

Queensland Protocol for referral of projects to the Independent Expert Scientific Committee

in accordance with clause 18(b) of the National Partnership Agreement on Coal Seam Gas and Large Coal Mining Development

1. Overview

The Queensland Government has committed to referring all project applications for coal seam gas (CSG) and large coal mining developments that are likely to have a significant impact on water resources to the Independent Expert Scientific Committee for advice.

This protocol fulfils the State's requirement under Clause 18(b) of the National Partnership Agreement on Coal Seam Gas and Large Coal Mining Development ('the NPA') by providing guidance to decision makers to assist them determine which project applications should be referred to the this Committee for advice.

2. Context

On 14 February 2012, the State of Queensland became a signatory to the NPA.

The objective of the NPA is to strengthen the regulation of CSG and large coal mining development by ensuring that future decisions are informed by substantially improved science and independent expert advice.

Paragraph 14 (c) of the NPA provides for the Australian Government to establish and maintain an Independent Expert Scientific Committee (IESC).

The IESC is to be established under the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) to, amongst other things:

Provide Commonwealth, State and Territory Governments with expert scientific advice relating to CSG and large coal mining development proposal that are likely to have a significant impact on water resources.

3. Purpose and application of this document

Paragraph 18(b) of the NPA requires the Queensland Government to publish a protocol, by 30 September 2012, that describes how it will decide which project applications should be referred to the IESC for advice (in accordance with the terms of the NPA).

4. Matters to be referred to the IESC

This protocol is to be used by relevant Queensland Government officers to determine whether a proposed large coal mining or CSG development ('a proposal') should be referred to the IESC for advice.

The decision maker for referrals to the IESC may be either the:

- (a) Director-General or authorised delegate of the department responsible for administration of the *Environmental Protection Act 1994* (EP Act)¹; or
- (b) Queensland Coordinator-General or authorised delegate for proposals being assessed as 'significant projects' under Part 4 of the *State Development and Public Works Organisation Act 1971* (SDPWO Act).

¹ The Director-General of the Queensland Department of Environment and Heritage Protection.

In deciding whether to refer a proposal to the IESC for advice, decision-makers should be satisfied that the proposal is both a “project application” and a proposal that is “likely” to have a “significant impact on water resources”.

5. Interpretation of terms

5.1 What is a “project application”?

For the purposes of this protocol a project application is a proposal for a CSG or large coal mining development that:

- (a) is to be undertaken as project – namely, one or more activities that are of significant scale and are to be undertaken in stages and as a single integrated operation²;
- (b) requires an environmental impact statement (‘an EIS’) under either the EP Act³ or the SDPWO Act⁴; and
- (c) at 30 September 2012, the related Queensland EIS evaluation/assessment report has not been completed.

An EIS may be required for significant expansions to existing activities.

5.2 When is a development “likely” to have a significant impact?

Likely, in this context, is an eventuality (a ‘significant impact on water resources’) that is considered a real possibility of occurring. It can be contrasted with an eventuality that generally has a ‘remote’ chance of occurring.

5.3 What is a significant impact?

A significant impact is one which is important, notable or of consequence, having regard to its context or intensity⁵

In accordance with clause 38(c) of the NPA, a significant impact on water resources is one caused by a single action or the cumulative impact of multiple actions which would directly or indirectly:

- (a) result in a substantial change in the quantity, quality or availability of surface or ground water;
- (b) substantially alter ground water pressure and/ or water table levels;
- (c) alter the ecological character of a wetland that is State significant or a Ramsar wetland;
- (d) divert or impound rivers or creeks or substantially alter drainage patterns;
- (e) reduce biological diversity or change species composition;

² NB sections 149 and 309G of the EP Act definitions related to mining and petroleum ‘projects’ include:

- A *mining project* means all mining activities carried out, or proposed to be carried out, under 1 or more mining tenements, in any combination, as a single integrated operation.
- A *chapter 5A activity project* is all chapter 5A activities of the same type under the same resource legislation carried out, or proposed to be carried out, under 1 or more relevant resource authority for that type of chapter 5A activity, in any combination, as a single integrated operation.

³ Under the EP Act an EIS may be required - by the Chief Executive or the Minister - or voluntarily submitted by an applicant. Refer to the EHP’s *Guideline on Triggers for Environmental Impact Statements (EIS) under the Environmental Protection Act 1994: for mining and petroleum/gas activities*.

⁴ Any proposed development determined by the Coordinator-General ‘to be a significant project’ under section 26(1)(a) of the SDPWO Act requires an EIS to be conducted in accordance with Part 4 of that Act.

⁵ Australian Government’s “Matters of National Environmental Significance: Significant Impact Guidelines 1.1.”, p.3.

- (f) alter coastal processes, including sediment movement or accretion, or water circulation patterns;
- (g) result in persistent organic chemicals, heavy metals, or other potentially harmful chemicals accumulating in the environment such that biodiversity, ecological integrity, human health or other community and economic use may be adversely affected; or
- (h) substantially increase demand for, or reduce the availability of water for human consumption.

6. Determining whether a proposal should be referred to the IESC for advice

6.1 Making the referral decision

The decision maker will refer a proposal to the IESC for advice if:

- (a) it is being considered as a 'project application' as defined under section 5.1 of this protocol document; and
- (b) the decision maker considers that the proposal is likely to cause 'significant impact on water resources' as defined under section 5.3 of this protocol.

In making determinations about the proposal's potential type, scale, likelihood and consequence of impact on water resources, decision makers may seek advice from the following relevant entities:

- Department of Agriculture, Fisheries and Forestry
- Department of Energy and Water Supply
- Department of Environment and Heritage Protection (EHP) - for proposals being assessed under the SDPWO Act
- Department of Natural Resources and Mines
- Department of State Development, Infrastructure and Planning
- GasFields Commission
- Office of the Coordinator-General (OCG) - for proposals being assessed under the EP Act
- Queensland Water Commission (or equivalent future entity)
- Any other entity the decision maker considers has expertise and knowledge that could contribute to the referral decision.

6.2 Referring proposals undergoing an EIS at 1 October 2012

This protocol will be applied to all proposals for which an EIS evaluation/assessment report has not been completed. However, in considering a referral to the IESC, the decision maker should also consider the extent to which assessment has been completed for those projects for which the EIS evaluation/assessment report is near the final stages of preparation prior to 1 January 2013⁶.

6.3 Referring proposals to expand CSG projects with existing approvals

It is important to reduce any potential uncertainty with respect to the referral of expansions of existing CSG projects to the IESC that are part of projects that have existing environmental approvals.

⁶ Consistent with clause 6 of the NPA which commits the State to provide certainty for application timeframes and ensuring assessment processes are clear to all parties.

In the case of existing CSG projects, the decision maker should recognise the importance and scope of existing approvals, as well as the potential impacts of a proposed change to an existing activity, in deciding whether to refer such a proposal.

For example, proposed changes to existing activities will generally not be referred to the IESC if the expansion is being considered via a voluntary EIS submitted under the EP Act that is for gas well infill on existing approved petroleum tenures that will result in less than a 10 percent increase in the number of wells approved to operate on that tenure.

Referrals to the IESC of expanding CSG projects would be intended to capture development of new gas fields or significant increases in the extent or intensity of existing CSG fields.

6.4 Timing of the referral decision

The decision maker may refer a proposal to the IESC at any time. This decision will be made based on the facts and circumstances of the particular project application.

During an initial transitional period in the operation of this protocol (the first 6-12 months), the decision maker will consider whether to refer a proposal to the IESC:

- (a) at the draft terms of reference (ToR) stage of the EIS;
- (b) immediately prior to or during the publication of the EIS; and
- (c) during consideration of amendments to, or additional information about, the EIS.

In general, formal referral by the Queensland Government to the IESC will occur immediately prior to or during the publication of the EIS. Unless there are extenuating circumstances, a proposal will only be referred once to the IESC.

During the transitional period, EHP and OCG will work with the Australian Government Department of Sustainability Environment Water Population and Communities (SEWPaC), and the IESC, to amend their generic EIS ToR and guidelines documents to ensure that every new EIS contains a section that packages the surface and groundwater information in a format suitable for direct referral to the IESC.

This would overcome the need for government departments to prepare separate referral information for the IESC from the lengthy EIS and associated technical reports.

Following the revision of generic EIS ToR and guidelines documents, referrals of proposals to the IESC will, in almost all circumstances, consist of:

- (a) a simple notification to IESC at the time of release of the draft ToR that a new proposal will be referred to it for advice in the future; and
- (b) a formal referral immediately prior to or during the publication of the EIS.

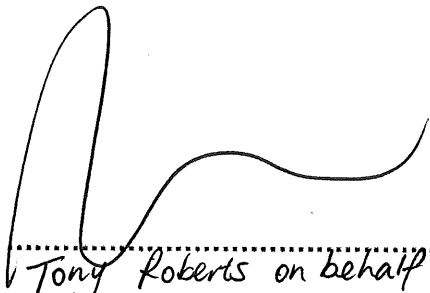
One objective of this protocol would be that each proposal is referred to the IESC once only during the EIS assessment process unless significant new relevant information becomes apparent after the release of the EIS for public consultation.

Explanatory notes associated with the interpretation and implementation of this protocol are provided in **Attachment 1**.

7. Date of Effect

This protocol takes effect on 1 October 2012.

8. Approval



.....
Tony Roberts on behalf of:
Andrew Chesterman

**Director-General
Department of Environment and
Heritage Protection**

Date *28/9/12*



.....
Barry Broe

Coordinator-General

26 September 2012.
Date

ATTACHMENT 1

EXPLANATORY NOTES FOR THE PROTOCOL

Referral of a proposal to the IESC once, at around the time of the public comment period on the EIS, is preferred on the basis that it is likely to be most efficient for all stakeholders and most effectively meets the intent of the NPA.

Supporting administrative arrangements are proposed to be developed between EHP, OCG and SEWPaC to work cooperatively in making joint referrals to the IESC for projects that are undergoing assessment under both Queensland legislation and the EPBC Act, sharing both referral documentation and IESC advice.

This protocol would be expected to be applicable under circumstances that the Queensland and Australian Governments implement a Bilateral Approvals Agreement.

The ToR for the IESC – attached to the NPA - and section 505D of the *EPBC Amendment (IESC on Coal Seam Gas and Large Coal Mining Development) Bill 2012* state that the IESC should provide its advice within no more than two months of receiving the request.

Paragraph 6 of the IESC's terms of reference refers to certainty of application time frames and ensuring that assessment processes are clear.

The Queensland Government does not intend any referrals it will make to the IESC to cause the timelines agreed with project proponents at the commencement of each assessment process (or timelines imposed by legislation) to be extended. Exceptions to this are expected to be rare and will be determined by Queensland Government officers, in consultation with the IESC and the proponent.

A general diagrammatic representation of the EIS process, and stages for referral to the IESC under the EP Act, is provided as Attachment 2.

Nothing in this protocol is intended to be interpreted as an indication of how advice received from the IESC will be considered and dealt with by the State.

ATTACHMENT 2

GENERAL DIAGRAMMATIC REPRESENTATION OF THE EIS PROCESS

