LOCK THE GATE ALLIANCE
AUSTRALIANS WORKING TOGETHER TO PROTECT OUR LAND, WATER, AND FUTURE

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Submission: *State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) Amendment 2014* and *Environmental Planning and Assessment Amendment (Mining and Petroleum Development) Regulation 2014*

The Lock the Gate Alliance opposes these changes to the *Statement Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007* and EP&A Regulation 2000. We are deeply disappointed that the Mining SEPP is being changed again to move the goal posts for members of the public that have engaged in good faith with the planning system. These rule are being proposed while community members at Gloucester are waiting to hear a response from the Government to their advocacy for a full Environmental Impact Statement and development consent to be required of AGL for their controversial Waukivory Project, involving CSG fracking in the Gloucester Valley.

The Government describes these changes as “minor” but some of them have implications for the villages and communities in the Gloucester Valley, and appear to smooth the way for AGL's Gloucester Gas Project, ensuring it remains exempt from the CSG exclusions. Already, the residential areas in Gloucester and surrounding villages have been denied the protection of the CSG exclusion zones, since the project had Part 3A transitional approval prior to the zones coming belatedly into force in October last year. Now these changes add insult to injury, and open the door for that project to expand, as well as pulling the rug out from under the good faith advocacy of the affected communities.

We oppose the further widening of loopholes to allowing AGL to get away with not doing a full EIS for their exploration program and expand their production approval beyond the 100 wells already included.

Changes to the clause 7 (2) (f) (iii): the 3km rule --

We oppose the *State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) Amendment 2014* because it changes the rules that determine which coal seam gas and other unconventional gas projects require development consent.

Under the current SEPP, development consent is required for all drilling for a set more than five production or exploration wells that are within 3km of any other well in the same title. This is precisely what is proposed at Gloucester under AGL’s Waukivory Project, as has clearly been demonstrated by members of the affected community. Instead of complying with this reasonable regulatory trigger, the Government now seeks to change the SEPP to specify that this 3km distance is to be measured “from the geometric centre of the set of wells” rather than the outer-most well.

The meaning of this term and this change is not entirely clear, but we believe that it has important implications for the rural communities in and around Gloucester. The community has previously argued that AGL's plans for fracking in new exploration wells for coal seam gas as part of their Waukivory Project needs a full Environmental Impact Statement and development consent because of its proximity to gas wells that they have already drilled. They have written to the Government making this argument and received no response for months. Now, instead of decently responding to their good faith representations, the government proposes to change the regulation, and allow AGL to proceed without development consent, and without an Environmental Impact Statement.

Changes to clause 20: expanding exemptions from the CSG exclusion zones

We oppose the addition of section 1B to clause 20 of the *State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) Amendment 2014* because it amends the exemption for transitional Part 3A projects from the coal seam gas exclusions, making the loophole even wider.

In October 2013, exclusion zones were brought into force in New South Wales that prevented coal seam gas activities in residential areas and critical industry clusters. At that time, any project that already had transitional Part 3A approval at the time the exclusions came into effect was exempted from these new rules, including the already approved Gloucester Gas project and the Camden gasfield. The exemption also applied to any transitional Part 3A project that was not yet approved, but had a concept plan approved.

This was already a broad and generous exemption that gave AGL the ability to conduct coal seam gas production within 2km of residential areas in the Gloucester Valley and represents a terrible impost on the people that live there. The changes now proposed are utterly unacceptable, as they expand this exemption, and put even more homes potentially at risk. Unconventional gas wells vent dangerous fumes including volatile organic compounds, polycyclic aromatic hydrocarbons, and Hydrogen Sulfide, Nitrogen Oxides and Sulfur Oxides. It is no trivial matter to allow such a facility to be close to people's homes.

At the time that the exclusion zones came into force, AGL had concept approval for an additional 330 wells in Gloucester prior to the exclusion zones coming into force, but only had project approval for 110 wells. The residential exclusion zones would under the current law apply to any Stage 2 production project in Gloucester, since no transitional Part 3A application for a second stage was current at October 2013. The changes now on exhibition extend the exemption from the residential no-go zone to modifications of approved Part 3A transitional projects where the modification is for wells that are already approved, and the Minister is satisfied there is "minimal" environmental impact.

We believe that this would make it possible for AGL to apply to modify their existing Stage 1 approval to drill some of the 220 wells that are approved by their concept plan without the residential exclusion zone applying. We acknowledge that the proposed changes put constraints on this, and it's hard to credit that the AGL could be triple the size of their gasfield as a "modification" of an existing consent and claim that it is having "minimal" harm, but nevertheless believe that the proposed changes are a serious risk to people in Gloucester, and must be stopped.

Closing the Gateway

The proposed changes to the *Environmental Planning and Assessment Amendment (Mining and Petroleum Development) Regulation 2014* appear to close the gateway process for Strategic

Agricultural Land identified after January this year. There is no clear justification for this. The proposed changes to the *EP&A Regulation* make it clear that the requirement for Part 3A project modifications that impact on Strategic Agricultural Land to obtain a Gateway certificate does not apply if the land was not shown on the Strategic Agricultural Land Map before 28 January 2014 or the application was made before 3 October 2013.

Previously, the gateway process applied to all applications made since 10 September 2012.

Part of the changes currently on exhibition are changes to the Critical Industry Cluster maps to include 19 new viticulture properties: it's not clear what public policy purpose is served by also exempting these properties from the Gateway process. It seems perverse to add them to the maps at the same time as changing the regulation so that the Gateway process will not apply to them?

If the Government is open to amending the Mining SEPP and the Gateway process, we have an alternative suggestion. Under the terms of the Mining SEPP, the Gateway Panel is legally bound to issue Gateway certificates for mining projects that recommend that the project goes ahead, regardless of impacts it will have on any matter under their consideration. Section 17H of the Mining SEPP states that a Gateway certificate *must* state that either the Gateway Panel is of the opinion that the proposed development meets the relevant criteria, or that the proposed development does not meet the relevant criteria, but, either way*, the certificate cannot be refused*. This fetters the Panel's ability to provide frank and accurate advice to the consent authority, preventing them from recommending refusal of a project, no matter how profound and irreversible its impacts on land and water.

Amendment is required to section 17H (1) so that is states that "The Gateway Panel *may* determine an application by issuing a gateway certificate in accordance with this Division" and to insert a new subsection (6) into section 17H that states "If the Gateway Panel determines not to issue a Gateway certificate, the Panel must provide a statement of reasons for their determination"

Restore balance to the Mining SEPP

In addition to the above proposed change, the Lock the Gate Alliance submits that the Mining SEPP must be amended to restore balance so that short term economic considerations are not placed above the public interest for consent authorities asked to consider mining activities.

We submit that the Mining SEPP must be amended to remove the gross imbalance created by the controversial "resource significance" amendments and the non-discretionary development standards, by repealing sections 12AA and 12AB of the Mining SEPP.

Controversial changes made to the Mining SEPP last year, which created sections 12AA and 12AB, made "the significance of the resource" the principal consideration for decision-makers for mining projects, and introduced non-discretionary standards for mining project that compelled consent authorities to give consent if those standards are met. The standards work only one way: they prevent an authority from refusing a consent on the grounds covered if the standard are met, but do not prevent them from *providing consent if the standard is not met*. This has loaded the dice further in favour of coal mining proponents, who demand certainty that their projects will be approved, regardless of their impacts.

These impositions were a profound breach of trust with coal and gas-affected communities and need to be repealed. Previously, sections 12 and 14 of the Mining SEPP ensured that compatibility

with other land uses, and impacts on water, biodiversity and greenhouse emissions were be considered before determining an application for consent for development for the purposes of mining, petroleum production or extractive industries.
This problem can be fixed by repealing sections 12AA and 12AB of the Mining SEPP and we submit that this needs to be done immediately.