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Submission: Guidelines for the Allocation of Coal Resources

Thank you for the opportunity to make this submission on the guidelines for the allocation of coal resources. The Lock the Gate Alliance is a network of groups and individuals around Australia working together to protect land and water resources and people and communities, from inappropriate mining. We welcome the Government taking action to implement the recommendations of the ICAC's report on *Reducing the opportunities and incentives for corruption in the State's management of coal resources*. However, we feel that the draft guidelines and the Strategic Statement on Coal that underpins them have neglected some key recommendations from that report and failed to tackle the challenges facing coal affected regions.

The first recommendation from the ICAC was that, "the NSW Government sets out the objectives, priorities and outcomes it wants to achieve from the allocation of the state's coal resources. These should demonstrate consistency and alignment with the goals of the NSW 2021 state plan and the 'make NSW number one' strategy." Accordingly, along with the draft guidelines for the allocation of coal resources, the government has produced a two-page "Strategic Statement on NSW Coal" which purports to do this. The Lock the Gate Alliance welcomes the opening of discourse about the strategic use and allocation of the state's coal resources but we are profoundly disappointed that the Government's current "Strategic Statement" fails to demonstrate consistency and alignment with the goals of the NSW 2021 State Plan.

Crucially, the eighth ICAC recommendation, that the steering committee provide triple-bottom line assessment of the environmental, social and economic factors of allocating an Exploration Licence, appears to have been mostly ignored by the Government. The need for triple bottom line "considerations" is mentioned among the objectives of the Coal Strategic Statement, but there is no mechanism or process that would actually allow this to occur and it is not included in the guidelines put out for public comment. In addition, we believe the guidelines fail the transparency and accountability test in not including robust provisions for the involvement and consultation of affected landholders and communities in the allocation of coal resources.

Our Alliance wants to engage in a genuine conversation about the strategic use of New South Wales' coal resource, but that conversation cannot occur while the state maintains its current default for coal resource development in any location in the state, at any cost.

We have a series of recommendations for addressing the gaps in the Government's approach, starting with a comprehensive reform process that protects land and water upfront.

Recommendations

- The exclusion of areas where mining is not appropriate must be brought into the coal allocation guidelines via a comprehensive reform process. The elements of this reform process are:
 - A freeze on further coal titles and allocations until the reforms are in place,
 - Establishment of statutory no-go areas for water resources, farmland, important bushland and homes,
 - A review of all current coal titles against the no-go areas and a triple-bottom-line assessment, with a process established to cancel and revoke any that are inconsistent with the new policy.
- The coal title allocation process must adopt the ICAC's recommended triple-bottom-line considerations.
- The coal title allocation process must have a clear and standard process throughout, beginning with notification in writing to all landholders within the exploration area, and ongoing transparent communication and engagement with affected landholders and the community, providing all relevant information, and updating them on the progress of the allocation process.
- Given the extensive areas released under the old system, a review of all coal leases and licences must be undertaken.
- The *Strategic Statement on Coal* needs extensive amendment if it is to be consistent with the NSW 2021 Plan and the expectations of the community. We urge the Government to open this discourse further by holding dedicated public discussion fora in areas where coal mining is occurring and proposed, including Newcastle, Singleton, Muswellbrook, Gunnedah and Lithgow.

We would appreciate the opportunity for the Lock the Gate Alliance and members of our network in coal affected regions to engage more meaningfully in the coal and mining reform process and look forward to the Government's response to our submission.

Feedback on the coal "strategic statement"

The Lock the Gate Alliance welcomes the opening of discourse about the strategic use and allocation of the state's coal resources, but we are profoundly disappointed that the Government's current "Strategic Statement" fails to demonstrate consistency and alignment with the goals of the NSW 2021 State Plan, as the ICAC specified it should.

As it stands, the Strategic Statement is little more than an acclamation of the current status of the coal industry in New South Wales, with a handful of imprecise "objectives" that are useless as policy directives and an insult to mining-affected and -threatened communities.

We have outlined below the manner in which the Statement, as it stands, fails to meet the ICAC's recommendation that it be consistent with the State Plan. More fundamentally, the Strategic Statement has failed to grapple with the challenges the coal industry, and the communities currently reliant on it, face as energy markets rapidly change, coal resources in traditional areas are exhausted and the industry increasingly encroaches on the viability of other sectors of the rural economy. In

the Hunter Valley, for example, the rapid acceleration of the industry in the last ten years has changed the social and economic fabric of the Valley. In ten years in that region, employment in agriculture has halved and employment in mining has doubled. This has long-lasting implications for the resilience of the region and the viability of sustainable rural industries. The recent dramatic decline in the market prices for coal are now being felt as shocks of redundancies in the region, even as production increases, to make amends for lost profits per tonne. The Hunter needs leadership and a strategic approach to the use of coal resources could correct some of the imbalance that is currently causing conflict, corruption and political turmoil in the region. We urge the Government to re-open the strategic statement in light of this need.

Our Alliance wants to engage in a genuine conversation about the strategic use of New South Wales' coal resource, but that conversation cannot occur while the state maintains its current default for coal resource development in any location in the state, at any cost.

Objectives

There is an urgent need for a strategic statement on coal that actually grapples with the challenges the industry faces, and the conflicts and damages that it causes locally. The current statement does not attempt this.

The "Coexistence" objective in the Strategy is already redundant in the Hunter Valley, as open cut mines have already pressed beyond reasonable limits to the point where other industries are stating their intention to leave the region altogether. Whilst ever clause 21AA of the Mining SEPP elevates the "significance of the resource" as the principle consideration for consent authorities for coal mines, co-existence is little more than a deceptive public relations slogan.

We support the transparency objective, and the specification that coal release, exploration and production decisions are open, transparent and evidence-based to minimise corruption risks. We do not believe that the current draft guidelines fulfil this objective adequately, and have made recommendations for how the guidelines can be amended to address this.

Regarding the sustainability objective, which states that "Coal release, exploration and production decisions are governed by triple bottom line considerations to promote comprehensive and balanced decision making," this is certainly a direction we support, but in the absence of the comprehensive reform process we recommend, we cannot see how this stated objective can be fulfilled. Currently, there are no environmental or social considerations included in the allocation guidelines and process, and it is unclear how anyone taking a triple bottom line approach would be able to do so within the current statutory and policy framework. If sustainability is to be more than just a public relations label, then fundamental change is needed to the way New South Wales utilises its coal resource and manages land and water conflicts and long-term planning for mining regions. Should the State Government genuinely want to deliver on the recommendation to adopt triple bottom line assessment and develop a strategic framework for the use of our coal resource, then a thorough public discourse, and root and branch reform agenda must be initiated by the current parliament.

Regarding the stated objectives for achieving value for the economy, adequate returns for taxpayers and opportunities for regional economic development, the Lock the Gate Alliance challenges the Government to accurately assess and review the economic role of the export coal industry in New

South Wales, using a cost-benefit analysis approach and creating scenarios for different regulatory approaches. We note that Department head, Kylie Hargreaves told Budget Estimates on 20 August that “there is a cost benefit of the pros and cons being done of every one of the auction and other competitive models that are being considered by Treasury at the moment.”¹ We are interested in hearing more about this analysis, and whether it includes, for example, the cost of lost opportunity for value-added food manufacturing in the Hunter dairy industry, which has never been accounted for in the glib estimations of the coal industry’s role in that region’s economic life. The proposals that Lock the Gate and others are making for clear no-go zones for water resources, agriculture, bushland and homes may limit the coal industry’s erstwhile open-slatther opportunities, but the benefits of this approach, in our view, would outweigh this cost. It is time for an open dialogue about the role of coal in the regions, in the state and in the future, and we encourage the Government to launch a process of reform that seeks the views of communities with a stake in the results of this dialogue.

In short, the Strategic Statement on Coal needs extensive amendment if it is to be consistent with the NSW 2021 Plan and the expectations of the community. We urge the Government to open this discourse further by holding dedicated public discussion fora in areas where coal mining is occurring and proposed, including Newcastle, Singleton, Muswellbrook, Gunnedah, Lithgow.

Inconsistency with the State Plan

The *Strategic Statement on Coal* mentions the New South Wales 2021 Plan just once, citing the target “to increase the value of mining production by 30%.” The value of mining production is, in fact, falling, as a result of glut conditions brought about by weak demand in Asia coupled with blind and poorly considered increases in production here. In fact, the Strategic Statement misrepresents the State Plan’s target, which is to increase the value of *primary industries and* mining production by 30% by 2020. This erasure by the Department of Trade and Investment of the primary industries speaks volumes about the imbalance in New South Wales priorities which privilege mining at the expense of agriculture. In order to increase the value of primary industries in the state, the *Strategic Statement on Coal* needs to honestly and clearly address land and water use conflicts between agriculture and mining, and outline how the future of food production will be secured, in light of the encroachment of mining into farmland and productive aquifers.

Goal 29 of the 2021 Plan is “Restore confidence and integrity in the Planning system” and the Plan specifically promises that the Government will “Implement a new planning system” that will “Increase stakeholder satisfaction with planning processes and transparency.” Relatedly, Goal 32 of the plan, “involve the community in decision making on Government policy, services and projects” aimed for an “Increased proportion of people who feel able to have a say on issues that are important to them.” The Lock the Gate Alliance opposed the *Planning Bill 2013* and we do not think that it was an appropriate instrument to deliver on these laudable targets and goals. We welcome the opportunity to begin afresh if the Government has a genuine commitment to this goal, as the current planning system and the Department that administers it is profoundly, repeatedly and sorely failing communities that are affected by or threatened by coal mining. We recently joined mining

¹ Estimates transcript. See here:

[http://www.parliament.nsw.gov.au/Prod/Parlment/committee.nsf/0/a196a0a2ef5e7b95ca257d3a00831151/\\$FILE/99992942.pdf/Transcript%20-%20Uncorrected%20Proof%20-%20Resources%20and%20Energy,%20Special%20Minister%20of%20State%20-%20%20Wednesday%2020%20August%202014.pdf](http://www.parliament.nsw.gov.au/Prod/Parlment/committee.nsf/0/a196a0a2ef5e7b95ca257d3a00831151/$FILE/99992942.pdf/Transcript%20-%20Uncorrected%20Proof%20-%20Resources%20and%20Energy,%20Special%20Minister%20of%20State%20-%20%20Wednesday%2020%20August%202014.pdf)

affected communities in submitting a log of claims to the Department of Planning about these failures, and have repeatedly made recommendations for simple reforms that can begin the process of restoring trust and effectiveness in the planning system. More fundamentally, a root and branch reform process is as necessary now as it was when the 2021 Plan was written, but to be effective, it must address the lack of transparency, accountability and checks and balances in the current system, and restore community appeal rights, agency concurrence powers and objective processes. We have attached, for your information, an outline of 20 key reforms that we feel are needed in New South Wales, and welcome the opportunity for robust public discourse on these matters in the lead up to the 2015 State Election.

Another relevant target in the State Plan that has not been addressed in *the Strategic Statement on Coal* is to “Develop Strategic Regional Land Use Plans by 2014.” The SRLUPs released for the Hunter and the North West and New England have failed to deliver on the promise that they will address the needs, challenges and opportunities of each region and its land use conflicts. The Plans were supposed to have been accompanied by agricultural land mapping and agricultural industry sector strategic plans, but there is no statutory protection for these lands from coal, and there has been no mapping and protection of dairy, cotton, cereal and horticultural critical industry clusters for either coal or unconventional gas. The Strategy is incomplete and imbalanced without this, and cannot be consistent with the 2021 Plan until the process of reforming mining to protect these industries is complete.

The State Plan also promised to “Finalise the Aquifer Interference policy and regulation to provide guidance on acceptable mining impacts to protect water resources.” This too, is incomplete. Lock the Gate recently released new research that exposed the scale of aquifer interference by open cut coal mining in the Hunter Valley. We believe that there is an urgent need to implement statutory protections preventing mining from occurring in important water resources, in productive aquifers, drinking water catchments and within 2km of rivers. The Strategic Statement on Coal is not consistent with the 2021 Plan until it grapples with the threat to water resources from coal.

Goal 26 of the 2021 Plan is “Fostering opportunity and partnership with Aboriginal people” with a specific target of “increasing the number of Aboriginal culturally significant objects and places protected.” The Strategic Statement on Coal does not address the ongoing loss of Aboriginal places and objects to coal mining and the pressing need to reform the management and protection of cultural heritage to stop this loss and give Aboriginal communities control over their heritage and its management.

The Guidelines for allocation of coal resources

The Guidelines are issued in response to the second recommendation of the ICAC, that “the NSW Government develops a set of predetermined factors to provide guidance in the release, allocation and development of NSW coal resources. These factors must be given consideration by all decision-making bodies involved in the process.”

The ICAC recommended that recommendations on the release of coal be assessed against objective pre-determined criteria and released to the public. The criteria outlined in the interim guidelines, which have been in place since February, but were only released to the public in August are minimalist in their approach. They address the problem of direct allocation in a measured way, but

do not attempt at all to deal with the triple-bottom line considerations that the ICAC recommended be included in the coal allocation process. The emphasis on ensuring that allocated areas actually get developed and the higher financial investment being made upfront by companies securing allocations by competitive process must be balanced by ensuring that allocations are not made in areas where mining is not an appropriate land use.

For example, the guidelines propose that coal titles can be cancelled by the Minister without compensation “where the conditions of the allocation in relation to mine development are not met by the title holder or the allocated resources are not developed within any specified time frame.” This amounts to the Government compelling companies to mine areas that have been allocated to them, and combined with the competitive process, will intensify the existing culture of entitlement among coal mining companies that expects all areas of the state, regardless of current or potential land use or values, to be available to them. The introduction of such a provision will exacerbate conflict in regional New South Wales over mining if it is not paired with major policy reform that ensures mining only occurs on land where such an intensive activity is appropriate.

The guidelines must be amended to include provisions for the triple-bottom-line assessment recommended by the ICAC. In addition, the process for allocation need a clear and standard process throughout that involves and informs affected landholders and broader community networks of which they are part. This should begin with notification in writing to all landholders within the exploration area, and ongoing transparent communication and engagement with affected landholders and the community.

It is crucial that the pre-determined factors in the allocation of coal titles include broader public interest matters that are potentially affected by the decision to pursue mining in the area proposed. Lock the Gate’s preference would be that protection zones be established with statutory force to exclude mining activities entirely from inappropriate areas.

Areas already released

Given the extensive areas released under the old system a review of all coal leases and licences must be undertaken that applies the triple bottom line assessment and allows for the cancellation of leases and licences where land becomes reserved for the protection of water, other land uses, residences and important bushland.

The ICAC recommended that the NSW Government replace the current arrangements of ELs in mature coal allocation areas with a system of EL tenure for which exponentially increasing rents are payable and that the NSW Treasury develops a transitional regime for moving all existing ELs to a rent-based arrangement and makes recommendations to government.² This would be an opportunity to undertake a thorough review of existing leases and cancellation of those that are issued over areas where mining would not be appropriate. Many coal leases are issued under the old Coal Act, and these need to be reviewed in the light of a Strategic Statement on Coal that recognises the deep challenges facing the coal industry and the communities where it operates.

Thank you again for the opportunity to make this submission. We look forward to engaging in further policy development on these important matters.

² Recommendations 7 and 8.

Appendix: Protect NSW's land, water and future from uncontrolled mining

Protect water

1. Create no-go zones that prohibit the expansion of coal mining and unconventional gas activities in drinking water catchments for major coastal populations.
2. Prohibit the expansion of coal mining and unconventional gas within 2km of rivers and wetlands.
3. Give the Gateway Panel the power to recommend mining proposals be rejected on the grounds of their impact on water resources.
4. Make approval or rejection of mining proposals contingent on a clear threshold that there be no damage, loss or reduction in surface water or groundwater.
5. Prohibit unconventional gas drilling and coal mining in productive alluvial aquifers and recharge aquifers for the Great Artesian Basin.

Protect land

6. Create no-go zones that prohibit the expansion of coal mining and unconventional gas activities on productive agricultural land.
7. Prohibit expansion of coal mining and unconventional gas activities onto lands supporting critical rural industries, and recognise all of the critical industry clusters that are the backbone of rural NSW, including dairy, horticulture, and food and fibre production.
8. Reform the assessment process to prevent and mitigate negative impacts of mining on rural industries, including assessment of cumulative impacts.
9. Create no-go zones that prohibit expansion of open-cut coal mining and unconventional gasfields in high conservation value land including state conservation areas, State Forests and in critically endangered ecological communities.

Protect people

10. Set binding science-based limits on cumulative air, noise, water and greenhouse pollution from coal and unconventional gas projects, and refuse any project that will breach these limits.
11. Require real-time and transparent monitoring of dust and noise pollution with significant penalties when limits are exceeded.

Restore balance

12. Give landowners the right to refuse access to their land, restore concurrence powers to environmental agencies and give local government the right to veto mining.
13. Restore the legal right for community members to appeal assessment decisions in the courts.
14. Create no-go zones to prohibit coal mining and unconventional gas near towns, villages and homes.
15. Implement the ICAC's recommendations on mining exploration, lobbyists and the planning system.
16. Embark on major reform of the *Mining Act* and *Petroleum (Onshore) Act* to implement these recommendations, using a White Paper process.
17. Ensure that the coal and unconventional gas mining is subject to the same environmental laws as other industries.
18. Create an independent and transparent Environment Assessment process where mining companies don't choose the consultants that assess the impacts of projects and decisions are objective, not discretionary and able to be appealed.
19. Introduce strict standards for rehabilitation, including adequate bonds and a ban on final voids.
20. A fair compensation arrangement for landholders impacted by coal and CSG development.