



Tenure Matters



A column by Sue Slater, Senior Advisor Petroleum, RLMS

Issue No. 17

If you were a regular reader of Tenure Matters, I apologise for the long hiatus since the last issue. I have been very busy on a couple of projects.

I have not forgotten that Part 2 of the discussion on linear infrastructure is outstanding, but this month I would like to discuss what I consider to be the biggest tenure-related issue facing explorers in Queensland at the moment. That issue is bridging the gap between appraisal and early development. Uncertainty in approval timeframes for the petroleum legislation compound difficulties with scheduling. These impacts are felt most keenly in the space between exploration and production, which might reasonably expect to be covered at least in part by a Potential Commercial Area declaration and the initial stages of a Petroleum Lease.

Increased environmental application commitments (notwithstanding the *Environmental Protection (Greentape Reduction) and Other Legislation Amendment Act 2012*) have increased the complexity in moving through an appraisal process from exploration. Issues around production testing, hydraulic fracturing, dam construction, and water management for example all contribute to the difficulty in getting an Environmental Authority approved for either a higher tenure application or simply to undertake the appraisal activities required to gain an appropriate understanding of the resource or reserve before the petroleum lease application is made.

The problems encompass aspects related to both the requirements of the *Petroleum & Gas (Production & Safety) Act 2004*, and to the *Environmental Protection Act 1994*, including:

- moving from an Authority to Prospect to a Petroleum Lease, and meeting the necessary reserve criteria;
- ability to have retention style tenure to help bridge the gap (Potential Commercial Area);
- meeting the criteria for the environmental authority application; and
- meeting a Production Commencement Date of two years from the grant of a PL; or

- having a relevant arrangement such as a Gas Sales Agreement in place to dictate a different Production Commencement Date.

Despite the introduction of a Potential Commercial Area in the 2004 Act, the petroleum sector in Queensland still lacks a functional and realistic retention framework. When I last wrote about Potential Commercial Areas in August last year, some small progress had been made with 12 declarations from 6 individual ATPs. In April 2014 basically half of the outstanding PCA applications were withdrawn, reducing the total from 154. The withdrawal of these applications made the numbers look healthier than previously; and currently there are 36 undecided applications (across 13 ATPs) and 37 declarations (across 9 ATPs) for a total of 73 PCAs. However, some of the undecided applications date back to 2007 and there still appears to be an enormous reluctance to make declarations. As well as our old friend 'land-banking', there appears to be additional concerns around potential compliance issues and the timing of applications within the life cycle of an ATP.

There appears to be a belief by the regulator that the Act does not allow adequately for non-compliance action against the evaluation program. However, section 91 of the Act clearly states that the evaluation program of the PCA, once the declaration is made, is taken to be an additional part of the existing work program for the ATP. Furthermore, section 53 requires that any proposed later work program must include the work necessary to implement the evaluation program for the period of that program. It would therefore appear that non-compliance against a work program could adequately cover any potential non-compliance against an evaluation program.

With respect to the timing of applications (in relation to the total 12 year life-cycle of an ATP), the Act does not specify any timing restrictions on the application for a PCA, other than it must obviously be before the tenure expires! The department would like to think that applications for a PCA are not made until the final 4 year work program period. And indeed, when you have a large ATP there is no need to make the application any earlier. However, there does not appear to be an appreciation that the original size of the ATP plays an important role in the timing of a PCA application, particularly for unconventional plays which typically require a reasonable areal extent in order to build a commercial project. An ATP that starts out 6 blocks in size will be 2 blocks by the last 4 year work program period, at which point the area available for a PCA application will not likely support an economic development on its own. This issue has been, perhaps, partially alleviated by the insertion of section 107B which allows for a special amendment of relinquishment requirements of an ATP, therefore allowing a PCA application to be made later when the relinquishment has been delayed, but as always, a timely decision from the regulator is the key to the effectiveness of the amendment.

Amendments to Environmental Authorities (EA) may be necessary to undertake adequate appraisal to allow for higher tenure applications. For example, hydraulic fracturing is allowed under the standard conditions for petroleum exploration (EM928) only if the well is located more than 2 km laterally from a landowner bore and the water source is more than 200m vertically from the proposed stimulation zone. If this requirement cannot be met, then a variation to the EA, or a site specific application, will be required. The standard conditions will also not allow any dam other than a low hazard dam to be built. Companies often need to deal with the dilemma of being unable to properly size the required dam to hold produced water, because they have not been able to adequately test the rate and quality of the produced water, in a classic Catch 22 scenario. This

situation results in some dams being over-sized as a precaution, involving higher costs, more disturbance than may be necessary and more compliance and monitoring obligations than might otherwise have been the case.

A site specific EA application takes a minimum of around 18 months to 2 years to complete, in the absence of existing baseline environmental data. The approval timeframe alone, without allowing for any information requests, comes in at a staggering 85 business days (4-5 months). At least however, there is a legislative timeframe under the *Environmental Protection Act 1994*. Decision-making timeframes are sadly lacking in the petroleum legislation.

The approval timeframe for a site specific EA is shown diagrammatically below in Figure 1 and the complexity of the application itself is shown diagrammatically in Figure 2.

The current legislation imposes a condition on the applicant of a Petroleum Lease (under Section 121(2)) that commercial petroleum production in the area of the lease is, or is likely, within 2 years of grant or that the applicant has entered into a contract, coordination arrangement or other arrangement (**relevant arrangement**) to supply the petroleum produced under the lease. This obligation is reflected in the instrument of grant, and is a key compliance issue for DNRM. The Act further requires that the relevant arrangement is an 'arms-length' commercial transaction that is likely to result in supply being carried out (section 122). The Minister may refuse the application if he reasonably believes that the relevant arrangement is not at 'arms-length' or that supply is not likely to happen.

Petroleum production is defined in section 15 as recovering the petroleum to ground level from a natural underground reservoir. There is no definition of commercial production, and the term is used only in Section 121(2)(a). Therefore the requirement for commercial production has been explicitly applied only to those Petroleum Leases expected to produce within 2 years of the grant date. It is implicit in the relevant arrangements that production would be commercial.

Depending on the location of the PL, the infrastructure requirements of the particular project and the economic environment prevailing at the time, the provision of the required infrastructure can take up to all of that initial period. There have been many developments both legislatively and in the public arena since the CSG-LNG projects emerged, that mean it has become more difficult to access land, the process requires a longer timeframe and there are many more environmental constraints and requirements. For example, to build a dam to hold CSG water has become a lengthy application and approval process that has taken up to 2 years in some cases. This means that getting the infrastructure in place to support production has become increasingly complex and time consuming. Since the construction of that infrastructure cannot commence until the PL has been granted, the ability to meet a 2 year production start date is highly compromised simply by the other approval processes required.

The ability to change the production commencement day was inserted by the *Mines Legislation (Streamlining) Amendment Act 2012* (Act No. 20 of 2012). This change is reflected in Section 175AA. The section was inserted to meet specific industry requirements, and is not particularly flexible. It was subsequently amended (quite significantly) by the *Land and Other Legislation Amendment Act 2014* (Act No. 29 of 2014). The change was required to be requested 12 months prior to the day the

production was due to start. Regulation 15 (inserted by 2014 SL No. 117) allowed that time frame to be shortened to 3 months (due to particular circumstances).

The wording of Section 175AA is somewhat ambiguous, and when reference is made to the Explanatory Notes it becomes apparent that at least the original intent of the change was that only petroleum lease holders who already had a relevant arrangement from the grant of the lease could apply to change the production start date. It therefore was not intended to apply to PLs granted with respect to the standard 2 year production commencement date.

So despite some changes to legislation, we are still left with a difficult and uncertain process to move from exploration through appraisal to development, maintaining tenure security while all the necessary information is gathered, compiled and assessed by the relevant departments in a lengthy process that has an indeterminate timeframe. Companies need more legislative certainty, better provisions for retention of tenure, and perhaps a staged approach to the approvals that could better deal with the vagaries of our industry. Unless the gap between early exploration and production can be better addressed and managed, many potential projects will not get off the ground.

Figure 1

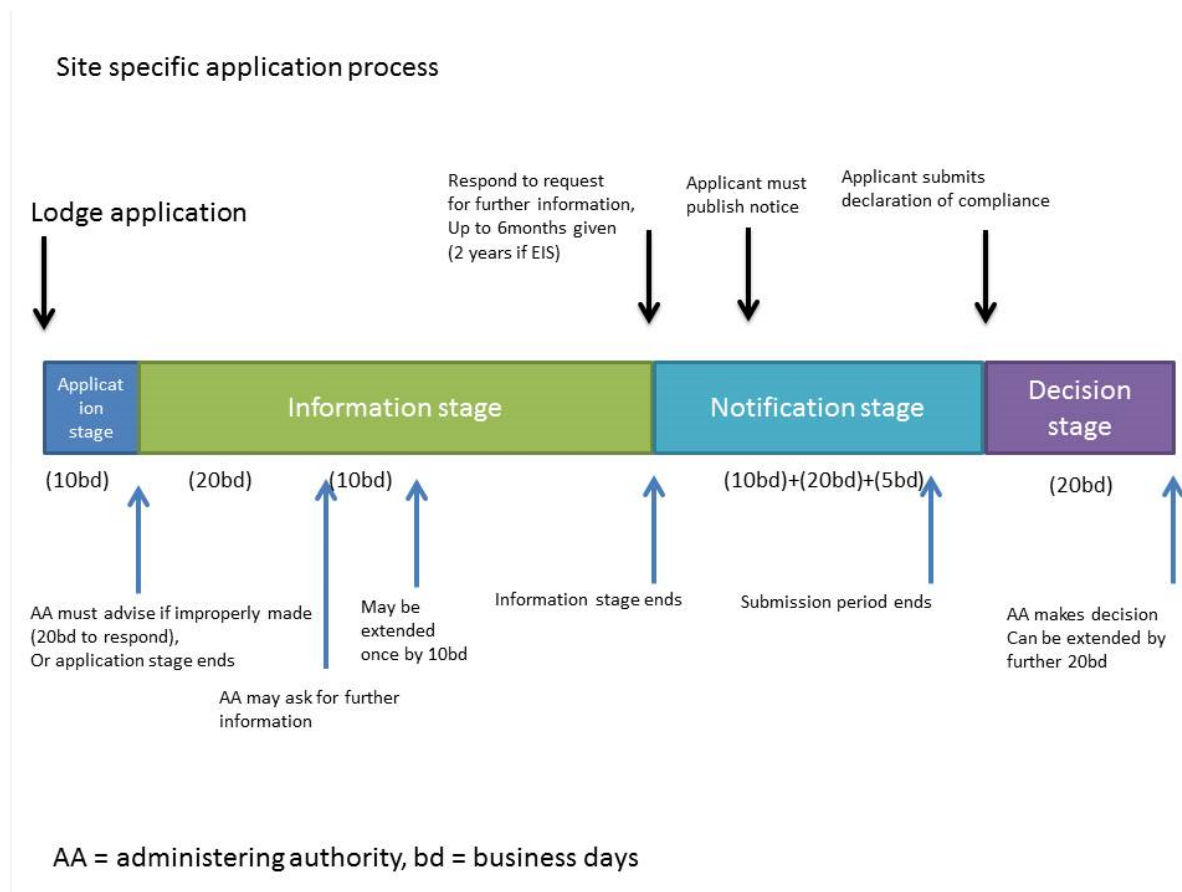
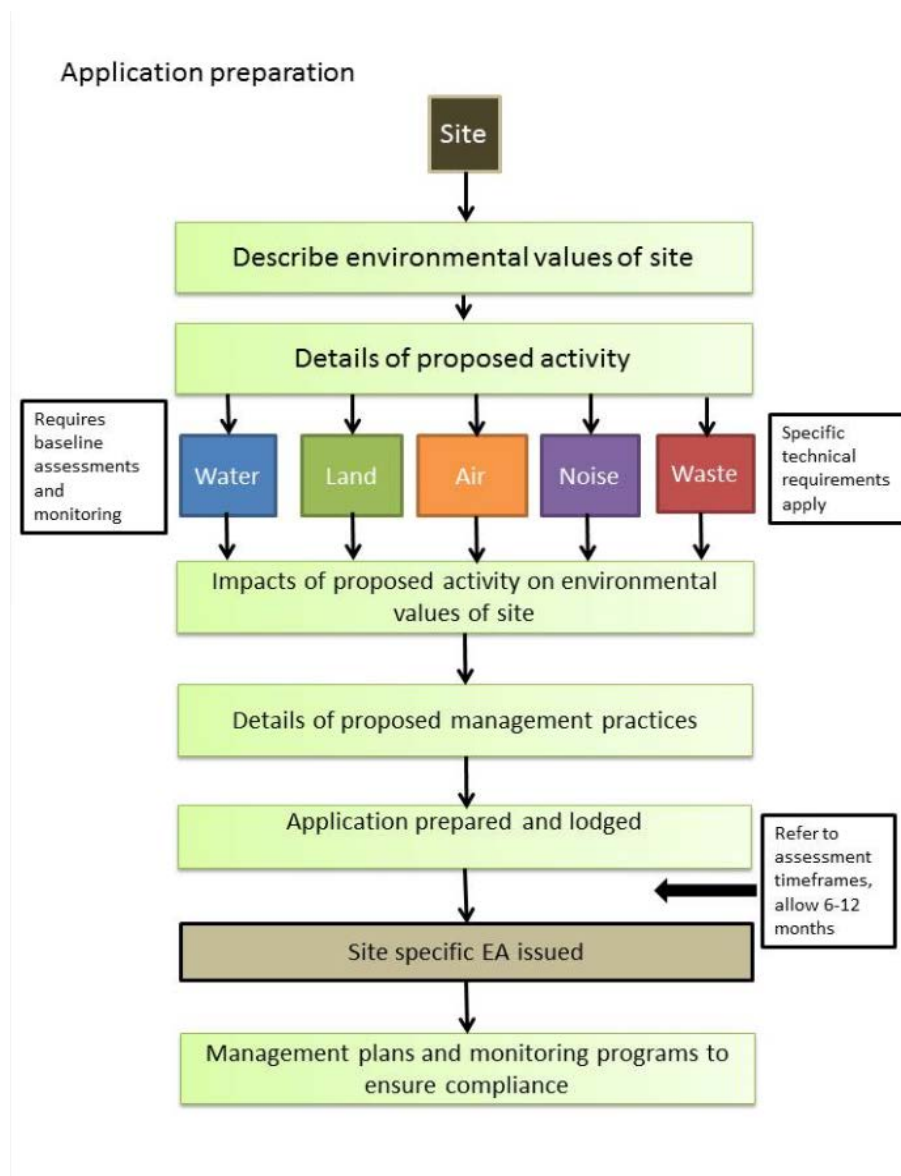


Figure 2



I am happy to hear suggestions about topics you would like covered. Feel free to email me at sue.slater@rlms.com.au with the subject heading Tenure Matters.

In the meantime, remember “Tenures make the Project; the Project doesn’t make the Tenures”.

RLMS covers the project spectrum from planning through to State and Federal government approvals, including land access, compensation, environmental impact statements and work schedules for clients ranging from entrepreneurs to major corporations, from start-ups to government agencies, and state significant projects such as Queensland’s LNG giants. Contact RLMS at:

*Level 14, 10 Eagle St
BRISBANE QLD 4000
P. +61 7 3229 8472
E. rlms@rlms.com.au*