



# ***Proposed Mining SEPP amendments: Air and noise impacts***

*Explanation of  
intended effect –  
November 2017*

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# Introduction

Section 38 of the *Environmental Planning and Assessment Act 1979* (EP&A Act) requires the Minister for Planning to take such steps as the Minister considers appropriate or necessary to:

- publicise an explanation of the intended effect of a proposed State Environmental Planning Policy (SEPP); and
- seek and consider submissions from the public before recommending that the proposed SEPP be made by the Governor.

This document has been prepared to explain the intent of the following proposed amendments to the State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007 (Mining SEPP):

- amendment of Clause 12AB 'Non-discretionary development standards for mining' to update the references to related air and noise levels (assessment criteria) to ensure consistency with other published government policy settings; and
- amendment of Clause 12A 'Consideration of voluntary land acquisition and mitigation policy' to reference an updated version of the Voluntary Land Acquisition and Mitigation Policy (VLAMP).

An explanation of the changes proposed to the VLAMP is also included in this document.

## Have your say

The Department of Planning and Environment encourages the community and other stakeholders to read the explanation of intended effect and make a submission:

- through the Department's website: <http://www.planning.nsw.gov.au/vlampreview>
- by mail to:  
Director, Resources Policy  
NSW Department of Planning and Environment  
GPO Box 39  
Sydney NSW 2001

Submissions close on 16 February 2018.

For further information, please email [information@planning.nsw.gov.au](mailto:information@planning.nsw.gov.au) or phone 1300 305 695.

# Proposed SEPP amendments

## Non-discretionary standards

### What amendments are proposed?

Clause 12AB of the Mining SEPP identifies development standards for particular matters, including air and noise impacts, which if complied with, prevent the consent authority from requiring more onerous standards for cumulative noise levels and cumulative air quality levels.

In 2017, the Environment Protection Authority (EPA) published 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). These documents made the following changes to the Government assessment criteria for:

- air impacts – the Approved Methods tightens the air assessment criteria for fine particles (PM<sub>10</sub>) from 30 µg/m<sup>3</sup> to 25 µg/m<sup>3</sup> and introduced new assessment 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 – the *Noise Policy for Industry* slightly modified assessment noise levels, however no changes to cumulative noise levels have been made.

These revised assessment criteria were developed and consulted on by the EPA. This exhibition process is not consulting on the revised assessment criteria, or any other elements of the EPA's Approved Methods or the Noise Policy for Industry.

It is now proposed to amend Clause 12AB of the Mining SEPP to adapt the EPA's revised assessment criteria as non-discretionary standards for cumulative noise levels and cumulative air quality levels.

It is also proposed that the Mining SEPP be amended to include a savings provision that extends the prohibition to development applications that have been submitted but not determined as at the date the amendment commences.

### Why are the amendments proposed?

The Mining SEPP identifies where mining, petroleum extraction and extractive industry activities can occur, and how various matters should be considered in the assessment of development applications. The Mining SEPP previously adapted the assessment criteria listed in the EPA's Approved Methods and Noise Policy for Industry, to inform consideration of air and noise impacts from major mining developments.

It is proposed to update these criteria in the Mining SEPP to reference the revised EPA policies.

## Consideration of the VLAMP

### What amendments are proposed?

Clause 12A of the Mining SEPP identifies that any applicable provisions of the VLAMP must be considered by the consent authority before determining an application for consent for State significant development for the purposes of mining, petroleum production or extractive industry development.

It is proposed to amend the Mining SEPP such that it references the revised version of the VLAMP, which will be identified by the date it is published in the Government Gazette.

### **Why are the amendments proposed?**

The Department has conducted a review of the VLAMP, triggered by the need to integrate the revised assessment criteria for noise and air impacts. Once the revised VLAMP is finalised and published in the Gazette, the Mining SEPP will need to be amended to ensure the correct version of the VLAMP is considered by the consent authority.

# Revised Voluntary Land Acquisition and Mitigation Policy

The Voluntary Land Acquisition and Mitigation Policy (VLAMP) has been reviewed with reference to the revised noise and air impact assessment criteria published by the EPA. The Department has also taken this opportunity to review broader elements of the policy.

After consideration of the outcomes of exhibition, the revised VLAMP will be implemented through an amendment to Clause 12A of the Mining SEPP, as outlined previously.

Information about the review of the VLAMP is included here for clarity and transparency.

## Process for the review

The Department conducted an internal review of the VLAMP, taking into consideration comments, submissions and input previously provided by government and external stakeholders.

## What changes have been made?

The revised VLAMP provides additional explanations and clarifies existing policy. This includes restructuring of some sections.

The VLAMP has also been updated to better explain how it fits into the regulatory framework, including its application through the Mining SEPP.

Significant changes to policy settings were not made because:

- there is limited scope for change without a very significant regulatory impact on the existing industry;
- changes to future developments would result in a two-tier regulatory system that would be costly and complex to administer;
- legislative changes would be required that may undermine development rights in the State; and
- the current system is considered to strike an appropriate balance, provided suitable protections can continue to be granted to directly-affected landowners.

## Negotiated agreements

Negotiated agreements are private contracts between two (or more) parties. In the VLAMP, this usually refers to landowners and the applicant. The Department does not regulate negotiated agreements and has no role in negotiation, review or determination of these contracts. However, with a view to better informing both parties, the Department has provided some additional guidance and information about what a negotiated agreement might comprise.

The Department is considering whether further standalone guidance on negotiated agreements would be of value to industry and the community.

In the coming months, the Department will be consulting stakeholders across a range of sectors on the potential to provide more policy guidance on negotiated agreements and dispute resolutions.

### **Acquisition and mitigation operational processes**

Much of the new content related to the processes associated with voluntary acquisition and mitigation rights have been drawn from standard development consent conditions for open cut mining projects.

These policy settings were already in place through project-specific development consents, however the relationship between the consent conditions and the VLAMP was not sufficiently clear.

### **Valuation of land to be acquired**

Standard development consent conditions outline the process for the valuation of land that is to be acquired and associated dispute resolution processes. These have now been incorporated into the VLAMP for transparency.

The VLAMP previously identified the *Land Acquisition (Just Terms Compensation) Act 1991* as a consideration for determining the value of land. However, it did not clarify how the provisions of this Act should be used. The revised VLAMP identifies that the principles used in that Act are applied during the valuation, but more specific provisions are not applied.

A precise calculator for 'reasonable compensation for any disturbance' is not included, as this must remain flexible to allow for consideration of the individual circumstances of the landowner.

### **Revised assessment criteria for acquisition and mitigation**

The revised assessment criteria in the EPA's Approved Methods and the Noise Policy for Industry were adapted, including some related policy explanations. The new assessment criteria include:

- new assessment criteria for very fine particles (PM<sub>2.5</sub>) (24-hour and annual average);
- tighter assessment criteria for of fine particles (PM<sub>10</sub>) (annual average); and
- slightly modified assessment noise levels.

## **Application of the revised VLAMP and criteria**

The revised criteria in the VLAMP cannot be retrospectively applied to projects that have already received consent. The consent authority assigns acquisition and mitigation rights as conditions of consent. Under the EP&A Act, the Government cannot alter conditions of consent once the consent is granted, unless the applicant requests a modification. This means that, for existing projects, acquisition or mitigation rights granted under a consent will remain in force, and additional rights cannot be granted.

As such, 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.