



**Council submission - Terms of Reference - Independent review of coal seam gas activities in NSW by the NSW Chief Scientist and Engineer**

**Terry Dwyer** to: [csg.review@chiefscientist.nsw.gov.au](mailto:csg.review@chiefscientist.nsw.gov.au)

11/04/2013 09:23 AM

History:

This message has been replied to and forwarded .

Dear Sir/Madam,

I refer to the above matter recently released for public exhibition and comment. Council has recently considered a staff report on this matter and the State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) Amendment (Coal Seam Gas Exclusion Zones) 2013. Council wishes to make a submission on the exhibited proposals – please find attached.

Relevant attachments are also attached. A hard copy of Councils submission will follow in the mail.

Regards,  
Terry Dwyer

Terry Dwyer  
Senior Strategic Planner (Policy)  
Clarence Valley Council  
Locked Bag 23, GRAFTON NSW 2460  
P: (02) 6643 0243  
F: (02) 6642 7647  
M: 0407 861 502  
[www.clarence.nsw.gov.au](http://www.clarence.nsw.gov.au)



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11 April 2013

Reference: DWS#1055544  
Contact: David Morrison/  
Terry Dwyer

NSW Chief Scientist and Engineer  
GPO Box 5477  
SYDNEY NSW 2001

Dear Sir

**Terms of Reference - Independent review of coal seam gas activities in NSW by the NSW Chief Scientist and Engineer**

I refer to the above matter recently released for public exhibition and comment.

Council has recently considered a staff report on this matter and would like to make a number of comments (below) as part of its submission.

Scope of Terms of Reference

Council considers that the scope of the Terms of Reference is too narrow, not comprehensive and should be widened to include:

- i. review of existing data/information pertaining to the land, subsurface, surface water and ground water environments in which CSG activities operate including data and studies on:
  - ground water systems including water quality, volumetric and spatial data on ground water systems (biological, chemical, physical, geological)
  - connectivity between ground water and surface water systems and between other ground water systems
  - soils including sub surface soil and strata data – chemical, structural characteristics, etc.
- ii. determination of the full range of data needs for assessing environmental/ecological, social and economic impacts of CSG exploration, prospecting and production activities both at broader and site specific scale

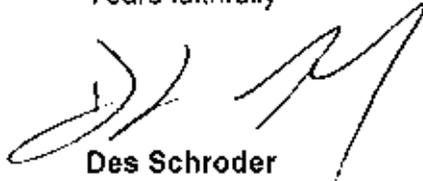
Time frames

The time frame for making submissions to the Independent Review's Terms of Reference and the reporting back to the Premier are considered to be too short. A greater period of time (at least 6 months) for a more comprehensive review of the science, data and planning/regulatory framework should be allowed so as to permit greater public input and independent peer review.

Council is also making a submission to the Department of Planning and Infrastructure regarding the recently exhibited State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) Amendment (Coal Seam Gas Exclusion Zones) 2013. A copy of this submission is enclosed for your information together with a copy of the staff report on the State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) Amendment (Coal Seam Gas Exclusion Zones) 2013 and the Independent Review's Terms of Reference.

If you require further information please contact either myself, David Morrison (Manager Strategic & Economic Planning) or Terry Dwyer (Senior Strategic Planner, Policy) on telephone 66430200.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Des Schroder', written over a horizontal line.

**Des Schroder**  
**Acting General Manager**



11 April 2013

Reference: DWS#1055464  
Contact: David Morrison/  
Terry Dwyer

The Director – Strategic Regional Policy  
Department of Planning & Infrastructure  
GPO Box 39  
SYDNEY NSW 2001

Dear Sir

**Public exhibition - State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) Amendment (Coal Seam Gas Exclusion Zones) 2013**

I refer to the above matter recently released for public exhibition and comment.

Council has recently considered a staff report on this matter and would like to make a number of comments (below) as part of its submission.

Exclusion zones

Council seeks the inclusion of the following areas as "exclusion zones" under proposed clause 9A (4) (b) and Schedule 3 of the "Mining SEPP":

- i. The balance of those areas at Gulmarrad and Woombah zoned R5 and that have a 4000m<sup>2</sup> lot size and are contiguous with those areas that are within 2km of land zoned Residential (R1, R2 or R3) that will enjoy exclusion.
- ii. Land at Waterview Heights zoned R5 and with a 4000m<sup>2</sup> lot size – on the basis that it is a substantial long established rural residential area in close proximity to the South Grafton/Grafton urban area enjoying community facilities such as a squash court, sports field, motel and active rural fire brigade/shed.
- iii. That part of the Gulmarrad and James Creek proposed "Growth Area" and future urban release area identified in the Mid North Coast Regional Strategy not already zoned residential.
- iv. The drinking water catchments of the Clarence - Coffs Harbour Regional Water Supply upstream of the Nymboida Weir and associated with the Shannon Creek Dam; and the SP2 zone over the Shannon Creek Dam.

Note: a copy of mapping of the above areas can be supplied to you upon request.

Exhibition/consultation period

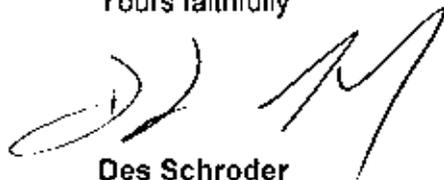
Council is particularly concerned about the brief exhibition/consultation period allowed to comment on the Draft Amending SEPP. It notes that the period is less than the 28 days allowed for comments and submissions on exploration licence applications (as outlined in NSW Trade & Investment's October 2011 guideline entitled "*Public Comment Process for the exploration of coal and petroleum, including coal seam gas*").

Such a brief period is of a token nature and against the "Public Participation Charter" focus espoused the NSW Planning Green Paper. The haste to finalise the proposals outlined in the Draft Amending SEPP and acceptable reforms to the CSG planning framework ahead of a comprehensive (independent) review by the NSW Chief Scientist and Engineer is not necessarily justified.

Council is also making a submission to the Terms of Reference for the current independent review by the NSW Chief Scientist and Engineer (Chief Scientist) of all CSG activities in NSW. A copy of this submission is enclosed for your information together with a copy of the staff report on the State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) Amendment (Coal Seam Gas Exclusion Zones) 2013.

If you require further information please contact either myself, David Morrison (Manager Strategic & Economic Planning) or Terry Dwyer (Senior Strategic Planner, Policy) on telephone 66430200.

Yours faithfully



**Des Schroder**  
**Acting General Manager**

<b>Committee:</b>	<b>ENVIRONMENT, ECONOMIC &amp; COMMUNITY</b>
<b>Section:</b>	Strategic & Economic Planning
<b>Date:</b>	9 April 2013
<b>Item:</b>	<b>12.070/13 AMENDMENT TO MINING SEPP - COAL SEAM GAS EXCLUSION ZONES</b>

**ATTACHMENT**

## **REPORT SUMMARY**

The purpose of this report is to advise Council in more detail of the recently announced amendments of the State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007 (Mining SEPP) to establish Coal Seam Gas Exclusion Zones. A draft SEPP amendment is currently on exhibition to 12 April 2013.

Council resolved at its 19 March 2013 meeting to effectively request the State Government to halt coal seam gas mining until further scientific analysis and testing has been undertaken to assure that there will be no detrimental impacts.

The proposed amendments to the Mining SEPP establish a mechanism to only halt CSG mining in or within 2 kilometres of urban residential zones and in selected critical industry clusters (eg horse breeding in the Hunter Valley). Draft criteria are also established to enable rural residential areas to also be excluded where they meet those "village character" criteria, which in reality to be very difficult to meet.

The likely effect of the proposed amendments to the mining SEPP therefore only halts mining in a relatively small portion of the local government area and is not supported by Council's adopted position. Comments on the draft SEPP close on 12 April.

## **OFFICER'S RECOMMENDATION**

That:

1. Council receive and note the report on the Draft State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) Amendment (Coal Seam Gas Exclusion Zones) 2013 and independent review by the NSW Chief Scientist and Engineer of all CSG activities in NSW.
2. Council make a submission to the Draft State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) Amendment (Coal Seam Gas Exclusion Zones) 2013 as follows:
  - a) That Council seek inclusion of the following areas as "exclusion zones" under proposed clause 9A(4)(b) and Schedule 3 of the "Mining SEPP":
    - i. The balance of those areas at Gulmarrad and Woombah zoned R5 and that have a 4000m2 lot size and are contiguous with those areas that are within 2km of land zoned Residential (R1, R2 or R3) that will enjoy exclusion.
    - ii. Land at Waterview Heights zoned R5 and with a 4000m2 lot size – on the basis that it is a substantial long established rural residential area in close proximity to the South Grafton/Grafton urban area enjoying community facilities such as a squash court, sports field, motel and active rural fire brigade/shed.
    - iii. That part of the Gulmarrad and James Creek proposed "Growth Area" and future urban release area identified in the Mid North Coast Regional Strategy not already zoned residential.
    - iv. The drinking water catchments of the Clarence - Coffs Harbour Regional Water Supply upstream of the Nymboida Weir and associated with the Shannon Creek Dam; and the SP2 zone over the Shannon Creek Dam.

- b) That Council express grave concern over the brief exhibition/consultation period allowed to comment on the Draft Amending SEPP noting that:
- i. The period is less than the 28 days allowed for comments and submissions on exploration licence applications (as outlined in NSW Trade & Investment's October 2011 guideline entitled "*Public Comment Process for the exploration of coal and petroleum, including coal seam gas*").
  - ii. Such a brief period is of a token nature and against the "Public Participation Charter" focus espoused the NSW Planning Green Paper.
  - iii. The haste to finalise the proposals outlined in the Draft Amending SEPP and acceptable reforms to the CSG planning framework ahead of a comprehensive (independent) review by the NSW Chief Scientist and Engineer is not necessarily justified.
3. Council make a submission to the Terms of Reference for the current independent review by the NSW Chief Scientist and Engineer (Chief Scientist) of all CSG activities in NSW, as follows:
- a) The Terms of Reference are too narrow and not comprehensive and should be widened to include:
    - i. review of existing data/information pertaining to the land, subsurface, surface water and ground water environments in which CSG activities operate including data and studies on:
      - ground water systems including water quality, volumetric and spatial data on ground water systems (biological, chemical, physical, geological)
      - connectivity between ground water and surface water systems and between other ground water systems
      - soils including sub surface soil and strata data – chemical, structural characteristics, etc
    - ii. determination of the full range of data needs for assessing environmental/ecological, social and economic impacts of CSG exploration, prospecting and production activities both at broader and site specific scale.
  - b) The time frame for making submissions to the Independent Reviews Terms of Reference and the reporting back to the Premier are considered to be too short. A greater period of time (at least 6 months) for a more comprehensive review of the science, data and planning/regulatory framework should be allowed so as to permit greater public input and independent peer review.
4. That Council seek assistance from the Local Government and Shires Association to lobby the NSW Government to allow a greater period of time for public involvement in both the Draft Amending SEPP and independent review of CSG activities in NSW.

## **BACKGROUND**

In February 2013, the Premier announced new measures to strengthen the regulation of the coal seam gas (CSG) industry in NSW. According to the government these measures will ensure heightened protection for residential areas and certain critical agricultural industries by prohibiting CSG activity within or close to these areas.

The new measures are being implemented by an amending SEPP known as the State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) Amendment (Coal Seam Gas Exclusion Zones) 2013 which amends the principal Mining SEPP.

Currently on exhibition is the following:

- State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) Amendment (Coal Seam Gas Exclusion Zones) 2013 (Draft Amending SEPP)

- S38 Explanation of Intended Effect
- Critical Industry Cluster Land maps
- Future Residential Growth Areas maps
- Frequently asked questions (FAQs)

A copy of the Draft SEPP amendment, S38 Explanation of Intended Effect and FAQs is in the Attachments. The exhibition/submission period is 21 March - 12 April 2013. A detailed summary of the proposed amendments is contained at Schedule 1 to this report.

## ISSUES

### 1. Scope of prohibition and exclusions criteria - residential

The proposed CSG "residential" exclusion coupled with the village exclusion criteria has created a new and arbitrary "R5 Village" concept. Council possesses many areas that are zoned R5 Large Lot Residential and that are spread far and wide throughout the Council area. The R5 zoned areas or precincts that have a lot size of no greater than 4000m<sup>2</sup> are listed in the Table below.

CVC R5 zoned precinct	Lot size (Min)	Comment
Gulmarrad	4000m <sup>2</sup>	Most of the area zoned R5/4000m <sup>2</sup> can meet exclusion as it is within the 2km buffer to land zoned R1 (mainly by virtue of Lot 355, DP 751388) or future residential growth area (by virtue of Part Lot 71, DP 1156995).
Waterview Heights	4000m <sup>2</sup>	Cannot meet exclusion – outside the 2km buffer to a residential zone.
South Grafton – Fairway Drive precinct	4000m <sup>2</sup>	All of the area zoned R5/4000m <sup>2</sup> can meet exclusion as it is within the 2km buffer to land zoned R1.
Woombah	4000m <sup>2</sup>	Most of the area zoned R5/4000m <sup>2</sup> can meet exclusion as it is within the 2km buffer to Woombah village zoned R2.
Ashby – adjacent to village and Murrayville Rd area	4000m <sup>2</sup>	All of the area zoned R5/4000m <sup>2</sup> can meet exclusion as it is within the 2km buffer to Ashby village zoned R2.
Illarwill – Golf Links Rd	4000m <sup>2</sup>	All of the area zoned R5/4000m <sup>2</sup> can meet exclusion as it is within the 2km buffer to Illarwill village zoned R2.
Lawrence	4000m <sup>2</sup>	All of the area zoned R5/4000m <sup>2</sup> can meet exclusion as it is within the 2km buffer to Lawrence village zoned R2.
Taloumbi	4000m <sup>2</sup>	Cannot meet exclusion – outside the 2km buffer to a residential zone.
Clarenza – Edward Ogilvie Drive	4000m <sup>2</sup>	All of the area zoned R5/4000m <sup>2</sup> can meet exclusion as it is within the 2km buffer to land zoned R1.
Glenreagh	4000m <sup>2</sup>	All of the area zoned R5/4000m <sup>2</sup> can meet exclusion as it is within the 2km buffer to Glenreagh village zoned R2.
Seelands – Whiting Estate	4000m <sup>2</sup>	Cannot meet exclusion – outside the 2km buffer to a residential zone.
Grafton – North Street	4000m <sup>2</sup>	All of the area zoned R5/4000m <sup>2</sup> can meet exclusion as it is within the 2km buffer to land zoned R1.
Junction Hill	4000m <sup>2</sup>	All of the area zoned R5/4000m <sup>2</sup> can meet

CVC R5 zoned precinct	Lot size (Mln)	Comment
		exclusion as it is within the 2km buffer to land zoned R1.
Mountainview	4000m <sup>2</sup>	Cannot meet exclusion – outside the 2km buffer to a residential zone.
<b>Note:</b> this table does include those areas zoned R5 and having a (minimum) lot size exceeding 4000m <sup>2</sup> .		

If most of the lands zoned R5 and with a lot size of no greater than 4000m<sup>2</sup> were not within 2 kilometres of land zoned residential it could be argued that the scope of prohibition and associated criteria are somewhat problematic. A particular case in point is Waterview Heights which is a significant rural residential precinct close to South Grafton but beyond the 2km buffer to a residential zone. Whilst its lot size on the lot size map is now 4000m<sup>2</sup> (for most of the rural residential settlement at Waterview Heights) under CV LEP 2011, historically it enjoyed and much of it was largely subdivided and developed under a 6000m<sup>2</sup> minimum lot size. The Waterview Heights R5 zone will not enjoy exclusion from CSG activity despite its significant extent and high level of development, because:

- it is Located 3 – 4 kilometres from the nearest Grafton/South Grafton residential zone
- the predominant developed lot size pattern is based upon 6000m<sup>2</sup> minimum.

Other issues with the “exclusion criteria” is omitting proximity to other zonings typically associated with urban areas including Industrial, Business, Public Recreation and certain Infrastructure zones (eg SP2 zone – Shannon Creek Dam). The Mining SEPP is also silent on exclusions or protective controls or considerations in and near drinking water catchments (Nymboida Weir and Shannon Creek Dam drinking water catchments). Therefore protection of these drinking water catchments from future CSG activities is not assured.

Few if any local government areas around NSW may have settlements that can strictly meet the “R5 Village” concept and exclusion criteria.

Council should at least strive to seek inclusion within the SEPP of the following areas as “exclusion zones” under clause 9(4) (b) and Schedule 3 of the Mining SEPP:

- v. The balance of those areas at Gulmarrad and Woombah zoned R5 and that have a 4000m<sup>2</sup> lot size and are contiguous with those areas that are within 2km of land zoned Residential (R1, R2 or R3) that will enjoy exclusion.
- vi. Land at Waterview Heights zoned R5 and with a 4000m<sup>2</sup> lot size – on the basis that it is a substantial long established rural residential area in close proximity to the South Grafton/Grafton urban area enjoying community facilities such as a squash court, sports field and active rural fire brigade/shed.
- vii. That part of the Gulmarrad and James Creek proposed “Growth Area” and future urban release area identified in the Mid North Coast Regional Strategy not already zoned residential.
- viii. The drinking water catchments of the Clarence - Coffs Harbour Regional Water Supply upstream of the Nymboida Weir and associated with the Shannon Creek Dam; and the SP2 zone over the Shannon Creek Dam.

## 2. Critical Industry Clusters

At a first glance, the Clarence Valley LGA does not appear to have any industries, enterprises or areas that would seem to fall under the same scope/criteria and scale of CIC's such as the already identified equine and viticultural industries. However, Council should encourage the State Government to engage more meaningfully and in a more targeted fashion with rural industries and communities in this regard eg sugar cane cooperative in view of the extent of the mapped “regionally significant farmland” in the Council area and region generally.

### 3. Excluded projects/activities

The new definition of *coal seam gas development* would appear to be satisfactory and provide some comfort and clarity that anything to do with CSG prospecting, exploration and drilling/production will be prohibited in the proposed exclusion zones.

Note – the definition *coal seam gas development* means the following:

- (a) development for the purposes of petroleum exploration, but only in relation to prospecting for coal seam gas,
- (b) development for the purposes of petroleum production, but only in relation to the recovery, obtaining or removal of coal seam gas, but does not include the following:
- (c) the recovery, obtaining or removal of coal seam gas in the course of mining,
- (d) development to which clause 10 or 10A applies.

### 4. Independent Review of coal seam gas activities in NSW - Chief Scientist

The terms of reference on the one hand would appear to be quite comprehensive. However there would appear to be a fundamental flaw in that there is to be no review of existing data/information pertaining to the land, subsurface, surface water and ground water environments in which CSG activities operate.

Data may well be there or held in a variety sources, formats scales etc. If so, there needs to be disclosure and a review of the adequacy of this data to ensure that it is fit for purpose right down to local and site specific scales. The general community needs to be assured that if governments and institutions have a range of relevant data that it should be public domain and open for scrutiny. This should include for instance data and studies on:

- ground water systems including water quality, volumetric and spatial data on ground water systems (biological, chemical, physical, geological)
- connectivity between ground water and surface water systems and between other ground water systems
- soils including sub surface soil and strata data – chemical, structural characteristics, etc

The review should also determine the full range of data needs for assessing environmental/ecological, social and economic impacts of CSG exploration, prospecting and production activities both at broader and site specific scale.

### 5. Exhibition and submission period

As reported earlier the exhibition/submission period for the Draft Amending SEPP is 21 March - 12 April 2013, being a period of 22 days. The submission period for the Terms of Reference of the Chief Scientists independent review is 22 March – 26 April 2013, being a period of 35 days.

The 22 day period allowed for comment on the Draft Amending SEPP in particular is considered to be inadequate for all stakeholders for such an important amendment to the CSG planning and regulatory framework. This period is less than the 28 days allowed for submission to exploration licence applications allowed for in NSW Trade & Investment's October 2011 guideline entitled "*Public Comment Process for the exploration of coal and petroleum, including coal seam gas*".

A request was recently made by staff to the DoPI seeking an extension to the 12 April 2013 submission deadline. Unfortunately this was declined as in the Department's words "*the implementation of the CSG exclusion zones is a high priority for Government and, accordingly, the Department is currently working towards finalisation of the SEPP amendment at the earliest possible time*".

This is less than satisfactory and Council should record its strongest possible concern in relation to the haste to finalise what could be a flawed process (including consultation) for both the Draft Amending SEPP and the Chief Scientists Review.

## **CONSULTATION**

See 5. Exhibition and submission period, above for discussion on external consultation.

Unfortunately, the timing of the release of the Draft Amending SEPP and Chief Scientists Review/Terms of Reference has not permitted adequate internal consultation or consultation with the community of the Clarence valley Council area. This sentiment should be conveyed to the NSW Government (DoPI and Chief Scientist).

## **SUSTAINABILITY ASSESSMENT**

### **Summary Statement**

The Draft Amending SEPP is a step in the right direction to providing some clarity as to where all new CSG exploration and production activity will be prohibited. This will still not address the concerns of the community in those areas outside of the proposed exclusion zones. It is considered that a more fundamental review of the CSG planning and approval/regulatory process should be undertaken following a more comprehensive review of all CSG activities in NSW by the Chief Scientist.

### **Ecology**

The Draft Amending SEPP is a step in the right direction to ensuring greater ecological outcomes in the areas that are proposed for exclusion. However the Chief Scientist's review of CSG activities in NSW is not considered to be wide ranging enough to assure that ecological systems will be protected from any impacts of new CSG activity particularly in the areas not proposed for exclusion.

### **Economic**

The economic impacts of the Draft Amending SEPP are not known at this stage. An economic impact statement has not accompanied the exhibition/consultation process. Impacts can only be speculated at this stage.

### **Social & Cultural**

The social & cultural impacts have not been considered as part of the exhibition/consultation process of the Draft Amending SEPP. These impacts are not a key part of the Chief Scientist's review of CSG activities. The social & cultural interests of those in the proposed exclusion areas are being better served by the Draft Amending SEPP than those outside the proposed exclusion areas.

### **Human Habitat & Infrastructure**

The proposals in the Draft Amending SEPP should ensure that there is no or little impact upon human habitat & infrastructure in the proposed exclusion areas. It should be incumbent upon the Chief Scientist's review of CSG activities to address impacts upon human habitat and infrastructure right across the board.

### **Governance**

As mentioned earlier the exhibition/submission period for the Draft Amending SEPP particularly is considered to be too brief to allow proper and transparent community consultation. This gives the impression that the NSW Government is handling stakeholder consultation in a somewhat token and perfunctory manner which is not considered to be good governance considering the emphasis placed on public participation by the Minister for Planning and Infrastructure in the NSW Planning "Green Paper" released for comment in the second half of 2012.

Council's submission should urge the NSW Government (DoPI and Chief Scientist) to take a less hasty and more considered approach to CSG planning reform and CSG activity/data review.

**Risk Management - N/A**

### **Guiding Sustainability Principles**

The following guiding sustainability principles are relevant to this issue:

- Protecting ecological processes and biodiversity.
- Supporting social and intergenerational equity.
- Promoting ecologically sustainable development.
- Encouraging community involvement and awareness.
- Taking a precautionary and anticipatory approach.
- Focusing on continuous improvement.

### **OPTIONS**

Option 1 – That Council receive and note the report on the Draft State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) Amendment (Coal Seam Gas Exclusion Zones) 2013 and independent review by the NSW Chief Scientist and Engineer of all CSG activities in NSW.

Option 2 – That Council make a submission to the Draft State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) Amendment (Coal Seam Gas Exclusion Zones) 2013 as follows:

- a) That Council seek inclusion of the following areas as "exclusion zones" under proposed clause 9A(4)(b) and Schedule 3 of the "Mining SEPP":
  - i. The balance of those areas at Gulmarrad and Woombah zoned R5 and that have a 4000m2 lot size and are contiguous with those areas that are within 2km of land zoned Residential (R1, R2 or R3) that will enjoy exclusion.
  - ii. Land at Waterview Heights zoned R5 and with a 4000m2 lot size – on the basis that it is a substantial long established rural residential area in close proximity to the South Grafton/Grafton urban area enjoying community facilities such as a squash court, sports field, motel and active rural fire brigade/shed.
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  - iv. The drinking water catchments of the Clarence - Coffs Harbour Regional Water Supply upstream of the Nymboida Weir and associated with the Shannon Creek Dam; and the SP2 zone over the Shannon Creek Dam.
- b) That Council express grave concern over the brief exhibition/consultation period allowed to comment on the Draft Amending SEPP noting that:
  - i. The period is less than the 28 days allowed for comments and submissions on exploration licence applications (as outlined in NSW Trade & Investment's October 2011 guideline entitled "*Public Comment Process for the exploration of coal and petroleum, including coal seam gas*").
  - ii. Such a brief period is of a token nature and against the "Public Participation Charter" focus espoused the NSW Planning Green Paper.
  - iii. The haste to finalise the proposals outlined in the Draft Amending SEPP and acceptable reforms to the CSG planning framework ahead of a comprehensive

(independent) review by the NSW Chief Scientist and Engineer is not necessarily justified.

Option 3 - That Council make an alternative submission to the Draft State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) Amendment (Coal Seam Gas Exclusion Zones) 2013.

Option 4 - Council make a submission to the Terms of Reference for the current independent review by the NSW Chief Scientist and Engineer (Chief Scientist) of all CSG activities in NSW, as follows:

- a) The Terms of Reference are too narrow and not comprehensive and should be widened to include:
- i. review of existing data/information pertaining to the land, subsurface, surface water and ground water environments in which CSG activities operate including data and studies on:
    - ground water systems including water quality, volumetric and spatial data on ground water systems (biological, chemical, physical, geological)
    - connectivity between ground water and surface water systems and between other ground water systems
    - soils including sub surface soil and strata data – chemical, structural characteristics, etc
  - ii. determination of the full range of data needs for assessing environmental/ecological, social and economic impacts of CSG exploration, prospecting and production activities both at broader and site specific scale.
- b) The time frame for both making submissions to the Independent Reviews Terms of Reference and the reporting back to the Premier are considered to be too short. A greater period of time (at least 6 months) for a more comprehensive review of the science, data and planning/regulatory framework should be allowed so as to permit greater public input and independent peer review.

Option 5 – That Council make an alternative submission to the Terms of Reference for the current independent review by the NSW Chief Scientist and Engineer (Chief Scientist) of all CSG activities in NSW.

Option 6 – That Council seek assistance from the Local Government and Shires Association to lobby the NSW Government to allow a greater period of time for public involvement in both the Draft Amending SEPP and independent review of CSG activities in NSW.

Options 1, 2, 4 and 6 are recommended.

## **FINANCIAL IMPLICATIONS**

There are nil financial implications.

Des Schroder  
DEPUTY GENERAL MANAGER – ENVIRONMENTAL & ECONOMIC

Prepared by staff member: David Morrison/Terry Dwyer  
Approved/Reviewed by Manager: Des Schroder  
Section: Strategic and Economic Planning  
Attachment: Draft SEPP amendment, S38 Explanation of Intended Effect and FAQs

## SCHEDULE 1

### Summary of proposed amendments and other measures

#### 1. Residential prohibitions

- i. All new CSG exploration and production activity will be prohibited on, under and within two (2) kilometres of, land zoned residential. The prohibition will also extend to future residential growth areas.
- ii. The SEPP will prohibit all new CSG exploration and production in and within two (2) kilometres of the following zones (or their equivalent):
  - R1 – General Residential
  - R2 – Low Density Residential
  - R3 – Medium Density Residential
  - R4 – High Density Residential
  - RU5 – Village

Note: the CVLEP 2011 has the following Residential zones – R1, R2 and R3.

- iii. This prohibition will also apply in and within two (2) kilometres of some areas zoned R5 – Large Lot Residential, which commonly applies to rural or semi-rural areas characterised by individual dwellings on large lots. However, the (exclusion) zone also applies to some village areas, and the SEPP will apply to these areas where they meet defined village criteria – these areas once accepted will be specified in Schedule 3 of the amended SEPP. Areas identified could include an entire area zoned R5 or part of that area. That part of the area zoned R5 that meets the village criteria will be listed in the SEPP as an exclusion zone.
- iv. The criteria and information/evaluation requirements developed by the Department of Planning and Infrastructure (DoPI) that will be used to consider exclusion of certain “R5 zoned Villages” are specified in the Table below:

Criteria:	Comment:	Information to be considered in evaluation:
<b>The area must contain a mix of land uses</b>	A mix of land uses (such as retail, business, industrial, educational or recreation) that service the local rural community is a key point of differentiation between a village and a rural residential subdivision.	Description of current land uses in the area and any information on projected changes to these land uses.
<b>The zone must apply to a settlement that is long established and that has some historic association within the district, region and/or rural hinterland</b>	Villages are generally long established population centres that historically served a particular economic function in a district or regional context. This is a key point of differentiation to rural residential subdivisions that are typically more recently established and, by the nature of their predominantly residential land use, do not provide a regional economic function.	Information on when the settlement was established and its historic association with the surrounding region.
<b>The area must contain a mix of lot sizes, including an average lot size up to 4,000 m<sup>2</sup></b>	Villages are characterised by a range of residential lot sizes, including smaller lots than would typically comprise a rural residential subdivision.	Information on range of residential lot sizes, including number and proportion of lots up to 4,000 m <sup>2</sup> in area.

- v. Future residential growth areas will include areas mapped in a Government-endorsed strategy such as a Regional Strategy or council housing strategy, as well as draft local environmental plans. Future residential growth areas currently on exhibition include the North West and South West Growth Centres in the Sydney Metro area. The DOPI is currently compiling information on all future growth areas across the State in consultation with local councils to include in a final map prior to the finalisation of the SEPP amendment.

## **2. Prohibition in critical industry clusters**

- i. All new CSG exploration and production activity will also be prohibited within and under areas identified as Critical Industry Clusters (CIC). A CIC is a localised concentration of activity associated with an agricultural industry of national or international significance that is potentially significantly impacted by mining or CSG development. The Draft amendment has, for the present time, identified two CICs – the equine and viticulture industries in the Hunter/Upper Hunter Valley.
- ii. CIC's will not be subject to the two (2) kilometre buffer in the same way as land zoned residential, future growth areas or Scheduled R5 zoned lands.
- iii. Any CSG activity proposed near a CIC will still be subject to a range of comprehensive policies and requirements to minimise their impacts on land uses within the cluster. These include the requirement to prepare an Agricultural Impact Statement, which must identify whether the proposal is located within two kilometres of any strategic agricultural land, including a CIC. If so, the application must specifically address potential impacts on the cluster.
- iv. Other relevant measures that would still apply to CSG proposals within two kilometres of a CIC include:
  - the Aquifer Interference Policy;
  - new community consultation requirements on licence applications and conditions;
  - updated and improved environmental assessment guidelines for exploration activities;
  - a ban on the use of dangerous BTEX chemicals and evaporation ponds; and
  - codes of practice for the CSG industry covering well integrity and fracture stimulation.

## **3. Excluded projects/activities**

- i. The exclusions will apply to exploration and production proposals that do not have approval at the date that the Mining SEPP is made.
- ii. The changes will also prevent exploration activities in these areas from expanding or transitioning to the production stage.
- iii. In the interim the exclusion zones are being given effect through administrative processes to ensure that no approvals are granted for CSG activity within the exclusion zones.

Note: the Draft SEPP amendment will also insert definitions of the following into the Mining SEPP - *coal seam gas, coal seam gas development, critical industry cluster land, Critical Industry Cluster Land Map, future residential growth area land, Future Residential Growth Areas Land Map and residential zone.*

## **4. Other measures to manage CSG in NSW**

Other new measures recently announced to regulate the CSG industry in NSW include:

- i. Appointment of the independent Environment Protection Authority (EPA) as the lead regulator of environmental and health impacts of CSG activities in NSW with responsibility for compliance and enforcement.

- ii. Establishment of an Office of CSG Regulation within the Department of Trade and Investment to enforce other regulations.
- iii. an independent review by the NSW Chief Scientist and Engineer (Chief Scientist) of all CSG activities in NSW, including the potential impact on rural residences and potential impacts on water catchments.
- iv. A requirement that all exploration, assessment and production titles and activities be required to hold an Environment Protection Licence.

In relation to iii. above, the Terms of Reference are that the Chief Scientist, Professor Mary O'Kane, will conduct a review of CSG related activities in NSW, with a focus on the impacts of these activities on human health and the environment. More specifically the Chief Scientist is to:

1. undertake a comprehensive study of industry compliance involving site visits and well inspections. The Chief Scientist's work will be informed by compliance audits undertaken by regulatory officers, such as the Environment Protection Authority and other government agencies
2. identify and assess any gaps in the identification and management of risk arising from coal seam gas exploration, assessment and production, particularly as they relate to human health, the environment and water catchments
3. identify best practice in relation to the management of CSG or similar unconventional gas projects in close proximity to residential properties and urban areas and consider appropriate ways to manage the interface between residences and CSG activity
4. explain how the characteristics of the NSW coal seam gas industry compare with the industry nationally and internationally
5. inspect and monitor current drilling activities including water extraction, hydraulic fracturing and aquifer protection techniques
6. produce a series of information papers on specific elements of CSG operation and impact, to inform policy development and to assist with public understanding. Topics should include:
  - operational processes
  - NSW geology
  - water management
  - horizontal drilling
  - hydraulic fracturing (fracking)
  - fugitive emissions
  - health impacts
  - wells and bores
  - subsidence.

Public submissions to the review are now being invited – the due date for submissions is 26 April 2013. The Chief Scientist will provide an initial report to the Premier and the Minister for Resources and Energy on her findings and observations by July 2013.

