



Office of the Director General

Mr Peter Harris AO - Chairman
Resource Exploration
Productivity Commission
GPO Box 1428
Canberra City ACT 2601
(by email: resourceexploration@pc.gov.au)

13/11120

Dear Mr Harris

Thank you for the opportunity to comment on the Productivity Commission's Draft Report on Mineral and Energy Resource Exploration. I congratulate the Commission on undertaking this challenging task. I have outlined the NSW Department of Planning and Infrastructure's comments for consideration by the Commission below, and attached a more detailed response.

Overall, the Department raises no significant objections to the Draft Report and recommendations as the Department has limited involvement in minerals and energy exploration activities. NSW Trade and Investment is generally responsible for exploration licensing and approvals with the Department having an assessment role where these exploration activities are identified as State Significant Development.

However, there may be a need to clarify aspects of the NSW Government's Strategic Regional Land Use Policy as they relate to recommendations 4.3, 6.4, 6.5 and 6.6. Specifically, the Strategic Regional Land Use Policy will shortly implement coal seam gas exclusion zones to prohibit coal seam gas exploration and development in existing residential and future residential growth areas and within a two kilometre buffer around these areas. The coal seam gas exclusions will also apply within the equine and viticulture Critical Industry Clusters in the Upper Hunter.

Additionally, the Gateway Process, which applies to State Significant exploration, does not specifically include the requirement for a cost benefit analysis assessment, outlined in draft recommendation 4.3. However, the Gateway Process is not determinative, and the costs and benefits of projects will be weighed at the development application stage as part of a full merit assessment process.

Should you have any further enquiries with regards to this submission, I have arranged for Chris Wilson – Executive Director, Development Assessment Systems and Approvals of the Department of Planning and Infrastructure to assist you. Mr Wilson can be contacted on 02 9228 6192.

Yours sincerely

Sam Haddad
Director General

16/7/2013



	DRAFT RECOMMENDATION	COMMENT
	<p>DRAFT RECOMMENDATION 4.3</p> <p>Governments should ensure that the development of coal seam gas exploration regulation is evidence-based and is appropriate to the level of risk. The regulation should draw on the guiding principles of the Multiple Land Use Framework endorsed by the Standing Council on Energy and Resources to weigh the economic, social and environmental costs and benefits for those directly affected as well as for the whole community, and should evolve in step with the evidence.</p>	<ul style="list-style-type: none"> • The need for a focus on evidence-based assessment of risk and better integration of economic, social and environmental considerations to achieve sustainable development outcomes is generally consistent with the proposed focus of land use planning under the new NSW planning system, as set out in the Planning White Paper. • However, there is the potential for aspects of the SRLUP to be inconsistent with these recommendations. • Specifically, the Gateway Process (which applies to State significant exploration) does not include the requirement for a cost benefit analysis assessment. However, it is noted that the Gateway Process is not determinative and the costs and benefits of projects will be weighed at the development application stage. • Also, the SRLUP coal seam gas exclusion zones prohibit coal seam gas exploration and development in existing residential and future residential growth areas and within a two kilometre buffer around these areas. The exclusions will also apply within Critical Industry Clusters. While these exclusion zones provide heightened protection for residential areas and Critical Industry Clusters.
	<p>DRAFT RECOMMENDATION 6.4</p> <p>Governments should ensure that their environment-related regulatory requirements relating to exploration:</p> <ul style="list-style-type: none"> • are the minimum necessary to meet their policy objectives • proportionate to the impacts and risks associated with the nature, scale and location of the proposed exploration activity. 	<ul style="list-style-type: none"> • This recommendation is generally consistent with the White Paper, which outlines the principles of a new development assessment system, including managing the risk of impacts by targeting assessment resources proportionate to the complexity of the proposal. • The SRLUP coal seam gas exclusion zones prohibit coal seam gas exploration and development in existing residential and future residential growth areas and within a two kilometre buffer around these areas. The exclusions will also apply within Critical Industry Clusters. While these exclusion zones provide heightened protection for residential areas and Critical Industry Clusters, it may be considered inconsistent with aspects of the draft recommendation.

DRAFT RECOMMENDATION 6.5

Governments should ensure that their environment-related regulation of exploration activities should be focused towards performance-based environmental outcome measures and away from prescriptive conditions, in order to better manage risk and achieve environmentally sound outcomes.

- This recommendation is generally consistent with the White Paper, which outlines principles of a new development assessment system, including requiring development to be approved with conditions that are essential to avoid or mitigate impacts, or to ensure a proposal aligns with a strategic plan.
- The SRLUP coal seam gas exclusion zones prohibit coal seam gas exploration and development in existing residential and future residential growth areas and within a two kilometre buffer around these areas. The exclusions will also apply within Critical Industry Clusters. While these exclusion zones provide heightened protection for residential areas and Critical Industry Clusters, it may be considered inconsistent with aspects of the draft recommendation.

DRAFT RECOMMENDATION 6.6

Governments should ensure that when there is scientific uncertainty surrounding the environmental impacts of exploration activities, regulatory settings should evolve with the best-available science (adaptive management) and decisions on environmental approvals should be evidence-based.

- This recommendation is generally consistent with the objects of the EP&A Act which include the encouragement of ecologically sustainable development, an element of which includes the precautionary principle. The Court's in NSW have also placed importance on these Ecologically Sustainable Development principles in interpreting the provisions of the EP&A Act relating to environmental assessment, particularly any requirements to consider the public interest.
- The recommendation is also generally consistent with the White Paper which outlines principles for strategic planning that based on evidence and take account of social, economic and environmental considerations.
- The SRLUP coal seam gas exclusion zones prohibit coal seam gas exploration and development in existing residential and future residential growth areas and within a two kilometre buffer around these areas. The exclusions will also apply within Critical Industry Clusters. While these exclusion zones provide heightened protection for residential areas and Critical Industry Clusters, it may be considered inconsistent with aspects of the draft recommendation.