

Mining and Petroleum Gateway Panel

Operational Procedures

September 2013

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The procedures do not affect or replace relevant statutory requirements. Where an inconsistency arises between the provisions of the procedures and relevant statutory provisions, the statutory requirements prevail.

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It should be noted that the procedures may be affected by changes to legislation at any time and / or be subject to revision without notice.

It is recommended that independent advice be sought in respect of the operation of the procedures and the statutory requirements applying to Mining and Petroleum Gateway Panel under Part 4AA of State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007.

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© State of New South Wales through the NSW Department of Planning & Infrastructure
September 2013
NSW Department of Planning & Infrastructure
23-33 Bridge Street Sydney NSW Australia
www.planning.nsw.gov.au

ISBN
Publication no. DOP

Contents

- 1. Introduction** **1**
- 2. Assessment and Determination** **1**
 - 2.1 Making of Applications and referral to Gateway Panel 1
 - 2.2 Mandatory Referrals for applications on BSAL 1
 - 2.3 Further Information from the Applicant 2
 - 2.4 Assessment Criteria 2
 - 2.5 Determination 2
 - 2.5.1 Timeframes 2
 - 2.5.2 Gateway Certificate 3
 - 2.5.3 Gateway Report 3
 - 2.5.4 Submission to Panel Secretariat 3
 - 2.6 Amending a Gateway Certificate 3
 - 2.7 Meetings 4
 - 2.8 Quorum at Meetings 4
- 3. Advice on development applications and modifications** **4**

DEFINITIONS

BSAL	Biophysical Strategic Agricultural Land
CIC	Critical Industry Cluster
DP&I	Department of Planning and Infrastructure
EP&A Act	Environmental Planning and Assessment Act 1979
IES Committee	Independent Expert Scientific Committee on Coal Seam Gas and Large Coal Mining Development
Mining SEPP	State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007
SAL	Strategic Agricultural Land

1. Introduction

The Mining and Petroleum Gateway Panel (the Gateway Panel) was established to provide an early, independent, scientific assessment of how a mining or coal seam gas proposal will impact the agricultural values of the land on which it is proposed.

These procedures have been developed to explain the operations of the Gateway Panel and to clarify the roles of various parties in the process. The procedures have also been designed to ensure, as far as practical and relevant, compliance with the *NSW Government Boards & Committees Guidelines* (July 2013).

The procedures should be read in conjunction with the Gateway Panel Charter, Complaints Handling Policy, and Code of Conduct.

The procedures will be kept under review and may be amended from time to time as needed following the experience of the operation of the Gateway Panel.

2. Assessment and Determination

2.1 *Making of Applications and referral to Gateway Panel*

Applications for Gateway certificates are lodged online via the Gateway Panel website, and then automatically forwarded to the Panel Secretariat. The Panel Secretariat is responsible for ensuring that an application satisfies the minimum requirements in the Mining SEPP and includes all relevant accompanying documentation before forwarding the application to the Gateway Panel.

If the application satisfies the requirements of the Mining SEPP, the Panel Secretariat will generate a publicly available record, which includes full public access to all documentation associated with the application.

Upon receipt, the Gateway Panel has **90 days** (may be extended – see Sections 3.4 and 3.7.1) to determine the application.

2.2 *Mandatory Referrals for applications on BSAL*

Prior to determining an application located (partially or wholly) on biophysical strategic agricultural land (BSAL), the Gateway Panel is required to seek advice regarding potential impacts on water resources from:

- the IES Committee, and
- the Minister for Primary Industries.

The Gateway panel must take into consideration any advice received from:

- the IES Committee, provided it is supplied within 60 days of the referral, and
- the Minister for Primary Industries, provided it is supplied within 70 days of the referral.

→ The Panel Secretariat will formally request this advice on the Panel's behalf at the same time as the application is forwarded to the Gateway Panel i.e. Day 1 of the 90 day period.

2.3 Further Information from the Applicant

The Gateway Panel has one opportunity to request additional information from an Applicant. If such a request is made, the Applicant has up to 30 days to provide the requested information.

Such requests may include clarification of some aspects of the proposal, or additional supporting information that could be readily provided within 30 days.

→ Note that the period between the making of the request and the provision of this information (if within 30 days) by the Applicant **is not counted** in the 90 day determination period described in Section 3.1

If the Applicant does not provide the information within 30 days, the Gateway Panel may reject the application, or proceed to determination.

2.4 Assessment Criteria

Applications must be assessed against the relevant criteria in the Mining SEPP (clauses 17H(4)(a) and 17H(4)(b)).

Note that applications located on both BSAL and CIC land must be assessed against both sets of criteria.

Consideration of what comprises “significant” in the context of the BSAL and CIC criteria should be based on the expert evaluation of 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.

The Mining SEPP specifically requires that, in assessing whether a proposal meets the relevant criteria, the Panel must have regard to:

- the duration of any impact referred to in that subclause, and
- any proposed avoidance, mitigation, offset or rehabilitation measures in respect of any such impact.

2.5 Determination

The Gateway Panel is to determine an application by issuing a gateway certificate and providing a succinct report outlining the assessment and reasoning behind the Panel’s determination.

2.5.1 Timeframes

Determinations must be made within 90 days of receiving an application. This period may effectively be extended for up to 30 days if a request to the applicant is made as described in section 3.4.

If an application remains undetermined at the end of this period, the Director-General will direct the Panel to determine the application within 30 days, or such longer period as specified (refer to clause 17I(2) of the Mining SEPP).

If the Gateway Panel does not issue a certificate within the period specified in clause 171(2) of the Mining SEPP, it must immediately issue an unconditional certificate.

2.5.2 Gateway Certificate

The Gateway Panel can issue either a conditional or unconditional certificate.

Conditional certificates

A conditional certificate should be issued if the Gateway Panel determines that the proposal does not meet one or more of the relevant BSAL and/or CIC assessment criteria, but may meet these criteria if certain recommendations relating to the issues of non-compliance were addressed.

Conditional certificates may also include recommendations that specified or further studies be undertaken by the applicant.

Recommendations must relate to an assessment of the project as proposed against the relevant criteria and means by which these criteria could either be met through amendments to the project or the provision of additional information. Recommendations that go beyond this, such as a recommendation that a project does not proceed, should not be included in certificates. Decisions on whether or not projects should or should not proceed will be made through a full merit assessment of all relevant environmental, economic and social issues at the development application stage. The recommendations made by the Gateway Panel will be a critical input to this process.

Unconditional Certificates

There are two scenarios under which an unconditional certificate is issued.

The first scenario is if the Gateway Panel determines that the proposal satisfies *all* the relevant BSAL and/or CIC assessment criteria.

The second scenario is if the Gateway Panel has not issued a certificate within the specified time directed by the Director-General, as described in section 3.5.1 above.

2.5.3 Gateway Report

The Gateway report should be a concise and focused summary of the Panel's assessment process and deliberations leading up to the issue of the certificate. The report serves to provide a necessary level of transparency behind the recommendations (or absence of) included in the gateway certificate. It is to be made public on the Gateway Panel website.

2.5.4 Submission to Panel Secretariat

Upon determination, the Gateway Panel is to immediately forward the gateway certificate and Gateway Report as a single package to the Panel Secretariat.

2.6 Amending a Gateway Certificate

An applicant can apply to amend a gateway certificate previously issued by the Panel (refer to clause 17L of the Mining SEPP). The need for such an amendment is anticipated to occur when the applicant makes changes to the nature of the proposal after a gateway certificate has been issued. It is important that gateway certificates reflect the development being proposed (and, therefore, may require amendment), given the requirements of clause 50A of the Environmental Planning and Assessment Regulation 2000 (EPAR), which states that relevant DAs must be accompanied by "*a current gateway certificate in respect of the proposed development.*"

Note that amendments to the proposal that are made as a result of recommendations in a gateway certificate do not require an amendment to the gateway certificate.

Applications for amendment of a gateway certificate must be determined within the timeframes and processes set out in clauses 17I and 17J of the Mining SEPP. However, in considering an application to amend a certificate, the Gateway Panel can limit its referral or consultation (ie, the provisions of clause 17G of the Mining SEPP) and the criteria it considers before determining the application (ie, clause 17H(4) of the Mining SEPP) at its discretion. However, the criteria it considers must be some or all of the criteria listed in the Mining SEPP, not criteria outside of this.

In exercising this discretion, the Panel should be guided by the nature and extent of the relevant change to the proposal. Large-scale, potentially high impact changes would obviously be more likely to necessitate referrals, consultation and consideration of all criteria than smaller-scale, low impact changes.

2.7 Meetings

Meetings of the Panel are held on an as needs basis, dependent on the number and type of proposals it is assessing, rather than being held according to a regular, fixed schedule.

There may be situations where it is desirable for the Gateway Panel to meet with the Applicant or agencies to discuss unresolved issues, and where appropriate to facilitate resolution of outstanding issues

The following meetings may be held in relation to each application:

- Initial briefing
- Any necessary meetings with agencies
- Determination meeting

In the absence of any direction from the Minister for Planning & Infrastructure, meeting procedures (including venues) may be determined by the Gateway Panel.

2.8 Quorum at Meetings

A quorum for a meeting of the Gateway Panel is a majority of the members assigned to each application (therefore quorum is 2).

3. Advice on development applications and modifications

The Gateway Panel may receive requests for advice from the Minister, Director-General, or consent authority for the Department of Planning & Infrastructure, in relation to:

- 1) State significant development or modification applications associated with an unconditional gateway certificate issued under clause 17I(3) of the Mining SEPP. In this instance, the Director General will consult with the Gateway Panel when preparing the environmental assessment requirements (DGRs) for the development application for that proposal.
- 2) Potential agricultural impacts of development applications for which DGRs were issued before 10 September 2012[†], or certain modification applications lodged before 10 September 2012.

In all instances, The Panel's advice should relate to the issues around agricultural land and water resources – generally in accordance with the relevant assessment criteria set out in the Mining SEPP – and not broader social, economic or other environmental

considerations that are addressed through other processes (both at the strategic planning and development assessment stages).

†If a request for DGRs or a modification application for a 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 on the agricultural impacts of the proposal may be sought during the assessment of the application.

This

advice will be guided by the relevant Gateway criteria in the Mining SEPP.

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