

Submission
No 2

**INQUIRY INTO COAL AND GAS LEGISLATION
AMENDMENT (LIVERPOOL PLAINS PROHIBITION)
BILL 2021**

Organisation: NSW Minerals Council

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NSW MINERALS COUNCIL



Legislative Council Portfolio Committee No.4 - Industry

Inquiry into the Coal and Gas Legislation Amendment (Liverpool Plains Prohibition) Bill 2021

NSWMC Submission

June 2021

Introduction

The NSW Minerals Council (**NSWMC**) represents the state's \$26 billion minerals industry. NSWMC has around 80 member companies who range from junior exploration companies to multinational mining companies, along with associated services providers.

The latest NSWMC economic survey shows the mining industry continues to make a significant contribution to keeping the NSW economy strong, despite the pandemic. The survey found our mining member companies directly injected \$15 billion into the state economy in 2019-20, while supporting tens of thousands of jobs and generating billions in additional spending across NSW, particularly in regional communities.

This \$15 billion in direct mining spending in NSW is an increase of \$1.3 billion on the previous financial year, and the highest in the nine years that the survey has been undertaken. Around 29,000 mining jobs were supported by our member mining companies in 2019-20 and almost 8,000 local businesses were part of the mining supply chain.

The mining industry is one of the heaviest regulated industries in NSW. Regulation covers a range of areas including (but not limited to) accessing the State's resources through various approval requirements, environmental safeguards (e.g protecting water resources, rehabilitation, air quality), work health and safety requirements, compliance and enforcement and a range of taxes and fees.

NSWMC appreciates the opportunity to make a submission to the Legislative Council Portfolio Committee No.4 - Industry Inquiry into the Coal and Gas Legislation Amendment (Liverpool Plains Prohibition) Bill 2021.

NSWMC position on the Coal and Gas Legislation Amendment (Liverpool Plains Prohibition) Bill 2021

The Bill is not supported.

The NSW Government released its Strategic Statement on Coal Exploration and Mining in NSW in 2020. The Strategic Statement “*set a clear and consistent policy framework for coal exploration and mining in NSW that supports investment certainty*”¹

The proposed Bill is inconsistent with the NSW Strategic Statement on Coal Exploration and Mining in NSW.

The Bill proposes to amend the *Mining Act 1992* (NSW) by prohibiting both the grant of new mining or prospecting authorisations as well as the exercising of rights under existing authorisations, within the “Liverpool Plains” region which as defined, includes the entire local government areas of Liverpool Plains Shire and Gunnedah Shire, and the towns of Boggabri, Rocky Glen, Bomera and Premer.

The areas identified on the map accompanying the Government’s Strategic Statement - “*Areas in NSW coal regions available and excluded from future coal exploration and mining*” cover both the Liverpool Plains Shire and Gunnedah Shire council areas (LGAs), as well as the towns.

Within the two LGAs, and where coal is present, the Strategic Statement identifies the majority of this area for “*no proactive releases for coal exploration*”, with new coal exploration able to occur “*adjacent to an existing coal title*”. The map also includes areas where coal mining is prohibited by the Mining SEPP, including the Watermark and Caroonna sites.

There are no areas identified in either of these LGAs as “*potential areas for release for coal exploration under the Strategic Release Framework*”. In this regard the Government has already effectively ruled out any future “proactive release” of new coal mine exploration licenses in these areas, and any future coal exploration would be limited to existing titles or new titles adjacent to an existing title or authorisations.

There are existing coal titles and approved mines located in both LGAs. These include the Vickery Project (Gunnedah Shire) and the Werris Creek mine (Liverpool Plains Shire) that would be adversely impacted. The Bill in its current form would prohibit the grant of any future authorisations associated with these projects, despite the Strategic Statement recognising these projects in its Map, and explicitly allowing coal exploration to occur adjacent to an existing coal title. The Bill would also prevent the exercising of rights under existing authorisations, where mining or prospecting has not yet commenced under those authorisations.

The Second Reading Speech to the Legislative Council notes the Bill has been designed to “*bring an end to*” the Vickery Extension Project. This is despite years of transparent assessment and consultation with local communities and stakeholders, as well as consideration by the Independent Planning Commission, after which it obtained State significant development planning approval, and is currently under consideration by the Commonwealth Environment Minister.

In its current form, the Bill would operate retrospectively in impinging on rights and obligations that existed prior to the commencement of the legislation. This is despite the well-established principle of statutory interpretation that absent clear statutory language, legislation is assumed not to have retrospective application in order to ensure that the rule of law is upheld. This principle is underpinned

¹ <https://resourcesandgeoscience.nsw.gov.au/miners-and-explorers/programs-and-initiatives/future-of-coal-statement>

by fundamental considerations of justice and fairness, where laws should not retrospectively change legal rights and obligations. To alter rights afforded to individuals or companies in circumstances where there is no clear legitimate reason to do so (for example, in the absence of any known corruption or other invalidity in the granting of those rights) would lead to an unjust and uncertain outcome and as a result be poor law making.

In reviewing the Bill, we note the views expressed by the Legislation Review Committee on 11 May 2021 that in prohibiting the grant of a new authorisation to mine in the Liverpool Plains, in cancelling any approved authorisation to mine in the Liverpool Plains where operations have not commenced, and in providing that compensation is not payable by the State because of any direct or indirect consequence of the operation of these provisions, they “impact on the economic or property rights of individuals with a stake in, or control over, mining licences in the Liverpool Plains areas”.

Such an approach is inconsistent with key considerations of certainty, justice and fairness, and would create uncertainty, and seriously damage investment confidence in the State.

Given the above the Bill is not supported.