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Director-General

The Director – General
Department of Planning & Infrastructure
GPO Box 39
SYDNEY NSW 2001

Attention: Director – Strategic Regional Policy and Director, Policy Systems and Procedures, Development Assessment Systems and Approvals

Dear Sir

Public exhibition of recent amendments to State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007

I refer to recent public exhibitions of proposed amendments to the above, including:

- i. SEPP (Mining, Petroleum Production and Extractive Industries) Amendment (Coal Seam Gas Exclusion Zones) 2013 – additional mapping for CSG exclusions, strategic agricultural land and BSAL; and
- ii. SEPP (Mining, Petroleum Production and Extractive Industries) Amendment (Resource Significance) 2013.

Council is aware that the "Resource Significance" amendment to the "Mining SEPP" was exhibited back in July/August 2013 and is now in effect as from 4 November 2013. Notwithstanding this, Council wishes to convey its comments on the amendment.

Please find enclosed Councils submission to the above two recent amendments to the Mining SEPP and generally to resource industry (mining and coal seam gas) policy and planning initiatives particularly since April 2013.

If you require further information please contact either myself, David Morrison (Manager Strategic & Economic Planning) or Terry Dwyer (Senior Strategic Planner, Policy) on telephone 66430200.

Yours faithfully



Des Schroder
Director Environment Planning and Community

Gateway process and Mining & Petroleum Gateway Panel

Council has no doubt that the Gateway process and facility can serve as a higher level of assessment and scrutiny of CSG proposals. However for it and any project assessment and approval process to function properly the assessors and decision makers will require adequate environmental baseline data and science. It is also noted (refer to comments under BSAL mapping) that the area the subject to the Gateway process for future CSG projects within the Clarence Valley LGA will be quite limited due to the relatively small area proposed as BSAL at this stage.

CSG exclusion zones and proposed additional exclusions

Council has noted that the CSG exclusion zones foreshadowed in the March/April 2013 draft Mining SEPP amendment are now in effect. Council's 11 April 2013 submission sought to have additional exclusions to be added, as follows:

- i. The balance of those areas at Gulmarrad and Woombah zoned R5 and that have a 4000m² lot size and are contiguous with those areas that are within 2km of land zoned Residential (R1, R2 or R3) that will enjoy exclusion.
- ii. Land at Waterview Heights zoned R5 and with a 4000m² lot size.
- iii. That part of the Gulmarrad and James Creek proposed "Growth Area" and future urban release area identified in the Mid North Coast Regional Strategy not already zoned residential.
- iv. The drinking water catchments of the Clarence - Coffs Harbour Regional Water Supply upstream of the Nymboida Weir and associated with the Shannon Creek Dam; and the SP2 zone over the Shannon Creek Dam.

It is now noted that the areas identified in items i, ii and iv have been overlooked. It is noted that the area referred in item iii above is proposed to be added to the CSG exclusions as "future residential growth areas". The area and configuration of these areas are consistent with the Gulmarrad and James Creek "proposed future urban release areas" identified in the Mid North Coast Regional Strategy.

It would seem from the actions and outcomes to date that the State Government is not intending to provide protection from CSG activity by way of exclusion of those closely settled rural residential precincts within the Clarence Valley LGA. Council has noted that only seven (7) "villages" state-wide are to enjoy additional exclusion from CSG activity.

Council considers that not considering the drinking water catchments of the Clarence - Coffs Harbour Regional Water Supply as specified in point iv above for exclusion from CSG activity is not in the public interest and should be rethought to help guarantee the integrity of the drink water of the region that this Water Supply infrastructure and asset serves.

Public exhibition of additional proposals – BSAL mapping

The exhibition of additional amendments to the Mining SEPP including the extension of CSG exclusion zones, revised equine and viticulture CIC mapping (Upper Hunter region) and mapping of an additional one million hectares of BSAL state-wide is noted. Comments have already been offered on the CSG exclusion zones above – both proposed extensions of and the lack of additional extensions.

The quantum of BSAL mapped/proposed for the Clarence Valley is not disclosed in the exhibition material. However, it appears to be in the order of 40083 ha which represents about 3.8% of the Clarence Valley LGA.

It is evident from a perusal of the draft BSAL mapping that the area/proportion of proposed BSAL within the Clarence Valley LGA will be minimal. The area of "CSG exclusion" and proposed "CSG exclusion" is also relatively small. By default it could be inferred that much of the Clarence Valley LGA will be "open for business" in terms of CSG exploration and production at a lower lever of scrutiny or assessment, than if it was to be either excluded from CSG activity or at least subject to the more rigorous assessment process afforded by the new "CSG Gateway process".

The exhibited BSAL mapping has failed to acknowledge regionally significant farmland which has been mapped (2008) and subject to policy protection in the Mid North Coast Regional Strategy (MNCRS). Therefore it is not evident how BSAL (mapping) relates to existing mapped regionally significant farmland. In the Clarence Valley LGA 73,440 ha of rural land has been mapped as regionally significant farmland, comprising approximately 7% of the LGA.

According to the MNCRS regionally significant farmland is the best farmland in the region having been identified on the basis of factors including slope, soil depth, drainage, water holding capacity, soil type and soil structure. It is capable of sustained use with a reasonable level of inputs. The strategy states that:

- Regionally significant farmland needs to be largely protected from encroachment, fragmentation and conflicting uses.
- LEPs will zone regionally significant farmland to protect agricultural values.
- New development adjoining or adjacent to farmland will incorporate buffers to avoid land use conflict.
- Mapped farmland will be protected from the impacts of new neighbouring development through conflict risk assessment and buffers, consistent with the Mid North Coast Farmland Mapping Project and the Rural Lands SEPP.

The disconnect between existing regionally significant farmland and proposed BSAL need to be resolved and it appears clear that a disparate approach to CSG and resources policy and planning is being undertaken. As a minimum all land currently mapped as regionally significant farmland should be added to "CSG excluded". However, Council believes that a more considered approach needs to be taken including one informed by underlying scientific and evidence base – encompassing environmental, social and economic criteria.

August 2013 exhibition of draft amendments to the Mining SEPP (Resource Significance)

Council is aware that the Department from 29 July to 12 August 2013 publicly exhibited a draft Mining SEPP amendment entitled State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) Amendment (Resource Significance) 2013. It appreciates that this particular amendment is only for mining projects, such as coal mining or mining of other minerals and precious metals such as gold or silver mines and not for CSG related activities/projects.

The following comments are offered in respect of the proposed new aim of the SEPP and the new matters for consideration in proposed Clauses 12AA and 12AB.

Significant mineral resources and clause 12AA

- i. There is no definition of *"significance of the resource"* – therefore how will this be measured or determined?
- ii. How does this clause relate to existing matters for consideration in Part 3 of the SEPP, particularly in relation to the use of the terminology *"significance of the resource"* in the amending SEPP versus the use of the terminology *"State or regionally significant resources of minerals..."* used in "clause 13 Compatibility of proposed development with mining, petroleum production or extractive industry"? It is accepted that DTIRIS will provide the advice on resource significance and that under the amendments resource significance and "economic benefits" are the principal considerations for the consent authority ahead of the other Part 3 matters.
- iii. Resource significance will therefore be arguably discretionary, on a case by case basis (as determined by the consent authority), in the absence of a more strategic state-wide or even national approach to resource development and energy policy.
- iv. Also arguably discretionary (as determined by the consent authority) will be the proportionality of the importance of the other matters in comparison with the significance of the resource. Cumulative impact matters should be a prime matter for consideration.
- v. Regarding proposed clauses 12AA (3) & (4) in particular there is no evaluation or decision making framework or tool disclosed at present to give confidence that assessment and decision making will be transparent and consistent.
- vi. Resource significance should also be alluded to at the prospecting/exploration stage and be confirmed (eg "registered") at least by the end of such stage.

Significant mineral resources and Clause 12AB

- i. It seems that the Policy will have competing/conflicting Aims once this new aim takes effect. The existing aims are:
"(a) to provide for the proper management and development of mineral, petroleum and extractive material resources for the purpose of promoting the social and economic welfare of the State, and
(b) to facilitate the orderly and economic use and development of land containing mineral, petroleum and extractive material resources, and
(c) to establish appropriate planning controls to encourage ecologically sustainable development through the environmental assessment, and sustainable management, of development of mineral, petroleum and extractive material resources".
- ii. It may follow, if consistency with the theme in recent legislative amendment proposals is to be maintained, that the Government may also alter or delete the reference to *ecologically sustainable development* in Aim (c) given that in the Planning Bill 2013 and recent Planning White paper it now only intends to have or encourage just sustainable development.
- iii. It would seem that clause 12AA (3) will take care of which aim will take precedence.

The following comments are offered in respect of the new matters for consideration in proposed Clause 12AC.

Clause 12AC

- i. This provision appears to be predicated on that there is and will be an "engineering" solution to everything.
- ii. Following on from this if an EIS or other application support or justification document states that the relevant environmental & other concerns/issues will be addressed, mitigated or ameliorated by controls, conditions, monitoring programs, rehabilitation etc. etc. then a development cannot be refused.
- iii. If one accepts this then it could be argued that a development could conceivably be considered, approved and operate for instance within a (drinking) water catchment or even a national park/nature reserve/world heritage area for instance.

This amendment may be seen by some as a reactionary response and "policy on the run" approach, with the Government appearing to react to foreclose the problems that some mining/resource projects have experienced with recent court cases (eg the Bulga decision). Other recent evidence of reactionary "on the run" policy includes the CSG exclusions Mining SEPP amendment announced earlier this year (and now effective from 4 October 2013), responding to pressures emanating predominantly from metro-urban areas in relation to CSG exploration/production etc.

Placing the "economic" element first could signal to the general community that it is the mining companies that the Government is giving precedence to in listening to community concerns in relation to this issue. The Government (consent authority) is likely to experience considerable difficulty in attempting to balance its consideration of the 'lesser' matters (for consideration) against the "economic benefits" matters (for consideration). Council has concern that this amendment also could also be the "thin end of the wedge" for a similar amendment in the not too distant future to the Mining SEPP in respect of CSG, UCG, petroleum etc.

The NSW Chief Scientist & Engineer has recently released her Initial Report – Independent Review of Coal Seam Gas Activities in NSW which has made some very detailed recommendations aimed at improving the information available to the community and assisting the Government to build confidence that it has the intention and capacity to oversee a safe CSG industry.

Although the Mining SEPP Resource Significance amendment does not relate to CSG it would not be too unreasonable to suggest that some of the recommendations or parts of those recommendations have some relevance to mining activities, which the State government, if acting in the broader public interest, would at least pause to acknowledge and consider before making such ad hoc amendments to the Mining SEPP. The amendment, particularly proposed Clause 12AC, will also legislate an "on paper compliance" approach whereby a project cannot be refused if the application and approval support documents assert that a proposal can proceed without unacceptable impacts.

This will require the public to place even more trust and faith in the proponents and the decision makers and in those charged with monitoring conditions, impacts and otherwise enforcing compliance with approvals. The focus of concerns with impacts of resource and energy projects will shift to diligent compliance by proponents and their operators/contractors and well resourced, competent and unfettered enforcement of compliance with consents/approvals and their conditions by regulatory agencies.

What guarantees, check/balances, resources and governance structures will be put in place to do this?

A system predicated upon "on paper compliance" cannot and should begin to operate in this matter without first the agreed science and evidence being in place.

Concluding comments

The Draft Amending SEPP CSG exclusion zones amendment is a step in the right direction to providing some clarity as to where all new CSG exploration and production activity will be prohibited. Any rural land that will not be mapped as BSAL will have a lower level of assessment and consideration for applications relating to CSG exploration & production and this will remain of concern to those in the community outside of the proposed exclusion zones or mapped BSAL areas. The disconnect or unacknowledged inconsistency between existing regionally significant farmland and proposed BSAL needs to be resolved. In this regard Council strongly urges the existing mapped regionally significant farmland to be used as a basis for BSAL. Council also wishes to reiterate concern about the omission from CSG exclusion zones the R5 zoned areas and drinking water catchment area described in Council's 11 April 2013 submission. It urges the Department and the Minister to reconsider its position on this.

The Resource Significance amendment to the Mining SEPP would seem to indicate that the new proposed aim *"to promote the development of significant mineral resources"* in concert with proposed clause 12AA is likely to take precedence over other aims including aim 2(c) – *"to establish appropriate planning controls to encourage ecologically sustainable development through the environmental assessment, and sustainable management, of development of mineral, petroleum and extractive material resources"*.

The Government and the mining/CSG industry will need to consider and ensure implementation of the Chiefs Scientists Interim Recommendations if ecological systems are to be safeguarded against irreversible degradation. Key to this will be sound science and technical data in relation to key "baselines" for water, air, soil resources and biodiversity.

There do not appear to be any proper studies or evaluations of the economic value of the "CSG" and mineral resource to the National, State, regional/local economies informing the current NSW Government's constantly evolving initiatives in relation to CSG and mining approval policy. The *"significance of the resource"* is a fundamental plank of the recent Resource Significance amendment to the Mining SEPP, yet it is not defined. The economic impacts of the Resource Significance amendment to the Mining SEPP and draft BSAL & other mapping are not known at this stage. An economic impact statement has not accompanied the exhibition/consultation process. Impacts can only be speculated at this stage.

The social and cultural impacts have not been considered as part of the exhibition/consultation process of the Resource Significance amendment to the Mining SEPP and draft BSAL & other mapping. Therefore such impacts are not known at this stage. The social & cultural interests of those in the exclusion zones and areas subject to "gateway assessment" areas are probably better served than those outside the proposed exclusion or assessment areas.

Whilst the "CSG excluded" areas and areas subject to gateway assessment through BSAL & CIC mapping will enjoy a greater degree of certainty and assessment respectively, uncertainty will remain about the degree of protection and assessment of the larger areas outside of these areas if and when they are to be subject to mining and CSG exploration & production activity.

The relatively brief exhibition/submission periods for the draft Resource Significance amendment to the Mining SEPP, additional mapping and recent CSG exclusion SEPP amendment gives the impression that the NSW Government is handling stakeholder consultation in a somewhat token and perfunctory manner which is not considered to be good governance considering the emphasis placed on public participation by the Minister for Planning and Infrastructure in the NSW Planning Reform process. It is a case of too much information in too short a period of time. The NSW Government would find that a higher level of interest and engagement would result if for instance regionalised and localised community consultation forums were publicised and offered.

Council urges the NSW Government to take a less hasty and more considered approach to CSG and mining planning and policy reform.

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