

○ *Review Report September 2015*

***Review of the
State Environmental
Planning Policy
(Mining, Petroleum
Production and
Extractive
Industries) 2007***



Planning &
Environment

Table of Contents

1. Introduction	3
2. The review process	4
The importance of strategic planning	4
The operation of clause 12AA	5
Other key issues	5
3. Review outcomes	6
Repeal of clause 12AA	6
Requirement to consider state-wide impacts of a project	6
4. The whole-of-government reform context	7
Government's response to ICAC Inquiry recommendations	7
NSW Government Gas Plan	7
Integrated Mining Policy	8
Streamlining of State Environmental Planning Policies	8
5. Next steps	9

1. Introduction

The Department of Planning and Environment (DP&E) has undertaken a review of the *State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007*, commonly referred to as the Mining SEPP.

The Mining SEPP is an environmental planning instrument under Part 3 of the *Environmental Planning and Assessment Act 1979*, which provides a policy framework to govern the assessment and development of the State's mineral and energy resources through the planning system. It serves as a tool to regulate the permissibility of mining, petroleum production and extractive industries across the state and provides consent authorities with a framework of matters that must be considered in the assessment process. This includes issues such as considering the impact of a development on existing land uses and whether environmental impacts and biodiversity offsets have been adequately addressed.

It is this framework that seeks to ensure not only that the consent authority addresses all matters relevant to a proposed development, but which also seeks to address land use conflicts and ensure a more balanced assessment of a proposed development.

The policy aims of the Mining SEPP are to:

1. 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;
2. facilitate the orderly and economic use and development of land containing mineral, petroleum and extractive material resources;
3. promote the development of significant mineral resources;
4. 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; and
5. establish a gateway assessment process for certain mining and petroleum (oil and gas) development to:
 - i. recognise the importance of agricultural resources;
 - ii. ensure protection of strategic agricultural land and water resources;
 - iii. ensure a balanced use of land by potentially competing industries; and
 - iv. provide for the sustainable growth of mining, petroleum and agricultural industries.

2. The review process

In conducting its review, DP&E has taken into consideration a number of issues raised by stakeholders. These views were gathered through submissions and consultation with key representative bodies for industry, community and environmental interests. The discussion held with peak bodies were broad and focused on the policy aims and operation of the SEPP.

Peak stakeholder groups consulted include:

- NSW Farmers Association
- NSW Minerals Council
- Australian Petroleum Production & Exploration Association
- Cements Concretes and Aggregates Australia
- Nature Conservation Council
- Total Environment Centre
- Lock the Gate
- Environment Defenders Office

Through this consultation process a number of issues associated with the planning and assessment process were raised including strategic planning, what matters the consent authority should have regard to, third-party merit appeals, biodiversity offsets and the assessment of cumulative impacts.

The importance of strategic planning

The decision-making process around mining and petroleum development has been the focus of considerable community attention. The use of land for mining and petroleum development in certain strategically significant areas, or areas where there is a significant population base or a well-established and productive agricultural industry, has been a polarising issue in communities.

A number of changes to the Mining SEPP over recent years have focused on resolving these conflicts, including by introducing exclusion zones, preliminary assessment processes and independent oversight of development assessments.

The review of the Mining SEPP has again highlighted to Government the need to consider other methods for resolving or avoiding land use conflict. This includes the potential to undertake more rigorous up-front strategic planning to resolve conflicts before a development application has been lodged.

DP&E is currently developing a series of strategic spatial plans, called regional plans, which will be released for public comment.

While these plans won't resolve land use conflicts, they will provide a foundation for further work. In the development of the regional plans for regions where mining activities are undertaken or proposed, the economic, social and environmental impacts of mining will be considered.

The operation of clause 12AA

Clause 12AA directs the consent authority to consider the relative significance of the resource. This includes considering the economic benefits of developing the resource, both to the State and the region in which the development is proposed to be carried out. Clause 12AA also makes the significance of the resource the principal consideration of the consent authority under the Mining SEPP.

A key foundation of the NSW planning system is that every development application is assessed on its merits. This includes a balanced assessment of the likely impacts of that development, including economic, environmental and social, impacts, consideration of the principles of ecologically sustainable development, and whether an application is in the public interest. These requirements are contained within sections 5 and 79C of the *Environmental Planning and Assessment Act 1979*.

Despite this, community and environment groups have raised concerns that clause 12AA results in economic factors being given greater weight over other considerations in the assessment process.

Other key issues

In addition to issues raised in relation to clause 12AA, a number of other issues were raised concerning different aspects of the assessment process. These included the operation of the Gateway process, non-discretionary development standards, biodiversity offsets, appeal rights, exclusion zones, triple bottom line assessments, water sharing plans, cumulative impact assessments, economic assessments and the consideration of indirect costs.

Many of these issues are either outside of the scope of the Mining SEPP or are best considered in a whole-of-government approach to mining proposals and developments.

Government is currently considering feedback received on these issues within the context of the broader reform context including the implementation of the NSW Gas Plan, the Government's implementation of ICAC's recommendations in relation to the management of coal resources and the release of the Integrated Mining Policy. Collectively, these policy initiatives address issues associated with establishing a robust assessment process that is positioned within a more strategic framework for deciding where, when and how exploration should occur.

3. Review outcomes

In response to stakeholder feedback, the NSW Government has decided to make an immediate amendment to the Mining SEPP and the mining assessment process. These changes are outlined below.

Repeal of clause 12AA

The Government has decided to amend the Mining SEPP to remove clause 12AA.

A draft Mining SEPP amendment proposing to remove clause 12AA was placed on public exhibition from 7 July 2015 to 21 July 2015. More than 2,400 submissions were received. Ninety-eight per cent of submissions (mostly from councils, representative groups and individuals) supported the removal of this clause.

In supporting the reform, stakeholders noted that the removal of clause 12AA:

- was seen as an important step in restoring balance to the mining assessment process and ensuring environmental and social impacts would be fully and properly considered; and
- provided greater community confidence that the economic benefits of a project would not outweigh the consideration of other impacts.

Requirement to consider state-wide impacts of a project

A number of submissions raised concerns that the removal of clause 12AA would mean the consent authority is not required to consider the state and regional-level economic benefits of a project. This is because under section 79C, the consent authority is only required to consider “the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality” (s79C(1)(b)).

However, it is standard practice for the state and regional economic impacts of mining to be considered under the assessment process, especially for projects declared to be State significant.

Accordingly, when the Minister refers mining projects to the Planning Assessment Commission, the terms of reference will specifically direct the Commission to consider the regional and state-wide economic, environmental and social impacts of a proposed development.

4. The whole-of-government reform context

A number of policy changes have been implemented across Government that are relevant to the review of the Mining SEPP. For example stronger compliance and enforcement measures have been implemented, including new standard conditions that will apply to many projects, stronger penalties and fines have been introduced, and a fairer, more transparent approach to the allocation of coal exploration licences is being developed.

These reforms, like those proposed as part of the Mining SEPP review, are designed to improve the assessment and regulation of these activities. This will assist in building community confidence in the mining and petroleum sector and in turn build investment certainty. The Mining SEPP review needs to be considered within the broader reform context.

Government's response to ICAC Inquiry recommendations

As part of the Government's response to the Independent Commission Against Corruption (ICAC) Inquiry into the allocation and release of potential coal resources across the State, the Government committed to developing a new allocation framework for coal exploration licences, which will include consideration of environmental, economic and social factors before releasing areas for exploration. A Strategic Release Framework is also being developed for petroleum as outlined in the NSW Gas Plan.

NSW Government Gas Plan

In September 2014, the Chief Scientist and Engineer, Professor Mary O'Kane, delivered the Independent Review of Coal Seam Gas Activities in NSW. In summary, Professor O'Kane's findings concluded that the technical challenges and risks posed by the CSG industry can, in general, be managed through:

- careful designation of areas appropriate in geological and land use terms for CSG extraction;
- high standards of engineering and professionalism in CSG companies;
- the creation of a State Whole-of-Environment Data Repository so that data from CSG industry operations can be interrogated as needed, and in the context of the wider environment;
- comprehensive monitoring of CSG operations with ongoing automatic scrutiny of the resulting data;
- a well-trained and certified workforce; and
- the application of new technological developments as they become available.

The Government has accepted all the Chief Scientist's recommendations. This is reflected in the NSW Gas Plan, which contains 17 actions to improve the regulation of CSG in the State.

Action 2 of the Gas Plan provides for the development of a Strategic Release Framework for gas exploration. The Framework will be developed in light of the approach to the allocation of coal exploration licences recommended by ICAC. The objective is to gain critical information at the release stage to identify the most appropriate areas for gas exploration.

Integrated Mining Policy

The Integrated Mining Policy (IMP) will provide a suite of policies that set out processes by which mining applications are assessed and, if approved, guidelines for how mining projects will be managed after development approval is received.

The objectives of the IMP are to:

- document and clarify Government requirements for the mining assessment process;
- increase certainty for both the community and the mining industry;
- improve coordination and cooperation between government agencies so that matters can be considered at the same time; and
- reduce duplication.

The IMP will improve the transparency, consistency and accountability of the assessment and regulation of mining projects. In doing so, the policies and guidelines will not change environmental standards or community consultation requirements.

Streamlining of State Environmental Planning Policies

The Department of Planning and Environment is currently undertaking work to simplify the State planning policy framework. This work includes a review of existing State Environmental Planning Policies (SEPPs) to consolidate policies where possible.

As part of the review of these policies, consideration will be given to whether the provisions should be in a SEPP or in a local environmental plan.

5. Next steps

As discussed in section two of this paper, feedback from the community in relation to the Mining SEPP has called for broader reform of mining policy and regulation that goes beyond the scope of the SEPP.

The NSW Government will continue to work towards improving how mining, petroleum production and extractive industries are regulated in NSW. This includes ongoing implementation of whole-of-government policy reforms such as:

- development of a clear policy and assessment framework, through the Integrated Mining Policy;
- the implementation of the NSW Gas Plan;
- reforms to the assessment process for mining development, including the Government commitment to halve assessment timeframes;
- a new strategic release framework for the allocation of coal and petroleum exploration licences; and
- new compliance and enforcement initiatives.

The Government will also continue to look for opportunities to better manage land-use conflict and ensure a rigorous assessment of the economic, social and environmental impacts associated with mining, petroleum and extractive industries.

The community will be consulted in relation to future reform of mining policy and regulation in NSW.