

**Integrated Mining Policy:  
Draft Mine Application Guideline  
NSW Minerals Council Submission**

**NSW MINERALS COUNCIL**

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## Executive summary

The NSW Minerals Council (NSWMC) welcomes the opportunity to comment on the draft Mine Application Guideline (MAG).

The NSW Government's initiative to establish a clear policy framework for the regulation of mining is commendable. The MAG is an important part of the *Integrated Mining Policy* framework and will provide clarity on the appropriate level of detail to be supplied at the Preliminary Environmental Assessment (PEA) stage of the development assessment process. NSWMC supports a rigorous assessment of major projects and recognises that the information in the PEA will allow Secretary's Environmental Assessment Requirements (SEARs) to be issued following consideration of the various mining constraints, risks and issues upfront, that is, prior to submitting a detailed environmental impact statement (EIS) and development application.

The MAG is, on the whole, well-written, and requires an appropriate level of detail for the PEA stage. There are some improvements that can be made to the document, including:

- **Guidance is required on the application of the MAG to smaller projects** – The MAG must be able to accommodate small to mid-sized projects, extensions and modifications of varying complexity, by requiring a level of detail commensurate with the size and complexity of the project. A PEA or SEARs might not be required in all cases.
- **The enforcement of a PEA is unclear** - It is unclear whether it is compulsory for proponents to submit a PEA in accordance with the MAG in order to receive the SEARs.
- **Requirements are potentially duplicated in the MAG and the Standard SEARs documents** - Duplication of requirements for an EIS should be avoided between the MAG, Standard SEARs and any potential EIS Guidelines.
- **Details of potential future mine expansions are not appropriate for a PEA** - Future applications for expansion may or may not occur for a number of reasons. An application for expansion should be assessed on its individual merit.
- **The requirements in an EIS should be clearly guided by risk** – The requirements set out in an EIS should be guided by the level of risk involved, and be able to be excluded if they are considered inapplicable in the circumstances. Their relevance / risk could potentially be informed by a PEA.
- **The summary table requires too much detail, which is unnecessary for a PEA** – The summary requirements for the 'Water Supply and Balance', 'Water Management' and 'Key Environmental Impacts and Mitigation Measures' are too detailed, and should not be applied to the PEA stage.

The recommendations made in this submission will assist in reaching Premier Mike Baird's commitment to reducing assessment timeframes for major projects by 500 days. However, the ultimate test of the guidelines that collectively form the *Integrated Mining Policy* will be whether responsible agencies implement them in a manner consistent with their intent and ultimately that they work satisfactorily in practice. With that in mind, the Department of Planning and Environment (DPE) should give serious consideration to testing the draft guidelines by means of a carefully conducted trial assessment activity designed to identify potential problems with the implementation of the various guidelines.



## About the NSW Minerals Council

The NSW Minerals Council (NSWMC) is the peak industry association representing the NSW minerals industry. Our membership includes around 100 members, ranging from junior exploration companies to international mining companies, as well as associated service providers.

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## Introduction

The NSW Government's initiative to establish a clear policy framework for the regulation of mining through the development of the *Integrated Mining Policy* is commendable.

The draft MAG has been prepared to provide clarity about the DPE's requirements for proponents submitting a PEA. NSWMC recognises that the quality and content of PEA documents impacts on DPE's capacity to undertake its initial assessment and development of SEARs. Consequently, a clear, well-targeted MAG would deliver improvements in the quality and content of PEA documentation and assist in the provision of relevant SEARs. It will also assist other government agencies in identifying any relevant high-level issues about a proposal.

The PEA is an early stage in the overall assessment process and should have the objective of identifying strategic environmental issues that need to be addressed during the preparation of the detailed EIS.

The mining sector currently faces extremely difficult operating conditions. Until recently taxes and regulations, rising labour costs, and a high Australian dollar were contributing to increased operating costs. In more recent times, increased global competition, and softer global demand for some of its key products have led to dramatically lower prices which have offset gains in reducing operating costs. For example, thermal coal prices have fallen by more than 50 per cent in the past five years. In addition, mining projects in Australia are among the most expensive in the world to develop and operate. The reality is that like any industry or business, there is a point at which costs become too high and begin stifling investment and growth. It is crucial that planning regulations do not impose additional and unnecessary obligations, delays, uncertainties and costs to the existing assessment process.

Project assessment timeframes have blown out from 500 days to more than 1000 days in the last six years. In November 2014, the Premier made a welcome commitment to reduce assessment timeframes for major projects by 500 days. Streamlining and consolidating the MAG by implementing the recommendations in this submission will assist in reaching this assessment target timeframe.

## Guidance is required on the application of the MAG to smaller projects

The draft MAG is designed to apply to a large greenfield mining project scenario. However, the assessment process must also be able to accommodate small to mid-sized projects, extensions and modifications of varying complexity. A one-size-fits all approach will be unworkable. It is critical that the MAG is flexible and scalable to accommodate the level of detail required for any particular project and its unique circumstances. A PEA or SEARs might not be required in all cases.

### Recommendation

- The MAG should be sufficiently flexible and scalable to accommodate both greenfield and brownfield projects and modifications of varying size and complexity. The MAG should provide explicit guidance on the treatment of these smaller projects.



## The enforcement of a PEA is unclear

### The legislative context of the PEA is unclear

It is unclear whether it is compulsory for proponents to submit a PEA in accordance with the MAG in order to receive the SEARs. Although in practice, the request for SEARs is accompanied by a PEA, currently neither the *Environmental Planning & Assessment Act 1979* nor the *Environmental Planning & Assessment Regulation 2000* (the Regulation) requires the preparation and submission of a PEA by a prospective applicant as a precondition to the provision of the environmental assessment requirements for the preparation of an EIS for a project. To reduce confusion and uncertainty, the MAG should align with existing legislation. There is also confusion in the document as it stands as to the status/requirement for a PEA.

#### Recommendations

- The MAG should state whether the preparation of a PEA is compulsory, and if so under which legislation or overarching policy.

## Requirements are potentially duplicated in the MAG and the Standard SEARs documents

Currently, there are requirements for an EIS outlined in both the MAG and the Standard SEARs. It is understood that further detailed requirements may be provided in an updated EIS Guideline. It is unclear why the inclusion of EIS requirements in the MAG are necessary when they could instead be provided in the Standard SEARs (or an EIS Guideline). Duplication should be avoided across these three documents in order to streamline the process as much as possible. The inclusion of EIS requirements in the MAG may also lead to potential inconsistency issues where matters identified in the MAG are subsequently identified as irrelevant and excluded from the SEARs and hence EIS.

#### Recommendations

- Consider limiting the scope of the MAG to prescribing requirements for the PEA only.
- Avoid duplication of requirements for an EIS between the MAG, Standard SEARs and any potential EIS Guidelines.

## Further guidance on the circumstances for acquisition could be provided

The MAG provides guidance that “*early consideration may need to be given to acquiring sufficient land to provide adequate separation from nearby sensitive land uses...*” The DPE *Voluntary Land Acquisition and Mitigation Policy* defines circumstances under which acquisition is warranted. This



section should acknowledge that negotiated agreements with landholders and mitigation measures are other options available apart from acquisition, where the relevant criteria are exceeded.

#### **Recommendation**

- The MAG should potentially refer to DPE's *Voluntary Land Acquisition and Mitigation Policy*, to acknowledge that negotiated agreements with landholders and mitigation measures are other options available apart from acquisition, where the relevant criteria are exceeded.

## **Details of potential future mine expansions are not appropriate for a PEA**

The section that relates to coexistence and land use suggests that 'potential future mine expansions' be considered. An application is prepared based on circumstances at that point in time. Future applications for expansion may or may not occur for a number of reasons but would be due to the circumstances that develop, for example, the economic climate.

An application for expansion would also need to go through the process and be assessed on its individual merit including its ability to coexist with surrounding land uses.

Therefore the reference to potential future mine expansions should be deleted.

#### **Recommendation**

- Remove the reference to 'potential future mine expansions' as a land use and coexistence consideration.

## **The requirements in an EIS should be clearly guided by risk**

There will inevitably be some sections of an EIS that are not relevant to a particular project. EIS requirements should use a risk-based approach that is based on the contents of a PEA to determine whether all the requirements outlined in the Standard SEARs are applicable.

#### **Recommendation**

- Within the PEA, use a risk-based approach to inform the applicability of the requirements outlined in the Standard SEARs.

## The summary table requires too much detail, which is unnecessary for a PEA

The *Water Supply and Balance* and *Water Management* sections request a significant level of detail for a 'summary' table. Further, the level of detail requested will only be available once a detailed assessment has been undertaken, i.e. during the EIS stage.

Highlighting the '*Key Environmental Impacts and Mitigation Measures*' is inappropriate for the PEA stage. Measures proposed to address impacts would only be determined once the nature and extent of the potential impact is quantified at the EIS stage. Further, given that the PEA will be made public, its inclusion raises the potential for causing unwarranted apprehension in the community or claims of misrepresentation if things are subsequently assessed to be unwarranted and not included.

### Recommendations

- Simplify the requirements for a 'summary' of '*Water Supply and Balance*' and '*Water Management*'. It should also be clarified that the level of detail being requested is not appropriate for the PEA stage.
- Clarify that the level of detail being requested in relation to '*Key Environmental Impacts and Mitigation Measures*' applies only to the EIS stage.

## Other considerations

Some other less significant considerations include:

- The PEA document layout should be flexible. As long as it covers the identified material it should be accepted.
- There are a number of wording changes within the MAG that could be made to improve the readability and clarity within the document. These comments and suggestions will be provided to DPE separately.