LAND ACCESS REVIEW SUBMISSION
19 December 2011

At the heart of BSA's concern about the land access framework is the <u>imbalance of power</u>. BSA believes that the current framework does not fully recognise or acknowledge that CSG exploration and production infrastructure and activities are not voluntary for landholders. The framework needs precursor to recognise that there is an imbalance of power.

BSA's response is guided by Principles relating to land access as outlined in "Not at any cost: A Blueprint for Sustainable CSG Operations." (March 2011).

- More certainty and transparency is required. We have reports of poor detail of activities being given by the companies which makes it difficult for Landholders to understand what they are facing. The companies should also be required to give as much insight into their overall plans for each property as soon as they are reasonably available with a good general description of what might be involved for the Landholder (i.e. how long the activities will go, the full range of activities that might be expected etc). The companies are the ones that know that as Landholders have no prior experience of it.
- Legal representation at all times through the negotiation process should be the option of the Landholder and in particular at the conference called under section 537A..There can be no justification for making legal representation the option of the CSG companies (see section 734 D (3)) in a conference under section 537A . The imbalance of bargaining power is so great and the consequences of poor outcomes so long-lasting for Landholders. It is inequitable that the CSG companies have the power to deny Landholders legal representation.
- Fair compensation must be offered to any and all affected landholders. CSG companies must be able to pay full compensation and have the capacity to fund make-good arrangements. We are very worried for Government to make sure that companies are financially capable of honouring Conduct and Compensation Agreements or compensating for breaches, such as environmental damage. The industry will last a long time but the companies might not especially if they use $2 subsidiaries.
- Landholders also want protection against unforeseen on-farm impacts. CSG Companies must carry insurance or have some other surety to be able to meet any such contingencies in future. We also demand public disclosure of bonds and insurance policies. Any insurance policies must not have "outs" that make them useless or mean that the insurance company can refuse to pay – eg. breaching an Environmental Authority. Landholders should be able to access government bonds etc to ensure the companies have a capacity to pay for damage they cause to individual properties.
- Recognition of and a commitment by CSG companies to respect the landholder's tenure rights associated with the land. Whilst petroleum and gas tenures in Queensland give CSG companies the right to extract CSG, current landholders enjoy the right to utilise the surface resources of their land. CSG companies must avoid unreasonably interfering with a landholder carrying out their lawful business. The temporary and "once only" activity of gas extraction must be done in a sensitive way , especially given the crown – the model citizen- is the owner of the resource and grants an exceptional monopoly privilege to a third party to extract it . Extraction must be done in a way that preserves the ability of the landholder to continue after the extraction is done and leave the Landholder still able to be viable as the activity occurs.

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The Basin Sustainability Alliance (BSA) Committee has identified the following issues in response to the land Access Review.

Notification of EISs / EMPS / changes to conditioning / CSG activities

- Landholders whose property may be potentially impacted by an EIS or EMP (even if that impact may or may not occur, or may occur in many years time) should be notified directly via personal letter rather than relying on landholders to "find out" via a public notice process.
- Naming of fields/areas in public notices and letters to landholders should be identified in a way that the landholder clearly recognises the location
- Landholders should be notified-directly about any changes / activity on their region.
- Notification of neighbours – landholders on neighbouring properties to CSG companies should be notified regarding CSG activities (just as neighbours to a development application such as a renovation of a business premises would need to be notified).

Holistic Planning

- Landholders need better knowledge of what's planned and what's coming.
- There should be a requirement for CSG to provide indicative area wide plans – holistic management plans
- More Transparency for CSG future planning
- Operational plans should be provided - Life of project plans – operational plan which includes details of land impacts
- Govt/companies should provide resources for landholders for advice such as independent property management planning – post notification / prior to agreement to ensure better property planning.
- Staged development plan showing maximum development / scale – timing

Access Arrangements

- Disclosure of agreement details be at landholder's discretion.
- There should be a clearly identified invoicing process - Onus should not necessarily but on the landholder to generate an invoice. (at the landholder's discretion)

Enforcement

- Landholders need to have some way better confidence in ensuring coal seam gas companies meet their obligations

Review of Agreements

- Review of all existing access agreements (if required by landholder). Framework should require all companies to agree to review existing agreements – CSG companies must invite landholders to review if they wish. (BSA recognises that some CSG companies are reportedly doing this voluntarily. However, there needs to be a enforceable consistent approach. QGC has sent letter to all landholder inviting them to review – but we know of landholders who have not received an invitation to do so.
- Right to include review periods in agreements
- Avoid blanket formulas /formulas linked to number of wells /well production
- Prefer framework to encourage move away from a per well compensation
- Ensure framework disallows Compensation that is tied to well production (the infrastructure and activity impacts landholder regardless of well output)
- Keeping the framework in a way that landholders can determine individual needs / expectations when it comes to right of way (for on farm activities like spraying etc).
- Avoiding any blanket equations for compensation – recognising that each landholders circumstance is different.

General Issues

- Don't want to see section P&G Act 804 undermined. Must remember landholder's right to demand no Unreasonable interference
- Section 804 of the P&G Act should be given equal coverage/weighting in practice as 805 – in terms of education and police enforcement
- Need better review process. Better mediation process. Better funded. Better education.
- Strongly support recommendation 18 of interim senate report. Must Give priority to the maintenance of agricultural production with minimal disruption in deciding any dispute
- Also support recommendation 21 of interim senate report – which highlights the involuntary nature of landholders dealings with CSG companies
- Any framework must show that scientific research proceeds development and must demonstrate a capacity to mitigate risk

PLEASE REFER TO THE FOLLOWING LANDHOLDER CASE STUDY.

Case Study of Landholder

The following response to the Land Access Review Committee has been completed by BSA Committee Member Katie Lloyd. This is her personal view, which reiterates many of the BSA statements, and should help put a human face on the BSA submission.

Has implementation of the land access framework improved relations between landholders and resource companies?

As we have been dealing with companies over the past 10 years I don't think I can say this framework has had an impact on our relationship with CSG companies. However we believe it is essential that landholders have the information available to them to assist them with the process they are set to endure. We certainly would have liked to have had information such as this available to us when we were first approached by companies.

We believe companies have been put on notice when it comes down to land access however whether it can be credited to this framework, or simply the negative public perception this industry has, is anyone's guess. It is reassuring to finally see something in black and white that highlights the expectations and responsibilities of each party during such a complex negotiating process however at the end of the day I believe companies and individual landholders will do whatever they believe necessary to protect their interest.

I have friends who have recently had contact from a company for the first time and they have certainly stated the representatives have been reasonable, presented them with all of the information suggested and have acted accordingly which is reassuring. However, I have also heard of another instance where representatives from that same company were still using the bully boy tactics they are renowned for and being arrogant. Different circumstances will no doubt create different attitudes.

Are you clear about your rights and obligations in relation to land access for resource activities on private land?

I feel a lot more informed now than even two years ago, let alone 10. I think there is a huge onus on landholders to be informed, and there is so much they need to be aware of, yet I still believe landholders' do their homework; and I can understand why. There is so much information to get your head around; it is not a simple process.

Companies will only supply the basic information and this often leads to disappointing outcomes and a loss of trust further down the track.

When it comes to landholders' rights and obligations, I still don't believe they count for much. We can't restrict the number of wells that go on our property; we don't necessarily get the right to implement no-go zones; restrict activity to a minimum; restrict who accesses the property. To implement any of these requests the onus rests with the landholder to negotiate and effectively justify the point; and this process can be extensive and exhausting.

Have you been involved in the negotiation of a Conduct and Compensation Agreement? Did you have concerns about the process?

Our family has been through two of these processes with two separate companies to date. One was unsuccessful and exhausted in 2006, and another agreement was reluctantly reached with a second company in 2008.

What is so frustrating about this process is that we go in blindfolded. We are dealing with companies who have very clear objectives of what they want to achieve yet they divulge little, extract as much information from you as they want, which ultimately gets the best outcome for them.
To have a company ask for your business plans when you know nothing about what they want to do on your land, we believe, puts the landholder on the back foot. Does the landholder risk the potential for more wells or infrastructure by being so upfront? I believe companies must put their plans upfront and work with the landholder on exact location, number, roads, access etc.

At the time of signing off on our agreement, recalling it was back in 2008 prior to there being so much focus on this industry, we felt very much pressured into signing. Threats of land court were being thrown around and we were being accused of "dragging the chain" as such.

What's more, we unfortunately did not have a review clause in our agreement which we now believe should be mandatory. Signing off on such development on a piece of paper is vastly different to seeing that agreement come to life. We believe we were very much lured into our agreement under false pretences. We were told things would be vastly different to how they operate now a couple of years on. We were expecting activity to decrease rapidly on our property however only now have been informed that the current activity will remain for the life of the project.

In light of this perhaps land access representatives should not be solely responsible for the handling of conduct and compensation agreements. Perhaps field superintendents need to at some stage of the process need to be included to outline exactly what the landholder can expect down the track in terms of access and general activity. I question whether land access representatives, or their managers for that fact, are aware of the ground work and can therefore provide the landowner with an honest impression.

The biggest problem landholders' face down the track, once they sign an agreement, is attempting to prove any potential impact or unreasonable interference to the company and getting them to act in good faith, or actually take those issues seriously.

Was the entry notification process satisfactory? If not how could this be improved?

I firmly believe that all landholders should be provided with Environmental Authorities, Social Management Plans and Environmental Management Plans well in advance of the negotiation/entry period to ensure they can gain an understanding of the future development. The onus should be on the companies to provide this information, not the landowner.

We have certainly had periods where we've requested companies not to access our land because of wet weather events and this has been accommodated. Companies must attempt to understand the needs of landholders' business operations and realise that adequate entry notification is essential to allow for any necessary farm management practices. I believe landholders should be given right of way so as to avoid any unreasonable interference to their operations.

As a landowner surrounded by company held land which comprises the development of significant CSG infrastructure, I would have appreciated notification from the companies prior to it starting outlining what was going on and what we could expect, if anything. We are in a situation where we have eight screw compressors going in at a location, on company owned land, that is under 3km from our house, and only 1km from our neighbours. I expressed to a company representative that it would be appreciated if they considered meeting with nearby landowners to explain what was going on, how noise impacts would be mitigated and how any compliance issues would be dealt with. The company has not made an effort to address this issue with us, however they perhaps may have dealt with those living in closer proximity. We came across this development in an EA Amendment advertised in a newspaper. Why isn't the company obliged to notify neighbours directly?. Again we are required by law to notify our immediate neighbours of any material change to our operation and this is done via an advertisement and directly by letter.

Have you been involved in a dispute resolution process associated with private land access? Were you satisfied with the result?

We have recently had situations with one company about the way in which they operate on our land following the realisation they were making water releases that we weren't aware of. While we have been working directly with the company, and officials from the CSG Enforcement Unit, on the issue I was very disappointed about the time in which it took to get answers and clarification on what happened and why.

I believe this particular issue highlighted a problem with the lack of detail featured in the particular Environmental Authority so while the company had done the wrong thing to us as landholders they were able to use the EA as their first line of defence because it had authorised the activity.

It is cases like this that lead me to believe the companies will always find a "get out of jail card" and that concerns me greatly. Conditions must be definitive, protect the environment, and the landholders' interests.

Have you had experience with the compliance and enforcement provisions or processes of the land access laws? Any suggestions for improvement?

What has concerned me in the past is the fact that the CSG industry has appeared to self regulate and dictate to Government how their enforcement officers can operate. When we noticed a serious leaking CSG well on our property, we were told by a Government CSG well compliance officer that they had tried to access our property to inspect wells however were informed by the relevant CSG company that access was restricted citing there were problems with the landholder relationship. Why should a company reserve the right to refuse a regulator access? Government regulators can access our property at their behest to inspect our registered weighbridge without warning so, why should these companies be afforded different treatment?

I realise there are more risks and regulations with CSG infrastructure however surely regulators can be trained and inducted by all companies to conduct inspection and compliance reviews without warning.

As a landowner, I would welcome the regulator to conduct random inspections of infrastructure to ensure the company is doing the right thing. I would however like forewarning of their visit because of our personal security and biosecurity requirements.

How could the land access code be improved?

Please refer to suggestions outline within this response**.**

Any general comments about the framework?
Refer to pages 1 – 3 of BSA submission