



Cotton Australia Submission to- State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) Amendment 2012

14th December 2012



Cotton Australia

Cotton Australia is the key representative body for the Australian cotton growing industry. It helps the industry to work together to be world competitive and sustainable, and also tell the good news about the industry's achievements. Cotton Australia determines and drives the industry's strategic direction, retaining its strong focus on R&D, promoting the value of the industry, reporting on its environmental credibility, and implementing policy objectives in consultation with its stakeholders.

Cotton Australia works to ensure an environment conducive to efficient and sustainable cotton production. It has a key role in Best Management Practices (*MyBMP*), an environmental management program for growers. This work has seen a significant improvement in the environmental performance of the industry, with huge improvements in water use efficiency, significant reductions in pesticide use, and millions of dollars invested into R&D.

The Australian cotton industry directly employs thousands of Australians and this year will contribute over \$2 billion to the Australia economy.

For further information or discussion on the content of this submission please contact Cotton Australia's Mining and Coal Seam Gas Policy Officer Sahil Prasad on 0406 598 054 or sahilp@cotton.org.au.



Submission

Cotton Australia welcomes the opportunity to provide comment on the *State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) Amendment 2012*.

Cotton Australia cannot currently support the suggested amendments proposed in this public consultation draft. The proposed amendments lack regulatory strength and do not reflect early representations of the form and function of the gateway process. The current process does not afford an adequate level of protection for our industry and fails to build trust in the process.

Cotton Australia holds fundamental concerns with two elements of this draft above the other concerns noted below. Firstly, to provide any confidence in the Strategic Regional Land Use Plan (SRLUP) process, all mining and petroleum industries must be legally required to go through compulsory and rigorous assessment. In addition, any application which is approved that is inconsistent with the advice or recommendations of specialist bodies including the Aquifer Interference Policy, Gateway Panel, Independent Expert Scientific Committee (IESC) or the Minister for Primary Industries is unacceptable. Our constituency expects that any conditions provided by the Gateway Panel are legally binding on the proponent.

Secondly, Cotton Australia remains extremely concerned that the current Gateway process currently does not hold the functional capability to refuse projects that don't meet the criteria or are inconsistent with the advice of consulted persons and bodies. Cotton Australia insists that the gateway process include the ability to refuse projects on their merits. An absence of this function undermines the credibility of the entire process and does not signify a serious attempt by the NSW government to address landholder concerns. Furthermore, it is arguable that the policy aim of this document "to ensure protection of Strategic Agricultural Land (SAL) and water resources"¹ cannot be met in its proposed form. Please see our reasoning and recommendations to selected clauses below:

17A (a) (ii)

The current wording proposed for this clause is too restrictive for the purposes of protecting strategic agricultural land and water resources. Based on representations made by the NSW Department of Planning, Cotton Australia understood the intent of the policy was to apply the Gateway Process to all state significant mining and petroleum developments which fall on SAL. The current wording does not meet this objective. To ensure all forms of potentially damaging mining activities are subject to the Gateway Process, Cotton Australia insists that a more expansive amendment be adopted which includes all State Significant Development (SSD) for mining activities.

Recommendation 1: Replace paragraph 17A (a) (ii) with words to the effect of:

(ii) the development is specified in clauses 5(2), 5(3) or 5(4) of Schedule 1 (State significant development – general) to State Environmental Planning Policy (State and Regional Development) 2011, or

17A(c)

Similar concern with clause 17A (a) (ii) are noted in respect of petroleum activities, with a highly restrictive definition that will not cover all SSD projects on SA Land. Cotton Australia remains extremely concerned that all types of development covered under clause 6 of Schedule 1 (State significant development – general)

¹ Please see clause 2(d)(ii)- of *State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) Amendment 2012*.

² Please see: http://www.dpi.nsw.gov.au/_data/assets/pdf_file/0003/436170/20120623-Deputy-Premier-med-rel-3



to State Environmental Planning Policy (State and Regional Development) 2011 are not covered by this process. For example, there is widespread concern from our constituency about the impact of petroleum related works (e.g. pipelines) on our industry's agricultural productivity. As such, Cotton Australia insists that all petroleum projects that qualify as SSD are assessed under this process.

Recommendation 2: Replace sub clause 17A(c) with words to the effect of:

(c) development specified in clauses 6(2), 6(3) or 6(4) of Schedule 1 (State significant development –general) to State Environmental Planning Policy (State and Regional Development) 2011, or

17A

Cotton Australia notes the omission of Extractive Industries from assessment as defined under State Environmental Planning Policy (State and Regional Development) 2011. We note there are similarities in the impacts of extractive industries on the productivity of our industry and insist on its inclusion for assessment to obtain a comprehensive policy.

Recommendation 3: Insert a new sub clause 17A (d) with words to the effect of:

(d) development specified in clause 7 of Schedule 1 (Extractive industries) to State Environmental Planning Policy (State and Regional Development) 2011, or

17A- Continued.

Cotton Australia remains weary of the potential impact of Geosequestration activities on our industry which relies on specific geological characteristics, soil types and good water quality and quantity to remain sustainable. In the instance that this technology is advanced and widely adopted in NSW, Cotton Australia recommends that such activities require gateway approval similar to other potentially damaging industries such as mining and petroleum activities.

Recommendation 4: Insert a new sub clause (17A (d)) with words to the effect of:

(d) development specified in clause 8 of Schedule 1 (Extractive industries) to State Environmental Planning Policy (State and Regional Development) 2011.

17B (1) (b)

To develop industry confidence in the SRLUP process, all mining, petroleum and extractive industries must be legally required to go through a compulsory and rigorous assessment. All decision making must be characterised by high quality scientific data that is publically available and peer-reviewable to provide any confidence to existing users of the land. Any application which is approved that is inconsistent with the advice or recommendations of specialist bodies including a gateway panel, IESC or the Minister for Primary industries is unacceptable. Our constituency expects that any conditions provided by the Gateway Panel are legally binding on the proponent and that science will underpin decision making.

Recommendation 5: Amend sub clause 17B (1) (b) with words to the effect of:

“must not be inconsistent with the following:”

17B (1) (b) (IV)

Cotton Australia notes the relatively short 30 day timeframe afforded to the Minister for Primary Industries to provide advice on water resource impacts. This timeframe is too short and potentially undermines the capacity of the Minister to deliver comprehensive advice in light of the anticipated high number of referrals that will be received. Furthermore, it is noted that the IESC enjoys a 60 day period pursuant to clause



17G(1)(c)(i). For the purposes of both consistency and ensuring the Minister of Primary Industries has reasonable time to provide sufficient advice the advisory timeframe under the abovementioned sub clause should be extended to 60 days.

Recommendation 6: Amend clause 17B (1) (a) IV) with words to the effect of:

“any advice provided by the Minister for Primary Industries within 60 days of a referral under paragraph (a), and”.

17B (2)

Based on representations made by the NSW Department of Planning, Cotton Australia understood that one intention of the Aquifer Interference Policy was to provide confidence to groundwater users that this resource would be protected prior to Gateway Certificates being issued. The current wording under sub clause 17B (2) only requires the Minister for Primary Industries to have ‘regard’ to the minimal impact considerations under the policy and any other provisions. The proposed amendment does not provide any confidence to our industry as a groundwater user that the Minister’s decision making will be consistent with the protection of this resource. Failure to be consistent with at least the minimal impact requirements in the Aquifer Interference Policy is potentially catastrophic to our industry. Cotton Australia needs a requirement at law that any advice provided by the Minister for Primary Industries is not inconsistent with the Aquifer Interference Policy.

Recommendation 7: Replace sub clause 17B (2) with words to the effect of:

The Minister for Primary Industries, when providing advice under this clause on the impact of the proposed development on water resources, must not be inconsistent with:”

17E (2)

In light of the recent appointment of the NSW Land and Water Commissioner whose powers include providing advice to Government on applications for exploration or production², Cotton Australia sees the consultation of the Land and Water Commissioner in the site verification process as a means of bolstering the assessment and representing landholders perspectives more broadly. Furthermore, any consultation and advice from the Land and Water Commissioner should be made available to the affected landholder for the purposes of equity and transparency.

Recommendation 8: Amend sub clause 17E (2) as follows:

(2) Before determining an application for a site verification certificate, the Director-General is to seek the advice of the NSW Land and Water Commissioner, who may consult the Director-General of the Department of Primary Industries.

Insert a new sub clause with words to the following effect after sub clause 17E (2):

(3) The Director-General must ensure that advice provided by the NSW Land and Water Commissioner under this clause is provided to landholders whose land is being considered for a site verification certificate.

17E (6)

² Please see: http://www.dpi.nsw.gov.au/data/assets/pdf_file/0003/436170/20120623-Deputy-Premier-med-rel-CSG.pdf



Like local council, landholders are (directly) affected by the outcome of a site verification certificate hold a strong interest in the outcome of this process. As such we recommend that landholders be provided with a copy of this certificate for the purposes of equity and transparency.

Recommendation 10: Amend sub clause 17E (6) as follows:

- (6) A copy of each site verification certificate issued by the Director-General must:
- (a) be published on the Department's website,
 - (b) be sent to the relevant local council, and
 - (c) be sent to landholders whose land has been the subject of the site verification.

17F (1)

It is understood from representations made by the Department of Planning that any proponent proposing to carry out mining or petroleum activities on SA land would apply to the gateway panel for determination. At present, the wording of sub clause 17F (1) does not reflect this intent, nor does it assist clarity or inspire confidence in the process. Cotton Australia insists that such a process 'must' take place to provide some level of certainty to our industry.

Recommendation 11: Amend sub clause 17F (1) with words to the effect of:

- (1) A person who proposes to carry out mining or petroleum development on SA land must apply to the Gateway Panel for a gateway certificate in respect of the proposed development.

17G (1) (b)

Cotton Australia's constituency is to be covered by several Strategic Regional Land Use Plans to be developed in NSW- these include the Central West, Western and Murrumbidgee regions. Given our interest in these regions and the New England/North West Region of NSW, we recommend that Cotton Australia be identified and consulted in the determination of an applications for a gateway certificate where regionally appropriate.

Recommendation 12: Amend clause 17G (1) (b) with words to the following effect:

"Before determining an application for a gateway for a gateway certificate relating to development on land that is biophysical strategic agricultural land, the Gateway Panel may consult with the following stakeholders"

- (i) the NSW Farmers Association
- (ii) the NSW Minerals Council Ltd.
- (iii) the Australian Petroleum Production and Exploration Association Ltd, and"
- (iv) Cotton Australia where regionally appropriate.³

17B (2)

Similar to our concerns with 17B(2), Cotton Australia is concerned that this sub clause does not provide a sufficiently direct link between the requirements of the Aquifer Interference Policy, and the Minister for Primary Industries' advice.

Recommendation 13: Amend sub clause 17G (2) with words to the effect of:

³ Please note that Cotton Australia holds a strong interest in the Central West, Western and Murrumbidgee Regions of NSW as identified under the Strategic Regional Land Use Policy.



“The Minister for Primary Industries, when providing advice under this clause on the impact of the proposed development on water resources, must not be inconsistent with”:

17H (1)

Cotton Australia remains extremely concerned that the current Gateway process does not hold the functional capability to refuse projects that don't meet the criteria or are inconsistent with the advice of consulted persons and bodies. At a fundamental level it is nonsensical to apply a 'gateway' metaphor to a mechanism that cannot refuse entry to a Development Application process. It is reasonable to foresee that some projects that require substantial modification to be suitable for ascension to a Development Application process should not be conditionally or unconditionally approved- leaving refusal as the only remaining sensible option. Cotton Australia insists that the gateway process include a refusal option to retain any functional credibility.

Recommendation 14:

Amend 17H (1) with words to the following effect:

(1) The Gateway Panel may determine an application by issuing a gateway certificate...

Insert a new sub clause immediately following sub clause 17H (1) to the following effect:

(2) The Gateway Panel must refuse to grant a gateway certificate where the proposed development would need to be significantly altered in order to meet the relevant criteria set out in sub clause (3).

17H (3)

Cotton Australia commends effort thus far to develop expansive and all-encompassing criteria for the determination of gateway certificates including the addition of fragmentation of agricultural land uses in this most recent draft. In the developing a robust criteria that ensures that all necessary considerations are met, Cotton Australia would recommend absolute compliance with the Aquifer Interference Policy coupled with consideration of access to agricultural resources, transport routes, support services and related infrastructure be included. Protection of NSW's productive aquifers as a resource is of primary concern to the Australian cotton industry and only full compliance with an Aquifer Interference Policy will suffice. Furthermore, the encroachment of mining and petroleum activities has the ability to hinder access to several items affecting our agricultural productivity such as Ginning facilities, major distribution routes etc.

Recommendation 15:

Amend paragraph 17H (4) (a) to insert the following provisions:

(a) in relation to biophysical strategic agricultural land- that the proposed development will not significantly reduce agricultural productivity of the land on which the proposed development is to be carried out, or any adjacent biophysical strategic agricultural land, based on a consideration of the following:

- (i) any impacts on the land through surface area disturbance, subsidence,
- (ii) any impacts on soil fertility, rooting depth or soil profile materials and thickness,
- (iii) increases in land surface micro-relief or soil salinity, or significant changes in soil pH,
- (iv) compliance with the criteria of the Aquifer Interference Policy,
- (v) any fragmentation of agricultural land uses,
- (vi) access to agricultural resources, transport routes, support services and related infrastructure.

17I (3)

Cotton Australia remains extremely concerned the Gateway Panel can issue an unconditional gateway certificate if it does not meet the timeframe requirements under clause 17H (2). The existence of a 'deemed



approval' mechanism undermines industry and community confidence in the ability of this process to protect communities affected by mining and petroleum activities. This is completely unacceptable as an option. A more productive alternative to the proposed amendment would be to allow the Director General to assess the reasons behind the delay and order either an extension or immediate determination.

Recommendation 16: Replace sub clause 17I (3) with words to the following effect:

(3) If the Gateway Panel does not issue a gateway certificate within the period required under this clause (and has not rejected the application), the Director-General must investigate the reasons for the delay and set the date by which the Gateway Panel must reach a determination as to whether a gateway certificate should be issued.

17I (4)

The availability of a rejection of an application mechanism only on the grounds of a failure to respond to a request (as per clause 17J (3) (a) is unacceptable as the only avenue for rejection. In order to give proper effect to the gateway process, this clause must form one of several avenues for rejection to retain any faith in this process.

Recommendation 17: Replace sub clause 17I (4) with words to the following effect:

(4) An application under this Division may also be rejected in accordance with clause 17J (3) (a).

17M (1)

Similar to our recommendation regarding sub clause 17E (6), landholders who are affected by the outcome of a site verification certificate hold a strong interest in the outcome of this process. For the purposes of equity and transparency we recommend that landholders be provided with a copy of the gateway certificate.

Recommendation 18:

Amend sub clause 17M (1) with words to the following effect:

(1) A Gateway Panel must give:

- (a) a copy of each application for a gateway certificate to the Director-General, and
- (b) a copy of each gateway certificate issued to the applicant, landholder(s) subject to site verification and to the Director General.

17N (2)

As per Recommendation 8 of this submission, Cotton Australia sees the appointment of a NSW Land and Water Commissioner as an opportunity for landholders and communities to be represented in the gateway process and of equal importance to the community in assessing the membership of the Gateway Panel.

Recommendation 19: Amend sub clause 17N (2) to the following effect:

(2) The Minister must consult with the Minister for Resources and Energy, the Minister for Primary Industries and the NSW Land and Water Commissioner on the proposed membership (including any alternate members) of the Gateway Panel.

17P (1)

Cotton Australia holds strong concerns as to whether a gateway panel of no more than 3 members has the capacity to deal with the number of applications it is expected to receive over the course of its existence, and whether it will hold a balance of expertise across the 6 disciplines listed under sub clause 17P(2). A maximum



of three members (and any alternate members) in the Gateway Panel is too restrictive on the capacity of the panel to perform the stipulated functions under sub clause 170.

Recommendation 20: Amend sub clause 17P (1) to the following effect:

(1) The Gateway Panel is to consist of not more than 6 persons appointed by the Ministers.

End submission.