



2 December 2014

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Department of Planning and Environment
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Sent via: www.planning.nsw.gov.au/proposals

State Environmental Planning Policy Amendment (Gas Exploration and Mining) 2014 - Mining

Thank you for the opportunity to be consulted on proposed amendments to the *State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007* which would insert a new clause 12A requiring consideration of applicable provisions of a new voluntary land acquisition and mitigation policy by consent authorities.

NSW Farmers welcomes the formulation of a policy specifying the criteria used to assess the need for voluntary mitigation or acquisition due to noise and dust impacts on landholders adjoining state significant mining, petroleum and extractive industry developments (extractive industry SSD).

Whilst it is understood that these amendments do not make substantive changes to the regulation of noise and dust impacts on proponents of extractive industry SSD, and that those changes are more likely to occur during the review of policy in 2015, the policy and the outline of the decision maker's approach has highlighted a number of deficiencies in the process from a landholders' perspective. This submission will examine those deficiencies from both an agribusiness and general landholder perspective.

General

Firstly, the title of the policy is misleading. The word 'voluntary' describes the nature of a landholder's potential action: sale of their land. Whereas 'acquisition' relates to the applicant's potential action: purchase. NSW Farmers recommends that the title be re-worded to more accurately reflect the mechanisms described in the policy. Furthermore, the current title has the potential to create misinformation and possibly fear that there will be a forced sale of land when this is not the case.

There is nothing voluntary about the noise and dust mitigation requirements throughout the assessment process either, contrary to how the title of the document reads.

Secondly, one of the key outcomes of the policy should be to outline a clear framework for *both* landholders and proponents to understand obligations and rights when it comes to noise and dust impacts and avoidance, mitigation and the potential acquisition of land. From a landholder perspective, the policy does not make it clear what to expect when new development is proposed on land nearby to them or adjoining their land. Given the serious implications that extractive industry SSD development can have on landholders, significantly more information needs to be provided outlining the process from noise and particulate matter, to offer of acquisition obligations and circumstances triggering these rights.

NSW Farmers submits that this information has been seriously lacking in this policy context for quite some time now, to the detriment of landholders who deserve to be knowledgeable on issues that have the vast potential to break down established lifestyles and livelihoods, and in a broader context, community make-up.

Landholders should be able to get the most significant of avoidance or mitigation efforts afforded to them as possible. This is applicable in terms of both the quiet enjoyment of the property and unimpeded operation of a farm business. They also deserve the best possible price for the sale of their land, especially in the case of a reluctant but practically unavoidable sale. The days of this sort of information being secretive and not well communicated to landholders needs to come to an end in order to restore the balance and competitive advantage between landholders and extractive industry SSD developers.

Approach to decision making- the policy

In reference to the 'five essential steps' in the assessment process as outlined on page 3 of the Voluntary Land Acquisition and Mitigation Policy, these steps should include the process where and how information is communicated to landholders as to potential future implications of the proposed activity. For example, NSW Farmers recommends that the policy be amended to include the following requirements:

- Outline the criteria for establishing which landholders are affected and will be required to prepare to negotiate. This is often referred to as a 'zone of affectation'. A clear definition and criteria is required.
- Outline the steps from a landholder's perspective, as well as the steps to be followed from a decision maker's perspective, that a landholder can expect when being faced with a development application for extractive industry SSD in their area.
- Outline the most appropriate means for landholders to have decisions reviewed.
- Outline the dispute resolution process. For example, the arbitration framework for the establishment of land access agreements for mining and gas are currently under review, and are expected to incorporate vast improvements to transparency of both the arbitrators and the arbitration. Mitigation and acquisition policy could do with equivalent incorporations.
- Include a provision for indirect loss of land use and value because of the direct actions of the extractive industry SSD proponent. For example, a situation where a mining company has acquired land surrounding open cut mine or even a number of pits creating in affect a large buffer zone. This buffer zone can have significant implications for land which happens to become effectively encompassed by it. The value of the land is lost because of these circumstances and yet the company is not obliged to rectify the situation.

NSW Farmers are aware of landholders with this exact problem, *and* who are subject to disruptive noise and dust levels as well, but yet are outside so-called zones of 'affectation', the policy needs to include such considerations for indirect consequences.

- Include a provision for landholder consultation during the process. This could be facilitated for example, by the Land and Water Commissioner.
- Include provisions for where landholders who are , on paper, under the relevant 'assessment criteria' for dust or noise affectation, or are within a 'negligible' or 'moderate' exceedances of the relevant dust or noise assessment criteria and the company is given conditions to mitigate these impacts, a mechanism where these can be reviewed. NSW Farmers hears often of landholders who are given seriously deficient 'mitigation' efforts. For example, being sent a box of ear-plugs in the mail each month.
- Include provisions where subsequent testing of noise and airborne particulate matter can be submitted to the department. This may require the hiring of an independent consultant but again, could be facilitated by the NSW Land and Water Commissioner.

NSW Farmers often hears of landholders who are told by both the company and the department that the relevant testing machines are not detecting the relevant thresholds of elevated noise or dust, but the landholders are, and in a serious way. This may because the testing equipment is spaced too far apart, or because the testing equipment is construed in a way that is not comparable to the actual living situation. Either way, the landholder needs to be able to submit subsequent findings to the department, and have it reviewed.

- Be upfront about the allowable exceedences for particulate matter over the 24-hour block averages over any one-year period, and ensure this number is inclusive of emergency situations such as bushfires and dust-storms. This will help to prevent allowable exceedence provisions being mis-used by proponents.
- Ensure that criteria associated with allowable exceedences are in line with national standards (i.e. particulate matter- number of micrometres in diameter).

In conclusion and in relation to the amendment to the *State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007* that activate the consideration of this policy, NSW Farmers questions the extent to which the policy will be effective.

The proposed wording is that a new clause 12A will require a consent authority to consider the applicable provisions of the policy. In that sense it is not clear whether the requirements of the policy are in fact mandatory or are merely a guide. NSW Farmers suggests that the entire policy and the wording of the amendments to the SEPP are strengthened to ensure compliance with appropriate avoid, mitigate and offer of acquisition responsibilities on the part of extractive industry SSD proponents.

NSW Farmers are more than happy to be consulted on any of the above recommendations. We note the extremely short time frame in which this policy has been put to the public and as such trust that the Department appreciate the relatively informal and direct nature of this submission and recommendations.

Regards

A handwritten signature in black ink, appearing to read 'Leys', with a stylized flourish at the end.

Danica Leys
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