

INQUIRY INTO NEW SOUTH WALES PLANNING FRAMEWORK

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INQUIRY INTO NEW SOUTH WALES PLANNING FRAMEWORK: SECOND SUBMISSION JULY 2009

Introduction

Regions around the world do not plan well for mining Schandl (2009, pers comm.) The environmental, economic and social costs imposed on communities have been therefore higher than they could have been, and benefits have not been maximized either for the communities or their States.

As an emerging mining region, the Gunnedah Basin is in a position to be the first region in the world to successfully plan for mining, if action is taken now. Although mining has existed in the Gunnedah Coalfield for around 100 years, operations have been relatively small. We are currently seeing a major expansion of exploration and mining for coal and coal seam gas.

NamoiROC sees this as a significant opportunity, with the potential to work collaboratively with stakeholders including industry and State Government to achieve the best we can for our communities and for the State. We are committed to taking responsibility for the required strategies and actions, however will need adequate resourcing to ensure that this occurs.

During the discussion with the Panel on 21st May 2009 in Tamworth, NamoiROC was requested to provide further information as to how, "given a clean slate" we would achieve the following:

- strategically plan for mining in our region;
- effectively communicate with our communities;

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- provide comments as to the appropriate level of consent for mining developments. Due to the changes currently occurring in the planning system, and the complexity of the issues involved, this last issue has not been addressed, however we would welcome ongoing involvement in its appropriate resolution.

In order to address these issues, time has been spent talking to organisations and individuals to gain an understanding regarding other mining regions, both within Australia and internationally. In this way it is hoped that we can apply successful strategies in our region, and avoid the pitfalls, while tailoring strategies to suit the particular needs and characteristics of our region and communities. These organisations and individuals are listed at the end of the submission. We expect to maintain on-going dialogue with these people.

Because of the importance of mining to our region and the State, and because of the benefits which can be achieved through collaboration, we would welcome the opportunity to further discuss the issues raised in this Submission with the Panel during the second round of hearings in August 2009.

As stated in our first Submission (February 2009), state development requires a whole of government approach to ensure that we are able to develop visions, strategies and plans to which maximise benefits and minimise costs to our communities. This whole of government approach needs to be complemented by appropriate partnerships with industry and communities if these visions, strategies and plans are to be supported and implemented.

The current legislation removes local communities from the deliberations leading up to the approval or otherwise of “State Significant Developments.” The assessment of coal mining proposals falls within the Part 3A Major infrastructure and other projects, Environmental Planning & Assessment Act 1979. In terms of seeking an approval, the proponent may apply for the approval of the Minister under Part 3A by lodging a project application that describes the project, and contains any other matter required by the Director-General.

To enable adequate regional planning and to maximise benefits and minimise costs to our communities, early engagement of all key stakeholders needs to occur. This will ensure that all relevant matters are identified and accounted for in the planning and undertaking of major developments across the state.

Social Licence to Operate

Gaining and maintaining a “social licence to operate” through Corporate Social Responsibility (CSR) is seen by the mining industry as critical to its success at the current time around the world (Schandl and Darbas, 2008, p. 25).

The Minerals Council of Australia on behalf of the Australian minerals industry “strongly supports the role of a ‘social licence to operate’ as a complement to a regulatory licence issued by government. To the minerals industry ‘social licence to operate’ is about operating in a manner that is attuned to community expectations and which acknowledges that businesses have a shared responsibility with government, and more broadly society, to help facilitate the development of strong and sustainable communities.”

The NSW Minerals Council Ltd also has a focus on environmental management and community engagement in order for industry to maintain its social licence to operate.

Central to BHP’s vision is the company’s aspirational goal of Zero Harm to people, their host communities and the environment, stating that to maximise bottom line performance they

need to address environmental and social sustainability dimensions as well as financial performance.

Despite the commitment from mining companies and the mining industry as a whole to gain a “social licence to operate” and the reference to this need in the literature, with the degree of community dissatisfaction and unrest in the Gunnedah Basin, it would be difficult to conclude that the industry has gained the “social licence to operate” in this region.

In this Submission NamoiROC puts forward some suggestions which may assist in a resolution to some of these problems. From our perspective, problems centre around lack of an appropriate governance structure, poor communication from State Departments regarding State Significant Developments in our region, an inappropriate planning framework and lack of resources and support for long-term strategic planning. If these issues can be addressed, we will be in a better position to maximise the triple bottom line benefits for our communities and the State, and the mining companies may be closer to achieving their “social licence to operate”.

The way forward for many of these issues may be clarified by reference to the Leading Practice Sustainable Development in Mining series which have been produced by the Australian Government in collaboration with industry.

1. Governance

Recommendation 1: that an appropriately resourced and supported tripartite association of major stakeholders is initiated by NamoiROC, and to include delegates from:

- NamoiROC,
- Industry (including BHP, Shenhua, Santos & other major companies), and
- State government (including Department of Primary Industry and Department of Planning).

We have an existing effective working relationship with the Regional Co-ordinator of New England North West Department of Premier & Cabinet and have links with Regional Co-ordinators Management Group (RCMG). Other stakeholders to be represented may include Regional Development Australia.

Support for Recommendation:

- A major recommendation of Schandl & Darbas (2008, pp 6-8) following their work in the Surat Basin, which included study of national and international literature, is the formation of a tripartite institutional arrangement involving local government, state government and industry as the appropriate co-ordinating body. Given the similarity of the Surat Basin and the Gunnedah Basin communities and issues it appears that this recommendation would be relevant to this region.
- A formal association between mining companies, local government, and state government is recommended by Brereton et al (2008) following their extensive work “*Assessing the Cumulative Impacts on Regional Communities: An Exploratory Study of Coal Mining in the Muswellbrook Area of NSW.*” Potential functions of such an association are included in the report.
- The first principle of the *Sustainable Futures Framework for Queensland Mining Towns (2007)* is centred around local government establishing “a leadership group

involving council, mining company and community stakeholders to develop strategies to plan for and manage the range of social, economic and environmental impacts from existing and proposed mining projects.”

- The second principle of the *Sustainable Futures Framework for Queensland Mining Towns (2007)* identifies the importance of “Collaboration – state government, local government, mining companies and communities work together in response to the range of social, economic and environmental impacts from existing and proposed mining projects.
- The collaborative project *Local Government, mining companies and resources developments in regional Australia: meeting the governance challenge* being managed by Dr Cath Pattenden, Centre for Social Responsibility in Mining, Sustainable Minerals Institute, The University of Queensland, will further assist local government, policy makers and resource companies develop more effective governance responses to mining expansion in the regions. The project timeframe is mid-2009 to mid-2011.
- The New England North West Regional Co-ordinating Managers Group (RCMG) have held two forums (October 2008 and February 2009) relating to landuse change, specifically in regard to mining. NamoiROC delegates attended these forums, with workshops identifying the need for local government to take a lead role in engaging State Government and industry to progress planning for landuse change.
- NamoiROC is in discussion with Prof Paul Martin, Rural Resurgence Initiative of the University of New England, regarding a potential collaborative project regarding appropriate institutional arrangements for the New England North West Region.
- Preliminary discussions with Stephen David (Caroona Coal Project Manager, BHP Billiton), Kathryn Logan (Gunnedah Business Co-ordinator, Santos Limited) and Joe Clayton (Project Director, Shenau Watermark) support the formation of an association with the listed stakeholders. Approaches will be made to the other major companies operating in the region.

2. Environmental Impact Statement *and* Social Impact Analysis during Exploration Phase – a Risk Management Approach

Recommendation 2: That a Social Impact Analysis (SIA) is required in addition to the Environmental Impact Statement (EIS) and that prospective companies are informed of this requirement when Expressions of Interest (EOI) are invited. The EIS and SIA must ensure that potential cumulative impacts are identified. This SIA will be used to inform all stakeholders of long-term planning needs, soft and hard infrastructure requirements and services. The SIA will also indicate effects on population and employment of mine closure.

The recommendation to include a SIA when inviting EOIs has been discussed with Hon Ian Macdonald who was supportive of the concept.

Support for Recommendation

- In their review of the international literature, Schandl & Darbas (2008, p 24) identified the need to undertake SIA a part of the development assessment, as and adjunct to

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EIA. Traditionally EIA does not address social issues. The use of SIA as a corrective may assist industry in gaining “social licence to operate.” The involvement of communities in identifying appropriate indicators, and participation in decision making is crucial.

Recommendation 3: That during the development of the EIS and SIA, relevant and acceptable indicators are determined in collaboration with communities and other mines. These indicators will form the basis of cumulative impact assessment and will be required to be monitored and reported to all stakeholders on a regular basis. Further, industry should be required to report at least annually on the economic, social and environmental performance on a *collective* basis to all stakeholders including community. Appropriate compliance measures need to be in place, with adequately resourced compliance officers.

Support for Recommendation

- The Environmental Assessment for mining proposals invariably does not analyse in sufficient detail the cumulative impacts (current or future). Whilst this is a required consideration within an Environmental Assessment the lack and inadequacy of strategic data to benchmark assessments against often means the assessment has little meaning. This highlights the total lack of strategic planning by the Department of Planning in resource development areas as well as the failure of the two government agencies in this area, the Department of Primary Industries and the Department of Planning to operate in an integrated and cohesive manner. It is clear that in locations such as the Gunnedah Basin this must be a priority if analysis of major coal and other resource development proposals are to have any credibility.
- The NSW’s Department of Planning report *Impacts of Underground Coal Mining on Natural Features in the Southern Coalfield Strategic Review* (2008) refers to the application of Precautionary Principle, which “requires risks associated with other options and socio-economic facts to be taken into account” (p107). Importantly, the report discusses the difficulty in establishing risk ratings, and the difficulty in identifying what risks are tolerable to the Government or the community (p105). Thus, the views of the community as well as those of the Government, are integral to appropriate risk management.

“Lack of clear guidance in this regard has almost certainly led to inconsistencies in approvals and outcomes, unnecessary cost to businesses and avoidable harm to the environment” (p105).

NamoiROC delegates continue to support the consideration of cumulative impacts of new, existing and future projects on a regional basis, and that the required studies should be completed prior to consent under Part 3A of the EP&A Act. The effects of projects are far-reaching and require a good understanding of existing infrastructure and economic, environmental and social factors and the potential impacts of changing landuse on these.

- Further information regarding measurement and appropriate reporting is available in Brereton et al (2008). A second phase of Prof David Brereton’s work involves effective measurement and reporting of cumulative impacts in emerging mining areas such as the Gunnedah Basin. NamoiROC has been discussing possible involvement in this work with Prof Brereton and Dr Daniel Franks.
- Schandl & Darbas (2008 p 25) point out the need to use SIA at regular times during the mine’s operation, especially identifying issues resulting from closure.

3. Project Status Report – links between EP&A Act & Mining Act

Recommendation 4: That the Environmental Planning & Assessment Act and the Mining Act be amended to make provision for a Project Status Report that is publicly released at the time of the development of a Mine Plan for a mine proposal.

Support for Recommendation

- The process under which assessment and public consultation takes place results in confusion and concern within the community. Environmental Assessments are extremely complex documents. Enabling communities to understand positive and negative implications of coal mining and other resource developments is, as a consequence, often difficult. This is further compounded by the extensive exploration processes that are undertaken often over three to seven years leading up to the lodgement or assessment of a project application. This extensive timeframe leads to uncertainty, agitation and suspicion that the project assessment at the project application stage is not an assessment but a justification of the development. Clearly there needs to be greater clarity in the process.
- Whilst it is acknowledged that exploration is just that and there is no guarantee a mine will occur, there needs to be a circuit breaker point where the holder of an Exploration Licence has to report within the exploration phase on the potential of a development having regard to the planning process that will be followed at the project application stage.

Consequently there needs to be a greater linkage between the Mining Act and the Environmental Planning & Assessment Act with regard to the exploration phase. It would appear that one of the tipping points in the exploration phase is the commencement of the development of a Mine Plan. At this stage proponents have determined the location of the proposed mines. This is usually after about two years of exploration.

Although the mine layout is not absolutely definitive at this point, and there may be other factors in finalising the Mine Plan that may impinge upon the progress of the project, it is a stage at which some level of definitive advice can be formally put to the community. The preparation of a Project Status Report, prepared to specific guidelines, should be a requirement of any exploration licence and a pre-requisite to the lodgement of a project application under Part 3A of the Environmental Planning & Assessment Act 1979.

4. Long-Term Strategic Planning

Recommendation 5 – That NamoiROC be adequately resourced to develop a Regional Strategy, with statutory recognition which plans for the implications of an expansion in mining both in individual local government areas, and across the region. Local government to work in the recommended tripartite association to identify needs, responsible organisation for each action and funding sources. Areas to be covered by the strategy include, and are not limited to the following:

- Resource development
- Impact identification
- Socio-economic effects
- Infrastructure requirements - rail including level crossing upgrades, freight capacity, port capacity, power, water, community
- Protection of agricultural lands

Support for Recommendation

- Exploration does not necessarily lead to a licence to mine and there are many factors which affect the outcomes of exploration. However, it is clear that the coal and gas reserves in the Gunnedah Basin, which covers much of our region, are significant. With high global demand for energy the extraction of these coal and gas resources is more than likely to expand.

With long lead times required for development of infrastructure and provision of services, planning and in some cases building needs to commence now if we are to be ready for the expected implications of expansion in mining.

- The NamoiROC Strategic Planning for Mining workshop (March 2009) identified the potential for significant environmental, social & economic impacts - both positive & negative in the region from mining. The participants agreed that region needs to be positioned to manage the impacts – to be able to mitigate against negatives / capitalise on positives, and that this can't be achieved under current planning framework or with current resources. The long lead times regarding planning & infrastructure development compared to short lead times for mine development were recognised. The workshop participants agreed that the major priority for the region was a statutory Strategic Plan.
- Discussions with Margaret MacDonald-Hill, Executive Officer of the Association of Mining Related Councils, NSW, have indicated strong support for a regional approach to planning and involving the range of stakeholders identified in this submission.
- Department of Local Government, Planning Sport and Recreation (2007, Appendix 8) provides a detailed overview of planning considerations based on the categories of land use planning, infrastructure planning and socio-economic planning. The actions identified under each category can be used as a starting point for the Gunnedah Basin region, to be re-prioritised depending on our specific regional and individual LGA characteristics and needs.

5. Communication & Community Engagement

Recommendation 6: That the Department of Primary Industry commit to informing local governments when a Exploration or Petroleum Licence is granted in their LGA, and when there is a change in the Licence provisions.

Support for Recommendation

- Communities expect that local councils are aware of activities in their LGA and hold councils accountable for these activities and for providing background information. This occurs irrespective of whether the activity is a State Significant Development or

not. Currently local government staff are spending a significant proportion of their time responding to mining related queries, despite their not being the consent authority. Local government staff are not adequately resourced to provide this service.

Recommendation 7 : That the Department of Primary Industry and the Department of Planning develop a communication strategy for communities in emerging mining areas, with the objective of keeping these communities regularly informed and updated regarding Part 3A applications, Exploration, Mining and Petroleum Licences granted, and findings of mining companies during exploration. The strategy will be developed in conjunction with NamoiROC and industry. Industry will be required to deliver communications according to milestones.

Support for Recommendation

- Currently councils and local communities do not have access to up-to-date information because of state government controls over consent and industry confidentiality. The existing Community Consultative Committees are not open to the public and members do not necessarily have the skills or access to information to ensure effective communication occurs. The State Government and industry need to take the lead in developing an appropriate strategy, in consultation with local government and industry.
- Schandl & Darbas's (2008) work in the Surat Basin identified the provision of accurate and timely information about mining activities and long term plans as the "single most important factor for pro-active change management at the community level."
- The Principles of Communication and Community Engagement, (Sustainable Futures Framework for Queensland Mining Towns 2007, p11) stress the importance of providing accurate and timely information about long-term plans to communities.

6. Diverse Economies – Avoiding Economic Failure post-mining

Recommendation 8: that NamoiROC, and the State Agencies, through RCMG, be adequately resourced to work with industry and other stakeholders to identify actions to build a diverse and robust regional economy as part of the Regional Strategy.

Support for Recommendation

- Schandl & Darbas (2008, p.7) identify that economic development based on mining alone will not lead to a sustainable regional economy because of the temporary boom bust nature of mining. A diversified economy needs to be an early and integral part of regional planning, with ad hoc attempts at diversification tending to fail.
- Parsons Brinkerhoff, Edge Land Planning & CARE (2009, Draft, p. 80-93) focus on the need to develop a diversity strategy if the past and present volatility in the region's economy is to be buffered. The report identifies knowledge and technology businesses as underpinning this diversity through their ability to support both small and large business growth.

7. Funding & Resourcing

Recommendation 9: That a set component of Exploration Licence Fees is returned to local government to adequately resource the following:

Tripartite association secretariat
Regional Planning Strategy
Local Strategic Impact Strategies
Ancillary Infrastructure Demands
Local government response to community issues
Communication strategy
Compliance

Support for Recommendation

- The Report “Impacts of Underground Coal Mining on Natural Features in the Southern Coalfield – Strategic Review – July 2008” detailed the importance of coal mining to the State’s economy: “*New South Wales is Australia’s second largest coal producing State. Total saleable coal production in 2006/07 was 131.3 million tonnes, valued at \$8.1 billion.*” In 2006/07 NSW coal royalties payable to the State Government total some \$412 million, in addition to an estimated \$100 million in other charges such as stamp duty and payroll tax.” Tracy Ong of The Financial Review, Friday 31st October 2008 writes “*The government is expected to earn \$840 million in coal royalties this year and it is expected to rise to \$1.4 billion in 2011-12.*”
- “*As the sphere of government closest to the community, local government is responsible for good governance and the care and protection of local communities within a framework of sustainable development*”(National General Assembly 2009)

It is impossible to achieve sustainable develop for our communities unless we are adequately resourced to ensure appropriate long term strategic planning and development of required infrastructure required to support mining operations. Rural and regional councils, in particular have already deferred infrastructure investment because of financial pressures, with an estimated national backlog of \$14.5billion (PricewaterhouseCoopers, commissioned by ALGA in 2006)

References

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31 July 2009

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