



For the protection of the integrity of river systems and water sources against the impacts of mining and other extractive industries

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Submission to NSW Planning System Review White Paper

New Planning System
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Rivers SOS is an alliance of 47 environmental and community groups throughout NSW concerned with the protection of the integrity of river systems and water sources from mining and other extractive industries. While we realise the Planning White Paper is extensive, our comments are directed mainly toward those aspects of planning legislation that have allowed coal mining and other extractive industries to impact on the river systems of NSW.

Position statement

Rivers SOS strongly endorses the ten principles to inform planning reform in NSW developed by the Nature Conservation Council of NSW, the Total Environment Centre and the Environmental Defender's Office NSW. In summary, these principles are:

1. Implementing ecologically sustainable development (ESD) including the precautionary principle, intragenerational and intergenerational equity, conservation of biodiversity and ecological integrity, conservation of cultural diversity and community participation in decision-making.
2. Improving the objectivity, credibility and cumulative impact review of environmental impact assessment. This includes mandating the use of independent, accredited experts in undertaking environmental impact assessment and effective assessment of cumulative impacts.
3. Ensuring genuine, appropriate and timely public participation in strategic planning and decision-making. This includes a funding mechanism to ensure community access to qualified experts for environmental impact assessment.
4. Ensuring transparency and accountability in decision-making.
5. Applying meaningful and measurable 'maintain or improve' conditions to key developments.
6. Ensuring integration with other environmental legislation. The new planning act should complement related environmental and natural resource management legislation and not override it. This would mandate efficient cross-department communication and co-operation. It would also increase the likelihood that projects would not be approved unless they 'improve or maintain environmental values'.
7. Mandating that mining and coal seam gas extraction proposals be subject to the same level of scrutiny and assessment in the planning act as all other development proposals.
8. Incorporating mandatory climate change considerations into strategic planning and development assessment.
9. Focusing on strategic planning rather than developer-driven planning.
10. Recognising the paramount role of the Land and Environment Court and maintaining third party appeal rights.

Objectives of the Act

We note that the Planning Bill lists among its objectives 'economic growth and environmental and social well-being through sustainable development' and that sustainable development is 'achieved by the integration of economic, environmental and social considerations, having regard to present and future needs'¹.

We are concerned that the White Paper and the Planning Bill remove all references to ecologically sustainable development (ESD). Nor is there any reference to the precautionary principle, biodiversity and ecological integrity or the polluter pays principle.

Recommendation 1

That ESD be clearly defined and that the definition includes a requirement that a proposal must maintain or improve environmental outcomes, including biological diversity and ecosystem processes.

Recommendation 2

That environmental outcomes be defined and appropriate and measurable performance standards set.

The Planning Bill has several objectives with no hierarchy between them, leaving wide discretion for decision-makers. It is the role of government to set objectives and ESD should be the overarching one. Most development proposals are submitted by companies or individuals whose paramount objective is profit. As an example, Illawarra Coal, a division of BHP Billiton, argued to the Southern Coalfield Inquiry that the current approval process should be extended to consider the economic trade-off of different levels of environmental restrictions. In Illawarra Coal's opinion, this economic trade-off should be the primary consideration of government².

The responsibility of government extends well beyond the economy. Intergenerational equity is now a widely accepted principle and, indeed, the equitable treatment of future generations is fundamental to the concept of ESD.

Recommendation 3

That ESD is the overarching object of the planning system and the new Planning Bill.

Recommendation 4

That NSW confirm its commitment to the definition of intergenerational equity endorsed by the Intergovernmental Agreement for the Environment on May 1st, 1992:

"The present generation should ensure that the health, diversity and productivity of the environment is maintained or enhanced for future generations".

¹ Planning Bill 2013, clause 1.3

² BHP Billiton, *Illawarra Coal, Submission to the Independent Inquiry into NSW Southern Coalfield*, July 2007

Community participation

The introduction of Part 3A under the previous legislation announced to the community that public participation was an administrative and bureaucratic burden. It disempowered the community and caused loss of faith in the planning system. Rivers SOS thus strongly supports a legislative basis for early and genuine community consultation. However, we have concerns about the implementation of the *Community Participation Charter* as set out in Part 2 of the Planning Bill. The emphasis is very much on up-front consultation:

'Once the community has participated in the development of the strategic plan for the area, planning authorities can streamline most development assessment without the need to further consult with communities unless proposals significantly depart from standards in the Local Plan'.

We note that

1. The specifics of consultation requirements are deferred to future Community Participation Plans that are to be developed in consultation with the local community.
2. The Planning Bill indicates these plans are not mandatory and cannot be challenged.
3. Effective consultation at the strategic level requires significant allocation of resources – financial, educative and facilitative.

Recommendation 5

That the Community Participation Charter be mandatory as well as actions to ensure community members have adequate information and advice to plan the communities and environments in which they want to live.

Recommendation 6

That a funding mechanism be established to ensure community access to qualified experts for environmental impact assessment.

Recommendation 7

That independent consultants with expertise in community engagement be contracted to facilitate consultation processes, funded by government for strategic planning and by the proponent for development assessment.

Infrastructure and environmental impact assessment

Previous legislation permitted impacts of mining that the Department of Environment and Climate Change (DECC) considered to be unacceptable, as many are irreversible and contrary to the principles of ESD. Of key concern to DECC was that subsidence due to longwall mining has had significant adverse impacts on river health and water dependent ecosystems, including threatened species and endangered ecological communities. It is frequently associated with the cracking of valley floors and creek lines with subsequent effects on surface and ground water³.

Further, the Sydney Catchment Authority (SCA) has estimated that within the next twenty years, 91 per cent of the Special Areas in Sydney's drinking water catchments will have been undermined⁴. Legislation to protect these areas is clearly urgent.

Rivers SOS support the stated view of the EPA Board⁵ that:

1. There is currently insufficient assessment of underground mining impacts at the approval stage.
2. The Subsidence Management Plan (SMP) approach is inadequate as it occurs after the mining strategy has already been planned and is thus too late in the process to properly address impacts and influence mine planning.
3. Environmental matters are inadequately addressed in the SMP process. Examples given were the potential impacts of diminished ground water reserves and the maintenance of surface water flows. Nor have they considered the potential impacts on aquifers either in terms of their interconnectedness or their capacity to recover lost resources.

Recommendation 8

That the imperative to respect intergenerational equity be legislated into the mining approval process.

The Sydney Catchment Authority highlights the lack of knowledge about the long-term effectiveness of current remediation techniques in natural systems. It defined three fundamental questions that need to be addressed in any consideration of the management of water resources:

1. What are the medium-term and long-term impacts of mining related subsidence on water resources and related ecosystems?
2. What are the risks to ground water and aquifers from subsidence? Where does the water go and how long will it take to restore natural water systems?
3. Is remediation of the impacts of mining-related subsidence possible?

Recommendation 9

That the precautionary principle be applied in the consideration of mining approvals.

³ NSW Department of Environment and Climate Change, Scientific Services Report, *Ecological Impacts of Longwall Mining in the Southern Coalfields of NSW – A Review*, July 2007

⁴ Sydney Catchment Authority, *Submission to Inquiry into the NSW Southern Coalfields*, July 2007

⁵ NSW EPA Board, *Inquiry into NSW Southern Coalfield. NSW EPA Board Submission*, July 2007

Recommendation 10

That the

“approvals process should require a reverse ‘onus of proof’ from the mining company before any mining is permitted which might unacceptably impact highly-significant natural features. In other words, the mining company must demonstrate, on the balance of probabilities, that identified highly-significant natural features would not be unacceptably impacted. If insufficient assurance can be provided, then mining which might cause severe impacts should not be permitted to proceed”⁶.

This Southern Coalfield Inquiry Report also recommended a ‘precautionary approach’ and a ‘reverse onus of proof’ from mining companies due to ‘the extent of current knowledge gaps’⁷.

Under current legislation, environmental impact assessment (EIA) reports, though almost always voluminous, characteristically lack scientific rigour. This makes preparation of submissions by committed members of the public both time-consuming and frustrating. Justification for apparently indefensible conclusions is often found in a footnote to a table buried deep in the appendices of a report. Invalid use of statistical procedures is common. For example, although the author would be aware that adverse air pollution impacts are most severe at their source, averages are often calculated over large areas to invalidly establish their insignificance. This would assume spontaneous and uniform diffusion that almost certainly never happens. Such deficiencies would not satisfy peer review.

Recommendation 11

That clear, mandatory, minimum requirements for environmental impact assessment be set out to ensure all assessments are objective and independent.

Recommendation 12

That an accreditation system be established for consultants allocated to prepare environmental assessments for mining proposals.

Recommendation 13

That the consent authority engage the consultants for environmental assessment of mining proposals rather than the applicant.

Recommendation 14

That the applicant fund this assessment process, but not participate in the selection or appointment of experts to carry it out.

Recommendation 15

That all environmental assessment reports for mining proposals be peer reviewed by external reviewers before submission to the consent authority.

⁶ Impacts of Underground Coal Mining on Natural Features in the Southern Coalfield, Strategic Review, NSW Department of Planning, July 2008, p.114

⁷ *Op cit*, p.6