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[dartenergy.com.au](http://dartenergy.com.au)

14 December 2011

The Director  
General Purpose Standing Committee No. 5  
Parliament House  
Sydney NSW 2000  
Australia

Via email: [gpscno5@parliament.nsw.gov.au](mailto:gpscno5@parliament.nsw.gov.au)

Dear Director

**Re: Landholder access agreement as requested in Committee hearing on 8 December 2011**

I am writing in response to the request made at the NSW Legislative Council Inquiry into Coal Seam Gas held on 8 December 2011, for Dart Energy to provide a copy of its standard land access & compensation agreement.

I have included a copy of our standard access & compensation agreement with this letter. Our land access agreements are between the landholder and Macquarie Energy Pty Ltd, which is the licence holder and subsidiary of Dart Energy.

Should you require further information please do not hesitate to contact myself ([jneedham@dartcbm.com](mailto:jneedham@dartcbm.com) (02) 9146 6330) or our External Relations Manager, Andrew Collins ([acollins@dartcbm.com](mailto:acollins@dartcbm.com) (02) 9146 6330).

Yours sincerely

Jason Needham  
Exploration Operations Manager

Encl: Attachment 1 - Standard Access & Compensation Agreement



## **Landholder Access and Compensation Agreement**

between

**Macquarie Energy Pty Limited (ABN 95 113 972 473)**

and

**[insert landholder]**

## Parties

<b>Macquarie Energy</b>	Macquarie Energy Pty Ltd ABN 95 113 972 473 (the Titleholder) of Suite 24.04, Level 24, MLC Centre, Sydney NSW 2000
<b>Landholder</b>	[insert landholder]

## Background

- A. The Landholder owns or is the registered lessee of the Land.
- B. The Titleholder is Macquarie Energy Pty Ltd (ABN 95 113 972 473), and is the registered holder of the Petroleum Exploration Licence, which covers an area that includes the Land.
- C. The Operator is Dart Energy Ltd (ABN 21 122 588 505), on behalf of the Titleholder, wishes to enter the Land to carry out the Prospecting Operations in accordance with their rights and obligations under the Petroleum Exploration Licence and the Petroleum Legislation.
- D. The purpose of this Agreement is to record the agreement between Macquarie Energy and the Landholder regarding access to the Land to carry out the Prospecting Operations and the compensation payable to the Landholder.

## Agreement

### 1 Definitions

- 1.1 A term shown in the first column of the Agreement Specifics will have the meaning shown opposite it in the Agreement Specifics when used in this Agreement. That meaning may be extended by clause 1.2.
- 1.2 In this Agreement, unless the context requires otherwise:

**Agreement Specifics** means Schedule 1 to this Agreement.

**Business Day** means any day except for a Saturday, Sunday or a public holiday in New South Wales.

**Compensation** includes any compensation payable to the Landholder under clause 7.

**Emergency** means a period of time that, in the Titleholder's opinion, exists as a result of a threat to the integrity of the Titleholder's property on the Land, the health and safety of any person, the environment or to property on the Land.

**Infrastructure** means all equipment, plant and access required for the drilling, testing, fracture stimulation, operation, production and abandonment of boreholes within the Petroleum Exploration Licence installed or constructed by the Titleholder on the Land.

**Operator** means Dart Energy Limited (ABN 21 122 588 505).

**Petroleum Exploration Licence** includes any tenement applied for or granted in renewal or extension of it or in substitution for or modification of it in whole or in part or as of right under or as a consequence of the Petroleum Exploration Licence.

**Petroleum Legislation** means the *Petroleum (Onshore) Act 1991* (NSW).

**Prospecting Operations** includes:

- (a) the transfer, establishment, use of and access to the Infrastructure;
- (b) all works carried out in relation to the Infrastructure;
- (c) unimpeded access to and from the Land for the purposes of discharging the Titleholder's rights and obligations under the Petroleum Exploration Licence and the Petroleum Legislation; and
- (d) any other activity agreed with the Landholder in writing.

**Borehole** means an exploration borehole drilled as part of the Prospecting Operations.

**Seismic** means reflection seismic surveys acquired as part of the Prospecting Operations.

## **2 Scope of Agreement**

The Landholder agrees that this Agreement constitutes an 'access arrangement' and a 'compensation agreement' for the purposes of the Petroleum Legislation.

## **3 Term**

3.1 This Agreement will commence on the Commencement Date and will continue until the earlier of:

- (a) the Landholder ceasing to own the Land;
- (b) the Operator plugging, abandoning the Boreholes and rehabilitating the site to the reasonable satisfaction of the Landholder;
- (c) the Petroleum Exploration Licence ceases to remain in force;
- (d) the parties agreeing to terminate this Agreement.

3.2 The Titleholder may terminate this Agreement at any time upon giving one months' notice to the Landholder provided that the Titleholder have rehabilitated the site to the reasonable satisfaction of the Landholder.

## **4 Access**

4.1 The Landholder agrees that the Titleholder may access the Land during the term of this Agreement as follows:

- (a) the Titleholder and Operator may access the Land during the Access Hours to carry out the Prospecting Operations;
- (b) the Titleholder and Operator may access the Land at any time to deal with an Emergency; and
- (c) the Titleholder or Operator must give the Landholder at least two days' notice before entering the Land to start carrying out the Prospecting Operations.

4.2 If the Landholder leases or agrees to lease the surface of the Land to a tenant during the term of this Agreement, the Landholder must ensure that the tenant agrees that:

- (a) the lease or agreement to lease is subject to the terms of access set out in this Agreement; and
- (b) all Compensation will be payable directly to the Landholder and the Titleholder will not be liable to pay any additional amount to the tenant.

## **5 Conduct of Prospecting Operations**

5.1 The Titleholder and Operator agree to use their reasonable endeavours to:

- (a) locate roads and Infrastructure so as to minimise interference with the Landholder's farming and livestock operations; and
- (b) minimise the noise from any Prospecting Operations conducted within the proximity of an inhabited residence on the Land.

5.2 The Landholder consents to the Prospecting Operations being carried out at the locations set out in Schedule 2, even if they are on land on which an improvement has been constructed or within 200m of their residence or within 50m of a garden, vineyard or orchard on the Land.

5.3 The Titleholder and Operator may, for the purpose of conducting the Prospecting Operations, construct or bring Infrastructure on to the Land and access that Infrastructure using existing roads on the Land as agreed with the Landholder and any new roads constructed by the Titleholder under this Agreement.

5.4 The Landholder acknowledges that all Infrastructure remains the property of the Operator irrespective of whether the Infrastructure is attached to the Land in a permanent fashion.

- 5.5 With the Landholder's agreement, the Operator may use water from the Landholder's surface and subsurface facilities in the drilling, completion and fracture stimulation operations of any Borehole and for drilling seismic shot holes.
- 5.6 During this Agreement, the Operator must repair to a condition as near as practicable to its original condition:
- (a) any damage to the Land or any fence, building or other improvement on the Land;
  - (b) any material damage to an access road used by the Operator,
- as soon as practicable after the damage is caused.

## 6 Obligations of Titleholder

In relation to the Prospecting Operations by the Titleholder on the Land, the Titleholder must, and must ensure that any third party authorised by it to use the Land will:

- (a) carry out all such operations on the Land in a proper and workmanlike manner and so as to cause as little injury and disturbance as practicable to any land, livestock or property of the Landholder having regard to the nature of such operations;
- (b) if required by the Titleholder and with the permission of the Landholder, erect gates on the Land and keep those gates in a stock proof condition;
- (c) use all efforts to extend courtesies and respect the privacy of the Landholder;
- (d) report to the Landholder any accidental injury or killing of livestock or damage to the property of the Landholder caused by the Titleholder;
- (e) where possible, use the Land in a manner which, consistent with the exercise of the rights granted under the Petroleum Tenement, will minimise the disturbance of people and livestock in the surrounding area;
- (f) leave all gates in the position found unless otherwise advised by the Landholder;
- (g) not take timber, soil and water from the Land to an extent greater than is necessary for the purpose of the Prospecting Operations without the prior consent of the Landholder;
- (h) take all precautions against the transportation of declared noxious weeds and seeds;
- (i) take all such measures as may be reasonably practical to protect native flora and fauna;
- (j) in relation to seismic activities, refrain from laying down fencing without permission from the Landholder, not remove water except from locations agreed by the Landholder and not set up camp within one kilometre of a stock watering point;
- (k) not carry any firearms on the Land and neither bring dogs thereon or to hunt, shoot or fish on the Land without the prior consent of the Landholder;
- (l) take all reasonable measures to prevent erosion from the Land and of the bed or banks of any stream or lake and the deposition of excavated material or eroded material in any lake, stream or watercourse;
- (m) remove all rubbish, waste, lunch bags, cans or construction debris caused by its activities on the Land;
- (n) comply with all statutory provisions which may be enforced from time to time in relation to bush fire damage or to restrictions on the lighting of fires in the open and properly extinguish all camp fires after use;
- (o) take all reasonable precautions to prevent the outbreak of any fire and not burn any debris or rubbish without the prior consent of the Landholder;
- (p) where the Titleholder open or break up the Land, as soon as practicable, and consistent with the requirements of the Prospecting Operations, restore the surface of the Land to its former condition so far as is practicable and consistent with the practice in the upstream oil and gas industry and its obligations under law;

- (q) not to destroy, remove or clear trees, timber and scrub to an extent greater than is necessary having regard to the nature of the Prospecting Operations and where the consent of any government department or other agency is required prior to the destruction, removal or clearing of any trees, timber or scrub, the Titleholder must obtain that approval prior to commencing any destruction, removal or clearing;
- (r) carry out all activities on the Land in accordance with all relevant Commonwealth, State and local government laws including the Petroleum Legislation; and
- (s) to the extent reasonably possible, drive all vehicles at moderate to slow speed and on established tracks and roads and where there is any deterioration of those tracks or roads by the Titleholder, maintain all such tracks or roads to the original condition. The Landholder acknowledges that seismic activities follow grid patterns not related to established tracks and roads and that the Prospecting Operations will require access to areas of the Land without any established tracks and roads.

## 7 Compensation

- 7.1 The Titleholder agree to pay Compensation to the Landholder for any injurious affect to the Land caused by the Prospecting Operations in the manner and at the times set out in this clause.
- 7.2 If requested by the Landholder within 6 months of the Prospecting Operations being completed, the Titleholder agree to discuss with the Landholder whether further Compensation is payable in addition to the Compensation set out in the Agreement Specifics and to resolve that Compensation.
- 7.3 In addition to the upfront Compensation set out in the Agreement Specifics, the Titleholder agree to Compensate the Landholder as follows:
  - (a) if and to the extent that the Prospecting Operations directly cause loss or damage to the Landholder's livestock or facilities on the Land, the Titleholder must either:
    - (1) repair the damage caused; or
    - (2) reimburse the Landholder for the actual loss sustained by the Landholder (including crops lost or damaged, additional stock mustering costs and supervision and the Landholder' time in dealing with the Titleholder);

The Titleholder must consult with the Landholder about options set out in clauses (1) and (2) above but the final decision about whether (1) or (2) will be adopted shall lie with the Titleholder.
  - (b) the Titleholder will control, or will bear the Landholder's reasonable costs of controlling, declared noxious weeds that grow on a Borehole site, on access roads and on any retained wellhead areas to the extent those weeds are attributable to the Prospecting Operations; and
  - (c) the Titleholder will reimburse the Landholder for any loss of income or extra costs by the Landholder in the ordinary course of its grazing and agricultural business arising directly from the Prospecting Operations, provided that the Landholder demonstrates to the Titleholder's reasonable satisfaction the nature and amount of that loss or those costs.
- 7.4 The parties agree that the amount of Compensation payable by the Titleholder may be reduced by the value of any "in kind" compensation supplied to the Landholder.
- 7.5 The Compensation will be payable as follows:
  - (a) upfront Compensation, as specified in the Schedule 1, payable to the Landholder within 14 days of this Agreement being executed;
  - (b) upfront Compensation, as specified in the Schedule 1, for the drilling of boreholes and the establishment of campsites is payable to the Landholder within 14 days of the Landholder being notified by the Operator of intention to drill;
  - (c) ongoing Compensation, as specified in the Schedule 1, on a weekly basis during the period of drilling operations, which commences on arrival of the drilling rig at the site, and concludes when all equipment has vacated the site, and excludes the period of site rehabilitation;
  - (d) Compensation for the death of livestock, damage to crops or loss of income will be paid to the Landholder upon the Titleholder receiving from the Landholder a written advice as to the fair

market value of the livestock or crop and information demonstrating to the Titleholder's reasonable satisfaction the nature and amount of the loss of income.

- (e) deferred compensation based on a line kilometre rate for the acquisition of seismic information. This will be determined after the line(s) have been completed and the distances accurately measured. The payment is to be made within 14 days of completion of the seismic program over the landowner's property.

7.6 If there is a material change in circumstances and the Landholder intends to apply to the Warden under the Petroleum Legislation for a review of the Compensation, the Landholder agrees to give the Titleholder written notice stating its intention to make the application and providing details of the application at least 14 days before making any such application.

7.7 The Compensation is in full and final satisfaction of all current and future liability of the Titleholder to pay compensation to the Landholder in respect of the Prospecting Operations and includes compensation for:

- (a) damage to the surface of the Land, and damage to the crops, trees, grasses or other vegetation on the Land, or damage to buildings and improvements on the Land, being damage which has been caused by or which may arise from the Prospecting Operations;
- (b) deprivation of the possession or use of the use of the surface of the Land or any part of the surface;
- (c) severance of any part of the Land from other parts of the Land or from other land that the Landholder owns;
- (d) surface rights of way and easements;
- (e) destruction or loss of, or injury to, or disturbance of, or interference with, stock on the Land; and
- (f) any damage consequential to any matter listed in clauses 7.7(a) to 7.7(e).

7.8 The Landholder agrees and acknowledges that:

- (a) the Landholder represents all parties entitled to claim Compensation for the Prospecting Operations under the Petroleum Legislation;
- (b) the Compensation is not related to the discovery or non-discovery of oil and/or gas reserves within the Land; and
- (c) except as set out in this clause 7, the Titleholder have no other obligation to pay compensation to the Landholder either under the Petroleum Legislation or otherwise.

## **8 GST**

8.1 The Compensation does not include GST. If GST applies to the Compensation, the Titleholder will:

- (a) increase the Compensation amount payable to allow for GST; and
- (b) issue a recipient created tax invoice on behalf of the Landholder.

8.2 Words defined in the GST Law (as that term is defined in *A New Tax System (Goods and Services Tax) Act 1999* (Cth)) have the same meaning when used in this clause 8.

## **9 Landholder's Indemnity**

9.1 Subject to clause 9.2, the Landholder indemnifies and will keep indemnified the Titleholder and Operator against:

- (a) any damage to the Infrastructure; and
- (b) any claim, demand, cost or liability made against or suffered or incurred by any person, that is caused by or which arises directly from the negligent acts or omissions of the Landholder or its employees or agents.

9.2 This indemnity set out in clause 9.1 does not apply to any claim arising out of accidents or events beyond the reasonable control of the Landholder.

- 9.3 Provided the Landholder takes reasonable care, the Titleholder release the Landholder from all liability for damage to Infrastructure caused by the Landholder.
- 9.4 Any Compensation paid to the Landholder under this Agreement will be deemed to include compensation for the occupier of any Land and the Landholder will indemnify the Titleholder against any claim by the occupier of the Land arising in respect of the loss, damage or expense for which compensation has been paid.

## **10 Titleholder's Indemnity**

- 10.1 Subject to clause 10.4, the Titleholder indemnify and will keep indemnified the Landholder against any claim, demand, cost or liability made against or suffered or incurred by the Landholder which result directly from:
- (a) injuries sustained by any person;
  - (b) the death of any person;
  - (c) damage to any property, whether of a third party or of the Landholder,
- due to or caused by the negligent acts or omissions of the Titleholder or their employees, agents or contractors. This indemnity also extends to third parties unknown who engage in misconduct while performing activities on behalf of the Titleholder under this agreement.
- 10.2 Subject to clause 10.4, the Titleholder will indemnify the Landholder against any damage to crops, timber, pasture land, livestock, improvements or other property caused by the Titleholder's employees, agents, contractors and subcontractors.
- 10.3 Subject to clause 10.3, the Titleholder will indemnify the Landholder against any loss or damage to equipment, including vehicles or plant, brought onto site by the Titleholder or any of its employees, agents or contractors except where the loss or damage is caused by an act or omission of the Landholder.
- 10.4 The indemnities set out in clauses 10.1 and 10.2 do not apply in respect of any claim, demand, cost or liability to which the compensation provisions under clause 7 apply.

## **11 Assignment**

- 11.1 The Landholder must not assign its rights and obligations under this Agreement without the prior written consent of the Titleholder. The Titleholder must not unreasonably withhold consent.
- 11.2 The Landholder may transfer all or part of its interest in the Land to another party without the Titleholder's consent provided that the Landholder advises the Titleholder of the transfer.

## **12 Disputes**

If there is a dispute between the parties about any matter under this Agreement, the dispute must be referred to an appropriately qualified expert selected by agreement or, if the parties cannot agree on an appropriately qualified expert, the procedure set out in the Petroleum Legislation will apply to resolve the dispute.

## **13 Force Majeure**

The Titleholder are not liable for a breach of this Agreement to the extent that the breach is caused by circumstances outside the Titleholder's direct control so long as the Titleholder:

- (a) notify the Landholder of the circumstances as soon as reasonably practicable after they arise;
- (b) try to remedy those circumstances quickly; and
- (c) notify the Landholder when those circumstances have ceased.

## **14 Notices**

- 14.1 Notices must be in writing and in English and may be given by an authorised representative of the sender.



- 14.2 Notices may be given to a person by leaving it in their mailbox at the person's address last notified to the other party, sending it by pre-paid mail to the person's address last notified to the other party or by sending it by facsimile to the person's facsimile number last notified to the other party.
- 14.3 Notice is deemed to be received by a person when left at the person's address, if sent by pre-paid mail, on the third Business Day after posting or, if sent by facsimile, at the time and on the day shown in a sending machine's transmission report that 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 the person's time zone, at 9.00am on the next Business Day).

## **15 Confidentiality**

- 15.1 Subject to clause 15.2, each party agrees to keep this Agreement and related negotiations and documents confidential and agrees not to disclose any of its terms without first obtaining the other party's prior written consent, which consent must not be unreasonably withheld.
- 15.2 A party may make the following disclosures without the consent of the other party:
- (a) disclosures to the party's legal advisers and consultants;
  - (b) disclosures to a potential purchaser of the Land or an interest in the Petroleum Exploration Licence, provided that the potential purchaser agrees to keep this Agreement confidential on the same terms as this clause 15;
  - (c) disclosures required by law, including disclosure to any stock exchange;
  - (d) disclosures ordered by any court, tribunal or authority.

## **16 General**

- 16.1 The Titleholder may exercise its rights under this Agreement by itself or through its authorised employees, agents, servants and contractors, including the Operator.
- 16.2 If the Landholder comprises more than one person, each of those persons is jointly and severally liable under this Agreement and, if the Titleholder comprise more than one person, each of those persons is severally but not jointly liable under this Agreement.
- 16.3 This Agreement is governed by the law of New South Wales and each party irrevocably submits to the exclusive jurisdiction of the Courts of that State.
- 16.4 This Agreement constitutes the entire agreement between the Titleholder and the Landholder in relation to its subject matter and supersedes any prior understanding or agreement between them.
- 16.5 This Agreement may only be amended by an order of a Warden's court or with the prior written consent of the parties.
- 16.6 This Agreement may be signed in any number of counterparts with the same effect as if the signatures to each counterpart were on the same instrument.

## **17 Interpretation**

In this Agreement unless the context otherwise requires:

- (a) singular includes plural and plural includes singular;
- (b) a reference to a party includes that party's personal representatives, successors and permitted assigns;
- (c) a reference to a schedule or annexure is a reference to a schedule or annexure of this Agreement;
- (d) a provision will be read down to the extent necessary to be valid and, if it cannot be read down to that extent, it must be severed;
- (e) a reference to a statute includes all statutes amending, consolidating or replacing the statute and to all regulations, direction and orders made under it;
- (f) headings do not affect interpretation; and

- (g) a provision must not be construed against a party only because that party put the provisions forward.

## Execution

EXECUTED as an agreement.

**SIGNED** for and on behalf of )  
**Macquarie Energy Pty Ltd** in the presence of: )

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Signatory  
Name:  
Title:

**SIGNED** for and on behalf of )  
**[insert landholder]** )  
in the presence of: )

\_\_\_\_\_  
Witness

\_\_\_\_\_  
[Landholder]

\_\_\_\_\_  
Name (please print)

\_\_\_\_\_  
Witness

\_\_\_\_\_  
[Landholder]

\_\_\_\_\_  
Name (please print)

**Each registered landholder must have a space to sign**

## Schedule 1 - Agreement Specifics

Date of Agreement	/ /
Landholder	[insert landholder]
Land	[insert Lot/DP] [insert address]
Titleholder	Macquarie Energy Pty Ltd (ABN 95 113 972 473)
Petroleum Exploration Licence	[insert licence number]
Commencement Date	Upon Execution of this Agreement
Prospecting Operations	<ul style="list-style-type: none"><li>▪ Drilling of a borehole at the location proposed in Schedule 2</li><li>▪ Establishing, maintaining, testing and monitoring the Boreholes and all ancillary operations</li><li>▪ All associated road works and fencing required to allow the Titleholder continued access to the Boreholes</li><li>▪ Acquisition of seismic surveys</li><li>• Rehabilitation of the Land pursuant to the Petroleum Legislation.</li></ul>
Access Hours	Please <b>tick and initial</b> , either: <input type="checkbox"/> Monday–Sunday: 6am to 6pm: Drilling rig not to be operated outside the hours of 6am to 6pm except in the case of Emergency or with Landholder’s consent  <i>or</i> <input type="checkbox"/> Monday-Sunday, 6am to 6am: 24 Hr access No restriction on hours during which drilling rig may be operated.
Compensation	Upfront compensation, payable within 14 days of this Agreement being executed: <ul style="list-style-type: none"><li>▪ \$XXXX upon execution of this agreement (7.5(a));</li><li>▪ \$YYYY per borehole drilled (7.5(b))</li></ul> Ongoing compensation, payable within 14 days of the completion of drilling operations: <ul style="list-style-type: none"><li>• \$ZZZ per week (7.5(b))</li></ul> Additional compensation as set out in clause 7 of the Agreement.

## Schedule 2 – Proposed Location of Prospecting Operations

**Insert map**

Location of proposed exploration borehole site.

## Schedule 3 – Preferred Payment Options

Please indicate your preferred payment method for Compensation as described in Schedule 1, and provide relevant details.

### For Individuals

☐ Electronic Funds Transfer

Account Name: \_\_\_\_\_

Bank: \_\_\_\_\_

Account No.: \_\_\_\_\_

BSB No.: \_\_\_\_\_

☐ Cheque

Payable to (name): \_\_\_\_\_

### For Companies

For Compensation payable to a company or trading name, please send an invoice for the amount to:

Macquarie Energy Pty Ltd  
ABN 95 113 972 473  
Suite 24.04, Level 24, MLC Centre,  
Sydney NSW 2000

Please ensure that your ABN is supplied and to include GST (if appropriate).

☐ Electronic Funds Transfer

Account Name: \_\_\_\_\_

Bank: \_\_\_\_\_

Account No.: \_\_\_\_\_

BSB No.: \_\_\_\_\_

☐ Cheque

Payable to (name): \_\_\_\_\_

PRIVACY NOTE: all details supplied will be kept in confidence and used solely for the purposes of this Agreement.