



New South Wales

Environmental Planning and Assessment Amendment (Gateway Process for Strategic Agricultural Land) Regulation 2013

under the

Environmental Planning and Assessment Act 1979

His Excellency the Lieutenant-Governor, with the advice of the Executive Council, has made the following Regulation under the *Environmental Planning and Assessment Act 1979*.

BRAD HAZZARD, MP
Minister for Planning and Infrastructure

Explanatory note

The object of this Regulation is to amend the *Environmental Planning and Assessment Act 1979* (the *EP&A Act*) and the *Environmental Planning and Assessment Regulation 2000* (the *EP&A Regulation*) as part of a scheme to establish a gateway process for mining and petroleum development on strategic agricultural lands.

This Regulation is made in conjunction with *State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) Amendment 2013*. That instrument inserts proposed Part 4AA into *State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007* (the *Mining SEPP*) and includes provisions that establish the Mining and Petroleum Gateway Panel (the *Gateway Panel*) and deals with the issue of gateway certificates and site verification certificates.

This Regulation contains amendments:

- (a) to require development applications relating to certain mining or petroleum development on specified strategic agricultural land to be accompanied by a gateway certificate in respect of the proposed development (or, in certain cases, a site verification certificate that certifies that the land on which the proposed development is to be carried out is not biophysical strategic agricultural land), and
- (b) to provide that similar requirements apply to applications under section 96 (2) of the EP&A Act to modify a development consent and to requests and applications to modify certain transitional Part 3A approved projects (including development consents taken to be project approvals), and
- (c) to provide that, if a gateway certificate has been issued in relation to a proposed development, the Director-General of the Department of Planning and Infrastructure,

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in preparing environmental assessment requirements under Schedule 2 to the EP&A Regulation, must address any recommendations of the Gateway Panel set out in the certificate, and

- (d) to provide that, if a gateway certificate has been issued in relation to a proposed development because of the expiry of the time limit set out in proposed clause c17I (3) of the Mining SEPP, the Director-General, in preparing such environmental assessment requirements, must consult with the Gateway Panel and have regard to the need for the requirements to assess any key issues raised by that Panel, and
- (e) to provide that, if a gateway certificate in respect of proposed development is issued after environmental assessment requirements for that proposed development have been notified, the Director-General must have regard to any recommendations of the Gateway Panel set out in the gateway certificate and may modify the environmental assessment requirements, and
- (f) to set the fee in relation to the issue of site verification certificates, and
- (g) to require information regarding any relevant site verification certificate to be included in planning certificates issued by councils under section 149 of the EP&A Act.

This Regulation is made under the *Environmental Planning and Assessment Act 1979*, including sections 78A (9), 89G (d), 149 and 157 (the general regulation-making power) and clause 10 of Schedule 6A to that Act.

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under the

Environmental Planning and Assessment Act 1979

1 Name of Regulation

This Regulation is the *Environmental Planning and Assessment Amendment (Gateway Process for Strategic Agricultural Land) Regulation 2013*.

2 Commencement

This Regulation commences on the day on which it is published on the NSW legislation website.

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Schedule 1 Amendment of Environmental Planning and Assessment Act 1979 No 203

Schedule 1 Amendment of Environmental Planning and Assessment Act 1979 No 203

Schedule 6A Transitional arrangements—repeal of Part 3A

Insert after clause 19:

20 Modification of certain approved projects and development consents relating to mining or petroleum development on strategic agricultural land

(1) Application of clause

This clause applies to the following requests and applications:

- (a) a request to modify an approved project,
- (b) an application for the modification of a development consent referred to in clause 8J (8) of the *Environmental Planning and Assessment Regulation 2000*,

but only if the request or application relates to mining or petroleum development on the following land:

- (c) land shown on the Strategic Agricultural Land Map,
- (d) any other land that is the subject of a site verification certificate.

(2) Meaning of “mining or petroleum development”

In this clause, *mining or petroleum development* means:

- (a) development specified in clause 5 of Schedule 1 to *State Environmental Planning Policy (Major Development) 2005* (as in force immediately before the repeal of that Schedule), but only if:
 - (i) a mining lease under the *Mining Act 1992* is required to be issued to enable the development to be carried out under the modified approval or consent because:
 - (A) the development is proposed to be carried out outside the mining area of an existing mining lease, or
 - (B) there is no current mining lease in relation to the proposed development, or
 - (ii) the development is for the purposes of extracting a bulk sample as part of resource appraisal or a trial of a mine comprising the extraction of more than 20,000 tonnes of coal or of any mineral ore, or

- (b) development specified in clause 6 of Schedule 1 to *State Environmental Planning Policy (Major Development) 2005* (as in force immediately before the repeal of that Schedule), but only if a production lease under the *Petroleum (Onshore) Act 1991* is required to be issued to enable the development to be carried out under the modified approval or consent because:
 - (i) the development is proposed to be carried out outside the area of an existing production lease, or
 - (ii) there is no current production lease in relation to the proposed development, or
- (c) development specified in clause 6 (2) of Schedule 1 to *State Environmental Planning Policy (State and Regional Development) 2011*.
- (3) However, ***mining or petroleum development*** does not include development carried out on land that is outside:
 - (a) the mining area of a mining lease or proposed mining lease, or
 - (b) the area of a production lease or proposed production lease.
- (4) **Request or application to which this clause applies to be accompanied by gateway certificate or site verification certificate**

A request or application to which this clause applies must be accompanied by:

- (a) in relation to land shown on the Strategic Agricultural Land Map as critical industry cluster land—a current gateway certificate in respect of the proposed development to be carried out under the modified approval or consent, or
- (b) in relation to any other land:
 - (i) a current gateway certificate in respect of the proposed development to be carried out under the modified approval or consent or
 - (ii) a site verification certificate that certifies that the land concerned is not biophysical strategic agricultural land.

(5) **Part 4AA of Mining, Petroleum Production and Extractive Industries SEPP applies to requests and applications to which this clause applies**

Part 4AA (Mining and petroleum development on strategic agricultural land) of *State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007* (other than Divisions 1, 2 and 5) applies (with all necessary changes) to a request or application to which this clause applies as if it were an application for development consent.

(6) **Assessment of requests and applications to which this clause applies**

Before determining a request or application to which this clause applies that is accompanied by a gateway certificate, the Minister must:

- (a) refer the request or application to the Minister for Primary Industries for advice regarding the impact of the proposed development on water resources, and
- (b) if the request or application is accompanied by an unconditional gateway certificate issued by operation of clause 17I (3) of the *State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007* (as applied by this clause), refer the request or application to the Gateway Panel for advice, and
- (c) consider:
 - (i) any recommendations set out in the certificate, and
 - (ii) any written advice provided by the Minister for Primary Industries in response to a referral under paragraph (a), and
 - (iii) any written advice provided by the Gateway Panel in response to a referral under paragraph (b), and
 - (iv) any written advice of the IES Committee provided to the Gateway Panel under clause 17G (1) of *State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007* (as applied by this clause).

(7) In determining a request or application to which this clause applies that is accompanied by a gateway certificate, the Minister must consider whether any recommendations set out in the certificate have or have not been addressed and if addressed, the manner in which those recommendations have been addressed.

- (8) The Minister for Primary Industries, when providing advice under this clause on the impact of the proposed development on water resources, must have regard to:
- (a) the minimal impact considerations set out in the document entitled *Aquifer Interference Policy* published by the NSW Office of Water, Department of Primary Industries dated September 2012, and
 - (b) the other provisions of that Policy.
- (9) **Miscellaneous provisions**
- For the avoidance of doubt, a site verification certificate or a gateway certificate may be issued for the purposes of this clause with respect to the part of land or the part of the proposed development to which the modification relates (rather than the whole of the land or the whole development to which the approval or consent relates).
- (10) This clause does not apply to or with respect to a request or application that was made but not determined on or before 10 September 2012. However, in any such case, the Minister or Director-General in dealing with the request or application may seek the advice of the Mining and Petroleum Gateway Panel.
- (11) Words and expressions used in this clause have the same meanings as they have in *State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007*.

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Schedule 2 Amendment of Environmental Planning and Assessment Regulation 2000

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[1] Clause 3 Definitions

Insert in alphabetical order in clause 3 (1):

gateway certificate means a gateway certificate issued under Part 4AA of *State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007*.

Gateway Panel means the Mining and Petroleum Gateway Panel constituted under Part 4AA of *State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007*.

site verification certificate means a site verification certificate issued under Part 4AA of *State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007*.

[2] Clause 50A

Insert after clause 50:

50A Special provisions relating to development applications relating to mining or petroleum development on strategic agricultural land

- (1) This clause applies to a development application that relates to mining or petroleum development (within the meaning of Part 4AA of *State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007*) on the following land:
 - (a) land shown on the Strategic Agricultural Land Map,
 - (b) any other land that is the subject of a site verification certificate.
- (2) A development application to which this clause applies must be accompanied by:
 - (a) in relation to proposed development on land shown on the Strategic Agricultural Land Map as critical industry cluster land—a current gateway certificate in respect of the proposed development, or
 - (b) in relation to proposed development on any other land:
 - (i) a current gateway certificate in respect of the proposed development, or

- (ii) a site verification certificate that certifies that the land on which the proposed development is to be carried out is not biophysical strategic agricultural land.
- (3) This clause does not apply to or with respect to a development application if the relevant environmental assessment requirements under Part 2 of Schedule 2 of this Regulation were notified by the Director-General on or before 10 September 2012.
- (4) In this clause, *biophysical strategic agricultural land*, *critical industry cluster land* and *Strategic Agricultural Land Map* have the same meanings as they have in *State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007*.

[3] Clause 119A

Insert after clause 119:

119A Special provisions relating to applications under section 96 (2) relating to strategic agricultural land

- (1) This clause applies to an application to modify a development consent under section 96 (2) of the Act that relates to mining or petroleum development (within the meaning of Part 4AA of *State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007*) on the following land:
 - (a) land shown on the Strategic Agricultural Land Map,
 - (b) any other land that is the subject of a site verification certificate.
- (2) An application to which this clause applies must be accompanied by:
 - (a) in relation to land shown on the Strategic Agricultural Land Map as critical industry cluster land—a current gateway certificate in respect of the proposed development to be carried out under the modified consent, or
 - (b) in relation to any other land:
 - (i) a current gateway certificate in respect of the proposed development to be carried out under the modified consent, or
 - (ii) a site verification certificate that certifies that the land concerned is not biophysical strategic agricultural land.

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Schedule 2 Amendment of Environmental Planning and Assessment Regulation 2000

- (3) For the avoidance of doubt, Part 4AA of *State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007* (other than Divisions 2 and 5) applies (with all necessary changes) to an application to which this clause applies as if it were an application for development consent.
- (4) For the avoidance of doubt, a site verification certificate or a gateway certificate for the purposes of this clause may be issued with respect to the part of land or the part of the proposed development to which the modification relates (rather than the whole of the land or the whole development to which the consent relates).
- (5) This clause does not apply to or with respect to an application under section 96 (2) of the Act that was made, but not determined, on or before 10 September 2012.
- (6) In this clause, *biophysical strategic agricultural land*, *critical industry cluster land* and *Strategic Agricultural Land Map* have the same meanings as they have in *State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007*.

[4] Clause 262C

Insert after clause 262B:

262C Fee for strategic agricultural land site verification certificate

The fee for the issue of a site verification certificate is \$3,900.

[5] Schedule 2 Environmental impact statements

Insert after clause 3 (4):

- (4A) Without limiting subclause (4):
 - (a) if a gateway certificate has been issued in relation to State significant development to which an application for environmental assessment requirements relates, the Director-General, in preparing the requirements, must address any recommendations of the Gateway Panel set out in the certificate, and
 - (b) if a gateway certificate has been issued by operation of clause 17I (3) of *State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007* in relation to the State significant development to which an application for environmental assessment requirements relates, the Director-General, in preparing the requirements, must consult with the Gateway Panel

and have regard to the need for the requirements to assess any key issues raised by that Panel.

- (4B) If a gateway certificate in respect of proposed State significant development is issued after environmental assessment requirements for that proposed development have been notified under this clause, the Director-General:
- (a) must have regard to any recommendations of the Gateway Panel set out in the gateway certificate, and
 - (b) may modify the requirements in accordance with subclause (5).

[6] Schedule 2

Insert after clause 7 (1) (f):

Note. A cost benefit analysis may be submitted or referred to in the reasons justifying the carrying out of the development, activity or infrastructure.

[7] Schedule 4 Planning certificates

Insert at the end of the Schedule:

19 Site verification certificates

A statement of whether there is a current site verification certificate, of which the council is aware, in respect of the land and, if there is a certificate, the statement is to include:

- (a) the matter certified by the certificate, and
Note. A site verification certificate sets out the Director-General's opinion as to whether the land concerned is or is not biophysical strategic agricultural land or critical industry cluster land—see Division 3 of Part 4AA of *State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007*.
- (b) the date on which the certificate ceases to be current (if any), and
- (c) that a copy may be obtained from the head office of the Department of Planning and Infrastructure.