



**Submission to the
NSW Government Department of Planning and Environment**

Integrated Mining Policy phase 2

September 2015

**NSW Farmers' Association
Level 6, 35 Chandos St
St Leonards NSW 2065**

emailus@nswfarmers.org.au

Introduction

NSW Farmers welcomes the initiatives of improving the available information for communities affected by mining in the integrated mining policy package. NSW Farmers can see the benefit in the proposed improvements for each of the compartments however, as noted in the NSW Farmers' submission to phase 1 of the integrated mining policy reform, to NSW Farmers the reforms lack the integration required in a wider policy context.

Before the end of September this year the Planning Minister is required to report on a review of the *State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007*. There have also been strong representations around reviving a review of the planning system as a whole, as well as the potential development of a single onshore resources Act. Overall NSW Farmers views the proposed reform in the integrated mining policy as a positive, however, NSW Farmers feel there will be far more beneficial outcomes to be realised from improving the system itself rather than piecemeal improvements to various reporting and compliance requirements.

NSW Farmers thank the Department of Planning and other relevant Departments for providing briefings to stakeholder groups on both phases of these projects, we value the opportunity to ask direct questions and also hear the concerns of the other stakeholders present. NSW Farmers are happy to provide comments but we must stress our insistence to the improvement of the planning framework as it relates to mining and other extractive industries in a broader context.

NSW Farmers comments below relate to each of the components of the Stage 2 reforms of the integrated mining policy:

- 1. Planning Agreement Guideline**
- 2. Post-Approval Guideline: Annual Review**
- 3. Post-Approval Guideline: Web-based Reporting**
- 4. Post-Approval Guideline: Independent Audits**
- 5. Water Policy and Regulation (summary document)**

1. Planning Agreement Guideline

NSW Farmers welcomes the identification and outlining of best practice principles for the negotiation of planning agreement guidelines. From a NSW Farmers perspective, the benefits of this will be providing more transparency on process and outcomes of planning agreements with Councils. This will improve community members' ability to evaluate the impact of a mining development. Planning Agreements are an important tool for companies in seeking social acceptance within a community. As the Department notes: 'In this way they can contribute to the social licence of a mining development.'¹ For this reason it is important to NSW Farmers members that all the

¹ NSW Government *Planning Agreement Guidelines For State Significant Mining Projects* (public consultation draft) July 2015 page 6.

information relating to the impacts of the development are available, including the Local Effects Analysis (LEA) methodology as prepared by DPE as well as any prepared LEA by any given proponent throughout the Environmental Impact Statement (EIS) stage. NSW Farmers understands that this methodology will be further outlined as part of the Economic Assessment Guidelines in Phase 3 of the Integrated Mining Policy. NSW Farmers would insist on the LEA being made publicly available as soon as possible in order to give the Planning Agreement Guideline meaning for decision makers and community members.

As per section 93G of the *Environmental Planning and Assessment Act 1979* (EP&A Act), proposed planning agreements must be publicly available for 28 days prior to final execution of the agreement. NSW Farmers recommends amending the Planning Agreement Guidelines to incorporate information about this requirement and purpose. If the notification period is for community awareness, are there certain conditions that require councils or developers to take queries on a proposed agreement and if so what would the requirements be for addressing those concerns. The notification period is not described as a consultation period but the distinction is not made clear in the Draft Planning Agreement Guidelines for state significant mining projects.

2. Post- Approval Guideline: Annual Review

NSW Farmers welcomes the guidelines that outline requirements for companies' annual reports. To date information on this requirement is not readily available and NSW Farmers believes that this requirement in particular is an important part of the transparency and clarity of individual mining operations.

At the outset however NSW Farmers feels that what is outlined in the annual review guidelines does not hit the mark in terms of making the information as accessible as it could be. The annual reviews should be available through government sources, such as the "Common Ground" website recently launched by the NSW Division of Resources and Energy (DRE). The information that is to be contained in an annual report is the sort of information that gives meaning and substance to websites such as Common Ground, and allows interested parties to view complete information about mining titles in the one spot. There are difficulties in requiring the mining operator to publish their own reports in terms of consistency of ease of access. Publishing annual reports at one site would also allow for cross checking across a range of mines and operations and would promote best practice in terms of self-reporting.

NSW Farmers understands that the post approval annual report (required by the issuing of development consent) and an environmental management report (required by the conditions of a mining lease) are separate from the Environmental Protection Licence Annual Return required by the Environment Protection Authority (EPA). It would be beneficial to all parties to see alignment between these requirements. NSW Farmers do appreciate the difficulties in relation to different licences and the timing of each in bringing these requirements together.

Environmental performance, water take and rehabilitation performance

NSW Farmers submits that this information needs to include data where necessary and welcomed the DPE's notation that where data is complex a summary should be provided. There needs to be a balance in obtaining correct and accurate information, whilst at the same time being able to be understood by wide ranging members of the community.

In terms of complaints, there should be a table to describe the number and nature of complaints, and what if any action has been done to address such complaints. NSW Farmers are aware of operators who address noise complaints with the distribution of a box of ear-plugs to each neighbour, for example, which to NSW Farmers' members is not adequate. This information needs to be readily available in the annual reviews.

3. Post-Approval Guideline: Web-based Reporting Framework

All of the information contained in the web-based reporting requirement is helpful and we welcome the initiative of pulling together this information in clear guidelines for mining companies and their reporting obligations.

We look forward to seeing the companies' pull together this information and display it in a way that is easily accessible and understandable. We do however believe that the NSW Government should host the information as well. There are requirements for the information to be submitted to government so in the case that a company is not meeting its public access obligations, or their methods are not sufficient, this would save individuals or corporations from lodging resource intensive applications under the *Government Information (Public Access) Act 2009* (GIPA applications). Holding the information at a centralised location also allows for ease of comparison across projects and will eventually lead to an improvement in reporting standards as the natural maturation of the process eventuates.

Currently, compartmentalised information achieves confusion, knowledge gaps and a lack of evaluative means for interested persons. It arguably also creates fear and angst amongst sectors of society towards the mining industry. Community members need free flowing and centralised information sources and the NSW Government is the obvious host for that information.

Web-based reporting also needs to include the course of action should a person believe they have grounds to challenge information found in the companies' reporting obligations. With an increased role for the NSW Government in providing this information, this should not need to include GIPA applications as is very commonly the case currently.

4. Post-Approval Guideline: Independent Audits

Independence, impartiality and objectivity of the audit team is going to be an essential element of the assessment of the audit team's competence, as well as the establishment that there is no relation to the work that is being audited, i.e. the auditors should not be marking their own homework. Again, information confirming independence should be publicly available.

NSW Farmers key concern here is that information contained in the audit reports needs to be straightforward. The risk at this stage is providing for unnecessarily lengthy and complex document which allows companies to conceal (even unwittingly) the important information due to the size of the report. This needs to be avoided and NSW Farmers recommends that the guidelines include the notation that reports need to be succinct, and discussions on each audit finding should avoid verbose language and jargon.

NSW Farmers welcomes the process proposed whereby companies will have four weeks to respond to audits with action plans including timelines and discussions on continual improvement initiatives. It is not clear whether the Department would need to approve these action plans, and whether they are required to be made available to the public.

5. Water Regulation and Policy: Application to mine and petroleum developments in NSW

The inclusion of the Aquifer Interference Policy under the legislative framework 'primary regulatory instruments' is confusing, as the policy is not legislation, and with the statement 'not yet commenced' implies that the policy is intended to be enacted as legislation.

NSW Farmers would welcome this and have long advocated that this policy should be written into law to give it the strength it requires. It would appear that by including it in this table of regulatory instruments in the context of all applicable legislation, the NSW Farmers policy position is confirmed. There are no other legislative measures that regulate the activity of water source interruption to the level that the AIP does, a controlled activity approval regulates the action on the surface and effects on the water source, whereas the AIP has its focus on the interference of the aquifer itself.

NSW Farmers welcomes the clarity offered in Tables 1 – 3 for legislative framework, assessment conditions and approval conditions. What is missing however is the way that an activity relates to regulation and policy and this guideline could be improved by using those. For example, a flow chart showing the points in an application to mine coal or apply to develop a petroleum resource and what applies at what particular stage. Nonetheless the tables and in particular the assessment considerations are a vast improvement on the information that is currently available in a piecemeal form and so we welcome this guideline.

Summary and conclusion

- Make public the Local Effects Analysis methodology so that community members can weigh up the impacts of a proposed development with the voluntary planning agreement.
- Clarify the best utilisation of the notification period for voluntary planning agreements. Is there a mechanism for community members to have their say during that period and if so, what are the processes for incorporating that information?
- Publish post approval annual reports and the like on a NSW Government website as well as including the requirement for proponents to publish them on the operation website.
- Ensure that annual reports, audits, and the like are required to be written in plain English and succinct. Where summaries of data is provided, ensure that the data is easily accessible where required.
- Indicate in the DPI Water's table 1 legislative framework how the AIP applies within the legislative framework as it is "not yet commenced".
- Create a flow-chart of applicable legislative or policy stages for water that is related to a mining or petroleum development to show the stages, rather than the itemisation of relevant policy only (provide context). This would also assist in the proposed development of a single resources act as proposed by the chief Scientist in a report on coal seam gas² in NSW in 2014.

NSW Farmers are confident that the documents currently on public consultation would streamline and clarify the environmental assessment and reporting requirements for state significant mining projects with some minor tweaks mostly relating to accessibility. It would further assist stakeholders if the outcomes of phase 1 of the integrated mining policy were made available so that the overall package is visible. It is also not clear what phase 3 comprises and whether phase 3 is the final phase or if there is ongoing work in improving the state significant mining application and assessment process.

² NSW Chief Scientist and Engineer *Final Report of the Independent Review of Coal Seam Gas Activities in NSW*, September 2014, Recommendation 6, page 13.