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2 December 2014

Manager, Resource Policy
Department of Planning & Environment
GPO Box 39
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Dear Sir/Madam

Submission - Draft Amendments to State Environmental Planning Policy (Mining Petroleum Production and Extractive Industries) 2007 (Mining SEPP)

The Upper Hunter Shire Council welcomes the opportunity to comment on the proposed amendments to State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007 (Mining SEPP).

Council has taken an active role in this area and has submitted its views on previous Mining SEPP amendments, the Strategic Regional Land Use Plan (both draft and policy), the Royalties for Regions program and was integral in the Critical Industry Cluster mapping exercise for our region.

The Upper Hunter Shire currently has the expired Assessment Lease 19 (Muswellbrook Coal Company) partially within it, current Authority 256 (Anglo American), the Dartbrook underground coal mine (in care and maintenance mode) partially within it, expired Exploration Licences 5306 and 5888 (Bickham Coal Company) wholly within it and current Petroleum Exploration Licences 4 (AGL) and 456 (Santos) both partially within it.

Proposed amendments to Mining SEPP - Gas Exploration Assessment

Council understands that these changes are being made in response to the Chief Scientist's Review of Coal Seam Gas Activities in NSW and the recommendations contained in that report.

1. Council is concerned that the downgrading of CSG exploration activities from State Significant Developments represents an easing of environmental assessment requirements for those activities given that the Review of Environmental Factors [REF] required under Part 5 is clearly a less comprehensive assessment than the Environmental Impact Statement [EIS] required under Part 4. Such an easing of environmental assessment was not a recommendation of the Chief Scientist and Council submits that the reasoning for such changes has not been adequately explained in either the proposed SEPP amendment or the accompanying documentation.

The Chief Scientist's Report states,

"In particularly sensitive areas, such as in and near drinking water catchments, risk management needs to be of a high order with particularly stringent requirements on

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companies operating there in terms of management, data provision, insurance cover, and incident-response times”.

In the Upper Hunter Shire this is particularly relevant to two of our largest towns Merriwa and Murrurundi, both of which are located within PEL 456. Merriwa's water supply is augmented through bores and Murrurundi's is largely taken from the Pages River.

The Chief Scientist further states,

“The Review studied the risks associated with the CSG industry in depth and concludes that – provided drilling is allowed only in areas where the geology and hydrogeology can be characterised adequately, and provided that appropriate engineering and scientific solutions are in place to manage the storage, transport, reuse or disposal of produced water and salts – the risks associated with CSG exploration and production can be managed”.

This is relevant to both towns particularly to Murrurundi, an area acknowledged as having a very high level of geological complexity coupled with stressed and unreliable water resources. The proposed Bickham Coal mine was ten (10) kilometres south of Murrurundi and was rejected primarily on water related issues. The Bickham PAC Report [2010] noted,

“The Commission’s conclusions are that after 10 years of studies and variations to proposals there remains a considerable level of uncertainty about the nature and extent of some significant water-related risks to the Pages River” (page 47)

“... an environment where water resources are severely stressed and the Pages itself is over-allocated” (page 16)

“Given that the Pages River and Kingdon Ponds are both considered to be seriously stressed catchments, the risks of even minor errors may be significant” (page 9)

Council notes that in a presentation to investors given on 26th November 2014 by Santos, the Murrurundi area is specifically mapped and targeted as a “Prospective Basin”.

While the Gas Plan specifically talks of the “careful designation of areas appropriate for CSG extraction”, an explorer proposes to actively target an area that on the evidence available to date is very probably inappropriate, even for exploration, let alone extraction and at the same time the Government is proposing a diminution of the environmental assessment of the risks those exploration activities may pose.

We are concerned that this is inconsistent with the Chief Scientist's recommendations (1) and (5) as follows:

- 1) That Government makes clear its intent to establish a world-class regime for extraction of CSG ... and***
 - 5) That Government use its planning powers and capability to designate those areas of the State in which CSG activity is permitted to occur, drawing on appropriate external expertise as necessary.***
2. Council notes that damage occurred in the Pilliga during the exploration stage, whilst the PEL was held by Eastern Star Gas. Although the environmental damage was perhaps not of state significance there would nevertheless be an increased possibility, in theory at least, under this

proposed amendment for there to be a state significant “*unintended consequence*” or “*accident*” which the Chief Scientist describes as “*inevitable*” in the final words of her report.

3. Council is also concerned that gas exploration assessment and the issuing of PELs will now be the ultimate responsibility of the Minister for Resources and Energy, on advice from the Office of Coal Seam Gas. The Office does not yet enjoy the confidence of the whole community, although we concede that it has had little time to establish such confidence. Council is concerned that a new body using less stringent assessment requirements is unlikely to bring about improved decision making and outcomes.
4. Council supports the rights of landowners to say, ‘No’, and submits that in relation to land access for CSG exploration activities -
 - i) The landholder has the right to reject overtures by CSG companies and that there can be no access without the landholder’s written consent. Council notes that this position has been adopted voluntarily by both AGL and Santos
 - ii) In the event of any agreement between a landholder and a CSG company, such agreement confers no right to compromise aquifers or otherwise do any harm to communally shared resources, including but not limited to the quality of air, water, amenity and health.

Proposed amendments to the Mining SEPP Voluntary Land Acquisition & Mitigation

1. Council is concerned that much of this proposed amendment is based on the premise that -

“Some landowners may be prepared to accept higher impacts on their land subject to entering into suitable negotiated agreements with applicants, which may include the payment of compensation”.

Assessment criteria are formulated to protect the community on a wide range of issues, most notably health. Council believes that this amendment moves the onus and responsibility for the protection of public health from the State to the individual. This is not acceptable and represents an imbalance of power that may lead to landowners being pressured by applicants into taking decisions and entering into agreements that could be injurious to their long-term health and well being, in return for cash.

If a landowner who has entered into such an agreement becomes sick or is injured as a result of the proponent’s activities, who, if anyone, will be liable - the landowner, the proponent or the State Government?

This amendment taken to a logical conclusion means that environmental standards and criteria could potentially be circumvented by the proponent. It weakens the assessment system and is a seriously retrograde step.

2. In relation to negotiated agreements between applicants and landowners, Council supports the requirement for applicants to bear all the costs associated with entering into an agreement which may include costs associated with providing expert advice to landowners to enable them to make informed choices. However, any independent expert appointed should be at the landowner’s discretion.
3. Council supports the application of voluntary mitigation rights to affected landowners; however any mitigation measures should be directed towards reducing the impacts of the development on any residence and/or normal business operations on the land.

4. Council is concerned that the Voluntary Land and Mitigation Policy reference for Particulate Matter "Mitigation Criteria" only set levels for PM10 and does not mention smaller particles PM2.5. We view this as a serious omission that must be rectified as the increased health hazards associated with PM2.5 are well documented. We note that the background section of the Policy states, "Both long (over years) and short term (hours or days) exposure to particulate matter has been linked to health problems. We commend the NSW Government (through the EPA) on their effective "Dust Stop" program within open-cut coal mines but as these mines are operated with large fleets of diesel machinery that can run 24 hours a day, Council believes that the NSW Government should be urgently developing and implementing, criteria, standards and guidelines for the control of Diesel Particulate Matter or DPM, which are typically in the PM0.1 range.

Council also notes that a cumulative impact assessment methodology for particulate matter was promised in the draft SRLUP for completion in March, 2013 and has still not been put on public exhibition. Again, we commend the NSW Government on its "Upper Hunter Air Particles Action Plan" and ask that they note section 4 - **Upper Hunter particle actions**

"4.1 Reduce particle emissions from coal mine operations

4.1.1 Assessment of development proposals

The NSW Department of Planning and Infrastructure (DP&I) coordinates the development assessment of new mining proposals with key agencies. The aims are to:

- *ensure these proposals minimise the generation of particle emission.*
- *identify and implement all reasonable and feasible mitigation measures consistent with best management practice.*
- *establish an effective regulatory framework for the ongoing regulation of particle emissions on mine sites".*

Taking this into account, Council feels that the omissions of both PM2.5 and PM0.1 from the particulate matter mitigation criteria leaves the policy falling well short of the Government's own expectations and recommendations by not giving the issue of dust the attention that it deserves.

5. Council welcomes the review of the NSW Industrial Noise Policy (EPA 2000), which is anticipated to be completed in 2015 and submits that this review must include guidelines and assessment criteria for low frequency noise or infrasound that is associated with diesel engines and other industrial machinery commonly used in coal mines such as crushers, vibrating screens and conveyors. Although mentioned in the policy, infrasound is not given the attention it warrants. The Queensland Government released a draft guideline for low frequency noise assessment in 2013 which is available on the Department of Environment and Heritage Protection website.

We thank you for your consideration of this submission.

Yours sincerely


For Waid Crockett
GENERAL MANAGER