

No Go Zones

Significant improvements under the Petroleum (Onshore) Act 1991 (NSW)

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11 July 2019

Access Arrangements

- The holder of a petroleum title may not carry out prospecting or mining operations except in accordance with an access arrangement agreed or determined (s69C & s69X)
- No access without an access arrangement whether it be exploration or production
- Beware, an access arrangement that allows damage to significant improvements or access through no go zones is irrevocable s72(2)
- The petroleum title holder pays landholder's legal costs in LEC disputes about orchards, gardens, vineyards and significant improvements

Petroleum (Onshore) Act 1991 (NSW)

Part 5 Restrictions on titles

Significant improvements

s72 Restrictions on rights of holders of titles over other land

(1) *The holder of a petroleum title must not carry on any prospecting or mining operations or erect any works on the surface of any land:*

(a) *on which, or within **200 metres** of which, is situated a **dwelling-house** that is a principal place of residence of the person occupying it, or*

(b) *on which, or within **50 metres** of which, is situated any **garden, vineyard or orchard**, or*

(c) *on which is situated any **significant improvement**, other than an improvement constructed or used for mining or prospecting operations,*

except with the written consent of the owner of the dwelling-house, garden, vineyard, orchard or improvement (and, in the case of the dwelling-house, the written consent of its occupant).

(2) *A consent under this section is **irrevocable**.*

(3) *Repealed*

(4) *If a dispute arises as to whether or not this section applies in a particular case, any party to the dispute may apply to the Land and Environment Court for a determination of the matter.*

(5) *The **holder of the petroleum title is to pay the costs** of the owner of the dwelling house, garden, vineyard or orchard or improvement (or occupant of the dwelling house) in those proceedings in the LEC.*

Petroleum (Onshore) Act 1991 (NSW)

Part 5 Restrictions on titles

Significant improvements s72

72(6) In this section, significant improvement on land, in relation to a petroleum title or an access arrangement, means a work or structure that:

- (a) is a substantial and valuable improvement to the land; and*
 - (b) is reasonably necessary for the operation of the landholder's lawful business or use of the land; and*
 - (c) is fit for purpose (immediately or with minimal repair); and*
 - (d) cannot co-exist with the exercise of rights under the petroleum title or the access arrangement without hindrance to the full and unencumbered operation or functionality of the work or structure; and*
 - (e) cannot reasonably be relocated or substituted without material detriment to the landholder,*
- and includes any work or structure prescribed in the regulations for the purposes of this definition, but does not include any work or structure excluded from the definition by the regulations.*

Petroleum (Onshore) Act 1991 (NSW)

Part 5 Restrictions on titles

Cultivated Land (not pasture grasses)

- The holder a production lease may not carry out mining operations on **cultivated land** or erect any works on the surface of any land under cultivation except with the consent of the landholder (s71(1))
- The Minister may however define the surface of any land under cultivation upon which mining operations may take place, and may specify the operations that take place (s71(2))
- Before such operations take place an assessment is to be made of the amount of **compensation** to be paid for the loss of or damage to any crop on the land (s71(3))
- If the amount of compensation cannot be agreed between the parties either may make application to the LEC for a determination of that compensation (s71(2B))
- Cultivation does not include the growth and spread of pasture grasses unless the Minister considers it to be so. Where there is a dispute as to whether or not the land is cultivated the Minister's decision is final (s71(4))
- Ordinary meaning requires sowing and reaping of some kind.

Cases

Martin v Hume Coal Pty Ltd [2016] LEC 51

- Cattle laneways
- Fences
- Irrigation works
- Equestrian eventing course
- Improved pastures and crops
- Shade trees and wind breaks
- Dams
- Roads and driveways
- Gardens

Ulan Coal Mines Ltd v Minister for Mineral Resources [2007] NSWSC 1299

- Section 62(1)(c) Mining Act - (1) improvement which enhanced the land's state; (2) substantial; and (3) valuable
- Dams [39][87] – well constructed holds water
- Fences – stock proof [44][101]
- Contour banks [131] -
- Access road [48][49] – severely eroded and not been maintained only suitable for 4wd
- Drainage channel [57] – diverts water

Not improvements

- Native grasses with no legumes; cleared pasture land with no evidence of improvement
- Neglected contour bank
- Track with no maintenance or formation work

Kayuga Coal Pty Ltd v John Earl Ducey & 4 Ors [2000] NSWCA 54

- “Value” not of considerable or special or especially valuable
- Fences held to be significant improvements

BFB Pty Ltd v Sandfire Resources NL [2019] NSWLEC 1235

- Access sought to cropped paddocks after harvest and before sowing
- Commissioner Dixon held [81] *“I do not find that healthy soil on these paddocks which on the evidence is transient and seasonal is sufficient to bring each of the cropped paddocks at issue .. Within the meaning of a “work” ... there is nothing on the evidence before me in terms of the nature and extent of the labour and acts done to or on the lands comprising the cropped paddocks ... to make each of them a work ... No reliable records which demonstrate activity on the access lands over time as to how often these particular paddocks were sprayed, and or deep ripped (if at all) or the amounts of lime, gypsum or organic (pig manure) or other chemicals or nutrients”*

Carter v Minister for Resources [2019] NSWLEC 83

- Open cut mining lease granted held to be invalid and of no effect
- Grant in breach of statutory provisions – agricultural land objection made in the granting of the lease. Mining lease invalid.
- Landholder's Agricultural Land objection overlooked and not determined before mining lease granted
- Section 63(4) Mining Act provides "A mining lease may not be granted under this section otherwise than in accordance with Part 2 of Schedule 1"
- Part 2 Schedule 1 clause 22(1) provides a landholder may object to the granting of a mining lease on the ground that the land is agricultural land. Clause 22(5) the Secretary is to determine the objection in accordance with Schedule 2.
- Part 2 Schedule 1 clause 23(1) provides "If land is determined to be agricultural land ... the lease must not be granted.
- Schedule 2: Two crops in 10 years, shade shelter windbreak trees, orchards vineyards, pastures of high production, grass seed, pasture legume seed, hay or silage

Thank you

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•This presentation represents a brief summary of the law as at July 2019. It should not be relied upon as definitive, complete or conclusive as the law must be applied to the facts.