



Hunter Environment Lobby

Proposals for coal mining policies for NSW

SUMMARY

The rapid increase in the scale and extent of coal exploration and mining in NSW is of widespread community concern and is unsustainable. In response, the Hunter Environment Lobby proposes a policy framework to address these issues. Commonwealth, State and local government authorities are urged to review, adopt and implement the proposed policies.

The policy proposals are for coal mining and related activities, and have been prepared by the Hunter Environment Lobby Inc (HEL) following a community forum in Singleton in May 2011 and extensive consultation.

Reforming the way coal mining is initiated, approved and operated is essential if widespread community concerns are to be resolved. A central issue is the nature of governance of the industry and its failure to properly take into account community interests. This requires significant legislative and administrative reform.

Interested groups and individuals within the community are invited to review the policies and to contribute towards their implementation.

BACKGROUND

The Hunter Environment Lobby Inc (HEL) is a non profit community group established to promote environment protection in the Hunter Valley. The objects of HEL are:

- 1 To promote the protection of the environment of the Hunter Valley, and to be concerned with all matters affecting the natural ecosystems of the Valley;
- 2 To prevent further degradation of the natural ecosystems of the Valley and to promote the rehabilitation of degraded ecosystems;
- 3 To encourage ecologically sustainable development, employment, energy use and land management practices;
- 4 To ensure co-ordinated environmental planning and management of the Valley;
- 5 To co-operate and exchange information with other groups supporting the above objectives;
- 6 To achieve the above objectives by all appropriate means.

The group strongly encourages links to other groups with similar interests, and promotes regional networks and education.

Since its establishment in 1992, the group has actively engaged in promoting positive environmental solutions, conducted public forums, reviewed many mining environmental assessments, and made submissions to development proposals.

This policy framework outlines principles, themes and policies that are proposed for the governance of coal mining in NSW.

PRINCIPLES

Three key principles for improving certainty for mining and resource extraction proposals are as follows.

1 Undertake environmental investigations prior to exploration lease

Investigation of key natural resources should be undertaken and be publicly available prior to the issue of any exploration licence or lease. This would include studies of biodiversity, surface and groundwater resources and soil resources. The information would provide baseline information for resource management and identify important issues.

2 Regional land use strategy prior to mining approval

Regional land use strategies should be developed prior to planning approval being given for mines. These strategies must be consistent with local land use strategies where they exist. They would ensure consideration is given to cumulative environmental impacts, provision of infrastructure, and benchmarks for protection of regional natural resources including surface and groundwater, biodiversity and soils. (Terms of reference for regional land use assessments and strategies are outlined in Appendix 1)

3 Integration of land use planning and mining legislation

Current mining legislation conflicts with the objectives of land use planning and other environment legislation. The legislative framework should be integrated to ensure consistent planning, assessment, approval and monitoring processes across legislation. The framework would preferably be nationally consistent, and operated by state governments.

PROPOSED POLICIES

Proposed policies for coal mining in NSW are outlined in the table below. These have been prepared for discussion purposes. Suggestions for additions and amendments are welcome.

Implementation of these policies will need to be prioritised, with some taking precedence over others.

Policies are grouped according to the following themes:

- 1 Governance - relating to the legislative framework and decision-making arrangements
- 2 Corporate & financial issues - economic framework and company arrangements
- 3 Resource exploration - issues arising during exploration and resource evaluation
- 4 Mine approvals - strategic planning matters and determination of approvals
- 5 Mine operations - issues associated with mine activities following initial approval
- 6 Mine rehabilitation - land rehabilitation and mine closure following operations

Theme	Proposed policy
1 GOVERNANCE	
Legislative responsibilities	Undertake a review and update of mining legislation, introducing reforms taking into account the policies below and the <i>Mining Law in NSW Discussion Paper</i> (Environmental Defenders Office NSW, 2011).
Division of responsibilities between different levels of government	Clearly define the role for local government in approvals, compliance and monitoring. Some local involvement is essential in maintaining community confidence in enforcement of approvals. Establish a new separate statutory authority with responsibility for mine environmental assessment, development approvals, environmental data management, environmental reporting and compliance.
Commonwealth role in mining approvals	Maintain current roles under EPBC Act, but increase role to enable greenhouse gas emissions and consequences to be considered as a matter of national environmental significance.
Mining titles	Initiate an independent public inquiry into mining titles and their relationship with land title.
Community engagement	Approval processes to ensure direct stakeholder and community engagement at key decision making stages, including planning focus meetings, DGR's, review of draft consent conditions, and prior to issue of leases and licences.
2 CORPORATE & FINANCIAL ISSUES	
Influence of direct mining income to the State government on decision-making	NSW Government to provide annual public accounts of the coal mining royalty receipts for each mine, and statements of regional infrastructure expenditure by local government area.
Infrastructure contributions	Ensure that a minimum of 30% of State Government revenue derived from coal mining royalties is returned to the local and regional area as economic, social or natural infrastructure.
Financial arrangements & taxes	Review council rates for mining land and arrangements for funding local infrastructure.
Mine assessment and review trust	NSW Government to establish by legislation a mine assessment and review trust, fully funded by the coal mining industry, to provide financial grants to resource community groups to respond to mining proposals, environmental assessments, and compliance issues. Initially, it is proposed this would be levied at \$250,000 for each exploration licence granted plus 5 cents per tonne of product coal produced.
Independent economic review	Undertake an independent economic review of the overall costs and benefits of coal mining to NSW, taking into account social issues.
Security deposits or bonds	Undertake a mine by mine cost benefit and economic analysis of local community impacts of mining when leases are issued, renewed or extended. Review and update arrangements for security deposits to recognise water and biodiversity risks and impacts and rehabilitation costs. Security deposit payments are to be made to an independent trust established by legislation.

Theme	Proposed policy
3 RESOURCE EXPLORATION	
Exploration rights and responsibilities	Prepare a charter to define exploration responsibilities to landholders and the environment.
Strategic environmental assessment	Public strategic environmental assessments should be mandatory before exploration licences are granted. These would include risk assessment and a review of cumulative impacts of key issues.
Mining exclusion zones	Exploration licences would not be granted in areas identified in a regional or local land use strategy as inappropriate for mining, and all ground-based exploration prohibited.
Coal seam methane exploration	A moratorium on further coal seam methane exploration and extraction, except in areas subject to existing approved coal mining.
4 MINE APPROVALS	
Strategic land use planning	Establish areas off limits to mining and coal seam methane extraction (mining exclusion zones or 'no go areas'). See Appendix 1 for terms of reference for regional assessments and strategies.
Tenure & leases	Initiate an inquiry into mining titles and their relationship with land title, and the links with approval obligations.
Environmental impact assessment	<p>Environmental assessments should be structured around issues and indicators, linked to quantifiable impact predictions and environmental monitoring programs.</p> <p>Environmental assessments should be restructured to concentrated more on impact management, links to monitoring, and project outcomes. This will enable impact predictions to be compared with outcomes.</p>
Approval processes	<p>Reform Environmental Planning and Assessment Act 1979 to ensure mining approvals follow processes and requirements consistent with other major approvals, and comply with local and regional land use strategies.</p> <p>Reform the Environmental Planning and Assessment Act 1979 to differentiate approval processes between temporary and transition uses such as mining and permanent land uses.</p> <p>Only approve new coal mines and further coal exports where a justifiable need can be demonstrated, and where there is a program in place for a transition to a renewable energy economy and sustainable long term future land use for the area. This policy would rule out speculative mining developments.</p>
Water issues	<p>All mining operations accessing water must obtain existing water licences.</p> <p>Mining exclusion zones should be established to prevent mine subsidence under prescribed streams, water bodies or wetlands. This would allow first workings only, and not long wall or multi seam extraction. This should be reflected in an adopted aquifer interference policy with legislative backing.</p>

Theme	Proposed policy
Water issues (cont.)	Undertake a comprehensive regional study on the impacts of current mining operations on surface and groundwater systems in the Hunter Valley.
Air quality issues	<p>Maintain and expand the existing DECCW regional air quality monitoring program in coal mining areas with data to be integrated in approvals processes.</p> <p>Introduce standards for PM 1 and PM 2.5 particulate emissions from coal mines and other coal-based emissions.</p>
Biodiversity issues	Mining proposals and activities to be subject to the Native Vegetation Act 2005 or equivalent legislation.
Biodiversity offsets	<p>Adopt a minimum biodiversity offset area ratio of 10:1 for native vegetation destroyed for coal mining purposes.</p> <p>Establish a Hunter Biodiversity Trust funded from a levy on coal mining approvals and/or operations directly resulting in loss of biodiversity. A minimum Trust contribution of \$150,000 per hectare of land with biodiversity values to be lost or degraded is proposed, plus an annual production levy.</p>
Greenhouse gas emissions	Include greenhouse gas emissions from coal mines as a matter of national environmental significance under the Commonwealth Environment Protection and Biodiversity Conservation Act 1999, thereby requiring Commonwealth approvals
Consent conditions	Undertake an independent public inquiry into the wording, appropriateness and enforceability of mining approval conditions, including development approval, leases, mine plans and rehabilitation approvals.

Theme	Proposed policy
5 MINE OPERATIONS	
Number of amendments to mining approvals over time	Reform legislation to provide clearer links between environmental assessments, monitoring, and project outcomes to enable impact predictions to be compared with outcomes and clearer determination of compliance.
Management & monitoring	Maintain and improve current management and monitoring practice. Reform legislative requirements as outlined above.
Community relationships	Review current community consultative committee terms of reference and structure. Ensure a legislative obligation to provide full information and environmental reporting data to committees, with information subject to the GIIPA Act provisions.
Mine Subsidence	<p>Compile mine subsidence data and monitoring results for all mines to provide a publicly available NSW land use subsidence database.</p> <p>Expand current mine subsidence compensation system to include measures to quantify and compensate for loss of environmental values such as surface water, groundwater, biodiversity and ecological processes.</p>
Air quality	<p>Ensure all coal trains to the Port of Newcastle are covered to prevent dust emissions.</p> <p>Use improved and uniform blasting product to eliminate toxic orange brown blast emissions.</p>
6 MINE REHABILITATION	
Rehabilitation requirements	<p>Establish an independent inquiry into rehabilitation of coal mines and derelict mine sites, and quantify the costs and liabilities associated with rehabilitation. The terms of reference of the inquiry would be to determine the administrative and funding arrangements required to ensure effective and ecologically sustainable land rehabilitation.</p> <p>Coal mine rehabilitation must ensure that natural ecological processes and systems are retained, enhanced and improved.</p> <p>Mine rehabilitation reports are to be compiled, reported on , and made publicly available annually by the relevant government agency.</p> <p>Within each mining complex the annual rate and area of rehabilitation should be not less than the annual rate of disturbance.</p> <p>Mine rehabilitation plans to be co-ordinated by a strategic landscape scale rehabilitation plan, linked with local and regional land use planning instruments. This could be an update of the 1999 Synoptic Plan for Integrated Landscapes for Coal Mine Rehabilitation in the Hunter Valley of NSW.</p>

Theme	Proposed policy
Rehabilitation compliance criteria	For each mining complex, rehabilitation criteria are to be determined relating to indicators such as soil stability, hydrology, ecological characteristics, presence of weed species, water quality, land contamination, post mining land use, etc.
Post mining land use	<p>Ensure that measures are in place to ensure that no final voids remain at the completion of open cut coal mining.</p> <p>A new separate statutory authority be established (see above) with responsibility for mine environmental monitoring and reporting including retaining records of land mining history and post mining land use options.</p>
Stakeholder and community involvement	Consultation with stakeholders and the community should form part of the preparation of mine operations plans including rehabilitation compliance criteria .
Information and reporting	Establishment of a public register of rehabilitation and mine operation plans, documenting progressive rehabilitation of mined areas and compliance with commitments.

APPENDIX 1 - Proposed terms of reference for strategic regional land use assessments and plans

TERMS OF REFERENCE

SCOPE

Appropriate area of coverage	Determine the appropriate planning area. This may be based on local government areas, communities of interest or biophysical regions as appropriate.
Key planning issues	Identify key issues to be addressed, especially protection of agricultural land, water resources, biodiversity, infrastructure, heritage and social issues. The relevant assessment scale for each issue needs to be identified. Planning and management components of issues need differentiation.
Strategic planning context	Recognise the planning context and integrate other strategic studies land use plans (eg Upper Hunter Cumulative Impact Study and Action Strategy 1997, Coal Mining Potential in the Upper Hunter Valley - Strategic Assessment 2005), local land use strategies, water management plans, NSW State Plan, etc.
Strategic environmental assessment	Undertake a strategic environmental review including cumulative impact assessment.
Framework for plan implementation	Identify the legal framework for land use plan implementation, including legislative and planning reforms required if appropriate. Provide consistent structure and contents for plan documentation (see below).

PROCESS

Stakeholder engagement	Identify all stakeholders and ensure adequate communication throughout the preparation of the assessments and plans.
Community engagement	Broad community involvement is important in addition to direct stakeholders. This must include local government with final plans linked to local community strategic plans.
Data compilation	Forms part of an analysis of the current situation relating to the history, environmental, economic and social characteristics of the planning area. Data is to be prepared in a form to facilitate ongoing updating.
Identify data gaps	Document data gaps and provide resources for additional studies as required. These may include groundwater or biodiversity studies.
Risk assessment	Undertake a risk assessment of land use issues and potential development activities.
Review present position	Compile a situation analysis report for public comment. The report is to document the decision-making context and to identify options that should be considered in the final land use plan.

PLAN STRUCTURE & CONTENTS (from Singleton & Upper Hunter LU Strategies)

Introduction	
Vision	
Structure of plan	
Planning context	Growth trends Planning framework Infrastructure and settlement structure Biodiversity and natural ecosystems Land and water Design issues
General aims and objectives	
Urban settlement	Projected population change and land demand Identification of areas for future urban expansion Infrastructure and service capacity
Village and rural residential development	Provision of adequate land for rural residential development in suitable locations Future use and development of villages and service provision
Rural areas	Protection of agricultural land and viability Climate change implications for land use Rural water quality and availability and protection of catchments Areas of coal mining potential and buffer land Rural servicing costs and requirements
Environmental values and constraints	Natural hazards Land capability Biodiversity and natural ecosystems Heritage issues, scenic and cultural landscapes
Planning administration and plan implementation	

SPECIFIC OUTCOMES

Identify key environmental and social values	Key values will include productive agricultural land, landscapes, biodiversity, water resources, human settlements, natural and economic infrastructure, etc.
Identify land use priorities	Priority land uses are to be identified and spatially defined.
Identify mining exclusion zones	Map boundaries of areas to be excluded from mining and exploration, such as high value agricultural land or landscapes and biodiversity areas and links.
Social, economic and environmental infrastructure requirements	Identify infrastructure provision such as roads or passenger rail services, etc
Framework for ongoing environmental condition and compliance monitoring	For example improvements to Upper Hunter Air Quality Monitoring Network.
A framework for continuing community engagement	Establishment of terms of reference and arrangements for community consultative committees.
Legally enforceable land use controls	Implement land use controls through local environmental plans or similar planning instruments.
