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 (Resource Significance) 2013*

The Lock the Gate Alliance strongly objects to the proposed changes to the *Mining, Petroleum Production and Extractive Industries SEPP 2007* (the Mining SEPP). The changes proposed will inappropriately stack the deck in favour of coal mining companies with the result that matters of public interest – compatible land use, rural amenity and the protection of water resources and biodiversity – will be relegated to a lower order of priority for mining consent authorities. The proposed amendments would also fetter the discretion of consent authorities to refuse consent for mining projects that may be harmful, based on a very limited set of criteria.

We already know that the politics are stacked against communities when it comes to coal. Until now, the NSW planning system, despite its limited access and broad discretion, has, on paper, held that the interests of protecting land, water and important natural areas should be balanced against the economic contribution of coal mining. These changes to the Mining SEPP throw out that balance, and should not proceed.

The amendments currently proposed for the Mining SEPP are particularly galling in light of the failure of the Government to conclude a process to amend the SEPP to reflect election commitments to protect farmland and water resources from coal mining. The Government has previously committed to amend the Mining SEPP to give effect to the Gateway process and Aquifer Interference Policy, and to establish a Land and Water Commissioner, and exhibited draft amendments for this in November, which were never implemented. There is now a Land and Water Commissioner, but he answers to the Department of Trade and Investment.

After receiving public comment on these previously proposed amendments to the Mining SEPP, and failing to conclude that process, the Government is now proposing *new* amendments to the Mining SEPP to make "significance of the [coal] resource" the principle consideration of a consent authority, above the protection of water resources, or compatibility with other land uses: in direct contradiction of previous commitments.

Furthermore, the Government's Planning White Paper process has foreshadowed that all SEPPS are going to be repealed next year. The Government has serious questions to answer about its purpose in amending this SEPP to give precedence to coal mining interests above matters that concern the public for a short window prior to an overhaul of the planning system. How many coal mines are expected to be hustled through the planning system under this new SEPP ahead of its repeal?

Lock the Gate would like to specifically raise the following problems with the SEPP amendments.

1. **The amendment adds "significance of the resource" to the matters that must be considered by consent authorities being asked to approve coal mines.**

In our view, there is no need for this to be brought into consideration at all: public authorities should be charged with considering matters of public interest, and "significance of the resource" is not one of them.

2. **The amendment would change the Mining SEPP so that "the significance of the resource is to be the consent authority's principal consideration."**

Sections 12 and 14 of the Mining SEPP provide that compatibility with other land uses, and impacts on water, biodiversity and greenhouse emissions must be considered before determining an application for consent for development for the purposes of mining, petroleum production or extractive industries.

Section 12 provides that consent authorities consider "(i) the existing uses and approved uses of land in the vicinity of the development, and (ii) whether or not the development is likely to have a significant impact on the uses that, in the opinion of the consent authority having regard to land use trends, are likely to be the preferred uses of land in the vicinity of the development, and (iii) any ways in which the development may be incompatible with any of those existing, approved or likely preferred uses."

They are then charged to "(b) *evaluate and compare the respective public benefits of the development and the land uses referred to in paragraph* (a) (i) and (ii)" and then to "evaluate any measures proposed by the applicant to avoid or minimise any incompatibility."

Section 14 ensures that "(1) Before granting consent for development for the purposes of mining, petroleum production or extractive industry, the consent authority **must consider whether or not the consent should be issued subject to conditions aimed at ensuring that the development is undertaken in an environmentally responsible manner**, including conditions to ensure the following:

> (a) that impacts on significant water resources, including surface and groundwater resources, are avoided, or are minimised to the greatest extent practicable,
> (b) that impacts on threatened species and biodiversity, are avoided, or are minimised to the greatest extent practicable,
> (c) that greenhouse gas emissions are minimised to the greatest extent practicable.

To these matters now, is added a new consideration. The consent authority now must have regard to "the significance of the resource," having regard to "the economic benefits" of exploiting it, "the relative significance of the resource in comparison with other resources across the State" and advice from the NSW Department of Trade and Investment about the "significance" of the resource.

The proposed amendments go into further specifics, requiring the consent authority to consider (a) the size, quality and availability of the resource that is the subject of the application, and (b) the proximity and access of the land to which the application relates to existing or proposed

infrastructure, and (c) the relationship of the resource to any existing mine, and (d) whether other industries or projects are dependent on the development of the resource. These are economic considerations for businesses, not relevant to the impact or assessment of the mine by the public authorities that are charged with acting in the public interest.

There is no justification for the "significance of the resource" to be elevated above other matters in this way. The matters previously outlined in the SEPP include compatibility with other land uses, protection of water resources and biodiversity. The threat to precisely these matters has been the catalyst for conflict in mining affected regions like the Hunter, the Liverpool Plains and the Sydney catchment. And yet, the Government proposes demoting these considerations before the new and ill-defined consideration "the significance of the resource." This will result in significant additional harm being inflicted on rural industries, local communities and biodiversity in the name of "resource significance."

3. **It is proposed that "the weight to be given by the consent authority to any other matter for consideration under this Part is to be proportionate to the importance of that other matter in comparison with the significance of the resource."**

The meaning of this provision is not clear. It is not clear whose view of the relative importance of these matters is given precedence. Those who are directly affected by coal mining may have a very different view of the importance of the other matters. Thoroughbred breeding studs, vineyards and dairy farms in the Hunter clearly consider their businesses important in comparison to the comparatively short term and single-use resource-exploitation business model of the coal industry. Small villages consider the cleanliness of their air to be more important than the significance of the coal resource they have the misfortune to live above. Farmers on the Liverpool Plains no doubt consider the integrity of the aquifers that supply constant water to their stock and homes, and for irrigation, very important in comparison to the significance of the coal that lies beneath the aquifer.

4. **The SEPP amendments propose the introduction of one-way non-discretionary standards for coal mine consents, with a very short time available to publicly discuss the implications of the standards being proposed.**

The standards work only one way: they prevent an authority from refusing a consent on the grounds covered if the standard are met, but do not prevent them from *providing consent if the standard is not met*. This seems to load the dice further in favour of coal mining proponents, who demand certainty that their projects will be approved, regardless of their impacts.

5. **The aquifer interference standard listed in the proposed SEPP reverses the intention of the minimal impact considerations of the Aquifer Interference Policy, preventing consent authorities from refusing consent for developments that reach the minimal impact threshold, rather than *preventing any development that exceeds this threshold*.**

Section 91F (1) of the *Water Management Act 2000* states that a person who carries out an aquifer interference activity and does not hold an aquifer interference approval, is guilty of an offence. Such

activities include penetration of an aquifer, interference with water in an aquifer, obstruction of the flow of water in an aquifer, and taking water from an aquifer in the course of carrying out mining.

Section 97 (6) of the *Water Management Act 2000* provides that "An aquifer interference approval is not to be granted **unless the Minister is satisfied that adequate arrangements are in force to ensure that no more than minimal harm will be done to the aquifer, or its dependent ecosystems,** as a consequence of its being interfered with in the course of the activities to which the approval relates"

The standards listed in the proposed SEPP amendments are *standards which must not be exceeded* under the terms of the Water Management Act. Under the proposed changes to the SEPP however, they become a standard *which compels a consent authority to provide consent*. This undermines the Water Management Act and puts aquifers at risk. For the SEPP to be consistent with commitments made by the NSW Government to protect water from mining, the minimal impact considerations must be a standard *beyond which consent cannot be given*. No consent authority should be compelled to give consent to a coal project on the basis of a small number of specific criteria, given the complex and cumulative impacts that are often involved.

6. **The proposed discretionary standard for air quality gives a "cumulative annual average level greater than 30µg/m^3 of PM_{10} for private dwellings" as the non-discretionary standard, ignoring the reality that 24 hour exceedances of safe levels of particulate pollution regularly occur as a result of coal mining operations and are negatively impacting on people's health.**

This proposed consent condition is at odds with the national air quality standards, the National Environment Protection Measure (Air Quality), to which the NSW Government is a signatory. The national standard for PM_{10} is a 24 hour average of 50 micrograms per cubic metre. The national air quality standard does not include an annual average.

The Strategic Regional Land Use Plans (SLRUPs) for the Upper Hunter and New England and the North West proposed that any new coal mine proposal must not cause exceedances of the health-based goals in the National Environment Protection (Ambient Air Quality) Measure (Air NEPM) at large towns such as Gunnedah and Narrabri, Singleton and Muswellbrook. This commitment would be breached if the SEPP amendments were made law.

Furthermore, the SRLUPs promised that NSW Health would prepare "a development assessment guideline for the impacts on human health from particulate matter emissions" which was to "identify maximum thresholds for both incremental and cumulative dust, including at small towns and individual rural residences, and is due for completion by June 2013." The World Health Organisation (WHO) has proposed guidelines standards for particulate pollution. For PM_{10}, they propose an annual mean of 20µg/m^3 and a 24 hour mean of 50 µg/m3 24-hour mean. The National NEPM reflects this 24 hour mean guideline standard, but the non-discretionary annual mean standard being proposed by this SEPP is higher than the standard proposed by WHO. Essentially, this SEPP would fetter NSW consent authorities to approve projects that meet a standard that is not world's best practise, and damages the health of nearby communities.

A consent standard based on a cumulative annual average of 30µg/m^3 would provide a much lower level of protection for community health than the national standard's 24 hour average. Adverse health impacts result from both short-term and long-term exposure to particle pollution and it is generally agreed that there is no safe level of exposure, but the health risk decreases with lower levels of exposure. The current NEPM standard is already being exceeded in the Hunter Valley and other coal-affected communities. Relying, instead, on an annual average would allow for regular exceedances of the standard for a 24 hour average.

Furthermore, the non-discretionary standard does not address smaller particulate pollution, with a diameter of 2.5 micrometres or less ($PM_{2.5}$). The World Health Organisation has recommended a set of "interim targets" for particulate pollution with a diameter of 2.5 micrometres or less ($PM_{2.5}$), the most stringent of which is a 24 hour average concentration of 25µgm^3.

It is essential that NSW adopts air quality standards consistent with other Australian states and with advice from the World Health Organisation. Before the NEPM was adopted in 1998, Australian states and territories had different standards. It would be a backward step for the NSW Government to adopt regulations that are at odds with these standards.

7. **Similarly, the standards proposed for overblast pressure and vibration are the maximum allowed in 12 month periods under the ANZECC technical basis guidelines, but there are many more aspects to these guidelines that are not included here, such as time-of-day restrictions, and number of blasts per day restrictions. The standards proposed for noise breach commitments made during the SLRUP process.**

Having this single measure as a standard that removes the discretion of the consent authority to refuse consent for a project that breaches other aspects of the guidelines, or has other idiosyncrasies of sound and vibration is a miscarriage of process and puts communities at risk.

Again, the measures proposed as non-discretionary standards for noise in the SEPP amendments contradict commitments in the SLRUPs. The Upper Hunter SLRUP noted that "Monitoring data from the Office of Environment and Heritage indicates that background noise levels in rural areas of NSW where there is no mining, other industry or road/rail traffic are generally less than 30 decibels (dB(A)). However, background noise levels are significantly higher than this in the Upper Hunter region due to existing mining activities, and are generally around 40dB(A) during the day and around 35dB(A) at night."

Both of the SLRUPs proposed that the conditions of development consent for mines in NSW include noise limits in accordance with the NSW Industrial Noise Policy (INP). The INP applies the lesser of either intrusive criteria (5 dB(A) above the rating background level) or the maximum recommended amenity criteria (such as 40dB(A) at night for rural and suburban areas). Where the rating background level (RBL) is less than 30dB(A), then it is set to 30dB(A). The amenity criteria put **an absolute ceiling on noise levels** to make sure cumulative noise levels in a region are acceptable." (our emphasis).

The SLRUP proposed that the standards in the Industrial Noise Policy be “absolute ceilings” for mining consents. The proposed SEPP amendments reverse this commitment: instead of prohibiting mining that exceeds this standard, as promised, it’s proposed that consent authorities will not be able to refuse projects that meet it. There is no mention of preventing consent authorities from approving projects that do not meet this minimum standard.

8. **There is no need to amend the purpose of the SEPP, as economic considerations are already part of its purpose**

The Purpose of the Mining SEPP currently is (a) to provide for the proper management and development of mineral, petroleum and extractive material resources for the purpose of promoting the social and economic welfare of the State, and (b) **to facilitate the orderly and economic use and development of land containing mineral, petroleum and extractive material resources**, and (c) to establish appropriate planning controls **to encourage ecologically sustainable development through the environmental assessment, and sustainable management, of development of mineral, petroleum and extractive material resources**.

These three purposes enshrined in NSW planning law the balance that needs to be struck between resource extraction and other matters of importance to the community that can be, and frequently are, compromised by coal mining. There is no need to add “to promote the development of significant mineral resources” to the list, and this addition would in fact detract from the rational balance struck by the other three. Coal mining should be conducted in an orderly fashion. It should be managed sustainably: these are precisely the goals to which NSW should aspire, and the proposed amendments to this SEPP take us significantly backwards from that aim.