



New South Wales

State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) Amendment 2012

under the

Environmental Planning and Assessment Act 1979

[The following enacting formula will be included if the Regulation is made:]

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*.

Minister for Planning and Infrastructure

Public consultation draft

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Clause 1

State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) Amendment 2012

under the

Environmental Planning and Assessment Act 1979

1 Name of Policy

This Policy is *State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) Amendment 2012*.

2 Commencement

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

3 Repeal of Policy

- (1) This Policy is repealed on the day following the day on which this Policy commences.
- (2) The repeal of this Policy does not, because of the operation of sections 5 (6) and 30 of the *Interpretation Act 1987*, affect any amendment made by this Policy.

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[1] Clause 2 Aims of Policy

Insert at the end of clause 2 (c):

, 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.

[2] Clause 3 Interpretation

Insert in alphabetical order in clause 3 (2):

Aquifer Interference Policy means the document entitled *NSW Aquifer Interference Policy*, published by 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.

critical industry cluster land means land identified on the Strategic Agricultural Land Map as critical industry cluster land (other than land certified by a current site verification certificate as not being critical industry cluster land).

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.

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IES Committee means the Interim Independent Expert Scientific Committee on Coal Seam Gas and Coal Mining established by the Commonwealth Minister for Sustainability, Environment, Water, Population and Communities and any body replacing that committee.

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 Criteria means the document entitled *Strategic Agricultural Land—Site Verification Criteria*, published in the Gazette on [publication date to be inserted here], that establishes criteria for identifying biophysical strategic agricultural land and critical industry cluster land.

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

[3] Clause 5A

Insert after clause 5:

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.

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

[4] Part 4AA

Insert after Part 3:

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 (State significant development—general) 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 (Petroleum (oil and gas)) of Schedule 1 (State significant development—general) 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

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- (c) development specified in clause 6 (2) of Schedule 1 (State significant development—general) 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* provides that a development application for consent to mining or petroleum development on the following land is not required to be accompanied by a gateway certificate if it is instead accompanied by a site verification certificate or certificates that certify that the land on which the proposed development is to be carried out is not biophysical strategic agricultural land or is not critical industry cluster land, or both, as the case requires:

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

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 Primary Industries 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 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
 - (iii) any advice of the IES Committee provided to the Minister for Primary Industries 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) (c) (i)), and
 - (iv) any advice provided by the Minister for Primary Industries within 30 days of a referral under paragraph (a), and
 - (v) any cost benefit analysis of the proposed development submitted with the application.

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- (2) The Minister for Primary Industries, when providing advice under this clause on the impact of the proposed development on water resources, must have regard to:
 - (a) the minimal impact considerations set out in the 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* provides that a development application for consent to mining or petroleum development on the following land is not required to be accompanied by a gateway certificate if it is instead accompanied by a site verification certificate or certificates that certify that the land on which the proposed development is to be carried out is not biophysical strategic agricultural land or is not critical industry cluster land, or both, as the case requires:

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

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 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.

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- (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:

access arrangement has the same meaning as in the *Mining Act 1992* or the *Petroleum (Onshore) Act 1991* (as the case requires).
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 of the Act, or
 - (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 Site verification certificates—critical industry cluster 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 critical industry cluster land.
- (2) A person who proposes to carry out mining or petroleum development on land shown on the Strategic Agricultural Land Map as critical industry cluster land 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.

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- (3) A certificate issued under this clause remains current for a period of 5 years (or such other period as is specified in the certificate) after the date on which it is issued by the Director-General.

17E Site verification certificates—generally

- (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 land concerned,
 - (iii) the type of certificate or certificates being sought,
 - (iv) whether the land is shown as SA land on the Strategic Agricultural Land Map (and if so, what is shown on that 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 apply the Site Verification Criteria when determining an application for a site verification certificate.
- (3) A single application may be made for both a site verification certificate with respect to biophysical strategic agricultural land and a site verification certificate with respect to critical industry cluster land.
- (4) A copy of each application for a site verification certificate must be published on the Department's website.
- (5) 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 the following land be accompanied by a gateway certificate (or a site verification certificate or certificates that certify that the land on which the proposed development is to be carried out is not biophysical strategic agricultural land or is not critical industry cluster land, or both, as the case requires):

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

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17F Applications for gateway certificates

- (1) A person who proposes to carry out mining or petroleum development on SA land may apply to the Gateway Panel for a gateway certificate in respect of the proposed development.
- (2) 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.
- (3) An application must:
 - (a) be in writing and include the following information:
 - (i) the name and address of the applicant,
 - (ii) the address, and formal 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 Primary Industries for advice regarding the impact of the proposed development on water resources, and
 - (b) may consult with the following stakeholders:
 - (i) the NSW Farmers' Association,
 - (ii) the NSW Minerals Council Ltd,
 - (iii) the Australian Petroleum Production and Exploration Association Ltd, and
 - (c) must take the following into consideration:

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- (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 Primary Industries 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)).
 - (iii) any written advice received by the Panel from a stakeholder within 60 days of a consultation undertaken under paragraph (b).
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)).
- (2) Before determining an application for a gateway certificate relating to development on land that is critical industry cluster land, the Gateway Panel:
 - (a) may consult with the following stakeholders:
 - (i) the NSW Farmers' Association,
 - (ii) the NSW Minerals Council Ltd,
 - (iii) the Australian Petroleum Production and Exploration Association Ltd,
 - (iv) the Hunter Valley Wine Industry Association,
 - (v) the Hunter Thoroughbred Breeders Association, and
 - (b) must take into consideration any written advice received by the Panel from a stakeholder within 60 days of a consultation undertaken under paragraph (a).
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)).
- (3) The Minister for Primary Industries, when providing advice under this clause on the impact of the proposed development on water resources, must have regard to:
 - (a) the minimal impact considerations set out in the Aquifer Interference Policy, and
 - (b) the other provisions of that Policy.

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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) must 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 the land on which the proposed development is to be carried out, or any adjacent 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, rooting depth or soil profile materials and thicknesses,
 - (iii) increases in land surface micro-relief or soil salinity, or significant changes to soil pH,
 - (iv) impacts on highly productive groundwater (within the meaning of the Aquifer Interference Policy),
 - (v) any fragmentation of agricultural land uses,
 - (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:

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- (i) 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 has not issued 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.
- (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 (as referred to in clause 17H (2) (a) (i)) 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

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purpose of calculating the time periods referred to in clauses 17G (1) (c) and (2) (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 for a period of 5 years (or such shorter period as is specified in the certificate) after the date on which it is issued by the Gateway Panel.

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 give:
 - (a) a copy of each application for a gateway certificate to the Director-General, and
 - (b) a copy of each gateway certificate issued to the applicant and to the Director-General.
- (2) The Director-General must cause a copy of each application for a gateway certificate and each gateway certificate issued by the Gateway Panel to be published on the Department's website.

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Note. A gateway certificate includes the Gateway Panel's reasons for the formation of the opinion stated in the certificate and for the making of any recommendations included in the certificate.

Division 5 Gateway Panel

17N Constitution of Gateway Panel

- (1) The Minister is to constitute the Mining and Petroleum Gateway Panel.
- (2) The Minister must consult with the Minister for Resources and Energy and the Minister for Primary Industries on the proposed membership (including any alternate members) of the Gateway Panel.

17O Functions of Gateway Panel

The Gateway Panel has the following functions:

- (a) to determine applications for gateway certificates,
- (b) if requested by the Minister or the Director-General, to provide advice to the Minister or the Director-General with respect to planning and development matters related to SA land or any related matter,
- (c) 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 more than 3 persons appointed by the Minister.
- (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 following disciplines, namely, agricultural science, hydrogeology, mining and petroleum development.
- (3) In appointing the members of the Gateway Panel, the Minister 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 Minister, to be appointed as the chairperson of the Panel.

17Q Alternate members

- (1) The Minister may appoint one or more alternate members for the Gateway Panel.

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- (2) An alternate member may act in the place of any member of the Gateway Panel who for any reason is unable to act as a member.
- (3) An alternate member must have one of the qualifications referred to in clause 17P (2).
- (4) Clauses 17R and 17S apply to an alternate member in the same way as they apply to a member.

17R Term and other conditions of office

A member of the Gateway Panel:

- (a) holds office for such term as is determined by the Minister, and
- (b) ceases to hold office in such circumstances as are determined by the Minister, and
- (c) is entitled to such remuneration, if any, and to the payment of such expenses, if any, as are determined by the Minister, and
- (d) holds office subject to such conditions as are determined by the Minister.

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 Minister 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.

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[5] Clause 20

Insert after clause 19:

20 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.
- (2) However, the Minister or the Director-General, in dealing with any such application, may seek the advice of the Gateway Panel.