

Director Assessment Policy, Systems & Stakeholder Engagement
Department of Planning and Infrastructure

Hunter Valley: Coal Seam Gas Exclusion Zones Submission 8 November 2013



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Foreword

Closing the loop on CSG Mining in the Hunter Valley

When it comes to coal seam gas (CSG) mining, protecting Australia's most visited wine tourism region in its entirety - not in parts - is of paramount importance. And the time to do it is now.

The NSW State Government should be recognised for delivering on its pre-election promises to preserve the Hunter Valley wine tourism region from CSG mining by confirming exclusion zones around the villages of Broke and Bulga as well as around significant areas defined as Viticulture Critical Industry Clusters (VCIC).

But protecting most of the region, while leaving several critical areas open for CSG exploration and mining, could have devastating consequences for the iconic Hunter region as a whole – and undo the Government's efforts thus far.

While mining is obviously a legitimate land use and an important revenue source, this can't justify allowing mining activities in areas where other existing, profitable industries would be adversely affected.

Put simply, winemaking, tourism and CSG mining are not compatible land uses. The popularity and reputation of the Hunter Valley wine tourism region is fundamentally connected to the area's natural beauty and landscape – and that natural beauty will fast disappear if the countryside is peppered with unsightly gas wells. Research reveals 80%¹ of Hunter Valley visitors don't want to see gas wells in the wine and tourism region, with 70%² saying if gas wells are established they'll just stop coming.

With the help of the NSW State Government we've nearly managed to preserve the Hunter Valley wine tourism region for future generations – all that's left is five simple steps to close the loop once and for all by:

1. ensuring final boundary maps for VCICs reflect input from winemakers and tourism property owners;
2. expanding existing exclusion zones to take in main gateways and visitor thoroughfares;
3. extending existing boundaries of Broke and Bulga villages;
4. categorically rejecting CSG miners' requests to 'opt out' of exclusion zones; and
5. refining the gateway process by implementing stricter controls before approving future mining projects.

We simply cannot stand by and allow one of this country's key wine production and tourism zones to be irrevocably damaged, both environmentally and aesthetically, by CSG exploration.



Mr Stewart Ewen OAM

Grape Grower and representative of the Hunter Valley Wine Tourism Association

¹ Joint survey of 335 visitors undertaken by the Hunter Valley Protection Alliance and Hunter Valley Wine Country Tourism, April 2012..

² As above

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8th November, 2013.

Director Assessment Policy, Systems & Stakeholder Engagement,
Department of Planning and Infrastructure,
GPO Box 39,
SYDNEY NSW 2001.

By email srlup@planning.nsw.gov.au

Dear Sir,

RE: **COAL SEAM GAS EXCLUSION ZONES.**

Much has been done over the last 3 years in relation to the regulation of unconventional Coal Seam Methane Gas activity.

Prior to the 2011 election promises were made by various shadow Ministers, now Ministers, to protect various strategic agricultural lands. Post election a great deal of work and thought has been directed into draft legislation and SEPPs to put into place protection regimes for villages and for Critical Industry Clusters, both viticulture and equine, in the Hunter Valley.

Additionally the Gateway provisions have been promulgated and we have the Aquifer Interference and the Agricultural Impact Statements.

Importantly, it appears that proper consideration is now being given to getting right the balance between the protection of villages, protection of the health of the public, protection of freshwater and protection of critical agricultural industries and prime agricultural land with the desire to extract coal seam methane gas by unconventional means.

The various draft SEPPs which have been, or are currently on, public exhibition are heading us in right direction, with the exception of the SEPP (Resource Significance) draft which should be withdrawn in its entirety.

With a view to ensuring that balance is right in the Hunter Valley we make the following submissions on behalf of our community, the winegrowing industry and the wine tourism industry.

1. Critical Industry Cluster exclusion zones

The CIC viticulture as now depicted in the currently exhibited map for the Broke Fordwich registered winegrowing subregion has been substantially and significantly reduced in area from the earlier Critical Industry Cluster maps, which had resulted from the earlier Strategic Land Use discussion groups.

In order to properly protect the winegrowing industry it is necessary not only to protect the physical vineyards, cellar doors, restaurants and cafés, but to also protect the overall experience of the millions of visitors who visit the Hunter Valley for that purpose.

The wine tourism industry may well be unsustainable if the scenic amenity is pockmarked with gas fields, especially if visitors to the region are required to travel through industrial gas fields when travelling from one wine experience to the next.

It is submitted that it is essential, in relation to the registered Broke Fordwich winegrowing region to ensure that all land within that registered region is included, contiguously, in the CIC exclusion zone, not just those blocks which currently have a vineyard planted thereon.

The Broke Fordwich winegrowing subregion has been registered by the Australian Wine & Brandy Corporation, Geographical Indications Committee, and also entered into the International Register of Protected Names.

In order to register the Broke Fordwich area as a subregion it was necessary to establish to the satisfaction of the Australian Wine & Brandy Corporation's Geographical Indications Committee that this subregion was homogeneous and discrete so far as grapegrowing and wine production was concerned.

It was necessary to establish that the subregion was sufficiently unique from other winegrowing regions in Australia, including the adjacent subregions in the Hunter. This was established in 1997 after considerable research. The Broke Fordwich subregion when registered in that year was the first subregion to be registered in New South Wales and the second only in Australia. Extracts from the Geographical Indications Committee findings are attached (as Annexure A) to support these contentions, as is a copy of the registered map of the subregion. It is the whole of the area which is registered, not just those blocks which currently have vineyards planted on them.

To supplement the natural rainfall in the Broke Fordwich subregion and to make the subregion drought resistant, over 200 winegrowers, dairy farmers and graziers formed the Broke Fordwich Private Irrigation District (the PID). This PID was constructed over a period of two years or so in the years 2000 and 2001 and takes water from the Hunter River through two booster pump stations to over 200 properties in the Broke Fordwich subregion.

The cost of the PID was in excess of \$6 million, all of which was borrowed. Each property which is part of the PID pays an annual rate and is entitled to agreed amounts of water per year.

The existence of the PID is yet another reason for the whole of the registered subregion to be included as the Critical Industry Cluster Viticulture. To compromise the PID would be to penalise those properties and businesses which are wine industry based but which do not actually have vines planted on those properties.

This Critical Industry Cluster should not be reduced in area in the manner proposed and we refer you to the map in the attached brochure which highlights the critical sections of wine tourism activities which have not been recognized by the current draft.

The Broke Fordwich CIC cannot be made up of 4 separate and remote Clusters as envisaged by the map on exhibition. The Broke Fordwich is one contiguous cluster and, in short definition (rather than the long textual definition described by the AW&BC) is the catchment of the Wollombi Brook from Paynes Crossing to Warkworth up to the 200 metre contour. That is the Broke Fordwich winegrowing region; that is what should be mirrored in the CIC viticulture exclusion zone; that is the area which was agreed upon by the various major stakeholders in the original Strategic Agricultural Land Use maps and which should not be altered to accommodate any miner or coal seam methane gas extractor to the extent that it interferes with the workings of the critical industry within the Cluster.

From a Town Planning perspective, fragmenting the Cluster reduces its significance and its valued qualities, namely the rural landscape, scenic amenity, community events and the like. The fragmentation of the Cluster could devastate its position in the wine and wine tourism market and the viability of all other businesses which depend on the winegrowing industry.

The Broke Fordwich wine industry, both as individuals and also through the Broke Fordwich Wine and Tourism Association Inc., spends a lot of time and money in promoting and advertising its subregion for its vines, its wines, its ambience, and as the “tranquil side” of the Hunter Valley. The Broke Fordwich Wine and Tourism Association has been in existence for almost 20 years and has been most successful in its promotions during that time and attracting many thousands of visitors to the Broke Fordwich winegrowing subregion.

Over the years, promotions have included, Harvest Festivals and Harvest Festival dinners, Budburst Festivals and Budburst Festival dinners, the Singleton Wine & Roses Festival, the Spirit of the Vine Festival and dinners, the Little Bit of Italy Festival and Folk in Broke. The Broke Fordwich Wine and Tourism Association is also a supporter of the Broke Village Fair and Vintage Car Display, a Fair which attracts up to 10,000 visitors each year.

The subregion is home to four restaurants, to over 50 vineyards of varying sizes, to 18 olive groves, to 12 cellar doors, to 36 Bed & Breakfast establishments hosting 187 commercial beds, to three shops, a tavern, 2 service stations and a host of dependent business including bus tour businesses, a soap maker, an olive product creator and retailer, 3 home catering and wedding businesses, a make-up artist, two booking and property management business, a masseuse, a number of vineyard contractors, delicatessen retailer, alpaca breeder and winemakers. The number of businesses dependent upon the success of the winegrowing subregion continues to grow. All these businesses are sustainable for the long term future, as opposed to the coal seam methane gas industry which will come and go in the short term leaving the ground in an unknown state, environmentally.

The area of the Broke Fordwich GI winegrowing region which was removed from the CIC in the currently exhibited maps includes an area along the Wollombi (aka Paynes Crossing) Road south of Broke to Paynes Crossing. This area is a gateway to the winegrowing region and there are no less than 9 vineyards in operation in this excluded area, together with over 20 houses and cabins which provide facilities which are used in conjunction with wine related tourism such as riding trails, bush walks and the like.

It is known that over a dozen applications, supported by Statutory Declaration, have, in the last week, been forwarded to the Department of Primary Industries setting out details from various landholders as to vineyard, horse and wine related tourism along this section of roadway. This alone should render the area as part of the critical industry cluster infrastructure and should be included in the viticulture CIC for the Broke Fordwich area.

As recently as 29th October, 2013 representations were made to the Hon George Souris by a number of landholders on the Wollombi Road between Broke and Paynes Crossing (part of the registered Broke Fordwich winegrowing region) outlining that this road is a gateway to the winegrowing area and should not have been removed from the earlier proposed CIC exclusion zone.

Those landholders were of one view, that the area to the south of Broke along the Wollombi Road to Paynes Crossing “should be returned as a place for inclusion on the CIC map for exclusion from coal seam methane gas.”

The Hon Member is clearly supportive of this proposal, his reply being “I will make representations to the Ministers for Primary Industry, Planning and Mineral Resources on your behalf. Knowing the area I do appreciate the points you make.”

The damage which could be done to the wine industry and the wine tourism industry by virtue of the subregion being partly turned into a gas field could be enormous and irretrievable. The registered Broke Fordwich winegrowing subregion must be left as a whole and excluded from coal seam methane gas activity as a Critical Industry Cluster.

For all the same reasons, there should be a 2 kilometre buffer around a CIC exclusion zone. Having a gas field, or even a gas well, threatening the water table or the scenic amenity has too great a risk when it may be developed immediately adjacent to a commercially operating vineyard.

It is assumed that the studies of fresh water aquifers surrounding CIC exclusion zones will reveal that aquifers extend from outside the exclusion zones to within them. There is no magic line at the exclusion zone stopping above ground or underground water. Dependent upon those studies it might well result in a 2 kilometre buffer zone around the CIC being sufficient, or too great a distance, or too short a distance. Perhaps the buffer zone around the CIC exclusion zone needs to be considered on a case by case basis based upon the underground geology. The buffer may well be then a 1 kilometre buffer, or a 3 kilometre buffer. For example, a 1 kilometre buffer may be sufficient along the Broke Cessnock Road alongside the Department of Defence land where it is proposed that the gateway to the vineyards be preserved as bushland and aquifer interference with vineyards may not exist.

It is not possible to provide effective protection of a viticulture Critical Industry Cluster where a gas field can be developed within that Cluster with its attendant risk and visual amenity destruction.

The corridor from the Pokolbin vineyard area to the Broke Fordwich vineyard region should also be included as part of the Critical Industry Cluster, together with a two kilometre buffer around it. The corridor should be seen as part of the contiguous wine region, now known and marketed as Hunter Valley Wine Country, rather than two wine regions separated by a gas field.

The Government has acknowledged the risk of all such damage in its documentation when it describes a Critical Industry Cluster in these terms: “For the purposes of the Strategic Regional Land Use Policy, a CIC is a localised concentration of interrelated productive industries based on an agricultural product that provides significant employment opportunities and contributes to the identity of the region” and “it consists of a unique combination of factors such as location, infrastructure, heritage and natural resources” amongst other things.

2. Opting out of the CIC exclusion zone – 10th September, 2012

There is no logical reason to give CSG companies the opportunity to identify viticulture properties that they already owned as at 10th September, 2012 with a view to exempting them from the CSG exclusion zone.

Again all the above arguments are repeated in relation to this unfair proposal.

We are aware that the holder of PEL 267 (AGL) has purchased two viticulture properties (Spring Mountain and Pooles Rock) within the Broke Fordwich winegrowing subregion and two grazing properties within the subregion (Yellow Rock at Broke and Windermere at Bulga).

The mere fact that these properties are owned by the CSG mining company does not warrant those properties being in a position where they endanger all other wine and wine dependent industries within the Critical Industry Cluster. It does not make those properties any less environmentally sensitive. It would result in the fossil fuel industry being inserted into the Critical Industry Cluster, and as a result the registered winegrowing subregion, where gas wells could be against the very boundary of an independently owned vineyard.

It is not unusual for land to be purchased by developers with the intention of developing that land, only to find at a later time that development approvals are refused for one reason or another. The developer then assesses their losses and on-sell the land. There is no basis or reason for AGL to be given preferential treatment merely because they elected to purchase land in the knowledge that their development may well be prohibited in the future.

Having exclusions from development controls doesn't happen in other industries. In the case of Broke Fordwich, AGL decided to take the risk. It should now attempt to mitigate its losses.

Further, in the case of the Broke Fordwich Critical Industry Cluster, whilst the Strategic Regional Land Use Policy might have been announced on 10th September, 2012, discussion in relation to that policy had been ongoing since about June, 2011 in the Reference Group meetings. AGL was well aware at that time that there was a possibility, even a probability, that viticultural land would be excluded from CSG exploration and production.

Indeed they were on notice as early as 27th January 2011, prior to the State election, that it was probable that viticultural land would be excluded from CSG exploration and production.

Minister George Souris, then in opposition, emailed AGLs agents on 27th January 2011 in these terms:

*"As far as I am concerned we do not want gas exploration or gas development in these high profile high value tourism areas and I am an opponent of AGLs activities, a matter which I am committed to my constituents to pursue to finality when there is a change of Government. There are many environmental risks as well but I am sure you are aware of all of these; I am far from happy with AGLs presence. The best thing AGL can do is surrender the PEL and save a lot of time for everyone in the future.
George Souris"*

Minister Andrew Stoner gave similar assurances in December, 2010, at a public meeting in the Hunter Valley, and he has confirmed the Government's position in an undated letter earlier this year (IM13/5137. MF13/3239) wherein he stated "All natural gas from coal seam exploration and production activity will be prohibited within and under areas identified as Critical Industry Clusters."

Mapping omissions

It appears from the mapping of the Broke Fordwich Critical Industry Cluster that the vineyards owned by AGL have not been included in the mapping. This is clearly an error in the mapping process as it does not comply with the mapping criteria. These vineyards must be initially included as part of the Critical Industry Cluster.

3. Residential exclusion zones

3.1 The village of Broke

The inclusion of the village of Broke as a village centre from which a two kilometre exclusion zone will be measured is applauded.

A problem may exist with Clause 9A(5), however is that in its current form a residential exclusion zone does not appear to apply to the village of Broke because that clause only refers to villages which are NOT within a CSG exclusion zone. We are sure the intention is to include all such villages and residential areas, whether or not they are within a CIC exclusion zone as stated by the Department "that the village area of Broke is a CSG exclusion zone, and that there will be a 2km buffer around that village area, calculated from the outside edge of the village boundary."

To ensure there is no grey area in the future, which could raise a doubt that the village of Broke is protected by the 2 kilometre residential exclusion zone it is submitted that 9A(5) should be amended to read:

"buffer zone means land, whether or not it is within a Critical Industry Cluster Coal Seam Gas exclusion zone, which is within 2 kilometres of the outside edge of the following land:

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

It should also be made clear, both in relation to CIC exclusion zones and residential exclusion zones, that the exclusion is to both underground activity and surface activity in accordance with the Premier's media release of 19th February, 2013 – *"A two kilometre exclusion zone will be imposed around residential zones to prevent new CSG exploration, assessment and production activities (both surface and underground); Exclusion zones will apply to identified Critical Industry Clusters - viticulture and the equine industry,"*

With that clause amended in those terms, it is submitted, however, that the footprint of the village of Broke should be extended to include:

- Those lots along the Broke to Cessnock Road (aka Singleton Street) from Wollombi Street to number 108 Cessnock Road, Broke. Whilst these blocks may be zoned rural or rural residential, they are effectively part of the village of Broke. In addition there is a café and a mechanic's workshop along this road.
- Those lots bounded by the Broke to Cessnock Road (aka Singleton Street) and opposite Nelson Street. These are smaller lots and will no doubt be developed in the future as part of the village.

- Those lots along Wollombi Street, Broke, from the Broke to Cessnock Road to Monkey Place Bridge. These blocks contain the various parks, the fire station, and then a number of dwellings on various block sizes some quite small in area (as small as 8020 square metres), whatever their actual zoning. These blocks are effectively and physically part of the village of Broke and the occupiers of those dwellings consider themselves residents of the village of Broke. Also included in this area is a small shop on the 8020 square metre block.

3.2 The village of Bulga

The proposal to include the village of Bulga as a village centre from which a 2 kilometre exclusion zone will be measured is welcomed.

It is submitted, however, that the footprint of the village of Bulga should be extended to include those lots as identified in the current zoning plans for Bulga as being zoned 1(d) Rural Small Holdings under Singleton LEP 1996. We refer to the submission from Singleton Council which contains the zoning maps and expansion proposals.

The areas covered by properties included in the Singleton Council LEP 1996 1(d) zoning are well in excess of the area designated as “Bulga Village” in the current plans provided by the Dept. of Planning and Infrastructure. We understand that Singleton Council has lodged a submission supporting the future growth area of the village of Broke.

These blocks are part of the village of Bulga and the occupiers of these consider themselves as residents of the village of Bulga.

The two kilometre residential exclusion zone measured from outer perimeter of the LEP 1996 boundaries overlaps the viticulture CIC to the south. This contributes to our argument that the area shown as the 2013 Viticulture CIC Clusters should be extended to include the vineyards identified to the west of the Bulga Village off The Inlet Road and to the west off Thomson Road.

We refer to the previous statement concerning the land contained within the Broke Fordwich Winegrowing Region. The areas around Bulga must be included in this region as originally intended in the draft land use study of 2012. Reference is made to the Singleton Council rezoning proposals for the land around the current 1(d) zoning. Their proposal in the Draft Singleton LEP 2102 for RU4 zoning (Primary Production Small lots) provides for and we quote ““To recognise the Hunter Valley Wine Country and the adjoining environs of Broke-Fordwich as a major tourist destination by providing additional opportunities for tourist uses”.

In addition Bulga is part of the PID irrigation district which was installed for the use of grape growers in the Bulga area.

Further, Bulga has many tourism related events and sites bringing tourists to Hunter Wine Country including: the “Tough Truck Challenge” which attracts about 5,000 visitors from as far away as Western Australia; the Milbrodale Mountain Classic also attracting many visitors; the “Baime Aboriginal Cave”; the historic Bulga Tavern; apiarists and honey sales; organic vineyard; orchards and more.

The total area to be included as part of the extended Broke Fordwich wine area is shown the Singleton Local Environmental Plan 2102 Land Zoning Map Sheet LZN-009.

Expansion of viticulture and low impact residential areas

There must be room in the exclusion zone for expansion for residential development and we believe that the area proposed in the Council's 2012 Draft SEP will provide for this.

Villages and exclusion zones to be free of CSG infrastructure

The exclusion zones around Villages and in the Viticulture CIC clusters must be free from gas and exploration wells and head equipment, administrative facilities, infrastructure relating to the CSG operations, pipelines above the ground, electrical supply cables or communication cables above, on, or below ground. There must be no pipelines crossing or entering the village areas or roads or tracks relating to any CSG facility.

3.3 Pokolbin Regions

Generally the mapping of the Pokolbin region has been well done and is nearly complete. We need to refer you to 2 regions that warrant further investigation by the Department.

The first being the areas in the east being Lovedale as we are aware of a number of private objections have been lodged by owners of Wine Tourism facilities that should be included in the CIC.

Secondly the area to the south of Pokolbin being the Mt View region needs revision as again there are a number of Wine Tourism properties that have not been included in the CIC mapping process.

Again, we understand that a number of private land owners who are actively involved in the Wine Tourism industry have made submission in regard to such.

4. Gateway

We re-iterate all our previous submissions put to you in relation to the Gateway process and confirm:

- a. The original draft Strategic Agricultural Policy document presented to the public gave the Gateway Panel the power to issue a Certificate, with or without conditions, or to refuse to issue a Certificate.
- b. In the later draft SEPP the power of refusal was removed.
- c. The result would be that the Gateway process would be window dressing at best.
- d. It was the view of the Stakeholders Reference Group, and it is our continuing view, that the Gateway Panel should not be required to issue a certificate if there are genuine reasons why such a Certificate should not be issued.
- e. The Gateway Panel must be able to assess, if it is the case, that there is a circumstance where no reasonable conditions could be attached to a Certificate which would enable relevant criteria to be met, or to overcome risks to Strategic Agricultural Land, or to groundwater or fresh water aquifers, and to be able to therefore refuse to issue a Certificate resulting in the Application going no further.
- f. Provision should be made to include on the Panel a member with expertise in the socio-economic effects of any application. In relation to Critical Industry Clusters, this is of paramount importance in order that all impacts on all industries and businesses within that cluster are assessed.
- g. It should be mandatory for the Panel to consult with stakeholders, including the Hunter Valley Wine and Tourism Industry Association Inc., rather than it being optional.

- h. The earlier draft SEPP should be expanded (in Clause 17H) to make provision for the Panel to assess the effect of the proposed development on the existing operations within the Cluster, including sustained growth, productivity, value and reputation. The Panel should also be required to assess the effect of the proposal on towns, villages, landholders and businesses within the cluster. And finally, the Panel must receive sufficient information so that it can assess the overall cumulative effect of the proposal.
- i. Clause 17J of the earlier draft SEPP makes provision for the Gateway Panel to make “one” request for further information from the applicant. This is seen as being far too restrictive. Any further information supplied may give rise to further concerns for the Panel and the Panel should not be restricted in its ability to ensure that all necessary information is before it.
- j. Clause 17B only requires the consent authority to “consider” the recommendations or conditions in a Gateway Certificate. This is not strong enough. The consent authority should be required to incorporate any recommendations or conditions in any consent, or to refuse consent in the event that the recommendations or conditions are such that the development could not go ahead if bound by the conditions.
- k. Clause 17B does not require the consent authority to consider an Agricultural Impact Statement, and it should be amended to do so.
- l. The default provision in Clause 17I(3) is unacceptable. This could result in a development bypassing the Gateway process when, if the proposal had been properly considered by the Panel, could well have resulted in stringent conditions. It puts at risk the environment of the State. It compounds the risks the Gateway process is being established to prevent. The prompt determinations of the Gateway Panel should be enforced in some other way.

Without these inclusions the gate has indeed disappeared from the gateway. It is no longer able to be closed.

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ANNEXURE A

Mitchell Town Planning Submission to SEPP



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23 October 2013

Director Strategic Regional Policy
Department of Planning and Infrastructure
GPO BOX 39
SYDNEY NSW 2001

Dear Daniel Keary,

RE: SUBMISSION TO SEPP (MINING, PETROLEUM PRODUCTION AND EXTRACTIVE INDUSTRIES) AMENDMENT (COAL SEAM GAS) 2013

Thank you for this opportunity to comment on the proposed amendments to State Environmental Planning Policy (Mining, Petroleum Production And Extractive Industries) Amendment (Coal Seam Gas) 2013 (hereafter referred to as the Mining SEPP). This submission has been prepared by Briony Mitchell Certified Practicing Planner on behalf of the Hunter Valley Protection Alliance.

The proposed amendments, which identify residential areas and villages (and future residential areas) to be excluded from mining development projects is to be commended. This submission provides additional information and clarification to inform further amendments required to the residential exclusions zones applicable to Broke and Bulga.

Most importantly however, this submission raises significant concerns about the amendments proposed to the maps relating to the Broke-Fordwich Viticulture Critical Industry Cluster and the lack of protection for this special area against mining development projects.

The NSW Government has demonstrated over the past year that, although the result of a very lengthy process, land use policy can be designed to respond to critical impacts and issues of importance to key areas in the Upper Hunter. I trust that that responsive approach continues and that the Mining SEPP is further amended to ensure an appropriate level of protection is afforded to the people and businesses of Broke- Fordwich wine region.

The following submission details our concerns and should be read in conjunction with the following attachments:

- **Attachment A** – Boundary of Broke for the purposes of calculating the mining exclusion zone.
- **Attachment B**- Boundary of Bulga for the purpose of calculating the mining exclusion zone.

1.0 RESIDENTIAL EXCLUSION ZONES

Although this submission relates specifically to the rural villages of Broke and Bulga, it is recommended that principles outlined in this submission should be applied to the all exclusion zones in the region.

To ensure that any mining development is located a minimum of 2km from residential properties in rural villages, the 'buffer zone' defined at Clause 9A(5) of the Mining SEPP should be taken from the outside edge of the residential area illustrated on the Additional Rural Villages Land Map 07 and Map 05 as illustrated at **Attachment A** and not from the centre of the village. Clause 9A(5) should be amended as follows:

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

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

It is also important to note that Broke has capacity to grow over time and accommodate additional dwellings and associated services to provide for the needs of a growing community. To the east and south east of the existing village are approximately 80 contiguous small residential lots which have been subdivided and would be accessed by planned roads connecting to the existing road network as illustrated in **Figures 1 & 2**.

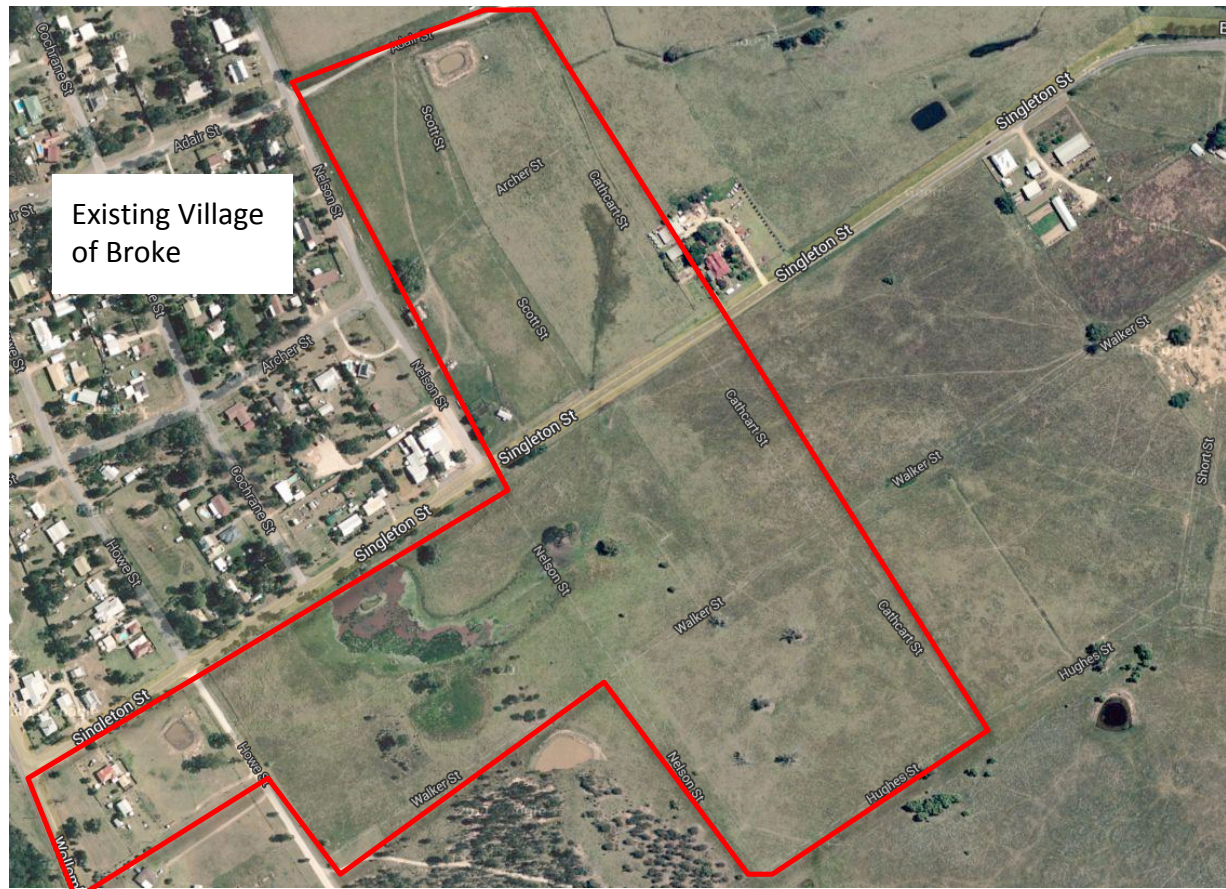


Figure 1 – Residential growth area to the south east of Broke.

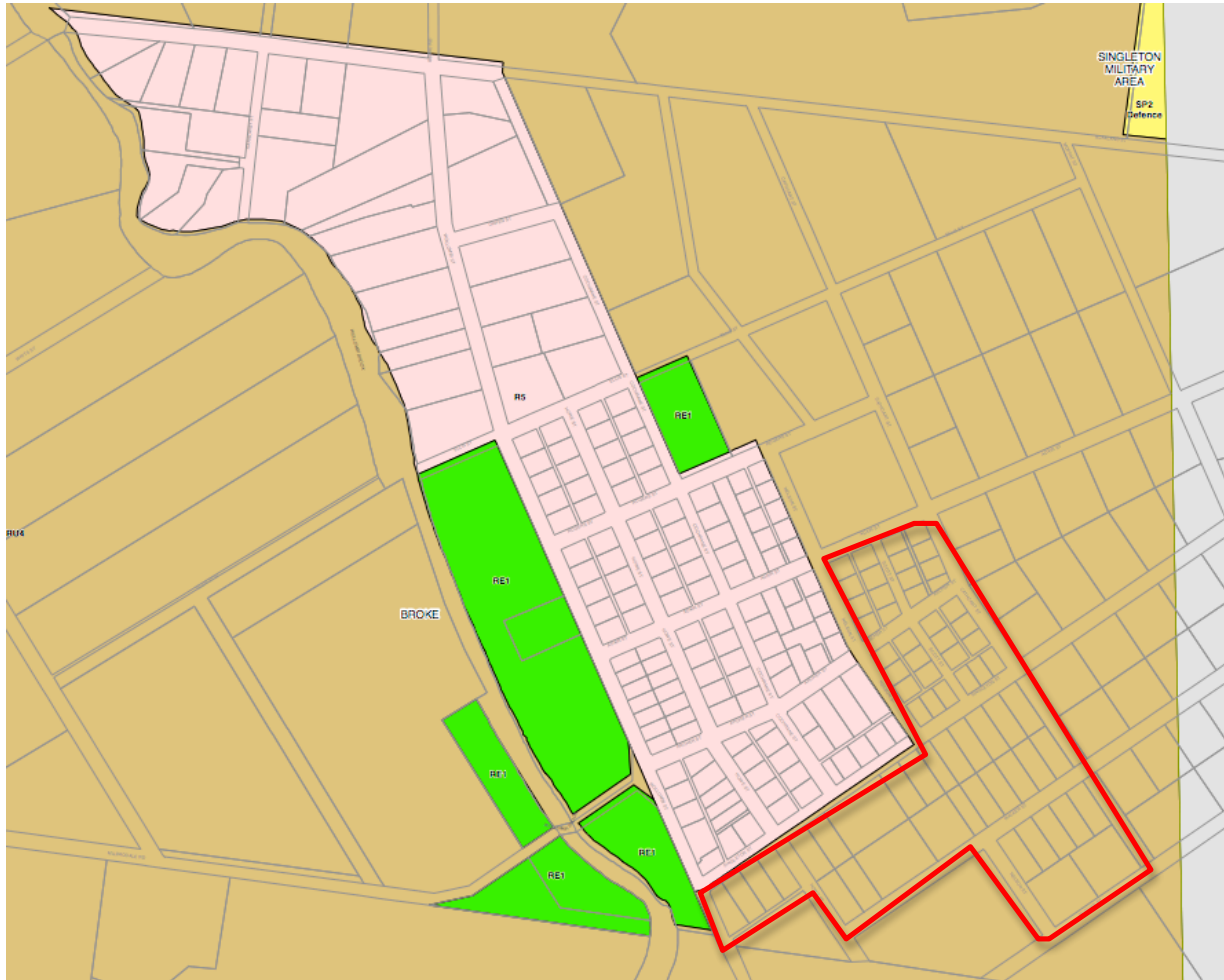


Figure 2 – Extract from Singleton LEP 2013 – Land Zoning Map 10A.

These lots will play an important part in accommodating housing growth in the region and ensure the sustainability of Broke in the long term future. Accommodating housing growth in this location would support the growth of the Broke-Fordwich Viticulture Critical Industry cluster, make efficient use of significant infrastructure being invested in the region and the diversification of the Hunter Valley economy beyond the life of mining activity in the region.

In the Singleton Land Use Strategy 2008, Broke is identified as the only village where substantial demand for additional development could be anticipated. A reticulated water supply was established in 2007 and although a reticulated sewer system is not planned for at this stage it is an item for review of the council in the long term. Broke is identified in the Strategy as an area to accommodate diversified tourism and accommodation growth for the region.

The NSW Government has acknowledged in the current round of amendments that future residential growth areas must also be protected from land use conflict associated with mining development and therefore this submission is made to ensure that Additional Rural Villages Land map – Sheet RVL_005 and Sheet RVL_007 are amended in accordance with **Attachment A** and **Attachment B**. The 2km Buffer Zone should be extended from the outside edge of the boundary of the Broke residential growth area.

2.0 CRITICAL INDUSTRY CLUSTER AREA & PROTECTION

The Strategic Regional Land Use Plan – Upper Hunter (SRLUP) dated Sep 2012 goes into great detail to describe the existence of Critical Industry Clusters and why they should be identified, mapped and protected. The following references summarise the NSW Governments intended strategic approach:

- p 9. *In the Upper Hunter region it is particularly important to minimise land use conflict” and to preserve “**key regional values** over the next 20 years.*
- p 21. An industry cluster is categorised as follows:
 - *a **concentration of enterprises** that provides clear development and marketing advantages and is based on an agricultural product;*
 - *productive industries are **interrelated**;*
 - *consists of a unique combination of factors such as **location, infrastructure, heritage and natural resources**;*
 - *is of national and/or international importance;*
 - *is an iconic industry that **contributes to the regions identity**; and*
 - *is potentially substantially impacted by coal seam gas or mining proposals”.*
- p 22. *The [Hunter Valley] viticulture cluster includes a highly integrated concentration of vineyards and associated wineries and tourism infrastructure in a rural landscape. ...the Hunter Valley wine tourism branding based on its **natural environment and visual landscape attributes** and its proximity to metropolitan areas.*
- p. 44 *If the critical mass of these industries [viticulture CIC] declines (due to mine expansions or mining impacts) or **the image of the region suffers**, there could be appreciable damage to the wider industry and economy.*
- p.45 *Significant and well established agricultural activities need to have **confidence that their future in the region is secure** and there are opportunities for their industry to develop and grow, particularly as these industries have the potential to continue sustainably well beyond the expected lifespan of most coal mines.*
- p.46 *Economic diversification will require continual effort to build on the strengths of existing industries such as mining, agriculture and tourism.*
- p. 49 *The scenic environment, high quality urban services and facilities and convenient location ...make the region attractive to tourists, tree-changers and others seeking lifestyle quality and choice.*

This policy sets a strong foundation for future policy directions for the long-term retention, support and growth of the viticulture CIC in the Hunter Valley. However the policy makes a critical error on page 20 of the SRLUP outlining the challenges for the region:

“improving the balance between competing land uses – particularly achieving co-existence where possible between mining, coal seam gas development and agriculture.

A viticulture critical industry cluster and a mining project are mutually exclusive. They cannot co-exist in the same locality. They can exist at the same time within the region (and the SRLUP supports them into the future to do so) however they must be separated to enable their operation to endure.

A viticulture cluster by its very definition, must be homogenous, integrated, interrelated businesses, connected and located within a scenic visual catchment to foster productivity, collaborative innovation, lifestyle and tourism. A mining project immediately adjoining a cluster or fragmenting a cluster reduces the significance of the cluster and its inherent and valued qualities ie rural landscape, high amenity, high scenic value, tourist accommodation, community events and high quality food and wine products.

The amendments to the Mining SEPP undermine the significance of the cluster by not providing sufficient protection against the acknowledged impacts of mining on the viticulture critical industry cluster.

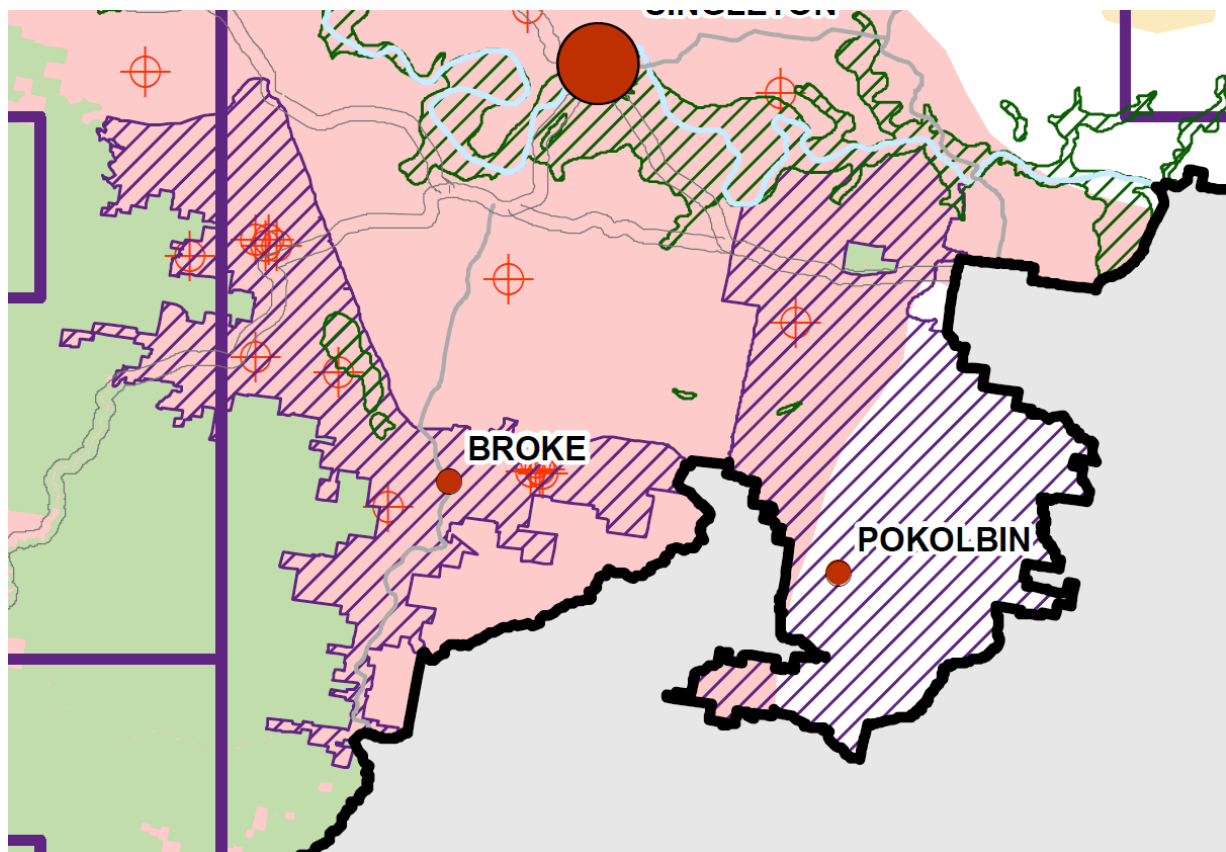


Figure 3 – Geographic Indications (GI) Committee registered area for the Broke-Fordwich winegrowing region and the Pokolbin winegrowing region.

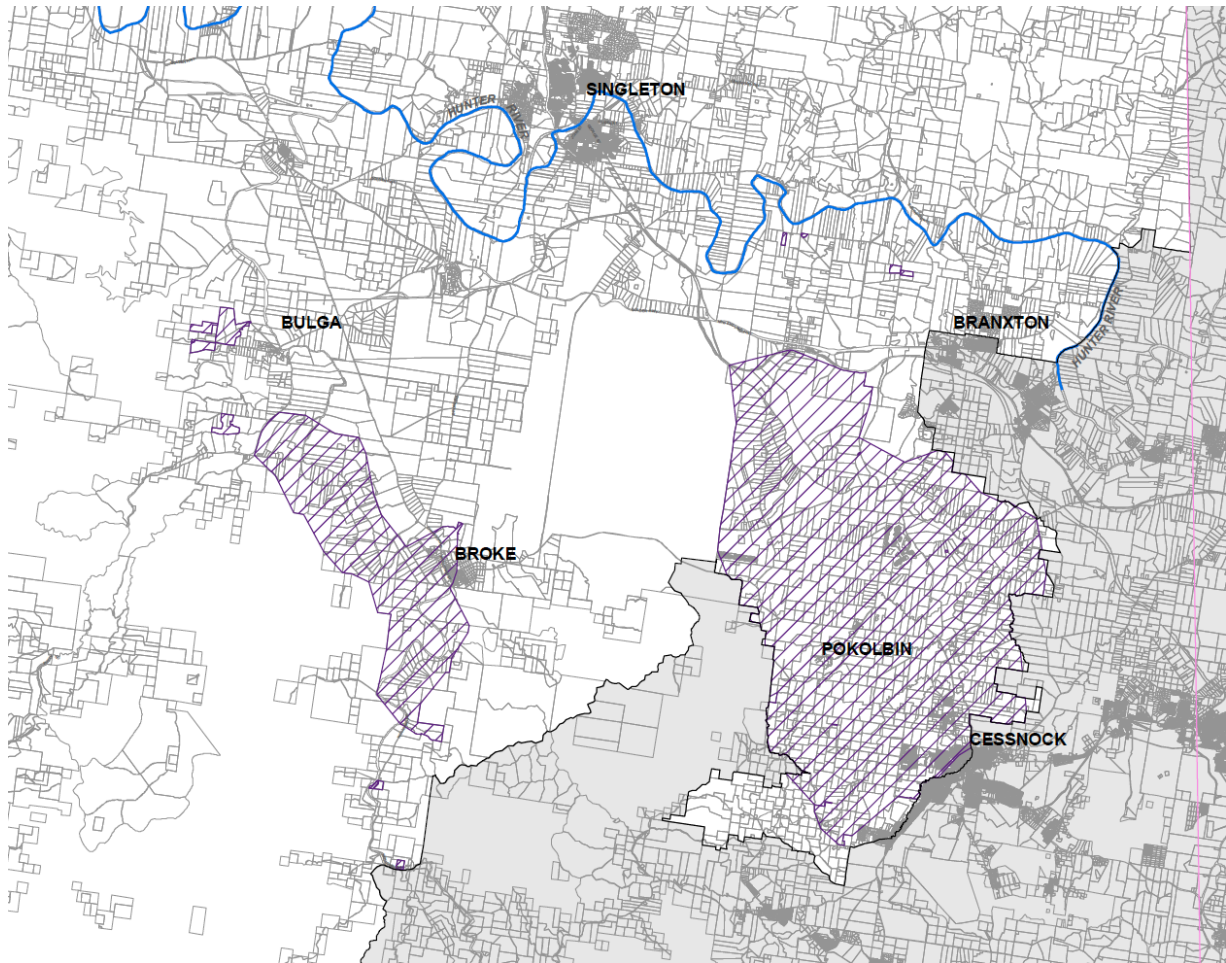


Figure 4 - Current amendment to the CIC area extract from the draft Critical Industry Cluster land Map – Sheet CIC_003.

As illustrated in **Figures 3, 4 & 5**, the area of the Broke-Fordwich Viticulture CIC has been significantly reduced on the draft Critical Industry Cluster land Map – Sheet CIC_003. This change raises serious concerns and significant risks for the long-term viability of the cluster as follows:

- the cluster (area of protection) no longer represents the Geographic Indicator (GI) registered area pursuant to the Wine Australia Corporation Act 1980, which is an internationally recognised region applying to the Broke-Fordwich winegrowing region. The GI has been accommodated in the Pokolbin viticulture CIC but in Broke and Bulga it has been ignored. The GI area consisted of the visual catchment surrounding the CIC (including the important link between the two wine regions of Broke and Pokolbin), the natural resources supporting the CIC as well as the physical vineyards, businesses and support services that drive the industry. Any degradation to the GI area as a result of mining activity would have devastating consequences on the classification of the area, its position in the market and the viability of the production in the wine growing industry.

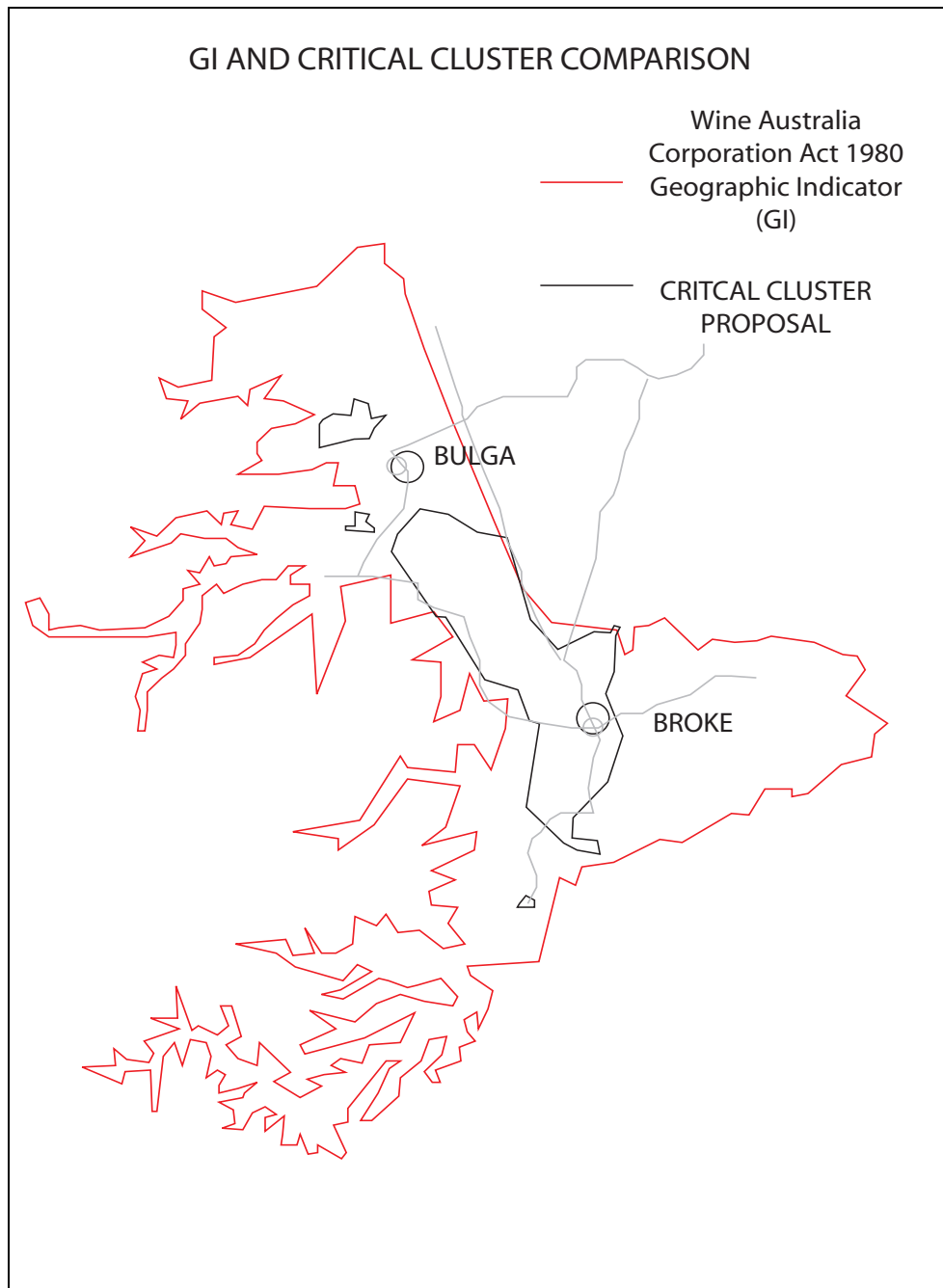


Figure 5 – Comparison of the GI area vs the recent amendments to the CIC c/o A W Associates

- The reduction in the area of the CIC has isolated vineyards outside the cluster and are fragmented from the critical mass. As there are no buffer zones proposed, the policy would enable a coal seam gas or mining proponent to locate within the Broke-Fordwich winegrowing region between the fragmented vineyards and the remaining cluster. This dislocation would also sever ties between Bulga and Broke and reduce the cumulative benefits delivered by these co-locating villages. The proposed amendment would reduce the connectivity of the outlying vineyards from the cluster, reduce the tourist experience and impact the natural landscape and road traffic environment.

- The proposed amendment imposes a highly restrictive limit to the growth and prosperity of the Broke- Fordwich winegrowing region to only those vineyards that currently exist. This limitation to the industry would stifle development and prevent innovation and change. It is highly inconsistent with the objectives of the SRLUP that seeks to ensure that the economy in the Upper Hunter is diverse and robust. The Broke- Fordwich region has great potential to capture clean and green markets for high quality products, a unique tourist experience, lifestyle experiences, alternative residential lifestyles and new and innovative businesses. Should mining projects surround the limited area covered by the proposed cluster area, the cluster would certainly diminish and become irrelevant.
- The gateways to the Broke-Fordwich wine-growing region are no longer protected by the viticulture CIC. The main entry points into the CIC are from the east along Broke Road and from the south along Wollombi Road. These scenic rural landscapes are critical to the identity of the CIC and frame the tourist experience, which underpins the industry. The Broke Road gateway from the east will have increasing importance after the opening of the Hunter Expressway as travel times from beyond the region will be significantly reduced and direct access will be provided down Hermitage Road. Again, as there is no buffer zone around the CIC the policy would enable a coal seam gas or mining proponent to locate along these gateways and irrevocably damage the image of the Broke-Fordwich wine growing region as a high quality, clean and green food and wine destination.
- The connectivity and integration with the Pokolbin winegrowing region has been severed. It is vital that these two closely integrated regions are connected by high quality scenic routes. The interconnectedness drives business in the region by drawing tourism and food and wine markets to the concentration of enterprises. The two regions share growth, marketing, infrastructure and accommodation objectives delivering benefits to all businesses. With the opening of the Hunter Expressway visitors will be delivered to the centre of the two regions making it vitally important that they are seen to be one cohesive destination. Severing the link between these two regions with the negative impacts of mining projects located along the Broke Road would have broad ranging and significant impacts on both the Broke- Fordwich and Pokolbin viticulture industries.

The critical industry clusters and their visual landscapes require unequivocal protection. To ensure the retention and viability of this industry consistent with the objectives of the SRLUP the proposed amendment to the Critical Industry Cluster land Map – Sheet CIC _003 should be abandoned and reference should return to the previous map, which followed the current GI classification boundary. This previous area encapsulated all the qualities of the CIC, which are required for its protection. The proposed amendment to Clause 9A(5) of the Mining SEPP to include critical industry cluster land within the coal seam gas exclusion zone is supported. These amendments combined would provide a high level of certainty to stakeholders and significantly reduce land use conflict in this region. Both industries (mining and viticulture) could invest in the growth and prosperity of their respective enterprises without significantly impacting on the operations of the other.

However, protection of the cluster is not complete until these changes are bolstered by a 2km buffer zone to ensure that the cluster is not affected by development that would immediately adjoin the cluster and its important natural resources. Clause 9A(5) of the Mining SEPP should be further amended as follows:

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

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

~~Note.~~

~~There is no buffer zone surrounding critical industry cluster land. Delete~~

3.0 EXCLUSION OF AGL PROPERTIES FROM CRITICAL INDUSTRY CLUSTER

The NSW Planning System is founded on the principles of protecting the public interest and the broader common interests of the state and not necessarily the individual immediate needs of current landowners. Strategic planning provides for the long-term housing, employment and infrastructure needs of the community while at the same time protecting and enhancing the environment and lifestyle opportunities for future generations.

The SRLUP aims to provide a sustainable plan for growth and change in the Upper Hunter over time. This includes ensuring that the region has a resilient, robust and diversified economy that will continue to prosper and support a permanent population well after the scaling back of coal mining industry. Forward planning is critical to the sustainable development of the region and the wellbeing of the population and its well-regarded environment.

Strategic planning for the Broke-Fordwich wine-growing region is no exception. The winegrowing industry has been a constant presence in the Hunter Valley and Broke for generations. Viticulture CICs have been identified and mapped to ensure their continued support and contribution to the State's economy. As stated in Section 2.0 above, the CIC area consists of "a highly integrated concentration of vineyards" as well as the visual catchment and the tourism experience created by the place.

Spring Mountain is the first vineyard on the approach to the Broke-Fordwich CIC from the east and will be the primary entry point once the Hunter Expressway open in 2013 as illustrated in **Figure 6**. This vineyard is the scenic gateway to Broke: it initiates the tourist experience of entering a wine-growing region and establishes the quality of the experience, which is continued throughout the numerous vistas, restaurants, cellar doors and accommodation. Spring Mountain is set within a sprawling green valley with a spectacular mountain range escarpment backdrop as illustrated in **Figure 7**. Spring Mountain is a large and productive vineyard and it is my understanding that it is still a viable business, which continues to contribute to the local viticulture economy despite being purchased by AGL in the past 2-3 years.

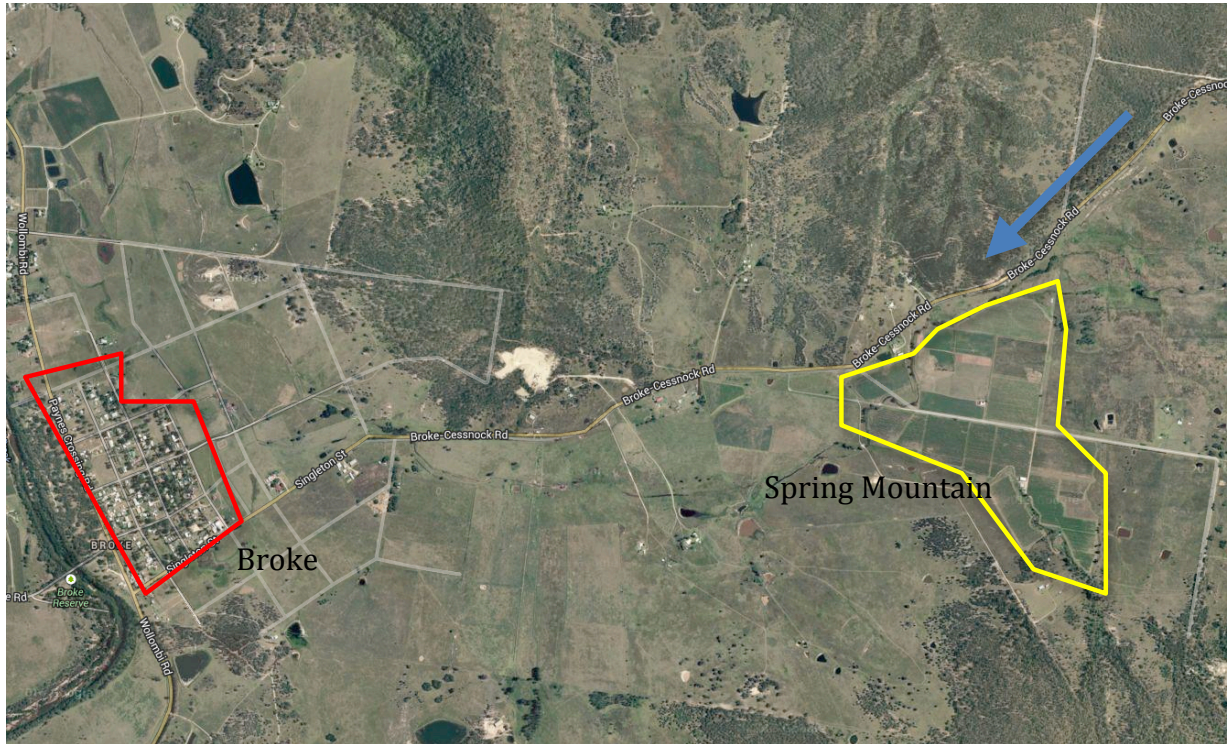


Figure 6 – Eastern gateway to the Broke-Fordwich CIC



Figure 7 – Spring Mountain Vineyard and the gateway to the Broke-Fordwich CIC

The suggestion that AGL could remove Spring Mountain or Pooles Rock (the other vineyard purchased in the past 2-3 years) from the viticulture industry cluster flies in the face of fundamental strategic planning principles. The immediate and short-term needs of an individual landowner is not representative of the broader needs of the community. Spring Mountain and their other vineyards are important to the critical mass of the Broke – Fordwich wine growing region and their loss would be inconsistent with the objectives of the SRLUP.

Moreover, the intention of the landowner in this case is to develop the land for coal seam gas mining. As demonstrated in Section 2.0 above, this use is incompatible with the CIC and would result in negative impacts on the viability of the CIC and as Spring Mountain (and the other AGL land holdings) are located within the Broke-Fordwich GI, coal seam gas mining should be prohibited.

AGL purchased land within the Broke-Fordwich CIC prospectively at a time when coal seam gas mining was strongly resisted by the community and state and local politicians. It was a risk, as they did not give sufficient weight to the high value of the viticulture industry to the State, the interrelationship of the uses in the area and that the CIC cannot be replicated elsewhere.

The State Government should withdraw their offer to review the classification of any land located within a critical industry cluster because mining activity (as is the case with most land use zoning exercises) is not compatible with areas of complex interrelationship. Mining enterprise should be located in less constrained locations, in a more appropriate land use zone with less land use conflict. As stated on page 22 of the SRLUP approximately 86% of coal resources and 84% of coal seam gas resources are unencumbered by strategic agricultural land (including CICs).

Just like the many different prospect developers in NSW who take risks in purchasing land prospectively, AGL needs to accept the land use classification as a CIC which is protected from coal seam gas mining and make arrangements for a more compatible land use which supports the sustainable growth of the CIC into the future. No compensation is warranted in this case.

4.0 GATEWAY PANEL

The Gateway Panel do not have the power under the Mining SEPP to refuse a proposal for a mining activity immediately adjoining a CIC. A certificate will be issued to enable a development application to be lodged and likewise approved. Conditions placed on any consent cannot prevent the fragmentation of a CIC, the impact on the visual catchment of the cluster or the impact on the experience for the tourist and without these critical elements the cluster will be irrevocably damaged and increasingly irrelevant.

Clause 17H of the Mining SEPP must be amended to ensure the Gateway Panel has a full range of powers to reject a proposal if it is inappropriate eg. It is located too close to a CIC and no level of mitigation could prevent land use conflict because of the fundamental differences between the two uses.

5.0 CONCLUSION

There shall soon be in place some strong planning policy to support the sustainable growth and change of the Upper Hunter region. Importantly, there is great potential for the planning system to secure certainty for two important industries in the region: viticulture and mining.

The proposed amendments seek to establish exclusion zones in residential areas and Critical Industry Clusters which is a step in the right direction however a broad area covering these places must be protected to ensure their longevity over time and to protect their inherent and valued characteristics.

The submission seeks to have the following amended and adopted by the NSW Government:

- Clause 9A(5) of the Mining SEPP should be amended as follows:

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

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

~~Note.~~

~~There is no buffer zone surrounding critical industry cluster land. Delete~~

- Additional Rural Villages Land Map 07 needs to be amended to include the Broke growth area.
- Critical Industry Cluster land Map – Sheet CIC_003 should be deleted and the boundary of the Broke-Fordwich Viticulture CIC is returned to the extent of the GI classification.
- Clause 17H of the Mining SEPP must be amended to ensure the Gateway Panel has a full range of powers to reject a proposal which is inappropriate.
- The State Government should withdraw their offer to review the classification of any land located **within** a critical industry cluster.

As stated from the outset, the NSW Government's aim was to reduce land use conflict in the Upper Hunter. The community has responded whole heartedly and participated entirely in this planning process to ensure that balance is returned to the debate regarding the appropriateness of coal seam gas and coal mining within residential or CIC areas or in close proximity to the these areas. These communities have been under significant emotional and financial strain over the past 10 years dealing with land use conflict and the negative impacts from mining projects in the region.

If the recommendations of this report are adopted then I believe the NSW Government will achieve what they set out to do. The communities of Broke and Bulga could focus on growth and diversification within the viticulture CIC, regenerate and enhance their natural environment and attract new visitors, business and residents to the region. While at the

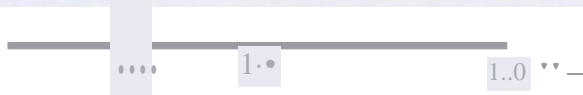
same time, mining projects (including coal seam gas projects can commence in areas with greater certainty and less land use conflict.

If you have any questions or if you require any additional information please do not hesitate to contact me on 0414 557 531.

Yours faithfully

A handwritten signature in black ink, appearing to read 'B. Mitchell', written in a cursive style.

Briony Mitchell BTP(Hons) MPIA CPP
Mitchell Town Planning





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ANNEXURE B

**Extracts from the findings of the Geographical Indications
Committee of the Australian Wine & Brandy Corporation**

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**EXTRACTS FROM THE FINDINGS OF THE GEOGRAPHICAL INDICATIONS COMMITTEE OF THE
AUSTRALIAN WINE & BRANDY CORPORATION.**

**There has been considerable growth of and within the Broke Fordwich winegrowing
subregion in the years which have passed since the following document was prepared in
1997 and it should be read with that caveat.**

4

GENERAL HISTORY OF THE AREA

The geographical Indications Committee has investigated the general history of the area in respect of the proposed subregion "BROKE FORDWICH" as per the material set out in Regulation 25(b) of the Australian Wine and Brandy Corporation Regulations 1994.

A permanent convict settlement was established in 1804 for convicts found guilty of crimes within the new Colony. Although the official name was Hunter River, the name Coal River was used for the first twenty years or so of the settlement.

Settlement of land in the Hunter Region began from about 1813 on alluvial soils of Patterson's Plains near the junction of the Patterson and Hunter Rivers, with access gained through Newcastle. In this pioneering period pastoralisation was the most important economic activity, although small farms were developed on the river flats to grow wheat, corn and vegetables.

The first vineyards were planted in the 1830's.

By Government decree, subdivision of the largest pastoral estates commenced in 1910. Closer settlement was further encouraged by Soldier Settlement allotments after World War I and World War II. The Soldier Settlement Farms were; generally unsuccessful for various reasons and over a period of time they merged into larger and more viable agricultural enterprises.

The "Fordwich Soldiers Settlement Purchase Area" was settled by soldier settlers in 1918-1919 on land formerly owned by the Blaxland family. The land owned by the Blaxland family was part of an original grant to John Blaxland, Snr. John Blaxland Snr. Was born at Fordwich, Kent, England in 1769 and emigrated to NSW in 1805. He was granted 6,000 acres, mostly in the Broke area, by Lord Castlereagh. He was given the use of 80 convicts for 18 months, a free passage for his family, and free freight for his goods. He built Fordwich Homestead in 1829, using the convict labour and hand-made bricks. A well and the site of the Homestead still remains today in Fordwich Road. Being of a benevolent nature Blaxland allowed the Homestead to be used both for Anglican Church Services and as the local School.

Many of the Soldier Settlers planted grapes on their 10 acre lots, however most were forced to leave their lots between 1919 and 1930 due to the start of the depression, poor grape prices, and a severe hail storm in 1929 or 1930 which devastated their vines.

The Tulloch family took over the first of these vineyards in 1922, and by 1930 had taken over the majority of them. There was a small number of the vineyards which reverted to dairy farming, and one vineyard was bought by the Elliot family. Tullochs have grown grapes continuously on these vineyards since the acquisition of the first vineyard in 1922.

Tulloch's grapes were transported to the Tulloch winery at Pokolbin for processing, and in times when the crop exceeded the capacity of the Tulloch winery then grapes were sold to Penfolds, Lindemans, Tyrrells and others.

One of the Soldier Settlers held onto his block and continued to grow vines. He sold to the Elliott family in about 1940. The Elliott family also grew grapes continuously on their block and processed their own fruit at the Elliott winery in Pokolbin (now Oakvale).

"A number of horticultural crops are grown in the Wollombi Catchment with significant plantings of wine grapes in the Broke, Fordwich, Milbrodale area. Other crops of significance are citrus and table grapes in the Milbrodale and Bulga area". (Information from Tony Somers, District Horticulturist, Maitland).

The advent of rail to the Hunter region in the 1860's was a boost to agriculture, and subsidiary industries such as flour mills, breweries, abattoirs and tanneries flourished. However, agricultural viability is influenced by market demand and climate. Drought and economic depressions have, from time to time, impeded progress, but overall the Hunter has developed into a region sustaining profitable enterprises in agriculture, viticulture, dairying, beef cattle, stud horses and general farming.

8

WINE AND GRAPE HISTORY

"The Broke Fordwich area accounts for about 11% of the vineyard area planted in the Hunter Valley. Vineyards are often high yielding and contribute a significant amount of fruit which is mostly processed in wineries in the Lower Hunter." (Information from Tony Somers, District Horticulturist, Maitland).

Traditionally all grapes from the Broke Fordwich area went to Pokolbin for processing, (see Newcastle Herald February 1939 "All the grapes used by the firm (Tullochs) for lwinemaking do not come from Pokolbin itself. There are another 150 acres of wine and table grapes at Fordwich, Patrick Plains") although some did go to Wyndham Estate at Branxton until the commencement of the Saxonvale Winery in the early 1970's. Some fruit then was processed at that winery until it ceased production in the late 1980's. That Winery has now re-opened as the Hill of Hope Winery and has commenced crushing in the 1997 vintage.

Max Lake in "Hunter Winemakers" published in 1970 describes the wines from the Broke Fordwich area in the following fashion:

"Tulloch's main vineyards are over at Fordwich, middle Hunter, and they make very definite red and white styles. The grapes are brought to the fermentary in Pokolbin and it is on the wine made from such Fordwich grapes, that much of the reputation of Pokolbin rests. Fordwich wine is bigger-flavoured, with fewer highlights of interest than the wine off the weathered volcanic undulations coming down from Mount View and its associated range.

Again speaking about Tullochs, James Halliday in "Wine & Wineries of New South Wales, 1980 edition, says:

"The winery is situated in the heart of Pokolbin, but much of the fruit comes from Tulloch's Fordwich vineyards. This results in whites and reds which stand a little apart from most lower Hunter wines, but are non the worse for that.....The whites tend to have more backbone than - and perhaps not

the flexibility nor final development potential of - conventional Lower Hunter Semillons, but are very good wines withal. The red wines are old favourites of mine, and even more than the whites reflect the microclimate of the Fordwich district."

James Halliday, writing in his same publication regarding Saxonvale says:

"The whites basically come from the Fordwich vineyards; the reds from the Pokolbin Estates and Happy Valley vineyards.....Semillon: Always slightly fuller in structure than Lower Hunter versions and certainly much fuller than Upper Hunter (Fordwich is halfway, geographically, between the two). Develops reasonably quickly into golden, honeyed style."

Wines made from the grapes grown in the Broke Fordwich area have become more important to the winemaker and have been acknowledged on the labels (e.g. Tyrrells Fordwich Verdelho; Broke Estate on Money Place Creek.

Broke Estate on Monkey Place Creek has acknowledged that it has a non-exclusive trademark in relation to "Broke Estate" and that it has no objection to the application for the Broke Fordwich Subregion application to proceed.

In 1907 Saxonvale Vineyards were established at Fordwich and on the Broke Road at Spring Mountain. By 1972 Saxonvale had established over 600 acres of vines in the Broke Fordwich area, which now included over 1,000 acres of grapevines.

Since the 1970's the area has grown considerably in terms of grapegrowing with areas of grapevines managed by Lindemans, Simon Whitlam (Arrowfield) and McGuigan Brothers. Tyrrells and Rothbury also purchase a great deal of grapes from the Broke Fordwich area.

Today there are 36 individual grapegrowers in the area with a total of over 607 hectares of grapevines. Virtually all of these grapes are taken to Pokolbin for processing, although a number of grapegrowers are starting to have wines made for them in Pokolbin under their own labels. These include Broke Fordwich Wine Co. Pty. Ltd., Pooles Rock, Cockfighters Ghost, Foates Ridge, Broke Estate, Hollyclare, Drews Creek, Meerea Park, Esslemont Estate, Elysium, Hill of Hope, Beyond Broke, Ceres Hill, Milbrodale, Peschar Family Wines, Glenguin, Bacchus Fine Wines, Traminer Park, Catherine Vale, Fordwich Estate, Tinonee, Fordwich Wines and Adams Peak.

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ANNEXURE C

Coal Seam Gas Exclusion Zone Resolution



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KEN HORNER - STRATEGIC LAND USE PLANNER**FOR ACTION**

Coal Seam Gas Exclusion Zones

Meeting Date: 8/04/2013
Target Date: 22/04/2013
Notes:
File Number: 13/16957

DP&SE9/13 Coal Seam Gas Exclusion Zones**FILE:01/0212**

Public Access was granted to Mr Graeme O'Brien, who addressed the meeting.

Public Access was granted to Mr Chris Robertson, who addressed the meeting.

A report was provided to inform Council of the proposed amendment to the State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007 to prohibit Coal Seam Gas exploration and production in residential areas and critical industry clusters.

52/13 **RESOLVED** that Council:

1. Lodge this report as a submission to the exhibition of the draft amendment to the Mining SEPP.
2. Nominate land currently zoned 1(d) Rural Small Holdings which meets the defined village criteria. This includes the villages of Broke, Bulga, Jerrys Plains and Camberwell. Mapping identifying these villages is appended. While three of these villages lie within the CIC land, as mapped, it should also include the two kilometre buffer which is to be provided to residential land.
3. Request the inclusion of its future residential growth areas as depicted on page 40 of its DP&I endorse Singleton Land Use Strategy 2008 (appended as **Attachment 3**).
4. Request the inclusion of its rural residential areas around Singleton and Branxton in the exclusion zones. This involves land currently zoned 1(d) Rural Small Holdings, which is proposed to be zoned R5 Large Lot Residential and E4 Environmental Living under the draft Singleton LEP 2013.
5. Request the inclusion of the Putty Valley, Belford and Lower Belford (to the eastern side of Black Creek), Whittingham and Milbrodale settlements as exclusion zones, similar to the residential exclusion zones as these areas contain schools and/or community halls.

6. Request the inclusion of Tourism and Dairy Industries as a CIC.
7. Not opt out of any of the exclusion areas.

(Scott/Adamthwaite)

**Upon being put to the meeting, the motion was declared carried.
For the Motion were Councillors Adamthwaite, Capsanis, Diemar-Jenkins,
Keown, Lowe, Martin, Moore, Rogers and Scott Total (9).
Against the Motion was Nil Total (0).**

ACTION TAKEN BY OFFICER

ANNEXURE D

Coal Seam Gas Exclusion Report



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9. Coal Seam Gas Exclusion Zones**FILE:** 01/0212**Author:** Ken Horner

Executive Summary

The purpose of this report is to inform Council of the proposed amendment to the State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007 to prohibit Coal Seam Gas exploration and production in residential areas and critical industry clusters.

Councils are specifically requested to identify villages which meet the defined village criteria so they can be included as residential land.

It is recommended that the report be forwarded to the Department of Planning & Infrastructure as a submission to the exhibition of the draft amendment, which closes on 12 April 2013.

RECOMMENDED that Council:

1. Lodge this report as a submission to the exhibition of the draft amendment to the Mining SEPP.
2. Nominate land currently zoned 1(d) Rural Small Holdings which meets the defined village criteria. This includes the villages of Broke, Bulga, Jerrys Plains and Camberwell. Mapping identifying these villages is appended. While three of these villages lie within the CIC land, as mapped, it should also include the two kilometre buffer which is to be provided to residential land.
3. Request the inclusion of its future residential growth areas as depicted on page 40 of its DP&I endorse Singleton Land Use Strategy 2008 (appended as **Attachment 3**).
4. Request the inclusion of its rural residential areas around Singleton and Branxton in the exclusion zones. This involves land currently zoned 1(d) Rural Small Holdings, which is proposed to be zoned R5 Large Lot Residential and E4 Environmental Living under the draft Singleton LEP 2013.
5. Request the inclusion of the Putty Valley and Lower Belford (to the eastern side of Black Creek) settlements as exclusion zones, similar to the residential exclusion zones.
6. Request the inclusion of the Dairy Industry as a CIC.
7. Not opt out of any of the exclusion areas.

Background

The NSW Government is proposing to amend the State Environmental Planning Policy (SEPP) on Mining to implement its announcement on 19 February 2013 that it will prohibit Coal Seam Gas (CSG) operation in residential areas and critical industry clusters.

The proposed SEPP amendment applies across the State and seeks to prohibit CSG exploration and production in and within two kilometres of land zoned residential, as well as proposed future residential areas.

Land “zoned residential” includes the following (or equivalent) zones:

- Zone R1 General Residential;
- Zone R2 Low Density Residential;
- Zone R3 Medium Density Residential;
- Zone R4 High Density Residential;
- Zone RU5 Village.

CSG exploration and production will also be prohibited within and under areas identified as Critical Industry Clusters (CIC). Currently two CICs have been identified – the equine and viticulture industries in the Upper Hunter.

An additional provision in the SEPP amendment allows councils to opt out of the provisions of the SEPP, by identifying land to be exempted from the CSG prohibition. This would not represent an automatic green light for CSG activity in the area. All proposed exploration and production activities will still need to go through the assessment regime, as outlined in the Government’s Strategic Regional Land Use Policy.

The Premier has also announced that:

- The Environment Protection Authority (EPA) will be the lead regulator of environmental health impacts of CSG activities with responsibility for compliance and enforcement;
- All exploration, assessment and production titles and activities will be required to hold an Environmental Protection Licence; and
- The Chief Scientist and Engineer will conduct an independent review of all CSG activities in NSW, including the potential impact on water catchment.

An Office of CSG Regulation will be established within the Department of Trade and Investment Regional Infrastructure Services (DTIRIS), reporting directly to the Director General of DTIRIS. The Office of CSG will also work closely with the Land and Water Commissioner.

A copy of the Department’s Frequently Asked Questions - Coal Seam Gas Exclusion Zones is appended as **Attachment 1** for information. A copy of the CIC mapping is appended as **Attachment 2**.

Community Strategic Plan

Our Community

N/A

Our Places

This recommendation supports the community strategies:
Promote village living and lifestyle
Plan considering the past, present and a sustainable future
Plan for a sustainable and safe community

Our Environment

This recommendation supports the community strategies:
Collaborate to protect, enhance and improve our environment
Enable and encourage civic leadership for environmental sustainability

Our Community Leadership

This recommendation supports the community strategies:
Inform, consult, involve, collaborate, empower our community for effective decision making
Respond to the changing needs of our community
Lead, govern and regulate transparently, equitably and ethically

Delivery Program/Operational Plan

This is not relevant to this report.

Council Policy/Legislation

The legislation to be amended is the State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007. The proposed amendment is titled State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) Amendment (Coal Seam Gas Exclusion Zones) 2013.

Council's draft Singleton LEP 2013 is yet to be finalised by the Department of Planning & Infrastructure, so the "equivalent" zones to be considered in Council's Singleton LEP 1996 are Zone 2 Residential, Zone R1 Residential, Zone R2 Low Density Residential and Zone 1(d) Rural Small Holdings Zone.

Financial Implications

CSG is used for low cost domestic gas consumption. However, there may be potential for adverse impacts on agricultural and residential environments, which have not been specifically costed.

Further cost implications could be associated with unknown environmental impacts.

Consultation/Social Implications

The State Government has only provided a three-week exhibition period, 22 March to 12 April 2013, for the proposed amendment. In the preparation of Council's Community Strategic Plan the Broke and Putty Valley communities expressed serious concern over the development of CSG resources in their areas. Broke can be included as a village exclusion, however, there is no mechanism for the exclusion of Putty Valley from CSG activities. Putty Valley comprises a relatively closely settled rural community with a community hall and Rural Fire Brigade. Residents strongly lobbied Council in regard to prohibiting CSG activities in its preparation of the draft Singleton LEP 2013.

The Lower Belford and Hermitage Road communities have also made representations to Council. It is unclear from the existing mapping the full extent of impact on the Lower

Planning and Sustainable Environment Report (Items Requiring Decision) - DP&SE9/13

Belford area, although the Standen Drive area to Black Creek would appear to be protected. The Hermitage Road area is fully contained within the CIC and is therefore protected.

The DP&I Frequently Asked Questions response to not including rural residential areas as exclusions is that “managing the impacts of CSG activity on rural residential subdivisions will be considered in the Chief Scientist & Engineer’s review”. It is considered that Council should request the inclusion of rural residential development in the excluded areas. The rural residential communities around Singleton and Branxton are relatively closely settled areas which may be significantly impacted by CSG activity.

It is understood from recent discussions with representatives of the wine country area that a submission has been made to the NSW Government requesting recognition of the tourism sector as a CIC.

Environmental Consideration

The potential for environmental impacts has been hotly debated over the past few years. There appears to be evidence that impact could be significant and irreversible.

While the equine and viticulture CICs are identified, other CICs have not been identified. An additional CIC which would be important for the Singleton LGA would be the dairy industry.

Risk Implications

There appears to be serious risk of significant environmental impacts, as mentioned above.

Options

Council needs to nominate land currently zoned 1(d) Rural Small Holdings which meets the defined village criteria. This includes the villages of Broke, Bulga, Jerrys Plains and Camberwell. Mapping identifying these villages is will be tabled at the meeting (due to technical difficulties at the time of writing this report). While three of these villages lie within the CIC land, as mapped, this does not include the two kilometre buffer to be provided to residential land. CIC land does not include the two kilometre buffer, and the villages within the CIC land lie close to the edge of it. This issue should be clarified.

Council should request the inclusion of its future residential growth areas as depicted on page 40 of its DP&I endorse Singleton Land Use Strategy 2008 (appended as **Attachment 3**).

Council should also request the inclusion of all of its rural residential areas around Singleton and Branxton in the exclusion zones. This involves land currently zoned 1(d) Rural Small Holdings, which is proposed to be zoned R5 Large Lot Residential and E4 Environmental Living under the draft Singleton LEP 2013.

Council should also request the inclusion of the Putty Valley settlement and Lower Belford as an exclusion zone, similar to the residential exclusion zones.

Council should request the inclusion of the dairy industry as a CIC.

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Council can nominate parts of the exclusion areas which it wishes to opt out of. However, it is recommended that Council not opt out of any of the exclusion areas.

Conclusions

It is recommended that Council lodge this report as a submission to the exhibition and that the requests and nominations detailed in the Options section above be made to the Department of Planning & Infrastructure.

Attachments

- AT-1** Mining SEPP Amendment Frequently Asked Questions
- AT-2** Critical Industries Cluster Map
- AT-3** Future Residential Areas Map



Mark Ihlein
Director Planning and Sustainable Environment