



Blue Mountains Conservation Society Inc

ABN 38 686 119 087

PO Box 29 Wentworth Falls NSW 2782

Phone: (02) 4757 1872

E-Mail: bms@bluemountains.org.au Web Site: www.bluemountains.org.au

Nature Conservation Saves for Tomorrow

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Department of Resources & Energy (DRE),
Sydney NSW 2000.

By email: resources.submissions@industry.nsw.gov.au

Submission on the Strategic Release Framework (SRF) for Coal and Petroleum Exploration

Summary

- The SRF uses a cumbersome system to combat corruption but fails to protect agricultural, hydrologic and environmental values and pays little regard to community consultation.
- Advisory Body for Strategic Release is heavily weighted (in terms of its composition) towards the primacy of exploitation, and intensely constrained towards such an outcome by its 'governance' and 'terms of reference'.
- Inputs to the Advisory Body for Strategic Release from the Resource Assessment process and the Preliminary Regional Issues Assessment are most unlikely to alter the heavy weighting against serious environmental considerations, or to provide satisfactory opportunity for community consultation.
- It is regrettable that the ABSR is only advisory and compositionally unbalanced. The outcomes will be perceived as lacking certainty, largely devoid of meaningful community consultation, and a monument to the government's inability to make decisions about the protection of farmland, water, bushland and rural communities.
- The Society reiterates that triple bottom line assessment and community consultation must be parts of the statutory process, and the environmental and social constraints for refusing mining and petroleum licences must be stipulated and immutable.
- At a time of declining demand for thermal coal and gas, government must not compromise (through short-term expedience) the longer term more sustainable uses of land. The Society strongly recommends that government makes the statutory identification of 'no go' areas a matter of extreme priority within the context of but not limited to the SRF.

1. Introduction

The Blue Mountains Conservation Society (BMCS and also ‘The Society’ in the present submission) has a membership which fluctuates in the range 800-850. The membership is mainly drawn from the City of the Blue Mountains and the Greater Sydney region, but a scattering of members exists throughout NSW and also interstate.

The Society has a strong interest in the Greater Blue Mountains World Heritage Area (GBMWhA) in terms of protecting its many parks and reserves. It is also extremely active in campaigning for the reservation of the Gardens of Stone Stage 2 (GoS2) Proposal over the western portion of the Blue Mountains and the Western Escarpment between Blackheath and the Capertee valley, and pursuing the National Heritage Listing of parts of these areas with a view to having them ultimately being assessed for addition to the GBMWhA.

As much of the Society’s region of interest is underlain by the Western and Southern Coalfields and, at various times, has been impacted by assorted petroleum exploration tenements, the Strategic Release Framework (SRF) is of considerable concern.

2. The SRF – general comment

This document has been heavily influenced by the Coal Exploration Steering Group (CESG) and its consultation processes. The main thrust of the CSEG was to reduce the opportunities and incentives for corruption in the management of NSW coal resources, this requirement being in accordance with the 2013 recommendations by the Independent Commission Against Corruption (ICAC).

The above is a much-needed objective, but focusing on the objective has seemingly resulted in a lack of clarity regarding protection of NSW’s farmland, bushland and water resources. This is despite frequent reference to the need to ensure that these matters, together with full public consultation, are part of the overall process.

As with so many documents of this type, the words are there, but there will always be concern about how the process will operate. Such concern is exacerbated by the fact that the DRE, which is required to promote exploitation of the State’s natural resources, is heavily (and perhaps disproportionately) involved.

3. The Advisory Body for Strategic Release (ABSR)

The ABSR is presented as making recommendations to the Minister for Industry, Resources and Energy regarding where, when and how coal and petroleum resources are to be released for exploration to suitably qualified companies. The aim of the ABSR is to deliver greater transparency and control over the release of exploration areas and the granting of prospecting titles for coal and petroleum resources. So the ABSR will decide on the areas considered to be suitable for release for exploration and the most appropriate competitive allocation process for each release.

Although having an Independent Chair, the other members of the ABSR will be high-level representatives from the DRE, Department of Planning and Environment (DPE), Treasury, and the Department of Premier and Cabinet (DPC). To make sure that ABSR decisions are **closely constrained**¹, it is emphasised in the terms of reference (ToR) that ABSR recommendations “...will be guided by the Government’s published objectives, priorities and desired outcomes in relation to the allocation and development of New South Wales’ coal and petroleum resources” (ToR 11). **It is abundantly clear that the ABSR is very much advisory and that its advice must toe the line.** Furthermore, should the straight-jacket be insufficiently tight, it is stated under ‘governance’, that when the Minister for Industry, Resources and Energy receives

¹ It should be borne in mind that the four members are already from departments which, as is apparent from the Society’s awareness of their position relating to approving a development application versus its rejection on environmental grounds, are primarily committed to resource-exploitation on economic and social (jobs, capital inflow) grounds.

the ABSR's recommendations, he/she "...will then seek Cabinet endorsement to release an area for exploration based on the recommendations"; nothing is left to chance!

At this point, the Society is justifiably concerned about how the heavily constrained exploitation-focused ABSR will deal with environmental issues. ToR 10 goes a very small way towards covering this aspect by stating that the ABSR: "...will consider advice from the Division of Resources and Energy through the Resource Assessment, and from the Department of Planning and Environment, through the Preliminary Regional Issues Assessment. **This will ensure that social, environmental and economic issues are considered.**"

On examining the Resource Assessment (RA) process, the main factors in such an assessment are stated as: availability of data, resource body characteristics, market characteristics, and other geological factors. There is nothing which suggests any serious consideration of environmental and adverse social factors. Rather, on top of the already heavy weighting in the ABSR towards ensuring exploitation outcomes, the RA also promotes the economic and thereby the positive social factors.

The Preliminary Regional Issues Assessment (PRIA) aims to inform the ABSR about environmental, economic and social issues at a regional or sub-regional scale, so as to help the ABSR make its recommendations about whether the Government should release an area for coal and/or gas exploration. The PRIA will be a 'high-level'² assessment of "...existing data sources and current government policy only." There is no intention that it will in any way be a precursor or factor to be considered in any future development application; but perhaps it should be!

The PRIA will seemingly limit itself to the readily evident social, environmental and economic considerations and focus on the broad potential risks associated with any future exploration and development; it will seek community input. From the Society's viewpoint, the heavy weighting towards exploitation outcomes and the focus of the RA, really mean that the PRIA will concern itself mainly with readily identified economic and positive social factors, and at best address the potential for broad environmental concerns. **This effectively suggests that the PRIA will have little bearing on the deliberations of the ABSR.**

The Society notes from the flowchart of the SRF that because the RA precedes the PRIA, the ABSR will have effectively accepted the significance of the resource. The remaining decision will be to determine whether or not to recommend releasing the area and the method by which competitive allocation will be achieved. **It is acknowledged that sensitive agricultural regions and high-value environmental regions could be excluded by the ABSR, but there is nothing in the process that provides certainty³.**

4. Additional critical and constructive comment

4.1 The nature of the SRF process

- Apart from attempting to combat corruption by using an independent advisory body⁴, the SRF is extremely bureaucratic; it is a clear case of using a steamroller to crack a walnut and constitutes a misuse of financial and human resources. Thus, all the data being gathered are pre-existing. It doesn't make sense to expect departments to gather data, prepare reports, and feed them into the ABSR in order to make the types of assessment that will probably be pretty obvious and even pre-determined.
- Any self-respecting exploration geologist (or member of what was once the geological survey of NSW) would be able to produce a map of NSW showing the principal regions prospective for coal and coal seam gas; and any environmental scientist should be able to overlay that map with one or more layers

² The meaning of this is unclear, but in view of the scale and the restriction to be within current government policy, it would seem that the assessment will be superficial and not extend beyond the obvious.

³ Somewhat ludicrously (and hopefully unlikely), areas once-covered by Petroleum Exploration Licences for coal seam gas that have been bought-back by the current government could still be recommended by the ABSR.

⁴ The heavily constrained but relatively senior composition of the ABSF would most probably render decisions free of blatant corruption; the main concern is the bias that comes with the departments with which they are associated.

showing the main environmental and adverse social concerns. In fact, past meetings⁵ between government departments, environmental groups and representatives of agricultural and livestock industries have already produced such maps.

- It is regrettable that the ABSR is compositionally unbalanced. The pieces of advice regarding areas which could be released and the methodology of release are subject to approval by the receiving minister and endorsement by Cabinet. This means that any claim to being independent, no matter how flimsy, is illusory. The outcomes will be subject to the whims of and manipulation by government. The outcomes will be perceived by all stakeholders as lacking in certainty, largely devoid of the protections provided by meaningful community consultation, and a monument to the government's inability to make decisions about the protection of farmland, water, bushland and rural communities.

4.2 Triple bottom line assessment and community consultation

- ICAC (2013) recommended “triple bottom line” assessment be introduced as part of the exploration licence granting process, and a Steering Committee was established with the intention of achieving it. If the SRF is the product deemed to supply “triple bottom line” assessment, it fails conspicuously because the ABSR is compositionally lacking in balance.
- If triple bottom line assessment and community consultation are truly valued by government and meant to be taken seriously, there has to be more than token references to them tucked away in the PRIA; also, the structure of the ABSR should not be loaded against environmental and adverse social considerations.
- Should the above be deemed unreasonable, the Society draws attention to two pieces of legislation introduced to parliament on 15/10/2015. They amend the *Mining Act* and *Petroleum (Onshore) Act* to ensure compatibility with the SRF as follows:
 - The *Mining and Petroleum Legislation Amendment (Grant of Coal and Petroleum Prospecting Titles) Bill 2015* introduces competitive tendering to the allocation of both coal and gas exploration tenements. Yet, as far as is currently apparent, neither community consultation nor triple bottom line assessment is mandatory.
 - The *Mining and Petroleum Legislation Amendment (Harmonisation) Bill 2015* introduces standard clauses to ‘harmonise’ coal and gas exploration, but concurrently refers to ‘broader and more flexible powers to impose and vary conditions’ (deharmonisation?). The Bill seemingly disregards the PRIA, effectively emphasising the PRIA’s insignificance and losing the opportunity to stipulate some statutory grounds for rejecting licences⁶.
- The Society firmly believes that triple bottom line assessment and community consultation must be parts of the statutory process. Furthermore, the environmental and social constraints for refusing mining and petroleum licences must be clearly identified and not subject governmental whims.

4.3 ‘No go’ areas

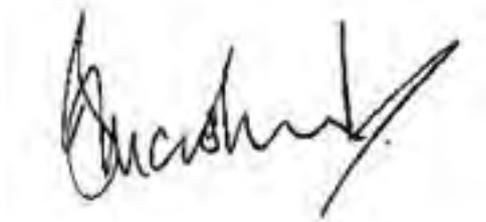
- The NSW Chief Scientist and Engineer (2014) recommended that the government should designate those areas of the State in which CSG activity is permitted. The reasonable corollary is that the remaining areas would be protected from further gas exploration.
- The agricultural and livestock communities, and also the environmental groups, have lobbied for areas which should be protected from open-cut coal mining, while at one time the National Party advocated significant buffers around villages and other small-community clusters of habitation. It made sense (and still makes sense) to clearly define areas from which coal and gas exploration and exploitation should be excluded; this should most certainly be before any form of exploration tenement is issued

⁵ From memory, back in the days when Brad Hazzard was Minister for Planning and attempts were being made to define realistic ‘no go’ zones.

⁶ For example, minimum buffer zones around small villages and other small communities, and minimum buffer zones around schools and along the boundaries of National Parks.

so as to avoid uncertainty. It would preclude the nonsense of covering parts of National Parks and then needing to excise those areas as part of the conditions attached to the licence.

- Some 'no go' areas are suggested in footnote 6, but it is critically important to also provide clarification in relation to drinking water catchments, productive aquifers, critically endangered ecosystems and productive agricultural land. At a time of declining demand for thermal coal and gas, it would be irresponsible for government to compromise (through short-term expedience) the longer term more sustainable uses of land.
- **The Society strongly believes that the only sane way of operating is for the government to clearly identify 'no go' areas as part of the SRF. Enough work has already been done on this to achieve a satisfactory outcome.**

A handwritten signature in black ink, appearing to read 'Brian Marshall', with a long, sweeping flourish extending to the right.

*Dr Brian Marshall,
For the Management Committee.*