



Director Assessment Policy, Systems & Stakeholder Engagement  
Department of Planning and Infrastructure  
GPO Box 39  
Sydney NSW 2001  
By Email: srlup@planning.nsw.gov.au

8 November 2013

## **Re: Submission on Stage 2 coal seam gas exclusion zones**

Dear Sir/Madam

Thank you for the opportunity to comment on the proposed amendments to the State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007 that extend the application of the coal seam gas exclusion zone policy to additional residential land and Critical Industry Clusters. We acknowledge that draft maps identifying biophysical strategic agricultural land are also being exhibited, however our submission focuses specifically on the coal seam gas exclusion zones.

### **Background - About ERM Power Limited**

ERM Power is an energy company listed on the ASX that operates electricity sales, generation, and gas exploration and production businesses across Australia. ERM Power's generation business involves the procurement of large volumes of gas and its gas exploration and production business has been established to secure access to longer term gas supplies that support the development of gas-fired generation opportunities and help deliver competitively priced energy to household and business energy consumers.

ERM Power has developed a number of regional gas-fired power stations and has long held plans to develop a power station near Casino that would not only support the increasing demand for electricity to the Northern Rivers but also defer future investment in transmission infrastructure, in particular TransGrid's proposed 330,000V transmission line between Dumaresq and Lismore. The discovery of an adequate local gas supply could lead to the crystallisation of this opportunity and in September 2012, ERM Power took a direct interest in prospective petroleum exploration leases (PEL) 457, 478 and 479 in the Clarence Moreton Basin in north east New South Wales, previously operated by Red Sky and Clarence Moreton Resources and known to contain both conventional gas and coal seam gas.

ERM Power supports the development of robust science-based policies that will ensure that the petroleum industry in NSW can harmoniously and sustainably coexist with the environment and community. The environment and safety are of utmost importance to ERM Power and we have a proven record of zero material environmental and safety incidents in our operations. We are committed to ensuring continuation of the highest standards of environmental and safety compliance and that no harm is caused to people or the environment.



We have some significant concerns with the NSW Government's coal seam gas exclusion zone regulations which we outline in the remainder of this submission.

**1. Significant regulatory uncertainty in relation to coal seam gas over the last two years and particularly since February 2013**

Since February 2013 there have been a significant number of changes to the NSW gas regulatory framework. Many of the regulations have taken a long time to be defined in detail and/or implemented, preventing exploration companies from being able to pursue their development operations with confidence and a complete understanding of the rules. These changes include, but are not limited to –

- The 2 km coal seam gas exclusion zone policy around residential areas announced (without prior industry consultation) in February 2013 and which details are still being defined (subject matter of this current consultation process).
- The NSW Chief Scientist and Engineer review of coal seam gas activities in NSW, whose final report is still under development and not expected to be released until 2014.
- Announced in February 2013, new regulatory roles to govern petroleum exploration and production activities in NSW, including the establishment of the Office of Coal Seam Gas and the appointment of the Environment Protection Authority as lead regulator of environmental and health impacts of coal seam gas activities in NSW. We note that it has taken several months for these bodies to implement their functions.
- At a federal level, amendments to the Petroleum Onshore Act 1991 announced in May 2013, and changes to the Environment Protection and Biodiversity Conservation Act (EPBC Act) announced in March 2013 and finalised in June 2013.

**2. Loss of value suffered by exploration companies and declining investor confidence**

The constant stream of often unpredictable regulatory change, as described above, has impaired the ability of exploration companies in NSW to proceed with their activities with reasonable assurance that the rules will not suddenly change. As a result of this unstable regulatory climate, not only does appetite to invest in the NSW gas industry continue to erode, but exploration companies who have invested in NSW have suffered (and may continue to suffer) the following –

- Costs incurred having to suspend or cease operations, and also cut jobs;
- Declining investor confidence and inability to attract capital (which has a major impact on junior exploration companies' ability to continue to sustain their operations);
- Direct loss of value of investments directly arising from the Stage 1 and now Stage 2 exclusion zone policy; and
- Continued risk that areas not currently covered by the Stage 1 or Stage 2 zones, may be re-zoned as "residential" in the future and thereby suddenly quarantined from any future development. This will again directly result in a loss of value of existing investments.



### **3. Stunting of investment in the gas industry in NSW will lead to adverse impacts on the state and its energy consumers**

Regulatory uncertainty impacting the upstream gas industry in NSW has clearly already caused a stifling of development activity in the last two years. If such regulatory instability persists, NSW may experience long term detrimental economic and social impacts. For example, there may be some regional areas which could have otherwise benefited from job creation and economic growth arising from gas exploration and production activities. NSW customers will also suffer from relatively higher gas prices and a potential gas shortage, as the State will have no alternative but to continue its dependence on gas imports from its neighbouring states, where such supplies are known to be tight due to the bulk east coast gas supplies tied up to meet LNG export commitments. We note that such impacts will not be alleviated until policy settings stabilise in a way that provides companies with confidence to resume operations to develop and bring new gas supplies to the market.

### **4. The 2 km exclusion zone policy effectively removes the rights of landowners to participate in the development of state resources and benefit from a potential income source**

The 2 km coal seam gas exclusion zone policy appears to be structured with the intention of protecting the rights of landholders who fall within the exclusion zones. However, the policy is based on a blanket prohibition which effectively removes the right of landowners to participate in the development of State Resources. The petroleum industry has a long history of cooperating with landowners, and land compensation agreements have become a critical income source for many farmers. This income source assists in “drought proofing” income. Similarly many townships have received a financial boost which has allowed young people to secure local employment rather than being forced to move off into cities.

Queensland, the first State to propose a 2 km CSG exclusion zone, is reported to have recently dropped the proposal<sup>1</sup> – apparently recognising that it would not provide a net benefit. ERM Power supports the concept of sustainable, cooperative development which is specifically tailored to consider the environmental, social and cultural factors in the proximity of the site of proposed activity.

### **5. 2 km exclusion zone appears arbitrary and not backed by any scientific rationale**

The “2 km” restriction appears to be arbitrary and not supported by any scientific evidence. Environment, health and safety risks are already managed the suite of other regulations, approval and licensing requirements that are in place within the state and at a national level. We also note that the Chief Scientist and Engineer’s initial report on coal seam gas activities does not provide any evidence which validates the 2 km exclusion zone policy.

The 2 km exclusion policy also does not appear to have considered the difference between exploration and development i.e. exploration activities are short duration information gathering exercises which inform all parties on the geology of the area. Production involves different equipment over a longer cycle and brings revenue/ flow on commercial benefits.

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<sup>1</sup> <http://www.theaustralian.com.au/national-affairs/queensland-premier-campbell-newman-ditches-bid-for-no-go-gas-zones/story-fnaxx2sv-1226754536534#mm-premium>



**6. Definition of residential zones is too broad and should be refined**

We have some concerns with the way in which the zones have been defined. A review of Local Environmental Plans for local government areas relevant to our exploration acreage has identified anomalous isolated pockets of R2 (low density residential) zoned land that could not practically be considered urban or residential. These were impacted by the Stage 1 exclusion zones.

We expect a similar issue to potentially arise in the case of land zoned as RU5 (village), which may have been already zoned as such, or nominated as such (under the Stage 2 process) due to a small number of isolated residences and which do not have any material population.

Such areas may contain significant State resources, but which under the policy, will never be developed and brought to market. This would be a significant lost opportunity for the State and seems to be an unintended consequence arising from the broad way in which the policy has been applied. Notwithstanding our earlier comments about the lack of scientific basis for the “2 km” restriction, if the NSW Government is intending to retain the exclusion zone policy, we recommend it reconsiders defining zones on the basis of population density.

We are happy to discuss these issues with the Department in further detail.

Thank you for the opportunity to provide input into this process.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Andy Pittlik'.

**Andy Pittlik**  
NSW Director  
**ERM Power Limited**