Voluntary Land Acquisition and Mitigation Policy

Summary

This document purports to formalise the Land Acquisition and Mitigation Policy, but in fact it seeks to turn the tables on those impacted by mining such that the mining companies can almost do what they like.

That is they can produce plenty of dust and noise, doesn't matter as long as there is a "net benefit". This "net benefit " is not defined anywhere in this document and therefore cannot be quantified.

This policy is the reverse of what good government policy should be. It purports to be for the protection of the amenity and health of the community but it isn't.

It is clearly for the benefit and profit of the foreign-owned mining companies.

Discussion detail

Wrongly named

Firstly how can acquisition that is forced on a landholder because of a mine's inability to keep its impacts at a reasonable level, be called "Voluntary" ?

The definition of voluntary is :

"of an action : performed or done of one's own free will, impulse or choice; not constrained, prompted or suggested by another". Shorter Oxford English Dictionary.

Acquisition of land by mines is therefore not voluntary and this policy should be renamed :
Land Acquisition and Mitigation Policy.

Change of description

In the section titled Preliminary, this policy is described differently :

"…policy for voluntary mitigation and land acquisition …." Is to imply that the mitigation is voluntary and not the land acquisition ?

I addressed the concept of voluntary above. This statement confuses the issue.

Mining as a real contributor?

In the section entitled Background, the 130,000 indirect jobs has been disputed by many including the landmark Land & Environment Court Case which rejected the Mount Thorley Warkworth expansion project.

The $1.3 billion in royalties amounts to less than 2% of the NSW State budget (see NSW State budget papers) and currently because of falling mine outputs is today closer to 1%.

It is claimed this helps fund infrastructure and services – not much I'm afraid, especially when it is considered how much the NSW Govt spends on infrastructure to support the mining industry. The net benefit to the state of NSW is probably close to zero.

"The wealth generated by the NSW minerals….." implies that it it stays in NSW; it doesn't. The majority of the mines are operated by foreign owned multinationals and the "wealth" is repatriated to foreign countries – not Australia.

"Despite the importance of these industries……can have significant noise and dust impacts on their surrounding communities…."…what a strange sentence.

It is because the miners are allowed to run vast open cut mines that there are noise and dust impacts…not "despite their importance "!

"…including the use of voluntary acquisition…." – again misuse of the word voluntary

High ideals not borne out in reality

"In assessing and approving developments, the government aims to protect health, preserve amenity and control intrusive noise"

But that's not what actually happens. The Dept of Planning connives with coal mines to get around the consent conditions that they themselves put in place supposedly to protect the community.

Policy rationale

The first paragraph says :

"…policies and guidelines include assessment criteria to protect the amenity, health and safety of people"

The second paragraph says :

"…it may not be possible to comply with these assessment criteria…."

Well if that is the case, the project should not be allowed to go ahead.

What is the point of having assessment criteria if the proponent is allowed not to comply ??

This thinking is what puts mines ahead of people. It's difficult to understand why the NSW state Government is so hell bent on increasing the profits of foreign owned mining companies at the expense of its citizens when the benefit to the state's coffers is so small.

The second point of the third paragraph says :

"Not all exceedances of the relevant assessment criteria equate to unacceptable impacts"

What does this mean ?

How does one then arrive at an unacceptable impact, other than by exceedance of the relevant assessment criteria?

If the impact is acceptable despite an exceedance of the relevant assessment criteria then surely the assessment criteria is not relevant ?

The third point of the second paragraph starts to reveal the real thrust of the policy

"Consent authorities may decide it is in the public interest …. even though there would be exceedances …..because of the broader social and economic benefits…."

The problem is, how to weigh off the unacceptable impacts (which we assume is the result of exceedances?) against what is seen as the "public interest".

It is certainly not in the local public interest to be subject to impacts caused by exceedances.

These issues were discussed at length in the Land and Environment Court during the Warkworth case and it was concluded that the mine could not keep within its criteria and the net public benefit of it going ahead did not outweigh the local public interest and it was denied.

However, the State Govt., following a swift meeting between the Premier and the CEO of Rio Tinto, immediately changed the law to prevent communities appealing PAC decisions and changed the rules to make "the significance of the resource" the primary deciding factor – to hell with the people.

Reasonable and feasible

The definitions on the last page are open to interpretation. What is reasonable and feasible in one person's mind is not in another.

It was suggested to Warkworth mine that if they went underground that would ameliorate the impacts on the community. Warkworth said that was not "practical" – does that mean not reasonable or feasible? More likely it means they don't want to do because it would cost too much (they think).

Bulga Coal is in large part an underground operation in the same coal field as Warkworth.

Bulga Coal produces more coal per annum with fewer staff than Warkworth i.e. it is more efficient than Warkworth.

So would we consider that Warkworth have done all that is reasonable and feasible to ameliorate the impacts of its open cut mine on the community ? I don't think so.

Mines don't have to comply with criteria

"2. If the applicant cannot comply with the relevant assessment criteria….."

So even though they have done all that they say they can think of (or can afford?) to comply, well, if they can't that's not so bad, they can go ahead anyway!

If they can't comply the the project should be disallowed.

What other industry gets consent to operate outside the rules ??

"4. If the consent authority decides to approve the development, then appropriate conditions need to be imposed on the approval.

5. The applicant must comply with … the conditions of approval"

Sounds good, but all too often the applicants don't comply with the conditions of approval and the Dept of Planning does nothing about it, in fact the Dept colludes with mine to side step the conditions – for example all mine consent conditions require noise to be measured under NSW INP, but they don't do it and the Dept of Planning supports them in breaking that condition and further has worked with mining industry to have the INP changed so it will be much easier for the mines to comply.

More later on this subject

Figure 1.

The most important decision box in the flow chart is “Net benefit?”

Nowhere does it state how to calculate that.

Net benefits have been argued by economists for the mining industry in grossly over estimated terms in the past. This was clearly demonstrated in the Land and Environment Warkworth case where the mines ridiculous claims of “benefit” were dismissed as unsubstantiated.

So, the issue is, if we have the mines making these unsubstantiated claims of “Net benefit” in order to get their mine approved, where is the independent and knowledgeable judge to calculate whether there is a benefit or not?

And if there does seem to be a benefit, where is the ongoing assessment to ensure that these benefits actually do arise ?

There are numerous cases of mines overstating their employment numbers and flow on effects, only to gain approval and then either close the mine down or sack the workers.

BHP- Mt Arthur before, the PAC stated “…continuation of employment of 2600…”, but their workforce was only 1500 and as soon as they got their approval, they sacked 150 miners – where is the net benefit now?

This is all too loose and ill-defined.

There needs to be a well -defined and robust way of calculating net benefit…not just jobs, jobs…jobs that often don’t exist, or, in the near future may not exist.

Second class citizens

“When an applicant acquires land to mitigate the impacts….this land could….be leased to new tenants”

So, if the impacts are such that the landowner can’t live there and the mine acquires the property, they can lease it to tenants.

Judge Preston in the Land and Environment Court was shocked when he heard this from the mine’s barrister…”What?” he said, “you are treating these tenants a second class citizens ? You can’t do that!”

Yet this document is stating exactly that !

If the land is acquired due to unacceptable impacts it should not be allowed to be tenanted !

Required to do it, but they don't

"*Applicants are required to assess the impacts of the development in accordance with the*

- *NSW Industrial Noise Policy (EPA2000)(INP) "*

The Land and Environment Court case over the Warkworth extension demonstrated that neither the applicant nor the Dept of Planning had followed the INP.

They continue with their stance and steadfastly refuse to do it. The Dept allows applicants to assess noise impacts using criteria that are not in the INP and refuse to instruct the applicants to follow INP.

"These standards are generally conservative and it does not automatically follow that exceedances of the relevant criteria will result in unacceptable outcomes"

Rubbish !

Firstly they are NOT standards, they are Policies and Guidelines

We have policies and guidelines in order to be able to determine unacceptable outcomes. That's why they are written in to all mine consent conditions.

Why are they there if they don't define unacceptable outcomes? How is one then to determine what is an acceptable or unacceptable outcome if one doesn't use the policies and guidelines?

For example, Noise.

Mine conditions state ; *" The applicant shall ensure that the noise level at any private dwelling on privately owned land does not exceed……"* and then there is a table identifying properties and the associated noise limits, day, evening and night.

Then there is a clause that states "Noise to be measured in accordance with INP"

"Shall ensure" seems pretty clear to me….

Shall means must – it is not optional, there is no room for interpretation

Ensure means make certain –

Noise TO BE measured in accordance with INP – not much room to move here either.

It seems more than abundantly clear to anyone with a good working knowledge of the English language that the intention of these words is that if the mine exceeds the noise levels in their consent conditions it will result in an unacceptable outcome. Otherwise why are they there in such highly specific unambiguous terms?

The statement "…*it does not automatically follow that exceedances of the relevant criteria will result in unacceptable outcomes"* is a an obvious and unsubtle attempt to water down the strict

conditions that the mines should have to operate under in order to protect the health and amenity of the people that live in the community.

Figure 4 and Table 1

Here is a BIG out for the miners.

There is only one out for the community…the Net benefit box

If this policy is implemented in its current form it gives carte blanche to the miners to do whatever they want.

They don't have to comply at all.

The decision tree if they don't comply only ends up at the "Net benefit "box if the" Exceedance is **significant."**

They shouldn't be exceeding at all, as stated previously. What is the point of having all these assessment criteria and conditions if all the mine has to do is convince the consent authority of net benefit?

As stated before, there needs to be a well -defined and robust way of calculating net benefit – and today we don't have it.

All we have is the mining companies touting jobs, jobs and royalties as net benefits, but no-one is checking up on them after the fact to ensure that these net benefits are actually achieved.

INP

"All noise levels must be calculated in accordance with the INP"

As stated before, the applicants don't do this and they have the support of the Dept of Planning to not do it.

So for the Dept of Planning to continue to state this is at least anomalous and at best disingenuous as it is say one thing, do another.

Health risks are acceptable ?

"While exceedances of these criteria will increase the human health risks….the consent authority may determine the additional risk to be acceptable….."

What ?

The World Health Organisation lays down standards for particulate matter based on the risks to human health.

To even contemplate that increasing health risks is acceptable is mind boggling.

How dare you increase the risk to my or any other citizens health just make it easier on a coal mine !

That is disgusting. You should be ashamed of yourselves !

It's not your health that's at risk, sitting in your air-conditioned city office nor suburban home.

"A consent authority should only apply voluntary mitigation rights where the residual impact is great than the criteria set out in Table 2."

The table 2 criteria should NEVER be exceeded.

It is completely unacceptable to people that they should have to be exposed to these pollutants just so a foreign owned mining company can preserve their profits.

Their profits, rather than paying for mitigation, should be used to control the emission of dust !

Alan M Leslie

339 The Inlet Rd

Bulga

NSW 2330