



# The Strategic Regional Land Use Policy

Gloucester, 27 October 2012



# About EDO NSW

- A community legal centre specialising in public interest environmental law.
- We help people who want to protect the environment through law.
- Our reputation is built on:
  - **Successful environmental outcomes using the law**  
With over 25 years' experience in environmental law, EDO NSW has a proven track record in achieving positive environmental outcomes for the community.
  - **Broad environmental expertise**  
EDO NSW is the acknowledged expert when it comes to the law and how it applies to the environment.
  - **Independent and accessible services**  
As a non-government and not-for-profit legal centre, our services are provided without fear or favour.

# Outline: Strategic Regional Land Use policy package

- Background to the policy package – balancing mining and CSG with protecting agricultural land and water
- The policy package consists of:
  1. Strategic Regional Land Use Plans (SRLUPs)
  2. Aquifer Interference Policy (AIP)
  3. Codes of Practice for Coal Seam Gas
  4. A range of initiatives regarding CSG activities

# Strategic Regional Land Use Plans (SRLUPS)

1

- Government maps 'Strategic Agricultural Land'

2

- Maps are incorporated into Strategic Regional Land Use Plans or Regional Strategies

3

- Mapped land will trigger the 'Gateway Process' for State Significant mining and CSG proposals

# What is 'Strategic Agricultural Land'?

- Highly productive land that has unique natural resource characteristics or socio-economic value.
- Two types:
  1. Biophysical Strategic Agricultural Land; and
  2. Critical Industry Clusters.
- The Strategic Regional Land Use Plans contain criteria for determining whether land meets the definition.
- Site specific verification still needed

## What is the 'Gateway Process'?

- Upfront assessment of the impacts of State significant mining and CSG proposals on Strategic Agricultural Land.
- Assessment undertaken by independent panel of experts in fields such as agricultural science, water and mining.
- Proposal is assessed against set criteria to determine whether it meets the criteria.
- Focus on land and water impacts – not socio-economic impacts (which will be assessed at a later stage).
- Applies to projects that extend an beyond existing mining or petroleum lease areas or where a new lease is required.

# Passing the Gateway

- Proposals that meet the Gateway criteria receive an unconditional Gateway Certificate.
- Proposals that cannot meet the criteria receive a conditional Gateway Certificate.
- The project is then ready to undergo development assessment (planning system).



Photo: Leonard John Matthews

## Implementation and enforcement

- The gateway process will be included in the State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007.
  - SEPPs are legally binding.
  - Changes will be publicly exhibited and community can comment.
  - SEPPs are likely to be removed from planning system as part of the ongoing Review.

# Aquifer Interference Policy

- Applies to the whole State.
- 1. Clarifies that all water 'take' needs to be accounted for and licenced.
- 2. Sets out how potential impacts to aquifers should be assessed (minimal impacts)
- 3. Ensures that these impacts are considered upfront as part of the assessment process for mining and CSG proposals either:
  - Through the Gateway Process; or
  - At the development assessment stage.

# Licensing take

- A water access licence is required to take water from a water source.
- Separate licences are needed to account for the take from all individual water sources (e.g. where taking from groundwater draws down on surface water).
- Cannot be granted unless Minister is satisfied that no more than minimal harm will be done to the water source as result of taking the water.
- It is proponent's responsibility to ensure they hold the necessary licences (with sufficient water allocation) to account for all water taken as part of an aquifer interference activity – for the life of the activity and after it has ceased

# Assessing aquifer impacts

1

- Office of Water – scientific assessment of the project against ‘minimal impact considerations’

2

- Minister for Primary Industries provides advice on aquifer impacts during the Gateway or development assessment stages

3

- This advice is made public and must be taken into account by the Gateway Panel or consent authority

## What are the minimal impact considerations?

- Groundwater sources are categorised as either ‘highly productive’ or ‘less productive’.
- Thresholds for minimal impact considerations have been developed for each highly productive and less productive groundwater source.
- The thresholds deal with water table, water pressure and water quality.

## How are the minimal impact considerations applied?

- For each measure – water table, water pressure and water quality – there are two levels of minimal impact considerations (thresholds).
- A proposal is measured against these thresholds in order to determine its impact on the water source and appropriate mitigation, prevention or avoidance strategies.
- An adaptive management approach is taken to proposals that don't meet the thresholds.

## What else will be considered by Office of Water?

- Proponent's ability to demonstrate that they can obtain the necessary licences in order to account for the take of water from the source.
- Proponent's ability to demonstrate that the proposal can prevent the take of water where a licence cannot be obtained.
- Proponent can show that proposed remedial actions are in place for impacts greater than those that are approved.
- Issues relating to acid sulphate soils and water logging or water table rise

## What else will be considered?

- With regards to CSG proposals, the advice will also consider:
  - Whether the design, construction and operation of a bore is likely to modify the existing hydraulic connection between aquifers
  - Whether fracking activities are likely to modify the existing hydraulic connection between aquifers
  - The method of disposal of extracted water

## What happens next?

- The Gateway will consider the Minister's advice before issuing a Gateway Certificate.
- The Gateway Certificate may include conditions relating to water as per the advice.

OR

- The consent authority will consider the advice before determining a development application.
- If consent is granted, the Office of Water will recommend conditions of consent and conditions to be attached to the water access licence.

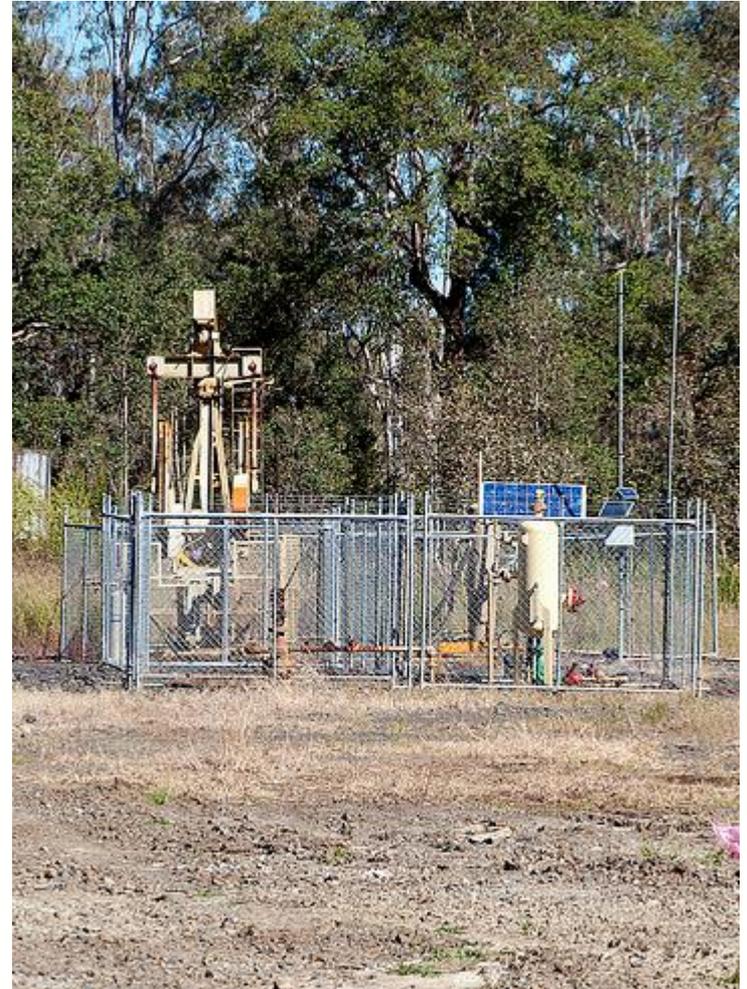
## Implementation and enforcement

- The Aquifer Interference Policy itself is not legally binding.
- Many of its provisions will be incorporated into the *Water Management Act* and the *Water Management Regulation*.

# Codes of Practice for Coal Seam Gas

- 2 Final Codes of Practice for:
  - Fracture stimulation activities
  - Well integrity
- 1 Draft Code of Practice for:
  - coal seam gas exploration

Photo: Jeremy Buckingham MLC



# Code of Practice for fracture stimulation activities

- Applies to hydraulic fracturing or fracing activities.
- Covers a range of issues relating to fracing
  - Principles – what *should* be achieved
  - Mandatory requirements- what *must* be achieved
- Issues:
  - Fracture Stimulation Management Plan
  - Stakeholder consultation
  - Fracture stimulation design
  - Risk assessment
  - Use of chemicals
  - Water resources
  - Monitoring

## Code of Practice for well integrity

- Applies to the design, construction, production, maintenance and abandonment of CSG wells in NSW
- Provide a minimum set of requirements for:
  - Ensuring the health and safety of workers and landholders
  - Identifying and managing risks to the environment
  - Sourcing water
  - Managing waste products
  - Notifying landholders and other stakeholders of specified well operations
  - Implementing regulatory requirements

## Draft Code of Practice for CSG exploration

- Aims to establish a best practice framework for CSG exploration companies when dealing with landholders and the general community.
- Provides guidance on:
  - Approaching landholders
  - Negotiating access arrangements
  - Notifying the community
  - Managing impacts on water resources

## Implementation and enforcement

- The Codes are not legally binding in their own right.
- Compliance with the Codes will be a condition of title.
- Conditions of title are legally binding.

## Other initiatives regarding CSG activities

- Ban on the use of evaporation ponds.
- Ban on the use of BTEX chemicals in fracking.
- New Community Consultation Guidelines for CSG exploration
- Requirement for an Agricultural Impact Statement at the exploration stage.
- REFs to be published on the Division of Resources and Energy website.
- Allow public comment on exploration licence applications
- New Industry Levy.

## Further commitments

- Commitment to publish median compensation payments.
- Commitment to provide a standardised land access arrangement.
- New Regional Community Funds.
- New land access mediation process.
- New rehabilitation criteria.

# New Land and Water Commissioner

- Appointed by NSW Government to:
  - Provide independent advice to the community regarding exploration activities on Strategic Agricultural Land
  - Facilitate consultation between government, industry and the community
  - Oversee the standard access arrangement
  - Advise landholders on:
    - Exploration licence applications
    - Exploration activities
    - Strategic Regional Land Use Plans
    - Assessment processes relating to mining and CSG
    - Compliance and enforcement matters
    - Landholder rights, access arrangements and compensation