



Bylong Coal Project

Planning and Assessment Commission Public Hearing

7th November 2018

NSW Farmers Comments – delivered by Mitchell Clapham

On behalf of NSW Farmers Association

BACKGROUND AND POLICY POSITION

I am a member of NSW Farmers Association. I am a member of their Conservation Resource Management Committee and speak on their behalf.

NSW Farmers is Australia's largest farming organisation with members growing food and fibre for the domestic and export markets from beef, dairy, sheep and goat meat to wool, grains, cotton, horticulture poultry, oysters, eggs, pork and winegrowers as well as thoroughbred breeders.

We support public policy and technical innovation aimed at:

- growing agricultures contribution to the Australian economy
- a sustainable natural environment reflecting the dedicated stewardship of our farmers; and
- the world's best production and marketing practises, joining science and the practical expertise of farmers.

We are well placed to be a strong voice on behalf of our members when it comes to highlighting issues that threaten to effect the agricultural industry in this State.

To be clear, NSW Farmers is not opposed to mining but we insist that these developments must occur strategically and not at the expense of productive agricultural land, water resources and important existing industries.



This said, I would also like to emphasise that there are regions where mining activities are completely inappropriate and incompatible with farming activities.

NSW Farmers' position on extractive industries is clear. We are calling for a scientific, evidence based and transparent approach to approvals that incorporates a *properly regulated* industry with *appropriate separations of power* in approvals and compliance. We are also calling for independent benchmarking of air and water quality and other health and environmental data prior to exploration and/or mining licences being granted.

It is with this in mind that we are here today to place on the record our concerns regarding the Kepco Bylong underground and open cut coal mine project.



IMPACTS ON AGRICULTURAL LAND

We have numerous members in the area that undertake a range of agricultural activities who are likely to be affected by water issues, dust and noise impacts, visual impacts as well as significant impacts to property values.

The State Significant Development Assessment Report provided for the project displays an inherent bias towards downplaying the agricultural significance of the Bylong area throughout the Agricultural Impact Statement (AIS). For example, the proponent quotes 2011 cattle prices which are 40% below current prices.

We consider there to be unacceptable impacts to Biophysical Strategic Agricultural land (BSAL), which is a finite and special agricultural resource unable in our view to be reproduced and there are glaring issues with additional impacts to the equine Critical Industry Cluster (CIC) and rehabilitation measures.

The AIS methodology and the proponents response neither requires, nor has adequately addressed the future agricultural potential of the area. The Bylong Valley has some of the country's best soils; it is close to the Hunter Valley horse and wine industries and the wine industry in Mudgee and has good access to Sydney. This positive agricultural future is not considered in any way throughout the planning process.

This comes at a time where governments at both a state and federal level are recognising the structural decline of the mining industry and the huge potential that the agricultural industry plays in future prosperity of this country. If we are serious about empowering the farm sector to be part of future economic growth, then we must protect and safeguard special and strategic assets such as the Bylong Valley.



This project represented one of the first of its kind to undergo scrutiny by the Gateway Panel. The fact that the Gateway Panel is powerless to stop a project represents a serious flaw and failing of Government. Why have a gateway with no gate?

The fact that a project can proceed, through a flawed Gateway process to a second round of determinations is a damning criticism of a process that was intended to provide upfront scientific and independent advice to Government and to provide protection to highly sensitive strategic agricultural land.

This process also facilitates enormous financial impost for the affected agricultural sector, who, are required to engage experts to assess these projects and carry out the work that the Governments and the Departments should have done in the first instance.

Nevertheless the experts on this panel did identify a number of issues that the proponent had failed to address in assessing impacts to agricultural land and water.

In their executive summary, the panel stated that;

- *“... The Project would have direct and significant impacts on the agricultural productivity of verified BSAL within the Project Boundary area; Indirect impacts on verified BSAL within the Project Boundary area have not been assessed and are potentially significant; and,*
- *Indirect impacts on potential BSAL adjacent to the Project Boundary area have not been assessed and are potentially significant.”*

The panel also rejected the proponent’s assertion that the requirements associated with operating within the Equine CIC should not apply and further concluded that the proponent’s application to the panel was *“non-compliant with respect to its assessment of the Equine CIC and lacks proper assessment of potential impacts.”* The panel’s report goes on to consider all of these issues in detail. Ultimately the only choice left to the panel was to issue a conditional Gateway Certificate that identified no less than 11 significant issues that the proponent did not adequately address.



One of the main reasons for the failure of the proponent to meet the criteria set by the panel was their inability to provide and describe precedence and processes for the restoration of BSAL.

The proponents must be asked to explicitly and in detail address issues that the panel raised in their Gateway Report. It needs to be made clear to the community how those issues have been addressed and mitigated and the AIS, nor the Environmental Impact Statement (EIS), attempt to do this.

The Department of Planning and Environment describe BSAL as land with high quality soil and water resources capable of sustaining high levels of productivity. DPE also point out the critical role sustaining the State's \$12 billion agricultural industry. In the case of the Bylong Valley, the location of this BSAL is also critically important to protect a strategic state agricultural asset for near-to-market fresh produce for Sydney into the future.

In addition to the BSAL identified, the AIS also indentifies large areas of highly productive agricultural land that may not have quite met the verification requirements as BSAL, however are still an important agricultural asset.

It is clear that the project represents an unacceptable and large impact on the state's BSAL asset base as a result of direct impact of the mining project. In addition, the proponent proposes to tie up large areas of BSAL via their offsets strategy with 486.25Ha of verified BSAL to be managed in the future to primarily deliver biodiversity conservation outcomes. It is acknowledged that 109.44Ha of that BSAL is currently cultivated. The proponent has stated that these lands will continue to be managed as agricultural activity; however the main objective and requirement of an offset is to deliver biodiversity outcomes.

It is disingenuous to state that some BSAL areas will be used agricultural when it is well know that this cannot be primary purpose of that offset land. NSW Farmers believe that productive agricultural land, including BSAL should not be locked up as an offset for mining and energy companies.



The proponent also contends that within the project disturbance footprint, all land within areas to be temporally disturbed either indirectly or directly, will be returned to its pre-mining capability and in the case of BSAL, to the extent of 110%. With the greatest of respect, when we are talking about BSAL, we find this very hard to believe. You cannot unscramble an egg. This disbelief is further expounded by the fact that the proponent has not included in the AIS any detailed description at all of how this is to occur, the costs of undertaking this rehab and the risk associated with these activities.

There is also no alternative rehabilitation strategy posed. Given that the merit of this project rests very heavily of the credibility of the proponent's claims to return and "make" BSAL, we strongly contend that much more scrutiny should be given to this process.

The proponent refers to their Rehabilitation and Decommissioning Strategy of 2015, however upon reviewing this document it still remains very unclear as to the actual activities that need to be undertaken to reinstate BSAL. Furthermore, the risk management section of this document is just over one page. It is not a comprehensive description of what is to occur if the strategy fails.

Whilst NSW Farmers does not generally focus on specific mineral, coal or coal seam gas projects, the proximity of the Kepco Coal Mining Project to prime agricultural land, CIC's and wineries, the scale of the project and the absolutely appalling process for approval have all commanded the Association's attention.

The impacts on individual landholders as a result of the approval of this mine cannot be overstated. We have highlighted some of those already and no doubt you will hear many of those concerns over the course of the hearing.



POLICY AND PLANNING CONCERNS

For NSW Farmers, the main and overarching reason we are here today, presenting at this hearing in relation to a specific project is because this project demonstrates, in the clearest possible terms, *the complete and abject failure of government planning processes* when it comes to extractive industries development of state significant projects.

The policy settings that have created this perverse process are clearly not working.

The fact that this room is packed with both sides at logger heads is a clear example of the continued failure of these processes. It is inexcusable to think that it should ever have come to this.

Without a doubt, our state and federal planning policy is failing. It is failing to provide a rigorous framework for planning decisions and failing to place agriculture as a priority on the government's agenda. Our members have been highlighting planning policy deficiencies across a number of different areas for some time. However, as we stand here today and present the concerns around a project that has raised so much concern, the issue has really been brought home.

We feel it is worth taking the opportunity to point out a number of severe deficiencies with current government policies and indeed, quite shocking examples of the abuse of government power in order to achieve a favourable outcome for resource development.



In September 2013, the Government, under the direction of the then Minister for Planning, The Hon. Brad Hazzard unilaterally and singlehandedly changed the policy framework by which decision on approvals for state significant development are made, to make the value of the coal, the principle consideration for decision makers to take into account when assessing project.

This is the process under which this project was considered.

NSW Farmers expressed alarm at the amendments contained within the State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) Amendment (Resource Significance) 2013 ("Proposed Amendments"), which were enacted and became part of the Mining SEPP generally for a number of reasons, with the main concern being the removal of a triple-bottom-line approach to approvals.

Our Association, as well as thousands of other interested stakeholders were shocked at these amendments. I am not overstating that. Upon further questioning by us, the government alluded to the fact that this was an intentional and completely unapologetic attempt at "suring up" the framework for a number of mining projects to proceed.

In fact, a Ministerial minute obtained by NSW Farmers through the GIPA process states that the majority of submissions (around 85 percent) received in the short exhibition time of two weeks, objected to the changes or had strong concerns about their implementation.

That same minute also, wrongly in our opinion, concluded that the change to this regulation should not be subject to the Governments own self-imposed "Guide to Better Regulation". I will not spend too much time getting into the detail, but the take home message is this;

- ***Government was changing policy on the run to try to pre-empt a favourable outcome for a mine application.***



In 2015, with a new Minister and new Premier, this policy was changed – back to what it originally was. Government clearly identified that they had made a mistake.

Other criticisms of the planning process include the lack of real regulatory teeth on the supposed Gateway Process and the lack of an enforceable Aquifer Interference Regulation.

There are solutions that would provide certainty to titleholders and landholders alike. The solutions centre on the need for proper upfront planning in order to identify areas that are suitable for mines, and areas that are not.

There are current, existing policies in place that can also provide solutions, as long as the political will is there to use them for what they were intended for – the protection of agricultural land. I am talking specifically about the Rural Lands SEPP.

This SEPP was introduced in 2008 in an attempt to recognise and safeguard the contribution of agriculture to the state. The Planning Circular that was released at the time that the SEPP was introduced speaks of the importance of the ongoing orderly and economic development of rural lands in NSW. A key part of that SEPP was the introduction of the notion of 'state significant agricultural land'.

The provision was included to give the relevant Minister the opportunity to protect important land that has state or regional significance and that may be under pressure for uses not compatible with the current agricultural use and where its protection will result in a public benefit.

At the time of its implementation, and to date, there are no lands listed under this SEPP as state significant. One would argue however, that the intention to protect these areas was always there, and has been greatly overshadowed in recent times by the pursuit of the mineral resources that lie under some of these lands at any and all costs. These areas still need and deserve protection, they should be listed on the SEPP as a matter of urgency.



In conclusion, I want to make it absolutely clear...NSW Farmers is not an anti-mining group, it never has been. We are however increasingly frustrated, and very disillusioned with government policy that fails to recognise and protect the importance of our key agricultural land.

Agriculture is the sustainable industry that will be here forever, producing wealth for this region, it is not a once only boom then bust with a footprint that survives a millennia. It's time government started to get real about protecting it and in doing so, you should not support this application for this project and destroy our vibrant agricultural industries within the Bylong Valley, the businesses, the people, the lives and indeed communities that rely upon them nor their potential for their future.