

Operational policy

Natural Resource Management

Compensation for petroleum and gas activities on QPWS managed lands

Operational policies provide a framework for consistent application and interpretation of legislation and for the management of non-legislative matters by the Department of Environment and Science. Operational policies are not intended to be applied inflexibly in all circumstances. Individual circumstances may require a modified application of policy.

Policy subject

Compensation payable for petroleum and gas (P&G) activities carried out on Queensland Parks and Wildlife Service (QPWS) managed lands.

Purpose

This policy outlines the methodology applied by QPWS and Partnerships (QPWS&P) to determine compensation for P&G development and infrastructure activities conducted on QPWS managed lands, including State forests, timber reserves and resources reserves.

Background

QPWS is part of the Department of Environment and Science (DES), and is responsible for managing protected areas established under the *Nature Conservation Act 1992* (NC Act) on State land (national parks (scientific), national parks, conservation parks and resources reserves), and State forests and timber reserves established under the *Forestry Act 1959* (Forestry Act).

P&G exploration and production activities are not permitted on national parks or conservation parks. However, petroleum authorities issued under the *Mineral and Energy Resources (Common Provisions) Act 2014* (MERC Act) can be granted over resources reserves, State forests and timber reserves, and P&G activities are conducted on these areas in some circumstances.

P&G companies have extensive operations and infrastructure on over 1,870 hectares of State forests and timber reserves. This infrastructure includes approved gas appraisal and production wells, access tracks, gas and/or water pipelines, transmission pipelines, communication towers, power lines, helicopter landing pads and temporary accommodation camps.

State forests and timber reserves are managed by QPWS in cooperation with the Department of Agriculture and Fisheries (DAF), which is responsible for managing State-owned forest products and quarry materials.

In line with the Forestry Act, the DES chief executive must manage these areas in accordance with the cardinal principle to permanently reserve them for the purpose of producing timber and associated products in perpetuity and protect a watershed therein.¹

The chief executive must also manage state forests and timber reserves having specific regard to the:

- benefits of permitting grazing in the area;

¹ Section 33 of the *Forestry Act 1959*.
Page 1 of 7 • QPWS/2019//4715 v1.02

Compensation for petroleum and gas activities on QPWS managed lands

- desirability of conservation of soil and the environment and of protection of water quality; and
- possibility of applying the area to recreational purposes.²

While there is no P&G infrastructure currently located on resources reserves, it may be permitted under the NC Act.

Resources reserves are a class of protected area established under the NC Act³ and are managed by QPWS to:

- recognise and, if appropriate, protect the area's cultural and natural resources;
- provide for the controlled use of the area's cultural and natural resources; and
- ensure that the area is maintained predominantly in its natural condition.⁴

Landowners, including QPWS, are entitled under the MERC Act to compensation from the holders of resource authorities (including petroleum authorities) for any compensatable effects caused by the resource activities.⁵

Compensatable effects in relation to QPWS managed lands means:

- deprivation of possession of surface of QPWS managed lands;
- diminution of the value of these lands;
- diminution of the use made or that may be made of the land or any improvement on it;
- severance of any part of the land from other parts of the land or from other land managed by QPWS;
- any cost, damage or loss arising from the carrying out of activities under the resource authority on the land; and
- any consequential damages for the above.⁶

QPWS can also recover accounting, legal or valuation costs that it has necessarily and reasonably incurred to negotiate or prepare a conduct and compensation agreement (CCA), other than the costs of a person facilitating an alternative dispute resolution.⁷

This compensation may be recovered through a CCA or another form e.g., compensation agreement. Under the MERC Act, a CCA can relate to all or part of the liability or future liability and may be incorporated into another agreement, like an easement for holders of petroleum pipeline licences.⁸

Policy Statement

Compensation payable to the State, is payable for the full suite of costs resulting from P&G activities conducted on QPWS managed lands. These include (but are not restricted to), costs of assessment, inspection, loss of public access and lost timber production (on State forests and timber reserves).

P&G companies operating on QPWS managed land are required to pay annual rental fees, and a one-off payment for initial disturbance and any direct costs. Depending on the circumstances, additional annual fees may be incurred for the compensatable effects of authorised activities on QPWS managed land. Compensation is calculated according to the nature, location and duration of the activities.

² Section 33 (2) of the *Forestry Act 1959*.

³ Section 14(g) of the *Nature Conservation Act 1992*

⁴ Section 21A of the *Nature Conservation Act 1992*.

⁵ Section 81 (General Liability to compensate) of the *Mineral and Energy Resources (Common Provisions) Act 2014*.

⁶ Section 81(4) of the *Mineral and Energy Resources (Common Provisions) Act 2014*.

⁷ Section 91 of the *Mineral and Energy Resources (Common Provisions) Act 2014*.

⁸ Section 83(3) of the *Mineral and Energy Resources (Common Provisions) Act 2014*.

Compensation methodology for State forests and timber reserves

Compensation for P&G activities conducted on State forests and timber reserves consists of the following four components:

1. Compensation for initial disturbance
2. Compensation for direct costs
3. Annual rental fees
4. Royalties for forest products and quarry materials

Compensation for initial disturbance

This compensation payment is required to partially compensate QPWS&P for disturbance on its land from P&G activities from clearing, construction or exclusion. It is a one-off upfront payment payable for each area of land that is authorised to be disturbed. Where compensation has been paid for initial disturbance in an Authorised Area, subsequent disturbance to the same area does not require further compensation.

For compensation purposes, the area of disturbance is delineated by the Authorised Area. The Authorised Area is the total area authorised to be disturbed and occupied (e.g., area of the occupation permit issued under section 35 of the Forestry Act, or easement area), plus any additional areas where authority has been granted to occupy or carry out works from time to time not requiring ongoing occupation (e.g., additional P&G activities such as temporary lay down areas, tree lopping, or trimming of vegetation, authorised by a permit under section 56 of the Forestry Act).

In order to recover compensation, a valuation of the Authorised Area must be conducted to determine market value of the land. As land valuations do not factor in the significant contributions QPWS lands make to Queensland, such as biodiversity, recreation needs, etc., a 'multiplier' is also used.

For State forests and timber reserves, a multiplier of 5:1 is applied to the market land value.

Compensation for initial disturbance is calculated by:

- the Authorised Area rounded up to the nearest hectare (ha); and
- multiplied by the market land value (\$/ha) as determined or verified by the State Valuation Services (SVS); and
- multiplied by five.

The Authorised Area is rounded up to the nearest hectare per State forest or timber reserve. For example, if a P&G company was authorised to disturb a total of 1.3 hectares on a State forest, to determine the compensation payable, the area would be considered 2 hectares.

Market land values will be submitted by the P&G company to QPWS for review by SVS. Where market land values differ between SVS and a P&G company, the higher of the two valuations is taken.

Compensation for direct costs

Compensation is also payable for any direct costs incurred by QPWS from P&G activities. This includes costs resulting from direct impacts on QPWS&P owned assets and infrastructure, such as the need to replace fire control lines, or costs to relocate or replace significant infrastructure, such as lookouts or campsites. Costs may also be incurred when P&G activities result in additional QPWS&P management requirements, for example, assessment and inspection by QPWS&P.

Compensation for petroleum and gas activities on QPWS managed lands

Annual rental fees

P&G companies are required to pay annual rent. For State forests and timber reserves, this payment is generally collected either through the annual rental payable for occupation permits issued under section 35 of the Forestry Act (charged at the commercial rate) and/or via pipeline easements (which are charged at 50 per cent of the commercial occupation permit rate).

Annual rentals for occupying State forests and timber reserves are set by the Director-General and vary according to the nature of the activity. Rental fees are indexed annually, either by the approved government indexation rate in the case of occupation permit fees, or by the consumer price index in the case of rentals for pipeline easements.

Annual rental fees are to be paid 12 months in advance.

Royalties for forest products and quarry material

Royalties for the use or destruction of forest products and quarry materials are paid to DAF at the applicable rate and apply only when an activity impacts on State owned forest products and quarry material. Royalties are not paid to QPWS.

Existing petroleum and gas pipelines on State forest

Existing pipeline corridors located on State forest require authorisation under an easement.

P&G pipelines with a pipeline licence granted *on or after January 1, 2011*, will be charged compensation according to the compensation methodology for State forests and timber reserves, detailed above.

Pipelines with a pipeline licence granted *on or before December 30, 2010*, will pay an annual rental fee of \$559 per State forest per year, in the 2021-22 financial year, which increases annually by government approved indexation. Alternatively, an up-front lump sum payment, adjusted for indexation will be considered on a case-by-case basis. No fees will apply for compensation for initial disturbance, direct costs or royalties for forest products and quarry material, impacted when the pipeline was constructed.

Compensation methodology for resources reserves

Compensation payable to QPWS&P for P&G activities on resources reserves is significantly higher than that of State forests and timber reserves. This recognises that resources reserves are protected areas with superior values to State forests and timber reserves and that these values are protected under both the NC Act and the *Environmental Offsets Act 2014* (EO Act), as protected areas, including resources reserves, are matters of state environmental significance (MSES) under the EO Act.

P&G companies require authorities issued under section 34 of the NC Act to undertake activities on resources reserves and are generally liable for significant compensation payments to QPWS&P.⁹ Under the EO Act, holders of section 34 and section 35 NC Act authorities are required to compensate (referred to as an offset) QPWS&P for direct or indirect impacts (whether temporary or permanent) resulting in, or likely to result in, loss or degradation of natural and cultural values, exclusion or reduction in the public use or enjoyment of the area, or authorised clearing or inundation for the construction of private or publicly owned infrastructure on protected area.^{10, 11} This protected area offset can be recovered through payment of a financial settlement¹² and is in addition to other components of compensation QPWS&P is entitled to under the MERC Act.¹³

⁹ Section 9(c) of the *Environmental Offsets Act 2014*, Schedule 1 of the *Environmental Offsets Regulation 2014*.

¹⁰ Section 8 (What is a significant residual impact) of the *Environmental Offsets Act 2014*.

¹¹ Section 8(2) of the *Environmental Offsets Act 2014* defines significant impact on protected area.

¹² Section 23 of the *Environmental Offsets Act 2014*.

¹³ Section 81 (General Liability to compensate) of the *Mineral and Energy Resources (Common Provisions) Act 2014*.

Compensation for petroleum and gas activities on QPWS managed lands

The compensation components are as follows:

1. Compensation for initial disturbance
2. Compensation for direct costs
3. Annual rental fees

Compensation for initial disturbance

Compensation for this disturbance is equivalent to the protected area offset and calculated in line with the requirements set out in the *Queensland Environmental Offsets Policy 2014* (EO Policy) for a financial offset settlement for protected areas. That is:

- the impact area, delineated by the total Authorised Area rounded up to the nearest hectare (ha); and
- multiplied by the average statutory land value for the local government area (with a floor price of \$500) as prescribed under the *Queensland Environmental Offsets Policy 2014*; and
- multiplied by five for resources reserves.

It is worth noting that QPWS&P cannot receive compensation *twice* for the same impact, through claiming both a financial settlement offset under the EO Policy and compensation for disturbance. Instead, the financial offset settlement calculation is in-built into determining the compensation in order to reflect the special values of resources reserves.

Compensation for direct costs

As for State forests and timber reserves, compensation is payable for any direct costs incurred by QPWS&P from P&G activities conducted on resources reserves.

Annual rental fees

P&G companies are required to pay an annual rental for areas subject to a section 34 authority under the NC Act. These rental fees are based on occupation permit fees. However, in recognition that resources reserves are a protected area, the occupation permit fee will be multiplied by 5 when calculating the annual amount owing for holding a section 34 authority under the NC Act.

Annual rental fees are to be paid 12 months in advance.

Unlike the Forestry Act, the NC Act does not allow for easements.

Timing of compensation payment

Compensation is paid in accordance with the terms of the CCA or Compensation Agreement.

Backdating of fees

QPWS&P requires P&G companies to pay annual fees in arrears if these had not been previously received prior to and/or during the construction of infrastructure on QPWS managed lands.

The method in this policy is also applied to any unpaid compensation liabilities.

Backdating annual fees will only be collected for a reasonable timeframe. Determining the reasonableness of a timeframe will depend upon the individual matters and circumstances. For example, fees may be backdated to the date an authority was issued under the Forestry Act or NC Act. However, a reasonable timeframe is unlikely to exceed 6 years from the date of negotiating with the P&G companies, in line with the *Limitations of Actions Act 1974*.

Fees for existing pipeline corridors or easements on land subject to a tenure conversion

Tenure conversion may occur either as a result of land becoming a type of QPWS managed land (e.g., freehold converted to State forest), or land transferring between QPWS managed tenures (e.g., State forest to resources reserve). In some cases, existing P&G pipelines may be located on this land prior to tenure conversion.

All infrastructure on QPWS managed land must be authorised and fees apply.

Pipeline corridors or easements located on freehold, leasehold, unallocated State land, reserve land or road converting to Forestry Act tenure or NC Act national park, conservation park or resources reserve will pay an annual rental fee which is the same annual rental fee applied under an existing agreement, or where this is not known, \$559 per year per easement or authority, in the 2021-22 financial year, which increases annually by government approved indexation. Alternatively, an up-front lump sum payment of rent, adjusted for indexation, will be considered on a case-by-case basis.

A pipeline easement located on State forest being transferred to a resources reserve, will pay an annual rental fee at the same annual rental terms as reflected in the easement or P&G compensation agreement.

Native title

Native title rights and interests are assumed to exist over QPWS managed areas, regardless of the native title claim or determination status of the area. Queensland Parks and Wildlife Service and Partnerships (QPWS&P) apply the Queensland Government's Native Title Work Procedures (NTWP) to the assessment of applications for authorities. The NTWP seek to ensure that State government dealings over land, water and natural resources may proceed validly with respect to native title rights and interests under the *Native Title Act 1993* (Cth).

Aboriginal and Torres Strait Islander Cultural Heritage

Aboriginal and Torres Strait Islander cultural heritage is protected on all land tenures in Queensland under the *Aboriginal Cultural Heritage Act 2003* (ACH Act) and the *Torres Strait Islander Cultural Heritage Act 2003*. Under the ACH Act anyone who carries out a land-use activity must take all reasonable and practicable measures to ensure that the activity does not harm Aboriginal cultural heritage.¹⁴ The duty of care applies to any activity where Aboriginal cultural heritage is located, regardless of whether or not it has been identified or recorded in a database or register. Where Aboriginal cultural heritage has been harmed offence provisions and penalties may apply under the ACH Act, or the NC Act where applicable.

Specific recognition, protection and conservation measures may be required to protect Aboriginal cultural heritage from the impacts of a proposed activity on QPWS managed land. The duty of care at the minimum requires a risk assessment to be carried out. Any risk of harm to Aboriginal cultural heritage depends on various factors including the nature of the proposed activity and its level of surface disturbance, and the nature of any past uses and previous disturbance in the area.

The cultural heritage duty of care can be met in various ways, for example under a Cultural Heritage Management Plan, a native title agreement or other agreement with the relevant Aboriginal party, and by complying with gazetted cultural heritage duty of care guidelines. The gazetted cultural heritage duty of care guidelines are available from the Department of Aboriginal and Torres Strait Islander Partnerships (DATSIP) website. Records of some but not all significant sites are kept in the Aboriginal and Torres Strait Islander Cultural Heritage Database and Register, which are each administered by DATSIP. Search request forms are available from the DATSIP website.

¹⁴ The same principles apply for Torres Strait Islander cultural heritage.

Reference materials

Information sheet: Occupation permits

Procedural Guide: Occupation permits- determining permit term and permit areas

Operational Policy: Occupation permits

Authorities

Forestry Act 1959

Nature Conservation Act 1992

Resource Acts – Petroleum and Gas (Production and Safety) Act 2004, Petroleum Act 1923, Mineral and Energy Resources (Common Provisions) Act 2014, Geothermal Energy Act 2010 and Greenhouse Gas Storage Act 2009

Limitations of Actions Act 1974

Further Information

Further information about compensation for P&G activities on QPWS lands can be obtained by contacting Major Projects and Estate Management, Permissions Management.

Human Rights Act 2019 compatibility

The department is committed to respecting, protecting and promoting human rights. Under the [Human Rights Act 2019](#), the department has an obligation to act and make decisions in a way that is compatible with human rights and, when making a decision, to give proper consideration to human rights. When acting or making a decision under this operational policy, officers must comply with that obligation (refer to [Comply with Human Rights Act](#)).

Disclaimer

While this document has been prepared with care, it contains general information and does not profess to offer legal, professional or commercial advice. The Queensland Government accepts no liability for any external decisions or actions taken on the basis of this document. Persons external to the Department of Environment and Science should satisfy themselves independently and by consulting their own professional advisors before embarking on any proposed course of action.

Approved By

Jamie Merrick

Signature

17/9/2018

Date

Director-General
Department of Environment and Science

Enquiries:
Major Projects and Estate Management
Email: QPWS.Estate@des.qld.gov.au