



New South Wales

State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) Amendment 2010

under the

Environmental Planning and Assessment Act 1979

Her Excellency the Governor, with the advice of the Executive Council, has made the following State environmental planning policy under the *Environmental Planning and Assessment Act 1979*. (10/07979)

TONY KELLY, MLC
Minister for Planning

State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) Amendment 2010

under the

Environmental Planning and Assessment Act 1979

1 Name of Policy

This Policy is *State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) Amendment 2010*.

2 Commencement

This Policy commences on the day on which it is published on the NSW legislation website.

3 Amendment of State Environmental Planning Policy (Exempt and Complying Development Codes) Amendment (Additional Codes) 2010

The *State Environmental Planning Policy (Exempt and Complying Development Codes) Amendment (Additional Codes) 2010* is amended by omitting clause 2 and by inserting instead:

2 Commencement

- (1) Except as provided by subclause (2), this Policy commences on 25 February 2011 and must be published on the NSW legislation website.
- (2) Schedule 1 [9] commences on 31 December 2010.

4 Repeal of Western Division Regional Environmental Plan No 1—Extractive Industries

Western Division Regional Environmental Plan No 1—Extractive Industries is repealed.

5 Repeal of Policy

- (1) This Policy is repealed on the day following the day on which this Policy commences.
- (2) The repeal of this Policy does not, because of the operation of sections 5 (6) and 30 of the *Interpretation Act 1987*, affect any amendment made by this Policy.

Schedule 1 **Amendment of State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007**

[1] **Clause 3 Interpretation**

Insert in alphabetical order:

Commissioner means the Western Lands Commissioner holding office as such under Chapter 1A of the *Public Sector Employment and Management Act 2002*.

state conservation area means a state conservation area reserved under the *National Parks and Wildlife Act 1974*.

Western Division has the same meaning as in the *Crown Lands Act 1989*.

[2] **Clause 3 (2), definition of “environmentally sensitive area of State significance”**

Omit the definition. Insert instead:

environmentally sensitive area of State significance means:

- (a) coastal waters of the State, or
- (b) land to which *State Environmental Planning Policy No 14—Coastal Wetlands* or *State Environmental Planning Policy No 26—Littoral Rainforests* applies, or
- (c) land reserved as an aquatic reserve under the *Fisheries Management Act 1994* or as a marine park under the *Marine Parks Act 1997*, or
- (d) land within a wetland of international significance declared under the Ramsar Convention on Wetlands or within a World heritage area declared under the World Heritage Convention, or
- (e) land identified in an environmental planning instrument as being of high Aboriginal cultural significance or high biodiversity significance, or
- (f) land reserved as a state conservation area under the *National Parks and Wildlife Act 1974*, or
- (g) land, places, buildings or structures listed on the State Heritage Register, or

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- (h) land reserved or dedicated under the *Crown Lands Act 1989* for the preservation of flora, fauna, geological formations or for other environmental protection purposes, or
- (i) land identified as being critical habitat under the *Threatened Species Conservation Act 1995* or Part 7A of the *Fisheries Management Act 1994*.

[3] Clause 3A

Insert after clause 3:

3A Consent authority

The consent authority for the purposes of this Policy is (subject to the Act):

- (a) the Council of the area in which the relevant land is situated, or
- (b) in the case of development on land within a part of the Western Division that is not within a local government area, the Commissioner.

[4] Clause 5 Relationship with other environmental planning instruments

Omit clause 5 (1) and (2).

[5] Clause 5 (5)

Insert “, 10A (Additional exempt development for land that is not within an environmentally sensitive area of State significance)” before “and clause 11”.

[6] Clause 5 (5)

Insert “, 10A” after “with clause 10”.

[7] Clauses 10, 10A and 11

Omit clauses 10 and 11. Insert instead:

10 Exempt development

- (1) This clause applies to development that is on land that:
 - (a) is not within an environmentally sensitive area of State significance, or
 - (b) is within a state conservation area but is not land referred to in paragraphs (a)–(e) or (g)–(i) of the definition of *environmentally sensitive area of State significance*.

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- (2) Development for any of the following purposes is exempt development if it is of minimal environmental impact:
- (a) the construction, maintenance and use of equipment for the monitoring of weather, noise, air, groundwater or subsidence,
 - (b) low intensity activities associated with mineral exploration or petroleum exploration, including the following:
 - (i) geological mapping and airborne surveying,
 - (ii) sampling and coring using hand-held equipment,
 - (iii) geophysical (but not seismic) surveying and downhole logging,
 - (iv) accessing of areas by vehicle that does not involve the construction of an access way such as a track or road.
- (3) Development for any of the following purposes is exempt development if it is of minimal environmental impact and is on land that is the site of an approved mine, an approved petroleum production facility or an approved extractive industry:
- (a) the construction, maintenance and use of any of the following:
 - (i) landscaping, flagpoles, fences and gates (including security booths and boom gates),
 - (ii) lighting fittings and lighting equipment (including lightpoles) that are designed and operated in accordance with Australian Standard AS 4282—1997, *Control of the obtrusive effects of outdoor lighting*,
 - (iii) emergency equipment (including the replacement or augmentation of fire systems, pump houses and fire water tanks),
 - (iv) business identification, directional or safety signs,
 - (b) the construction, maintenance and use of car parking facilities or paving, but only if the car parking facilities are, or paving is, located on land that has been lawfully cleared of vegetation,
 - (c) the demolition of a building or structure that is carried out in accordance with Australian Standard AS 2601—2001, *The demolition of structures*, but only if the building or structure is not, or is not part of, a heritage item, or in a heritage conservation area, identified by an environmental planning instrument,
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- (d) the making of non-structural alterations to the exterior of a building (such as painting, plastering, cement-rendering, cladding, attaching fittings or decorative work),
- (e) the making of non-structural alterations to the interior of a building that do not result in the load bearing capacity of the building being exceeded,
- (f) the construction, maintenance and use of a shed, but only if:
 - (i) the shed is set back at least 100 metres from any public road and at least 200 metres from any dwelling that is not associated with the mine, petroleum production facility or extractive industry, and
 - (ii) the shed does not cover an area of more than 300 square metres, and
 - (iii) the shed is not more than 10 metres high, and
 - (iv) any spillage from chemicals or fuel stored in the shed will be caught by an appropriate and adequately sized bund, and
 - (v) the shed is located on land that has been lawfully cleared of vegetation, and
 - (vi) the shed meets the relevant deemed-to-satisfy provisions of the Building Code of Australia,
- (g) a work carried out in compliance with a lawful direction or notice issued under the *Occupational Health and Safety Act 2000* or in accordance with the *Coal Mine Health and Safety Act 2002* or *Mine Health and Safety Act 2004*,
- (h) the construction, maintenance and use of wheel or vehicle wash facilities, but only if:
 - (i) waste water is treated and reused on site or disposed of at an approved waste management facility, and
 - (ii) the wheel or vehicle wash facilities are located on land that has been lawfully cleared of vegetation,
- (i) the construction, maintenance and use of water storage tanks, but only if:
 - (i) the storage tank capacity does not exceed 100,000 litres, and
 - (ii) the storage tank is located on land that has been lawfully cleared of vegetation.

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- (4) Development for any of the following purposes is exempt development if it is of minimal environmental impact and is on land that is the site of an approved mine:
- (a) the installation of additions to existing infrastructure for the drainage (but not the use) of gas from the mine in emergencies or for safety purposes, but, in the case of land that is within a state conservation area, only for a period of not more than 6 months,
 - (b) the modification of a shaft used, in connection with any underground mining, for conveying workers or materials,
 - (c) the construction, maintenance and use of any minor drill hole or minor shaft within the mine, being a drill hole or shaft used for emergency or safety purposes or that has a diameter of no more than 500 millimetres.

Note. Under section 76 of the Act, exempt development may be carried out without the need for development consent under Part 4 of the Act or for assessment under Part 5 of the Act.

The section states that exempt development:

- (a) must be of minimal environmental impact, and
- (b) cannot be carried out in critical habitat of an endangered species, population or ecological community (identified under the *Threatened Species Conservation Act 1995* or the *Fisheries Management Act 1994*), and
- (c) cannot be carried out in a wilderness area (identified under the *Wilderness Act 1987*).

10A Additional exempt development for land that is not within an environmentally sensitive area of State significance

- (1) This clause applies to development on land that is not within an environmentally sensitive area of State significance.
- (2) Development for any of the following purposes is exempt development if it is of minimal environmental impact and is on land that is the site of an approved mine, an approved petroleum production facility or an approved extractive industry:
 - (a) the construction, maintenance and use of toilet and shower facilities, but only if the facilities:
 - (i) are connected to a public sewer, or
 - (ii) have an on-site sewage management facility, including any related land application area within the meaning of section 68A of the *Local Government Act 1993*, or
 - (iii) consist of temporary chemical closets approved under section 68 of the *Local Government Act 1993*,

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- (b) the construction, maintenance and use of a shed, but only if:
 - (i) the shed is set back at least 100 metres from any public road and at least 200 metres from any dwelling that is not associated with the mine, petroleum production facility or extractive industry, and
 - (ii) the shed does not cover an area of more than 1,000 square metres (in the case of the site of an approved mine) or 500 square metres (in the case of the site of an approved petroleum production facility or an approved extractive industry), and
 - (iii) the shed is not more than 15 metres high (in the case of the site of an approved mine) or 10 metres high (in the case of the site of an approved petroleum production facility or an approved extractive industry), and
 - (iv) any spillage from chemicals or fuel stored in the shed will be caught by an appropriate and adequately sized bund, and
 - (v) the shed is located on land that has been lawfully cleared of vegetation, and
 - (vi) the shed meets the relevant deemed-to-satisfy provisions of the Building Code of Australia,
 - (c) the installation, maintenance and use of infrastructure for the drainage of water from the mine, petroleum production facility or extractive industry, but only if the drained water is stored in, treated or otherwise managed by a lawful approved facility.
- (3) Development for the purposes of the construction, maintenance and use of a road on land that is the site of an approved mine is exempt development, but only if:
- (a) the development is of minimal environmental impact, and
 - (b) the road does not create an additional intersection with a public road, and
 - (c) the road is located on land that has been lawfully cleared of vegetation, and
 - (d) the construction and maintenance of the road is consistent with best practice industry standards as outlined in the document titled *Managing urban stormwater: Soils and*

construction (Volume 2C Unsealed roads), published by the Department of Environment and Climate Change and dated January 2008.

Note. Under section 76 of the Act, exempt development may be carried out without the need for development consent under Part 4 of the Act or for assessment under Part 5 of the Act.

The section states that exempt development:

- (a) must be of minimal environmental impact, and
- (b) cannot be carried out in critical habitat of an endangered species, population or ecological community (identified under the *Threatened Species Conservation Act 1995* or the *Fisheries Management Act 1994*), and
- (c) cannot be carried out in a wilderness area (identified under the *Wilderness Act 1987*).

11 Complying development

- (1) This clause applies to development that is not on any of the following land:
 - (a) land within an environmentally sensitive area of State significance,
 - (b) land identified in Schedule 1 to the *Sydney Water Catchment Management Regulation 2008*.
- (2) Development for any of the following purposes is complying development if it is on the site of an approved mine, an approved petroleum production facility or approved extractive industry:
 - (a) the construction, maintenance and use of communication facilities, electricity distribution lines or water pipelines,
 - (b) subdivision for the purpose of making an adjustment to the boundary of a lot, being an adjustment that will retain all services within the existing lots and that will not:
 - (i) create any additional lots or dwelling entitlements, or
 - (ii) change the area of any lot by more than 10%,
 - (c) the use of any mobile plant that crushes, separates, treats or sizes minerals or mineral-bearing ores, gravel or rock, or of any associated ancillary equipment, but only if:
 - (i) the use is in one location only and for a total period of not more than 12 months (in any period), and
 - (ii) the use is carried out more than 1 kilometre from any dwelling or school not associated with the mine, petroleum production facility or extractive industry, and

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- (iii) the intended processing capacity does not exceed 150 tonnes per day or 30,000 tonnes per year, and
- (iv) the use is carried out between 7 am and 5 pm on weekdays and 8 am and 1 pm on Saturdays,

Note. Examples of associated ancillary equipment include generators, dredges and drills.

- (d) the reconstruction or alteration of, or addition to, a building, but only if neither the height nor the footprint area of the building will exceed by more than 10% the height or footprint area, respectively, of the original building.
- (3) Development for the purposes of liquid petroleum gas storage containers on the site of an approved petroleum production facility or approved extractive industry is complying development, but only if:
- (a) the storage containers together have a capacity to store, at any one time, a total of not more than 3 tonnes of gas, and
 - (b) the storage containers comply with Australian Standard AS 1940—2004, *The storage and handling of flammable and combustible liquids*.
- (4) Development for any of the following purposes is complying development if it is on the site of an approved mine:
- (a) the construction, maintenance and use of a shed, but only if:
 - (i) the shed is set back at least 100 metres from any public road and at least 200 metres from any dwelling that is not associated with the mine, and
 - (ii) the shed covers an area of more than 1,000 square metres but not more than 3,000 square metres, and
 - (iii) the shed is not more than 15 metres high, and
 - (iv) any spillage from chemicals or fuel stored in the shed will be caught by an appropriate and adequately sized bund, and
 - (v) the shed is located on land that has been lawfully cleared of vegetation, and
 - (vi) the shed meets the relevant deemed-to-satisfy provisions of the Building Code of Australia,
 - (b) an upgrade of processing equipment or expansion of processing equipment that does not result in the capacity of the equipment exceeding by more than 10% the original capacity for the mine as approved,

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- (c) the construction, maintenance and use of fuel bowsers and fuel, gas and oil storage tanks, but only if the storage tanks:
 - (i) have a capacity to store, at any one time, a total of not more than 50,000 litres, and
 - (ii) comply with Australian Standard AS 1940—2004, *The storage and handling of flammable and combustible liquids*, including any requirements in relation to spill management, and
 - (iii) are located on land that has been lawfully cleared of vegetation,
 - (d) the construction, maintenance and use of storage tanks for the purposes of storing inert gases or stone dust, but only if the storage tanks:
 - (i) have a capacity to store, at any one time, a total of not more than 50 tonnes, and
 - (ii) comply with Australian Standard AS 1940—2004, *The storage and handling of flammable and combustible liquids*, and
 - (iii) are located on land that has been lawfully cleared of vegetation,
 - (e) the construction, maintenance and use of a coal storage facility, but only if:
 - (i) the storage capacity of the facility does not exceed 5,000 tonnes, and
 - (ii) the facility is located on land that has been lawfully cleared of vegetation,
 - (f) the construction, maintenance and use of temporary buildings, but only if each building:
 - (i) is constructed, maintained and used for a total period of not more than 24 months (in any period), and
 - (ii) is not more than 1 storey in height, and
 - (iii) meets the relevant deemed-to-satisfy provisions of the Building Code of Australia, and
 - (iv) is located on land that has been lawfully cleared of vegetation.

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[8] Clause 18A

Insert after clause 18:

18A Designated development

Development for the purposes of extractive industries that are located in the Western Division and that obtain or process for sale, or reuse, more than 15,000 cubic metres of extractive material per year or more than 40,000 cubic metres in total is declared to be designated development for the purposes of the Act.

[9] Clause 19 Savings and transitional—general

Insert at the end of the clause:

- (2) An application for development consent that was made before the commencement of the *State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) Amendment 2010*, but was not finally determined before that commencement, is to be determined as if that Policy (other than Schedule 1 [3]) had not been made.