

Our Reference: TRIM No.8465#6 MB:MB

21 August 2015

The Executive Director
Resources and Industry Policy
Department of Planning and Environment
GPO Box 39
Sydney NSW 2001

Dear Sir/Madam

RE: WOLLONDILLY COUNCIL COMMENTS ON “DRAFT PLANNING AGREEMENT GUIDELINES FOR STATE SIGNIFICANT MINING PROJECTS”

This letter is to provide Wollondilly Council's comments on the “Draft Planning Agreement Guidelines for State Significant Mining Projects” that was released recently as part of Stage 2 of the State Government's Integrated Mining Policy.

Background

Wollondilly Council is located on the south western fringes of the Sydney Metropolitan Area. It covers an area of 2,600 square kilometres, and has a population of approximately 45,000. Mining is a very important industry for the Wollondilly LGA. In 2015 approximately 460 people, representing 2.2% of the work force were employed in mining and associated industries. Wollondilly Council is also a strong supporter of the NSW Association of Mining Councils, of which the Mayor of Wollondilly, Cllr Colin Mitchell is the immediate past president.

Comments on Draft Guidelines

Wollondilly Council welcomes the development of these Guidelines. We consider that they will be very useful in assisting all parties to planning agreements (including Councils) to be better equipped to negotiate agreements that will deliver public benefits to local communities as an outcome of mining projects.

We do however have a number of comments, including suggestions for some additions to the Guidelines which will we believe will make the Guidelines even more useful:

Part A: Process for planning agreement negotiations for mining projects

- **Sections 1-3:** It is noted that these sections provide relevant background information;
- **Section 3:** One matter that would be very helpful is for the Guidelines to clarify the different ways in which conditions of consent and planning agreements can be used to provide infrastructure, as well as the ways in which they may overlap – ie the extent to which planning agreements can be used to reinforce conditions of consent, as well as for entirely separate purposes to procure infrastructure as a community benefit. Later sections of the Guidelines seem to suggest an overlap between conditions of consent and planning

- agreements which is true in some cases, but not all. It would be worth clarifying the role of planning agreements in relation to conditions of consent early in the Guidelines;
- *Section 4 – last pgh.* The idea of including a formula in a planning agreement for the sharing of impacts is interesting and could benefit from elaboration in the Guidelines. For example, can an Appendix be included that includes a formula and shows how it has been used in previous situations to promote the sharing of impacts. This would be very helpful for practitioners who need develop a formula for use in an Agreement;
 - *Section 4, Box 3* – It is not clear if these matters have been negotiated in planning agreements for mining developments, or if they apply to planning agreements more generally
 - *Section 5* - Can more details be included about the “Local Effects Analysis Methodology” including how it is used in VPAs, rather than EISs. Perhaps an Appendix could be included that shows how this methodology can be used in the context of negotiating a planning agreement, as this would be helpful to practitioners wishing to apply it to specific situations;
 - *Section 5 – Pge 7, pgh2.* The statement that the “*definition of public purpose under the EP&A Act is not limited*” is a little confusing as the term “public purpose” is limited by the definition under the Act, and which is included in Box 2 of the Guidelines;
 - *Section 5 – Pge 7,pghs 4 - 5.* The need for Council to understand the existing capacity of services and infrastructure is very important. Could a dot point be added to those in pgh 5 clarifying that Council may need to fund studies through the planning agreement to ensure that it has the required baseline data to determine the capacity of existing infrastructure
 - *Section 5 – pge 8* the top pgh again raises the issue of the relationship between conditions of consent, and planning agreements and sec 94 contributions. It should be made clear that that conditions of consent can be used to provide infrastructure directly required by the mining development, as is the case in other developments;
 - *Section 5 – pge 7 – infrastructure* - this section seems very brief for such an important topic;
 - *Pge 8 – Public Services and amenities* – A sentence could be added to the last line such as “ *and whether an allowance for on going maintenance of these services and amenities beyond the life of the mine should be provided for in the agreement*”
 - *Pge 8 – Studies and Strategic Planning* - Economic diversification planning is a very good suggestion. Please include studies to obtain information on capacity of existing services and infrastructure in this section and/or in Box 6 below
 - *Section 6- Monitoring and Reporting* - This section needs to clarify that provisions for monitoring and reporting of progress of the implementation of the Agreement should be included within the Agreement, as well as in the other reports that you have suggested. Reporting stages should be linked to the delivery of key pieces of infrastructure required by the Agreement.
 - *Section 7 – Mediation processes* – It might be worth stating that a mandatory requirement for a planning agreement under the Act is that it include provisions for dispute resolution

Part B – Guiding principles for planning agreement negotiations for mining projects

- *Pgh 1* – this is a bit confusing because the Sec 93F of the Act does identify matters that need to be included in the Planning Agreement. Perhaps the first sentence in pgh 1 could be qualified to make reference to refer to this;
- Principle 2, third dot point - Council does not agree that planning agreements shouldn't provide for infrastructure items that are included in a Section 94 Plan or a Section 94A Plan. These Plans identify Council's high priority infrastructure and there is no reason why a Planning Agreement should not be used to bring these items forward, particularly if the need for these pieces of infrastructure is exacerbated by the mining development. These plans are developed in consultation with the community and also reflect the community views about priorities for infrastructure. If a piece of infrastructure listed under a Section 94 or Section 94A plan is provided under a Planning Agreement, it is a relatively simple matter to amend the Section 94 or 94A Plan to remove any items so provided to ensure that other developers aren't paying for them as well.
- Principle 3 – first dot point - community strategic plans often feed down into other plans eg s94 further highlighting my above comment;

Other comments

It is considered that the Guidelines would benefit if some brief comments regarding the following matters could be included in relevant sections of the Guideline, and which would have implications for planning agreement being negotiated for mining developments:

- 1) Delivery Schedule - this needs to be made clear and should be enforceable, with the staging of the delivery of benefits clearly specified.
- 2) Review - Given the long life of some mining projects, the Agreement should however provide sufficient flexibility to allow alternative infrastructure to be included in the Agreement that might be required over the life of the mine should this come to light;
- 3) Offsets of Sec 94 or Sec 94A Contributions: Under the Act, one of the mandatory inclusions is whether or not any payments under Section 94 or Section 94A of the Act are to be excluded or taken into account as a result of benefits provided under the agreement. It is not appropriate to offset Section 94 or 94A payments if the benefits being provided under the Agreement are to provide infrastructure to mitigate impacts directly associated with the mine, as these are matters that should be addressed as conditions of consent. Offsets of Section 94 or Section 94A contributions should only occur when infrastructure with a real community benefit is being provided.
- 4) Security: Recent Court decisions have highlighted the need for Planning Agreements to ensure that appropriate levels of security are provided. The importance of this matter should be recognised in the Guidelines
- 5) Valuing benefits over the life of the Mine: An issue that needs to be recognised in the guidelines is the changing cost of infrastructure to be provided over the life of the mine. There needs to be a provision for reviewing the costs of the benefits being provided;
- 6) Other Matters: the issue of probity is not well covered by the Guidelines. Planning Agreements can be perceived by the community as a developer “:buying” a development

consent in exchange for the benefits provided under a Planning Agreement. As mining developments can be controversial there is a potential that people could focus on this perception of a planning agreement. The Guidelines should recognise this and include a section advising all parties to act with due diligence and proper attention to probity when negotiating a planning agreement. The option to appoint a Probity Advisor in some circumstances could also be mentioned;

- 7) Audit guidelines – The Department has also prepared a set of Audit Guidelines as part of Stage 2 of the Integrated Mining Policy. It would strengthen the Planning Agreement regime if a development's compliance with any Planning Agreement requirement is included as a matter that should be audited. Wollondilly Council requests that this matter be included in the Audit Guidelines.

Wollondilly Council trusts that the matters identified in this letter will be given appropriate consideration as the guidelines are completed. Should you wish to discuss this letter, please contact Martin Beveridge (Co-ordinator, Developer Contributions Planning) on 4677 8320.

Yours faithfully



Martin Beveridge
Co-ordinator, Developer Contributions Planning