Coal Seam Gas

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Sydney: 02 9262 6989
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Rest of NSW: 1800 626 239

This Fact Sheet focuses on coal seam gas exploration and production. It does not cover mining of coal and other minerals. Please see our Mining Fact Sheet for information about mining. EDO NSW has published a book on mining and coal seam gas law in NSW. For a comprehensive guide to CSG law in NSW, read Mining Law in New South Wales: A Guide for the Community. The Strategic Regional Land Use policy package, which applies to some coal seam gas activities, is discussed in our Strategic Regional Land Use Policy Package Fact Sheet.

Overview

Legislative framework

In NSW, coal seam gas (CSG) is defined as a type of petroleum. The exploration and production on land of CSG is regulated under a number of different laws:

- Petroleum (Onshore) Act 1991 (NSW)
- Petroleum (Onshore) Regulation 2007 (NSW)
- Environment Protection and Biodiversity Conservation Act 1999 (Cth)
- Environment Protection and Biodiversity Conservation Regulations (Cth)

1 http://www.edonsw.org.au/legal_advice
This Fact Sheet explains how onshore petroleum projects are assessed and approved, with a focus on the provisions which allow landholder and public participation. It focuses on the laws that regulate exploration and production. This Fact Sheet does not deal with mining. For information on how mining is regulated in NSW, see our Mining Fact Sheet.

Who owns the coal seam gas (CSG) under my land?

As a general rule, the Government owns the petroleum on and under your land. The only rare exception is where petroleum is reserved to the landholder in some old property deeds issued under old system title. Because almost all petroleum is owned by the Government and not the landowner, the NSW Government has the power to authorise others to look for and remove it from your land.

Responsible Minister

The NSW Minister for Resources and Energy is responsible for the Petroleum (Onshore) Act 1991 (NSW). The Petroleum (Onshore) Act 1991 (NSW) is administered by NSW Department of Industry Division of Resources and Energy. The Division of Resources and Energy has produced a range of fact sheets which explain landholder rights under petroleum legislation, including a list of common questions.

The NSW Minister for Planning, the Planning Assessment Commission, the NSW Department of Planning and Environment or your local council may be responsible for assessing and approving CSG projects, depending on the type of activity.

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Types of CSG approvals

CSG companies require permission (in the form of a title) to access petroleum under your land. The Minister for Resources and Energy is usually responsible for granting these titles, which include: 3

- Special prospecting authorities;
- Exploration licences;
- Assessment leases; and
- Petroleum production leases.

In addition, some form of development consent is often needed. The Minister for Planning or the Planning Assessment Commission is commonly the consent authority. This role can also belong to your local council, or a Joint Regional Planning Panel. 4

Other approvals are sometimes necessary before a CSG project can commence. For example, the NSW Minister for the Environment may have a role to play if the CSG activities relate to a national park, or a pollution licence may be required from the EPA.

Special prospecting authorities

A special prospecting authority gives the holder the right to look for petroleum in the area covered by the authority for an initial term of up to 12 months. 5 They tend to authorise preliminary exploration methods only, such as geological surveys and are used to ascertain the CSG potential of large areas of land. If the holder of a special prospecting authority wants to undertake more intensive exploration, an exploration licence will be required.

Exploration licences

An exploration licence gives the holder the exclusive right to explore for petroleum within the area specified in the licence. 6 Exploration involves looking for petroleum and testing whether the land contains a commercial amount of the resource. Exploration can also involve pilot testing of a gas well. An exploration licence for CSG can be issued for up to 6 years. 7

Assessment leases

Assessment leases are designed to allow the retention of rights over an area in which a significant petroleum deposit has been identified if production activities on

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7 *Petroleum (Onshore) Act 1991* (NSW), s. 31.
the deposit are not commercially viable in the short term but there is a reasonable prospect that they will be in the longer term. Assessment leases can be granted for up to 6 years.  

**Production leases**

With the exception of pilot testing which is a form of exploration, a petroleum production lease is required in order to extract CSG. These leases are issued by the Minister for Resources and Energy. A production lease allows the holder to conduct petroleum mining operations on the land together with the right to construct associated infrastructure such as buildings, plant, waterways, roads, pipelines, dams, reservoirs, tanks, pumping stations, tramways, railways, telephone lines, electricity power lines etc. A petroleum production lease can be granted for up to 21 years, and must not cover an area greater than 4 blocks.

In addition to a production lease, a development consent will also be needed. These are issued by the Minister for Planning (or a delegate such as the Planning Assessment Commission). See below for more information.

**Types of CSG activities**

**Exploration**

For a comprehensive guide to exploration, read Chapter 2 of *Mining Law in New South Wales: A Guide for the Community*.

How are applications for exploration licences assessed?

1. **Applicant lodges an application**

Applications can be initiated by the applicant or can be in response to invitations for tenders by the NSW Government. Applications are lodged with the Director-General of NSW Trade and Investment.

2. **The applicant notifies the public of the application**

There is no legal requirement for applications for CSG exploration licences to be publicly notified. However, the Division of Resources and Energy does publish all applications for CSG exploration licences on its website. Applications are also published every Friday in the NSW Government Gazette.

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8 *Petroleum (Onshore) Act 1991 (NSW)*, s. 35.
9 *Petroleum (Onshore) Act 1991 (NSW)*, s. 41.
10 *Petroleum (Onshore) Act 1991 (NSW)*, s. 45.
11 *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.
13 *Petroleum (Onshore) Act 1991 (NSW)*, s. 11.
Some CSG exploration also requires development consent. If this is the case, there are additional notification requirements. See below for more information.

3. 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 and Energy. The Minister must not make a decision before taking into account the need to conserve and protect the environment, including flora, fauna, scenic attractions and features of Aboriginal and historical interest.\(^{16}\)

The Minister can refuse or grant the exploration licence. Exploration licences for CSG can be granted for up to 6 years\(^ {17}\) over an area of up to 140 blocks.\(^ {18}\) Once a decision is made, it should be published on the [Division of Resources and Energy website].\(^ {19}\)

If the licence is granted, it can be subject to conditions.\(^ {20}\) Conditions can address a range of issues and are often designed to minimise or avoid environmental impacts, and can include requiring a security deposit from the company.\(^ {21}\) Conditions can apply to land that is not covered by the exploration licence, but which may be impacted by the exploration activities.\(^ {22}\) Conditions are legally binding. If the conditions are being breached, the Minister for Resources and Energy, the Director-General of NSW Trade and Investment, or an inspector can direct the licence holder to take steps to comply with the condition within a set period of time.\(^ {23}\) It is an offence to not comply with such a direction.\(^ {24}\) If the licence holder does not comply with a direction to rehabilitate the land, the work can be undertaken by the Government at the licence holder’s expense.\(^ {25}\)

Renewals

Where an application has been made for a renewal of a title, the Minister can renew or refuse the application.\(^ {26}\) 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 initial approval.


\(^{18}\) [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.


**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 exploration licence applications for CSG.\(^{27}\) However, comment will only be sought on the effects of exploration.\(^{28}\) Anything you have to say about the potential impacts of any future petroleum production will not be considered.

Further opportunities to have a say exist if the project needs development consent. See below for more information.

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 an exploration licence is granted over your land, you can still have a say about what happens on your land. The way to do this is through an access arrangement. See below for more information.

**The applicant undertakes an environmental assessment**

The licence holder needs to get approval for their specific program of exploration and undertake an environmental assessment to ascertain what the impacts of their planned activities will be. The environmental assessment is lodged with the Division of Resources and Energy and will need to be approved before any work can be carried out.

The environmental assessment requirements will depend on whether the exploration also needs development consent, which is a separate process from getting an exploration licence.

If the exploration *does* need development consent, the environmental assessment will depend on what sort of development it is. Generally speaking, exploration activities that need development consent are exploration wells (but not boreholes or monitoring wells).\(^{29}\) The exploration may also need consent if it is being carried out in a certain area such as within 40 metres of a natural water body or wetland, in an area of high water table or highly permeable soils, within a drinking water catchment, or on a floodplain.\(^{30}\) See below for more information about development consent.

For those types of CSG exploration that *do not* need development consent such as monitoring wells\(^{31}\) and stratigraphic boreholes\(^{32}\), the applicant will still need to

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\(^{29}\) SEPP (State and Regional Development) 2011, Sch. 1, cl 6(2) and SEPP (Mining, Petroleum Production and Extractive Industries) 2007, cl. 6, 7.

\(^{30}\) *Environmental Planning and Assessment Regulation 2000* (NSW), Sch. 3, cl. 27(g).

\(^{31}\) Monitoring wells are drilled specifically to obtain accurate formation samples and are used for the sole purpose of taking water samples and/or monitoring water levels.
undertake a Review of Environmental Factors (REF). See below for more information.

Are there any restrictions on exploration?

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

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:

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

Exploration also cannot occur over any ‘significant improvement’.

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. Once written consent is given, it cannot be taken back. It is also possible for CSG exploration to take place under these areas.

Disputes over whether something is a ‘significant improvement’ will be settled in the Land and Environment Court. Either party can apply to the Court for a ruling.

2. Protections for residential areas

CSG development is prohibited within certain exclusion zones and buffer zones. CSG development cannot be carried out on or under:

32 Stratigraphic boreholes are boreholes drilled specifically to obtain a detailed record of the character and composition of the rock formation and not for the purpose of locating a mineral deposit.
33 under Part 5 of the Environmental Planning and Assessment Act 1979 (NSW)
34 Petroleum (Onshore) Act 1991 (NSW), s. 9.
35 Petroleum (Onshore) Act 1991 (NSW), s. 9.
36 Petroleum (Onshore) Act 1991 (NSW) s. 72.
37 Petroleum (Onshore) Act 1991 (NSW) s. 72.
38 Petroleum (Onshore) Act 1991 (NSW), s. 72.
39 Petroleum (Onshore) Act 1991 (NSW), s. 72 (2).
40 Petroleum (Onshore) Act 1991 (NSW), s. 72 (4).
• land that is zoned residential
• land that has been designated ‘additional rural village land’ by the NSW Government;
• land identified as future residential growth area land; or
• within a two kilometre buffer around these areas.

3. Protections for ‘critical industry clusters’

Developments for the purpose of CSG exploration are prohibited within certain areas identified as ‘critical industry clusters’ by the NSW Government. The types of areas that qualify as critical industry clusters are those where significant agricultural industries are related to each other, are deemed to contribute to the region’s identity, and provide significant employment opportunities. Equine and viticulture industries concentrated in the Upper Hunter are the only mapped critical industry clusters at this time.42

4. Protections for water

It is recommended that landholders engage independent water experts to conduct baseline studies and monitor the water and seek to have the CSG company pay for this. Although there is no legal requirement for this, landholders should seek to have the water on their properties tested with regards to quantity, quality and flow regimes prior to any work being undertaken.

5. Protections for exempted areas

There are a number of areas where no exploration activities can take place under an exploration licence without the specific consent of the Minister for Resources and Energy.43

Examples of exempted areas include State Forests, National Parks, Travelling Stock Routes, 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.44 The Minister for Resources and Energy can issue an ‘exempted area consent’ to allow for exploration in such areas.45

41 State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007, cl 9A. The areas currently listed as ‘additional rural village land’ are part of Goonengarry in the Byron Local Government Area (LGA), parts of Broke and Bulga, and all of Camberwell and Jerrys Plains in the Singleton LGA, all of Modanville in the Lismore LGA, and all of Sutton Forrest in the Wingecarribee LGA. The areas currently listed as future residential growth areas are the North West and South West Growth Centres of Sydney, Forrester Beach on the Central Coast, and Nabiac, Forster, Tea Gardens, Hawks Nest and Bulahdelah on the Mid North Coast.
43 Petroleum (Onshore) Act 1991 (NSW), s. 70.
44 Petroleum (Onshore) Act 1991 (NSW), s. 70.
45 Petroleum (Onshore) Act 1991 (NSW), s. 70.
Case study: exploration in exempted areas

Eastern Star Gas (now taken over by Santos) was granted an exploration licence to explore for CSG in an exempted area – the Pilliga State Forest, west of Narrabri. The Pilliga is a recognised biodiversity hotspot and home to a number of threatened species. So far, the exploration has involved seismic surveys, clearing of numerous roads and tracks, drilling of up to 92 coal seam gas drill holes and wells, development of five pilot production fields and construction of 13 major water treatment dams and a water treatment plant.46

6. Protections for National Parks and other Special Areas

While an exploration licence may cover them, it is generally unlawful to explore in a National Park, historic site, nature reserve, karst conservation reserve or Aboriginal area.47 However, a special Act of Parliament can authorise exploration in these areas48 or the reserved status of the land could be revoked.

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.49 In such cases, there needs to be a notice of the Minister’s intention to issue such an approval laid before both Houses of Parliament, and members of Parliament are allowed 15 sitting days to put on a motion objecting to such notice. If that motion is passed, then the Minister cannot grant the approval for the exploration.50

CSG exploration is also prohibited within a State recreation area51 without the agreement of the Minister for Environment.52

Production

For a comprehensive guide to production, read Chapter 3 of Mining Law in New South Wales: A Guide for the Community.

How are applications for mining and petroleum production leases assessed?

1. Applicant lodges an application

47 National Parks and Wildlife Act 1974 (NSW), ss. 41, 54, 58O and 64.
48 National Parks and Wildlife Act 1974 (NSW), s. 41.
49 National Parks and Wildlife Act 1974 (NSW), ss. 41(4), 54, 58O and 64. The Minister for Resources and Energy can nominate a person to undertake the exploration on behalf of the Government.
50 National Parks and Wildlife Act 1974 (NSW), ss. 41(5), 54, 58O and 64. Note that the Petroleum (Onshore) Act 1991 (NSW) do not apply to National Parks and other Special Areas. Therefore, there is no requirement for an exploration licence to be issued. Rather, the process set out under the National Parks and Wildlife Act 1974 (NSW) is the process for authorising exploration in these areas.
51 National Parks and Wildlife Act 1974 (NSW), s 47N.
52 Petroleum (Onshore) Act 1991 (NSW), s. 70(3).
Applications can be initiated by the applicant or can be in response to invitations for tenders made by the NSW Minister for Resources and Energy. Applications are lodged with the Director-General of the NSW Department of Industry.

2. The applicant notifies the public of the application

Within 21 days of lodging an application, the applicant has to notify the public of the application by publishing a notice in a newspaper circulating generally in the State. A list of CSG production lease applications is also published in the NSW Government Gazette every Friday.

3. The applicant undertakes an environmental assessment

The environmental assessment is undertaken at the development consent 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 and Energy. The Minister must not make a decision before taking into account the need to conserve and protect the environment, including flora, fauna, scenic attractions and features of Aboriginal and historical interest.

The Minister can grant or refuse the production lease. However 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 production lease. A lease may be refused for any number of reasons, including where the Minister decides it would not be in the public interest to grant the lease. The Minister has the power to refuse to grant a new CSG title, refuse to renew a title, or cancel a title if it is in the ‘public interest’ to do so. However, the NSW Premier has indicated that the Government intends to only use this special power where the Independent Commission against Corruption (ICAC) has determined serious corrupt conduct is involved.

If the lease is granted, it can be subject to conditions. These conditions are in addition to any conditions attached to the development consent. Conditions can relate to any number of things and are typically designed to minimise or avoid the

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54 Petroleum (Onshore) Act 1991 (NSW), s. 11.
55 Petroleum (Onshore) Act 1991 (NSW), s. 43. The Land is often chosen to make such notifications.
57 Petroleum (Onshore) Act 1991 (NSW), s. 74.
58 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.
59 Petroleum (Onshore) Act 1991 (NSW), s. 21.
60 Petroleum (Onshore) Act 1991 (NSW), s. 24A.
62 Petroleum (Onshore) Act 1991 (NSW), s. 23.
impacts of the activity, and include requiring a security deposit from the company.\textsuperscript{63} Conditions can apply to land that is not covered by the title, but which may be impacted by the activities.\textsuperscript{64} Conditions are legally binding. If the conditions are being breached, the Minister for Resources and Energy, the Director-General of NSW Trade and Investment or an inspector can direct the leaseholder to take steps to comply with the condition within a set period of time.\textsuperscript{65} It is an offence to not comply with such a direction.\textsuperscript{66} If the leaseholder does not comply with a direction to rehabilitate the land, the work can be taken out by the Government at the leaseholder’s expense.\textsuperscript{67}

The public also has a role to play in enforcing conditions. See below for more information.

**Does the public get a say?**

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

However, because CSG production projects also require development consent, the public will have a right to comment when the project is being assessed under the planning system. See below for more information about development consent.

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 petroleum production?**

Generally petroleum production leases can be granted over any land, including privately owned land.\textsuperscript{68} However, there are some restrictions which mostly relate to the rights of other title holders. For example, a production lease can’t be granted over land that is subject to an existing title such as an exploration licence or another production lease.\textsuperscript{69}

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

\begin{footnotes}
\item[63] *Petroleum (Onshore) Act 1991* (NSW), s. 106B.
\item[64] *Petroleum (Onshore) Act 1991* (NSW), s. 75(4).
\item[65] *Petroleum (Onshore) Act 1991* (NSW), s. 77.
\item[66] *Petroleum (Onshore) Act 1991* (NSW), s. 77.
\item[67] *Petroleum (Onshore) Act 1991* (NSW), s. 78.
\item[68] *Petroleum (Onshore) Act 1991* (NSW), s. 9(3).
\item[69] *Petroleum (Onshore) Act 1991* (NSW), s. 9.
\end{footnotes}
1. **Protections for houses, gardens, vineyards, orchards, and significant improvements**

CSG production on private land is restricted to protect the assets of the landholder. As a general rule, CSG production activities are not permitted on the *surface* of land.\(^{70}\)

- 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, vineyard or orchard; or
- on which there is a ‘significant improvement’.

It is possible for 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.\(^{71}\) Once written consent is given, it cannot be taken back.\(^{72}\) It is also possible for CSG production to take place *under* these areas.

Disputes over whether something is a ‘significant improvement’ will be settled in the Land and Environment Court. Either party can apply to the Court for a ruling.\(^{73}\)

2. **Protections for residential areas**

CSG development is prohibited within certain exclusion zones and buffer zones. CSG development cannot be carried out on or under: \(^{74}\)

- land that is zoned residential
- land that has been designated ‘additional rural village land’ by the NSW Government;
- land identified as future residential growth area land; or
- within a two kilometre buffer around these areas.

3. **Protections for ‘critical industry clusters’**

Developments for the purpose of CSG exploration are prohibited within certain areas identified as ‘critical industry clusters’ by the NSW Government. The types of areas that qualify as critical industry clusters are those where significant agricultural industries are related to each other, are deemed to contribute to the region’s identity, and provide significant employment opportunities. Equine and viticulture industries

\(^{70}\) *Petroleum (Onshore) Act 1991* (NSW), s. 72.

\(^{71}\) *Petroleum (Onshore) Act 1991* (NSW), s. 72.

\(^{72}\) *Petroleum (Onshore) Act 1991* (NSW), s. 72.

\(^{73}\) *Petroleum (Onshore) Act 1991* (NSW), s. 72(4).

\(^{74}\) *State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries)* 2007, cl 9A. The areas currently listed as ‘additional rural village land’ are part of Goonengerry in the Byron Local Government Area (LGA), parts of Broke and Bulga, and all of Camberwell and Jerrys Plains in the Singleton LGA, all of Modanville in the Lismore LGA, and all of Sutton Forrest in the Wingecarribee LGA. The areas currently listed as future residential growth areas are the North West and South West Growth Centres of Sydney, Forrester’s Beach on the Central Coast, and Nabiac, Forster, Tea Gardens, Hawks Nest and Bulahdelah on the Mid North Coast.
concentrated in the Upper Hunter are the only mapped critical industry clusters at this time.\textsuperscript{75}

4. Protections for cultivated land and certain agricultural land

\begin{center}
See pages 36-37 of \textit{Mining Law in New South Wales: A Guide for the Community} for more information about protections for cultivated land.
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As a general rule, the holder of a petroleum production lease cannot carry out any production operations on the \textit{surface} of any land which is under cultivation except with the consent of the landholder.

However, the Minister for Resources and Energy can define an area of cultivated land on which production activities can be carried out if the Minister thinks the circumstances warrant it. If this happens, a compensation assessment has to be made before any production activities start to ensure the landholder is compensated for any loss or damage to any crop on the land concerned.\textsuperscript{76}

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.\textsuperscript{77} If there is a dispute about whether particular land is cultivated, the Minister for Resources and Energy has the final say.

Strategic Regional Land Use plans have been prepared for the Upper Hunter and New England North West regions of NSW, including strategic agricultural land and equine and viticulture critical industries. An extra layer of assessment applies before a development application for CSG developments can be submitted to the Government.\textsuperscript{78} Read more in our \textit{Strategic Regional Land Use Policy Package Fact Sheet}.

5. Protections for water

CSG activities are prohibited within Sydney Catchment special areas while the NSW Chief Scientist investigates the impact of coal seam gas activities and other contributing factors on water in the special areas.\textsuperscript{79}

It is recommended that landholders engage independent water experts to conduct baseline studies and monitor the water and seek to have the CSG company pay for this. Although there is no legal requirement for this, landholders should seek to have the water on their properties tested with regards to quantity, quality and flow regimes prior to any work being undertaken. Water should also be monitored throughout the

\textsuperscript{76} \textit{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.
\textsuperscript{77} \textit{Petroleum (Onshore) Act 1991} (NSW), s. 71(3).
production phase. This information will help landholders to understand the impacts, if any, that the activity is having on water and may be useful in any claims later on.

6. 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 for Resources and Energy. Examples of exempted areas include State Forests, National Parks, Travelling Stock Routes, public reserves, community land, Crown land and land held on trust as a racecourse, cricket ground, recreation reserve, park or permanent common.

The Minister for Resources and Energy can issue an ‘exempted areas consent’ to allow CSG production in such areas.

7. Protections for National Parks and other Special Areas

It is unlawful to extract CSG in a National Park, historic site, nature reserve, karst conservation reserve or Aboriginal area. A special Act of Parliament would be needed to authorise CSG production 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 extract CSG beneath the National Park below that depth.

CSG production is also prohibited within a State Recreation Area without the agreement of the NSW Minister for the Environment.

Development consent

For a comprehensive guide to development consent for CSG projects, read Chapter 4 of *Mining Law in New South Wales: A Guide for the Community*.

In addition to an exploration licence or production lease, many CSG projects require some kind of development consent under the planning system. This means a two-stream approval process applies.

There are a number of different assessment processes that can apply, depending on how the development is characterised. In general, CSG developments will fall into one of three categories:

- *State significant development* (SSD): these are projects that are deemed to be of State or regional significance.

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80 Petroleum (Onshore) Act 1991 (NSW), s. 70.
81 Petroleum (Onshore) Act 1991 (NSW), s. 70.
82 National Parks and Wildlife Act 1974 (NSW), ss. 41, 54, 58O and 64.
83 National Parks and Wildlife Act 1974 (NSW), s 47N.
84 Petroleum (Onshore) Act 1991 (NSW), s. 70(3).
- **Designated development**: these projects are deemed to be high impact development.\(^{86}\)

- **Part 5 developments**: these projects do not need development consent, but still need to undergo an environmental assessment.\(^{87}\)

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

Until 2011, many CSG projects were assessed under Part 3A of the *Environmental Planning and Assessment Act 1979* (NSW) (EP&A Act). Part 3A has now been removed from the planning system, but some major projects that were being assessed under Part 3A at the time it was removed will continue to be assessed under that system. Any modifications to projects approved under Part 3A will be assessed under the old Part 3A provisions. This means Part 3A could apply to some projects for quite some time. See our [Part 3A Fact Sheet](#) for more information about Part 3A developments.

How a development is characterised is important because it will determine how it will be assessed and who will be responsible for making the decision.

### State significant development (SSD)

In practice, most CSG projects fall into the category of State significant development (SSD) and the Minister for Planning will be the decision-maker unless that role is delegated to the Planning Assessment Commission. The Minister for Planning had delegated the decision-making power to the Department of Planning and Environment for ‘non-controversial’ SSD applications and the Planning Assessment Commission for ‘controversial’ SSD applications.\(^{88}\)

There are two ways a CSG project can qualify as SSD:

1. It’s a type of development listed in *State Environmental Planning Policy (State and Regional Development) 2011* (State and Regional Development SEPP),\(^{89}\) or

2. The Minister for Planning makes an order that the development is SSD.\(^{90}\)

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\(^{85}\) 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. 1 and 2.

\(^{86}\) They are assessed under Part 4 of the *Environmental Planning and Assessment Act 1979* (NSW). Designated developments are listed in the *Environmental Planning and Assessment Regulation 2000* (NSW), Sch. 3.

\(^{87}\) They are assessed under Part 5 of the *Environmental Planning and Assessment Act 1979* (NSW), which contains general environmental assessment requirements that apply to developments that do not require consent.

\(^{88}\) Non-controversial applications are those that have received less than 25 objections and have local council support. Controversial applications are those that have received more than 25 objections, or where the local council has objected or where there is a reportable political donation in connection with the application. For more information, see: [http://www.planning.nsw.gov.au/Development/Delegateddecisions/tabid/514/language/en-AU/Default.aspx](http://www.planning.nsw.gov.au/Development/Delegateddecisions/tabid/514/language/en-AU/Default.aspx).

All development for the purpose of petroleum production will qualify as SSD. Some exploration activities will also qualify, but not stratigraphic boreholes, monitoring wells, or a set of 5 or fewer wells that are more than 3 kilometres from any other petroleum well (other than an abandoned petroleum well) in the same petroleum title. Developments relating to CSG production such as pipelines or processing plants will also qualify as SSD in some circumstances.

See our State Significant Development and State Significant Infrastructure Fact Sheet for more information about the development assessment process.

**Does my local environmental plan apply to SSD?**

Planning at the local level is governed by local environmental plans (LEPs) and State Environmental Planning Policies (SEPPs) which are both forms of environmental planning instruments (EPIs). See our LEPs and SEPPs Fact Sheet for more information.

Some EPIs prohibit CSG activities on certain land, while others allow it. Where an EPI wholly prohibits CSG activities in a zone or over particular land, the Planning Minister cannot grant consent to that development. Where an EPI only partly prohibits the development, consent can be granted. Any zone that permits agriculture or industry (either with or without consent) will automatically allow CSG activities to be permitted with consent by virtue of the Mining SEPP.

To get around CSG activities being wholly prohibited within an area, a development application for SSD that is wholly prohibited by an EPI can be accompanied by a proposal to change the EPI so that the activity can go ahead. The Director-General of Planning and Environment can also propose changes to a LEP for the purposes of facilitating otherwise prohibited SSD.

Where a LEP needs to be changed to facilitate SSD, only the Planning Assessment Commission (PAC) can approve the amendment, and only the PAC can determine a development application for SSD that requires an amendment to a LEP.

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90 Before the Minister can ‘call in’ a development for assessment as SSD, he or she must first obtain the advice of the Planning Assessment Commission (PAC) about the State or regional planning significance of the proposal and make that advice publicly available. See: Environmental Planning and Assessment Act 1979 (NSW), s. 89C.
91 SEPP (State and Regional Development) 2011, Sch. 1, cl. 6.
92 Stratigraphic boreholes are boreholes drilled specifically to obtain a detailed record of the character and composition of the rock formation and not for the purpose of locating a mineral deposit.
93 Monitoring wells are drilled specifically to obtain accurate formation samples and are used for the sole purpose of taking water samples and/or monitoring water levels.
94 SEPP (State and Regional Development) 2011, Sch. 1, cl. 6(4). The development must have a capital investment value of more than $30 million.
95 Environmental Planning and Assessment Act 1979 (NSW), s. 89E(2).
96 Environmental Planning and Assessment Act 1979 (NSW), s. 89E(3).
97 SEPP (Mining, Petroleum Production and Extractive Industries) 2007, cl. 7.
98 Environmental Planning and Assessment Act 1979 (NSW), s. 89E(5).
99 Environmental Planning and Assessment Act 1979 (NSW), s. 89E(5).
100 Environmental Planning and Assessment Act 1979 (NSW), s. 89E(6).
See our [LEPs and SEPPs Fact Sheet](#) for more information about amendments to LEPs.

**What does the decision-maker need to consider?**

The decision-maker is required to consider a number of factors when determining a development application, including the public interest, whether the site is suitable for the development, the impacts of the development on the natural and built environment, the LEP, and relevant SEPPs.  

See our [LEPs and SEPPs Fact Sheet](#) for more information about how SEPPs apply to the development consent process.

**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 (OEH), the Environment Protection Authority (EPA) or the NSW Department of Primary Industries (DPI) Water.

With SSD, many of these additional approvals are either unnecessary or subject to a requirement that the approval must be given consistently with the development consent, meaning the other government agency has no discretion to 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 petroleum production lease is a type of approval that is still required but which must be granted consistently with a development consent for SSD. A licence to construct and operate a pipeline and a licence to pollute (environment protection licence) must also be granted.

**What is an aquifer interference approval?**

An aquifer interference approval is necessary where an activity will interfere with an aquifer. These are issued by NSW DPI Water. It is an offence to interfere with an aquifer without an aquifer interference approval or to breach or exceed the approval. The maximum penalty for a corporation is $1.1 million. Read the NSW Government’s [Aquifer Interference Policy](#) for more information.

**Can the project be changed?**

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101 [Environmental Planning and Assessment Act 1979 (NSW), s. 89E](#).
102 [Environmental Planning and Assessment Act 1979 (NSW), s. 79C; State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007](#).
103 [Environmental Planning and Assessment Act 1979 (NSW), s. 89K](#).
104 Water Management Act 2000 (NSW), s. 91A.
105 Water Management Act 2000 (NSW), s. 363B.
Consent to undertake SSD can be modified which means 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.

See our State Significant Development and State Significant Infrastructure Fact Sheet for more information about modifications to SSD.

**Designated Development**

Although many CSG projects will qualify as SSD, most of those that don’t will fall into the ‘designated development’ category. Designated development refers to high-impact developments (e.g. likely to generate pollution), or developments which are located in or near an environmentally sensitive area.

Local councils are responsible for assessing designated development but this role can also rest with a Joint Regional Planning Panel (JRPP) which is an independent planning body set up by the Minister for Planning in certain areas.

To qualify as designated development a project has to meet a number of thresholds relating to the size, type and location of the development. See pages 55-60 of Mining Law in New South Wales: A Guide for the Community for more information about the types of CSG activities classified as designated development.

See our DAs and Consents Fact Sheet for more information about the development assessment process for designated development.

**Does my local environmental plan apply?**

Designated development can only take place on land where it is permitted by the local environmental plan (LEP), unless a State Environmental Planning Policy (SEPP) overrides the LEP.

The SEPP (Mining, Petroleum Production and Extractive Industries) 2007 turns off some of the provisions in an LEP. For example, it says that if a LEP allows development for the purpose of petroleum production to be carried out with consent so long as certain provisions of the LEP are satisfied, those provisions do not have to be satisfied before development consent can be granted.\(^{106}\) The SEPP also says that CSG developments are allowable with consent in any zone in which agriculture or industry is allowable (either with or without consent).\(^ {107}\) These sorts of provisions limit the ability of LEPs to control CSG activities in local areas.

If CSG activities are prohibited by the LEP, it is possible for the applicant to propose a change to the LEP to facilitate the activity.

**What does the decision-maker need to consider?**

\(^{106}\) SEPP (Mining, Petroleum Production and Extractive Industries) 2007, cl. 8.

\(^{107}\) SEPP (Mining, Petroleum Production and Extractive Industries) 2007, cl. 7.
The decision-maker is required to consider a number of factors when determining a development application, including the public interest, whether the site is suitable for the development, the impacts of the development on the natural and built environment, your LEP, and relevant SEPPs.\(^{108}\)

See our LEPs and SEPPs Fact Sheet for more information as to how SEPPs apply to the development consent process.

**Are any other environmental approvals necessary?**

In addition to development consent, a number of other environmental approvals may be necessary, including an environment protection licence (licence to pollute) from the Environment Protection Authority\(^{109}\) a permit to clear native vegetation from the Local Land Services,\(^{110}\) a petroleum production lease from the Minister for Resources and Energy,\(^{111}\) or an aquifer interference approval, a water use approval and/or a water access licence from NSW DPI Water.\(^{112}\)

**Can the project be changed?**

Designated developments can be modified which means 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.

See our DAs and Consents Fact Sheet for more information about modifications to designated developments.

**Part 5 assessments**

In some cases a CSG activity will not need development consent. This may be because a law or policy says the activity doesn’t need consent (this is most likely to apply to exploration activities) or it may be that the proponent is also the consent authority. These activities will still need to undergo an environmental assessment which is known as a Part 5 assessment.\(^{113}\)

Unlike with SSD and designated development, there is no application as such, because consent is not necessary. The only definite legal requirement is for Part 5 activities to undergo a level of environmental assessment.

**What sort of environmental assessment happens under Part 5?**

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\(^{108}\) Environmental Planning and Assessment Act 1979 (NSW), s. 79C; State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007.


\(^{110}\) Under the Native Vegetation Act 2003 (NSW).

\(^{111}\) Under the Petroleum (Onshore) Act 1991 (NSW).

\(^{112}\) Under the Water Management Act 2003 (NSW).

\(^{113}\) See: Environmental Planning and Assessment Act 1979 (NSW), Part 5.
The Minister for Resources and Energy must examine and take into account to the fullest extent possible all matters which are likely to affect the environment if the activity goes ahead.\textsuperscript{114}

The most common form of environmental assessment for Part 5 projects is called a Review of Environmental Factors (REF). A REF takes a preliminary look at the likely environmental, social and economic impacts of a proposed development. REFs are only published once the activity has been approved.\textsuperscript{115}

If the proposal is likely to have a significant effect on the environment, an environmental impact statement (EIS) must be prepared and placed on public exhibition for at least 30 days, during which time the public can make submissions.\textsuperscript{116} A copy of the EIS and any submissions are forwarded to the Director-General of Planning and Environment, who then reports to the Minister for Resources and Energy.\textsuperscript{117}

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\textbf{Case Study: When will a proposal be likely to have a significant effect on the environment?}\textsuperscript{118} \\
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The Fullerton Cove Residents Action Group (FCRAG) challenged Dart Energy’s proposal for the drilling of coal seam gas exploration wells at Fullerton Cove near Newcastle. The site was located on a floodplain zone, in a high water table area, near an internationally-listed Ramsar wetland. \\
FCRAG argued that the proposal was high-impact development, and that Dart should therefore have prepared a full Environmental Impact Statement. FCRAG also argued that the proposal was not properly assessed under Part 5, particularly in relation to potential impacts on groundwater, threatened species and ecological communities. FCRAG pointed to the fact that the Department of Trade and Investment had not been provided with any groundwater assessment by Dart before approving the project. \\
The Land and Environment found that although there was no consideration of any groundwater assessment, the Department had complied with its requirements to consider environmental impacts “to the fullest extent possible”. The Court took into account the fact that this was a pilot project, and the Department had general knowledge of the geology of the area, and information collected in reports for nearby exploration wells. \\
This case shows that the requirement to consider environmental impacts “to the fullest extent possible” is limited and a failure to consider specific potential environmental impacts will not render a decision invalid if general regard has been given to those impacts. \\
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\textsuperscript{114} \textit{Environmental Planning and Assessment Act 1979} (NSW), ss. 79B(8), (9).
\textsuperscript{115} To find the REF go to: \url{http://www.resources.nsw.gov.au/environment/ref}. You will need to know the year the project you are interested in was approved.
\textsuperscript{116} \textit{Environmental Planning and Assessment Act 1979} (NSW), ss. 112, 113.
\textsuperscript{117} \textit{Environmental Planning and Assessment Act 1979} (NSW), ss. 112(2), 113(5).
\textsuperscript{118} Fullerton Cove Residents Action Group Incorporated v Dart Energy Limited & NSW Department of Trade and Investment, Regional Infrastructure and Services (No 2) [2013] NSWLEC 3.
If the activity is on land that is critical habitat or is likely to significantly affect threatened species, populations or ecological communities or their habitats, then a species impact statement (SIS) may also be required.\(^\text{119}\)

After considering the environmental impacts, the Minister for Resources and Energy can then either approve or reject the activity.\(^\text{120}\) Binding conditions can be attached.

See our [DAs and Consents Fact Sheet](#) for more information about Part 5 assessments.

**Can any CSG activities go ahead without undergoing an environmental assessment?**

Some minor CSG activities are exempt which means they don't need consent and do not have to undergo any environmental assessment. These include:\(^\text{121}\)

- 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.

However these sorts of activities will not be exempt if they are taking place in an environmentally sensitive area of State significance.\(^\text{122}\)

### Landholder Rights

For a comprehensive guide to landholder rights in relation to CSG activities, read Chapters 5 and 7 of *Mining Law in New South Wales: A Guide for the Community*.

### Access Arrangements

For a comprehensive guide to access arrangements, read Chapter 5 of *Mining Law in New South Wales: A Guide for the Community*.

\(^\text{119}\) *Environmental Planning and Assessment Act 1979* (NSW), s. 112(1B).

\(^\text{120}\) *Environmental Planning and Assessment Act 1979* (NSW), s. 112(4).

\(^\text{121}\) SEPP (Mining, Petroleum Production and Extractive Industries) 2007, cl. 10.

\(^\text{122}\) An environmentally sensitive area of State significance includes coastal waters, SEPP 14 coastal wetlands, SEPP 26 littoral rainforest, aquatic reserves, Ramsar wetlands, land of high Aboriginal cultural significance or high biodiversity significance (as identified in a Local Environmental Plan), State Conservation Areas, land on the State Heritage Register, land reserved or dedicated under the *Crown Lands Act 1989* (NSW) for the preservation of flora, fauna, geological formations or for other environmental protection purposes, or land identified as critical habitat.
What is an access arrangement?

An exploration licence can be granted over your land without your consent. However, no exploration can take place on your land until an access arrangement is in place. An access arrangement sets out the terms upon which the CSG company can access your land to explore for petroleum. The exploration activities must be carried out only in accordance with the terms of the access arrangement (and, of course, the exploration licence).

Access arrangements are only legally required at the exploration stage, but you may wish to consider seeking to make the arrangement cover any future CSG activities in the event that a petroleum production lease is granted in the future.

What is the process for making an access arrangement?

The holder of the exploration licence will serve you with a written notice of their intention to enter into an access arrangement with you. The notice must include a plan and description of the land where the exploration will take place and the exploration methods intended to be used. Along with the notice, you will also receive a draft access arrangement.

There is currently no template access arrangement for CSG exploration in NSW. However, the ‘Agreed Principles of Land Access’ have been signed by CSG companies Santos and AGL and landholder representatives NSW Farmers, Cotton Australia, the NSW Irricators Council, Country Women’s Association of NSW, and Dairy Connect. The principles state:

- Any Landholder must be allowed to freely express their views on the type of drilling operations that should or should not take place on their land without criticism, pressure, harassment or intimidation. Any Landholder is at liberty to say “yes” or “no” to the conduct of operations on their land;

- Gas companies confirm that they will respect the Landholder’s wishes and not enter onto a Landholder’s property to conduct drilling operations where that Landholder has clearly expressed the view that operations on their property would be unwelcome; and

- The parties will uphold the Landholder’s decision to allow access for drilling operations and do not support attempts by third party groups to interfere with any agreed operations. The parties condemn bullying, harassment and intimidation in relation to agreed drilling operations.

It is important to note that the ‘Agreed Principles of Land Access’ have only been signed by the CSG companies listed above.

123 Petroleum (Onshore) Act 1991 (NSW), s. 69C.
124 Petroleum (Onshore) Act 1991 (NSW), s. 69C.
125 Petroleum (Onshore) Act 1991 (NSW), s. 69E.
You should carefully review a proposed access arrangement and seek independent legal advice before signing anything. You are allowed to suggest whatever changes you think are appropriate. For example, you can ask for certain clauses to be removed or changed and suggest new clauses to cover issues that are not dealt with by the draft access arrangement. Another option is to draft your own access arrangement (or have a lawyer do this for you) and present that to the CSG company as the basis for negotiations.

If a landholder requests it, an access arrangement must state that the title holder has to pay the reasonable legal costs of the landholder to allow the landholder to get initial legal advice about the access arrangement. There may be limits on how much can be paid.

You will have a minimum of 28 days to come to an agreement from the date you are served with a notice of intention to seek an access arrangement. If you can reach an agreement about the access arrangement in that time, all the parties will sign the arrangement and it will become binding on them.

However, if you cannot agree within 28 days (or if you choose not to negotiate at all), the CSG company can start the arbitration process. It is important to keep in mind that a failure to agree does not necessarily mean that you will have to go to arbitration. The company may decide not to pursue this option against you.

Secondary landholders need to be notified of an access arrangement but they do not have a right to negotiate the terms of such arrangements. Secondary landholders include mortgagees. The licence holder has to serve any secondary landholders with notice of an access arrangement within 14 days of the access arrangement being agreed upon.

For a comprehensive guide to arbitration and access arrangements, read Chapter 5 of Mining Law in New South Wales: A Guide for the Community.

**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 company to come onto your 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 should an access arrangement cover?**

Each access arrangement will be different as the landholder and the company must negotiate the terms. Much will therefore depend on the negotiating skills of the

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126 Petroleum (Onshore) Act 1991 (NSW), s. 69D (2A). Note, it is unclear whether the landholder’s legal costs must be paid in the event that the landholder decides not to sign the access arrangement.

127 The costs are not to exceed the maximum amount set by the Director-General of Trade and Investment, with the concurrence of the NSW Farmers Association and Australian Petroleum Production and Exploration Association Limited, by order published in the Gazette. At the time of writing, no such order had been made.

128 Petroleum (Onshore) Act 1991 (NSW), ss. 69F, 69G.

129 Petroleum (Onshore) Act 1991 (NSW), s. 69EA.
landholder, the land, including what it is currently used for, and the nature of the exploration activities that are proposed. Remember that you can include a term in the access arrangement requiring the company to pay your reasonable costs of obtaining legal advice about making the arrangement.

See Appendix 2 in *Mining Law in New South Wales: A guide for the community* for a checklist that lists some of the things an access arrangement should address.

**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. If the licence holder breaches the access arrangement, the landholder is allowed to deny the licence holder access until the licence holder stops breaching the arrangement, or the breach is fixed.

Where a breach has occurred, a landholder can request the Director-General of Trade and Investment to appoint an arbitrator to decide whether the breach has been fixed properly. The Director-General must appoint an arbitrator within 24 hours of being requested and the arbitrator must deal with the matter within 5 business days of being appointed.

**What are my obligations under an access arrangement?**

Once an exploration licence is granted and an access arrangement is finalised, you are legally obliged to grant access in accordance with the access arrangement. If you unlawfully prevent the licence holder from accessing your land or carrying out authorised activities, you will be committing an offence and may be liable for the maximum penalty of $11,000. However, if you are denying access to prevent an ongoing breach of the access arrangement by the licence holder, your obstruction would not be considered to be unlawful. You should ensure that your access arrangement is detailed enough to be able to identify breaches. Seek legal advice if you have any doubts.

**Am I liable for the actions of the licence holder?**

Under the law landholders are immune from any action, liability, claim, or demand that arises as a result of the exploration licence holder’s acts or omissions.

**What if my neighbour signs an access arrangement?**

There is no legal requirement to consider your neighbour when negotiating an access arrangement, but it would be the neighbourly thing to do. By meeting with your neighbours and discussing your concerns, you may be able to help protect each other’s interests.

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130 *Petroleum (Onshore) Act 1991 (NSW)*, s. 69C(1).
131 *Petroleum (Onshore) Act 1991 (NSW)*, s. 69D(4).
133 *Petroleum (Onshore) Act 1991 (NSW)*, s. 136(3).
135 *Petroleum (Onshore) Act 1991 (NSW)*, s. 141.
If the actions of the licence holder are interfering unreasonably with your use and enjoyment of your land, you may be able to bring an action in nuisance. See below for more information.

Confidentiality clauses are often included in access arrangements. This is not required by law, and you do not have to agree to a confidentiality clause if you want to be able to talk about your access arrangement with your neighbours or anyone else.

Is there any way of getting out of an access arrangement?

If the access arrangement sets out how it can be terminated or varied, it can be terminated or varied by following that process.\(^{136}\) If the arrangement was decided by an arbitrator, the arbitrator can vary or terminate it but all the parties must agree.\(^{137}\)

An arrangement can also be varied or terminated by the Land and Environment Court if the arrangement was originally decided by the Court or an arbitrator.\(^{138}\)

What happens if I sell my land or buy land that already has an access arrangement in place?

An access arrangement does not run with the land so if you sell your land, or die, the access arrangement will no longer apply.\(^{139}\) However, if the arrangement is with two or more landholders, and one of the landholders sells their share of the property, the access arrangement continues in force for the others.\(^{140}\)

Can my property be accessed in any other way?

Sometimes, a company will seek to access your land using an authority that is not an access arrangement. This is particularly relevant at the production phase, where access arrangements are not required at all. This can be through easements and rights of way, or for inspection and control.

Legal Options

For a guide to some legal options, read Chapter 7 of \textit{Mining Law in New South Wales: A Guide for the Community}.

If you are concerned about CSG activities in your area or on your land there are a number of things you can do. The law provides a number of formal opportunities to set out your concerns. There are also a range of other actions you could take. If you are considering taking any of the legal action discussed in this Fact Sheet, seek legal advice first.

Write submissions

\(^{136}\) \textit{Petroleum (Onshore) Act 1991 (NSW)}, s. 69T(1).
\(^{137}\) \textit{Petroleum (Onshore) Act 1991 (NSW)}, s. 69T(2).
\(^{138}\) \textit{Petroleum (Onshore) Act 1991 (NSW)}, s. 69U(1); 69U(2).
\(^{139}\) \textit{Petroleum (Onshore) Act 1991 (NSW)}, s. 69T(2).
\(^{140}\) \textit{Petroleum (Onshore) Act 1991 (NSW)}, ss. 69U(1), 69U(2).
When the Government wants to know what you think about something, it will usually ask you to write a submission. A submission sets out your point of view and the argument which supports that point of view.

Read our Submissions, Letters and Petitions Fact Sheet and our Including conditions in your submission Fact Sheet for more information. See our Have Your Say resource for more information about how to engage with decision-makers to achieve positive outcomes for the environment and maps of current opportunities for comment.

**Appear at a public hearing or public meeting**

You can find out if a project you're interested in has been referred to the PAC by visiting the PAC’s website and searching the PAC register.\(^{141}\)

The PAC routinely consults the community to help them understand the issues involved in each planning matter. They can do this in two ways – a public hearing or a public meeting.

**Challenge the development consent**

The decision to grant development consent to a CSG project can sometimes be challenged in Court. There are two main types of challenge – merits appeals and judicial review.

See our Land and Environment Court Fact Sheet for more information about challenging a development consent. You should always seek legal advice before taking legal action.

**Bring a ‘civil enforcement’ case**

If the development goes ahead, the community can still play a role in ensuring that it is being operated lawfully. This type of legal action is known as ‘civil enforcement’. A typical matter might involve a claim that there has been a breach of an environmental or planning law. The Court will be asked to make orders to fix that breach.

See our Land and Environment Court Fact Sheet for more information about bringing a civil enforcement case. You should always seek legal advice before taking legal action.

**Incorporate an environmental group**

Individuals often unite on a single issue and when this happens, a group inevitably forms. While community groups are a great way to approach a common problem, you may also wish to consider incorporating the group.

See our Incorporating an Environmental Group Fact Sheet for more information about incorporating an association.

Compensation and land valuation cases

See Chapter 7 of *Mining Law in New South Wales: A guide for the community* for more information about compensation and land valuation.

Landholders can appeal to the Land and Environment Court for an assessment of compensation where ‘compensable loss’ has been suffered as a result of exploration or production activities. You can challenge the value of your land if you are dissatisfied with the Valuer-General’s determination.

Whether you are challenging a compensation or valuation decision, the Land and Environment Court may confirm or revoke the decision, make a decision in place of the original decision, or refer the matter back to the original decision-maker for determination in accordance with the Court’s finding or decision.

Other disputes with CSG companies

The Land and Environment Court can hear a range of disputes that can arise between a landholder and a CSG company, including disputes surrounding access arrangements, disputes about exploration or mining activities coming too close to dwelling-houses, gardens and improvements, boundary disputes, disputes about a right of way, right of access to water or right of entry, allegations of trespass or damage to land, and disputes about the management of land subject to a CSG title.

Bring a claim in nuisance

CSG activities can affect neighbouring properties with noise, vibrations and light (which may amount to a nuisance). You may be able to bring a case to stop the harm or be compensated for it. These kinds of claims are rare in relation to CSG activities, but there are some examples.

See our *Private Nuisance Fact Sheet* for more information about nuisance claims.

Selling your land to the CSG company

There is no law that says the company needs to buy your land except where it is a condition of consent that the company purchases your property upon your request if certain limits such as noise, dust etc. are surpassed. If it is a condition of consent, then legally they have to purchase your property if you request it.

How do I make complaints about CSG operations?

If you can show that you or your property is being negatively affected by exploration or production operations, you should make a complaint to the company and the

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142 Such appeals are heard in Class 8 of the Court’s jurisdiction. See: *Land and Environment Court Act 1979* (NSW), s. 21C.

143 Valuation of Land Act 1916 (NSW), s. 37(1). These appeals are heard in Class 3 of the Court’s jurisdiction. See: *Land and Environment Court Act 1979* (NSW), s. 19.

144 Petroleum (Onshore) Act 1991 (NSW), s. 115.
NSW Government. The Division of Resources and Energy has information on its website about making complaints about CSG activities.\textsuperscript{145}

**How do I find information?**

Most of the information you need will be publicly available. You just need to know where to look.

1. **Making a GIPA application**

If you can’t find something you are looking for, you should contact the Government agency that you think will have the information. If that doesn’t work you can make a GIPA application (under the *Government Information (Public Access) Act 2010* (NSW) which replaced the old freedom of information laws).

See our Access to Information Fact Sheet for more information about GIPA applications.\textsuperscript{146}

2. **Getting information from the CSG company**

Sometimes companies establish community advisory committees to allow ongoing discussions with the community. These committees can be formalised into Community Consultative Committees (CCCs). Establishing a CCC is often a condition of consent imposed by the Minister for Planning (or the Planning Assessment Commission).

The Government has produced Community Consultation Committee Guidelines to help explain the role of CCCs.\textsuperscript{147} The Guidelines also contain dispute resolution procedures and guidance on how to handle conflicts of interest.

3. **Finding exploration licences and petroleum production leases and any relevant conditions**

You can use the online ‘NSW Titles’ to identify what exploration licences and production leases have been issued in your region and the holder of those titles.\textsuperscript{148} NSW Titles is a useful tool but be sure to download the instruction sheet so you can get the most out of it.

You can find the conditions attached to an exploration licence using the online ‘DIGS’ program.\textsuperscript{149}

4. **Finding development consents/conditions**

These tend to be available on the website of the decision-maker, e.g. the Department of Planning and Environment’s website\textsuperscript{150} or that of the local council or JRPP if the development was designated development.

5. **Finding pollution licences and other permits**

\textsuperscript{145} Available at: http://www.resources.nsw.gov.au/environment/complaints-and-incident-reporting

\textsuperscript{146} See: http://www.edo.org.au/edonsw/site/factsh/fs10_3.php or call EDO NSW on 02 9262 6989.


\textsuperscript{148} Available at: http://digsopen.minerals.nsw.gov.au/

\textsuperscript{150} See: http://majorprojects.planning.nsw.gov.au/page/determinations/
Most licences and permits that are issued by government departments are publicly available.

- Pollution licences (also known as environment protection licences) are available from the [EPA website].
- Clearing approvals are listed on the [Office of Environment and Heritage website].
- Approvals relating to water use are listed on the NSW [DPI Water website].

**Australian Government Approvals**

Some CSG activities will need approval from the Australian Government. This is in addition to any approval required at the State level (such as a petroleum production lease or development consent). The approval is granted under Federal environmental law.

An Independent Expert Scientific Committee on Coal Seam Gas and Large Coal Mining Development has been established to advise all governments on CSG and coal projects that may have significant impacts on water resources.

**What sorts of CSG projects need Commonwealth approval?**

Only ‘controlled actions’ need approval from the Australian Government. A controlled action is an action that is likely to have a significant impact on a ‘matter of national environmental significance’.

There are eight matters of national environmental significance. These are also known as ‘triggers’ because they trigger the need for approval from the Australian Government. The matters of national environmental significance are:

- world heritage values of a world heritage area;
- heritage values of a national heritage place;
- ecological values of a Ramsar wetland;
- nationally listed threatened species and ecological communities;
- listed migratory species;

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• nuclear activities (including uranium mines);
• Commonwealth marine areas; and
• the Great Barrier Reef Marine Park; and
• coal seam gas and large-scale coal projects likely to have a significant impact on water resources

See our EPBC Act Fact Sheet for more information about Australian Government approvals.

The Australian Government has released Significant Impact Guidelines for coal seam gas and large coal mining developments – impacts on water resources. The guidelines are designed assist applicants of CSG or a large coal mining developments to decide whether the action will or is likely to have a significant impact on a water resource. Read more on the Australian Environment Department website.

Glossary

**Key to terms used in this Fact Sheet**

- CSG means coal seam gas
- Department means NSW Department of Industry Division of Resources and Energy
- Environment Minister means the NSW Minister for the Environment
- EP&A Act means the Environmental Planning and Assessment Act 1979 (NSW)
- LEP means Local Environmental Plan
- Minister means the NSW Minister for Resources and Energy
- NPW Act means the National Parks and Wildlife Act 1974 (NSW)
- OEH means the NSW Office of Environment and Heritage
- Planning Minister means the NSW Minister for Planning
- Petroleum includes coal seam gas (CSG)
- POEO Act means the Protection of the Environment Operations Act 1997 (NSW)
- SEPP means a State Environmental Planning Policy

Useful websites
**NSW Titles** 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.

**DIGS** is a database of mining licence and lease documents.

**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 though its Environmental Trust, is an online tool designed to assist the community to have their say in decisions impacting the environment.

**EDO NSW 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.

**Useful legal text**