



Nature Conservation Council

The voice for nature in NSW

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

7 September 2015

Submission – Integrated Mining Policy – Stage 2

Dear Sir/Madam,

The Nature Conservation Council of New South Wales (NCC) is the state's peak environment organisation. We represent more than 150 environment groups across NSW. Our members have a strong interest in planning and development issues, and are strongly committed to securing positive environmental outcomes in their local area and across the State.

INTRODUCTION

We welcome the opportunity to comment on Stage 2 of the Integrated Mining Policy, which comprises the following documents:

- Planning Agreement Guideline
- Post Approval Guideline – Annual Review
- Post Approval Guideline – Web-based Reporting
- Post Approval Guideline – Independent Audits
- Water Policy and Regulation (summary document)

Our more detailed comments on each of these documents are set out below.

We generally welcome the Government's efforts to improve mining regulation in NSW. The material released as part of Stage 2 of the Integrated Mining Policy will provide important guidance to proponents and the community, including in relation to post-approval reporting and auditing processes, and will improve transparency and consistency in relation to these processes.

While we generally welcome the Government's efforts in this area, we note that:

- The Integrated Mining Policy comprises guidelines and policies only, which are not mandatory or enforceable. In order to see real improvements in mining regulation across the State consideration should be given to making key components of the Integrated Mining Policy mandatory and enforceable.

- We continue to have significant concerns with aspects of Stage 1 of the Integrated Mining Policy, in particular the Swamp Offset Policy. Our concerns are outlined in detail in our submission to Stage 1¹.
- The Integrated Mining Policy does not address key issues that NCC has identified as critical for restoring balance in the mining application and assessment process. In response to Stage 1 of the Integrated Mining Policy we identified a number of key issues that we consider need to be addressed in order to restore balance in the mining application and assessment process. These issues are outlined again in Attachment 1 of this submission (noting that we welcome the Government's recent decision to repeal clause 12AA of the Mining SEPP).

COMMENTS ON STAGE 2 – INTEGRATED MINING POLICY

Planning Agreement Guideline

- We generally support the Planning Agreement Guideline as a mechanism for providing greater clarification and transparency around the planning agreement process.
- We suggest that the Guideline could provide more detailed information on how planning agreements could achieve the 'conservation or enhancement of the natural environment' (s93F(2)(f) EPA Act).

Post Approval Guideline – Annual Review

We generally support the Post-Approval Guideline – Annual Review, and provide the following additional comments:

- It would be useful to clarify whether the reporting period is a calendar year from the date of consent or normal calendar year (January - December).
- The Guidelines should clearly require reporting on Management Plans including both:
 - The status of Plans of Management required by the consent; and
 - Whether outcomes identified in the Plans of Management have been achieved.

This is important as many environmental and social matters are dealt with in plans of management, rather than directly in the consent. These requirements could be incorporated into Section 6 of the Guideline.

- We note that the footnote on page 7 of the Post Approval Guideline – Annual Review provides that the operator should consider any relevant reporting requirements under the *NSW Biodiversity Offsets Policy for Major Projects*, however, the annual reporting requirements under that policy are not clear. Further consideration should be given to providing further guidance on reporting requirements for biodiversity offsetting.

¹ NCC Submission – Integrated Mining Policy – Stage 1, available at www.nature.org.au/media/172055/150709-ncc-submission-integrated-mining-policy-stage-1.pdf

- The Guideline requires operators to indicate compliance status against relevant approval conditions. We note that this is a self-reporting requirement, as opposed to an official compliance assessment undertaken by the relevant regulatory agency. This should be made clear within the Annual Review.
- Annual Reviews should identify any planned or assessed modifications to the proposal.

Post Approval Guideline – Web-based Reporting

We generally support the Post-Approval Guidelines - Web based Reporting, and provide the following additional comments:

- The document should make it clear that Plans of Management developed in accordance with the consent should be made available online (e.g. 'supporting documents' and 'associated documentation' on page 3).
- Assessment reports for development applications should be provided in reasonable size for download (e.g. image size reduced, broken down into segments).
- All assessment documents should be archived and maintained on the proponent's website.
- Consideration should be given as to how environmental assessment information will be incorporated into a central data repository for all environmental data (as recommended by the Chief Scientist).

Post Approval Guideline – Independent Audits

We generally support the Post-Approval Guidelines – Independent Audits, and provide the following additional comments:

- We note that the guidelines provide clear criteria for the selection and approval of the audit team, however it is our view that the audit process would be more independent and transparent if auditors were appointed directly by the lead regulator (rather than being put forward by the operator). This could be done by having a register of accredited auditors which are drawn on to allocate auditors to a project on a case by case basis. This would reduce potential bias and conflict of interest.
- Community consultation should not be limited to the Chair of the relevant Community Consultative Council (p 8). Auditors should be encouraged to consult more broadly, for example with any relevant local community organisation in impacted communities, particularly in relation to monitoring (e.g. Progress Association etc.).

Water Policy and Regulation (summary document)

We note that the Water Policy and Regulation document is intended to provide an overview of the current water and regulatory and policy framework applying to mining and petroleum developments in NSW. We generally support the document and make the following comments:

- It is not clear on the face of the document that this is a summary of existing information rather than new policy – perhaps the title could better reflect that (e.g. use the terminology ‘overview’ or ‘fact sheet’).
- It would be useful to clearly identify where in the process cumulative impacts (on water source integrity, water quantity and flows, and water quality) need to be considered.
- It would be useful to include hyperlinks as much as possible throughout the document, to allow users to click directly through for additional information (e.g. legislation, policies and agency home pages).
- There are some obvious formatting issues that need to be resolved in the final document (e.g. alignment of text in tables). Additionally, the information in the document is dense and complicated – it may be useful to consider whether the layout and design of the document can be improved to make it more user-friendly.

We also make the following comments in relation to the **Frequently Asked Questions** document that was released as part of Stage 2 – Integrated Mining Policy:

- There is no public information on the status of the Guidelines for Economic Assessment, which were flagged during Stage 1 for release as part of Stage 2.
- The FAQs anticipate that when the Integrated Mining Policy is finalised the Department will consult with affected parties on the transition process. This should include relevant Community Consultative Committees.

If you require any additional information in relation to our submission, please do not hesitate to contact Cerin Loane, Policy and Research Coordinator, on (02) 9516 1488.

Yours sincerely,



Kate Smolski
Chief Executive Officer

APPENDIX 1 - Key Issues for restoring balance in the mining application and assessment process

Below are a number of key issues that we consider need to be addressed in order to restore balance in the mining application and assessment process:

1. **Introduce no-go zones to protect special natural areas and high conservation areas, drinking water catchments, prime farmlands and residential areas:** for example by prohibiting coal and coal seam gas exploration and mining in these areas.
2. **Strengthen SRLUP 'gateway' and protect high conservation value lands:** The *Environmental Planning and Assessment Amendment (Gateway Process for Strategic Agricultural Land) Regulation 2013* amended the *Environmental Planning and Assessment Act 1979 (EPA Act)* and the *Environmental Planning and Assessment Regulation 2000* to establish a gateway process for mining and petroleum development on strategic agricultural lands. The Gateway Process allows for additional scientific scrutiny, but it does not afford definitive protection to important mapped agricultural and high conservation lands and has significant shortcomings.
3. **Introduce changes to improve the integrity of environmental impact statements:** There is significant community concern regarding the integrity of environmental impact statements. The Government's *NSW Planning System Review Green Paper* proposed that consultants that provide Environmental Impact Statements should be chosen from an accredited panel, and required to meet certain standards regarding the impartiality and quality of their work. We believe the most effective way of ensuring the integrity of environmental impact assessments is to break the nexus between the developer and the environmental consultant. So long as developers continue to directly pay the consultants there is the risk of bias, undue influence and unethical practices.
4. **Introduce clear guidelines for the assessment of impacts:** We note that the Government is proposing to introduce Guidelines for the Economic Assessment of Mining and Coal Seam Gas Proposals as part of stage 2 of the integrated Mining Policy. We recommend that the Government also introduce robust assessment guidelines for other key matters including social impact assessment, health impacts and assessment of cumulative impacts.
5. **Restore environmental approvals for State significant development:** Broadly speaking State significant development has the most significant environmental impacts, and proposals with the greatest impact should be subject to the greatest scrutiny. Sections 89J and s89K of the EPA Act override requirements to obtain environmental approvals under environmental legislation. In doing so, the assessment of development impacts may not be subject to the same level of scrutiny as intended by environmental legislation, including via oversight from the relevant agency,
6. **Repeal clauses 12AA and 12 AB of the Mining SEPP:** Changes made to the *State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007* in 2013 have been strongly opposed by the community because they put industry

interests ahead of local communities and the environment by requiring decision makers to give even more weight to economic considerations over impacts on air, water and existing industries. We welcome the Government's announcement on 7 July 2015 that it will amend the Mining SEPP to remove clause 12AA which makes the significance of the resource "the principal consideration" when determining mining projects. NCC strongly supports the proposed amendment and also submits that clause 12AB be repealed so that development standards are replaced by binding standards for air, water, noise and vibration that are robust, enforceable, and fair to neighbouring residents and land uses.

7. **Strengthen the NSW Biodiversity Offsets Policy for Major Projects:** The NSW Biodiversity Off set Policy for Major Projects does not meet best practice and fails to adequately protect biodiversity. In particular the conservation of biodiversity is not one of the key objectives of the policy; the policy fails to identify and protect 'red flag' areas including areas of high conservation value; 'like for like' offsetting requirements have been weakened; there are multiple pathways to offsetting, including supplementary measures and mine site rehabilitation.
8. **Review Voluntary Land Acquisition and Mitigation Policy:** While the Voluntary Land Acquisition and Mitigation Policy attempts to provide a solution for potential land use conflicts, it is premised on the assumption that mining and exploration activities should be allowed to go ahead, despite impacts on communities, and that any impacts can be adequately compensated. For example, it provides that consent authorities may decide it is in the public interest to allow the development to proceed, even though there would be exceedances of the relevant assessment criteria, because of assumed social and economic benefits of the development.
9. **Create a clear, objective decision making framework for decision makers:** Discretionary decision-making has contributed to the community losing confidence in the planning system. An objective decision-making framework would afford better environmental protection, reduce the risk of corruption and substantially improve the legitimacy of the planning system. On this point, we note Recommendation 1 of the Independent Commission Against Corruption that the NSW Government ensures that discretionary planning decisions are made subject to mandated sets of criteria that are robust and objective². Methodologies to support objective decision making can be streamlined through using of information technology and ePlanning processes³.
10. **Remove the restrictions on third party merit appeal rights following a PAC public hearing:** Existing restrictions on third party merit appeal rights following a PAC public hearing override judicial oversight of planning decisions, and reduce the transparency and accountability of decisions of the Planning Assessment Commission. We strongly urge the

² Independent Commission Against Corruption, *Anti-corruption safeguards and the NSW planning system* (2012), p 6.

³ We note that both BASIX and the NorBE Tool under the State Environmental Planning Policy (Sydney Drinking water Catchment) 2011 utilise online tools.

Government to remove the restrictions to third party merits appeals by repealing sections s23F and s98(5) of the EPA Act.

We acknowledge that many of these matters would require legislative change and are not within the current the scope of the Integrated Mining Policy. However, we urge the Department and Government to recognise that the community distrusts the integrity of the mining application and assessment process, and believes that reform is needed to bring balance, transparency and accountability to the system.