IN THE MINING WARDEN'S COURT
AT ST LEONARDS

J A BAILEY, CHIEF MINING WARDEN

THURSDAY 17 MAY 2001

CASE NO. 2000/11

SYDNEY GAS OPERATIONS PTY LTD (Applicant)

v.

BROWNLOW HILL PTY LTD (Respondent)

CASE NO. 2000/12

BROWNLOW HILL PTY LTD (Applicant)

v.

SYDNEY GAS OPERATIONS PTY LTD (Respondent)

APPLICATIONS FOR REVIEW OF ARBITRATOR'S FINAL DETERMINATION UNDER THE PROVISIONS OF SECTION 69R PETROLEUM (ONSHORE) ACT 1991 CONCERNING PEL2

APPEARANCES AT HEARING OF 26 APRIL 2001

Sydney Gas Operations Pty Ltd:	Mr A Phelps, Solicitor of Piper Alderman
Brownlow Hill Pty Ltd:	Mr J Connors of Counsel, instructed by FitzGerald White Talbot

Matter heard at St Leonards on 26 April 2001

ACCESS ARRANGEMENTS
AND
REASONS FOR DECISION

HANDED DOWN IN ABSENCE OF PARTIES

Following the renewal of PEL2, Sydney Gas Operations Pty Ltd and Brownlow Hill Pty Ltd sought the services of an arbitrator for the purposes of access arrangements under Part 4A of the *Petroleum (Onshore) Act 1991*. On 4 February 2000 the Arbitrator delivered his final award in the matter.

The Solicitors for Brownlow Hill Pty Ltd forwarded an Application for Review of the Arbitrator's Determination. This application was dated 21 February 2000 and was received on 24 February 2000.

The Solicitors for Sydney Gas Operations Pty Ltd signed an Application for Review of the same determination on 22 February 2000. This application was received by the Mining Registrar at 4.00 p.m. on 22 February 2000.

The Application for Review lodged on behalf of Brownlow Hill Pty Ltd does not set out any grounds for review of the determination. The Application for Review lodged on behalf of Sydney Gas Operations Pty Ltd sets out a number of grounds upon which a review is sought. Each of those grounds relates directly or indirectly to the compensation factor of the access arrangements.

The following legislation is relevant to these proceedings:

Prospecting to be carried out in accordance with access arrangement
69C. *The holder of a prospecting title may not carry out prospecting operations on any land otherwise than in accordance with an access arrangement:*

(a) agreed (whether orally or in writing and whether before or after the prospecting title was granted) between the holder of the title and each owner and occupier of the land; or

(b) determined by an arbitrator in accordance with this Part.

Matters for which access arrangement to provide
69D. *(1) An access arrangement may make provision for or with respect to the following matters:*

(a) the periods during which the holder of the prospecting title is to be permitted access to the land;
(b) the parts of the land in or on which the holder of the prospecting title may prospect and the means by which the holder may gain access to those parts of the land;
(c) the kinds of prospecting operations that may be carried out in or on the land;
(d) the conditions to be observed by the holder of the prospecting title when prospecting in or on the land;
(e) the things which the holder of the prospecting title needs to do in order to protect the environment while having access to the land and carrying out prospecting operations in or on the land;

(f) the compensation to be paid to any owner or occupier of the land as a consequence of the holder of the prospecting title carrying out prospecting operations in or on the land;
(g) the manner of resolving any dispute arising in connection with the arrangement;
(h) the manner of varying the arrangement;
(i) such other matters as the parties to the arrangement may agree to include in the arrangement.

Costs
69O. *(1) Each party to the hearing is to bear his or her own costs in relation to the hearing.*
(2) The arbitrator's costs in relation to the hearing are to be borne by the holder of the prospecting title.
(3) Payment of the arbitrator's costs in relation to a hearing is, for the purpose of any security given by the holder of a prospecting title, taken to be an obligation under the title.

Review of Determination
69R. *(1) A party to a hearing who is aggrieved by an arbitrator's final determination (other than a determination referred to in section 69J (2)) may apply to a Warden's Court for a review of the determination.*
(6) In reviewing a determination under this section, a Warden's Court has the functions of an arbitrator under this Part in addition to its other functions.
(7) The decision of a Warden's Court on a review of a determination is final and is to be given effect to as if it were the determination of an arbitrator.

When the matter first came before this Court there was a dispute as to the procedure to be adopted when a review application is lodged under the provisions of Section 69R of the *Petroleum (Onshore) Act 1991*. Following submissions I delivered my decision on that preliminary point on 15 May 2000.

Following that preliminary decision the matters were listed on a number of occasions before this court for the purposes of giving directions as to the manner in which the review would proceed.

The review ultimately was heard in the Warden's Court at St Leonards on Thursday 26 April 2001. No evidence was called at that hearing. The parties relied on the transcript of evidence from the arbitration proceedings. Although expert evidence reports were available in respect of witnesses who were not called before the Arbitrator, those witnesses did not give evidence at the Review following a direction which I made on 29 January 2001 which was within the spirit of Schedule "K" of the Supreme Court Act. Following a conference between the two experts there was an agreement as to quantification of compensation, and consequently that issue was not contested in front of me.

There were a number of other matters which had been outlined by the Arbitrator, concerning access, which were challenged at the hearing in the Warden's Court.

Mr Connors, who appeared for Brownlow Hill Pty Ltd, emphasised at the very beginning that the property owners did not consent to access to their property. He handed up a document which was headed "Access Conditions" and emphasised that if the court did make an access arrangement then the conditions in the document which he handed up would be the most appropriate conditions.

One matter in dispute concerns the length of time the mining company should be allowed on the property.

Mr Connors submitted that the mining company should be on the subject property for a period of not more than 18 months. Mr Connors bases that period of time on the evidence given before the Arbitrator by a witness, an expert called on behalf of the mining company, a Mr Skidmore.

At page 67 of the transcript at line 43, the following exchange takes place:

> Q. Okay. You said, I think, just before we broke for lunch – if my notes are correct – it takes as long as a year or a year and a half to get all the wells to a point of production?
>
> A. I think that's a pretty fair statement. Let me just back up again and go back over the process, because it's important to understand that just a few wells won't bring this project into production.

Mr Connors emphasized that when the Arbitrator set a period of five years, he was under a misconception as to the meaning of Section 69. He submitted that the Arbitrator thought that if he put a lesser time in than the period of the exploration licence, then that time would be contrary to the licence. Mr Connors pointed out that EL2 is for a "huge area of land", and the property subject to this hearing is only very minute compared to the total area.

On that point Mr Phelps pointed out that any period less than the period of the Exploration Licence, that is five years, would be contrary to the provisions of Section 69D(3) of the *Petroleum (Onshore) Act 1991*.

That section provides:

> ***69D. (3)*** *In the event of an inconsistency between:*
>
> *(a) a provision of an access arrangement; and*
>
> *(b) a provision of this Act, of the regulations or of a condition of a prospecting title,*
>
> *the provision referred to in paragraph (b) prevails.*

Mr Phelps submitted that if a period was limited, as requested by Mr Connors, it would be inconsistent with the rights conferred on Sydney Gas Operations Pty Ltd and therefore the access arrangements would be inconsistent with the prospecting licence. Consequently the access arrangements should be available until the expiration of the exploration licence.

When questioned as to the meaning of Section 69D (1) (a), Mr Phelps indicated that that sub-section referred to days and hours of the week rather than the length of time for which the access arrangements would exist.

Mr Phelps indicated that that was a common sense approach to the meaning of the section. He submitted that if all the landowners involved in EL 2 had placed similar restrictions as to a period of time on their land, Sydney Gas Operations Pty Ltd would be required to conclude its exploration on every property by a certain date. Consequently, the landowners would be in control of the timing of the exploration.

Mr Phelps submitted that this would be an intolerable situation having regard to the fact that the mining company has limited resources in relation to personnel and rigs, and to put a time restriction on an individual property would be an unnecessary restrictive clause in respect of the exploration licence. He said that such a restriction could make the exploration process unworkable.

I concur with the submissions of Mr Phelps in relation to this point. It would be an intolerable situation if for example a time restriction of 18 months was placed on the mining company, and due to unforseen circumstances they required 20 months. This would mean that the parties would have to negotiate again to extend the period and possibly go back before the court. The exploration licence is for a certain period of time and the mining company should not be restricted to the time spent on any particular area covered under the licence.

Another area of dispute is the question of pipes and electricity lines, either above or beneath the ground. It was submitted on behalf of the landowners that there should be a clause restricting pipelines and electricity wires etc beneath the surface of the ground. The mining company is opposed to such a clause, indicating that there may be circumstances where rock exists and it would be a prohibitive expense to put those items beneath the ground. Consequently the mining company has requested that a proviso be included in any clause as follows:

> "The company shall not be required to bury electric lines where the company considers (in its sole discretion) that it is unreasonably expensive to do so."

The landowner's objection to electric power lines being above the ground is a safety reason. Many accidental deaths have occurred as a result of farming equipment striking overhead power lines.

There are two significant factors in respect of the arguments put before the court.

Firstly, if overhead power lines are erected which cause the death of an individual, no amount of compensation could make up for such an incident.

Secondly, the proviso that was suggested by the mining company, enables the mining company to determine strictly on its own economic basis whether electric power lines should be under or above the ground. I don't think that proposition is reasonable in all the circumstances.

Consequently in respect of that particular matter I propose to allow a clause, which is in accordance with that suggested by the landowner, that pipelines etc. be buried below the surface.

I should point out that there was a submission by Mr Phelps that there needs to be a reason to depart from an arbitrator's award. He said that as there is no further evidence produced at this review, therefore there is nothing to suggest that the clauses of the arrangement outlined by the arbitrator are incorrect. Mr Phelps was of course leaving aside the aspect of compensation.

Mr Connors rejected that submission of Mr Phelps. Having regard to the ruling I made earlier as to how this review was to proceed, I do not see myself bound by clauses of the arrangement outlined by the arbitrator. I indicated that I would accept any further submissions, I would rely upon the transcript of the evidence before the arbitrator and any other evidence produced at the review. I did not say and I do not believe that if no further evidence is produced that I am bound to impose the clauses that were imposed by the arbitrator.

Another area of dispute was the clause relating to a survey. The landowner wanted the mining company to have a registered surveyor, survey the property at the end of each calendar month to determine the amount of land occupied by the mining company for the purposes of compensation. The mining company is challenging a clause along those lines, insofar as they say that after an initial stage there will be very little variation to the amount of land occupied for a period of many months. It would be an unnecessary expense for the mining company to bring in a registered surveyor every month to confirm what is obvious. The mining company suggested that the clause merely include a need for a registered surveyor to survey the area if there is a dispute between the parties.

I concur with the submission of the mining company that the need to survey every month would be an unnecessary imposition of time and money. I propose to allow a clause to be inserted in the arrangement that would give effect to the need for the company to provide a survey of the area if there is a dispute.

The landowner was concerned about the hours of operation of the exploration. It was submitted on behalf of the landowner that a clause be inserted restricting the company from carrying out authorised activities during certain hours of the day, Monday to Friday, and certain hours on Saturday, with a phrase indicating that the company shall not be allowed on the land at any other times.

The mining company was opposed to such a simple clause. It was submitted that there might be circumstances where the company would need to gain access to the property for purposes other than operating machinery which would cause noise. It cited an instance where a company employee may leave tools on the site. If the company was restricted on the land within the hours nominated it would mean that the workmen could not go back onto the site after those hours to collect their tools. It was submitted that there might be other circumstances where, in the case of an emergency, it would be necessary for the company to gain access to the lands to remedy a problem which may occur. If the clause suggested by the landowner was inserted it would hamper the company unnecessarily.

It was Mr Connors' submission that in the case of an emergency, any right of entry by the mining company outside of the specified hours could be arranged by agreement with the landowner. The difficulty that may arise in those circumstances is that an incident may occur where the mining company is unable to contact the landowner forthwith; if the mining company entered upon the land to attend to the emergency without the requisite agreement, the company would be in breach of this access arrangement.

In respect of the hours of operation I propose to include the following clause:

> "The company may access the Lands at any time, but it shall only carry out operations authorised under the licence during the following hours, except where such operations are necessary to deal with any emergency situation on the Lands or to preserve any of the company's property on the Lands:
>
> Monday to Friday 7 a.m. to 6 p.m.
>
> Saturday 7 a.m. to 2 p.m."

Another clause in dispute was the suggested clause 14 which is headed "Information and Audit". The suggested clause on behalf of the landowner was that the company must give the landowner copies of the exploration and production returns and reports which it files with the Department of Mineral Resources. The mining company wanted the words "non-confidential" inserted. The reply by the landowner was that "non-confidential" information could be obtained through the Freedom of Information Act and posed the question: "Why should the landowner be put to the expense of obtaining it in that manner?"

I have some grave reservations as to whether the landowners would be able to obtain confidential information under the Freedom of Information Act. It is my understanding that such information would only be released under that Act, with the consent of the mining company.

Accordingly. I propose to accede to the request of the mining company and insert the words "non-confidential" in the clause.

Another clause in dispute was the clause concerning the removal of waste. The landowners wanted any garbage, waste or empty containers removed on a daily basis. The mining company opposed that and suggested that it be removed on a "regular basis". I have concerns in respect of each of the suggested clauses put to the court.

I propose to insert a clause as follows:

> "Any excessive garbage, waste or empty containers shall be removed from the Lands daily, otherwise any other garbage, waste or empty containers should be removed on a regular basis."

There was a dispute between the parties as to the requirement of a default clause. The mining company submitted that a minor default would see them being locked out of the land in question and that would be extremely unreasonable. They proposed that any default clause referred to a default "of a material provision". The concern of the landowner is that a debate would then ensue as to what is a material provision and this could mean an unnecessary expense to the landowner.

I propose to insert a clause in which an Inspector of Mines would make a determination as to what is a material provision.

Mr Phelps referred to other changes within the conditions suggested appropriate by Mr Connors. He spent little time in addressing on those changes and referred to them as being "merely semantic". I do not propose to go into them at present but I have included those "semantic changes" in the Access Arrangement where I have deemed it appropriate.

The final issue to be determined in respect of this review is the question of costs. The landowner is seeking professional costs in respect of the review. The mining company indicated that I am bound by the provisions of Section 69O of the *Petroleum (Onshore) Act 1991* which provides that the parties are to meet their own costs.

It was submitted on behalf of the landowner that when conducting this review, *a Warden's Court has the functions of an Arbitrator under this part in addition to its other functions [see Section 69R(6), Petroleum (Onshore) Act 1991].* Therefore, the Warden's Court has a discretion to award costs as it does in any other case.

As to whether or not that submission is correct, requires a consideration of both the *Mining Act 1992* and the *Petroleum (Onshore) Act 1991.* The Warden's Court derives its power to award costs from *Section 317 Mining Act 1992*, which states:

> ***317Costs may be allowed***
> ***(1) The costs of all proceedings under this Act before a warden (whether in a Warden's Court or otherwise) are in the discretion of the warden and the amount of such costs may be determined by the warden or taxed, as the warden may direct.***
> ***(2) The reference in subsection (1) to costs includes a reference to an arbitrator's costs in relation to a hearing under Division 2 of Part 8.***

It can be seen that the section refers to costs *under this Act.* However, Section 114 of the *Petroleum (Onshore) Act 1991* states:

> ***Wardens' Courts***
> ***114. Wardens' Courts under the Mining Act 1992, are by this section constituted Wardens' Courts for the purposes of this Act and the provisions of Part 15 of the Mining Act 1992, with any necessary modifications, apply accordingly.***

Part 15 of the Mining Act 1992 incorporates Section 317. The phrase *with any necessary modifications* which appears in Section 114 of the *Petroleum Act* may be interpreted to modify Section 317(1) of the *Mining Act* to include, after the phrase *under this Act*, the following words: ***or the Petroleum (Onshore) Act 1991***.

Consequently, I agree with the submissions on behalf of the landowner that I have a discretion in relation to the granting of costs on this review.

Although I have the power to award costs, it must be remembered that under the *Petroleum Act*, it is intended that parties pay their own costs upon Arbitration. So any consideration of costs is not simply that costs should the follow the event.

There were submissions from both sides as to which side caused delays in this matter and as to which side has been unreasonable in respect of attempts to resolve the issues without litigation.

There have been a number of reasons for the delay of this matter; the first being that the parties disputed the way in which this review should be conducted. After a hearing on that preliminary point the ruling that I made was certainly not in accordance with the procedure suggested by either side. On a number of occasions when this review came back before the court for a mention and directions, submissions were made on behalf of the landowner to put a permanent stay on the proceedings, due to the fact that the landowners would never give consent under Section 72 and on another occasion, due to the fact that the land had been declared heritage.

On each occasion I refused to accede to the request of the landowner. After giving directions it was necessary for the matter to be brought back before the court so that further directions could be made, due to delays, the court was told, by the landowners.

Even when the matter was being set down for final hearing, Mr Connors was calling on his best legitimate forensic endeavours to extend the date as long as possible.

Mr Connors submitted that on the question of costs, the review application by the mining company was only in respect of compensation; as there had finally been an agreement to compensation it was unreasonable that the mining company continued on with this hearing. I cannot accept that as a legitimate argument for the awarding of costs. Although the mining company only lodged a review application in respect of the arbitrator's award concerning compensation, in negotiations in attempting to settle this matter the landowners wanted a number of clauses of the Arbitrator altered. It is unreasonable to suggest that the mining company in continuing to challenge those matters ought to be subject to a costs order.

The compensation aspect of the access arrangement was a matter of contention from both parties. I note that the sum of compensation settled on at the review, after both parties had engaged experts, was greater than that awarded by the Arbitrator, but still less than the landowner's expert suggested at the Arbitration hearing.

With regard to the above matters, in exercising my discretion I do not propose to make any order for costs.

A copy of the Access Arrangements is attached.

2000/11

ACCESS ARRANGEMENTS

BROWNLOW HILL PTY LTD (Owner)

AND

SYDNEY GAS OPERATIONS PTY LTD (Company)

INTRODUCTION

A. The Owner owns the Lands.

B. The Company holds PEL2 which allows it to explore the Lands for Petroleum.

C. These conditions bind the Owner and all of the occupiers of the Lands.

OPERATIVE CLAUSES

1. Definitions

In these conditions

"Act"	means the Petroleum (Onshore) Act 1991.
"Business Day"	means any day except a Saturday or a Sunday or other public holiday.
"DMR"	means The New South Wales Department of Mineral Resources.
"Lands"	means the land comprised in Certificate of Title Volume 12908 Folio 223 and Folio 224 and otherwise known as Brownlow Hill Farm.
"PEL2"	means Petroleum Exploration Licence 2 granted to the Company under the Act.
"Petroleum"	means petroleum as defined in the Act and other related petroleum hydrocarbon.

2. Interpretation

In these conditions unless the context otherwise requires:

2.1 singular includes plural and plural includes singular;

2.2 reference to the Act or other legislation includes any amendment to it, any legislation substituted for it, and any statutory instruments issued under it and in force;

2.3 reference to a person includes a corporation, a firm and any other entity;

2.4 reference to a party includes that party's personal representatives, successors and assigns;

2.5 if a party comprises more than one person, each of those persons is jointly and severally liable under these terms of access;

2.6 headings do not affect interpretation;

2.7 a provision must not be construed against a party only because that party put the provision forward;

2.8 a provision must be read down to the extent necessary to be valid; if it cannot be read down to that extent, it must be severed;

2.9 the Introduction is correct.

3. Term

These conditions shall operate until the first of:

3.1 The Company having plugged and abandoned all wells on the Lands that the Company intends to drill in accordance with the Act and the rules and requirements of DMR; or

3.2 the granting of an Assessment Lease or Production Lease under the Act to the Company

4. Licence

4.1 The Owner grants to the Company a licence:

4.1.1 over all roads, existing at the date of this agreement, on the Lands, for ingress and egress to all well sites, gas pipelines, water pipelines, electric lines, tank batteries, compressors and other facilities located on the Lands for the conduct of the Company's operations authorised under PEL2;

4.1.2 to construct and use new roads, well sites, gas pipelines, water pipelines, electric lines, tank batteries, compressors and other facilities for the conduct of the Company's explorations authorised under PEL2.

4.2 The Company must:

4.2.1 give the Owner at least 5 (five) days notice before constructing a well location, road, pipeline, tank battery or any other surface facility or conducting geophysical exploration on the Lands;

4.2.2 after consultation with the Owner about the Company's construction or drilling plans, drill the number of wells and construct the amount of pipeline and types of other facilities the Company decides so long as the wells, pipelines and facilities are in accordance with the application and plans submitted from time to time by the Company to DMR, a copy of such original plan as lodged with DMR the Company will provide to the Owner. The Company will use its reasonable endeavours to minimise the area of each of the drillsites;

4.2.3 use best efforts to locate roads and facilities so as to minimise interference with the Owner's farming and livestock operations;

4.2.4 not construct wider or more roads than reasonably necessary to conduct its operations in a prudent manner;

4.2.5 not without prior consent of the Owner/Occupier carry on any prospecting or mining operations or erect any works on the surface of the Lands on which or within 200 metres of which is situated a dwelling house that is the principal place of residence of the Owner/Occupier of any such Lands; and

4.2.6 use its best endeavours to minimise the noise from its operations where those operations are conducted within the proximity of any dwelling on the Lands that is the principal residence of the Owner/Occupier of such Lands.

4.3 The Company must:

4.3.1 bury below the surface as far as practicable all pipelines, flowlines, gas gathering lines, water lines and electric lines;

4.3.2 backfill all ditches for those lines within two (2) weeks (weather permitting) after the construction, installation or repair of those lines or appurtenant facilities;

4.3.3 bury at least one (1) metre below the surface all pipelines across cultivated fields, wherever practicable.

4.4 The Company must maintain in good condition any roads and any adjacent table drains, it constructs or uses so as to avoid erosion.

4.5 The Company must not allow any officer employee agent or contractor of the Company, or any officer employee or agent of a contractor of the Company:

4.5.1 to bring firearms on to the Lands;

4.5.2 to camp on the Lands.

4.6 After plugging and abandoning a well as required by the Act and the requirements of the DMR, the Company must commence within 14 days either:

4.6.1 restore the surface of the location to its condition before the Company commenced operations there. This includes ripping and/or discing and reseeding any disturbed areas or access road; or

4.6.2 pay to the owner an amount agreed by the parties for the Owner to use its own equipment and labour to restore the surface of the location to the Owner's satisfaction. The Company then has no further liability to any person (including the DMR or any other government agency) to restore the surface.

5. Gates and fencing

5.1 The Company must:

5.1.1 when it cuts a fence, install an "H" brace into the fence on each side of the cut to prevent the fence losing tension;

5.1.2 install steel gates when roads go through fences and ensure that those gates are kept closed;

5.1.3 keep boundary gates locked;

5.1.4 fence all pits until dry and back-filled and restored;

5.1.5 fence all wells, tank batteries and other Company facilities on the Lands.

5.2 When the Company has finally completed its operations authorised under PEL2 (whether in the nature of exploration, assessment or production) on the Lands, any gates, road material, pipelines, and electrical line left in place on the Lands become the property of the Owner.

6. Water

6.1 If the Owner decides that there is enough surface water in the Owner's surface facilities the Company may use that water in the drilling, completion and fracture stimulation operations of any well on the Lands.

6.2 If the Company drills a water well specifically for the purpose of the drilling, completion and fracture stimulation of any well on the Lands:

6.2.1 the Company need not pay the Owner for water from that water well;

6.2.2 when the Company decides that it does not need the water well, the Owner may buy the well bore and casing from the Company for $5.00 (five dollars). If the Owner buys the well bore and casing, the Company has no further liability to any person (including the DMR or any other governmental agency) for the operation or the plugging and abandonment of that well.

6.3 The Company may use water (surface water, if the Owner decides that there is enough surface water in the Owner's surface facilities, or from wells) for drilling seismic shot holes.

6.4 The Company must not use water for any pressure maintenance or water flood operations.

7. Compensation

7.1 The Company must pay the Owner:

7.1.1 $1,200.00 per hectare per annum for all Lands occupied for the Company's operations authorised under PEL2 and shown yellow or green on the map attached and all laneways for the movement of livestock;

7.1.2 $150.00 per hectare per annum for all other Lands occupied for the Company's operations authorised under PEL2;

7.1.3 if the Company's operations cause the death of any livestock or damage or destruction of crops, the fair market value of that livestock or crops.

7.1.4 compensation for any loss of income which is directly caused by the Company's operations on the land.

8. Owner-provided Water

8.1 If the Owner supplies water from his ponds or dams the following rates shall apply:

8.1.1	5000 bbls	$5000.00
8.1.2	500 bbls	$400.00
8.1.3	1,000 bbls	$800.00
8.1.4	2,000 bbls	$1,800.00
8.1.5	3,000 bbls	$3,000.00

9. Review

In the event that the Owner subdivides and sells or attempts to subdivide or sell land, and suffers any loss as a consequence of the Company's activities on the land preventing subdivision or adversely affecting value or sales, the Owner may bring a further claim for compensation.

10. Survey

In the event of a bona fide dispute between the parties as to the area of the Lands occupied by the Company, the Company shall cause a survey of the disputed area of the Lands to be carried out.

11. Payment

11.1 All payments to the owner shall be made on or before the 14th day of the month following the month in which the entitlement to compensation arose.

11.2 Entitlement to compensation shall arise:

11.2.1 for each drill site – when a drill rig is at the site of the proposed well or earthworks at the site are commenced;

11.2.2 for the office, toilets, equipment, diesel and chemical stores – when the land is occupied for the purpose of constructing the facility;

11.2.3 for the gas flaring facility – when the land is occupied for the purpose of constructing the facility;

11.2.4 for ditches and roads – when any ditch is opened or construction of any road is commenced;

11.2.5 for the death of livestock, damage to crops or loss of income – upon receipt of advice by the company from the owner as to the fair market value of the livestock or crop and quantum of loss of income.

12. Hours of Operation

12.1 The Company may access the Lands at any time, but it shall only carry out operations authorised under the licence during the following hours, except where such operations are necessary to deal with any emergency situation on the Lands or to preserve any of the Company's property on the Lands:

Monday to Friday	7.00 a.m. to 6.00 p.m.
Saturday	7.00 a.m. to 2.00 p.m.

13. Surface Tenants

13.1 If, before the date of commencement of access or during the period of access, the Owner leases or agrees to lease the surface of the Lands to a tenant:

13.1.1 the lease or agreement to lease must be made subject to these terms of access;

13.1.2 the Owner must cause the tenant to endorse on these terms of access its consent to these terms of access;

13.1.3 the Company must pay to the Owner all amounts due under clause 8, and the Owner may pay to the tenant any amount it agrees with the tenant;

13.1.4 the Company is not liable to pay to the tenant any additional amount (other than for livestock or crops under clause 11.2.5).

14. Information and Audit

The Company must give the Owner copies of the non-confidential exploration and if applicable non-confidential production returns and reports that it files with DMR insofar as they relate to the Company's operations on the Lands.

15. Indemnity

The Company must indemnify the Owner against all claims and all losses, liability and expenses incurred by the Owner in connection with the Company's operations on the Lands.

16. Safety

The Company shall ensure that it complies by itself its employees and contractors with all directions of the DMR and the WorkCover Authority and all relevant provisions of the Occupational Health & Safety Act and any other legislation controlling or directing the operations being carried out by the Company.

17. Insurance

17.1 The Company must effect and maintain a public liability insurance policy in respect of the exploration and drilling program for a minimum amount of $10,000,000.00 (ten million dollars).

17.2 The policy of insurance must be:

17.2.1 in the name of the Company and the interest of the Owner noted;

17.2.2 effected with a solvent and reputable Insurer.

17.3 The Company must give to the Owner a copy of the policy and certificates of currency of the policy when it is renewed.

18. Waste

Any excessive garbage, waste or empty containers shall be removed from the Lands daily, otherwise any other garbage, waste or empty containers should be removed on a regular basis.

19. Default

19.1 If, in the opinion of an Inspector of Mines from the Mines Safety and Environment Division of the Department of Mineral Resources, the Company is in default of a material provision of these conditions:

19.1.1 the Owner must notify the Company about the fact and details of the default and the amount (if any) or action required to remedy the default;

19.1.2 the Company shall not be entitled to gain access to the Lands for any purpose other than to remedy the default or to deal with any emergency situation on the Lands or to protect the Company's property on the Lands until the default is remedied.

20. Disputes

20.1 If there is a dispute between the parties about any matter under these terms of access, the dispute must be referred to an appropriately qualified expert selected by agreement.

20.2 If the parties cannot agree on the selection of an appropriately qualified expert, the procedure set out in Part 4A of the Act will apply to the resolution of the dispute.

21. Notice

21.1 Notice must be in writing and in English, and may be given by an authorised representative of the sender.

21.2 Notice may be given to a person:

21.2.1 personally;

21.2.2 by leaving it at the person's address last notified;

21.2.3 by sending it by pre-paid mail to the person's address last notified;

21.2.4 by sending it by facsimile to the person's facsimile number last notified and then confirming it by pre-paid mail to the person's address last notified.

21.3 Notice is deemed to be received by a person:

21.3.1 when left at the person's address;

21.3.2 if sent by pre-paid mail, on the third Business Day after posting; and

21.3.3 if sent by facsimile and confirmed by pre-paid mail, at the time and on the day shown in a sending machine's transmission report which indicates that the whole facsimile was sent to the person's facsimile number last notified (or if the day shown is not a Business Day or if the time shown is after 5.00pm in person's time zone, at 9:00am on the next Business Day).

22. Force Majeure

22.1 The Company is not liable for a breach of these conditions to the extent that the breach is caused by circumstances outside the Company's direct control and for the period those circumstances continue, if the Company:

22.1.1 immediately notifies the Owner; and

22.1.2 tries to remedy the cause quickly.

22.2 The Company must notify the Owner when the cause has been remedied.

23. Further Action

23.1 The conditions of this Access Arrangement may only be amended by:

23.1.1 the consent of the parties, such consent shall be in writing and signed by all parties, or

23.1.2 by an order of a warden's court.