

NSW Mine Rehabilitation

DPE Discussion Paper



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Executive Summary

This IEEFA paper is prepared in response to the NSW Department of Planning and Environment (DPE)'s discussion paper on mine rehabilitation in NSW. IEEFA acknowledges the positive nature of many of the “daft policy principles for mine rehabilitation in NSW” being presented, however the underlying assumption still remains that the mining industry will ‘do the right thing’ for the community. This ignores the reality as proven repeatedly through history in mine rehabilitation that corporations have an underlying legal and fiduciary requirement to maximise profits for their shareholders, and management and boards have a series of short term reward incentives to maximise profits and this creates an obvious conflict of interest that sees many mining companies defer / avoid / quarantine / externalise costs where possible.

Transparency, public disclosure, independent assessment, improved regulatory oversight and public reporting need to accompany these principles. Improved DPE funding and avoiding the very evident regulatory capture by the mining industry would likewise facilitate a greater balance between private firms profit maximisation while using public resources and the public needs of the community and taxpayer to match total life of project costs with benefits.

IEEFA considers mining an important part of the Australian economy, generating jobs and investment that help maintain economic activity and provide significant export revenues for Australia. In NSW, the single most important export commodity is thermal coal, primarily generated in the Hunter Valley but also in the Southern Highlands. Coking coal for steel manufacturing is a lesser but still important export product. In the context of this, the very large overburden volumes involved in opencut coal mining and IEEFA's primary focus on energy markets and rising technology threats to the viability of this industry, our opinions in this paper will largely reference the NSW coal sector.

IEEFA also notes that mining uses a public asset for private gain, and the majority of mining in Australia is undertaken by multinational companies. In this context it is important to balance the narrow vested interests of largely private, foreign mining firms with the long term needs of the Australian public and those communities most affected. A social licence to operate is key for mining companies to continue to operate, and mine rehabilitation is a key part of this commitment. However, the promises made by mining companies need to be considered in the context of the more than 50,000 abandoned, unrehabilitated mine sites across Australia. Mining firms and their Australian lobbyists are very good at trumpeting their good intentions, but the reality of the last 200 years is that these positive statements all too often ring hollow, leaving tax payers and communities to wear the cost of unrehabilitated mines.

The NSW requirement for mining companies to provide financial assurance to cover the future cost of mine rehabilitation is an important public policy instrument. IEEFA would note that the current system is clearly inadequate in dealing with the risks and external costs associated with mining. Profits are privatised but too many costs are externalised and / or deferred.

The current framework needs to be enhanced to better manage the external costs and risks relating to mine rehabilitation:

1. adequate, independent evaluation of the true cost of life of project rehabilitation;
2. ongoing external monitoring, including updated, independently verified cost assessments during the mine life;
3. far greater enforcement of progressive, annual mine rehabilitation;
4. far greater evaluation of risks and costs associated with final voids, including the potentially perpetual cost of water treatment to avoid toxic chemical buildup;¹
5. elimination of the standard mine company practice of deferring rehabilitation through the unacceptable and much abused “care and maintenance” loophole; and
6. Far tighter restrictions on the current industry practice by the multinational majors of selling off near end of mine life or end-of-life sites in “care and maintenance” sites to undercapitalised minnows, thereby quarantining and passing off the liabilities once all the mining profits have been realised and paid out as dividends.

IEEFA would note the announcement by Peabody Energy in February 2018 of the first third-party surety bond issuance.² In IEEFA's view this risk transfer to IAG Australia is a move likely to be well received by foreign shareholders of Peabody, but by freeing up capital and insulating Peabody from the long term liability of mine rehabilitation, it works to encourage the current industry practice of 'defer and forget'. IEEFA would instead urge the NSW DPE to be pushing for a strong system that creates a positive capital management incentive for private companies to undertake progressive rehabilitation as soon as realistically practical. If mine rehabilitation financial assurance was held in cash in full a trust account on behalf of the NSW government, this would galvanise board and senior management attention on this key externality. As progressive rehabilitation is completed and independently verified, this cash can be progressively refunded. The mining industry would then have a positive incentive to act, overcoming the current system's possibly unintended outcome giving mining firms a financial incentive to defer and avoid.

A second benefit of a system of full cash bonds held in trust is that the annual interest on the cash held could be applied to progressively fund the clean up costs of the abandoned unrehabilitated mine legacy the NSW industry has left. Such funding would ideally be initially directed at those abandoned sites that are putting the NSW water catchment areas most at risk of continued contamination from toxic chemicals that results from acid leaching. The health costs avoided would help reign in the NSW government's spiralling health budget and serve NSW communities. This would enhance the reputation of mining companies and restore some of the mining industry's badly eroded social licence to operate.

¹ http://downloads.erinsights.com/reports/the_hole_truth_LR.pdf

² <http://www.afr.com/business/mining/peabodys-mine-rehab-bonds-an-australian-first-20180213-h0w0tp#ixzz572H7YV2P>

Who Does the NSW DPE Represent?

Australia has more than 50,000 abandoned, unrehabilitated mine sites.³

In reading the paper prepared by the DPE, IEEFA would note that the DPE is funded by the government i.e. taxpayers of NSW and should operate on behalf of the people of NSW. It is not an instrument of the mining industry, nor should it be lobbying on behalf of the mining industry, at least in IEEFA's view.

The near opening section on "Mining and its contribution to NSW" is an important summary of the positives of mining. However, this section lacks balance, a critical balance that is in IEEFA's view clearly absent in how the "Department of Approvals" is seen by parts of the NSW public, particularly for affected communities who wear a disproportionate share of the externalities of the largely private mining sector.

An acknowledgement of the positive contribution of mining should also come with a reminder that mining requires use of a finite resource owned by the people of Australia, and that it comes with both benefits and costs. NSW is one of the largest producers / exporters of thermal coal in the world, and yet the DPA makes zero mention of thermal coal mining's significant indirect contribution to climate change in terms of scope 1,2 & 3 terms. The DPE here makes no mention of the use of water (another critical and finite resource of NSW) and no mention of the public health costs from water, air and particulate pollution that arises from this industry in terms of mining, transportation and burning. These externalities are not unique to this industry, but they in many cases create a disproportionately high share of these costs.

The need for a review and update of the NSW Mine Rehabilitation provisions is entirely required now because at least a material part of the mining industry has systemically failed to live up to its promises to mine sustainably and then restore the mine site once mining has finished. For mining industry experts to report that there are more than 50,000 unrehabilitated, abandoned mine sites across Australia strongly flags that mining is far from living up to commitments it makes when seeking approval to undertake mining activities.

The DPE needs to reliably report on the number of coal mine sites across NSW that have been fully rehabilitated. The Australia Institute has tracked the ratio of coal mines in care and maintenance vs coal mines fully rehabilitated and their public interest research reports both a systematic failure by the mining industry and that the NSW DPE was clearly not well informed.⁴

The NSW Auditor General's Report "Performance Audit – Mining Rehabilitation security deposits"⁵ of May 2017 is likewise grim reading, at least from the NSW community perspective.

IEEFA welcome's this review of the NSW mining rehabilitation system. With the coal price back to near record highs, the coal mining sector's profitability has been restored and mining firms like Whitehaven Coal and Peabody Energy are reporting record cashflows. Now is the perfect time to tighten legislation and procedures, plus incorporate independently assessed, full Financial Assurance of a level that accurately reflects the full cost of mine rehabilitation and contingencies, including water treatment (potentially in perpetuity) for the growing number of final voids from open cut coal mines that have now received DPE approval.

³ <https://theconversation.com/what-should-we-do-with-australias-50-000-abandoned-mines-18197>

⁴ <http://www.abc.net.au/news/2017-02-15/australia-institute-report-raises-concerns-on-mine-rehab/8270558>

⁵ <http://apo.org.au/node/94346>

Relinquishment of Mine Sites

The NSW DPE mine rehabilitation provisions have been systematically gamed by many mining companies. This is particularly evident when large multinational “sell” the end-of-life sites to minnows that lack the financial capacity to complete rehabilitation, particularly in the event of rehabilitation costs coming in above the level of financial assurance.

IEEFA would recommend that in light of 50,000 unrehabilitated abandoned mines across Australia, the regulations be reviewed and tightened to either require the direct beneficiary of the proceeds from mining to fulfil their associated rehabilitation requirements themselves or if they sell, for the liability for rehabilitation in excess of their financial assurance (FA) to remain open. Should the site acquirer fail, the chain of responsibility needs to extend back in time to the original operator of the mine, if required. Mining companies might claim this is too onerous, but if they have undertaken progressive rehabilitation during the mine life and properly funded the remaining FA with adequate contingencies, their financial risk post sale would be negligible. Given the alternative is that the public is forced to unwittingly continue to underwrite this financial risk, a suitable linking of costs and benefits is appropriate.

Closure of the “Care & Maintenance” Loophole

Mining firms are meant to complete mine rehabilitation as soon as practical after mining is finished. However, if rehabilitation costs have not been fully funded during the mine’s operation, there is an unintended “perverse outcome” incentive for the company to continue to defer rehabilitation. Deferral of the unfunded cost is to the financial advantage of the mining company. Fully funding all mine rehabilitation costs up front, including a premium to cover unexpected contingencies would give the mine owner a direct incentive to complete rehabilitation as soon as practicable. The financial incentive of a refund of unused cash held in trust as FA would align the mining company’s interests with that of the NSW public.

Currently the opposite is true. The number of end-of-commercial life mine sites in “care & maintenance” far exceeds the number of sites fully rehabilitated. IEEFA is unaware of any complete opencut coal mine in NSW that has been fully rehabilitated and successfully relinquished, such that the area is then available for alternative use by the state, communities and/or other industries.

Public Disclosure Would Enhance Community Review

Greater transparency and public disclosure would allow environmental non-government organisations (eNGO) to monitor and evaluate private mining firms’ performance relative to the commitments they made at the time of mine approval.

Institute for Energy Economics and Financial Analysis

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About the Authors

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Tim Buckley, IEEFA's director of energy finance research, Australasia, has 25 years of financial market experience covering the Australian, Asian and global equity markets from both a buy and sell side perspective. Tim was a top-rated Equity Research Analyst and has covered most sectors of the Australian economy. Tim was a Managing Director, Head of Equity Research at Citigroup for many years, as well as co-Managing Director of Arkx Investment Management P/L, a global listed clean energy investment company that was jointly owned by management and Westpac Banking Group.

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