

INQUIRY INTO BENEFICIAL AND PRODUCTIVE POST- MINING LAND USE

Organisation: Lock the Gate Alliance

Date Received: 26 June 2024

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24 June 2024

Standing Committee on State Development

Submission: Post-mining land use inquiry

Introduction

Thank you for the opportunity to submit to this important inquiry. NSW's mining regions need independent, statutorily empowered and well-resourced public authorities to oversee the closure of mines and the management of mining and buffer lands and this inquiry will hopefully play a pivotal role in bringing much needed public scrutiny to what has been, until now, a discussion largely taking place between Government and the mining industry out of public sight.

We have been very concerned that discussions between the NSW Government and mining companies about post-mining land use have been taking place for at least two years without input from the broader public and hope that this inquiry can bring to light the substance of those discussions and ensure that arrangements for post-mining land use are made in the public interest and prioritise community wellbeing, locally-led enterprise, Aboriginal land and cultural rights and environmental repair.

We introduce this submission giving an overview of the current state of the industry and public expectations for post mining land use in the Hunter, North West and Central West and subsequently structure our submission around the relevant terms of reference.

Mining occupies a huge area of land in the Hunter region, North West and Central West. In the Hunter particularly, the open cut mines and their "buffer lands" dominate land and water resources in the once productive central part of the Valley. Analysis by Lock the Gate undertaken nearly ten years ago showed that mining companies owned 24% of all freehold land and 23% of all mapped Biophysical Strategic Agricultural Land in the Muswellbrook Local Government Area and 15% of all freehold land and 27% of all mapped Biophysical Strategic Agricultural Land in the Singleton LGA. The same analysis showed mining companies owned 6% of freehold land in Midwestern LGA and 4% in Narrabri. The more than a quarter of a million hectares identified by Lock the Gate as being owned by mining companies is roughly evenly distributed between these local government areas, with some lands also in Gunnedah and Gloucester. Much of this land is not subjected to the direct impacts of mining but are "buffer lands," acquired because they are subjected to air and noise pollution above statutory limits, or biodiversity offset areas, purchased to compensate for the loss of bushland to the mines.

As noted in the *Hunter Regional Plan 2041*, most mines in the region have rehabilitation obligations to restore biodiversity or productive pasture land once mining ceases. The basis of community expectation is that the mining companies will meet these obligations and that biodiversity and agriculture, which have suffered substantial losses in the last two decades of extraordinary coal industry expansion, will be prioritised in the closure planning process. There is also currently legal approval granted for the abandonment of 45 “final voids” in NSW mining regions, half of which are in the Hunter region. These voids will be groundwater sinks for centuries, drawing in groundwater from the surrounding area and becoming more and more contaminated over time as water evaporates and pollutants concentrate. Mines sites are also likely to permanently remove catchment area from local creeks and rivers, as the end of mining landforms are designed to limit the risk of pollution by draining towards the void.

Despite engaging largely in secret with the mining industry to unwind the legal obligation most mines have to restore biodiversity and productive pasture, the government does not, to our knowledge, have an adequate understanding of what the post-mining landscape will look like as currently conceived. Before rushing to release land to development, the government needs to:

- Create a public fund for long-term environmental restoration and management, arising from the mining industry after mining leases are relinquished, funded by the coal mining industry.
- Establish a Rehabilitation Commissioner to oversee catchment scale rehabilitation of the damage of coal mining and manage the above fund.
- Prepare maps of the Hunter, Narrabri and Mudgee area patching together the current legal expectation for post-mining landforms, to show the community as a baseline for consultation;
- Analyse the above composite to understand:
 - Which areas of biodiversity restoration are legal obligations based on biodiversity offsetting promises;
 - Which are part of regional biodiversity corridors;
 - Which areas will be left with ongoing ponding occurring from subsidence from underground mining;
 - Which areas are capable of returning to agricultural production;
 - What transport and energy infrastructure can be repurposed;
 - How much of the catchment areas of different rivers and their tributaries is expected to be permanently lost and what effect this will have on water availability;
 - What volume of water is expected to be annually drawn and permanently cumulatively lost as a result of draw down caused by final voids;
 - How many final voids and their locations will remain post-mining and whether the push to revise legal obligations for rehabilitation should also review final void approvals;
 - What are the potential “residual risks” that will outlast the relinquishment of mining leases, and what scale of funding needs to be dedicated on an ongoing basis to manage this risk.

None of the above analysis has been undertaken by the NSW government ahead of launching enthusiastically into discussions with the mining industry about redeploying mining land and relieving companies of their legal rehabilitation obligations and their liability for residual risk.

We urge the committee to fully consider the scale of environmental restoration facing mining regions, and explore how this threat can be turned into an opportunity to develop local jobs and enterprise in land restoration and management, provide land and cultural opportunities to Aboriginal people and combat the effects of global warming in the Hunter, North West and Central West in particular. Given its population base and enormous area of affected land, the Hunter Valley is ideally placed to become a national and global leader in post-mining landscape restoration, which can then benefit NSW's other mining regions. This will require reform of existing training institutions like TAFE, and the establishment of new collaborative research institutions such as an independent Centre of Excellence.

The compatibility of post mining land sites with commercial projects

There will certainly be areas in existing mine sites that are compatible with industrial re-use. Most mines have dedicated rail loops or haul roads, high voltage power access, water supplies and areas of land currently dedicated to infrastructure like coal processing plants. This makes them attractive as sites to situate renewable energy projects. But mine sites also leave complex legacies. Tailings dams accumulate heavy metals and salts, acid draining from disturbed soils can mobilise metals into waterways, subsidence can occur long into the future and the land settles. Final voids and their highwalls are essentially rendered unusable. For these reasons, site selection for post-mining land use must be careful and undertaken at a regional planning scale.

We draw the Committee's attention to an Audit Office review of mine rehabilitation securities in 2017. The AO recommended a long-term environmental rehabilitation fund to deal with legacy issues and residual risk that endures after the relinquishment of mining leases and the hand back of security deposits. Such a fund has never been established and no regional scale work has been done to environmentally, socially and economically assess the suitability of mine sites for repurposing and the risks involved.

The potential of unlocking surrounding land for residential dwellings, amenities, environmental and educational facilities

As outlined in our introduction, there are at least a quarter of a million hectares of land owned by mining companies in NSW, roughly equally shared between the Singleton, Muswellbrook, Midwestern and Narrabri local government areas, with some lands also in Gunnedah and Gloucester.

Much of that land is in so-called "buffer lands," not being actively mined, but has been purchased by companies because it is subject to noise and air pollution above statutory thresholds. One of the major challenges facing mining regions seeking to diversify ahead of the decline of thermal coal exports is the domination of land, water and labour by the coal mines. Regional development requires removing these barriers to new enterprise and opportunities *before* the mines close down.

We provide with this submission the results of analysis we commissioned from EY examining the potential for reuse of limited areas of mining land for commercial and industrial development. It is important for the Committee to consider proposals of all kinds with circumspection. The Hunter Valley and the Namoi Valley are among the most heavily-cleared landscapes in New South Wales, with serious potential “extinction debt” that may see more species and communities driven to extinction as a result of habitat loss. Proposals for the “unlocking” of mining land must redress this debt, and proactively reverse this trend.

How to ensure the benefit from innovative post mine land uses are shared between the community and mine operators

We are concerned that this element of the inquiry’s terms of reference proposes benefits to mining operators as a necessity. Benefits for mine operators should not be a policy objective, given that these companies have already reaped the benefit of exploiting the coal resources below the land they occupy and have created considerable public cost in lost water, lost productive land, health effects from air pollution and the escalating cost of climate change. Documents obtained by Lock the Gate under GIPA revealed that the industry is advocating for exemption from “residual risk” that remains after rehabilitation. Post-mining land use reforms should have the benefit of the region, its people and landscapes as their sole purpose. Any financial benefits for mine operators arising from such land use change should be mandatorily reinvested in projects for the benefit of mining-affected communities and their regional environment. The government should ensure that the companies fund a long-term fund established to pay for emerging environmental management challenges arising from the mining industry after mining leases are relinquished.

The closure of coal mines has begun and will continue over the next fifteen years. The committee should consider the impact that new availability of land will have on local economies and consider how biodiversity offset areas and carbon offset sites will be managed into the future in the interests of the local community and the “nature positive” agenda. We encourage the committee to inquire with mining companies about their current expenditure and arrangements for weed and invasive species management and nature repair on buffer lands and biodiversity offset sites.

Mining communities have sacrificed a great deal for the prosperity of New South Wales and arrangements for post-mining land use must prioritise the needs and expectations of those communities, their amenity, the health of their catchments, recognition of Aboriginal land and cultural rights, and the restoration of biodiversity as well as the creation of commercial opportunities. Decision-making about mining consents over the last twenty years has been taken out of the hands of local governments and regional representatives of state government agencies. The communities of the Hunter, Goulburn and Namoi River catchments have had little to no say in the manner, scale and impact of mining on their lives and their environment. This imbalance and removal of agency must be reversed in the closure process: communities must be given the opportunity to make decisions about the future of their region if those decisions are to be just, durable and sustainable.

Renewable energy assets currently being proposed on mining land are often not connected to the existing grid. This should be a requirement of approving any new renewable energy projects on

mining land and consideration given to what will happen to these energy facilities when mining ends and they lose their current large consumption load. In the case of Narrabri Underground, for example, the mine has current approval to 2034 and is proposing a solar farm on site to begin in 2025 for a 25 year life span. Should the mining company not pursue its Stage 3 expansion, this solar installation will have a 16 year life during which it will be capable of generating significant electricity with nowhere for the electricity to go.

Aboriginal communities in particular have lost land and cultural and spiritual sites as a result of large scale open cut coal mining in particular. The Committee should seek the views of Wonnarua, Wiradjuri and Gomeroi people about their opportunity to access land when large areas of buffer land are relinquished and renew their access to and care for cultural areas and landscapes. The commercial interests of mining companies threaten to close off opportunities for land justice and environmental management to be undertaken by First Nations people and groups.

The expectations of mining communities in relation to post-mine land use, and how to balance this with innovative reuse of existing infrastructure

Hunter Renewal's concerted engagement with people in the Hunter region has demonstrated that mine rehabilitation and the future of the Valley are of great concern to local people. This concern is similarly conveyed to Lock the Gate in our work with communities in the North West, Central West and Illawarra. Hunter Renewal condensed and summarised recommendations from myriad reports and studies on post-mining land use and discussed these ideas with members of the public in a series of workshops. The results of this work are presented in the *Blueprint for the Hunter*. Of the recommendations and policies discussed with the community, the highest expectations were for:

- Increased coal mining royalties to support the Hunter's transition and repair the landscape through long-term ecosystem restoration.
- Stronger legal obligations so that companies cannot leave voids that will become a perpetual hazard to human and environmental health.
- Support the return of mine-owned land to Traditional Owners, especially unmined buffer lands) and engage First Nations people in decision-making for new projects from the outset.
- Create an independent Hunter Rehabilitation and Restoration Commission to plan, coordinate and deliver a restored Hunter Valley.

The closure of large mines offers a unique opportunity to return portions of unmined buffer lands to First Nations groups and deliver real and continuing benefits to Aboriginal people. This is particularly important given the recent loss of culturally significant areas to the mining industry such as the destruction of Saddle Ridge by the Warkworth Continuation Project, the clearing of Leard Forest by the Maules Creek mine, and the occupation of river fronts and wetlands in the Goulburn River, Glennies Creek and Hunter River by several large mining operations. As one example, during the preliminary regional issues assessment for the potential release of the Hawkins-Rumker coal exploration area between Bylong and Kandos, the Aboriginal Community "expressed significant concern regarding the cumulative impacts of mining in the wider region on environmental features (e.g. swamps, watercourses and rock features) and connection with Country and song lines." It is crucial that the transformational change that will take place in the Hunter, Namoi and Goulburn

catchment areas in the coming two decades prioritise redress of this loss and gives Aboriginal people and Traditional Owners land, agency and opportunity.

The need to develop a robust independent regulatory framework to maintain and advance best practice in this area

Lock the Gate obtained through GIPA the outcomes of a workshop between NSW government representatives and the representatives of ten mining companies and the NSW Minerals Council about post-mining land use. One of the issues discussed was “residual risk” that continues after relinquishment of mining leases, which is reduced, but not removed by rehabilitation. The second key topic was the mining industry’s desire to facilitate changes to approved “final land forms” for coal mines, which are currently legally established for each mine in its development consent. The documents show companies are lobbying the government to:

- Let mine owners off the hook for the residual long-term risk of failed rehabilitation on mine sites;
- Allow mines to change approved final landforms and rehabilitation commitments without having to apply for planning approval to do so.

We note that NSW has never acted upon findings by the Audit Office in 2017 in a review of *Mining Rehabilitation Security Deposits* that “The Department does not hold any financial assurance to cover the costs associated with mitigating any future environmental degradation once a mine closes and the security deposit is relinquished to the mining company.” The Audit Office noted that security deposits are not the appropriate mechanism to cover these long-term risks but that “the risk of potential post-closure environmental degradation still needs to be costed and covered” and suggested a fund to cover the state-wide risk, to which all mines would contribute as a means of addressing this risk.¹

The *Hunter Regional Plan 2041* deals with post mining land use in its first strategy (1.1). That strategy states that: Planning proposals for mine or power station sites identified as regionally significant growth areas will be supported by a **place strategy** which demonstrates how the proposal will:

- maximise employment generation or will attract visitors to the region
- make use of voids and/or site infrastructure such as rail loops, hard stand areas, power, water and road access
- support the growth of adjoining industrial areas or settlement areas
- enhance corridors within the landscape such as biodiversity corridors or disused infrastructure corridors
- complement areas with special amenity value such as critical industry clusters, open space, villages and residential areas
- have considered existing and likely future uses of adjoining land and avoid land use conflict
- align with any specific guidance in the district planning priorities section of this plan.

¹ Audit Office. 2017 <https://www.audit.nsw.gov.au/our-work/reports/mining-rehabilitation-security-deposits>

We are not aware of such “place strategies” so far being developed, but the Committee should investigate what undertakings have already been given to mining companies by the Department of Planning and the Department of Regional NSW.

Conclusion

The wind-down of the coal industry has profound implications for mining-dominated communities, especially in the Hunter Valley. There is widespread worry and uncertainty about what the next twenty years will bring. Local communities have the most at stake in the transition and must be centrally involved in shaping the development of new industries, a role they were largely denied in the last twenty years of the mining industry’s expansion. This will require changes in planning processes, but should also include new models of development that maximise local benefits such as community-ownership and profit-sharing schemes. The Committee must not forget the debts already incurred: the extinction debt from clearing wildlife habitat, the water debt in altered hydrological regimes, the social debt from the evisceration of rural communities in the buy up of land, and distortion of the labour market, the cultural and land debt to First Nations communities and the inter-generational debt still mounting in the form of escalating global warming. All of these debts must be paid by the companies that have made profit from the Hunter, Namoi and Goulburn River catchments. We urge the committee to recognise the historic and strategic enormity of the next two decades and make the public interest their guiding principle.