



Submission to NSW Department of Planning on the State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) Amendment (Resource Significance) 2013

August, 2013



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.

Cotton Australia welcomes the opportunity to provide this submission to the Department of Planning on the *State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) Amendment (Resource Significance) 2013*.

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



General

Cotton Australia welcomes the opportunity to provide comment on the State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) Amendment (Resource Significance) 2013 (the 'Draft SEPP') under the *Environmental Planning and Assessment Act 1979* (the 'EP & A Act'). Cotton Australia (we) hold a number of concerns with the draft SEPP, and view several proposed clauses as a means of undermining the importance of existing industries, communities and the environment when assessing applications for mining and gas projects. Please see our recommendations below.

Recommendation 1: *Extend the comment period by an additional two weeks to four weeks in total.*

Recommendation 2: *Remove cl. 2(b1) from the draft SEPP.*

Recommendation 3: Insert reference to “ecologically sustainable development” into the Aims of Policy section.

Recommendation 4: *Remove cl 12AA (3)-(4) from the draft SEPP.*

Recommendation 5: *Insert reference to the consideration of ‘cumulative impacts’, ‘environmental impacts’ and ‘impacts on existing industry’ after proposed cl.12AA (2)(d).*

Recommendation 6: *Remove cl. 12AC (2) from the draft SEPP.*

Recommendation 7: *Retain cl.13 in its original place.*



Submission

Inadequate Comment period and Consultation

Cotton Australia notes the 2 week period consultation period running from the 29th of July to the 12th of August. Given the importance the draft SEPP, the strong public interest from industry, community and environmental groups- an additional two week consultation period to communicate the issues to our constituents and develop our industry response would be reasonable.

Recommendation 1: *Extend the comment period by an additional two weeks to four weeks in total.*

“Aims of the Policy”

Cotton Australia notes the proposed expansion of the “Aims of the Policy” section in the draft SEPP to “*promote the development of significant mineral resources*”. We don’t see the need for this addition in light of the current aims that already practically promote the mining and gas interests above all others. Based on consultation with our constituency, there is a strong sentiment in mining affected areas that the current NSW government already unnecessarily promotes mining over agriculture, environment and the community. This sentiment is supported by the large number of mining and gas projects already approved on, or in very close proximity to farming operations in NSW with little regard to land-use compatibility issues with the agriculture sector. The proposed amendment would simply reinforce this sentiment and undermine confidence in the regulatory framework even further. In line with this concern, the proposal in the draft SEPP requiring aims of policy to be considered under proposed clause 12AB of the draft¹ exacerbates the abovementioned concern.

As a means of restoring some balance to the aims of the SEPP in its current form, we recommend the Principle of Ecologically Sustainable Development² be enshrined in the Aims of the Policy. Such an inclusion would restore some balance in the approvals process and provide some comfort to industry who notes the proposed scrapping of ESD by the Department of Planning in our future planning system. The preservation of the polluter pays, precautionary and inter and intra-general equity principles that make up ESD are a fundamental step towards restoring balance and confidence in our approvals process and the decision makers themselves.

Recommendation 2: *Remove cl. 2(b1) from the draft SEPP.*

¹ 12AB- Aims of the Policy to be considered: The consent authority must consider the aims of this Policy in determining an application for consent for development for the purposes of mining.

²

Recommendation 3: Insert reference to “ecologically sustainable development” into the Aims of Policy section.

“Significance of Resource”

The inclusion of cl. 12AA requires the significance of the resource targeted in the development application be given principal consideration by the decision maker (in most cases this will be the Planning and Assessment Commission).³ The current wording of the draft effectively allows for primary consideration of the significance of the resource, followed by other issues to be considered ‘*proportionate to the importance of that other matter in comparison with the significance of the resource*’. In practice, the grouping of all other matters for consideration to be weighed against the economic return from mining projects is imbalanced and doesn’t allow equal consideration of other necessary factors in the clause. The significance of the resource should be given equal weighting to all other considerations to allow a well-balanced and equitable decision making process.

Additionally, a recurrent recommendation by Cotton Australia and numerous key stakeholders is that cumulative impacts, environmental impacts and existing industry be considered at approval level. By incorporating these factors into the set of considerations required by the Director General when providing advice under cl. 12AA(2), there would be more balance in the advice provided to the consent authority, and hence to process as a whole.

Recommendation 4: *Remove cl 12AA (3)-(4) from the draft SEPP.*

Recommendation 5: *Insert reference to the consideration of ‘cumulative impacts’, ‘environmental impacts’ and ‘impacts on existing industry’ after proposed cl.12AA (2)(d).*

“Non-Discretionary development standards for mining”

The proposed changes in the draft set non-development standards for mining. Under s. 79(C) of the EP & A Act, non-compliance with these standards does not prevent consent under cl. 12AC(2)- *(If proposed development for the purposes of mining satisfies a development standard set out in this clause, the consent authority must not refuse consent to the development on the specific grounds to which the standard relates)*- this will undermine the capacity of the decision maker, limit the strength of the approvals process and diminish public confidence in the process as a whole.

Recommendation 6: *Remove cl. 12AC (2) from the draft SEPP.*

Compatibility of proposed development with mining, petroleum production and extractive industry

³ Please see. Cl 12AA(3)-(4)



The draft SEPP proposes to renumber clause 13 of the current SEPP (*Compatibility of proposed development with mining, petroleum production and extractive industry*) into the ‘Miscellaneous’ section under cl. 18b. The relocation of this important clause is problematic as it moves this key consideration out of Part 3 of the SEPP- Matters for consideration, particularly cl 13. (2)(a)(i) *the existing uses and approved uses of land in the vicinity of the development*. This clause recognizes land use incompatibility and undermines the seriousness of the land use incompatibility debate being raised by the agriculture sector. This proposed change simply reinforces a sentiment that the NSW government holds a pro-mining attitude at the expense of other land users e.g. farmers.

Recommendation 7: *Retain cl.13 in its original place.*

Submission Ends.