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Reference FILE14/272

Moree Plains SHIRE

28 November 2014

Manager
Resource Policy
Department of Planning and Environment
GPO Box 39
SYDNEY NSW 2001

Dear Sir / Madam,

Re: Planning changes to the NSW Mining and State and Regional Development Planning Policies

Thank you for the opportunity to comment on the above draft changes.

Moree Plains Shire and the surrounding region is an area with potential resources of both coal and coal seam gas (CSG). Council has previously expressed serious concerns about coal and CSG as they relate to our high value strategic agricultural lands. Council is unwilling to jeopardise the long-term future of local agriculture for the short-term benefits of coal and CSG extraction.

Council is concerned that there remains a lack of clarity over potential environmental impacts from coal and CSG development including on ground water. Moree Plains Shire is one of the most productive agricultural shires in Australia and Council will not support any industry which could put our natural resources at risk, no matter how small, to the long-term future of local agriculture which has sustained the prosperity of our shire for many years.

Gas Exploration Assessment

The proposed new approval mechanism for gas exploration is of concern to Council. Exploration works for coal and CSG development are not insignificant and generally involve many of the same considerations as production works. Exploration still involves activities such as drilling, construction of roads and infrastructure and potential environmental impacts including impact on groundwater.

Gas exploration is proposed to be changed from State Significant Development to development under Part 5 of the Environmental Planning and Assessment Act 1979. This is a massive change in many respects, not the least being that proposals would go from being State Significant to not even requiring a Development Application. The new requirement to submit a Review of Environmental Factors to the Office of CSG is a process which would be open to criticism for a lack of transparency. Community engagement would be removed from the process altogether

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except for proposals where an Environmental Impact Statement is required. The FAQ sheet accompanying this draft advises that "if the Office of CSG considers the proposed activity will have a significant impact on the environment then an EIS must be prepared." What are the benchmarks that the Office of CSG consider in determining if an activity would have significant impact on the environment? The benchmarks must be made available to the public as they would form an integral part of this process.

It is suggested that a process whereby the assessment of exploration projects is done entirely by the Office of CSG with no public consultation (unless an EIS is required), limited/no publicly available information and limited/no transparency is going to alienate the public very quickly. This coupled with a potential perception that the Office of CSG lack impartiality would not be in the best interests of the coal and CSG industries long-term.

The decision to modify the approval process is said to be based on advice from the Chief Scientist and Engineer who site an overly complex approval process as the key reason. Is it considered satisfactory for the existing process to remain for the assessment of production proposals? It would seem to be a huge over-reaction to completely abandon the current approvals process. Could this not have been better dealt with by improving legislation compatability and having the Department of Planning and Environment act as the primary assessment body (as they currently do) and refer proposals to the appropriate state agencies for their concurrence? This could not be considered too onerous for the assessment of exploration proposals. The intended changes appear to be a case of throwing out the baby with the bathwater.

Council is also concerned that exploration and production assessments would be undertaken by entirely different bodies under different legislative processes. Given the prevalence of common issues involved with both exploration and production activities there must be a strong nexus between the assessment processes for the two. The draft changes will see a substantial gap appear in this respect.

Voluntary Land Acquisition and Mitigation Policy

The Voluntary Land Acquisition and Mitigation Policy poses some interesting concepts. Within the Policy Rationale section (page 3) the following statement is made:

"Consent authorities may decide that it is in the public interest to allow the development to proceed, even though there would be exceedances of the relevant assessment criteria, because of the broader social and economic benefits of the development."

This statement indicates that a development may have unacceptable impacts but can be approved nonetheless. Aside from the obvious problems of unacceptable environmental impacts and land use conflict, this position provides no incentive for mining companies to meet the assessment criteria when their proposal is considered (by the determining authority) to be for the greater good. Figure 1 in the draft policy provides that unsuitable developments can be refused subject to assessment of the net benefit. In effect this means that an inappropriate development could be approved if it is sufficiently lucrative.

The concept of Voluntary Land Acquisition (VLA) has some merit in theory. If a developer offers a private land holder an appropriate price for their land and the offer is accepted this can be positive for new development and the land holder. However there are many variables and possible scenarios which could show serious flaws in the draft policy.

If an offer to acquire lands is made and not accepted does this affect the assessment process with respect to buffers and the consideration of impacts on the subject lands? Surely the assessment would be the same regardless of whether an approach for acquisition is made or not. It reads as though development can be approved on the basis that affected lands can or should be acquired by the developer due to unacceptable impacts. That is, acquired by voluntary agreement rather than compulsory acquisition. If this is the case it would be a requirement that could be very difficult to enforce and would be a ridiculous assessment process.

Part 5 of the essential steps in the assessment process (page 3) provides that "the application of voluntary acquisition rights through a development consent should be seen as a mitigation measure..." How can a development consent require VLA? By definition this would not be voluntary. In any case a development consent should not be relying on the potential for an acquisition of land to ensure that unacceptable impacts do not eventuate. If, post-consent where VLA is conditioned, a land owner chooses not to sell their land, is it expected that their land should be subjected to unacceptable impacts?

Negotiated agreements as outlined in the Policy: General section (page 5) are generally supported although there must be an assurance that the land holder is able to access appropriate independent advice so that they are well-informed going into such negotiations. There should not be any situations where a land holder is 'strong-armed' by a developer.

Voluntary mitigation is supported in principal. The draft policy states "Voluntary mitigation rights should be applied to affected landowners when: The consent authority is satisfied that the development is still in the public interest and should be approved." This is only acceptable if mitigation works are able to reduce the targeted impacts to the point that they are acceptable.

Please contact Murray Amos on the contact details above should you wish to discuss this matter further.

Yours sincerely

Katrina Humphries

Katrina Humphries
MAYOR