

15th April 2005

Mr Simon A Y Smith
Deputy Director General
Environment Protection and Regulation Division
Department of Environment and Conservation
PO Box A290
SYDNEY SOUTH NSW 1320

Dear Mr Smith

**Interim Aboriginal Heritage Consultation Guidelines
Administration of Aboriginal Heritage Protection**

The NSW Minerals Council (NSWMC) appreciates the opportunity to provide comments to the Department of Environment and Conservation (DEC) in relation to reform of the Aboriginal Heritage policy and legislation, in this case, the Interim Aboriginal Heritage Consultation Guidelines and the proposal for addressing the administration of Aboriginal heritage assessment.

NSWMC is the pre-eminent body representing mineral exploration companies and the producers of coal, minerals and extractive materials in this State.

The NSW minerals industry has an annual production value of around \$7 billion, employing over 15,000 people, mainly in rural and regional areas. The minerals 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 industry contributes over \$1.2 billion per year to government revenues, with coal continuing to be the State's largest export earner at over \$4 billion per year. The export of Australian mining equipment, technology and services is also significant and is valued at well over \$3 billion per year nationally.

NSWMC and its member companies, as well as key minerals industry institutions, have worked with dedication and commitment to ensure that the minerals industry in this State is at the forefront of innovative ways to develop knowledge and know-how for implementing sustainable solutions to the challenges facing our sector, including matters pertaining to Aboriginal heritage assessment.

The minerals industry has consistently lobbied for certainty in the Aboriginal heritage assessment process. The industry has significant concerns with the regulatory and administrative process relating

to assessment, consultation requirements and permitting for archaeological relics. Important deficiencies in the regulatory framework and policy previously expressed to DEC are:

- there is little or no application of the concept of “significance” in the evaluation of archaeological materials and their “conservation value”
- each individual stone relic is currently regarded as a “site” rather than viewed in the proper context of a collection of material within an area of the landscape
- extremely high and disproportionate costs and of archaeological investigations in the course of project development approval and implementation
- Aboriginal communities often feel excluded from the benefits of these investigations due to the archaeological/scientific focus
- Aboriginal communities increasingly see the provision of advice and clearance fieldwork as a significant source of economic empowerment due to lack of alternative government policies that are social/economic based. This has resulted in a proliferation of Aboriginal representation to capitalise on these employment opportunities, sometimes without a valid interest in the heritage values of the site.

NSWMC welcomes DEC’s commitment to improving the current system of Aboriginal heritage legislation and policies. Comments on the two areas of current reform are considered separately below.

Consultation

The Interim Aboriginal Heritage Consultation Guidelines represent an important first step in reviewing and improving the legislation and policy for Aboriginal heritage assessment in NSW.

The industry welcomes the interim guidelines, however, maintains that there will continue to be difficulties in consultation with some Aboriginal groups until there is a significantly improved policy and regulatory framework, including a workable resolution for dealing with multiple, contesting parties. For example, one approach could involve establishing a list or recommendation on preferred or priority groups for consultation and site participation.

Future reform in consultation requirements also needs to address the litigation or dispute procedures to prevent ongoing and unnecessary claims against companies that have followed appropriate procedures, as this will create further costs to industry.

Administration of Aboriginal Heritage Protection

NSWMC welcomes the DEC’s commitment to improve the operation of the existing Aboriginal heritage laws, and its administration of them. NSWMC agrees that the issues are complex and that considerable work is needed to address these issues as soon as is practicable.

The minerals industry supports the DEC’s intention to increase the level of staff to develop and implement change in this area and agrees with the approach of a joint steering group to examine how this could be achieved and to work with DEC on other aspects of reform in this area. The NSWMC representatives on this group are intended to include:

- Mr Peter Smith, Director - Environment and Development, NSWMC (assisted by Ms Georgina Beattie)
- Rio Tinto/Coal & Allied – Jeremy van de Bund
- Xstrata – representative to be confirmed
- Barrick Cowal Gold Project – representative to be confirmed.

The industry supports in principle the concept of increasing user-based fees for efficient assessment of permits and consents for larger developments. However, industry will have high expectations that there will be rapid and effective reform in this area. We must be assured that these higher costs are balanced by an immediate improvement in the timeliness of assessments, consistent approaches from regional and head office staff, and early, clear and decisive directions to companies on Aboriginal heritage requirements. Issues of consideration by the steering group for longer term reform of the assessment process should include:

- Encouragement of negotiated outcomes between relevant parties taking into account the legitimate interests of both relevant Aboriginal communities and industry
- Realistic and timely processes that deliver clarity and certainty to all parties in the process
- Acknowledgment that Aboriginal heritage assessment is one element of major development approvals to be balanced in whole of Government outcomes for the benefit of the entire State
- Effective assistance to industry and consent authorities in identification of relevant Aboriginal communities for consultation, and those with authority to represent wider groups.

NSWMC looks forward to ongoing, open and constructive communication with DEC to address this complex issue in the most effective way for industry, while maintaining conservation outcomes and not disadvantaging Aboriginal communities. If you have any questions or would like to discuss the issues raised above please contact me on 02 8202 7218.

Yours sincerely

Peter R Smith
DIRECTOR – ENVIRONMENT AND DEVELOPMENT