

State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007

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New South Wales

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New South Wales

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State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007



New South Wales

Her Excellency the Governor, with the advice of the Executive Council, has made the following State environmental planning policy under the *Environmental Planning and Assessment Act 1979* in accordance with the recommendation made by the Minister for Planning. (S06/00851/PC)

FRANK SARTOR, M.P., Minister for Planning

Part 1 Preliminary

1 Name of Policy

This Policy is *State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007*.

2 Aims of Policy

The aims of this Policy are, in recognition of the importance to New South Wales of mining, petroleum production and extractive industries:

- (a) to provide for the proper management and development of mineral, petroleum and extractive material resources for the purpose of promoting the social and economic welfare of the State, and
- (b) to facilitate the orderly and economic use and development of land containing mineral, petroleum and extractive material resources, and
- (c) to establish appropriate planning controls to encourage ecologically sustainable development through the environmental assessment, and sustainable management, of development of mineral, petroleum and extractive material resources.

3 Interpretation

- (1) A word or expression used in this Policy has the same meaning as it has in the standard instrument prescribed by the *Standard Instrument (Local Environmental*

Plans) Order 2006 unless it is otherwise defined in this Policy.

(2) In this Policy:

approved, in relation to any development or any use of land, means development or a use:

- (a) for which any required development consent under Part 4 of the Act, or approval under Part 3A of the Act, has been granted (being a consent or approval that is in force), or
- (b) that does not require any such development consent or approval under the Act and regulations.

environmental conservation zone means a zone identified in another environmental planning instrument as having protection or conservation of the environment, or of an aspect of the environment, as its only objective or as a principal objective.

Note—

See, for example, Zone E2 Environmental Conservation in the standard instrument prescribed by *Standard Instrument (Local Environmental Plans) Order 2006*.

environmentally sensitive area of State significance has the same meaning as it has in *State Environmental Planning Policy (Major Projects) 2005*.

exploration and **prospecting** include the taking of samples, and the assessment of deposits, of minerals, petroleum and extractive materials.

extractive industry means the winning or removal of extractive materials (otherwise than from a mine) by methods such as excavating, dredging, or quarrying, including the storing, stockpiling or processing of extractive materials by methods such as recycling, washing, crushing, sawing or separating, but does not include:

- (a) turf farming, or
- (b) tunnelling for the purpose of an approved infrastructure development, or
- (c) cut and fill operations, or the digging of foundations, ancillary to approved development, or
- (d) the creation of a farm dam if the material extracted in the creation of the dam is used on site and not removed from the site.

extractive material means sand, gravel, clay, soil, rock, stone or similar substances but does not include turf.

industry means the manufacturing, production, assembling, altering, formulating, repairing, renovating, ornamenting, finishing, cleaning, washing, dismantling,

transforming, processing or adapting, or the research and development of, any goods, chemical substances, food, agricultural or beverage products, or articles for commercial purposes, but does not include a mine, petroleum production facility or extractive industry.

mineral means any substance prescribed by the regulations under the [Mining Act 1992](#) as a mineral for the purposes of the definition of **mineral** in that Act, and includes coal and oil shale, but does not include uranium or petroleum.

mineral exploration means prospecting pursuant to an assessment lease, exploration licence, mineral claim, mining lease or opal prospecting licence under the [Mining Act 1992](#) or exploration pursuant to an exploration licence, mining licence or retention licence under the [Offshore Minerals Act 1999](#).

mining means the winning or removal of materials by methods such as excavating, dredging, or tunnelling for the purpose of obtaining minerals, and includes:

- (a) the construction, operation and decommissioning of associated works, and
- (b) the stockpiling, processing, treatment and transportation of materials extracted, and
- (c) the rehabilitation of land affected by mining.

petroleum means:

- (a) any naturally occurring hydrocarbon, whether in a gaseous, liquid or solid state, or
- (b) any naturally occurring mixture of hydrocarbons, whether in a gaseous, liquid or solid state, or
- (c) any naturally occurring mixture of one or more hydrocarbons, whether in a gaseous, liquid or solid state, and one or more of the following, that is to say, hydrogen sulphide, nitrogen, helium, carbon dioxide and water,

and includes any substance referred to in paragraph (a), (b) or (c) that has been returned to a natural reservoir, but does not include coal or oil shale or any substance prescribed to be a mineral for the purposes of the [Mining Act 1992](#).

petroleum exploration means prospecting pursuant to an exploration licence, assessment lease or production lease under the [Petroleum \(Onshore\) Act 1991](#) or exploration pursuant to an exploration permit, retention lease or production licence under the [Petroleum \(Submerged Lands\) Act 1982](#).

petroleum production means the recovery, obtaining or removal of petroleum pursuant to a production lease under the [Petroleum \(Onshore\) Act 1991](#) or a production licence under the [Petroleum \(Submerged Lands\) Act 1982](#), and includes:

- (a) the construction, operation and decommissioning of associated petroleum related works, and
- (b) the drilling and operation of wells, and
- (c) the rehabilitation of land affected by petroleum production.

petroleum related works means any works, structures or equipment that are ancillary or incidental to petroleum production and includes all works, structures and equipment that a production lease under the [Petroleum \(Onshore\) Act 1991](#), or a production licence under the [Petroleum \(Submerged Lands\) Act 1982](#), entitles the lease or licence holder to construct, maintain or execute.

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

underground mining means mining carried out beneath the earth's surface and includes board and pillar mining, longwall mining, top caving, sub-level caving and auger mining and associated activities involving shafts and access pits but does not include open cut mining.

- (3) Notes included in this Policy do not form part of this Policy.

4 Land to which Policy applies

This Policy applies to the State.

Note—

By virtue of Part 10 of the [Interpretation Act 1987](#) the application of this Policy extends to the coastal waters of the State, as defined by section 58 of that Act.

5 Relationship with other environmental planning instruments

- (1) The following environmental planning instruments are repealed:
 - (a) [State Environmental Planning Policy No 37—Continued Mines and Extractive Industries](#),
 - (b) [State Environmental Planning Policy No 45—Permissibility of Mining](#).
- (2) [State Environmental Planning Policy No 11—Traffic Generating Developments](#) is amended by omitting paragraph (m) of Schedule 1 to the Policy.
- (3) Subject to subclause (4), if this Policy is inconsistent with any other environmental planning instrument, whether made before or after this Policy, this Policy prevails to the extent of the inconsistency.
- (4) Subclause (3) does not apply to any inconsistency between this Policy and any of the following State environmental planning policies:
 - (a) [State Environmental Planning Policy \(Major Projects\) 2005](#),

- (b) [State Environmental Planning Policy No 14—Coastal Wetlands](#),
 - (c) [State Environmental Planning Policy No 26—Littoral Rainforests](#),
- regardless of when the inconsistency arises.

- (5) Clause 10 (Exempt development) and clause 11 (Complying development) do not limit the operation of any provision of any other environmental planning instrument that identifies development as exempt development or complying development except to the extent that the provision is inconsistent with clause 10 or 11.

Part 2 Permissible development

6 Development permissible without consent

Development for any of the following purposes may be carried out without development consent:

- (a) mineral exploration and fossicking,
- (b) rehabilitation, by or on behalf of a public authority, of an abandoned mine site,
- (c) mining within a mineral claims district pursuant to a mineral claim under the [Mining Act 1992](#),
- (d) petroleum exploration,
- (e) the construction, maintenance or use (in each case, outside an environmentally sensitive area of State significance) of any pollution control works or pollution control equipment required as a result of the variation of a licence under the [Protection of the Environment Operations Act 1997](#), being a licence that applies to an extractive industry, mine or petroleum production facility in existence immediately before the commencement of this clause.

Note—

Development to which this clause applies may require approval under Part 3A of the Act or be subject to the environmental assessment and approval requirements of Part 5 of the Act.

7 Development permissible with consent

- (1) **Mining** Development for any of the following purposes may be carried out only with development consent:
- (a) underground mining carried out on any land,
 - (b) mining carried out at surface level:
 - (i) on land where development for the purposes of agriculture or industry may be carried out (with or without development consent), or

- (ii) on land that is, immediately before the commencement of this clause, the subject of a mining lease under the *Mining Act 1992* or a mining licence under the *Offshore Minerals Act 1999*,
 - (c) mining in any part of a waterway, an estuary in the coastal zone or coastal waters of the State that is not in an environmental conservation zone,
 - (d) facilities for the processing or transportation of minerals or mineral bearing ores on land on which mining may be carried out (with or without development consent), but only if they were mined from that land or adjoining land,
 - (e) mining on land that is reserved as a state conservation area under the *National Parks and Wildlife Act 1974*.
- (2) **Petroleum production** Development for any of the following purposes may be carried out only with development consent:
- (a) petroleum production on land on which development for the purposes of agriculture or industry may be carried out (with or without development consent),
 - (b) petroleum production on land that is, immediately before the commencement of this clause, the subject of a production lease under the *Petroleum (Onshore) Act 1991*,
 - (c) petroleum production in any part of a waterway, an estuary in the coastal zone or coastal waters of the State that is not in an environmental conservation zone,
 - (d) facilities for the processing or transportation of petroleum on land on which petroleum production may be carried out (with or without development consent), but only if the petroleum being processed or transported was recovered from that land or adjoining land,
 - (e) petroleum production on land that is reserved as a state conservation area under the *National Parks and Wildlife Act 1974*.
- (3) **Extractive industry** Subject to subclause (4), development for any of the following purposes may be carried out only with development consent:
- (a) extractive industry on land on which development for the purposes of agriculture or industry may be carried out (with or without development consent),
 - (b) extractive industry in any part of a waterway, an estuary in the coastal zone or coastal waters of the State that is not in an environmental conservation zone,
 - (c) facilities for the processing or transportation of extractive materials,
 - (d) processing of construction or demolition waste or of other material that is to be used as a substitute for extractive material,

- (e) pre-mixed concrete works or bitumen pre-mix or hot-mix industries.
- (4) Consent for a purpose specified in subclause (3) (c)–(e) may be granted only if the development is on land where an approved extractive industry is being carried out.
- (5) This clause is subject to clause 6 and to clause 8K of the *Environmental Planning and Assessment Regulation 2000*.

Note—

Clause 8K of the *Environmental Planning and Assessment Regulation 2000* makes special arrangements for mining operations under a mining lease that was in force on 15 December 2005. The arrangements apply only for a limited transitional period or until the operations are approved under Part 3A of the Act, after which the operations will be subject to the usual development consent or approval requirements (including, for example, in relation to any expansion or intensification, or enlargement of the area, of the operations).

8 Determination of permissibility under local environmental plans

- (1) If a local environmental plan provides that development for the purposes of mining, petroleum production or extractive industry may be carried out on land with development consent if provisions of the plan are satisfied:
 - (a) development for that purpose may be carried out on that land with development consent without those provisions having to be satisfied, and
 - (b) those provisions have no effect in determining whether or not development for that purpose may be carried out on that land or on the determination of a development application for consent to carry out development for that purpose on that land.
- (2) Without limiting subclause (1), if a local environmental plan provides that development for the purposes of mining, petroleum production or extractive industry may be carried out on land with development consent if the consent authority is satisfied as to certain matters specified in the plan, development for that purpose may be carried out on that land with development consent without the consent authority having to be satisfied as to those specified matters.

Note—

This clause continues the effect, in relation to mining, of *State Environmental Planning Policy No 45—Permissibility of Mining*. (That Policy is repealed by clause 5 of this Policy.)

9 Prohibited development

Despite any other provision of this Policy or any other environmental planning instrument, development specified in Schedule 1 is prohibited.

10 Exempt development

- (1) Development for any of the following purposes is exempt development if it is of minimal environmental impact and is not on land within an environmentally sensitive

area of State significance:

- (a) the construction, maintenance or use of a station for the monitoring of weather, noise, air or groundwater, if the monitoring is associated with an approved mine, approved petroleum production facility or approved extractive industry, approved mineral exploration or approved petroleum exploration,
 - (b) low intensity activities associated with mineral exploration or petroleum exploration, including the following:
 - (i) geological mapping and airborne surveying,
 - (ii) sampling and coring using hand-held equipment,
 - (iii) geophysical (but not seismic) surveying and downhole logging,
 - (iv) accessing of areas by vehicle that does not involve the construction of an access way such as a track or road.
- (2) Development for any of the following purposes is exempt development if it is of minimal environmental impact, is on land that is the site of an approved mine, petroleum production facility or extractive industry and is not on land within an environmentally sensitive area of State significance:
- (a) the construction, maintenance or use of any of the following:
 - (i) carparking facilities, paving, landscaping, flagpoles, fences and gates (including security booths and boom gates),
 - (ii) lighting fittings and lighting equipment (including lightpoles), but only if the associated light spill and reflection are contained within the boundaries of the site,
 - (iii) emergency equipment (including the replacement or augmentation of fire systems, pump houses and fire water tanks),
 - (iv) business identification, directional or safety signs,
 - (b) the demolition of a building or structure that is carried out in accordance with Australian Standard AS 2601—2001, *Demolition of structures*, but only if the building or structure is not, or is not part of, a heritage item, or in a heritage conservation area, identified by an environmental planning instrument,
 - (c) the making of non-structural alterations to the exterior of a building (such as painting, plastering, cement-rendering, cladding, attaching fittings, or decorative work),
 - (d) the making of non-structural alterations to the interior of a building that do not result in the load bearing capacity of the building being exceeded,

- (e) the construction, maintenance or use of a shed, but only if:
 - (i) the shed is set back at least 100 metres from any road and at least 200 metres from any dwelling that is not associated with the shed, and
 - (ii) the shed does not cover an area of more than 300 square metres, and
 - (iii) the ground floor of the shed is not more than 1 metre from the natural ground level, and
 - (iv) the shed is not more than 10 metres high, and
 - (v) any spillage from chemicals or fuel stored within the shed is caught by an adequately sized bund,
 - (f) a work carried out in compliance with a lawful direction or notice issued under the *Occupational Health and Safety Act 2000* or under associated occupational health and safety legislation (within the meaning of that Act), but not including the processing of any extractive materials or minerals won as a result of the carrying out of that work,
 - (g) the installation of infrastructure for the drainage of water from the mine, petroleum production facility or extractive industry, but only if the drained water is stored in or managed by a lawful approved facility.
- (3) Development for any of the following purposes is exempt development if it is of minimal environmental impact, is on land that is the site of an approved mine and is not within an environmentally sensitive area of State significance:
- (a) the installation of additions to existing infrastructure for the drainage (but not the use) of gas from the mine in emergencies or for safety purposes,
 - (b) the modification of a shaft used, in connection with any underground mining, for conveying workers or materials,
 - (c) the construction, maintenance or use of any minor drill hole or minor shaft within the mine, being a drill hole or shaft used for emergency or safety purposes.

Note—

Under section 76 of the Act, exempt development may be carried out without the need for development consent under Part 4 of the Act or for assessment under Part 5 of the Act.

The section states that exempt development:

- (a) must be of minimal environmental impact, and
- (b) cannot be carried out in critical habitat of an endangered species, population or ecological community (identified under the *Threatened Species Conservation Act 1995* or the *Fisheries Management Act 1994*),

and

(c) cannot be carried out in a wilderness area (identified under the *Wilderness Act 1987*).

11 Complying development

Development for any of the following purposes is complying development if it is on the site of an approved mine, petroleum production facility or extractive industry and is not within an environmentally sensitive area of State significance or on any land identified in Schedule 1 to the *Sydney Water Catchment Management (General) Regulation 2000*:

- (a) the construction, maintenance or use of communication facilities, electricity distribution lines or water pipelines,
- (b) subdivision for the purpose of making an adjustment to the boundary of an allotment, being an adjustment that will retain all services within the existing allotments and that will not:
 - (i) create any additional allotments or dwelling entitlements, or
 - (ii) change the area of any allotment by more than 10%,
- (c) the use of any mobile plant that crushes, separates, treats or sizes minerals or mineral-bearing ores, or of any associated ancillary equipment, but only if the use is in one location only and for a total period of not more than 12 months (in any period),

Note—

Examples of associated ancillary equipment include generators, dredges and drills.

- (d) the reconstruction or alteration of, or addition to, a building, but only if neither the height nor the footprint area of the building will be more than 10% greater than the height or footprint area, respectively, of the original building.

Part 3 Development applications—matters for consideration

12 Compatibility of proposed mine, petroleum production or extractive industry with other land uses

Before determining an application for consent for development for the purposes of mining, petroleum production or extractive industry, the consent authority must:

- (a) consider:
 - (i) the existing uses and approved uses of land in the vicinity of the development, and
 - (ii) whether or not the development is likely to have a significant impact on the uses that, in the opinion of the consent authority having regard to land use trends, are likely to be the preferred uses of land in the vicinity of the development, and
 - (iii) any ways in which the development may be incompatible with any of those

existing, approved or likely preferred uses, and

- (b) evaluate and compare the respective public benefits of the development and the land uses referred to in paragraph (a) (i) and (ii), and
- (c) evaluate any measures proposed by the applicant to avoid or minimise any incompatibility, as referred to in paragraph (a) (iii).

13 Compatibility of proposed development with mining, petroleum production or extractive industry

(1) This clause applies to an application for consent for development on land that is, immediately before the application is determined:

- (a) in the vicinity of an existing mine, petroleum production facility or extractive industry, or
- (b) identified on a map (being a map that is approved and signed by the Minister and copies of which are deposited in the head office of the Department and publicly available on the Department's website) as being the location of State or regionally significant resources of minerals, petroleum or extractive materials, or

Note—

At the commencement of this Policy, no land was identified as referred to in paragraph (b).

- (c) identified by an environmental planning instrument as being the location of significant resources of minerals, petroleum or extractive materials.

Note—

Sydney Regional Environmental Plan No 9—Extractive Industry (No 2—1995) is an example of an environmental planning instrument that identifies land as containing significant deposits of extractive materials.

(2) Before determining an application to which this clause applies, the consent authority must:

(a) consider:

- (i) the existing uses and approved uses of land in the vicinity of the development, and
- (ii) whether or not the development is likely to have a significant impact on current or future extraction or recovery of minerals, petroleum or extractive materials (including by limiting access to, or impeding assessment of, those resources), and
- (iii) any ways in which the development may be incompatible with any of those existing or approved uses or that current or future extraction or recovery, and

(b) evaluate and compare the respective public benefits of the development and the

uses, extraction and recovery referred to in paragraph (a) (i) and (ii), and

- (c) evaluate any measures proposed by the applicant to avoid or minimise any incompatibility, as referred to in paragraph (a) (iii).

14 Natural resource management and environmental management

- (1) Before granting consent for development for the purposes of mining, petroleum production or extractive industry, the consent authority must consider whether or not the consent should be issued subject to conditions aimed at ensuring that the development is undertaken in an environmentally responsible manner, including conditions to ensure the following:
- (a) that impacts on significant water resources, including surface and groundwater resources, are avoided, or are minimised to the greatest extent practicable,
 - (b) that impacts on threatened species and biodiversity, are avoided, or are minimised to the greatest extent practicable,
 - (c) that greenhouse gas emissions are minimised to the greatest extent practicable.
- (2) Without limiting subclause (1), in determining a development application for development for the purposes of mining, petroleum production or extractive industry, the consent authority must consider an assessment of the greenhouse gas emissions (including downstream emissions) of the development, and must do so having regard to any applicable State or national policies, programs or guidelines concerning greenhouse gas emissions.

15 Resource recovery

- (1) Before granting consent for development for the purposes of mining, petroleum production or extractive industry, the consent authority must consider the efficiency or otherwise of the development in terms of resource recovery.
- (2) Before granting consent for the development, the consent authority must consider whether or not the consent should be issued subject to conditions aimed at optimising the efficiency of resource recovery and the reuse or recycling of material.
- (3) The consent authority may refuse to grant consent to development if it is not satisfied that the development will be carried out in such a way as to optimise the efficiency of recovery of minerals, petroleum or extractive materials and to minimise the creation of waste in association with the extraction, recovery or processing of minerals, petroleum or extractive materials.

16 Transport

- (1) Before granting consent for development for the purposes of mining or extractive industry that involves the transport of materials, the consent authority must consider

whether or not the consent should be issued subject to conditions that do any one or more of the following:

- (a) require that some or all of the transport of materials in connection with the development is not to be by public road,
 - (b) limit or preclude truck movements, in connection with the development, that occur on roads in residential areas or on roads near to schools,
 - (c) require the preparation and implementation, in relation to the development, of a code of conduct relating to the transport of materials on public roads.
- (2) If the consent authority considers that the development involves the transport of materials on a public road, the consent authority must, within 7 days after receiving the development application, provide a copy of the application to:
- (a) each roads authority for the road, and
 - (b) the Roads and Traffic Authority (if it is not a roads authority for the road).

Note—

Section 7 of the [Roads Act 1993](#) specifies who the roads authority is for different types of roads. Some roads have more than one roads authority.

- (3) The consent authority:
- (a) must not determine the application until it has taken into consideration any submissions that it receives in response from any roads authority or the Roads and Traffic Authority within 21 days after they were provided with a copy of the application, and
 - (b) must provide them with a copy of the determination.
- (4) In circumstances where the consent authority is a roads authority for a public road to which subclause (2) applies, the references in subclauses (2) and (3) to a roads authority for that road do not include the consent authority.

17 Rehabilitation

- (1) Before granting consent for development for the purposes of mining, petroleum production or extractive industry, the consent authority must consider whether or not the consent should be issued subject to conditions aimed at ensuring the rehabilitation of land that will be affected by the development.
- (2) In particular, the consent authority must consider whether conditions of the consent should:
 - (a) require the preparation of a plan that identifies the proposed end use and landform of the land once rehabilitated, or

- (b) require waste generated by the development or the rehabilitation to be dealt with appropriately, or
- (c) require any soil contaminated as a result of the development to be remediated in accordance with relevant guidelines (including guidelines under section 145C of the Act and the *Contaminated Land Management Act 1997*), or
- (d) require steps to be taken to ensure that the state of the land, while being rehabilitated and at the completion of the rehabilitation, does not jeopardize public safety.

Part 4 Miscellaneous

18 Receipt and disposal of waste

Nothing in this Policy makes permissible (with or without consent) the use of land for the receipt or disposal of waste brought on to the land from other land, even if that use is or may be ancillary or incidental to development that is permissible under this Policy.

Note—

For example, this Policy does not make it permissible to dispose of off-site waste on the site of an extractive industry that is permissible under this Policy even if the disposal is for the purposes of rehabilitation of the site.

19 Savings and transitional—general

This Policy does not apply to or with respect to an application for an approval under Part 3A of the Act or development consent under Part 4 of the Act that had been made but not finally determined before the commencement of this Policy.

Schedule 1 Prohibited development

(Clause 9)

Open cut mining within the local government area of Lake Macquarie, except in areas identified on the map marked "*State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007—Map 1—Lake Macquarie*" (being a map that is approved and signed by the Minister and copies of which are deposited in the head office of the Department and publicly available on the Department's website) as areas in which open cut mining is permissible, whether with or without development consent.