

Rio Tinto Coal Australia Pty Limited
GPO Box 391
Brisbane Queensland 4001
Australia
T +61 (0) 7 3625 3000
F +61 (0) 7 3625 3001

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Alex O'Mara
Executive Director, Resources and Industry Policy
NSW Department of Planning & Environment
23-33 Bridge Street
Sydney 2000

Dear Alex

Proposed change to the State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) Amendment (Significance of Resource) 2015

Rio Tinto is concerned about the proposed change to the State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) Amendment (Significance of Resource) 2015 (Mining SEPP).

We are disappointed that this is yet another policy change that significantly impacts confidence in the NSW planning system and we urge the NSW Government to properly consider the impact it will have on jobs, the economy and investor confidence in this State.

A strong mining sector is vital to the NSW economy and, in particular, to the Hunter region where Rio Tinto operates three coal mines. The mining industry in NSW contributes greatly to the NSW economy, including \$9.6 billion in direct spending on goods and services, local councils and community groups in 2013-14 alone.

With our joint venture partners, Rio Tinto has invested billions of dollars in developing world-class mining operations in NSW and is a significant contributor to this economic activity.

We find this proposed amendment to be an ill-conceived reaction to an ill-informed minority opinion and it represents the latest in a long line of changes to the NSW regulatory regime, which affect investor confidence and run against the NSW Government's election commitments to halve assessment timeframes.

Worst of all, it means yet further delays in the assessment process for the Mount Thorley Warkworth mine, where 1,300 employees and their families continue to face uncertainty about their future and their livelihoods.

We urge the NSW Government to reconsider this proposed amendment to the Mining SEPP and minimise any further unnecessary impacts on these jobs and economic activity in the mining sector by ensuring that economic factors remain an express consideration in the Mining SEPP. Appropriate transitional arrangements should also be put in place to minimise sovereign risk and ensure that any changes do not affect projects already being assessed.

Enquiries should be directed to Rio Tinto's Manager Policy and Government Relations (NSW), Scott Keenan scott.keenan@riotinto.com.

Yours sincerely



Chris Salisbury
Chief Operating Officer – Coal

cc: The Hon Mike Baird - NSW Premier
The Hon Rob Stokes - Minister for Planning
The Hon Anthony Roberts - Minister for Industry, Resources and Energy

Attached: Rio Tinto Coal Australia's submission to the NSW Department of Planning and Environment on proposed changes to the State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) Amendment (Significance of Resource) 2015

Rio Tinto Coal Australia’s submission to the NSW Department of Planning and Environment on proposed change to the State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) Amendment (Significance of Resource) 2015

1. Introduction

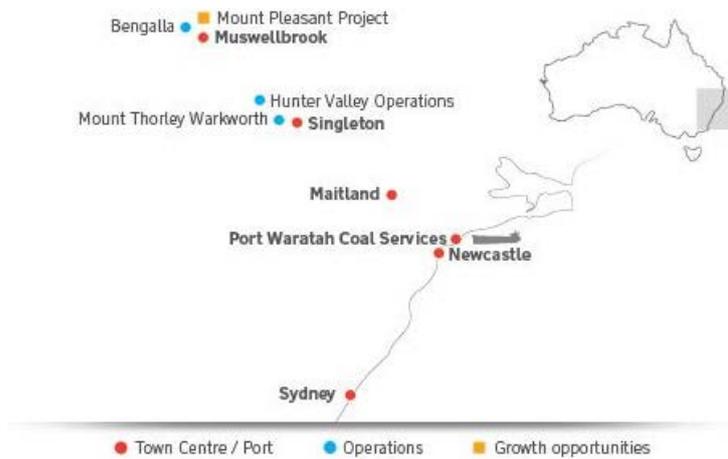
Rio Tinto welcomes the opportunity to provide a submission to the NSW Department of Planning and Environment.

Rio Tinto’s operations in NSW

Rio Tinto Coal Australia is one of Australia's leading mining organisations with a highly successful record in the development and management of world-class open cut and underground coal operations.

In 2014, more than 4,700 employees and 1,400 contractors helped us produce 56 million tonnes of coking, semi-soft and thermal coal for international export. We operate five coal mines in Australia, including three in NSW.

We are proud to be a major employer and a long term member of the Upper Hunter community where we operate the Bengalla, Mount Thorley Warkworth and Hunter Valley Operations mines.



2. Stability in the planning system is required for investor and community confidence

Rio Tinto recognises that a planning system must evolve over time to cater for shifts in economic and social priorities and expectations. However, in order to maintain confidence in the system, this must be done in a considered manner with appropriate consultation and communication of the need for the change.

The proposed change to the Mining SEPP is however the latest in a series of haphazard and reactive policy and legislative changes which have created unnecessary uncertainty for both investors and community members. It follows the repeal of Part 3A, the introduction of the gateway process and the introduction of the Planning Assessment Commission as the decision maker.

This uncertainty has been further exacerbated by the application of proposed changes to projects which are mid-assessment. This has effectively moved the goal posts and added further delays to a long assessment process. We believe it is essential that changes to the planning system such as this should only apply to projects entering the planning system.

The signal this sends to investors is that this effective retrospective application of changes to projects already in the system could apply to any further changes the Government may decide in the future. This profoundly undermines confidence in a system which can typically take several years to navigate.

Investment in the mining sector in any jurisdiction requires confidence in the planning system over the long term and trust in the Government's ability to manage any change. The actions of the NSW Government over recent years in respect to changes to the planning system are noted far beyond this state.

Should the Government proceed with the proposal to remove clause 12AA from the Mining SEPP, it will reverse the confidence derived from recent election commitments to halve assessment timeframes for major mining projects in NSW. It sends a poor message to the mining industry's investors about NSW and runs against the government's claim that NSW is open for business.

Furthermore, it also sends the wrong message to the thousands of hardworking people whose jobs remain in limbo while a decision on whether their mines can continue to operate is again delayed.

3. Significance of the Resource must be recognised in assessment process

Clause 12AA in the existing Mining SEPP was introduced to help provide more certainty to proponents and investors by ensuring that the significance of the resource is expressly considered in the assessment process.

However, misconceptions about the Mining SEPP have created uncertainty and some concern. Critics and opponents of mining have misconstrued the purpose of clause 12AA, incorrectly claiming that it raises the economic significance of the resource above all other considerations, which appears to have led to this proposed amendment.

Clause 12AA is the principal consideration under Part 3 of the Mining SEPP but is not the principal consideration under Section 79C of the Environmental Planning and Assessment (EP&A) Act which outlines the considerations of the consent authority. We correctly applied Clause 12AA in the EIS for the Warkworth Continuation EIS stating, "Clause 12AA of the Mining SEPP does not operate to make the 'significance of the resource' the principle consideration of the matters contained within of section 79C of the EP&A Act 1979."

The correct interpretation of clause 12AA has been confirmed by the NSW Planning Assessment Commission in the Review Report prepared for the Stratford Coal Mine modification stating:

'The Commission has observed that 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. It is true that the Mining SEPP requires consideration of one aspect of the project, the significance of the resource, with a strong focus on economic benefits. However, the SEPP does not and cannot remove the requirement to consider the public interest when evaluating the project under section 79C of the Act.'

Indeed, the Mining SEPP only requires the significance of the resource to be the principle consideration for the consent authority, 'under this part'.

There is just one other reference to considerations of the economic impacts of a project in Section 79C(1)(b) of the EP&A Act which refers only to the 'economic impacts on the locality' and says nothing about the significance of the resource for the State.

The implementation of the NSW Government's new Integrated Mining Policy is welcome, but these are policies and will not be a sufficient replacement for clause 12AA, nor will they perform the same function as the clause because they don't mandate that the decision maker considers the significance of the resource.

There has been and should continue to be a thorough assessment of all potential impacts on the environment and the community and plans to mitigate those potential impacts. While we don't agree that clause 12AA should be removed, it would be a step too far for the NSW Government to eradicate any mention of the economic benefits of a resource in the assessment process. A reference to it should be retained in the Mining SEPP if clause 12AA is to be removed. Failure to do so would send a negative signal in relation to current and future mining investment in NSW.

4. Our NSW operations and the planning system

In NSW, our operations are located in the Hunter Valley region, where we manage Coal & Allied's three open cut operations at Bengalla, Hunter Valley Operations and Mount Thorley Warkworth.

Coal & Allied is currently seeking planning approvals to provide a long term future for Mount Thorley Warkworth mine and the jobs of more than 1,300 employees and contractors.

Two separate applications have been submitted for the integrated operation, one for Warkworth Mine and one for Mount Thorley Operations, each with an Environmental Impact Statement (EIS) that has been thoroughly assessed. The applications are currently before the PAC for determination. If the development consents are approved, it will allow this mine, which has been part of the local community for more than 30 years, to continue operating on land it owns and within the footprint of existing mining leases until approximately the end of 2035.

We believe there is a strong case for MTW to continue mining regardless of the proposed SEPP amendment, as the mine brings significant benefits for NSW and our local communities in the Hunter Valley, and approval to continue mining will allow these benefits to continue flowing. Benefits of its continued operation include:

- \$1.5 billion to the NSW economy in the form of wages, royalties and taxes over the life of the mine
- An offer to commit 1,800 hectares towards a proposed national park in the Upper Hunter as part of more than 2,800 hectares in offsets
- \$1.7 million per year commitment to training and employment programmes
- In 2014, the mine spent \$154 million with 196 local suppliers, \$400 million with 530 NSW suppliers and \$629 million with 743 suppliers across Australia.

Economic considerations should always be balanced against social and environmental factors and this has remained the case given the limited reach of clause 12AA. Our proposals meet all of the relevant NSW Government planning policies and requirements and we have put in place a range of measures that reduce the impact for the environment and our near neighbours.

It is disappointing that this proposed change to the Mining SEPP has come so close to a final determination of these applications by the Planning Assessment Commission, resulting in more delays and more uncertainty for our business, our 1,300 employees and many more people working in the local businesses supplying our mines.