

21st July 2015

Executive Director,
Resources and Industry Policy,
Department of Planning and Environment, GPO Box 39,
Sydney, NSW 2001.

Re : Submission on State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) Amendment (Significance of Resource) 2015 Draft Mining SEPP Amendment

A copy of this submission in PDF format is attached with this document.

Submission to DPE
regarding

**State Environmental Planning Policy
(Mining, Petroleum Production
and Extractive Industries) Amendment
(Significance of Resource) 2015 Draft Mining
SEPP Amendment**

21 JuLY. 2015

by George Tlaskal

313 Inlet Road, BULGA, NSW, 2330

I fully SUPPORT the amendment of the NSW Mining SEPP as proposed

The draft amendment seeks to remove the provisions that make resource significance the principal consideration when determining a mining application. This means that social, environmental and economic considerations would all have equal footing under the rules.

However, as resident of Bulga in the Hunter Valley, a township currently threatened by the proposed expansion of the Rio Tinto Warkworth mine, I also realise that this is only a small step in the way to make the regulatory process of the coal and gas industries fair and just. There is a long way to go. After forty years of my involvement with the automotive fuels and coal industries I have come to the conclusion that the regulatory structures that evolved in all that time are no longer capable to protect our living environment and the human health. The pendulum swung too far in favour of the resource corporations. They captured the regulatory process and essentially started to create the regulations for themselves. There is no better example of this situation than ***the provisions that make resource significance the principal consideration when determining a mining application*** [1] which was forced on the NSW Government by Rio Tinto.

I am the last one to doubt that the current prosperity of the western societies has been to a large degree achieved thanks to the plentiful energy from the cheap fossil fuels. As a former scientist, I equally realise that the exponential growth of the world human population and the corresponding exponential growth in the extraction of the fossil fuels cannot go on for ever. It has to stop and it has to stop soon. If it does not end soon, we will be increasingly facing huge environmental and social problems. The worrying trend of young people increasingly not being able to find meaningful jobs for which they are qualified is not helping either. In other words, as a society we are facing huge problems and these are not going to be solved by tinkering with a few legal clauses here and there. The question is “Are we capable of facing these big problems or are we, once again, going to chicken out and resort to business as usual?”

The Early History of the Open Cut Mining in the Hunter

We all know that there are many problems facing the regulators in this post-mining era that need to be discussed. Perhaps reading about my personal experiences of over thirty years

in and around the Hunter Valley coal mines could be useful in this context. I will concentrate on the very serious and very neglected problem of the stranded assets around the coal mines with a particular reference to Bulga, which is the village where I live.

Many people travelling on the New England Highway through once beautiful Hunter Valley cannot understand why the government allows the coal mining corporations to create such a horrible moonscape between Singleton and Muswellbrook. Even worse, these horrified visitors to the Hunter do not even know that this moonscape is there to stay because the mines are free to postpone the land restoration to the never-never time horizon. They are even allowed to leave the "Sydney Harbour size" final voids for the future generations. The mining corporations, such as the Rio Tinto Warkworth Mine [1] simply declare that these dirty holes full of toxic water would be far "too expensive to fill"! As far as the mining industry regulators are concerned, all this is fine and perfectly legal. As far as I know, not a single Hunter open cut coal mine has been ever properly closed and the mined land regenerated to the original condition!

I was transferred into the Hunter Valley coal mines from Queensland in 1983 when a research project into alternative automotive biofuels from the sugarcane and cassava was terminated. It turned out then that there was no fuel crises after all and that there was still plenty of oil in the sands of Arabia. Since then I worked in the IT departments of various coal mines for more than twenty years. Thus I had the opportunity to witness the whole history of the Hunter open cut mines expansion first hand.

In the early days the Hunter mines were smaller and almost entirely Australian-owned. The price of coal was also much lower than there is today but the mines prospered. They paid their taxes and they left all the profits in Australia. The workforce was largely the local farmers living in the close proximity to the mines that employed them. Since the life on the land was always a struggle, they welcomed this employment opportunity. Many small dairy farms, too close to the mines, were purchased by the mines for a multiple of their actual market value. In the great scheme of the coal mining operations this was regarded as insignificant. Very often the farmers had been leasing their farms back from the mine for years until they succeeded to find a better property to suit their operations. The Hunter coal mines were then very much a part of the local community in the true sense rather than in the current PR sense.

Unfortunately, the cultivation of the good relations with the mine neighbours gradually diminished as many Hunter mines became concentrated in the hands of large transnational corporations. The mine management was usually imported from elsewhere and never really established the local touch. As big corporations always do, they started to cut costs, minimise taxes and export profits. They soon discovered that the mining regulations, originally designed for the small local mines, were easy to ignore or to adjust for their convenience. They hired a small army of lobbyists, consultants and spin doctors to lobby the politicians and the government regulators. It did not take long to have the regulators perfectly embedded to do the bidding for the powerful coal mining industry. As the case of the Warkworth mine expansion shows very clearly [1], the regulatory capture [2] is now so complete that Rio Tinto can safely ignore even the decisions of two highest courts in the state of NSW and keep re-proposing the same failed project!

As I said earlier, most of the current mining regulations originated in those early “friendly” days. At that time the regulatory power of various government departments was actually respected and never challenged by the mining companies. However, by now, the Environmental Planning and Assessment Act 1979 No 203 [3] is so aged and so overworked by lobbyists that is capable of legally approving almost anything. Similarly, the “Voluntary Land Acquisition and Mitigation Policy” [4] offers only two grounds for a compensation of the local landowners – noise and dust. In both cases the mine determines both the eligibility and the compensation amount. Naturally, the less they compensate the better for their financial bottom line!

This was fine in the early days when the mines were friendly and when they respected their neighbours. These days the transnational mining corporations are allowed to take strictly legalistic approach and this gives no rights what-so-ever to the local residents. Even worse, the mines, that generate the noise and dust pollution, also do control the means to monitor the subsequent environmental effects. The mines own the monitoring instruments and they own the data. It must be very tempting and completely safe to manipulate the system to always look good! This also gives them the power to manipulate the Voluntary Land Acquisitions to their advantage. If the government regulators are serious about the regulating they should at least force the mines to **display all environmental monitoring data online in real time!**

The current procedure is that the mine pays some external consultants, computer modellers, to establish the acquisition zone according to the mine instructions. The property owners within this acquisition zone are then supposed to negotiate with the mining company the purchase of their properties. This is a very unequal relationship. On one side there is an extremely rich multinational non-human “legal person” and on the other side a real person - an unfortunate landowner. The power is entirely on the side of the mining company. They might give you a good price and thus sow envy and disruption into the local community or they might give you a ridiculously low price and say that this is all you will ever get. Properties on one side of the street might be in the acquisition zone and on the other side, 20 m apart, outside the acquisition zone. It is all a real, unholy and unjust mess!

Even worse from the human health point of view, the Voluntary Land Acquisition and Mitigation Policy [4] regulation mentions only the PM10 particulates. It treats them as a sort of lifestyle nuisance that occasionally smudges the clothes on the washing line. There is no serious mention of the more dangerous PM2.5 particles that could have very serious health consequences for both the miners and for the local residents. Once again, this shows how dated this part of the mining regulation really is. Yet there are hundreds of published articles in the current medical journals that show how the health declines and the the incidence of the pulmonary vascular diseases increase in the cohorts of people living close to open cut coal mines. I personally, suffer from a chronic bronchitis that I attribute to the years I spent working in the mines and living around them.

So far I have spent a lot of time analysing the injustices experienced by people living in the acquisition zones and concluded that their lot is pretty tough. However, people who live in the proximity of a large open cut mine but **outside the acquisition zone** fare even worse. As soon as a proposal for a new or expanded mine is announced their properties become worthless stranded assets. Nobody can sell anything! Even worse, this situation may become permanent. For example, In the case of Bulga , the present regulatory system allows the Rio Tinto mines to fall behind in the land regeneration and even allows them to leave a huge final void of stagnant toxic water for future generations [1]. Nobody will ever want to live next to a large noisy and dusty coal mine except some occasional itinerant mine workers. The mine workers these days do not live permanently near the mines they employ them. The resource corporations also prefer their workforce to live elsewhere because they care less about the mine raping the land..

According to the current regulatory system the mines have no obligations at all towards their neighbours outside the acquisition zones that they themselves created. The government regulators deny that these stranded assets are a serious problem. After all, they live far away and the values of their properties are not threatened. My family is not in that lucky situation. We live close to the mines outside the acquisition zone. Naturally, we realise very clearly that while we are enjoying our beautiful home now there will be a time when we or our children would be forced to sell our property. One day we will be too old, too sick or too dead!

To own an investment in a family home has been an indisputable right of every Australian for at least the last one hundred years. This right has also been cherished and supported by Australian governments at all level and of every political hue. Many people involved in the land rights movement see the destruction of the property values by foreign transnationals as a legalised theft.

A Possible Solution

Any solution to the problems of stranded assets of the mine near neighbours must start with a complete revision and rewrite of the "Voluntary Land Acquisition and Mitigation Policy" [4]. Destruction of the property values must simply become another ground for a just compensation and must be included in the costs of the proposed mining operations. It might roughly work like this:

Before a mine is approved the government would establish an independent property trust and determine the baseline values of all properties in the buffer zone around the new or expanded mine. The buffer zone would be, say 10km or more in diameter depending on the local geographical conditions. Naturally, all this preliminary works would be a part of the future mining costs. The mining company would then deposits a sum equal to the total of all the property values within the buffer zone into this property trust. If a local resident family runs into a hardship and is not able to sell their property within, say 2 years, the trust shall then purchase the property for the base value and manage it for the duration of the mining activities. When the mine finally closes, the trust will be liquidated and the balance of the money returned to the mining company. Nothing could be fairer! This arrangement would also force the mine not to be an environmental vandal and to do everything possible not to

damage the property values of their neighbours. This will also prevent establishment of non-economical mining projects for speculative reasons as an additional social benefit.

In the case of the current Warkworth mine expansion, we understand that Rio Tinto proposes to compensate the village of Bulga by giving about 11 million \$ to the local Singleton Council. While such arrangement may be of some benefit to the inhabitants of Singleton, who are not really affected by these mines, it will do nothing for the residents of Bulga and their stranded family assets. A better solution would be that such money becomes a part of the above mentioned property trust.

“PLANNING FOR GROWING NSW: INSPIRING STRONG COMMUNITIES, PROTECTING THE ENVIRONMENT” is the inspirational footer on the Mining Change documentation page [5]. Unfortunately, as a resident of the beleaguered Bulga community, I can only hope that this noble spirit is sincere. We are just at the start of an arduous reform. Hopefully, at the end of this process we are going to find that it is the elected government and not the foreign corporations that actually run the state of NSW.

George Tlaskal
313 Inlet Road,
BULGA, NSW, 2330
george@tlaskal.com or jorgetgm@gmail.com
tel. 0265745187

REFERENCES

[1] “ADDENDUM: STATE SIGNIFICANT DEVELOPMENT ASSESSMENT Warkworth Continuation Project (SSD-6464)”

http://huntervalleyprotectionalliance.com/BMPA/pdf/DPE_WARKWorthAssessmentReportAddendum_20150520.pdf

[2] Regulatory capture

https://en.wikipedia.org/wiki/Regulatory_capture

[3] “Environmental Planning and Assessment Act 1979 No 203”

http://huntermvalleyprotectionalliance.com/BMPA/pdf/NSW_EnvironmentalPlanningAndAssesment_ACT1979_No203.pdf

[4] “Voluntary Land Acquisition and Mitigation Policy For State Significant Mining, Petroleum and Extractive Industry Developments” (as amended on December 15, 2014)

<http://www.planning.nsw.gov.au/Portals/0/DevelopmentProposals/IMP%20Voluntary%20Land%20Acquisition%20and%20Mitigation%20Policy%20SSD%20Mining.pdf>

http://huntermvalleyprotectionalliance.com/BMPA/pdf/DPE_VoluntaryLandAcquisitionAndMitigationPolicySSDMining.pdf

[5] Department of Planning and Environment, Draft change to mining policy

<https://majorprojects.affinitylive.com/public/84d84b147f76928b6c64356fb398ec03/Frequently%20Asked%20Questions.pdf>