

3.2 Draft State Environmental Planning Policy (Mining Petroleum Production and Extractive Industries) Amendment (Coal Seam Gas Exclusion Zones) 2013

Discussion took place on the implications of the draft Policy Amendment.

49/13 A **motion** was moved by Cr Hoggett and seconded by Cr Frank Hooke that:

1. Council advise the Department of Planning and Infrastructure that it generally supports the proposed amendments to the SEPP (Mining, Petroleum Production and Extractive Industries) subject to:
 - i. Inclusion of the R5 zone area around the township of Gloucester, as shown on the attached map;
 - ii. Inclusion of the E3 zone areas around the township of Gloucester; and
 - iii. Removal of the proposed “Opt-out” provision; and
2. That the State Government be requested to develop an appropriate Policy regarding setbacks to open cut mines.

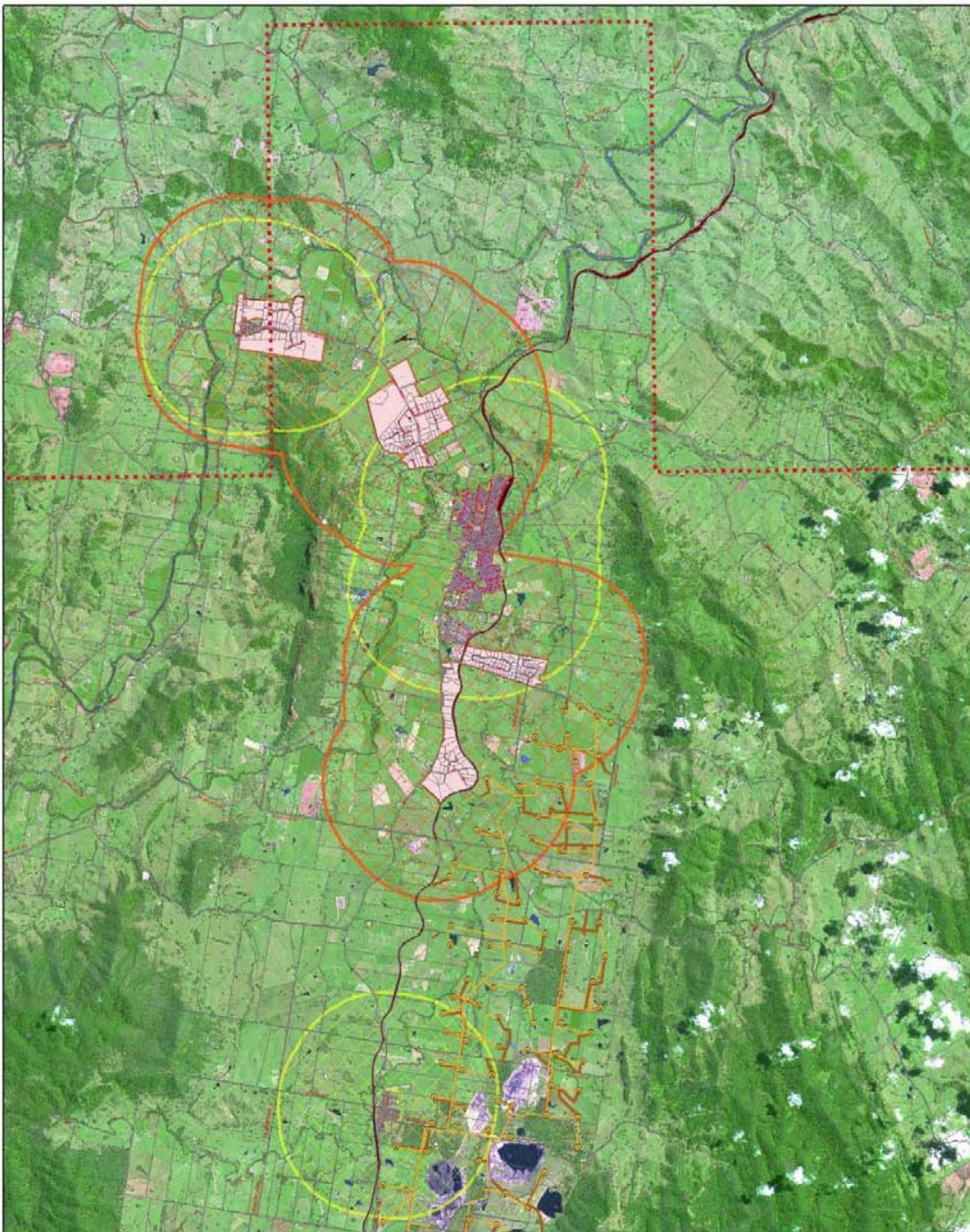
An **amendment** was moved by Cr Rosenbaum that:-

1. Council advise the Department of Planning and Infrastructure that it generally supports the proposed amendments to the SEPP (Mining, Petroleum Production and Extractive Industries) subject to:-
 - i. Inclusion of the R5 zone areas around the township of Gloucester, as shown on the attached map;
 - ii. Inclusion of the E3 zone areas around the township of Gloucester;
 - iii. Inclusion of the “Opt-out” provision; and
 - iv. Inclusion of setbacks to rural dwellings.

The **amendment** was withdrawn.

The **motion** was put and carried.

**PROPOSED 2km BUFFER
LZN Zone R5**



Legend			
AGL Proposal		Zone	
• AGL Proposed Wells	R5 Large Lot Residential	• R5 - 2 km Buffer	
— AGL Proposed Gas & Water Lines		• Current Proposal - 2 km Buffer	
— AGL Proposed Access Road			
••••• AGL Title PEL 285			

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3.2 Draft State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) Amendment (Coal Seam Gas Exclusion Zones) 2013

Report by Director of Planning and Environment

Executive Summary

A Draft SEPP has been distributed by the Department of Planning and Infrastructure which seeks to give effect to the State Government's recent announcement of limitations on new coal seam gas exploration and production activity, on or under land in residential zones, in future identified growth areas and Critical Industry Clusters (the Upper Hunter equine and viticulture industries).

The Department has invited councils to nominate particular areas zoned R5 within their LGA's for listing in the Mining SEPP as an area to which the prohibitions apply. Criteria published by the Department are likely to mean that only Stratford and Barrington would be excluded whilst other areas such as Forbesdale, Avondale Estate and Thunderbolts Estate, would not.

It is proposed that Council nominate all R5 large lot residential land for prohibition from coal seam gas exploration and production activity.

Detailed Report

A copy of the Draft SEPP received by Council is attached to this report. The document seeks to give effect to the recent announcement by the Government of prohibitions on new coal seam gas exploration and production activity on or under land in and within 2 km of a residential zone, or future identified residential growth area, and on or under land in a Critical Industry Cluster (CIC) of which two have been identified being the Upper Hunter equine and viticulture industries.

The draft document lists four of the five residential zones in the template LEP of which only three apply to Gloucester LEP 2010 being;

- R2 – low density residential
- R3 – medium density residential
- R5 –village

The draft SEPP lists a range of criteria to apply to areas zoned R5 as follows;

- the area must contain a mix of land uses
- the zone must apply to a settlement that is long established and that has some historic association within the district, region and/or rural hinterland
- the area must contain a mix of lot sizes, including an average lot size of up to 4000 m².

The Department appears to be seeking to distinguish between a “village” and a “rural residential estate”. In our local area, the villages of Stratford and Barrington would comply with the

Department's criteria. However rural residential estates such as Thunderbolts and Forbesdale would not and would therefore not benefit from the prohibition of CSG activities. Estates such as those mentioned above are contiguous with the town of Gloucester and form part of the urban settlement. No doubt Council supported those estates to encourage development, provide an alternative type of housing, and to enable this housing to occur without requiring significant extensions to reticulated sewerage services.

Council has mapped the areas excluded from CSG activity as documented in the Draft SEPP, and a second map shows the additional areas affected if the R5 areas are added. It is recommended that Council ask the Department to include the R5 areas as shown on the second map.

There have been concerns raised in some communities about a provision in the draft SEPP that allows a local council to request areas to be exempted from the prohibitions. There may be circumstances where such an exemption might be appropriate, but it is considered that such an exemption would be considered very carefully by any council before seeking to apply.

It is also disappointing that the State Government continues to reject the concept of exemptions applying to areas of land zoned for environmental conservation purposes such as the E3 zone around Gloucester. Council has made ongoing submissions about this matter, and it is considered appropriate to again request that the E3 zones be exempted in our submission on this matter.

Gloucester Council has also not identified future growth areas in any development strategy to date and no additional areas are referenced in the Upper Hunter Strategic Regional Land-Use Plan.

The short exhibition period for response on this matter has been a problem. This report has been forwarded to the Department by the deadline of 12 April with advice that it is to be considered by Council on the 17th. Confirmation of Council's resolution on the matter will be sent immediately following the meeting.

Alignment with Strategic Plan/Program

Council's Community Strategic Plan identifies extractive industries as a significant issue for the local community. The proposed exemption by the State Government supports Council's concerns about minimising the impact of such development on our community.

Financial/Resource Implications

There are no financial implications in regard to this matter.

Policy Implications

There are no policy implications in regard to this matter.

Statutory/Regulatory Considerations

The proposed amendments to the SEPP will amend consent opportunities for future proposed CSG exploration and production activity.

Recommendation

That Council advise the Department of Planning and Infrastructure that it generally supports the proposed amendments to the SEPP (Mining, Petroleum Production and Extractive Industries) subject to inclusion of the R5 zone areas around the township of Gloucester, as shown on the attached map.

Attachments

1. Explanation of proposed SEPP
2. Draft SEPP
3. Map showing exemptions based on proposed draft SEPP
4. Map showing inclusion of R5 zones

Explanation of the intended effect of the proposed amendment to the *State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007*

Before making any recommendation to her Excellency the Governor on whether an environmental planning instrument should be made, the Minister is to take such steps as is considered appropriate or necessary to publicise an explanation of the intended effect of the instrument and to seek and consider submissions from the public on the matter (section 38 of the *Environmental Planning and Assessment Act 1979* ("the Act").

This document has been prepared for the purposes of section 38 of the Act and when read together with the attached draft of the proposed *State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) Amendment (Coal Seam Gas Exclusion Zones) 2013* forms an explanation of the intended effect of that instrument.

The proposed SEPP will:

- apply to the State,
- prohibit coal seam gas development on or under land in the following exclusion zones:
 - in and within 2km of a residential zone,
 - in and within 2km of a future residential growth area,
 - within critical industry clusters (CICs),
- define coal seam gas development as development for the purposes of petroleum exploration, but only in relation to prospecting for coal seam gas, and petroleum production, but only in relation to the recovery, obtaining or removal of coal seam gas, and not including:
 - the recovery, obtaining or removal of coal seam gas in the course of mining,
 - exempt development identified under clause 10 or 10A of the Mining SEPP (which includes development such as monitoring equipment, geological mapping and surveying and geophysical surveying that is of minimal environmental impact).
- define residential zone as any of the following zones or an equivalent zone:
 - Zone R1 General Residential
 - Zone R2 Low Density Residential
 - Zone R3 Medium Density Residential
 - Zone R4 High Density Residential
 - Zone RU5 Village
- prohibit coal seam gas development on land zoned R5 Large Lot Residential that meets criteria of land of a village character (these criteria are to be published separately during the exhibition of the proposed SEPP). Councils will be asked to nominate particular areas zoned R5 within their LGA for listing in the SEPP as an R5 village. Nominations will be evaluated by the Department of Planning and Infrastructure and Local Government NSW and recommendations will be made to the Minister for Planning and Infrastructure for inclusion in the finalised SEPP.
- define future residential growth area by reference to a map. In the first instance, this map will only include the North West and South West Growth

Centres, as identified in State Environmental Planning Policy (Sydney Region Growth Centres) 2006. The Department of Planning and Infrastructure is currently compiling information on all future growth areas across the State in consultation with local councils to include in a final map prior to the finalisation of the SEPP amendment.

- define CIC land by reference to a map that, in the first instance, will include the Upper Hunter equine and viticulture CICs. These maps will be reviewed following the completion of a regional CIC verification process currently being undertaken by NSW Trade and Investment and revised as necessary.
- provide that councils can identify areas for removal from all or part of an exclusion zone to enable coal seam gas development to occur, subject to relevant approvals, within the identified areas.
- make provisions for savings and transitional arrangements to the effect that the prohibition of coal seam gas activities within the exclusion zones applies to development applications made, but not determined, before the commencement of the amendments. In the period until the SEPP is made, the prohibitions will be dealt with through administrative processes and any relevant applications for both exploration and development activity will not be approved or, if determined, will exclude any activity within the SEPP exclusion zones.

public consultation draft



New South Wales

**State Environmental Planning Policy
(Mining, Petroleum Production and
Extractive Industries) Amendment
(Coal Seam Gas Exclusion Zones) 2013**

under the

Environmental Planning and Assessment Act 1979

[The following enacting formula will be included if the State environmental planning policy 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



New South Wales

State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) Amendment (Coal Seam Gas Exclusion Zones) 2013

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Minister for Planning and Infrastructure

public consultation draft

State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) Amendment (Coal Seam Gas Exclusion Zones) 2013 Clause 1

State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) Amendment (Coal Seam Gas Exclusion Zones) 2013

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 (Coal Seam Gas Exclusion Zones) 2013*.

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.

public consultation draft

State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) Amendment (Coal Seam Gas Exclusion Zones) 2013

Amendment of State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007 Schedule 1

Schedule 1 Amendment of State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007

[1] Clause 3 Interpretation

Insert in alphabetical order in clause 3 (2):

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.

critical industry cluster land means land identified on the Critical Industry Cluster Land Map as "critical industry cluster land".

Critical Industry Cluster Land Map means the State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007 Critical Industry Cluster Land Map.

Note. The draft Critical Industry Cluster Land Map exhibited with the draft *State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) Amendment (Coal Seam Gas Exclusion Zones) 2013* shows equine and viticulture critical industry cluster land in the Upper Hunter identified on the maps prepared for the *Upper Hunter Strategic Regional Land Use Plan*. It is intended that the Critical Industry Cluster Land Map be revised after the exhibition period concludes.

public consultation draft

State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) Amendment (Coal Seam Gas Exclusion Zones) 2013

Schedule 1 Amendment of State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007

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.

Note. The draft Future Residential Growth Areas Land Map exhibited with the draft *State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) Amendment (Coal Seam Gas Exclusion Zones) 2013* only identifies the North West Growth Centre and the South West Growth Centre under *State Environmental Planning Policy (Sydney Region Growth Centres) 2006*. It is intended that the Future Residential Growth Areas Land Map be revised after the exhibition period concludes to include other future residential growth areas.

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.

[2] Clause 3B

Insert after clause 3A:

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 33A (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 33A (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

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State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) Amendment (Coal Seam Gas Exclusion Zones) 2013

Amendment of State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007 Schedule 1

opinion of the Director-General) equivalent land uses are permitted to those permitted in that named land use zone.

[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.

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

[4] Clause 9A

Insert after clause 9:

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 land within a coal seam gas exclusion 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"

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State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) Amendment (Coal Seam Gas Exclusion Zones) 2013

Schedule 1 Amendment of State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007

takes effect when this Policy is amended to include in Schedule 2 a description of the area of land concerned.

- (4) In this clause, **coal seam gas exclusion zone** means any of the following areas of land:
- (a) land within a residential zone or land within 2 kilometres of a residential zone,
 - (b) land specified in Schedule 3 (being land within Zone R5 Large Lot Residential or a land use zone that is equivalent to that land use zone) or land within 2 kilometres of that specified land,
 - (c) future residential growth area land or land within 2 kilometres of future residential growth area land,
 - (d) critical industry cluster land.

[5] Clause 20

Insert after clause 19:

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*).
- (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.

[6] Schedules 2 and 3

Insert after Schedule 1:

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State Environmental Planning Policy (Mining, Petroleum Production and
Extractive Industries) Amendment (Coal Seam Gas Exclusion Zones) 2013

Amendment of State Environmental Planning Policy (Mining, Petroleum
Production and Extractive Industries) 2007 Schedule 1

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

(Clause 9A (2))

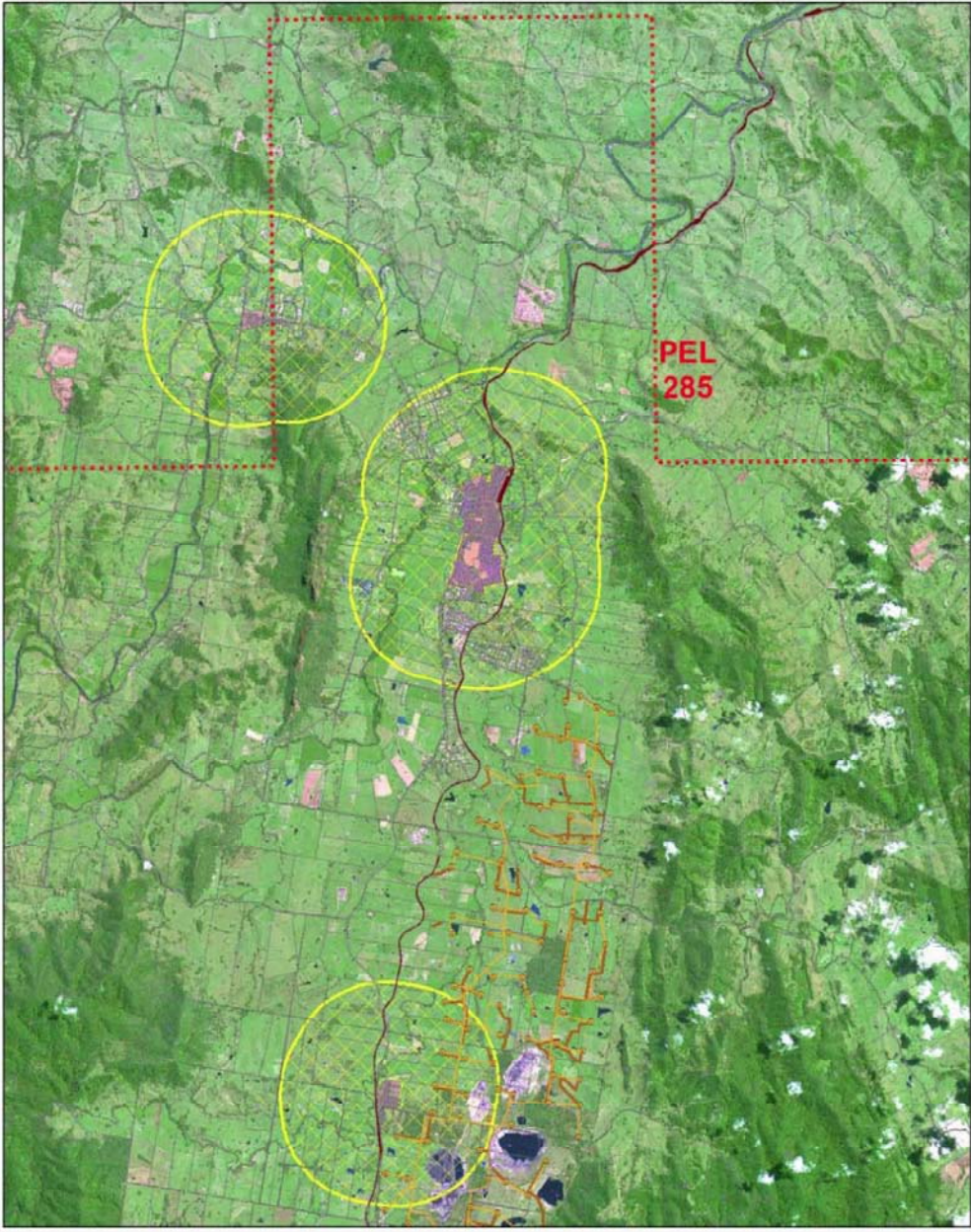
Note. When this Plan was made this Schedule was blank.




**Schedule 3 Zone R5 Large Lot Residential land
where coal seam gas development is
prohibited**

(Clause 9A (4) (b))

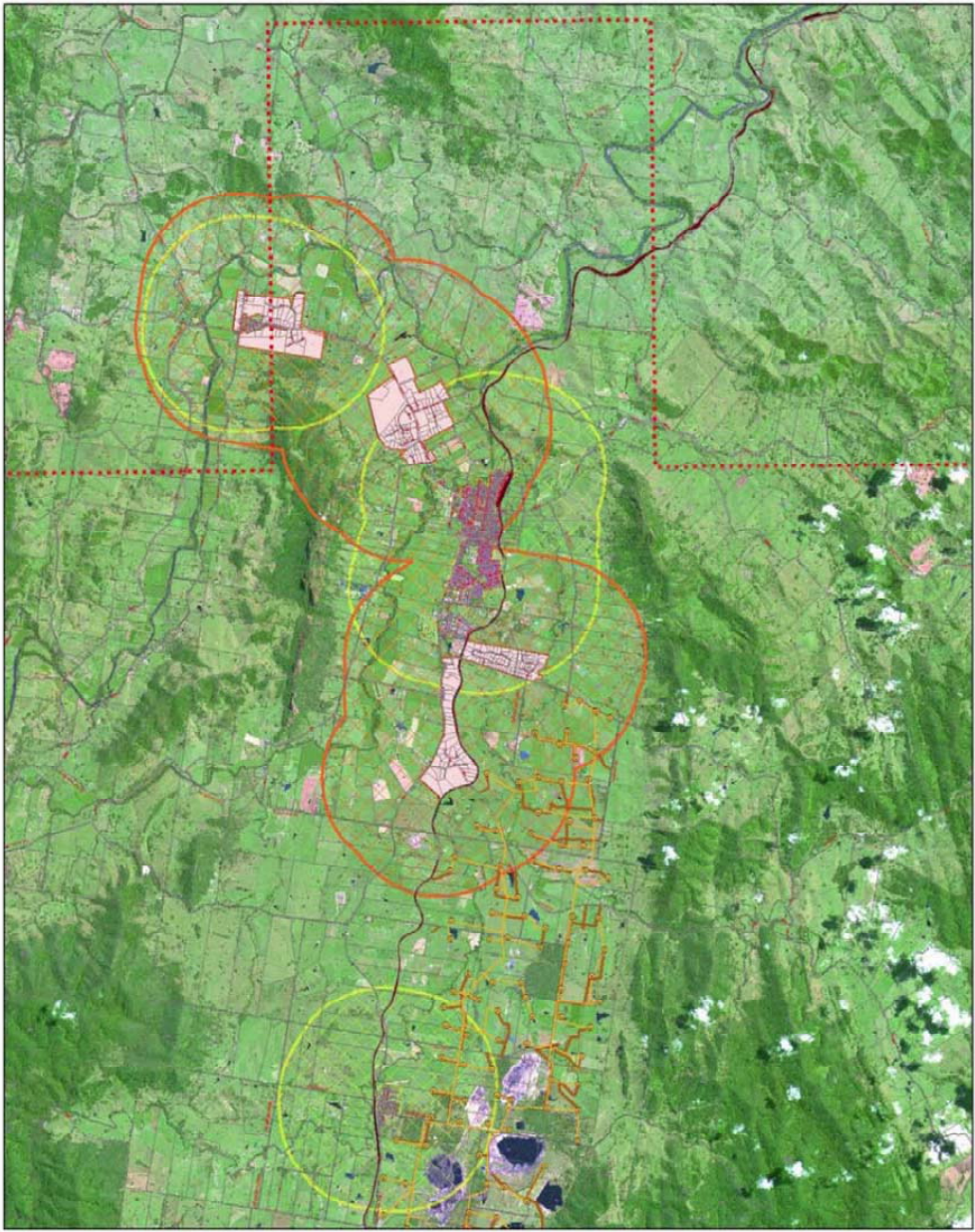
Note. It is intended that this Schedule list areas of land within Zone R5 Large Lot Residential that meet the Department of Planning and Infrastructure's criteria of land of village character.

**PROPOSED 2km BUFFER
LZN Zones R1 to R4 and RU5**



Legend		0 0.5 1 2 3 4 Kilometers	  Enquiries: (02) 6538 5250 Facsimile: (02) 6558 2143 council@gloucester.nsw.gov.au	 Gloucester Shire Council
AGL Proposal	Zone			
• AGL Proposed Wells	R2 Low Density Residential			
— AGL Proposed Gas & Water Lines	R3 Medium Density Residential			
— AGL Proposed Access Road	RU5 Village			
•••• AGL Title PEL 285	2 km Buffer			

**PROPOSED 2km BUFFER
LZN Zone R5**



Legend			  Enquiries: (02) 6538 5250 Facsimile: (02) 6558 2343 council@gloucester.nsw.gov.au	
AGL Proposal * AGL Proposed Wells — AGL Proposed Gas & Water Lines — AGL Proposed Access Road - - - AGL Title PEL 285	Zone  R5 Large Lot Residential  R5 - 2 km Buffer  Current Proposal - 2 km Buffer			