

**Submission
No 175**

**INQUIRY INTO CURRENT AND POTENTIAL IMPACTS OF
GOLD, SILVER, LEAD AND ZINC MINING ON HUMAN
HEALTH, LAND, AIR AND WATER QUALITY IN NEW
SOUTH WALES**

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Submission to the NSW Legislative Council inquiry into current and potential impacts of gold, silver, lead and zinc mining on human health, land, air and water quality in NSW.

Thank you for the opportunity to make a submission.

I about 5 kms from the Bowdens lead, zinc and silver site. Our property of 1,000 acres is almost totally covered by a conservation covenant in perpetuity with the NSW Biodiversity Conservation Trust (originally with NSW NPWS). Approximately two thirds is covered by an additional agreement with the Federal environmental stewardship program for Box Gum Grassy Woodlands.

In respect of the terms of reference of the inquiry I submit that the current regulatory framework is NOT fit for purpose and NOT able to ensure that the positive and negative impacts of heavy metals and critical minerals mining on local communities, economies (including job creation) and the environment are appropriately balanced (specifically term of reference 'h'); and that there are serious impacts to health, water and land (a, b, c), and there are serious shortcomings in the measures to monitor complaints, compliance, risk management, remediation, rehabilitation and improve outcomes (d, e, f, g).

My comments are based on experience with the Bowdens mine approval process and a review of the documentation issued by the NSW DPIE and IPCN. My comments are influenced not only by our personal land use but also by a considered review of the processes I have seen.

The framework is not fit for purpose because:

- There is insufficient transparency in the decision making process; specifically in stating the actual decision to be made and properly identifying and quantifying all benefits and costs
- The huge disparity in bargaining power between the 3 main parties involved/impacted by the decision, viz government/DPIE/IPCN, the miner and the local and wider community, means the local community interest is very seriously prejudiced.
- For all the appearance of objectivity, the final decision is still largely subjective
- There are serious shortcomings in the effectiveness of processes to monitor and remediate in real time negative outcomes eg with respect to lead poisoning, water loss
- The miner and Government/DPIE/IPCN are not sufficiently at risk to ensure better outcomes for the community

Transparency of the evaluation being made and the true benefits and costs

Despite the thousands of pages of documentation there is not a clear statement of the actual decision to be taken. It is likely along the lines of: 'as long as the benefits outweigh the costs and negative impacts are minimised the project may proceed with conditions to be specified'. There are different forms of this wording in the DPIE and IPCN documentation and evaluations of the benefits were cautiously couched with terms such as 'overall', 'on balance', 'likely'.

A clear and unequivocal statement of the decision to be taken is required along with a mandatory form of approval words.

The benefits of the project to NSW are not clearly and comprehensively identified in a single table by DPIE and IPCN. The best I have seen is the following extracted from the CIE report commissioned on the economics of the project by the DPIE in response to the proponent's estimates. This analysis took a more conservative view of the analysis done by GE for the proponent.

1 Benefits and costs to NSW – Gillespie Economics and CIE estimates

Benefit/cost categories	Gillespie Economics	CIE estimate
	\$m, PV	\$m, PV
Production benefits		
Government royalties	21	19.7 to 23.6
Australian third party royalties	4	5
Company tax	15	10.4 to 12.4
Residual producer surplus	4	5
Supplier benefit	0	0.1
Wage premium benefits	-	2.2
Total production benefits	44	42.4 to 48.3
Public impacts		
Wage benefits of employment	25	0
Non-market benefits of employment	78	0
Greenhouse gas emissions	0	-(10 to 41)
Total public impacts	103	-(10 to 41)
Net benefit (EU ETS carbon price)		32.4 to \$38.3

Total benefits are thus 32m – 38m. This includes projected income tax of 10m – 12m. Given the likely availability of tax losses and tax planning opportunities, income tax should not be counted on in which case the benefits are only 22m – 26m.

These are very low benefits to justify sanctioning a mine in a greenfields rural area and which has the potential for serious health, water, land etc impacts. The DPIE also noted that the return to NSW was low. This analysis puts into perspective the emotive claims of ‘jobs, investment, biggest undeveloped silver deposit in the southern hemisphere [in fact only 30% is proposed at present to be mined], strategic importance’.

A clearer ruling on the benefits to be included and how to be calculated is required.

Costs (current and future) to the community and NSW are effectively valued at Nil! All risks and negative impacts no matter when they may occur have no value assigned to them because in the words of DPIE and IPCN they are negligible or can be managed or, if that is not feasible or reasonable, can be minimised. This is the same as saying there is zero harm from the mine now and into the future. In the view of the miner, DPIE and IPCN the following costs will occur to the community:

- Lead poisoning and health impact – nil/never
- Water loss and degradation – nil/never
- Land degradation – nil/never
- Loss of amenity and heritage values – nil/never
- Noise impact and disturbance – nil/never
- Local night sky interference – nil/never
- Loss of business values and home values – nil/never
- Other – nil/never

No mine is zero harm and there are plenty of examples in the community of costs and negative impacts being felt long after the project commences. An honest and transparent attempt should be made to quantify all costs. There are no doubt actuarial or complex project valuation tools that can do this. If the situation were reversed and the mining company itself wanted compensation or protection for the above potential costs it would pretty quickly come up with a calculation, as would a community in a heavily populated area were a mine to be floated there.

This exercise will also inform more robust conditions to be imposed and the size and terms of the financial bond to be given by the miner. Importantly, it will also highlight no-tolerance areas such as lead poisoning and water loss which should of themselves be enough to not allow mining.

Equity demands there should be a process of compensating those in the community that suffer the costs.

The decision question and conclusion, list of benefits and costs would ideally be summarised in a pro forma single page for all to see.

There should also be some threshold amounts and conditions when looking at benefits and costs:

- The project should generate minimum properly quantified gross benefits and net benefits over costs. The Bowdens benefits are too low and too 'line ball' of themselves and also particularly when considered with the risks, to have warranted permission to mine
- There should be a higher threshold and much better case for greenfields projects.

There should be a final common sense test, eg 'would a reasonable person in the street think the project really stacks up?' I would think that a disinterested observer would say there are substantial concerns with a lead mine 2kms from a town and public primary school, and question why a project with such poor returns for NSW and with significant risks to the community was approved.

Local community disadvantaged by processes and drivers that favour the miner and encourage DPIE approvals

NSW owns the minerals and has policies and budgetary needs to exploit these. The DPIE and IPCN are likely under political pressure to appear business friendly, not be a roadblock and to approve mines. The miner is granted a licence in return for royalties, to mine and sell these as its sees fit to maximise profits and meet government imposed conditions to minimise harm to the community. The local community is by far the weakest partner in this arrangement, suffers all the negative impacts and is the most at risk.

There are some rules and regulations in place, and conditions imposed to try and safeguard the local community. These need to be strengthened and processes put in place to have the local community be a more equal partner. These could include:

- Proper identification and quantification of all benefits and costs as above. Compensation should be given to the community for the costs suffered.
- Currently conditions imposed on the mine require detailed management plans for operation and amelioration of risks to be developed subsequent to approval and put in place, generally to the satisfaction of the Planning Secretary. These should all be developed upfront and subject to detailed evaluation, review and approval before approval is given

- There should be some general funding and legal expertise given to the community to make its case and compensate it for its time and effort
- The DPIE/PCN decision is in part influenced by local, state and national public submissions. Many of these come from shareholders of the proponent. The company's profitability and shareholder return is not a concern for DPIE/PCN. The issues for them are the benefits and costs to NSW. Whilst everyone is entitled to an opinion and to make a submission, there should be a more robust analysis and dissection of submissions when quantifying numbers for and against
- Calculation of the bonds to be given by the miner and triggers for their use should be transparent, made upfront, publicised and subject to review. The bond should not just cover end of mine remediation but provide for automatic payments for events during the life of the mine if not fully and immediately addressed by the miner at the time
- Just as the community is at risk for life for mine failings, so too should the miner have extended risk and be obliged to remediate/compensate for failings well beyond mine closure. This should be effective regardless of the use of special purpose entities, limited liability companies, other arrangements and change of ownership. Ongoing director personal liability should apply. Bond terms should be robust to ensure this.
- DPIE/PCN key performance indicators should be published and reviewed to ensure proper and effective weight is given to protecting the community from harm and costs
- There should always be the possibility of appealing merit decisions to the courts (currently not generally possible).

Decision making process should be more objective

Evaluations of the potential negative impacts for Bowdens were made with regard to various guidelines and requirements. The DPIE and PCN appeared to generally accept the proponent's expert reports that the guidelines were satisfied eg re lead dust, water loss and tailings dam issues, while dismissing the contrary expert reports submitted by the community. That indicates a degree of subjectivity.

Approvals and conditions should include a mechanism for resolving the differences between the experts or including a balance of both.

Compliance

A comprehensive schedule should be prepared for the monitoring of all licence conditions and management plans. This should be publicised and reviewed with community input. The company's auditor should sign off each year that all has been done or advise shortcomings.

There should be real time monitoring of the occurrence of negative impacts and plans for immediate remediation. Criteria should be established for each of the negative impact categories/community concern areas that accurately indicate a negative event. Eg for lead poisoning concerns, the criteria should not just be emissions measured at certain stations but very regular tests of actual lead dust on roofs and in water tanks close to and further away from the mine. Independent baseline studies should be performed in advance. A schedule should be prepared for the negative event category, the tests to be performed and baseline and other studies required. This should be appropriately reviewed with public input.

There should then be an appropriate plan for dealing with the occurrence of negative events and complaints, including timelines for resolution and identification of those that need immediate action. To encourage timely action, the company could be required to pay certain amounts immediately as a deposit.

Ensure the miner and the Government/DPIE/IPCEN that approves the mine shoulder a greater part of the risk

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