Coal seam gas, landholder rights and the law

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Lismore
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EDONSW

- Community Legal Centre
- Specialises in public interest environmental law matters since 1985
- Mission: to promote the public interest and improve environmental outcomes through the informed use of the law
- Multi disciplinary approach
  - Advice and Representation
  - Law Reform
  - Outreach & Education
  - Scientific Service
Tonight’s seminar:

1. Brief introduction to CSG in NSW
2. The law and policy of CSG
3. CSG in the Northern Rivers
4. Issues for landholders – access arrangements and other rights and obligations – Graham Bassett
5. Criminal law issues
6. Questions – Graham and Sue
CSG IN NSW: A BRIEF INTRODUCTION
What is CSG?

- CSG is an unconventional gas consisting primarily of methane, trapped underground in coal seams by water pressure.
- CSG is used for fuelling natural gas appliances and to generate electricity.

Image: Exploratory drilling Maison Deau, Jeremy Buckingham, MLC
**Coal seam gas**

- Wells typically take 2 weeks to drill
- Can produce gas for years

### Unfracked well
- Coal seam permeable enough to allow sufficient gas flow

### Fracked well
- Coal seam not permeable enough and requires fracking (hydraulic fracturing) to produce sufficient gas flow

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**Steps involved in fracking**

1. **Pumping fracturing fluid**
   - Typically 1 day

2. **Fracturing fluid flows back out of well**
   - Typically 1 - 2 days

3. **Sand remains and holds fractures open to stimulate gas flow**

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*Diagram: Australian Science Media Centre*
CSG – concerns and areas subject to law reform

- Ground and surface water
  - Contamination
  - Depressurisation of aquifers
- Wastewater produced
- Health impacts: humans, animals
- Land clearing for gas fields
- Industrialisation of rural landscape
- Decrease in land values
- Inadequate regulation of industry
- Fugitive emissions methane potent GHG
- Lack of publicly available information about CSG activities

Image: Tweed River Murwillumbah (Steven Byrne)
NSW current laws - CSG

- *Petroleum (Onshore) Act 1991 (NSW)*
- *Environmental Planning and Assessment Act 1979 (NSW)*
  - SEPP (Mining, Petroleum Production and Extractive Industries) 2007
  - SEPP (State and Regional Development) 2011
- *Water Management (General) Regulation 2011*
  - Aquifer Interference Policy
NSW current policies - CSG

- NSW policies:
  - The Strategic Regional Land Use Policy
    - Strategic Regional Land Use Plans (SLRPs)
  - Aquifer interference policy
  - Code of Practice for CSG Exploration
- Fracking moratorium and BTEX ban
- Inquiry into CSG
- Interim Independent Expert Scientific Committee on CSG and Coal Mining – Cth
Petroleum (Onshore) Act 1991 - Titles

- Special Prospecting Authorities
- Exploration licences
- Assessment leases
- Production leases
Process for CSG Exploration (limited relevance in Northern Rivers)

- Invitation to apply for Exploration Licence (tender/proponent driven)
- Application – must be published in State and local newspaper
- Public comment
- Determination (granted or rejected)
- Environmental Assessment (REF) before on ground work can start
Process for CSG Production - Two-stage approval process

**Petroleum Production Lease**
- Trade and Investment NSW
- Production lease approval process

**Development Consent**
- Department of Planning and Infrastructure
- SSD approval process
Development consent process

Director-General issues Environmental Assessment Requirements

Proponent consults with local council, government agencies and the community in preparing an EIS

Proponent lodges the Application and EIS

Department exhibits the Application and EIS for minimum of 30 days
Development consent process (continued)

Submissions

Proponent receives submissions (may lodge a response)

Department finalises assessment and consults local council and agencies on draft conditions of consent (if any)

Minister (or PAC) makes the decision
Restrictions on exploration – ‘exempted areas’

- National Parks
- State Forests
  - Pilliga
- Recreation Reserves
- Parks or Commons
- Cricket Grounds

Image: Un-lined pond & CSG well – Pilliga (Jeremy Buckingham MLC)
Restrictions on exploration – National Parks and other Special Areas

Image: Mt Warning sunset, from lookout in Border Ranges National Park (Steven Byrne)
Strategic Regional Land-Use Policy – key components

- Strategic Regional Land Use Plans
- Aquifer Interference Policy
- Code of Practice for CSG Exploration
- Moratorium on fraccing
- All new PEL applications to be publicly exhibited
- All new CSG production applications to include an Agricultural Impact Statement
- Office for Ag Sustainability and Food Security
- Well Integrity & Fraccing standards
Strategic Regional Land-Use Policy – key components (2)

- Promotion of Crown Land (TSRs) for pipeline routes & establishment of energy & transport corridors
- Development of methodology for identifying strategic agricultural lands
- Audit of all CSG Exploration Licences
- Guidelines for REFs (environmental assessments)
- Ban use of BTEX in fracking
- Ban use of evaporation ponds
- Review of land access arrangements
- 5 year royalty free period over
  - Companies required to pay into a community infrastructure fund for every $2 the Govt will refund $1
NSW CSG Parliamentary Inquiry

35 Recommendations:

- Moratorium on any more Production Leases
- Continued ban on fracking until we know more about the impacts
- End of royalty free 5 year period
- Upper limit of 0.1% fugitive emissions
- Domestic Gas Reserves Policy – domestic gas
- CSG Ombudsman
- Continued Exploration so we can properly assess the resource and work out the risks
Independent Expert Scientific Committee – Cth

● Interim committee of experts formed to provide independent scientific advice to the Federal Government on CSG and large coal mining projects that are likely to have a significant impact on water resources.

● The committee will:
  – Provide advice on CSG and coal mining projects;
  – Oversee bioregional assessments in areas where CSG and/or large coal mining developments are underway or planned; and
  – Oversee research on potential water-related impacts of CSG and/or large coal mining developments.
LEC Court Challenges
Gloucester Case

Barrington-Gloucester-Stroud Preservation Alliance Inc v Planning Assessment Commission and AGL Upstream Infrastructure Investments Pty Limited [2012] NSWLEC 197

- Judicial Review Proceedings
- Challenged Part 3A approval
  - Uncertainty (groundwater & wastewater)
  - Minister failed to take in to account ESD (Precautionary Principle)
- Case was dismissed (last Monday)
- Arguments to costs to be heard – public interest?
Fullerton Cove Residents Action Group v Dart Energy & Anor - LEC Proceedings No. 12/40866

- Seeking Interlocutory Injunction today in LEC
  - Development – 2 vertical gas wells into 2 coal seams then drilled laterally into each other
    - Development is Designated Development
    - REF – did not consider the environment to the fullest extent possible (no groundwater study)
    - Company would not undertake to not commence work
    - Court can not require undertaking as to damages in public interest cases
Compliance & Enforcement

- Independent audit undertaken in April found varying degrees of non-compliance
- Community has identified breaches of licence conditions
- Community spending much time and resource accessing information
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<th>PEL16</th>
<th>Richmond Valley Council</th>
<th>Metgasco Ltd</th>
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<th>Breach of Title Condition (Reporting)</th>
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<td>Operation of Temporary Holding Ponds with inadequate freeboard levels.</td>
<td>May 2012</td>
<td>Multiple</td>
<td>Statutory Direction</td>
<td>18 June 2012</td>
<td>S.77 Direction to give effect to Condition 8 of PEL16 to establish adequate freeboard in Temporary Holding Ponds.</td>
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ISSUES FOR LANDHOLDERS
Graham Bassett

- Access Arrangements
- Improvements
- Restrictions on Private Land
Police v Warrick Jordan – Narrabri LC

- Mr Jordan was participating in a protest at an Eastern Star Gas drilling site in the Bibblewindi State Forest - Pilliga.
- Mr Jordan harnessed himself to the Drilling Rig on the site. At the end of the day Mr Jordan voluntarily descended and was subsequently arrested and charged.

Image: Warrick Jordan, Pilliga CSG action (courtesy Boudicca Cerese)
Police v David Ramsey – Casino LC

- 20 June 2012 protester blocked access to a METGASCO site on Pollocks Rd.
- Protestor attached himself to a Bulldozer inside private land. Police Rescue was called to remove Mr Ramsey from the Bulldozer.
Fullerton Cove

Image courtesy Kate Ausburn
Fullerton Cove

Image courtesy Kate Ausburn
136 Other offences

- ... 

(3) A landholder of any land or any other person who:
  - (a) **obstructs** any person prospecting or mining for petroleum in the doing of any act which the person is by or under this Act authorised to do on any such land, or
  - (b) interferes with, removes, destroys or defaces any notice required by this Act or the regulations to be placed on any land, is guilty of an offence.

- Maximum penalty: 100 penalty units.
WRAPPING UP
EDO NSW publication on mining law – includes CSG

- Due for release this month

- Order your free copy tonight
For more information

● EDO NSW runs a free Environmental Law Advice Line
  – Northern Rivers Office
  – Monday – Friday
  – 1300 369 791 (freecall) or 02 6621 1111

● Fact sheets are available on our website:
  – www.edonsw.org.au

● For updates on environmental law and policy, sign up to our weekly eBulletin
  – Includes weekly alerts on new major project listings and links to the Department’s website