

## Environment & Planning Alert

### CSG development – proposed changes to the Mining SEPP

March 2013

#### Overview

Following its press release in February 2013 and changes to the *Water Management Act 2000* on 1 March 2013 for mine dewatering and coal seam gas (CSG) wells, the NSW Government has released another round of measures to further regulate the CSG industry in NSW.

These further measures propose changes to the *State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007 (Mining SEPP)* to prohibit 'CSG development' within exclusion zones associated with residential development and Critical Industry Clusters (CIC).

The proposed changes are set out in the public consultation draft of the *State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) Amendment (Coal Seam Gas Exclusion Zones) 2013 (CSG Exclusion Zones SEPP)* released for public consultation on 21 March 2013.

Copies of the CSG Exclusion Zones SEPP and related information can be obtained [here](#) and are on exhibition until 12 April 2013.

#### Proposed changes

The draft CSG Exclusion Zones SEPP proposes the following key changes.

- 'CSG development' is to be prohibited on or under land within a 'CSG exclusion zone'.
- CSG development is CSG exploration and production but is not to include CSG recovery in the course of mining or any 'exempt development'.
- A CSG exclusion zone is any of the following areas:
  - land within a residential zone, or within 2km of a residential zone;
  - land within a future residential growth area, or within 2km of such an area;

- land identified as CIC land; and
- land zoned 'R5 Large Lot Residential' (or an equivalent zone) specified in a new Schedule 3 to the Mining SEPP, or land with 2km of such land.
- The prohibition on 'CSG development' is to apply to current applications (including those for development consent, Part 3A projects and concept plans, and certain modification applications) for CSG development which have not been finally determined when the CSG Exclusion Zones SEPP comes into force.
- The prohibition on CSG development is not to apply to land contained in a new Schedule 2 to the Mining SEPP.
- A Council is able to request that the Planning Minister recommend to the Governor that an area of land be added to the new Schedule 2.

#### Impact of the changes

The proposed changes are to apply throughout NSW with the following implications.

- CSG exploration and production is to be prohibited in, and within 2km of, land which is zoned (or an equivalent zone) as:
  - R1 General Residential;
  - R2 Low Density Residential;
  - R3 Medium Density Residential;
  - R4 High Density Residential; and
  - RU5 – Village.
- The prohibition will also extend to land zoned R5 Large Lot Residential listed in Schedule 3 to the Mining SEPP. The Planning Minister has requested that Councils nominate particular areas zoned R5 for listing within the new schedule. Certain tests are to apply to land to be included within the new Schedule 3.

- As many rural areas comprise substantial areas of R5 Large Lot Residential land, the prohibition on CSG development is likely to extend beyond generally recognised rural town centres and residential suburbs.
- CSG exploration and production will also be prohibited in, and within 2km of, future residential growth areas. At present, the only future residential growth areas are those identified in the *State Environmental Planning Policy (Sydney Region Growth Centres) 2006*, namely the:
  - South West Growth Centre (see [here](#)); and
  - North West Growth Centre (see [here](#)).
- However, designated future residential growth areas are set to expand. Such areas are likely to accord with recently released metropolitan, regional, subregional and precinct strategies and plans being worked on by the Department of Planning and Infrastructure (**DoPI**), with some already on exhibition. It is expected that a final map showing more areas of future residential growth will ultimately accompany the proposed changes. It is not known if this map will be exhibited.
- CSG exploration and production will also be prohibited on CIC land which is to be identified on a CIC Land Map. Presently, only two CICs (ie. the equine and viticulture industries) have been identified in the Upper Hunter. The CIC Land Map exhibited with the CSG Exclusion Zones SEPP mirrors the *Upper Hunter Strategic Regional Land Use Plan*, namely the:
  - CIC Land Map CIC\_001 (see [here](#));
  - CIC Land Map CIC\_002 (see [here](#)); and
  - CIC Land Map CIC\_003 (see [here](#)).
- However, it is intended that the CIC Land Map will be revised (ie. presumably expanded) by the DoPI after the exhibition period concludes and once a regional CIC verification process being undertaken by NSW Trade and Investment is completed. It is not known if this map will be exhibited.
- While the CSG Exclusion Zones SEPP is principally aimed at preventing future CSG development within exclusion zones (including applications for projects not finally determined when the changes commence), it is possible that the prohibition of CSG development in some areas will impact already approved CSG development also, which may be required to rely upon 'existing use rights' under the EP&A Act for future

enlargement and expansion, unless affected areas of land are able to be included within Schedule 2.

- While those proposing to undertake CSG development may be able to negotiate with Councils to 'identify areas of land' to be included within Schedule 2 of the Mining SEPP (thereby overcoming the prohibition within CSG exclusion zones), very little information is provided with the proposed amendments about how this process is to work in practice.
- Where CSG development is not prohibited, it remains subject to obtaining all relevant consents and approvals.

## Written submissions

Submissions on the CSG Exclusion Zones SEPP are sought by **12 April 2013**. Submissions are to be made:

- Online: [www.planning.nsw.gov.au/onexhibition](http://www.planning.nsw.gov.au/onexhibition)
- By post: The Director  
Strategic Regional Policy  
NSW Department of Planning & Infrastructure  
GPO Box 39  
SYDNEY NSW 2001

## Further measures

This round of measures is to be accompanied by additional changes to regulate the CSG industry in NSW, including:

- The EPA being the lead regulator of the environmental and health impacts of CSG activities;
- An office of CSG Regulation, being established within NSW Trade and Investment; and
- Amendments to the *Protection of the Environment Operations Act 1997* to require the licensing of CSG exploration, assessment and production.

We will keep you informed as these changes are released.

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For further information on the topics in this alert, please [click here](#) to contact our national Environment & Planning team.

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