

INQUIRY INTO ENVIRONMENTAL PLANNING INSTRUMENTS (SEPPs)

Organisation: NSW Minerals Council

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NSW Minerals Council Submission – May 2021

Introduction

The NSW Minerals Council (**NSWMC**) represents the state's \$26 billion minerals industry. NSWMC has around 80 member companies who range from junior exploration companies to multinational mining companies, along with associated services providers.

The latest NSWMC economic survey shows the mining industry continues to make a significant contribution to keeping the NSW economy strong, despite the pandemic. The survey found our mining member companies directly injected \$15 billion into the state economy in 2019-20, while supporting tens of thousands of jobs and generating billions in additional spending across NSW, particularly in regional communities.

This \$15 billion in direct mining spending in NSW is an increase of \$1.3 billion on the previous financial year, and the highest in the nine years that the survey has been undertaken. Around 29,000 mining jobs were supported by our member mining companies in 2019-20 and almost 8,000 local businesses were part of the mining supply chain.

The mining industry is one of the heaviest regulated industries in NSW. Regulation covers a range of areas including (but not limited to) accessing the States resources through various licences and conditions, environmental safeguards (e.g protecting water resources, rehabilitation, air quality), work health and safety requirements, compliance and enforcement, a range of taxes and fees, as well as the NSW planning framework.

State Environmental Planning Policies (**SEPPs**) provide the critical state-wide planning rules that give the mining industry confidence to invest in NSW with reasonable certainty.

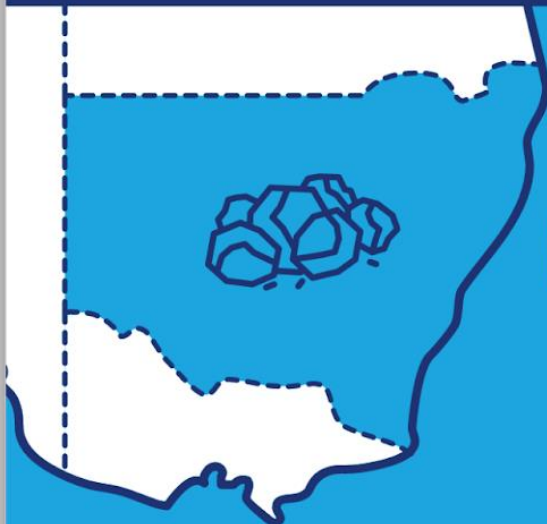
NSWMC appreciates the opportunity to make a submission to the Legislative Council Regulation Committee Inquiry into environmental planning instruments (SEPPs).

Importance of SEPPs

For the mining industry, SEPPs are critical environmental planning instruments which address relevant planning issues consistently across the State.

SEPP making powers have been in force since the *Environmental Planning and Assessment Act 1979* (**EP&A Act**) was enacted in 1979. The practical effect of a SEPP is to create consistent planning rules for certain types of development or environmental outcomes which are of significance to the State. The use of SEPPs ensures a consistent and certain approach is taken for these development types or environmental outcomes across the State rather than those matters being dealt with through local planning instruments which would vary significantly across the 128 separate NSW local government areas.

NSW MINERALS INDUSTRY ECONOMIC SNAPSHOT



\$1.7 BILLION
ROYALTIES ¹

\$26.3 BILLION
PRODUCTION VALUE ²

\$14.9 BILLION
DIRECT SPENDING ON NSW
SUPPLIERS AND WAGES ³

7,862

NSW BUSINESSES
DIRECTLY SUPPORTED ⁴

39,100

PEOPLE DIRECTLY
EMPLOYED ⁵



\$18.4 BILLION
COAL EXPORTS - NSW'S
MOST VALUABLE EXPORT ⁶



\$288 BILLION
MINERAL EXPLORATION
EXPENDITURE IN 2020 ⁷



\$13 BILLION
CAPITAL INVESTMENT
PIPELINE ⁸

Sources: 1 - NSW Treasury | 2 - Department of Regional NSW | 3 - NSW Mining Industry Expenditure Impact Survey | 4 - NSW Mining Industry Expenditure Impact Survey | 5 - Australian Bureau of Statistics | 6 - Coal Services | 7 - Australian Bureau of Statistics | 8 - NSW Minerals Council Analysis

The NSW mining industry relies heavily on various SEPPs to provide clear, consistent and certain rules for mining projects. Of particular importance are the Mining SEPP and the State and Regional Development SEPP. These instruments have been formulated in consideration of the State's economic, social, and environmental objectives and provide the necessary planning and determination framework to enable the mining industry to make investment decisions in NSW with certainty.

Inquiry into SEPPs

The Regulation Committee will consider how SEPPs are made, and whether the *NSW Government Guide to Better Regulation* is adhered to. The Committee will also inquire into whether SEPPs should be disallowable by the Legislative Council. It's understood this is a response to the exclusion of certain legislative instruments, such as SEPPs, from disallowance or veto by Parliament, which has been referred to as a "*scrutiny gap*".

The existing SEPP making framework under section 3.29 of the EP&A Act provides necessary flexibility for the Government to respond to State or regionally significant planning issues in a timely manner as they arise. Section 3.29 through enabling SEPPs to be made for 'the purpose of environmental planning by the State' also ensures SEPPs can cover a wide range of planning issues. This is evidenced by the matters currently covered which range from industry or development specific SEPPs (such as the Mining SEPP) to SEPPs that deal with specific environmental matters (such as SEPP 55 relating to remediation of contaminated land).

NSWMC and its members support the development of regulation (including SEPPs) complying with the better regulation principles as outlined in the *NSW Government Guide to Better Regulation*. This includes open and transparent consultation with industries, business and the community, as well as a robust evaluation of costs and benefits of any new regulation.

Over recent times the NSW Government has moved towards a far more consultative manner of preparing planning policy, including SEPPs, and commonly engage in the preparation of consultation or discussion papers and stakeholder workshops in formulating the content of SEPPs. This continuing trend is supported as it ensures a fair and transparent process, as well as an ability for stakeholders to provide input into SEPP making which is essential to give the public confidence in the process. This approach is also consistent with the focus of community participation in decision making as set out in the EP&A Act which was recently amended to strengthen consultation requirements. Early and thorough community and stakeholder engagement should continue to be a key aspect of the SEPP making process.

In addition to supporting a proper and due process in the making of planning instruments, NSWMC and its members also support reasonable scrutiny or oversight of development of regulation to ensure that regulations have not been made improperly (and without following due and proper process) or for ulterior or improper purposes.

In terms of disallowance powers being applied to SEPPs, careful consideration must be given to any proposal that creates additional regulatory burden that leads to uncertainty around planning rules, particularly where it constitutes an absolute power of veto. The potential to raise expectations that other statutory planning instruments (e.g. LEPs) could be subject to disallowance powers must also be considered.

The review should take account of the existing SEPP making process that typically occurs under section 3.29, including consultation and stakeholder engagement undertaken in

accordance with section 3.30 of the EP&A Act (as well as other specific provisions such as section 3.25 which relates to environmental matters). Importantly, and as noted above, there continues to be an increasing expectation that the preparation of any planning instrument, particularly SEPPs, will include comprehensive consultation and engagement with communities and stakeholders. The increased emphasis on engagement provides improved transparency and accountability around the development of and the intent of new planning instruments. Once implemented, SEPPs are also subject to periodic reviews that provide further opportunities to scrutinise the efficacy of the planning instrument based on practice and experience.

For example, the Design and Place making SEPP process extends from Mid-Late 2020 to the end of 2021 and includes two separate consultation periods.



Source: DPIE website

There are also examples where SEPP amendments are attached to Bills which proceed through Parliamentary processes, such as the yet to be made Territorial Limits Bill which was subject to its own Legislative Council Committee Inquiry process¹

Given the processes often adhered to and the checks and balances in place, it would be concerning if disallowance powers could be easily used to veto a SEPP amendment in its final stages (potentially after significant time) for the purposes of political expediency, despite a comprehensive, transparent, and robust process, including adherence to the better regulation principles, and reasonable consultation with the community and business.

Under these circumstances, last minute veto powers have the potential to create significant uncertainty for all stakeholders including communities and business.

There will be circumstances where some stakeholders disagree with the outcomes proposed in a SEPP. Where the regulation has been developed through a robust and transparent process and consistent with the better regulation guidelines and effective consultation with stakeholders, the need for any further review is questionable. This is particularly the case where it would potentially result in delay in making and/or the disallowance of the SEPP.

¹ <https://www.parliament.nsw.gov.au/committees/inquiries/Pages/inquiry-details.aspx?pk=2567>

Whilst reasonable scrutiny of new regulation is supported, it should be balanced against reasonable timeliness, consistency, and certainty. Any additional regulatory burden that erodes these principles or adds more layers will ultimately affect community confidence and investment confidence.