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Development Assessment Systems and Approvals
Department of Planning and Infrastructure
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12 August 2013

HTBA SUBMISSION – STATE ENVIRONMENTAL PLANNING POLICY (MINING, PETROLEUM PRODUCTION AND EXTRACTIVE INDUSTRIES) AMENDMENT (RESOURCE SIGNIFICANCE) 2013

The Hunter Thoroughbred Breeders Association objects 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”). The Proposed Resource Significance SEPP, which identifies the significance of mineral resources to be the consent authority’s **principal consideration**:

- is **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**;
- is **inconsistent and completely at odds with the NSW Government Strategic Regional Land Use Plan** for the Upper Hunter (released in September 2012) – including balancing agricultural and resources development; protecting strategic land assets (including biophysical strategic agricultural land and critical industry clusters); requiring Agricultural Impact Statements; establishing a Gateway Process (founded on independent, scientific expertise); and balancing all socio-economic interests when considering mining proposals;
- **conflicts** with commitments to work with local councils of the Upper Hunter region to implement initiatives for economic diversification recommended in the Upper Hunter Economic Diversification Report;
- **contradicts the proposed State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) Amendment 2012** released in November 2012 **to implement the NSW Government’s Gateway Assessment Process**;
- **contradicts the proposed State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) Amendment (Coal Seam Gas Exclusion Zones) 2013** – released in March 2013 prohibiting coal seam gas exploration and production within 2km of residential zones and within and under critical industry clusters;
- **negates the additional scrutiny of the proposed Drayton South open cut coal mine** announced by Minister Hazzard in May 2013 to address concerns raised by the community and the impacts on international scale thoroughbred breeding studs; **renders the PAC process as irrelevant and taints the State Planning Process**;
- **undermines 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;
- **discriminates against agricultural landholders**, the community and the environment in favour of mining interests;
- **creates investment uncertainty** for non-mining investment by agricultural communities in regional NSW;
- **reduces prospects for economic diversity** and resilience for the Upper Hunter community;

- **signals a total rejection by the NSW Government to all non-mining sustainable industries in the Hunter Valley** and heralds the demise of our billion dollar thoroughbred breeding industry – Australia’s largest producer, supplier and exporter of premium thoroughbreds concentrated in the Hunter Valley, employing thousands of people and one of only three Centres of Thoroughbred Breeding Excellence in the world.

On the matter of non-discretionary standards for mining, on cumulative noise levels, air quality, airblast overpressure, ground vibration and aquifer interference, it is our view that the NSW Government should be mandating the highest possible international standards (air quality measures for PM 2.5 for example). These are important issues and should be dealt with responsibly not used as a smoke screen to give legitimacy to what is otherwise an outrageous proposal for mining supremacy in this State.

The Hunter Thoroughbred Breeders Association is completely opposed to this Proposed Resource Significance SEPP. We are totally at a loss as to why the Government has seen fit to advance mining interests over all other legitimate and sustainable investment interests in NSW. We are completely outraged at the lack of progress made to implement the Gateway and CSG Exclusion SEPPs while this Proposed Resource Significance SEPP has been developed and proposed, without consultation, in contravention of current law, in opposition to the Government’s commitments to protect strategic agricultural assets and lands, and completely at odds with every land use policy pronouncement the Coalition Government has made since it was elected to office.

The signal the Proposed Resource Significance SEPP sends to all non-mining investors in the Hunter Region is that **NSW is not open for business for sustainable agricultural industries** (including iconic thoroughbred breeding and winemaking industries) and is not serious about progressing economic diversity or planning for life after mining. Is this the Government’s intention?

The Hunter Thoroughbred Breeders Association represents over 150 thoroughbred breeders and equine supply industries. Our multi-billion dollar industry is one of the largest employers in the Hunter Valley - employing thousands of people in the region and hundreds of thousands of people across our national value chain. It represents the largest concentration of stud farms in the world outside of Kentucky in the USA. It is Australia’s largest producer, supplier and exporter of premium thoroughbreds. It is home to world renowned stud farms including Darley, Coolmore, Arrowfield, Vinery Stud, Yarraman Park to name a few. The Hunter Valley is Australia’s horse capital. It is internationally recognised and acclaimed. It is supported by a sophisticated network of equine supply industries – industries that would not exist in the Hunter Valley in the absence of the Hunter’s premier thoroughbred breeding industry. This Proposed Resource Significance SEPP places all of this at risk and threatens the viability and future of thoroughbred breeding and racing in NSW.

The Hunter Thoroughbred Breeders call on the NSW Government to withdraw the Proposed Resource Significance SEPP and to proceed to promptly implement the well overdue State Environmental Planning Policy SEPPs to implement the Gateway Process and the Coal Seam Gas Exclusion Zones. More details on each of the issues raised above are attached. We request that this submission be read in conjunction with the letters we have sent to the Premier and Ministers Hartcher and Hazzard dated 1 August 2013.

Yours sincerely



Dr Cameron Collins
President



Mr Andrew Wiles
Vice President

1. 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

Many commitments were made by the NSW Liberals and Nationals prior to the 2011 State election – including:

- Reforms to mining and coal seam gas legislation to **protect strategic agricultural land and associated water resources** (p1);
- **Strategic land use plans will be prepared using triple bottom line assessments of the environmental, social and economic values in regional areas.** These assessments will inform our decisions about the best way to use land and identify the environmental, social and economic values that need to be protected (p2);
- **A key part of the strategic land use planning process will be to identify strategic agricultural land and associated water and ensure that it is protected from the impacts of development** (p2);
- **The NSW Liberals and Nationals believe that agricultural land and other sensitive areas exist in NSW where mining and coal seam gas extraction should not occur.** There are other areas where mining and coal seam gas extraction are suitable and should be pursued following a tough assessment of potential impacts. Strategic land use plans will set the framework within which future development will be assessed (p2);
- **Explicit agricultural impact assessments** – All new mining and petroleum project applications will be required to undertake explicit agricultural productivity impact assessments as part of their environmental impact statement; (p2)
- Strategic agricultural land is highly productive land that has both unique natural resources characteristics (such as soil and water resources) as well as socio-economic value (such as high productivity, infrastructure and access to markets). **Together these characteristics make strategic agricultural lands essential assets to ensure future food security and retention of strategic agricultural industries** (p3);
- The NSW Liberals and Nationals have committed to rewriting the State's planning laws. Our planning policy includes three key elements:
 1. Scrapping Part 3A of the EP&A Act
 2. Ensuring local input into regional strategic plans
 3. Commencing an overhaul of the planning system soon after March 2011, with community input prior to the final determination of the DA. **This would include a thorough examination of enhanced buffer zones and 'ring fencing' with particular reference to proximity to communities and effected on established industries.** (p4).

Former shadow Minister for Primary Industries and Energy (Duncan Gay) summed up the Coalition's position in his media release launching this policy by stating *"After 16 years of inaction from the NSW Labor Government, the NSW Liberals & Nationals have done the hard work to help bring about a fairer balance between mining and agriculture production in NSW."* *"We recognise there is an urgent need to strengthen the assessment of the impact of mining and coal seam gas extraction and that's why we will immediately implement a tougher process, taking a precautionary approach."* *"This is about taking a **triple bottom line** approach to development, which will recognise strategic agricultural land as a finite resources that must be preserved into the future"* Mr Gay said (Media release 16 February 2011, NSW Liberals & Nationals Announce Strategic Regional Land Use Policy)

Many have criticised the NSW Coalition Government for over promising and under delivering on the above election commitments to the people of NSW, particularly regional NSW. However one would not have expected the NSW Government to completely override every promise they made before and after taking office to introduce such a blatantly biased policy as is described in the State Environmental Planning Policy (Resource Significance) Amendment 2013.

2. Inconsistent with the NSW Government Strategic Regional Land Use Plan for the Upper Hunter (released in September 2012)

In his foreword to the NSW Government's Strategic Regional Land Use Plan ("SRLUP") for the Upper Hunter, the Premier said:

"More than two million hectares of our State's most valuable agricultural land as well as the critical water sources that supply it are now subject to protections never before seen in NSW. Much of that land is located in the Upper Hunter."

"The Upper Hunter region is one of the State's most fertile and productive agricultural areas. The agricultural industry is worth around \$5.9 billion annually to the regional economy with dairy, horse breeding, viticulture and beef cattle industries being major contributors."

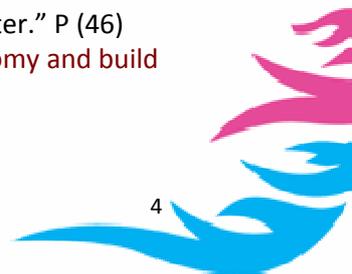
"For the first time large-scale mining or coal seam gas projects proposed on the most valuable of these agricultural lands must be independently and scientifically assessed before a development application can even be lodged."

"Importantly the potential impacts on the agricultural value of the land and its water supplies will be the key focus of this expert, upfront assessment and much be thoroughly addressed by any mining or coal seam gas company wanting to operate in these areas."

"The national and international significance of the Upper Hunter's wine and thoroughbred industries has also been recognised with large areas of the region also identified for heightened protection."

As the NSW Government's policy document the SRLUP goes on to outline the Government's policies including:

- Its "commitment to strong economic growth in regional NSW and, whilst increased investment and development in regional areas are key priorities, **these must be balanced with the protection of agricultural land and the sustainable management of natural resources**" (p9)
- **"This plan represents the Government's proposed framework to support growth, protect the environment and respond to competing land uses**, whilst preserving key regional values over the next 20 years" (p9)
- "improving the balance between competing land uses; maintaining or enhancing future opportunities for sustainable agriculture; **defining and protecting strategic agricultural land.**" (p20)
- "strategic agricultural land is highly productive land that has both unique natural resource characteristics.. as well as socio-economic value" (p21)
- the "equine critical industry cluster around Scone, Bylong and Denman and a viticulture cluster around Broke, Pokolbin and Denman have been identified as strategic agricultural lands." (p22)
- "All State significant development and infrastructure proposals which would potentially impact on agricultural resources or industries are required to prepare an Agricultural Impact Statement to demonstrate that impacts on agricultural land and resources are avoided or minimised to acceptable levels." (p23) **The objective of Agricultural Impact Statements are to "ensure protection of strategic agricultural land and the water resources it relies on; ensure a balanced use of land by competing industries"** (p23)
- recognising the significance of economic diversification and resilience "Like many areas of regional NSW economic diversification is an important challenge for the Upper Hunter." P (46) Under Policy Response the Government committed to **" Diversify the region's economy and build economic resilience"** (p47)



- recognises that community health and amenity is a product of the physical and social environments. “this plan aims to improve community welfare by providing greater certainty about where mining and coal seam gas development can occur in the region, thus reducing the potential for land use conflict and associated impacts.” “Air, noise and visual pollution can cause cumulative impacts on communities – each new source of pollution adds to the overall impact on the region.” (p55) The Government’s policy response on this matter was to “Ensure that the growth of mining and coal seam gas industries does not significantly impact on community health and amenity.” (p61)
- recognises that “the natural environment in the region is under ongoing pressure from development including an increase in mining and coal seam gas development” (p64). “The NSW Government is committed to protecting and restoring priority land, vegetation and water habitats.” (p65)
- protecting and conserving “significant cultural heritage now and for future generations (beyond the 20 year life of this plan) through managing the ongoing impacts from development including local and regional development and mining activities.” (p73)
- the Government’s commitment to implement a Gateway process, undertaken by an independent Mining and Coal Seam Gas Gateway Panel, based on focussed, scientific assessment of the impacts of a proposal on agricultural land and water resources. (p76)
- Strategic Planning, cost benefit analysis and cumulative impact assessment methodology are included as part of this SRLUP to “provide a clear land use framework for the region” p 81

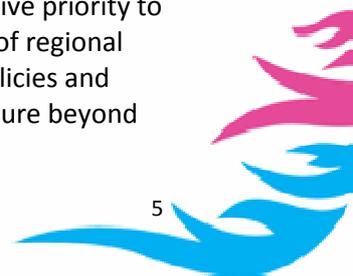
It is extraordinary that following the years of community consultation, the Government seeks to overturn its Strategic Regional Land Use Plan policies with the introduction of the Resources Significance SEPP Amendment which renders every commitment the NSW Government has made for protection of strategic agricultural lands and waters as entirely irrelevant.

3. Conflicts with commitments to work with local councils of the Upper Hunter region to implement initiatives for economic diversification recommended in the Upper Hunter Economic Diversification Report

The Upper Hunter Diversification Report is part of the Upper Hunter Economic Diversification Project which outlined strategies and initiatives for economic diversification and strengthening of local communities in the Upper Hunter region. It is specifically referred to in the SRLUP (p47). It is based on four initiatives:

1. Increasing local populations to build ongoing critical mass for service industries and associated jobs;
2. Building on specific industry strengths and local advantages and using these as a foundation for future growth;
3. Developing new areas of industry based on emerging opportunities such as agribusiness or renewable energy;
4. Developing knowledge intensive industries including support for renewable energy support systems, education, training and research.

It is mystifying why the NSW Government through the introduction of this SEPP would give priority to mining and destroy existing sustainable industries that contribute to the diversification of regional economies and provide long term sustainable jobs in complete contradiction of their policies and commitments and at a time when responsible governments should be planning for a future beyond and after mining.



4. Contradicts the proposed State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) Amendment 2012 released in November 2012 to implement the NSW Government's Gateway Assessment Process

The State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) Amendment 2012 released in November 2012 to implement the NSW Government's Gateway Assessment Process. "The aim of this Policy was to establish a Gateway process for certain mining and petroleum (oil and gas) development:

- to recognise the importance of agricultural resources, and
- to ensure protection of strategic agricultural land and water resources, and
- to ensure balanced use of land by potentially competing industries, and
- to provide sustainable growth for mining, petroleum and agricultural industries." (Public consultation draft)

Consultation on the SEPP closed in December 2012 and no progress has been made since to implement it. The proposed Resources Significance SEPP completely contradicts the Gateway Assessment SEPP. It beggars belief that the NSW Government would trash its entire Strategic Regional Land Use Plan to yield to the pressures imposed by mining companies and in so doing betray every commitment they made to regional communities and strategic agricultural industries since they gained office. Is this the Government's intention?

5. Contradicts the proposed State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) Amendment (Coal Seam Gas Exclusion Zones) 2013

In February 2013 Premier O'Farrell announced *Tough New Rules for Coal Seam Gas Activity* (Media Release 19 February 2013). The Premier announced "*no go zones for CSG activities*" within 2km of residential areas and on critical industry clusters. In his announcement the Premier stated "*My Government has listened and acted. Local Liberal and Nationals MPs have also made strong representations on behalf of their communities. These actions clearly place public health and safety at the heart of all CSG activities.*" Mr O'Farrell also said "*Families in residential areas should not have to worry about their quality of life being affected by noise, visual impacts and other effect of coal seam gas mining.*"

We supported this policy announcement and questioned why it did not apply also to coal mining activity.

The Premier also committed publicly to introducing these tough new rules within six weeks. A draft Coal Seam Gas Exclusion Zones SEPP amendment 2013 was released for public consultation in March 2013. Some five months later no progress has been made to implement it.

The proposed Resources Significance SEPP is in stark contrast to the Coal Seam Gas Exclusion Zone SEPP. It is extraordinary that despite the Premier's commitments the Coal Seam Gas Exclusion Zone SEPP has not been progressed and will be rendered irrelevant by the Resources Significance SEPP which gives priority and primacy to mineral resources. It is breathtaking that the NSW Government could develop such contradictory policy instruments in complete contrast to their commitments to the NSW people, the health and well being of regional and urban communities and to critical agricultural industries they promised to protect.

6. Negates the additional scrutiny of the proposed Drayton South open cut coal mine announced by Minister Hazzard in May 2013; renders the PAC process irrelevant and taints the NSW planning system.

On 21 May 2013 Minister Brad Hazzard announced the “*Drayton South mine to undergo extra scrutiny*”. In his Media Release Minister Hazzard stated the “*NSW Government had heard the community’s concerns and has today moved to ensure further scrutiny of the proposed Drayton South coal mine near Muswellbrook and its potential impact on nearby horse studs.*” Minister Hazzard wrote to the Planning Assessment Commission requesting it defer its review of the proposed open – cut mine to allow the Department of Planning and Infrastructure to undertake further work on concerns raised in public submissions.

Should the Resources Significance SEPP be implemented now, far from addressing community concerns and the threats posed to international thoroughbred breeding studs and the entire thoroughbred breeding industry in the Hunter Valley, this delay will render any PAC considerations, other than the significance of the resource, irrelevant and signal the demise of not only international scale thoroughbred breeding studs located near (500m to 1km) the open cut coal mine but the entire vertically integrated thoroughbred breeding industry concentrated in the Hunter Valley.

Should the Resources Significance SEPP be implemented, it would represent a total betrayal of the trust the community had placed in the Government’s “process”, would render the PAC process irrelevant and would taint the Government’s new, and to date untested, planning system.

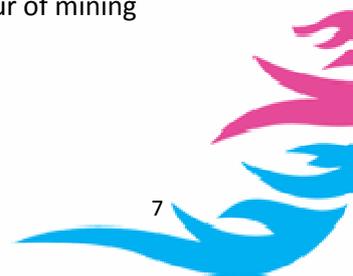
At a time when the NSW Government is poised to receive a report from ICAC and the Premier’s commitment to “*do everything I can to restore integrity in government – integrity that was so profoundly destroyed by the former Labor Government*”(Hansard 21 February 213) it is staggering that the NSW Government would move to introduce regulations that place more power and importance in the hands of mining companies over and above all other interests and in so doing discard the protections the Government promised to landholders, strategic agricultural industries, sustainable long term jobs, community health and wellbeing and the preservation of vital environment and water resources.

The Government has a duty of care to all its citizens and should look beyond short term financial gain to long term sustainability.

7. Undermines every promise for certainty, protection, balance and fairness made by the Coalition Government prior to and since it came to office

The NSW Coalition Government was elected with a mandate to fix the dysfunctional NSW planning system and to restore fairness, balance, integrity, the protection of strategic agricultural lands, vital resources and the health and well being of communities. It promised to recognise landholder rights and introduce tougher new rules to protect communities and agricultural industries from the detrimental effects of mining developments.

The Resources Significance SEPP make a mockery of every commitment the NSW Government made prior to and since it came to office. It signals that this Government, along with many of its predecessors, has caved into the power and pressure of mining interested above those of the communities and people who voted them into office. Rather than distancing themselves from the politicisation of this process, the Government has taken the extraordinary steps of partnering with the mining companies against legal institutions and communities and legislating in favour of mining company interests above all others.



8. Discriminates against agricultural landholders, the community and the environment in favour of mining interests and creates investment uncertainty for non-mining investment by agricultural communities in regional NSW

By its very nature, the proposed Resources Significance SEPP, discriminates against agricultural, community and environmental interests – interests and a duty of care the Government should protect.

There have been numerous reports, including a recent report by the Australia Institute and Economists at Large, which have identified that mining proposals systemically over state the benefits and understate the costs to the State, environment, other industries and employment. The recent work we have commissioned from independent experts reinforces this conclusion.

Investment confidence in NSW for sustainable agricultural investments, such as those in our industry, have been stifled by decades of uncertainty and mountains of bureaucratic red tape all of which favours mining companies at the expense of ordinary landholders, sustainable farming communities, iconic agricultural industries and vital environmental resources, such as water.

9. Reduces prospects for economic diversity and resilience and signals a total rejection by the NSW Government to all non-mining sustainable industries in the Hunter Valley

The signal the Resources Significance SEPP sends to all non-mining interests, is that they are second class citizens and NSW is not interested in upholding Government commitments to protect their interests and their employees or fostering their growth in this state.

This Resources Significance SEPP has far reaching implications for all non-mining industries in this state and for the State's future development. Far from encouraging economic diversity, this SEPP destroys investment confidence and signals the beginning of the end to sustainable industries which should be the backbone of our future growth, prosperity and our legacy to future generations.

The message the NSW Government is giving to Australia's largest, multibillion dollar thoroughbred breeding industry concentrated in the Hunter Valley is that mining interests come first and that we should exit because our future, our employees, our products and exports are not valued in this State.

