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20 July 2015

Executive Director, Resources and Industry Policy
Department of Planning and Environment
GPO Box 39
Sydney NSW 2001

Dear Sir/Madam

Proposed Repeal of Clause 12AA - State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) Amendment (Significance of Resource) 2015

Glencore welcomes the opportunity to comment on the public consultation draft of the *State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) Amendment (Significance of Resource) 2015 (NSW) (SEPP Amendment)*.

Glencore opposes the SEPP Amendment in its current form and submits that clause 12AA of the *State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007 (NSW) (Mining SEPP)* plays an integral role in ensuring an appropriate balance between social, environmental and economic factors in the planning regime for the assessment and approval of mining developments in NSW.

Having said that, Glencore acknowledges the NSW Government's concern that there is a community perception that clause 12AA operates to elevate the economic significance of a proposal above all other considerations in determining a mining project application, including social and environmental impacts.

As a matter of law, we believe this is not the case. However, Glencore believes that repealing only sub-clauses 12AA(4) and 12AA(5) of the Mining SEPP would achieve the objectives sought by the Government. For the reasons discussed below, the remaining provisions in clause 12AA are of significant importance in achieving a balanced planning regime and should be retained.

Consequences of repealing clause 12AA

In NSW the majority of applications for mining developments are assessed and determined as State Significant Development (SSD) under Part 4 of the *Environmental Planning and Assessment Act 1979 (NSW) (EP&A Act)*.

Section 79C(1) of the EP&A Act lists the matters that must be considered by a consent authority in determining those development applications. Amongst other things, the section 79C matters for consideration include:

- (a) the provisions of any environmental planning instrument (including the Mining SEPP); and
- (b) the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality of the development.

If clause 12AA of the Mining SEPP was repealed in its entirety, the remaining requirement in section 79C(1) of the EP&A Act to consider social and economic impacts would apply only to the locality of the development, which is inadequate given the scale and potential benefits of most mining projects.

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There would be nothing remaining in section 79C(1) of the EP&A Act that would require the consent authority for SSD mining projects to consider:

- (a) the possible economic benefits of a development to the State as a whole (which may include employment generation, capital investment and payment of royalties); or
- (b) the relative significance of the resource compared to other mineral resources across the State.

Glencore submits that these are important factors that should be taken into account during the assessment of mining projects in NSW to achieve a balanced outcome. Mining projects and other SSD projects typically have economic implications that are far broader than the locality in which the mine is proposed to operate.

Clause 12AA of the Mining SEPP currently:

- (a) ensures that the significance of the resource is given explicit and appropriate consideration;
- (b) allows a consent authority to consider proposed mining developments in context and assess the potential employment generation and economic benefits at local, regional and state levels;
- (c) recognises that the mining industry contributes substantially to the economic growth of the State, through job creation, payment of royalties and capital investment; and
- (d) upholds the objectives set out in clause 2 of the Mining SEPP, which include the promotion of:
 - (i) 'the development of significant mineral resources';
 - (ii) '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
 - (iii) 'the orderly and economic use and development of land containing mineral, petroleum and extractive material resources.'

Repealing clause 12AA in its entirety would not result in social, environmental and economic factors having equal footing; it would result in important regional and State-wide social and economic factors being non-mandatory considerations of a consent authority and thus potentially excluded from the assessment process overall.

Balancing social, environmental and economic considerations

There has been significant community opposition to the introduction of clause 12AA on the grounds that it places too great an emphasis on economic factors at the expense of environmental and social considerations. However, this opposition is based on a misperception of how clause 12AA actually operates. This misperception has been noted in:

- (a) a Review Report prepared by the Planning Assessment Commission (PAC) for the Stratford Coal Mine which stated:

'there appears to be a misperception in some sections of the community that the Mining SEPP makes economic considerations override the requirement to consider the public interest. This is not the case... the SEPP does not and cannot remove the requirement to consider the public interest when evaluating a project under section 79C of the [EP&A Act]'; and

- (b) a briefing note prepared by DoPE in November 2013 which attempted to address community concerns by confirming that clause 12AA does not make resource significance 'the only matter for consideration, or an overarching consideration that outweighs all other issues'.

In reality, clause 12AA(4) currently requires the significance of the resource to be the principal consideration only under Part 3 of the Mining SEPP. It does not require the significance of the resource to

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be the principal consideration under section 79C(1) of the EP&A Act by the consent authority in its ultimate determination of an SSD application for consent for a mining development.

Glencore submits that the legislative framework already exists to give social and environmental factors the appropriate weighting in the overall assessment and approval process for mining developments. Specifically:

- (a) section 79C(1) of the EP&A Act requires the public interest to be taken into account as a stand-alone item for consideration, and a number of social and environmental considerations must also be taken into account by a consent authority when determining applications for mining developments;
- (b) the Secretary's Environmental Assessment Requirements issued for SSD mining projects typically require close scrutiny of environmental and social impacts of a proposed development;
- (c) there are stringent and effective regulations in place through environmental legislation and conditions of consent which aim to minimise the impacts that mining developments might have on the environment; and
- (d) clause 12AA of the Mining SEPP was originally introduced to address the view of the NSW Government at the time that the economic benefits of a mining development and the significance of the resource to the State were not being given sufficient weight in the assessment and approval process.

Glencore is of the view that the balance has not in fact 'swung too far' in favour of economic considerations and rather that without clause 12AA, economic considerations which are of significant importance to the State of NSW may not be considered in the assessment and approval of mining developments.

Conclusion

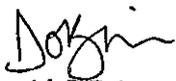
Glencore believes that the assessment of proposed SSD mining developments must be a transparent, balanced and well informed process, and should be consistent with the triple bottom line approach that is fundamental to sustainable development.

Glencore recommends that instead of repealing clause 12AA of the Mining SEPP in its entirety, the Government only repeal subclauses 12AA(4) and 12AA(5). This would mean that the significance of a resource would still be taken into account by a consent authority in determining a mining development, but would no longer be a 'principal consideration' under Part 3 of the Mining SEPP.

If the NSW Government intends to repeal clause 12AA in its entirety, the SEPP Amendment should include appropriate transitional provisions that provide certainty to consent authorities, the mining industry and the community regarding projects that are currently under assessment.

We appreciate the opportunity to make this submission and welcome the chance to discuss these matters further.

Yours faithfully



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