

**Submission
No 77**

INQUIRY INTO BENEFICIAL AND PRODUCTIVE POST- MINING LAND USE

Organisation: Association Mining and Energy Related Councils (NSW) Inc.
Date Received: 26 September 2024



26 September 2024

The Hon. Emily Suvaal, MLC
Chair, Standing Committee on State Development
Parliament House
Macquarie Street
SYDNEY NSW 2000

Jessie Halligan
Principal Council Officer
Committees Office
Legislative Council

By email: to State.Development@parliament.nsw.gov.au

Dear Emily,

PARLIMENTARY INQUIRY INTO POST MINING LAND USE – SUPPLEMENTARY SUBMISSION

We apologise for the delay in furnishing you with the following supplementary submission and information, which we undertook to provide prior to the conclusion of the Inquiry.

The State policy framework

A key evaluation consideration of all planning applications in the State is a triple bottom line assessment of the “natural and built environments, and social and economic impacts in the locality” (s. 4.15(b) of the *Environmental Planning and Assessment Act 1979* (the **Act**)). The *State Environmental Planning Policy (Resources and Energy) 2021* (the **RESEPP**), gives this some force but while environmental and economic considerations are given considerable clarity, social considerations – of the type which typically concern host communities – are largely left undeveloped.

Environmental considerations, for example, are relatively comprehensively dealt with in the non-discretionary provisions of clause 2.16 of the RESEPP:

- noise, 2.16(3),
- air quality, 2.16(4),
- airblast overpressure, 2.16(5),

- ground vibration, 2.16(6), and
- aquifer interference, 2.16(7).

Other environmental issues: significant water resources, threatened species and greenhouse gas emissions, are dealt with, albeit discretionarily, at 2.20 ((1)(a) to (1)(c), of the RESEPP respectively). These are also separately regulated by bespoke legislation. Remediation and rehabilitation issues are dealt with in 2.23 of the RESEPP and by bespoke provisions in Schedule 8A of the *Mining Regulation 2016* to include such things as completion criteria, early planning, progressive rehabilitation and annual monitoring and reporting.

Economic considerations are dealt with in 2.21 of the RESEPP and given arguably – in practice at least, primacy over the other considerations by virtue of the cost benefit assessment (and the well-developed metrics used for economic considerations against the less developed and less easily quantifiable environmental and social assessment metrics in the guideline material) required by 2.25(2)(d) of the RESEPP.

Whilst environmental and economic considerations are dealt with reasonably comprehensively, social impacts experienced by the host community are dealt with in only a very rudimentary way. Indeed transport (2.22) is the only explicit social consideration.

Social issues of the type MERC, its member councils, and mining communities are most concerned with, have comparatively little development in State policy. These issues are, however, important and include concepts of shared benefit, social infrastructure costs, the use of itinerant or travelling workforces, and housing. Other gaps in State Government policy include the way local road infrastructure impact is assessed and some aspects of environmental impact – including native vegetation landscape connectivity.

Benefit sharing

The concept and principles of benefit sharing will come as no surprise to the State Government. When mines, increasingly operating at export scale, are hosted in relatively small regional communities, issues often arise if the benefits of the mining aren't shared whilst the costs are. Some of those costs include an overheated (or inadequate) housing market as well as markets for services and trades, fuel, and other household expenses. Less quantifiable costs include loss of amenity, identity, and poorer environmental and, often, health outcomes.

There are many mechanisms to share benefits, including State Government programs, voluntary planning agreements, rating, and voluntary community contributions. There is enormous discrepancy in voluntary planning agreements. In assessing the issue, of course, all aspects of benefit sharing need to be considered. A comprehensive review and policy

response should be undertaken with the object of setting out an evidence-based methodology that can be deployed by consent authorities in arriving at an appropriate mix of royalty distribution (presently known as Resources for Regions), rate setting, and a refresh of the use and negotiation of voluntary planning agreements. It is noted that the decision by the State Government to end Resources for Regions has essentially ended the State Government's commitment to benefit sharing in New South Wales.

Social impact closure planning

From 2011, considerable progress was made in rehabilitation closure planning. It began with individual mining applicants and councils negotiating better practice around macro and then micro-relief of mining overburden emplacements. This has now been regulated across industry. The benefits include much better final rehabilitated landforms, a better understanding by all parties – including the community – of what the legacy mine will look like, reduced dust and noise during mine operations and less regulatory breaches.

Social impacts at closure can also be very significant if not planned. The evidence is that early planning reduces the cost for both communities and necessary 'rapid response' intervention by government. The focus is usually on early re-skilling, worker transfers, adaptive capacity of the entire workforce – including the future workforce, business supply chain diversification, and job creation. For reasons expressed above, this has received little attention in State Government planning policy.

Housing

One of the consequences of the scale of the mining industry relative to its typical host communities is the pronounced peaks and troughs in the housing market (including the rental market) and the ability to attract sustained investment in the housing sector. Affordable housing policy has also emerged as a significant State-wide issue. There are some practical policy initiatives the State Government could explore in a review of 2.20 of the RESEPP to resolve some of the social impacts that arise from hosting mining activity.

Drive-in drive-out workforces

The issue of drive-in drive-out (DIDO) workforces has been the subject of several Parliamentary inquiries by both the Australian and State governments. There is also a considerable body of literature related to the issue – much of which is concerned with the issue of worker safety and wellbeing.

In 2013, the Australian Parliament's Standing Committee on Regional Australia produced a report: *Cancer of the bush or salvation for our cities? Fly-in, fly-out and drive-in, drive-out workforce practices in Regional Australia*. The report contains a wealth of information about the extent of the issue and makes twenty-one recommendations – none of which have been implemented in any substantial way. The social, economic and safety impact on communities is comprehensively dealt with in Part 3 of the Report.

The Chair of the bi-partisan committee in his Forward, noted that: "Policy makers must develop a policy mix that ensures the FIFO/DIDO work practice does not become the dominant practice, as it could lead to a hollowing out of established regional towns, particularly those inland" and that: "There are simple and practical measures that can be put in place to provide more incentive for FIFO/DIDO workers to become residential workers but foremost, governments at all levels must acknowledge that, for some communities – particularly those traditional resource communities, FIFO/DIDO is a cancer."

DIDO workforces continue to be an issue in most State mining communities even those mining communities closer to larger regional centres. Again, there are some practical policy initiatives the State Government could explore in a review of 2.20 of the RESEPP to resolve some of the social impacts that arise from hosting a DIDO workforce.

Road infrastructure and safety

One of the few areas where there has been an erosion of community and local government outcomes in relation to mining is the use by mining operations of council public roads. 2.22 of the RESEPP further limited the matters a consent authority can consider in determining an application. Previous State Government policy was much broader and permitted, for example, consideration of whether planning consent conditions should be imposed to undertake road capital works should it be required to ensure the safety of mineworkers and other road users. It is still possible to achieve desirable outcomes, but the policy setting invites a more combative negotiation involving a Council essentially submitting, at least at first instance, that consent to use a road should be refused.

Additionally, if a Council cannot persuade a consent authority to refuse consent for the use of a council public road and a Council is unable to fund it at an appropriate level of safety, both mineworkers and the travelling public are left to carry the cost, including the safety cost, of an inadequate road.

There are several policy solutions to this issue. The first is to review the RESEPP provisions to include a graduating scheme of independent evidence-based evaluation or, alternatively, the development of a guideline for mining affected road network assessments. This can be supported by an application for a special rate variation against the mining category of the

general land rates or other revenue mechanisms – including restoring the Resources for Regions scheme which, in part, addressed this policy gap.

Native vegetation landscape connectivity

Whilst it was noted above that environmental issues have been dealt with relatively comprehensively, it is noted that native vegetation landscape connectivity is not addressed in similar detail. This is more typically an issue for councils impacted by significant open-cut mining activity. The environmental value of native vegetation is, in part, determined by its extent. Fragmented pockets of native vegetation are typically less valuable. Whilst this is often addressed in individual environmental impact assessments, outcomes would be vastly superior if the landscape connectivity planning were front-loaded and undertaken comprehensively rather than piece-meal. There is an opportunity to vastly improve policy outcomes which address the State Government's overall environmental objectives.

Recommendations

MERC recommends that the State Government review the RESEPP, particularly with respect to social impact assessment and the matters set out in this report.

Please do not hesitate to reach out if you require anything further.

Yours sincerely,

Greg Lamont
Executive Officer