

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



Attention: Director of Assessment Policy Systems & Stakeholder Consultation

July 2015

Dear Ms McNally

## **HUNTER THOROUGHBRED BREEDERS ASSOCIATION SUBMISSION ON INTEGRATED MINING POLICY**

The Hunter Thoroughbred Breeders Association appreciates the opportunity to comment on the Stage 1 of the Government's Integrated Mining Policy documents – Secretary's Environmental Assessment Requirements (SEARs); Mine Application Guideline; and Swamp Offset Policy.

### **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 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. We are the largest agricultural industry in the Hunter Valley, the largest agricultural employer and a significant regional employer in our own right. We are the nursery of Australia's racing industry and support 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 \$5billion into the NSW economy every year, support 100,000 jobs and attract more than 3 million visitors annually to the Hunter region.

### **Overarching Comments**

The HTBA appreciates the rationale underpinning the Integrated Mining Policy (IMP) is to:

- Improve transparency, consistency and accountability of the assessment process;
- reduce duplication and improve the efficiency of assessment and regulation of State significant mining developments;
- improve coordination between government agencies;
- reduce the need for Government to seek additional information from mining companies, which causes delays in the process;
- provide better guidance to both proponents and the community.

As we understand it, all of these elements are intended to improve the functioning and integrity of the system.

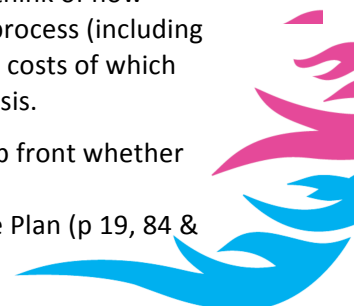
The HTBA appreciates and supports the need for reducing duplication and increasing efficiency and transparency through a whole-of-government approach to the planning system.



However the underlying rationale for the IMP raises a number of seminal issues that are fundamental to genuine holistic reform of the current planning assessment process for State Significant Developments (SSDs).

In our view these are:

1. **The need for a clear overarching vision** from Government regarding all the elements of reforms to the planning process including:
  - Up-front protection of CICs with a 10km buffer. This gives certainty for all planning purposes and addresses potential land use conflicts.
  - A holistic road map of all planning reforms, so that all stakeholders can contribute in the most effective and efficient manner. Only then can communities judge whether the Government is genuine about overhauling the planning system and providing certainty for the future.
  - Advice on the progress and outcomes of the Coal Exploration Steering Group, chaired by Mr Percy Allen AM.
  - Provision of upfront advice and assessments on where mining can and cannot go and the role that Independent advisers to the Government (such as the Gateway Panel) should play (see separate comments on the Gateway Panel).
  - In the absence of the above, the choice of the three documents for review is without context and reinforces current preconceptions and modus operandi.
2. **The need to restore credibility and trust** in the independence and integrity of the planning assessment process:
  - the current system, which is entirely reliant on information untested and scantily scrutinised provided and funded by mining Proponents, does not achieve this. It must be changed. This is an opportunity to think outside the box and institute genuine reforms of benefit to all stakeholders and particularly the state of NSW.
3. **The need for independent scientifically based assessments** that not only reduce duplication and costs and improve efficiencies (for Government departments, the community, proponents and NSW taxpayers) but also restore trust and integrity in the process:
  - The lack of independence of environmental assessments proffered by Proponents has resulted in the quadrupling of costs and resources applied to the assessment of SSDs – i.e. costs borne by Proponents; communities; Departmental officers; and experts appointed by Government. The scientific basis of these assessments is not transparent and is unable to be properly assessed.
  - It has also led to a complete lack of community confidence in the independence, integrity and veracity of the Government's assessment process.
  - We recognise that internal departmental resources, skills and expertise are stretched and limited.
  - But we respectfully suggest that a truly independent scientific and professional "whole of mine" assessment of development applications requires a fundamental rethink of how assessments are undertaken. This can only occur through an assessment process (including EIS assessments) that is entirely independent from the Proponent, and the costs of which can be and should be recouped from the Proponent on a fee for service basis.
4. **The need to empower independent Government experts** to scientifically assess up front whether SSDs should pass the gateway and proceed to apply for development applications:
  - This was envisaged and articulated in the draft Strategic Regional Land Use Plan (p 19, 84 & 95).



- It was heralded as the best way forward to ensure the protection of strategic agricultural land and water **whilst** ensuring security and clarity for agriculture and mining industries.
- Yet these powers were not ultimately provided to the NSW Gateway Panel and what has resulted is unnecessary costs, uncertainty, angst and the amplifying of land use conflicts.

5. **The need to differentiate State Significant Developments from other development assessments** and rule accordingly:

- Proponents of SSDs should not be afforded unlimited opportunities to make applications once the Government has ruled that the SSD is not in the public interest.
- SSD's cannot and should not be compared to a renovation on a house – and similar rules should not be applied.
- The environmental and community impacts of SSDs are significant (as noted in the proposed Mining SEPP Amendments) and once the independent umpire has ruled that the SSD is not in the public interest that decision should stand.
- Neither the community nor the taxpayer should be put through numerous, costly, resource intensive and highly stressful processes when precautionary principles and the public benefit have delivered a ruling against an SSD.

6. **The need to support communities** to respond to complex environmental assessments:

- Landholders and communities shoulder an excessive burden to protect their interests, lands, environments and communities due to a situation not of their making.
- They cannot compete financially with deep-pocketed mining proponents and therefore are unable to access expensive assistance such as “independent” experts.
- The current system pays no regard to the financial and emotional burden the assessment process places on individual landholders and affected communities.
- Changes are needed to level the playing field – including longer exhibition times (minimum of 8 weeks) for communities to respond to highly technical and complex environmental assessments and financial recompense for landholders to participate in an informed manner.
- The introduction of independent assessments as suggested in point 2 above may address this situation and restore faith and integrity to the system.

There are a number of additional reforms relating to appeal rights, penalties, compliance, and “use it or lose it” licence provisions which we have previously submitted to the department and remain relevant to planning policy reforms. This document is appended to our submission.

Attached we also provide specific comments on the three documents on exhibition – the Secretary's Environmental Assessment Requirements (SEARs); Mine Application Guideline; and Swamp Offset Policy.

We look forward to understanding the broader context of the planning reforms envisaged by the Government. We emphasise the need for genuine reform, rather than a piecemeal approach to refine at the margins of the current process, and look forward to participating in this continuing reform process.

We would be pleased to provide more information on any of the issues included in this submission.

Yours sincerely



Dr Cameron Collins  
President



## HTBA COMMENTS ON INTEGRATED MINING POLICY – STAGE 1

### Standard Secretary's Environmental Assessment Requirements (SEARs)

The HTBA welcomes a more comprehensive approach to SEARs which outlines and articulates the **minimum** requirements that should be incorporated in all environmental impact assessments.

As a general principle, the precautionary principle and the principle of environmentally sustainable development (including triple bottom line assessments) should be applied to all applications for mining projects – particularly those that have the potential to impact on strategic agricultural land including CICs) and biophysical strategic agricultural land (BSAL).

Importantly the starting point for any mining project would be to **avoid** any negative impacts on the environment, strategic agricultural lands (including CICs) and BSAL.

### Independent Assessment

We reinforce the comments made in the covering letter to our submission that environmental impact assessments should be undertaken by an independent scientifically expert organisation and paid for by the Proponent on a fee for service basis. This will go some way to restoring confidence in the process and removing unnecessary layers of inefficiency and financial burden currently imposed on landholders, community, the Government and NSW taxpayers.

### Critical Industry Clusters

Given the Government's recognition of critical industry clusters for equine and wine in NSW, we submit that a provision should be included to specifically address the impacts of mining proposals on these CICs which should be triggered if mining proposals come within 2km of CICs (consistent with current requirements for Agricultural Impact Statements) or are associated with ELs which intersect or come within 2km of CICs or individual CIC operators).

This should include, but not be limited to, assessments of the proposed mining impacts on:

- the operations of the CICs and individual CIC operators;
- the visual amenity (static and dynamic), landscape and final land form;
- heritage values of the CICs and the lands within which they operate;
- the quality and quantity of water (ground and surface water) relevant to the operations of the CICs;
- agricultural productivity;
- air, dust, noise, blasting, vibration and lighting;
- livestock and/or other relevant agricultural produce;
- roads, road safety and ability to access transport routes for essential services (such as livestock emergency transport or access to markets);
- the reputation of the CICs or individual operators within the CICs (including investor perceptions of threats posed by mining);
- the socio-economic fabric of the CIC communities and towns.

Given the growing proximity of intrusive coal mining in the Upper Hunter, this general provision should be incorporated in the standard SEARs.

### Transparency

Importantly we submit that all information provided as part of the SEARs be sufficient to **enable** independent interrogation and scrutiny of the mining proposal.



Our experience to date has been that on all fronts – including year on year information on mining, economic, visual, heritage, production, rehabilitation issues and supporting maps – does not facilitate independent scrutiny or analysis. This includes assumptions underpinning the mining proposal analysis. These are fundamental to proper and independent assessment and third party testing.

### Air Quality

As a general point we submit that current air quality “standards” (and for that matter noise, dust, lighting “standards”) do not work in a rural environment. Minimum or maximum standards are not calibrated for rural environments and therefore do not set appropriate benchmarks for the avoidance or mitigation of these impacts on rural (particularly rural residential) properties and communities.

We note and support the need for air quality particulates, including PM2.5, be included as standard requirements. Given the increasing levels of concern regarding the impacts of mining in the Hunter region, we question whether PM1 should also be incorporated in the standard SEAR requirements. This must include cumulative assessments.

### Biodiversity

On the matter of biodiversity offsets, we note that a comprehensive offsets data base of lands currently held in conservation as a result of development consents was to be compiled by the Department of Planning by December 2012 and was to be updated on an on-going basis.

It is not clear whether this biodiversity offsets database has been compiled and if not why not? This is an important base upon which future biodiversity offsets can be assessed and determined. It is information that was promised to be completed by 2012 and that the general public have requested for several years.

What is clear is that there is growing concern that biodiversity offsets, like for like, cannot in most instances be attained within the region in which the proposed mine is to operate. This is undermining regional biodiversity and the Government’s biodiversity offsets policy needs to be rectified as a matter of urgency.

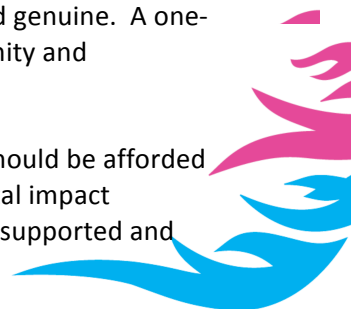
### Accuracy of Information

The “standard” SEARs should include the provision requiring a signed statement from the author of the EIS certifying that the information contained within the document is neither false nor misleading. This has been the practice in the past and should continue to be applied to future environmental assessments.

### Genuine Consultation

We note that the IMP is not intended to change community consultation requirements. While in the broad we agree with this sentiment, we submit that consultation with all affected stakeholders and communities needs to be open, transparent, informative, inclusive, comprehensive and genuine. A one-way dialogue and the production of “newsletters” is no substitute for genuine community and stakeholder consultation.

We also submit, as stated in the covering letter to this submission, that communities should be afforded a minimum of eight (8) weeks to consider and respond to highly technical environmental impact assessments and, in the absence of a truly independent assessment of EIS’s, should be supported and recompensed for financial costs incurred in responding to mining proposals.



## Mine Application Guideline

We note that the Mine Application Guideline (MAG) sets out the Government's expectations for both pre-assessment documentation and the EIS. We further note that Guidelines for the Economic Assessment of Mining and Coal Seam Gas Proposals and Planning Agreements are yet to be released.

Given the many references in the standard SEARs to the MAG, our comments on the MAG also relate to the standard SEARs.

## Ecologically Sustainable Development

The HTBA supports the need to firmly apply the principles of ecologically sustainable development to all SSD applications. The requirement for a genuine, credible triple bottom line assessment for SSDs should be reinforced in both the MAG and the SEARs.

## Preliminary Environmental Assessments (PEAs)

We agree with the need for PEAs to be prepared in advance of the request for SEARs and the preparation of an EIS. In our view, these PEAs should also form the basis of, in conjunction with a revised Gateway process (see comments below), whether a project **should proceed at all** to prepare an EIS and apply for a development approval.

This view is consistent with the Government's draft Strategic Regional Land Use Policy (2012), the intended role of the Gateway Panel and is a fundamental consideration to the genuine nature of the Government's reform of the planning system.

## Gateway Certificates

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. We submit that an integral and fundamental reform to the planning process should include the empowerment of the Gateway Panel to refuse SSD applications upfront in order to deliver the protection to BSAL, strategic agricultural lands and CICs promised by the Government.



### Mine Planning Process – Appropriate Buffers

The HTBA agrees that appropriate separation distance is required to provide confidence that existing land uses can be maintained (p2). We do not agree however that the onus should be on mining companies to acquire sufficient land to provide adequate separation. This practice has resulted in heightening land use conflicts, denuding our regional economies of important and sustainable economic diversification and placing at risks sustainable agricultural industries. It has left landholders “stranded” where they are within a potential acquisition zone, or are left out or just outside its borders and their land is effectively sterilized by the potential of the mine related impacts.

The Government needs to establish appropriate buffers between mining and competing land uses. This is consistent with the Premier’s comments that mining cannot go everywhere and that “coexistence is not coexistence without boundaries”.

We submit that a buffer of 10km around CICs and between individual CIC operations and new mining proposals needs to be established to protect the CICs which are recognised by the NSW Government as being of state and national significance. This allows certainty and an opportunity for the CIC industries to continue and provides room for expansion.

### Mine Planning Process – Choices and Trade Offs

The HTBA agrees that the SSD Proponent must outline the mining project **in its entirety** ... so that decision makers can understand what choices and trade-offs have been made and why (p3).

The HTBA submits that the mining project that is articulated should be the entire mining project. Our experience has shown that as soon as a mining project is approved the Proponent seeks a modification (almost on a yearly basis) and the entire (cumulative) costs and impacts of the mining project are not evaluated upfront. It follows that any licence area not included in the assessment should be cancelled for all future mining purposes.

The “choices and trade offs” should not be limited to mining practices but should provide an opportunity for all involved, landholders, communities and decision makers, to make a considered and well-informed decision on the entire impacts of the proposed mining operation up front. Modifications and mining creep should not be the preferred operational or assessment standard, which has been the case to date.

### Robust EIS

The HTBA agrees with the need for a robust EIS that provides a high level of certainty regarding the environmental and other impacts of the SSD. Our comments relating to an independent EIS made earlier are pertinent to this assessment.

Our experience has shown that affected communities do not trust the environmental impact assessments commissioned for and provided by the Proponent. There is a perception that Government departments have a predisposition to accept the information by the Proponent over the concerns of communities.

In order to restore faith and trust in the planning system an independent assessment process must be implemented.

### Strategic Context

The strategic context (section 3) may need to be updated in light of the Government’s recently announced proposed changes to the Mining SEPP to remove the resource significance as a principal consideration and greater emphasis needs to be placed on the environmental, social and economic





impacts of the project on affected communities and strategic agricultural lands, water resources and industries.

### Regional Context

Section 3.2 (page 6) should include a section specifically addressing the impacts of mining projects on Critical Industry Clusters (including considerations outlined in the previous section on SEARs).

### Environmental Impact Assessment

As a general comment and observation, the MAG is very light on in terms of its guidance to mining proponents on environmental impact details that should be provided for both PEAs and EIS.

Conditions of consent for any mining project should not allow for future mitigation “plans” or assessments. Avoidance, mitigation and management plans covering all aspects of the mining project should be submitted as part of the EIS and include rehabilitation. If amendments are required further development applications should be made and be subject to a separate development application, allowing scientific and transparent scrutiny.

### Consultation

The HTBA agrees that mining proponents should genuinely engage with all affected businesses, landholders and local communities. Our experience to date has been that this has not been the case (as noted in our comments on the SEARs above).

A social licence to operate means that mining proponents need to make a genuine effort to engage and address community concerns.

### Swamp Offsets Policy

We are not experts on swamps and recognise that this is a niche issue. However the inclusion of a policy framework for Biodiversity Offsets for Upland Swamps and Associated Threatened Species highlights a number of key concerns with this reform process - including:

1. the need for an overarching reform strategy so that all policies can be prioritised, considered and assessed in context;
2. the need for an overarching risk assessment policy and process so that strategic agricultural lands, BSAL and other sensitive environmental assets (including swamps) can be identified upfront (including through an accurate mapping process) and protected;
3. the need for clear overarching criteria and risk management approaches to help identify, protect, avoid, minimise or mitigate mining impacts on sensitive environmental assets and environments;
4. the need for upfront biodiversity banking in cases where the environmental impacts of a mining proposal are questionable;
5. the need for significant upfront environmental bonds to ensure that the legacy of mining projects are not left to future generations and to positively deter mining proponents from delivering on their environmental and rehabilitation commitments;
6. the need for effective monitoring and substantial penalties to detect breaches of compliance and positively deter breaches in compliance and environmental damage.

Comments relating to biodiversity offsets and a biodiversity database made in the SEARs section of this submission also apply to this policy.





## PLANNING POLICY REFORMS

### Restore Confidence in the Planning Process by:

1. Providing **up front certainty** to all stakeholders (communities, landholders, critical industry clusters and miners) about **where mining should and should not occur**. This was a Coalition election commitment which has not been delivered.
2. Applying a **whole of Government approach** to mining exploration and mining development. Allocation of mining leases and their assessment should not be done in a vacuum or in isolation. Strategic regional land use planning, protection of vital agricultural industries, lands, soils and water and triple bottom line assessments should be included in one integral process.
3. **Protecting critical industry clusters** and key environmental assets (eg prime agricultural lands and water resources) from mining development. These clusters have been mapped and recognised as nationally and state significant. Protection should allow for growth, provide sufficient buffers from encroaching development and protect the cluster as a whole (not allow loop holes for opt outs). World's best practice, UK, US, France, NZ) demonstrates that Australia is the only country that does not protect its nationally significant equine critical industry cluster.
4. **Early, genuine and transparent consultation** with communities, landholders, and industries.
5. **Restoring the Gate to the Gateway Process** – the Gateway Panel should have the right to recommend an EL or mining application be declined and not proceed to DA.
6. **Ensuring independent, impartial, credible and transparent assessments** of exploration licence allocations, and environmental impact assessments of state significant projects. Independent economic analysis is an important first step. The entire mining allocation, exploration and assessment process would benefit from totally independent and transparent analysis. Not only would this help restore confidence in the process it will remove many layers of assessment and cost that are currently undertaken – by proponents, communities, landholders, agricultural industries and Government.
7. **Establishing and properly resourcing an Independent Planning Commission** to be responsible for whole of government assessment of applications, allocations and renewals of mining exploration licences, environmental impact assessments, development applications and modification applications. An independent one-stop mining assessment shop for want of a better descriptor.
8. **Monitoring and Enforcement** – consider establishing and properly resourcing an independent body to monitor and enforce compliance of exploration and mining consent conditions.
9. Requiring **appropriate up-front environmental bonds** for rehabilitation. Imposing **appropriate penalties** for breaches of licences to protect communities, landholders and facilitate compliance.
10. **“Use it or lose it”** – end the inappropriate practice of automatically renewing exploration licences when they expire. Proponents should either use the opportunity to explore the resource potential or lose it. **Mining modifications should also be limited**. The current practice of “modification creep” provides no community confidence in the process and deprives stakeholders, communities and Governments of the opportunity to properly assess the entire project at the outset.
11. **Reinstating merit appeals rights and landholder property rights**.
12. **Abolition of the Resource Significance 2013 Amendment** to the State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries).

