

Pipelines Compulsory Acquisition Process Guidelines –draft for consultation

Guideline on requirements for compulsory
land acquisition

Draft for consultation July 2025

Acknowledgement of Country



Department of Climate Change, Energy, the Environment and Water acknowledges the traditional custodians of the land and pays respect to Elders past, present and future.

We recognise Australian Aboriginal and Torres Strait Islander peoples' unique cultural and spiritual relationships to place and their rich contribution to society.

Artist and designer Nikita Ridgeway from Aboriginal design agency – Boss Lady Creative Designs, created the People and Community symbol.

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For any enquiries about the requirements under the Pipelines Act 1967 please visit <https://www.energy.nsw.gov.au/nsw-plans-and-progress/regulation-and-policy/our-role-networks/pipelines> or email energy.submissions@planning.nsw.gov.au

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1 Introduction

The *Pipelines Act 1967* (the Pipelines Act) allows land and easements to be vested in a licensee when a pipeline licence (or variation) is granted by the NSW Minister for Energy (as the Minister administering the Pipelines Act).

A licensee will sometimes need to acquire land or an easement over land which is held by a third party to construct and operate a pipeline. If the licensee and the owner of the land cannot reach agreement, the Minister for Energy (the Minister) may consider land to be 'available for compulsory acquisition' in certain circumstances.

Under section 22(1)(d)(ii) of the Pipelines Act, the Minister may find lands or easements over lands to be available for compulsory acquisition if the Minister is satisfied:

that the applicant has taken **all reasonable steps** to enter into an agreement with the owner to acquire the lands or easements and those steps have not resulted in any such agreement.

This guideline outlines the minimum steps the licensee needs to take for the Minister to be satisfied that "all reasonable steps" have been taken, under section 22(1)(d)(ii) of the Pipelines Act. The process is similar to the process to compulsorily acquire an interest in land under the *Land Acquisition (Just Terms Compensation) Act 1991* (**Just Terms Act**).

Further information on the requirements for pipelines in NSW can be found at [Pipelines | NSW Climate and Energy Action](#)¹.

Details in this document may be subject to change. If there is a change, the NSW Government will publish the changes on its website at [Pipelines | NSW Climate and Energy Action](#).

1.1 Scope of this guideline

Under section 14(1)(d) of the Pipelines Act, if the Minister is satisfied that:

- (d) the lands, or the easements, specified in the application for the licence —
 - (i) are vested in the applicant, or
 - (ii) are available, in accordance with section 22, for compulsory acquisition, and

...
the Minister may grant a licence in relation to the lands, including those the subject of easements, specified in the application or such of those lands as he or she thinks fit.

That is, for the Minister to grant a licence under the Pipelines Act, or a variation under section 18 of the Pipelines Act, lands or easements over lands must either be vested in the applicant, or available for compulsory acquisition under section 22 of the Pipelines Act.

The Pipelines Act already aligns the processes to determine compensation for land acquired by compulsory process to the Just Terms Act with respect to compensation.

Before the Minister can be satisfied that they should vest the easement or land in the applicant by compulsory acquisition under section 21(1) of the Pipelines Act, they must be satisfied that the

¹ <https://www.energy.nsw.gov.au/nsw-plans-and-progress/regulation-and-policy/our-role-networks/pipelines>

applicant has taken "all reasonable steps to enter into an agreement with the owner to acquire the lands or easements and those steps have not resulted in any such agreement".

This Guideline outlines what the Minister may consider "all reasonable steps" to be when determining a licence application that includes compulsory acquisition of land and/or easements over land under section 22(1)(d)(ii) of the Pipelines Act.

It is not intended to provide an exhaustive list.

The Pipelines Act outlines certain requirements for a licence applicant when acquiring lands under sections 22(1)(a), (b) and (c), such as Crown lands. This guideline does not address these requirements.

The *Pipelines Regulation* specifies that a licence applicant must provide evidence of how all reasonable steps have been taken when making a licence application that includes lands or easements of the type contemplated in section 22(1)(d)(ii) of the Pipelines Act.

1.2 Reasonable steps to enter into an agreement

At all times, the Minister encourages the acquisition of lands or an easement in lands for pipelines by agreement.

The Centre for Property Acquisition sets key principles that apply to making a genuine attempt to acquire land by agreement in the Minimum negotiation period² for acquisition of land document. Those principles, while made in the context of the Just Terms Act, are a useful guide for this process, which is comparable.

Based on these key principles, the minimum reasonable steps a prospective licensee is expected to take to acquire lands or an easement by agreement are to:

- communicate with the owner with the express aim of achieving agreement
- genuinely consider the position of the owner, but not so as to require the licence applicant to subordinate its position
- act honestly
- be proactive about sharing information, including any valuation report and results of investigations and inquiries
- ensure offers are genuine, and that there is a timely response to any counteroffer
- provide timely responses to questions raised by the owner
- where possible, have meetings to discuss any offers and take the valuer engaged by the licence applicant along to at least one meeting with the owner.

1.3 Amendments to the guideline

The Minister reserves the right to amend, supplement or replace this guideline at any time in their absolute discretion. DCCEEW will publish the current version of the guideline on Pipelines | NSW Climate and Energy Action.

² https://www.nsw.gov.au/sites/default/files/2022-07/Minimum_negotiation_period_for_acquisition_of_land.pdf

1.4 Summary of the process

Table 1: Process summary

Step	Summary of process	Indicative timing
1	Licence applicant introduces project to community and owners	Occurs as part of project planning and before development application
2	Licence applicant commences negotiation with individual owners	Issues a commencement letter beginning minimum 6-month negotiation period
3	Minimum period of genuine negotiation, during which the licence applicant must: <ul style="list-style-type: none"> • make an offer based on an independent valuation report • communicate with the owner/s and encourage them to discuss the offer • genuinely engage with the owner/s, in line with section 1.2, including considering any counteroffer 	6 months
Development consent must be received before taking these next steps		
4	Licence applicant advises the Minister that agreement has not been reached and that a future licence application is likely to include compulsory acquisition without agreement	
5	Licence applicant notifies the owner where agreement has not been reached that it intends to apply to the Minister for a pipeline licence on the basis that lands or easements need to be compulsorily acquired	At least 90 days before applying to the Minister for a licence (minimum 90-day notice period)
6	Applicant applies to the Minister for a pipeline licence	At least 90 days after notifying the owner that compulsory acquisition without agreement is likely to be required (step 5)
7	The Minister instructs DCCEEW to issue a notice to the owner/s where compulsory acquisition without agreement likely	Provide a minimum timeframe of 28 days for the owners to respond

8	The Minister considers responses from the owner/s as part of the determination of the licence application	
9	DCCEEW assesses the licence application (including any land acquisitions)	
10	The Minister determines the licence application. Any land/easements to be compulsorily acquired are vested in the licence applicant if pipeline licence is granted	
11	DCCEEW arranges Gazettal notice for land acquisitions	As soon as possible following the grant of a licence with lands
	Enquiries	Email energy.submissions@planning.nsw.gov.au

2 Reasonable steps to be taken

Where lands or easements over lands are of the type contemplated in s 22(1)(d)(ii) of the Pipelines Act, the pipeline licence applicant must take “**all reasonable steps**” to enter into an agreement with the owner to acquire those lands or easements before such lands or easements will be available for compulsory acquisition.

Under the *Pipeline Regulation*, the licence applicant must provide evidence to the Minister of all the steps they have taken to seek to reach agreement.

Reasonable steps may vary depending on the unique circumstances of a proposed acquisition. Reasonable steps could vary across different geographic areas, for different projects and over the course of time as community expectations change.

The process outlined in this guideline is intended to parallel most of the process under the Just Terms Act. However, significant parts of the process are fundamentally different under the Pipelines Act. For example, under the Pipelines Act, the lands and easements over land are vested in the pipeline licensee upon the Minister granting the pipeline licence and providing notification published in the Gazette, rather than vested in the acquiring authority under the Just Terms Act.

This results in a process where the licensee will do some of the pre-acquisition steps, and the Minister will initiate some of the pre-acquisition steps.

2.1 Process

As a minimum, the processes that are required of an authority of the State with acquisition powers under the Just Terms Act are considered to model what reasonable steps the Minister would expect

to have occurred before granting a licence application that includes the compulsory acquisition of land or an easement for the purpose of the pipeline licence.

This process includes the following 3 actions, which make up Step 3 in Table 1, and are outlined in more detail in part 2.2:

- a. Issue a 'commencement letter' to the owner(s) (similar to a letter advising commencement of the negotiation period under section 10A of the Just Terms Act).
- b. Inform the owner about their rights and obligations.
- c. Provide all relevant information that will help the applicant and the owner/s to reach an agreement.

After completing these steps, and taking "reasonable steps to enter into an agreement" for at least 6 months, the licence applicant may then inform the Minister that no agreement has been reached. Both parties (the applicant and the owner) can, however, agree to shorten the period, or the Minister may approve a shorter period.

At least 90 days before lodging a licence application a licence applicant must inform the Minister that it intends to apply for a pipeline licence that includes the compulsory acquisition of lands or easements. Once this has occurred, the licence applicant must advise the owner in writing, and continue to negotiate with the owner for a further minimum 90-day period.

Where a licence applicant proceeds to apply for a pipeline licence on the basis that compulsory acquisition is required, DCCEEW, on behalf of the Minister, will inform the owner that an application of that nature has been received and confirm its intention to determine the licence. This correspondence will set out the owner's rights with respect to compensation. The owner can provide a submission to DCCEEW within 28 days.

The Minister will then form an opinion as to whether "reasonable steps to enter into an agreement" have been taken.

At all times, the Minister encourages the acquisition of land by agreement.

The processes for determining compensation for land acquired by compulsory process are aligned in the Pipelines Act (section 22A) to the Just Terms Act.

2.2 Pre-acquisition requirements

These pre-acquisition requirements reflect those of parties issuing an 'commencement letter' under section 10A of the Just Terms Act. The requirements, approach, rights and obligations reflect those of the Just Terms Act and the guidance materials followed by acquiring authorities.

2.2.1 Provide the owner with a commencement letter

The commencement letter must contain:

- a statement that the licence applicant has an obligation to make a genuine attempt to acquire the land by agreement before applying to the Minister to compulsorily acquire the land or easement
- a statement that the minimum 6-month negotiation period commences from the date of receipt of the commencement letter (or such other date as is appropriate in the circumstances)
- contact details of the primary point of contact (Personal Manager)

- the purpose that the land or easements are proposed to be acquired for and details about relevant project approvals
- the process to be followed once the 6 months concludes.

In the commencement letter, a licence applicant must inform the owner that:

- the owner can engage a lawyer and valuer
- the licence applicant will cover the owner's reasonably incurred legal and valuation fees in connection with the proposed acquisition as part of the agreed compensation package
- the owner has an obligation to inform the licence applicant about any other interests in the land that they are aware of, for example, any unregistered lease holders
- the owner is entitled to a compensation package that is to be assessed under Part 3 of the Just Terms Act.

A licence applicant must:

- proactively inform the owner of the types of compensation available under the Just Terms Act
- proactively inform the owner of the types of reasonable costs the licence applicant will cover between the date of the commencement letter and the completion or discontinuance of the acquisition
- give the owner the opportunity to provide evidence to support their compensation claim.

2.2.2 Relevant considerations to assist in reaching an agreement

A licence applicant should:

- make a reasonable effort to meet face-to-face with the owner (and, failing that, propose an online meeting)
- make a reasonable effort to arrange a meeting with any experts, including valuers, before the valuation reports are finalised and in person where possible
- propose an early exchange of valuation reports and any other material supporting the respective positions on the owner's entitlement to compensation
- provide any offers to the owner in writing
- ensure an ongoing dialogue with the owner to ensure they are informed of the timing of any further offers and the date by which the negotiations must conclude
- give the owner reasonable time to consider and respond to any offers made by the licence applicant
- respond promptly to counteroffers
- give reasons for not accepting an offer or proposing an alternative offer.

2.2.3 When pre-acquisition requirements are altered

The licence applicant is not required to continue with every part of the pre-acquisition process if:

- the owner notifies the licence applicant that the owner is not prepared to negotiate with the licence applicant for the acquisition of the land by agreement, or
- the owner cannot be located after the applicant makes reasonable inquiries.

When a licence applicant cannot locate the owner, and native title is not an issue, the licence applicant must satisfy the Minister that adequate steps have been taken to find the owner before the compulsory acquisition can be approved.

Where the owner cannot be located, the licence applicant must satisfy the following minimum requirements before the application for acquisition can be considered:

- publication of a notice in a local paper, and
- erection of a notice on a board or other structure in a conspicuous place on the land proposed to be acquired, and
- Australia-wide white pages search for surname of owner (or similar search), or
- (if a title search indicates that the owner is likely to be deceased) publication of a notice in the public notices section of a nationally circulated newspaper.

3 When agreements cannot be reached

To provide owners with a minimum 90-day notice period to finalise negotiations, similar to that afforded by the Just Terms Act, licence applicants are required to advise the Minister and the owner where there is likely to be a need for compulsory acquisition without agreement at least 90 days before applying for a licence.

The Minister and the licence applicant then advise the owner in writing about the details of the application expected from the licence applicant and the rights of the owner to claim compensation.

A licence applicant cannot provide this information to the Minister or the owners before receiving the necessary development consent for the pipeline project.

3.1 Minimum timeframe for notifying the owner

The licence applicant is required to advise the Minister and the owner, not less than 90 days before applying for a pipeline licence, of the details of any lands or easements over lands that are to be included in the licence application.

3.2 Details to be provided to the Minister

The licence applicant must supply the Minister with the same details expected to be provided when an acquiring authority seeks approval to issue a proposed acquisition notice under the Just Terms Act. These include specific details of the land parcel, its ownership, the land or easement proposed to be acquired and the reason for the compulsory acquisition (that is, a description of the project).

Additionally, the licence applicant should include documents including a registered deposited plan and site map, copy of the commencement letter and, to demonstrate that the correct owners have been identified:

- title search/es (not more than 6 months old)
- ASIC documents where companies are on title
- dealing documents corresponding with the title search references.

A licence applicant should also provide detailed file notes from all conversations with the owner including:

- copies of all correspondence sent and received
- detailed notes of all meetings conducted with the owner and their experts.

3.3 DCCEEW will issue owner letters

On behalf of the Minister, DCCEEW will issue letters to owners to advise them that the pending licence application will include a request for the compulsory acquisition of land or an easement over the land.

The letter will invite the owner to provide feedback on the negotiation to reach an agreement, with a minimum timeframe of 28 days for the owner to respond.

3.4 What happens after feedback is received?

DCCEEW will assess all submissions received and provide a summary to the Minister when the licence application is considered.

DCCEEW will also provide a recommendation on each negotiation with to the Minister on the determination of the licence application.

4 Pipeline licence application inclusions

4.1 Documentation requirements

The licence application must include all relevant documentation to provide evidence that the applicant has taken all reasonable steps to enter into an agreement with the owner to acquire the land or easements.

To demonstrate that the correct owner/s have been identified, suitable document include, but are not limited to:

- title search/es (not more than 6 months old)
- ASIC documents where companies are on title
- dealing documents corresponding with the title search references
- registered deposited plans and site maps
- easement details
- copies of the commencement letters issued
- native title searches
- records of any agreements/consents
- details of any compensation claims received.

Licence applicants should also publish information about the project on their websites and project pages. This should include:

- clear information on the project
- clear and up-to-date information on project timing
- their approach to community engagement (including engagement with Aboriginal communities)
- information on how to make contact/complain.

4.2 Licence applicant to demonstrate reasonable steps

To demonstrate that the negotiation period has been conducted in good faith, a licence applicant must carefully document the whole 6-month (or longer) process and any continuing negotiation at the time of the licence application, including:

- detailed file notes from all conversations with the owner (negotiation records)
- copies of all correspondence sent and received
- detailed notes of all meetings conducted with the owner and their experts.

While this is not an exhaustive list, it indicates the type of conduct required to demonstrate that a genuine attempt was made.

5 Additional information and resources

5.1 Additional guidance materials

At all times, licence applicants should consider the codes and standards that apply across NSW business and authorities when negotiating with owners. Some of these guidelines and codes are:

- NSW Government [Property Acquisition Standards](#)
- Centre for property acquisition [Minimum negotiation period for acquisition of land](#)
- The Energy Charter [Landholder & Community Better Practice Engagement Guide](#)
- The Energy Charter [Better Practice Social Licence Guideline](#).

5.2 Glossary of terms

Term	Definition
DCCEEW	Department of Climate Change, Energy, the Environment and Water
Just Terms Act	<i>Land Acquisition (Just Terms Compensation) Act 1991</i>
Land	Has the meaning as defined in section 3 of the Pipelines Act unless explicitly stated otherwise

Owner	Has the meaning as defined in section 3 of the Pipelines Act unless explicitly stated otherwise
Minister	NSW Minister for Energy as minister administering the Pipelines Act
Pipelines Act	<i>Pipelines Act 1967</i>
Valuer-General	An independent statutory officer appointed by the Governor of NSW to oversee the valuation system. In certain situations where no agreement is reached, the Valuer-General determines the amount of compensation.

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