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Dear Sir

**Submission – proposed State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) Amendment (Significance of Resource) 2015**

We act for **Mitsubishi Materials (Australia) Pty Ltd** and have been instructed to prepare the following submission in relation to the proposed amendment to the *State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries)* ('SEPP'). It is noted that the proposed amendment is open for comment until 21 July 2015.

It is submitted, for the reasons set out in this submission, that the proposed amendment goes further than the stated purpose behind the amendment. The stated purpose can be satisfied by a narrower amendment which would require consent authorities to still give some weight to the significance of the resource without it being the principal consideration as the current clause 12AA of the SEPP states.

**Current effect of the SEPP**

It is noted that in 2013 the SEPP was amended to include clause 12AA which, as has been amply stated in the explanatory materials to the proposed amendment, specified that "*the significance of the resource is to be the consent authority's principal consideration*" in deciding

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whether to consent to a proposed development. However, the quoted provision is only that which is contained in sub-clause 12AA(4).

For completeness, it is also noted that sub-clause 12AA(5) follows on from sub-clause 12AA(4) in stating that “*the weight to be given by the consent authority to any other matter for consideration under this Part is to be proportionate to the importance of that other matter in comparison with the significance of the resource.*”

It should be noted that without the other subclauses of clause 12AA, there is nothing in the SEPP which would require a consent authority, when considering whether or not to grant approval for a development, to take into account any of the economic factors mentioned in clause 12AA. Rather, the other provisions of Part 3 of the SEPP which sets out matters which the consent authority MUST take into account specifically enumerate factors such as the compatibility of the proposed development with existing uses of surrounding land and comparative public benefits of the proposed development with existing land uses (clause 12), the compatibility of the proposed development with other mining developments and comparative public benefits of the proposed development with other mining developments (clause 13), environmental factors (clause 14), resource recovery (clause 15), proposed transport arrangements for the development (clause 16) and rehabilitation (clause 17).

While it is arguable that a consent authority could, if it chose to do so, take into account other factors such as the economic significance of the resource, there does not appear to be anything specifically requiring a consent authority to take such factors into account, let alone accord any weight to such factors in its decision making process.

### ***Effect of the proposed repeal of clause 12AA***

The proposed amendment is to repeal the entire clause 12AA. If it is repealed then a consent authority will no longer be obliged to make the economic significance of a proposed development the *principal consideration*, or indeed to give any weight to such factors at all. Rather, the consent authority will be directed by other clauses in Part 3 of the SEPP in determining whether or not to give consent to a proposed development.

While the explanatory material that has been published seeks to downplay the importance of this change, it is submitted that the change is quite significant. If the entire clause 12AA is removed, then there will be nothing in Part 3 of the SEPP which requires the consent authority to take into account the “*economic benefits, both to the State and the region in which the development is proposed to be carried out, of developing the resource*”. The consent authority could still consider such a criterion if it chose to do so, but does not appear to be under any obligation to consider such a criterion.

**Stated purpose of the proposed amendment**

The frequently asked questions and answers document that has been published in support of the proposed amendment describes the reason for the proposed changes as follows:

- The resource significance provisions in the Mining SEPP have created community and stakeholder concern that the social and environmental impacts of a proposal are not being adequately considered or given appropriate weighting by the Department of Planning and Environment or the Planning Assessment Commission.
- In order to build community confidence in the rigour of the assessment process, it is proposed that the Mining SEPP be amended to remove the economic significance of the resource as the principal consideration of the consent authority.
- Removing Clause 12AA provides a balanced framework for decision makers to assess the likely impacts of mining developments.

The above explanation emphasises the desire to provide a “balanced framework”. Removing the requirement to place primary importance on the significance of the resource would achieve that stated purpose. However, the proposed amendment, in repealing all of clause 12AA, will not provide a balanced framework at all, but rather would allow consent authorities to totally disregard the significance of the resource, which may be quite meritorious in terms of providing employment in the specific area and other areas of the State, providing substantial revenue flows for the State and contributing to economic development both locally and for the rest of the State.

**Submission**

- The proposed repeal of the entire clause 12AA goes too far.
- It is submitted that an appropriate balance would be simply to repeal sub-clauses 12AA(4) and 12AA(5) which currently make the economic significance the *principal* consideration.
- If the rest of clause 12AA remains in the SEPP, then at least there is something that requires a consent authority to take into account the economic considerations set out in clause 12AA (1), (2) and (3).
- While the community concerns that are referred to in the questions and answers document are appreciated, it would in our submission cause just as much concern in the wider community if consents to developments could be determined without regard to the wider economic benefits that such developments could generate for the State.

- Developments in the mining, petroleum production and extractive industries invariably require substantial capital investment and long term forward planning over many years. It is submitted that making such a change to the SEPP as that which is proposed now may cause considerable concern for parties who are planning to invest large amounts of capital which will benefit this State in the long run.

***About the submitter***

Mitsubishi Materials (Australia) Pty Ltd has interests in mining joint ventures in New South Wales. It has been an active participant in such ventures, which have contributed substantial revenues to the State, for in excess of 40 years.

Yours faithfully

**Rodgers Barnes & Green**

A handwritten signature in black ink, appearing to read "Greg Rodgers". The signature is written in a cursive, flowing style.

**Greg Rodgers**

Director

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