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8 November 2013

Submission: CSG exclusions and biophysical agricultural land map.

The *State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007* (the Mining SEPP) and *Environmental Planning and Assessment Regulation 2000* (the EP&A Regulation) have now been amended to give effect to the promised residential exclusion for CSG and the “Gateway” process, and further amendments are foreshadowed to expand the residential exclusions and adopt biophysical strategic agricultural land mapping for the Gateway process.

The Lock the Gate Alliance and our member groups are very glad to finally see this policy made, but hope that the Government will take the opportunity presented by the next round of exclusions to ensure that everyone’s homes are protected from both coal seam gas and coal mining, and to fix the major flaws in what is, at the moment, a basically useless Gateway process. The delay in the Government’s implementation of promised protections for agricultural and residential areas from coal seam gas has led to significant anxiety in communities and has meant that some areas are now, from the Government’s perspective, sacrificed. Continued delay in enacting policy to give effect to the Government’s promise to protect agricultural land and water resources from coal mining will likewise lead to further conflict, anxiety and loss for communities facing the expansion of coal mining. We urge the Government in the strongest terms to stop ignoring the very reasonable calls coming from the community for no-go areas for coal mining to protect water resources, agriculture and bushland from new and expanding mines.

In general, Government policy on the control of coal and gas mining is at odds with and failing to keep pace with community organisation and public opinion. Many communities in NSW have now declared themselves “gasfield free” by direct grassroots democratic process. House by house, road by road and shire by shire, these communities have elected not to have industrial gasfields in their area, and have expressed their willingness to resist the invasion of gas mining in their area. Many of these communities are not captured by the lines on the maps of Local Environment Plans, and indeed, in the north west of NSW and the northern rivers, entire shires have declared their intention to remain free of coal seam gas. Failure by Government to match this democratically-realised exclusion will result in continued agitation and conflict in the areas affected by this invasive industry.

On the regulation of coal mining, the impacts on affected communities have become intolerable, and this is leading to a significant turn in sentiment, not against coal mining across the board, but against the unrestrained sprawl of mining into places that common sense dictates should be protected from this most intrusive of industries: highly productive farmland, irreplaceable bushland, groundwater aquifers and drinking water catchments for our major cities and towns. Regional communities have a reasonable expectation that the Government will regulate and constrain an industry that has impacts as intense and irreversible as coal mining, and have been shocked to find that this is not the case.

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The amendments to the *Mining SEPP* and the *EP&A Regulation* have presumably been implemented to address this backlash, but fall short of the extent of exclusion expected by the community for the coal seam gas industry and utterly fail to address the demands of regional people that reasonable limits be placed on coal mining to protect the basic amenity of regional and rural communities, their drinking water, and natural and cultural heritage. Until this is fixed, the Government will continue to face resistance and the coal and gas industries will continue to face strong opposition.

We thank you for the opportunity to comment on this policy, and will continue to advocate and agitate for communities affected by the expansion of inappropriate mining.

Summary of recommendations

- People's homes should be safe from mining and coal seam gas no matter where they live. Rural residential land (zone R5) and all large lot residential zonings should be added to the CSG exclusion zone.
- Individual farmhouses in areas zoned as rural land or similar should also be protected with a 2km buffer.
- The exclusion areas should include the community of Belford and Lower Belford in Singleton Shire and Tintenbar, Meerschaum Vale, and Newrybar in Ballina Shire as the "villages" to be excluded from CSG exploration and the village exclusion must apply to the entirety of the villages of Goongerry, Jerry's Plains Broke and Bulga.
- The CSG exclusion zone should be applied to the Stage 1 Gloucester Gas Project (08_0154). While this project has already received Concept Plan approval by the Planning Assessment Commission, and is therefore unaffected by the CSG exclusion zone, construction has not commenced, and the proponent, AGL Upstream Infrastructure Investments, has not approved financing for the project. The residents of Gloucester rightly believe that their health and livelihoods deserve the same protections that apply to the rest of NSW.
- The 2km buffer must apply to all exclusions, including land mapped as critical industry clusters.
- The exclusion should be extended to coal mining, which should not be permitted in residential zones, critical industry clusters, and 2km buffer around each.
- Resource companies should not be able to exempt land they own from the critical industry clusters: it will defeat the purpose of the protections to create holes in the maps.
- There is no protection for agricultural land under the Gateway process. The Regulation must be amended to create a strict exclusion, and must apply to all projects not determined before the creation of the amended regulations.
- Highly productive farmland in the Hunter, north-west and the northern rivers must be given absolute protection from coal mining and coal seam gas if rural communities and agricultural industries are to have any certainty and protection.
- The new Gateway provisions in the Mining SEPP do not provide the Panel with the power to even recommend rejection of a mining application. This failure must be immediately amended. The Gateway panel must be empowered to reject applications for certificates, must be empowered to recommend to consent authorities that projects not be approved, and these recommendations must be binding on consent authorities.
- The mechanism whereby an unconditional certificate is automatically issued if the Gateway Panel runs out of time must be removed.
- The Director-General of the Department of Planning is not an appropriate person to determine verification of agricultural land.
- The process to verify biophysical strategic agricultural land is subject to the discretion of the Director-General of the Department of Planning, who only needs to "have regard to" the

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verification criteria. This is appropriate caution for protection of land, but there should not be any discretion to remove land from the map if it meets the criteria.

- The next steps should be the introduction of exclusion zones to protect surface water and groundwater resources from CSG and coal mining.

Coal seam gas residential and critical industry cluster exclusions

As of Friday 4 October, CSG exclusions apply now to anywhere in a Local Environment Plan that is zoned in the Standard LEP Zone R1 General Residential, Zone R2 Low Density Residential, Zone R3 Medium Density Residential, Zone R4 High Density Residential, Zone RU5 Village. The exclusion also applies to a 2km around those zonings, and the Sydney growth centres. Part or all of seven villages are also proposed to be added to the exclusion. There is no apparent justification for these additional village exclusions not including the entirety of the villages to which they relate, but some do not, such as Jerry's Plains. It is crucial that the CSG exclusion be applied consistently to all residential areas, otherwise the lines drawn around exclusion areas appears arbitrary, and subject to lobbying and interference by mining proponents.

The exclusion zones extend to applications for development consent made, but not finally determined before the changes to the SEPP took effect on 4 October and to requests to modify existing consents. It is bitterly disappointing that the Government has taken so long to finalise this commitment in law, and that AGL has, in the meantime, secured approval to drill for coal seam gas within 2km of the town of Gloucester, and other towns and residences in that valley and along the Buckett's Way. Delay in fulfilling the promised residential exclusions, and limited application of the new provisions have sacrificed Gloucester. This is not acceptable.

The Lock the Gate Alliance believes that all people's homes should be protected from coal mining and coal seam gas. There are homes and villages within 2km of new and expanding coal mines and there are new and expanding mines proposed for within 2km of critical industry clusters. The exclusion zones should be expanded to apply to coal mining, and should include land zoned R5 in the Standard LEP and its equivalent in other LGAs. In addition, we support calls by local governments and local community groups to expand the exclusion zones to Belford and Lower Belford in Singleton Shire, Tintenbar, Meerschaum Vale and Newrybar in Ballina Shire, the entirety of the villages of Goongerry, Jerry's Plains Broke and Bulga and the entirety of Byron Shire.

The CSG exclusion zone should also be applied to the Stage 1 Gloucester Gas Project (08_0154). This project has already received Concept Plan approval by the Planning Assessment Commission, and is therefore unaffected by the CSG exclusion zone as it is currently drafted. Nevertheless, construction has not commenced, and the proponent, AGL Upstream Infrastructure Investments, has not approved financing for the project. The residents of Gloucester rightly believe that their health and livelihoods deserve the same protections that apply to the rest of NSW.

Many communities in NSW have now declared themselves "gasfield free" by direct democratic process. House by house, road by road, and shire by shire, these communities have elected not to have CSG in their area, and have expressed their willingness to resist the invasion of gas mining in their area. Many of these communities are not captured by the lines on the maps of Local Environment Plans, and indeed, in the north west of NSW and the northern rivers, entire shires have declared their intention to remain free of coal seam gas operations.

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It appears that the exclusion declared for critical industry clusters is not afforded the 2km buffer given to residential areas. There is no justification for this, and a protection buffer for critical industry clusters must be implemented as part of the next round of exclusions. In addition, the Government is running a process inviting resource companies to exempt their land from the critical industry cluster maps. Ownership of land has no effect on the physical character of that land, and purchase of land within critical industry clusters by resource companies cannot be allowed to erode the integrity of these crucial rural industries. Resource companies should not be able to exempt land they own from the critical industry clusters. It will defeat the purpose of the protections to create holes in the maps, and the Hunter Valley will lose those industries that give it character and diversity.

Agricultural land

For agricultural land, the Government has finally brought the promised Gateway process into statutory law, via the new section 50A of the *EP&A Regulation 2000*, but the results are very disappointing, to say the least.

The Gateway process does not apply to lands already subject to mining leases, so there is no protection for agricultural land from mine extensions, and neither is there protection for lands where project terms of reference pre-date September 2012. The new Drayton South open-cut, which will be immediately adjacent to two horse studs and a winery, and will affect Strategic Agricultural land and an important stream has terms of reference that pre-date September 2012, but this does not have any effect on the importance of the land that will be lost to that project, nor will it ameliorate the impact it will have on surrounding wineries and horse studs. This project is emblematic of those projects that must be captured by new regulation to protect agricultural lands from mining, which must apply to all projects not yet constructed. Both the winegrowing and horse-breeding industries have made clear that the continued expansion of open cut coal mining and the beginning of coal seam gas in the Hunter are threshold issues for their continued operations in the region. There is no doubt about the seriousness and urgency of the threat to the environment and economy of the Upper Hunter. The government's response to date, and the Gateway process is exemplary of it, is a failure.

There is no exclusion of mining from agricultural lands in the Gateway Process. The Gateway Panel's advice and any recommendations they make do not need to be acted upon by consent authorities. Under section 17B of the SEPP, consent authorities need only 'consider' the Gateway Panel's advice, and each member of our network knows the effect such considerations generally have on the momentum on inappropriate mining projects: none at all.

With the proposed expansion of mining into the Liverpool Plains and Gloucester, and coal seam gas into the North West and Northern Rivers, it is crucial that clear no-go areas are established from the exploration phase onward, with adequate exclusions. The current policy fails to even establish this for critical industry clusters, but it is clear that highly productive farmland in the North West and the northern rivers must be given absolute exclusions if rural communities and agricultural industries are to have any certainty and protection.

Under the new system, biophysical strategic agricultural land (SAL) must first be verified. It is the Director-General of the Department of Planning that determines these applications, and the process is entirely discretionary: he or she must "have regard to" the criteria set out in the site verification protocol. We do not believe that the Director-General of the Department of Planning is an appropriate person to determine these applications. Such a person would not normally have

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expertise in soil and would not have as part of their professional brief an interest in conserving agricultural land or upholding agricultural interests. In addition, it is not appropriate for these applications to be discretionary when the loss of land is the result. There may be a case to be made to allow some discretion to protect land that does not meet the criteria, but it must not be permissible in the regulation to sterilise productive agricultural land for mining.

The Gateway provisions in the Mining SEPP do not provide the Panel with the power to refuse a certificate, and do not provide them with the power to even *recommend* rejection of a mining application. This failure must be immediately amended. The Gateway panel must be empowered to reject applications for certificates, must be empowered to recommend to consent authorities that projects not be approved, and these recommendations must be binding on consent authorities.

A Gateway certificate can be conditional if the Panel considers that the proposed development does not meet the relevant criteria. In this case, the certification must “include recommendations of the Gateway Panel to address the proposed development’s failure to meet the relevant criteria.” Even if a Gateway certificate expressed strong disapproval for a project and its impact on agricultural lands, there is no requirement for their advice to be followed. Before giving consent to a mine, consent authorities must “consider” any recommendations set out in a gateway certificate, and any advice on water resources provided by the Minister for Primary Industries, and any consultations with the Gateway panel about applications that had their certificate issued automatically because the Panel ran out of time, and advice from the IESC. Again, our members have experience with the way in which such “considerations” are generally treated by the Department, the PAC and the Minister, and we have no faith that this system will result in the protection of agricultural land from mining.

Water resources

The Gateway panel must refer all applications to the Independent Expert Scientific Committee (IESC) and the Minister for Primary Industries “for advice regarding the impact of the proposed development on water resources.” This is the only time the impact on water resources is addressed in the process, and there are no requirements for what this advice must address, critical thresholds beyond which damage must not be inflicted, or lands mapped as off-limits in the interests of protecting water resources. This is despite clear evidence that coal mining and CSG extraction have a significant impact on water resources. The IESC advice must come within 60 days and the Minister’s advice within 70 days, though this can be extended. In giving advice, the Minister for Primary Industries must simply “have regard to” the minimal impact considerations and the rest of the Aquifer Interference Policy. Other than this, there is no mention of aquifer interference and this is a major hole in the Government’s delivery of their commitments.

The problem of mining in groundwater aquifers that supply agricultural production, and under catchment areas for major drinking water supplies like the Central Coast and Sydney has not been dealt with at all.

Open cut coal mining has an impact on water resources by diverting creeks and rivers, by cutting into aquifers, and removing water from them. Final voids left open after mining ceases draw groundwater from the surrounding area, lowers water tables and can introduce contaminants such as heavy metals and highly saline waters to surface environments. Underground coal mining has an impact on water resources by mining directly in aquifers, and by fracturing the rock formations that contain aquifers and river beds. Coal seam gas extraction can impact on water resources by depressurising aquifers, contaminating groundwater directly and indirectly by introducing

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connections between aquifers. The process can involve the use of carcinogenic chemicals, which can then migrate into adjacent and shallow groundwater aquifers.

To date, the Government has utterly failed to put in place laws and policies that will protect groundwater aquifers and surface drinking water catchments from the impacts of underground and open cut coal mining, and coal seam gas extraction. As for agricultural land, an unequivocal no-go exclusion must be established for important water resources. Until this happens, agricultural industries, regional towns and even Sydney's own drinking water supply are not safe.

Conclusion

With the next round of changes to the *State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007*, the Government has an opportunity to fix some of the failings of the Gateway process. We urge the Government in the strongest terms to implement a protection for all people's homes from coal seam gas and coal mining, and to establish unequivocal no-go areas for agricultural land, water resources and natural and cultural heritage for protection from coal and gas extraction. Such action would be entirely in line with community expectation and would resolve much of the conflict currently being felt in regional NSW.