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25 May 2007

Sector Strategies and Systems Innovation
Department of Planning
GPO Box 39
SYDNEY NSW 2001

To Whom It May Concern,

Re: State Environmental Planning Policy (Major Projects)

The Environmental Defender's Office of NSW (EDO) welcomes the opportunity to provide comment on proposed amendments to the *State Environmental Planning Policy (Major Projects)* (hereafter 'Major Projects SEPP').

The EDO is a community legal centre specialising in public interest environmental law. The EDO has 20 years experience in litigating environmental matters and participating in environmental law reform processes.

Clause 8 - Proposals for state significant site listing

The EDO supports this amendment allowing for public notification of proposals to add sites of State significance to Schedule 3 of the Major Projects SEPP. However, this requirement should be mandatory rather than discretionary. Furthermore, the public should be able to make submissions on the proposal. There should be a requirement that these submissions are taken into account by the Minister in determining whether to approve an addition to Schedule 3.

Schedule 1, clause 3(d) - Agricultural produce industry and food and beverage processing

This amendment stipulates that any purpose that the Minister considers to constitute an agricultural produce industry or food and beverage processing will be classified as such, and will consequently be deemed a Part 3A project. This imports a significant subjective element to what should be a scientifically-based characterisation. The Minister should prepare clear guidelines outlining the circumstances where he will be satisfied that a development falls into this category.

The EDO has general concerns about agricultural processing industries being automatically classified as Part 3A projects. These activities can be water-intensive and put significant strains on water resources. Given the current situation with water scarcity, drought and the effects of climate change, it is essential that such activities are assessed in a transparent, scientifically sound manner. The additional approvals required under the *Water Management Act 2000* that do not apply to Part 3A projects, were created to ensure that proposed developments use water in an ecologically sustainable manner. The EDO therefore calls for agricultural produce industries to be removed as a class of Part 3A developments.



Schedule 1, clause 5(3) (a) - Mining

It is unclear what the rationale is for mining extensions and developments that are ‘ancillary’ to projects granted consent under Part 4 to be now considered under Part 3A. Any such proposals should logically be considered under Part 4. This will ensure that the extensions and ‘ancillary’ works are subject to the same scrutiny as the original proposal. Extensions should also be subject to the ‘substantially the same’ requirements under s96 of the *Environmental Planning and Assessment Act 1979*.

‘Ancillary’ should be defined in the Major Projects SEPP. As most mining activities have the potential for significant environmental impacts, ancillary developments should be strictly characterised. The EDO is concerned that ‘ancillary’ projects will be used as a mechanism to approve extensions that are in reality new proposals and not related to a previous consent.

Additional approvals

The consequence of the listing of a class of development as a Part 3A project under the Major Projects SEPP is that certain licences and approvals required by other Acts are no longer required. Under s75U of the *Environmental Planning and Assessment Act 1979*, these include: the concurrence of the Minister administering the *Coastal Protection Act 1979*, approvals under Part 4 of the *Heritage Act 1977*, permits under section 87 and section 90 of the *National Parks and Wildlife Act 1974* and water use approvals under sections 89-91 of the *Water Management Act 2000*.

These other approvals constitute important safety nets, and help ensure that all potential impacts of a development are adequately considered when the Minister makes his decision. The departments that are responsible for granting these additional approvals have the necessary expertise to adequately assess issues such as pollution, heritage and threatened species licences. The listing of a class of development under the Major Projects SEPP means that these issues may be validly ignored. Furthermore, even those approvals that still apply under Section 75U (such as an Environmental Protection Licence) cannot be refused. Given these consequences, the EDO opposes the listing of classes of development as Part 3A projects. Developments should be considered individually to determine whether they are appropriate for consideration under Part 3A.

Regional or State significance

Listing of a class of developments under the Major Projects SEPP automatically determines that each development that is within the relevant class is of ‘regional or state significance’. The EDO submits that whether a particular development is of ‘regional or state significance’ should be determined as a separate question, especially considering the significant ramifications of classing a development as a Part 3A project. Under one of the proposed amendments, coastal developments that would seemingly fall under Part 3A are given back to councils for determination where the Minister believes the development is only of ‘local significance’. We would support amendments to the Major Projects SEPP similar to this amendment for coastal developments provided there are clear guidelines setting out relevant criteria that the Minister should consider in determining whether a development is of ‘local significance’.

Coastal provisions

A consequence of the listing of developments in the coastal zone as Part 3A projects is that developments that are likely to have the greatest impact on the coastal environment in NSW will be decided by the Planning Minister who determines the scope of any environmental assessment. This would be appropriate, provided that there is a clear process in place to ensure that environmental



impacts are adequately considered, that the public is involved in the process and that concurrence is obtained from Minister for Climate Change, Environment and Water. This is not currently the case. Under section 75U of the *Environmental Planning and Assessment Act 1979*, the concurrence of the Minister for Climate Change, Environment and Water is not required for a Part 3A project. It is important that the Minister charged with administering the *Coastal Protection Act 1979* have some input into the assessment of development proposals which are likely to have the most significant impacts on the Coastal Zone. That Act prohibits the carrying out of development in the Coastal Zone if the Minister for Climate Change, Environment and Water is of the opinion that the development:

- is inconsistent with principles of ecologically sustainable development,
- adversely affects the behaviour of the sea or an arm of the sea or any bay, inlet, lagoon, lake, body of water, river, stream or watercourse, or
- adversely affects any beach or dune the bed, bank, shoreline, foreshore or flood plain of the sea or an arm of the sea or any bay, inlet, lagoon margin, lake, body of water, river, stream or watercourse.

This concurrence role should therefore be reinstated as a mandatory requirement. Furthermore, the *NSW Coastal Policy 1997* should be a mandatory consideration for the Minister. The aim of the policy is to promote 'the ecologically sustainable development of the New South Wales coastline'. The policy also sets out various goals, objectives and actions as part of a coastal framework. The Major Projects SEPP should be amended to require the Planning Minister to have due regard to the policy when considering whether to approve a coastal development. Otherwise the overarching document, which is meant to represent government policy relating to the management of NSW's coast, is meaningless, as it does not apply to activities that are likely to have the most significant impact on the coastal zone.

Should you have any questions regarding this submission please contact Robert Ghanem on robert.ghanem@edo.org.au or (02) 9262 6989.

Yours sincerely

Environmental Defender's Office (NSW) Ltd

Rachel Walmsley

Policy Director

