

EXPLANATION OF THE INTENDED EFFECT

Section 38 of the *Environmental Planning and Assessment Act 1979* ('EP&A Act') requires the Minister to take such steps, if any, as the Minister considers appropriate or necessary to publicise an explanation of the intended effect of a proposed State environmental planning policy and to seek and consider submissions from the public on the matter before recommending that the proposed instrument be made by the Governor.

An indicative draft amendment SEPP entitled State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) Amendment 2014 ('the proposed SEPP') has been prepared for the purpose of public consultation.

The proposed SEPP, when read together with this document, provides an explanation of the intended effect of a proposed amendment to the State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007 ('the Mining SEPP').

The Amendments are to:

- clarify the application of the 'five wells rule', which determines when the drilling of coal seam gas exploration wells requires development consent;
- clarify the types of modifications that are subject to CSG exclusion zones;
- update the date to which the Mining and Petroleum Gateway process applies to proposals in areas of the State other than the Upper Hunter and New England North West Strategic Regional Land Use Plan regions; and
- rectify minor mapping anomalies.

1 – Clarification of the 'five wells rule'

The Mining SEPP allows for the drilling and operation of a set of up to five petroleum exploration wells without development consent, provided they are more than three kilometres from any other well in the same petroleum title.

If the desired exploration activity will exceed these limits, development consent must be obtained before the activity can proceed. In addition, the State Environmental Planning Policy (State and Regional Development) 2011 (the SRD SEPP) requires that in these cases, the proposed exploration activity must undergo assessment as State significant development.

If the desired exploration activity does not exceed these limits, the proposed activity requires approval from the Office of Coal Seam Gas.

There is currently uncertainty about how the five wells rule applies, specifically, where the 3kms is measured from. It is proposed to amend the Mining SEPP and SRD SEPP to clarify that when applying the 'five wells rule', the distance between a set of five or fewer wells, to any other well, should be measured from the geometric centre of the set. This will clarify the intention of the provision.

Once exploration is complete, development approval is still required before gas production operations may commence.

2 – Minor Modifications

All new CSG activities are subject to CSG exclusion zones, wherever they apply. Activities already approved are permitted to continue to operate.

However, when the CSG exclusion zones were introduced, no distinction was between minor /operational modifications, and modifications that would expand, enlarge or intensify operations to extract CSG.

The prohibitions on minor /operational modifications were not part of the policy intent. This unintended consequence will be addressed through an amendment to savings and transitional provisions of the SEPP to clarify which modifications are subject to exclusion zones.

Examples of operational modifications that are proposed to be permitted include modifications which:

- involve the construction and/or relocation of an access road to an approved CSG well;
- change rehabilitation concepts or techniques for an approved CSG well and drill site area;
- expand the surface area of an approved CSG well drill site which may involve disturbance of vegetation.

However, any modification to increase the number of production wells will not be permitted. Also, modifications which will result in any increase in the depth or lateral extent of a well will not be permitted.

Finally, the Minister or consent authority must be satisfied that the modification is of minimal environmental impact.

3 – Update the date in savings and transitional provisions

The Mining and Petroleum Gateway process currently applies to all State significant projects on Strategic Agricultural Land, except where Director General's Requirements were issued for proposed projects prior to 10 September 2012.

The date of 10 September 2012 was selected as the operational date for the savings and transitional provisions as it represented the day before the Strategic Regional Land Use Plans for the Upper Hunter (UH) and New England North West (NENW) were released, notifying of the proposed Gateway process.

Biophysical Strategic Land (BSAL) mapping was not exhibited for the rest of the State until 4 October 2013, thus showing the policy intent in regards to BSAL for the remainder of the State. Therefore 3 October 2013 is proposed as the date the savings and transitional provisions apply for projects outside the UH and NENW. That is, for any mining or CSG project outside of NENW and UH regions, where

Director General's Requirements have been issued on 3 October 2013 or before, the Gateway process will not apply.

To implement this, an amendment will be made to the savings and transitional provisions of the Mining SEPP, and a Regulation will be made to make consequential amendments to the *Environmental Planning and Assessment Act 1979* (Schedule 6A – Transitional Arrangements – Repeal of Part 3A) and Environmental Planning and Assessment Regulation 2000 (clauses 50A and 119A).

4 - Mapping issues

A number of small parcels of land were inadvertently omitted from the CSG exclusion zones when the Critical Industry Cluster (CIC) mapping was completed.

In addition, the regional boundaries used for the CIC mapping were inconsistent with the boundaries that were used in the Strategic Regional Land Use Plans. A correction of these boundaries will result in approximately 19 additional viticulture properties being added to the viticulture CIC.

It is proposed to amend the SEPP to replace the current maps with the corrected maps.