



The Executive Director – Resources and Industry
Department of Planning and Environment
GPO Box 39
SYDNEY NSW 2001

To the Executive Director – Resources and Industry,

RE: Integrated Mining Policy

The New South Wales Aboriginal Land Council (**NSWALC**) welcomes the opportunity to make a submission on the proposals for an *Integrated Mining Policy* in NSW.

NSWALC is concerned to ensure that all projects that have the potential to impact on Aboriginal culture and heritage are subject to robust community consultation and Aboriginal heritage protection requirements.

NSWALC is the peak body representing Aboriginal peoples in NSW and with over 23,000 members, is the largest Aboriginal member based organisation in Australia. Established under the *Aboriginal Land Rights Act 1983 (NSW)* (**ALRA**), NSWALC is an independent, self-funded non-government organisation that has an elected governing council. The objects of NSWALC are to:

- a. to improve, protect and foster the best interests of Aboriginal persons within New South Wales, and
- b. to relieve poverty, sickness, suffering, distress, misfortune, destitution and helplessness of Aboriginal persons within New South Wales.

NSWALC also has specific functions in relation to Aboriginal culture and heritage:

- a. to take action to protect the culture and heritage of Aboriginal persons in New South Wales, subject to any other law,
- b. to promote awareness in the community of the culture and heritage of Aboriginal persons in New South Wales.

NSWALC provides support to the network of 120 democratically elected Local Aboriginal Land Councils (**LALCs**) that exist in NSW. The network of Aboriginal Land Councils was established to acquire and manage land as an economic base for Aboriginal communities, as compensation for historic dispossession and in recognition of the ongoing disadvantage suffered by Aboriginal communities. As elected bodies, Aboriginal land councils represent the not only the interests of their members, but of the wider Aboriginal community, and have functions to protect and promote Aboriginal culture and heritage.

We understand that the proposed Integrated Mining Policy aims to provide a new whole-of-government approach to mining applications, including:

- requiring information from mine applicants earlier in the assessment process, including the requirement to show how they arrived at their preferred project designs;

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- providing one whole-of-government set of Secretary's Environmental Assessment Requirements (SEARs) for mining applications; and
- clarifying Government policies so they are easier for the community to understand and industry to navigate, including policies around biodiversity offsets, impacts to endangered swamps, water regulation and voluntary land acquisition.

We further understand that the Integrated Mining Policy will apply to all State significant mining developments, including coal and mineral mines, however, will not apply to petroleum operations or coal seam gas proposals, or any exploration activities.

NSWALC supports rigorous assessment of all projects, particularly in relation to potential impacts on Aboriginal culture and heritage. While we note that Aboriginal heritage has been included as a criterion in the proposed Environmental Impact Statement,ⁱ we believe that this requirement should be strengthened.ⁱⁱ

As currently drafted, the proposed policy does not reflect best practice standards and the principles outlined in the United Nations *Declaration on the Rights of Indigenous Peoples*, including:

Article 31

1. *Indigenous peoples have the right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions, as well as the manifestations of their sciences, technologies and cultures, including human and genetic resources, seeds, medicines, knowledge of the properties of fauna and flora, oral traditions, literatures, designs, sports and traditional games and visual and performing arts. They also have the right to maintain, control, protect and develop their intellectual property over such cultural heritage, traditional knowledge, and traditional cultural expressions.*
2. *In conjunction with Indigenous peoples, States shall take effective measures to recognise and protect the exercise of these rights.ⁱⁱⁱ*

Article 32

1. *Indigenous peoples have the right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources.*
2. *States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources.*
3. *States shall provide effective mechanisms for just and fair redress for any such activities, and appropriate measures shall be taken to mitigate adverse environmental, economic, social, cultural or spiritual impact.*

The policy outlines that proponents should follow the NSW Office of Environment and Heritage (OEH) *Aboriginal Cultural Heritage Consultation Requirements for Proponents* 2010. This is a highly contentious document and does not provide a sufficient process for genuine consultation and engagement with Aboriginal communities and Aboriginal Land Councils.^{iv}

Further, the proposed policy does not appear to outline any processes for Aboriginal people to be involved in the identification of Aboriginal heritage. Rigorous assessment and consultation processes are needed and must include provisions for assessing cumulative impacts.

NSWALC urges the Government to focus on the legislative reform of Aboriginal cultural heritage laws in NSW. Not only will conclusion of this process provide Aboriginal people with some certainty, it will also provide other stakeholders, including the resources industry with certainty. Without certainty about how this Policy will eventually interact with culture and heritage law in NSW, the effectiveness of its objectives will be diminished.

The *Mine Application Guideline* states that:

“The EIS should include the information required for a Preliminary Environmental Assessment (PEA) above, but to a level of specificity and detail appropriate to the nature and extent of the proposed development. This will include:

...other biophysical or heritage features of significance mapped or known areas at regional or subregional scale”^{iv}

NSWALC is concerned that consideration only of heritage features which are **mapped or known** will inevitably lead to widespread destruction of significant sites and objects. NSWALC has consistently highlighted the importance of ensuring consultation with Aboriginal peoples in identifying Aboriginal heritage sites. While government databases currently record over 60,000 Aboriginal heritage sites, there remain many sites that Aboriginal communities have chosen to not to formally register. There are a number of reasons for this, including the sensitive nature of some sites, or fear of vandalism to sites. In addition, there have been a number of issues raised about the accuracy of government databases, and hence the early consultation with Aboriginal communities is essential.

It should be noted that the State of the Environment Report 2011 listed the following reasons for the destruction of Aboriginal sites:

- *“lack of listing or recognition,*
- *conscious, informed decisions by development consent authorities,*
- *prioritisation of economic considerations over heritage protection,*
- *little to no assessment or public reporting of the cumulative impact of development—that is, how much of the Indigenous heritage estate has already been destroyed through past activities in the region,*
- *insufficient consultation with Indigenous communities.”*^{vi}

In addition to these systemic issues, the NSW State of the Environment 2012 noted that:

“Simplification or streamlining of planning and development processes have the inadvertent result of making it easier to inappropriately modify heritage places or fail to identify them for protection on schedules.”^{vii}

Recommendation 1: The Integrated Mining Policy should be amended to reflect best practice standards and principles outlined in the United Nations *Declaration on the Rights of Indigenous Peoples*.

Recommendation 2: Consultation with Aboriginal Land Councils and Aboriginal communities should occur, particularly in the identification and assessment of Aboriginal Culture and Heritage. Aboriginal people’s decision-making rights in relation to Aboriginal heritage must also be provided for.

Recommendation 3: Legislative provisions that provide for rigorous assessment, consultation with Aboriginal peoples, and proper protections for Aboriginal heritage are needed. This includes provisions for assessing cumulative impacts, compensating Aboriginal people for the destruction of Aboriginal heritage, and designation of specific areas to be protected where there will be unacceptable impacts.

I trust that genuine consideration will be given to our comments and that responses to the issues we have raised will be forthcoming.

If you have any questions regarding this letter, please do not hesitate to contact the NSWALC Policy and Programs Unit on 02 9689 4444.

Yours sincerely,



Lesley Turner
Chief Executive Officer

Date: 13/7/15

ⁱ NSW Government, Integrated Mining Policy May 2015, Standard Secretary's Environmental Assessment Requirements (SEARs), Page 11, available at:

[https://majorprojects.affinitylive.com/public/18da2774fbd91ccd7eb9bb3c237cac42/Standard%20SEARs%20for%20Coal%20Mining%20Projects%20\(underground%20open%20cut\).pdf](https://majorprojects.affinitylive.com/public/18da2774fbd91ccd7eb9bb3c237cac42/Standard%20SEARs%20for%20Coal%20Mining%20Projects%20(underground%20open%20cut).pdf)

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ⁱⁱⁱ United Nations Declaration on the Rights of Indigenous People, available at:

http://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf

^{iv} NSWALC has made a number of submissions in relation to this policy, available at:

<http://www.alc.org.au/media/69351/nswalc%20submission%20-%20deccw%20community%20consultation%20requirements.pdf>

^v NSW Government, Integrated Mining Policy Guideline May 2015, Mine Application Guideline, Page 6, available at

<https://majorprojects.affinitylive.com/public/ac8620dec4589453edd4a0749fd288e3/Mine%20Application%20Guideline.pdf>

^{vi} Australian State of the Environment Committee, State of the Environment Report 2011, Independent report to the Australian Government Minister for Sustainability, Environment, Water, Population and Communities, Chapter 9: Heritage, Page 735, available at: <http://www.environment.gov.au/soe/2011/report/heritage/download.html>

^{vii} NSW State of the Environment Report 2012, Chapter 1, available at:

http://www.epa.nsw.gov.au/soe/soe2012/chapter1/chp_1.8.htm#1.8.42