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**ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979  
STATE ENVIRONMENTAL PLANNING POLICY No. 37—  
CONTINUED MINES AND EXTRACTIVE INDUSTRIES**

NEW SOUTH WALES



*[Published in Gazette No. 61 of 18 June 1993]*

HIS Excellency the Governor, with the advice of the Executive Council, and in pursuance of the Environmental Planning and Assessment Act 1979, has been pleased to make the State Environmental Planning Policy set forth hereunder in accordance with the recommendation made by the Minister for Planning.

ROBERT WEBSTER, M.L.C.,  
Minister for Planning.

Sydney, 16th June, 1993

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**PART 1—PRELIMINARY**

**Citation**

1. This Policy may be cited as State Environmental Planning Policy No. 37—Continued Mines and Extractive Industries.

**Aims, objectives etc.**

2. (1) The aims of this Policy are:

(a) to provide that certain existing mines and extractive industries may continue to operate during:

(i) a registration period of 3 months after the commencement of this Policy without the necessity for development consent; and

(ii) a moratorium period of 2 years without the necessity for development consent if they are registered under this Policy with the relevant consent authority; and

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- (b) to restrict the operation of those mines and extractive industries during any period for which they may be carried out under this Policy without the necessity for development consent to substantially the same level at which they have operated since 1 July 1986; and
  - (c) to prevent the continuance of the operation of those mines or extractive industries after the moratorium period unless development consent is obtained; and
  - (d) to identify, as either designated development or advertised development, development for which such a development consent is required.
- (2) The objectives of this Policy are:
- (a) to promote and safeguard the orderly and economic use of land for the purpose of mines and extractive industries in recognition of the importance of mining and extractive industries to the economic and social well-being of the people of New South Wales; and
  - (b) to enable certain existing mines and extractive industries to continue to operate subject to appropriate environmental assessment and to specify the circumstances in which development consent for them may be obtained.

**Land to which this Policy applies**

3. (1) This Policy applies to all land in the State, except as provided by this clause.

(2) This Policy does not apply to the land to which the following environmental planning instruments apply:

State Environmental Planning Policy No. 14—Coastal Wetlands

State Environmental Planning Policy No. 26—Littoral Rainforests.

(3) This Policy does not apply to the land described in Mining Lease 1239 and known as Yessabah Mine.

**Relationship with other environmental planning instruments**

4. In the event of an inconsistency between this Policy and any other environmental planning instrument, whether made before, on or after the commencement of this Policy, this Policy prevails to the extent of the inconsistency.

**Definitions****5. In this Policy:**

**“continued operation”** means development for the purpose of a mine or extractive industry that:

- (a) was lawfully commenced before the coming into effect of an environmental planning instrument that permitted the carrying out of that development only with development consent; and
- (b) has not been abandoned within the meaning of section 109 (2) (e) and (3) of the Environmental Planning and Assessment Act 1979; and
- (c) has not, before the commencement of this Policy, been granted development consent for the purpose of a mine or extractive industry; and
- (d) would, but for this Policy, be prevented from extending, having its area increased, or enlarging, expanding or intensifying, because of section 109 (2) of the Environmental Planning and Assessment Act 1979;

**“extractive industry”** has the same meaning as in the Environmental Planning and Assessment Model Provisions 1980, that is, it means:

- (a) the winning of extractive material; or
- (b) an industry or undertaking not being a mine, which depends for its operations on the winning of extractive material from the land upon which it is carried on;

**“extractive material”** has the same meaning as in the Environmental Planning and Assessment Model Provisions 1980, that is, it means sand, gravel, clay, turf, soil, rock, stone or similar substances;

**“material produced”** from a continued operation means the metal, mineral or extractive material obtained or won by the continued operation;

**“mine”** has the same meaning as in the Environmental Planning and Assessment Model Provisions 1980, that is, it means any place, open cut, shaft, tunnel, pit, drive, level or other excavation, drift, gutter, lead, vein, lode or reef whereon, wherein or whereby any operation is carried on for or in connection with the purpose of obtaining any metal or mineral by any mode or method and any place on which any product of the mine is stacked, stored, crushed or otherwise treated, but does not include a quarry;

**“moratorium period”** means the period of 2 years after the registration period;

**“registration period”** means the period of 3 months after the commencement of this Policy.

## **PART 2—CARRYING OUT OF CONTINUED OPERATIONS DURING THE REGISTRATION AND MORATORIUM PERIODS**

### **Authority to carry out continued operations during the registration period**

**6.** A person may, without the necessity for development consent to be obtained:

- (a) carry out a continued operation; and
- (b) enlarge, expand or intensify a continued operation,

at any time during the registration period, subject to Part 4.

### **Carrying out of continued operations after the registration period**

**7.** A continued operation must not be carried out after the registration period unless it is registered under Part 3.

### **Authority to carry out continued operations during the moratorium period**

**8.** A person may, without the necessity for development consent to be obtained:

- (a) carry out a continued operation that is registered under Part 3; and
- (b) enlarge, expand or intensify such a continued operation,

at any time during the moratorium period, subject to Part 4.

### **Effect of this Part**

**9.** This Part has effect despite the provisions of any other environmental planning instrument.

## **PART 3—REGISTRATION OF CONTINUED OPERATIONS**

### **Registration**

**10.** A continued operation is registered under this Part if the person carrying out the continued operation gives the consent authority, in writing, such of the information specified in Schedule 1 as is, or ought

reasonably to be, within the person's knowledge and the consent authority has not cancelled the registration under clause 12.

### **Register of continued operations**

**11. (1)** Information given to a consent authority under clause 10 comprises a register and is to be kept by the consent authority as the register of continued operations.

**(2)** Any person may inspect the register, free of charge, at the consent authority's office during ordinary office hours.

### **Cancellation of registration**

**12. (1)** A consent authority may give notice, in writing, to a person who carries out a continued operation to show cause why the registration of the continued operation should not be cancelled under this clause.

**(2)** The notice must indicate:

- (a) the person to whom representations directed to the consent authority may be made; and
- (b) a period of not less than 21 days after the date of the notice within which any representations are to be made.

**(3)** After considering any representations, a consent authority may cancel the registration, if it is of the opinion that:

- (a) the information purportedly given to the consent authority under clause 10 does not comply with that clause; or
- (b) the information given to the consent authority under clause 10 does not confirm that the operation is a continued operation; or
- (c) the continued operation is in breach of Part 4.

**(4)** The consent authority must give notice, in writing, to the person who carries out the continued operation of the cancellation of the registration and the reason for cancellation.

## **PART 4—LIMITATIONS ON CARRYING OUT OF CONTINUED OPERATIONS**

### **Limit on carrying out of continued operations—increase in area**

**13.** The additional area of land actually physically used during any period of 12 months in which a continued operation may be carried out under this Policy without the necessity for development consent must not exceed:

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- (a) the average additional area of land actually physically used by the expansion of the continued operation each year from 1 July 1986 until 30 June 1991; or
- (b) the additional area of land actually physically used by the expansion of the continued operation during the period from 1 July 1990 to 30 June 1991,

whichever is the greater.

**Limit on carrying out of continued operations—annual amount of material produced**

**14.** The annual amount of material produced from a continued operation during any period of 12 months in which a continued operation may be carried out under this Policy without the necessity for development consent must not exceed:

- (a) the average of the amounts of all material produced from the continued operation each year from 1 July 1986 until 30 June 1991; or
- (b) the amount of all material produced from the continued operation during the period from 1 July 1990 to 30 June 1991,

whichever is the greater

**Submission of information to the consent authority**

**15.** The operator of a continued operation must submit to the consent authority, at 3-monthly intervals after registration under Part 3 and while the continued operation is carried out under this Policy without the necessity for development consent, written information that:

- (a) clearly delineates each new area of land actually physically used by the expansion of the continued operation during the last 3 months; and
- (b) specifies the amount of all material produced from the continued operation during the last 3 months.

**Limit on installation and use of certain plant**

**16.** Part 2 does not remove the need for development consent (if development consent would otherwise be needed) to install, after the commencement of this Policy, and use any plant for screening, crushing, washing or otherwise dealing with material produced from the continued operation.

**Protection of trees and bushland**

17. Part 2 does not affect the operation of:

- (a) a tree preservation order applying to the land on which a continued operation is or is proposed to be carried out; or
- (b) State Environmental Planning Policy No. 19—Bushland in Urban Areas.

**PART 5—CARRYING OUT OF DEVELOPMENT WITH DEVELOPMENT CONSENT****Development applications to which this Part applies**

18. This Part applies to a development application made before the end of the moratorium period for consent to carry out development for the purpose of a mine or extractive industry in relation to land on which a continued operation is or was carried out.

**Other applications for development consent**

19. Nothing in this Policy prevents a person from making a development application after the moratorium period for consent to carry out development for the purpose of a mine or extractive industry in relation to land on which a continued operation is or was carried out.

**Designated development**

20. (1) Development for the purpose of a mine or extractive industry in respect of a continued operation is declared to be designated development:

- (a) if:
  - (i) in the case of a mine—there is a proposed minimum increase of 25 per cent per annum in the amount of all material produced from 1 July 1990 to 30 June 1991; or
  - (ii) in the case of an extractive industry—there is a proposed minimum increase of 50,000 tonnes per annum in the amount of all material produced from 1 July 1990 to 30 June 1991; or
- (b) if the carrying out of the development is, in the opinion of the consent authority or the Director of Planning (on a reference under subclause (3)), likely to significantly affect the environment taking into account only the following matters:

- (i) the current impact of the continued operation on the surrounding locality, having regard to its current and past performance, including:
  - management of noise, vibration, dust, erosion, water and traffic; and
  - land rehabilitation or restoration carried out by the operator of the continued operation;
- (ii) the future impact of the development having regard to:
  - any proposed changes to the character, nature or scale of the continued operation; and
  - the existing vegetation, scenic character or special features of the land on which the development is to be carried out and its locality;
- (iii) the guidelines (if any) published by the Department of Planning.

(2) A consent authority must inform the applicant as soon as practicable after the receipt of a development application to which this Part applies if, in the consent authority's opinion, the development the subject of the application is designated development because of subclause (1) (b).

(3) If the consent authority is of the opinion that the development the subject of the application is designated development because of subclause (1) (b) and the applicant notifies the consent authority, in writing, that the applicant disagrees with that opinion, the consent authority must refer the application to the Director of Planning for a determination of the matter.

(4) The determination of the Director of Planning is final and binds the consent authority and the applicant.

(5) This clause does not apply to an extractive industry carried out on land to which Western Division Regional Environmental Plan No. 1—Extractive Industries applies,

### **Advertised development**

**21.** Pursuant to section 30 (4) of the Environmental Planning and Assessment Act 1979, the provisions of sections 84, 85, 86, 87 (1) and 90 of that Act apply to and in respect of development for the purpose of a mine or extractive industry on land on which a continued operation (not being designated development) is or was carried out in the same way as those provisions apply to and in respect of designated development.



**Consideration of development applications for advertised development**

**22.** A consent authority must not grant development consent to a development application to which this Part applies to carry out development (not being designated development) unless it has taken into consideration:

- (a) a statement of environmental effects prepared in accordance with the guidelines (if any) published by the Department of Planning; and
- (b) any Mining Rehabilitation and Environmental Management Plan (or draft Plan) prepared for the site in relation to a mining lease under the Mining Act 1992.

**Cessation of Part 2 on granting of development consent during the registration or moratorium periods**

**23.** If a development application to which this Part applies is determined during either the registration period or the moratorium period by the granting of consent, unconditionally or subject to conditions, Parts 2 and 4 cease to apply to the continued operation concerned when the consent comes into force.

**Applications made but not finally determined during the moratorium period**

**24. (1)** If a development application to which this Part applies is made not less than 3 months before the moratorium period expires but is not finally determined by the consent authority before the moratorium period expires, this Policy continues to apply to the continued operation concerned until:

- (a) the application is finally determined by the consent authority; or
- (b) if the application is finally determined by the granting of consent, the consent comes into force.

**(2)** However, if an appeal is made against the determination by the applicant within 28 days after the application is finally determined by the consent authority, or by an objector, this Policy continues to apply to the continued operation concerned until:

- (a) the appeal is finally determined; or
- (b) if the appeal is finally determined by the granting of consent, the consent comes into force.

**PART 6—MISCELLANEOUS****Prohibited development**

25. Nothing in this Policy enables the carrying out of development for the purpose of a continued operation, a mine or an extractive industry on land on which, under an environmental planning instrument, the carrying out of development for the purpose of a mine or extractive industry is prohibited.

**Consideration of Department of Planning guidelines**

26. In the application and administration of this Policy, the operator of a continuing operation and a consent authority are to give consideration to any guidelines published for the purposes of this Policy by the Department of Planning.

**Guidelines published by the Department of Planning**

27. Any guidelines published by the Department of Planning as referred to in this Policy are to be available for inspection by the public on request at the Department's offices.

**SCHEDULE 1—REGISTRATION INFORMATION**

(Cl. 10)

**1. Particulars of the operator**

Name and address of the operator.

**2. Description of the land**

Particulars of the land used including, where applicable:

- street number
- suburb or locality
- land area
- land title description:  
eg. Lot, D.P. Number, Volume, Folio. Portion, Parish,  
County

and a map showing:

- land boundaries and dimensions
- location of watercourses.

**3. Planning controls**

(1) Date of the coming into force of the environmental planning instrument that prevents the continuance of the use except where consent under the Environmental Planning and Assessment Act 1979 has been obtained.

(2) Particulars of any other environmental planning instruments that apply now or have applied previously.

**4. Nature of operation prior to planning control**

Details of the operation carried out before the coming into force of environmental planning instruments identified in paragraph 3 (1), including:

- date of commencement of the operation
- location as shown on a plan
- quantities of materials produced in each year of operation
- method of operation, type and capacity of equipment used
- transport routes.

**5. Details of the continued operation after planning control**

Details of the continued operation carried out after the coming into force of the environmental planning instrument identified in paragraph 3 (1), including written information and appropriate plans, to indicate the following:

- (a) the location of mining, extraction and stockpiling carried out, showing clearly the area and depth of the operations;
- (b) other particulars of the continued operation, including:
  - type and quantity of material produced
  - material treatment and loading facilities
  - type and capacity of plant and machinery used on site and for material transport
  - hours of operation
  - environmental safeguards employed to minimise water pollution, noise, dust and soil erosion
  - land rehabilitation measures, including plant species used.

**6. Establishing operational limits for the moratorium period**

In respect of the continued operation carried out during the period 1 July 1986 to 30 June 1991, details of the continued operation carried out during each year, supported by a plan or other documentation acceptable to the consent authority, which:

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- (a) delineates clearly for each year in the period 1 July 1986 to 30 June 1991 the additional areas of land actually physically used in carrying out the continued operation; and
- (b) specifies for each year in the period 1 July 1986 to 30 June 1991 the amount of all material produced from the continued operation.

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