

Submission

Department of Sustainability, Environment, Water, Population and Communities

Draft significant impact guidelines:

Coal seam gas and large coal mining developments - impacts on water resources

130725

Stefanie Schulte
Economic Policy Analyst

Introduction

NSW Irrigators' Council (NSWIC) represents more than 12,000 water access licence holders across NSW. These irrigators access regulated, unregulated and groundwater systems. Our Members include valley water user associations, food and fibre groups, irrigation corporations and community groups from the rice, cotton, dairy and horticultural industries.

This submission represents the view of the Members of NSWIC with respect to the *Draft significant impact guidelines: Coal seam gas and large coal mining developments - impacts on water resources*. However, each Member reserves the right to independent policy on issues that directly relate to their area of operation, or expertise, or any other issue that they may deem relevant.

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General Comments

NSWIC welcomes the opportunity to make a submission to the *Draft significant impact guidelines: Coal seam gas and large coal mining developments - impact on water resources*.

NSWIC acknowledges that the draft significant impact guidelines were developed in response to the amendments of the *Environmental Protection and Biodiversity Conservation Act 1999* (EPBC Act) via the *Environmental Protection and Biodiversity Conservation Bill 2013* (EPBC 2013) which recognizes that large mining and coal seam gas (CSG) activities can have significant and possibly irreversible impacts on water resource.

Under these objectives, NSWIC is not convinced that the current draft impact guidelines are comprehensive or detailed enough to protect all water resources from mining and CSG activities. NSWIC recognizes that these limitations arise as a result of limitations to the EPBC Act. However, NSWIC submits that the guidelines should be written to allow for future changes to the EPBC Act in order to protect all water resources indefinitely.

As such, NSWIC has provided four key recommendations to the draft guidelines, which we hope will initiate further discussion on amendments to the EPBC Act.

- 1. It must be mandatory for each CSG and large scale mining operation to submit a water impact referral to the department.**
- 2. All mineral and other energy resource extractive activities must be subject to the same impact assessment criteria and not just CSG and large scale mining activities.**
- 3. The impact guidelines must apply to all stages of mineral and other energy resource extractive activities to ensure the thorough protection of all water resources.**
- 4. The impact guidelines must assess any changes to the beneficial use characteristics of the water resources - both ground and surface water.**

NSWIC has outlined on several occasions that the scale and exponential increase in mineral and other resource extractive activities has placed water resources and those industries reliant on them at considerable risk. Without adequate protection, this risk to water sources could have a large scale impact on the environment, communities and industries.

As NSWIC is concerned about the protection of water resources, we would like to stress NSWIC policy objectives at this point¹;

The preservation of sustainable resources for agriculture – including water – must be absolute in addressing mining exploration or operational licence applications.

¹ For further reference, NSWIC Mining and CSG policy is appended to this submission.

NSWIC advocates a strict “no regrets” approach to the licencing of both exploration and operations in mining in respect of water sources.

Without these key objectives being included in the draft impact guidelines and subsequently in the EPBC Act, NSWIC believes that water resources will continue to be threatened by mineral and other resource extractive activities.

Specific Comments

NSWIC submits the following specific comments to the draft significant impact guidelines. We reiterate that several comments were made in the hope and expectation that further amendments to the EPBC Act will be initiated;

1. Self-Assessment

NSWIC does not concur with the notion that a referral to the Department of Sustainability, Environment, Water, Population and Communities is optional for proponents of CSG and large mining developments.

As our policy has clearly outlined, the protection of water resources must be absolute and unconditional. The optional character of the referral application does not allow for such stringent protection of water resources and is therefore not sufficient in our opinion.

Furthermore, the guidelines themselves are not sufficiently detailed to allow proponents of CSG and large scale mining operations to thoroughly assess if their activities will have a "significant impact on water resources". The guidelines must be tightened to ensure that no water resources are affected by any CSG or large scale mining activities.

NSWIC is aware that a penalty applies in case breaches against the *Environmental Protection and Biodiversity Conservation Amendment Bill 2013* are committed, but given the uncertainty and the limited knowledge that currently exists in respect to the impact of CSG and large scale mining activities on water resources, a subjective self-assessment process is highly inadequate as a protection mechanism for water resources. We also note that penalties applied subsequent to damage occasioned are likely to be highly ineffective in reversing that damage.

Given that the amendments to the *Environmental Protection and Biodiversity Conservation Act* (EPBC Act) were drafted to allow for the development and implementation of impact guidelines, NSWIC submits that the submission of a referral to the department be made mandatory for all CSG and large scale mining operations.

Recommendation 1.

It must be mandatory for each CSG and large scale mining operation to submit a water impact referral to the department.

2. CSG and Large Coal Mining

NSWIC objects to the fact that scrutiny is only applied to CSG and large coal mining activities, whilst ignoring all other mineral and energy resource extractive industries which could have an impact on water resources. Such limited consideration may leave water resources at considerable risk of possible irreversible damage.

The limitation of the guidelines to only assess possible impacts of CSG and large coal mining operations if extraction takes place is also not sufficient in NSWIC's opinion. Extraction is only one activity that could impact water resources, however adjacent activities are as important as actual extractive activities.

NSWIC acknowledges that the EPBC Act requires the assessment of an 'action' as a whole, however the following paragraph states that;

However, if the extraction activity itself does not have a significant impact on a water resource, then the action does not require referral under the water related CSG and large coal mining development provision, even if other activities are likely to have a significant impact on water resources².

NSWIC does not concur with such an assessment and submits that all actions related to CSG and large scale mining activities must be included in the assessment of impacts on water resources.

Furthermore, clarity must be provided by the department about the following paragraph;

A referral may still be required if other activities, not involving extraction, are likely to have significant impact on any other matter of national environmental significance.

NSWIC would like to gain clarity on what these matters of national environmental significance could be if water resources are excluded for the consideration of 'none extractive activities'. It seems absurd to exclude water resources when considering other matters of environmental significance.

Finally, NSWIC is concerned about the exemption mentioned on p.16 and we strongly object to the exemption provided under Part 4, 7 and 9 of the EPBC Act and believe further amendments to the Act will be necessary in this regard. We remain of the opinion that the protection of water resources must be absolute and unconditional and hence no exemption should be granted that could potentially threaten ground and surface water resources.

Recommendation 2:

All mineral and other energy resource extractive activities must be subject to the same impact assessment criteria and not just CSG and large scale mining activities.

² Draft significant impact assessment, p.5

3. Assessment Stages

NSWIC would like to reiterate that we object to the notion that only extraction is considered a trigger point for the water impact assessment under the draft guidelines.

We remain of the opinion that the protection of all water resources must be ensured through a uniform assessment process that applies to all mineral and other resource extractive activities.

The limitation of only assessing impacts at the extraction stage dilutes the protection of water resources considerably. Should water resources - surface and groundwater - be affected by mineral or other resource extractive activities, then the result could be detrimental and hence will have long lasting impacts on communities, the environment and other industries.

Furthermore, NSWIC is concerned that the definition of 'significant impact' is not stringent enough to ensure the protection of all water resources through all stages of mining and CSG activities. Any impact on water resources - large or small scale - can change the beneficial use characteristics and should therefore be assessed. Our concern is particularly evident in example 3, p.13;

While there is some potential for surface water resource to be impacted where the activity is carried out during the wet season (...).

Should any activity have an impact on water resources, then their impact should be assessed and quantified and hence a referral should be submitted to the department.

Recommendation 3.

The impact guidelines must apply to all stages of mineral and other energy resource extractive activities to ensure the thorough protection of all water resources.

4. Impact Criteria

NSWIC is concerned that the impact assessment - general criteria on page 7 - focuses too narrowly on hydrology and water quality. Whilst hydrological changes and changes in water quality are crucial, NSWIC submits that the 'general criteria' must be expanded to include any modification to the beneficial use characteristics of any water sources, so that all impacts can be assessed.

Recommendations 4:

The impact guidelines must assess any changes to the beneficial use characteristics of the water resources - both ground and surface water.

5. Clarity and Assessment process

NSWIC submits that clarity is provided on the following sections of the draft significant impact guidelines;

A referral may be still required if other activities, not involving extraction, are likely to have a significant impact on any other matter of national environmental significance. (p.5)

Should such 'activities' exist, then NSWIC questions the need to initially exempt all but extractive activities to apply to the significant impact guidelines. NSWIC would like to reiterate that the impact guidelines should be uniformly applied to all CSG and mining related activities so that assurance is given to all water access licence holders that water resources are protected.

Furthermore,

A proponent may obtain entitlements to extract water under a state water resource plan which has been prepared in accordance with the requirements of the National Water Initiative (p.8).

NSWIC is of the understanding that any CSG or mining operator that will take water either deliberately or incidental, will be required to hold sufficient water licences to cover their aggregate take. For that reason, NSWIC would like to obtain clarity on which circumstances could exist under which proponents 'may' have to obtain licences. On this point, NSWIC would like to add that the acquisition of a licence should not be confused with the impact on a water resources. Whilst proponents of CSG and large scale mining activities will hold water entitlements, their activities could still impact water resources.

Additionally,

Small scale development may be less likely to have a significant impact on a water resource. For example, exploration, appraisal and pilot developments, which due to their scale and short duration of activity may be less likely to have a significant impact on water resources (p.11).

While NSWIC rejects the notion that exploration, appraisal and pilot developments should be excluded from a water resource impact assessment, we further question the rationale behind these assumptions. Any interference with a water course or any damage to an aquifer - at any stage of a CSG or mining activity - could have a detrimental and possibly irreversible impact on water resources. Whilst the probability of damage occurring might be lower, it is still present and hence should be assessed under the impact guidelines.

Furthermore,

..to produce water suitable for beneficial use in the environment, agriculture or industry, including reinjection into suitable aquifer.. (p.12)

NSWIC does not support the process of reinjection into any aquifer not only because it could have an impact on the pressure within the aquifer but 'suitable' is not equivalent to 'the same' characteristics as the water that is currently present in the aquifer.

Finally,

The Minister may also decide that an action is not likely to have a significant impact on a matter of national environmental significance, and does not require approval under the EPBC Act, because it will be taken in a 'particular manner'.(p.13)

While NSWIC rejects any exemptions to assess possible impacts on water resources, we would like to gain clarity on what the 'particular manner' constitutes and under what circumstances they would allow for an exemption of the impact assessment.

6. Timeframe

NSWIC is concerned about the timeframe provided to the Minister to make a binding decision on whether an action requires approval.

As not all impacts on water resources are yet fully understood, NSWIC believes it is fraudulent to impose a timeframe for the assessment process that is potentially insufficient to fully and comprehensively assess the impact on the water source(s). NSWIC therefore submits that the wording should be amended to say;

..within a timeframe that allows for a comprehensive and full scale assessment of the impact on all water resources related to the CSG, mineral, large scale mining or other energy resource extractive activity.

Conclusion

Having outlined our concerns in regards to the draft significant impact guidelines and the underlying EPBC Act, we urge the department to thoroughly consider drafting the guidelines to enable further amendments to the EPBC Act.

These changes to the EPBC Act will be necessary to enable comprehensive and adequate protection of all water resources. At this point we would like to reiterate our key objectives under NSWIC Policy - Mining and Coal Seam Gas Approvals; Protection Water Resources at this point;

The preservation of sustainable resources for agriculture – including water – must be absolute in addressing mining exploration or operational licence applications.

NSWIC advocates a strict “no regrets” approach to the licencing of both exploration and operations in mining in respect of water sources.

Appendix A:



PO Box R1437
Royal Exchange NSW 1225
Tel: 02 9251 8466
Fax: 02 9251 8477
info@nswic.org.au
www.nswic.org.au
ABN: 49 087 281 746

Mining and Coal Seam Gas Approvals; Protecting Water Resources

Policy

110829

Andrew Gregson
Chief Executive Officer

Introduction

NSW Irrigators' Council (NSWIC) represents more than 12,000 irrigation farmers across NSW. These irrigators are on regulated, unregulated and groundwater systems. Our members include valley water user associations, food and fibre groups, irrigation corporations and commodity groups from the rice, cotton, dairy and horticultural industries.

This document represents the views of the members of NSWIC. However each member reserves the right to an independent view on issues that directly relate to their areas of operation, or expertise, or any other issues that they may deem relevant.

Executive Summary

This document sets out the policy of NSWIC in respect of the issuing of permits for mining, including for coal seam gas, across this state, for both exploration and operations.

The preservation of sustainable resources for agriculture – including water – must be absolute in addressing mining exploration or operational licence applications.

NSWIC advocates a strict “no regrets” approach to the licencing of both exploration and operations in mining in respect of water sources.

Background

Our constituency and expertise is linked to water, both surface and ground. It is on that basis that this policy was drafted and accepted. NSWIC claims significant expertise in water resource management, but not in respect of mining, gas extraction or processing.

This policy is limited to the potential impacts of mining, including coal seam gas extraction, on water resources. This does not preclude NSWIC – or any of its Member organisations – from holding additional or separate policy positions on other issues with the mining industry that affect our stakeholders.

NSWIC is not opposed to the mining industry nor to its further development. We recognise that there may be significant social and economic benefits which in many instances can be delivered with limited negative impact to communities, to businesses and to the environment. We recognise that benefits may accrue at an individual level, a community level, a regional level and a state-wide level. In light of a sustained attack on productive water use, any additional economic activity generated by mining may be much needed by many communities.

NSWIC believes that the local and regional social and economic costs of mining activity may, in many instances, outweigh the benefits. A full analysis of both costs and benefits across the long term must be undertaken by independent experts and fully published.

By its nature, resource extraction is a short to medium term activity. Once the resource has been extracted, the business ceases to operate. Agriculture, on the other hand, is a sustainable long term activity. Sensibly managed, its use of renewable resources allows for food and fibre production indefinitely. We believe that this fact must underpin a basic policy proposition; the preservation of sustainable resources for agriculture – including water – must be absolute in addressing mining exploration or operational licence applications.

Potential Impacts

NSWIC has considered the potential impacts that mining activity may have on water resources. We have considered both ground and surface water sources, as we believe that both stand to be impacted by mining operations.

Irrigators are subject to significant obligations in respect of access, reliability, quality and impacts. These are largely contained with the *Water Management Act* and subordinate legislation. That is, irrigators face a legislative regime to manage, preserve and protect the water resource. We believe that mining and coal seam gas operations must be subject to a process that is *at least* as prescriptive and enforced.

Whilst it would seem a simple process to regulate and monitor individual operations to avoid impacts, NSWIC is concerned at the likelihood of cumulative impacts of multiple operations in and around individual water sources.

The Water Resource – Access

Physical access to the water resource – and its integrity – is a non-negotiable threshold requirement for NSWIC. There must be no circumstances under which the watercourse or aquifer is damaged or altered either permanently or temporarily.

Examples of such damage might be cracking an underground aquifer such that water is able to escape or become depressurised. In surface water, the diversion of a watercourse or escape to, say, an open cut that would not otherwise have occurred is a similar example, as is land and watercourse subsidence from long-wall operations.

Examples of temporary damage might include transfer of drilling fluids in the period prior to permanent casing.

The Water Resource – Reliability

The value of a water resource and an associated extraction licence to an irrigator is not only access to it, but the reliability of it. Irrigation necessarily involved the precise application of water resources at precise times. Impact on the reliability at both short and long term temporal intervals will have a material negative impact on irrigators.

Examples of reliability impacts might include temporary loss of availability.

The Water Resource – Quality

NSWIC is concerned at diminution of water quality from mining operations including salinity impacts and the addition of chemicals to water sources. It is our policy that contaminated water – be it through mining process or an adjunct to operations – is utterly unacceptable and must be vigorously guarded against. Any returned water must be of a quality *at least* equal to or higher in quality to independently assessed benchmark data obtained prior to operations commencing. NSWIC will not accept averaging of water quality testing, but requires that all returns meet this standard.

Examples of such impacts may include incursion of saline water and other contaminants to either surface or ground water as part of extraction operations. The injection of chemical-laden liquids to achieve hydraulic fracturing clearly has the potential to significantly diminish water quality, aside from the potential damage to the physical structure of an aquifer.

The Water Resource – Availability and Use

NSWIC is aware that mining operations and exploration are often significant users of water. We absolutely oppose the granting of water use exemptions in either case. Mining, by its nature, is a commercial activity. Commercial options to obtain water for use exist in the form of tradeable water entitlements. NSWIC insists that all mining use of water must be on the basis of licensed extraction to avoid third party impacts associated with further allocation in fully allocated systems.

Measures to Avoid Impacts

NSWIC recognises that there are essentially three separate phases of mining activity where water resources must be protected; exploration, operation and post-operation.

We believe that a risk management approach needs to be adopted to avoid impacts.

NSWIC believes that each phase must be adequately regulated. We are content for this to be achieved by a Regulation based on an aquifer interference policy in conjunction with Water Sharing Plans. We require that in areas where Water Sharing Plans are not yet finalised, any mining activity – including exploration – must be deferred until such time as the Plan is finalised and active. We further require that the aquifer interference policy and regulation be extended to all water sources, not simply underground aquifers. We may be content with alluvial aquifers being included which essentially protect surface watercourses.

Council is concerned that there may be instances where no alluvial aquifers are situated adjacent to surface water courses, such as where a surface water course passes through a hard rock zone. In these instances, Council requires a methodology where a deemed alluvial aquifer exists or another legislative measure is used to enforce the conditions of the aquifer interference regulation.

Council is further concerned at impacts occasioned by interaction between deep and shallow aquifers. We understand that a stacked aquifer policy may address this, but reserve comment until such policy is understood.

An approved suite of tests – including isotope testing – must be undertaken (at least quarterly) and reported against by a suitably qualified independent entity at the expense of the proponent at each of the phases listed below.

Exploration

NSWIC acknowledges that the exploration phase of mining operations may pose a comparatively lower risk to water sources than full operations in some cases. At the same time, we believe that potential damage at this phase remains significant and hence protection mechanisms must be strongly made and rigorously enforced.

In the first instance, we believe that a “no negative impacts to third parties” approach must be adopted, save and except to levels that would be permitted pursuant to a Water Sharing Plan. Where an exploration permit is sought, the applicant must be able to prove that operations under the permit will not negatively impact third parties in respect of water resources. Such proof must be independently verified.

Where an applicant is required to provide proof of any matter, NSWIC believes that the burden must be that of “beyond reasonable doubt”.

We believe that an assessment of potential damage must be undertaken by a suitably qualified independent third party. This assessment must take into account potential cumulative impacts. Such an assessment may utilise a risk management matrix that allows

variance for high value or strategically important areas to ensure that the response meets the potential threat. Based on such assessment, a security bond mechanism must be determined and enforced such that the state holds a financial instrument capable of fully compensating for any damage occasioned.

The risk management approach and possible resultant matrix must also take into account the environmental and water resource history of the applicant. Where an applicant has a poor history – breaches of entitlements by it or an associated entity – or said applicant has no history in managing environmental and water resource impacts, their potential threat level must be increased.

Any take of water – either deliberate or inadvertent – as an adjunct to exploration must be fully accounted. Where threat levels are assessed on a higher scale according to the proposed matrix, this accounting must be required up front. That is, an operator must hold an entitlement (temporary or permanent) equivalent to the potential take from exploratory operations at the commencement of such operation.

Regular oversight and reporting against conditions on permits must be required and full transparency of the results must be guaranteed.

Operation

NSWIC believes that the operation phase has the greatest potential to cause significant damage to water sources and, as such, advocates that the strictest conditions and requirements be imposed at this phase. It is our position that all of the requirements for exploration permits must be continued and built upon, together with additional requirements being imposed.

As the potential for damage is significantly more considerable, the security bond mechanism and risk matrix analysis must again be used but must result in significantly higher values of bond held. The risk matrix analysis must include consideration of performance against requirements at the exploration phase both on the current proposal and on any previous operations by the proponent or any associated entity.

A full benchmarking process of the immediate and surrounding areas of the proposed operations must be conducted prior to the commencement of any activity. This must be completed by an independent entity and the results must be fully transparent and available publicly. It is against this benchmark data that all compliance must be measured over the course of operations.

As a minimum, quarterly testing of water quality, water quantity, pressure and availability must be undertaken and reported against the benchmark data. Again, this testing must be undertaken by an independent entity and be made publicly available. Where the risk matrix indicates a higher risk operation, testing at a greater frequency must be considered.

Any negative impact reported against a benchmark must be treated as a strict liability offence. That is, unless the operator can prove (on the balance of probabilities) that the damage was occasioned by an event or events *other than* those for which they are responsible, they must be held liable for the damage occasioned.

Produced Water

NSWIC recognises that operation of both mining and coal seam gas extraction routinely results in water being extracted, either subsequent to injection or as a tangent to operations.

As a basic premise, NSWIC notes that all extractions (other than recovery of injected water) must be pursuant to a Water Access License.

Where extracted water is of lower quality than the surrounding source and needs to be either stored or disposed of, a strict management regime must be required and rigorously enforced. Storage must be effected by a “closed system” that allows no opportunity for leakage or evaporation. Treatment of contaminated water (be it saline extracted water or recovered water from operations that contains chemicals) must include filtration to remove heavy metals. Independently verified testing of both input and output to treatment must be undertaken and made publicly available.

Any water to be reinjected or released in any fashion must be to *at least* the quality of the surrounding sources based on independently tested and publicly reported benchmark data.

Post Operation

By their nature, mining operations have a limited lifespan. The impacts on water resources, however, may not be restricted to that same lifespan.

It is the position of NSWIC that applications for operations permits must include an identifiable and third party verified withdrawal strategy with respect to water sources. That is, before a permit is issued and operations allowed to commence, an exit strategy that deals with how water management issues will be dealt with on withdrawal must be provided and independently verified.

At the conclusion of operations, independent verification of potential damage that may still be occasioned (taking into account the withdrawal strategy) must guide the quantum of security bond to be kept and the period over which it must be kept. The same verification must address the potential water requirements (leeching, inadvertent take and the like) that the site is likely to demand. Those demands must then be fully accounted (by acquisition of entitlement) and held until proof is presented that such requirements are no longer present.

Other Matters

At the time of writing, NSWIC is concerned at the capacity of Government regulatory bodies to deal with the anticipated scope of mining and coal seam gas exploration, operations and post-operation requirements pursuant to this policy. Without adequate resourcing – and efficient use of those resources – Council believes that the most rigorous of policy will be meaningless.

We specifically believe that industry self-regulation and self-reporting is meaningless and must be abandoned as a protocol or measure of protection, specific or implied.

Breaches of conditions at any phase must be considered a “reportable incident”. The State authorities must, at the expense of the operator, provide a publicly accessible report of the breach and must notify stakeholders directly of the breach, what measures were taken to avoid the breach and what additional conditions will be imposed as a result of the breach.

ENDS