

## **INQUIRY INTO REGIONAL PLANNING PROCESSES IN NSW**

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## **NSW MINERALS COUNCIL**

NSW Legislative Council Standing  
Committee on State Development

*Inquiry into regional planning  
processes in NSW*

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## Introduction

The NSW Minerals Council (NSWMC) welcomes the opportunity to provide comment to the NSW Legislative Council Standing Committee on State Development's *Inquiry into regional planning processes in NSW*. The Inquiry presents a unique opportunity to reinvigorate our regional communities.

NSWMC represents the \$21 billion minerals industry in NSW. Our 85 members range from junior exploration companies to international mining companies, as well as associated service providers.

The mining industry is a major, high-value contributor to regional economies. It brings increased economic diversity and provides many people in regional NSW with a greater range of choices for a career close to home and family. However in recent years the industry, and other regional industries, has been increasingly frustrated by the NSW planning system. Delays and increased costs of seeking an approval, and perverse refusals have and continue to cost jobs in regional NSW.

Although NSW remains the best performing Australian jurisdiction across a number of key economic indicators such as retail trade, housing starts, and dwelling finance<sup>1</sup>, much of the State's recent growth has been Sydney-centric. By comparison, data from the Australian Bureau of Statistics show that parts of regional NSW are either in economic decline or have grown at a significantly slower pace than Sydney<sup>2</sup>, and many regional communities continue to experience unemployment and youth unemployment rates much higher than the state average<sup>3</sup>.

For example, the Hunter region, the second largest region in NSW and a key driver of overall state growth, has a regional youth unemployment rate 21.9 per cent and an unemployment rate of 7.8 per cent as at December 2015, almost double the NSW average of 12.4 per cent and 5.2 per cent respectively. In the New England/North West area the youth unemployment and unemployment rates are 18.6 per cent and 8.2 per cent, and in the Tweed region it is 17 per cent and 8.5 per cent<sup>4</sup>.

This inquiry comes at a crucial time for the continued growth and prosperity of the State's regional areas. NSWMC urges the Committee to encourage the Government to recognise the ongoing importance of mining in regional planning, to provide an efficient planning system to ensure mining can continue to play a strong role in regional economies, and to improve funding for vital infrastructure and services in mining communities, including supporting the industry's initiatives in this area.

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<sup>1</sup> CommSec (2016), "CommSec State Of The States Report", January 2016

<sup>2</sup> Australian Bureau of Statistics (2015), 3218.0 - Regional Population Growth, Australia, 2013-14

<sup>3</sup> Australian Bureau of Statistics (2015), 6202.0 - Labour Force, Australia, Dec 2015

<sup>4</sup> Ibid

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## Background

### Mining's contribution to regional NSW

The mining industry makes a significant economic and social contribution to NSW. In 2014/15, mining operations directly spent an estimated **\$11.3 billion** in NSW. This included:

- **\$2.7 billion** in wages and salaries to approximately 21,265 full-time employees;
- **\$1.3 billion** in State Government royalties and taxes; and
- **\$7.3 billion** in purchases of goods and services from approximately 7,694 local businesses, community contributions and payments to local governments.

In 2014/15 mining also supported an additional 114,160 'indirect' or supplier jobs across NSW, with the total jobs supported equivalent to 3.7 per cent of total State employment. The total contribution of mining to the NSW economy was **\$24.9 billion**, equivalent to 4.8 per cent of Gross State Product.

Unsurprisingly, the majority of the industry's economic and social contribution is located in the State's rural and regional communities, which host the majority of its operations. Table 1 below provides a summary of the industry's impact in select regional areas.

Table 1: Mining contribution by NSW region (2014/15) <sup>5</sup>						
Region	Direct spend	Total Employment (direct and indirect)	Employment as % of regional workforce	No. of businesses supported	Total contribution	Total contribution as % of Gross Regional Product
Hunter	\$4.8 billion	63,414	20.9%	3,417	\$10.2 billion	22.9%
Illawarra	\$901 million	12,729	6.6%	625	\$1.88 billion	8.3%
Central West	\$678 million	12,289	13.9%	770	\$1.37 billion	10.6%
Far West	\$185 million	2,791	32.3%	196	\$364 million	32.4%
North Western	\$294 million	5,060	9.2%	449	\$590 million	8.2%

This data demonstrates that despite the challenge of low commodity prices the mining sector continues to make a substantial contribution to regional NSW; and although the current operating environment is difficult, independent bodies forecast a positive outlook for the State's prospects for future coal exports.

Thermal coal will remain a major global source of electricity generation for decades to come, and metallurgical coal will continue to be an essential ingredient in the manufacture of steel and cement.

<sup>5</sup> NSW Minerals Council (2016), "NSW Mining Industry Economic Impact Assessment 2014/15"

NSW's position as a supplier of low ash, low sulphur and high calorific value thermal coal places us in an excellent position to take advantage of the forecast increase in global energy demand.

### **NSW Government policies have damaged investor confidence**

The NSW planning system for major projects has been in a constant state of change since 2011. Those changes have created very significant investment uncertainty and increased the cost and time of making a planning application.

The industry has faced a plethora of regulatory changes and uncertainty in recent years, including:

- The delegation of decision making to the Planning Assessment Commission
- The repeal of Part 3A, followed by a period where there was no major projects assessment pathway in NSW, and the eventual introduction of State significant development
- The introduction and then repeal of clause 12AA of the *State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007* ("the Mining SEPP")
- The introduction of the Gateway Process
- The introduction of strategic agricultural land and critical industry clusters
- The application of draft policies to projects at the late stages of assessment process
- The introduction of a raft of new policies through the Integrated Mining Policy (IMP) process
- Introduction of the Major Projects Offset Policy, which will now be replaced by another scheme that will be included in anticipated biodiversity legislation.

Further, in the past six years project assessment timeframes have blown out from 500 days to more than 1,000 days. In November 2014, Premier Baird made a welcome commitment to reduce assessment timeframes for major projects by 500 days and reiterated a previous commitment to deliver an integrated, whole of government policy package for mining.

Regular and ongoing changes to the planning and regulatory framework has eroded investor confidence. This is reflected in the annual Fraser Institute surveys of investor perceptions of different mining jurisdictions across the globe, in which in 2014/15 NSW is ranked second last of all Australian jurisdictions in the 'Investment Attractiveness' index, only ahead of Victoria<sup>6</sup>.

While some steps have been taken to meet these commitments, several key reforms remain outstanding and the timeframes for their delivery are slipping, including finalisation of the IMP reforms.

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<sup>6</sup>Fraser Institute (2014), *"The Fraser Institute Annual Survey of Mining Companies: 2014"*

## Response to Inquiry Terms of Reference

The Inquiry is a timely opportunity for the Committee to provide guidance to the Government to help address the longstanding planning issues in regional NSW and improve confidence to the mining sector and mining communities. This submission addresses those specific terms of reference where we are able to assist the Committee.

***a) Opportunities to stimulate regional development imposed under the planning framework including through legislation, policy, strategy and governance***

***b) Constraints to regional development imposed by the planning framework, and opportunities for the framework to better respond to regional planning issues***

**Ensure that projects that will bring jobs and other economic benefits to regional areas are appropriately assessed**

In December 2015 the NSW Government introduced *Economic Assessment Guidelines for Mining and Coal Seam Gas Proposals* (Economic Assessment Guidelines). The Guidelines include the assessment of net benefits to workers. Those benefits are only assessed as a premium that would be paid in addition to the normal wage of a mining worker. This approach does not adequately value the contribution of mining to regional employment.

There needs to be further work undertaken to ensure that decision-makers are not discounting the impact of mining projects, particularly in areas of high unemployment where this may be decisive. This work could complement or amend the current Economic Assessment Guidelines.

### **Recommendations:**

- The Inquiry should consider how to appropriately evaluate the economic impact of projects in regional areas.
- NSW Treasury and the Department of Planning and Environment should develop a methodology for assessing the impacts of mining projects on regional jobs.

**Ensure that the voices of local communities count**

There is a view that anti-mining sentiment is high in mining communities. This is not supported by the evidence. Anti-mining activists have used the public submissions process, as well as Planning Assessment Commission (PAC) meetings and hearings, to create an impression of communities opposed to mining.

For example, in the case of the Whitehaven Maules Creek mine, of the 110 submissions received the overwhelming majority were from individuals and organisations located outside the Boggabri area, including from as far as Marrickville, Glebe, Eurobodalla and Melbourne. The majority of these submissions expressed opposition both to the Maules Creek development and mining activities in general.

While these individuals and groups often claim to speak for the 'local community', in reality they represent a tiny but vocal minority that are philosophically opposed to mining and who often move from protest to protest, rather than being a true reflection of community attitudes toward mining.

This can be demonstrated by the example of the Centennial Springvale mine, located near Lithgow. Despite the importance the town places on the mine, which is a significant local employer and the only mine that provides coal to the Mt Piper Power Station - which provides 15 per cent of the State's electricity - in recent years it has come under concerted attack from a small but vocal number of environmental groups located outside the Lithgow region.

In response, the Mayor of Lithgow, Councillor Maree Statham, expressed the frustration of the local community with anti-mining activists, stating *"Do any of them have a son, father or brother working in the mines? Do they pay rates here?"*<sup>7</sup>. In order to show support for mining jobs, the community has been forced to rally on the streets of Lithgow.

The evidence shows that there is a high level of support for mining and individual mining projects in mining communities. Polling conducted by NSWMC in relation to the recent Mount Thorley and Warkworth mines and the Drayton South project, both located in the Hunter Valley, showed very significant local support for both projects:

- Research conducted in June 2015 across the Singleton Local Government Area found that 67% of people surveyed supported the continuation of the Mount Thorley and Warkworth mines. The research also found that the vast majority of respondents, nearly 87%, believed mining was 'important' or 'very important' for the Singleton economy.<sup>8</sup>
- When specifically asked about Anglo American's Drayton South project near Muswellbrook, 61% supported the approval of the project. The research also found that a significant majority, nearly 78% of people surveyed, believed mining was 'important' or 'very important' for the Muswellbrook economy.<sup>9</sup>

The impression of community opposition created by anti-mining objections to mining projects places significant pressure on the PAC not to recommend approval of projects, or to include onerous conditions on approval recommendations, as well as provide commentary on policy issues outside the PAC terms of reference. It also creates an environment where the Department of Planning and other government agencies are pressured to increase the level of assessment and review required, and the hurdles that are put in front of projects.

The Government has the discretion to limit the terms of reference for PAC reviews to issues that require an independent review. This would limit irrelevant objections, and make the process a genuine review. The PAC is able to use its discretion to decide which objectors it needs to hear from in person, which would help ensure a focus on the actual objection, rather than the number of objectors.

#### **Recommendations:**

- The Committee should consider how best to ensure that the voices of local people are heard in relation to regional planning decisions.
- Where a number of different groups or individuals are making essentially the same submissions, or submissions that are straightforward, the PAC should use its discretion to limit the number of people appearing before it.

<sup>7</sup> Galilee S. "This is a farcical abuse of the planning system", Daily Telegraph, 19 August 2015

<sup>8</sup> Reachtel survey for NSWMC, Singleton LGA, June 2015

<sup>9</sup> Reachtel survey for NSWMC, Muswellbrook LGA, June 2015



- Presentations to the PAC should be limited:
  - at meetings, to submissions on the terms of reference (see below); and
  - at hearings, to submissions on the report from the Department of Planning.

### **Streamline the PAC process**

Since 2011 the role of the PAC has expanded significantly. NSWMC believes that the addition of the PAC to the planning process has led to delays and increased costs for proponents, but has not diminished the controversy of decision-making, or placated anti-mining activists.

NSWMC believes that the Minister should be responsible for making State Significant Development (SSD) decisions. Only the NSW Government is able to make decisions about whether these very significant projects are in the interests of the local community, the region and NSW. In the event that the Committee members support the continuation of an independent decision making body, reform needs to be undertaken to limit the terms of reference of any review and streamline processes.

#### **Recommendations<sup>10</sup>:**

- Return decision making on SSD projects to the Minister
- Ensure that any independent review or decision making body:
  - Is constituted of members with broad decision making experience, not subject experts;
  - Is provided with a specific terms of reference by the Government when undertaking any review; and
  - Is required to follow time frames set by government (i.e. not the body itself) with regard to setting and undertaking meetings and hearings, receiving submissions, providing reports and other issues of process.

### ***c) The suitability of a stand-alone regional planning Act***

There is merit in investigating the benefits of a stand-alone regional planning Act. New legislation could most effectively deal with the constraints that have been identified above.

Regional areas have different economic and social drivers from the cities. These areas are more vulnerable to population decline, economic shock caused by the loss of one employer or industry and high levels of unemployment. Stand-alone regional planning legislation could address these issues through its objects and evaluation criteria, and by resolving the concerns held by mining and other regional industries about the planning process.

A regional planning Act could:

- Address the mining industry's long held concerns about the planning process, a number of which are discussed in this submission;

<sup>10</sup> NSWMC can provide the Committee with a more detailed proposal for PAC reform which has been provided to the Department of Planning

- Include in the objects of the Act:
  - The promotion of regional economies and communities;
  - The promotion of effective management of the State's mineral resources; and
  - The promotion of regional employment;
- Provide evaluation criteria that allow decision makers to effect the object of promoting regional economies and employment;
- Ensure that the voices of local communities are heard and prioritised over activists from elsewhere seeking to manipulate the planning process;
- Return decision making on SSD projects to the Minister responsible for the Act;
- Extinguish merit appeal for SSD;
- In the event that decision making is not returned to the Minister, reform the process of independent determination to ensure that it is streamlined and is provided with appropriate guidance through legislation and policy when making decisions
- Provide a more streamlined and efficient assessment process.

#### **Recommendation:**

- The Committee should investigate the development of a stand-alone regional planning Act that would:
  - Have at its core the promotion of economic benefits and jobs for regional NSW;
  - Place the Government back in the driving seat as the decision maker for major projects; and
  - Resolve issues around decision making and process that are causing delay and inefficiency.

#### ***e) Opportunities to increase delegations for regional councils in regard to the planning making processes***

Mining operations are large, complex investments and NSWMC is strongly of the view that given the substantial economic and social contribution of the industry, mining-related developments are of state significance and as such must continue to be assessed and determined by the NSW Government.

#### **g) Opportunities for government-led incentives that promote regional development**

##### **Return a fair share of royalties to mining communities**

Despite mining's significant contribution to NSW government revenue, there has been a history of insufficient and inadequate investment in public infrastructure, facilities and services in mining regions. The 2011 *Economic Assessment of Mining Affected Communities* study, which predated the commencement of the *Resources for Regions* program, found that total NSW Government expenditure in the local government areas of Singleton and Muswellbrook was \$5,396 per capita, compared with an

average for NSW of \$6,058 per capita. During the same period these two LGAs produced 57% of state mining royalties.<sup>11</sup>

NSWMC believes that the *Resources for Regions* program has been a good first step in addressing funding inequity for mining communities. However, failure by the Government to adequately fund the *Resources for Regions* program in the last budget marks a return to the inequitable distribution of royalties across the State. The widening of the eligibility criteria to allow all LGAs to apply for funding has exacerbated the inadequacy of the available funding.

The process of individual councils competing for a small pool of funding should be replaced by a more strategic and regional approach that returns a fair share of royalties to mining communities.

**Recommendations:**

- The Committee should investigate a royalties for regions style program, to be funded from existing royalty streams.
- In the absence of any new program, *Resources for Regions* must be adequately resourced.

***h) Pathways to improve decision making processes for regional development proposals, including increasing the use of complying development, improving negotiation processes for voluntary planning agreements, and reducing the costs associated with assessment***

**Expand the use of exempt and complying development**

NSWMC supports the expansion of exempt and complying development categories to permit other activities that have negligible or minimal environmental impacts. Exempt and complying development reduces the cost and time imposts on both proponents and government. Appendix A includes a number of suggested mining activities that could be included in the categories of exempt and complying development.

**Recommendation:**

- The Government should investigate what aspects of mining and other regional development can be facilitated through exempt and complying development.

**Provide support for any agreement between NSWMC and AMRC on voluntary planning agreements**

For many years, proponents of mining projects have been required by custom to negotiate Voluntary Planning Agreements (VPAs) with local councils. The *Environment Planning and Assessment Act 1979* provides little if any guidance as to how VPAs are to be negotiated and how contributions are to be calculated. As such, the negotiation of VPAs has historically occurred in a relatively ad-hoc manner with no certainty or predictability for either party, and has often led to prolonged negotiations and contribution amounts unrelated to project-specific impacts.

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<sup>11</sup> NSW Government (2011) *"Economic Assessment of Mining Affected Communities"*

In this regard, NSWMC has entered into formal negotiations with the Association of Mining Related Councils (AMRC), with a view to agreeing on the process for negotiating a VPA. Negotiations between NSWMC and AMRC are in the early stages. The Government can formalise any agreed negotiation process within the current planning legislation.

**Recommendation:**

- The NSW Government formalise under the planning legislation, any arrangements that can be agreed by NSWMC and AMRC in relation to the process of negotiating a VPA.

## APPENDIX A - Suggested exempt and complying activities

The following activities should be included in the exempt and complying development provisions of the Mining SEPP as they are minor in risk from an environmental perspective:

- Accessing of areas by vehicle required for mineral exploration including access by way of new access tracks or minor roads.
- Minor forms of development (for example landscaping, emergency equipment, signage) on land *adjacent to* an approved mine.
- Minor alterations to approved surface infrastructure where the total disturbance footprint remains unchanged.
- Changes to longwall panel layouts where the total mining area is not increased.
- The erection of permanent office buildings required for a mining operation that fit within specified development standards (for example relating to height, setback etc.).
- Any work carried out as a result of a notice issued under the *Protection of the Environment Operations Act* or any other environmental protection legislation.
- The installation of gas drainage infrastructure for any purpose (rather than being restricted to an emergency or safety purpose).
- The installation and use of water reticulation systems.

In relation to complying development, in-pit disposal of waste types should be permitted as complying development where it is done so in accordance with an Environment Protection Licence (EPL) or any other resource recovery exemption.