

# Review of the Voluntary Land Acquisition and Mitigation Policy

## Frequently asked questions

November 2017

### What is changing in the Mining SEPP?

- The proposed amendments to the *State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007* (Mining SEPP) are driven by changes to the revised assessment criteria published by the Environment Protection Authority (EPA) in the *Approved Methods for the Modelling and Assessment of Air Pollutants in New South Wales* (EPA, 2016) (Approved Methods) and the *Noise Policy for Industry* (EPA, 2017).
- It is proposed that Clause 12AB of the Mining SEPP will be revised to adapt components of the EPA's revised assessment criteria for air and noise as non-discretionary standards (Clause 12AB). This means that a consent authority cannot require more onerous air and noise standards than the revised assessment criteria.
- It is also proposed to amend Clause 12A of the Mining SEPP to implement the new version of the Voluntary Land Acquisition and Mitigation Policy (VLAMP), following the completion of that review. The review of the Mining SEPP integrates the revised assessment criteria for the purposes of assigning acquisition and mitigation rights associated with State significant resources development.

### What has changed in the VLAMP?

- The Department has adapted the EPA's revised assessment criteria for noise and air quality impacts. The criteria for:
  - air impacts have been tightened, with the annual assessment criteria for fine particles (PM<sub>10</sub>) changing from 30 µg/m<sup>3</sup> to 25 µg/m<sup>3</sup>, and the introduction of new criteria for very fine (PM<sub>2.5</sub>) particles at 25 µg/m<sup>3</sup> (24-hour) and 8 µg/m<sup>3</sup> (annual); and
  - noise impacts have been slightly modified, however no changes to cumulative noise levels have been made.
- The VLAMP has also been updated to provide clearer and more thorough explanations of policy related to:
  - negotiated agreements;
  - acquisition and mitigation operational processes;
  - the valuation of land that is to be acquired; and
  - the regulation of impacts on land subject to acquisition rights.

### Why weren't there more significant changes to the VLAMP?

- The Department conducted an internal review of the VLAMP, taking into consideration comments, submissions and input that were previously provided by various stakeholders through other processes.
- On review of this input, the Department found that a number of issues and concerns could be best addressed through better explanations and clarifications of the existing policy settings. In particular, it was recognised that the VLAMP relied on policy settings implemented through the conditions of development consent and that these policy settings needed to be referenced in the VLAMP.
- The VLAMP has been updated to ensure the policy framework is fully expressed in a transparent manner. This includes policy settings around acquisition processes, timeframes and the valuation of land.

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- More significant changes were not made because:
  - there is limited scope for change without unacceptable regulatory impact on the existing industry;
  - significant changes to the regulation of future developments would result in a two-tier regulatory system that would be costly and complex to administer;
  - significant legislative changes would be required that may undermine development rights in the State; and
  - the current system is deemed to strike an appropriate balance, provided suitable protections can continue to be granted to directly-affected landowners.

## Why are major resources developments permitted to impact neighbouring lands?

- The consent authority, under the *Environmental Planning and Assessment Act 1979*, is responsible for assessing the impacts and benefits of major development, with a view to encouraging sustainable development.
- Major resources projects can provide significant benefits to regional communities and the State economy. Given the size and scope of these developments, some impacts on surrounding lands are unavoidable.
- If the Government required major resource developments to have no significant impact on surrounding properties, this could severely curtail the viability of those projects, limiting the return on the State's assets.
- The Government is working to ensure that the right balance is found between promoting sustainable development, the extraction of resources on behalf of the taxpayer, and the interests of individuals and local communities.

## Why are voluntary acquisition and mitigation rights granted to affected landholders?

- Major resources projects provide significant benefits to the State economy. For this reason, these projects are assessed as State significant development by the Minister for Planning or his delegate.
- However, these projects can have significant impacts on nearby residents. In some cases, the operations of these projects may disrupt the amenity of the area, in other cases there may be associated health risks.
- Some air and noise impacts from these developments are unavoidable. The role of the consent authority is to strike the right balance.
- The capacity to grant of voluntary acquisition and mitigation rights are one of the tools the Government uses to regulate the impacts of major development. The consent authority grants these rights to provide direct protections to affected landholders.

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### Does the grant of acquisition rights mean the landholder must sell their land?

- No. The rights are granted as a protection for the landholder(s), who can choose to trigger these rights at any time by writing to the relevant mining company. The company must then provide an offer to purchase the land – this is required as a condition of the development consent.
- The VLAMP provides more detail on how the voluntary acquisition process works.
- Alternatively, a negotiated agreement between the landowner and the company may be able to find common ground that is more suitable to both parties than an acquisition arrangement.

### How is the acquisition price determined?

- The VLAMP has been revised to better define the process for determining an acquisition price.
- In the first instance, this is a matter for negotiation between the company and the landowner. Either party may refer the matter to the Secretary of the Department of Planning and Environment for review. The Secretary will engage an independent valuer to assess the land and determine a fair price. Further details are provided in the VLAMP.
- It is still up to the landowner whether they choose to accept any offer to sell.

### Why does the VLAMP reference assessment criteria published by the Environment Protection Authority?

- The Department relies on the scientific and technical expertise of the Environment Protection Authority (EPA) to inform the appropriate assessment criteria to best manage air and noise impacts on private landowners.
- Although the EPA's assessment criteria are not developed to be directly applied by the VLAMP, in the context of health and amenity of air and noise impacts, these criteria provide the best available benchmark for assessments of major resources projects.

### How does the VLAMP consider the social impacts associated with acquisitions?

- The VLAMP is one of a suite of policy documents that the NSW Government has published to help explain that assessment process to the community and to industry.
- The VLAMP deals primarily with the technical application of assessment criteria by the consent authority and the grant of acquisition and mitigation rights. It does not consider social, environmental or economic impacts from the development. However, these issues must all be addressed through the project's Environmental Impact Statement and the development assessment process.
- The NSW Government has recently published the *Social Impact Assessment Guideline for State significant mining, petroleum production and extractive industry development*. This Guideline is expected to be applied as part of future development applications and directly considers the anticipated social impacts of the proposed development.

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### How will the revised VLAMP be implemented?

- Once the revised VLAMP is finalised, it will be published in the Government Gazette by the Minister for Planning.
- From the date of gazettal, it is intended that the revised VLAMP will apply to:
  - new applications made after the policy has been commenced;
  - existing applications that were not yet determined when the policy commenced; and
  - modification applications that involve increases to the approved dust or noise impacts of a development.
- If a modification application does not involve increases to the approved dust or noise impacts, the revised VLAMP will not be applied. That means new acquisition and mitigation rights will only be applied where a modification proposal will increase current impacts, even if the current impacts exceed the assessment criteria.
- This is intended to provide certainty and consistency for existing projects.
- New acquisition and mitigation rights will not be independently granted (or removed) from landowners that are currently affected by a development, regardless of whether the impacts now exceed (or fall below) the assessment criteria.

### What else is the government doing to support landholders?

- The Department is considering the development of new guidance on negotiated agreements and new dispute resolution mechanisms to better support discussions between landowners and industry.
- In 2018, the Department will consult stakeholders across a range of sectors on the potential to provide more policy guidance on these options.

### How do I comment on the proposal?

- Submissions on the exhibition of the revised Voluntary Land Acquisition and Mitigation Policy will close on 16 February 2018.
- You can view the proposal:
  - online at [planning.nsw.gov.au/proposals](http://planning.nsw.gov.au/proposals); or
  - at the Department's Information Centre, Level 22, 320 Pitt Street, Sydney.
- You can make a submission by:
  - responding online at: [planning.nsw.gov.au/proposals](http://planning.nsw.gov.au/proposals)
  - or by mail to:  
Resources and Industry Policy  
GPO Box 39, Sydney, NSW 2001
- All submissions will be made public in line with the Department's objective to promote an open and transparent planning system. If you do not want your name published, please state this clearly at the top of your submission. Before making a submission, please read our privacy statement at: [planning.nsw.gov.au/privacy](http://planning.nsw.gov.au/privacy)

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### Where can I find out more?

- Call on 1300 305 695.
- If English isn't your first language, please call 131 450. Ask for an interpreter in your language and then request to be connected to our Information Centre on 1300 305 695.
- Email [information@planning.nsw.gov.au](mailto:information@planning.nsw.gov.au)