

Western Division Regional Environmental Plan No 1—Extractive Industries (1989 EPI 827)

[1989-827]



New South Wales

Status Information

Currency of version

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Provisions in force

The provisions displayed in this version of the legislation have all commenced.

Notes—

- **Does not include amendments by**
Gazette No 201 of 17.12.2004, p 9590 (not commenced — to commence on 28.2.2005)

Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

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Contents

1 Name of plan	3
2 Aims, objectives etc.....	3
3 Land to which plan applies	4
4 Inconsistency between environmental planning instruments.....	4
5 Relationship to other environmental planning instruments.....	4
6 Amendment of State Environmental Planning Policy No 4—Development Without Consent	4
7 Definitions	5
8 Consent authority	6
9 Designated development	7
10 Development consent—general	7
11 Development consent and concurrence—Schedule 1 land.....	7
12 Copy of development application and supporting documents to be sent to certain public authorities	8
13 Prime crop and pasture land.....	9
14 Extraction for agricultural purposes—exemption	9
15 Continuing uses.....	9
16 Existing extractive industries—plan required	9
Schedule 1	9

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1 Name of plan

This plan may be cited as *Western Division Regional Environmental Plan No 1—Extractive Industries*.

2 Aims, objectives etc

(1) The aims of this plan are:

- (a) to facilitate, and to control in an orderly manner, the extraction of geological materials (other than minerals) from the lands of the Region, and
- (b) so far as is consistent with paragraph (a), to encourage the preservation of:
 - (i) prime crop and pasture lands and other agriculturally usable lands, and
 - (ii) water quality, whether lacustrine, riparian, subterranean or surface water, and
 - (iii) riparian environments generally, and
 - (iv) land which is a catchment for a town water supply, and
 - (v) archaeological and Aboriginal sites, relics and places, and
- (c) to provide a means whereby the public interest in the extraction of resources from the Region is balanced against the public interest in the preservation of the things referred to in paragraph (b), and
- (d) to introduce a system of planning control requiring consent to be obtained by both public and private bodies and persons carrying out development for the purposes of extractive industries, that is applied consistently throughout the Region.

(2) The strategies employed in this plan are:

- (a) to facilitate the operation of extractive industries by altering the designation of extractive industry in the Region to include only those extractive industries which are larger or higher yielding than the quantities declared in this plan or are

situated on protected lands or environmentally sensitive lands as recognised by this plan, and

- (b) to require the concurrence of the Commissioner to a determination of a consent authority granting consent to an extractive development, in the case of an extractive industry that is a designated development, and
- (c) to ensure adequate protection for the environment by providing that the preparation of an environmental management and rehabilitation plan be a condition of any consent, and requiring that at a minimum, consultation must be undertaken with the Department of Water Resources, the Soil Conservation Service and the National Parks and Wildlife Service before any consent is determined, and
- (d) to recognise the necessity of small extractive operations to farm management by excluding most on-farm extractive activities from the consent provisions of this plan, and
- (e) to allow the continued use of an existing operation to proceed largely unaffected by this plan, while imposing conditions on the re-use of an existing site after the period specified in this plan has elapsed.

3 Land to which plan applies

This plan applies to all land within the Region, being the land declared to be a region called Western Division Region by the Minister under section 4 (6) of the *Environmental Planning and Assessment Act 1979* and being the Western Division of the State as described in the Second Schedule to the *Crown Lands Consolidation Act 1913*.

4 Inconsistency between environmental planning instruments

In the event of an inconsistency between this plan and any other environmental planning instrument (whether made before, on or after the day on which this plan is made) this plan shall prevail to the extent of the inconsistency.

5 Relationship to other environmental planning instruments

This plan amends *State Environmental Planning Policy No 4—Development Without Consent* in the manner set out in clause 6.

6 Amendment of State Environmental Planning Policy No 4—Development Without Consent

State Environmental Planning Policy No 4—Development Without Consent is amended by inserting after clause 11 (2) the following subclause:

- (3) Subclause (1) does not apply to a development consent referred to in subclause (1)

that involves the carrying out of development for the purpose of an extractive industry on land to which [Western Division Regional Environmental Plan No 1—Extractive Industries](#) applies.

7 Definitions

In this clause:

agriculture includes horticulture and the use of land for any purpose of husbandry, including the keeping or breeding of livestock, poultry, or bees and the growing of fruit, vegetables and the like.

bank means the limit of the bed of a river.

bed, in relation to a river or lake, means the whole of:

- (a) the soil or other matter forming the channel in which the river flows, or
- (b) the soil or other matter forming the bottom of the lake,

and includes so much of the sides and bottom of the channel or of the shore and bottom of the lake as contain the river or lake at its mean level (whether or not the river or lake is for the time being at its mean level), but does not include any part of the sides or bottom of the channel or of the shores or bottom of the lake covered by water in times of flooding only.

Commissioner means the person appointed as the Western Lands Commissioner under section 4 of the [Western Lands Act 1901](#).

crown lands means Crown lands within the meaning of the [Crown Lands Consolidation Act 1913](#).

environmental management and rehabilitation plan means a written statement relating to land the subject of a development application and containing particulars of:

- (a) the methods proposed for the duration of the development to ensure that the land is in a stable state and any proposed future use of the land, and
- (b) the proposed future use of the land.

extractive industry means:

- (a) the winning of extractive materials, not being coal, petroleum or any mineral within the meaning of the [Mining Act 1973](#), or
- (b) an industry or undertaking (not being a mine) which depends for its operations on winning extractive material from the land on which the industry or undertaking is carried out.

lake includes:

- (a) a dry lake, or
- (b) a wet lake such as a lagoon, swamp or other collection of still water, whether permanent or temporary, not being water contained by an artificial work.

prime crop and pasture land means land within an area:

- (a) identified, on a map prepared by or on behalf of the Director-General of the Department of Agriculture and Fisheries and deposited in an office of the Department of Agriculture and Fisheries, as Class 1, Class 2 or Class 3 land or as land of merit for special agricultural uses, or
- (b) certified by the Director-General of Agriculture and Fisheries to be prime crop and pasture land for the purposes of this plan.

protected land has the same meaning as it has in Division 2 of Part 4 of the [Soil Conservation Act 1938](#).

Region means land declared to be the Western Division Region in accordance with the Act.

river includes:

- (a) a stream of water (whether or not consisting of or including saline water), whether perennial or intermittent, flowing in a natural channel, or in a natural channel artificially improved, or in an artificial channel which has changed the course of the stream, and
- (b) an affluent, confluent, branch or other stream of water (whether or not consisting of or including saline water) into or from which a stream referred to in paragraph (a) flows.

the Act means the [Environmental Planning and Assessment Act 1979](#).

8 Consent authority

In this plan the consent authority is:

- (a) in the case of development application relating to land in the Region other than land to which the environmental planning instruments in Schedule 1 apply—the Commissioner, or
- (b) in the case of development applications relating to land to which the environmental planning instruments in Schedule 1 apply—the council of the area in which the land is situated.

9 Designated development

- (1) Development for the purposes of extractive industries that is carried out in the following circumstances is declared to be designated development for the purposes of the Act:
 - (a) development which uses or disturbs a total area of land (including the bed or a river, waterway or lake) exceeding 4 hectares,
 - (b) development where the amount of extractive material to be obtained (not including overburden or topsoil not constituting part of the extractive material) will exceed 15 000 cubic metres per year or 40 000 cubic metres in total,
 - (c) development carried out on protected land,
 - (d) development carried out on land that is **protected river land** within the meaning of the *Rivers and Foreshores Improvement Act 1948* or is within 20 metres of the bed or bank of any river or lake.
- (2) For the purposes of subclause (1) (a), **disturbs**, in relation to land, includes:
 - (a) the clearance or excavation of land, and
 - (b) the placing on land of oversized material, tailing or other rejected materials, and
 - (c) the erection or construction on the land of buildings or dams.

10 Development consent—general

- (1) This clause applies to land in the Region other than land to which the environmental planning instruments referred to in Schedule 1 apply.
- (2) A person shall not carry out development on land to which this clause applies for the purpose of an extractive industry without the consent of the Commissioner.
- (3) The Commissioner shall not grant consent to development for the purpose of an extractive industry unless the Commissioner has taken into account the matters set out in clause 11 (5).

11 Development consent and concurrence—Schedule 1 land

- (1) This clause applies to the land to which the environmental planning instruments referred to in Schedule 1 apply.
- (2) A person shall not carry out development for the purpose of an extractive industry on land to which this clause applies without the consent of the consent authority.
- (3) Subject to subclause (4), the consent authority shall notify the Commissioner of a consent within 14 days of the date of issue of a notice of consent.

- (4) The consent authority shall not grant consent under subclause (2) to development that is designated development without the concurrence of the Commissioner.
- (5) The Commissioner shall in determining whether concurrence should be granted take into consideration:
 - (a) the present use and any potential use of the land to which the application relates, and
 - (b) the anticipated effect of the development on the capacity of the land to sustain after extraction its present or any other level of agricultural production, and
 - (c) the environmental impact of the proposed development on the use and management of Crown lands adjoining or in the locality of the proposed development, and
 - (d) whether an archaeological survey is required for an extractive industry proposed to be carried out on land within 300 metres of a bank of any river or lake.

12 Copy of development application and supporting documents to be sent to certain public authorities

- (1) A development application for consent to carry out development for the purpose of an extractive industry on land to which this plan applies shall be accompanied by an environmental management and rehabilitation plan.
- (2) The consent authority shall, within seven days after receipt of an application and environmental management and rehabilitation plan, forward copies of the same to:
 - (a) the Commissioner of the Soil Conservation Service, and
 - (b) the Director of the Department of Water Resources, and
 - (c) the Director of National Parks and Wildlife.
- (3) The consent authority shall not determine the development application until:
 - (a) it has received a written representation with respect to the application from the public authorities specified in subclause (2), or
 - (b) the public authorities have informed the consent authority in writing that they do not wish to make any representation with respect to the documents, or
 - (c) 28 days have elapsed after the date on which the copies of the documents were forwarded to the public authorities in accordance with subclause (2) and no written response has been received,whichever first occurs.

- (4) Where the consent authority has received a written representation from a public authority in accordance with subclause (3) (a), the consent authority shall, in determining the development application, have regard to the representation.

13 Prime crop and pasture land

The consent authority shall not consent to development for the purpose of an extractive industry on prime crop and pasture land, unless it is satisfied that there is an unsatisfied demand for the material to be extracted, with suitable deposits of that material not known to be available in a significant quantity within a reasonable distance, other than in, on or under that prime crop and pasture land.

14 Extraction for agricultural purposes—exemption

- (1) Nothing in this plan shall require development consent to be obtained for the carrying out of development for the purposes of an extractive industry, if that development is carried out for the purpose of agriculture and for no other purpose.
- (2) Development referred to in subclause (1) shall be presumed to be for a purpose other than agriculture if the extractive materials are removed from land by a person who does not own or hold or lease that land.

15 Continuing uses

If the use of or carrying out of work on an existing extractive operation has not occurred for a period of 5 years from the commencement of this plan, then re-use of that site will require consent to be obtained under the appropriate provisions of this plan.

16 Existing extractive industries—plan required

A person who was, at the commencement of this plan, carrying out development for the purpose of an extractive industry and who continues to do so shall, not later than 5 years after the commencement of this plan, prepare and submit to the consent authority an environmental management and rehabilitation plan in respect of that development.

Schedule 1

(Clause 8, 9 (1))

Interim Development Order No 1—Shire of Balranald
Bogan Local Environmental Plan No 1
Bourke Local Environmental Plan 1998
Brewarrina Local Environmental Plan 2000
Central Darling Local Environmental Plan 2004
Interim Development Order No 1—City of Broken Hill
Cobar Local Environmental Plan 2001
Interim Development Order No 1—Shire of Carrathool
Interim Development Order No 1—Shire of Hay
Interim Development Order No 1—Shire of Walgett

Interim Development Order No 1—Shire of Wentworth