

NSW PLANNING SYSTEM REVIEW

White Paper and Draft
Legislation Submission

NSW MINERALS COUNCIL



Introduction

The NSW Mining Industry

The NSW Minerals Council is the peak body representing the State's \$24.5 billion mining industry.

NSWMC provides a single, united voice on behalf of our 100 member companies: 40 full members (producers and explorers), 25 associate members (junior explorers) and 35 associate members (service providers) and works closely with government, industry groups, stakeholders and the community to foster a dynamic, efficient and sustainable minerals industry in NSW.

Structure of this submission

The NSW Minerals Council has made three submissions since the Planning System Review commenced in 2011.

Appendix A of this submission provides a summary of our key positions from the earlier submissions. The three earlier submissions can also be viewed by following the links below:

[Pre-consultation Submission – November 2011](#)

[Post Issues Paper Submission – March 2012](#)

[Green Paper Submission – September 2012](#)

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Executive Summary

The first of the five strategies the NSW Government has adopted to 'Make NSW Number One' is to 'Rebuild the Economy'.¹ The economy is rightly at the top of the list as it is impossible to deliver the other strategies including 'returning quality services' and 'renovating infrastructure' without the revenue streams that come from a rigorous and robust economy.

Reform of the planning system is a critical component of rebuilding the NSW economy. The planning assessment system is the gateway to investment in NSW. The Planning System Review provides the opportunity to ensure that NSW is able to attract investment in the major projects that are significant to the State's economy and generate jobs, investment that flows through to the broader business community and direct revenue to government.

While the Planning System Review has made bold and decisive changes in the area of urban development, disappointingly the White Paper and the Planning Bill do not propose the changes to State Significant Development (SSD) necessary to restore the confidence of investors in these large scale projects in NSW.

State significant developments are the projects that drive large scale investment, employment generation and economic growth. These include mining projects but also other major projects needed to underpin the strength of our economy.

Mining investment is important to NSW

Mining is a strategic industry for NSW producing its most valuable export commodity- coal, powering 84% of NSW electricity generation and underpinning the regional economies of the Hunter Valley, Illawarra and other towns and communities across the State.

Mining sector confidence in NSW is at a low and continuing to decrease. A recent survey found that NSW ranked 44th in a ranking of global mining jurisdictions, down from 20th in 2010/11 and the lowest in Australia with the exception of Tasmania.²

Despite this lack of confidence, NSW is a mining state with an abundance of resources. In 2011/12 the industry paid mining royalties to the NSW government of \$1.486 billion and mining companies spent \$9.3 billion on wages, contractors and suppliers and community contributions in NSW³. The industry currently employs 44,625 people directly and the employment of thousands more is dependent on a vigorous mining industry⁴.

Failure to address uncertainty and delays for State Significant Development will cost NSW

Modelling undertaken by PricewaterhouseCoopers on behalf of the NSW Minerals Council shows that delay and uncertainty are crucial factors impacting investment decisions made by the mining industry. The research identifies a delay of 12 months as a tipping point. At this point up to a third of planned mining projects would be abandoned, leading to a significant reduction in the number of jobs created by the industry, investment, revenue generated and redistributed and royalties paid to the Government.

In a scenario where projects are delayed by 12 months or more the potential losses to NSW over the next 20 years are alarming:

- 6445 direct jobs in mining and 22,400 indirect jobs would not be created
- \$10.3 billion in investment in today's money would be lost

¹ NSW Government, NSW 2021, A Plan to Make NSW Number 1

² Fraser Institute, Survey of Mining Companies 2012-13, February 2013

³ NSW Minerals Council, NSW Mining Economic Impact Survey 2011/12, page 3

⁴ Australian Bureau of Statistics, 6291.0.55.003 - Labour Force, Australia, Detailed, Quarterly E06, August 94

- The Government would miss out on \$600 million per year in direct revenue from mining royalties.

Reforms to address uncertainty and delay

The NSW Minerals Council has made three submissions since the commencement of the Planning System Review, as well as a number of submissions during the transition from Part 3A to SSD. The message of all these submissions has been consistent: NSW needs an efficient system that assesses the impacts of a proposed mine in a transparent, responsible manner, commensurate to the level of impact.

Without the following reforms to the Planning Bill and planning system significant investment in NSW will be lost:

- **Include explicit reference to promotion of the effective management of the State's mineral resources in the Object of the Planning Bill.** This is not an issue of principle. If this change is not made mining projects that would have been approved under the Environmental Planning and Assessment Act 1979 (EPA Act) will be rejected in the future.
- **Take action to streamline assessment and shorten timeframes.** There are a number of changes that must be made for the SSD assessment process to be efficient: including statutory timeframes in the Planning Bill; setting targets for assessment and determination of projects; deeming 'no comment' by agencies which fail to meet deadlines; making provision for the Department of Premier and Cabinet to oversight SSD applications; and integrating outstanding approvals into the development consent.
- **Include a broader provision to modify existing consents.** The power to modify consents in the Planning Bill is too narrow force modest extensions of projects into the full assessment process. A broad based modification provision will allow assessment that is commensurate to the level of impact.
- **Extinguish merit appeals for SSD where the Planning Assessment Commission (PAC) has undertaken a merit review or determined the application.** The need for merit appeal is negated in the current system for SSD, where projects are subject to assessment and determination by the independent Planning Assessment Commission (PAC), as well as a separate merit review by the PAC in many cases.
- **Urgently address the gaps in mining policy and streamline responsibilities.** Industry, government and the community need to have clear expectations of how mining projects will be assessed and the standards they will be required to comply with.
- **Address the current ad hoc nature of infrastructure contributions for mining projects.** A robust framework and guidance about what impacts should be compensated needs to be developed. In the absence of agreement the decision maker for SSD must be able to make the decision as to an appropriate contribution.
- **Ensure that decision makers have access to advice from Treasury.** Economic impacts of SSD projects are considerable and it is important that decision makers are guided by Treasury in this respect.
- **Ensure that the permissibility of mining and the Strategic Regional Land Use Plans are not lost in the changes.**

The mining industry is currently facing difficult operating conditions. Those conditions have already resulted in mining communities feeling uncertainty about their future as employees and local businesses become concerned about the impacts of the industry scaling back. In this environment it is crucial that an inefficient planning system does not cause viable projects to be lost.

A key target of the Government in rebuilding the NSW economy is to "increase the value of primary industries and mining by 20% by 2020". In order to meet that target the Government will need to address the delays and uncertainty that are crippling the resources industry and have already lead investors in other commodities lost to NSW.

Economic Impacts of the Proposed New Planning System

Reform of the planning system has over two years to date, and is not yet completed. During this time the mining industry has faced considerable changes to the regulatory environment with the introduction of the Strategic Regional Land Use Plans, the Gateway for Coal Projects, the Aquifer Interference Policy and the delegation of decision making to the PAC.

These changes have added to the time taken to assess mining projects. In addition the increasing prevalence of merit appeal has caused significant delays in the time that it takes to obtain a final decision, and adds greater risk and uncertainty to investment in mining in NSW.

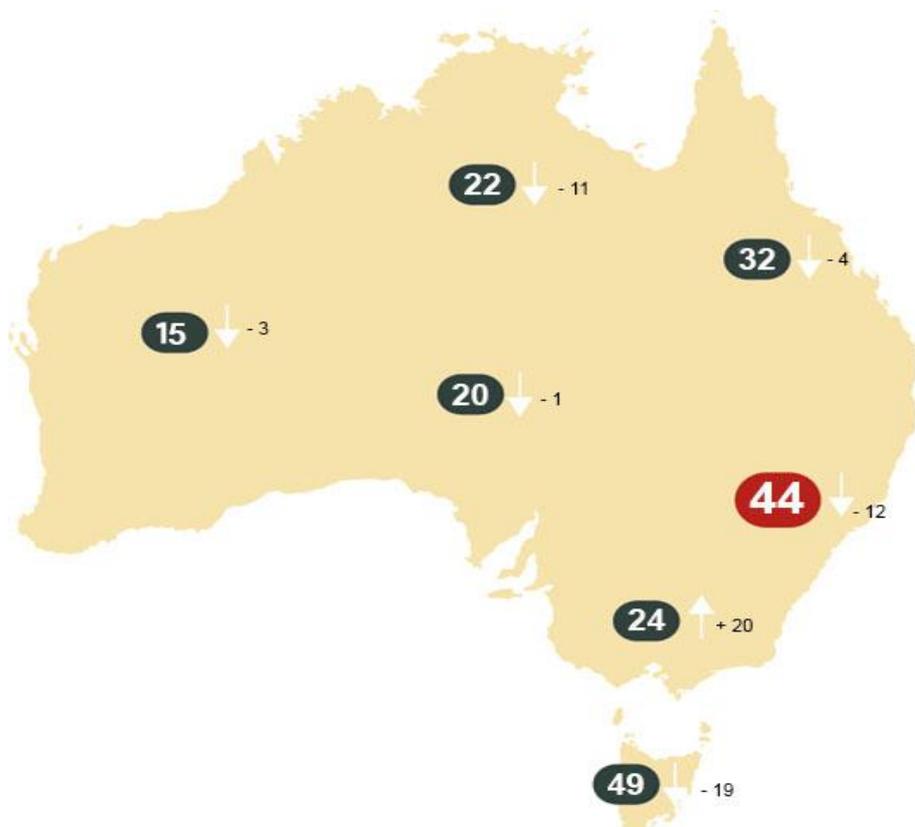
Investor confidence in NSW

The current SSD system, largely unchanged by the review, has resulted in uncertainty and inconsistency that has sapped investor confidence. Concerns about a lack of policy certainty that have been raised for a number of years have become startlingly evident as the PAC and Land and Environment Court have made a number of decisions in contradiction of the recommendations of the Department of Planning and Infrastructure (DP&I).

The Fraser Institute's *Survey of Mining Companies 2012-13* showed that investor confidence in NSW had declined since the last survey and that the State was lowly ranked, both globally and among other Australian jurisdictions – see **Figure 1 – Survey of Mining Companies 2012-13**.

NSW has dropped from a global rank of 20th in 2010/11 to 44th in 2012/13 and within Australia is the lowest ranked with the exception of Tasmania

Figure 1 –Investor confidence in Australian States - Survey of Mining Companies 2012-13



The Economic cost of the failure to improve State Significant Development

The Planning System Review has missed a number of opportunities to significantly reform the SSD assessment process and address declining investor confidence in NSW.

Delay and uncertainty have considerable impacts on projects, leading to additional costs and in some cases abandonment of projects. Failure to address delays and uncertainties caused by: the objector rights of merit appeal; the lack of a broad based modification power; and the provision of statutory timeframes, will have an impact on the NSW minerals industry and in turn on the NSW economy.

The NSW Minerals Council engaged PricewaterhouseCoopers (PwC) to undertake an analysis of the impact of delays and uncertainty arising from the planning system on the NSW Economy. The full report from PwC can be found at **Appendix B**.

PwC undertook a survey of NSW Minerals Council members to identify planned projects that would be impacted by delays and uncertainty caused by failure to address the industry's concerns about the planning system. To estimate the costs of uncertainty and delay on the mining industry PwC developed and analysed a set of scenarios to reflect the current planning system involving delays of an average of 6 months, 12 months and more than 12 months.

A delay of 12 months was found to be a tipping point at which decisions to abandon projects would be made. Under all three scenarios, delay and uncertainty had significant impacts on the NSW economy over the next 20 years.

Table 1 sets out the impacts of delays of 12 months or more. The dollar amounts are expressed as present value that is the cost today. The nominal future costs would be higher. Not all NSW members were able to respond to the survey and NSWMC does not represent all mining projects in NSW. Accordingly the analysis is conservative and is likely to understate the potential economic impact.

Table 1 – Impacts of delays of 12 months or more

Scenario	Impact	Size of impact
12 months or more delay	Direct employment	- 6,445 FTE
	Indirect employment	- 22,363 FTE
	Investment	- \$10.3 billion
	Revenue	- \$75.7 billion
	Profit	- \$19.3 billion
	Royalties	- \$6.1 billion

The delays that are crippling investor confidence in NSW

Project delays in the current system have become an almost unavoidable part of seeking development consent for a mining project. Increases in the time and complexity of assessments have not resulted in better assessments or greater confidence in assessments by third parties.

The projects below illustrate delays of 12 months and more which have occurred after the environmental impact assessment has been placed on exhibition.

Tomingley Gold Project – Delay of 14 months

- The application was lodged on 5 September 2009.
- The environmental impact assessment (EIS) went on exhibition on 17 November 2011.
- From exhibition to determination the proponents expected the process to realistically take another 9 months. This process took **23 months** and delays were attributed to a drawn out and inefficient process of receiving multiple requests for information after the exhibition.
- Approval was granted in July 2012, by which time the process had taken **2 years and 10 months**.

Warkworth Extension Project – Delay of 14 months and counting

- The application in this project was made in **March 2010**.
- DP&I made its recommendation to the PAC in October 2012, **19 months** after the project application was lodged.
- The PAC determined the project in February 2012, taking **3 months** to make a decision.
- The decision to approve was appealed to the Land and Environment Court took almost another **14 months**. The proponents have now appealed.
- The process from application to today, without the project being finalised has taken **3 years and 3 months**.

Ulan Continued Operations Project – Delay of 18 months

- The application for this project was lodged in September 2008.
- The DP&I made its recommendation to the then Minister from Planning in November 2010 and it was approved in the same months, **26 months** after the application was commenced.
- The decision to approve the project was appealed and the Land and Environment Court approved the project, with some minor changes to conditions in March 2012, **18 months** after the original decision to approve.
- The process from application to conclusion took **3 years and 6 months**.

Coalpac Consolidation Project – Delay of 14 months and counting

- The application for this project was lodged in October 2010.
- The EIS exhibition ended on 1 June 2012.
- Some **14 months** after the end of the exhibition period the project has still to be determined. In the meantime it has been reviewed by the PAC and the proponent has provided extensive responses to their concerns.
- This is an application to extend the mine and because of the delays more than 90 employees have had to be made redundant. It is now **2 years and 8 months** since the application was commenced.

Drayton South Coal Project – Delay unknown

- The project application was lodged on 4 March 2011
- The exhibition period ended on 21 December 2013.
- The Minister for Planning and Infrastructure referred the project to the PAC to undertake a review and public hearing in March 2013. The **Minister subsequently asked the PAC to delay the public hearing** as the thoroughbred horse breeders opposing the project do not believe that the environmental impact statement adequately addresses their concerns.

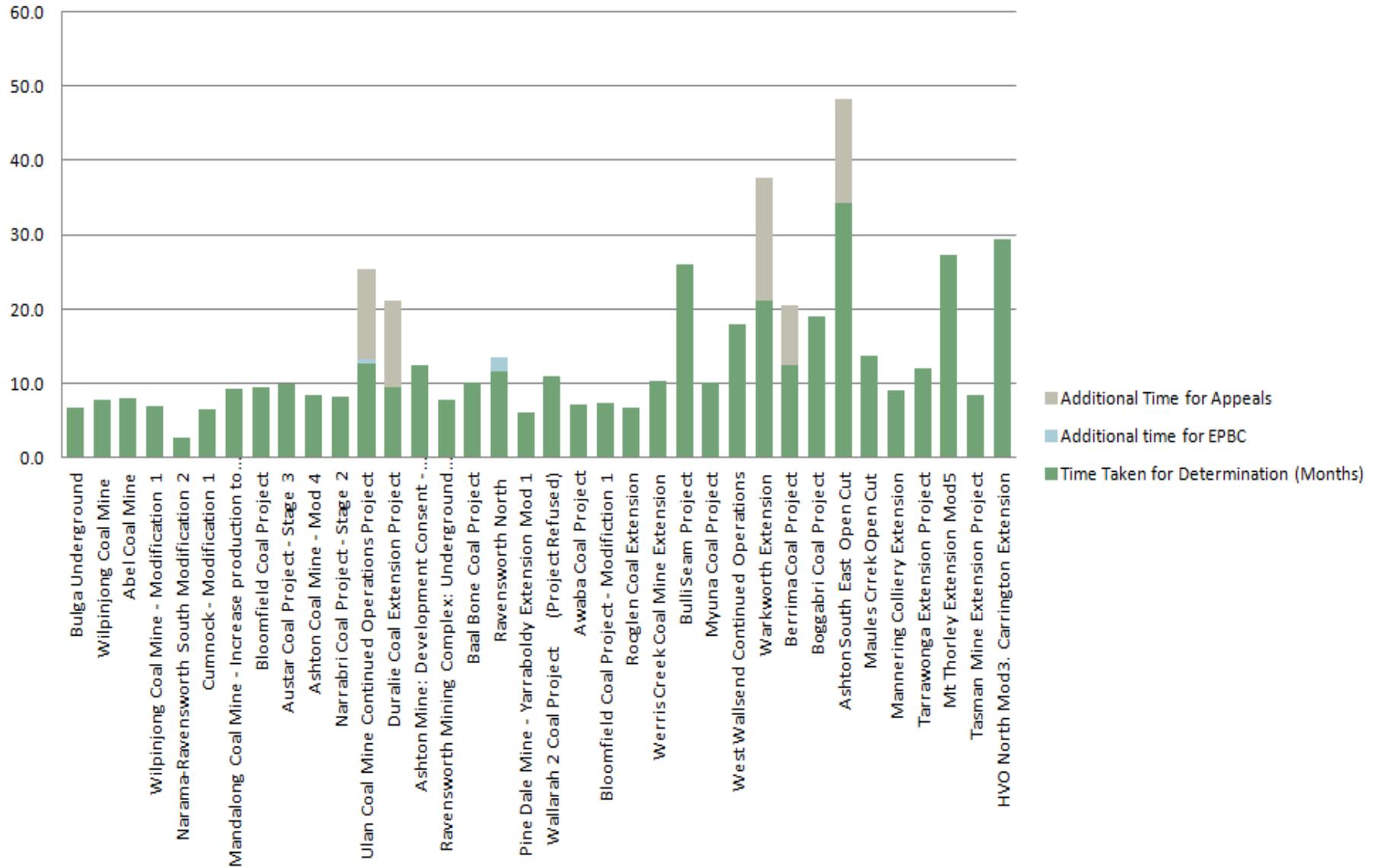
Consistent points of delay

There are a number of points where projects consistently suffer delay.

- **Between the beginning of exhibition and the determination.** This period is often subject to delays for a number of reasons including: the period of exhibition is extended; submissions are not provided on time; requests are made for additional information; submissions are not provided to the proponent in a timely manner.
- **The PAC process.** Determination by the PAC results in delays, particularly where the PAC places itself in the role of the assessor instead of relying on DP&I.
- **Appeals to the Land and Environment Court.** Appeals cause very long delays, frequently of more than 12 months. Appeals also bring higher levels of uncertainty.
- **Agency input on the Environmental Assessment Requirements (EARs).** This process should be relatively simple as EARs are largely consistent between similar projects, however unnecessary delay can be caused at this point and without statutory timeframes there is little the proponent can do.
- **Determining adequacy of the EIS.** This process can significantly delay placing the project on exhibition.
- **Ongoing agency requests for additional information.** A range of project changes and additional information is requested by DP&I after the EIS exhibition. These requests have been exacerbated, with DP&I second guessing all of the project changes and information requirements that the PAC members may require in determining the project. There is currently no mechanism for determining what the PAC members actually require. This resulting in an overly conservative approach by DP&I.

Since 2004 the determination part of the process -from the commencement of exhibition to the final decision – has been increasing. **Figure 2** below shows determination times for coal projects NSW (projects with new production of greater than 1mtpa), have increased significantly since 2004.

Figure 2 - Determination times for coal projects NSW (projects with new production of greater than 1mtpa)



The New Planning System should...

- 1. Include promotion of the effective management of the State's mineral resources in the Object of the Planning Bill**
- 2. Streamline the SSD assessment process, including statutory time limits with meaningful penalties for government agencies that fail to comply, and consolidate approvals**
- 3. Include a broad based power to modify SSD consents in the Planning Bill**
- 4. Remove the right to a merit appeal on SSD determinations for both proponents and objectors**
- 5. Provide clear policies with regard to mining to guide government, industry, the community and decision makers beginning with the NSW Planning Policy on Resources and Energy**
- 6. Provide robust guidance and a framework for the negotiation of Voluntary Planning Agreements and amend the Planning Bill to allow SSD decision makers to make the final decision on infrastructure contributions**
- 7. Ensure that the permissibility of mining and the Strategic Regional Land Use Plans are transferred intact into the new strategic plans**
- 8. Ensure participation in SSD of relevant government agencies including Treasury**

1. Include promotion of the effective management of the State's mineral resources in the Object of the Planning Bill

The Environmental Planning and Assessment Act (1979) (EPA Act) includes specific reference in the object of the Act to the proper management, development and conservation of the state's mineral resources for the purpose of promoting the social and economic welfare of the community and a better environment.

This has been removed from the Object of the Planning Bill and must be reinserted to ensure that responsible development of the State's mineral resources is not automatically deferred to other matters explicitly referenced in the Object.

Express reference to mineral resources should be retained

The Planning Bill removes explicit reference to mineral resources, and has a general provision with regard to the promotion of "economic growth and environmental and social well-being through sustainable development".

This general reference is inadequate given that express reference continues to be made to the effective management of agricultural resources and water, potentially elevating these resources in any balancing of social, environmental and economic impacts of a particular development.

Reasoning that mining is included in the general catch-all of 'economic growth', while making express reference to agriculture is inconsistent and concerning and sends the wrong message to decision makers. Given the significant economic importance of mining to the NSW economy, it accounts for 20 % total NSW exports by value, powers 84% of NSW electricity generation and underpins the Hunter Valley and Illawarra economies, it should be acknowledged in the Object of the Planning Bill.

The Object of the Act should reflect the Mining Act and Government Policy

The object of the Planning Bill should reflect the government's own policy and the objects of the Mining Act 1992, which states that "*The objects of this Act are to encourage and facilitate the discovery and development of mineral resources in New South Wales...*"⁵

The NSW Government in its policy NSW 2021, A Plan to Make NSW Number 1 states that Goal One is to "Improve the NSW Economy". One of the four targets to achieve this improvement is to "*Increase the value of primary industries and mining production by 30% by 2020*".⁶

Recommendation

- The object of the Planning Bill must be amended to include express reference to promotion of the proper management, development and conservation of the State's mineral resources for the purpose of promoting the social and economic welfare of the community and a better environment.

NSW Mining Act 1992, section 3A

NSW Government, NSW 2021, A Plan to Make NSW Number 1, page 6

2. Streamline the SSD assessment process, including statutory time limits with meaningful penalties for government agencies that fail to comply, and consolidate approvals

Delay is critical to the viability of projects. It is crucial that the Planning System Review ensure that SSD is streamlined, statutory timeframes are provided, agencies are properly incentivised to provide an efficient service and, where possible, approvals are consolidated.

NSW lags behind other jurisdictions in Australia and internationally in recognising and seeking to address the impact of delays in the assessment process on the SSD pipeline and the economy more broadly.

Appropriate timeframes for assessment and determination of projects

The timeframes for mining projects in NSW are too long. While the new object of the Planning Bill includes reference to “efficient and timely development assessment”, there is little change to the substantive provisions with regard to SSD that would drive any improvement. The White Paper does not identify improving efficiency of assessment and determination of SSD as a priority of the reforms. The object should require that ‘efficient and timely determination’ is required.

Other states and the Australian Government all explicitly recognise reducing the timeframes for assessment of major projects as crucially important to the delivery of economic growth. A study by Port Jackson Partners for the Minerals Council of Australia in September 2012 found that thermal coal projects in Australia are delayed on average 3.1 years, while in the rest of the world the average delay was 1.8 years⁷.

The Productivity Commission has been tasked by the Australian Government to undertake a study with regard to major development assessment processes. Part of the scope of the study is to “...to make recommendations to improve Australia’s processes, both within and between jurisdictions, by reducing duplication, removing unnecessary complexity and regulation, and eliminating unnecessary costs or unnecessarily lengthy timeframes for approvals processes”⁸

The Queensland Government has acknowledged the need to provide efficient assessment processes for major projects. In 2011 they set a target of reducing assessment timeframes for major mining projects to 17 months by 2014. A change of government has seen a change of approach, and the adoption of a Coordinator General to oversee “coordinated projects” –major infrastructure and resources projects. Since the appointment of the Coordinator General it is understood assessment and determination times for these major projects have been reduced by 50%.

At the time of the introduction of SSD the NSW Minerals Council called for the inclusion of statutory timeframes to ensure that applications are dealt with efficiently. Despite this there are few statutory timeframes applicable to government agencies in the current provisions with regard to SSD or the Planning Bill.

Timeframes for the following processes should be included in the new planning legislation:

- The issuing of Environmental Assessment Requirements (EARs) for an Environmental Impact Statement (EIS)
- Timeframe for any consultation by DP&I with other agencies in relation to the content of any EARs
- The adequacy review of an EIS
- The provision of public submissions on an EIS to the proponent and agencies

⁷ Port Jackson Partners, Opportunity at Risk: Regaining our Competitive Edge in Minerals Resources, September 2012, page 27

⁸ Productivity Commission, Major Project Development Assessment Processes Productivity Commission Issues Paper. February 2013, page 25

- The deadline for notifying a determination for the purposes of "time starting to run" in relation to merit appeal rights
- The deadline for notifying a determination for the purposes of "time starting to run" in relation to judicial review challenge.

Incentive to comply with the timeframes

Currently there is little incentive on government agencies to comply with any statutory timeframes as the risks and costs of delay are borne by the proponent.

The current and proposed systems provide the proponent with a limited window of opportunity to seek a deemed refusal if a determination has not been made within 90 days. However this effectively penalises the proponent who needs to abandon the application to DP&I and begin a new application before the Land and Environment Court. The Land and Environment Court is not an efficient or appropriate forum for making complex planning decisions.

Deeming no reply to equal no comment would provide incentive to agencies to ensure that they participate within statutory timeframes. Inserting the Department of Premier and Cabinet into the process with a role to oversee and ensure that projects are assessed and determined within appropriate time frames would also provide incentive.

Streamlined assessment and consolidated approvals

It is critical that the SSD assessment system is streamlined and avoids the need for secondary approvals, such as roads approvals, which add time and complexity and should be part of a consolidated planning approval.

Examples of concurrences or other approvals that should be exempt for SSD include those relating to:

- Water Management Act 2000 (NSW)
- National Parks and Wildlife Act 1974 (NSW)
- Threatened Species Conservation Act 1995 (NSW)
- The Mine Subsidence Board.

Recommendations

- The Government should adopt targets for the reduction of approval timeframes and make achieving those targets a key performance indicator for relevant government agencies
- The Department of Premier and Cabinet should oversee the efficient assessment and determination of major projects.
- Statutory timeframes for the important milestones of the SSD process must be included in the Planning Bill or regulations
- Deemed approval type mechanisms should be used to ensure that state agencies provide advice and submissions in a timely manner
- Exhibition of projects should be widely publicised and the timeframes for submissions should be strictly adhered to by DP&I.

3. Include a broad based power to modify SSD consents in the Planning Bill

Changes to the EPA Act made in 2011 to repeal the Part 3A Major Projects provisions and introduce SSD, removed the broad based modification provisions for state significant projects, which have not been reintroduced in the Planning Bill. Failing to include a similar streamlined pathway for assessment of modifications in the new legislation will inevitably cause unwarranted delays and take up additional departmental assessment resources.

Mining is a dynamic form of development

Modifications under Division 4.8 of the Planning Bill will only be available if the modified development would be substantially the same as the original consent. Mining projects, which are largely works as opposed to construction of permanent built structures, require frequent modifications. This is because mining is a complex, dynamic activity that can extend over decades, and not all potential variations over the life of mine can be predicted at the time of the original development application.

Factors such as new geological information, minor changes to mine plans, improvements in technology, and new environmental information can all lead to changes being required or desirable throughout the life of mine. The planning system must have the flexibility to account for these changes, using assessment processes commensurate with the level of impact.

For example the Mangoola Mine, which was approved in 2007, is now up to its 6th modification application. While best attempts are made to ensure the initial approval is exhaustive it cannot deal with all the contingencies and unknowns of a mining project.

Assessment should be commensurate to impact

Transitional arrangements for Part 3A mean that consents made under that legislation continue to have access to the broad modification power of section 75W. Importantly, DP&I are able to determine the level of assessment that such an application requires.

DP&I currently make an assessment to determine:

- Whether the application is appropriate for determination as a modification.
- Whether or not to issue Director General's Environmental Assessment Requirements.
- Whether or not to place the project on exhibition.

Although this is consistent with the principles adopted by the new planning system of ensuring assessment is commensurate with impact, it would not be the case under the Planning Bill as currently drafted, where many changes to existing consents would be subject to a full new application.

Analysis of determined modification applications over the past 18 months (**Table 2** below) shows that DP&I have acted consistently and responsibly to ensure that s 75W modifications are assessed in a way that is commensurate to their impact.

The analysis also shows that s 75W modifications are consistently determined faster and with fewer submissions than full applications, and that when applications referred to the PAC because of political donations are excluded, the vast majority of modifications are able to be determined by senior officers within DP&I.

Table 2 – Analysis of modifications February 2012 – June 2013

Average Time (months)	
Part 3A	21.2
Part 3A Modification	6.4
SSD (only 1 application determined)	15.1
Part 3A Modifications	
Average number of submissions (modifications that were exhibited)	15.9
Council objected	8.6 %
Determined by senior officers of DP&I	59.5 %
Applications exhibited	66.6 %

Projects to modestly extend a mine within the existing lease area will require a full application

In the current operating environment small extensions to projects within the mining lease area will be much more likely than new projects. While these projects fit within the broad modification power for Part 3A, they will not fit within the proposed s 4.38 of the Planning Bill.

In 2004 the Whitehaven Coal Mine proposed a modest expansion to the mine that would have the effect of extending the mine life by two year by extending the open pit southerly to incorporate an area of 50 hectares which was wholly within the existing mining lease. In assessing the project DP&I stated that *“It has also concluded that these benefits can be obtained without generating any significant environmental impacts”*.

Despite this assessment of no significant environmental impact the project did not proceed by way of section 96 instead requiring a completely new application.

Exposing these modest extensions to the full development application process including delays and the possibility of merit appeal will reduce their viability.

Consequences of not including a broad based modification power

The risks of not including a broad based modification power are:

- **Modifications will take longer; incur more costs and uncertainty.** This may make small extensions or other modifications unviable. This is a very real risk to continuing operations and jobs in the current investment climate where extensions and modifications are more likely to be pursued than capital intensive greenfield projects.
- **Greater resources will be required.** As more SSD applications are determined and Part 3A consents begin to make up less of the active projects, more full applications will required to be lodged for modifications. This will increase the workload of DP&I inevitably causing further delays.
- **Given the narrowness of the modification power proponents and the DP&I will act conservatively.** Proposed s 4.38 is narrow. In order to avoid going through the whole determination process only to be challenged in court, proponents and DP&I will act conservatively and decide that lodging a full application is the best course where there is not a clear precedent.

Recommendation

- The Planning Bill must include a broad based power for the Minister for Planning and Infrastructure or his delegate to modify SSD consents.

4. Remove the right to a merit appeal on SSD determinations for both proponents and objectors

Merit appeal has increasingly become an avenue to frustrate and delay mining projects and is eroding the confidence of mining investors in NSW. Appeal to a court is neither an ideal or appropriate way to determined complex projects involving multiple technical disciplines and assessment by multiple government agencies.

The current NSW Government has introduced significant independence and transparency into the SSD process eliminating the need for further appeal to the court.

Merit appeal causes crippling delay and uncertainty for SSD projects

Recent decisions in relation the Warkworth Extension and Berrima Colliery have highlighted the very significant additional risk that objector rights to merit appeal add to developing projects in NSW.

While some recent appeals have been successful, the history of merit appeals against mining projects has been different. In the past very few appeals against mining projects have been successful, but even where the project is ultimately approved the time and resources involved in defending the applications are considerable deterrents to investing in NSW.

Using the third party merit appeal provisions of the EP&A Act as a tactic to delay development is simple and low risk as there is a high likelihood that the court will not award costs against the third party applicant. In addition there is no requirement to be represented by a legally qualified person.

Green groups have explicitly stated that they will use the merit appeal process to frustrate projects, regardless of the merit of the appeal. In a document *Stopping the Australian Coal Export Boom*, Greenpeace and associated organisations, including the NSW Environmental Defenders Office state “Legal challenges can stop projects outright, or can delay them in order to buy time to build a much stronger movement and powerful public campaigns.”⁹ The document goes on to say that the group will “lodge legal challenges to the approval of all of the major new coal ports, as well as key rail links (where possible), the mega-mines and several other mines chosen for strategic campaign purposes.”

Merit appeal is unnecessary in the light of independent review and determination

Over a number of years various independent processes have been introduced to ensure that projects are determined on their merits alone. This includes PAC reviews and PAC determinations. These processes lead to greater transparency in decision making, but also lengthen the approval process.

Reduction in third party merit appeal should be a natural consequence of additional oversight; however this has not been the case. Merit appeals for SSD projects have not been considered at all by the Planning System Review to date. The consequence is that projects such as Ashton Coal Operation’s South East Open Cut can be supported by DP&I, go through two PAC determinations and still be subject to a third party merit appeal to the Land and Environment Court.

⁹ Anti Coal Movement (Greenpeace, Coalswarm, Graeme Wood Foundation, Lock the Gate), *Stopping the Australian Coal Export Boom*, page 6

Recommendation

- The Planning Bill must remove the right to merit appeal for both proponents and objectors where the application has been subject to any of the following:
 - A review by the PAC
 - A public hearing by the PAC (this is currently the case)
 - A determination by the PAC.

Recent Land and Environment Court Appeals

Ulan Continued Operations Project

This project was appealed to the Land and Environment Court. The appeal took 18 months.

The Court was initially asked to disapprove the project on three grounds: greenhouse gas offsets, biodiversity offsets and water.

The Court approved the project subject to some minor additional conditions around biodiversity offsets. The legal cost to the proponent was \$1.5 million. As a result of the appeal the project was placed at risk and 270 direct jobs during construction and 300 new positions during operation as well as capital investment in excess of \$1billion could have been lost to NSW.

Warkworth Extension Project

This project was extensively assessed by relevant government agencies. DP&I recommended that the project be approved subject to conditions.

The project was determined and approved by the PAC.

The determination period (from the end of the exhibition until the decision was made by the PAC) took 20 months. While determination periods have been increasing since 2010 (see **Figure 2**), this is at the high end of the period of time usually taken. The three members PAC took three months to make their determination to approve the project.

The Land and Environment Court appeal took 14 months. The final hearing involved various experts being cross examined in open court. The judge then retired to make his determination.

The decision to refuse the project has very considerable implications for the local community. The extension is necessary to continue efficient operations at the mine and 1300 jobs are now at risk pending an appeal by the proponent and the Minister for Planning and Infrastructure.

5. Provide clear policies with regard to mining to guide government, industry, the community and decision makers beginning with the NSW Planning Policy on Resources and Energy

Gaps in the government policy on the assessment of mining projects are becoming increasingly evident. PAC and Land and Environment Court decisions have highlighted gaps and ambiguities in government policy. Developing a clear, certain whole of government policy on mining, which is consistently applied, must be a priority for reform of the planning system.

Assess, prioritise and fill policy gaps for mining

The Government should make the policy by which projects are assessed and conditioned, and that policy should be clear and unambiguous to proponents, the community and decision makers.

The Government needs to urgently undertake an assessment of NSW policies in relation to mining and ensure that policy in these areas is clearly articulated by government. It should not be the place of independent decision makers or the court to make policy for NSW. The following areas require clear whole of government policy as a matter of priority:

- Biodiversity impacts
- Infrastructure contributions
- Circumstances for the acquisition of properties impacted by noise
- Greenhouse gas offsets
- Assessment of economic impacts.

Address overlapping responsibilities

It is crucial that as part of the assessment of mining related policies the Government clarify responsibilities of the various agencies to reduce duplication. Duplication exists between the development consents and the statutory responsibilities and authorities of other government agencies. Examples are:

- The overlap between extraction plans (DP&I) and subsidence management plans (NSW Trade and Investment, Division of Resources and Energy)
- The overlap between Environmental Protection Licences (EPA) and development consents (DP&I).

Development of the NSW Planning Policy on Energy and Resources

The NSW Planning Policy on Energy and Resources should set the high level policy for the development of mining in NSW. The policy should be developed in close consultation with the industry.

The Policy should:

- Recognise the importance of the mining industry to NSW, as well as its inherently dynamic and temporary nature.
- Recognise the Object of the Mining Act 1992, to “encourage and facilitate the discovery and development of mineral resources in New South Wales, having regard to the need to encourage ecologically sustainable development...”¹⁰.
- Confirm the permissibility of mining with consent.

¹⁰ NSW Mining Act 1992, section 3A

- Address the compatibility of other development with mining, as per the State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007 (the Mining SEPP), clauses 12 and 13.
- Acknowledge the process of individual merit based assessment to determine viability of mining.
- Confirm the desirability of integrated mining policy and the importance of integrated, streamlined policies and responsibilities for mining.

Recommendations

- The Government must address the gaps in mining policy as a matter of priority. The same process should address overlapping responsibilities for assessment and compliance.
- The NSW Planning Policy should be developed in close consultation with industry.
- Develop and implement an integrated mining policy in consultation with industry.

6. Provide robust guidance and a framework for the negotiation of Voluntary Planning Agreements and amend the Planning Bill to allow SSD decision makers to make the final decision on infrastructure contributions

In recent years an expectation has arisen, from both DP&I and local councils, that mining proponents will enter into voluntary planning agreements. There is no guidance on how this process should be undertaken and what impacts are appropriately compensated by mining proponents.

It is not appropriate for all social and economic infrastructure requirements in a region to be identified and apportioned between proponents of different classes of development. There must be a link between the need created by the development that requires the provision of the infrastructure.

Lack of clear guidance frustrating both council and proponents

Negotiations of infrastructure contributions for mining projects by way of a VPA have become the standard approach for mining projects. There is no guidance however on what impacts should be taken into account and how these should be assessed and compensated.

Confusion also exists about the extent to which mining projects should provide compensation to councils in relation to impacts that result from additional people moving to an area in order to work on the project. The impacts on local infrastructure of additional residents should largely be already compensated for through infrastructure contributions levied on developers of residential property. There is little attention paid to the net benefits a project generally brings to a region and additional payments already required of mining projects made such as higher rates.

DP&I is currently preparing Guidelines for the Negotiations of VPAs. This guideline should provide robust guidance, and include a matrix for determining the level of impact of a project on local infrastructure which would determine what payment should be required.

Lack of a clear framework for negotiation of VPAs

The process for negotiating a VPA currently has no framework. DP&I needs to put in place a process with a clear time frame for the negotiation of the VPA. In the event that an agreement cannot be reached within that time the negotiations should not hold up the assessment and determination of the project.

Decision maker to assess and condition any contribution in the event that a VPA cannot be negotiated

The Government should provide that in the event that a VPA cannot be negotiated for a SSD project the decision maker can assess the impacts of the project on local infrastructure and make appropriate conditions for a contribution to be made by the project. The decision maker should be guided by the Guidelines for the Negotiations of VPAs. Any such condition would need to override any local or regional infrastructure contribution.

The White Paper discussion of infrastructure contributions has focussed almost exclusively on addressing longstanding problems with infrastructure contributions for the property industry and residential development. It does not provide guidance as to how it will apply to mining developments.

State significant developments, particularly mining are different from local development such as residential development. There are substantially fewer projects and they are subject to much more

detailed assessment of social and economic impacts (with some exceptions). They are less homogenous and have different impacts. As such these projects should not be dealt with by the local and regional infrastructure contributions which are proposed in the Planning Bill and the White Paper.

Recommendations

- The Government must:
 - Provide robust guidance on infrastructure contributions of mining projects in the Guidelines for the Negotiations of VPAs
 - Put in place a clear process with timeframes for the negotiation of VPAs
 - Amend the Planning Bill to provide that for SSD projects the decision maker may make appropriate conditions for infrastructure contributions to be made by the project.

7. Ensure that the permissibility of mining and the Strategic Regional Land Use Plans are transferred intact into the new strategic plans

Ensuring a certain and consistent regulatory landscape is vital to making NSW a more attractive place to invest. Since 2011 there has been an environment of regulatory uncertainty in NSW as the planning system review has dragged on and the Strategic Regional Land Use policy was developed.

It is crucial that the development of new strategic plans does not provide an opportunity for the reopening of the issue of where mining development can be proposed and assessed in NSW.

Ensure the Permissibility of Mining

The following areas of the Mining SEPP would need to be included by the NSW Government in the standard local land use plan, and not subject to change:

- The permissibility of mining
- Exempt and complying mining development
- Permissibility of exploration without development consent
- Evaluation and consideration of incompatible development in areas where there is currently mining or possible future extraction of mineral resources.

Retain the SRLUPs

Similarly the Strategic Regional Land Use Plans and legislation and policy implementing the plans should be translated in full into the new system of strategic planning. Exhaustive consultation, as well as significant resources to implement the plans has already been expended. Any changes to these plans would signal a significant change in the sovereign risk of NSW and inevitably lead to loss of investment.

Recommendations

- The development control provisions of the State Environmental Planning Policy (Mining, Petroleum Production And Extractive Industries) 2007 must be transferred to the Local Plans
- The legislation and policy providing for the Strategic Regional Land Use Plans must be retained in the new planning system.

8. Ensure participation in SSD of relevant government agencies including Treasury

A range of government agencies provide input into the assessment of SSD projects, including: NSW Health; the Office of Environment and Heritage; the EPA; the NSW Trade and Investment; and Roads and Maritime Services. Although the social and economic impacts of mining projects are subject to increasing scrutiny, there is no expert agency input on this aspect of SSD applications.

Economic impacts of SSD projects

SSD projects provide jobs and investment that power the economic growth of NSW. In 2011-12 the NSW mining industry spent \$9.3 billion in NSW directly on wages, suppliers and community contributions. It is appropriate that decision makers including the PAC and the Land and Environment Court have access to government expertise on the economic impacts of SSD projects, and guidance on how to balance the local regional and state costs and benefits.

The economic impacts of projects have increasingly been a focus of decision makers and reviewers of projects. Like health, biodiversity and water, economics is an area where different experts have differing opinions. It is difficult for decisions makers to weigh different expert opinion in this area.

Treasury should begin a practice of providing input on mine development applications. The final determination requires a balance of the social, economic and environmental factors. Treasury would be able to provide independent advice with regard to conflicting economic assessments and also guide decision makers on whether appropriate forms of economic analysis have been used.

Examples of recent cases where Treasury input would have been beneficial

In 2013 there have been two notable examples where Treasury input would have been beneficial to decision makers:

- **Warkworth Extension Project** - The decision to approve this project by the PAC was appealed to the Land and Environment Court. The Land and Environment Court needed to consider the evidence of opposing experts with regard to costs benefits analysis and other economic modelling techniques. The Court would have been assisted by a submission from Treasury.
- **Coalpac Consolidation Project** – The PAC reviewed the project. In the review report the PAC considered costs benefit analysis undertaken by the proponent and economic analysis of the impact of the project on electricity prices. Subsequent to the review DP&I sought advice from Treasury to clarify issues raised by the PAC. This type of information should be available to review and decision making bodies at the outset of their deliberations in the form of a submission.

Recommendations

- NSW Treasury should:
 - Provide input to individual SSD applications
 - Provide guidance on how economic impacts of mining projects should be assessed.

Other Recommended Changes to the Planning Bill

- 1.1 Section 5.4 of the Planning Bill should be amended to make it clear that an environmental impact statement is only be required where, in the opinion of the determining authority, the relevant development is likely to significantly affect the environment.**

The recent decision Fullerton Cove Residents Action Group Incorporated v Dart Energy Ltd (No 2) [2013] NSWLEC 38 potentially opens the door for any person who opposes a project assessed under Part 5 of the EP&A Act:

- To commence judicial review proceedings in relation to assessments carried out under Part 5 of the EP&A Act via the usual Review of Environmental Factors (REF) instead of an Environmental Impact Statement (EIS)
- To adduce new expert evidence (which proponents and Government agencies will be required to refute) as to the likely impacts of a project and the significance of these impacts.

This will create uncertainty, delays and costs for mining companies seeking to rely on exploration approvals granted by Government agencies following an assessment under Part 5 of the EP&A Act.

- 1.2 Amendments should be made to the relevant provisions of the Planning Bill dealing with the imposition of biodiversity offset contributions, in order that such contributions are consistent with any relevant policy, plan or program endorsed pursuant to a strategic assessment carried out under Part 10 of the EPBC Act**

Although the provisions in the Planning Bill relating to biodiversity offset contributions establish a framework which has the potential to recognise mining industry initiatives like the current strategic assessment of biodiversity in the Upper Hunter Valley region, those provisions in and of themselves provide no guarantee that the outcomes of such strategic assessments will be accurately and consistently reflected in Regional Growth Plans, Subregional Delivery Plans and Local Plans.

The following amendments should be made to provide a greater degree of certainty in this regard:

- (a) an amendment to s 3.5(2)(g) as follows:
- (2) A draft regional growth plan is to identify the following:
- ...
- (g) the kind of development on any particular land in the region for which biodiversity offset contributions are proposed, provided that such biodiversity offset contributions are consistent with any relevant policy, plan or program endorsed pursuant to a strategic assessment carried out under Part 10 of the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999* (unless identified in subregional delivery plans),
- (b) an amendment to s 3.6(2)(f) as follows:
- (2) A draft subregional delivery plan is to identify the following:
- ...
- (g) the kind of development on any particular land in the subregion for which biodiversity offset contributions are proposed, provided that such biodiversity offset contributions are consistent with any relevant policy, plan or program endorsed pursuant to a strategic assessment carried out under Part 10 of the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999*,

- (c) the inclusion of a new s 3.13(3A) as follows:
- (3) The relevant planning authority may submit to the Minister draft provisions of a local plan (other than planning control provisions) it has prepared. The Minister may make any such provisions of a local plan in the form in which the draft provisions were submitted or with such modifications as the Minister considers appropriate (or decide not to do so).
- (3A) If the draft provisions referred to in subsection (3) are biodiversity offset contribution provisions, the relevant planning authority can only submit such draft provisions to the Minister if they are consistent with any relevant policy, plan or program endorsed pursuant to a strategic assessment carried out under Part 10 of the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999*.

1.3 S 6.1(3) of the Planning Bill must be amended to extend the benefit of s 6.2 to investigative activities that have to be carried out for the purpose of providing assessment information for the "Gateway Process"

Division 6.1 of the Planning Bill reproduces the substance of what is contained in s 89J of the EP&A Act. This is achieved by two separate provisions: ss 6.1 and 6.2. These sections provide that certain approvals that would otherwise be required are not required to be obtained by a proponent when undertaking investigations as part of an Environmental Impact Assessment.

The problem with s 6.1(3) is that, it has failed to extend the exemption of having to obtain approvals of the kind listed in s 6.2, to a proponent who will be required to obtain such approvals for the purpose of investigative activities that have to be carried out in connection with providing assessment information for the "Gateway process". Unless this exemption is so extended, there will be a delay for the mining industry associated with the "Gateway process".

The Government has accepted on policy grounds that the industry should be exempt from obtaining such approvals in respect of investigative work needed for an EIS. The same principle should apply for investigative work that is carried out in connection with the "Gateway process".

The deficiency in s 6.1(3) of the Planning Bill is also present in s 89J of the EP&A Act. The latter provision was drafted before the Government prepared its draft amendments to the Mining SEPP for the introduction of the "Gateway process". Section 89J of the EP&A Act should be amended in the same manner as recommended for s 6.1(3) of the Planning Bill.

1.4 The provision in the Planning Bill equivalent to the current section 79C of the EP&A Act requires a minor amendment to refine the operation of the provision in respect of SSD

Section 4.19(5) as follows, so as to avoid any doubt that "development assessment codes" need not be taken into account in determining an SSD application:

- (5) Development assessment codes (and their acceptable solutions and performance outcomes) are also to be taken into consideration (but not for State significant development)...

1.5 In circumstances where a proposed modification to an SSD consent involves merely the correction of a minor error, misdescription or miscalculation, there is no provision in Division 4.8 in Part 4 of the Planning Bill that establishes a truncated modification process. This needs to be addressed.

Division 4.8 in Part 4 of the Planning Bill contains provisions similar to, but not identical to s 96 of the EP&A Act.

Although the White Paper (at p 141) states that the new scheme will retain the ability to modify a development consent to correct a minor error, misdescription or miscalculation,

there is no equivalent provision in Division 4.8 to s 96(1) of the Act which creates a truncated process for minor modifications of this kind.

This would appear to be either an oversight or a deliberate drafting approach which has the object of minimising the length of the Planning Bill with the intent that significant provisions presently contained in s 96 of the EP&A Act will be contained in the regulations to the Planning Bill. Section 4.38 should be amended to include a provision that is identical to s 96(1) of the EP&A Act.

1.6 The express reference in the objects of the Planning Bill to "efficient and timely development assessment" is a partial improvement on the EP&A Act, but it needs to be augmented

An improvement in the objects of the Planning Bill (as compared with the objects of the EP&A Act), is the express reference to an efficient and timely development assessment in s 1.3(1)(h). That provision states that an object of the Act is to promote:

efficient and timely development assessment proportionate to the likely impacts of proposed development.

It should be noted however, that s 1.3(1)(h) only refers to "efficient and timely development assessment". The word "determination" or expression "approval process" is not mentioned. This is a glaring omission. A planning system which has an efficient assessment process, but a decision-making process that is characterised by delay, is second-rate.

The semi-adequate nature of s 1.3(1)(h) can be contrasted with s 3(2)(d) of the *Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act)* which states:

3(2) In order to achieve its objects, the Act:

...

(d) adopts an efficient and timely Commonwealth environmental assessment and approval process that will ensure activities that are likely to have significant impacts on the environment are properly assessed; ...

Section 1.3(1)(h) of the Planning Bill should be amended to insert the underlined words:

(h) efficient and timely development assessment and approval process proportionate to the likely impacts of proposed development.

ANNEXURE A - Summary of NSWMC previous submissions

Objectives

1. The NSW minerals industry supports the objectives for the planning system outlined in the Green Paper, in particular the importance placed on promoting economic development and competitiveness
2. The objects of the new Planning Act should have equal weight
3. The objects of the new Planning Act should be consistent with the Mining Act and should encourage the discovery and development of the mineral resources of NSW

Community and Stakeholder Engagement

4. The goal of a Public Participation Charter should be to encourage broader public participation in planning decisions. It should set out the principles of good engagement, and should not be constraining or prescriptive
5. The Government should consult on the detail of a Public Participation Charter, and explain how it will contribute to participation by the wider community in the planning process, at the plan making and project assessment stages
6. The new Planning Act should make it clear that any non-compliance with the Public Participation Charter (apart from the general requirement to publicly exhibit and accept submissions) cannot be used to invalidate a policy, plan or project approval
7. Consultation and engagement standards should not be legislated. There should be flexibility to undertake this process in the way that will best engage communities, provide for sharing of project information and local knowledge and respond and adapt to relevant concerns
8. Environmental groups and should be engaged; however it is not necessary or appropriate to elevate these groups above other groups in the community

Strategic Planning

1. NSW Planning Policies need to be statutory plans
2. The composition of the Regional Planning Panels should be changed to remove special interest stakeholders and add a community representative
3. The system of plans must provide for strategic assessments and plans, such as the SRLUPs, and Biodiversity Plans to be developed and take effect. The category of sectoral strategy does not appear to provide for these types of plans
4. The Government should consider whether the Local Land Use Plans are the most appropriate level of plan to contain the development controls currently in the Mining SEPP
5. The key provisions of the current Mining SEPP must be contained as standard conditions of the Local Land Use Plans

Development Assessment and Compliance

9. Accreditation of experts would be a costly, resource intensive process, and would be unlikely to provide a level of confidence in assessments that would make the costs worthwhile and should not be part of the new planning system
10. The Government should include in the SSD assessment process the capacity for the State Government agencies to identify at the DGR stage, areas of assessment that will require independent review and engage and pay for an independent expert to review the assessment
11. Transparent criteria should be developed to determine when the PAC should be required to undertake a review of a project, or conduct a public hearing
12. The Minister for Planning and Infrastructure should determine SSD applications. In the event that SSD applications are determined by an independent panel, this should be by way of delegation of the Ministers powers

13. In the event that SSD determinations are to be made independently, a new independent, fit for purpose decision making body should be formed whose members should be chosen on the basis of experience in making balanced planning decisions
14. The Minister for Planning and Infrastructure should provide any independent decision making panel with guidelines for decision making and procedures under which the panel should operate
15. Delegation of decisions to an independent decision making panel should be made by the Minister on the basis of criteria to identify projects that are contentious or complex, not simply by the number of submissions received
16. Delegation of decision making should occur after the proponent has responded to submissions and any public meeting also held at this stage
17. The independent decision making panel should refer any issues of concern, both of its members, and expressed by the public at the meeting to DP&I to be investigated with the relevant agencies and addressed in the Director General's Assessment Report
18. The new planning system should retain a mechanism for determining that activities do not require assessment, including low and minimal impact activities, and activities that are appropriately assessed and approved through other legislation, including most mineral exploration. Similarly the definition of development should be narrowed to ensure activities that should not require approval are excluded from the definition
19. The Government should investigate the role of third party appeals. In particular the Government should:
20. Identify ways to ensure that third party merit appeals are not pursued for vexatious reasons such as delaying development, including making better use of costs orders, and requiring a threshold case
21. Extinguish third party merit appeals where the decision maker is an independent body

Infrastructure Planning and Co-ordination

22. Treasury should undertake a review of developer contributions in the context of other mechanisms for funding local government and the regions, and the White Paper should address the reform of the VPA process relevant to industries other than residential development

Delivering a New Planning system

23. The Government should allow time for consultation on the White Paper before drafting legislation
24. Appropriate resources, funding and people must be available to put the plans in place within a reasonable timeframe. The Government should have a clear strategy for undertaking the whole planning process in high priority regions before moving into other regions
25. Consideration of transitional arrangements should be a priority in developing the new system to ensure that the community and investors have the certainty about how development will be dealt with during the roll out of the new system. The transitional arrangements should ensure that the new legislation is not retrospective, but give proponents the option of 'opting in' to the new system

APPENDIX B - PricewaterhouseCoopers Report

Potential to unlock value in the mining sector through planning reforms in NSW

NSW Minerals Council

June 2013

Final

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Executive Summary

The NSW Minerals Council engaged PwC to undertake analysis of the impacts of changes in the NSW planning system on the mining sector and on government revenue. Changes to process and new precedents in decision making over the last two years have generated concern in the mining sector about increasing delays and uncertainty in the approval process for mining projects. For example, one business estimates that the delegation of the determination of an approval to the Planning Assessment Commission added 16 months to the approval process for their project. The planning reform process provides an opportunity to address some of the uncertainty and delay costs which would unlock value in the mining sector with benefits for the rest of the economy as well as increased revenue from royalties for the NSW Government.

An international survey shows that NSW's ranking in terms of the attractiveness of its policy environment for mining businesses has dropped from 20th to 44th in the last two years. All other Australian jurisdictions (except for Tasmania which has only a small mining industry) now have a more attractive policy environment.

Businesses incur a range of holding, management and administrative costs if a project is delayed, as well as a longer wait for a return on their investment. As part of this analysis, we estimated that for coal projects these costs amount to 7 cents per tonne of coal production per month of delay. This means that if the length of time for a mining approval over the next 20 years could be reduced by an average of one month, it would generate \$0.2 billion over 20 years in 2012/13 dollars in additional profit. This would increase to \$2.3 billion if time for approvals could be reduced by 12 months.

The costs associated with delays are generally easier to predict than the costs of uncertainty. To estimate the combined costs of uncertainty and delay on businesses we developed and analysed a set of scenarios relative to the policy environment that existed in early 2011, involving delays of an average of 6 months, 12 months or more than 12 months respectively. The proxy we have used for uncertainty is the likelihood that a proportion of proponents would abandon a project in each scenario. The analysis was based on data returns received for 39 proposed mining projects from members of the NSW Minerals Council. These indicated that delays of more than 12 months contribute significantly to uncertainty and to decisions to abandon projects. Our analysis suggests that if the planning reforms could eliminate the delays introduced through recent changes on average by more than 12 months:

- the value of investment in the sector would be \$10.3 billion (\$2012/13) greater than a business as usual case
- up to 6,450 direct and 22,400 indirect coal mining jobs more jobs could be created
- revenue in the sector would increase by \$68.7 billion (\$2012/13) compared to a business as usual case
- royalties would be around \$600 million (nominal) per annum more, or nearly \$6.1 billion (\$2012/13) over 20 years.

These dollar amounts are in today's ("real") dollars. That means they have been discounted to reflect the time value of money i.e. a dollar in 2012/13 has more buying power than a dollar in 20 years time. We used a discount rate of 7 per cent. Gross figures (in "nominal" terms) would be higher.

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Introduction

The NSW Minerals Council engaged PwC to undertake economic analysis of the impacts of recent changes to planning processes in NSW and the potential benefits of addressing these through the current planning reforms for both the mining sector and Government revenue.

We were asked to consider the impacts of a number of factors that could result in a delay to a project being approved or uncertainty about whether it is likely to be approved including:

- The delegation of determinations to the Planning Assessment Commission
- The absence of an equivalent in amended legislation of the modification power which used to be available under Part 3A of the *Environmental Planning and Assessment Act 1979*
- Third party merit appeals particularly given two recent decisions made by the NSW Land and Environment Court.

More broadly, the NSW Minerals Council is concerned that changes to processes mean well understood precedents and approaches previously applied by the Department of Planning and Infrastructure are no longer consistently applied by decision makers (including the Planning Assessment Commission) adding to the uncertainty for proponents about whether their project will be approved.

The concerns of the NSW Minerals Council and its members relate to changes in processes and decision making that have occurred over the last two years as well as longstanding concern about delays and uncertainties inherent in merit assessment. They are concerned these are not yet adequately addressed in the proposed new planning system for NSW.

Although there are some documented examples of the delays caused by these factors over the last two years, it is not possible to accurately isolate

and forecast the future impact of these planning changes over the long term. In order to help analyse the impacts we:

1. Developed a metric to measure the costs of delay per month per tonne of coal production
2. Analysed the impact of a set of three scenarios developed based on industry feedback (delays of an average of 6 months, 12 months or more than 12 months combined with assumptions around uncertainty) in terms of costs to industry (profit) and costs to the NSW Government (royalties).

To support the analysis, PwC with the NSW Minerals Council surveyed mining businesses and collected information about proposed new projects. We collected data about the nature of the projects, the applicable planning legislation (given some projects are already in the approvals process whereas others will be subject to proposed new legislation), estimated investment, production volumes and costs. We specifically collected information about the impacts a specified delay would have on whether or not a project would proceed and the influence of uncertainty on investment decisions.

We did not receive sufficient survey responses to undertake detailed analysis for commodities other than coal. However, we have used publicly available information to undertake some analysis of copper and gold.

We compared the information we collected to independent sources of information about expected investment and forecast production in the sector where possible to inform and/or verify assumptions we made to undertake the analysis. The following sections provide context for our analysis and outline our findings.

Factors contributing to delay and uncertainty

The impacts of several of the factors the NSW Minerals Council has identified as contributing to delay and uncertainty are outlined briefly below.

Impact of delegation of determination to the Planning Assessment Commission

Since 1 October 2011, all development applications for modifications to mines or for new mines have been referred by the Minister for Planning to the Planning Assessment Commission either for review or determination. The Planning Assessment Commission is independent and undertakes its functions separate to the Department. Its reviews and determinations occur after an application has been assessed by the Department.

The Planning Assessment Commission may re-open issues already assessed by the Department and will often require proponents to address new issues relatively late in the assessment process.

Proponents who have experienced the process are finding this contributes to longer approval times and consider it has added to uncertainty. One proponent reported in their survey response a delay to project approval of 16 months due to the Planning Assessment Commission's involvement in the process.

Impact of changes to modification powers in legislation

Part 3A of the *Environmental Planning and Assessment Act 1979* (The Act) provided a broad modification power for mining projects. This meant a streamlined approval process could be applied to modifications of an already approved mining development. Modifications might occur in

response to geological factors that become apparent during development, improved technology and responses to impacts.

Part 3A of the Act has now been removed. The modification power has been replaced by S96. The narrower scope of this clause means that the industry anticipates many modifications will be State Significant Development consents and subject to full approval rather than streamlined processes. This could include referral to the Planning and Assessment Commission. The full approval process creates potentially significant delays for project modifications compared to the previously streamlined process. The proposed new planning legislation does not broaden section 96.

Recent outcomes of merit appeals processes

All State Significant proposals are subject to third party merit appeal. Any objector is allowed to lodge a merit appeal at limited cost. Merit appeals can result in the refusal of a project previously approved through an extensive assessment process.

Historically, there have been few successful third party merit appeals against mining projects. However, two Land and Environment Court decisions on appeals in 2013 have generated significant uncertainty for industry.

These are:

- **Boral's Berrima Collieries** - Boral's application for the Berrima colliery's expansion was lodged under Part 3A of the Act and consequently approved by the Planning Assessment Commission in June 2012, after a two-year assessment process.

A residents' action group lodged an appeal. In March 2013, the court found the project application did not provide sufficient evidence to support an assessment of the impacts of the proposal on surface water and ground water and overturned the earlier approval of PAC.¹ This has affected the overall viability Berrima Collieries project and Boral has lodged an appeal against the court ruling.

- **Rio Tinto Coal & Allied's Warkworth extension** – The existing consent for the Warkworth mining project expires in 2021. An application for modification was lodged to extend the operation until 2033. The extension is forecast to produce approximately 144 million tonnes of coal at the existing rate of 12 mtpa. Currently, Mount Thorley Warkworth has a workforce of more than 1,300 employees and it is estimated an additional 150 jobs would be generated over the life of the extension. After close to three years consideration, the Warkworth extension project was approved by the Planning Assessment Commission in February 2012 with support from other State and Commonwealth government agencies.

A residents' action group appealed the decision and the Land and Environment Court overturned the previous approval by the independent Planning and Assessment Commission in April 2013. This is the first time that a major project approval extending an existing open-cut mine has been overturned by the Court. Rio Tinto has lodged an appeal against the Court ruling with the support of the NSW Minister for Planning.²

Data on impacts of recent changes observed to date

Apart from examples of delays for specific projects, there is already some evidence of an overall impact on the sector.

The average licence processing time in NSW for new and renewed mineral exploration approvals in the period July to December 2012 was 105 days and 14 days longer, respectively, compared to January to July 2011 (refer to Table 1). The number of approvals in July to December 2012 was also significantly lower.

This data is for exploration approvals only rather than mining approvals but provides an early indication of the impacts of the current policy environment on the sector.

Table 1 Exploration process time in NSW

	Jan – Jul 2011 (Pre recent changes)		Jul – Dec 2012 (Post recent changes)		Comparison
	Number finalised	Average time (Application to grant)	Number finalised	Average time (Application to grant)	Relative delay
Mineral exploration					
New licences	132	139 days	91	244 days	105 days
Renewal	240	240 days	152	254 days	14 days
Coal exploration					
New licences	1	258 days	0	n/a	n/a
Renewal	0	n/a	0	n/a	n/a

Source: 2013-14 Pre-budget submission to the NSW government, NSW Minerals Council, Apr 2013

¹ BRW (01 March 2013), http://www.brw.com.au/p/business/southern_highlands_residents_group_4AfwmwtDDAxCWzElbGvIGK (accessed on 5 June 2013)

² Rio Tinto Coal Australia Media Release, Petition calls on NSW Government to protect Mount Thorley Warkworth jobs, available at http://www.riotintocoalaustralia.com.au/media/38_media_releases_4947.asp (accessed on 5 June 2013)

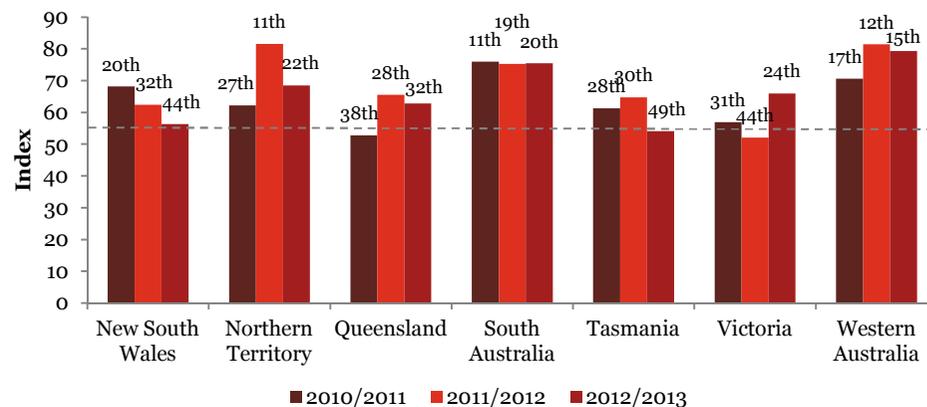
The Fraser Institute Annual Survey of Mining Companies 2012/2013 provides evidence of increasing negative sentiment in NSW. The results show the overall policy attractiveness of investing in the NSW mining sector has declined significantly since 2010/11.

The survey ranks participating jurisdictions via a Policy Potential Index. This index is a composite index that measures whether or not a jurisdiction's mineral potential under the current policy environment (i.e., regulations, land use restrictions, taxation, political risk and uncertainty) encourages or discourages exploration.³

The survey shows that the policy attractiveness of NSW has dropped significantly in each of the last two years. NSW's ranking has dropped from 20 in 2010-11 to 44 in 2012-2013 with an index score of 56.4 out of 100.⁴ The scores indicate that all other Australian jurisdictions (except for Tasmania which has only a small mining industry) now have a more attractive policy environment for mining businesses than NSW (refer Figure 1).

Addressing delays and uncertainty associated with recent changes could help to restore NSW's competitiveness with other jurisdictions.

Figure 1 Australian states and territories Policy Potential Index scores⁵



Source: Wilson, A., McMahon, F. & Cervantes, M. (2012) Fraser Institute Annual Survey of Mining Companies 2012/2013. The Fraser Institute p13.

³ Wilson, A., McMahon, F. & Cervantes, M. (2012) Fraser Institute Annual Survey of Mining Companies 2012/2013. The Fraser Institute p11.

⁴ Wilson, A., McMahon, F. & Cervantes, M. (2012) Fraser Institute Annual Survey of Mining Companies 2012/2013. The Fraser Institute p13.

Potential impacts of delay and uncertainty

- In our survey of mining businesses, most expected to be able to manage delays of three to six months without impacting whether or not their projects would go ahead and with limited impact on the value of their investments. However, respondents expressed negative sentiments about increases in delays and uncertainty in NSW
- Some provided examples of the Planning Assessment Commission and merit appeal processes each adding an additional 12 months to recent approvals processes
- Delays of 12 months or more appear to a tipping point with a much higher proportion of responding businesses indicating that projects would be abandoned if delays exceeded 12 months
- Survey respondents also emphasised that they could better manage delays if policies around mining in NSW were clearer and more predictable and decisions suggest some of the types of supporting information and analysis for a development application that were previously acceptable might not be considered adequate in future reducing proponents confidence about the assessment of their applications.

Figure 2: Responding businesses' comments on impacts of delay and uncertainty

“The approvals timing in NSW is arguably the longest in Australia and therefore, opportunities to deliver projects to match market movements is lower than other states. The predictability of achieving approval is also arguably lower than other states.”

“It is the current uncertainty around project assessment and approval that destroys project value.”

“The NSW approvals process is much more convoluted than Queensland. Queensland is currently the preferred approvals jurisdiction for coal.”

“If the approvals process becomes too lengthy and uncertain, projects will have to be sourced from pro-development jurisdictions to provide certainty and positive return on investment in realistic timeframes.”

“The major 'cost' will be a loss of confidence by our investors in the industry. They will look to take their investment dollars to other countries or opportunities. They are willing to take the risk on changing market conditions (macro and micro) but will not initiate new investments if there is an environment of continual uncertainty about the project assessment process.”

Estimating the costs of delay and uncertainty

A “rule of thumb” for costs of delay

We developed a measure of the cost of one month of delay per tonne of coal based on analysis of forecasts for the next 20 years. This is estimated to be 7 cents per month per tonne of coal. This could be used as a rule of thumb to estimate the costs of a range of delay periods affecting a range of projects. For example, if approvals for all proposed projects over the next 20 years were delayed by just one month, this would equate to a cost to the mining industry of about \$200 million dollars (\$2012/13) over 20 years. This does not build in the impact of uncertainty including any decisions to abandon projects. Conversely, costs would be reduced if approvals processes took less time.

To develop this estimate we:

- Asked mining businesses to estimate a range of costs associated with each month of delay including:
 - a. Their “holding” costs – the costs related to any borrowings for the project prior to its approval
 - b. Additional management and administrative costs during the period of delay
 - c. Advance transport capacity bookings.

These combined costs are relatively small compared to the scale of project investments and only accounted for about two cents of the cost of delay per tonne of coal per month.

- Estimated the costs of a month’s delay associated with the time value of money (for revenue, operating and investment and other production costs) using a discount rate of 7 per cent per annum i.e. a

dollar today has more buying power than a dollar in future. This accounted for the majority of the costs (5 cents per tonne of coal per month).

- Assessed and discounted these combined costs over a 20 year period for the forecast increase in coal production over this period.
- Divided the total cost (\$2012/13) by the total number of tonnes of coal (discounted) produced over the period.

Table 2: Costs to industry of different delay periods

Average delay for all new production	Cost to industry over 20 years
	<i>\$billion</i>
1 month	\$0.2
6 months	\$1.2
12 months	\$2.3

Source: PwC analysis

This analysis and our analysis of three scenarios in the following sections suggest that while the costs of delay are significant, they are much less than the costs associated with uncertainty which are more likely to result in projects being abandoned.

Analysis of costs of delay and uncertainty for three scenarios: delay by 6 months; 12 months and more than 12 months

We have captured the combined impact of delay and uncertainty in the analysis of scenarios. Our proxy for uncertainty is decisions to abandon projects. We have assumed that an increasing proportion of projects will be abandoned as projects are delayed by 6 months, 12 months and more than 12 months because of uncertainty and based on responses to our survey.

Coal is the major commodity produced in NSW and copper and gold are the next largest in terms of value. In 2011-12, the combined value of coal, copper and gold production accounted for 97% of total mining industry in NSW.⁵ Aggregating analysis for each of these provides a slightly conservative assessment of the total impact on the NSW mining industry.

The NSW government is expecting strong growth (greater than twelve per cent) in annual revenue from mineral royalties until 2016-17 with assumptions of a gradual depreciation of the Australian dollar against the US dollar, a relatively stable coal price and continual growth in coal export volumes.⁶ Table 3 shows the economic impact on the mining industry and NSW government royalties for the three scenarios. If there is an average delay of more than 12 months, the NSW mining industry is estimated to lose around \$19 billion in profit in real terms over the next 20 years. The NSW government would receive approximately \$6 billion less than under the base case. Conversely, if the delays and uncertainty associated with recent changes in the approvals process were addressed in the planning reforms, it would potentially unlock significant value.

Table 3 Summary of cost to industry and NSW government of different scenarios over 20 years (\$2012/13)⁷

	Cost to industry (profit)				Cost to the NSW government (royalties)			
	Coal	Copper	Gold	NSW	Coal	Copper	Gold	NSW
	<i>\$billion</i>	<i>\$billion</i>	<i>\$billion</i>	<i>\$billion</i>	<i>\$billion</i>	<i>\$billion</i>	<i>\$billion</i>	<i>\$billion</i>
Delay by 6m	\$2.54	\$0.26	\$0.06	\$2.86	\$0.84	\$0.02	\$0.01	\$0.87
Delay by 12m	\$5.72	\$0.60	\$0.13	\$6.45	\$1.90	\$0.05	\$0.03	\$1.98
Delay by more than 12m	\$17.00	\$1.87	\$0.40	\$19.27	\$5.82	\$0.16	\$0.09	\$6.07

Source: PwC analysis

⁵ NSW Mining (2012), NSW Minerals Council

⁶ NSW Budget Paper 2013-14, 6-22

⁷ Gross values have been discounted to present values in 2012/13 dollars using a discount rate of 7 per cent.

Scenario 1 -Delay by more than 12 months

Assumptions

- All mining approvals are delayed on average by more than 12 months
- About 33% of projects would not proceed because of uncertainty and the redirection of investment away from NSW to jurisdictions with a more attractive policy environment
- Growth in production over the next 20 years would reduce by 52% relative to the base case because of the delay and the size of the abandoned projects.

Summary

The estimated impacts on the mining industry and on NSW government royalties for this scenario are shown in Table 4.

Table 4 Impacts relative to the base case (\$2012/13)¹

Impact	Unit	Size of impact
Direct employment ⁽²⁾⁽⁴⁾	FTE	- 6,445
Indirect employment ⁽³⁾⁽⁴⁾	FTE	- 22,363
Investment ⁽⁴⁾	\$ billion	- \$10.3
Revenue	\$ billion	- \$75.7
Profit	\$ billion	- \$19.3
Royalties	\$ billion	- \$6.1

Source: PwC analysis,

Notes:

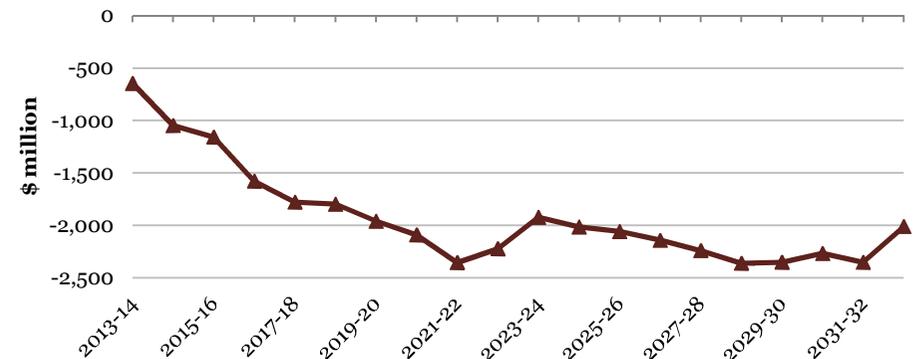
- 1) Gross values have been discounted to present values in 2012/13 dollars using a discount rate of 7 per cent.
- 2) This is the greatest impact on annual direct employment and would occur in 2016-2017.
- 3) A simple employment multiplier of 3.47⁸ has been applied to estimate indirect employment.
- 4) Employment and investment is estimated based on coal projects only due to lack of survey responses for copper and gold projects

Impact on mining sector profit

Relative to the base case, it is estimated there will be \$19.3 billion less profit due to growth for the NSW mining industry for this scenario. The cost could be up to \$2.3 billion per annum in some years. The majority of the cost relates to projects abandoned because of uncertainty which significantly exceeds the costs of delay on its own.

Mining businesses would invest approximately \$10.3 billion less in new projects in NSW relative to the base case.

Figure 3 Impact on mining sector profit relative to the base case (\$2012/13)



Source: PwC analysis

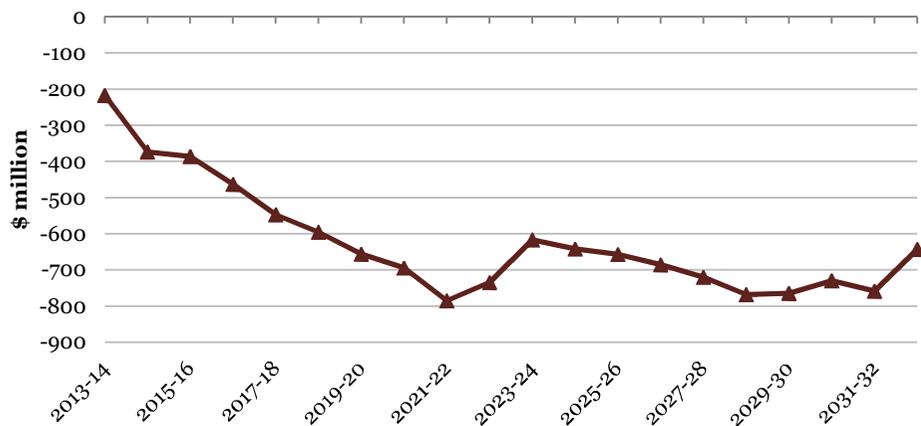
⁸ Economic Contribution of NSW Mining Sector to 2030, ACIL Tasman, 2011

Impact on NSW government royalties

The NSW government could expect an average annual reduction of \$622 million in royalties compared to the base case. The total cost to the NSW government over the next 20 years would be approximately \$6.1 billion (\$2012/13).

Figure 4 shows the relative amount of royalties for this scenario compared to the base case.

Figure 4 Scenario 1 - impact on royalties to the NSW government relative to base case (\$2012/13)



Source: PwC analysis

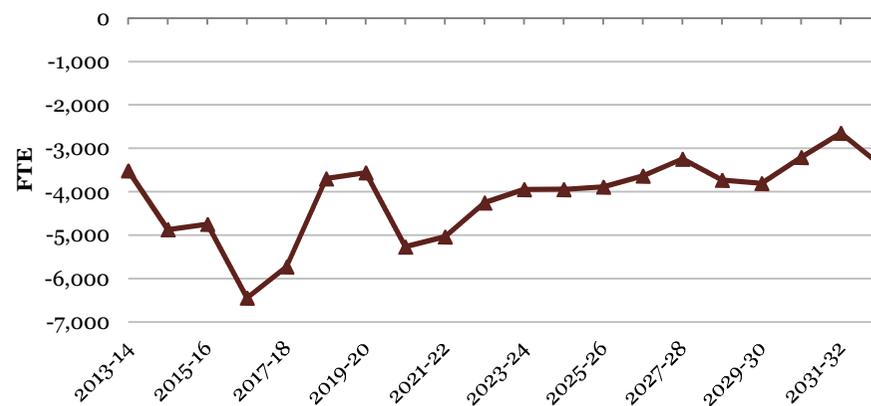
Impact on employment in coal mining

We did not receive sufficient survey responses to undertake analysis of the impact on employment under the scenarios for commodities other than coal.

Results indicate that up to 6,450 fewer direct jobs would be generated compared to a business as usual case for this scenario. Using an input output multiplier, this could mean up to 22,400 fewer indirect jobs.⁹

The greatest impact would occur in 2016-17 reflecting delays in the commencement of projects.

Figure 5 Scenario 1 - impact on direct employment in coal mining relative to base case



Source: PwC analysis

⁹ A simple employment multiplier of 3.47⁹ has been applied to estimate indirect employment. The multiplier used was generated by ACIL Tasman in *Economic Contribution of NSW Mining Sector to 2030*, ACIL Tasman, 2011

Scenario 2 - Delay by 12 months

Assumptions

- All mining approvals are delayed on average by 12 months
- About 13% of projects would not proceed because of uncertainty and the redirection of investment away from NSW to jurisdictions with a more attractive policy environment
- Growth in production over the next 20 years would reduce by 11% relative to the base case because of the abandoned projects.

Summary

The estimated impacts on the mining industry and NSW Government royalties for this scenario are shown in Table 5.

Table 5 Impacts relative to the base case (\$2012/13)¹ – Scenario 1

Impact	Unit	Size of impact
Direct Employment ⁽²⁾⁽⁴⁾	FTE	- 3,730
Indirect employment ⁽³⁾⁽⁴⁾	FTE	- 12,944
Investment ⁽⁴⁾	\$ billion	- \$3.4
Revenue	\$ billion	- \$25.1
Profit	\$ billion	- \$6.5
Royalties	\$ billion	- \$2.0

Source: PwC analysis

Notes:

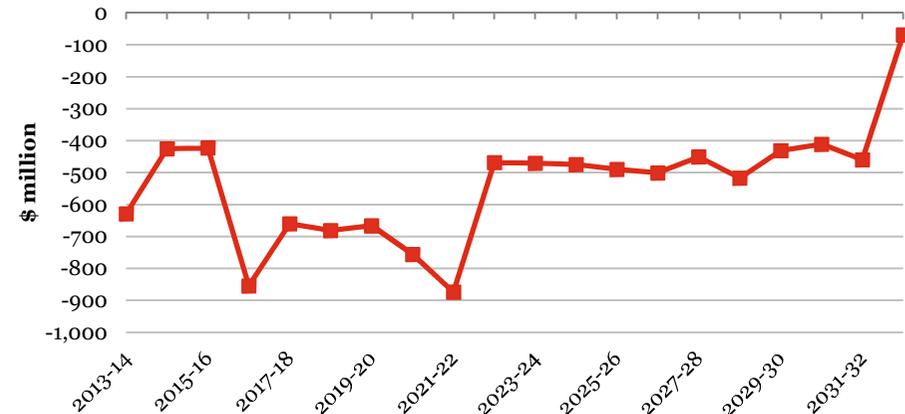
- 1) Gross values have been discounted to present values in 2012/13 dollars using a discount rate of 7 per cent.
- 2) This is the greatest impact on annual direct employment and would occur in 2016-2017.
- 3) A simple employment multiplier of 3.47¹⁰ has been applied to estimate indirect employment.
- 4) Employment and investment is estimated based on coal projects only due to lack of survey responses for copper and gold projects

Impact on mining sector profit

The delay and uncertainty in the planning process for this scenario would result in \$25.1 billion less revenue relative to the base case and \$6.5 billion less profit in \$2012/13.

\$3.4 billion would not be invested in mining projects relative to the base case.

Figure 6 Impact on profit to mining industry relative to the base case (\$2012/13) – Scenario 1



Source: PwC analysis

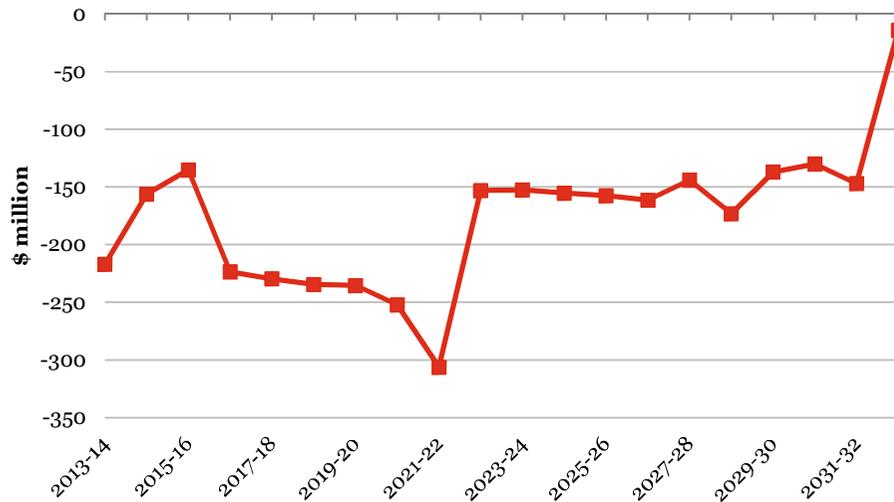
¹⁰ Economic Contribution of NSW Mining Sector to 2030, ACIL Tasman, 2011

Impact on NSW government royalties

It is estimated around \$2.0 billion (in net present value terms) less in royalties would be generated under this scenario. The annual foregone revenue for the NSW government would be an average of \$176 million per annum.

Figure 7 shows the annual loss of royalties for this scenario relative to the base case

Figure 7 Impact on royalties to the NSW government relative to base case (\$2012/13) – Scenario 2

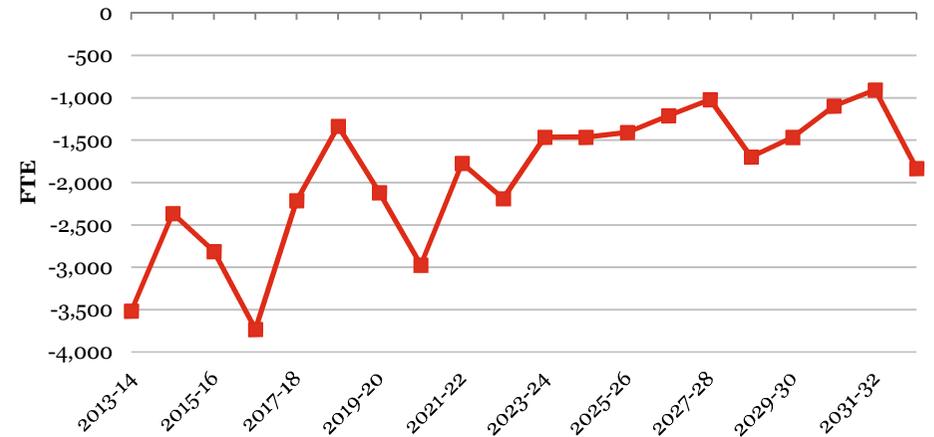


Source: PwC analysis

Impact on employment in coal mining

The direct jobs generated by NSW coal mining would be up to 3,700 fewer than under the base case and indirect employment would be up to 13,000 fewer.

Figure 8 Impact on direct employment in coal mining relative to base case – Scenario 2



Source: PwC analysis

Scenario 3 - Delay by 6 months

Assumptions

- All mining approvals are delayed on average by 6 months.
- About 8% of projects would not proceed because of uncertainty and the redirection of investment away from NSW to jurisdictions with a more attractive policy environment
- Growth in production over the next 20 years would reduce by 4% relative to the base case because of the abandoned projects

Summary

The estimated impacts on the mining industry and NSW Government royalties for this scenario are shown in Table 6.

Table 6 Economic impacts relative to the base case (\$2012/13)¹ – Scenario 3

Impact	Unit	Size of impact
Direct Employment ⁽²⁾⁽⁴⁾	FTE	- 1,893
Indirect employment ⁽³⁾⁽⁴⁾	FTE	- 6,568
Investment ⁽⁴⁾	\$ billion	- \$1.5
Revenue	\$ billion	- \$11.1
Profit	\$ billion	- \$2.9
Royalties	\$ billion	- \$0.9

Source: PwC analysis

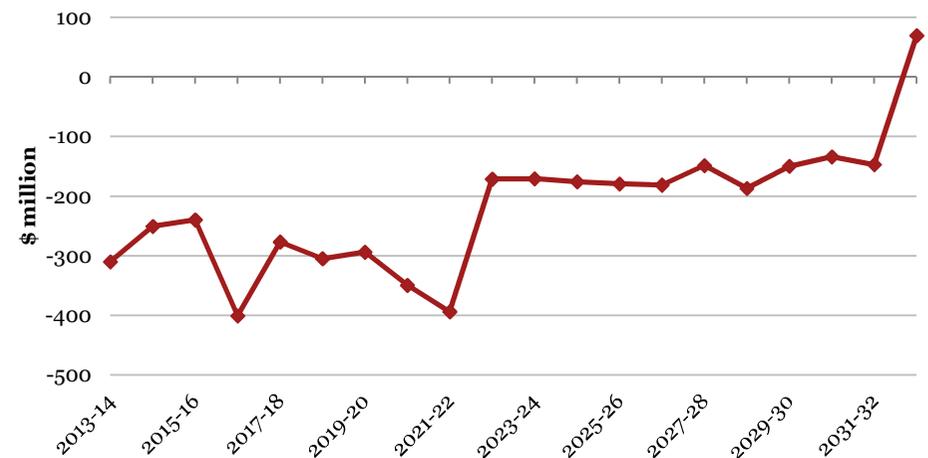
Notes:

- 1) Gross values have been discounted to present values in 2012/13 dollars using a discount rate of 7 per cent.
- 2) This is the greatest impact on annual direct employment and would occur in 2016-2017.
- 3) A simple employment multiplier of 3.47¹¹ has been applied to estimate indirect employment.
- 4) Employment and investment is estimated based on coal projects only due to lack of survey responses for copper and gold projects

Impact on mining sector profit

Under this scenario, it is expected the mining sector would generate \$2.9 billion less profit over 20 years (\$2012/13). Investment in NSW mining is estimated to be \$1.5 billion (\$2012/13) less compared to the base case. This investment could be redirected to other jurisdictions in Australia or overseas.

Figure 9 Impact on profit in mining relative to base case (\$2012/13) – Scenario 3



Source: PwC analysis

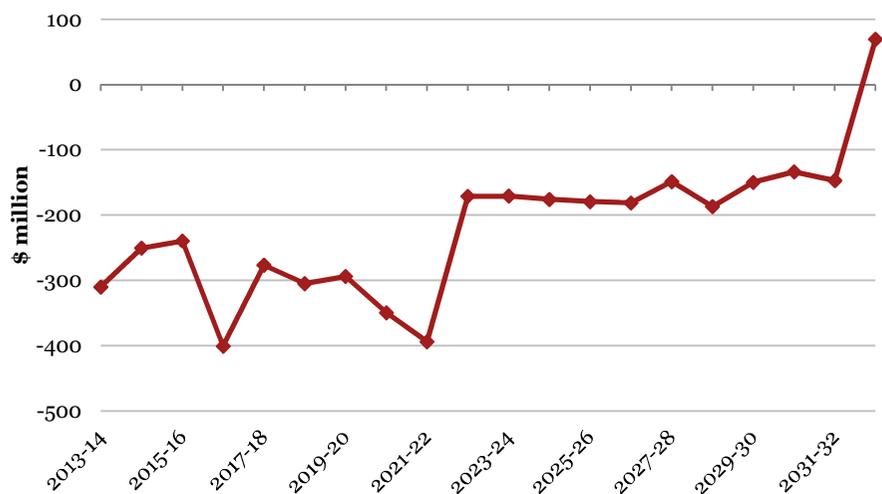
¹¹ Economic Contribution of NSW Mining Sector to 2030, ACIL Tasman, 2011

Impact on NSW government royalties

The revenue from minerals royalties for the NSW government estimated to be \$0.9 billion less compared to a business as usual case over 20 years in net present value terms.

The greatest impact would occur in 2016-17 (\$400 million in that year) because of delays in the commencement of projects.

Figure 10 Impact on royalties paid to the NSW government relative to base case (\$2012/13)

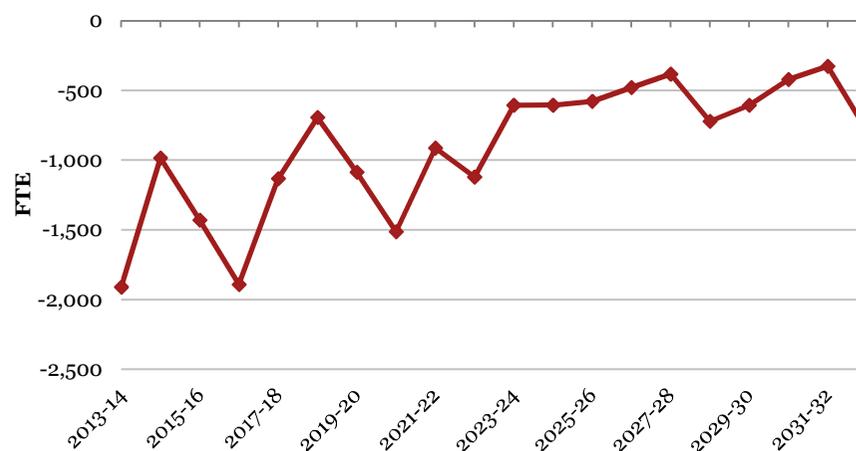


Source: PwC analysis

Impact on employment in coal mining

The maximum impact on employment under this scenario would be 1,900 FTE in 2016-17, mainly in regional NSW. This equates to 6,600 fewer indirect jobs.

Figure 11 Impact on direct employment in coal mining relative to base case (\$2012/13)



Source: PwC analysis

Appendix A: Trends in the NSW Mining Industry

The NSW mining industry contributed approximately 4.3% of NSW's Gross State Product in 2011/12.¹² The importance of mining is greater in regional economies. 27% of the Hunter's Gross Regional Product is derived from the mining industry and 11% for the Illawarra region.¹³

Production¹⁴ – The value of NSW coal and metallic mineral output rose 20% to \$24.5 billion in 2011-12. Coal accounts for the greatest proportion of the total value. In 2011-12, the value of coal production at average market prices was approximately \$20.7 billion equating to 84% of total mining output in NSW. The production of saleable coal rose by 6.5% compared to 2010-11 resulting in a total production of 167 million tonnes (Mt). The production of copper increased by 9% and accounted for 6% of the total value of NSW mineral output (\$1.4 billion). Gold production declined by around 7% but the value of production increased by 36% to \$1.8 billion because of increased gold prices.

Exports¹⁵ – In 2011-12, the total value of mineral exports in NSW was over \$21 billion, representing 86% of total NSW output. 79% of NSW's

coal production was exported overseas and was worth approximately \$17 billion with an increase of 12% in volume and 19% in dollar value compared to 2010-11. Asian countries remain the primary destination for NSW coal. Japan received the largest proportion of NSW coal (46.5%) followed by China (17.5%) and Republic of Korea (15.3%). 35% of copper produced in NSW was exported with a total value of \$0.5 billion. The medium to long term outlook for international coal and metal demand remains strong.

Royalties¹⁶ – Royalties paid by the mining industry to the NSW government were \$1.3 billion in 2012-13 accounting for around 2% of the NSW Government's annual revenue. Royalties are predicted to grow to \$2.1 billion by 2016-17 due to projected increases in production.

Employment¹⁷ – Employment in the mining industry has grown steadily over the past decade. Since 2003, the number of employees in the mining sector has increased by more than 300% from 15,400 to 47,300. In 2011-12, 53% of total mining employment was in coal mines.

¹² Lawrence Consulting and the University of Newcastle Australia (2012), *NSW Mining Economic Impact Survey 2011/12*, Preliminary Summary Report, Prepared for the NSW Minerals Council

¹³ Lawrence Consulting and the University of Newcastle Australia (2012), *NSW Mining Economic Impact Survey 2011/12*, Preliminary Summary Report, Prepared for the NSW Minerals Council

¹⁴ NSW Mining (2012), NSW Minerals Council

¹⁵ NSW Mining (2012), NSW Minerals Council

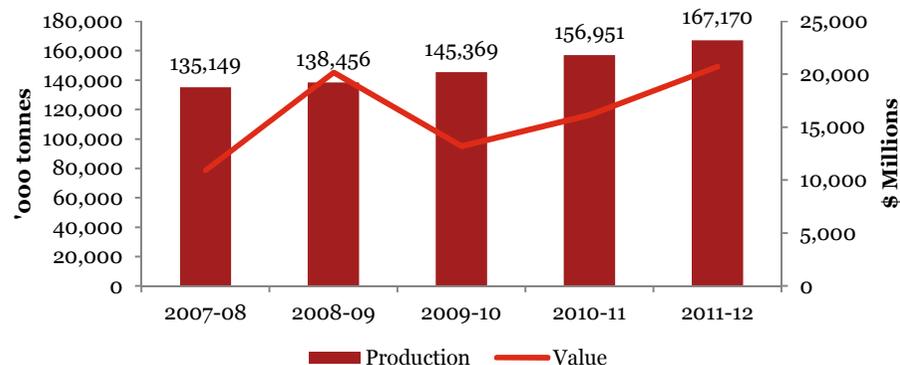
¹⁶ NSW Government Budget Paper No. 2, 2012-14 Budget Statement

¹⁷ NSW Mining (2012), NSW Minerals Council

Recent trends in growth in NSW

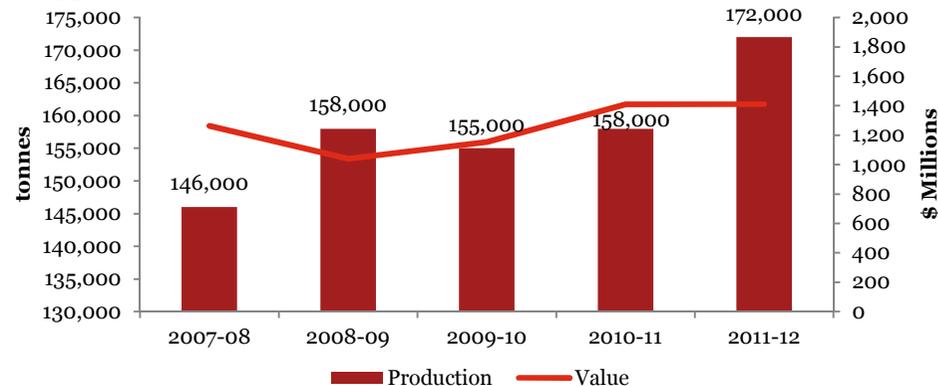
- Over the last three years, production of coal and copper has increased while the annual production of gold has been relatively stable
- The value of NSW mining increased from \$16.5 billion in 2009-10 to \$24.5 billion in 2011-12 with an annual growth rate of 14%.

Saleable Coal



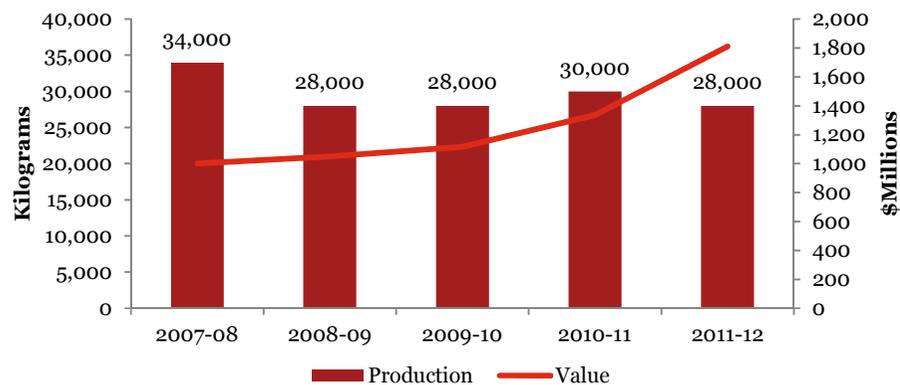
Source: Coal Services Pty Ltd

Copper



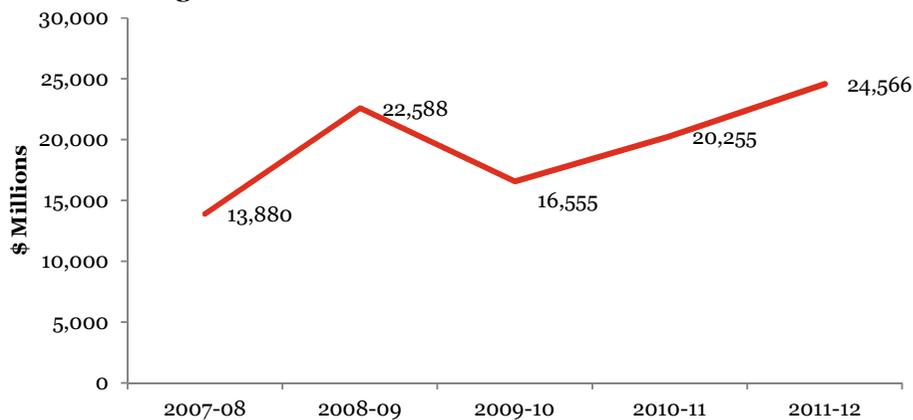
Source: Bureau of Resources and Energy Economics

Gold



Source: Bureau of Resources and Energy Economics

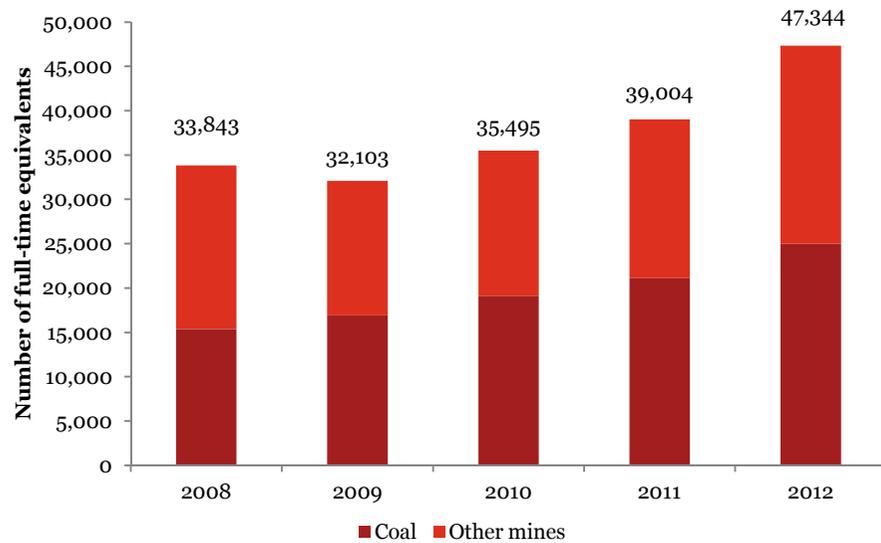
Total mining



Source: NSW Trade and Investment

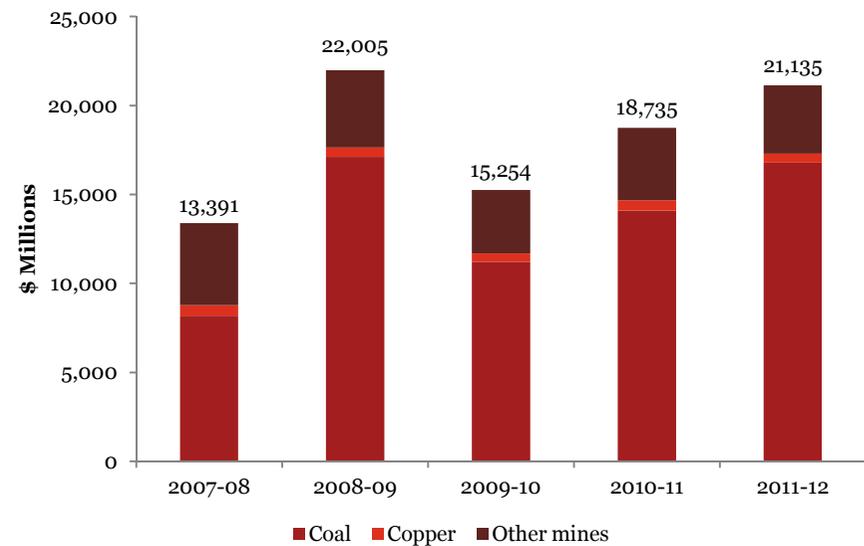
- Employment in the mining sector grew around 21% in 2012 compared to 2011. The growth rate of jobs for coal (18%) was lower than overall growth rate.
- There was a peak in the total export value of NSW mineral and metal production in 2008-09 at \$22 billion. Over the past three years, exports have increased at 11% per annum. The share of coal in dollar value has increased from 61% in 2007-08 to 79% in 2011-12.

Employment



Source: ABS and Coal Services Pty Ltd

Exports



Source: Industry and Investment NSW – Primary Industries – Mineral Resources

Forecast trends in growth

Forecast growth in demand for coal as well as copper and gold is expected to remain relatively strong over the short to medium terms demonstrating ongoing opportunity for the mining sector in NSW for competitive mining projects.

Coal

The international trade in thermal coal is expected to grow up to total 1,125 Mt in 2018, increasing by approximately 17% relative to 2012. This outlook is underpinned by robust demand in emerging economies, especially China and India for electricity generation and for steel manufacture. It is forecast coal will experience the largest relative increase among all fuel sources including gas. By 2020, world coal consumption is forecast to increase from 4,960 Mt of coal equivalent to total 5,830 Mt of coal equivalent.¹⁸

Australia, Indonesia, Colombia and South Africa are the four key exporters. All exporters have plans to expand mine and infrastructure capacities.

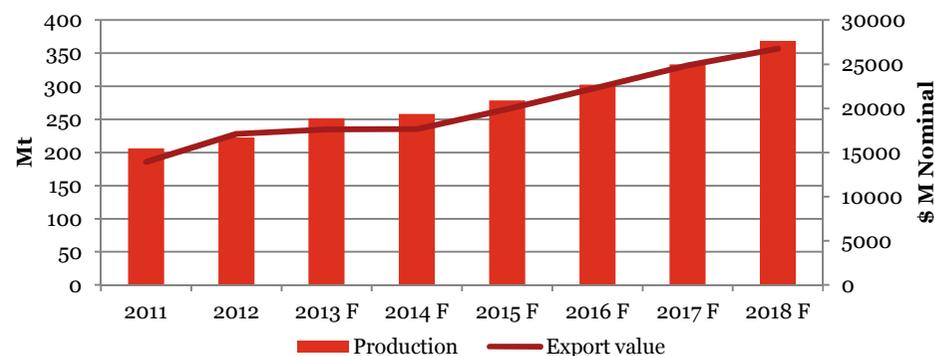
In response to increasing world demand, Australia's output and exports of coal are expected to expand over the five years through 2018 (refer to Figure 12).

From 2016, the growth rate in production is expected to increase with foreign direct investment in greenfield developments.¹⁹

Australia is projected to increase its share of the traded global coal market to 36% in 2025, up from 30% in 2005. The growth in Australia's market share of global coal trade is underpinned by Australia's substantial coal

reserves, the strong economic performance of the coal industry and its position as a reliable exporter of quality coal.

Figure 12 Historical and expected level of coal production and export value



Source: BREE; ABARES; International Energy Agency; Coal Services Pty Ltd; Queensland Department of Mines and Energy

Copper

Over the period 2014 to 2018, the annual growth rate of copper consumption is forecast to be 4.6% with total production of 26.6 Mt in 2018. The strong demand in emerging economies such as China and India for residential construction and electricity transmission networks is the primary driver.²⁰

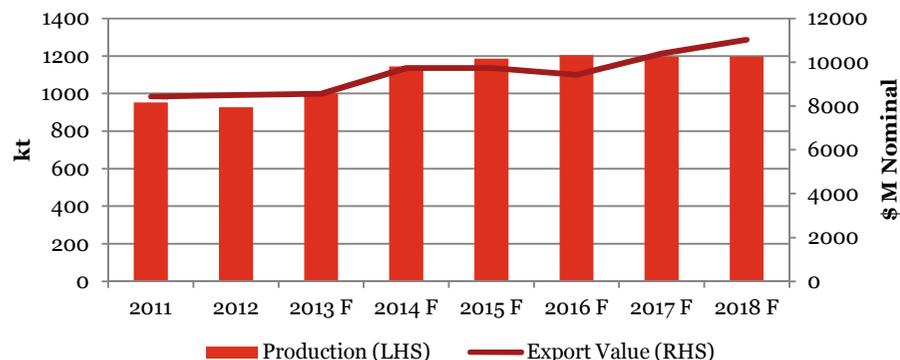
The projected export value in 2018 is similar to 2013 in real terms at approximately \$9.6 billion (\$11.0 billion in nominal value).

¹⁸ Resource and Energy, March Quarter 2013, BREE

¹⁹ Resource and Energy, March Quarter 2013, BREE

²⁰ Resource and Energy, March Quarter 2013, BREE

Figure 13 Historical and expected level of copper production and export value



Source: BREE; ABARES; Australian Bureau of Statistics; International Copper Study Group; World Bureau of Metal Statistics.

Gold

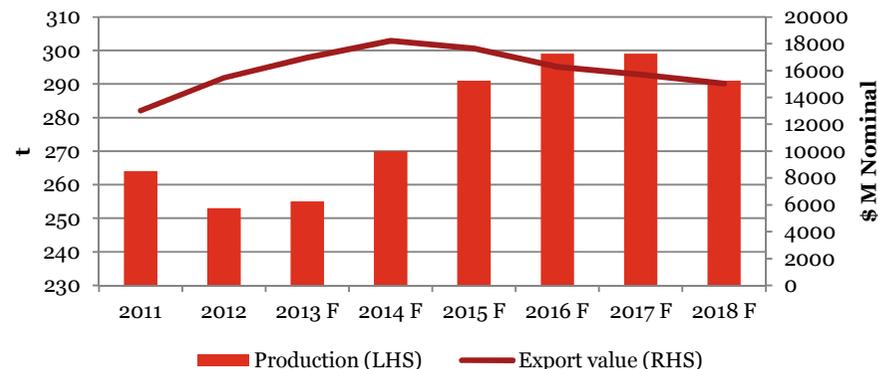
The average price of gold has increased for eleven consecutive years and it is forecast to decline by 4% in 2013 relative to 2012. Increasing demand for jewelry, driven by declining prices as well as a growing middle class in developing countries, contributes to a forecast annual growth rate of 3% for fabrication demand for gold up to 2018.²¹

Australian gold production is expected to grow by 5.4% per annum and peak at 299 t in 2016 and 2017 with a number of new projects scheduled to commence in 2014 (refer to Figure 14).

Gold exports in Australia consist of refined gold from ore from domestic mine production as well as gold dore (impure gold) and scrap which are imported before being refined into gold bullion and re-exported. BREE forecasts the total export value of gold to increase up to \$18 billion in

2014 and then decline by 4.7% per annum due to expected drop of trading price.²²

Figure 14 Historical and expected level of gold production and export value



Source: BREE; ABARES; Gold Fields Mineral Services; Australian Bureau of Statistics; London Bullion Market Association.

²¹ Resource and Energy, March Quarter 2013, BREE

²² Resource and Energy, March Quarter 2013, BREE

Appendix B: Additional assumptions used in analysis

It is not possible to predict accurately the extent of delays and uncertainty created by the recent and proposed changes to the policy environment. Changes over the last two years are just starting to manifest in the approvals process and it will be some time before it is possible to more accurately measure delays and the impact of uncertainty on investment decisions.

In the absence of definitive measures of impacts we developed a number of ways to provide estimates of potential impacts. These include:

1. a measure of the cost of delay of one month per tonne of coal
2. impacts on mining sector investment, profit and employment of three scenarios with delays by 6 months, 12 months and more than 12 months and with assumptions about uncertainty
3. estimates of foregone royalties for each of the three scenarios we considered

The base case

In order to make useful comparisons, we have assumed in our base case that the policy environment of early 2011 had remained in place and that changes to the process over the last two years had not occurred.

We used projections of coal production developed by NSW Trade and Investment for 2025 as a reference point – these projections were made in 2010/11.

We generated year by year projections for production, investment and operating costs using returns provided by mining businesses and scaling forecasts so they did not exceed the NSW Trade and Investment point in time estimates for the year 2025. The Trade and Investment projections of coal production are based on known projects and proposals and are therefore considered conservative. Beyond 2025, projections flatten. This is expected as we have not accounted for the prospect of additional exploration leading to further proposals over time and an ongoing pipeline of new projects. We took this approach to avoid using uncertain data and to avoid over-estimating impacts on the coal industry.

Our projections generated an average production growth rate for coal for NSW of 4.6% over the next 20 years. BREE forecast a growth rate of 9.3% per annum for the next five years reflecting the significant levels of investment planned in the short term.²³

Copper and gold

We did not receive sufficient survey responses to undertake detailed analysis for commodities other than coal. Public information and

²³ Resource and Energy, March Quarter 2013, BREE

assumptions based on survey responses from coal projects were used to develop analysis of industry profit and royalties from copper and gold production in each scenario.

- The BREE major project list 2013-14 was used to develop assumptions about growth in production as a result of new projects commencing in NSW
- A profit margin and royalties paid to the NSW government as a proportion of revenue published by IBISWorld were used in the analysis:

% of Revenue	Net profit before interest and tax 2012-13	Royalties
Copper	48.0%	4%
Gold	12.8%	3.0%

Source: Copper ore mining in Australia, IBISWorld Industry Report Bo803, Nov 2012 & Gold ore mining in Australia, IBISWorld Industry Report Bo804, Dec 2012

- The reduced growth in production due to abandoned projects is assumed to be the same as coal projects.

Royalties

- 2011/12 was used as the reference year for NSW government revenue from royalties, total coal production and market price – for all other years the relative change in forecast production and coal price was used to derive the change in royalties
- It is assumed that the proportion of underground compared to open cut mining in NSW remains the same which results in a constant average royalty rate
- The NSW Government’s proposal to collect supplementary royalties from 1 July 2012 to coincide with the commencement of the Commonwealth Government’s Mineral Resource Rent Tax (MRRT)

was not incorporated in the forecasts. In the 2013-2014 Budget, the NSW government revised the forward forecast revenue from supplementary royalties to zero over the forward estimates due to weak collection of MRRT.²⁴

Additional assumptions

Use of NSW Trade and Investment forecasts to predict future production levels

- We used NSW Trade and Investment production forecasts to cap forecast production – forecast production levels supplied by mining businesses were scaled down to avoid over- estimating impacts
- Business activities such as delaying production or hedging in response to possible fluctuations of commodity prices is not part of the analysis (we were isolating the impacts of planning changes)

No infrastructure constraints

- It is assumed no external constraints will limit forecast growth. That is, potential transport constraints (such as rail and port capacity) are assumed to be able to be overcome.

Survey returns used as appropriate sample of the regional and NSW population

- We assume that the returns received from the responding mining proponents were an appropriate sample to represent the NSW coal mining sector – the majority of operations with known proposals responded to the survey.

²⁴ NSW Budget Statement 2013-14, 6-3

Commodity prices

- The IMF Commodity Price Forecast from May 2013 was used to project market prices over the period.
- These forecast modest increases in the (thermal) coal price from \$US90 to \$US100 over the period in nominal terms. Based on current exchange rates forecast prices are predicted to be steady at \$A87 in real terms over the period. The forecast price for copper is steady at \$A7,171/Mt and \$A1,454/oz for gold in real terms.

