

## Environment & Planning Alert

October 2013

### Coal Seam Gas & Mining

#### Draft NSW Significant Impact Guidelines released

Earlier this year the Federal Government introduced the *Environment Protection and Biodiversity Conservation Amendment Act 2013* (Cth). This amendment Act created a new matter of national environmental significance for coal seam gas and large coal mining developments which will have or are likely to have a significant impact on a water resource.

The Department of Sustainability, Environment, Water, Populations and Communities has also released "*Draft Significant Impact Guidelines: Coal seam gas and large coal mining developments – impacts on water resources*" (**Guidelines**). [Click here](#) to view the Guidelines.

The purpose of the draft Guidelines is to assist any person who proposes to take an action which involves a coal seam gas development or large coal mining development to decide whether the action has or is likely to have a significant impact on a water resource. This will determine whether or not the proposed development should be referred to the Department of Sustainability, Environment, Water, Population and Communities (**DSEWPAC**) for a decision as to whether assessment and approval is required under the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) (**EPBC Act**).

The Guidelines provide that a 'significant impact' is an impact which is important, notable, or of consequence, having regard to its context or intensity. Whether or not an action is likely to have a significant impact is **independent** of the size of the water resource. Instead it depends upon the sensitivity, value, and quality of the water resource which is impacted, and upon the intensity, duration, magnitude and geographic extent of the impacts.

The general criteria in the Guidelines for when an action is likely to have a significant impact on a water resource is if there is a real chance or possibility that it will directly or indirectly result in:

- a substantial change to the hydrology of a water resource; or
- a substantial change in water quality of a water resource; and
- substantial changes to ecosystem function and integrity.

The Guidelines also explain the transitional provisions in the EPBC Act relating to coal seam gas and large coal mining developments.

Written by

**Amanda Johnstone**  
Senior Associate

+61 2 8248 3408

[ajohnstone@thomsonslawyers.com.au](mailto:ajohnstone@thomsonslawyers.com.au)

## Coal Seam Gas

### Review of CSG activities in NSW - initial report released

Earlier this year the NSW Chief Scientist released an "Initial Report on the Independent Review of Coal Seam Gas Activities in NSW". [Click here](#) to view the Report.

The Report considers the following issues relating to CSG activities in NSW:

- land access and property;
- geology and CSG;
- unconventional gas extraction processes and technologies;
- water;
- subsidence;
- earthquakes and induced seismicity;
- fugitive emissions and air quality;
- health;
- safety;
- cumulative impacts; and
- data.

The Report recommends that the NSW Government commit to adopting a vigilant, transparent and effective regulatory and monitoring system to ensure the highest standards of compliance and performance by the CSG industry. The Report makes 5 recommendations:

1. That the Government commits to establishing a regime for the extraction of coal seam gas that is world class.
2. That Government commission the design and establishment of a whole-of-environment data repository for all State environment data including all data collected according to legislative and regulatory requirements associated with water management, gas extraction, mining, manufacturing, and chemical processing activities, and that any legislation amendments needed to direct all environment data to the Data Repository be undertaken.
3. That a pre-major-CSG whole-of-State subsidence baseline be calculated using appropriate remote sensing data going back, say, 15 years. And that, from 2013 onwards, an annual whole-of-State

subsidence map be produced so that the State's patterns can be traced for the purpose of understanding and addressing any significant cumulative subsidence.

4. That all coal seam gas industry personnel including subcontractors working in operational roles be subject to mandatory training and certification requirements and that these mandatory training and certification requirements be included in the codes of practice relevant to CSG.
5. That the Government continue and extend its role as a champion of research relevant to the hard problems related to under-earth especially the development of sophisticated predictive underground models and a formalisation of engineering processes for cumulative impact assessment. The Government should not only lead by example in encouraging and funding such research to be undertaken and discussed in NSW, but should exhort other governments and organisations to take a related approach through mechanisms such as COAG and international partnerships.

The Review will continue into 2014 with further work to be undertaken in relation to landholders' legal rights; setbacks and exclusion zones; examining appropriate levels of industry insurance; conducting a comprehensive study of industry compliance; reviewing government best practice in the management of CSG extraction; international best practice; and analysing in-depth the methods for CSG risk assessment and mitigation.

Written by

**Amanda Johnstone**

Senior Associate

+61 2 8248 3408

[ajohnstone@thomsonslawyers.com.au](mailto:ajohnstone@thomsonslawyers.com.au)

## Mining

### Proposed changes to the Mining SEPP in NSW

The draft NSW *State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) Amendment (Resource Significance) 2013 (Consultation Draft)* is currently under consideration by the Department of Planning & Infrastructure. The Consultation Draft proposes to amend the NSW *State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007 (Mining SEPP)* to promote the

development of significant mineral resources in NSW. [Click here](#) to see the Consultation Draft.

The proposed amendments will only apply to mining proposals for mineral resources, such as coal mining and mining of other minerals and precious metals, such as gold and silver. However, the proposed amendments will **not** apply to petroleum projects, such as coal seam gas projects.

The proposed amendments:

- require a consent authority to make the 'significance of the resource' the principal consideration in the determination of development applications for mining proposals;
- set out matters to assist a consent authority in establishing the relative significance of a resource in comparison with other resources across the State, including:
  - the economic benefits, to both the State and the region in which the development is proposed to be carried out, of developing the resource; and
  - any advice by the Director-General of the Department of Trade and Investment, Regional Infrastructure and Services as to the relative significance of the resource having regard to matters including:
    - the size, quality and availability of the resource;
    - the proximity and access to existing and proposed infrastructure;
    - the relationship of the resource to any existing mine; and
    - whether other industries or projects are dependent on the development of the resource;
- identify non-discretionary development standards for noise, air quality, airblast overpressure, ground vibration and aquifer interference;
- clarify that non-discretionary development standards will, when satisfied, prevent a consent authority from refusing a development application on those specific grounds; and
- require a consent authority to consider any advice from the Office of Environment & Heritage about the adequacy of proposed measures to mitigate or offset biodiversity impacts of the proposed development.

Once the amendments are introduced, all mining proposals not yet determined will be subject to the

amendments. This includes applications which are currently undergoing the assessment process and those which have not yet been lodged.

By making the significance of the resource a principal consideration during the development assessment of mining proposals, and balancing economic, environmental and social considerations, there will be increased certainty for the mining industry, local government and the community about how decisions will be made on major mining proposals.

Written by

**Amanda Johnstone**  
Senior Associate

+61 2 8248 3408

[ajohnstone@thomsonslawyers.com](mailto:ajohnstone@thomsonslawyers.com)

**Alison O'Connor**  
Lawyer

+61 2 8248 3474

[aconnor@thomsonslawyers.com](mailto:aconnor@thomsonslawyers.com)

## Major Projects

### Update on Federal Review of Major Project Development Assessment Processes – Productivity Commission draft Report released

Earlier this year the Productivity Commission commenced a review of major project development assessment and approvals processes throughout Australia (**DAA Processes**).

On 5 August 2013, the Productivity Commission released a draft Report on "Major Project Development Assessment Processes" (**Draft Report**). [Click here](#) to view the Draft Report.

The Draft Report makes 28 draft recommendations for reform in the following areas:

- Achieving regulatory objectives;
- Reducing regulatory overlap and duplication;
- Improving timeframes and coordination;
- Regulatory certainty, transparency and accountability; and
- Compliance costs.

The recommendations include:

- establishing a 'one project, one assessment, one decision' framework for environmental approvals;
- establishing Major Project Coordination Offices to:

- advise on statutory requirements;
- coordinate and facilitate assessment and approval processes; and
- report on progress against timelines;
- separating environmental policy from regulatory and enforcement processes in all jurisdictions;
- setting statutory timelines for assessment and approval decisions;
- increasing the use of Strategic Assessments;
- requiring approval authorities to publish reasons for approval decisions and conditions for all major projects; and
- developing strategies for monitoring and enforcing compliance with approval conditions.

In order to implement change to DAA Processes, the Commission has suggested a five point plan planning process towards bilateral agreements which involves:

1. increasing State and Territory environmental assessment procedures with Commonwealth accreditation;
2. strengthening State and Territory approval processes;
3. initially progressing bilateral approval agreements on less environmentally sensitive issues;
4. COAG Reform Council monitoring progress on bilateral approval agreements; and
5. COAG publishing a timetable of agreed reforms and the COAG Reform Council reporting annually on key milestones, barriers to reform and how to address them.

The Draft Report was exhibited for public comment until 13 September 2013. A final report will be submitted to the Australian Government in December 2013.

Written by

**Amanda Johnstone**  
Senior Associate

+61 2 8248 3408

[ajohnstone@thomsonslawyers.com](mailto:ajohnstone@thomsonslawyers.com)

**Alison O'Connor**  
Lawyer

+61 2 8248 3474

[aconnor@thomsonslawyers.com](mailto:aconnor@thomsonslawyers.com)

For further information, please [click here](#) to contact our national Environment & Planning team.