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Dear Manager, Resource Policy

Gosford City Council Submission on Proposed Planning Changes to NSW Mining and State and Regional Development Planning Policies

Thank you for providing the opportunity to comment on the proposed changes to the NSW Mining and State and Regional Development Planning Policies. The following submission from Gosford City Council has not been endorsed by Council through a formal Council meeting, due to the (two week) short period of public exhibition. Council will seek to ratify this submission at its meeting of the 9 December 2014, after the close of the public exhibition period.

INTRODUCTION

Council understands the proposed changes are intended to support the recommendations made by the NSW Chief Scientist in her report titled, *"Final Report of the Independent Review of Coal Seam Gas Activities in NSW"*. Council has made its submission inclusive of consideration to the recommendations in this report and with consideration to the current position resolved by Council with respect to the protection of Gosford local government area from any coal seam gas exploration or mining activity.

For your information Council wrote to the Premier of NSW and the Minister for Resources and Energy in October 2012, advising them of the resolution of Council made at its meeting on the 2nd October 2012, described in part as:

- A. Council oppose all current coal seam gas exploration and mining practices anywhere in the Gosford Local Government Area because of the unacceptable risks to our water catchments, groundwater, agricultural industries, natural environment and human health.
- B. Council support other Councils in NSW in their opposition to Coal Seam Gas Exploration and Mining.

- C. *All coal seam gas extraction and exploration be banned within all water catchment areas on the Central Coast.*

In making the above resolution Council gave key consideration to:

- The recently adopted NSW Government Strategic Regional Land Use Policy
- Risks to the Health and Safety of the local residents
- Risks to the environment including the drinking water catchments, future food production and the atmosphere from fugitive greenhouse gas emissions.

CONTEXT

The proposed amendments to the *State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007* ('the Mining SEPP') and the *State Environment Planning Policy (State and Regional Development) 2011* ('the SRD SEPP'), will:

- Amend the Mining SEPP to remove petroleum exploration activities, including the 5 wells rule, from being development permissible with consent so that these activities are no longer assessed by the Department of Planning and Environment as a development application, but rather are assessed by a relevant determining authority (The Office of Coal Seam Gas) under Part 5 of the EP&A Act
- Amend the Mining SEPP to require a consent authority to consider the Voluntary Land Acquisition and Mitigation Policy in determining applications for State significant mining, petroleum and extractive industry projects.
- Amend the SRD SEPP to remove references to petroleum exploration, including the 5 wells rule, from specified development in Schedule 1 under petroleum (oil and gas) so that it is no longer considered to be State Significant Development.

Further detail describing the sections of the relevant SEPPs is available in APPENDIX 1.

NSW Chief Scientist Recommendations

The information provided on the Department of Planning & Environment's (DoP&E) website indicates that the proposed changes are intended to support the recommendations made by the NSW Chief Scientist in her report titled, "*Final Report of the Independent Review of Coal Seam Gas Activities in NSW*". This report includes 16 recommendations. There is no information provided by the DoP&E indicating the recommendations relevant to these changes, however Council has identified the recommendations 1, 2, 3 and 7 as the most relevant.

PRIMARY CONCERNS

Council's primary concerns regarding these proposed changes relate to the issues of:

- Petroleum exploration activities being excluded from the SEPP's as state significant development and therefore not requiring development consent.

- Reduced opportunity for community input into the CSG development decision making process
- Reduced rigor in the environmental assessment requirements for proposed CSG exploration activities
- CSG exploration activities being assessed, approved and regulated for compliance by the one agency, namely the Office of Coal Seam Gas.

Assessment of petroleum exploration activities under Part 5 of the EP&A Act

Currently, development for the purposes of petroleum exploration (this includes CSG) is classified as State Significant Development and therefore requires development consent. Development applications must be accompanied by an Environmental Impact Statement (EIS). In accordance with the regulations an EIS must be placed on public exhibition for at least 28 days, during which time the public can make submissions. Any submissions would need to be considered in determining whether consent would be given for the development.

The proposed changes to the Mining SEPP and the SRD SEPP would see the petroleum exploration activities excluded as State Significant Development, therefore not requiring development consent and instead being assessed under Part 5 of the EP&A Act, with environmental considerations being assessed under a Review of Environmental Factors (REF). Under this change there would be no legal requirement to place the REF on public exhibition and no mechanism for public submissions to become a part of any consent decision making process.

The proposed changes do not accord with the NSW Chief Scientist's recommendations 1 and 2 which emphasise the importance of ensuring clear and open communication on CSG matters is maintained at all times and committing to mechanisms for working closely and continuously with the community, industry and research organisations that contribute to making a world-class regime for extraction of CSG.

Coal Seam Gas exploration and production is an issue of high concern to Council and the community in the Gosford local government area. Removing any opportunity to contribute to an open, sincere and civil dialogue on this matter is considered to be taking a step backward that cannot be supported.

For these reasons Council does not support this proposed change to the Mining SEPP and SRD SEPP.

Recommendation

That the Mining SEPP and SRD SEPP **not change** as proposed in relation to assessment of petroleum exploration activities under Part 5 of the EP&A Act and removal of CSG exploration activities as state significant development.

Consent authority required to consider the Voluntary Land Acquisition and Mitigation Policy

Amendment of the Mining SEPP to include this change appears to formalise a process that is currently applied. This proposed change aligns with the NSW Chief Scientist's recommendation 3 which focuses on protecting affected communities.

Council supports this proposed change in the full context of Council's submission against item 1 above, ie, no change to petroleum exploration activities identified as state significant development.

Recommendation

That the Mining SEPP be amended to require a consent authority to consider the Voluntary Land Acquisition and Mitigation Policy.

One agency for assessment, approval and compliance regulation

Council has concerns regarding the proposed change related to the one agency, namely the Office of Coal Seam Gas, being responsible for assessment, approval and compliance regulation of CSG exploration activities.

Council's concern is based around the ability of the Office of Coal Seam Gas to remain independent in the decision making process for all of these functions.

Council **does not support** this proposed change and prefers that Department of Planning and & Environment remain the consent authority for CSG exploration activities as state significant development. Council does support the Office of Coal Seam Gas as the appropriate agency for compliance regulation for both CSG exploration and production activities.

Recommendations

- That the Department of Planning & Environment remain the consent authority for CSG exploration activities as state significant development.
- That the Office of Coal Seam Gas be identified as the agency responsible for compliance regulation for CSG exploration and production activities.

NSW Chief Scientists Recommendations

Part of the NSW Chief Scientist's recommendation 3 states that *"funding (derived from the fees and levies paid by CSG companies) for local councils to enable them to fund, in a transparent manner, infrastructure and repairs required as a consequence of the CSG industry."* While this matter is not included as a component of the proposed changes to the Mining SEPP and SRD SEPP, Council is using this opportunity to request additional information regarding the intended manner in which this recommendation and all remaining recommendations are to be addressed.

Recommendation

A full response to the NSW Chief Scientists recommendations made in her report titled, *"Final Report of the Independent Review of Coal Seam Gas Activities in NSW"*, be provided to the public.

Yours faithfully



Danielle Dickson

Acting Chief Executive Officer

APPENDIX 1

Specifically the following clauses are proposed to be omitted from the Mining SEPP

7 Development permissible with consent

(f) drilling or operating petroleum exploration wells, not including:

(i) stratigraphic boreholes, or

(ii) monitoring wells, or

(iii) a set of 5 or fewer wells that is more than 3 kilometres from any other petroleum well (other than an abandoned petroleum well) in the same petroleum title,

(g) drilling or operating petroleum exploration wells (not including stratigraphic boreholes or monitoring wells) that is carried out in an environmentally sensitive area of State significance.

(2A) For the purposes of subclause (2) (f) (iii), the distance from a set of 5 or fewer wells to any other petroleum well is to be measured from the geometric centre of the set of wells.

Specifically the following clauses are proposed to be omitted from the SRD SEPP

(2) Development for the purpose of drilling or operating petroleum exploration wells, not including:

(a) stratigraphic boreholes, or

(b) monitoring wells, or

(c) a set of 5 or fewer wells that is more than 3 kilometres from any other petroleum well (other than an abandoned petroleum well) in the same petroleum title.

(3) Development for the purpose of drilling or operating petroleum exploration wells (not including stratigraphic boreholes or monitoring wells) that is carried out in an environmentally sensitive area of State significance.

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) a declared Ramsar wetland within the meaning of the [Environment Protection and Biodiversity Conservation Act 1999](#) of the Commonwealth, or

(e) a declared World Heritage property within the meaning of the [Environment Protection and Biodiversity Conservation Act 1999](#) of the Commonwealth, or

(f) land identified in an environmental planning instrument as being of high Aboriginal cultural significance or high biodiversity significance, or

(g) land reserved as a state conservation area under the [National Parks and Wildlife Act 1974](#), or

(h) land, places, buildings or structures listed on the State Heritage Register under the [Heritage Act 1977](#), or

(i) 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

(j) land identified as being critical habitat under the [Threatened Species Conservation Act 1995](#) or Part 7A of the [Fisheries Management Act 1994](#).
