to the Scope, other examples and procedures about interaction between a party granted rights to access/use land, and owners or occupiers of that land.

3. The Inquiry will be carried out on the assumption of complete cooperation and full disclosure from the parties involved. Information may be shared with other parties to this investigation as required by the principles of procedural fairness outlined below. Material provided to the Inquiry may be made publicly available by the Department unless it was specifically provided in confidence. Where a party has identified confidential parts in the material it provides, the Investigators will ensure that information provided to the Investigators remains confidential between the Investigators and the Department.

4. To ensure procedural fairness:
   - the Investigators have checked and declare no conflict of interest in relation to the relevant parties and issues
   - Any information disclosed to the investigators by one party that may be adverse to the interests of another party will be put to that other party for response, in accordance with the requirements of procedural fairness
   - a draft of the Inquiry Report (subject to any redaction for legitimate confidentiality) will be provided to Hunter Gas Pipeline Pty Ltd and the Environmental Defenders Office for response.
   - those parties will be afforded a reasonable opportunity to review and comment on the draft report
   - all comments will be considered by the Investigators, prior to their final report being delivered to DCCEEW.
5. A preliminary report will be provided to DCCEEW by end May 2024 with a final report to be provided by the end of June 2024. Flexibility is needed in the timeline for the Inquiry, to ensure proper consideration of all relevant matters and to allow for the possibility that new issues come to light that need to be examined.

6. The Investigator's report may be publicly released after it has been provided to DCCEEW.

5.2 Authority to Survey

Grant of Authority to Survey Under the Pipelines Act 1967

Granted to
Hunter Gas Pipeline Pty Ltd
For the Queensland Hunter Gas pipeline.

Authority to Survey

a) I, Matt Kean, Treasurer and Minister for Energy, being satisfied that Hunter Gas Pipeline Pty Ltd (40 108 119 544) ("HGP") has made an application that complies with section 5E(2) of the Pipelines Act 1967 ("the Act") and clause 5 of the Pipelines Regulation 2013, in respect of the proposed Queensland Hunter Gas pipeline, hereby grant to HGP an Authority to Survey under section 5F of the Act.

b) The Authority to Survey is granted,
   i. in respect to the Lands specified in Schedule 2 ("Lands"), and
   ii. subject to conditions specified in Schedule 1.

c) The Authority to Survey commences on the date of the signing of this Instrument, and remains in force for 18 months (and for any such period for which the Authority to Survey may be extended in accordance with section 5G(2) of the Act), unless the Authority to Survey is cancelled as to all or any Lands in re-spect of which it is in force in accordance with section 5G(3) of the Act.

d) Pursuant to section 5H of the Act, while the Authority to Survey is in force, HGP is, subject to the conditions in Schedule 1, authorised:
   i. to enter Lands, and
   ii. to carry out surveys on Lands to investigate possible routes for the proposed pipeline and determine the pipeline route, the situation of any associated apparatus or works and of any Lands to be used to get access to the pipe-line, apparatus or works, and
   iii. to take samples from Lands for examination and testing.

Dated this 13 day of January 2023

The Hon Matt Kean MP
Treasurer and Minister for Energy

Schedule 1 - Conditions of Authority to Survey

Imposed by the Treasurer and Minister for Energy ("**the Minister**") under section 5G(1)(b) of the *Pipelines Act 1967*.

1. HGP, as the holder of this Authority to Survey ("**Authority**"), must arrange survey operations in accordance with the Surveying and Spatial Information Regulation 2017 and the Pipelines Regulation 2013.

2. HGP, as holder of the Authority, must observe and perform any instructions given by the Secretary of the Treasury ("**the Department**") with a view to minimising effects on the environment, the owners or occupiers of affected Lands or their stock, standing crops, produce or any improvements made to their land.

3. Access to Lands for which the Authority is granted is limited to those areas that are reasonably necessary to survey for possible pipeline routes and associated apparatus or works. Access to private dwellings or gardens is not permitted.

4. HGP, as holder of the Authority, must have attempted a reasonable level of negotiation and/or communication prior to using the powers of the Authority. HGP must demonstrate this to the Department

prior to providing written notice to owners or occupiers of Lands of intent to access Lands under the powers of the AUTHORITY.

5. Survey operations carried out under this Authority must be conducted in a responsible manner so as not to cause damage to any person or stock, and to minimise damage to or effects on property and the environment. In particular, HGP, as holder of the Authority (or their agents), must:

   I. For all Lands, give at least fourteen calendar days written notice to the owner or occupier of the land prior to conducting surveys on their land, advising of the times when the surveys will be undertaken;

   II. For all Lands, contact the owner or occupier of the land at least fourteen days prior to conducting surveys on their land and ask them to provide verbal or written details of any specific and reasonable entry requirements such as biosecurity plans or request for reasonable reschedule via written notice no later than seven days before the nominated survey date;

   III. Comply with the reasonable requirements of owners or occupiers of Lands;

   IV. Not unduly interfere with the activities of owners or occupiers of Lands or their stock; vehicular access through standing crops or paddocks with nursing livestock is not permitted;

   V Not unduly interfere with the rights of the holders of co-existent mining or prospecting titles;

   VI. Not interfere with any fence or cut, destroy, ringbark or remove any growing trees or other vegetative cover on Lands except where these directly obstruct or prevent the carrying out of the authorised surveys and then only with permission of the relevant owners or occupiers;

   VII. Not cause or aggravate soil erosion, and provide appropriate means to prevent or minimise soil erosion and the spread of weeds and disease on Lands;

   VIII. As far as practicable, utilise existing roads and tracks for the purpose of ac-cess to and on Lands, avoid driving across or through cropped paddocks, and on entry and exit, ensure that any gate is returned to the position it was in before entering or exiting;

   IX. Not take dogs or firearms onto Lands;

   X. Make such provisions for sanitation as may be necessary on Lands including provision for disposal of any refuse;

   Xl. Not cause or start any fire and take all precautions against outbreak of fire on Lands surveyed and at all times comply with the provisions of the Rural Fires Act 1997;

   XII. Not interfere with or impede the use of any road, track, transmission line or telephone line on Lands and adjacent areas;

   XIII. Make good any damage caused to property, stock or the environment on Lands and adjacent areas as soon as is practicable after any dam-age is caused;

   XIV. Conduct and provide on request from owners or occupiers of Lands evidence of Police Checks for all contractors entering private Lands;

   XV. Ensure all contractors entering Lands comply with relevant State and Federal health guidelines in relation to Covid-19 restrictions (or any other relevant health order as they apply);

   XVI. Provide a copy of the Certificate of Currency for relevant liability insurance to the Department as proof of sufficient cover in place for survey activities;

   XVII. Ensure any personnel entering Lands on behalf of HGP is required to sign onto and adhere to the owners or occupiers of Lands biosecurity plan and logbook, where relevant. Vehicle wash down certificates must be presented to owners or occupiers of Lands on request; and

   XVIII. Comply with all relevant biosecurity guidelines, policies or alerts in relation to international travel. This includes but is not limited to not accessing Lands using the powers of the AUTHORITY within 14 days of re-turn from regions impacted by biosecurity issues.

6. HGP, as holder of the Authority (or their agents), must carry out survey activities during business hours on Mondays to Fridays. The prior consent of the owner or occupier of land is required before carrying out any survey of their land under this Authority outside business hours, on weekends or on public holidays.

7. HGP, as holder of the Authority, indemnifies the Crown, the Minister, the Secretary of the Department and the Department and shall keep them indemnified against all claims, costs, expenses, demands, legal process, judgments, or awards arising from or relating to any act or omission of HGP or their agents (whether negligent or not) in relation to HGP obligations under this Authority.

8. HGP, as holder of the Authority, must exhaust reasonable attempts to re-solve a dispute with owners or occupiers of Lands in relation to compliance with the conditions of the Authority. On the re-quest of owners or occupiers of Lands and/or HGP, the Department will determine the validity of the dispute. The Department will review and provide direction to resolution.

9. HGP, as holder of the Authority, must conduct Aboriginal Cultural Heritage Assessment on Lands under the powers of the Authority when those Lands are public or Crown lands. This assessment will inform the management and protection of artefacts and sites identified during the cultural heritage assessment for the purposes of complying with legislation and conditions of consent on project commencement.

10. HGP, as holder of the Authority, where conducting Aboriginal Cultural Heritage Assessment un-der Condition 9 must engage two cultural heritage monitors. One nominee from the registered native title applicant / holder (where applicable) and one nominee from the Local Aboriginal Land Council (or 2 from Local Aboriginal Land Council where there is no registered native title applicant / holder). Nominees must be contacted at least fourteen days prior to conducting surveys on Lands. Nominees must provide verbal or written details of any request for reason-able reschedule via written notice no later than seven days before the nominated survey date.

11. HGP, as holder of the Authority, must hold public liability insurance for a sum of not less than $20,000,000 in respect of any one claim and on demand supply a certificate of currency to any owner or occupier of land on which they wish to con-duct surveys under the Authority.

12. HGP, as holder of the Authority (or their agents), must not inform the owner or occupier of any Lands that their land may be subject to compulsory acquisition, unless the owner or occupier is in-formed at the same time that acquisition must be approved by the Minister and the owner or occupier will be able to state their case opposing acquisition, before the Minister will make any decision on the matter.

13. HGP, as holder of the Authority (or their agents), must at all times make it clear to owners or occupiers of Lands that any survey conducted under this Authority is being conducted in accordance with an authority granted by the Minister; and must produce the Authority to the owner or occupier of land when conducting a survey on their land in accordance with the Authority, or otherwise on request of the owner or occupier.

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20230113_Santos_ATS_Instrument_inc_additional_conditions.pdf (nsw.gov.au)

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