

MAJOR PROJECT DEVELOPMENT ASSESSMENT PROCESS

NSW MINERALS COUNCIL
SUBMISSION

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NEW SOUTH WALES
MINERALS COUNCIL LTD

1 Introduction

The NSW Minerals Council (NSWMC) welcomes the opportunity to contribute to the Productivity Commission's study of Australia's major development assessment processes on behalf of the minerals industry of NSW. NSWMC also supports the submission of the national peak body for mining, the Minerals Council of Australia.

An efficient major projects approval process is vital to the continued economic growth of Australian industries including mining. Each state and territory in Australia has its own development assessment process. The Federal Government through the provisions of the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) requires a separate Australian Government approval for many major projects. The inefficiencies of this process are obvious; frequent duplication between state and Australian Government approvals; and inconsistencies of process for developers operating in more than one jurisdiction. Added to this are considerable inefficiencies in the NSW planning system in both the strategic planning and assessment processes.

The consequences of inefficiencies in the major project development processes are extremely significant including a loss of productivity for industry and increased sovereign risk of investing in Australia. Indicators, including international surveys of investment intentions indicate that the inefficient development assessment process is affecting Australia's attractiveness as a location for investment.

The NSW minerals industry is supportive of changes to the planning system and regulation of the mining industry. The current processes have become unwieldy, duplicative and costly. The NSW minerals industry believes that changes should not be made at the risk to loss of protection for the community or the environment. However there is considerable scope for streamlining and merging of processes, as well as reduction of administrative burden, that can be achieved without any loss of protection for the community or the environment.

1.1 About the NSW Minerals Council

The NSW Minerals Council (NSWMC) is a not for profit, peak industry association representing the State's \$20 billion minerals industry. NSWMC provides a single, united voice on behalf of our 100 [member companies](#): 40 full members (producers and explorers), 25 associate members (junior explorers) and 35 associate members (service providers) and works closely with government, industry groups, stakeholders and the community to foster a dynamic, efficient and sustainable minerals industry in NSW.

NSWMC is a major stakeholder in many of the environmental, social, regulatory and economic issues critical to the sustainable development of NSW.

2 Development Assessment in NSW

For the last two years the NSW planning system has been in a state of uncertainty. This was initially caused by the repeal of the major projects provisions of the planning legislation in 2011; and subsequently by the Planning System Review, which will overhaul completely the system of strategic planning and development assessment in NSW and replace the current planning legislation.

The NSW Government has commenced the NSW Planning System Review. The Review should have been completed and new planning legislation introduced by December 2012. The Review has been delayed and the public release of the White Paper and draft legislation is said to be imminent.

Since the change of government in NSW in 2011, considerable changes have been made to the major projects development assessment process:

- The dedicated major project provisions of the *Environmental Planning and Assessment Act 1975* (EP&A Act) have been replaced by State Significant Development.

- The Minister for Planning and Infrastructure has delegated his decision making powers on State Significant Development to the Planning Assessment Commission, and senior officers of the Department of Planning and Infrastructure.

In addition to the Planning System Review the NSW Government has introduced a Strategic Regional Land Use Policy and Aquifer Interference Policy. As a result of these policies, mining projects which have potential to impact strategic agricultural land will be required to pass through a pre-development assessment Gateway Process. The Gateway Process will add considerable time, and cost to the development process. It will increase the regulatory burden on mining proponents in NSW. It is not clear how the already exhaustive assessment process will be enhanced sufficiently by the Gateway to warrant the delay and costs that it will result from this additional process.

The backdrop to this uncertainty about planning in NSW is increasingly worsening sentiment about investing in the state. The Fraser Institute's Survey of Mining Companies ranks the attractiveness of global mining jurisdictions to investors. The 2012-13 Fraser Institute survey found that the overall attractiveness of investing in Australia had declined. While some jurisdictions ranked higher than in the previous 12 months (including Western Australia), NSW dropped from 32 of 93 jurisdictions in 2011/12, to 44 of 96 jurisdictions in 2013/13.¹

3 Duplication of State and Australian Government process

The first three months of 2013 has seen a number of backwards steps taken in streamlining state and Australian Government assessment processes.

In 2012 there was anticipation that the NSW and Australian governments were moving closer to accreditation of the NSW assessment process for matters of national environmental significance under the EPBC Act. However that reform appears to be stalled, and the current process of undertaking separate assessments continues. This process causes significant delays and increased cost of assessment. Frequently the duplicative processes result in increased costs of offsetting the impacts of projects, without achieving commensurate gains for the environment.

More recently the Australian Government has introduced a 'water trigger' under the EPBC Act, which will require separate assessment of impacts on water of mining and gas projects, which will duplicate the NSW assessment process. The introduction of the water trigger will mean that water will be assessed by up to three different bodies on some mining projects in NSW: the independent gateway panel; the Planning Assessment Commission; and the Australian Government. This process is not efficient, will result in increased delays and costs for projects, and is unlikely to achieve commensurate gains for the environment.

4 Recommendations

NSWMC recommends that the Productivity Commission Study should consider the following approaches to reforming major project assessment processes:

- **Streamlining of state and Australian government approvals.** This is an area of growing duplication. Accreditation of state government approval processes would provide a very significant gain in productivity. This can be done without posing additional risks to the environment or community.
- **Streamlining and introducing statutory time frames for state based approval processes.** The NSW State Significant Development process contains very few statutory timeframes. This process can take between two to three years. While the Department of Planning and Infrastructure is the lead agency, other state agencies are required to provide input into the assessment and this frequently leads to delays. Introducing realistic statutory timeframes would drive a more efficient process and allow for assessment of performance.

¹ Fraser Institute, *Survey of Mining Companies 2012-13*, <http://www.fraserinstitute.org/>

- **Streamlining independent review, determination and appeals processes.** In NSW it will be possible for a mining project to be assessed by up to three separate independent bodies (the Gateway Panel, a Planning Assessment Commission review panel and a Planning Assessment Commission determination panel) and still be subject to merit appeal to the Land and Environment Court by third parties.

Third party merit appeals add delay, cost and risk to the development assessment process, and have rarely been successful against mining projects in NSW. The transparency provided by independent review should be an important part of the assessment process. However, as the introduction of new independent assessments/ reviews are designed to ensure better, more transparent decisions are made, this should lead to a reduction of appeal rights for third parties.

- **Streamline additional approvals.** An efficient major development process should include all subsequent approvals. Allowing any approvals to sit outside the exhaustive major development processes, is inefficient and risks the delay/ failure of a project that has been approved.
- **Ensuring that independent determination panels are fit for purpose.** In NSW the Planning Assessment Commission undertakes determination of State Significant Development projects. Traditionally the role of this panel was to review projects, and accordingly it is comprised of experts. This, along with the delegation at the end of the project has led to concerns that the panel is reopening, and duplicating the assessment process. Independent determination panels should be comprised of members who have a background in making balanced planning decisions, and should refer concerns about assessment to the lead assessment for review.
- **Providing clear and transparent assessment policies to guide proponents.** In NSW a lack of clear and transparent assessment policy has been a concern for industry, and has led to unprecedented decisions by both the Planning and Assessment Commission and the Land and Environment Court.

Major project proponents should be able to rely on compliance with clear policy on impacts, mitigation measures and other matters, to assess the viability of the project and determine whether to proceed, alter the project or abandon the project as unviable. Given the long assessment process, the costs and capital at risk, the conditions on which a project will be approved should be clear before the project reaches the determination phase of assessment. This level of certainty benefits the community, government and proponents.

- **Providing assessment processes proportionate with the significance of a project.** Mining is unlike other development. It is a temporary land use and a dynamic form of development subject to changes as knowledge and technology improves. As a dynamic form of development it is important that mining has access to an efficient process for modifying development consents.