



SUBMISSION TO THE

NSW Department of Planning and Environment

Bylong Coal Project

Agricultural Impact Statement

November 2015

NSW Farmers' Association

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Executive Summary

NSW Farmers welcomes the opportunity to respond to the Agricultural Impact Statement (“AIS”) prepared by Hansen Bailey Environmental Consultants as a part of the Bylong Coal Project Environmental Impact Statement (“EIS”). NSW Farmers is Australia’s largest state farming organisation and the peak representative body for commercial farm business in NSW. Agriculture in NSW is worth approximately \$12 billion annually. The sector employs over 66 000 people, and 70% of the NSW land mass is managed by farmers who are and world leaders in sustainable food and fibre production.¹

NSW Farmers has reviewed the AIS provided for the Bylong Coal Project (“the project”) and outlined below some of the key issues and concerns. These issues and concerns should not be taken lightly, as in the main, there appears to be an inherent bias towards downplaying the agricultural significance of the Bylong area throughout the AIS. Due to time constraints placed on our organisation and more importantly, the Bylong community, NSW Farmers has focused predominantly on the unacceptable impacts the project presents to Biophysical Strategic Agricultural Land (“BSAL”) which is a finite and special agricultural resource. In the short time that we have had to review the AIS, we also have identified glaring issues with the impacts to the equine Critical Industry Cluster (“CIC”), rehabilitation measures and have serious questions around many of the assumptions relied upon by the proponents in calculating agricultural impacts.

NSW Farmers has an inherent problem with the AIS methodology and the proponent’s response in that 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 as well as having 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 to be serious about empowering the farming sector to be a part of this growth into the future then we should be safeguarding special and strategic assets such as the Bylong Valley for the future.

¹ NSW Agriculture Industry Action Plan 2014
http://www.dpi.nsw.gov.au/__data/assets/pdf_file/0020/535061/agriculture-industry-action-plan_full_doc.pdf

Summary of Recommendations

RECOMMENDATION 1

The AIS (or in the alternative the EIS) be amended to explicitly report upon how the Gateway Panel's issues as identified in their report of April 2014 are addressed.

RECOMMENDATION 2

Project boundaries should be revised in order that impacts on BSAL are completely avoided.

RECOMMENDATION 3

BSAL should not be removed from productive agricultural use via offsets. Furthermore, the AIS should be amended to reflect that all offsets are required to give biodiversity outcomes, regardless of ancillary agricultural uses.

RECOMMENDATION 4

The proponent needs to undertake extensive landholder consultation on how the BSAL reinstatement process is to work. The proponent should also be providing precedents and Australian examples that demonstrate the previous successful reinstatement of highly productive agricultural land, post mining. The proponent should also provide a full risk assessment on their BSAL reinstatement plan and a mitigation strategy in the event that BSAL reinstatement fails.

RECOMMENDATION 5

The AIS should be amended after specific and thorough attention is given to the impacts on the equine industry within the Bylong Valley. The amendments should address how the concerns of the Gateway Panel in relation to equine impacts have been addressed and should also demonstrate that adequate consultation has been undertaken with key stakeholders in the equine industry.

RECOMMENDATION 6

The proponent should fund an independent agricultural expert to be co-opted by the Department of Primary Industries to review the AIS input assumptions and calculations made as a result.

RECOMMENDATION 7

The stakeholder consultation process proposed in the proponent's AIS needs a complete review, with a view to markedly widening the stakeholders involved.

RECOMMENDATION 8

The risk assessment process put forward in the proponent's AIS is seriously insufficient. . NSW Farmers submits that until this section of the proponent's AIS is extensively revised, the AIS should not be adopted.

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Introduction

NSW Farmers is Australia's largest state farming body, representing the majority of commercial farm businesses in NSW, ranging from broad acre, meat, dairy, wool and grain producers, to more specialised producers in the horticulture, egg, pork, oyster and goat industries. Responsible management of our precious land and water resources is fundamental to the success of these farm businesses, and the families who own and operate them.

NSW Farmers has a long history of involvement in the Strategic Regional Land Use Policy ("SRLUP"), from its inception to the current implementation process. The Association is of the view that the SRLUP has comprehensively failed to do what it set out to do, which was to protect agricultural land and water from inappropriate extractive industry impacts. The Gateway Process is impotent to actually ensure that serious flaws and concerns about these impacts are dealt with appropriately. The Aquifer Inference Policy is a much weakened version of what was promised to the community of NSW and cannot adequately enforce protection of water resources. We are continuing to see project after project clear planning "hurdles" in areas where the agricultural impact is being simply dismissed. Nevertheless, we do welcome the requirement for an AIS to be completed by proponents. It is important that a true picture of agricultural impacts is well understood before projects proceed. That being said, in most instances, as in this one, the AIS forms a part of the proponents larger EIS and is largely written to be an advocacy document.

Our work on behalf of members predominantly focuses on lobbying government to get planning policy settings right. However, in this instance, NSW Farmers was strongly compelled to make a submission about this individual AIS due to the significant and appalling impacts that this project is to have on some of the state's best agricultural land. Specific aspects of our concerns around this issue will be discussed in depth later in this document, but the impacts on BSAL represented by this project are simply unacceptable to NSW Farmers.

1. The Gateway Panel Report

On the 15th April 2014 the NSW Gateway Panel issued a report to accompany their conditional gateway certificate for this project.² This project represented one of the first of its kind to undergo scrutiny by the Gateway Panel. The panel is powerless to stop a project, but the experts on this panel did identify a number of issues that the proponent

² Report by the Mining & Petroleum Gateway Panel to accompany a Conditional Gateway Certificate for the Bylong Coal Project
<https://majorprojects.affinitylive.com/public/2164b53682b8ec82874c0a635d19c6d7/Mining%20and%20Petroleum%20Gateway%20Panel%20Report%20on%20Bylong%20Coal%20Project%2015April14.pdf>

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. We will discuss the important issue of BSAL in further detail below but in the first instance we would submit that it is highly desirable for the proponents to 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 EIS, attempt to do this.

Recommendation 1: The AIS (or in the alternative the EIS) be amended to explicitly report upon how the Gateway Panel’s issues as identified in their report of April 2014 are addressed.

2. Impacts on BSAL

2.1 Direct removal of BSAL

The project proposes open-cut and underground coal mining within a Study Area that incorporates 2,366 Ha of Applicant-verified Biophysical Strategic Agricultural Land (BSAL) and 1,933 Ha of Government-verified Equine Critical Industry Cluster (“CIC”) land.

We welcome the fact that the proponent has taken the time to further verify and ground truth the amount of BSAL to be impacted by this project as it is clear that the maps completed by the NSW government are grossly inadequate. The removal of this amount of BSAL from the state’s asset base is completely unacceptable to NSW Farmers, especially when considered in light of the proponent’s claims as to rehabilitation.

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 identifies 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.

Recommendation 2: Project boundaries should be revised in order that impacts on BSAL are completely avoided.

2.2 BSAL used as a biodiversity offset

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 would prefer that productive agricultural land, including BSAL, not be locked up as an offset for mining and energy companies.

Recommendation 3: BSAL should not be removed from productive agricultural use via offsets. Furthermore, the AIS should be amended to reflect that all offsets are required to give biodiversity outcomes, regardless of ancillary agricultural uses.

2.3 BSAL rehabilitation

This area of the AIS is perhaps the most problematic one for NSW Farmers. The proponent contends that within the project disturbance footprint, all land within areas to be temporality disturbed either indirectly or directly, will be returned to its pre-mining capability. With the greatest of respect, when we are talking about BSAL, we find this very hard to believe. 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.

The proponent then goes on to state that BSAL will be reinstated (i.e. made), with the aim of returning 110% of the he total of amount of BSAL affected by the project. Again, there is no description within the AIS of how this is to happen or detail around costs, timelines

and risks associated with this approach. 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.

Recommendation 4: *The proponent needs to undertake extensive landholder consultation on how the BSAL reinstatement process is to work. The proponent should also be providing precedents and Australian examples that demonstrate the previous successful reinstatement of highly productive agricultural land, post mining. The proponent should also provide a full risk assessment on their BSAL reinstatement plan and a mitigation strategy in the event that BSAL reinstatement fails.*

2.4 Impacts on the Equine Critical Industry Cluster

In addition to impacts on BSAL, the project is proposed to have an impact on at least 2400Ha of the mapped Equine Critical Industry Cluster ("CIC"). This again was an issue identified by the Gateway panel in their report, which stated that

"The Application is non-compliant with respect to its assessment of the Equine CIC and lacks proper assessment of potential impacts. It is the opinion of the Gateway Panel that the Project would have a significant impact on the Equine CIC because:

- *There is 1,933 ha of verified Equine CIC land within the Project Boundary area;*
- *The Applicant has already directly impacted the Equine CIC through its acquisition of land, e.g. Bylong Park Thoroughbreds, and implemented land use change;*
- *The Project proposes a disturbance footprint of 2,667 ha for open-cut and underground coal mining;*
- *The Project proposes open-cut and underground coal mining that directly impacts lands within this CIC; and,*
- *The Applicant has misconstrued the Gateway process and failed to put forward a compliant or considered assessment of its potential impacts on the Equine CIC."*

Again, as with our criticisms in relation to BSAL impacts, it is unclear to us and certainly it is unclear to the community as to how those issues have been resolved by the proponent. It is important that these concerns are given due consideration and continually tracked throughout the planning process, not just simply forgotten about once a conditional gateway certificate is granted.

We are also concerned with the approach taken to stakeholder consultation on the specific issue of impacts to the equine CIC. There is a description in the AIS of the different types of horse facilities in the valley that stand to be affected but no mention of any consultation with peak equine groups, particularly the Hunter Thoroughbred Breeders Association and/or other relevant breed societies.

Recommendation 5: *The AIS should be amended after specific and thorough attention is given to the impacts on the equine industry within the Bylong Valley. The amendments should address how the concerns of the Gateway Panel in relation to equine impacts have been addressed and should also demonstrate that adequate consultation has been undertaken with key stakeholders in the equine industry.*

3. Agricultural Impact Calculations and Assumptions

Right throughout the AIS there are a number of questionable assumptions and inputs that have invariably led to the project being presented in its best light, and the agricultural impacts being downplayed. It has been impossible for us, given the time available, to go through these assumptions one by one. The issues with accuracy of input assumptions could be vastly improved by better stakeholder consultation (see s.4 below). Given the number of glaring errors that we have found in relation to assumptions around basic animal husbandry and agronomic process, we also submit that the proponent should be required to fund an independent expert to be co-opted by the Department of Primary Industries to review the AIS independently.

The overall picture of agriculture as it is today in the Bylong Valley is also underdone in terms of methodology. When identifying and describing the existing agricultural resources, the proponent refers to interviews that they have conducted with some land managers over 2 days in 2014. This is not adequate if there is to be a true and deep understanding of how this valley operates in an agricultural context. We turn now to some specific concerns on the inputs.

3.1 Use of 2011 gross margin budgets (p.52)

These budgets have been used by the proponent to calculate the quantum and value of agricultural production. This does not give a true and accurate reflection of the present day value of agriculture. For the beef industry alone, the most important agricultural activity in the valley, the EYCI has increased from an average of 396.52c/kg cwt in 2011 to an average so far for the 2015 year of 497.61c/kg cwt. The most recent EYCI at the time of writing is actually 568.5c/kg cwt.³ This represents an **increase of over 40% in cattle prices alone**. EYCI figures are not hard to source, the fact that the proponent has chosen to rely on figures from 2011, in which beef prices were 40% less than what they

³ <http://www.mla.com.au/Prices-markets>

are now is a further argument for the AIS being nothing more than an advocacy document for the proponent.

3.2 No recognition of premium prices

The proponent persistently chooses to rely on out-of-date data that downplays the significance of the agricultural and equine industries instead of consulting widely to get a realistic picture of the impacts that this project will have. Beef and horse prices are based market data rather than recognising that for this valley, many producers are receiving premiums for both livestock and horses.

3.3 No understanding of agricultural systems (p.58)

When calculating the quantum and value of agricultural water, the proponent incorrectly assumes lucerne to be a cash crop – further underlining their limited understanding of agricultural industries. Lucerne is in fact, a perennial crop with large establishment and costs and something that is generally invested in for at least a 5 year period.

The proponent also utilises (again out of date) figures from 2011 for summer irrigated and dryland crops for northern NSW when determining agricultural water values for the project. The Bylong Valley cannot be compared to these areas.

Recommendation 6: *The proponent to fund an independent agricultural expert to be co-opted by the Department of Primary Industries to review the AIS input assumptions and calculations made as a result.*

4. Stakeholder Consultation

NSW Farmers is pleased to see stakeholder consultation included in the AIS and cannot over-state the importance of regularly and meaningfully engaging with the community. However, despite having its own chapter in the AIS, the section on stakeholder consultation is given no less than a 2 page description within a 100+ page document. This does not reflect the significant challenge that effective stakeholder engagement represents and clearly fails to take the process seriously. There is a list of 7 neighboring landholders that are purported to have been be consulted, and the AIS simply refers to the main volume of the EIS to justify its efforts in consultation. Upon reviewing the stakeholder consultation chapter of the EIS, it appears to be nothing more than a compilation of newsletters and communications sent to various stakeholders over a period of time.

It is also of concern that localised community groups, such as the Bylong Valley Protection Alliance are not included on this list of stakeholders, noting their status as the organised community group for affected landholders across the region. There is has also

been no consultation on this project with any representative of NSW Farmers, either in a local or Head Office capacity.

NSW Farmers also notes the absence of a consideration of bushfire risks within the AIS. Given the location of this project and the unique bushfire threats posed within this valley, as well as the topography of the area, it is imperative that bush fire risk mitigation strategies are developed with local landholders for the project area and surrounds, including scheduled hazard reduction activities, fire trail maintenance and so on.

Similarly, there is no reference to biosecurity, let alone the acknowledgement of the new NSW Biosecurity Strategy; a strategy based on the principle of shared responsibility for protecting the economy, environment and community from negative impacts associated with pests, weeds and diseases. It is imperative that biosecurity risks to the agricultural industry, including the equine industry, are considered and addressed as a part of the AIS. These and other issues would have been able to be addressed by the proponent had the stakeholder consultation process been more robust to date.

The AIS guidelines clearly states significant consultation is expected in developing an agricultural impact statement for a state significant project.⁴ Furthermore, the guideline goes on to state that:

“Every effort should be made to engage with all affected and interested parties. If this is not the case, reasons for not consulting and details of efforts made to engage that group should be noted.”

Recommendation 7: The stakeholder consultation process proposed in the proponent’s AIS needs a complete review, with a view to markedly widening the stakeholders involved.

5. Risk Assessment

Whilst noting that additional information is provided in Appendix 5 of the proponents EIS, the staggeringly inconsequential weighting given to the actual risk assessment – comprising one paragraph of discussion and a seemingly throwaway line that “risks will be reduced, where reasonable and feasible, or controlled through the implementation of appropriate mitigation and management measures” (p.72) is strikingly inadequate. It also happens to be the exact same sentence used by the proponent’s consultants, Hansen Bailey, when completing the AIS for the Shenhua Watermark project in the north west of the state. To use a copy-and-paste approach to addressing the risks to agriculture represented by this project is offensive as well as providing little value to clients, the

⁴ http://www.dpi.nsw.gov.au/__data/assets/pdf_file/0010/463789/Agricultural-Impact-Statement-technical-notes.pdf

proponent. It is also not adequate to refer key stakeholders to other sections of the EIS, when the proponent has been asked to address risk specifically in relation to the agricultural impacts.

Table 34 notes that (without mitigation measures), there are 'high' risks to the availability and productivity of agricultural land and water (both surface and ground water), and 'moderate' risk to BSAL and rehabilitation, on top of a number of low risks to a number of issues including (but not limited to) visual and lighting, and business and infrastructure risks. Despite this, the community is being asked to take on faith that these risks will be reduced or controlled, without detailed description of how and when this will happen. Further, no information is given on how risk mitigation will be monitored, evaluated and reported. NSW Farmers submits that until this section of the AIS is extensively revised, the AIS should not be adopted.

Recommendation 8: *The risk assessment process put forward in the proponent's AIS is seriously insufficient. . NSW Farmers submits that until this section of the proponent's AIS is extensively revised, the AIS should not be adopted.*

Conclusion

As outlined above, there are many flaws with the proponents AIS, and unlike the proponent, ourselves and the wider community have only had a very short time to review it. Given impacts proposed to key agricultural land, we ask that our recommendations to improve the veracity and credibility of this document are treated seriously and given due weight by both government and the proponent. In its current form, the AIS is simply an advocacy tool rather than an objective piece of work to inform planning processes. In that regard, out of all or recommendations, we feel that one in relation to the proponent funding an independent agricultural expert to review the AIS to be critical.