Suggesting Conditions of Approval

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Overview

When making submissions objecting to a proposed coal mine or coal seam gas (CSG) project, it is important that you also consider whether there are any conditions that might minimise the impact of the development on you and/or the environment, and request that these conditions be attached to any approval that is given.

The Department of Planning and Environment can attach conditions to any development that it approves[^2], and if these conditions are not complied with, the mining or gas company may be required to stop work, repair any damage, pay a fine, face prosecution, or a combination of these things.

Conditions are designed prevent, minimise, and offset any adverse impacts of the project, including environmental, economic and social impacts. Conditions are also intended to set standards and performance measures for acceptable environmental performance, and to require regular monitoring and reporting.

This Fact Sheet is to help you consider what sorts of conditions you might like to ask for and what sorts of conditions are likely to be attached to a coal mine or CSG project.

[^2]: Approval for open cut coal mining is assessed under s 89E of the Environmental Planning and Assessment Act 1979 NSW as all coal mining is listed as State Significant Development under Schedule 1 of the State Environmental Planning Policy (State and Regional Development) 2011. The draft standard and model conditions state that they apply only to decisions made under delegation, and most mining project approvals are assessed by the Planning Assessment Commission (PAC) under delegation from the Minister for Planning.
Standard and Model Conditions

The Department of Planning and Environment has prepared draft Standard and Model Conditions for specific industries, including open cut and underground mining, and petroleum exploration and production. The final Standard and Model Conditions are expected to be released in 2012 following consultation with industry, councils, and government agencies.

Standard conditions are common to every approval and generally ensure that the project operates in accordance with the law. The model conditions reflect the Government’s approach to best practice management of the impacts of the development. The community may have other ideas about what constitutes best practice and can suggest additional conditions that can further improve how the impacts of the development can be avoided or minimised. Some of these ideas are discussed below.

The Standard and Model conditions won’t necessarily be attached to an approval; rather they are examples of the types of conditions that are likely to be applied to particular developments. If your submission requests these types of conditions, it is more likely that your suggestions will be adopted. You will note that the draft conditions are quite general. It is recommended that you suggest specific limits and parameters to ensure the conditions are effective in avoiding or minimising the impacts of the mine.

Standard and Model Conditions for open cut mines

The draft model conditions for open cut mines include:

- Limits on the amount of coal that can be extracted each year;
- A fixed completion date for mining activities;
- Protection of public buildings, including the requirement for the mining company to cover the cost of any repair or relocation;
- General minimisation of harm to the environment;
- Extraction plans, including water and biodiversity management plans;
- Limits on how the coal can be transported e.g. not on public roads;
- Hours, frequency, and time of day that blasting is allowed;

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• Noise, air-blast and vibration limits;
• Air quality and greenhouse gas criteria, including a ban on the emission of offensive odours and a requirement to minimise greenhouse gas emissions;
• Additional measures that must be taken by the mining company to reduce noise and air quality impacts at the request of ‘eligible landholders’ e.g. double-glazing, insulation, or air filters;
• Conditions requiring the mining company to buy an eligible landholder’s property at the request of the landholder if noise, dust and air quality limits are exceeded. This may also include cumulative noise if other mines are also affecting a landholder. This condition is contentious because the landholder’s right to request that the mining company purchase their property is based on the mine breaching its conditions. Perhaps a better condition would be that eligible landholders are entitled to require the mine to purchase their property at any time, regardless of whether the mine is exceeding the noise, dust and air quality limits. It would be better that a zone of affectation be agreed upon and that land is purchased by the mining company at the landholder’s request. Additionally, if a landholder with acquisition rights requests a mining company to purchase their property in writing, the mining company has three months in which to do so. The price should be based on the current market value of the landowner’s interest in the land at the date of this request, as if the land was unaffected by the development. If the matter is not resolved, either party can request the Director-General of the Department of Planning and Environment to request a valuation, and then if this price is still not agreed upon, the Director-General will determine the price. If a landholder refuses this final price, after 6 months the mining company will no longer be required to purchase the property.
• Property inspections of land within 2km of the open cut mine pit at a landholder’s request before mining commences to establish the baseline condition of buildings and structures. This condition may help the landholder establish any damage that is caused by the mine and is relevant to compensation. It may also be worth asking that the investigations extend to water and other natural features of the property;
• Property investigations within 2 months of a landholder’s request after open cut mining has commenced to ascertain if any damage has been caused by the blasting. These investigations could be requested at regular intervals for the life of the mine;

7 An eligible landholder is someone whose land is listed in the conditions as being subject to acquisition upon request, or additional noise and/or air quality mitigation upon request. In your submission, you may wish to seek to be listed as an eligible landholder.
8 An eligible landholder is one whose land is listed in the conditions as being subject to acquisition upon request, or additional noise and/or air quality mitigation upon request.
- Requirements to protect soil and the water supply, and a requirement for a water management plan to be implemented, including the provision of a replacement if the water supply is adversely and directly impacted;\textsuperscript{10} 
- The requirement for biodiversity management and offset strategies, and heritage management plans; 
- Requirements for the monitoring of coal transport, e.g. the amount of coal transported from the mine each year, and a traffic management plan; 
- Waste minimisation requirements; 
- Requirements to establish and maintain an effective vegetative screen along the boundary of a site that adjoins public roads; 
- Rehabilitation of the mine site, for reasons including community safety; 
- Requirement to establish and operate a Community Consultative Committee. The Committee is an advisory committee that should have community and Council representatives, an independent Chair and appropriate representation from the company. The Guidelines for Establishing and Operating Community Consultative Committees for Mining Developments\textsuperscript{11} were released by the Department of Planning (as it was then) in 2007. These guidelines outline the purpose of the Committee, who the members should be, the procedure for meetings, responsibilities of the company, and communication with the broader community; and 
- Reporting requirements if any of the conditions are not being met. It is advisable to ask that all reporting of breaches is made public.\textsuperscript{12}

**Standard and Model Conditions for underground mines**

The draft Standard and Model conditions for underground mines include:

- Limits on the amount of coal that can be extracted each year; 
- A fixed completion date for mining activities; 
- Protection of public buildings, including the requirement for the mining company to cover the cost of any repair or relocation; 
- General minimisation of harm to the environment; 
- Extraction plans, including water and biodiversity management plans; 
- Subsidence impact performance measures for the natural environment and heritage, requiring that mining does not cause any more damage than the performance measures listed for watercourses, land such as cliffs, biodiversity, Aboriginal heritage, and historic heritage. If these measures are exceeded, the company may be required to remediate the damage, or if this is not viable, then offset the damage caused.

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\textsuperscript{10} This does not include negligible impacts. 
\textsuperscript{12} Pollution reporting requirements are also imposed by the Protection of the Environment Operations Act 1997 (NSW).
- Subsidence impact performance for built features, requiring that mining does not cause any more damage than the performance measures listed for public infrastructure and public safety.

- The requirement for the company to prepare and implement extraction plans, including water, land biodiversity, public safety, and heritage management plans;

- Noise impact assessment criteria for eligible landholders. It is important to note that if there is a written agreement between the landholder and company to exceed the criteria which the Department of Planning and Environment has been advised of, this criteria may not apply.

- Additional measures that must be taken by the mining company to reduce noise and air quality impacts at the request of ‘eligible landholders' e.g. double-glazing, insulation, or air conditioning;

- Air quality and greenhouse gas criteria, including a ban on the emission of offensive odours and a requirement to minimise greenhouse gas emissions;

- Conditions requiring the mining company to buy any private land at the request of the landholder if air quality limits are exceeded. This condition is contentious because the landholder’s right to request that the mining company purchase their property is based on the mine breaching its conditions. Perhaps a better condition would be that eligible landholders are entitled to require the mine to purchase their property at any time, regardless of whether the mine is exceeding the air quality limits. It would be better that a zone of affectation be agreed upon and that land is purchased by the mining company at the landholder’s request. Additionally, if a landholder with acquisition rights requests a mining company to purchase their property in writing, the mining company has three months in which to do so. The price should be based on the current market value of the landowner's interest in the land at the date of this request, as if the land was unaffected by the development. If the matter is not resolved, either party can request the Director-General of the Department of Planning and Environment to request a valuation, and then if this price is still not agreed upon, the Director-General will determine the price. If a landholder refuses this final price, after 6 months the mining company will no longer be required to purchase the property.

- Requirements to protect soil and the water supply, and a requirement for a water management plan to be implemented, including the provision of a replacement if the water supply is adversely and directly impacted;

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13 An eligible landholder is someone whose land is listed in the conditions as being subject to noise impact assessment criteria, you may wish to seek to be listed as an eligible landholder.

14 An eligible landholder is someone whose land is listed in the conditions as being subject to noise mitigation. In your submission, you may wish to seek to be listed as an eligible landholder.


16 This does not include negligible impacts.
• A gas drainage management plan, including community consultation and landholder agreements, as well as mitigation and/or compensation for significant noise, air quality and visual impacts and rehabilitation of disturbed sites.
• The requirement for biodiversity management and offset strategies, and heritage management plans;
• Requirements for the monitoring of coal transport, e.g. the amount of coal transported from the mine each year, and a traffic management plan;
• Waste minimisation requirements;
• Rehabilitation of the mine site, for reasons including community safety;
• Requirement to establish and operate a Community Consultative Committee. The Committee is an advisory committee that should be have community and Council representatives, an independent chair and appropriate representation from the company. The Guidelines for Establishing and Operating Community Consultative Committees for Mining Developments were released by the Department of Planning (as it was then) in 2007. These guidelines outline the purpose of the Committee, who the members should be, the procedure for meetings, responsibilities of the company, and communication with the broader community; and
• Reporting requirements if any of the conditions are not being met. It is advisable to ask that all reporting of breaches is made public.\(^\text{18}\)

**Standard and Model Conditions for coal seam gas exploration and production**

The draft Standard and Model conditions for petroleum exploration and production (including CSG) include:

• A requirement for the identification of well sites, including the requirement for the proponent to submit a site layout plan that has been prepared in consultation with the landholder to the Office of Environment and Heritage, the Department of Trade and Investment, Resources and Energy Division, and the Department of Planning and Environment if one was not prepared as part of the Environmental Impact Statement. Site layout plans must include details of the location of well sites, the route of access roads, and initial rehabilitation works following construction;
• Requirements for the protection of public infrastructure, including the requirement for the company to cover the cost of any repair or relocation;
• Construction and operation hours;
• Noise management plan;
• Noise impact assessment criteria limiting noise levels at any residence on privately owned land, requiring continuous improvement;


\(^{18}\) Pollution reporting requirements are also imposed by the *Protection of the Environment Operations Act 1997* (NSW).
- Requirements for the company to implement all reasonable and feasible measures to ensure that gas wells are constructed, operated and decommissioned to avoid and minimise gas migration risks and adverse impacts to beneficial aquifers including associated groundwater users, surface waters and groundwater dependent ecosystems;
- A ban on the use of fracking fluids containing BTEX chemicals;
- A requirement for water management plans to include measures to minimise impacts on surface water and groundwater quality;
- Requirement for an erosion and sediment control plan;
- Signs along all gas gathering system lines indicating that buried gas pipelines are present, and requirements to ensure that impacts to riparian vegetation and endangered ecological communities are minimised;
- Air quality and greenhouse gas criteria, including a ban on the emission of offensive odours and a requirement to minimise greenhouse gas emissions, and the requirement for an air quality and greenhouse gas management plan;
- Discharge limits on the concentration of pollutants listed in the conditions;
- The requirement for biodiversity management and offset strategies, and heritage management plans;
- Waste minimisation requirements;
- The implementation of a safety management system;
- Requirements to report on compliance;
- Requirement to establish and operate a Community Consultative Committee. The Committee is an advisory committee that should be have community and Council representatives, an independent chair and appropriate representation from the company. The Guidelines for Establishing and Operating Community Consultative Committees for Mining Developments were released by the Department of Planning (as it was then) in 2007. These guidelines outline the purpose of the Committee, who the members should be, the procedure for meetings, responsibilities of the company, and communication with the broader community;
- Requirements to report any incidents. It is advisable to ask that all reporting of breaches is made public.

Additional conditions

You should not feel restrained by the draft Standard and Model conditions. Some communities have requested other conditions be imposed on proposed developments, and you are able to request conditions that are specific to your own community. While it is not guaranteed that these conditions will be imposed by the decision maker, it is important to let the Department of Planning and Environment know how the development will affect you, and ways that you think the

20 Pollution reporting requirements are also imposed by the Protection of the Environment Operations Act 1997 (NSW).
development’s impact on you can be avoided or minimised. Some community groups have successfully applied to the Department of Planning and Environment, as well as the Land and Environment Court, to have conditions imposed on developments that fall well outside the draft Standard and Model conditions. These conditions extend the notion of what constitutes best practice.

Some conditions that communities have successfully requested include:

- Specific air quality assessments to monitor air quality, dust levels and risks to human health posed by air quality. Limits on air quality levels, including criteria for particulate matter with a diameter of less than 10 micrometers (PM10, which includes PM2.5) and defined actions to avoid and mitigate these risks, including that the mining company stop or relocate any activities to avoid exceeding these limits;\(^{21}\)
- Restrictions on operating hours and number of freight trains permitted to leave the site each day to mitigate and minimise the impact of noise on the community;\(^{22}\)
- Specific bans on mine water being discharged into certain creeks and rivers, and specific methods of irrigation paired with trigger levels for controlling discharge, ecotoxicity testing, and water monitoring plans to ensure that these bans are complied with;\(^{23}\)
- Specific biodiversity considerations, such as the requirement for there to be no impact on a specific species or its habitat from changes to water quality caused by mining, including conserving and restoring riparian vegetation and habitat, a study and management plan including monitoring to ensure that these conditions are complied with;\(^{24}\)
- The requirement for a Biodiversity Management Plan to include a description of the biodiversity values of the vegetation communities in the offset area, a description of the biodiversity values to be lost through clearing of vegetation communities in the area disturbed by the mine, and a description of how the offset strategy would be implemented, how the biodiversity values in the offset area would be maintained and enhanced, and to provide and enhance suitable habitat in the offset area for threatened species in the area;
- A requirement for the mining company to ensure that biodiversity offsets are maintained and enhanced forever, by either entering into a Conservation

\(^{21}\) *Ironstone Community Action Group Inc v Minister for Planning & Duralie Coal Pty Ltd [2011] NSWLEC 195.*
\(^{22}\) *Ironstone Community Action Group Inc v Minister for Planning & Duralie Coal Pty Ltd [2011] NSWLEC 195.*
\(^{23}\) *Ironstone Community Action Group Inc v Minister for Planning & Duralie Coal Pty Ltd [2011] NSWLEC 195.*
\(^{24}\) *Ironstone Community Action Group Inc v Minister for Planning & Duralie Coal Pty Ltd [2011] NSWLEC 195.*
Agreement, a public positive covenant, or similar binding mechanism over the offset area; 25

- The requirement for biodiversity offsets to be implemented such as a biodiversity corridor to increase connectivity between two distinct biodiversity offset areas; 26
- Specific rehabilitation conditions, such as long term requirements to ensure that no water pollution occurs after mining has finished. 27

You may also wish to request conditions relating to:

- Baseline studies of groundwater and surface water levels and quality, and continuing monitoring to ensure any changes in water quality and levels are identified and publically reported, as well as measures for the protection of groundwater e.g. preventing groundwater loss if you have bores;
- Baseline inspections and subsequent investigation of any damage caused by the company’s activities e.g. structural damage to buildings;
- Cumulative health impact studies, including plans for ongoing monitoring and a community health education project;
- Compensation for any damage to your property caused by the company’s activities, including provisions for baseline studies prior to the commencement of activities and continuing monitoring;
- Limits on dust and noise from train or truck movements between sites, including times of day, frequency, number, and routes of traffic;
- Baseline studies and continuing monitoring of the biodiversity values of species in the area, and measures to protect listed threatened and migratory species and endangered ecological communities which are known to be present in the area;
- More comprehensive community consultation programs and greater transparency;
- Requirement that the results of any monitoring or reporting be made public or published within a specific timeframe.

It is important for landholders and residents to have input in the decision-making process, and this includes having a say about what conditions should be placed on a development if it is approved. You are the expert on your town and your community, and while it is important to oppose the approval of the development in your submission if you do not want it to go ahead, it can also be important to tell the decision makers how the impacts of the development can be avoided or minimised if they do approve it.

26 Hunter Environment Lobby Inc v Minister for Planning [2011] NSWLEC 221.
27 Coastwatchers Association Inc & South East Region Conservation Alliance (SERCA) v Minister for Planning & Anor NSWLEC, 7 February 2012, unreported. Condition 51.