



Strategic Regional Land Use Policy Package

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This Fact Sheet focuses on the Strategic Regional Land Use policy package. It does not cover mining and coal seam gas exploration and production in detail. Please see our [Mining](#) and [Coal Seam Gas](#) Fact Sheets for more information about mining and coal seam gas. 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*](#).

Overview

The NSW Government's [Strategic Regional Land Use policy package](#)² (SRLU package) sets out the process for assessing the impact of large-scale mining and coal seam gas (CSG) developments on areas of agricultural and environmental value by:

- mapping strategic agricultural land and critical industry clusters;
- setting new assessment mechanisms and codes of practice for mining and CSG developments; and
- setting guidelines on how mining and CSG developments can interfere with groundwater (aquifers).

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

² <http://www.nsw.gov.au/initiative/strategic-regional-land-use>

The package includes the following policy documents:

1. *Strategic Regional Land Use Plan – New England/North West*
2. *Strategic Regional Land Use Plan – Upper Hunter*
3. *Aquifer Interference Policy*
4. *Coal Seam Gas Codes of Practice – Well Integrity*
5. *Coal Seam Gas Codes of Practice – Fracture Stimulation Activities*

This factsheet addresses the key messages of the SRLU package and provides a general outline the individual elements of the package. See our [Mining](#) and [Coal Seam Gas](#) Fact Sheets for more information about mining and coal seam gas.

Strategic Regional Land Use Plans

To date, Strategic Regional Land Use Plans have only been made for the New England/North West and Upper Hunter regions. The NSW Government [indicated in 2012](#)³ that mapping for the Central West and Southern Highlands regions was underway, and that other areas of the State, including the North Coast, will be covered by Strategic Regional Land Use Plans by 2014. However, no further information has been released about this process.

Strategic Regional Land Use Plans⁴ outline the challenges confronting the region to which they relate with regards to things such as infrastructure, economic development, employment, housing, and the natural environment. The Government's policy response for each set of challenges is outlined in the Plan. A key challenge for the New England/North West and Upper Hunter regions is the rapid growth of the mining and CSG industries and their proximity to valuable agricultural land.

Each plan includes maps that identify strategic agricultural land as well as the coal, CSG and other mineral potential of the region. Strategic agricultural land is highly productive land that has unique natural resource characteristics (such as soil quality and reliable water access) or socio-economic value (such as high productivity, infrastructure availability and access to markets).

There are two categories of strategic agricultural land:

1. Biophysical strategic agricultural land – based on the inherent qualities of the land; or
2. Critical industry cluster – based on the land's importance to a highly significant and clustered industry.

This mapping is important because the gateway process only applies to land that is mapped as strategic agricultural land. However, the other policy documents such as

³ http://www.nsw.gov.au/sites/default/files/strategicregionallandusepolicy-mediarelease_sd_v02.pdf

⁴ <http://www.nsw.gov.au/strategicregionallanduse>

the Aquifer Interference Policy and the Coal Seam Gas Codes of Practice apply to the whole of NSW, not just land mapped as strategic agricultural land.

The two mapped regions identify over 2 million hectares of strategic agricultural land, including two critical industry clusters identified in the Upper Hunter Strategic Regional Land Use Plan. They are the viticulture critical industry cluster and the equine critical industry cluster.

The gateway process

Development applications for large-scale mining or CSG activities on mapped strategic agricultural land must be accompanied by a 'gateway certificate'. If a development application relates to 'biophysical strategic agricultural land', a site verification certificate is acceptable.

The gateway process only applies to land within an existing Strategic Regional Land Use Plan (currently the New England/North West and Upper Hunter regions), or to land outside of these regions where landholders or mining and CSG operators have applied for a site verification certificate to determine whether a piece of land is classified as biophysical strategic agricultural land.⁵

A gateway certificate is a certificate issued by the [NSW Mining & Petroleum Gateway Panel](#)⁶ following an assessment of the potential impacts of the project on agricultural land and water resources. Because the gateway stage is before the development assessment stage, a gateway application does not require environmental investigations to the level of an environmental impact statement.

The Mining and CSG Gateway Panel comprises experts in fields such as agricultural science, water and mining.

The gateway process only applies to projects that satisfy all three of the following criteria:

1. The project is State Significant Development (SSD) (this includes most coal mining and CSG production projects, some CSG exploration projects but not coal exploration projects);
2. The project requires a new mining/petroleum production lease or exploration licence; and
3. the project is located on biophysical strategic agricultural land⁷ or a 'critical industry cluster'⁸ (as mapped by the SRLUPs for each designated area).

⁵ *State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007* (NSW), cl. 17C. *Environmental Planning and Assessment Regulation 2000* (NSW), cl. 50A.

⁶ <http://www.mpgp.nsw.gov.au/>

⁷ *Strategic Regional Land Use Plan: New England North West*, p. 20. Land with a rare combination of natural resources highly suitable for agriculture.

Only coal or CSG leases and licences that were issued after 11 September 2012 (when the SRLU package was released) will be subject to the gateway process. This means that renewals of exploration licences and mining/production leases currently in place are not subject to the gateway process and other SRLU package policies.

A mining or CSG company can [apply for a gateway certificate online](#).⁹ The SRLU package does not specify the level of information which is required to be included in the gateway application.

The Mining and CSG Gateway Panel will need to assess the proposal against set criteria, including:

1. Whether the project will significantly reduce agricultural productivity based on:
 - a) the consideration of a number of environmental factors;
 - b) impacts on highly productive groundwater, including the provisions of the Aquifer Interference Policy; and
 - c) the advice of the Minister for Primary Industries.
2. Whether the proposal will lead to significant impacts on a critical industry cluster based on:
 - a) subsidence and surface area disturbance;
 - b) reduced access to agricultural resources;
 - c) reduced access to support services and infrastructure;
 - d) reduced access to transport routes; or
 - e) loss of scenic and landscape values.

The Mining and CSG Gateway Panel must then issue a gateway certificate which can include conditions such as the requirement for additional environmental studies or physical amendments to the project to avoid or minimise particular impacts. However, there is no option for the Panel to refuse to issue a gateway certificate. This means that all projects that are required to pass through the gateway will be given a certificate with or without conditions. There is no land that has been deemed by the SRLU package as 'no-go' zones for mineral/petroleum exploration and mining

Once a gateway certificate has been issued, the applicant can lodge a SSD application with the NSW Department of Planning and Environment for assessment. See our [State Significant Development and State Significant Infrastructure](#) Fact Sheet for more information about how SSD applications are assessed.

The applicant must address any conditions imposed by the gateway certificate in the Environmental Impact Statement (EIS) that it prepares as part of its SSD application. The Planning and Assessment Commission (PAC) must consider the extent of

⁸ *Strategic Regional Land Use Plan: New England North West*, p. 20. A localised concentration of interrelated productive industries based on an agricultural product that provides significant employment opportunities and contributes to the identity of the region.

⁹ <http://www.mpgp.nsw.gov.au/index.pl?action=page&page=applications>

compliance with the conditions in determining whether to grant planning approval for the project.

Recent amendments to Mining SEPP¹⁰ make the 'significance of the resource' the principal consideration for the PAC when determining an application for mining or CSG development.

CSG exclusion zones

CSG exclusion zones were introduced in October 2013¹¹. The exclusion zones ban new CSG activity within a two kilometre buffer around existing and future residential areas. The exclusion zones apply to 2.7 million hectares of existing and future residential land across NSW, including all residential areas of NSW, the North West and South West Growth Centres of Sydney and seven rural villages across NSW.

The exclusion zones also apply to the equine and viticulture critical industry clusters in the Upper Hunter. A map indicating the CSG exclusion zones is available on the NSW Planning and Environment website.¹² See our [Coal Seam Gas](#) Fact Sheet for more information.

Aquifer Interference Policy

Mining and coal seam gas activities are known to interfere with aquifers, for example through penetrating the aquifer, taking water from the aquifer or obstructing the flow of an aquifer.

The [Aquifer Interference Policy](#)¹³ (AIP) applies to the whole of NSW. It details how the potential impacts of new mining and CSG proposals on aquifers should be assessed and how this information is provided to the relevant planning process, including the Gateway Panel and/or the Planning Assessment Commission.

The AIP has two key components. Firstly, it sets the rules to guide the NSW Department of Primary Industries (DPI) Water in licensing water use for mining and CSG activities. Secondly, it guides the Mining and CSG Gateway Panel or Planning Assessment Commission in assessing the impacts aquifer interference activities development assessment stage. It is important to note that the AIP is not in itself legally binding, but is a policy document designed to guide decision-makers when assessing the impacts of a development on an aquifer.

¹⁰ *State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) Amendment (Resource Significance) 2013*, cl. 12AA.

¹¹ Through an amendment to the *State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007*

¹² http://www.planning.nsw.gov.au/Portals/0/PlanningYourRegion/CSG_exclusion_zones_residential_CICs.pdf

¹³ <http://www.nsw.gov.au/strategicregionallanduse>

Only coal or CSG leases and licences that were issued after 11 September 2012 (when the SRLU package was released) are subject to the AIP. The AIP specifically exempts exploration activities – even though exploration activities can involve aquifer interference. The determination of NSW DPI Water can also be overruled during development assessment.

Licensing water use for mining and CSG activities

The AIP confirms that all water taken by aquifer interference activities, regardless of its quality, needs to be accounted for within extraction limits set by the relevant water sharing plan.

A water access licence (WAL) is required whether water is taken for consumptive use or whether it is taken incidentally by the aquifer interference activity (such as dewatering of a mine). This includes where flow is induced from adjacent groundwater sources or connected surface water sources to fill a void created in the aquifer. Flows induced from other water sources also constitute take of water and separate access licences are required to account for the take from all individual water sources.

The WAL entitlement must be sufficient to account for the take of water from the water source at all times. It is the responsibility of the applicant to predict the required volume and monitor the take against the licensed share throughout the life of the activity. Where the water is to be taken from a water source that has no unassigned water or insufficient unassigned water to account for any inflows to the activity then water entitlements will need to be purchased from an existing licensed user.

Compliance action and penalties may apply in the event that there is insufficient water allocation to account for the take of water during an activity's life. Such a situation can be rectified through adjustments to held entitlements, purchasing water allocations on the temporary water market or through remediation action to reduce the actual take of water

WALs are not to be granted unless the Minister for Primary Industries is satisfied that adequate arrangements are in force to ensure that no more than minimal harm will be done to any water source as a consequence of water being taken under the licence.

Mining and CSG projects that have been approved as State Significant Developments (SSD) require WALs but do not require water use approvals, water management work approvals or activity approvals (except aquifer interference approvals).¹⁴ However, these projects will need to nominate on their WAL the water supply work that is causing water to be taken. For example, where an open cut or

¹⁴ *Environmental Planning and Assessment Act 1979* (NSW), s. 89J.

underground coal mine is taking water indirectly from a connected river, then the mine workings will need to be the nominated water supply work.

In these instances, some conditions may be imposed on the WAL which relate to the taking of water as a result of the works that have been approved in the development consent. This might include appropriate monitoring networks and measurement strategies to ensure the take of water from all affected water sources can be accurately quantified and reported.

In water sources where water sharing plans do not yet apply, an aquifer interference activity that is taking surface or groundwater is required to hold a water licence under the *Water Act 1912*.¹⁵

Until water sharing plans apply across the whole State, it is possible for the *Water Act 1912* to apply in a groundwater source and the *Water Management Act 2000* to apply in a connected surface water source or vice versa. Where this occurs and the aquifer interference activity is effectively taking water from both water sources then licences will be required under each Act.

The AIP applies to licences under the *Water Act 1912*.

Assessing aquifer interference activities

The Minister for Primary Industries is required to provide advice, which will be made public, on aquifer impacts either:

- to the Mining and CSG Gateway Panel during the gateway process; or
- if the gateway process does not apply, to the PAC during the assessment of the development application.

Before the Minister for Primary Industries provides advice to either the gateway process, the Planning Assessment Commission or the Minister for Planning, NSW DPI Water will undertake an assessment of the project's ability to achieve points 1 – 4 below.

1. The proponent's ability to obtain the necessary licences to account for the take of water from any relevant water source.
2. The proponent's ability to demonstrate that the proposal has been designed in such a way as to prevent the take of water where the necessary licences cannot be obtained.
3. The proponent's ability to demonstrate that adequate arrangements will be in place to ensure that the minimal impact considerations can be met.
4. The proponent's proposed remedial actions for impacts greater than those that were predicted as part of the relevant approval. The requirement for

¹⁵ *Water Act 1912* (NSW), Parts 2 and 5.

remedial actions may occur where modelled predictions were inaccurate or where planned mitigation, prevention or avoidance strategies have failed.

Note: The *Water Management Act 2000* includes provisions that require aquifer interference activities to be authorised by aquifer interference approvals.¹⁶ However, these provisions have not yet commenced.

The AIP states that aquifer interference approvals are not to be granted unless the Minister for Primary Industries is satisfied that adequate arrangements are in force to ensure that no more than minimal harm will be done to any water source, or its dependent ecosystems, as a consequence of its being interfered with.

Even though aquifer interference approvals are not required under the law, NSW DPI Water will assess the potential impacts of the aquifer interference activity against the minimal impact considerations and this will be used as the basis for providing advice to either the gateway process, the Planning Assessment Commission or the Minister for Planning. So, the activity will be assessed as though it needs an aquifer interference approval, even though it doesn't under the law.

The assessment will be based on the proponent's environmental assessment. The AIP includes a detailed table that sets out the minimal impact considerations for highly productive groundwater sources and less productive groundwater sources. It also defines highly productive groundwater sources and less productive groundwater sources.

When a project comes before the NSW Department of Planning and Environment for Assessment as SSD, the Director-General must consult relevant public authorities when preparing the environmental assessment requirements. The AIP states that NSW DPI Water will be consulted when environmental assessment requirements are being prepared.

The AIP also sets out the information that the proponent will need to provide to allow the proposed activity to be assessed, such as baseline groundwater conditions, details of potential water level, quality or pressure drawdown impacts on groundwater dependent ecosystems; and details of the potential to cause or enhance hydraulic connection between aquifers. Where a project is approved, the AIP also lists some conditions that should be attached to the approval.

CSG Codes of Practice

All new CSG exploration and production titles in NSW are subject to the Codes of Practice. Compliance with the Codes will be included as conditions of title. CSG titles existing before the SRLU package came into effect are not covered by these Codes.

¹⁶ See: *Water Management Act 2000* (NSW), ss. 91, 91F.

The [CSG Codes of Practice](#)¹⁷ have the effect of ending the NSW Government's moratorium on hydraulic fracturing (fracking) and ban the use of additives containing BTEX compounds.

The Well Integrity Code seeks to ensure that well operations are carried out safely, without risk to health and without detriment to the environment. The Code covers the design, construction, maintenance and abandonment of wells. The Code does not apply to seismic shot holes, monitoring bores, water monitoring bores and exploration holes deemed to be 'frontier exploration' holes.

The Fracture Stimulation Activities Code sets out requirements to ensure that CSG fracture stimulation activities (fracking) are conducted in a safe manner and that communities, the environment and water resources are protected. Prior to the commencement of fracking, a Fracture Stimulation Management Plan (FSMP) must be prepared by the titleholder and approved by the NSW Government. The FSMP should identify and demonstrate how all relevant issues associated with the fracking will be managed to ensure that residual risks to the environment, community and workforce are reduced to acceptable levels.

Agricultural Impact Statements

An [Agricultural Impact Statement](#)¹⁸ (AIS) assesses the impact of some mining and CSG proposals on agricultural resources (including water resources) and businesses. An AIS is required for all new SSD mining and coal seam gas development applications that may impact agricultural resources, and for mining and CSG exploration activities as part of the Review of Environmental Factors (REF). An AIS will be required for these developments regardless of whether or not they are on land mapped as strategic agricultural land.

The AIS must detail:

- the significance of the agricultural resources – including land and water – and associated businesses in the project area and surrounding locality; and
- the potential impact of the project on agricultural land, water and businesses at a local and regional level.

If the AIS is completed at the development application stage it will be assessed by the NSW Department of Planning and Environment, in consultation with the [Office of Agricultural Sustainability and Food Security](#).¹⁹

¹⁷ <http://www.nsw.gov.au/strategicregionallanduse>

¹⁸ <http://www.nsw.gov.au/strategicregionallanduse>

¹⁹ <http://www.dpi.nsw.gov.au/oasfs>

If the AIS is completed at the exploration stage it will be assessed by the Division of Resources and Energy, in consultation with the NSW Department of Planning and Environment and the Office of Agricultural Sustainability and Food Security.

Land and Water Commissioner

The NSW Government has appointed a [Land and Water Commissioner](#)²⁰ to provide independent advice to the community regarding exploration activities on strategic agricultural land throughout the State and as an advocate for landholders. This includes guidance to landholders on applications for mining and CSG exploration licence applications, SRLUPs, access arrangements and compensation, and the rights and responsibilities of mining and CSG companies. The Land and Water Commissioner also supervises the finalisation and implementation of access arrangements, and provides advice to the NSW Government on applications for exploration or production activities.

For more information, see EDO NSW's publication [Mining and the Law: A guide for the community](#).

Glossary

Key terms used in this fact sheet

AIP means the Aquifer Interference Policy

AIS means an Agricultural Impact Statement

CSG means coal seam gas

SRLUP means Strategic Regional Land Use Plan

SSD means State significant development under the *Environmental Planning and Assessment Act 1979* (NSW)

WAL means a water access licence

Useful websites

- [NSW Government – Strategic Regional Land Use](#)
- [Land and Water Commissioner](#)

²⁰ <http://www.trade.nsw.gov.au/lw-commissioner>