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Submission to the NSW Department of Planning

The Scoping Paper on the NSW Coal and Gas Strategy

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Introduction

NSW Irrigators' Council (NSWIC) represents more than 12,000 irrigation farmers across NSW. These irrigators access 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 independent policy on issues that directly relate to their areas of operation, or expertise, or any other issues that they may deem relevant.

Background

The NSW Government is embarking on a Coal and Gas Strategy for the state with the following strategy aims:

- *guide sustainable development of the coal mining and coal seam gas industry*
- *minimise adverse health, environment, agricultural and land use impacts of the industry*
- *strengthen communication between Government, industry and the community on coal mining and gas production matters.*¹

A Ministerial Sub-Committee has been put in place to lead this strategy as well as the formation of a Reference Group made up of key stakeholders.

A Scoping Paper prepared and released by the NSW Department of Planning explains the key initiatives involved in the strategy (13 in total). These initiatives are meant to be the various aspects and issues which need to be taken into account when tackling this type of strategy. The list includes items such as growth of the industry, mine / land rehabilitation, infrastructure planning, biodiversity planning, water resource management and subsidence management.

Each one of these key initiatives encompasses a great deal of information and most impact on one another, so the job of assessing these and developing them into a strategy for NSW is going to be a very large task.

A successful mining strategy for NSW will require the collaborative efforts of everyone involved in or affected by mining. Achieving this, although difficult, can be the only way to ensure all areas of the strategy are successfully addressed.

Attached with this submission is our policy “Consultation – The Expectations of Industry”. Originally created to address the inadequate consultation by the Murray Darling Basin Authority in its work developing the Guide to the Proposed Basin Plan, we feel it is relevant and hope it provides some insight when reviewing your communications strategy.

¹ NSW Coal & Gas Strategy – Scoping Paper – page 3

Introduction

This appears to be a strategic plan for mining with all other entities being secondary and for the most part needing to work around what the mining requirements are.

We acknowledge that mining is an important part of the NSW economy and there are growth opportunities in both coal and coal seam gas areas into the future. However, the communities, environmental assets, farm enterprises and local businesses are also very important and contribute significantly to the economy and growth opportunities for NSW.

The Scoping Paper concentrates on coal and coal seam gas opportunities without addressing mining in the rest of the state or the cumulative effects of mining. A strategic plan for NSW must be applicable state wide and encompass all forms of mining.

Unless properly managed and regulated the potential long-term impacts from mining are significant.

Water

NSWIC is appalled that such a vital resource is not being adequately considered.

The single most important resource for every stakeholder is water, yet it is not until half way through the scoping paper in the *“Future Growth Areas and Issues”*² section that water is even mentioned in any substantial way.

“Water – there is growing community concern about the impact of mining on alluvial aquifers and water resources, the impact of coal seam gas extraction on aquifers, and the treatment and disposal of waste water.”

This is absolutely correct, there is a growing concern. Without water, communities, local businesses, environmental sites, agriculture enterprises and mining operations could not survive. The risk to water resources both surface and groundwater either temporarily or permanently increases exponentially as mining operations increase.

These cumulative effects and the inherent risks involved in mining are far too great for water not to be at the very top of the list of priorities for this strategy. Too often not reported or not effectively managed, damage to groundwater, alluvial, aquifers, rivers or creeks can be irreparable. An outcome which is completely unacceptable.

A Department of Infrastructure, Planning and Natural Resources report *“Management of stream / aquifer systems in coal mining”*³ would assist in setting the minimum standard by which assessment, protection, monitoring and remediation procedures are addressed.

² NSW Coal & Gas Strategy – Scoping Paper – page 6

³ DIPNR Stream Guidelines – Hunter Region April 2005

Land Use

In the Scoping Paper “Improved management of potential land use conflicts”⁴ and “Strategic biodiversity planning”⁵ are examples where by if there are competing interests for land use or a high biodiversity conservation value, a cost benefit analysis or strategic assessment will be the means by which a determination will be made of mining operations proceeding.

This may not be the incorrect means to determine an outcome however, either of these methods of analysis should be over a much longer term than simply life of mine and must address social, economic and environmental issues.

The issue of land use, the protection of prime alluvial lands and high biodiversity areas as well as the cumulative impacts of mining is of great concern to NSWIC. A long term strategy must involve the ability to quarantine 1st and 2nd class lands as well as high biodiversity areas from any mining activity at all.

NSW Coal & Gas Strategy Reference Group

NSWIC is pleased that our request to have an irrigation representative sit on the Coal & Gas Strategy Reference Group was granted.

When this reference group was first announced it was immediately clear that local stakeholder groups were under represented. With the addition of representatives from NSWIC, Hunter Valley Wine Growers and the Thoroughbred Breeders Association a better balance has been struck and we hope this translates into a balanced outcome.

The members of this reference group must have input into the strategic planning process as well as the regulatory reform process if they are going to be effective. With so many issues to consider, this reference group must make the possible effects to groundwater, surface water, prime agricultural lands and the environment a priority.

Consultation

We are also pleased to see that “*improved communication*”⁶ is one of the Scoping Papers key initiatives. The initial public forums held by the NSW Government in late February / early March 2011 demonstrated the substantial level of public interest into mining issues and highlighted the frustrations felt by a lack of proper input and effective consultation.

A survey recently released by the NSW Minerals Council⁷ highlighted the top ten most-mentioned topics:

⁴ NSW Coal & Gas Strategy – Scoping Paper – page 9

⁵ NSW Coal & Gas Strategy – Scoping Paper – page 10

⁶ NSW Coal & Gas Strategy – Scoping Paper – page 11

⁷ Upper Hunter Mining Dialogue – Report on the Stakeholder Survey for the NSW Minerals Council (April 2011)

1. Dust and air quality
2. Employment opportunities development
3. Population and economic growth
4. Water usage / impacts
5. Agricultural land use / impacts
6. Need for increased / improved dialogue and collaboration
7. Public health impacts
8. Pace and scale of mine expansion and impacts of workforce and local businesses
9. Visual amenity / landscape impacts
10. Need for improved cumulative impacts management

These findings highlight the importance of working with communities and stakeholders to identify key issues. Each of these topics is of great importance and it is only by working with communities and stakeholders that balanced outcomes can then be achieved to address each of these areas.

Conclusions

Although NSWIC has chosen to highlight water, land use and consultation in its submission, we have a vested interest in seeing that all the Scoping Papers key initiatives are effectively dealt with by being subject to triple bottom line assessments and cumulative impacts assessments.

Until the NSW Strategy is understood and a framework agreed to, there should be a halt to any new mining licenses being issued. By not implementing such a measure, the very issues this strategy is trying to address will only be compounded.

With regards to the protection of water resources and the cumulative effects of mining, NSWIC recommends the Ministerial Sub-Committee and the Reference Group be guided by the National Water Commissions position on Coal Seam Gas.⁸

A coal and gas strategy for NSW must be about balance. With the proper consultation, regulations, monitoring and enforcement, it will be possible for all entities to achieve a balance which encompasses growth, sustainability and management of all resources.

⁸ National Water Commission - <http://www.nwc.gov.au/www/html/2959-coal-seam-gas.asp?intSiteID=1>



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Consultation

The Expectations of Industry

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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.

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Executive Summary

This document sets out the consultation process that the irrigation industry expects from Government on policy matters affecting the industry.

Specifically, the industry expects that the contents of this document inform the consultation process with respect to preparation of the Basin Plan by the Murray Darling Basin Authority.

Background

Industry has been critical of consultation processes entered into by both State and Commonwealth Government entities in the change process with respect to water policy. Irrigators have significant sums invested in their businesses, all of which are underpinned by the value, security and reliability of their primary asset – water.

Irrigators recognise the imperatives for change and are content to provide advice on policy measures to ensure effective outcomes for all involved.

In light of these two factors, it is not unreasonable that irrigators request adequate consultation.

Recent consultation efforts have ranged from excellent to woeful⁹. Irrigators believe that a method of consultation should be determined prior to the commencement of a policy change process. To that end, this document sets out the methods which we believe are acceptable and ought be adopted by Government both State and Commonwealth.

In particular, this document aims to inform the Murray Darling Basin Authority in its work developing the Basin Plan.

⁹ See case studies later in this document.

Forms of Consultation

We consider two forms of consultation to be acceptable – Direct and Indirect. The preferred option will be dictated by circumstances.

Direct Consultation

This method involves engaging directly with affected parties, together with their representative organisations. As a default, it ought always be considered the preferred method of consultation.

Irrigators acknowledge that practical exigencies must be considered to determine if Direct Consultation is possible. Such considerations will include:

- The number of affected stakeholders (the smaller the number, the more ideal this method);
- The timeframe available for implementation (the longer the timeframe, the more ideal this method)¹⁰; and
- The geographical distribution of stakeholders (the closer the proximity, the more ideal this method).

Indirect (Peak Body) Consultation

This method involves engaging with bodies that represent affected parties. NSW Irrigators Council is the peak body representing irrigators in this state. The National Irrigators Council is the peak body in respect of Commonwealth issues.

Irrigators acknowledge that there will be occasions on which consultation with peak bodies is necessary for practical reasons. Such reasons may include:

- An overly large number of affected stakeholders;
- A short timeframe (not artificial) for implementation;
- A large geographic spread of stakeholders; and
- An issue technical in nature requiring specific policy expertise.

This form of consultation requires some specific considerations that must be addressed in order for it to be considered acceptable;

¹⁰ Although note specifically that artificial timeframes, such as political necessity, will not be well received by irrigators.

- Timeframes

Indirect Consultation is, in essence, the devolution of activity to external bodies. That is, the task of engaging with affected stakeholders to assess their views and to gather their input is “outsourced” to a peak body. That peak body cannot operate in a vacuum and, as such, must seek the views of its members lest it become unrepresentative. Dependent on the nature of the issues and the stakeholders, this may take some time. It is vital that peak bodies be requested to provide advice on necessary timeframes prior to seeking to engage them in an Indirect Consultation model.

- Resource Constraints

Peak bodies do not possess the resources of government. In most instances – and certainly in the case of irrigation industry peak bodies – their resources are gathered directly from members and hence must be well accounted for.

Peak bodies engage in a significant range of issues and activities, many of which feature their own time constraints.

Prior to commencing the consultation process, discussions with peak bodies must be held to ensure that the needs of stakeholders with respect to resourcing and timeframes are respected. This may include ensuring that consultation does not occur during times of known peak demand; coordination with other government agencies to avoid multiple overlapping consultation processes; and coordination with peak bodies existing consultation mechanisms (for example, NSWIC meeting dates are set annually and publicly available. These are an ideal forum for discussion as they provides access to key stakeholders with no additional cost to stakeholders).

Stages of Consultation

Irrigators believe that a multi-stage consultative model, in either the Direct or Indirect applications, is necessary.

- (i) *Identification of problem and necessity for change*

Irrigators are wary of change for the sake of change. In order to engage industry in the process of change, an identification of its necessity is required. This should take the form of a published¹¹ discussion paper as a minimum requirement.

¹¹ We accept that “published” may mean via internet download, but require that hard copies be made available free of charge on request.

(ii) *Identification of solutions and method for implementation*

With a problem identified and described, a description of possible solutions together with a proposed method of implementation should be published.

It is imperative that the document clearly note that the proposed solutions are not exhaustive. The input of stakeholders in seeking solutions to an identified problem is a clear indicator of meaningful consultation.

It is likely, in practice, that steps (i) and (ii) will be carried out concurrently. This should take the form of a document seeking written submissions in response. The availability of the document must be widely publicised¹². The method for doing so will vary depending on the method of consultation. As a threshold, at least 90% of affected stakeholders ought to be targeted to be reached by publicity.

(iii) *Summary of submissions, identification of preferred approach*

Subsequent to the closing date, a document ought to be published that summarises the submissions received in the various points covered. It must also append the full submissions.

Acknowledgement of a consideration of the weighting of submissions must be given. As an example, a submission from a recognised and well supported peak body (such as NSWIC) must be provided greater weight than a submission from a small body, an individual or a commercial body with potential commercial interests.

There are no circumstances in which submissions ought to be kept confidential. Whilst we recognise that identification of individuals might be restricted, any material on which a decision might be based must be available to all stakeholders.

The document must then identify a preferred approach, clearly stating the reasons why that approach is preferred and why alternate approaches have been rejected.

Where the need for change has been questioned by submissions, indicating that a case has not been made in the opinions of stakeholders, further discussion and justification of the necessity must be made in this document.

(iv) *Explanation of interim determination and final feedback*

The document prepared in stage (iii) must now be taken directly to stakeholders via forums, hearings or public discussions. All stakeholders, whether a Direct or Indirect model is chosen, must have an opportunity to engage during this stage.

¹² Regional newspapers, radio stations and the websites of representative groups and infrastructure operators are useful options in this respect.

The aim of this direct stage is to explain the necessity for change, to explain the options, to identify the preferred option (together with an explanation as to why it is the preferred option) and to seek further input and feedback. Further change to a policy at this point should not, under any circumstances, be ruled out.

(v) *Publication of final determination*

Subsequent to stage (iv), a document must be published summarising the feedback received from that stage, identifying any further changes, identifying why any particular issues raised across various hearings at stage (iv) were not taken into account and providing a final version of the preferred solution.

What Consultation Is Not

“Briefings” after the fact are not consultation (although they may form part of the process). Stakeholders will not be well disposed to engagement where prior decisions have been made by parties unwilling to change them. Briefings in the absence of consultation will serve to alienate stakeholders.

Invitations to attend sessions with minimal notice (less than 10 days) is not consultation. Consideration must be given to the regional location of parties involved, together with the expenses and logistical issues of travel from those regions.

Case Study One

Australian Productivity Commission (Review of Drought Support)

Getting it Right

During 2008, the Australian Productivity Commission commenced a review of Government Drought Support for agriculture. The review commenced with the publication of a document to which submissions were sought. A significant period of time was allowed for submissions.

Subsequent to the close of submissions, a draft position was published which took into account written submissions that were received, identified issues raised in submissions and identified a number of changes considered subsequent to submissions.

The Commission then engaged in a large series of public hearings in areas where affected stakeholders were located. Parties were invited to provide presentations in support of their submissions. Parties who had not lodged written submissions were also welcome to seek leave to appear. The meetings were open to the public, who were also given the opportunity to address the hearing.

A series of “round tables” in regional areas was conducted with identified and self-disclosed stakeholders. These meetings gave those who were unable or unwilling to provide presentations in public the opportunity to have input. At the same time, no submissions were kept confidential, the Commission recognising that the basis for its determinations must be available to all.

Importantly, present at the hearing were three Commissioners. It is vital that the decision makers themselves are available to stakeholders, rather than engaging staff to undertake this task.

We understand that a final publication will be made available in 2009.

Case Study Two

CSIRO (Sustainable Yields Audit)

Getting it Wrong

In early December, CSIRO (in conjunction with a number of other Government entities) conducted a regional “consultation” series with respect to the Sustainable Yields Audit. The series was, in our opinion, ill-informed, poorly organised, poorly executed and poorly received.

In late November, CSIRO sought advice from NSWIC over the format and timing of the series. We provided advice that:

- The series did not cover sufficient regional centres to engage all stakeholders. In particular, Northern NSW had not been included;
- The series should not be by invitation, but should be open to all comers given the implications not only for irrigators but for the communities that they support;
- Ninety minutes was vastly insufficient to cover the depth and breadth of interest that would be raised by attendees; and
- That the timeframe between invitation and the event was insufficient.

None of that advice was adopted.

Invitations were sent to an undisclosed number of stakeholders who had been identified by an undisclosed method. In the short space of time available to advise attendance, CSIRO threatened to cancel a number of sessions on the basis of low responses. Given the limited notice and invitation list, NSWIC became aware of a number of stakeholders who wanted to attend but were unable to.

During the sessions, information was presented as a “briefing” despite being described as consultation. As such, extremely limited time was available was questions to be addressed – a key feature of consultation. Moreover, where information that was presented was questioned, a defensive stance was taken – a key feature of lack of willingness to engage stakeholders in a consultative fashion.

In particular, NSWIC is particularly concerned at the lack of willingness to engage on factual matters contained within the report. Where glaring inaccuracies were pointed out, defensiveness was again encountered. In several instances, inaccuracies that had been advised by stakeholders were perpetuated in later documents.

Further, several presenters were clearly not aware of the full range of detail surrounding the matters that they discussed. It is imperative that those seeking feedback on a subject understand that subject in depth prior to commencing consultation.