



21 July 2015

The Hon. Rob Stokes MP
Minister for Planning
Member for Pittwater
52 Martin Place
SYDNEY NSW 2000

Submission: Draft Change to Mining Policy – Department of Planning and Environment

Environmental Property Services (EPS) is an environmental planning and economic advisory company providing a range of planning, environmental and major project development services. EPS has extensive experience in the traditional real estate development, resource and construction sectors, and specialises in providing holistic project solutions which integrate social, economic and environmental aspects to deliver balanced outcomes.

We understand that the Department of Planning and Environment (DoP&E) is proposing to amend the planning policy that governs mining in NSW, the *State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007* (Mining SEPP). Specifically, the policy amendment seeks to remove clause 12AA of the Mining SEPP which currently requires the resource significance of the proposal to be given principal consideration when determining a mining application.

We also understand that DoP&E is undertaking a holistic review of mining regulation in NSW in an attempt to improve and streamline the specific development application requirements for State Significant mining and extractive industry developments under the *Environmental Planning and Assessment Act 1979* (EP&A Act).

EPS recognises the equitable value of the proposed amendment of the Mining SEPP through the removal of Clause 12AA. Similarly, we support the intention of DoP&E to holistically review the current mining regulation and introduce the Integrated Mining Policy as a means of improving transparency, consistency and accountability for assessment decisions. However, we equally recognise that the proposed amendments alone will not wholly address the existing uncertainties within the planning framework for mining and other state significant projects.

EPS is acutely aware of the legislated environmental assessment process in NSW, particularly for State Significant Developments such as that undertaken by the mining sector under the provisions of the EP&A Act and the Mining SEPP. Operating in this space in an advisory capacity on a daily basis, it is apparent to EPS that the process of environmental impact assessment is consistently deficient in its provision of a holistic evaluation of the biophysical, social and economic aspects of major projects.



Ecologically Sustainable Development (ESD) is a mandatory consideration for major project developments in NSW. Assessment of ESD requires a “triple-bottom-line” balanced assessment of the biophysical, social and economic impacts. Clause 12AA of the Mining SEPP in 2013 effectively skews the weighted assessment in favour of the economic considerations for mining projects in NSW. Having considered this issue at some length, EPS has identified that, even prior to the legislative amendment, a multi-faceted and uniform approach to environmental impact assessment is not being undertaken in accordance with ESD.

EPS has undertaken a close review of the current environmental impact assessment process and worked closely with a significant NSW coal mining company and its selected external experts to consider the frequency and the degree of the omission.

The scope of works guiding EPS’ review included:

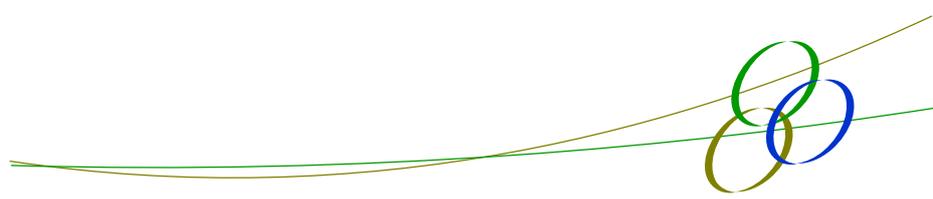
- An investigation of ‘Best Practice’ for EIA in an International, National and State-wide context;
- An investigation of the current EIA practice for major developments within Australia, and more specifically NSW;
- A detailed analysis of the relevant NSW legal precedent on ESD (the 2013 Warkworth case, the 2007 and 2010 Walker Cases and the 2006 Telstra Case, and others);
- Identification and analysis of the current omission within NSW EIA’s; and
- Development of an approach to address the omission.

Observationally, the most prominent areas of deficiency by the mining sector in the Environmental Impact Assessment process have typically been:

1. The lack of integration of the economic, social and environmental attributes as part of the assessment of a project.
2. With specific regard to the requirement to assess “*the risk weighted consequences of various [development] options*” established by S7(4)(a)(ii) of the *Environmental Planning and Assessment Regulation 2000*, the lack of assessment and scenario analyses prepared within an EIS EIA to evidence the consideration of project alternatives and justification of the preferred option with regard to the principles of ESD.

It is acknowledged that without total assessment of the project against the principles of ESD, any determination may be open to challenge on the grounds that full consideration of the proposal has not been undertaken. This remains true irrespective of the amendments to the Mining SEPP primarily because comprehensive project evaluation methodology which captures the Triple Bottom Line principle of ESD is not typically adopted as a current method of EIA.

Having identified the disconnect between the principle of ESD and the typical application in EIA, EPS developed a risk weighted multi criterion scenario analysis which holistically considers economic, social and environmental impacts for application in project EIA.



Equally applicable to Mineral/Petroleum and major project assessment, the methodology was prepared specifically to encompass international best practice principles and to meet the NSW legislative requirement of assessing *“the risk weighted consequences of various [development] options”*. EPS considers that adoption of an assessment procedure that encompasses a holistic evaluation of the biophysical, social and economic aspects of major projects will substantially reduce the contestability of planning approvals for individual projects.

EPS is confident that the proposed amendments to the Mining SEPP and the review of the broader regulatory framework be undertaken by DoP&E will positively influence the assessment of mining proposals, and increase certainty in planning. We believe that the triple bottom line evaluation methodology developed by EPS can be integrated into the revised Mining Policy and support the intentions of DoP&E for major development in NSW. Again, EPS strongly support the DoP&E proposals and welcome the opportunity to discuss this further at the next available occasion.

Yours faithfully,

Jeff Burns
Principal

Steve McCall
Principal