

STRATEGIC REGIONAL LAND USE POLICY

Guideline for Gateway Applicants

The Mining and Petroleum Gateway process ('Gateway process') is an independent, scientific and upfront assessment of how a mining or CSG production proposal will impact the agricultural values of the land on which it is proposed to be located. It will consider proposals at a very early stage before a development application is lodged.

To pass the Gateway unconditionally, a proposal must demonstrate that it meets the Gateway criteria relating to agricultural and water impacts. If a proposal can't demonstrate that it meets these criteria, it will be subject to requirements – included as recommendations in a Gateway Certificate – that must be addressed at the development application stage.

This guideline has been prepared to assist applicants and others understand the information required for a Gateway application.

INTRODUCTION

The Gateway process is established through Part 4AA of the *State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007* (the Mining SEPP).

The Gateway assessment is undertaken by an independent expert panel – the Mining and Petroleum Gateway Panel (the Gateway Panel) – that assesses the proposal against specific criteria set out in the Mining SEPP.

The Gateway Panel consists of independent experts in agricultural science, water and mining.

Upon completion of its assessment, the Gateway Panel will either:

1. Issue an unconditional Gateway Certificate, without recommendations, if the Gateway Panel determines that the proposal meets the criteria relating to agricultural and water impacts.
2. Issue a conditional Gateway Certificate if the Gateway Panel determines that the proposal does not meet the criteria. The recommendations of the gateway certificate must be addressed in the development application for the proposal and must be considered by the relevant

consent authority when determining the development application.

GATEWAY PROJECTS

The Gateway process applies to certain types of State significant mining or petroleum development on Strategic Agricultural Land:

- State significant mining development that requires a new or extended mining lease;
- Extraction of a bulk sample of more than 20,000 tonnes of coal or any mineral ore (ie. State significant mining exploration activity);
- State significant petroleum development that requires a new or extended petroleum production lease; and
- State significant petroleum exploration activity.

Components of the above projects that are outside of the new mining or petroleum production lease will not be subject to the Gateway process. This provision is intended to exclude linear infrastructure components, such as gas pipelines that do not form part of the mining or petroleum production lease, from the Gateway process.

Expansions of existing projects which do not require a new or extended lease will not be subject to the Gateway process (see Figure 1).

Application of the Gateway	
<p>Gateway will apply to:</p> <p>Greenfield mines</p> <p>New stand alone mines or GSG projects or project extensions beyond existing lease area (advisory only at DA stage if DGRs already issued)</p>	
<p>Gateway will apply to:</p> <p>Brownfield mine expansion beyond lease area</p> <p>Expansions of an existing mine or CSG project partially within and partially outside of the existing lease area (advisory only at DA stage if DGRs already issued)</p>	
<p>Gateway will NOT apply to:</p> <p>Brownfield mine expansion within lease area</p> <p>Expansions of an existing mine or CSG project within existing lease area (with such proposals still subject to the usual environmental assessment process under the Planning Act, including the requirement for an Agricultural Impact Statement and comprehensive assessment against the provisions of the Aquifer Interference Policy).</p>	
<p>Key:</p> <p> Existing Project Project Extension or New Project Existing Lease Area</p>	

Figure 1 – Application of the Gateway process to greenfield and brownfield proposals

However, the agricultural impacts of such expansions and components would still be comprehensively assessed through the requirement for an Agricultural Impact Statement at the development application stage.

STRATEGIC AGRICULTURAL LAND

Strategic agricultural land (SAL) is highly productive land that has both unique natural resource characteristics (such as soil and water resources) as well as socio-economic value (such as high productivity, infrastructure availability and access to markets). Two categories of SAL have been identified: Biophysical SAL and Critical Industry Clusters (CICs).

Biophysical SAL is land with a rare combination of natural resources highly suitable for

agriculture. These lands intrinsically have the best quality landforms, soil and water resources which are naturally capable of sustaining high levels of productivity and require minimal management practices to maintain this high quality.

CICs are localised concentrations of interrelated productive industries based on an agricultural product that provides significant employment opportunities and contributes to the identity of the region. There are two CICs – the viticulture and equine CICs in the Upper Hunter.

Maps of Biophysical SAL and CICs are included in the Mining SEPP. Due to the regional scale of the Biophysical SAL maps, a process is in place to provide for site-specific verification that particular sites do in fact meet the Biophysical

SAL criteria. This process involves the lodgement of a Site Verification Application, as explained in the *Interim Protocol for Site Verification and Mapping of Biophysical Strategic Agricultural Land*.

WHAT IS REQUIRED IN A GATEWAY APPLICATION?

Application form

Gateway applications are lodged via the Gateway Panel's website¹. Applicants must complete all mandatory fields in the online form and attach a detailed supporting document (see next heading). The applicant must also provide evidence of landowner notification if the applicant is not the landowner.

Supporting Document

The supporting document describes the proposal's impact in terms of the relevant Gateway criteria (listed below) and the mitigation measures to address these impacts. It is important that the supporting document focuses on the relevant gateway criteria and not other issues that will be assessed at the development application stage (such as flora and fauna) that do not relate directly to agricultural productivity.

In addition to addressing the gateway criteria, the supporting document should include high-quality aerial photographs, maps or figures that clearly depict the local and regional context of the proposal, surrounding development, the location of key infrastructure, natural resources and environmental features.

The document should briefly explain why the site was chosen for the proposal and briefly discuss any alternatives considered.

The supporting documentation must address the construction and the operational phase of the development (including, if relevant, demolition and decommissioning/rehabilitation). It should present relevant technical investigations undertaken for each component of the project, along with the findings, conclusions and

recommendations of those investigations. The detailed technical studies should be included.

The supporting documentation should be clear and concise, objective and written in plain English to enable the general public to understand it. It should avoid unnecessary repetition and jargon.

Biophysical SAL

For proposals for Biophysical SAL, the supporting document must address the criteria listed in the Mining SEPP:

Clause 17H

- (4) *The relevant criteria are as follows:*
- (a) *in relation to biophysical strategic agricultural land – that the proposed development will not significantly reduce the agricultural productivity of any biophysical strategic agricultural land, based on a consideration of the following:*
 - (i) *any impacts on the land through surface area disturbance and subsidence,*
 - (ii) *any impacts on soil fertility, effective rooting depth or soil drainage,*
 - (iii) *increases in land surface micro-relief, soil salinity, rock outcrop, slope and surface rockiness or significant changes to soil pH,*
 - (iv) *any impacts on highly productive groundwater (within the meaning of the Aquifer Interference Policy),*
 - (v) *any fragmentation of agricultural land uses,*
 - (vi) *any reduction in the area of biophysical strategic agricultural land.*

Note that 'any biophysical strategic agricultural land' refers to all Biophysical SAL potentially affected by the proposal, not only Biophysical SAL on or adjacent to the project site.

Surface area disturbance and subsidence

Applicants need to provide maps and text that identify and describe the areal extent of the

¹ <http://www.mppg.nsw.gov.au>

surface area disturbance and subsidence. This should include description and mapping of the classes of land and soil capability and soil fertility that will be affected. An estimation of the likelihood of full rehabilitation of this area post mining activity and an overview of the processes used to achieve the rehabilitation should be provided.

Soil fertility, effective rooting depth, soil drainage, land surface micro-relief, soil salinity, rock outcrop, slope and surface rockiness or soil pH

The applicant should:

- refer to the Interim Protocol for Site Verification and Mapping of Biophysical Strategic Agricultural Land² which describes relevant criteria and their analysis and identifies key references.
- refer to the Agricultural Impact Statement: Technical Notes³ which are technical guidelines supporting agricultural impact assessments.
- provide information in tabular form that demonstrates the pre-development and post development land and soil capability and soil fertility classes.

Highly productive groundwater

The applicant should provide:

- estimates of all quantities of water that are likely to be taken from any water source on an annual basis during and following cessation of the activity
- a strategy for obtaining appropriate water licence/s for maximum predicted annual take;
- establishment of baseline groundwater conditions including groundwater depth, quality and flow based on sampling of all existing bores in the area, any existing monitoring bores and any new monitoring bores that may be required under an authorisation issued under the *Mining Act 1992* or the *Petroleum (Onshore) Act 1991*;

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<http://www.planning.nsw.gov.au/LinkClick.aspx?fileticket=L9he8kgUWg0%3d&tabid=495&language=en-US>

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<http://www.planning.nsw.gov.au/LinkClick.aspx?fileticket=k0mCLuT03w%3d&tabid=495&language=en-US>

- a strategy for complying with any water access rules applying to relevant categories of water access licences, as specified in relevant water sharing plans;
- estimates of potential water level, quality and pressure drawdown impacts on nearby water users who are exercising their right to take water under a basic landholder right;
- estimates of potential water level, quality and pressure drawdown impacts on nearby licensed water users in connected groundwater and surface water sources;
- estimates of potential water level, quality and pressure drawdown impacts on groundwater dependent ecosystems;
- estimates of potential for increased saline and contaminated water inflows to aquifers and highly connected river systems;
- estimates of the potential to cause or enhance hydraulic connection between aquifers;
- estimates of the potential for river bank instability, or high wall instability or failure to occur;
- outline of the method for disposing of water inflows to a mine or extracted water (in the case of coal seam gas activities);

This information should be based on a simple model that uses best available baseline data collected at an appropriate frequency and scale and that is determined to be fit-for-purpose to the satisfaction of the Minister for Primary Industries.

Proponents should also provide a strategy for moving to modelling using more detailed site specific data that will be used at the development application stage to better assess potential impacts.

The information detailed above will be used to assess the project against the criteria specified in 'Table 1 – Minimal Impact Considerations for Aquifer Interference Activities' in the Aquifer Interference Policy.

Fragmentation of agricultural land uses

The applicant must consider the existing and typical agricultural land use of the site and in the locality and indicate whether the proposal will

result in significant fragmentation of agricultural land use based on a consideration of the following:

- the decrease in production and efficiency of agriculture in the area;
- reduced access to critical farm and rural infrastructure such as water resources, transport routes and stock reserves;
- changes in the form of agricultural land use (eg from non-irrigated to irrigated);
- changes in land use from agriculture to other land use; and
- any agricultural land acquired as a buffer or offset for the mine.

Reduction in the area of BSAL

The application should quantify any likely reduction in the pre-development and post development area of Biophysical SAL. In particular, this will include a consideration of the loss of Biophysical SAL through factors including surface area disturbance and fragmentation, land use changes, acquisition and impacts on soil fertility and land capability.

Under the Mining SEPP, applicants for proposals on land that is not mapped as Biophysical SAL may elect not to undertake Biophysical SAL site verification and proceed directly to lodging a gateway application. In these circumstances, the amount and extent of BSAL that is potentially affected by the proposal must still be clearly documented in the gateway application in accordance with the *Interim Protocol for Site Verification and Mapping of Biophysical Strategic Agricultural Land*.

Critical Industry Clusters

For State significant mining and coal seam gas proposals on CIC land, the supporting document must address the criteria listed in the Mining SEPP:

Clause 17H

- (4) *The relevant criteria are as follows:*
- (b) *in relation to critical industry cluster land – that the proposed development will not have a significant impact on the relevant critical industry based on a consideration of the following:*

- (i) *any impacts on the land through surface area disturbance and subsidence,*
- (ii) *reduced access to, or impacts on, water resources and agricultural resources,*
- (iii) *reduced access to support services and infrastructure,*
- (iv) *reduced access to transport routes,*
- (v) *the loss of scenic and landscape values.*

Surface area disturbance and subsidence

Applicants need to provide maps and text that identify and describe the areal extent of the surface area disturbance and subsidence.

The focus of this assessment should be on areas that are physically used for CIC activities, such as the loss of grapevines or subsidence within thoroughbred breeding paddocks.

The assessment should also describe and map the classes of land and soil capability and soil fertility that will be affected.

An estimation of the likelihood of full rehabilitation of this area post mining activity and an overview of the processes used to achieve the rehabilitation should be provided.

Water resources and agricultural resources

The applicant should identify all water and agricultural resources with direct utility to the CIC. The impact of the proposal on these resources should be quantified as well as the significance of any temporary or permanent disruption of access to these resources by the CIC.

Support services and infrastructure

Any properties acquired (including both operational land and buffer areas) or directly impacted in another way as a result of the project must be identified. The application must consider whether these property acquisitions or other impacts of the proposal are likely to isolate any CIC property from, or lead to the closure of,

a CIC support service such as an equine veterinarian or winery.

The impacts of any temporary or permanent disruption of access from CIC properties to support services and infrastructure must also be assessed.

Transport routes

The applicant should identify:

- road and rail traffic volumes and routes and vehicle sizes associated with the project;
- existing CIC-related road and rail traffic movements that occur on the same routes as proposed in the project; and
- The potential impacts on CIC-related road and rail transport routes.

The impact of any temporary or permanent road or rail closures on CIC-related transport routes must also be assessed.

Scenic and landscape values

Views of the project site from CIC properties or RMS-signposted Tourist Routes must be assessed in the application. The application should use visual aids such as photomontages to explain the potential impacts. Any mitigation measures such as visual bunds or plantings should also be shown in images.

What is 'significant'?

Consideration of what comprises "significant", in the context of the Biophysical SAL and CIC criteria listed above, will be based on the expert evaluation of Gateway Panel members having regard to:

- the sensitivity of the impacted environment or feature – including consideration of the characteristics and values of the impacted environment or feature, and its susceptibility/level of resilience to changes arising from the predicted impacts, and
- the magnitude of the predicted impacts – including consideration of whether the impact is positive or negative, the scale of change arising from the impacts, the duration of the change arising from the

impacts and the degree to which negative impacts can be avoided, mitigated or offset.

Gateway applications that are located on Biophysical SAL are referred to the Commonwealth Government's Independent Expert Scientific Committee (IESC) for advice regarding impacts on water resources. Although this guideline has been prepared to be consistent with the IESC's information requirements, applicants must also consider the IESC information requirements⁴.

WHAT HAPPENS NEXT?

Gateway certificate applications are lodged via the Gateway Panel website⁵. Upon lodgement the applicant will be issued with a reference number which should be quoted when enquiring about the status of your application with the Gateway Panel Secretariat (contact details available on the Gateway Panel website).

The Gateway Panel will assess applications against the Gateway criteria listed in the Mining SEPP. The Gateway Panel is to have regard to the duration of potential impacts and any proposed avoidance, mitigation, offset or rehabilitation measures.

If the proposal is located on BSAL, the Gateway Panel must refer the application to the Commonwealth Independent Expert Scientific Committee (IESC) and the Minister for Primary Industries for advice on water impacts and take into consideration any advice provided within 60 days by the IESC and 70 days by the Minister for Primary Industries. The Minister for Primary Industries will consider the IESC's advice in providing advice.

The Gateway Panel will issue a certificate that either states the Gateway Panel's opinion that:

- The proposal meets the relevant Gateway criteria (an "unconditional certificate"); or
- The proposal does not meet the relevant Gateway criteria (a "conditional certificate").

⁴ Refer to <http://www.environment.gov.au/coal-seam-gas-mining/project-advice/pubs/iesc-information-guidelines.pdf>

⁵ <http://www.mpgp.nsw.gov.au>

A conditional certificate is to include recommendations of the Gateway Panel to address the proposed development's non-compliance with the relevant criteria. It may also include a recommendation that further studies be undertaken by the applicant in relation to the proposed development.

The Gateway certificate must be issued within 90 days of receipt of the Gateway certificate application. However, the Gateway Panel may make one request for additional information from the applicant. The applicant has up to 30 days to provide the additional information. The 90-day 'clock' stops from the date the Gateway Panel requests the additional information. The 90-day 'clock' starts again when the applicant provides the additional information or when 30 days have elapsed since the Gateway Panel requested the additional information (whichever comes first).

If an applicant fails to provide the Gateway Panel with the requested information within the 30 day period, the Gateway Panel can either reject the application or continue to determine the application as the Gateway Panel sees fit.

The statutory period for issuing a Gateway certificate is therefore 90 days plus an additional period of up to 30 days if additional information is requested.

If the Gateway Panel does not issue a certificate within the statutory period (and has not rejected the application), then the Director General of DP&I must direct the Gateway Panel to issue a certificate within 30 days (or a longer period if specified). If the time specified by the Director General lapses, the Gateway Panel must immediately issue an unconditional certificate.

GATEWAY CERTIFICATES AND DGRs

An applicant may request the Director General's environmental assessment requirements (DGRs) to be issued prior to obtaining a Gateway certificate. However, the Gateway certificate is still required before a development application can be lodged. Any recommendations in the Gateway certificate that

relate to DGRs will be addressed through supplementary DGRs.

AMENDMENTS TO GATEWAY CERTIFICATES

An applicant may seek to amend a Gateway certificate at any time. This is necessary if the nature of the proposal has changed during the application and assessment process, as the Gateway certificate must reflect the nature of the proposal.

Note that changes to the proposal that are consistent with the recommendations in a Gateway certificate do not require an amendment to the Gateway certificate.

Amendments can be sought by writing directly to the Gateway Panel Secretariat⁶. The Gateway Panel must follow clauses 17I and 17J of the Mining SEPP but has the discretion to decide which other aspects of the Gateway process will apply to the amended application on a case-by-case basis.

OTHER PROJECTS REFERRED TO THE GATEWAY PANEL FOR ADVICE

There are other circumstances under which the Gateway Panel may provide advice on a proposal.

Unconditional certificates issued due to the lapse of the statutory period

If the Gateway Panel does not issue a Gateway certificate within the statutory period or within any extension of time that may be given by the Director-General of DP&I, the Gateway Panel must immediately issue an unconditional certificate. In this circumstance, the Director General of the Department of Planning and Infrastructure must consult with the Gateway Panel when preparing the DGRs for the development application for that proposal.

The Department will liaise with the applicant to ensure that the documents that support the request for DGRs adequately address the

⁶ GPO Box 39, Sydney NSW 2001

project's potential impacts on Strategic Agricultural Land. The documents should generally reflect the contents of this Guideline.

Modification applications

Modification applications for projects that meet the criteria under 'Gateway Projects' above will also be referred to the Gateway Panel for advice.

The Department will liaise with the applicant if further information is required to address any issues raised by the Gateway Panel.

Transitional arrangements

If a request for DGRs or a modification application for the proposal was made on or before 10 September 2012, then the Gateway process does not apply to that project. However, the advice of the Gateway Panel may be sought during the assessment of the application.

There are no special requirements for the applicant to provide additional information in this circumstance.

FOR FURTHER INFORMATION

If you would like further information relating to the preparation of Gateway applications:

Department of Planning & Infrastructure
website:

www.planning.nsw.gov.au

Mining and Petroleum Gateway Panel website:

www.mpgp.nsw.gov.au