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Coal Seam Gas, Community Rights to Object and the Environmental Protection Act 1994

Outline of this legal information sheet

1. About coal seam gas and how it is regulated in Queensland
2. Your rights to object/lodge a submission on coal seam gas proposals (known as “petroleum activities”)
3. What to put in your submission and how to lodge it
4. How to supercharge your submission
5. Finding out about the decision and appealing the decision.
6. What if there is an environmental impact statement or the project is a “significant project”?
7. Monitoring compliance with an environmental authority.
8. Enforcing breaches of environmental authorities.
9. Useful Contacts

1. About Coal Seam Gas extraction and how it is regulated in Queensland.

In order for coal to form underground a process occurs whereby decomposing plant matter is heated and compressed. As a result of this process gas becomes trapped by water in seams within the coal. Resource companies have worked out a technique to extract this gas. This process involves digging a vertical well into the coal seams and extracting the water. This allows for the pressure that has kept the gas in place to be removed and as such the gas is released and can flow. The gas flow is then captured for use as an energy source.

To lawfully extract coal seam gas, a resource company must apply for and successfully obtain both a Resource Authority under the *Petroleum and Gas (Production and Safety) Act 2004* and also an Environmental Authority, which is a document that deals with environmental conditions, under the *Environmental Protection Act 1994* (“EP Act”). Other permits may also be needed.

The application for environmental authority is made to and decided by the Department of Environment and Natural Resource Management (“DERM”).

This legal information sheet focuses on the *Environmental Protection Act 1994*. Chapter 5A of the EP Act is the main area dealing with coal seam gas activities, which come under the broader title “petroleum activities”.

But if the project has been declared a significant project under the *State Development and Public Works Organisation Act 1974*, then it is crucial that you have input into the terms of reference and Environmental Impact Statement for that project, as while you may still have submission rights to DERM and should exercise those rights, the Coordinator General, not DERM is the most

important decider of conditions for the environmental authority. See later in this legal information sheet about the special rules that apply to “significant projects”.

2. Your rights to object/lodge submission on coal seam gas proposals (known as “petroleum activities”)

Submission rights only apply for level 1 petroleum activities

Public submission rights are available only for level 1 petroleum activities. The main level 1 petroleum activities are:

1. A petroleum activity on a site containing a high hazard dam or a significant hazard dam; (DERM has a manual about what constitutes hazard dams that is being revised. The hazard relates to the design and contents of the dam and the risks to health and ecology if the dam broke or failed to contain its contents).
2. Certain other petroleum activities that also include as part of the project activities such as fuel burning, waste treatment, sewerage treatment or certain other activities set out in Chapter 4 of the EP Act;
3. A petroleum activity that is likely to have a significant effect on a Category A or B environmentally sensitive area (the areas are in the *Environmental Protection Regulation 2008* which includes many types of protected areas under the *Nature Conservation Act 1992*, but not nature refuges or water catchment areas).

DERM may also decide in limited circumstances that an amendment application for a level 1 petroleum activity requires public notification.

Even if public notification is not required, for example if the petroleum activity is not “level 1”, you can still send in a letter to DERM with your views in relation to an application you may hear about.

Public notification

The applicant must publish a notice with required content about the application in a newspaper circulating generally in the area where the relevant activity is proposed to be carried out. The notice must be published within 2 days after the application date.

Submissions/objections may be made within 8 business days after the notice is published or a later date fixed by the authorities. We recommend that you check with DERM what deadline they have set, as in some cases they have extended the period during which the public may lodge submissions. The applicant must provide a declaration to DERM as to or whether or not the applicant has complied with the public notice provisions.

Who can lodge a submission?

Any person may make a submission. Person includes an individual but it also includes a body of persons whether incorporated or not.

Where to see development application and materials

DERM must keep the application open for inspection by members of the public from the application date at the head office of DERM in Brisbane and other places the chief executive decides. DERM must give a person a copy of the application upon payment of the appropriate fee. Currently there is no requirement or practice that all applications are put online.

DERM has a practice of sending out disks containing information if the companies supply them with electronic copies of applications.

For inquiries relating to CSG, contact DERM's CSG hotline on 13 25 23.

What the development application must contain

The application is required to include various features

The application must—

- (a) be made to the DERM in the approved form; and
- (b) describe—
 - (i) each relevant resource authority for the application; and
 - (ii) all relevant activities for the application; and
- (c) be supported by enough information to allow the authority to decide the application, including for example—
 - (i) relevant information about the likely risks to the environment; and
 - (ii) details of wastes to be generated; and
 - (iii) any waste minimisation strategy; and
- (d) be accompanied by—
 - (i) an environmental management plan that complies with section 310D of the EP Act¹ (this is a very important document that proposes environmental protection commitments);

3. What to put in your submission and how to lodge it

Formal requirements for a submission

A properly made submission must be:

- In writing
- Signed by or for each person who made the submission
- State the name and address of each signatory
- Be made to the administering authority i.e. DERM
- Be received on or before the last day of the submission period.

According to DERM, submissions may be made by post to DERM, PO BOX 2454, Brisbane QLD 4001 and alternatively you can fax submissions to (07) 3330 5634. Check the address in the public notification to be sure you send your submission to the correct address. It is advisable to post your signed original submission in if you fax the submission in. And keep a copy, showing when and how your submission was lodged.

Currently there is no express provisions allowing a submission to be made by email. However we understand from DERM that if they receive a submission by email on or before the due date, then as long as a signed copy is faxed or posted in soon afterwards, the submission will be taken into account.

Relevant matters for deciding application to address in your submission

Try to address some of these relevant matters or criteria in your submission!! In deciding whether to grant or refuse the application, DERM-

- (a) must comply with any relevant regulatory requirement (this means certain requirement under an environmental protection policy or a regulation, perhaps most relevantly rules restricting

when evaporation ponds may be allowed. Environmental Protection Policies are on DERM's website).

- (b) subject to paragraph (a), must **consider** each of the following—
- (i) the standard criteria (this is a list in the EP Actⁱⁱ it includes environmental principles, such as the precautionary principle and intergenerational equity, the public interest which is a very broad term and many other matters. So protection of air and water quantity and quality, public health, good quality agricultural land, economic matters and social and cultural matters are examples of what is relevant).
 - (ii) if any part of the application relates to a wild river area—the wild river declaration for the area;
 - (iii) additional information given for the *application*;
 - (iv) any suitability report obtained for the application (about if the applicant is a suitable person to hold the environmental authority);
 - (v) any properly made submission for the application;
 - (vi) the views expressed at a conference held for the application;
 - (vii) the environmental management plan accompanying the applicationⁱⁱⁱ; (as this includes environmental protection commitments this document needs to be carefully scrutinised)
 - (viii) the status of the application under resource legislation for each relevant resource authority for the application (as the EP Act states you can only apply for an environmental authority if you have a resource authority or have applied for one).
 - (ix) if an environmental impact statement requirement has been made for the application—the EIS.

Guidelines by DERM

DERM has produced a set of three guidelines for the environmental management of Coal Seam Gas fields and use of Coal Seam Gas water that may help you analyse proposals. These are:

- Preparing an environmental management plan for coal seam gas activities (DERM, 31 March 2010)
- Model conditions for coal seam gas activities (DERM, 31 March 2010)
- Approval of coal seam gas water for beneficial use (DERM, 31 March 2010)

These are accessible from the Queensland Department of Environment and Resource Management [website](#).

4. How to supercharge your submission

Communication and Politics

- It is important to try to be scientific and precise about your concerns if at all possible.
- It is vitally important that you include a concise summary of your points on the front page of your submission so readers don't get lost in the detail.
- If you have time, talk to the media about the issue and send copies of your submission to relevant Ministers and other politicians. Request meetings and seek commitments.
- Ask to meet with the company applying for the environmental authority.
- Ask to meet with the public servants at DERM to ask questions and to put forward your views. The developer will meet with them, and barrage them with phone calls and hard and soft promotion of their proposals, so this is only fair that DERM meet with you too.
- Try to gain a large number of submissions to gain relevance in the media and to gain political traction. It is good to talk to members of your community but also to other groups that might share your concerns even if the groups are not located in your area, such as conservation groups.

Relevance

- Try to address the criteria the decision maker will use- see list above!
- Read the application carefully and highlight any deficiencies in the application. For example, does the environmental management plan include all the features it is required to include under the EP Act (see list at the back). If not, then the application may be invalid and the company would be wise to correct the environmental management plan and redo the public notification.
- So for example include maps and photographs showing key features to be affected by the proposal.
- If you know of them, refer to publications about the ecology of the area or about relevant creeks or ground water that may be affected.
- If you can afford to hire an expert to assist you with a key concern, then you can submit that experts report as an attachment to your submission/objection.
- It might be helpful to suggest conditions of approval include monitoring or rehabilitation though you will need to balance the benefits of such suggestions against total opposition to the proposal.

5. Finding out about the Decision and appealing the decision

Finding out about the decision

An information notice about the decision by DERM to approve or approve with conditions or refuse the application must be given to the submitter within 8 business days after the decision.

Seeking DERM to review an approval

A submitter for an environmental authority (petroleum activities) for a level 1 petroleum activity may apply for an **internal review** of a decision granting the application for environmental authority. The application must be made within 10 business days after the day on which the person receives notice of the original decision. Section 521 of the EP Act contains details about that review process. Basically if you seek internal review then a fresh decision will be made on the application by DERM. An application for review does not automatically “stay” the decision so work can start on the activity: an application must be made to the Land Court to be sure that work may not start.

Making an Appeal to the Land Court

There are also appeal rights to the Land Court. The appeal to the Land Court must be started within 22 business days after the appellant received notice of the decision.

On appeal, the Land Court has the same powers as DERM. The Land Court rehears the matter and may make a fresh decision.

6. What if there is an environmental impact statement or the project is a “significant project”?

When is an Environmental Impact Statement required?

The EP Act provides that DERM or the Minister responsible for the EP Act may decide that an Environmental Impact Statement of “EIS” is required for the proposal under the EP Act. If so public notification is required twice, firstly for the draft Terms of Reference for the EIS and secondly, for the EIS.

If there is a “significant project” declaration made under the *State Development and Public Work Organisation Act 1974* then an EIS will be undertaken under the provisions of that Act instead of the EP Act.

What if a significant project declaration is made by the Coordinator General?

Some coal seam gas projects have been declared to be “significant projects” under the *State Development and Public Work Organisation Act 1974* which entails the Co-ordinator General overseeing environmental assessment of the project, usually with the aid of an Environmental Impact Statement, “EIS”.

Public submissions are sought on draft terms of reference for the EIS Environmental Impact Assessment Statement and on the EIS.

The Coordinator General prepares a detailed report on the assessment process including conditions. All conditions for the environmental authority stated in the Coordinator-General’s report for the project *must be imposed* on the environmental authority. Any other conditions that DERM proposes to impose *must not be inconsistent* with the approval.

For an example, see the Coordinator General’s evaluation report for an environmental impact statement on the Gladstone Liquefied Natural gas – GLNG Project dated May 2010. That project includes various components such as the Coal Seam Gas fields, the Gas Transmission Pipeline and the Liquefied Natural Gas Facility at Curtis Island near Gladstone. <http://www.dip.qld.gov.au/resources/project/gladstone-liquefied-natural-gas/cg-report-gladstone-ling.pdf>

7. Monitoring Compliance with the Environmental Authority

If DERM approves the proposal, it is good to get a copy of the final Environmental Authority showing the conditions and all relevant plans and maps documents from DERM so that you can later on check to see if conditions are complied with.

You are entitled to obtain a copy of the Environmental Authority, environmental protection orders directing the company to do various things, monitoring reports, environmental reports and other valuable information under the public register held under s540 of the EP Act. A charge will be made for copies. See contacts at back of this legal information sheet.

If you want to see other information, for example letters between DERM or the Minister and the applicant then you may need to lodge a Right to Information application. An application can be lodged online at <https://www.smartservice.qld.gov.au/services/information-requests/apply.action>.

Keep records of breaches or dubious action by the company in diaries, photographs and sampling. The more precise you are as to details and dates the more powerful your complaint will be in bringing the matter to DERM's attention.

8. Enforcing breaches of the Environmental Authority

If the holder of an environmental authority breached a condition, then DERM has the responsibility to take enforcement action, either issuing an order to compel compliance or bringing criminal prosecution or seeking an enforcement order in the Planning and Environment Court.

Members of the community have legal entitlement to go to the Planning and Environment Court to seek an order to remedy or restrain a breach of the EP Act for example, breach of conditions. The general rule in that Court is that each side pays his or her costs, irrespective of the outcome of the case, as it is a public interest jurisdiction.

9. Useful Contacts:

Environmental Defenders Office (Qld) Inc.

Ph: 07 32114466 for legal assistance in relation to scrutiny of coal seam gas projects

Fax: 07 32114655

Post: 30 Hardgrave Road, West End 4101

Email: edoqld@edo.org.au

Web: www.edo.org.au/edoqld

Department of Environment and Resource Management (DERM)

Ph: 13 25 23 CSG Hotline - to ask about applications in progress and to seek a copy of applications

Ph: Pollution Hotline 1300 130 372 if you wish to report a breach of conditions of approval.

Ph: 131304 to check out where is your local DERM business centre or search <http://www.derm.qld.gov.au/contactus/businesscentres.html#bclist> so that you can search the public register under the EP Act for environmental authorities, environmental reports, monitoring reports etc. A fee will be charged for copies of documents.

Fax: (07) 3330 5875 to send your submissions: but check public notice that this is correct current fax number

Post: DERM, PO BOX 2454, Brisbane QLD 4001 for your submissions but check public notice that this is correct current post office box

Email: info@derm.qld.gov.au

Web: www.derm.qld.gov.au

Weblink to DERM coal seam gas guidelines:

Beneficial reuse of water

http://www.derm.qld.gov.au/environmental_management/land/documents/csg-water-beneficial-use-approval.pdf

Environmental Management Plan

http://www.derm.qld.gov.au/environmental_management/land/documents/csg-environmental-management-plan.pdf

Model Conditions:

http://www.derm.qld.gov.au/environmental_management/land/documents/csg-model-conditions.pdf

Department of Infrastructure and Planning

Web: <http://www.dip.qld.gov.au/projects/energy/gas.html> for list of significant projects concerning gas

ⁱ *Environmental Protection Act 1994*

- (1) The purpose of an environmental management plan is to propose environmental protection commitments to help the administering authority decide the conditions of the environmental authority (chapter 5A activities).
- (2) An environmental management plan must—
 - (a) be in the approved form; and
 - (b) describe each of the following—
 - (i) each relevant resource authority for the environmental authority;
 - (ii) all relevant activities the subject of the application;
 - (iii) the land on which the activities are to be carried out;
 - (iv) the environmental values likely to be affected by the activities;
 - (v) the potential adverse and beneficial impacts of the activities on the environmental values; and
 - (c) state the environmental protection commitments the applicant proposes for the activities to protect or enhance the environmental values under best practice environmental management; and
 - (d) contain enough other information to allow the administering authority to decide the application and conditions to be imposed on the environmental authority (chapter 5A activities); and
 - (e) address any other matter prescribed under an environmental protection policy or regulation.
- (3) The environmental protection commitments must include a rehabilitation program for land proposed to be disturbed under each relevant resource authority for the application.
- (4) The rehabilitation program must state a proposed amount of financial assurance for the environmental authority.
- (5) If the application is for a coal seam gas environmental authority, the environmental management plan must also state the following—
 - (a) the quantity of coal seam gas water the applicant reasonably expects will be generated in connection with carrying out each relevant CSG activity;
 - (b) the flow rate at which the applicant reasonably expects the water will be generated;
 - (c) the quality of the water, including changes in the water quality that the applicant reasonably expects will happen while each relevant CSG activity is carried out;
 - (d) the proposed management of the water including the use, treatment, storage or disposal of the water;
 - (e) the measurable criteria (the *management criteria*) against which the applicant will monitor and assess the effectiveness of the management of the water including criteria for each of the following—
 - (i) the quantity and quality of the water used, treated, stored or disposed of;
 - (ii) protection of the environmental values affected by each relevant CSG activity;
 - (iii) the disposal of waste, including, for example, salt, generated from the management of the water;
 - (f) the action that is proposed to be taken, if any of the management criteria are not satisfied, to ensure the criteria will be able to be satisfied in the future.
- (6) For subsection (5)(d), the environmental management plan must not provide for using a CSG evaporation dam in connection with carrying out a relevant CSG activity unless—
 - (a) the plan includes an evaluation of—
 - (i) best practice environmental management for managing the coal seam gas water; and
 - (ii) alternative ways for managing the water; and
 - (b) the evaluation shows there is no feasible alternative to a CSG evaporation dam for managing the water.
- (7) In this section—

coal seam gas means petroleum (in any state) occurring naturally in association with coal or oil shale, or in strata associated with coal or oil shale mining.

coal seam gas environmental authority means an environmental authority (chapter 5A activities) for a level 1 chapter 5A activity involving exploring for or producing coal seam gas.

coal seam gas water means underground water brought to the surface of the earth or moved underground in connection with exploring for or producing coal seam gas.

CSG evaporation dam means an impoundment, enclosure or structure that is designed to be used to hold coal seam gas water for evaporation.

relevant CSG activity means a relevant chapter 5A activity involving exploring for or producing coal seam gas.

ⁱⁱ *Environmental Protection Act 1994*

standard criteria means—

- (a) the principles of ecologically sustainable development as set out in the ‘National Strategy for Ecologically Sustainable Development’; and
- (b) any applicable environmental protection policy; and
- (c) any applicable Commonwealth, State or local government plans, standards, agreements or requirements; and
- (d) any applicable environmental impact study, assessment or report; and

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- (e) the character, resilience and values of the receiving environment; and
 - (f) all submissions made by the applicant and submitters; and
 - (g) the best practice environmental management for activities under any relevant instrument, or proposed instrument, as follows—
 - (i) an environmental authority;
 - (ii) a transitional environmental program;
 - (iii) an environmental protection order;
 - (iv) a disposal permit;
 - (v) a development approval; and
 - (h) the financial implications of the requirements under an instrument, or proposed instrument, mentioned in paragraph (g) as they would relate to the type of activity or industry carried out, or proposed to be carried out, under the instrument; and
 - (i) the public interest; and
 - (j) any applicable site management plan; and
 - (k) any relevant integrated environmental management system or proposed integrated environmental management system; and
 - (l) any other matter prescribed under a regulation.

ⁱⁱⁱ As for i, above.