Tenure Matters

A column by Sue Slater, Senior Advisor Petroleum, RLMS

Issue No. 12

Welcome back. This month is Part 2 of the exploration of some of the issues around linear infrastructure, including not just pipelines, but other linear infrastructure typically associated with resource projects. Last month I focused on pipelines built under the petroleum legislation. This month I plan to discuss mining leases for transportation under the *Mineral Resources Act 1989*, Private Infrastructure Facility (PIF) designation, as well as State Development Areas, prescribed projects and critical infrastructure declarations under the *State Development & Public Works Organisation Act 1971*.

The legislation governing the building of much linear infrastructure, such as powerlines, was written in a time when governments, or government-owned entities, mostly built the infrastructure. Increasingly this is no longer the case, and private companies are proposing to, and sometimes, succeeding in building significant infrastructure. Unfortunately legislation has not really kept pace with the realities of the day. State governments increasingly cannot afford to build significant infrastructure and look to private enterprise or perhaps public-private partnerships (PPP). In Queensland, although there have been a number of transport related PPPs, none of these are thus far related to resource projects. There are also processes for designation as community infrastructure under the *Sustainable Planning Act 2009*, which may be used for powerlines, rail or road or other transport purposes, but this will not be discussed further since this would not generally apply to resource projects.

Prior to changes made to the State Development and Public Works Organisation Act 1972 which took effect on 21 December 2012 proponents could apply to have their infrastructure designated as an *infrastructure facility of significance*. This has been repealed and replaced with the *Private infrastructure facility* (PIF) under section 174 of that Act. A PIF requires an environmental impact assessment prior to lodgement, and notices and negotiations with the registered owners of the land affected by the facility, including native title holders prior to an application for approval. In contrast, a pipeline built under a pipeline licence (PPL) under the *Petroleum & Gas (Production & Safety) Act 2004*, allows that landowner negotiation to occur post PPL grant but prior to construction. The types of infrastructure facilities that could qualify as a PIF can include roads, rail, bridges, electricity

generation, transmission or distribution facilities, oil or gas storage, transmission or distribution facilities. Where negotiations to acquire land for the infrastructure are unsuccessful the land can be compulsorily acquired by the Coordinator-General on behalf of the proponent. Similar compulsory acquisition abilities exist under the *Petroleum & Gas (Production & Safety) Act 2004*, but are rarely, if ever, used. A prior step, referred to as a Part 5 approval under the P&G legislation allows the construction of the pipeline to proceed without finalising compensation agreements where a very small minority of landowners are delaying a project which otherwise has ticked all the appropriate boxes. The land is not compulsorily acquired in this case, but construction proceeds while compensation is settled.

The Government may also declare State Development Areas, under the *State Development & Public Works Organisation Act 1971.* Development inside these areas is then subject to the relevant plan

The State has previously declared the following:

- Stanwell to Gladstone Infrastructure Corridor SDA, declared in 2008 to accommodate up to 7 underground pipelines;
- Callide Infrastructure Corridor SDA, declared in 2009, to accommodate multiple underground pipelines, primarily for the pipelines transporting CSG to the LNG plants on Curtis Island;
- Surat Basin Infrastructure Corridor SDA, declared in 2011 to accommodate rail between Wandoan and Banana to connect with the existing Western Railway and Moura Railway systems;
- Galilee Basin SDA, declared in 2014, which comprises two 500m wide rail corridors from the Galilee Basin to the Port of Abbot Point.

The Bundamba to Swanbank SDA, declared in 2006, for the construction of water pipeline infrastructure was repealed once the infrastructure was built and operational. The associated development scheme was repealed and the management of the corridor is now the responsibility of the Ipswich City Council.

The purpose of infrastructure corridors should be to minimise the disturbance to both landholders and the environment by allowing for co-location. In areas where there are considerable constraints, the presence of a corridor can assist with route selection. A corridor should also minimise costs on a per-proponent basis, when compared to selecting a route and obtaining approvals for that route in isolation. For a multi-use corridor there should be a single EIS **prior** to declaration, to ensure that the chosen corridor does not have any significant environmental constraints. Individual proponents would then only have to address specific components related to their infrastructure and impact on co-located infrastructure – already built, proposed or aspirational. Additionally, consideration of whether full rehabilitation is always necessary, if for example another corridor user will potentially disturb the area. Unfortunately it is not clear that potential efficiencies in process are being fully realised. For example a Material Change of Use (MCU) application is still required which in the case of corridor declared for infrastructure seems somewhat absurd, since surely the envisaged use of the corridor was for exactly that purpose.

SDA applications[1] have a six stage assessment process including pre-lodgement, application, referral, public consultation, review and decision – although each application may not necessarily undergo

[1] http://www.statedevelopment.qld.gov.au/state-development-areas/applications-and-requests.html

the full process. SDA applications are assessed by the Coordinator-General, and may be referred to relevant state government agencies or local council for comment. Fees are set in the S*tate Development & Public Works Organisation Regulation 2010.* A material change of use application fee for "gas transportation infrastructure facility", for example, is just over $45,000.

Also worth noting, under the *State Development and Public Works Organisation Act 1972,* a project can be declared by gazette notice to be a "prescribed project". A prescribed project is one of particular economic or social significant to Queensland or a region. The purpose of declaring a project to be a "prescribed project" is "t*o overcome any unreasonable delays in obtaining project approvals*"[2]. If necessary, the Coordinator-General may intervene in the approvals process in various ways to ensure timely decision making. Declarations last two years from the gazettal notice, but may be extended, also by gazettal, for a period no longer than the initial period. If a prescribed project is considered to be critical or essential for economic, social or environmental reasons, it can also be declared to be a "critical infrastructure project". With respect to resource projects including linear infrastructure, current prescribed projects include the North Galilee Basin Rail Project and the Carmichael Coal Mine and Rail Project both declared in 2014, and expiring (unless extended) in 2016.

The *Mineral Resources Act 1989,* under section 316, allows the grant of Mining Leases for infrastructure to support production, but these are generally connected to an existing ML. These can be used for the transportation through, over or under the land by a pipeline, aerial ropeway, conveyor, transmission line or road, and must relate directly to the associated mining lease. When the associated mining lease ceases to exist, the ML for transportation must also end. There are no pre-requisite tenure requirements for a mining lease for transportation. However, in contrast to a pipeline licence under the *Petroleum & Gas (Production & Safety) Act 2004*,[3] and in keeping with the requirements of mining lease applications, compensation must be agreed prior to the grant. The typical mining lease process applies, which includes a Certificate of Public Notice and an Objection Period.

Under the proposed Common Provisions legislation, currently under development, there has been discussion of an "Infrastructure Authority" that captures transport, conveyance and processing facilities across the resource commodity. This would then replace the petroleum pipeline licence, petroleum facility licence and the mining lease for infrastructure under the current legislation. It is to be hoped that the process "doesn't fix what ain't broke".

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

[2] http://www.statedevelopment.qld.gov.au/infrastructure-delivery/prescribed-projects.html
[3] Discussed in January 2015