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20 December 2004

Native Vegetation Reform Submissions
Department of Infrastructure, Planning and Natural Resources
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Draft Native Vegetation Regulation 2004 and supporting documents

The NSW Minerals Council (NSWMC) appreciates the opportunity to comment on the Native Vegetation Regulation 2004 and its supporting documents, currently out for consultation by the Department of Infrastructure, Planning and Natural Resources (DIPNR).

The New South Wales Minerals Council is the industry association representing mineral exploration companies and the producers of coal, minerals and extractive materials in the State.

The NSW mining industry has an annual production value of around \$7 billion, employs over 15,000 people, mainly in rural areas, and contributes over \$900 million per year to government revenues. Coal continues to be the State's largest export earner and the industry now earns around \$5 billion per year. The mining industry also provides indirect employment, estimated to be in the order of a further 45,000 people, in a large number of support industries, ranging from heavy engineering and equipment manufacturing to the provision of mine supplies and consumable items and specialised advisory, design and management services. The export of Australian mining equipment, technology and services is also significant and is valued at well over \$3 billion per year nationally.

The NSW Minerals Council is a major stakeholder in many of the environmental, social and economic aspects in New South Wales. The minerals industry has long had an important role to play with the community and regulators in striving to ensure satisfactory environmental outcomes. The industry's mining projects are subject to rigorous environmental assessment under the Integrated Development Approval procedures which takes account of vegetation clearing, land management and rehabilitation requirements (amongst many other environmental matters). Further, the industry is subject to numerous other approvals, permits and licences throughout its planning, operational and decommissioning stages. The NSWMC participates in the development of policies and guidelines to improve the measurement and assessment of potential impacts from mining, including native vegetation and land management.

The NSWMC always seeks to ensure that any environmental regulation and policy meets the basic criteria of effectiveness, efficiency and fairness. Council considers that the Draft Native Vegetation Regulation 2004 has promise to deliver such outcomes and we support the general thrust of the reforms.

Overview

The NSWMC welcomes the Government's intention to 'cut red tape' and is in general agreement with the Department over the need to find better and more efficient ways of managing our native vegetation, land and waters. The concepts raised in the Native Vegetation Reforms will be relevant to the implementation of a variety of conservation and natural resource management aspects associated with

minerals industry operations beyond native vegetation, such as catchment and river health, salinity, biodiversity and soil conservation.

It is acknowledged that the Native Vegetation Act 2003 (Section 25) and the Native Vegetation Regulation 2004 appropriately exclude some activities for which Ministerial consent is required (including mining developments) from their requirements. Such developments are already subject to broad and rigorous assessment under the Integrated Development Approval arrangements under the Environmental Planning and Assessment Act 1979 and other stringent environmental assessment and licensing arrangements.

While mining activity itself will be excluded from the Native Vegetation Act and Regulation, it has implications for the mining industry which is a significant landowner and manager of lands surrounding the mines. These buffer areas are used for a variety of agricultural pursuits, such as broad acre agriculture, dairying, studs and viticulture as well as already active riparian revegetation and protection.

With the exception of a few issues set out below, the Minerals Council generally supports the contents of the draft Regulation. In this regard, DIPNR is to be commended for giving serious consideration to providing innovative options for native vegetation conservation and land management. The following important aspects that the Council seeks to be considered in reviewing the draft Regulation include:

- The Draft Regulation provides greater certainty, provides flexibility and rewards landholders for good land management initiatives. The NSWMC welcomes the funding set aside for incentives to protect and restore the landscape, especially the high proportion (80%) for on-ground works.
- The obligation that clearing which significantly reduces the quality or extent of native vegetation requires an offset is generally to be supported. The minerals industry has long been a key player in “offsets-type” approaches, especially given it has a strong record of research and practice in rehabilitation, revegetation, regeneration, restoration and vegetation enhancement in its areas of operation. These activities extend well beyond the areas directly disturbed by the mining operation (mine rehabilitation) and can include buffer zone and riparian improvements on mine or non-mine owned lands.
- The NSWMC would like to highlight the importance of the temporal issues associated with offsets. While the assessment methodology states that the ‘benefits of the offset persist for at least the duration of the negative impact of the proposed clearing’, it needs to be made clear when it is acceptable for offsets to start delivering their benefit relative to the timing and duration of the clearing. It would be unrealistic to impose requirements that demand immediate payback or offset, when some revegetation might not contribute benefits for 5 years or more, even though it will continue to provide benefits for many years.
- Farmers should receive recognition and be rewarded for their good management of native vegetation. Native vegetation in poor condition has greater scope for improvement than native vegetation in good condition; therefore farmers that have been maintaining their native vegetation are at a disadvantage when trying to find offsets to allow some clearing.
- Off-sets (trade-offs) should not be required for every development proposal. Offsets should be reserved for clearing proposals where there is no net environmental benefit within the landscape. Short term negative environmental impacts should be allowed where long term environmental gains will be met.
- The NSWMC commends DIPNR for providing legislation that reduces complexity by allowing that Property Vegetation Plans (PVPs) can not be changed by new listings of threatened species or environmental planning instruments. Part 3(9) of the Regulation states that the Minister can terminate a PVP under section 30 of the Act as long as the Minister writes to the landholder and gives 14 days to receive a response. This clause appears to take away the certainty for landholders that the new Regulation is meant to provide. It needs to be a policy of DIPNR and acknowledged by the Minister and the public that a PVP will only be terminated under exceptional circumstances. If this is not the case then the Minister could be influenced to terminate plans at the will of environmental lobby groups or when a new threatened species is listed. This will seriously reduce the effectiveness and intention of the Regulation.
- It is not clear from the Regulation how PVPs will be affected by the Federal Environmental Protection and Biodiversity Conservation (EPBC) Act 1999. If the Regulation fails to provide protection for landholders from matters of national significance triggered in the EPBC Act, then it may need to be referred to the Ministerial Council of National Resource Management to determine a nationally acceptable procedure for exempting legislation in situations where landholders have committed to improve or maintain environmental outcomes from a particular date.

- Weed and invasive scrub management in steep areas must be an 'exempt activity' to allow effective groundcover to minimize soil erosion.
- There is a need to make sure appropriate resources are available at the Catchment Management Authorities to assist farmers develop PVPs in a timely manner. It is acknowledged that this is the intention of the Regulation; however it is extremely important for the new system to work in practice and to be accepted.
- Greater balance should be encouraged by seeking to understand the likely scale and nature of the impacts of vegetation clearing and the potential social and economic (and sometimes environmental) benefits associated with the land use proposal. It is encouraging that the documents suggest that the PVP Developer could be used in the future to trade environmental credits. It is hoped this would include trading between environmental outcomes when there is a significant social, economic or environmental benefit.
- The size of the cleared area around rural infrastructure (other than areas classified as small holdings - less than 10ha, or less than 40ha in the Western Division) must remain as in the current Act, 'clearing to the minimum extent necessary'. The imposition of set distances across a Catchment Management Authority area will not be able to take into account variations in the type and location of infrastructure, the type, size and density of native vegetation or the terrain surrounding the infrastructure. Clearing to the "minimum extent necessary" gives landholders the flexibility to ensure that they are able to take reasonable measures to allow normal operations to continue and minimize the possibility of damage to the infrastructure or themselves and employees.

Conclusion

The NSWMC believes the draft Regulation is a positive step towards greater stability and certainty for landholders. It is recommended that DIPNR carefully reviews the comments and suggestions outlined above to further improve the Native Vegetation policy and legislation in NSW.

If any further information is required on matters raised in this submission, please contact the undersigned (email: psmith@nswmin.com.au or tel: 02 8202 7218).

Yours sincerely



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