

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

[2007-65]



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—

- **See also**

[Planning Legislation Amendment Bill 2019](#)

[Environmental Planning and Assessment Amendment \(Territorial Limits\) Bill 2019](#)

- **Editorial note**

The Parliamentary Counsel's Office is progressively updating certain formatting styles in versions of NSW in force legislation published from 29 July 2019. For example, colons are being replaced by em-dashes. Text of the legislation is not affected.

This version has been updated.

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



New South Wales

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



New South Wales

## 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
  - (b1) to promote the development of significant mineral 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, and
- (d) to establish a gateway assessment process for certain mining and petroleum (oil and gas) development—
  - (i) to recognise the importance of agricultural resources, and
  - (ii) to ensure protection of strategic agricultural land and water resources, and
  - (iii) to ensure a balanced use of land by potentially competing industries, and
  - (iv) to provide for the sustainable growth of mining, petroleum and agricultural

industries.

### 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—

**additional rural village land** means land identified on the *Additional Rural Village Land Map* as “additional rural village land”.

**Additional Rural Village Land Map** means the *State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007 Additional Rural Village Land Map*.

**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.

**Aquifer Interference Policy** means the document entitled *NSW Aquifer Interference Policy*, published by the NSW Office of Water, Department of Primary Industries, dated September 2012.

**biophysical strategic agricultural land** means—

- (a) land identified on the *Strategic Agricultural Land Map* as “biophysical strategic agricultural land” (other than land certified by a site verification certificate as not being biophysical strategic agricultural land), and
- (b) any other land that is certified by a site verification certificate as being biophysical strategic agricultural land.

**coal seam gas** means petroleum that—

- (a) consists of naturally occurring hydrocarbons, or a naturally occurring mixture of hydrocarbons and non-hydrocarbons, the principal constituent of which is methane, and
- (b) is in a gaseous state at standard temperature and pressure, and
- (c) is extracted from coal beds.

**coal seam gas development** means the following—

- (a) development for the purposes of petroleum exploration, but only in relation to prospecting for coal seam gas,
- (b) development for the purposes of petroleum production, but only in relation to the recovery, obtaining or removal of coal seam gas,

but does not include the following—

- (c) the recovery, obtaining or removal of coal seam gas in the course of mining,
- (d) development to which clause 10 or 10A applies.

**Commissioner** means the Western Lands Commissioner holding office as such under Chapter 1A of the [Public Sector Employment and Management Act 2002](#).

**critical industry cluster land** means land identified on the *Strategic Agricultural Land Map* as “critical industry cluster land”.

**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** means—

- (a) coastal waters of the State, or
- (b) land identified as “coastal wetlands” or “littoral rainforest” on the *Coastal Wetlands and Littoral Rainforests Area Map* (within the meaning of [State Environmental Planning Policy \(Coastal Management\) 2018](#)), or
- (c) land reserved as an aquatic reserve under the [Fisheries Management Act 1994](#) or as a marine park under the [Marine Parks Act 1997](#), or
- (d) land within a wetland of international significance declared under the Ramsar Convention on Wetlands or within a World heritage area declared under the World Heritage Convention, or
- (e) land identified in an environmental planning instrument as being of high Aboriginal cultural significance or high biodiversity significance, or
- (f) land reserved as a state conservation area under the [National Parks and Wildlife Act 1974](#), or

- (g) land, places, buildings or structures listed on the State Heritage Register, or
- (h) land reserved or dedicated under the *Crown Lands Act 1989* for the preservation of flora, fauna, geological formations or for other environmental protection purposes, or
- (i) land identified as being critical habitat under the *Threatened Species Conservation Act 1995* or Part 7A of the *Fisheries Management Act 1994*.

**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.

**future residential growth area land** means land identified on the *Future Residential Growth Areas Land Map* as a “future residential growth area”.

**Future Residential Growth Areas Land Map** means the *State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007 Future Residential Growth Areas Land Map*.

**gateway certificate** means a certificate issued by the Gateway Panel under Division 4 of Part 4AA.

**Gateway Panel** means the Mining and Petroleum Gateway Panel constituted under Division 5 of Part 4AA.

**IES Committee** means the Independent Expert Scientific Committee on Coal Seam Gas and Large Coal Mining Development established by the *Environment Protection and Biodiversity Conservation Act 1999* of the Commonwealth.

**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 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.

**open cut mining** means mining carried out on, and by excavating, the earth's surface but does not include underground 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.

**residential zone** means any of the following land use zones or a land use zone that is equivalent to any of those zones—

- (a) Zone R1 General Residential,
- (b) Zone R2 Low Density Residential,
- (c) Zone R3 Medium Density Residential,
- (d) Zone R4 High Density Residential,
- (e) Zone RU5 Village.

**SA land** means land that is—

- (a) biophysical strategic agricultural land, or
- (b) critical industry cluster land, or
- (c) both.

**site verification certificate** means a certificate issued by the Director-General under Division 3 of Part 4AA.

**Site Verification Protocol** means the document entitled *Interim Protocol for Site Verification and Mapping of Biophysical Strategic Agricultural Land*, published in the Gazette on 12 April 2013.

**state conservation area** means a state conservation area reserved under the *National Parks and Wildlife Act 1974*.

**Strategic Agricultural Land Map** means the *State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007 Strategic Agricultural*

*Land Map, the State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007 Strategic Agricultural Land Map–New England North West Region and the State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007 Strategic Agricultural Land Map–Upper Hunter Region.*

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

**unconditional certificate**—see clause 17H (2) (a) (i).

**underground mining** means—

- (a) mining carried out beneath the earth’s surface, including bord and pillar mining, longwall mining, top-level caving, sub-level caving and auger mining, and
- (b) shafts, drill holes, gas and water drainage works, surface rehabilitation works and access pits associated with that mining (whether carried out on or beneath the earth’s surface),

but does not include open cut mining.

**Western Division** has the same meaning as in the [Crown Lands Act 1989](#).

**Note—**

The Act and the [Interpretation Act 1987](#) contain definitions and other provisions that affect the interpretation and application of this Policy.

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

**3A Consent authority**

The consent authority for the purposes of this Policy is (subject to the Act)—

- (a) the Council of the area in which the relevant land is situated, or
- (b) in the case of development on land within a part of the Western Division that is not within a local government area, the Commissioner.

**3B Interpretation—references to named land use zones and equivalent land use zones**

- (1) A reference in this Policy to a named land use zone is a reference to a land use zone under an environmental planning instrument made as provided by section 3.20 (2) of the Act.
- (2) A reference in this Policy to a land use zone that is equivalent to a named land use zone is a reference to a land use zone under an environmental planning instrument that is not made as provided by section 3.20 (2) of the Act—
  - (a) that the Director-General has determined under clause 1.6 of [State Environmental Planning Policy \(Exempt and Complying Development Codes\) 2008](#) is a land use

zone in which equivalent land uses are permitted to those permitted in that named land use zone, or

- (b) if no such determination has been made in respect of the particular zone, that is a land use zone in which (in the opinion of the Director-General) equivalent land uses are permitted to those permitted in that named land use zone.

#### **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), (2) (Repealed)

(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 (Coastal Management) 2018*,
- (c) (Repealed)

regardless of when the inconsistency arises.

(5) Clause 10 (Exempt development), 10A (Additional exempt development for land that is not within an environmentally sensitive area of State significance) 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, 10A or 11.

#### **5A Maps**

(1) A reference in this Policy to a named map adopted by this Policy is a reference to a map by that name—

- (a) approved by the Minister when the map is adopted, and
- (b) as amended or replaced from time to time by maps declared by environmental planning instruments to amend or replace that map, and approved by the Minister

when the instruments are made.

- (2) Any 2 or more named maps may be combined into a single map. In that case, a reference in this Policy to any such named map is a reference to the relevant part or aspect of the single map.
- (3) Any such maps are to be kept and made available for public access in accordance with arrangements approved by the Minister.
- (4) For the purposes of this Policy, a map may be in, and may be kept and made available in, electronic or paper form, or both.

**Note—**

The maps adopted by this Policy are to be made available on the official NSW legislation website in connection with this Policy.

## **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—
    - (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*,
  - (f) extracting a bulk sample as part of resource appraisal of more than 20,000 tonnes of coal or of any mineral ore.
- (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*,
  - (f), (g) (Repealed)
- (2A) (Repealed)
- (3) **Extractive industry** Development for any of the following purposes may be carried out

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.

(4) **Co-location of industry** If extractive industry is being carried out with development consent on any land, development for any of the following purposes may also be carried out with development consent on that land—

- (a) the processing of extractive material,
- (b) the processing of construction and demolition waste or of other material that is to be used as a substitute for extractive material,
- (c) facilities for the processing or transport of extractive material,
- (d) concrete works that produce only pre-mixed concrete or bitumen pre-mix or hot-mix.

(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.

**9A Coal seam gas development prohibited in certain exclusion zones**

- (1) Despite any other provision of this Policy or any other environmental planning instrument, the carrying out of coal seam gas development is prohibited on or under the following land—
  - (a) land within a coal seam gas exclusion zone,
  - (b) land within a buffer zone.
- (2) This clause does not apply to or in respect of coal seam gas development on or under an area of land listed in Schedule 2.
- (3) A local council may request that the Minister recommend to the Governor that this Policy be amended to list an area of land in Schedule 2.

**Note—**

Subclauses (2) and (3) enable local councils to identify areas of land to be exempted from the coal seam gas development prohibition contained in this clause. This council-initiated exemption or “opt out” takes effect when this Policy is amended to include in Schedule 2 a description of the area of land concerned.

- (4) Nothing in this clause prevents the carrying out of development on land within a buffer zone for the purposes of a pipeline that is ancillary to coal seam gas development.
- (5) In this clause—

**buffer zone** means land that is not within a coal seam gas exclusion zone, but is within 2 kilometres of the following land—

- (a) land within a residential zone,
- (b) future residential growth area land,
- (c) additional rural village land.

**Note—**



There is no buffer zone surrounding critical industry cluster land.

**coal seam gas exclusion zone** means any of the following areas of land—

- (a) land within a residential zone,
- (b) future residential growth area land,
- (c) additional rural village land,
- (d) critical industry cluster land.

## 10 Exempt development

- (1) This clause applies to development that is on land that—
  - (a) is not within an environmentally sensitive area of State significance, or
  - (b) is within a state conservation area but is not land referred to in paragraphs (a)–(e) or (g)–(i) of the definition of **environmentally sensitive area of State significance**.
- (2) Development for any of the following purposes is exempt development if it is of minimal environmental impact—
  - (a) the construction, maintenance and use of equipment for the monitoring of weather, noise, air, groundwater or subsidence,
  - (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.
- (3) Development for any of the following purposes is exempt development if it is of minimal environmental impact and is on land that is the site of an approved mine, an approved petroleum production facility or an approved extractive industry—
  - (a) the construction, maintenance and use of any of the following—
    - (i) landscaping, flagpoles, fences and gates (including security booths and boom gates),
    - (ii) lighting fittings and lighting equipment (including lightpoles) that are designed and operated in accordance with Australian Standard AS 4282—1997, *Control*

*of the obtrusive effects of outdoor lighting,*

- (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 construction, maintenance and use of car parking facilities or paving, but only if the car parking facilities are, or paving is, located on land that has been lawfully cleared of vegetation,
- (c) the demolition of a building or structure that is carried out in accordance with Australian Standard AS 2601—2001, *The 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,
- (d) the making of non-structural alterations to the exterior of a building (such as painting, plastering, cement-rendering, cladding, attaching fittings or decorative work), where the work does not involve the use of external combustible cladding (within the meaning of the [Environmental Planning and Assessment Regulation 2000](#)),
- (e) 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,
- (f) the construction, maintenance and use of a shed, but only if—
  - (i) the shed is set back at least 100 metres from any public road and at least 200 metres from any dwelling that is not associated with the mine, petroleum production facility or extractive industry, and
  - (ii) the shed does not cover an area of more than 300 square metres, and
  - (iii) the shed is not more than 10 metres high, and
  - (iv) any spillage from chemicals or fuel stored in the shed will be caught by an appropriate and adequately sized bund, and
  - (v) the shed is located on land that has been lawfully cleared of vegetation, and
  - (vi) the shed meets the relevant deemed-to-satisfy provisions of the Building Code of Australia,
- (g) a work carried out in compliance with a lawful direction or notice issued under the [Occupational Health and Safety Act 2000](#) or in accordance with the [Coal Mine Health and Safety Act 2002](#) or [Mine Health and Safety Act 2004](#),
- (h) the construction, maintenance and use of wheel or vehicle wash facilities, but only

if—

(i) waste water is treated and reused on site or disposed of at an approved waste management facility, and

(ii) the wheel or vehicle wash facilities are located on land that has been lawfully cleared of vegetation,

(i) the construction, maintenance and use of water storage tanks, but only if—

(i) the storage tank capacity does not exceed 100,000 litres, and

(ii) the storage tank is located on land that has been lawfully cleared of vegetation.

(4) Development for any of the following purposes is exempt development if it is of minimal environmental impact and is on land that is the site of an approved mine—

(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, but, in the case of land that is within a state conservation area, only for a period of not more than 6 months,

(b) the modification of a shaft used, in connection with any underground mining, for conveying workers or materials,

(c) the construction, maintenance and use of any minor drill hole or minor shaft within the mine, being a drill hole or shaft used for emergency or safety purposes or that has a diameter of no more than 500 millimetres.

**Note—**

Under section 4.1 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*).

**10A Additional exempt development for land that is not within an environmentally sensitive area of State significance**

(1) This clause applies to development on land that is not within an environmentally sensitive area of State significance.

(2) Development for any of the following purposes is exempt development if it is of

minimal environmental impact and is on land that is the site of an approved mine, an approved petroleum production facility or an approved extractive industry—

- (a) the construction, maintenance and use of toilet and shower facilities, but only if the facilities—
    - (i) are connected to a public sewer, or
    - (ii) have an on-site sewage management facility, including any related land application area within the meaning of section 68A of the *Local Government Act 1993*, or
    - (iii) consist of temporary chemical closets approved under section 68 of the *Local Government Act 1993*,
  - (b) the construction, maintenance and use of a shed, but only if—
    - (i) the shed is set back at least 100 metres from any public road and at least 200 metres from any dwelling that is not associated with the mine, petroleum production facility or extractive industry, and
    - (ii) the shed does not cover an area of more than 1,000 square metres (in the case of the site of an approved mine) or 500 square metres (in the case of the site of an approved petroleum production facility or an approved extractive industry), and
    - (iii) the shed is not more than 15 metres high (in the case of the site of an approved mine) or 10 metres high (in the case of the site of an approved petroleum production facility or an approved extractive industry), and
    - (iv) any spillage from chemicals or fuel stored in the shed will be caught by an appropriate and adequately sized bund, and
    - (v) the shed is located on land that has been lawfully cleared of vegetation, and
    - (vi) the shed meets the relevant deemed-to-satisfy provisions of the Building Code of Australia,
  - (c) the installation, maintenance and use 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, treated or otherwise managed by a lawful approved facility.
- (3) Development for the purposes of the construction, maintenance and use of a road on land that is the site of an approved mine is exempt development, but only if—
- (a) the development is of minimal environmental impact, and
  - (b) the road does not create an additional intersection with a public road, and

- (c) the road is located on land that has been lawfully cleared of vegetation, and
- (d) the construction and maintenance of the road is consistent with best practice industry standards as outlined in the document titled *Managing urban stormwater: Soils and construction (Volume 2C Unsealed roads)*, published by the Department of Environment and Climate Change and dated January 2008.

**Note—**

Under section 4.1 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**

- (1) This clause applies to development that is not on any of the following land—
  - (a) land within an environmentally sensitive area of State significance,
  - (b) land identified in Schedule 1 to the *Water NSW Regulation 2013*.
- (2) Development for any of the following purposes is complying development if it is on the site of an approved mine, an approved petroleum production facility or approved extractive industry—
  - (a) the construction, maintenance and use of communication facilities, electricity distribution lines or water pipelines,
  - (b) subdivision for the purpose of making an adjustment to the boundary of a lot, being an adjustment that will retain all services within the existing lots and that will not—
    - (i) create any additional lots or dwelling entitlements, or
    - (ii) change the area of any lot by more than 10%,
  - (c) the use of any mobile plant that crushes, separates, treats or sizes minerals or mineral-bearing ores, gravel or rock, or of any associated ancillary equipment, but only if—
    - (i) the use is in one location only and for a total period of not more than 12 months (in any period), and

- (ii) the use is carried out more than 1 kilometre from any dwelling or school not associated with the mine, petroleum production facility or extractive industry, and
- (iii) the intended processing capacity does not exceed 150 tonnes per day or 30,000 tonnes per year, and
- (iv) the use is carried out between 7 am and 5 pm on weekdays and 8 am and 1 pm on Saturdays,

**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 exceed by more than 10% the height or footprint area, respectively, of the original building.
- (3) Development for the purposes of liquid petroleum gas storage containers on the site of an approved petroleum production facility or approved extractive industry is complying development, but only if—
- (a) the storage containers together have a capacity to store, at any one time, a total of not more than 3 tonnes of gas, and
  - (b) the storage containers comply with Australian Standard AS 1940—2004, *The storage and handling of flammable and combustible liquids*.
- (4) Development for any of the following purposes is complying development if it is on the site of an approved mine—
- (a) the construction, maintenance and use of a shed, but only if—
    - (i) the shed is set back at least 100 metres from any public road and at least 200 metres from any dwelling that is not associated with the mine, and
    - (ii) the shed covers an area of more than 1,000 square metres but not more than 3,000 square metres, and
    - (iii) the shed is not more than 15 metres high, and
    - (iv) any spillage from chemicals or fuel stored in the shed will be caught by an appropriate and adequately sized bund, and
    - (v) the shed is located on land that has been lawfully cleared of vegetation, and
    - (vi) the shed meets the relevant deemed-to-satisfy provisions of the Building Code of Australia,
  - (b) an upgrade of processing equipment or expansion of processing equipment that

- does not result in the capacity of the equipment exceeding by more than 10% the original capacity for the mine as approved,
- (c) the construction, maintenance and use of fuel bowsers and fuel, gas and oil storage tanks, but only if the storage tanks—
    - (i) have a capacity to store, at any one time, a total of not more than 50,000 litres, and
    - (ii) comply with Australian Standard AS 1940—2004, *The storage and handling of flammable and combustible liquids*, including any requirements in relation to spill management, and
    - (iii) are located on land that has been lawfully cleared of vegetation,
  - (d) the construction, maintenance and use of storage tanks for the purposes of storing inert gases or stone dust, but only if the storage tanks—
    - (i) have a capacity to store, at any one time, a total of not more than 50 tonnes, and
    - (ii) comply with Australian Standard AS 1940—2004, *The storage and handling of flammable and combustible liquids*, and
    - (iii) are located on land that has been lawfully cleared of vegetation,
  - (e) the construction, maintenance and use of a coal storage facility, but only if—
    - (i) the storage capacity of the facility does not exceed 5,000 tonnes, and
    - (ii) the facility is located on land that has been lawfully cleared of vegetation,
  - (f) the construction, maintenance and use of temporary buildings, but only if each building—
    - (i) is constructed, maintained and used for a total period of not more than 24 months (in any period), and
    - (ii) is not more than 1 storey in height, and
    - (iii) meets the relevant deemed-to-satisfy provisions of the Building Code of Australia, and
    - (iv) is located on land that has been lawfully cleared of vegetation.

### **Part 3 Development applications—matters for consideration**

#### **12AA (Repealed)**

## **12AB Non-discretionary development standards for mining**

- (1) The object of this clause is to identify development standards on particular matters relating to mining that, if complied with, prevents the consent authority from requiring more onerous standards for those matters (but that does not prevent the consent authority granting consent even though any such standard is not complied with).
- (2) The matters set out in this clause are identified as non-discretionary development standards for the purposes of section 4.15 (2) and (3) of the Act in relation to the carrying out of development for the purposes of mining.

### **Note—**

The development standards do not prevent a consent authority from imposing conditions to regulate project-related noise, air quality, blasting or ground vibration impacts that are not the subject of the development standards.

- (3) **Cumulative noise level** The development does not result in a cumulative amenity noise level greater than the recommended amenity noise levels, as determined in accordance with Table 2.2 of the Noise Policy for Industry, for residences that are private dwellings.
- (4) **Cumulative air quality level** The development does not result in a cumulative annual average level greater than 25  $\mu\text{g}/\text{m}^3$  of  $\text{PM}_{10}$  or 8  $\mu\text{g}/\text{m}^3$  of  $\text{PM}_{2.5}$  for private dwellings.
- (5) **Airblast overpressure** Airblast overpressure caused by the development does not exceed—
  - (a) 120 dB (Lin Peak) at any time, and
  - (b) 115 dB (Lin Peak) for more than 5% of the total number of blasts over any period of 12 months,measured at any private dwelling or sensitive receiver.
- (6) **Ground vibration** Ground vibration caused by the development does not exceed—
  - (a) 10 mm/sec (peak particle velocity) at any time, and
  - (b) 5 mm/sec (peak particle velocity) for more than 5% of the total number of blasts over any period of 12 months,measured at any private dwelling or sensitive receiver.
- (7) **Aquifer interference** Any interference with an aquifer caused by the development does not exceed the respective water table, water pressure and water quality requirements specified for item 1 in columns 2, 3 and 4 of Table 1 of the Aquifer Interference Policy for each relevant water source listed in column 1 of that Table.

### **Note—**

The taking of water from all water sources must be authorised by way of licences or exemptions under the



relevant water legislation.

(8) The Minister is to review a non-discretionary development standard under this clause if a government policy on which the standard is based is changed.

(9) In this clause—

**Aquifer Interference Policy** means the document entitled *NSW Aquifer Interference Policy* published by the NSW Office of Water, Department of Primary Industries and in force as at the commencement of this clause.

**Noise Policy for Industry** means the document entitled *Noise Policy for Industry* published by the Environment Protection Authority and in force as at the commencement of this clause.

**PM<sub>2.5</sub>** means particulate matter less than 2.5 µm in aerodynamic equivalent diameter.

**PM<sub>10</sub>** means particulate matter less than 10 µm in aerodynamic equivalent diameter.

**private dwelling** means residential accommodation owned by a person other than a public authority or a company operating a mine.

**sensitive receiver** means a hospital, school classroom, centre-based child care facility or place of public worship.

## **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).

## **12A Consideration of voluntary land acquisition and mitigation policy**

(1) In this clause—

**voluntary land acquisition and mitigation policy** means the *Voluntary Land Acquisition and Mitigation Policy* approved by the Minister and published in the Gazette on the date on which *State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) Amendment (Air and Noise Impacts) 2018* is published on the NSW legislation website.

(2) Before determining an application for consent for State significant development for the purposes of mining, petroleum production or extractive industry, the consent authority must consider any applicable provisions of the voluntary land acquisition and mitigation policy and, in particular—

(a) any applicable provisions of the policy for the mitigation or avoidance of noise or particulate matter impacts outside the land on which the development is to be carried out, and

(b) any applicable provisions of the policy relating to the developer making an offer to acquire land affected by those impacts.

(3) To avoid doubt, the obligations of a consent authority under this clause extend to any application to modify a development consent for State significant development for the purposes of mining, petroleum production or extractive industry.

(4) This clause extends to applications made, but not determined, before the commencement of this clause.

## **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.

- (3) Without limiting subclause (1), in determining a development application for development for the purposes of mining, the consent authority must consider any certification by the Chief Executive of the Office of Environment and Heritage or the Director-General of the Department of Primary Industries that measures to mitigate or offset the biodiversity impact of the proposed development will be adequate.

## **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 clause 3 of Schedule 6 to 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 4AA Mining and petroleum development on strategic agricultural land

### Division 1 Preliminary

#### 17A Meaning of “mining or petroleum development”

- (1) In this Part, **mining or petroleum development** means—
  - (a) development specified in clause 5 (Mining) of Schedule 1 to [State Environmental](#)

*Planning Policy (State and Regional Development) 2011*, 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 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 mine comprising the extraction of more than 20,000 tonnes of coal or of any mineral ore, or
  - (b) development specified in clause 6 (1), (3) or (4) (Petroleum (oil and gas)) of Schedule 1 to *State Environmental Planning Policy (State and Regional Development) 2011*, 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 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*.
- (2) However, **mining or petroleum development** does not include development carried out on land that is outside—
- (a) the mining area of a proposed mining lease, or
  - (b) the area of a proposed production lease.

## Division 2 Development applications

### Note—

Clause 50A of the *Environmental Planning and Assessment Regulation 2000* requires that a development application for consent to mining or petroleum development on certain identified land (including land shown on the *Strategic Agricultural Land Map*) must be accompanied by—

- (a) a gateway certificate, or
- (b) 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.

### **17B Assessment of development applications**

- (1) Before determining an application for development consent for mining or petroleum development that is accompanied by a gateway certificate, the consent authority must—
  - (a) refer the application to the Minister for Regional Water for advice regarding the impact of the proposed development on water resources, and
  - (b) consider—
    - (i) any recommendations set out in the certificate, and
    - (ii) any written advice provided by the Minister for Regional Water in response to a referral under paragraph (a), and
    - (iii) any written advice of the Gateway Panel in relation to the development given as part of the consultations undertaken by the Director-General under clause 3 (4A) (b) of Schedule 2 to the *Environmental Planning and Assessment Regulation 2000*, and
    - (iv) any written advice of the IES Committee provided to the Gateway Panel as referred to in clause 17G (1) (whether that advice was received before or after the expiry of the 60-day period referred to in clause 17G (1) (b) (i)), and
    - (v) any cost benefit analysis of the proposed development submitted with the application.
- (2) In determining an application for development consent for mining or petroleum development that is accompanied by a gateway certificate, the consent authority 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.
- (3) The Minister for Regional Water, 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 Aquifer Interference Policy, and
  - (b) the other provisions of that Policy.

### **Division 3 Site verification certificates**

**Note—**

Clause 50A of the *Environmental Planning and Assessment Regulation 2000* requires that a development application for consent to mining or petroleum development on certain identified land (including land shown on the *Strategic Agricultural Land Map*) must be accompanied by—

- (a) a gateway certificate, or
- (b) 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.

### **17C Site verification certificates—biophysical strategic agricultural land**

- (1) The Director-General may issue a site verification certificate in respect of specified land certifying, in the Director-General's opinion, that the land is or is not biophysical strategic agricultural land.
- (2) The owner of land may apply to the Director-General for a site verification certificate in respect of the land if—
  - (a) any one or more of the following has occurred—
    - (i) written notice of an intention to obtain an access arrangement in relation to the land under section 142 of the *Mining Act 1992* has been served,
    - (ii) an access arrangement in relation to the land under Division 2 of Part 8 of the *Mining Act 1992* has been agreed or determined,
    - (iii) written notice of an intention to obtain an access arrangement in relation to the land under section 69E of the *Petroleum (Onshore) Act 1991* has been served,
    - (iv) an access arrangement in relation to the land under Part 4A of the *Petroleum (Onshore) Act 1991* has been agreed or determined, and
  - (b) the land is not subject to a pending development application (or modification application) for mining or petroleum development.
- (3) A person who proposes to carry out mining or petroleum development on land shown on the *Strategic Agricultural Land Map* may apply to the Director-General for a site verification certificate in respect of the land, but only if the person gives notice of the application—
  - (a) by written notice to the owner of the land before the application is made, or
  - (b) by advertisement published in a newspaper circulating in the area in which the development is to be carried out no later than 30 days before the application is made.
- (4) Only one certificate may be issued under this clause in respect of the same land.
- (5) In this clause—

**modification application** means an application to modify a development consent and includes—



- (a) a request to modify an approved project within the meaning of Schedule 6A to the Act, and
- (b) an application for the modification of a development consent referred to in clause 8J (8) of the *Environmental Planning and Assessment Regulation 2000*.

**owner of land**, in relation to land subject to a mining lease under the *Mining Act 1992*, does not include the holder of the lease.

#### **17D Applications for site verification certificates**

- (1) An application for a site verification certificate must—
  - (a) be in writing and include the following information—
    - (i) the name and address of the applicant,
    - (ii) the address, and particulars of title, of the subject land,
    - (iii) whether the land is shown as biophysical strategic agricultural land on the *Strategic Agricultural Land Map*, and
  - (b) be in the form (if any) approved by the Director-General from time to time, and
  - (c) be accompanied by the relevant fee (if any) specified in the regulations.
- (2) The Director-General must have regard to the criteria set out in the Site Verification Protocol when determining an application for a site verification certificate.
- (3) The Director-General is to determine an application within 21 days of it being made.

#### **17E Notification of applications for and issue of site verification certificates**

- (1) A copy of each application for a site verification certificate must be published on the Department's website.
- (2) A copy of each site verification certificate issued by the Director-General must—
  - (a) be published on the Department's website, and
  - (b) be given to the relevant local council.

### **Division 4 Gateway certificates**

#### **Note—**

Clause 50A of the *Environmental Planning and Assessment Regulation 2000* requires that a development application for consent to mining or petroleum development on certain identified land (including land shown on the *Strategic Agricultural Land Map*) must be accompanied by—

- (a) a gateway certificate, or
- (b) 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.

### **17F Applications for gateway certificates**

- (1) An application for a gateway certificate in respect of proposed mining or petroleum development on SA land is to be made to the Gateway Panel.
- (2) An application may be made only by the person who proposes to carry out the proposed mining or petroleum development.
- (3) If the applicant is not the owner of the land concerned, the application may be made only if notice of the application is given—
  - (a) by written notice to the owner of the land before the application is made, or
  - (b) by advertisement published in a newspaper circulating in the area in which the development is to be carried out no later than 30 days before the application is made.
- (4) An application must—
  - (a) be in writing and include the following information—
    - (i) the name and address of the applicant,
    - (ii) the address, and particulars of title, of the subject land,
    - (iii) a description of the proposed development,
    - (iv) whether the land is biophysical strategic agricultural land or critical industry cluster land, or both, and
  - (b) be in the form (if any) approved by the Gateway Panel from time to time.

### **17G Referral of applications**

- (1) Before determining an application for a gateway certificate relating to development on land that is biophysical strategic agricultural land, the Gateway Panel—
  - (a) must refer the application to the IES Committee and the Minister for Regional Water for advice regarding the impact of the proposed development on water resources, and
  - (b) must take the following into consideration—
    - (i) any written advice received by the Panel from the IES Committee within 60 days of the referral concerned,

**Note—**

This 60-day period may be extended for a period of up to 30 days if the Gateway Panel requests that the applicant provide the Panel with further information (see clause 17J (2)).

- (ii) any written advice received by the Panel from the Minister for Regional Water within 70 days of the referral concerned.

**Note—**

This 70-day period may be extended for a period of up to 30 days if the Gateway Panel requests that the applicant provide the Panel with further information (see clause 17J (2)).

- (2) The Minister for Regional Water, 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 Aquifer Interference Policy, and
  - (b) the other provisions of that Policy.

**17H Determination of applications**

- (1) The Gateway Panel must determine an application by issuing a gateway certificate in accordance with this Division.
- (2) A gateway certificate must—
  - (a) state that the Gateway Panel is of the opinion that—
    - (i) the proposed development meets the relevant criteria (***an unconditional certificate***), or
    - (ii) the proposed development does not meet the relevant criteria (***a conditional certificate***), and
  - (b) include the Gateway Panel's reasons for the formation of the opinion stated in the certificate (and the reasons for the making of any recommendations included in the certificate).
- (3) A conditional gateway certificate—
  - (a) is to include recommendations of the Gateway Panel to address the proposed development's failure to meet the relevant criteria, and
  - (b) may also include a recommendation that specified studies or further studies be undertaken by the applicant regarding the proposed development.
- (4) The ***relevant criteria*** are as follows—
  - (a) in relation to biophysical strategic agricultural land— that the proposed development will not significantly reduce the agricultural productivity of any biophysical strategic agricultural land, based on a consideration of the following—
    - (i) any impacts on the land through surface area disturbance and subsidence,
    - (ii) any impacts on soil fertility, effective rooting depth or soil drainage,

- (iii) increases in land surface micro-relief, soil salinity, rock outcrop, slope and surface rockiness or significant changes to soil pH,
  - (iv) any impacts on highly productive groundwater (within the meaning of the Aquifer Interference Policy),
  - (v) any fragmentation of agricultural land uses,
  - (vi) any reduction in the area of biophysical strategic agricultural land,
- (b) in relation to critical industry cluster land—that the proposed development will not have a significant impact on the relevant critical industry based on a consideration of the following—
- (i) any impacts on the land through surface area disturbance and subsidence,
  - (ii) reduced access to, or impacts on, water resources and agricultural resources,
  - (iii) reduced access to support services and infrastructure,
  - (iv) reduced access to transport routes,
  - (v) the loss of scenic and landscape values.
- (5) In forming an opinion as to whether a proposed development meets the relevant criteria, the Gateway Panel is to have regard to—
- (a) the duration of any impact referred to in subclause (4), and
  - (b) any proposed avoidance, mitigation, offset or rehabilitation measures in respect of any such impact.

#### **17I Time for determination of applications**

- (1) The Gateway Panel must determine an application within 90 days of it being made.
- (2) If the Gateway Panel does not issue a gateway certificate before the expiry of the period required under this clause (and has not rejected the application), the Director-General is, by order in writing, to direct the Panel to issue a certificate in respect of the proposed development within 30 days of making the direction or such longer period as is specified in the direction.
- (3) If the Gateway Panel does not issue a gateway certificate within the period required by a direction under this clause, the Panel must, immediately after the expiry of that period, issue an unconditional certificate in respect of the proposed development.
- (4) For the avoidance of doubt, an application under this Division may be rejected only in accordance with clause 17J (3) (a).

### **17J Gateway Panel may request further information before determining application**

- (1) **One request for further information permitted** The Gateway Panel may make one request that the applicant provide the Panel with further information. The applicant is to provide that information within 30 days of the request.
- (2) **“Clock stopped” while applicant responds to request** During the period beginning on the making of the request and ending on the provision of the information or the expiry of the 30-day period (whichever occurs first), time ceases to run for the purpose of calculating the time periods referred to in clauses 17G (1) (b) and 17I (1).
- (3) **Effect of failure to respond to request** If an applicant fails to provide the Gateway Panel with the requested information within the 30-day period, the Panel must—
  - (a) reject and not determine the application, or
  - (b) continue to determine the application within the period required under this Division, as extended by subclause (2).
- (4) For the avoidance of doubt, the Gateway Panel—
  - (a) may not make a request under this clause after the expiry of the 90-day period referred to in clause 17I (1), and
  - (b) may, in determining an application, have regard to any requested information provided after the expiry of the 30-day period referred to in subclause (1).

### **17K Duration of gateway certificates**

A gateway certificate remains current until—

- (a) the day that is 5 years after the day on which the certificate was issued (or an earlier day specified in the certificate), or
- (b) if the certificate accompanies a development application made in respect of a proposed mining or petroleum development—that application is finally determined.

### **17L Amendment of gateway certificates**

- (1) A gateway certificate may be amended on application to the Gateway Panel.
- (2) Clauses 17I and 17J apply to an application for an amendment of a gateway certificate with all necessary changes.
- (3) The Gateway Panel may determine, as it sees fit, whether any of the other provisions of this Division are to apply to such an application in a particular case.

### **17M Notification of gateway certificates**

- (1) The Gateway Panel must—

- (a) notify the applicant in writing of its determination of the application, and
  - (b) if it issues a gateway certificate, give a copy of the gateway certificate to the applicant.
- (2) The Gateway Panel must give a copy of the following documents to the Director-General and must cause any such copy to be published on the Gateway Panel's website (or, if there is no such website, the Department's website)—
- (a) each application for a gateway certificate,
  - (b) any written advice received by the Gateway Panel under clause 17G,
  - (c) each gateway certificate issued by the Gateway Panel.

## **Division 5 Gateway Panel**

### **17N Constitution of Gateway Panel**

- (1) The Independent Planning Commission is to constitute a subcommittee of the Commission as the Mining and Petroleum Gateway Panel.
- (2) The Commission must consult with the Minister for Planning, the Minister for Resources, Minister for Energy and Utilities and the Minister for Primary Industries on the proposed membership of the Gateway Panel.

### **17O Functions of Gateway Panel**

The Gateway Panel has the following functions—

- (a) to determine applications for gateway certificates,
- (b) to provide advice to the consent authority under clause 17B (1) of this Policy in relation to applications for development consent,
- (c) to provide advice to the Minister or the Director-General under clause 21 (2) of this Policy in relation to applications for development consent,
- (d) to provide advice to the Director-General under clause 3 (4A) (b) of the *Environmental Planning and Assessment Regulation 2000* in relation to the preparation of environmental assessment requirements,
- (e) such other functions as may be imposed or conferred on the Panel by this Policy or any other law.

### **17P Members of Gateway Panel**

- (1) The Gateway Panel is to consist of not less than 3 persons appointed by the Independent Planning Commission. A member of the Commission may be appointed as a member of the Gateway Panel.

- (2) A person is qualified for appointment as a member of the Gateway Panel if the person has expertise in any one or more of the disciplines of agricultural science, hydrogeology or mining and petroleum development.
- (3) In appointing the members of the Gateway Panel, the Commission is to ensure, as far as practicable, that the members have expertise in a mix of the disciplines referred to in subclause (2).
- (4) One of the members of the Gateway Panel is, by the member's instrument of appointment or a further instrument signed by the Commission, to be appointed as the chairperson of the Panel.

**17Q Constitution of Gateway Panel for particular matters**

- (1) For the purpose of carrying out any of its functions, the Gateway Panel is to be constituted by 3 members.
- (2) The members for the purpose of exercising a function of the Gateway Panel are to be determined by the chairperson.
- (3) The Gateway Panel may, at any time, exercise by the same members or different members, one or more of its functions.

**17R Term and other conditions of office**

A member of the Gateway Panel—

- (a) holds office for such term (not exceeding 3 years) as is determined by the Independent Planning Commission, and
- (b) ceases to hold office in such circumstances as are determined by the Independent Planning Commission, and
- (c) is entitled to such remuneration, if any, and to the payment of such expenses, if any, as are determined by the Independent Planning Commission, and
- (d) holds office subject to such conditions as are determined by the Independent Planning Commission.

**17S Pecuniary interests**

A member of the Gateway Panel who has a pecuniary interest (within the meaning of sections 442 and 443 of the [Local Government Act 1993](#)) in any matter that is the subject of a decision or advice by the Panel and who is present at a meeting of the Panel at which the matter is being considered—

- (a) must disclose the interest to the meeting as soon as practicable, and
- (b) must not take part in the consideration or discussion of the matter, and

(c) must not vote on any question relating to the matter.

#### **17T Procedure at meetings**

Subject to clause 17U, the procedure at meetings of the Gateway Panel is to be determined by the Independent Planning Commission or, in the absence of any such determination, by the Panel.

#### **17U Quorum**

The quorum at a meeting of the Gateway Panel is a majority of the members for the time being of the Panel.

### **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.

#### **18A Designated development**

Development for the purposes of extractive industries that are located in the Western Division and that obtain or process for sale, or reuse, more than 15,000 cubic metres of extractive material per year or more than 40,000 cubic metres in total is declared to be designated development for the purposes of the Act.

#### **19 Savings and transitional—general**

- (1) 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.
- (2) An application for development consent that was made before the commencement of the *State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) Amendment 2010*, but was not finally determined before that commencement, is to be determined as if that Policy (other than Schedule 1 [3]) had not been made.

#### **20 Savings and transitional—coal seam gas development in certain exclusion zones**

- (1) Clause 9A extends to—
  - (a) an application for development consent made, but not finally determined, before the commencement of that clause, and



- (b) a Part 3A project or concept plan application made, but not finally determined, before the commencement of that clause, and
  - (c) the following requests and applications made, but not finally determined, before the commencement of that clause—
    - (i) a request to modify an approved project,
    - (ii) an application to modify a development consent (including an application to modify a development consent referred to in clause 8J (8) of the *Environmental Planning and Assessment Regulation 2000*).
- (1A) Clause 9A does not prohibit the carrying out of the following coal seam gas development—
- (a) development that is a transitional Part 3A project (within the meaning of Schedule 6A to the Act), but only if—
    - (i) the project was approved (whether before or after the repeal of Part 3A) or is the subject of an approved concept plan (whether approved before or after the repeal of Part 3A) before the commencement of that clause, and
    - (ii) the carrying out of the development complies with the conditions of the approval of the approved project or the approved concept plan (as in force on the commencement of that clause),
  - (b) development for which development consent has been granted before the commencement of that clause, but only if the carrying out of the development complies with the conditions of the development consent (as in force on the commencement of that clause).
- (1B) Clause 9A does not prohibit the carrying out of coal seam gas development if—
- (a) the development is authorised by either of the following—
    - (i) an approval to modify a transitional Part 3A project of a kind referred to in subclause (1A) (a),
    - (ii) a modification of a development consent for development of a kind referred to in subclause (1A) (b), and
  - (b) the Minister or consent authority who modifies the project or development consent is satisfied that the coal seam gas development authorised by the modification is of minimal environmental impact, and
  - (c) any development so authorised that involves the drilling or operation of a petroleum well relates to a well that was approved as at 3 October 2013 as part of development of a kind referred to in subclause (1A) (a) or (b) and does not result in any increase in the depth or lateral extent of the well, and

(d) the carrying out of the development so authorised complies with the conditions of the modified approval or the conditions of the modified development consent.

(1C) To avoid doubt, subclause (1B) (c) does not apply to the drilling or operation of a petroleum well that was not approved as referred to in subclause (1B) even if that well is, or is to be, located within the drill site area of a petroleum well that was approved as referred to in subclause (1B) (c).

(2) Words and expressions used in this clause have the same meaning as they have in Schedule 6A (Transitional arrangements—repeal of Part 3A) to the Act.

#### **20A SEPP to be reviewed by Minister**

The Minister is to arrange for this Policy to be reviewed (and a report of the review made public) before the end of September 2015.

#### **21 Savings and transitional—mining and petroleum development on strategic agricultural land**

(1) Part 4AA of this Policy does not apply to or with respect to an application for development consent under Part 4 of the Act if the relevant environmental assessment requirements under Part 2 of Schedule 2 to the *Environmental Planning and Assessment Regulation 2000* for the development were notified by the Director-General on or before 10 September 2012.

(1A) In addition to subclause (1), Part 4AA of this Policy does not apply to or with respect to an application for development consent under Part 4 of the Act that involves mining or petroleum development within the meaning of Part 4AA if—

(a) the land to which the application relates was not shown (whether in whole or in part) on the Strategic Agricultural Land Map before 28 January 2014, and

(b) the relevant environmental assessment requirements under Part 2 of Schedule 2 to the *Environmental Planning and Assessment Regulation 2000* for the development were notified by the Director-General on or before 3 October 2013.

(2) However, the Minister or the Director-General, in dealing with an application referred to in subclause (1) or (1A), may seek the advice of the Gateway Panel.

#### **22 Savings and transitional—Jerrys Plains open cut mining prohibition**

Schedule 1, as amended by *State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) Amendment (Jerrys Plains Prohibition) 2017*, extends to an application for development consent made, but not finally determined, before the commencement of that amendment.

### 23 Savings and transitional—air and noise impacts

Clause 12AB, as amended by *State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) Amendment (Air and Noise Impacts) 2018*, extends to any development applications made, but not finally determined, before the commencement of that amendment.

### 24 Savings and transitional—Gateway certificates

- (1) Clause 17K, as substituted by the amending SEPP, extends to a gateway certificate that was current immediately before that substitution.
- (2) A gateway certificate that accompanied a development application made before the substitution of clause 17K by the amending SEPP and ceased to be current before the application was finally determined is taken to be a current gateway certificate until that application is finally determined.
- (3) In this clause—

**amending SEPP** means the *State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) Amendment 2019*.

## Schedule 1 Prohibited development

(Clause 9)

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

Extractive industries within the area identified on the map marked “*State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007—Map 2—Gosford City*” (being a map that is approved and signed by the Minister and copies of which are deposited in the head office of the Department).

Open cut mining within the area identified on the map marked “*State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007—Map 3—Upper Hunter Shire*” (being a map that is approved and signed by the Minister and copies of which are deposited in the head office of the Department).

Open cut mining within the area identified as “land where open-cut mining is prohibited” on the map named *State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007—Map 4—Jerrys Plains*.

Open cut mining within the area identified as “Land where open-cut mining is prohibited” on the map named *State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007—Map 5—Bulga*.

## **Schedule 2 Areas where local council has requested coal seam gas development not be prohibited**

(Clause 9A (2))

### **Note—**

When this Plan was made this Schedule was blank.