

LOCK THE GATE ALLIANCE

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

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Submission: State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) Amendment (Significance of Resource) 2015

Thank you for the opportunity to make a submission on this important amendment to the State Environmental Planning Policy for Mining.

We wholeheartedly support the proposal to repeal clause 12AA of the SEPP and hope that this change occurs quickly after 21 July when the public exhibition period closes. We are especially grateful that this change has come in time to be considered by the Planning and Assessment Commission in its consideration of the Warkworth Continuation Project.

The public response to the proposal to introduce both clause 12AA and 12AB in November 2013 was overwhelmingly opposed to the change. It is deeply regrettable that the Government persisted with this change despite the opposition of the public and the communities affected by coal mining projects and despite even the reservations of the Planning and Assessment Commission, which made clear its view that this clause is in conflict with section 79C of the *Environmental Planning and Assessment Act 1979*.

Many damaging coal mining projects have been given development consent with this clause in effect, but the lack of merits appeal rights for the public and lack of independent concurrence powers for other statutory agencies under Part 4.1 of the *Environmental Planning and Assessment Act* make it next to impossible to prevent these projects harming communities, businesses and the environment once State Significant Development consent is in place. These mistakes will haunt New South Wales for decades to come if action is not taken to rectify them.

Nevertheless, we sincerely thank the Government for responding to the public's overwhelming call to repeal clause 12AA.

We would like to also take this opportunity to strongly urge you to adopt further amendment to the SEPP to improve balance and fairness.

Section 12AB of the SEPP (Non-discretionary standards) which was created at the same time as section 12AA fetters consent authorities from adopting more stringent environmental standards for air quality, noise and water than the SEPP allows. This is irresponsible and is leading to poor environmental and social outcomes. This section must also be repealed, or its action reversed so that development *cannot be given consent if it breaches the standards*, but consent authorities are free to adopt more stringent standards where appropriate.

Similarly, section 14 (3), which was also added at that time, requires the consent authority to consider "any certification" by the Chief Executive of OEHL that offset and mitigation proposals for biodiversity are adequate. The only time that this clause has so far been used, for the Warkworth

Continuation Project, OEH gave this certification despite the offset package not actually fulfilling the requirements identified, making a mockery of this “certification” and leading us to the conclusion that the purpose of this clause, like the others, is to fetter the PAC from independently assessing the impacts of that project, and others, on biodiversity, and coming to a different conclusion than the conclusion desired by Government agencies.

Section 12A, which was added to the SEPP late last year and requires the consent authority to consider the “Voluntary” land acquisition policy is grossly inappropriate and unfair and is also leading to terrible social and economic consequences for communities and businesses immediately affected by mining. Like the others, this section of the SEPP was designed, in our view, to fetter the PAC and prevent it imposing stronger conditions than the Department of Planning wanted. The Acquisition Policy is causing anxiety, injustice and likely also serious health consequences for people affected by mining. We urgently ask the Government to amend it in consultation with affected communities.

More broadly, we believe that the statutory review of the SEPP that is due for completion by September provides an opportunity to address the land use conflicts that are dividing regional communities and ensure that the natural assets, rural industries and people of New South Wales are protected from the harms of mining. We suggest:

- Amend Section 9A so that it also makes coal mining prohibited development within the exclusion zones currently applied to coal seam gas. For water resources, the prohibition must include alluvial aquifers and 2km around fourth order streams in an expanded Part 9A.
- Amend Part 3 so that impacts on health and on Aboriginal cultural heritage, including social impacts and landscape scale impacts, are considerations for consent authorities for mining projects, and that the cumulative impacts on water resources and biodiversity are also matters for consideration.
- Further exclusions for coal and gas should also be listed in Schedule 1 of the SEPP, including the Special Areas of Sydney’s drinking water catchment, the Broke-Fordwich wine region, a 10km buffer around equine and viticulture critical industry clusters and productive farmland, productive aquifers and critically endangered woodlands.
- Amend section 17F so that a Gateway Certificate is needed for any application within the buffer zone for any BSAL or critical industry cluster.
- Expand the list of critical industry clusters to include additional clusters identified through a systematic process, in addition to horse-breeding and wine-growing in the Hunter.
- The section 9A 2km exclusion around urban areas and residential zones should be extended to also apply to all household dwellings - for both unconventional gas and coal mining.

Beyond the SEPP, but with implications for biodiversity considerations, the Major Projects Offset policy must be changed to restore the “like-for-like” principle on all offsets and limit the use of mine-site rehabilitation and complementary measures for offsetting.

Finally, we seek the Government’s commitment that it will, from this point forward, ensure the public can appeal poor decisions. This is a very simple matter. The Minister and Planning and Assessment Commission can ensure that the next mining projects being considered, including Drayton South, Narrabri Gas and Bylong Projects have full merits appeal rights retained by ensuring there is no public hearing of the PAC held.

Thanks again for the opportunity to comment and for the timely action in making this change to the SEPP.