

PLANNING SYSTEM

State environmental planning policies

Circular	PS 10-030
Issued	20 December 2010
Related	PS 07-005

Amendments to the Mining SEPP – Exempt and Complying Development

The purpose of this circular is to advise councils, developers and the community of amendments to the exempt and complying development provisions in the Mining SEPP.

Introduction

State Environmental Planning Policy (Mining, Petroleum & Extractive Industries) 2007 (the Mining SEPP) was amended on 10 December 2010. This circular outlines the amendments to the exempt and complying development provisions as well as other miscellaneous amendments made to the Mining SEPP.

Amendments to exempt and complying development

The amendments expand the types of development that may be carried out as exempt or complying development under the Mining SEPP.

All exempt or complying development carried out under the Mining SEPP must be located on the site of an approved mine, approved petroleum production facility or approved extractive industry (with the exception of development for the purposes of environmental monitoring or low intensity exploration activities, which may be carried out on any land).

This means, for an approved mine, approved petroleum production facility or approved extractive industry, modification of the relevant development consent or project approval is not required for the carrying out of exempt or complying development. The exempt and complying development provisions in the Mining SEPP apply where such development was not identified in the initial consent or approval. However, if the initial consent or approval does cover the development, the development may be carried out in accordance with the terms of that consent or approval.

Minimal environmental impact

To be exempt development under the Mining SEPP, the development must be of “minimal environmental impact” (in accordance with section 76(2) of the *Environmental Planning and Assessment Act 1979*).

What constitutes minimal environmental impact on the site of an approved mine, approved petroleum production facility or approved extractive industry is to be assessed on a case-by-case basis having regard to the proposed development in the context of the current state of the environment.

To ensure that all exempt development under the Mining SEPP is of minimal environmental impact, appropriate restrictions have been introduced to minimise any potential environmental impacts arising from the carrying out of the development. For instance, some types of exempt development may only be carried out “on land that has been lawfully cleared of vegetation”, which means that if development involves or requires the clearing of vegetation, it cannot be carried out as exempt development under the Mining SEPP.

Expansion of exempt development

Under the amendments to the Mining SEPP, the following types of development may now be carried out as exempt development:

- toilet and shower facilities
- wheel or vehicle wash facilities
- water storage tanks
- sheds that are 1,000 square metres in the case of an approved mine or 500 square metres in the case of an approved petroleum production facility or approved extractive industry, and
- on-site roads (but only on the site of an approved mine).

Exempt development in State Conservation Areas

The Mining SEPP does not currently allow for exempt (or complying) development on land within an environmentally sensitive area of State significance, defined to include land reserved as a State Conservation Area.

A State Conservation Area is reserved under the *National Parks and Wildlife Act 1974* for both its conservation value and resource potential. As such, the amendments to the Mining SEPP allow a limited range of exempt development to be carried out in State Conservation Areas (provided that the land does not otherwise fall within another category of environmentally sensitive area of State significance).

The types of development that may be carried out as exempt development in State Conservation Areas include:

- landscaping, flagpoles, fences & gates
- lighting
- emergency equipment
- signage
- carparking facilities and paving
- demolition works
- non-structural exterior and interior alterations
- sheds that are 300 square metres
- occupational health and safety works
- wheel or vehicle wash facilities, and
- water storage tanks.

The following types of development may also be carried out as exempt development on the site of an approved mine:

- additions to gas drainage infrastructure
- modification of underground mine shafts, and
- minor drill holes or minor shafts.

Expansion of complying development

Under the amendments to the Mining SEPP, the following types of development may now be carried out as complying development on the site of an approved mine:

- sheds that are 3,000 square metres,
- expansions / upgrades to processing plant equipment,
- fuel bowsers and fuel, gas and oil storage tanks,
- storage tanks for the purposes of storing inert gases or stone dust,
- coal storage facilities, and
- temporary buildings.

Development for the purposes of liquid petroleum gas storage containers may also be carried out as complying development on the site of an approved petroleum production facility or approved extractive industry.

Repeal of Western Division REP

The amendments to the Mining SEPP repeal the Western Division Regional Environmental Plan No 1 – Extractive Industries (WDREP). Many of the provisions of the WDREP are superseded by the Mining SEPP.

Consent authority

The Mining SEPP now contains a provision identifying the Western Lands Commissioner as the relevant consent authority for development for the purposes of mining, petroleum production and extractive industries located on land in the Western Division that is not within a local government area (i.e. the unincorporated area of the State).

Designated development

The Mining SEPP now declares development for the purposes of extractive industries that is located on land in the Western Division and that obtains or processes for sale, or reuse, more than 15,000 cubic metres of extractive material per year or more than 40,000 cubic metres in total as designated development. These thresholds have been carried across from the WDREP.

Further information

A copy of the State Environmental Planning Policy (Mining, Petroleum and Extractive Industries) 2007 (as amended) is available on the NSW legislation website at <http://www.legislation.nsw.gov.au>.

Note: This and other Department of Planning circulars are published on the web at <http://www.planning.nsw.gov.au/PlanningSystem/Circularsandguidelines/PlanningSystemCirculars/tabid/81/Default.aspx>.

Authorised by:

Sam Haddad
Director-General
NSW Department of Planning

Important note: This circular does not constitute legal advice. Users are advised to seek professional advice and refer to the relevant legislation, as necessary, before taking action in relation to any matters covered by this circular.

© State of New South Wales through the Department of Planning
www.planning.nsw.gov.au

Disclaimer: While every reasonable effort has been made to ensure that this document is correct at the time of publication, the State of New South Wales, its agencies and employees, disclaim any and all liability to any person in respect of anything or the consequences of anything done or omitted to be done in reliance upon the whole or any part of this document.