



Protocol for Notifiable Road Use Agreements

A voluntary protocol between the **Local Government Association of Queensland**, the **Queensland Resources Council** and the **Department of Transport and Main Roads** for the notification and assessment of particular types of movements of material in the mining and energy sector.



**Queensland
Government**

This protocol is a joint initiative of the Queensland Government, Local Government Association of Queensland and the Queensland Resources Council.

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Preamble

The *Mineral and Energy Resources (Common Provisions) Act 2014* (MERCPA) and the *Mineral and Energy Resources (Common Provisions) Regulation 2016* (MERCPR) set out the legislative framework for a notifiable road use between a resource authority holder ('the resource company') and public road authority. For convenience, the legislative sections referred to in this protocol are included at Appendix A.

For particular resource activities where haulage rates will exceed 10 000 tonnes per year for a public (local government) road and 50 000 tonnes per year for a state-controlled road¹, the resource company is responsible for notifying the public road authority.² The public road authority may give a resource authority holder a reasonable direction (a road-use direction) about the way the holder may use the road for a notifiable road use³ including carrying out an assessment of the impacts likely to arise from the notifiable road use. Under MERCPA a resource company is required to compensate the public road authority⁴ for costs related to the road use which may be through a road compensation agreement.⁵

This protocol is applicable where haulage is proposed as part of the usual process of developing a resource project (typically long lead times involving project feasibility, assessment by environmental impact statement [EIS], final investment decision etc.), not where urgent assessment of a road haulage application is required, for example in response to an extreme weather event. There are also instances outside the MERCPA where road-use agreements may be required between governments and resource companies, for example to manage road impacts when hauling quarry material.

The key stakeholders in this process are represented by:

- the Department of Transport and Main Roads (DTMR)
- local governments, represented by the Local Government Association of Queensland (LGAQ)
- resource companies, represented by the Queensland Resources Council (QRC).

These peak bodies recognise the importance of protecting road infrastructure and safety for the community and the benefits of reaching agreement about notifiable road-use assessment methods, use of roads, impact mitigation and compensation in a timely manner. This protocol is a formal agreement between the Parties, designed to facilitate cooperation and achieve outcomes that are fair and reasonable to all parties.

¹ MERCPR s.26

² MERCPA s.63

³ MERCPA s.64

⁴ MERCPA s.93

⁵ MERCPA s.94

Aim of the protocol

The protocol aims to:

- clarify shared objectives (supporting industry development while ensuring road safety and fairly managing significant transport impacts)
- provide a consistent framework for engagement and assessment of road-use impacts
- clarify the roles and responsibilities and improve communication and collaboration between the state government, local governments and resource companies to reach agreement about notifiable road use associated with resources projects.

Purpose of the protocol

The purpose of the protocol is to provide certainty by setting out principles, processes and timeframes for assessing impacts, reasonable impact assessment processes and negotiating compensation and reaching agreement about notifiable road use. This protocol only applies to notifiable road use under MERCPR s.26 1(b). This provision relates to the haulage of material where haulage rates will exceed 10 000 tonnes per year for a local government road and 50 000 tonnes per year for a state-controlled road. All references to notifiable road use in this protocol refer to activities as defined in this provision.

Note: Permits or approvals for project-related activities are still required irrespective of any compensation agreement made under this protocol or the MERCPR. This would include, for example, over-size and or over-mass vehicle permits.

Commitments

The Parties are committed to ensuring impacts on public roads arising from resource activities are appropriately assessed and that additional impacts on public roads are avoided, managed and/or mitigated.

The Parties agree that fair and reasonable compensation should be made to public road authorities for road infrastructure and maintenance costs from any additional impacts as a result of a notifiable road use.

The Parties are committed to timely assessment and revision (if required) of a notifiable road use to reach agreement on how roads may be used, impacts managed and mitigated, and the fair and reasonable compensation for additional impacts from the road use agreed by the Parties if required.

Where a resource company will be undertaking a notifiable road use, the Parties agree to encourage their members or delegates to negotiate in good faith in accordance with the principles outlined in this protocol.

The Parties agree that road safety is the foremost consideration for any road use and this must be formally addressed prior to the commencement of all notifiable road use, including circumstances where it is anticipated that a road-use direction or a road impact assessment will not apply.

Principles and responsibilities

Comprehensive and consistent assessment

Resource companies will work with the public road authority to identify and comprehensively assess any adverse road impacts associated with the project.

All Parties agree that the latest DTMR *Guide to Traffic Impact Assessment* (GTIA) should be used as the basis for assessing the impacts of a notifiable road use on public roads. Assessment will focus on ensuring road safety and condition are maintained. This will ensure a consistent methodology is used to quantify impacts for both local and state-controlled roads and for local roads in different local government areas. This will mean the road use is assessed consistently on its entire journey, from start to finish.

Resource companies recognise the limited resources available in some local governments and are committed to early engagement to allow sufficient time for the local government to allocate the necessary resources and review assessments of a road use. In some circumstances, a resource company may, by agreement with the local government, assist with resourcing the local government to ensure a comprehensive assessment of the proposed road use can be undertaken within an agreed timeframe.

Minimising impact on the public road network

Resource companies will minimise the impact of any notifiable road use on public roads by:

- avoiding the use of public roads, especially lower order, local government roads, where possible
- minimising the impact of any use of public roads via road-use management strategies
- mitigating residual impacts via minor improvements, road maintenance contributions
- entering into a road compensation agreement where the benefit exceeds the time/cost of preparation.

Road-use management strategies may include managing the timing of road transport activities, especially during wet weather, choosing the optimal type of vehicles to be used and using alternate routes where available to minimise impacts on road infrastructure and other road users.

Additionality

Assessment is to be undertaken on the impact arising from a notifiable road use that is beyond the baseline of usual road activity ('additionality').

Resource companies will compensate the public road authority for any additional cost, damage or loss that the authority incurs as a direct consequence of their notifiable road use. Impact mitigation requirements such as pavement maintenance contributions will take into account proposed upgrades and the timing and cost of existing maintenance programs by public road authorities and may be moderated accordingly.

Where project traffic varies significantly from that originally proposed and impact assessed, the resource company will advise the road authority and seek a variation to the road compensation agreement amount and road-use management requirements. The resource company is responsible for having the road impact assessment revised by a suitably qualified person⁶, in consultation with the road authority. The revised advice/road impact assessment will be considered promptly and fairly by the public road authority and resolved in good faith by all Parties.

⁶ Consistent with the DTMR Guide to Traffic Impact Assessment 2017 (<https://www.tmr.qld.gov.au/business-industry/Technical-standards-publications/Guide-to-Traffic-Impact-Assessment>) a suitably qualified person would be a Registered Professional Engineer Queensland (RPEQ) (see page 68).

Standards

The GTIA provides resource companies with guidance on how to assess the traffic impacts of proposed haulage on state roads. However, resource companies are encouraged to also use the GTIA for assessing impacts on local government roads with their agreement.

Public road authorities will only require the resource companies to compensate the authority for intervention measures consistent with the relevant standards being used by the public road authority for their own works.

Where a resource company and the authority agree that the resource company will undertake works on behalf of the public road authority to compensate for road-use impacts, these works will be undertaken in accordance with the relevant standards adopted by the authority.

Consistency

The LGAQ encourages members to coordinate and apply timely, reasonable and consistent methodology for a road impact assessment where a resource project or activity may require access to public roads in more than one local government area. Similarly, with road use across districts, TMR seeks to use a consistent approach to negotiating impact assessment and mitigation.

Consistency between the methodology adopted by DTMR and local governments is to reduce complexity, including the use of the GTIA for the assessment of impacts on road safety and condition and reasonable requirements to mitigate those impacts as part of any road-use direction.

The Parties are committed to a consistent and agreed road impact assessment and compensation methodology and the preparation of a model agreement for use by the resource company and relevant public road authority.

Fair, reasonable and proportionate

Resource companies will ensure the full impacts of the proposed activity are evaluated in a manner which is consistent with the GTIA with a focus on maintaining road safety and condition.

Resource companies will provide fair and reasonable compensation to a road authority for impacts arising from a notifiable road use. Resource companies will provide fair, reasonable and proportionate contribution to the increased network operating costs or future maintenance of new assets arising from the resource activity, accounting for the proportion of use for the resource activity and the proportion of public road use.

DTMR regional offices can assist resource companies and local governments with current information on typical costs for regional road infrastructure and routine road maintenance.

Independent mediation

By agreement, the Parties may refer a road-use assessment, where agreement cannot be reached, to a suitably qualified person for an independent mediation. The mediator will facilitate discussion and provide advice to the Parties on the matters jointly requested to be considered including options to resolve the matters in dispute.⁷

The resource company will be responsible for all reasonable costs for independent mediation.

⁷ The Queensland Law Society provides a searchable directory of approved mediators including those with experience in building and construction and commercial and contract matters.

Timeframes

The MERCPR (s. 27(3)) requires resource companies to notify a public road authority of their intention to carry out a notifiable road use at least 10 business days before the notifiable road use is proposed to start. It is noted that this notification requirement applies to both transport relating to seismic survey or drilling activity as well as haulage at more than the haulage threshold rate.

In relation to haulage (notifiable road use for the purpose of this protocol), resource companies recognise that an acceptable level of impact assessment and mitigation requires time to prepare and assess and will engage the public road authority as early as practical on their development intentions. Where possible, initial engagement should occur as early as 18 months prior to commencement of road use. Early engagement allows authorities to consider future capital works programs, grants programs, shared or cumulative impacts from various projects and multi-stakeholder collaboration.

The public road authorities acknowledge that as projects proceed to final investment decision, projects may need to be varied as new information is obtained or to respond to other project issues. Resource companies and road authorities will work to identify the optimal road management and mitigation options to respond to these issues as they arise.

Resource companies will provide formal notification of their intention to carry out a notifiable road use activity at a minimum of six months prior to the date at which agreement is required.

The LGAQ will encourage its members to assess notifications in a timely manner and provide advice as soon as possible to the resource company of any expected delays or requests for further information.

Appendix B sets out agreed timeframes for the notifiable road-use process including the following:

- a resource company to inform the public road authority of their haulage proposal
- a resource company to formally notify the public road authority prior to the date at which they propose to commence the use of a public road
- a resource company to complete an assessment of impacts in consultation with the road authority and in accordance with a road-use direction (MERCPR s.64)
- the resource company and relevant public road authority to negotiate a road-use management plan and compensation agreement for the use or for written consent for the use to be provided by the relevant public road authority.

Relationship with environmental impact statements

While MERCPR s64(3b) precludes a public road authority from requiring further impact assessment to the extent it has already been assessed under an EIS process or similar document, it does not preclude a public road authority from requiring impact assessment of notifiable road use which was not subject to evaluation in the earlier EIS assessment. Negotiation of a Notifiable Road Use Agreement (NRUA) is typically completed following issuing of an evaluation report⁸ or assessment report.⁹ Completing the negotiation of a NRUA often depends on increased confidence by the resource company to invest in detailed investigation of alignments and design of road upgrades or haul roads, and increased information on the physical and environmental constraints and social issues that must be considered in mitigating impacts (on landholders and community).

⁸ Evaluation reports are issued under the *State Development and Public Works Organisation Act 1971*

⁹ Assessment reports are issued under the *Environmental Protection Act 1994*

Resources companies recognise the benefits of early and comprehensive engagement with public road authorities and the importance of working closely with public road authorities on how to ensure the most up to date and comprehensive information is provided to assess road impacts and inform transport planning. Public road authorities recognise that road impact assessment and mitigation strategies will have been identified and refined during the EIS process and as additional information becomes available. All parties recognise the benefits from bringing forward, as early as practicable in the project lifecycle, detailed consideration of road-use impacts and planning to ensure comprehensive assessment, minimisation of impacts and optimisation of road use outcomes.

Note: permits for any project-related over-size and or over-mass vehicles under the National Heavy Vehicle Regulator provisions are still required, irrespective of any compensation agreement made under this protocol or the MERCPC.

Implementation

The Parties agree to inform their membership and TMR district centres of this protocol and encourage adoption by their members of the protocol.

Monitoring and review

The Parties agree to monitor adoption and jointly undertake an annual review of the effectiveness of this protocol.

Subject to its effectiveness, the Parties agree that this protocol may, at a future date, be a suitable model for the negotiation of other infrastructure and services agreements.

Termination

A party to the protocol may withdraw from the protocol at any time by written notification to the other Parties.

Appendix A. Relevant legislative extracts

MINERAL AND ENERGY RESOURCES (COMMON PROVISIONS) ACT 2014

Chapter 3 Part 3

Division 2 Notifiable road use

61 Application of div 2

This division applies to the use of a public road if the use is a notifiable road use.

62 What is a *notifiable road use*

A *notifiable road use*, of a public road, is the use of the road as prescribed by regulation.

63 Use of public roads for notifiable road use

(1) A resource authority holder must not use a public road for a notifiable road use unless—

(a) the holder has given the public road authority for the road a notice, complying with the prescribed requirements, that the holder proposes to carry out the use; and

(b) 1 of the following applies—

(i) the holder and the relevant public road authority have signed a compensation agreement for the use;

(ii) the public road authority has given written consent to the carrying out of the use;

(iii) an application has been made under section 100 to decide the holder's compensation liability to the public road authority relating to the road.

(2) A requirement of a resource authority holder under subsection (1) is taken to be a condition of the resource authority.

64 Directions about notifiable road use

(1) The public road authority for a public road may, by written notice, give a resource authority holder a reasonable direction (a *road use direction*) about the way the holder may use the road for a notifiable road use.

Examples of what a direction may be about—

- when the road may be used
- the route for the movement of heavy vehicles
- safety precautions the holder must take

(2) The road use direction may also require the holder to—

(a) carry out an assessment of the impacts likely to arise from a notifiable road use the subject of the notice; and

(b) consult with the public road authority in carrying out the assessment.

(3) However—

(a) an assessment can not be required if the notifiable road use is transport relating to a seismic survey or drilling activity; and

(b) the public road authority can not require an assessment of an impact to the extent it has already been assessed under an EIS under the Environmental Protection Act or a similar document under another Act.

(4) A road use direction is invalid—

(a) to the extent it is about more than the following matters—

(i) preserving the condition of the road;

(ii) the safety of road users or the public; and

(b) if it is not accompanied by, or does not include, an information notice about the decision to give the direction.

(5) Compliance with a road use direction given to a resource authority holder is taken to be a condition of the resource authority.

Part 7 Division 3 Compensation for notifiable road uses

93 Liability to compensate public road authority

(1) A resource authority holder is liable to compensate the public road authority for a public road for any cost, damage or loss the authority incurs or will incur that is or will be caused by notifiable road uses carried out by the holder that relate to the road.

Examples of a possible cost for subsection (1)—

- repair costs to rectify damage to the road caused or that will be caused by any of the uses
- capital costs for unplanned upgrades of the road incurred or that will be incurred because of any of the uses
- bring-forward costs, including interest charges, for a planned upgrade of the road that because of any of the uses is or will be required earlier than planned

(2) The resource authority holder's liability under subsection (1) is the holder's **compensation liability** to the public road authority.

(3) The compensation liability—

- (a) applies whether or not the holder has given notice of the use; and
- (b) is in addition to and does not limit or otherwise affect the holder's liability under another provision of this Act about compensating the public road authority or anyone else.

94 Road compensation agreement

(1) A resource authority holder and the public road authority for a public road may enter into an agreement (a **road compensation agreement**) about the holder's compensation liability to the public road authority.

(2) A road compensation agreement is invalid if it does not comply with the prescribed requirements for the agreement.

MINERAL AND ENERGY RESOURCES (COMMON PROVISIONS) REGULATION 2016

26 Notifiable road use—Act, s 62

(1) For section 62 of the Act, a notifiable road use is—

- (a) use of a public road, within an authorised area for a resource authority, for transport relating to a seismic survey or drilling activity; or
- (b) use of a public road at more than the haulage threshold rate if the haulage relates to—
 - (i) transporting minerals that were mined, released by mining, or processed on land in an authorised area for a resource authority under the Mineral Resources Act; or

Example of processed minerals—

minerals processed in a refinery to become another substance

- (ii) transporting petroleum produced or processed in an authorised area for a resource authority under the P&G Act or 1923 Act; or
- (iii) transporting GHG streams for a resource authority under the Greenhouse Gas Act; or
- (iv) constructing a pipeline for a relevant resource authority.

(2) Subsection (1)(b) applies even if the public road is not on land in the area of the resource authority.

(3) In this section—

haulage threshold rate means—

- (a) for a State-controlled road—50,000t a year; or
- (b) for another public road—10,000t a year.

relevant resource authority means a resource authority under the P&G Act, 1923 Act, Geothermal Act or Greenhouse Gas Act.

Appendix B. Timeframes and process

Notifiable road use (NRU)—where haulage threshold rate exceeds 50 000 tonnes per year on a state-controlled road and 10 000 tonnes per year on other public roads.

ENGAGEMENT

Approx. 18 months prior to agreement

- Resource company informs public road authority of intention to carry out NRU as part of a proposed project.
- Resource company commences regular engagement with public road authorities to:
 - inform the public road authority on project status
 - negotiate road use impact methodology and identify opportunities to manage and mitigate impacts (including cumulative impacts) or leverage grants or funding
 - identify or collect background traffic and pavement standards information to assist with impact assessment

LODGEMENT AND ASSESSMENT

Approx. 6 months prior to agreement

