



Nature Conservation Council

The voice for nature in NSW

Department of Planning and Environment
23-33 Bridge St
Sydney NSW 2000

16 July 2014

Submission on State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) Amendment 2014 and Environmental Planning and Assessment Amendment (Mining and Petroleum Development) Regulation 2014

Dear Sir/Madam,

The Nature Conservation Council of NSW (NCC) is the peak environment organisation for New South Wales, representing 130 member societies across the state. Together we are committed to protecting and conserving the wildlife, landscapes and natural resources of NSW.

We do not support *State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) Amendment 2014* or *Environmental Planning and Assessment Amendment (Mining and Petroleum Development) Regulation 2014*.

While the Government suggests that “the proposed changes are considered to be minor and do not represent a new policy position for the Government”¹, we submit that the implications for communities concerned with the impacts of coal seam gas activities are substantial and that the proposed changes undermine the Government’s CSG exclusion zone policy.

In particular, we are concerned with the following aspects of the proposed changes:

- The proposed amendments alter the way the “five well/3km” rule is applied – essentially changing the rules that determine which coal seam gas and other unconventional gas projects require development consent.
- Proposed changes to savings and transitional provisions will allow ‘modifications’ in exclusion zones, without clear criteria for determining environmental impact.
- Proposed amendments to savings and transitional provisions alter ‘gateway process’ requirements.

Our concerns are further outlined below.

¹ Strategic regional land use policy, Frequently Asked Questions, July 2014

The proposed amendments alter the way the “five well/3km” rule is applied – essentially changing the rules that determine which coal seam gas and other unconventional gas projects require development consent.

Currently, development for ‘petroleum production’ (including CSG drilling or operating petroleum exploration) is classified as State significant development, and requires development consent unless a set of five or fewer wells is more than 3km from “any other petroleum well in the same petroleum title”.

It is now proposed to insert clause 7(2A) into *State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007 (Mining SEPP)* to provide that “the distance from a set of 5 or fewer wells to any other petroleum well is to be measured from the geometric centre of the set of wells”.

Government suggests that this change is required to clarify the uncertainty about how the five wells rule applies, specifically, where the 3kms is measured from. In our view, this change actually has the potential to create uncertainty, especially for the community, who may find it difficult to determine measurements based on the geometric centre of wells. In our view, the existing provision “within 3km of any other petroleum well in the same petroleum title” is unambiguous and would require a simple straight line measurement from the nearest well (irrespective of whether it forms part of a set of wells).

The practical implications of the change are that some new gas wells will no longer need a full Environmental Impact Statement, and public participation, before they can go ahead.

Of particular concern, are reports that the proposed change will facilitate AGL’s plans for fracking in new exploration wells for coal seam gas as part of its Waukivory Project.² We are concerned that the SEPP amendments have been proposed specifically to facilitate this project, and, if that is the case, argue that this is a breach of the community’s trust and not in the public interest.

Proposed changes to savings and transitional provisions will allow ‘modifications’ in exclusion zones, without clear criteria for determining environmental impact.

In October 2013, laws were brought into force in New South Wales that prevent coal seam gas activities in ‘exclusion zones’, including residential areas and critical industry clusters. Savings and transitional provisions introduced at the time meant that the exclusion zones did not apply to projects approved prior to 3 October 2013.³

The proposed amendments to the Mining SEPP will allow modifications to projects approved prior to 3 October 2013 if the following three conditions are satisfied:

- The Minister or consent authority is satisfied that the modification is of ‘minimal environmental impact’; and

² www.smh.com.au/environment/water-issues/legal-tweak-may-fasttrack-agl-gloucester-fracking-20140707-zsyvg.html

³ See clause 20(1A) *State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007*; Note: Clause 20A and clause 9A of the Mining SEPP commenced on 4 October 2013.

- Any drilling or well operation authorised by the modification relates to a well approved as at 3 October 2013, and does not result in increased *depth* or *lateral extent* of the well; and
- Development is carried out in compliance with conditions of the modified approval.⁴

We are concerned with this proposed change because:

- It is not clear what is meant by ‘minimal environmental impact’. There is no definition or criteria for determining whether a proposed application will have minimal environmental impact. We have repeatedly argued that Ministerial discretion in the planning system is a potential corruption risk, and that there must be clear, objective criteria for decision makers. In our view there must be clear criteria or binding guidelines for determining the environmental impact of a modification.
- It is unclear if “increase in *lateral extent*” means extent in length along the coal seam (as opposed to increase in the width of the well).
- Once again, it appears the amendments will facilitate AGLs project in Gloucester. AGL has concept plan approval for 330 wells in Gloucester, but only has stage 1 approval for 110 wells. We are concerned that the new provision will allow AGL to seek to modify its existing Stage 1 approval to allow the drilling additional wells, relying on its concept plan approval.

Proposed amendments to savings and transitional provisions alter ‘gateway process’ requirements

Currently, development applications for State significant CSG and mining projects on Strategic Agricultural Land must go through the Mining and Petroleum Gateway Panel, to assess impacts on strategic agricultural land and its associated water resources.

Specifically, a ‘gateway certificate’ or a ‘site verification certificate’ is required for projects where the Director General’s Environment Assessment were granted after 10 September 2012. According to the *Explanation of the Intended Effect*⁵, 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.

The proposed amendment to the Mining SEPP provides that Part 4AA of the Mining SEPP (Mining and petroleum development on strategic agricultural land) does not apply if:

⁴ Proposed clause 20(1B) of the Mining SEPP

⁵ *Explanation of the Intended Effect*, Department of Planning and Environment, https://majorprojects.affinitylive.com/public/a2190e256b1a005b7b7a6bf4ba8f4c10/Explanation_of_the_intended_effect.pdf

(a) the land to which the application relates was not shown (whether in whole or in part) on the Strategic Agricultural Land Map before 28 January 2014, and

(b) the relevant environmental assessment requirements under Part 2 of Schedule 2 to the Environmental Planning and Assessment Regulation 2000 for the development were notified by the Director-General on or before 3 October 2013.

Essentially, 3 October 2013 is proposed as the date the savings and transitional provisions apply for projects outside the UH and NENW. This means that a gateway certificate is not required for those projects.

However, the Minister or Director General may seek the advice of the Gateway Panel. We are concerned that this provides broad Ministerial discretion and submit the Minister and Director General must be required to seek the advice of the Gateway Panel.

Conclusion

NCC members, and the broader community, have significant concerns about the impacts of mining, petroleum and coal seam gas activities, particularly the impacts on communities, water resources and human health.

The Government's CSG exclusion zone policy, implemented in late 2013, provided the community with some reassurance that the Government was taking steps to safeguard communities from the impacts of these industries. The proposed *State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) Amendment 2014* and *Environmental Planning and Assessment Amendment (Mining and Petroleum Development) Regulation 2014* undermine the Government's CSG exclusion zone policy.

In particular, the proposed changes appear to facilitate the AGL project at Gloucester, and may also facilitate other CSG proposals. The community will see this as a significant breach of faith.

We call on the government to scrap this proposal and ensure that the interests of the community and environment remain protected.

Yours sincerely,

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

Kate Smolski
Chief Executive Officer