Devine

Agribusiness

LAND ACCESS ADVISORS & COMPENSATION VALUERS

Background

Expansion of the resources sector and the associated encroachment of petroleum and mining activity onto agricultural land poses significant challenges for both industries.

New legislative controls and codes of practice have recently been implemented to regulate the way resource companies access agricultural land, however significant uncertainty still exists for landholders in managing conditions for access, the assessment of reasonable compensation, and dealing with the associated impacts from exploration and development activities.

Our experience with the resource sector

Devine Agribusiness has been providing compensation assessment, easement and acquisition valuation services and specialised consulting services within the resources sector for over 10 years. Our team has significant experience in this area and is well informed of industry practices, relevant precedent and the legislative framework.

Devine Agribusiness recognises that in reaching agreements with resource companies there are a number of important considerations for your business and property that may be overlooked if the process is driven solely by the resource company or by lawyers. These include the practical implications of actually running your business during the period of the activity, and assessing the adequacy of compensation as against the company's statutory obligations. Appropriate legal documentation of agreements is also vital, and where necessary we can identify the most appropriate legal advisers for your situation, or if preferred we can work with your existing legal advisers.

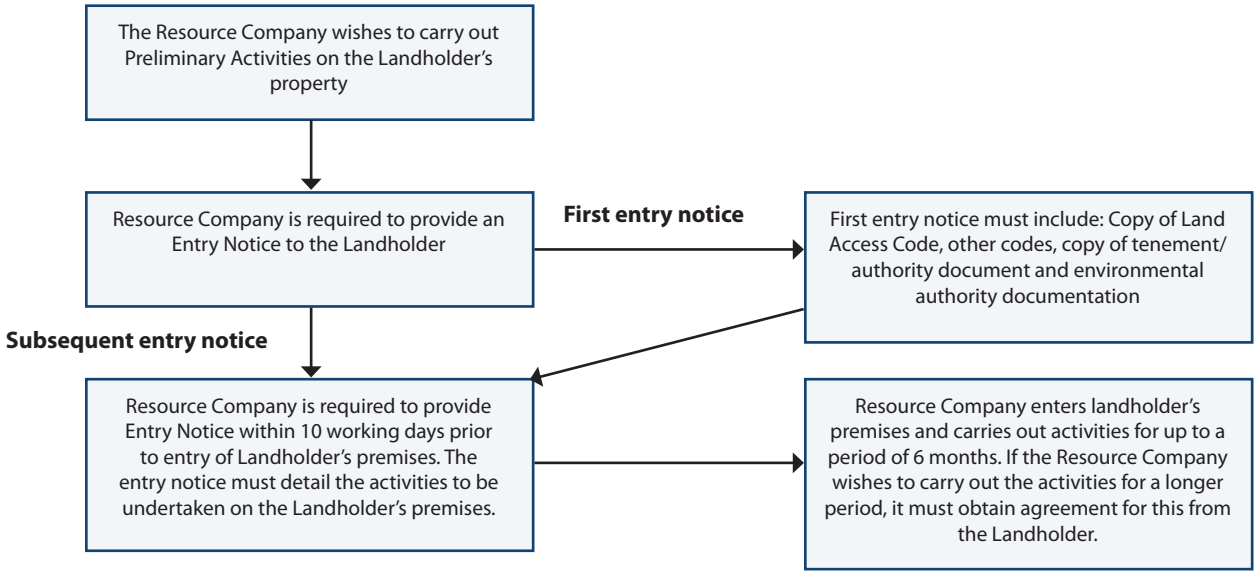
Preliminary Activities

Your first contact with a resource company wishing to enter your land is likely to come in the form of an Entry Notice for Preliminary Activities.

Preliminary Activities are those activities that will have no or only a minor impact on the landholder's business or land use activities. Some examples of Preliminary Activities taken from the Mineral Resources Act 1989 are given below:

- Driving along an existing road or track in the area
- Taking soil or water samples
- Geophysical surveying not involving site preparation
- Aerial, electrical or environmental surveying

The following flow chart outlines the Entry Notice process for a resource company wishing to seek access to a landholder's property to carry out Preliminary Activities.



Advanced Activities

Resource companies may wish to gain access to your land to carry out Advanced Activities. These activities cause much more disturbance to your property and business. Some examples of Advanced Activities taken from the Mineral Resources Act 1989 are given below:

- Levelling of drilling pads and digging sumps
- Clear-felling vegetation
- Constructing an exploration camp, concrete pad, sewage or water treatment facility or fuel dump
- Carrying out a seismic survey using explosives
- Constructing a track or access road

Resource companies are required to negotiate a Conduct and Compensation Agreement (CCA) or a Deferral Agreement (DA) with you prior to carrying out Advanced Activities on your land unless you agree to waive this requirement. A Deferral Agreement simply delays the negotiations involved in forming a CCA until after the resource company has accessed your property.

In negotiating a CCA there are statutory processes to follow, and if an agreement cannot be reached between the two parties, either party can seek Alternative Dispute Resolution (ADR). If the ADR process fails the case may be referred to the Land Court for settlement.

In most circumstances we suggest that the landholder chooses the option of negotiating a CCA from the outset rather than agreeing to defer the negotiations or waive them altogether. Resource companies are often under pressure to start their activities as quickly as possible which means that landholders are in the strongest negotiating position prior to them getting access. This is also the best time to influence their proposed operations so as to minimise the disturbance to your operations and achieve a more favourable compensation settlement.

We suggest that you do not agree to waive the requirement for the resource company to negotiate a CCA since you would be in a much weaker negotiating position and having your case referred to the Land Court can be time consuming, very expensive and there is no guarantee of a favourable outcome.

If you receive notification of a resource company's intention to carry out Advanced Activities on your land we advise that you seek advice as to how to proceed.

Our services

Devine Agribusiness has been providing advice and assistance to landholders in this area for over 10 years. We specialise in the fields of valuation, rural production consultancy and land access services. As a result of our extensive experience we have developed a good understanding of the legal framework surrounding resource activities as well as a good awareness of the issues affecting landholders and how to achieve the most favourable outcome for them.

Devine Agribusiness is able to offer the following services to landholder's wishing to seek advice and assistance on dealing with resource companies wishing to carry out activities on their land:

- We can provide advice on your rights and assist you in choosing the best strategy for dealing with resource companies
- We can act as land valuers and offer compensation assessment services
- We can advise and assist you in negotiations with resource companies
- We have access to a panel of legal experts that we can engage if required
- We can work with your legal representative if you prefer