

Mr Gordon Kirkby
Chair – Warkworth and Mt Thorley Determinations
Planning Assessment Commission
GPO Box 3415
SYDNEY NSW 2001

Dear Mr Kirkby

Mt Thorley Continuation Project (SSD 6465)
Additional Information – Statutory considerations

On 7 July 2015, the Minister for Planning released the Draft *State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) Amendment (Significance of Resource) 2015* (Draft Mining SEPP Amendment) for public consultation for a period of 14 days. The Minister for Planning will consider submissions received from the public before determining whether to recommend to the Governor that Draft Mining SEPP Amendment be made.

The draft instrument is attached for the Planning Assessment Commission's (PAC's) information.

The Draft Mining SEPP Amendment, if made, would repeal clause 12AA of the Mining SEPP. Clause 12AA requires, amongst other things, a consent authority to consider the significance of the resource when determining an application for the purposes of mining, and to make resource significance the consent authority's principal consideration under Part 3 of the Mining SEPP when determining whether or not to grant consent to the development.

Part 3 of the Mining SEPP outlines a range of other matters that a consent authority must also consider when determining an application for mining-related development. These matters include:

- a number of non-discretionary standards in relation to noise, air quality, vibration and aquifer interference (clause 12AB);
- compatibility with other land uses (clause 12);
- the government's voluntary land acquisition and mitigation policy (clause 12A);
- other mining-related land uses (clause 13);
- natural resources and environmental management (clause 14);
- resource recovery (clause 15);
- transport (clause 16); and
- rehabilitation (clause 17).

As set out above clause 12AA requires that the consideration of resource significance is the principal consideration when considering these matters. However, this consideration is only one consideration under one part of one environmental planning instrument, and does not absolve a consent authority from the requirement to take into account other considerations under the *Environmental Planning and Assessment Act 1979* (EP&A Act), including Section 79C and the objects of the EP&A Act.

Objects of the Act

The Minister for Planning or his delegate must consider the objects of the EP&A Act when making decisions under the Act. The objects of most relevance to the Minister's decision on whether or not to approve the project are found in Section 5(a)(i),(ii),(vi) and (vii). They are:

To encourage:

- (i) the proper management, development and conservation of natural and artificial resources, including agricultural land, natural areas, forests, minerals, water, cities, towns and villages for the purpose of promoting the social and economic welfare of the community and a better environment;*
- (ii) the promotion and co-ordination of the orderly and economic use and development of land;*
- (vi) the protection of the environment, including the protection and conservation of native animals and plants, including threatened species, populations and ecological communities, and their habitats; and*
- (vii) ecologically sustainable development.*

Section 79C

Section 79C of the EP&A Act requires a consent authority to consider a number of matters when determining development applications. These matters can be summarised as:

- the provisions of environmental planning instruments (including draft instruments), development control plans, planning agreements, the *Environmental Planning and Assessment Regulation 2000* (EP&A Regulations);
- the likely impacts of the development (including environmental impacts on both the natural and built environments, and social and economic impacts in the locality);
- the suitability of the site;
- any submissions; and
- the public interest.

Accordingly, the consent authority is required to consider the Draft Mining SEPP Amendment when determining the development application for the Mt Thorley Continuation Project.

Should the Draft Mining SEPP Amendment be made before the application is determined, or if it remains a draft instrument in the terms of section 79C at the time the application is determined the significance of the resource and the economic benefits of mining-related development remain relevant considerations under the aims of the Mining SEPP, and under the objects and Section 79C of the EP&A Act.

Mining SEPP

The aims of the Mining SEPP make it clear that the NSW Government recognises the economic and social benefits of mining to the State as a whole, and the importance of properly developing significant mineral resources to realise these benefits.

For example, clause 2 of the Mining SEPP includes the following aims of the policy:

The aims of this Policy are, in recognition of the importance to New South Wales of mining, petroleum production and extractive industries:

- (a) to provide for the proper management and development of mineral, petroleum and extractive material resources for the purpose of promoting the social and economic welfare of the State, and*
- (b) to facilitate the orderly and economic use and development of land containing mineral, petroleum and extractive material resources, and*
- (b1) to promote the development of significant mineral resources, and*

- (c) *to establish appropriate planning controls to encourage ecologically sustainable development through the environmental assessment, and sustainable management, of development of mineral, petroleum and extractive material resources.*

The Department has taken into account of the objects of the EP&A Act, section 79C of the EP&A Act and the aims of the Mining SEPP in this assessment.

Consideration

The Department set out its specific consideration of the Mining SEPP, Section 79C and the objects of the EP&A Act in its response to the PAC on 26 June 2015.

The Department has now considered the Draft Mining SEPP Amendment in relation to the project. The difference between the Draft Mining SEPP Amendment and the Mining SEPP in its current form relates to the removal of clause 12AA which goes to the relative importance a consent authority must give to the significance of the resource.

Accordingly, if the Draft Mining SEPP Amendment is made before the application is determined, or Draft Mining SEPP Amendment remains a draft instrument in the terms of section 79C when a determination is made on the application, the consent authority will still be required to take into account the significance of the resource, and any social and economic benefits for the region and the State as a whole arising from the resource extraction, but should not make the significance of the resource the principal consideration as compared with other considerations in the Mining SEPP.

With this in mind, the Department considers it appropriate, in drawing the PAC's attention to the Draft Mining SEPP Amendment, to confirm that the Department's consideration of resource significance in its assessment of the project has not overridden or excluded other considerations under the Mining SEPP or the EP&A Act, including the objects of the Act and the matters listed in section 79C of the EP&A Act.

The Department considers that the Draft Mining SEPP Amendment does not change the conclusions of the Department's assessment or its recommended conditions, and would not change the conclusions of the Department's assessment or its recommended conditions if the Draft Mining SEPP Amendment was made before the application was determined.

In particular, the Department remains of the view that the project is consistent with the aims of the Mining SEPP and that the extraction of the resource would result in a number of substantial social and economic benefits for the region and the State as a whole. This is so even if the significance of the resource is not the consent authority's principal consideration under the Mining SEPP.

While the extraction of the remaining coal resource at Mt Thorley (about 30 million tonnes) would not be significant in absolute or relative terms, the Department is of the view that the resource can be considered to be significant as:

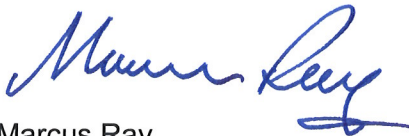
- it would provide essential support to the Warkworth Continuation Project by:
 - allowing up to 10 million tonnes of coal a year to be washed at the Mt Thorley coal preparation plant;
 - providing space for dumping overburden, tailings and coal rejects generated by the Warkworth mining operations; and
 - providing a range of supporting infrastructure, such as the roads and conveyors that currently link the Warkworth mine to the Mt Thorley Coal Loader; and
- it would, together with the related Warkworth Continuation Project:
 - extract some 260 million tonnes of coal for the energy and steel making industries (with about 30 million tonnes from the Mt Thorley mine);

- facilitate the continued employment of about 1,300 people across the mine complex (with about 120 at Mt Thorley);
- involve a direct capital investment of about \$720 million in the mine complex (including about \$4 million at Mt Thorley);
- generate approximately \$617 million in royalties for the NSW government (including about \$50 million from Mt Thorley); and
- generate a net benefit of around \$1.5 billion to NSW (based on the cost benefit analysis for the projects).

When balancing these matters against the other considerations for the project, and in the context of the Department's assessment of the project as a whole, and now having taken the Draft Mining SEPP Amendment into account, the Department remains satisfied that the assessed benefits of the Mt Thorley Continuation Project outweigh its assessed impacts and costs, and that the project is in the public interest and should be approved, subject to the conditions which the Department has provided to the PAC previously.

If you have any further queries about this matter, please contact Mike Young, Director Resource Assessments, on (02) 9228 2091.

Yours sincerely



Marcus Ray
Deputy Secretary
Planning Services

07/07/2015



New South Wales

State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) Amendment (Significance of Resource) 2015

under the

Environmental Planning and Assessment Act 1979

[If this State environmental planning policy is made, the following enacting formula will be used:]

His 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

Public consultation draft

State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) Amendment (Significance of Resource) 2015 [NSW]

State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) Amendment (Significance of Resource) 2015

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 (Significance of Resource) 2015*.

2 Commencement

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

3 Repeal of clause 12AA of State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007

Clause 12AA of *State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007* is repealed.

4 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 a repeal made by this Policy.