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Department Generated Correspondence (Y)

DEPARTMENT OF PLANNING AND INFRASTRUCTURE
Development Assessment Systems and Approval

Subject	Section 37 - Making the Mining SEPP Amendment on Resource Significance and Non-discretionary Development Standards		
Action	<input type="checkbox"/> For Information	<input checked="" type="checkbox"/> For Decision	<input type="checkbox"/> Letter for signature
Priority	<input checked="" type="checkbox"/> Urgent <input type="checkbox"/> Routine		
Minister Office Generated:		Department Generated <input checked="" type="checkbox"/>	
Minister <input type="checkbox"/>	Chief of Staff <input type="checkbox"/>	Parliament Generated <input type="checkbox"/>	
Media <input type="checkbox"/>	Policy Advisor <input type="checkbox"/>		
Deputy CoS <input type="checkbox"/>			
Local Government Area(s) affected: ALL			
State Member: ALL		Known Views: unknown	
Federal Member: ALL (NSW)		Known Views: unknown	
Federal Government committees/taskforces (and the like) related to this issue: N/A			
Media Unit Advised:	Yes <input checked="" type="checkbox"/>	N/A <input type="checkbox"/>	

PURPOSE

For the Minister to recommend to the Governor that she make the proposed *State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) Amendment (Resource Significance) 2013* ('proposed SEPP').

RECOMMENDATIONS

That the Minister:

- a) **approve** of the form and subject matter of the proposed SEPP at **Tag A**, under section 33A(9) of the *Environmental Planning and Assessment Act 1979* ('the Act');
- b) **note** that the Director-General, under section 34A of the Act, formed the opinion that the making of the proposed SEPP will or may, adversely affect critical habitat or threatened species, populations or ecological communities, or their habitats, and that consultation with the Directors-General of the Department of Premier and Cabinet and the Department of Primary Industries was consequently undertaken;
- c) **form the opinion**, under section 37(2) of the Act, that the matters covered by the proposed SEPP are of State and regional environmental planning significance;
- d) **form the opinion** that the public exhibition of a Consultation Draft of the proposed SEPP and an explanation of its intended effect, between 29 July 2013 to 12 August 2013, was sufficient public consultation and that no further steps to publicise or seek and consider submissions from the public on the matter are appropriate or necessary;

- e) **note** the analysis of submissions, the key issues raised in those submissions, and how it has been proposed those matters be considered in the finalisation of the proposed SEPP, as outlined in the summary document at **Tag F**;
- f) **recommend** to the Governor that she **make** the proposed SEPP under section 37(1) of the Act by:
 - i. **signing** the Minute Paper for the Executive Council (**Tag B**); and
 - ii. **forwarding** the following documents to the Executive Council for the Governor's approval:
 - the proposed SEPP (**Tag A**) and Minute Paper for the Executive Council (**Tag B**),
 - the Explanatory Note for the Governor (**Tag C**),
 - the opinion of Parliamentary Counsel that the proposed SEPP may be legally made (**Tag D**),
- g) **sign** the front page of the proposed SEPP (**Tag A**);
- h) **form the opinion** that the proposed SEPP is not a significant regulatory proposal; and
- i) **forward** to the Cabinet Secretariat, for the purposes of satisfying the requirements of the *Guide to Better Regulation*, the document demonstrating compliance with principles of the Guide (**Tag E**).

BACKGROUND

- The proposed SEPP (at **Tag A**) will amend the *State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007* ('Mining SEPP') to introduce provisions related to the determination of development applications (DAs) and modifications of development consents under Part 4 of the Act for mining proposals.
- The primary purpose of the proposed SEPP is to ensure that the significance of a mineral resource is given explicit and appropriate consideration in decision-making on mining DAs. This is to be achieved through the proposed SEPP by:
 - acknowledging the relative significance of each mineral resource to the State and to regions, based on economic benefits, as well as strategic considerations such as alignment with infrastructure provision and inter-dependencies with other industries and developments; and
 - ensuring that the balancing of other considerations under the SEPP is done in a manner which is proportionate to the relative significance of the resource.
- It is generally recognised that the mining sector provides substantial benefits to the State through job creation and economic growth (including exports), infrastructure investment, inter-dependencies with related industries (eg. manufacturing, construction and energy sectors), as well as mineral royalties (the price charged by the Crown for the transfer of the right to extract a mineral resource) from mining. These public benefits are in addition to the project-specific benefits realised by the resource companies themselves with respect to their financial returns from the resource ventures, and the flow-on benefits to regional communities from increased economic activity and contributions to local infrastructure and the like.
- Despite the significant contributions of mining to the State, there is currently no express requirement in planning legislation to acknowledge this when determining a mining DA.

- To redress this, the proposed SEPP will introduce new DA considerations related to the significance of the mineral resource, as well as non-discretionary development standards covering environmental and amenity criteria.
- The Department has always made the significance of the mineral resource a clear, upfront consideration during development assessment. However, there is currently no clear statutory policy that sets out the need to balance the significance of the proposal (both economic and strategic) against other issues such as any potential environmental, amenity or social impacts, at the decision-making stage.
- These SEPP provisions will give the community and stakeholders greater certainty, by providing a more explicit consideration of these matters before a consent authority determines a mining DA.

CONTENT OF SEPP

The proposed SEPP will introduce provisions in relation to mining DAs as follows:

- a new aim (in clause 2 of the Mining SEPP) to promote the development of significant mineral resources;
- require the consent authority to consider the 'significance of a resource' when determining a DA for a mining proposal;
- set out the matters which will assist the consent authority in establishing the 'significance of the resource' that is the subject of the DA, including:
 - the economic benefits to the State and the region, such as short and long term employment opportunities (general and specialist positions), capital investment, on-going expenditure, and mineral royalties; and
 - any advice from the Director General of the Department of Trade and Investment, Regional Infrastructure and Services (DTIRIS) as to the relative significance of the resource in comparison with other mineral resources across the State.
- set out the matters the Director General of DTIRIS will have regard to when determining the relative significance of the mineral resource including:
 - the size, quality and availability of the resource that is the subject of the application, and
 - the proximity and access of the land to which the application relates to existing or proposed infrastructure, and
 - the relationship of the resource to any existing mine, and
 - whether other industries or projects are dependent on the development of the resource.
- make the 'significance of the resource' the consent authority's principal consideration under Part 3 of the Mining SEPP when determining a mining DA;
- apply the resource significance provisions to modifications of mining consents, as well as DAs;
- identify non-discretionary development standards under the provisions of section 79C of the Act addressing the following matters - noise, air quality, airblast overpressure, ground vibration and aquifer interference;
- base non-discretionary development standards on current government-endorsed environmental policies, and establish a requirement that the Minister review and consider amending the standards if the relevant environmental policies are revised and updated in the future so as to ensure standards are up-to-date;

- ensure that a consent authority considers any certification by the Chief Executive of the Office of Environment and Heritage (OEH) and/or the Director General of the Department of Primary Industries (DPI) that measures to mitigate or offset biodiversity impacts of the proposed development will be adequate;
- establish a requirement that the Minister review the Mining SEPP after two years of being amended by the proposed SEPP, to ensure all the provisions of the Mining SEPP remain adequate and appropriate, and particularly to reflect experience with implementation.

FORMAT AND SUBJECT MATTER OF SEPP

Section 33A(9) of the Act provides that, in the absence of a standardised instrument, the Minister is to determine the form and subject matter of draft environmental planning instruments.

As there is no standard instrument for State environmental planning policies, it is recommended that, pursuant to section 33A(9) of the Act, the Minister determine that the form and subject matter of the proposed SEPP be that as set out in the instrument at **Tag A**.

The format and subject matter of the proposed SEPP is consistent with the format and subject matter of the principal instrument (the Mining SEPP) which will be amended.

MATTER OF SIGNIFICANCE

Under section 37(2) of the Act, the Governor may make a SEPP to make provision with respect to any matter that, in the opinion of the Minister, is of State or regional planning significance.

This submission recommends that the Minister form the opinion that the proposed SEPP makes provision for matters of both State and regional planning significance.

The Mining SEPP was originally made in 2007 to recognise the importance to New South Wales of mining, petroleum production and extractive industries. Consistent with this view, the proposed SEPP will ensure that the significant contributions of mining to the State and regions, become an express consideration when a consent authority determines a mining DA.

BETTER REGULATION REQUIREMENTS

The proposed SEPP is subject to the better regulation requirements set out in the NSW Government's Guide to Better Regulation.

It is recommended in this submission that the Minister form the view that a Better Regulation Statement is not required as the proposed SEPP is not a significant regulatory proposal. The policy being given effect by the instrument is an amendment to an existing policy (the Mining SEPP), and the provisions are consistent with general government policy to promote the sustainable development of significant mineral resources, given the important benefits to the State from the mining industry. The policy also promotes compliance with appropriate, well-established environmental and amenity standards.

In accordance with the NSW Government's *Guide to Better Regulation*, the Minister has determined the proposed SEPP is not a significant regulatory proposal, as it does not:

- introduce a major new regulatory initiative,
- have a significant impact on individuals, the community or a sector of the community,
- have a significant impact on business, including by imposing significant compliance costs,
- impose a material restriction on competition, or
- impose a significant administrative cost to government.

The proposed SEPP introduces additional heads of consideration when a consent authority determines a DA for a mining proposal. The DAs the subject of these new provisions will continue to be assessed on their merits and be subject to consideration of other matters under section 79C of the Act.

The proposed SEPP is consistent with the principles outlined in the NSW Government's *Guide to Better Regulation*, as follows:

- **Principle 1** - the need for government action has been established. It is recognised by government that, despite the significant contributions of mining to the State, there is currently no express requirement in planning legislation to acknowledge resource significance when determining a mining DA;
- **Principle 2** - the objective of the proposed SEPP is clear. The objective is articulated in the new proposed aim of the Mining SEPP to 'promote the development of significant mineral resources';
- **Principle 3** - the impact of this government action is properly understood, and other options (including non-regulatory options) have been considered. It is considered however that an amendment to the current statutory policy governing mining developments (the Mining SEPP) is the most relevant and appropriate mechanism to implement the objective of the policy;
- **Principle 4** - the action to make the proposed SEPP is effective and proportional. An existing policy has already been established to outline other relevant matters for consideration when determining mining proposals. The new proposed provisions, as with the current SEPP provisions, do not over-ride or switch off broader over-arching matters to be considered under section 79C of the Act when a consent authority determines a DA;
- **Principle 5** - public consultation has been undertaken on the proposed SEPP, and the views of business and the community have informed the finalisation of the policy;
- **Principle 6** – simplification and consolidation of existing policy has been considered. An existing statutory instrument is being utilised to introduce the policy, rather than establishing a new stand-alone policy; and
- **Principle 7** – policy should be periodically reviewed. The proposed SEPP will introduce two new review clauses to require that the provisions of the Mining SEPP be reviewed, to ensure that the provisions continue to be efficient and effective.

PUBLIC CONSULTATION

Under section 38 of the Act, the Minister is to take such steps, if any, as the Minister considers appropriate or necessary to publicise an explanation of the intended effect of the proposed instrument and to seek and consider submissions from the public on the matter.

The Minister previously formed the opinion under section 38 of the Act that it is appropriate to publicise an explanation of the intended effect of the proposed SEPP and to seek submissions from the public on the matter.

A consultation draft of the proposed SEPP and an explanation of its intended effect were advertised and made available to the public for two weeks from Monday 29 July 2013 to Monday 12 August 2013. The proposed SEPP was made available to the public as follows:

- a media release was issued by the Minister for Resources and Energy to announce the public exhibition of the proposed SEPP;
- a consultation draft of the proposed SEPP and explanation of its intended effect were published on the Department of Planning and Infrastructure website and notified under the 'What's New' home page link;
- a supporting FAQ document was published with the proposed SEPP;
- an advertisement was placed in the Sydney Morning Herald further publicising the exhibition of the proposed SEPP;
- an email to all NSW councils was issued notifying local government about the proposed SEPP and the timeframe for making submissions; and
- a Departmental E-news notice was emailed to subscribers.

The topic of the proposed SEPP was picked up by major media outlets including national, state and regional radio and papers circulating in NSW, and drew interest from media commentators, indicating that the intention of the policy was broadly understood and widely publicised.

In addition to written submissions, the Department received phone inquiries from the public, media inquiries and held meetings with key stakeholder groups and agencies throughout the preparation of the proposed SEPP.

During the exhibition period, an approximate total of **1216** submissions was received including **15** from local government, **1** from a State agency (Sydney Catchment Authority), **22** from resource industry organisations, and **75** from other peak bodies and interest groups, with around **1103** submissions from individuals making up the remaining numbers.

It should be noted that submissions continue to be received by the Department several weeks after the exhibition period closed, as well as representations made to various Ministers and the Premier.

It is generally estimated that around **15 percent** of all submissions showed support for the proposed SEPP. Supportive submissions were generally received from the resource industry itself (peak bodies and resource companies), as well as individual

submissions from members of the public who showed support for the mining industry and policy measures taken to assist the industry. It is also noted that Lithgow City Council and the Northern Mining and Energy Division of the Construction Forestry Mining and Energy Union (CFMEU) showed clear support for the proposed SEPP.

The feedback from the above submitters included:

- proposed SEPP provides some certainty to planning and approval process – investment has been leaving NSW due to uncertainty
- mining industry provides employment and economic opportunities in regional NSW and should be encouraged through the planning process
- proposed SEPP provides adequate environmental standards so that, if satisfied, projects can proceed while minimising impacts on communities
- resource industries have called for the proposed SEPP to also apply to petroleum production, including coal seam gas, and extractive industry proposals
- the provisions should also apply to Part 3A transitional projects, modifications to Part 3A projects, and modifications to consents under Part 4 of the Act
- the proposed SEPP does not go far enough – resource significance should be the principal DA consideration under the EP&A Act, not just under the Mining SEPP.

The majority of submissions however (around **85 percent**) objected to the proposed SEPP or had strong concerns and reservations about its implementation. This included most local government organisations and interest groups, as well as close to 1000 individuals. Key issues raised in these submissions included:

- elevating resource significance as the “principal” consideration is inconsistent with ESD principles and a triple bottom line approach to addressing social, environmental and economic impacts
- concern that the new SEPP provisions might also apply to coal seam gas
- policy is putting mining industry before communities and the environment
- policy conflicts with the government’s strategic regional land use policy and reduces the consideration of land use conflicts with other primary industries and rural amenity
- too much focus on State benefits of mining – rather than local and regional benefits and impacts
- non-discretionary standards are “one-way” – the standards should be binding and exceedances of the environmental and amenity criteria should not be allowed
- some standards, such as noise and air quality, should be stricter or include different measures.

Many submitters, including most councils, several interest groups and many individuals, raised concern that the two-week SEPP exhibition period was too short. Of note, Local Government NSW and the NSW Association of Mining Related Councils were concerned that the timeframe for commenting on a policy of this nature was far too short to allow for councils to consult internally, let alone consult more broadly with their communities before making a formal submission.

A summary of issues raised in submissions is attached (**Tag F**). The document summarises the common themes and key concerns raised in submissions. The

document also outlines how these matters have been considered and addressed in the finalisation of the proposed SEPP.

This brief recommends that the Minister note the analysis of submissions, the key issues raised in those submissions, and how it has been proposed those matters be considered in the finalisation of the proposed SEPP, as outlined in the summary document at **Tag F**.

AGENCY CONSULTATION

In preparing the proposed SEPP, consultation has occurred with senior officers of the following agencies via a Chief Executive Officers working group: DTIRIS (including the Division of Resources and Energy and Department of Primary Industries), OEH, NSW Office of Water, Environment Protection Authority (EPA), Roads and Maritime Services, DPC and NSW Treasury. The views of these agencies have informed the finalisation of the proposed SEPP for exhibition.

A formal written submission was received from the Sydney Catchment Authority (SCA) raising concerns that mining could result in increased risks to Sydney's drinking water catchment and an increased risk of damage to water supply infrastructure. The agency proposed:

- excluding the application of the amendments to Sydney's drinking water catchments (or at least the Schedule 1 Special Areas); and
- inserting a clause to prohibit longwall mining within areas identified in the Dams Safety Committee's notification areas.

It should be noted, that the proposed changes to the Mining SEPP will not alter the requirement to consider relevant development merit assessment matters under the Act, including any potential impact on Sydney's drinking water supply. The proposed changes only affect the consideration of mining-related matters identified under the Mining SEPP, including resource recovery, transport, rehabilitation, natural resource and environmental management and land use compatibility.

In addition, the SCA's call to prohibit longwall mining in areas identified within the Dam Safety Committee's notification area is not within the scope of the proposed SEPP changes, but is a broader policy issue to be considered as a separate matter.

In summary, the matters raised by SCA relate in the main to merit assessment issues that can be addressed at the DA stage.

Other comments were received by various agencies outside the public exhibition period (including from NSW Health, DTIRIS, OEH, EPA and DPI) and their concerns have been taken into account in finalising the SEPP.

Of note, NSW Health raised concerns that developments can still be approved even if they do not meet the non-discretionary development standards. The agency also suggested that a standard should be referenced for cumulative air quality, specifically the NEPM (ambient air quality).

The air quality standard proposed in the draft SEPP reflects current NSW policy and has been applied to mining proposals for several years. The SEPP can be updated if new government environmental and amenity standards, including air quality standards are adopted. To this effect, a review clause has been added to the proposed SEPP post-exhibition, to ensure that the Minister amends the non-discretionary development standards where appropriate, if and when government policy changes on the subject.

Furthermore, the standard will not prevent a consent authority from imposing other conditions as part of the consent, including a daily air quality standard. Current and recent conditions of approval for mines have included daily air quality emission standards, and conditions for air quality and noise emissions are contained in the Department's draft Standard and Model Provisions for the Mining & Extractive Industry (on the website).

It should be noted, a mining proposal's compliance with a non-discretionary development standard is only one matter for consideration. The Department's assessment of a project will always consider the development on its merits. This includes considering it against other environmental planning instruments and relevant government policies, taking into account the submissions received and the public interest, and assessing the site's suitability and other environmental, social and economic factors.

HERITAGE CONSULTATION

As the proposed SEPP will not expressly change any provisions relating to the conservation of buildings, works, relics, places or precincts on specific land to which an interim heritage order made by the Minister or a listing on the State Heritage Register applies, the Minister does not need to consult the Heritage Council on these matters.

Heritage issues may need to be considered as part of the assessment of specific mining proposals as they arise through the development assessment process.

SECTION 34A THREATENED SPECIES CONSULTATION

Section 34A of the Act requires the Director General to consult with the Director General of the Department of Premier and Cabinet (DPC) and the Director General of the Department of Primary Industries (DPI) before a draft SEPP is made, in the opinion of the Director General, critical habitat or threatened species, populations or ecological communities, or their habitats, will or may be adversely affected by the draft SEPP.

In a previous submission, the Director General formed the opinion that the proposed SEPP may adversely affect critical habitat or threatened species, populations or ecological communities, or their habitats and therefore consultation with the relevant agencies was undertaken.

In response, Ms Sally Barnes, Chief Executive of OEH, wrote to the Director General of the Department of Planning and Infrastructure on behalf of Mr Chris Eccles, Director General of DPC. Ms Barnes provided no objection to the proposed SEPP.

The reason given was that the proposed SEPP does not change the current requirements of the Act for assessing impacts on critical habitat, threatened species, populations, ecological communities, and their habitats, and that the proposed SEPP will retain the ability for a consent authority to impose conditions to ensure that impacts on threatened species and biodiversity, are avoided or are minimised to the greatest extent practicable.

In Ms Barnes' letter, it was also noted that the proposed NSW Biodiversity Offsets Policy will play an important role in informing mining applicants and consent authorities on how to assess impacts on biodiversity and the use of offsets where appropriate.

Bruce Christie, Acting Director General of DPI, also wrote to the Director General of the Department of Planning and Infrastructure indicating that DPI does not object to the proposed SEPP. The reason given was that the proposed SEPP will not change the existing environmental assessment processes for threatened species, populations and ecological communities of fish and marine vegetation. In addition, Mr Christie pointed out that consent authorities will continue to be compelled to consider whether or not consent should be issued subject to conditions aimed at ensuring adverse impacts on water resources, threatened species and biodiversity will continue to be avoided or minimised to the greatest extent practicable.

In regard to the proposed biodiversity mitigation and offsetting clause in the proposed SEPP, it is acknowledged that DPI also plays an important role in this respect for aquatic species and their habitats. As such, the proposed clause has been expanded to also require the consideration of advice from the Director General of DPI on biodiversity mitigation and offsetting matters, in addition to that of the Chief Executive of OEH.

PARLIAMENTARY COUNSEL OPINION

The Parliamentary Counsel has provided an opinion that the proposed SEPP may be legally made (**Attachment D**).

COMMENCEMENT

It is recommended that the draft SEPP commence on notification on the NSW Legislation Website.

 3. 9. 13

Sarah McGirr, 9228 6347

Chris Wilson

Executive Director, Development Assessment Systems and Approvals


Sam Haddad
Director General

3/9/2013

Minister Hazzard

 23.9/2013



New South Wales

State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) Amendment (Resource Significance) 2013

under the

Environmental Planning and Assessment Act 1979

Her Excellency the Governor, with the advice of the Executive Council, has made the following State environmental planning policy under the *Environmental Planning and Assessment Act 1979*.

A handwritten signature in black ink, appearing to read 'Brad Hogg'.

Minister for Planning and Infrastructure

State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) Amendment (Resource Significance) 2013

under the

Environmental Planning and Assessment Act 1979

1 Name of Policy

This Policy is *State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) Amendment (Resource Significance) 2013*.

2 Commencement

This Policy commences on the day on which it is published on the NSW legislation website.

3 Repeal of Policy

- (1) This Policy is repealed on the day following the day on which this Policy commences.
- (2) The repeal of this Policy does not, because of the operation of sections 5 (6) and 30 of the *Interpretation Act 1987*, affect any amendment made by this Policy.

Schedule 1 Amendment of State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007

[1] Clause 2 Aims of Policy

Insert after clause 2 (b):

- (b1) to promote the development of significant mineral resources, and

[2] Clauses 12AA and 12AB

Insert before clause 12 in Part 3:

12AA Significance of resource

- (1) In determining an application for consent for development for the purposes of mining, the consent authority must consider the significance of the resource that is the subject of the application, having regard to:
 - (a) the economic benefits, both to the State and the region in which the development is proposed to be carried out, of developing the resource, and
 - (b) any advice by the Director-General of the Department of Trade and Investment, Regional Infrastructure and Services as to the relative significance of the resource in comparison with other mineral resources across the State.
- (2) The following matters are (without limitation) taken to be relevant for the purposes of subclause (1) (a):
 - (a) employment generation,
 - (b) expenditure, including capital investment,
 - (c) the payment of royalties to the State.
- (3) The Director-General of the Department of Trade and Investment, Regional Infrastructure and Services is, in providing advice under subclause (1) (b), to have regard to such matters as that Director-General considers relevant, including (without limitation):
 - (a) the size, quality and availability of the resource that is the subject of the application, and
 - (b) the proximity and access of the land to which the application relates to existing or proposed infrastructure, and
 - (c) the relationship of the resource to any existing mine, and
 - (d) whether other industries or projects are dependent on the development of the resource.
- (4) In determining whether to grant consent to the proposed development, the significance of the resource is to be the consent authority's principal consideration under this Part.
- (5) Accordingly, 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.
- (6) To avoid doubt, the obligations of a consent authority under this clause extend to any application to modify a development consent.

12AB Non-discretionary development standards for mining

- (1) The object of this clause is to identify development standards on particular matters relating to mining that, if complied with, prevents the consent authority from requiring more onerous standards for those matters (but that does not prevent the consent authority granting consent even though any such standard is not complied with).
- (2) The matters set out in this clause are identified as non-discretionary development standards for the purposes of section 79C (2) and (3) of the Act in relation to the carrying out of development for the purposes of mining.
Note. The development standards do not prevent a consent authority from imposing conditions to regulate project-related noise, air quality, blasting or ground vibration impacts that are not the subject of the development standards.
- (3) **Cumulative noise level**
The development does not result in a cumulative amenity noise level greater than the acceptable noise levels, as determined in accordance with Table 2.1 of the Industrial Noise Policy, for residences that are private dwellings.
- (4) **Cumulative air quality level**
The development does not result in a cumulative annual average level greater than 30 $\mu\text{g}/\text{m}^3$ of PM_{10} for private dwellings.
- (5) **Airblast overpressure**
Airblast overpressure caused by the development does not exceed:
 - (a) 120 dB (Lin Peak) at any time, and
 - (b) 115 dB (Lin Peak) for more than 5% of the total number of blasts over any period of 12 months,measured at any private dwelling or sensitive receiver.
- (6) **Ground vibration**
Ground vibration caused by the development does not exceed:
 - (a) 10 mm/sec (peak particle velocity) at any time, and
 - (b) 5 mm/sec (peak particle velocity) for more than 5% of the total number of blasts over any period of 12 months,measured at any private dwelling or sensitive receiver.
- (7) **Aquifer interference**
Any interference with an aquifer caused by the development does not exceed the respective water table, water pressure and water quality requirements specified for item 1 in columns 2, 3 and 4 of Table 1 of the Aquifer Interference Policy for each relevant water source listed in column 1 of that Table.
Note. The taking of water from all water sources must be authorised by way of licences or exemptions under the relevant water legislation.
- (8) The Minister is to review a non-discretionary development standard under this clause if a government policy on which the standard is based is changed.
- (9) In this clause:
Aquifer Interference Policy means the document entitled *NSW Aquifer Interference Policy* published by the NSW Office of Water, Department of Primary Industries and in force as at the commencement of this clause.

Industrial Noise Policy means the document entitled *NSW Industrial Noise Policy* published by the Environment Protection Authority and in force as at the commencement of this clause.

PM₁₀ means particulate matter less than 10 µm in aerodynamic equivalent diameter.

private dwelling means residential accommodation owned by a person other than a public authority or a company operating a mine.

sensitive receiver means a hospital, school classroom, child care centre or place of public worship.

[3] Clause 14 Natural resource management and environmental management

Insert after clause 14 (2):

- (3) Without limiting subclause (1), in determining a development application for development for the purposes of mining, the consent authority must consider any certification by the Chief Executive of the Office of Environment and Heritage or the Director-General of the Department of Primary Industries that measures to mitigate or offset the biodiversity impact of the proposed development will be adequate.

[4] Clause 20

Insert after clause 19:

20 SEPP to be reviewed by Minister

The Minister is to arrange for this Policy to be reviewed (and a report of the review made public) before the end of September 2015.

BETTER REGULATION PRINCIPLES

State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) Amendment (Resource Significance) 2013

The *State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) Amendment (Resource Significance) 2013* (the proposed SEPP) will amend the *State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007* ('Mining SEPP') to introduce provisions related to the determination of development applications (DAs) and modifications of consents under Part 4 of the Act for mining proposals.

The primary purpose of the proposed SEPP is to ensure that the significance of a mineral resource is given explicit and appropriate consideration in decision-making on mining DAs. This is to be achieved through the proposed SEPP by:

- acknowledging the relative significance of each mineral resource to the State and to regions, based on economic benefits, as well as strategic considerations such as alignment with infrastructure provision and inter-dependencies with other industries and developments; and
- ensuring that the balancing of other considerations under the SEPP is done in a manner which is proportionate to the relative significance of the resource.

In accordance with the NSW Government's *Guide to Better Regulation*, the Minister has determined the proposed SEPP is not a significant regulatory proposal, as it does not:

- introduce a major new regulatory initiative,
- have a significant impact on individuals, the community or a sector of the community,
- have a significant impact on business, including by imposing significant compliance costs,
- impose a material restriction on competition, or
- impose a significant administrative cost to government.

The proposed SEPP introduces additional heads of consideration when a consent authority determines a DA for a mining proposal. The DAs the subject of these new provisions will continue to be assessed on their merits and be subject to consideration of other provisions under the section 79C of the Act.

The proposed SEPP is consistent with the principles outlined in the NSW Government's *Guide to Better Regulation*, as follows:

- **Principle 1** - the need for government action has been established. It is recognised by government that, despite the significant contributions of mining to the State, there is currently no express requirement in planning legislation to acknowledge resource significance when determining a mining DA;
- **Principle 2** - the objective of the proposed SEPP is clear. The objective is articulated in the new proposed aim of the Mining SEPP to 'promote the development of significant mineral resources';
- **Principle 3** - the impact of this government action is properly understood, and other options (including non-regulatory options) have been considered. It is

considered however that an amendment to the current statutory policy governing mining developments (the Mining SEPP) is the most relevant and appropriate mechanism to implement the objective of the policy;

- **Principle 4** - the action to make the proposed SEPP is effective and proportional. An existing policy has already been established to outline other relevant matters for consideration when determining mining proposals. The new proposed provisions, as with the current SEPP provisions, do not over-ride or switch off broader over-arching matters to be considered under section 79C of the Act when a consent authority determines a DA;
- **Principle 5** - public consultation has been undertaken on the proposed SEPP, and the views of business and the community have informed the finalisation of the policy;
- **Principle 6** – simplification and consolidation of existing policy has been considered. An existing statutory instrument is being utilised to introduce the policy, rather than establishing a new stand-alone policy; and
- **Principle 7** – policy should be periodically reviewed. The proposed SEPP will introduce two new review clauses to require that the provisions of the Mining SEPP be reviewed, to ensure that the provisions continue to be efficient and effective.

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Summary of submissions - draft Mining SEPP Amendment (Resource Significance) 2013

The *State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007* (the Mining SEPP) commenced on 16 February 2007, and consolidated previous planning policies related to mining, petroleum production and extractive industries.

A consultation draft of an amendment to the Mining SEPP entitled *State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) Amendment (Resource Significance) 2013* (the proposed SEPP) was publicly exhibited from 29 July to 12 August 2013.

SUBMISSION STATISTICS

An estimated total of **1216** submissions were received during the exhibition period (submissions counted until 2am 13 August 2013). Breakdown of submission by respondent group:

Local government	15
State organisations	1
Resource industry	22
Other interest groups	75
Individuals/others	1103
TOTAL	1216

The following trends are generalised based on a broad analysis of the submissions, and the figures are indicative only:

- 15% of submissions in support of the proposed SEPP.
- 85% of submissions objected to the SEPP or raised significant concerns.
- Majority of council submissions objected to or raised significant concerns about the SEPP (with the exception of Lithgow City Council who supported the amendments).
- Of the individual submissions, 15% were in support, and 85% objected to the proposed SEPP or raise concerns. Many individual supporters indicated that they were employees of mining companies.
- No petitions were received however ~ 44% of individual submissions were standard response or 'form-style' submissions. Of these, 93% objected to the proposed SEPP, while 7% of the form-style submissions supported the SEPP.
- The NSW Farmers' submission included an attachment of around 469 statements from individual community members largely objecting the proposed SEPP. These individual statements appear to be in addition to the 1216 submissions received directly by the Department.

SUMMARY OF KEY ISSUES

Key issues raised in the majority of submissions (including from **councils, interest groups and individuals**) include:

- elevating resource significance as the “principal” consideration is inconsistent with ESD principles and a triple bottom line approach to addressing social, environmental and economic impacts
- concern that the new SEPP provisions might also apply to coal seam gas
- policy is putting mining industry before communities and the environment
- policy conflicts with the government’s strategic regional land use policy and reduces the consideration of land use conflicts with other primary industries and rural amenity
- too much focus on State benefits of mining – rather than local and regional benefits and impacts
- non-discretionary standards are “one-way” – the standards should be binding and exceedances of the environmental and amenity criteria should not be allowed
- some standards, such as air quality, should be stricter or include different measures.

Many submissions, including from councils, interest groups and many individuals, raised concern that the two-week SEPP exhibition period was too short.

Key issues raised by **resource industry groups** as well as individuals in support of the proposed amendments included:

- proposed SEPP provides some certainty to planning and approval process – investment has been leaving NSW due to uncertainty
- mining industry provides employment and economic opportunities in regional NSW and should be encouraged through the planning process
- proposed SEPP provides adequate environmental standards so that, if satisfied, projects can proceed while minimising impacts on communities
- resource industries have called for the proposed SEPP to also apply to petroleum production, including coal seam gas, and extractive industry proposals
- the proposed SEPP does not go far enough – resource significance should be the principal DA consideration under the EP&A Act, not just under the Mining SEPP.

ANALYSIS OF ISSUES/PROPOSED RESPONSE

The following table is a summary of the key issues raised, with particular emphasis on recurring themes in submissions. The table also indicates the proposed response to be taken in finalising the *State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) Amendment (Resource Significance) 2013*.

Summary of Issues raised in submissions on Mining SEPP amendments about Resource Significance – August 2013

TOPIC	SUBMISSION ISSUE	DP&I COMMENTS/RESPONSE
General comments about proposed SEPP exhibition		
<p>SEPP exhibition period</p>	<p>Many written submissions as well as emails and phone inquiries were received, commenting that the exhibition period was only 2 weeks long.</p> <p>Several submitters requested extensions.</p> <p>Many people commented that a policy of this importance should be exhibited for several months.</p> <p>We also received comments from a Member of Parliament (Greg Piper, MP) concerned that the policy was announced during a parliamentary recess and requesting that the exhibition period be extended.</p>	<p>Public exhibition period for the proposed Mining SEPP amendment was two (2) weeks and submissions closed on Monday 12 August 2013.</p> <p>All submissions received within this period were analysed and the comments and views put forward about the proposed SEPP has informed the finalisation of the policy.</p> <p>The work of government is ongoing, and it is not appropriate for all policy development to cease each time Parliament is in recess.</p> <p>While the government does often provide longer periods of exhibition for detailed development proposals and strategic planning proposals, the proposed Mining SEPP amendments are very specific and targeted. The proposed changes are not complex and are not expansive and, for the most part, stakeholders are aware of what these changes mean.</p> <p>Over 1200 submissions were received during the exhibition period - which is testament to the fact that stakeholders and the broader public engaged readily in this process, understand what the policy is trying to achieve, and are able to respond and comment on this specific policy within the timeframe given.</p> <p>Action: Feedback received outside the exhibition timeframe is not documented in this report however all relevant comments about the policy have been taken into consideration in the finalisation of the SEPP, regardless of when the comments were received.</p>
<p>General comment opposed to proposed SEPP</p>	<p>General comments made in opposition to the proposed SEPP include:</p> <ul style="list-style-type: none"> • motivation and objectives behind the amendments are not clear • SEPP is a reaction to the Bulga Warkworth LEC decision • integrity of the SEPP questioned • effect of the policy not clear • SEPP breaks an election promise • SEPP short-sighted – need long-term solutions. • Concern about corruption and ICAC findings associated with mining leases • Concern about not requiring landowners consent to enter land to mine • Concern that the benefits and profits from mining go overseas. 	<p>Specific comments objecting to the proposed SEPP are outlined further below.</p> <p>It is noted that many submissions in opposition to the proposed SEPP are concerned about the mining industry in general, rather than the specific proposed policy.</p> <p>Many submitters identified concerns about coal seam gas (CSG) as a major issue and have objected to the proposed policy on the assumption that it will assist CSG expansion. The policy will not apply to CSG.</p> <p>The SEPP amendment will give community and stakeholders greater certainty. DP&I has always made the significance of the mineral resource a clear, upfront consideration during development assessment. However, there is currently no clear statutory policy that sets out the need to balance the economic significance of the proposal against other issues such as any potential environmental, amenity or social impacts, at the decision-making stage, which is what this amendment will do.</p>
<p>General comment to support proposed SEPP</p>	<p>General comments made in support of the proposed SEPP include:</p> <ul style="list-style-type: none"> • investment has been leaving NSW due to uncertainty • policy gives some certainty to planning and approval process so that environment, economy and welfare of people of NSW becomes a priority. • mining industry provides many jobs and economic opportunities throughout regional NSW. • provides standards so that, if satisfied, projects can proceed for benefit of all • will provide equity and fairness in the assessment of major projects 	<p>Specific comments in support of the proposed SEPP are outlined further below.</p> <p>A common issue raised by resource industry submitters is the fact that the proposed SEPP will only apply to mining, and not to petroleum production or extractive industries.</p>

Summary of Issues raised in submissions on Mining SEPP amendments about Resource Significance – August 2013

TOPIC	SUBMISSION ISSUE	DP&I COMMENTS/RESPONSE
Part 3 Development Applications – matters for consideration		
<p>Policy puts importance of mining above other matters</p>	<p>Many submissions showed concern that 'resource significance' is identified in the SEPP as a new DA consideration and that this matter is to be the "principal" consideration, put above all other matters.</p> <p>The concern about giving priority to resource significance mining was often predicated on concerns about the impact mining has on the environment, cultural, heritage and rural amenity values, social impacts on local communities, agricultural lands, and land use conflicts with other rural industries.</p> <p>Some submitters said we need to move away from supporting fossil fuel industries and start giving renewable energies greater emphasis.</p>	<p>The Mining SEPP was established in recognition of the importance of resource industries to the State.</p> <p>Other planning instruments, government policies and guidelines put social and environmental matters at the forefront. These policies continue to have the same weight they always had under s79C of the EP&A Act.</p> <p>'Resource significance' is identified as the principal consideration under the draft SEPP in recognition that it has always been a primary consideration when assessing a mining DA in practice.</p> <p>It is now intended that it also be an acknowledged primary consideration when the DA is determined.</p>
<p>Resource significance the "principal" consideration</p>	<p>There was concern that making the significance of a resource the "principal consideration" might lead to projects being approved despite deficient environmental assessment and despite potential impacts not being sufficiently mitigated.</p> <p>Some submitters (including councils and individuals) acknowledged that resource significance is a relevant consideration, but it should not be the principal consideration.</p> <p>Resource industry groups recommended that resource significance should not only be the principal consideration under Part 3 of the SEPP, but should be the principal consideration under section 79C as well.</p>	<p>While community groups were concerned the resource significance provision will be the principal consideration under the mining SEPP, resource industry groups were concerned the proposal didn't go far enough, and that resource significance should be the principal consideration under the whole EP&A Act.</p> <p>The policy will not make 'resource significance' the only matter for consideration, or an overarching consideration that outweighs all other issues - such as environmental impacts - when assessing a mining DA. It will however highlight to the consent authority that it must address the significance of the resource in a comprehensive and meaningful way, and that it cannot be ignored or downplayed in the assessment process.</p> <p>It is important to note that the SEPP will require that, when balancing assessment matters, the weight given to any other matter under the SEPP must be proportionate to the importance of that matter in comparison with the significance of the resource.</p> <p>Action: Retain the clause as proposed in the exhibition draft.</p> <p>A SEPP cannot switch off provisions of the Act, as such, the SEPP cannot be expanded to override Section 79C, nor will it in its current form.</p>
<p>Policy only applies to mining, not petroleum production or extractive industries</p>	<p>Resource industry groups and others, pointed out that the proposed SEPP only applies to the mining industry.</p> <p>It was suggested that the provisions about 'resource significance' and non-discretionary development standards should also apply to petroleum production and extractive industries, as these industries are also important to the state.</p> <p>Air quality, noise and blasting standards for mining could equally apply to quarries.</p>	<p>The proposed SEPP has been drafted to only apply to mineral resources at this stage.</p> <p>While other resource industries are important to the state, it is envisaged that the initial work of DTIRIS in undertaking a strategic analysis of the relative significance of resources across the state will be focused on comparing mineral resources, rather than petroleum or extractive material deposits.</p> <p>Action: Restrict proposed SEPP to just mineral resources.</p>
<p>Will the policy apply to coal seam gas?</p>	<p>A number of submissions object to the proposed SEPP on the grounds that it promotes and facilitates the development of the coal seam gas (CSG) industry.</p> <p>Submissions outlined environmental, social, economic and land use conflict concerns about CSG in NSW.</p> <p>Mention made to Chief Scientist's initial</p>	<p>The Government remains committed to implementing the Gateway assessment and the coal seam gas exclusion zones – these matters are currently being finalised following consideration of feedback from the community and stakeholders.</p> <p>The proposed SEPP does not apply to CSG proposals, other petroleum production, or extractive industries (eg. hard rock quarries and sand and gravel extraction).</p> <p>The proposed SEPP only applies to proposed mineral resource</p>

Summary of Issues raised in submissions on Mining SEPP amendments about Resource Significance – August 2013

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	<p>report into CSG and its recommendations.</p> <p>It was also noted by NSW Farmers that clause 12AA(1)(b) refer to resource significance in comparison with "other resources" but does not narrow this down to "mineral resources. Despite public exhibition of proposals to protect residential areas from CSG & introduce the Gateway assessment – the Government has not introduced these measures. Instead it has introduced a SEPP amendment which elevates the importance of the mining proposal.</p>	<p>operations such as coal mining and other mineral mines.</p>
<p>Application of policy to Part 3A projects and to modifications of existing consents and approvals</p>	<p>The mining industry has called for the new provisions to have broader application by applying them to Part 3A transitional projects, modifications to Part 3A projects, and modifications to consents under Part 4 of the Act.</p>	<p>The SEPP provisions cannot be expressly applied to Part 3A projects, or modifications to Part 3A projects, as the SEPP is not a statutory consideration under Part 3A whereas it is under Part 4 of the Act.</p> <p>The Department does however, as a matter of policy, take into account the Mining SEPP in the assessment of mining proposals under Part 3A. This will continue to be the case, and the new resource significance clause will be considered by the Department when assessing transitional Part 3A projects and modifications to projects, as a matter of course.</p> <p>For Part 4 mining DAs, the new provisions related to resource significance could be applied to modifications of Part 4 consents (as the Act allows for EPI provisions to be applied to the determination of a modification application under section 96 and 96AA).</p> <p>Action: The proposed SEPP has been amended post-exhibition to apply the resource significance provisions to the determination of an application to modify a consent under Part 4.</p>
<p>Economic significance put above environment and social impacts</p>	<p>The majority of submissions put forward the following views about the proposed SEPP:</p> <ul style="list-style-type: none"> • switches off or over-rules environmental, cultural and social impacts of mining • contrary to objects of the EP&A Act • distorts triple bottom line assessment • sets aside concept of ecological sustainable development (ESD) • ignores precautionary principle • biases certain merit considerations so that matters are no longer equally balanced under section 79C • over-rides community concerns about mining • puts the views and interests of mining companies ahead of local residents <p>The majority of submissions oppose the proposed SEPP due to an objection to resource significance being given a greater level of consideration than environmental and social considerations.</p> <p>Concern also raised that, by prioritising benefits of mining ahead of potential negative impacts on matters of national environmental significance, the decision</p>	<p>The Mining SEPP cannot change the weighting given to any matters under s79C. It can only change the emphasis given to matters within the SEPP itself and explain how those matters should be considered.</p> <p>The SEPP will also require that, when balancing assessment matters, the weight given to any other matter under the SEPP must be proportionate to the importance of that matter in comparison with the significance of the resource.</p> <p>Environmental matters under s79C will continue to have the same weight as they currently do.</p> <p>The views of the public when making submissions on a mining DA will continue to have the same weight as they always have. Of note, submissions received on a DA and the public interest will remain their own specific considerations when determining a mining DA.</p> <p>ESD and triple bottom line considerations also continue to have the same weight as they always have. Consent authorities must take into account the likely impacts of the development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality, and the suitability of the site for the development, when determining a Mining DA.</p> <p>The change in focus within the Mining SEPP about resource significance only affects the consideration of mining related matters under the SEPP itself – not the consideration of all the other general DA matters under s79C of the EP&A Act.</p>

Summary of Issues raised in submissions on Mining SEPP amendments about Resource Significance – August 2013

TOPIC	SUBMISSION ISSUE	DP&I COMMENTS/RESPONSE
	making rules in the proposed SEPP are unlikely to meet federal <i>Environment Protection And Biodiversity Conservation Act 1999</i> requirements.	
Economic views are biased	Some submissions suggested that mining companies will argue that their resource projects are always significant and that mining companies use poor economic analysis methods when undertaking cost benefit analysis (CBA).	<p>The significance of the resource will be measured by the consent authority with the advice of DTIRIS in terms of relative significance of the resource compared to other resources across the state. 'Resource significance' is not measured by the mining company. The mining company's view of the relative significance of their mining project over any other mining proposals or deposits is irrelevant.</p> <p>Mining companies will still need to identify the environmental, social and economic impacts of their proposals (eg. By using CBA), as a totally separate exercise under section 79C of the EP&A Act.</p>
Policy puts State benefits over regional and local benefits	<p>Some submissions, including from councils, showed concern that benefits to the State from mining were being put before benefits to local and regional communities.</p> <p>Comments were made that DTIRIS may over-state the importance of all resources.</p>	<p>'Resource significance' will be a measure of:</p> <p>(a) the economic benefits, both to the State and the region in which the development is proposed to be carried out, of developing the resource, and</p> <p>(b) any advice by the Director-General of DTIRIS as to the relative significance of the resource in comparison with other resources across the State.</p> <p>The consent authority determines resource significance and, in doing so, must examine both State and regional benefits.</p> <p>Action: Consideration will be given to DTIRIS publishing clear criteria and a process for undertaking its comparative analysis of the significance of resources across the state.</p>

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<p>Relationship to SLRUP, CSG prohibitions, Gateway, BSAL, CICs and other strategic land use matters</p>	<p>Many submissions see the proposed SEPP as being contrary to the SRLUP policy.</p> <p>Views put forward that negotiations around SRLUP have been cast to one side, and the submission process for that policy has been ignored.</p> <p>Faster action on implementing SRLUPs. Calls to dis-apply the proposed SEPP provisions in key areas identified in the SRLUP process (eg. BSAL).</p> <p>Concern that important agricultural lands may be affected by the proposed SEPP.</p> <p>The Government has overridden promises made (pre and post-election) to protect strategic agricultural land & water resources. The Government is overturning its Strategic Regional Land Use Policy with the introduction of this amendment – there has been no progress on the Gateway process or the coal seam gas exclusion zones, despite these being publicly exhibited months ago.</p> <p>Negates the additional scrutiny that was to be given to the Drayton South open cut coal mine; renders the PAC process irrelevant and taints the process.</p> <p>Signals a rejection of all non-mining sustainable industries in the Hunter Valley.</p>	<p>The SRLUP provisions, the Gateway provisions and CSG prohibitions are about strategic planning, land use zoning, and addressing matters about critical industry clusters and land use conflicts up front in the planning system. These tools are used to avoid and manage land use conflicts and environmental and amenity impacts at the strategic planning stage, across a broad scale, and well before a DA for a resource proposal is ever lodged.</p> <p>The Resource Significance SEPP amendment is only about mining proposals, and only relates to these proposals once a DA has been lodged. This proposed policy will not affect any of the Government's current strategic and land use planning initiatives related to resource industries (including mining and CSG).</p> <p>The Government has gone to significant lengths to address key issues that arise from resource industries (in terms of environmental impacts and land use conflicts) early on and that, as a consequence, there is far greater preliminary assessment and consultation being undertaken before a resource company can even apply for approval of a mining DA.</p> <p>The Resource Significance SEPP provisions will only apply in instances where mining is permitted and a DA can be lodged. In those instances, the intention is to make it clear that the benefits to the State from the mining operation should be a primary consideration when assessing the DA.</p> <p>The Government recognises the importance of strategic agricultural land and critical industries like the thoroughbred and wine-growing industries in the Hunter Valley.</p> <p>This is why additional protection and a robust upfront scientific assessment will apply for any mining proposals on strategic agricultural land or land within these critical industry clusters. The Government is currently finalising the Gateway process and the creation of a Gateway Panel, which will provide an additional layer of scrutiny to mining proposals on strategic agricultural land at the very early stages of the proposal.</p> <p>All mining proposals will continue to be subjected to a rigorous assessment process and will be decided on their merits. That will not change. The changes simply mean that once proposals have reached the DA assessment stage – after this additional upfront scrutiny – the significance of the mineral resource will also be a consideration.</p> <p>Action: The proposed SEPP has been amended post-exhibition to require the Minister to review the entire Mining SEPP after two years of these amendments being made to ensure the overall policy is operating effectively, including the strategic planning and development assessment considerations.</p>
<p>Emphasis on consolidating mining activity</p>	<p>Submissions raised issue that one of the 'resource significance' criteria for DTIRIS to consider is proximity and access to existing infrastructure and relationship to existing mines.</p> <p>This approach builds a focus on consolidating mining activity wherever it already occurs, over the consideration of impacts on other land uses.</p>	<p>Noted.</p> <p>This criterion is not determinative, but it is one of several factors in identifying the strategic importance of a proposal.</p> <p>It is important to note however that issues related to cumulative impacts and tipping points (including environmental, amenity, infrastructure capacity etc) will also need to be considered. As such, mining proposals near areas where mining already occurs will be assessed in the context of what impacts have already occurred and whether the locality, region, or infrastructure can</p>

Summary of Issues raised in submissions on Mining SEPP amendments about Resource Significance – August 2013

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		cope with the impacts of additional mineral production.
DTIRIS test of relative resource significance	<p>Suggestions that other additional matters should be examined by DTIRIS when determining resource significance including: availability of alternative sources, State revenue impacts, local economy consequences, need for the resource and alternative supplies.</p> <p>Concerns raised that there is conflict with DTIRIS being both the source of advice on resource significance and the department responsible for promoting the mining industry.</p>	<p>The Government will not be relying on the mining company to determine the significance of the resource. It will be using DTIRIS expertise to ensure a balanced assessment of the significance of the resources is provided to consent authorities. DTIRIS will be comparing the significance of the resource against other resources across the State to identify which resources are more significant than others.</p> <p>Action: Consideration will be given to DTIRIS publishing clear criteria and a process for undertaking its comparative analysis of the significance of resources across the state.</p>
Non-discretionary development standards	<p>A large number of submissions indicated uncertainty about the purpose and effect of the non-discretionary development standards.</p> <p>SEPP proposal allows decision makers to approve mining proposals even if they don't meet the 'development standards' identified, leaving the local community and environment at risk.</p> <p>Many oppose the 'one way' standards, and believe that the proposed standards should be replaced by binding environmental protection standards that are mandatory instead of being optional.</p> <p>One submission suggested that the non-discretionary development standards might be subject to SEPP 1, and therefore a consent authority may not have full flexibility in deciding whether or not to apply the standard.</p> <p>Concerns that the introduction of the standards will result in proponents focusing on satisfying Standards at the expense of a comprehensive assessment.</p>	<p>Incorporating the environmental and amenity criteria into the SEPP as 'non-discretionary' development standards gives mining companies an additional incentive to comply with the standards.</p> <p>Where the proposal does not meet the criteria, additional conditions can be imposed as part of the development approval, to address adverse environmental impacts.</p> <p>The proposed SEPP relies on existing standards that are set out in government-endorsed environmental policies. These policies are already applied in the assessment of mining proposals. Development proposals will continue to be assessed against these policies, with the SEPP now reinforcing those standards.</p> <p>The proposed SEPP may strengthen these environmental policies (eg. Industrial Noise Policy, Aquifer Interference Policy, Approved Methods for Air Quality Monitoring, Blasting standards) by giving the minimal impact standards statutory effect through the non-discretionary development standard provisions. This should in turn mean that it is more likely that mining companies would attempt to comply with the standards to then benefits from the provisions.</p> <p>Action: The proposed SEPP has been amended post-exhibition to require the Minister to review the standards if and when the relevant environmental policies are revised in future.</p>
Cumulative noise levels	<p>Many submissions raised concern about applying annual averages for air quality, noise and vibration – these standards completely ignore daily exceedances of those limits.</p> <p>Comments made that noise standards should also apply to dwellings acquired by the mining company (as they may be occupied by employees or other people).</p>	<p>Given that external factors such as weather and other prevailing conditions might affect the daily noise and dust levels experienced at receptors, annual averages are needed to set a more representative limit to be achieved by a mine.</p> <p>Projects will continue to be able to be regulated and conditioned with project specific limits on noise and dust emissions, including daily exceedance levels.</p> <p>Action: The proposed SEPP has been amended post-exhibition to require the Minister to review the standards if and when the relevant environmental policies are revised in future.</p>
Cumulative air quality	<p>A large number of submissions raised concerns about air quality impacts from mining, and in particular about the proposed non-discretionary standard for cumulative air quality, including:</p> <ul style="list-style-type: none"> • proposed standards contrary to state, national and World Health Organisation standards • national 24 hour average standard 	<p>These development standards reflect existing government policy, and have been consistently applied to mining projects across NSW for many years now.</p> <p>The proposed air quality standard would not stop a consent authority from imposing other conditions as part of the consent, including a daily air quality standard. Current and recent conditions of approval for mines have included daily air quality emission standards.</p>

Summary of Issues raised in submissions on Mining SEPP amendments about Resource Significance – August 2013

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	<p>should apply (<50µg/m3) – not annual average.</p> <ul style="list-style-type: none"> • particulate matter (PM) should be measure as PM5, PM2.5 or PM1 as they have more profound health impacts than PM10. • PM10 level set at 30 µg/m3 is not strict enough and should be 20 µg/m3. • air quality standards should also apply to dwellings acquired by the mining company (as they may be occupied by employees or other people). 	<p>Conditions for air quality and noise emissions are contained in the Department's draft Standard and Model Provisions for the Mining & Extractive Industry (on website).</p> <p>The SEPP can be updated if new government environmental and amenity standards, including air quality standards, are adopted.</p> <p>Action: The proposed SEPP has been amended post-exhibition to require the Minister to review all standards if and when the relevant environmental policies are revised in future.</p>
Airblast overpressure and ground vibration	<p>Only some comments received on blasting standards. A council made reference to airblast overpressure standards not incorporating reflected noise, as is experienced in escarpment areas.</p>	<p>Blasting standards taken from existing ANZEC guidelines.</p> <p>Action: The proposed SEPP has been amended post-exhibition to require the Minister to review the standards if and when the relevant environmental policies are revised in future.</p>
Aquifer interference	<p>Many submissions raised concern in relation to aquifer interference and impacts of mining and CSG on aquifers, water supplies and ecosystems.</p> <p>Allowing state significant development to be exempt from minimal impact standards in the Aquifer Interference Policy places water resources at an unacceptable risk.</p> <p>Comments made the draft policy should not reverse the intention of the Aquifer Interference Policy and believes the policy must be made binding for all development, including mining and coal seam gas.</p> <p>Mining should be made prohibited from occurring near water catchment areas, including drinking water catchments and other sensitive areas.</p> <p>The SEPP should reflect the recently announced commitment by the government to a 'net positive' standard for biodiversity impacts.</p> <p>View put forward that the SEPP exempts mining from the minimal impact standards in the Aquifer Interference Policy including the need to acquire water-access licences to cover 'incidental take' of groundwater that may result from damaged or intercepted aquifers as well as changes to the regulations for Water sharing Plans that exempts the mining industry from 'cease to pump rules'.</p> <p>Murray Darling Basin Plan has enshrined the concept of the Triple Bottom Line in relation to impacts to water.</p> <p>Federal Legislation has been passed that protects water that is impacted by large coal mines or Coal Seam Gas.</p>	<p>The proposed SEPP does not exempt any development from any government requirements, including water licensing.</p> <p>The proposed SEPP should strengthen the existing Aquifer Interference Policy by giving the minimal impact standards statutory effect through the non-discretionary development standard provisions.</p> <p>This should in turn mean that it is more likely that mining companies would attempt to comply with the standards to then benefits from the provisions.</p> <p>Action: The proposed SEPP has been amended post-exhibition to require the Minister to review the standards if and when the relevant environmental policies are revised in future.</p>
OEH certification	<p>Various comments have been made about the OEH certification of biodiversity mitigation and offset measures including:</p>	<p>The proposed change is not intended to introduce an entirely new mandatory process of OEH certification.</p> <p>If however, the proponent has effectively engaged with OEH, and</p>

Summary of Issues raised in submissions on Mining SEPP amendments about Resource Significance – August 2013

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	<ul style="list-style-type: none"> • provisions should be binding and consent authority must adopt the advice • provision should be a non-discretionary standard • provision should also apply to the DG of DPI for aquatic threatened species • provision should not prevent the consent authority from requiring stricter biodiversity and offsetting measures • consent authority should be required to consult with OEH in regard to all mining developments – should be a mandatory consultation provision • reference to OEH is vague and does not clarify the context in which OEH certification may be provided • does not have safeguards to ensure that OEH can assess mitigation and offset biodiversity impacts against robust standards. <p>Submissions also commented that examples of biodiversity offsets for SSD mining proposals agreed by OEH:</p> <ul style="list-style-type: none"> • have been inadequate and have not avoided or minimised the impacts on threatened species and biodiversity • not mapped and cannot be easily identified by DP&I or OEH. 	<p>established a mitigation and offsets package that OEH supports, this is clearly a relevant matter the consent authority should take into account.</p> <p>A consent authority can still impose additional conditions to require additional measures to mitigate and offset biodiversity impacts.</p> <p>The provision can't be a non-discretionary development standard because it is not a "standard".</p> <p>The provision does not prevent a consent authority from requiring a stricter outcome from the development related to mitigating and offsetting biodiversity impacts.</p> <p>Expanding the provision to cover aquatic threatened species provisions (for the DG of DPI) might be appropriate.</p> <p>Action: The proposed SEPP has been amended post-exhibition to also refer to the Director General of the Department of Primary Industries for aquatic threatened species in relation to certifying that biodiversity mitigation and offsetting measures are adequate.</p>
Other issues		
<p>Clause 13 - land use compatibility clause for DAs for development near mines, quarries and petroleum production sites.</p>	<p>Concern about why clause 13 is being moved from Part 3 and renumbered as clause 18B in Part 4. There appears to be no justification given for this amendment.</p> <p>Some concerns raised that this reduces or changes the effect of clause 13, in relation to having regard to</p>	<p>The renumbering of clause 13 was purely administrative. The change was intended to make it clearer that Part 3 was about resource DAs. Clause 13 always applied to DAs near mines and quarries – so it was proposed to move it to a separate section of the SEPP.</p> <p>Action: The proposed SEPP has been amended post-exhibition to put clause 13 back in Part 3, as it doesn't alter the policy either way.</p>



New South Wales

PARLIAMENTARY COUNSEL

Opinion

Environmental Planning and Assessment Act 1979
Proposed State Environmental Planning Policy (Mining, Petroleum Production and
Extractive Industries) Amendment (Resource Significance) 2013

Your ref: Brendon Jenkins
Our ref: NH e2013-187-d12

In my opinion the attached draft environmental planning instrument may legally be made.

A handwritten signature in black ink, appearing to read 'D Colagiuri'.

(D COLAGIURI)
Parliamentary Counsel

3 September 2013



New South Wales

State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) Amendment (Resource Significance) 2013

under the

Environmental Planning and Assessment Act 1979

Her Excellency the Governor, with the advice of the Executive Council, has made the following State environmental planning policy under the *Environmental Planning and Assessment Act 1979*.

Minister for Planning and Infrastructure

State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) Amendment (Resource Significance) 2013

under the

Environmental Planning and Assessment Act 1979

1 Name of Policy

This Policy is *State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) Amendment (Resource Significance) 2013*.

2 Commencement

This Policy commences on the day on which it is published on the NSW legislation website.

3 Repeal of Policy

- (1) This Policy is repealed on the day following the day on which this Policy commences.
- (2) The repeal of this Policy does not, because of the operation of sections 5 (6) and 30 of the *Interpretation Act 1987*, affect any amendment made by this Policy.

Schedule 1 Amendment of State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007

[1] Clause 2 Aims of Policy

Insert after clause 2 (b):

- (b1) to promote the development of significant mineral resources, and

[2] Clauses 12AA and 12AB

Insert before clause 12 in Part 3:

12AA Significance of resource

- (1) In determining an application for consent for development for the purposes of mining, the consent authority must consider the significance of the resource that is the subject of the application, having regard to:
- (a) the economic benefits, both to the State and the region in which the development is proposed to be carried out, of developing the resource, and
 - (b) any advice by the Director-General of the Department of Trade and Investment, Regional Infrastructure and Services as to the relative significance of the resource in comparison with other mineral resources across the State.
- (2) The following matters are (without limitation) taken to be relevant for the purposes of subclause (1) (a):
- (a) employment generation,
 - (b) expenditure, including capital investment,
 - (c) the payment of royalties to the State.
- (3) The Director-General of the Department of Trade and Investment, Regional Infrastructure and Services is, in providing advice under subclause (1) (b), to have regard to such matters as that Director-General considers relevant, including (without limitation):
- (a) the size, quality and availability of the resource that is the subject of the application, and
 - (b) the proximity and access of the land to which the application relates to existing or proposed infrastructure, and
 - (c) the relationship of the resource to any existing mine, and
 - (d) whether other industries or projects are dependent on the development of the resource.
- (4) In determining whether to grant consent to the proposed development, the significance of the resource is to be the consent authority's principal consideration under this Part.
- (5) Accordingly, 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.
- (6) To avoid doubt, the obligations of a consent authority under this clause extend to any application to modify a development consent.

12AB Non-discretionary development standards for mining

- (1) The object of this clause is to identify development standards on particular matters relating to mining that, if complied with, prevents the consent authority from requiring more onerous standards for those matters (but that does not prevent the consent authority granting consent even though any such standard is not complied with).
- (2) The matters set out in this clause are identified as non-discretionary development standards for the purposes of section 79C (2) and (3) of the Act in relation to the carrying out of development for the purposes of mining.
Note. The development standards do not prevent a consent authority from imposing conditions to regulate project-related noise, air quality, blasting or ground vibration impacts that are not the subject of the development standards.
- (3) **Cumulative noise level**
The development does not result in a cumulative amenity noise level greater than the acceptable noise levels, as determined in accordance with Table 2.1 of the Industrial Noise Policy, for residences that are private dwellings.
- (4) **Cumulative air quality level**
The development does not result in a cumulative annual average level greater than 30 µg/m³ of PM₁₀ for private dwellings.
- (5) **Airblast overpressure**
Airblast overpressure caused by the development does not exceed:
 - (a) 120 dB (Lin Peak) at any time, and
 - (b) 115 dB (Lin Peak) for more than 5% of the total number of blasts over any period of 12 months,measured at any private dwelling or sensitive receiver.
- (6) **Ground vibration**
Ground vibration caused by the development does not exceed:
 - (a) 10 mm/sec (peak particle velocity) at any time, and
 - (b) 5 mm/sec (peak particle velocity) for more than 5% of the total number of blasts over any period of 12 months,measured at any private dwelling or sensitive receiver.
- (7) **Aquifer interference**
Any interference with an aquifer caused by the development does not exceed the respective water table, water pressure and water quality requirements specified for item 1 in columns 2, 3 and 4 of Table 1 of the Aquifer Interference Policy for each relevant water source listed in column 1 of that Table.
Note. The taking of water from all water sources must be authorised by way of licences or exemptions under the relevant water legislation.
- (8) The Minister is to review a non-discretionary development standard under this clause if a government policy on which the standard is based is changed.
- (9) In this clause:
Aquifer Interference Policy means the document entitled *NSW Aquifer Interference Policy* published by the NSW Office of Water, Department of Primary Industries and in force as at the commencement of this clause.

Industrial Noise Policy means the document entitled *NSW Industrial Noise Policy* published by the Environment Protection Authority and in force as at the commencement of this clause.

PM₁₀ means particulate matter less than 10 µm in aerodynamic equivalent diameter.

private dwelling means residential accommodation owned by a person other than a public authority or a company operating a mine.

sensitive receiver means a hospital, school classroom, child care centre or place of public worship.

[3] Clause 14 Natural resource management and environmental management

Insert after clause 14 (2):

- (3) Without limiting subclause (1), in determining a development application for development for the purposes of mining, the consent authority must consider any certification by the Chief Executive of the Office of Environment and Heritage or the Director-General of the Department of Primary Industries that measures to mitigate or offset the biodiversity impact of the proposed development will be adequate.

[4] Clause 20

Insert after clause 19:

20 SEPP to be reviewed by Minister

The Minister is to arrange for this Policy to be reviewed (and a report of the review made public) before the end of September 2015.