

'NEGOTIATIONS'

Factsheet series about Arrow's expansion

This Factsheets series looks at Arrow's expansion from the point of view of Landholders and are based on recent local experience. This can differ markedly from what industry and government present. Factsheets draw on many sources and are comprehensive, but inevitably wordy

Factsheet 1 - *Arrow's Warra-Brigalow-Chinchilla Expansion* lists the effects of gas-wells, pipelines and infrastructure on farms and environment. Factsheet 2 *'What to do before they come calling'* shows what to prepare for. This one looks at your opponents. It covers Chapters 5 of *'The Gas Guide – Land Access Agreement'*, 6 *'Make good'*, and 9 *'Rehabilitation'* and shows pitfalls.

Know your opponents - background to the Gas Guide

Who are you dealing with?

- The main opponent is the Queensland Government. It has expressed a strong desire to foster a Coal Seam Gas industry in Queensland, even at the expense of food producing industries.
[For instance, the mining and oil industries have an absolute right to any water, be it surface or underground, over Agricultural and other users.]
- It is guided, amongst others, by the Centre for Coal Seam Gas at The University of Queensland. The Centre is funded by the Government and the CSG industry. Its *'Strategic Advisory Board'*¹ is made up by senior executives from the University, the Qld Department of Natural Resources, Mining and Energy (DNRME) and from the industry: Arrow Energy, Origin Energy, Santos, and the Australian Petroleum Production & Exploration Association.
[APPEA's goal is to "Protect the Industry's access to resources, offshore and onshore"².]
- The Government has set up the Gas Fields Commission and funds it at a cost of \$2.5 million per year. Its aim is to smooth the relationships between the CSG industry and Landholders.
- That Commission has published The Gas Guide for the purpose of facilitating contracts between Landholders and gas companies, in this case Arrow Energy.
- Arrow is owned by Shell. However, please note that the contracts are between Landholders and Arrow Energy, not Shell, not the government, not the Commission, nor anyone else.
- The contracts are attached to the property title and go with the property if it is inherited or sold.
- Arrow's negotiators, called 'land access liaison officers', may pick bits of the Guide they like.
- Landholders are free to accept or dismiss all or part of the Guide.

Chapter 5 of the Guide – 'Land Access Agreement'

Overall comment

The Guide appears to be written to encourage Landholders to fall into line with the Government's desire for a CSG industry. Its main aim seems to be to ensure that there will be a long-lasting 'Conduct and Compensation Agreement' between the companies and individual Landholders with minimal obstruction, delay or cost to the companies.

The Guide uses the Land Court almost as a final threat, implying that this Court will force Landholders into agreeing. It fails to mention that some recent Land Courts decisions have gone against Oil and Mining Companies and in favour of Landholders and other parties.

It also fails to mention that Land Court Decisions can be appealed in the Land Appeal Court of Queensland.

Property map

The guide: *'Any plans for expansion or improvement the Landholder may have under way.'*

Practice: Many Landholders have long term development plans. Timing of when these can be implemented depends on income, weather and markets, while plans change constantly.

Once a 'plan' has been included in a contract as a binding long-term commitment, any change that is not "under way" will need to be negotiated. These can be refused or made difficult to implement.

¹ <https://ccsg.centre.uq.edu.au/advisory-bodies>

² <https://www.appea.com.au/about-appea/>

The Guide fails to mention as ‘compensatable’ or for inclusion in the property map any effects on: lay-out of and investments in soil and water conservation measures such as levelling, contour banks and waterways; current quality of well and surface water; current air quality; current noise levels; current disturbance levels e.g. traffic, night-light and odour.

Business plan

The Guide: *“This information can assist in decreasing the chance of a dispute in the years after signing ...”*

Practice: Business plans are projections, not commitments. Contracts are for many years while in five years much can happen on farms. Including or attaching projections as firm commitments in a long-term binding agreement can lead to these being used later against the Landholder.

Bio security

The guide: *“The landholder is ultimately accountable for any certifications relating to their property or produce.”*

Practice: The areas of activities of the company are fenced off with a ‘No Trespass’ sign. The Landholder has no control over vehicle access or actions in that area yet remains accountable for any breach of the Biosecurity plan.

Chemical use (page 4)

The guide: *“The resource company must provide Safety data sheets for any chemicals they plan to use ...”*

Practice: CSG companies will not provide details of chemicals they use during future fracking as they claim that information to be ‘Commercial in Confidence’. Landholders thus cannot exercise their responsibility to ensure that they understand conflicts with the Chemical Accreditations Act which they need to abide by.

Chapter 6 of the Guide – ‘Make Good’ for Bores

The guide: describes in detail the process to assess if a bore is eligible for possible compensation.

Comment: The assessment process is very complex and can require up to 14 steps. Each step can require large amounts of detailed information, some of which is held by the companies. It can involve three or more Government Departments. It can thus take years before it is even established that a bore has been affected by gas-company’s activities. It can then be further complicated and delayed by the company claiming that the decline of the bore is due to other factors.

The guide quotes the Water Act *“that the resource company must “reimburse the bore owner for any accounting, hydrogeological, legal or valuations costs that the bore owner reasonably incurs “.*

Comment: The Landholder is initially responsible for the cost incurred.

The Guide: *“It is best practice that you discuss these costs with the resource company to agree on ‘reasonable cost’ upfront and get written confirmation of what they will reimburse”.*

Comment: It then provides advice of how to go about engaging other professionals and how they should do their jobs – advice which the Guide is not qualified to provide.

Agreeing upfront to ‘reasonable cost’ limits the amount and quality of reimbursable advice from experts. The Landholder will have to pay for any un-expected but needed additional advice.

Chapter 9 of the Guide – ‘Rehabilitation and handback’

Any gas field will run out of gas in 15 – 30 years. Chapter 9 describes the process of rehabilitation. However, its economic life may end much earlier, depending on the future cost of production and the future market price of gas. Gas prices are expected to remain low till the late 2020’s.

As said above, the contracts are between Landholders and Arrow Energy, not its owner - Shell.

- Shell has a history of selling its low-performing assets to minor companies or individuals.
- Should Arrow be sold, the contracts are sold with it to those other parties.
- In the USA these are sometimes referred to as ‘Evaporating Companies’- after the last dollar has been extracted only the liabilities are left - no money for rehabilitation and no valid address.
- With Coal Seam Gas such remaining problems will be left on Landholders’ properties.