



Mining and Coal Seam Gas

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Overview

This Fact Sheet explains how mining and coal seam gas (CSG) projects are assessed and approved.

For a comprehensive guide to mining and CSG law in NSW, read our legal guide [Mining Law in New South Wales: A Guide for the Community](#)

Legislative framework

In NSW, mining is regulated under the:

- [Mining Act 1992 \(NSW\)](#)
- [Mining Regulation 2010 \(NSW\)](#)

Coal seam gas (CSG) is defined as a type of petroleum. The onshore exploration and production of CSG is regulated under the following laws:

- [Petroleum \(Onshore\) Act 1991 \(NSW\)](#)
- [Petroleum \(Onshore\) Regulation 2007 \(NSW\)](#)

¹ http://www.edonsw.org.au/legal_advice

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Both mining and CSG are also regulated by the:

- [Environment Protection and Biodiversity Conservation Act 1999 \(Cth\)](#)
- [Environment Protection and Biodiversity Conservation Regulations 2000 \(Cth\)](#)
- [Environmental Planning and Assessment Act 1979 \(NSW\)](#)
- [Environmental Planning and Assessment Regulation 2000 \(NSW\)](#)
- [State Environmental Planning Policy \(State and Regional Development\) 2011 \(NSW\)](#)
- [State Environmental Planning Policy \(Mining, Petroleum Production and Extractive Industries\) 2007 \(NSW\)](#)
- [Strategic Regional Land Use Policies](#)
- [Aquifer Interference Policy](#)
- [Well Integrity Code of Practice \(CSG only\)](#)
- [Fracture Stimulation Activities Code of Practice \(CSG only\)](#)

Who owns minerals and petroleum?

As a general rule, the Crown owns minerals and petroleum, even on privately owned land.² Because almost all minerals and petroleum are owned by the Crown and not the landowner, the NSW Government has the power to authorise others to look for and remove them from land.

Responsible Ministers and Departments

The NSW Minister for Resources is responsible for regulating mining and CSG activities in NSW. The responsible Department is the [NSW Department of Industry - Division of Resources and Energy](#).

The NSW Minister for Planning, the [NSW Department of Planning and Environment](#), the Planning Assessment Commission may be responsible for assessing and approving certain mining developments, depending on the type of activity being proposed.

The NSW Environment Protection Authority (EPA) is the lead regulator for CSG activities in NSW once they have commenced. The EPA is responsible for the

² *Coal Acquisition Act 1981 (NSW)*, s 5; *Mining Act 1992 (NSW)*, s 282; *Petroleum (Onshore) Act 1991 (NSW)*, s 6.

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enforcement of the various approvals required for CSG, including development consent and conditions, pollution, and water use.³

Types of approvals

Mining and CSG companies require permission (in the form of a title) to access minerals and petroleum. The Minister for Resources is usually responsible for granting these titles, which include:

- Exploration licences;
- Assessment leases; and
- Mining/petroleum production leases.

In addition, some form of development consent is often needed. The Minister for Planning or the [Planning Assessment Commission \(PAC\)](#) is commonly the consent authority.

Other approvals are often necessary before a mining or CSG project can commence. For example, the Environment Minister may have a role to play if the activities relate to a national park, or a pollution licence may be required from the [EPA](#).

Exploration licences

Exploration involves looking for minerals or petroleum and testing whether the land contains a commercial amount of the resource. An exploration licence gives the holder the exclusive right to explore for specified minerals or petroleum within the area specified in the licence.⁴ Exploration licences can be issued for up to 6 years and are renewable.⁵

Process for issuing an exploration licence

1. Applicant lodges an application

Applications for coal and CSG exploration licences can only be lodged in response to an invitation from the Minister for Resources.⁶ Applications are lodged with the Secretary of the Department of Industry.⁷

³ See: <http://www.epa.nsw.gov.au/licensing/csgfaqs.htm>.

⁴ *Mining Act 1992* (NSW) s. 29; *Petroleum (Onshore) Act 1991* (NSW), s. 31.

⁵ *Mining Act 1992* (NSW), s. 27; *Petroleum (Onshore) Act 1991* (NSW), s. 31.

⁶ *Mining Act 1992* (NSW), ss 13, 368A, 13C, Sch 1A; *Petroleum (Onshore) Act 1991* (NSW), ss 8, 11, Sch 1A. Invitations will be published in a newspaper circulating generally throughout the State, and in one or more newspapers circulating in the locality in which the land concerned is situated. If a company already holds a mineral title the competitive selection process does not apply in relation to application for a prospecting title for an operational allocation purpose.

⁷ *Mining Act 1992* (NSW), s 13; *Petroleum (Onshore) Act 1991* (NSW), s 11.

2. The applicant notifies the public of the application

Affected landholders do not have to be personally notified that an exploration licence has been applied for over their land. However, if the licence relates to coal, the applicant must publish a notice of their application in both State-wide and local newspapers within 45 days of receiving confirmation from the Secretary that the application has been lodged.⁸ These notices must contain a plan of the proposed exploration area.⁹

There is no requirement for applications for CSG exploration licences to be publicly notified.

For both coal and CSG, a list of exploration licence applications is published on the Division of Resources and Energy website,¹⁰ and in the NSW Government Gazette every Friday.¹¹

EDO NSW has a free weekly [eBulletin](#) that notifies readers of applications for exploration licences.¹²

3. Decision

An Assessment Panel made up of members from the Department of Premier and Cabinet, NSW Treasury and the Division of Resources and Energy assesses the application and makes a recommendation but the decision to approve or reject the application is made by the Minister for Resources. The Minister must not make a decision before taking into account the need to conserve and protect the environment.¹³ Under the competitive selection process, the Minister also seeks the endorsement of the Government before granting the title.¹⁴

Exploration licences for coal or CSG can be granted for a period of up to 6 years. CSG exploration licences can be granted over an area of up to 140 blocks.¹⁵ There is no limitation on the size of the exploration area for coal.¹⁶

Fit and proper person

The Minister can refuse an application for a coal or CSG title if they are of the opinion that the applicant is not a 'fit and proper person' to hold a title.¹⁷ In determining this, the Minister can take into consideration a number of things, including:¹⁸

⁸ *Mining Act 1992* (NSW), s. 13A; *Mining Regulations 2010* (NSW), cl. 15(1), 21(1).

⁹ *Mining Act 1992* (NSW) s. 13A.

¹⁰ See: <http://www.resources.nsw.gov.au/titles/current-coal-and-petroleum-explorationlicence-applications/current-coal-exploration-licence-applications>.

¹¹ See: <http://www.nsw.gov.au/gazette>.

¹² See: <http://www.edonsw.org.au/ebulletin>

¹³ *Mining Act 1992* (NSW), Sch 1B Part 2; *Petroleum (Onshore) Act 1991* (NSW), Sch 1B Part 2.

¹⁴ See: http://www.resourcesandenergy.nsw.gov.au/data/assets/pdf_file/0011/579395/Overarching-Policy-Framework.pdf.

¹⁵ *Petroleum (Onshore) Act 1991* (NSW), s 30. A block is a 'graticular' section of the Earth's surface. Graticular sections are made up of 5 minutes of latitude and 5 minutes of longitude

¹⁶ *Mining Act 1992* (NSW), s 25; *Mining Regulation 2016* (NSW), cl 16, Sch 2.

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- criminal conduct issues;
- record of compliance with relevant legislation;
- technical competence in regard to management of activities or works;
- whether the company or a director of that company is not of good repute;
- whether the company or a director of that company is not of good character, with particular regard to honesty and integrity; and
- financial capacity to comply with obligations under the title.

If the licence is granted, it can be subject to conditions.¹⁹ Conditions can address a range of issues and are often designed to minimise or avoid environmental impacts. For example, they may require the applicant to take steps to protect the environment from harm or mitigate such harm, or to rehabilitate the land or water that has been affected by exploration activities.²⁰ Importantly, conditions are not limited to land that is covered by the exploration licence, but can also apply to other land which may be impacted by the exploration activities.²¹

Conditions are legally binding. If the conditions are being breached, the Minister, the Secretary or an inspector can direct the licence holder to take steps to comply with the condition within a set period of time.²² It is an offence to not comply with such a direction.²³

If the licence holder does not comply with a direction to rehabilitate the land, the work can be undertaken by the Minister at the licence holder's expense.²⁴

Requirement for a security deposit

One important condition that can be attached to a title is for the applicant to give and maintain a financial security to ensure the applicant fulfils their legal obligations, including those imposed by the conditions.²⁵ This condition is not often applied in practice, but is one way the Government could help ensure that mining and CSG companies rehabilitate the site properly after the activities are finished.

¹⁷ *Mining Act 1992* (NSW), s 380A; *Petroleum (Onshore) Act 1991* (NSW), s 24A.

¹⁸ *Mining Act 1992* (NSW), s 380A(2); *Petroleum (Onshore) Act 1991* (NSW), s 24A(2).

¹⁹ *Mining Act 1992* (NSW), s 22, Sch 1B; *Petroleum (Onshore) Act 1991* (NSW), Sch 1B.

²⁰ *Mining Act 1992* (NSW), Sch 1B; *Petroleum (Onshore) Act 1991* (NSW), Sch 1B.

²¹ *Mining Act 1992* (NSW), Sch 1B; *Petroleum (Onshore) Act 1991* (NSW), Sch 1B.

²² *Mining Act 1992* (NSW), s 240; *Petroleum (Onshore) Act 1991* (NSW), s 77.

²³ *Mining Act 1992* (NSW), s 240C; *Petroleum (Onshore) Act 1991* (NSW), s 78A.

²⁴ *Mining Act 1992* (NSW), s 241; *Petroleum (Onshore) Act 1991* (NSW), s 78D.

²⁵ *Mining Act 1992* (NSW), ss 261B, 261BA; *Petroleum (Onshore) Act 1991* (NSW), ss 106B, 106C.

4. The licence holder undertakes an environmental assessment

If the exploration licence is granted, the licence holder still needs to get an activity approval before undertaking the actual exploration work. The Minister for Resources must examine and take into account to the fullest extent possible all matters that are likely to affect the environment if the activity goes ahead.²⁶ After considering the environmental impacts, the Minister can then either approve or refuse the activity.²⁷ Binding conditions can be attached.

The licence holder needs to prepare a report that assesses the likely impacts of the exploration on the environment. This is usually done through a Review of Environmental Factors (REF).²⁸ A REF is a preliminary study that provides a basic overview of the potential environmental impacts of a proposed project, and any measures that will be taken to minimise those impacts.

A REF is usually prepared by an environmental consultant who is engaged by the applicant.

REFs are only published once the activity has been approved.²⁹ The public therefore doesn't get the opportunity to comment on the REF.

If the REF reveals that there is likely to be a significant environmental impact, the licence holder will need to undertake an Environmental Impact Statement (EIS). An EIS is a much more detailed assessment of the possible environmental impacts of the development.³⁰ In cases where there is likely to be a significant effect on threatened species, populations, ecological communities or their habitat, a Species Impact Statement (SIS) may also be required.³¹ Where an EIS or a SIS is required, the study must be made publicly available and the community must be given an opportunity to make submissions for at least 30 days.³²

Can any exploration activities go ahead without undergoing an environmental assessment?

Certain low intensity exploration activities don't require environmental assessment unless they are on critical habitat or land that is part of a wilderness area. These include:³³

²⁶ *Environmental Planning and Assessment Act 1979* (NSW), s 111.

²⁷ *Environmental Planning and Assessment Act 1979* (NSW), s 112(4).

²⁸ See Department of Industry, 2015, *Guideline for Preparing a Review of Environmental Factors*: <http://www.resourcesandenergy.nsw.gov.au/miners-and-explorers/codes-and-guidelines/guidelines/guideline-for-preparing-a-review-of-environmental-factors>

²⁹ To find the REF go to: <http://www.resourcesandenergy.nsw.gov.au/miners-and-explorers/applications-and-approvals/environmental-assessment/ref>. You will need to know the year the activity you are interested in was approved.

³⁰ *Environmental Planning and Assessment Act 1979* (NSW), s 112.

³¹ *Environmental Planning and Assessment Act 1979* (NSW), s 112.

³² *Environmental Planning and Assessment Act 1979* (NSW), s 113.

³³ *Environmental Planning and Assessment Act 1979* (NSW), s 76; *State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007*, cl 10.

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- the construction, maintenance and use of equipment for the monitoring of weather, noise, air, groundwater or subsidence;
- geological mapping and airborne surveying;
- sampling and coring using hand-held equipment;
- geophysical (but not seismic) surveying and downhole logging; and
- accessing areas by vehicle that does not involve the construction of an access way such as a track or road.

For all other coal and CSG exploration activities, the applicant needs to lodge their environmental assessment as part of an activity approval application to the Division of Resources and Energy.³⁴

Even if an activity approval has been granted, exploration activities on private land cannot commence without an access arrangement being in place between the mining or CSG company and the landholder.

Renewals

Where an application has been made for a renewal of a title, the Minister can renew or refuse the application.³⁵

The Minister may refuse to renew an application on any ground, particularly where the applicant has breached the law or the conditions attached to the approval.³⁶

Does the public get a say?

While there is no legal right for the public to comment on whether an exploration licence is granted, it is Government policy to allow the public to [comment](#) on applications for coal and CSG exploration licences.³⁷ However, comment will only be sought on the effects of *exploration*.³⁸ Comments on the potential impacts of any future mining or petroleum production will not be considered.

Where a licence is being renewed, there is no legal requirement to inform the public of the renewal application and no formal opportunity for the community to comment.

If the project needs development consent there will be further opportunities for the public to have a say.

³⁴ See Department of Industry, 2015, *Assessment Requirements for Exploration Activities*: http://www.resourcesandenergy.nsw.gov.au/_data/assets/pdf_file/0006/565962/ESG5-Assessment-Requirements-for-Exploration-Activities.pdf

³⁵ *Mining Act 1992* (NSW), s 114(1); *Petroleum (Onshore) Act 1991* (NSW), s 19(2B).

³⁶ *Mining Act 1992* (NSW), s 114, Sch 1B; *Petroleum (Onshore) Act 1991* (NSW), s 19, Sch 1B.

³⁷ See: <http://www.resources.nsw.gov.au/community-information/comment>.

³⁸ Department of Trade and Investment, Division of Resources and Energy, 2011, *Public Comment Process for the exploration of coal and petroleum, including coal seam gas*, available at: <http://www.resources.nsw.gov.au/community-information/comment>.

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Affected landholders will also get a say on what happens to their land if they choose to negotiate an access arrangement with the company.

Are there any restrictions on exploration?

Generally, exploration licences can be granted over any land, including privately owned land.³⁹

However, there are some restrictions which mostly relate to the rights of other title holders. For example, an exploration licence cannot be granted over land that is subject to an existing title such as another exploration licence.⁴⁰

There are also some restrictions on where exploration can take place. These are designed to protect certain land, including some public places and some privately owned land. These restrictions are outlined below.

1. Protections for houses, gardens and other significant improvements

Exploration on the *surface* of private land is restricted to protect the assets of the landholder. As a general rule, exploration on the surface of land cannot come within:⁴¹

- 200 metres of a dwelling house that is the principal place of residence of the person occupying it; or
- 50 metres of a garden for coal; or
- 50 metres of a garden, vineyard or orchard for CSG.

Exploration also cannot occur over any 'significant improvement'.⁴²

Exploration can only go ahead in these areas with the written consent of the landowner and, in the case of a dwelling house, with the written consent of the occupier as well.⁴³ Once written consent is given, it cannot be taken back.⁴⁴

It is also possible for mining and CSG exploration to take place *under* these areas.

A 'significant improvement' is a work or structure that:⁴⁵

- a. is a substantial and valuable improvement to the land, and
- b. is reasonably necessary for the operation of the landholder's lawful business or use of the land, and

³⁹ *Mining Act 1992* (NSW), s 24 (3); *Petroleum (Onshore) Act 1991* (NSW), s 9.

⁴⁰ *Mining Act 1992* (NSW), s 19; *Petroleum (Onshore) Act 1991* (NSW), s 9.

⁴¹ *Mining Act 1992* (NSW) s 31; *Petroleum (Onshore) Act 1991* (NSW) s 72.

⁴² *Mining Act 1992* (NSW) s 31; *Petroleum (Onshore) Act 1991* (NSW) s 72.

⁴³ *Mining Act 1992* (NSW) s 31; *Petroleum (Onshore) Act 1991* (NSW), s 72.

⁴⁴ *Mining Act 1992* (NSW) s 31(3); *Petroleum (Onshore) Act 1991* (NSW), s 72(2).

⁴⁵ *Mining Act 1992* (NSW), Dictionary; *Petroleum (Onshore) Act 1991* (NSW), s.72(6).

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- c. is fit for its purpose (immediately or with minimal repair), and
- d. cannot reasonably co-exist with the exercise of rights under the exploration licence or the access arrangement without the full and unencumbered operation or functionality of the work or structure being hindered, and
- e. cannot reasonably be relocated or substituted without material detriment to the landholder.

The restriction only applies to the actual land containing the improvement, not the entire parcel of land upon which there are improvements.⁴⁶

For both coal and CSG, disputes over whether something is a 'significant improvement' will be decided by the Land and Environment Court. Either party can apply to the Court for a ruling.⁴⁷

2. Protections for water

For coal, if an exploration licence is granted over the surface of land, a landholder who is entitled to use the land for stock watering or water drainage purposes is entitled to free and uninterrupted access for those purposes to the water in any stream, lagoon or swamp either on the land or on neighbouring land.⁴⁸ This does not apply to CSG.

3. Protections for exempted areas

Exempted areas are places where no exploration activities can take place under an exploration licence without the specific consent of the Minister.⁴⁹

Exempted areas tend to be land that is held for a public purpose. Examples include State Forests, Travelling Stock Reserves, State Conservation Areas, public reserves, community land, Crown land and land held on trust as a racecourse, cricket ground, recreation reserve, park or permanent common.⁵⁰

The Minister can, however, issue an 'exempted area consent' to allow for exploration in these areas.⁵¹

4. Protections for National Parks and other Special Areas

It is generally unlawful to explore in a National Park, historic site, nature reserve, karst conservation reserve or Aboriginal area.⁵² However, a special Act of Parliament

⁴⁶ *Ulan Coal Mines Ltd v Minister for Mineral Resources* [2007] NSWSC 1299.

⁴⁷ *Mining Act 1992* (NSW), s 31(5); *Petroleum (Onshore) Act 1991* (NSW), s 72(4).

⁴⁸ *Mining Act 1992* (NSW), s 165.

⁴⁹ *Mining Act 1992* (NSW), s 30; *Petroleum (Onshore) Act 1991* (NSW), s 70.

⁵⁰ *Mining Act 1992* (NSW), Dictionary; *Petroleum (Onshore) Act 1991* (NSW), s 70.

⁵¹ *Mining Act 1992* (NSW) s 30; *Petroleum (Onshore) Act 1991* (NSW), s 70.

⁵² *National Parks and Wildlife Act 1974* (NSW), ss. 41, 54, 58O and 64.

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can authorise exploration in these areas⁵³ or the reserved status of the land could be revoked to allow for exploration to occur.

It is also possible for the NSW Minister for Environment to approve exploration in these areas if the exploration is being undertaken on behalf of the Government.⁵⁴

5. Protections for exclusion zones and 'off limits' areas

New CSG exploration is prohibited on or within 2 kilometres of the following CSG exclusion zones:⁵⁵

1. Land within a residential zone.
2. Future residential growth area land.⁵⁶
3. Additional rural village land.⁵⁷

New CSG exploration is also prohibited on 'critical industry cluster land'.⁵⁸ This is land with a concentration of equine (horse) and viticulture (wine) industries that has been mapped by the NSW Government in the Upper Hunter.⁵⁹

These exclusion zones do not apply to coal. However, open cut coal mines are prohibited in parts of two local government areas – Lake Macquarie City Council and the Upper Hunter Shire Council.⁶⁰

The Governor of NSW can create further exclusion zones or 'off limits' areas by amending the Mining SEPP.⁶¹

Access Arrangements

What is an access arrangement?

An exploration licence can be granted over private land without the landholder's consent. However, no exploration can take place on land until an access arrangement is in place.⁶² An access arrangement sets out the terms upon which the exploration company can access land to explore for minerals. The exploration

⁵³ *National Parks and Wildlife Act 1974* (NSW), s. 41.

⁵⁴ *National Parks and Wildlife Act 1974* (NSW), ss. 41(4), 54, 58O and 64. The Minister for Resources can nominate a person to undertake the exploration on behalf of the Government.

⁵⁵ 'CSG developments' include development for the purpose of CSG exploration: SEPP (Mining, Petroleum Production and Extractive Industries) 2007, cl 9A, 3. But note that pipelines that are ancillary to coal seam gas development are not prohibited in the 2km buffer zone.

⁵⁶ Currently the North West and South West Growth Centres of Sydney; Forrester's Beach on the Central Coast; Nabyac, Forster, Tea Gardens, Hawks Nest and Bulahdelah on the Mid North Coast.

⁵⁷ Currently part of Goonengerry in the Byron LGA; parts of Broke and Bulga, all of Camberwell and Jerrys Plains in the Singleton LGA; all of Modanville in the Lismore LGA; all of Sutton Forrester in the Wingecarribee LGA.

⁵⁸ SEPP (Mining, Petroleum Production and Extractive Industries) 2007, cl 9A.

⁵⁹ See: <http://www.planning.nsw.gov.au/Policy-and-Legislation/Mining-and-Resources/Critical-Industry-Clusters-in-the-Upper-Hunter>.

⁶⁰ SEPP (Mining, Petroleum Production and Extractive Industries) 2007, cl 9, Sch 1.

⁶¹ SEPP (Mining, Petroleum Production and Extractive Industries) 2007, cl 9, Sch 1.

⁶² *Mining Act 1992* (NSW), s 140; *Petroleum (Onshore) Act 1991* (NSW), s 69C.

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activities must be carried out in accordance with the terms of the access arrangement (and the exploration licence).

Access arrangements are only legally required at the exploration stage.

What is the process for making an access arrangement?

1. Licence holder serves the landholder with an intention to seek an access arrangement

The mining or CSG company who holds the exploration licence will serve the landholder with a written notice of their intention to enter into an access arrangement.⁶³ The notice will include a draft access arrangement. Access arrangements can range from simple one-page documents to detailed contracts.

There is a template access arrangement for minerals and coal, use of which is voluntary.⁶⁴ This template does not apply to CSG, but there is a code of practice for negotiating access arrangements for CSG exploration.⁶⁵

2. The landholder and licence holder negotiate the terms of the access arrangement

The draft access arrangement can be used as the basis for negotiations or the parties can start negotiations from scratch. Landholders should seek independent legal advice before signing anything.

The licence holder must pay the reasonable costs of the landholder in negotiating the access arrangement.⁶⁶ The maximum amount determined by the Minister as of December 2016 is \$2,500.

3. The access arrangement is finalised or the parties may go to arbitration

If the parties reach agreement, about the access arrangement, all the parties will sign the arrangement and it will become binding on them.⁶⁷

Landholders who do not wish to negotiate do not have to. However, if no agreement can be reached within 28 days of the landholder being notified of the licence holder's intention to seek an access arrangement, the licence holder *may* choose to start the arbitration process.⁶⁸

What happens at arbitration?

⁶³ *Mining Act 1992* (NSW), s 142; *Petroleum (Onshore) Act 1991* (NSW), s 69E.

⁶⁴ See: <http://www.resourcesandenergy.nsw.gov.au/landholders-and-community/minerals-and-coal/template-for-land-access>.

⁶⁵ *Petroleum (Onshore) Act 1991* (NSW), ss 69DA, 69DB; *Petroleum (Onshore) Regulation 2016* (NSW), cl 16A; NSW Department of Industry, Skills and Regional Development, Division of Resources and Energy, *Exploration code of practice: petroleum land access* (1 December 2016): http://www.resourcesandenergy.nsw.gov.au/_data/assets/pdf_file/0005/688595/PUB16-428-FINAL-Exploration-code-of-practice-petroleum-land-access.pdf.

⁶⁶ *Mining Act 1992* (NSW) s 142(2A); *Petroleum (Onshore) Act 1991* (NSW), s 69E(2A).

⁶⁷ *Mining Act 1992* (NSW), s 142(3); *Petroleum (Onshore) Act 1991* (NSW), s 69E(3).

⁶⁸ *Mining Act 1992* (NSW), ss. 139, 140(b), 143 – 153.

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Any person can be chosen as the arbitrator so long as both parties agree.⁶⁹ If the parties cannot agree, either party can apply to the Secretary of the Department of Industry who will choose an arbitrator from a list.⁷⁰

The arbitrator will set a time and place for conducting a hearing.⁷¹ Both the licence holder and the landholder/s are allowed to appear at the hearing and be heard, and also have the right to be represented by an agent or a lawyer.⁷²

The Department of Industry has released guidelines for land access arbitration procedure.⁷³ At all times, the arbitrator must act fairly and in good conscience.⁷⁴

The arbitrator will first try to get the parties to agree through mediation.⁷⁵ If agreement can be reached, then the access arrangement will be entered into.⁷⁶

If the parties cannot agree, the arbitrator will make an interim determination as to whether the licence holder should have access to the land.⁷⁷ If the arbitrator determines that access is to be granted, they will need to prepare a draft access arrangement and serve it on all the parties.⁷⁸

Once an interim determination order and access arrangement have been received, either party has 14 days to apply to the arbitrator to:⁷⁹

- reconsider the question of access to land; or
- vary the terms of the draft access arrangement.

If no such application is made, the interim determination order and draft access arrangement become final.⁸⁰ If an application is made, the arbitrator will set a time and place for a further hearing into the matter.⁸¹ After this further hearing, the

⁶⁹ *Mining Act 1992* (NSW), s 143; *Petroleum (Onshore) Act 1991* (NSW), s 69F.

⁷⁰ *Mining Act 1992* (NSW), s 144; *Petroleum (Onshore) Act 1991* (NSW), s 69G. See the current list of arbitrators: http://www.resourcesandenergy.nsw.gov.au/landholders-and-community/landholders-rights/arbitration_process/current-arbitrators.

⁷¹ *Mining Act 1992* (NSW), s 145; *Petroleum (Onshore) Act 1991* (NSW), s 69H.

⁷² *Mining Act 1992* (NSW), s 146; *Petroleum (Onshore) Act 1991*, NSW), s 69I.

⁷³ *Mining Act 1992* (NSW), s 148A; *Petroleum (Onshore) Act 1991*, NSW), s 69KA; NSW Department of Industry, Skills and Regional Development, Division of Resources and Energy, *Land access arbitration procedure: Mediations and arbitrations under the Mining Act 1992 and the Petroleum (Onshore) Act 1991* (1 December 2016):

http://www.resourcesandenergy.nsw.gov.au/_data/assets/pdf_file/0009/688590/PUB16-543-Land-Access-Arbitration-Procedure.pdf.

⁷⁴ *Mining Act 1992* (NSW), s 148; *Petroleum (Onshore) Act 1991*, NSW), s 69K.

⁷⁵ *Mining Act 1992* (NSW), s 148B; *Petroleum (Onshore) Act 1991*, NSW), s 69KB.

⁷⁶ *Mining Act 1992* (NSW), s 147; *Petroleum (Onshore) Act 1991*, NSW), s 69J.

⁷⁷ *Mining Act 1992* (NSW), s 149; *Petroleum (Onshore) Act 1991* (NSW), s 69L.

⁷⁸ *Mining Act 1992* (NSW), s 149; *Petroleum (Onshore) Act 1991* (NSW), s 69L.

⁷⁹ *Mining Act 1992* (NSW), s 150; *Petroleum (Onshore) Act 1991* (NSW), s 69M.

⁸⁰ *Mining Act 1992* (NSW), s 151; *Petroleum (Onshore) Act 1991* (NSW), s 69N.

⁸¹ *Mining Act 1992* (NSW), s 150; *Petroleum (Onshore) Act 1991* (NSW), s 69M.

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arbitrator will make a final determination and serve a copy of the determination on the landholder and the licence holder.⁸²

Either party can appeal the arbitrator's decision

Landholders and licence holders who are unhappy with the arbitrator's decision can apply to the Land and Environment Court for a review of the determination.⁸³ This must be done within 28 days of an interim determination being served, or within 14 days of a final determination being served.⁸⁴

The decision of the Court is final.

What rights does an access arrangement give the licence holder?

This will depend on the terms of the access arrangement. Generally, the access arrangement will allow the licence holder to enter land at certain times to do certain things authorised by the exploration licence.

Beyond that, any restrictions will be decided by the terms of the access arrangement. The more detailed and thorough the access arrangement is the more protections will be in place for the landholder.

What happens if the licence holder breaches the access arrangement?

The licence holder can only carry out exploration activities in accordance with the access arrangement.⁸⁵

If the licence holder breaches the access arrangement, the landholder is allowed to deny the licence holder access until they stop breaching the arrangement, or the breach is remedied to the reasonable satisfaction of an arbitrator appointed by the Secretary.⁸⁶

Where a breach has occurred, a landholder can request the Secretary to appoint an arbitrator to decide how the breach should be fixed, or whether the breach has been fixed properly.⁸⁷ The licence holder can also request an arbitrator to be appointed. The Secretary must appoint an arbitrator within 48 hours of being requested to do so, and the arbitrator must deal with the matter within 5 business days of being appointed.

What are the landholder's obligations under an access arrangement?

Once an exploration licence is granted and an access arrangement is finalised, landholders are legally obliged to grant access in accordance with the access arrangement. If a landholder unlawfully prevents the licence holder from accessing

⁸² *Mining Act 1992* (NSW), s 151; *Petroleum (Onshore) Act 1991* (NSW), s 69N.

⁸³ *Mining Act 1992* (NSW), s 155; *Petroleum (Onshore) Act 1991* (NSW), s 69R.

⁸⁴ *Mining Act 1992* (NSW), s 155; *Petroleum (Onshore) Act 1991* (NSW), s 69R.

⁸⁵ *Mining Act 1992* (NSW), s 140(1); *Petroleum (Onshore) Act 1991* (NSW), s 69C(1).

⁸⁶ *Mining Act 1992* (NSW), s 141(4); *Petroleum (Onshore) Act 1991* (NSW), s 69D(4).

⁸⁷ *Mining Act 1992* (NSW), s 141(4); *Petroleum (Onshore) Act 1991* (NSW), s 69D(4).

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their land or carrying out authorised activities, they will be committing an offence. The maximum penalty for this offence is \$11,000.⁸⁸

However, landholders can lawfully deny access to prevent an ongoing breach of the access arrangement by the licence holder.

Assessment leases

An assessment lease is designed to allow the retention of rights over an area where a significant mineral or petroleum deposit has been identified if mining the deposit is not commercially viable in the short term but there is a reasonable prospect that it will be in the longer term. An assessment lease for coal or CSG can be granted for up to 6 years.⁸⁹

Mining and petroleum production leases

It is illegal to mine coal or extract CSG without a mining lease or petroleum production lease.⁹⁰

In order to mine for coal it is first necessary to get a mining lease which is issued by the Minister for Resources. A mining lease allows the holder to prospect and mine on a specified area of land for a specific mineral or group of minerals. It will also allow the holder to carry out primary treatment operations such as crushing, sizing, grading, washing and leaching the ore to separate minerals.⁹¹ Mining leases can be granted for up to 21 years.⁹²

For CSG, pilot production can be authorised under an exploration licence, but in order to move to full production it is first necessary to get a petroleum production lease which is issued by the Minister for Resources. A petroleum production lease allows the holder to conduct petroleum production operations on the land together with the right to construct associated works such as buildings, plant, waterways, roads, pipelines, dams, reservoirs, tanks, pumping stations, tramways, railways, telephone lines, electricity power lines etc.⁹³ A petroleum production lease can be granted for up to 21 years⁹⁴ and must not cover an area greater than 4 blocks.⁹⁵

Once granted, mining and petroleum production leases can be wholly or partially renewed. There are strict requirements for renewing leases, particularly with regards to the timing of renewal applications.⁹⁶ If an application for renewal is made, the

⁸⁸ *Mining Act 1992 (NSW)*, s 378B; *Petroleum (Onshore) Act 1991 (NSW)*, s 136(3).

⁸⁹ *Mining Act 1992 (NSW)*, s 45; *Petroleum (Onshore) Act 1991 (NSW)*, s 35.

⁹⁰ *Mining Act 1992 (NSW)*, s 5; *Petroleum (Onshore) Act 1991 (NSW)*, s 7.

⁹¹ *Mining Act 1992 (NSW)*, s 73.

⁹² *Mining Act 1992 (NSW)*, s 71.

⁹³ *Petroleum (Onshore) Act 1991 (NSW)*, s 41.

⁹⁴ *Petroleum (Onshore) Act 1991 (NSW)*, s 45.

⁹⁵ *Petroleum (Onshore) Act 1991 (NSW)*, s 44. A block is a 'graticular' section of the Earth's surface.

Graticular sections are made up of 5 minutes of latitude and 5 minutes of longitude.

⁹⁶ *Mining Act 1992 (NSW)*, s 113; *Petroleum (Onshore) Act 1991 (NSW)*, s 19.

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lease will continue to operate until the lease is renewed or cancelled, even if the original lease expires.⁹⁷

In addition to a mining or petroleum production lease, development consent is also needed. This is issued by the Minister for Planning (or a delegate such as the Planning Assessment Commission).

Process for issuing a mining lease or petroleum production lease

1. Applicant lodges an application

Applications can be initiated by the applicant or can be in response to an invitation for tenders (coal) or applications (CSG) made by the Minister.⁹⁸

Before inviting tenders for a mining lease, the Minister must publish a notice in a newspaper circulating generally in the State and in one or more newspapers circulating in the local area.⁹⁹

Applications are lodged with the Secretary of the Department of Industry.¹⁰⁰ For coal, the application must describe the proposed mining area.¹⁰¹ For CSG, the application must be accompanied by a map or plan that shows the boundaries of the proposed petroleum production area.¹⁰² The application must also be accompanied by a program of works that the applicant proposes to carry out.¹⁰³

All applications must be accompanied by a fee.¹⁰⁴

2. The applicant notifies the public of the application

For coal, the applicant must publish a notice in both a State-wide newspaper and local newspaper within 45 days of lodging the application for a mining lease.¹⁰⁵ The notice must contain a plan of the proposed mining area.¹⁰⁶

Affected landholders also have a right to be personally notified of a mining lease application if it extends to the *surface* of their land. This notice should inform landholders of their right to object to the granting of the lease, for example, on the

⁹⁷ *Mining Act 1992* (NSW), s 117; *Petroleum (Onshore) Act 1991* (NSW), s 20.

⁹⁸ *Mining Act 1992* (NSW), ss 51, 52; *Petroleum (Onshore) Act 1991* (NSW), s 42. Invitations are published in a newspaper circulating generally throughout the State, and in one or more newspapers circulating in the locality in which the land concerned is situated (coal), or the NSW Government Gazette (CSG).

⁹⁹ *Mining Act 1992* (NSW), Sch 1 cl 24.

¹⁰⁰ *Mining Act 1992* (NSW), s 51; *Petroleum (Onshore) Act 1991* (NSW), s 11.

¹⁰¹ *Mining Act 1992* (NSW), s 51.

¹⁰² *Petroleum (Onshore) Act 1991* (NSW), s 13.

¹⁰³ *Mining Act 1992* (NSW), s 129A; *Petroleum (Onshore) Act 1991* (NSW), s 14.

¹⁰⁴ *Mining Act 1992* (NSW), ss 51(4); *Petroleum (Onshore) Act 1991* (NSW), s 12. To see a list of fees, visit: <http://www.resourcesandenergy.nsw.gov.au/miners-and-explorers/applications-and-approvals/titles-application-forms/mining-act-fees> and <http://www.resourcesandenergy.nsw.gov.au/miners-and-explorers/applications-and-approvals/titles-application-forms/petroleum-act-fees>.

¹⁰⁵ *Mining Act 1992* (NSW), s 51A; *Mining Regulation 2016* (NSW), cl 26.

¹⁰⁶ *Mining Act 1992* (NSW), s 51A.

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grounds that the land is agricultural land, and to make a claim that there is a significant improvement on the land.¹⁰⁷

For CSG, the applicant must publish a notice in a State-wide newspaper within 21 days of lodging an application.¹⁰⁸ Affected landholders do not have the right to be personally notified.

EDO NSW has a free weekly [eBulletin](#) that notifies readers of applications for coal mining and petroleum production leases.¹⁰⁹

3. The applicant undertakes an environmental assessment

The environmental assessment is undertaken at the development application stage. See below for more information.

4. Decision

The Division of Resources and Energy assesses the application but the decision to approve or reject the application is made by the Minister for Resources.

The Minister must not make a decision before taking into account the need to conserve and protect the environment in or on the land over which the lease is sought.¹¹⁰

The Minister can grant or refuse to grant the lease. However, for CSG, if the applicant held the land under an exploration licence, they are legally entitled to be granted the production lease in respect of the land if they complied with the terms and conditions of the exploration licence and accept the conditions of the proposed petroleum production lease.¹¹¹

A lease may be refused for any number of reasons, including where the Minister decides that the company has an unsatisfactory compliance history.¹¹²

If the lease is granted, it can be subject to conditions.¹¹³ These conditions are in addition to any conditions imposed as part of a development consent.

Conditions can relate to any number of things and are typically designed to avoid or minimise the impacts of the activity. For example, they may require the applicant to take steps to protect or rehabilitate the environment, protect land or water from harm or mitigate such harm.¹¹⁴ Other conditions can require the company to ensure the

¹⁰⁷ *Mining Act 1992* (NSW), Sch 1 cl 21.

¹⁰⁸ *Petroleum (Onshore) Act 1991* (NSW), s 43. *The Land* is often chosen to make such notifications.

¹⁰⁹ To subscribe to the eBulletin, visit: <http://www.edonsw.org.au/ebulletin>.

¹¹⁰ *Mining Act 1992* (NSW), Sch 1B cl 3; *Petroleum (Onshore) Act 1991* (NSW), Sch 1B cl 3.

¹¹¹ *Petroleum (Onshore) Act 1991* (NSW), s 42. Also, granting the lease must not breach the *Environmental Planning and Assessment Act 1979* (NSW) or any other Act.

¹¹² *Mining Act 1992* (NSW), Sch 1B cl 6; *Petroleum (Onshore) Act 1991* (NSW), Sch 1B cl 6.

¹¹³ *Mining Act 1992* (NSW), Sch 1B Part 3; *Petroleum (Onshore) Act 1991* (NSW), Sch 1B Part 3.

¹¹⁴ *Mining Act 1992* (NSW), Sch 1B Part 3; *Petroleum (Onshore) Act 1991* (NSW), Sch 1B Part 3.

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safety of the public.¹¹⁵ Importantly, conditions can apply to land that is not covered by the title, but which may be impacted by the activities.¹¹⁶

One important condition that can be attached to an approval is for the applicant to give and maintain a financial security to ensure the applicant fulfils their legal obligations, including those imposed by the conditions.¹¹⁷

Conditions are legally binding. If conditions are breached, the Secretary can direct the leaseholder to take steps to comply with the condition within a set period of time.¹¹⁸ It is an offence to not comply with a direction.¹¹⁹

If the leaseholder does not comply with a direction to rehabilitate the land, the work can be carried out by the Minister at the leaseholder's expense.¹²⁰

Does the public get a say?

For coal, any person may object to the granting of a mining lease, whether or not their land is covered by the mining lease. Landholders who own agricultural land have special rights to object to the granting of a mining lease over the surface of their land.

For CSG, members of the public, including affected landholders, are not provided with the opportunity to comment on whether the production lease should be granted.¹²¹

For both coal and CSG, government agencies and local councils can object to the granting of a lease.¹²² There is also an opportunity for the public to have a say at the time the development application goes on exhibition under the development consent process

Where a lease is being renewed, there is no legal requirement to inform the public of the renewal application and no formal opportunity for the community to comment.

Are there any restrictions on mining/petroleum production?

Generally, mining and petroleum production leases can be granted over any land, including privately owned land.¹²³

However, there are some restrictions which mostly relate to the rights of other title holders. For example, a mining or petroleum production lease can't be granted over

¹¹⁵ *Mining Act 1992 (NSW)*, Sch 1B Part 3; *Petroleum (Onshore) Act 1991 (NSW)*, Sch 1B Part 3.

¹¹⁶ *Mining Act 1992 (NSW)*, Sch 1B Part 3; *Petroleum (Onshore) Act 1991 (NSW)*, Sch 1B Part 3.

¹¹⁷ *Mining Act 1992 (NSW)*, s 261B; *Petroleum (Onshore) Act 1991 (NSW)*, s 106B.

¹¹⁸ *Mining Act 1992 (NSW)*, s 240; *Petroleum (Onshore) Act 1991 (NSW)*, s 77.

¹¹⁹ *Mining Act 1992 (NSW)*, s 240C; *Petroleum (Onshore) Act 1991 (NSW)*, s 78A.

¹²⁰ *Mining Act 1992 (NSW)*, s 241; *Petroleum (Onshore) Act 1991 (NSW)*, s 78D.

¹²¹ *Mining Act 1992 (NSW)*, Sch 1 cll 26, 28.

¹²² *Mining Act 1992 (NSW)*, Sch 1 Div 1, 3; *Petroleum (Onshore) Act 1991 (NSW)*, Part 4 Div 2, 3.

¹²³ *Mining Act 1992 (NSW)*, s 68; *Petroleum (Onshore) Act 1991 (NSW)*, s 9(3).

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land that is subject to an existing title such as an exploration licence or another lease.¹²⁴

There are also restrictions designed to protect certain land, including some public places and some privately owned land.

1. Protections for houses, gardens and significant improvements

As a general rule, mining and CSG production activities are not permitted on the *surface* of land:¹²⁵

- within 200 metres of a dwelling house that is the principal place of residence of the person occupying it;
- within 50 metres of a garden for coal;
- within 50 metres of a garden, vineyard or orchard for CSG; or
- on which there is a 'significant improvement'.

It is possible for mining and CSG production to go ahead in these areas with the written consent of the landowner and, in the case of a dwelling house, with the written consent of the occupier as well.¹²⁶ Once written consent is given, it cannot be taken back.¹²⁷

It is also possible for mining and CSG production to take place *under* these areas.

For coal, it is important to note that landholder consent is only required if the house, garden or significant improvement existed at the 'relevant date'.¹²⁸ What this date is will depend on the specific circumstances of each situation. For example, the relevant date could be the date that an exploration licence application was lodged over the land by the mining company which is now seeking the mining lease.¹²⁹ This does not apply to CSG.

A 'significant improvement' is a work or structure that:¹³⁰

- a. is a substantial and valuable improvement to the land, and
- b. is reasonably necessary for the operation of the landholder's lawful business or use of the land, and
- c. is fit for its purpose (immediately or with minimal repair), and
- d. cannot reasonably co-exist with the exercise of rights under the lease without the full and unencumbered operation or functionality of the work or structure being hindered, and

¹²⁴ *Mining Act 1992* (NSW), s 58; *Petroleum (Onshore) Act 1991* (NSW), s 9.

¹²⁵ *Mining Act 1992* (NSW), s 62; *Petroleum (Onshore) Act 1991* (NSW), s 72.

¹²⁶ *Mining Act 1992* (NSW), s 62; *Petroleum (Onshore) Act 1991* (NSW), s 72.

¹²⁷ *Mining Act 1992* (NSW), s 62; *Petroleum (Onshore) Act 1991* (NSW), s 72.

¹²⁸ *Mining Act 1992* (NSW), s 62(5).

¹²⁹ *Mining Act 1992* (NSW), s 62(5). It is important to seek legal advice about what the 'relevant date' is in any particular situation.

¹³⁰ *Mining Act 1992* (NSW), Dictionary; *Petroleum (Onshore) Act 1991* (NSW), s.72(6).

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- e. cannot reasonably be relocated or substituted without material detriment to the landholder.

The restriction only applies to the actual land containing the improvement, not the entire parcel of land upon which there are improvements.¹³¹

For coal, a landholder wanting to claim that something is a significant improvement must write to the Secretary within 28 days of being notified of the mining lease application or the intention to invite tenders.¹³² The claim must provide details of the improvements such as what they are and where they are located.¹³³ There is no procedure set out in the law for claiming a significant improvement for CSG applications.

For both coal and CSG, disputes over whether something is a 'significant improvement' will be decided by the Land and Environment Court. Either party can apply to the Court for a ruling.¹³⁴

2. Protections for agricultural land and cultivated land

Coal – Agricultural land

An affected landholder can object to the inviting of tenders or the granting of a mining lease over their land on the grounds that the land, or part of it, is *agricultural land*.¹³⁵

The objection must be made in writing to the Secretary and must be lodged within 28 days of receiving notice of a mining lease application or intention to invite tenders.¹³⁶

Agricultural land is legally defined as:¹³⁷

- land that has been sown with not less than 2 crops of an annual species during the 10 years prior to the invitation for tenders for the mining lease being published or the application for the mining lease being lodged; or
- land that has been sown with 1 crop of an annual species during the 10 years prior to the application for the mining lease being lodged in cases where it would not be reasonable to expect more than one crop to have been sown, and there was a sufficient reason for not having brought the land under cultivation at an earlier date;¹³⁸ or

¹³¹ *Ulan Coal Mines Ltd v Minister for Mineral Resources* [2007] NSWSC 1299.

¹³² *Mining Act 1992* (NSW), Sch 1 cl 23A.

¹³³ *Mining Act 1992* (NSW), Sch 1 cl 23A.

¹³⁴ *Mining Act 1992* (NSW), s 31(5); *Petroleum (Onshore) Act 1991* (NSW), s 72(6A).

¹³⁵ *Mining Act 1992* (NSW), Sch 1 cl 22.

¹³⁶ *Mining Act 1992* (NSW), Sch 1 cl 22.

¹³⁷ *Mining Act 1992* (NSW), Sch 2 cll 1, 2.

¹³⁸ Unless the Secretary believes that more than one crop should reasonably have been sown in that time or that the land should have been brought under cultivation at an earlier date.

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- land on which shade, shelter or windbreak trees are growing, or at any time during the past 10 years, edible fruit or nut trees, vines or any other perennial crop approved by the Secretary or their delegate has been growing; or
- pastures that are sown with seed of a species and at a rate of application, or treated with fertiliser of a composition and at a rate of application, satisfactory to the Secretary or their delegate, and that have, as a result of that sowing or treatment, maintained a level of pasture production that is substantially above that which might be expected of natural pastures; or
- land that is used, to an extent acceptable to the Secretary or their delegate, for the production of grass seed, pasture legume seed, hay or silage; or
- land that has a preponderance of improved species of pasture grasses.

Whether or not land is agricultural land will often depend on what has happened to the land over the 10 years preceding the invitation for tenders or the lodgement of a mining lease application. However, in cases where the mining lease applicant also held an exploration licence over the land, the Secretary will have to decide whether the land was agricultural land for the 10 years preceding the exploration licence application.¹³⁹

If the Secretary finds that the land is agricultural land, a mining lease *cannot* be granted and an invitation for tenders cannot be made without the written consent of the landholder.¹⁴⁰ If the landholder gives consent, the consent cannot be revoked.¹⁴¹

However, a mining lease can be granted over agricultural land if the Minister for Resources considers that the granting of the lease over that land is necessary to give access to any other part of the land to which the lease applies.¹⁴²

A mining lease may not be granted beneath the surface of any agricultural land except at such depths, and subject to such conditions, as the Minister considers sufficient to minimise damage to the surface.¹⁴³

CSG – Cultivated land

As a general rule, the holder of a petroleum production lease cannot carry out any production operations on the *surface* of any land which is under cultivation except with the consent of the landholder.¹⁴⁴

However, the Minister can define an area of cultivated land on which production activities can be carried out if the Minister thinks the circumstances warrant it.¹⁴⁵ If this happens, a compensation assessment has to be made before any production

¹³⁹ *Mining Act 1992* (NSW), Sch 2 cl 2, 3.

¹⁴⁰ *Mining Act 1992* (NSW), Sch 1 cl 23.

¹⁴¹ *Mining Act 1992* (NSW), Sch 1 cl 23(2), 22(4).

¹⁴² *Mining Act 1992* (NSW), Sch 1 cl 23(4).

¹⁴³ *Mining Act 1992* (NSW), Sch 1 cl 23(3).

¹⁴⁴ *Petroleum (Onshore) Act 1991* (NSW), s 71(1).

¹⁴⁵ *Petroleum (Onshore) Act 1991* (NSW), s 71(2).

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activities start to ensure the landholder is compensated for any loss or damage to any crop on the land concerned.¹⁴⁶

There is no legal definition for what constitutes cultivated land; however, cultivation for the growth and spread of pasture grasses is not to be taken to be cultivation unless the Minister thinks the circumstances warrant it.¹⁴⁷ If there is a dispute about whether particular land is cultivated, the Minister has the final say.¹⁴⁸

There is no formal right to object to the granting of a production lease, so there it is unclear where in the process a landholder should raise the fact that the land is under cultivation.

3. Protections for water

There are mandatory requirements for mining and CSG companies to prepare Groundwater Monitoring and Modelling Plans in consultation with the Department of Primary Industries - Water prior to constructing or using any borehole or petroleum well.¹⁴⁹

For coal, if a mining lease is granted over the surface of land, a landholder who is entitled to use the land for stock watering or water drainage purposes is entitled to free and uninterrupted access for those purposes to the water in any stream, lagoon or swamp either on the land or on neighbouring land.¹⁵⁰

4. Protections for exempted areas

There are a number of areas where no CSG production activities can take place under a production lease without the specific consent of the Minister.¹⁵¹ These exempted areas don't apply to coal mining (but do apply to coal exploration).

Exempted areas tend to be land that is held for a public purpose. Examples include State Forests, public reserves, community land, Crown land and land held on trust as a racecourse, cricket ground, recreation reserve, park or permanent common.¹⁵²

Notwithstanding this restriction, the Minister can always issue an 'exempted areas consent' to allow CSG production in such areas.¹⁵³

¹⁴⁶ *Petroleum (Onshore) Act 1991* (NSW), s 71(2A). The assessment can be made between the landholder and the gas company or, if they can't agree, by the Land and Environment Court.

¹⁴⁷ *Petroleum (Onshore) Act 1991* (NSW), s 71(3).

¹⁴⁸ *Petroleum (Onshore) Act 1991* (NSW), s 71(4).

¹⁴⁹ Department of Industry, 2015, *Exploration Code of Practice: Environmental Management*.
<http://www.resourcesandenergy.nsw.gov.au/miners-and-explorers/codes-and-guidelines/codes-of-practice/environmental-management>

¹⁵⁰ *Mining Act 1992* (NSW), s 165.

¹⁵¹ *Petroleum (Onshore) Act 1991* (NSW), s 70.

¹⁵² *Petroleum (Onshore) Act 1991* (NSW), s 70.

¹⁵³ *Petroleum (Onshore) Act 1991* (NSW), s 70.

5. Protections for National Parks and other Special Areas

It is unlawful to carry out mining or CSG production in a National Park, historic site, nature reserve, karst conservation reserve or Aboriginal area.¹⁵⁴ A special Act of Parliament would be needed to authorise mining in these areas. Some National Parks go to the centre of the Earth, while some have depth restrictions. If there is a depth restriction, it is possible to mine beneath the National Park below that depth.

6. Protections for exclusion zones and 'off limits' areas

New CSG developments are prohibited on, or within 2 kilometres of, the following CSG exclusion zones:¹⁵⁵

1. Land within a residential zone.
2. Future residential growth area land.¹⁵⁶
3. Additional rural village land.¹⁵⁷

New CSG developments are also prohibited on 'critical industry cluster land'.¹⁵⁸ This is land with a concentration of equine (horse) and viticulture (wine) industries that has been mapped by the NSW Government in the Upper Hunter.¹⁵⁹

These exclusion zones do not apply to coal. However, open cut coal mines are prohibited in parts of two local government areas – Lake Macquarie City Council and the Upper Hunter Shire Council.¹⁶⁰

The Governor of NSW can create further exclusion zones or 'off limits' areas by amending the Mining SEPP.¹⁶¹

Development consent

In addition to a mining or petroleum production lease, many mining and CSG projects require some kind of development consent under the planning system before they can go ahead. This means a two-stream approval process applies.

¹⁵⁴ *National Parks and Wildlife Act 1974* (NSW), ss. 41, 54, 58O and 64.

¹⁵⁵ 'CSG developments' include development for the purpose of CSG exploration: SEPP (Mining, Petroleum Production and Extractive Industries) 2007, cl 9A, 3. But note that pipelines that are ancillary to coal seam gas development are not prohibited in the 2km buffer zone.

¹⁵⁶ Currently the North West and South West Growth Centres of Sydney; Forresters Beach on the Central Coast; Nabiac, Forster, Tea Gardens, Hawks Nest and Bulahdelah on the Mid North Coast.

¹⁵⁷ Currently part of Goonengerry in the Byron LGA; parts of Broke and Bulga, all of Camberwell and Jerrys Plains in the Singleton LGA; all of Modanville in the Lismore LGA; all of Sutton Forrest in the Wingecarribee LGA.

¹⁵⁸ SEPP (Mining, Petroleum Production and Extractive Industries) 2007, cl 9A.

¹⁵⁹ See: <http://www.planning.nsw.gov.au/Policy-and-Legislation/Mining-and-Resources/Critical-Industry-Clusters-in-the-Upper-Hunter>.

¹⁶⁰ SEPP (Mining, Petroleum Production and Extractive Industries) 2007, cl 9, Sch 1.

¹⁶¹ See: SEPP (Mining, Petroleum Production and Extractive Industries) 2007, cl 9 and Sch 1.

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In general, coal mining and CSG production developments will fall into the category of *State Significant Development* (SSD). These are projects that are deemed to be of State or regional planning significance.¹⁶²

See our [NSW Planning Law Fact Sheets](#) for more information about NSW planning laws.

State significant development (SSD)

All development for the purposes of coal mining and CSG production is classified as State Significant Development (SSD).¹⁶³ However, coal and CSG *exploration* activities are not classified as SSD.¹⁶⁴

Many developments related to mining and CSG production, such as processing plants storage facilities, or pipelines are also classified as SSD or State Significant Infrastructure (SSI).¹⁶⁵

See our [State Significant Development and State Significant Infrastructure Fact Sheet](#) for more information about the development assessment process for SSD and SSI.

Gateway Certificate required if coal or CSG development is proposed over 'strategic agricultural land'

There are special requirements for coal and CSG developments proposed over 'strategic agricultural land'.¹⁶⁶

There are two types of strategic agricultural land:

1. Biophysical strategic agricultural land.
2. Critical industry cluster land.

Biophysical strategic agricultural land

Biophysical strategic agricultural land is land that has been mapped as such by the NSW Government due to the presence of high quality soil and water resources capable of sustaining high levels of productivity on that land.¹⁶⁷ 2.8 million hectares of biophysical strategic agricultural land has been identified and mapped in NSW.¹⁶⁸

¹⁶² They are assessed under Part 4, Division 4.1 of the *Environmental Planning and Assessment Act 1979* (NSW). Types of SSD are listed in the State Environmental Planning Policy (State and Regional Development) 2011, Sch. 5 and 6.

¹⁶³ ¹⁶³ SEPP (State and Regional Development) 2011, Sch 1 cl 5, 6.

¹⁶⁴ SEPP (State and Regional Development) 2011, Sch 1 cl 5.

¹⁶⁵ SEPP (State and Regional Development) 2011, Sch. 1 cl 5.

¹⁶⁶ *Environmental Planning and Assessment Regulation 2000* (NSW), cl 50A.

¹⁶⁷ SEPP (Mining, Petroleum Production and Extractive Industries) 2007, cl 3. Also see

<http://www.planning.nsw.gov.au/Policy-and-Legislation/Mining-and-Resources/Safeguarding-our-Agricultural-Land>.

¹⁶⁸ See: <http://www.planning.nsw.gov.au/Policy-and-Legislation/Mining-and-Resources/Safeguarding-our-Agricultural-Land>; and <http://www.planning.nsw.gov.au/~/-/media/Files/DPE/Maps/map-biophysical-sal-across-the-state.ashx>.

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All development applications for new coal or CSG development on mapped biophysical strategic agricultural land must be accompanied by either a 'gateway certificate' or a 'site verification certificate'.

Critical industry cluster land

Critical industry cluster land is land with a concentration of equine (horse) and viticulture (wine) industries that has been mapped by the NSW Government in the Upper Hunter.¹⁶⁹

CSG developments are prohibited on critical industry cluster land.¹⁷⁰

Coal developments can still happen on this land, but development applications must be accompanied by a gateway certificate.

There is no opportunity to obtain a site verification certificate with regards to critical industry cluster land.

Site verification certificate

A site verification certificate certifies that the land either is or is not biophysical strategic agricultural land. The Secretary of Planning and Environment can issue a site verification certificate at the request of either the landholder or the coal or CSG company.¹⁷¹

If the site verification certificate confirms that the land is *not* biophysical strategic agricultural land, no gateway certificate will be required.¹⁷²

Gateway certificate

A gateway certificate is issued by the Mining and Petroleum Gateway Panel following a preliminary assessment of a coal or CSG proposal against criteria relating to agricultural and water impacts. This 'gateway assessment' is an additional step towards achieving development consent that happens prior to the development application being lodged.¹⁷³

¹⁶⁹ See: <http://www.planning.nsw.gov.au/Policy-and-Legislation/Mining-and-Resources/Critical-Industry-Clusters-in-the-Upper-Hunter>.

¹⁷⁰ SEPP (Mining, Petroleum Production and Extractive Industries) 2007, cl 9A(5).

¹⁷¹ SEPP (Mining, Petroleum Production and Extractive Industries) 2007, cl 17C.

¹⁷² NSW Government, Interim protocol for site verification and mapping of biophysical strategic agricultural land: http://www.planning.nsw.gov.au/Policy-and-Legislation/Mining-and-Resources/~/_media/ED7BE8EE5FC34A71889FE89CF744D846.ashx.

¹⁷³ *Environmental Planning and Assessment Regulation 2000* (NSW), cl 50A; SEPP (Mining, Petroleum Production and Extractive Industries) 2007, Part 4AA. Also see: <http://www.mpgp.nsw.gov.au/>.

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The Gateway Panel is appointed by the Minister and is made up of members with expertise in agricultural science, hydrogeology or mining and petroleum development.¹⁷⁴

The Gateway Panel has 90 days to assess the proposal against a set of criteria¹⁷⁵

1. In relation to *biophysical strategic agricultural* land, whether the proposed development will significantly reduce the agricultural productivity the land, based on a consideration of:
 - any impacts on the land through surface area disturbance and subsidence,
 - any impacts on soil fertility, effective rooting depth or soil drainage,
 - increases in land surface micro-relief, soil salinity, rock outcrop, slope and surface rockiness or significant changes to soil pH,
 - any impacts on highly productive groundwater,¹⁷⁶
 - any fragmentation of agricultural land uses,
 - any reduction in the area of biophysical strategic agricultural land.

2. In relation to *critical industry cluster* land, whether the proposed development will have a significant impact on the relevant critical industry based on a consideration of the following:
 - any impacts on the land through surface area disturbance and subsidence,
 - reduced access to, or impacts on, water resources and agricultural resources,
 - reduced access to support services and infrastructure,
 - reduced access to transport routes,
 - the loss of scenic and landscape values.

The Panel cannot refuse to issue a gateway certificate; it will either state that the proposed development meets the relevant criteria and issue an unconditional gateway certificate or state that the proposed development does not meet the relevant criteria and issue a conditional certificate.¹⁷⁷

If a conditional certificate is issued it must include recommendations to address the proposed development's failure to meet the relevant criteria. It can also include a recommendation that specified studies or further studies be undertaken by the applicant regarding the proposed development.¹⁷⁸

These recommendations must be addressed in the Secretary's Environmental Assessment Requirements (SEARs) discussed below.

¹⁷⁴ SEPP (Mining, Petroleum Production and Extractive Industries) 2007, cl 17P.

¹⁷⁵ SEPP (Mining, Petroleum Production and Extractive Industries) 2007, cl 17H.

¹⁷⁶ Within the meaning of the Aquifer Interference Policy.

¹⁷⁷ SEPP (Mining, Petroleum Production and Extractive Industries) 2007, cl 17H.

¹⁷⁸ SEPP (Mining, Petroleum Production and Extractive Industries) 2007, cl 17H.

Assessment process for State Significant Development

1. Applicant applies for the environmental assessment requirements

The applicant starts the process by lodging an online application and request for the Secretary's Environmental Assessment Requirements (SEARs).¹⁷⁹ The SEARs set out what the applicant needs to cover in their environmental impact assessment, and typically include groundwater and surface water studies, biodiversity impact studies, dust and noise impact studies, etc.

2. Secretary sets environmental assessment requirements

In preparing the SEARs, the Secretary must consult with relevant public authorities such as the Office of Environment and Heritage and the local council in the area where the project is to take place to ensure that all key issues are identified and assessed.¹⁸⁰ The NSW Government has released 'Indicative SEARs', which outline common assessment requirements.¹⁸¹

If a gateway certificate has been issued, the Secretary must address any recommendations of the Gateway Panel set out in the certificate.¹⁸²

3. Applicant lodges an environmental impact statement

The applicant must then prepare an environmental impact statement (EIS) that meets the environmental assessment requirements that have been set by the Secretary. In practice, this role is performed by an environmental consultant engaged by the applicant.

In addition to addressing the SEARs, an EIS must also analyse any feasible alternatives to carrying out the development and analyse the likely impacts of the development on the environment, including any measures proposed to reduce or avoid those impacts.¹⁸³

The applicant must also complete a cost benefit analysis and a local area assessment as part of its economic assessment.¹⁸⁴

¹⁷⁹ *Environmental Planning and Assessment Regulation 2000* (NSW), Sch 2 cl 3(1).

¹⁸⁰ *Environmental Planning and Assessment Regulation 2000* (NSW), Sch 2 cl 3(4).

¹⁸¹ The Indicative SEARs are part of the integrated Mining Policy. See:

<http://www.planning.nsw.gov.au/Policy-and-Legislation/Mining-and-Resources/Integrated-Mining-Policy>.

¹⁸² *Environmental Planning and Assessment Regulation 2000* (NSW), Sch 2 cl 3(4A).

¹⁸³ *Environmental Planning and Assessment Regulation 2000* (NSW), Sch 2 cl 7.

¹⁸⁴ The Guidelines for the economic assessment of mining and coal seam gas proposals is part of the Integrated Mining Policy. See: <http://www.planning.nsw.gov.au/Policy-and-Legislation/Mining-and-Resources/Integrated-Mining-Policy>.

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The applicant often consults with local council, government agencies and the community when preparing the EIS.

4. The EIS goes on public exhibition

The development application and EIS are exhibited on the Department of Planning and Environment major projects website.¹⁸⁵

The minimum exhibition period for SSD is 30 days.¹⁸⁶

Public notice of the application must be published in a local newspaper and on the website of the Department.¹⁸⁷ A copy of the notice must also be given to people owning or occupying adjoining land, detailing the proposed development and the submission period.¹⁸⁸

5. The public can make submissions

During this exhibition period, any person can make a written submission to the Department about the project.¹⁸⁹ It is important for objectors to make written submissions on time as this preserves any objector merit appeal rights later on.

See our Fact Sheet on the [Land and Environment Court](#) for more information on merit appeals.¹⁹⁰

The Secretary of Planning must then either pass the submissions, or a summary of them, to the applicant.¹⁹¹ The submissions must also be published on the Department's website.¹⁹²

The Secretary may decide to ask the applicant to respond to any issues raised in the submissions.¹⁹³ While this does not always happen, it usually does with mines and CSG projects where objections have been raised. This response must also be published on the Department's website.¹⁹⁴

If the applicant proposes minor changes in response to submissions, the Department will take steps to finalise the assessment, and no further community consultation is

¹⁸⁵ See:

http://majorprojects.planning.nsw.gov.au/index.pl?action=search&status_id=6&status_id=117&status_id=116&status_id=114.

¹⁸⁶ *Environmental Planning and Assessment Act 1979* (NSW), s 89F; *Environmental Planning and Assessment Regulation 2000* (NSW), cl 83.

¹⁸⁷ *Environmental Planning and Assessment Act 1979* (NSW), s 89F; *Environmental Planning and Assessment Regulation 2000* (NSW), cl 84.

¹⁸⁸ *Environmental Planning and Assessment Act 1979* (NSW), s 89F; *Environmental Planning and Assessment Regulation 2000* (NSW), cl 84(2).

¹⁸⁹ *Environmental Planning and Assessment Act 1979* (NSW), s 89F(3).

¹⁹⁰ See: http://www.edonsw.org.au/land_and_environment_court

¹⁹¹ *Environmental Planning and Assessment Regulation 2000* (NSW), cl 85A.

¹⁹² *Environmental Planning and Assessment Regulation 2000* (NSW), cl 85B.

¹⁹³ *Environmental Planning and Assessment Regulation 2000* (NSW), cl 85A(2).

¹⁹⁴ *Environmental Planning and Assessment Regulation 2000* (NSW), cl 85B.

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required. If the Secretary thinks the amended development application substantially differs from the original application, the amended application and EIS will be placed on public exhibition again for further public comment.¹⁹⁵

6. Decision

The Minister for Planning is the decision-maker for all SSD projects.¹⁹⁶ However, this power has been delegated to the Department of Planning and Environment or the Planning Assessment Commission (PAC), except where the SSD project is proposed by a public authority.¹⁹⁷

The Planning Assessment Commission

The Planning Assessment Commission (PAC) is a planning body whose members are appointed by the Minister for Planning.¹⁹⁸ For the most part, the PAC is independent and is not subject to the direction or control of the Minister (except in relation to procedure).¹⁹⁹

The PAC consists of a Chair and eight members.²⁰⁰ For each matter the PAC has to deal with, the Chair nominates the PAC members who will make up the PAC for that matter. It is common for three members to form the PAC for any given matter. Each PAC member must have expertise in one or more of the following fields: planning, architecture, heritage, the environment, urban design, land economics, traffic and transport, law, engineering, tourism or government and public administration.²⁰¹

When assessing SSD projects, the decision-maker must take a number of things into account, including:²⁰²

- any environmental planning instrument (such as a local environmental plan or State Environmental Planning Policy) that applies to the land (of particular relevance will be the State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007);
- coastal zone management plans;
- the likely impacts of the development, including environmental impacts on the natural and built environments, social impacts and economic impacts;
- the suitability of the site for the development;

¹⁹⁵ *Environmental Planning and Assessment Act 1979* (NSW), s 89F.

¹⁹⁶ *Environmental Planning and Assessment Act 1979* (NSW), s 89D.

¹⁹⁷ *Environmental Planning and Assessment Act 1979* (NSW), s 23; Minister for Planning's instrument of delegation (2011): <http://www.planning.nsw.gov.au/Assess-and-Regulate/Development-Assessment/Systems/Delegated-Decisions>.

¹⁹⁸ *Environmental Planning and Assessment Act 1979* (NSW), Sch 3.

¹⁹⁹ *Environmental Planning and Assessment Act 1979* (NSW), s 23B(3).

²⁰⁰ To see the current PAC members, visit: <http://www.pac.nsw.gov.au/commission-members>.

²⁰¹ *Environmental Planning and Assessment Act 1979* (NSW), Sch 3 Part 2.

²⁰² *Environmental Planning and Assessment Act 1979* (NSW), s 79C.

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- public submissions; and
- the public interest.

In addition, the decision-maker must also consider:

- The existing uses and planned uses of the land in the vicinity of the development, the impact of the development on these uses, and any ways in which the development could be incompatible with those uses.²⁰³ The decision-maker must then evaluate and compare the public benefit of the development and those other land uses, taking into account any measures that the applicant has proposed to avoid or minimise such incompatibility.²⁰⁴
- The impact that the proposed development might have on other mining or CSG operations already existing in the vicinity.²⁰⁵
- Whether or not the consent should be issued subject to conditions aimed at ensuring that the development is undertaken in an environmentally responsible manner, such as conditions to minimise the impacts on water, threatened species and greenhouse gas emissions.²⁰⁶
- The efficiency of the development in terms of resource recovery and whether any conditions can be attached to the approval to maximise such efficiency.²⁰⁷
- Whether or not the consent should be issued subject to conditions that minimise the impact of the development on local transport infrastructure, especially public roads.²⁰⁸
- Whether or not the consent should be subject to conditions aimed at ensuring the rehabilitation of land that will be affected by the development.²⁰⁹

The decision-maker can approve or refuse the development²¹⁰ and can attach legally binding conditions to any approval.²¹¹ Conditions are designed to minimise the adverse impacts of the development. In practice, standard conditions are often attached. The Department of Planning and Environment has published draft model and standard conditions for open cut mining, underground mining and gas production on its website.²¹² There are also non-discretionary development standards relating to noise, air quality, ground vibration, and aquifer interference that, if complied with by the proponent, prevent the decision-maker from requiring more onerous standards for those things.

²⁰³ SEPP (Mining, Petroleum Production and Extractive Industries) 2007, cl 12.

²⁰⁴ SEPP (Mining, Petroleum Production and Extractive Industries) 2007, cl 12.

²⁰⁵ SEPP (Mining, Petroleum Production and Extractive Industries) 2007, cl 13.

²⁰⁶ SEPP (Mining, Petroleum Production and Extractive Industries) 2007, cl 14.

²⁰⁷ SEPP (Mining, Petroleum Production and Extractive Industries) 2007, cl 15.

²⁰⁸ SEPP (Mining, Petroleum Production and Extractive Industries) 2007, cl 16.

²⁰⁹ SEPP (Mining, Petroleum Production and Extractive Industries) 2007, cl 17.

²¹⁰ *Environmental Planning and Assessment Act 1979* (NSW), s 89E.

²¹¹ *Environmental Planning and Assessment Act 1979* (NSW), s 89E(1)(a).

²¹² See draft Standard and Model Conditions for Open Cut and Underground Mining:

<http://www.planning.nsw.gov.au/Assess-and-Regulate/Development-Assessment/Systems/State-Significant-Development>

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If there is no decision after 90 days, the project is deemed to have been refused.²¹³

Do local environmental plans apply to SSD?

Where a local environmental plan (LEP) wholly prohibits mining or CSG activities over particular land, mining activities cannot be approved on that land.²¹⁴ Where a LEP only partly prohibits the mining or CSG activities, consent can be granted.²¹⁵ Any zone that permits agriculture or industry (either with or without consent) will automatically permit mining activities with consent by virtue of the Mining SEPP.²¹⁶

Where mining or CSG activities are wholly prohibited on the land, a development application can be accompanied by a proposal to change the LEP (via a spot rezoning) so that the activity can go ahead.²¹⁷

Only the Planning Assessment Commission (PAC) can approve an amendment to change a LEP to facilitate SSD,²¹⁸ and only the PAC can determine a development application for SSD that requires an amendment to a LEP.²¹⁹ See our [LEPs and SEPPs Fact Sheet](#) for more information about amendments to LEPs.

Are any other environmental approvals necessary?

Developments often need a number of approvals in addition to development consent. These approvals are often granted by other government agencies such as the Office of Environment and Heritage, the Environment Protection Authority or the Department of Primary Industries - Water.

With SSD, many of these additional approvals are either not required or must be given consistently with the development consent, meaning the other government agency cannot refuse the approval if it is necessary to carry out SSD.

See our [State Significant Development and State Significant Infrastructure Fact Sheet](#) for more information about additional approvals for SSD.

A mining lease and a petroleum production lease are still required but *must* be granted consistently with a development consent for SSD.²²⁰ So once development consent is granted the Minister for Resources cannot refuse to issue a mining or petroleum production lease.

An approval from the Commonwealth Government may be required. If an activity is likely to have a significant impact on a 'matter of national environmental

²¹³ *Environmental Planning and Assessment Regulation 2000* (NSW), cl 113.

²¹⁴ *Environmental Planning and Assessment Act 1979* (NSW), s. 89E(2).

²¹⁵ *Environmental Planning and Assessment Act 1979* (NSW), s. 89E(3).

²¹⁶ *SEPP (Mining, Petroleum Production and Extractive Industries) 2007*, cl. 7.

²¹⁷ *Environmental Planning and Assessment Act 1979* (NSW), s. 89E(5).

²¹⁸ *Environmental Planning and Assessment Act 1979* (NSW), s. 89E(6).

²¹⁹ *Environmental Planning and Assessment Act 1979* (NSW), s. 89E(6).

²²⁰ *Environmental Planning and Assessment Act 1979* (NSW), s. 89K(c).

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significance',²²¹ it must be referred to the Commonwealth Department of the Environment and Energy for assessment. The decision to approve or refuse the project is made by the Minister for the Environment and Energy.

There are 9 matters of national environmental significance that trigger the need for Commonwealth approval. The most relevant is where a coal seam gas or large coal mining operation will have a significant impact on water resources.

Can the project be changed?

Consent to undertake SSD can be modified, meaning the applicant can seek to alter the project in some way after consent has been granted. The applicant has to apply for a modification to the same consent authority that made the original decision. The development, as modified, must be substantially the same development as was originally approved,²²² otherwise a fresh development application will need to be lodged.

Useful web links

[The NSW Titles Viewer](#) is an online titles mapping system which enables the public to access and view frequently updated maps that show the various mining and exploration titles and applications that exist in NSW.

[MinView](#) allows on-line interactive display and query of exploration tenement information and geoscience data.

[Have Your Say](#), which has been assisted by the NSW Government through its Environmental Trust, is an online tool designed to assist the community to have their say in decisions impacting the environment.

[EDO NSW's eBulletin](#) is a free weekly email bulletin with alerts to keep you informed of opportunities to comment on proposed developments at the State and Federal level.

[The NSW Department of Industry Division of Resources and Energy](#) has produced a range of fact sheets which explain [landholder rights](#) under mining legislation, including a list of common questions.

Useful legal text

- The Environmental Law Handbook, Farrier and Stein, eds (6th edition, 2016), Chapter 18.

²²¹ These are listed in the *Environment Protection and Biodiversity Conservation Act 1999* (Cth), ss 12-25.

²²² *Environmental Planning and Assessment Act 1979* (NSW), s 96(1A); *Environmental Planning and Assessment Regulation 2000* (NSW), cl 118.

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Key to terms used in this Fact Sheet

Department means [NSW Department of Trade and Investment Division of Resources and Energy](#)

EPA means the [Environment Protection Authority](#)

Environment Minister means the NSW Minister for the Environment

LEP means Local Environmental Plan

Mineral means substances prescribed by the [Mining Regulation 2010](#) (NSW) as a mineral. Minerals include coal (not coal seam gas), gold, silver, bauxite, antimony, lead, silver, and uranium.

Minister means the NSW Minister Resources.

Planning Minister means the NSW Minister for Planning

Secretary means the Secretary of the Department of Industry

SEPP means a State Environmental Planning Policy