LOCK THE GATE ALLIANCE

AUSTRALIANS WORKING TOGETHER TO PROTECT OUR LAND, WATER, AND FUTURE

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Submission: Mining SEPP changes and "Acquisition policy"

We appreciate the opportunity to make a submission on the latest changes proposed to the Mining SEPP, but would like to register our profound disappointment that a third round of changes to the SEPP is taking place to suit the interests of the mining industry while calls for reform to the SEPP to protect mining affected communities have been ignored. Mining affected people, groups and communities have made repeated and reasonable representations about reforms that are urgently needed to address and prevent the unliveable impacts of coal and gas mining.

Some of these proposals have been for simple and effective changes to the Mining SEPP.

Furthermore, significant numbers of people and groups made submissions against the last two changes to the SEPP that were designed to aid mining companies.

We have asked for:

1. Repeal of s12AA of the Mining SEPP,
2. A proper gate for the Gateway process,
3. Restoration of merits appeal rights for communities and concurrence powers for other agencies
4. A restructure of the Department Planning to end their intimacy with the mining industry.
5. Beginning of a root and branch reform process to restore balance for mining affected communities.

None of these important reforms have been made or begun, and instead, further changes are now proposed to the Mining SEPP to smooth the way for mining companies.

The introduction of clause 12AA of the SEPP last year has been criticised by community groups and the Planning and Assessment Commission as being inconsistent with section 79C of the EP and A Act, and as formalising the previously informal bias in favour of the mining industry in planning decisions. We also wrote submissions against changes made to the SEPP in August this year to ensure that AGL did not need to prepare an Environmental Impact Statement for its Waukivory coal seam gas exploration project. Time and time again, communities affected by mining are ignored and the public interest sidelined in favour of mining interests.

We are opposed to the *State Environmental Planning Policy Amendment (Gas Exploration and Mining) 2014*. This amendment removes the clauses that ensured that development consent is required for unconventional gas exploration where there are more than five wells within 3km of one another, and for exploration in environmentally sensitive areas of State significance. This clause has already been changed once this year, to suit AGL's preference that its Waukivory coal seam gas exploration project not be subject to a full Environmental Impact Statement process, and now it is being removed altogether, and decision-making for all coal seam gas exploration vested in the Office of Coal Seam Gas.

This clause is crucial to ensuring that high impact exploration activities are adequately and transparently assessed. The Review of Environmental Factors process and the Office of Coal Seam Gas cannot deliver this transparency, this rigour or a full appreciation of the risks. Only a development consent process, with an Environmental Impact Statement, engagement of the public and the Government agencies responsible for heritage, biodiversity, water and health, can provide this.

Removing the requirement for development consent, and thus, full environmental assessment, is contrary to the Chief Scientist's recommendations. Her report highlighted *"the need for Government and industry to approach these issues with eyes wide open, a full appreciation of the risks, complete transparency, rigorous compliance, and a commitment to addressing any problems promptly with rapid emergency response and effective remediation."* This cannot be delivered by the Office of Coal Seam Gas nor by simplified Reviews of Environmental Factors instead of Environmental Impact Statements.

Indeed, the section in the SEPP that is being removed was only introduced into the SEPP a short time ago to address the problem that large numbers of coal seam gas exploration wells were being drilled and were producing gas without adequate assessment having been undertaken of their environmental impacts. Significant environmental impacts were experienced in the Pilliga forest, for example, as a result of Eastern Star Gas's exploration wells there, approved under the REF system.

We believe the removal of the requirement for a full EIS for groups of wells also directly contradicts Recommendation 7 of the Chief Scientist, which stated that the Government should separate the process for allocation of rights to exploit subsurface resources from the regulation of activities required to give effect to that exploitation (ie exploration and production activities). However, the measure proposed here hands both the allocation of titles and the environmental approval for exploration activities to the same body - and vests both ultimately with the Minister for Resources. This is therefore a major breach of the Chief Scientist recommendations on several fronts.

We are also opposed to the Department of Planning's new *Voluntary Land Acquisition and Mitigation Policy* and inclusion of it in the Mining SEPP. In the first instance, we seek clarification from the Department about discrepancies between the policy available with the exhibition documents for Mining SEPP changes, put on exhibition on 18 November, and the version of the policy dated 5 November that was forwarded to the Determination PAC for the Watermark mine. The policy given as Attachment E for the Watermark PAC specifies that the PM10 24 hour criteria is only applied at the 98.6 percentile, *excluding extraordinary events like bushfires and dust storms*[1]. This is consistent with the marked up recommended conditions of consent for that mine which the Department forwarded to the PAC on 10 November, which specifies that the PM10 24-hour criteria applies only at the 98.6 percentile and excludes bushfires and other external events[2].

[1] Watermark Project referral to Planning and Assessment Commission, 10 November 2014, Attachment E "Voluntary Land Acquisition and Mitigation Policy November 2014" says the standard, "Excludes extraordinary events such as bushfires, prescribed burning, dust storms, sea fog, fire incidents and illegal activities" page 16.

[2] Watermark Project referral to Planning and Assessment Commission, 10 November 2014, Appendix G, condition 17, Table 10, note (e) states, "The 98.6 percentile reflects a permitted number of predicted or monitored exceedances (being up to 5) within the 365 24-hour block averages comprising any one year. Where more than 5 exceedances are predicted or recorded, the percentile is exceeded. While the criterion relates to cumulative (i.e. total) impacts, it also excludes contributions from extraordinary events such as bushfires, prescribed burning, dust storms, sea fog, fire incidents and illegal activities."

The proposal for Watermark is a deliberate and conscious breach of the National Environment Protection Measure for Air Quality and prevent the Planning and Assessment Commission from making conditions to mining approvals that protect people from the health effects of particulate pollution. The Department's policy as forwarded to the Watermark PAC, and the draft conditions of consent for the mine effectively double the number of days that the NSW Government considers it is acceptable for people in rural areas living near mines to experience air quality that exceeds the 24-hour limit for particulates – from five days a year to ten days a year.

We note that this is not an isolated case. The National Environment Protection Measure for Ambient Air Quality (the Air Quality NEPM) currently has a goal for PM_{10} concentrations over a 24 hour period of 50µg per cubic metre. In the standard, there is a goal for "maximum allowable exceedances" of five days per year. A formal review of the Air Quality NEPM in 2011 review noted that the exceedances rule was being abused:

> The 5 exceedances for the PM_{10} standard were introduced to account for the impact of bushfires, dust storms and fuel reduction burning for fire management purposes. These exceedances are often misused and have been applied to urban air pollution and, in some cases, individual sources. Given greater understanding of the health effects of air pollution, it is clear that allowing exceedances increases the risk to the population and reduces the level of protection offered by the standard. There was strong support throughout the consultation process for the removal of the exceedances and the introduction of not-to-be-exceeded standards.[3]

Watermark is not the first mine for which the Department of Planning has proposed to deliberately abuse the five exceedances allowance.

Introduction of the Land acquisition policy in either form appears to significantly weaken the PAC's ability to impose conditions to protect people and communities from particulate pollution. This proposed change to the mining SEPP would force the PAC to "consider any applicable provisions of the voluntary land acquisition and mitigation policy," even if that policy is in breach of agreed national standards for air quality protection. The Department's new acquisition policy proposes to lock in the 50µg per cubic metre standard, but a draft variation for the Air Quality NEPM has recently been publicly exhibited that would actually *strengthen* the PM10 goal to include annual average concentration limits and to perhaps tighten the 24 hour goal to 40µg.

It is wholly inappropriate for the Department of Planning's to lock-in a weakened goal that will expose communities to particle pollution with no certainty they will have the option to sell up. In recent years, it has become common practice for conditions of mine approvals to list properties that are given an "acquisition right" – which the mine owner must purchase if approached by the owners. These acquisition conditions are imposed in lieu of forcing mines to adopt more stringent mitigation actions to actually prevent unliveable impacts from dust, noise and blasting.

In its Report for Watermark in May, the Department cited other recent coal mine approvals that also resulted in air quality impacts and mass property buy outs on a similar scale, including:

- Maules Creek, where 12 landowners were granted acquisition rights,
- Moolarben, 16 properties with acquisition rights
- Anvil Hill/Mangoola, where 36 properties were in the acquisition area,
- Mount Owen, which affected 18 properties,
- Mount Pleasant, where 47 properties are within the acquisition area
- the most recent Bengalla approval, 21 properties within the acquisition area.

[3] National Environment Protection Council Service Corporation 2011. p30.

Rather than force the mining companies to work at civilised hours, and to curtail their scale and rate production so that they do not cause breaches of air quality and other standards, the Department of Planning has simply been allowing the conditions to be breached, and forcing people to sell up and leave their communities - whilst disingenuously calling it 'voluntary'.

Rural families are being given an impossible choice: sell up and tear apart a community, or live with unliveable noise and dust impacts from a coal mine next door.

The choice is not a choice at all since the living conditions inside the “acquisition zone” are in breach of environmental and health standards. What is happening in mining affected regions of rural NSW amounts to a compulsory buy-up of the landscape. We don't believe it is appropriate to entrench this approach in law via the SEPP.