

9 July 2015

Director of Assessment Policy Systems &
Stakeholder Engagement,
Department of Planning and Environment
GPO Box 39, SYDNEY NSW 2001

Dear Director,

Subject: Submission - Department of Planning and Environment - Integrated Mining Policy - Improving mining regulation in NSW

Preamble

It is noted that the draft amendment to the State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) SEPP 2007 is also on exhibition from July 7 until 21 July 2015. Staff welcome the potential repeal of Clause 12AA of the SEPP to remove the economic significance of the resource as the principle consideration of the consent authority. Removal of Clause 12AA will provide for a more balanced framework for decision makers to assess the likely impacts of mining developments inclusive of the environmental and social benefits/disbenefits.

Community and stakeholder concern on the current SEPP are noted. Staff support the proposition to provide appropriate weighting of relevant social, environmental and economic impacts of the development by the Department of Planning and Environment or the Planning Assessment Commission.

The introduction of an Integrated Mining Policy which aims to improve coordination between government agencies and reduce costs and delays by unnecessary red tape is also welcomed. This is understood to be achieved by decreasing duplication between the key mining approvals being those of development approvals, mining leases and environmental protection licences. However, judicious and informed care needs to be taken in relation to any emphasis on economic outcomes over and above the environmental and social benefits of any mining proposal.

The attachments on exhibition consist of the following:

- Frequently asked questions;
- Integrated Mining Policy overview;
- Mine application guideline;
- Standard Secretary's Environmental Assessment Requirements (SEARs) for Coal Mining Projects (underground and open cut); and
- Swamp Offset policy – Biodiversity Offsets for upland swamps and associated threatened species

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Our Ref: F2007/01473-01 Your Ref:

N.B. The following comments were provided by staff prior to the public exhibition of the above amendment to the Mining SEPP. However, the comments made are to strengthen the proposed Policy changes, and more specifically the Integrated Mining Policy Guideline requirements for the Preliminary Environmental Assessment (PEA) and for an Environmental Impact statement (EIS).

General comments on the Standard Secretary's Environmental Assessment Requirements (SEARs)

With regard to the intentions of the Integrated Mining Policy to improve and streamlining of mining applications and assessment, there is concern that there is undue weight placed on the economic aspects of mining as opposed to the environmental impacts, impacts on other current and potential future land uses, and community health and wellbeing. The Frequently Asked Questions indicate that the Government intends to strike a balance between economic benefits of major projects and impacts on communities however, it is difficult to see how the package offered does this, or that the environment is adequately considered.

The preparation of standard Secretary's Environmental Assessment Requirements (SEARs) is supported.

The following issues should be included in these requirements:

- Risk and unforeseen environmental outcomes. What will be the procedure and response to unforeseen and unpredicted environmental outcomes? Provision of contingencies and bonds to cover such circumstances should be included;
- The cumulative impacts of the proposal when combined with other existing and planned developments particularly with regard to water, landscape connectivity and biodiversity;
- Impact on future land use particularly with regard to future uses and ability or inability to use land affected by mining for other uses after both surface and underground mining has occurred e.g., is the land going to be rendered unsuitable for urban development or other uses?;
- Commitments to follow through with measures proposed in the EIS;
- Estimated cost of rehabilitation and management of the land so that adequate bonds can be established to ensure these works happen;
- Human health impacts; and
- Contribution to global warming.

It is recommended that the General Requirements make it mandatory for the EIS to address all relevant issues raised by stakeholders particularly local government, and infrastructure and service providers rather than just "be informed by" these.

It is important in any streamlining or process review to maintain the integrity of the assessment process. In particular, that the DPE:

- independently assess all submissions made on State Significant developments internally and this task not be handed over to the applicant (as was the case with Part 3A assessments);
- independently contract expert advice and peer review of an EIS where necessary; and
- maintain control of the public consultation process.

Additionally, an assessment of the viability of mitigation measures in the event that a potential impact exceeds that predicted in the EIS. For example, the inaccessibility of land often prevents either satisfactory monitoring or remediation when an impact does occur. The ability to mitigate should be factored into decisions regarding the scale of works (i.e. allowable subsidence reduced where mitigation viability is low).

It is noted that the EIS makes allowance for a void to remain as part of the final landform. This is considered to be an unproductive and unnecessary outcome of the post mining process, and should not be canvassed as an appropriate means of rendering the land as a finished product.

The mining proposal needs to address the following:

- how it is intended to remediate the land post mining;
- include measures to recontour/shape the land; and
- provide details on the potential reuse of any voids as a component of any approval in order to address the sterilisation of land.

Where a void cannot be filled or recontoured based on measurable and established criteria, then alternate options need to be raised in the EIS as to how the void can be remediated and reused.

Specific comments on the Environmental Impact Assessment (EIS)

Air Quality

- The *Standard Secretary's Environmental Assessment Requirements* (SEARs), make reference to the *Approved Methods for the Modelling and Assessment of Air Pollutants in NSW* (Approved Methods, NSW EPA) for the preparation of an *Air Quality Impact Assessment* (AQIA). For clarity, it should be documented that a modelled exceedance of any designated air pollutant at a sensitive receptor shall be deemed unacceptable. Further to this point, it should be documented that all pollutant emission controls, as used in air quality modelling, shall be incorporated in conditions of consent for the project.

Biodiversity

- The EIS should include measures to avoid and mitigate impacts on biodiversity including landscape connectivity (rather than presume that it will be removed and can be offset);
- With respect to the future use of mine-affected areas, it is suggested that these should go through a rezoning process to ensure an objective view of the best use of the land;
- The Policy Framework for Biodiversity Offsets for Upland Swamps and Associated Threatened Species is supported; however, this needs to be prefaced by a preference to avoid impacts on upland swamps;
- It is recommended that this approach not be restricted to upland swamps. It should be extended to include impacts on all aspects of biodiversity, surface water (creeks and streams) and, in particular, all groundwater dependant ecosystems;
- Recent events of toxic groundwater discharges after mining pumping ceases, excessive subsidence of large areas of the Sugarloaf State Conservation Area

(now inaccessible to the public), and disappearance of permanent creeks as a result of underground mining, indicate that there needs to be ongoing monitoring, clear accountability, compensation and consequences for events that are not predicted or are more severe than predicted by the EIS;

- The ecosystems that the Policy seeks to cover need to be clearly defined; and
- A similar approach should be used to address other consequences of mining that are not predicted or are unexpected.

Chemicals, hazardous substances and dangerous goods

- The EIS must ensure that it is consistent with the requirements of SEPP 33 Hazardous and Offensive Development.

Flooding

Mining affecting any potentially flood prone land should consider the relevant Council's flood prone land policies and LEP/DCP requirements, as well as comply with the NSW Government's Flood Prone Land Policy as stated, contained in the NSW Government Floodplain Development Manual April 2005. Specifically, add three additional dot points under the first dot point "Describe flooding assessment and modelling..." :

- impacts of projected climate changes on flooding over the proposed asset life of the mine including 10%, 20% and 30% changes in rainfall intensities;
- impacts of projected sea level rise on flooding over the proposed life asset life of the mine; and
- impacts of mine subsidence on flooding and the effects of sea level rise.

Land and soils

- The EIS must address the requirements of Acid Sulphate Soils in accordance with the Acid Sulphate Soils Manual.

Subsidence (Underground mines only)

Add a new dot point to the section on "Justification must be supported..."

- "Include the effect of mine subsidence on flooding and tidal inundation, including consideration of projected climate changes and sea level rise"

Transportation

Clarification is sought between points 2 and 3 of the section dealing with the requirements of the EIS. Are they meant to be separate assessment processes or are they the same requirement?.

Social

Development of guidelines

It is recognised that the NSW Government is currently considering guidance options, addressing the social impacts of mining developments. However, in the absence of these guidelines the following is provided for consideration. Additionally as prefaced in the preamble, the repeal of Clause 12AA of the Mining SEPP will provide additional interrogation of the social and environmental aspects of mining proposals, so as to have equal weighting with economic considerations during assessment by the respective authority.

Criteria regarding the assessment of social impacts of a proposal should be strengthened. Currently, applications are required to address social and economic impacts

however, the proposals tend to focus mainly on the economic impacts (they identify the economic benefits that the proposal will bring. The social impacts are largely ignored, particularly regarding the long term impacts, especially when the mining operations are wound up.

Another point for consideration is the monitoring of the conditions. In speaking to some of the communities who are affected by mines, they report that there is no active monitoring of the mining operations. Concern has been raised that the EPA only responds if residents raise complaints or concerns, and the residents do not have the expertise or knowledge as to whether the mine is abiding by their conditions of consent.

Under all aspects of the EIS requirements where a dot point states “consider any relevant government policies” it is strongly recommend that the word “consider” is replaced by “ensure consistency with” any relevant government policies or words to that effect. The words “consider or should” indicate the requirement is not mandatory. Any requirement to consider another piece of Legislation, SEPP or guideline must be mandatory in its assessment against that Legislation, Policy or guideline.

Additional matters of concern:

Haulage levies for resource extractors

Although not a specific aspect of the Mining Policy under consideration, staff raise the issue of levying and compliance of haulage levies payable to Council under resource recovery approvals.

There appears to be a lack of data being kept on the materials extracted and hauled on roads by the respective departments of the State Government. It is understood that there may be a department that keeps total materials extracted however, this is treated as confidential commercial information. At a minimum, this information should be shared with Council, when Council needs to validate data for the collection of haulage levies.

In closing, Staff from Lake Macquarie Council thank the Department of Planning and Environment for the opportunity to comment on the Integrated Mining Policy provisions, and also note and support the proposed draft amendment to repeal Clause 12AA to the (Mining, Petroleum Production and Extractive Industries) SEPP 2007.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'Gabriele Calcagno', with a large, sweeping flourish underneath.

Gabriele Calcagno

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