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9 July 2015

The Hon. Leslie Williams, MP
Suite 6
27 Grant Street
PORT MACQUARIE NSW 2444

Dear Leslie,

RE: MINING STATE ENVIRONMENTAL PLANNING POLICY (SEPP)

I read with alarm (please see attached 8 July 2015 AFR articles) that the NSW Government is planning a review of the Mining SEPP.

Whilst I would always argue for balanced consideration in planning issues, the way mining has been portrayed and denigrated in recent years has dismayed me.

Not only was this Baird Government voted in to stabilise the NSW economy but also to create jobs and give certainty for businesses, large and small, to be able to plan for the future.

What has happened in the Hunter Valley over the past five years is a good example of the uncertainty that exists and that uncertainty affects many businesses through NSW and Australia.

The Mount Thorley Warkworth Mine is one of Expressway Spares most important customers and any negative impact on that mine would have a negative impact on our business and that will hit home in your electorate.

The State of NSW, let alone the Commonwealth of Australia, just cannot ignore the size of the problem we are all facing. As a nation we do very little manufacturing or value adding to our resources and we need to rely on our natural resources to survive, until such time as our economy is appropriately diversified.

The Minerals Council of Australia quotes Professor Sinclair Davidson who estimates that in 2011-2012 that coal mining and related industries and services represented 3.1% of the national GDP or \$43B. He also estimates that the "broader coal economy" (i.e. coal economy plus wages earned in the coal economy) represented 4.2% of GDP or almost \$60B in 2011-2012. These are MASSIVE figures and cannot be ignored!

If we keep changing the rules the big mining companies have to abide by, then who knows what they may do in the future and I am very concerned about this proposed change.

I urge you to convince the appropriate Minister and the NSW Government to take a very close look at where this may end up before making any rash changes.

Yours Sincerely,

Patrick Cassegrain
Managing Director
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unable to attend those meetings. We are told she was on leave. But whatever the reason, the result was that, having spent six months on the case, Briggs stepped down from the panel.

Open and shut for Rio's Hunter flagship

Mount Thorley-Warkworth is the third-biggest coal complex in the Hunter Valley and it sits front and centre of the Australian coal operations that everyone imagines Rio Tinto would rather like to sell, maybe, to Mick Davis and his XZ crew.

But the five-pit complex's future has been cast into doubt again by the Baird government's unfathomable decision to overturn reforms that were introduced as recently as 2013 and that were aimed pretty obviously at extending this operation's working life.

This saga stretches back to 2010, when Rio made its original application to extend the boundaries of the Mount Thorley-Warkworth pits to ensure the 30-year-old operation could continue producing coal until 2036.

The planning authority's subsequent approval of the plan was then challenged effectively by a coalition of local and national anti-coal, anti-carbon, and anti-development lobbies.

In April 2013 they secured rejection of the mine expansion in the NSW Land and Environment Court. Approval was overturned because the court found the economic benefit did not outweigh the "unacceptable impacts" on local biodiversity or the increased imposition on local communities caused by the mine's creep to within 2.6 kilometres of the town of Bulga.

This rejection was endorsed by a court of appeal, which found no error of law in the L&E judgment.

With that the state introduced reforms to the planning act that established economic significance as an overriding priority of future planning assessments and Rio promptly re-started the approval process with a proposition redrafted to deal with criticism made in the 2013 rejection.

We heard a couple of weeks ago that the Baird government would remove this particular trigger from the State Environmental Planning Policy once the Mount Thorley-Warkworth process was run. We didn't believe a government could be so stupid. But, as it turns out, it is on track to outperform on the stupidity index.



Rio wanted to extend the Mount Thorley-Warkworth pits to ensure the operation could continue until 2036. PHOTO: DEAN DUNN

In promoting economic significance to a position of primacy in the planning approval process the government quite naturally invited cynicism from environmentalists, who were concerned that Rio had somehow earned special treatment after its project had failed the public tests.

To so promptly extract the economic significance trigger seems only to confirm those suspicions. The government leaves itself open to allegations that it opened a legislative window for a review of the Mount Thorley-Warkworth case and now, with its progress looking to be as secure as possible, the window is to be closed abruptly.

It is a move that, again, announces a worryingly ad hoc approach to a planning process that sits at the gateway to the state's economic progress and re-arms critics of what was a quite rational restatement of the priorities. But what truly beggars belief is that this back-flip has been formally proposed before Rio's project has been secured.

The most immediate issue for Rio and pretty much everyone else currently involved in the formalities of

the Planning Assessment Commission will be to establish that any changes that are eventually made to the SEPP will not be retrospective.

By my count there have been seven PAC approvals offered to proponents wanting to extend legacy operations or build new mines over the past 18 months. Each of those successful applicants will probably need reassurance that their approvals hold.

Needless to say, some of the coal developments in question are a bit controversial, not the least of them being Shenbua's Watermark project, which sits on the delicate fringes of the blacksoil of the Liverpool Plains.

But, if anything, the issue of retrospectivity probably hangs even more heavily on Rio's contested progress at Bulga. A final decision on Mount Thorley-Warkworth sits with the PAC. A verdict is expected by the end of July or early in August. The coal industry is reasonably confident of a green light, which is good because Rio's current approvals mean that the project's 1800 jobs can only be guaranteed until the end of 2015.

But the potential that the rules of the PAC assessment might be changed

before a decision must surely create a bit of a dilemma for the three-person panel deciding on the Rio project's fate.

And, should the PAC deliver on expectations and approve the extension, what then? Does this early redraft of the planning rules open the potential for another legal challenge? And what if the rules are changed before the PAC panel adjudicates?

Quite unexpectedly, that potential is real, and not just because it is open to the government to move with rare speed to amend the approval regime.

The other side of the coin here is that Rio's PAC process has taken a few unusual turns over recent times, with one panellist being replaced and with a second round of public meetings being forced unexpectedly on the proponent.

The statutory meeting required to extinguish the potential of appeal of PAC rulings was held in late 2014. But the PAC decided a second community gathering was required because of the "high level of public interest".

It was not just Rio that failed to anticipate this need. As it turned out, one of the three that will decide Mount Thorley-Warkworth's future, PAC chairwoman Lynelle Briggs, was

NSW coal miners slam 'retrograde' planning change

Geoff Winestock

NSW coal miners have slammed a decision by the Baird government to scrap a clause in state planning rules which made economic benefit the key criterion in assessing whether a mine should go ahead.

"This is a retrograde step that will hurt NSW. It will put at risk thousands of current and potential jobs, particularly in regional mining communities where unemployment is often well above the state average," NSW Miners' Council CEO Stephen Gallie said on Tuesday.

The decision could affect controversial applications for extensions to Rio Tinto's Mount Thorley Warkworth and Anglo-American's Drayton South coal

mines in the Hunter Valley region.

NSW Planning Minister Rob Stokes announced on Monday he would repeal a clause in state environmental planning policy regulations which said the "principal consideration" for approving a mine should be "the significance of the resource" defined as the economic benefit from the project and the relative size of the deposit.

NSW premier Mike Baird visited the Mount Thorley Warkworth area with Mr Stokes after the election where the Coalition suffered big swings in the seats of Tamworth and Upper Hunter affected by proposed coal mines.

The amendment to planning rules which is now being repealed was rushed through in 2013 after Rio Tinto complained bitterly that the NSW Land

and Environment Court overturned a state government decision to approve the Mount Thorley mine partly on the grounds that Rio Tinto had overstated the economic benefits from the project.

Environmental groups welcomed the decision to drop the clause and said it could play a crucial role in the looming decision on Rio Tinto's revised application for Mount Thorley Warkworth which is now being considered by planning authorities. The Rio Tinto plan would extend the mine close to the village of Bulga.

"It is hugely significant that this change is being made prior to the final decision on the Warkworth expansion. There is a lot more work to do to restore the balance in New South Wales, but Minister Stokes has set the

ball rolling with this crucial first step," said Georgina Woods, spokesperson for Lock the Gate Alliance, an anti-coal mining group.

NSW Greens MP Jeremy Buckingham welcomed the decision but said the government had little choice but to repeal the clause because the independent Planning Assessment Commission which issues approvals had argued it was badly drafted and inconsistent with other provisions of the planning act. He cited a case for Korcan firm Kores' Wallarah II mine in the NSW Central Coast in 2014 where the PAC said the clause did not "sit comfortably" with the act's other provisions. The PAC wrote that "the courts have consistently held that the public interest is a much broader concept

than the economic value of a mining project, particularly when this value is calculated using methodologies that cannot properly estimate the costs associated with non-market impacts".

Mining industry sources however said the Wallarah decision was not representative because the NSW government had not yet been ready to provide advice on the significance of the project. In more recent cases the NSW Trade and Investment Department has provided input on how each project meets the provisions and the PAC has become more familiar with the interpretation of the provisions.

Since the clause's introduction, the PAC has rejected some major mines, while approving Shenbua's Watermark project on the Liverpool Plains.