



Ms Carolyn McNally
Secretary
NSW Department of Planning and Environment
GPO Box 39
Sydney NSW 2001

Attention: Director of Assessment Policy Systems & Stakeholder Consultation

21 July 2015

Dear Ms McNally

HUNTER THOROUGHBRED BREEDERS ASSOCIATION SUBMISSION – STATE ENVIRONMENTAL PLANNING POLICY (MINING, PETROLEUM PRODUCTION AND EXTRACTIVE INDUSTRIES) AMENDMENT (SIGNIFICANCE OF RESOURCE) 2015 (SEPP)

The Hunter Thoroughbred Breeders Association appreciates the opportunity to comment on the above draft SEPP, specifically to remove provisions under section 12 AA relating to making the significance of the resource the principal consideration when determining mining projects.

Hunter Thoroughbred Breeders Association

The Hunter Thoroughbred Breeders Association represents over 150 industry participants including thoroughbred breeders and suppliers of support services. The Hunter Valley's Thoroughbred Breeding Industry is Australia's premier multi-billion dollar breeding industry, representing over half of all thoroughbreds produced in Australia. It is Australia's largest supplier and exporter of premium thoroughbreds and acknowledged as one of only three international centres of thoroughbred breeding excellence in the world. The industry contributes over \$2.6 billion to the NSW economy and is an important employer of hundreds of thousands of Australians (directly and indirectly) throughout our value chain regionally, in NSW and across the nation. It also attracts important tourism to the Hunter Valley region and delivers a diverse economic base for regional Australia.

The industry in the Hunter Valley is vertically integrated and interconnected. It is the largest agricultural industry in the Hunter Valley, the largest agricultural employer and a significant regional employer in our own right. It is the nursery of Australia's racing industry and supports some 250,000 Australian jobs nation wide. The industry is one of two Critical Industry Clusters (wine and equine) recognised by the NSW Government. Together these two clusters inject some \$5 billion into the NSW economy every year, support 100,000 jobs and attract more than 3 million visitors annually to the Hunter region.

HTBA 2013 Submission

In the HTBA submission of August 2013, the HTBA objected in the strongest possible terms to the proposed State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) Amendment (Resource Significance) 2013 ("Proposed Resource Significance SEPP").

Many of the grounds for our opposition are valid reasons which support the amendment now proposed by the NSW Government. They included concerns that identifying the significance of the mineral resources to be the consent authority's **principal consideration**:

- was **completely at odds with the NSW Liberals and Nationals Strategic Regional Land Use Triple bottom line assessment to protect our regions – election policy released in February 2011;**



- was **inconsistent and completely at odds with the NSW Government Strategic Regional Land Use Plan** for the Upper Hunter (released in September 2012);
- **undermined every promise for certainty, protection, balance and fairness** made by the Coalition Government prior to and since it came to office to implement tougher but fairer mining and csg assessment processes in recognition of the competing land use conflicts in the Hunter Valley;
- **discriminated against agricultural landholders, the community and the environment in favour of mining interests;**
- **created investment uncertainty** for non-mining investment by agricultural communities in regional NSW;
- **reduced prospects for economic diversity** and resilience for the Upper Hunter community;
- **signalled a total rejection by the NSW Government to all non-mining sustainable industries in the Hunter Valley.**

A copy of the HTBA's 2013 submission on this matter is appended.

Repeal of Section 12AA

The Hunter Thoroughbred Breeders Association strongly supports the repeal of section 12AA. The repeal of section 12AA would ensure that the SEPP more appropriately aligns with:

- the Government's election commitments;
- the intent of the Government's Strategic Regional Land Use Policy to protect strategic agricultural lands (both biophysical strategic agricultural land and critical industry clusters);
- the Environment Planning and Assessment Act 1979 ("the Act") – particularly the Objects of the Act noting in particular the :
 - the proper management, development and conservation of natural and artificial resources, including agricultural land ... for the purpose of promoting the social and economic welfare of the community and a better environment (section 5 (a) (i))
 - the promotion and coordination of the orderly and economic use and development of land (section 5 (a)(ii))
 - the protection of the environment (section 5 (a) (iv),
 - ecologically sustainable development (section 5 (a) (v) ; and
 - **noting that neither the Objects of the Act nor matters for consideration by consent authorities, as stipulated in section 79C of the Act, do not provide preferential treatment or weight to mining considerations over all other considerations.**
- the sentiments of the overwhelming majority of stakeholder submissions (85%) which opposed this amendment in 2013;
- the need to encourage and promote economic diversity and investment certainty in regional economies. This in turn should recognise that sustainable long-term jobs and agricultural industries should not be relegated as second order priorities to mining jobs. In the current economic environment one could argue that these sustainable jobs, agricultural industries and the protection of the environment (particularly prime agricultural lands and water resources upon which they rely) should be given priority and primacy as principle considerations for consent authorities; and
- the need to restore public trust and confidence in the NSW planning process.



Additional Amendments

It is timely for the Government to make additional amendments which have clearly not operated in a manner which protects the orderly and economic use of the land, the environment, agricultural or the public interest.

Repeal of Section 12 AB: NON-DISCRETIONARY DEVELOPMENT STANDARDS FOR MINING

In addition to the repeal of section 12AA of the SEPP the HTBA submits that the Government should take the opportunity of repealing section 12AB which was introduced at the same time as section 12 AA and was equally intended to avoid consent authority refusal by giving preferential treatment to mining over local environmental or amenity impacts such as cumulative noise levels, air quality, airblast overpressure, ground vibration and aquifer interference.

Apart from the fact that the non-discretionary standards stipulated are either not appropriate, being reviewed or are indiscriminate in their application between urban and rural settings, we submit that non-discretionary standards should not restrict consent authorities to require the application of the highest possible environmental standards or indeed refuse mining applications on the grounds that they could not comply with the highest environmental or amenity standards. Why should a decision maker not be able to impose a different or higher standard in order to meet or address particular environmental concerns?

In the past 12 months we have witnessed NSW planning directives that not only show indecent preference to mining projects but diminish the protection of community wellbeing (at times below appropriate domestic or international health standards)

For example, the NSW Government accepts that in some cases State significant mining projects have limited scope to avoid or mitigate impacts on amenity, health and safety of people “even with the application of best practice management”. (*Integrated Mining Policy – Voluntary Land Acquisition and Mitigation Policy for State Significant Mining, Petroleum and Extractive Industry Developments, 15 December 2014, p3*).

Rather than rejecting these proposals, this “guidance” proposes that consent authorities apply “voluntary mitigation and land acquisition rights”. This guidance is not only counterintuitive it positively discriminates against all affected landholders where air quality, noise and dust exceedences, and hence impacts on human health and amenity, are inevitable and unavoidable.

This policy approach is not only irresponsible it subverts the duty of care the NSW Government should be extending to its citizens particularly where health, environment, heritage values (including landscape values) and community amenity is at risk.

In light of the above, we respectfully submit that section 12AB should also be repealed.

“Buffer” and “Exclusion Zones”

The Government’s current policies on buffers and exclusion zones as they apply to coal versus coal seam gas are inconsistent. Buffers and exclusions zones are applied to coal seam gas mining but do not apply to coal mining – which is far more intrusive, visually impactful and harmful to community wellbeing and the environment.

In February 2013 the Coalition Government introduced “tough new rules for coal seam gas activity” which included coal seam gas exclusion zones around residential areas and on critical industry clusters and the provision of powers to the Environmental Protection Authority to regulate and revoke coal seam gas licences.



In announcing these “tough new rules” the former Premier stated, “ *Families in residential areas should not have to worry about their quality of life being affected by the noise, visual impacts and other effects of coal seam gas mining*” (Media release 19 February 2013)

The HTBA welcomed this announcement as a step in the right direction. We agreed with the NSW Government that families in residential areas should not have to worry about their quality of life being affected by noise, visual impacts and other effects of coal seam gas mining. However we also noted that families in the bush should not have to worry about their futures either – including the noise, visual impacts, threats to their health, air quality and water systems from **coal and coal seam gas mining**.

We noted that coal mining in the Upper Hunter is very intrusive, highly visible and has damaging effects on air, health and water. At that time we called for appropriate exclusion zones to be applied to coal mining activities in the Upper Hunter to afford the families of the Upper Hunter appropriate protections from coal mining. (*No Go Zone for CSG Welcomed, No Go Zones for Coal Mining also Needed – HTBA press release 19 February 2013*).

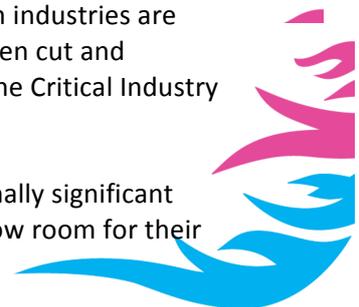
In March 2015 the HTBA in conjunction with the Hunter Valley Wine and Tourism Association called on the Government to prohibit new open cut, underground coal and coal seam gas mining on and within 10km of the equine and viticulture Critical Industry Clusters. A copy of this policy document, which also includes national and international best practice examples of protections in place to protect equine and wine critical industry clusters from incompatible land use is attached.

The HTBA notes that Section 9 of the 2007 SEPP currently provides for prohibited development to be specified in Schedule 1 of the SEPP. To date three areas have been identified and specified in Schedule 1 as prohibited development:

1. Open cut mining within the local government area of **Lake Macquarie City**, except in areas identified on the map marked “ *State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007-Map 1-Lake Macquarie City* ” (being a map that is approved and signed by the Minister and copies of which are deposited in the head office of the Department) as areas in which open cut mining is permissible, whether with or without development consent.
2. Extractive industries within the area identified on the map marked “ *State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007-Map 2-Gosford City* ” (being a map that is approved and signed by the Minister and copies of which are deposited in the head office of the Department).
3. Open cut mining within the area identified on the map marked “ *State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007-Map 3-Upper Hunter Shire* ” (being a map that is approved and signed by the Minister and copies of which are deposited in the head office of the Department).

The HTBA submits that in accordance with section 9 of the 2007 SEPP and consistent with the advice of 15 Independent Government experts (Bickham PAC, Drayton South Review and Determination PACs and the Gateway Panel report on Drayton South) that mining and equine, wine and tourism industries are incompatible land uses, Schedule 1 of the SEPP should be amended to prohibit new open cut and underground coal and coal seam gas mining on and within 10 km of the equine and wine Critical Industry Clusters.

This buffer/exclusion zone would not only protect these state, national and internationally significant agricultural assets, thousands of jobs and tourism business they attract, but also to allow room for their growth and future development.



The HTBA also submits the section 9A of the 2007 SEPP should be expanded to provide protection to all household dwellings, productive agriculture, endangered environmental species and assets and water resources, particularly drinking water resources and catchments, from both coal and coal seam gas developments.

Gateway Panel Certificates

The Government's Gateway Process was introduced as "the key policy response for resolving land use conflicts between mining and coal seam gas proposals and strategic agricultural land" (*Strategic Regional Land Use Plan, Upper Hunter, p76*).

The policy objective also clearly intended, inter alia, to ensure the protection of strategic agricultural land and the water resources it relies on (p23).

The draft policy also applied the gateway process for State significant development applications for mining or coal seam **on or within two kilometres of strategic agricultural land** and those proposals that did not pass the Gateway "cannot proceed to DS lodgement" (p19, Draft Strategic Regional Land Use Plan, Upper Hunter).

Further the current policy for the preparation of Agricultural Impact Assessments for State significant mining and coal seam gas proposals is triggered when these proposals are on or within 2km of Critical Industry Clusters.

The current Gateway process for State significant developments has been whittled down to applying only to SSD proposals **on** strategic agricultural land and does not allow the Gateway Panel to reject proposals which clearly do not meet their scientific assessment criteria. This makes a mockery of the process and does not allow appropriate, informed assessments particularly in cases where they will have a significant impact on strategic agricultural land – as witnessed by the recent application by Anglo American's second proposals for an open cut coal mine at Drayton South.

The first Anglo American application for an open cut coal mine at Drayton South was reviewed by all six members of the Gateway Panel. This Panel, along with 6 Independent Planning Assessment Commissioners found that this development was an incompatible land use with the equine, wine and tourism industries (some of which are less than 1km from the proposed mine). Yet due to a possible unintended consequence of the redrafting of this policy, the assessment of the project on strategic agricultural lands (including the equine and wine CICs) has not been conducted.

This is clearly not in the best interests of the NSW economy nor, one would think, the NSW planning process. It does not engender trust nor comprehensive and transparent assessment of the impacts of mining projects on strategic agricultural land, as is the intention of the policy.

The HTBA strongly submits that mining proposals on or within 2km of strategic agricultural lands should require referral to and approval by the Gateway Panel. In this respect section 17F (1) of the SEPP should be amended to read:

"17F (1) An application for a gateway certificate in respect of proposed mining or petroleum development on or within 2 kms of SA land is to be made to the Gateway Panel."

Further we remain of the view that planning and investment certainty, balance and protection of strategic agricultural land and environmental assets would be better achieved if the **Gateway process is applied as early as possible and the Gateway Panel is empowered to refuse to issue Gateway certificates for mining projects that do not meet the stipulated criteria.**



As we stated in our submission to the Integrated Mining Policy (July 2015) every Gateway Certificate that has been issued by the Gateway Panel to date has revealed that the project has overwhelmingly failed either the entire or majority of BSAL or CIC criteria. See table below:

Gateway Panel Conditional Certificates	
Spur Hill Underground Coking Coal Project	Failed 9 of the 11 BSAL and CIC criteria
Caroona Coal Mine	Failed all 6 BSAL criteria
Bylong Coal Project	Failed 10 of 11 criteria
West Muswellbrook Project	Failed 9 of 11 BSAL and CIC criteria
Drayton South Coal Project	Failed 5 of 6 BSAL criteria; CIC impacts not assessed.

Every Gateway certificate issued to date has been conditional. What experience is showing us is that if the Gateway Panel was empowered to refuse applications that clearly did not meet the BSAL and CIC criteria then the projects to which they refer would not have been allowed to proceed. The upfront scientific and independent advice to Government would have meant that the Government's commitments and policies to deliver protection to highly sensitive strategic agricultural land would have achieved just that and saved proponents, communities and the NSW taxpayer unnecessary delays, costs and stress. In the absence of this policy, land use conflicts continue and precious strategic agricultural lands, industries, water and the environment are being placed at risk.

Thank you for the opportunity of making this submission. We trust that the Government will take every opportunity to not only repeal section 12 AA but also repeal section 12 AB and make other amendments proposed in this submission.

Yours sincerely



Dr Cameron Collins
President

Enclosures:

1. *HTBA Submission – State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) Amendment (Resource Significance) 2013*
2. *Time to Protect the Hunter Valley's State Significant Agricultural Lands & Industries – March 2015.*

