

Our ref: R11/0033 Out-21793

16 August 2013

Mr Sam Haddad
Director General
Department of Planning and Infrastructure
GPO Box 39
SYDNEY NSW 2001

Attn: Director, Policy Systems and Procedures, Development Assessment Systems and Approvals

Dear Mr Haddad

Amendments to Mining SEPP – Resource Significance

Thank you for the opportunity to provide feedback on the latest draft amendments to the State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007, (the Mining SEPP). We note that the amendments currently on exhibition are referred to as Mining SEPP Amendment (Resource Significance) 2013.

In relation to the proposed changes, the following matters are of concern to Local Government NSW (LGNSW):

- The proposed elevation of the 'Significance of the Resource' as a principal consideration ahead of all other factors;
- The unnecessary addition of an Aim of the Policy "to promote the development of significant mineral resources";
- The restriction placed on decision makers to refuse projects if non-discretionary standards for mining have been satisfied; and
- The short exhibition period (2 weeks).

Our specific concerns are discussed below.

1. Local and Regional Impacts

Local Government wishes to ensure that the expansion of new mines into what have been traditionally 'agricultural' and 'tourist' areas does not undermine existing local investment in a broad-based economy. The assessment of new mining applications therefore should not only measure the economic benefit offered by the specific development proposal, but should also take into account the overall economic and long term sustainability of a diverse local and regional economy.

The proposal to elevate the significance of the mining resource to be the "principal" consideration would fundamentally shift the balance in favour of mining proponents by mandating that proposals be assessed primarily on the value of the economic benefits of exploiting the mining resource. While the economic benefits of mining proposals to the State are an important consideration, we maintain that environmental and social considerations

should be given equal weight when assessing mining development. LGNSW also questions the proposed imposition of non-discretionary development standards. It is unclear how these development standards would relate to other factors that a consent authority is required to take into account under section 79C of the EP&A Act.

2. Triple Bottom Line Assessments and Balancing Competing Land Uses

LGNSW strongly advocates that mining proposals are comprehensively assessed and are subject to rigorous scrutiny based on triple bottom line (social, economic and environmental) principles. Achieving a balance between competing land uses and the needs of different industries and communities was indeed an underlying premise of the Government's Strategic Regional Land Use Plans (SRLUPs).

As discussed above, the economic weighting that would be given to mining resources as a result of the proposed amendments will result in an unbalanced approach to the assessment of mining proposals. We believe this is inconsistent with the Government's previously stated triple bottom line approach to assessing mining proposals.

3. Ecologically Sustainable Development

The proposed amendment is inconsistent with the principle of Ecologically Sustainable Development (ESD), which is expressly stated as one of the existing Aims of the Mining SEPP (sub-clause 2(c)). By making the economic benefits the principal consideration above other factors, the proposed amendments contravene the existing Policy Aim expressed under subclause 2(c) of the Mining SEPP.

4. Inconsistent with the Objects of the EP&A Act

By placing greater emphasis on the economic significance of a resource and limiting the discretionary power of consent authorities in relation to environmental matters, the proposed amendments are also considered to be inconsistent with Objects (i), (vi) and (vii) of the EP&A Act.

The Mining SEPP is subordinate to the Act, and therefore it should not override the Objects of the Act.

5. Certification by Office of Environment and Heritage

LGNSW is supportive of the proposal to require decision makers to consider any advice from the Office of Environment and Heritage (OEH) about the adequacy of the proposal to mitigate or offset impacts on biodiversity. However, we consider the terms used in the proposed new clause 14(2) to be unclear and inconsistent with the intent to 'elevate the importance of the Office of Environment and Heritage in the assessment process' (as referred to in the Frequently Asked Questions).

6. Consultation Timeframe

We would like to relay our disappointment with the inadequacy of the consultation timeframe allowed yet again for public comment on this draft amendment. We have written to the Department previously on this matter (refer to our letter dated 23 April, ref R11/0033 Out-21439). The two weeks allowed for public comment falls well short of the 28 day minimum promised in the *White Paper* for public exhibition of draft plans. It is considered totally inadequate for councils' internal consultation, let alone to enable them to consult with their communities.

Conclusion

LGNSW does not believe there is any justification for the proposed amendments to the Mining SEPP.

LGNSW is firmly of the view that the triple bottom line approach to assessment of development proposals must be maintained. Specifically, the "significance of the resource" should not be assigned "principal consideration", therefore the proposed the new clause 12AA (3) should be deleted. Further, we request a briefing from senior managers at the Department as soon as practicable to clarify the background, purpose and context of the proposed changes.

Should you wish to contact LGNSW, Mr Shaun McBride (phone 9242 4072; email shaun.mcbride@lgnsw.org.au; or Ms Jane Partridge (phone 9242 4093; email jane.partridge@lgsa.org.au) are available to discuss this matter with your staff.

Yours sincerely



Noel Baum
Director – Policy