Community Sacrifice for Coal and Gas

Social Impact Assessment in New South Wales:
Gaps and Recommendations | 2024

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Executive Summary

Across rural and regional New South Wales (NSW), communities continue to endure negative social impacts of the extractive resource industry. Where coal mining has brought significant revenue to the NSW Government and fuelled economic growth within the region, communities have been ruptured and livelihoods destroyed. The negative social impacts of the extractive resource industry have been poorly assessed and the communities at the extractive-frontier continue to suffer with persistent and ongoing negative impacts, including 24 hour/day noise, dust, blasting, combustion, increased traffic movements, loss of population, loss of place, loss of culture, and loss of well-being.

The Social Impacts Alliance have prepared this report to inform communities, social impact assessment practitioners, and policy and decision makers about the shortcomings in the NSW planning system and the failures in protecting communities at the extractive frontier. The report outlines the background to the current state of Social Impact Assessment (**SIA**) of State Significant Development (**SSD**), specifically as it relates to the extractive sectors in NSW. The report illustrates the gaps in policy and planning and makes several recommendations for the NSW Government to advance SIA and provide a just planning system.

The report draws upon decades of work and advocacy by community members across NSW who have endured the negative social impacts of coal and gas extraction. The report was inspired by a decision made by Chief Justice Brian Preston in the Land and Environment Court (**LEC**) in 2019 concerning the proposed Rocky Hill Coal Project (**Rocky Hill**). In Rocky Hill, Preston CJ refused an application by Gloucester Resources Limited (**GRL**) to develop a new open-cut coal mine in the Gloucester Valley[1]. Rocky Hill is a landmark decision for its findings on both climate change and social impacts. Rocky Hill reiterates the mental and physical impacts of coal mining on local communities, emphasising people's attachment to place and how large scale open-cut coal mines can have adverse impacts on those connections and people's wellbeing.

Photo Credit: Hugh Nicholson '*Pilliga wildflowers at risk from Narrabri coal seam gas*'

Rocky Hill illustrates the importance of a rigorous SIA framework that facilitates the assessment and evaluation of social impacts. Since 2010, communities impacted by the fossil fuel industry have been calling for such a framework. They have also lobbied for an assessment of social and health impacts to ensure all negative social impacts of SSD projects are properly considered.

In 2017, the NSW Government adopted a Social Impact Assessment (**SIA**) Guideline for coal and gas and quarries. Rocky Hill was the first decision to consider and apply the Guideline. In 2021, the guideline was revised and extended to all SSD projects, including

[1] *Gloucester Resources Limited v Minister for Planning [2019] NSWLEC 7.*

renewable energy projects: Social Impact Assessment Guideline for State Significant Projects (**Guideline**).

The Guideline is now an expected framework to guide SIA in NSW, and it is a main component of the Environmental Impact Assessment (**EIA**) process. Community concerns about health impacts are, however, still unaddressed and there is still no requirement to conduct a Health Impact Study as part of an EIS. This is significant as many of the communities impacted by extractive industries, such as coal mining in the Hunter Valley, consistently report air quality conditions that fail to meet national standards and report associated negative health statistics and other health concerns, including mental health.

The Guideline lists eight key categories in which social impacts may occur: way of life; community; accessibility; culture; health and wellbeing; surroundings; livelihoods; and decision-making systems. Whilst the Guideline presents a tremendous step forward in placing social impacts on the agenda, the expansion of the Guideline has compromised the Guideline's specific relevance for extractive projects. Further, the SIA process continues to be framed around the presumption the project will be approved and that presumed (but rarely assessed) social benefits from employment will outweigh other social components central to people's way of life, livelihoods, and wellbeing. The SIA process remains focused on the construction and operation phase, and limited attention is paid to the environmental and social legacies of projects, including mine rehabilitation and long-term environmental legacy, which are not adequately addressed as a social impact.

The Guideline fails to include climate change and human rights as priority items for assessment. It fails to recognise the temporal impacts of mining that go hand in hand with the material implications and impact on environment, surroundings, and sense of place. The ongoing and cumulative impact of mining is often missed.

In addition to the gaps that remain in the Guideline, the SIA capacity within the Department of Planning, Housing and Infrastructure (**DPHI**) is vastly under-resourced and there is not sufficient capacity and skill within DPHI to adequately review SIAs through best practice holistic and cross-sectional social scientific evaluation. This results in a poor assessment of the extent of social impacts and poor conditions of approval, relative to other areas of EIA.

The report offers an overview of our key concerns about the current state of SIA in NSW, calling for the urgent need to implement better processes and more resources to support rural and regional communities who are left to deal with the negative impacts of extractive industries. The report presents eight key recommendations, supported by several sub-recommendations, to build a more equitable and fair system that can better protect vulnerable communities on the extractive frontier.

Photo Credit: Hedda Askland *Hunter Valley coal landscape*

Key Recommendations

1. **Build greater recognition of the unique nature of the extractive resource industry within the Social Impact Assessment Guideline by including:**
   - more guidance on evaluation of uneven distribution of benefits;
   - advice on how to manage impacts over time;
   - consideration of human rights and climate change;
   - requirement of holistic assessment;
   - revised expectation of social baseline;
   - requirement of place-based analysis; recognition of culturally appropriate First Nations engagement;
   - consideration of individual physical and mental health, and community health and cohesion;
   - requirement of a structured mitigation approach in line with eight assessment criteria; and,
   - requirement for co-design and local procurement.
2. **Review and revision of the 2022 Cumulative Impact Assessment Guidelines for State Significant Projects.**
3. **Extinguish Independent Planning Commission Public Hearings to ensure all communities get a public meeting and retain their merit appeal rights.**
4. **Establish structures to ensure transparency, integrity and accountability in SIA process:**
   - all SIAs to be prepared and peer reviewed by a certified SIA practitioner;
   - allocate resources for affected communities to be active participants in the SIA process;
   - conduct an inquiry into alternatives to proponent-driven SIAs;
   - establish a formalised framework for review and oversight;
   - establish a community advisory board within key regions;
   - strengthen the requirement for SIAs to be conducted in line with the Australian Government's National Statement on Ethical Conduct of Human Research;
   - institute strong principles to guide decisions; and,
   - listing of DPHI SIA Team and Team Leader on DPHI assessment report.
5. **Improve DPHI resourcing, including the establishment of a permanent and dedicated expert SIA team within DPHI, and knowledge sharing.**
6. **Amend the Guideline to ensure the social impacts of climate change are assessed.**
7. **SIMPs to be developed, reviewed, assessed and approved prior to any development approval, and all SSD conditions of consent to include a condition requiring proponents to comply with the specific social impact mitigation measures provided for in the SIMP.**

Social Impacts Alliance©

1.

Introduction

1.
Introduction

The Social Impacts Alliance is a group of connected communities seeking to raise awareness of the continued failure of the SIA process and the ongoing gaps in policy and planning that place the experiences, concerns, needs and wishes of community secondary to that of industry.

Social impacts caused by expanding coal extraction and gas exploration in NSW have been serious and widespread over time. This is especially evident in the Hunter, Mudgee and North-west regions. The pollution generated by very large opencut coal mines has caused significant areas of land and property to be acquired by mining companies. This has hollowed out rural communities and neighbourhood networks, destroyed social fabric and caused the disappearance of entire villages, that were previously centres of community activity and socialisation.

In the Hunter, communities have been decimated at Ravensworth, Warkworth, Camberwell, Mt Olive, Bulga, Wybong, Kyuga and many places between Muswellbrook and Singleton. In the Mudgee region, the villages of Ulan, Wollar and Bylong are entirely owned by mining companies. In the North-west, established farming communities have been broken up. The approved Narrabri gas field and proposed Hunter Gas Pipeline has caused major social stress. It has taken a strong community-based campaign over many years for social impacts of mining and gas projects to be assessed. While there is now a formal process, it is still less than adequate and does not mitigate the underlying stress and trauma caused by loss of community and productive farms.

The report is divided into four main parts. In the first introductory section, we outline key issues of social impact as set out in the Guideline and provide a background to the development of the Guideline and its implementation. The role of merit appeals in the LEC is explored, with a particular focus on Rocky Hill. This was a significant moment in time that legitimised the Guideline and released SIA from the dominant technocratic view that undermines lived experiences of place and community. The second section analyses the gaps in SIA policy and practice. The third section provides a summary of key principles of SSD and SSI, and the fourth section makes a set of recommendations.

1.1
Social Impact Assessment in New South Wales

All proponents for SSD projects are legally required to prepare a SIA Report in accordance with the Guideline as part of the scoping and assessment process. The SIA aims to place people at the centre of the assessment process, considering various social elements of value to people, including way of life, community, accessibility, culture, health and wellbeing, surroundings, livelihoods and decision-making systems.

This is a standardised approach that seeks to build better relationships between proponents and community and reduce risks through early and open engagement. It was in part developed to alleviate problems that occurred during the mining boom – a time where projects were developed and approved with no formal regulatory framework or guideline for how to assess and evaluate social impacts, with devastating consequences for the local communities at the coal face. Despite the implementation of the Guideline, communities continue to experience negative effects of SSD projects and raise concerns about the consultation, engagement, assessment and approval process.

1.2
The key issues of social impact

In the context of SIA, a social impact refers to any ‘consequences that people experience when a new project brings change’ (DPE 2021: 8). These consequences may include changes to people’s way of life, community, infrastructure, services and facilities, culture, health and wellbeing, surroundings, personal and property rights, decision-making systems and/or fears and aspirations related to one or any combination of the above. A social impact

can be negative or positive, tangible or intangible, direct or indirect. Evidence of a social impact can be directly, indirectly or partly quantifiable. Importantly, social impacts can be experienced differently across people and groups within a community, by different communities and at different stages of a project.

Cumulative social impacts are the 'successive, incremental and combined impacts of activities on society, the economy and the environment' (Franks, Brereton & Moran 2013: 641). Cumulative social impacts can occur in three ways: (1) as spatial change in which multiple social impacts occur over the same physical area; (2) as temporal impacts in which social impacts vary over time; and (3) linked impacts, which involve how one social impact triggers another, or one activity has multiple impacts.

In general, the scale and extent of social impacts can be influenced by various factors of a project. This may include the project's location, extraction methods, local and regional context, the pace of change and development, and commodity price cycles. Any SIA should 'be targeted and proportionate to the likely project impacts, and to the project's context' (DPE 2021: 7). Ultimately, a SIA is all about **identifying, predicting and evaluating the likely social impacts that will result from a project.** It should propose responses to the predicted impacts, including suggestions for:

1. refining the details of the project to avoid negative impacts and enhance benefits,
2. minimising negative impacts and maximising benefits,
3. mitigating negative impacts, and
4. managing impacts and benefits.

A SIA should also include a 'no-go scenario' which predicts the social impacts if the project does not go ahead. This enables comparative evaluation of the relative social costs and benefits of each scenario, leading to better decision-making.

An effective SIA is not only about the final report. Equally important is the process by which the SIA is conducted; that is, how data is collected, analysed and assessed. A good SIA relies on meaningful and purposeful engagement and consultation. It should be guided by the following principles: action-oriented, adaptive, culturally responsive, distributive equity, impartial, inclusive, integrated, life cycle focus, material, precautionary, proportionate, rigorous and transparent (NSW DPIE 2021). Given these principles, a key objective of a SIA is to achieve meaningful community engagement that ensures potentially affected people are identified and understand how the proposed project may affect them, the purpose of the EIA and SIA, and how they can participate. Additionally, community engagement should collect qualitative and quantitative data that represents diversity in the community and leads to an understanding of the interests and views that potentially affected people have about the project.

1.3
Failure in planning and call for change

For over twenty years, local communities in rural NSW have been placed under tremendous pressure as coal mining interests encroach on their villages and towns. The smaller, rural communities have been largely ignored in the planning and approval process of coal mines and gas projects, with limited and often poor community consultation and engagement in the EIA process. Social impacts have historically been given a secondary status to economic impacts, cumulative impacts were largely ignored, and localised negative impacts downplayed in comparison to regional growth and wider social benefits linked to economic diversification (e.g. Askland 2018; Kennedy 2016; McManus, Albrecht and Graham 2014; Parsons 2020; Parsons, Everingham and Kemp 2019).

In response to the negative impacts, the failures in assessment and the significant imbalance of power, impacted communities commenced project-specific legal proceedings to seek recognition of their hardship and the negative social impact of operations and proposed projects. The Bulga Milbrodale Progress Association Inc challenged the Warkworth Extension Project (**Warkworth**)[2] and the Hunter Environment Lobby (**HEL**) challenged Yancoal's Ashton South-East Open Cut Coal Mine (**Ashton Coal**). In these two cases, the communities challenged the Minister's development approval in the LEC, exercising their merit appeal rights (see 1.4, below). In the case of Warkworth, Rio Tinto's proposed coal mining project was rejected by the LEC, with social impacts central to the Court's findings. At [18] of the judgment, Preston CJ held that:

[2] *Bulga Milbrodale Progress Association Inc v Minister for Planning and Infrastructure & Anor [2013] NSWLEC 48.*

'In relation to social impacts, I find that the Project's impacts in terms of noise, dust and visual impacts and the adverse change in the composition of the community by reason of the acquisition of noise and air quality affected properties, are likely to cause adverse social impacts on individuals and the community of Bulga. The Project's impacts would exacerbate the loss of sense of place, and materially and adversely change the sense of community, of the residents of Bulga and the surrounding countryside'

Rio Tinto appealed to the Court of Appeal and were unsuccessful. However, the community's sense of recognition was short lived. After the decision, the NSW Government amended the then Mining State Environment Planning Policy (**SEPP**) to require the consent authority to specifically consider the 'significance of the resource' in terms of its economic benefit to the State and the region when granting consent for development[3]. The amendments to the planning policy were, as Ute (2013:np) explain, 'aimed at emphasising the relative importance of economic benefits over other factors to be considered in determining applications for planning approval of major mining projects.' As a result, Rio Tinto lodged a new development application, public hearings were held and the Warkworth Expansion was approved in 2015.

Local communities affected by the extractive resource industry reacted to this seeming dismissal of the social pressures and cried out for attention to the lived experiences of negative social impacts. Negative impacts included, but were not limited to: acquisition of properties and subsequent loss of community; everyday impacts of noise, dust, vibrations, blasting and combustion on families' health, lifestyle and relationships; loss of services and increased cost of living; sleeplessness, heightened anxiety and depression; disempowerment; changes to loved landscape and sense of loss of place, including solastalgic distress (Albrecht 2005); broken relations; and, deteriorating social cohesion (e.g. Askland 2018, 2020, 2024). Their concerns were most often dismissed, with technical, quantitative measurements of variables such as noise and dust taking precedence and lived experience only accessible by qualitative methods disregarded. Case Study I offers a brief report of the situation in Bulga as per August 2024.

Case Study I : Regulatory failure – **Bulga**

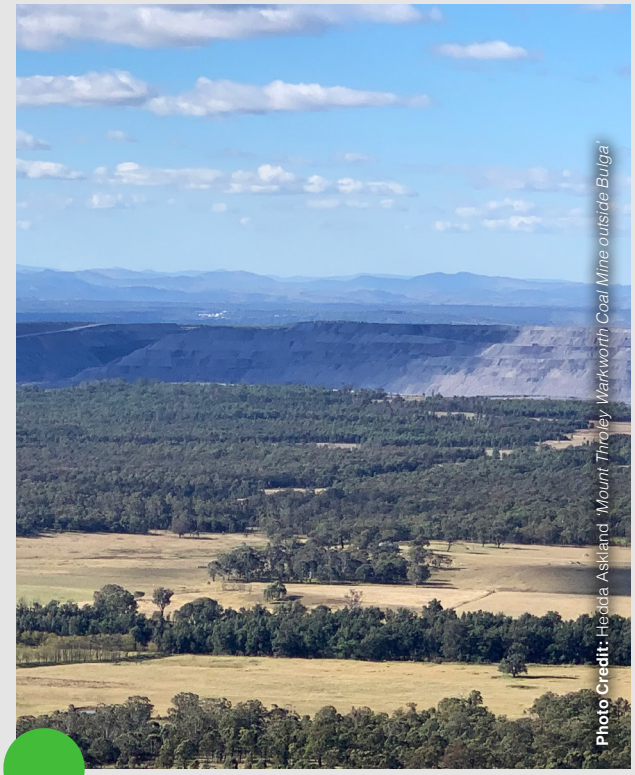

Photo Credit: Hedda Askland 'Mount Thorley Warkworth Coal Mine outside Bulga'

The Bulga community near Singleton has suffered trauma and fatigue through the failure to protect their community using all available avenues of the NSW planning system. The community is now facing an ongoing battle to have conditions of approval upheld. Regular damage to houses from blasting is not resolved through the process of negotiating with the Secretary of Planning. The promised water supply to Bulga village has not materialised. The management of the Voluntary Payment Agreement for the Bulga Project Fund is a continuing challenge. Residents suffer from noise, dust pollution and blasting stress and the ongoing frustration dealing with the mining company and with regulators, to no effect. A significant number of community members have been bought out by the mining company and left the district. The Social Impact Management Plan has not mitigated any of the social problems.

[3] *State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007, cl 12AA.*

Impacted communities across NSW continued to raise their concerns and built strategic allegiances with non-government organisations, as well as academics and activists who supported their cause. The ongoing community pressure combined with industry desire for clarity and certainty put pressure on the DPHI leadership, which came to recognise SIA as an area in need of improvement (Parsons 2020). Through consultation with community, experts and consultants, DPHI developed the Guideline, which was updated and expanded in 2021 to include all SSD projects.

The Guideline is a significant step forward in the development application and assessment process, offering advice to project applicants, proponents and consultants about how to undertake SIAs and how social impacts sit alongside environmental, economic and other impacts. It emphasises the need for a holistic and human-centred approach to development, and supports the professionalism, integrity and legitimacy of SIAs (Parsons 2020: 280). It also gives communities a guide to advance their understanding of what to expect in the assessment process and what a rigorous and valid SIA looks like. Nonetheless, communities at the forefront of new development – whether this is mining, coal seam gas, renewable energy, road and infrastructure or other developments – continue to raise concerns about the process and those concerns continue to be ignored.

1.4
Rocky Hill

The Guideline was an important first step in:

a. improving the SIA process;
b. establishing stronger expectations around community engagement; and
c. recognising the qualitative nature of social impacts and need for rigorous social science research that encapsulates lived experiences of place.

In 2019, the Guideline gained attention when it was considered by the LEC in its decision to reject the proposed Rocky Hill Coal Mine in the Gloucester Valley (**Rocky Hill**)[4]. Rocky Hill exposed the failures in the system and the way industry and development standards dismiss social impacts as lived experience. For example, in relation to air quality, Preston CJ found that:

> *'The negative social impacts caused by residents' concerns about the project-related air quality impacts, including the perceived threat to their health and the health of their families, are not impacts that are the subject of the cumulative air quality level development standard in cl 12AB(4) of the Mining SEPP. That development standard does not prevent a consent authority from refusing consent on grounds relating to, or imposing conditions to regulate, project-related air quality impacts that are not the subject of the development standard or social impacts resulting from project-related air quality impacts.' (at [269])*

Rocky Hill brought attention to a long-standing claim from impacted communities, that the industrial policies for noise and dust do not protect communities. Under these policies, the mines, which are often situated in rural–and traditionally quiet–locations, are allowed to operate at industrial noise levels that are contradictory to the soundscapes of the place that people call home. As a local resident from a village neighbouring three large open-cut mines once explained, 'the mines may be meeting their conditions, yeah, but these conditions are driving us mad!' (Askland, fieldnotes, 17 August 2023). An example of how the difference between predicted impacts and operational realities is presented by the fact that the Upper Hunter Air Quality Monitors in 2023 registered 297 air alerts, which indicate measures that exceed the National Air Quality Standard (NSW Government 2014). In Rocky Hill Preston CJ acknowledged how industrial policies and projected impacts would contradict lived experiences of place and how the stress of living with the contradictions of industrial noise and deteriorated air quality constitute social impacts in and of themselves, and how these may be cause for further social impacts, including community fatigue and stress.

The proponent, Gloucester Resources Limited (**GRL**), presented measurements and predictions on environmental impacts that, by definition, would be within the recommended levels and aligned with 'best practice'. As indicated by the quote above, Preston CJ did, however, emphasise how these impacts could not simply be seen in relation to the technical levels set in the policy but had to be seen in relation to the experiential condition of impact, which is relational and connected to people's sense of place. His Honour acknowledged how such impacts are dependent on

[4] *Gloucester Resources Limited v Minister for Planning [2019] NSWLEC 7*

the environment in which they are experienced and how they tie themselves in with people's experiences of, and expectations to, place. In light of this, impacts such as those related to noise, dust and amenity are not simply technical measures but phenomena that are woven into people's sense of place and community, and, as such, contribute to social impacts.

The findings on social impacts in Rocky Hill is unprecedented. It is not only the first judgment based upon the Guideline, but it is also a judgment that positions how we think and act on social impact of SSD projects beyond its conventional scientific framework and recognise the lived experience of those living most closely to a proposed project. At [421] of the judgment, Preston CJ found that the project:

> *'…will have significant negative social impacts on people's way of life; community; access to and use of infrastructure, services and facilities; culture; health and wellbeing; surroundings; and fears and aspirations. The Project will also cause distributive inequity'.*

On most of the measures of social impact, Preston CJ found that the project would have 'likely' 'major' impacts resulting in 'extreme' social risks (at [322] of the judgment). His Honour's reading of the social impact testimonies—by experts and local residents—adopted a holistic approach to social impacts that recognised the environment and community as interconnected in both material and temporal terms. In this way, Rocky Hill incorporates people's lived experience of place; it is a judgment that states that place matters.

The findings in Rocky Hill have significant implications for social impact assessors because it requires attention to sense of place and place attachment. Place is not simply geography. Conversely, whilst place is connected to geography in that it entails a spatial reference, it is, as an experience, the interlinking of the biophysical, social and spiritual (Vanclay 2004). Local people are key in defining and understanding what their place is and should be. In line with this, the Rocky Hill judgment utilises the overarching idea of the SIA Guideline, which sets people at the centre of assessment. Social impacts should be assessed in line with the social elements of value to people, which together constitute notions and experience of place (Figure 1).

Figure 1: *Social elements of value to people (adapted from NSW DPIE 2021: 7)*

Rocky Hill is also significant in that the emphasis on lived experiences of place and, by inference, the relational dimension between people and place, **offers a pathway to decolonise the assessment process**. Aboriginal people have so often in the past been ignored and rejected as a voice in planning assessments. Rocky Hill was no different, with Aboriginal ways of knowing and perceptions of place dismissed in GRL's social assessment. In contrast, Preston CJ recognised the impact the project would have on Aboriginal cultural values embedded in the landscape, and the judgment establishes a strong position on how to protect and recognise Aboriginal people and heritage – by protecting Country (cf. Manikas 2019). The judgment exposes the failures of the social impact assessors to conduct adequate engagement and recognise Indigenous concerns. It emphasises how landscape, as Aboriginal heritage, cannot be seen in its individual parts but as an integrated whole. At [351] of the judgment, His Honour makes the following finding:

'I find that the Project will have significant negative social impacts on culture. The Project will adversely affect Aboriginal people of the area, by impacting their culture and Country. The impacts are not merely to the individual Aboriginal sites that have already been identified, but also there is the risk that other unidentified Aboriginal sites might be affected. There is also the broader impact on the landscape that is of high spiritual significance to the Aboriginal people … The negative social impacts will endure, not only for the duration of the Project, but long afterwards. The rehabilitation of the mine will not heal the harm to Country and culture. The scale or degree of change from the existing condition as a result of the social impact of the Project will be substantial.'

Rocky Hill has many flow-on effects. For example, Aydos et al. (2020) explain how the LEC may now consider indirect greenhouse gas emissions, recognise the causal link between individual coal mines and global climate change, consider the Paris Agreement and the Carbon Budget Approach, and reject the market substitution and carbon leakage arguments, which argues that emissions from specific coal mines are likely to occur from another supplier regardless of whether or not it is approved. In relation to social impacts, specifically, Brown et al. (2021) illustrate how Rocky Hill represents changing assumptions pertaining to what exists (ontology), how we know it exists (epistemology) and use of social research evidence in the LEC. They explain how Rocky Hill represents the first time the Court accepted evidence of solastalgia (the experience of loss of home while still at home) and recognised it to have an unacceptable impact, and how the judgment therefore created space in the decision-making process to recognise other previously unrepresented and hidden social impacts. Rocky Hill has established the important link between the environmental and social impacts of coal mines; it broadens the scope and provides new opportunities for climate change and social impact litigants.

Rocky Hill gained significant national and international attention and is hailed as a landmark judgment because of its recognition of localised responses to the global challenge of climate change. Rocky Hill is equally important for its findings on social impacts, which highlights how environmental impacts cannot be seen as removed from their social environment but, rather, must take into account local experiences of place, place attachment and community. Rocky Hill also represents a significant turning point in regard to society's expectations of land and resource use, beckoning more comprehensive considerations of all economic, social and environmental impacts of SSDs.

Photo Credit: Lock the Gate *'First Nations people seeking rights*

1.5
The role of merit appeal

Rocky Hill emphasises the importance of the LEC and the opportunity for communities to have their voices heard by an independent authority. Rocky Hill was commenced in the LEC as a Class 1 Merit Appeal. What is important to note is that in this case, the merit appeal right was exercised by GRL (the proponent) as the proposal was refused by the Minister. The merit appeal was only possible because a 'public meeting' was held and not a 'public hearing'. If a public hearing had been held, GRL would not have been able to appeal the decision to refuse the mine. It is unusual for the Minister to refuse a coal mine, and even more rare for a public meeting to be held instead of a public hearing, making Rocky Hill quite unique in and of itself.

The Environmental Defenders Office (2016:4) explains merit appeals as follows:

> **Class 1 -** Merits appeals
>
> *In a merit appeal (also called a 'Class 1' appeal), the Court remakes the decision which is being challenged – 'stepping into the shoes of the original decision maker'. This is different and not to be confused with assessing the legal validity of a decision, which is known as 'judicial review' [...].*
>
> *In a merit appeal, the Court usually has the power to make any decision which the original decision-maker could have made, such as by granting or refusing development consent. If the Court approves a development application, then the Court will usually impose conditions of consent.*
>
> *Merits appeals are available under a range of environmental legislation. However, most merits appeals in the Land and Environment Court are brought by developers against a refusal to grant development consent or against the conditions of consent. In some cases, a person who objects to the granting of development consent (known as an objector or third party) is also entitled to either bring (or be joined to) a merit appeal.*
>
> *Merits appeals are usually heard by a Commissioner, rather than a Judge. However, if the proceedings are likely to be lengthy, complex or controversial, the matter can be heard by two or more Commissioners, or a Judge and a Commissioner sitting together.*

During the mining boom, there were a few examples of merit appeal cases, including the Warkworth and Ashton Coal cases referred to above. In both these cases the community challenged the Minister's decision to approve the mines in the LEC, with the Court finding in favour of their merit-based argument.

In Ashton Coal, HEL commenced the merit appeal[5]. The assessment process revealed significant concerns with the quality of information provided and problems internally within DPHI as to how assessments were conducted. We understand two government agency workers openly opposed the approval of the mine due to scientific reasons and, as a result, either lost their job or were shifted to another part of the agency. This indicates a clear internal agenda in favour of the mining industry. However, the merit appeal did not include social impact grounds. The eventual recognition of community concerns was won by focussing on the impacts of one particular property owned by the late Wendy Bowman. The property would have been totally consumed by the proposed expansion of the mine. The Court approved the extension, subject to a condition that Ashton Coal acquire Mrs Bowman's farm within seven years. The mine needed Mrs Bowman's property to access the coal and to manage impacts (Environmental Defenders Office 2015). Mrs Bowman did not agree to sell her property to the mine within the seven-year time period, securing a positive and empowered outcome for the community.

This case study illustrates how significant merit appeal rights are for community.

The Environmental Planning and Assessment Act 1979 (**EP&A Act**) provides that where a public hearing is held by the IPC, merit appeal rights for both objectors and applicants are extinguished[6].

[5] *Hunter Environment Lobby Inc v Minister for Planning and Infrastructure (No 2) [2014] NSWLEC 129.*
[6] *Environmental Planning and Assessment Act 1979 (NSW), s 8.6(3)(a).*

The IPC website explains this provision as follows:

> *'After a public hearing, no merit appeal may be brought under Division 8.3 of the EP&A Act, in respect of any future decision made by the Commission as consent authority under the EP&A Act in relation to the carrying out of any development that is the subject of this public hearing. See Division 8.3 of the EP&A Act for more details.'*

For impacted communities, this provision is devastating. Since 2018, the Minister has requested the IPC to hold sixteen (16) public hearings. Fifteen (15) of those were for mining projects. (Lock the Gate Alliance 2024). Without merit appeal rights in the LEC and an impartial judiciary, communities in NSW have been put at a disadvantage vis a vis industry (Cox 2020).

Since then, all public hearings that have been held have been for SSD projects involving the extractive industry, predominantly coal. The IPC has the power to compel a person to attend a public hearing to give evidence or produce a document[7]. To date, the IPC has not exercised this power[8]. **This means, in practice, the only difference between a public hearing and a public meeting is that the former extinguishes merits appeal rights, whereas the latter does not.** The bias against communities affected by the extractive resource industry is evident. Since April 2023, at least five renewable energy projects have had public meetings held even though 50 or more unique objections were made.

DPHI has stated that the key considerations in deciding whether to require a public hearing are 'the complexity of the project and the level of public interest' (Lock the Gate Alliance 2024), meaning that complex projects with high levels of public interest have a public hearing requested. However, there are any number of non-fossil projects that are extremely complex, with high levels of public interest, that have not been required to hold a public hearing but have instead had a public meeting conducted. Furthermore, it is evident that it is the Planning Minister's practice not to refer renewable projects to public hearings and that proponents and third-party objectors retain their merit appeal rights. This implies a bias and deep injustice within the planning system that works in favour of the extractive resource industry and against communities at the extractive frontier. **To ensure this bias is addressed, that all communities hold equal rights to be heard, and that the rights of impacted communities are reinstated, public hearings should be extinguished. Public meetings should be held instead of public hearings so that stakeholders retain their merit appeal rights.**

Photo Credit: Lock the Gate, *Rights of landholders and First Nations people ignored*

[7] *Environmental Planning and Assessment Act 1979 (NSW), Sch 2, cl 4.*
[8] *29 February 2024, Correspondence between IPC and Lock the Gate.*

Social Impacts Alliance©

2.

Gaps in policy and planning

2.
Gaps in policy and planning

The implementation of the Guideline was a significant step in addressing the gaps in the assessment process for SSD projects. Importantly, it has established a clear benchmark for social impact assessors by setting out the minimum expectations and a set of criteria to review and assess the quality of a SIA. Nonetheless, gaps and failures in the process continue to expose communities to unnecessary stress, with linked social and environmental justice concerns. This includes gaps in the Guideline, gaps in assessment, gaps in evaluation and gaps in implementation.

2.1
Gaps in the Guideline

Whilst the Guideline has offered proponents, communities and practitioners an important framework to ensure social impacts are identified, evaluated and responded to in a comprehensive and rigorous manner, more work is needed. In the context of State Significant mining, petroleum production and extractive industry development, the communities at the coal face endure distinct challenges. As detailed below, key issues concern flaws in the SIA process, specifically issues with baseline and cumulative impacts, and the way mine closure and legacy mines are dealt with lightly from a social impact perspective.

The Guideline continues to shape a planning environment in which predicted (and often overstated) employment benefits and economic growth are highlighted as social benefits that outweigh other social components central to people's way of life, livelihoods and wellbeing. Even if the predicted jobs do materialise, what is rarely assessed is how this change in a community's patterns of work affect people, their connections, and community safety. There is no attention given to local jobs and livelihoods that are displaced as people move to higher paid mining jobs.

The Guideline emphasises the need to establish the social locality—that is, 'the area of social influence…of a project' (NSW DPIE 2021:16). Identifying social locality requires understanding the nature of the project, the characteristics of affected communities and how positive and negative impacts may be reasonably perceived or experienced by different people (NSW DPIE 2021:16). Placed together with one of the key principles to guide a SIA, distributive equity (NSW DPIE 2021:10), it should be expected that a SIA will evaluate how impacts and benefits are geographically distributed across and within the social locality. **Spatial impacts are, however, not mentioned in the definition of distributive equity, which is described as the consideration of 'how different groups will experience social impacts differently (particularly vulnerable and marginalised groups, future generations compared with current generations, and differences by gender, age and cultural group)'** (NSW DPIE 2021:10).

The Guideline includes several points to guide SIA practitioners in the definition of social locality and how impacts and benefits are distributed across social and cultural variables (NSW DPIE 2021: 17). A practitioner trained in place-based analysis could use these points to guide a spatial assessment of impact, however there are no clear instructions on how to evaluate the uneven distribution of benefits, risks and impacts as these move from the centre of the social locality through to its periphery. This has led to a continued favourable evaluation of the greater regional benefits of a project, specifically linked to employment and economic growth, at the expense of the severe localised impacts, often beyond mitigation, at the extractive frontier.

Other gaps in the Guideline include the exclusion of climate change and human rights as priority items for assessment, in contravention of standard international practice. Furthermore, the Guideline fails to recognise the significant temporal impacts of mining that go hand in hand with the material implications and impact on environment, surroundings and sense of place. The expansion of the

Guideline, which originally focussed on petroleum and extractive industry development specifically, has created a challenging space where it must cater for such a vast diversity of projects, that have distinct life-cycle concerns and challenges. Projects that have a set lifetime, such as a coal mine, will require very different assessment and mitigation measures as opposed to a school or a hospital.

Whilst we welcome the improvement of SIA practice across the board, we are concerned about how the expansion of the Guideline dilutes significant social impact concerns for extractive projects specifically. An example of this is the failure to have well-developed mine closure plans to ensure the ongoing sustainability of communities once the mine ceases to operate.

In addition to the need to better recognise distributional equity in spatial terms, how particular fossil-fuel projects link in with climate change as a social impact of carbon intensive development projects, the need to frame the Guideline in line with the human rights framework, and the issues around life-cycle assessment, we have identified three main gaps in the Guideline.

2.1.1
Baseline bias and lack of recognition of cumulative impacts

SSD projects will always be proposed within a context that has a history of development and change. In the regions that have been at the centre of the State's extractive resource industry, any proposal for a new project or a modification of existing projects will occur within a social and environmental landscape marked by past or ongoing projects. This is recognised in the Guideline's emphasis on cumulative social impacts. The term *'cumulative impacts'* refers to impacts that *'can arise from project activities (such as dust and noise), or multiple projects needing similar resources (e.g. skilled labour, housing or water)'* (NSW DPIE 2021:20). SIAs that adhere to the principle of a life-cycle focus will consider cumulative impacts (NSW DPIE 2021:10), and the way a proposed development will intersect with other existing projects is a key component of the identification of impacts (NSW DPIE 2021: 16). The emphasis on cumulative impacts does, however, lose its weight in the assessment of many of the eight social elements that matter to people (NSW DPIE 2021:7), particularly way of life, community, culture, surroundings, livelihoods and decision-making systems. It retains a position of value primarily in regard to assessment of tangible environmental variables, such as concerns linked to air and water, and economic variables, including concerns about workforce, housing, service provision and resource availability. The failure to adequately assess cumulative social impacts emerges from what we call a 'baseline bias'.

One of the first steps of a SIA is to set the social baseline. It will be part of the SIA scoping study, and will inform the EIA Engagement Strategy, project refinement and SIA complexity (NSW DPIE 2021:12). The social baseline establishes the characteristics of the communities within a social locality against which the nature and extent of identified and predicted social impacts are assessed (NSW DPIE 2021:14). The Guideline defines it as follows:

> *'The social baseline study describes the social context without the project. It documents the existing social environment, conditions and trends relevant to the impacts identified […] The study is a benchmark against which direct, indirect and cumulative impacts can be predicted and analysed. Tailor the scope and content of the social baseline study to the project context and the level of assessment of social impacts using meaningful indicators and information (NSW DPIE 2021: 21).'*

Where local communities are already adversely impacted by existing mining, for example displacement of local community and loss of social infrastructure, the baseline may become skewed and lend itself to an argument for limited impacts despite the aggravation of stress and negative impacts the project will have. This is because the baseline will be set on the conditions that exist at the time of the scoping study for the proposed development, not based on the conditions that marked the community prior to extensive mining. In the context of modification applications, this means a mine can argue there will be no social impacts of a proposal because of how the baseline is established on the social context as it has been set by their current mining operations. This bias in the baseline is experienced as a deep injustice by

the communities who are enduring ongoing, negative impacts of mining, and it has eroded trust and belief in the decision-making system – a social impact in its own right. An example of this is Wollar – see Case Study II.

The 2022 Cumulative Impact Assessment Guidelines for State Significant Projects must be reviewed and revised to consider cumulative social impacts.

2.1.2
Timeliness and appropriateness of Social Impact Management Plans

In the post-approval phase of a project, a Social Impact Management Plan (**SIMP**) may be a requirement of the conditions of consent. A SIMP describes how the continuous mitigation, enhancement, monitoring and management of social impacts over the life cycle of a project will be achieved. It should specifically outline the performance-based and prescriptive conditions to be implemented, including quantifiable indicators, baseline values, frequencies, triggers, stakeholders and responses. Additionally, a SIMP should explain how any unanticipated impacts will be addressed, and how the community can provide feedback on their measures. To ensure continued community engagement, a SIMP should be easily accessible to the community, available online, and, if required, translated into other languages, including Aboriginal languages. Finally, any other management plans, such as noise or air quality management plans, should be cross-referenced in the SIMP. The issues mentioned above regarding the bias in the baseline and the lack of insight into the spatial distribution of impacts can affect a SIMP. The SIMP can become a smoke screen, and the SIMP may not address the impacts as it is endured by local community. It may adopt management strategies that do not reflect the way impacts are distributed spatially or, in some instances, the proposed management of impacts can become negative impacts. In some instances, the social impact cannot be managed or mitigated, and the SIMP will appear as a tick a box exercise that does nothing to support the impacted community.

An example of this is where a SSD project, such as a mine, has a significant impact on the social fabric and composition of the local community neighbouring the mine. In such instances, the social impact would be

Photo Credit: Annette Gartland *'Blast at Wilpinjong Coal Mine'*

caused by depopulation due to forced or voluntary acquisition of properties. In small rural communities, the loss of a few makes a significant difference and can impact access to services and social cohesion. The proposal will cause depopulation, which cannot be rectified while the mine is in operation, if ever. The impacts that then need to be understood and mitigated are those caused by depopulation. This could, for example, be loss of the postal service, closure of the local fuel station, closure of the rural fire brigade, and cessation of visiting health services. A SIMP must address these impacts by real commitment to ensuring the local community retains vital services. In many cases the SIMP does not address any of these impacts in any meaningful way and instead refers to employment benefits, voluntary contributions made by the proponent to council, management of social impacts of mine closure, and commitments to community programs that are not of relevance to directly impacted communities – see Case Study II.

SIMPs often fall short where the project impacts Indigenous land and culture. Lacking real commitment and acknowledgement of the depth of the impact projects can have on Indigenous peoples, management plans might include Indigenous training and employment strategies (which may or may not lead to tangible outcomes such as actual jobs), tokenistic opportunities to do smoking ceremonies or other cultural ceremonies on site, and financial support of Indigenous initiatives.

Case Study II: Wollar – The village that disappeared

Photo Credit: Hedda Askland *'Wollar village'*

In the 1980s, there was a small thriving community known as Wollar, situated at the edge of the Golbourn River National Park. There were between 300-400 people living there. There was a local school with about 30 students and two teachers. Village life centered around the local shop, school, the two churches, the community hall and recreation ground. Mining was in the periphery, with Glencore's Ulan mine operating about 30km away from the village. Coal mining in the region had been relatively limited.

Mining interests started growing in the 1990s and without the local resident's knowledge, a representative of a mining company started purchasing rural properties on the outskirts of the village (Askland and Bunn 2018). This area was to become the site for Peabody's Wilpinjong Mine, which opened in 2006 as the first green field mine in NSW in the 21st century. The mine obtained a 21-year operation license from 2006 to 2027 and was given approval to extract 9.5Mtpa of coal. Initially, the local residents were not too concerned about the mine. They were promised jobs and told the mine would boost the village and provide benefits to the community. However, as the mine's operations got underway, the local community experienced nothing but negative impacts. The mine operates 24 hours per day, seven days per week. More than 90% of the residents have either been bought out or left the area because of the negative impacts and there are no longer any local landowners living in the village, with only one property not owned by the mine. Those who remain in the area are stranded with assets that are difficult to sell because of the negative impacts of the mine and, despite their pleas, they have not been given voluntary acquisition rights as they are deemed to be outside the mitigation zone. They are stranded in a village with few people, with noise, dust, blasting, spontaneous combustion pollution, light, traffic and visual impacts marking everyday life. The shop and school have closed, and Peabody Energy purchased the two churches.

The mine was initially established to produce coal for the Bayswater power station in the Upper Hunter, as the quality of the coal was very poor. Today the mine is also producing blended thermal coal for export. Since its original approval, the mine has submitted, and had approved, six modifications and one extension application, enhancing the rate of production, increasing train activity and expanding the footprint of the mine. The latest extension approved by the NSW State Government in April 2017, prolonged the mine's operations until 2033, expanding its open cut pits over approximately 500 hectares, and developing a new 300-hectare pit that brings the mine boundary only 1.5km from the village itself. In 2023, 12 million tons of coal was produced at Wilpinjong (Peabody 2024). In the same year, the remaining local residents were notified about Peabody's intention to apply for a further expansion and they are currently in the midst of yet another fight as the company had been granted a new exploration license that can bring new coal mining operations over grazing and cropping country, creeks

and bushland, no more than 500m from the village and adjacent to the Goulburn River National Park.

Peabody Energy is now the largest property owner in the Wollar area and has failed to maintain housing stock to rentable standards. In a major housing crisis, they are demolishing houses in Wollar Village and on surrounding properties while applying to build a temporary workers camp on the mine. The SIMP approved in 2018 failed to include the community's call for a building maintenance and management plan so that residences in the village and surrounding properties were maintained to livable standards. Instead, it allows for houses to be demolished.

The question about post-mining land use remains completely muted in all conversations about social impacts, with the mine continuing its takeover of land without any consideration of how the village can be brought back to life post-mining. The SIAs for modification and extension applications have taken the Peabody's takeover of Wollar as a new status quo from which the baseline is set, subsequently claiming that there is no real social impact on the village of Wollar because no-one lives there anymore and the social infrastructure does not exist. This is a complete injustice to the people that continue to call Wollar home and are fighting for its future. There are many people waiting to move back to the Wollar area with the understanding that the mine impacts would start to diminish from 2025 under current approvals.

Photo Credit: Hedda Askland *'Abandoned house in Wollar village'*

In addition to the qualitative concerns regarding the SIMPs, there are two key issues linked to process. Firstly, **SIMPs are often not finalised when the development application is approved**. A framework and proposal of a SIMP may be forwarded as part of the SIA but the SIMP itself will not be subject to scrutiny and approval. Instead, the conditions of approval require a SIMP to be written within a set timeframe, though not necessarily with an alignment to the SIA and inclusion of SIA data. This means projects can be approved without a real understanding of whether impacts can be satisfactorily managed and without adequate transparency and rigour, nor with community input. Thus, whilst, during the assessment phase of an SSD project, proponents develop a range of documents outlining the expected impacts of the project, the Conditions of Consent of the Project Approval may only reference the EIA documents.

The second issue with the SIMP process is that SIMPs are not legally binding and can be changed by the company at any time. There is not always an implementation plan aligned to the SIMP, making it difficult to hold the proponent accountable. This can be compounded by implementation often being the

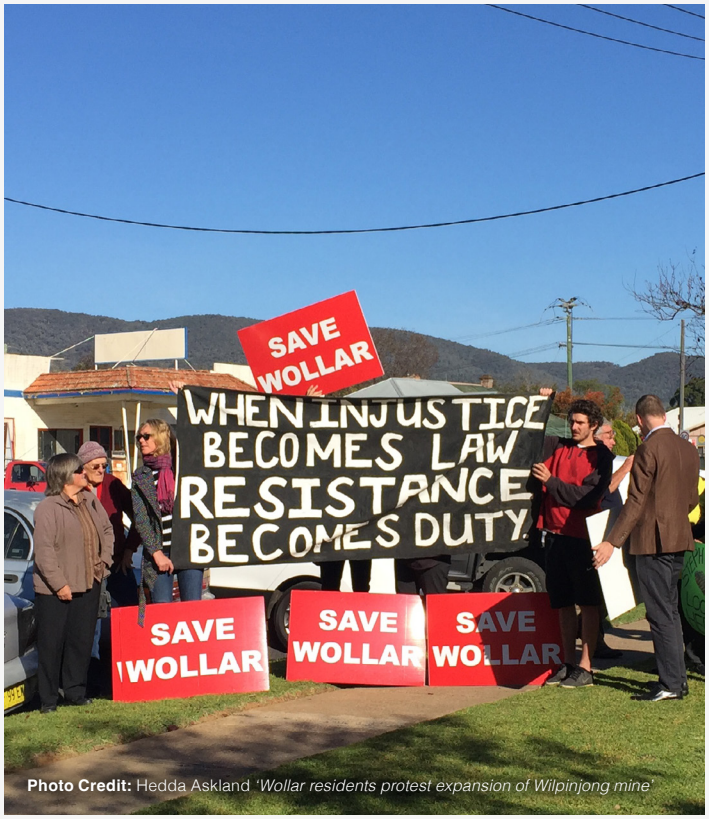

Photo Credit: Hedda Askland *'Wollar residents protest expansion of Wilpinjong mine'*

responsibility of third-party contractors, who have not been involved in developing the provisions. Whilst conditions of consent may require proponents to implement the SIMP, in practice enforceability is weak. There are no real checks and balances in place to ensure that the commitment to management of impacts is complied with and what would happen if it is not.

The power imbalance between industry and community is evident in the process of developing and approving SIMPs. Whilst a SIMP must be approved by the Director-General there is no requirement for it to be acceptable to the community. There is also no way to hold the proponent accountable for its implementation. The SIMPs are a function of a self-regulated system based on adaptive management principles. Ultimately, this means that almost any activity can be justified and there is no real requirement to provide tangible outcomes to the community. Furthermore, when breaches of management plans are seen, SIMPs can be revised and modified to incorporate the previous breach.

Case Study III: Maules Creek – The empty SIMP

Often the management actions identified in a SIMP are just the evidence point of the social decline, and the actions proposed to manage the impacts cannot in themselves reverse the social decline. Case study II (above) is an example of this, illustrating how the social decline caused by large extractive projects coming into a region are treated as marks in sand to be blown away.

Another example of this is the Maules Creek Coal Mine. A key indicator of social health is the number of students at the local primary school. After the introduction of mining in 2012, the composition of Maules Creek community changed fundamentally. The EIA anticipated logically that a growth in jobs would result in a growth in families and, therefore, a growth in student numbers, including at Fairfax primary school in Maules Creek Village. However, as the mine encroached on the village, the social make-up of the community changed dramatically. Over 80 family farms were bought up, with Whitehaven Coal accumulating more than 80,000 hectares of land. This hollowed out original families and as a result student numbers at the Fairfax primary school dropped so low that it is now at risk of closing. Meanwhile, the SIMP (Whitehaven 2022) includes a management strategy that states: 'CA5 – Assist the long-term viability of Fairfax Public School at Maules Creek by promoting the school's availability to personnel.' As evidenced by the declining numbers, this is a completely impotent strategy to try to prevent the very outcome that has occurred and there is no way to hold the proponent account to this fundamental change to the social context of the community.

2.1.3
Scope for assessment of health impacts

When communities started campaigning for better recognition of social impacts, they were also calling for a guideline on health impact assessment and an emphasis of health impacts in the planning process – see Case Study IV. Health impacts are closely linked to social impacts. The International Principles for Social Impact Assessment states that:

> *'[s]ocial dimensions of the environment – specifically but not exclusively peace, the quality of social relationships, freedom from fear, and belongingness – are important aspects of people's health and quality of life' (Vanclay 2003:1).*
>
> *The Guideline recognises health and wellbeing as one of the eight key categories for likely impacts, emphasising the need to understand and address:*
>
> *"...health and wellbeing, including physical and mental health especially for people vulnerable to social exclusion or substantial change, psychological stress resulting from financial or other pressures, access to open space and effects on public health" (NSW DPIE 2021:19).*

Extractive resource projects have distinct health impacts, including impacts from dust, noise, emissions and toxicity. Research from mining intensive regions, such as the Hunter Valley, have provided evidence of environmental distress, as well as stress and anxiety linked not only to the operational phase but the planning and approval stages of developments (e.g. Askland 2018, 2020, 2024; Askland and Bunn 2018; Albrecht 2005). There is a need for a separate health and wellbeing assessment to be written into the development application process, with clear instructions for when a separate health impact assessment is needed and how the SIA and health impact assessment are aligned. Health impact assessments should be conducted by health experts, with public health concerns to be addressed through collaboration between health and social researchers.

Photo Credit: Hedda Askland *'Maules Creek impacted by mining water theft'*

Case Study IV: Fighting for Health Impact Assessment – Maules Creek

Prior to mining starting in 2012, Maules Creek community undertook an extensive effort to conduct a comprehensive health impact assessment (Gunnedah Basin HIA Proposal Draft). The Steering Committee consisted of community groups and organisations in the Gunnedah Basin. Their intention was to commission a study of the health and welfare risks associated with various mining and gas extraction scenarios for the Gunnedah Basin, and to consider potential strategies for the avoidance, minimisation and management of these risks. The group undertook extensive lobbying for over two years, with a specific ask for funding for a Health Impact Assessment at state and federal government and regional levels. Ultimately, this request was met with rejection at every level of government because the job and royalty benefits from the mine would far exceed any negative health or social outcomes and funding was not provided for the study.

2.2
Gaps in assessment process

One of the key principles for the SIA process is impartiality. The Guideline states that a SIA should use 'fair, unbiased research methods and follow relevant ethical standards' (NSW DPIE 2021: 10). The principle of impartiality is, however, challenged because the SIA process is proponent driven. The process is be triggered by either a need identified by the Government to which industry responds through a tender process, or by a private enterprise's idea, desire and design. Regardless, the proponent will be driving the advancement of SSDs, and the proponent holds power in terms of determining when and by whom the SIA process is conducted. The process often assumes that the project will gain approval, thus making the SIA process appear more like a tick the box exercise than an actual assessment. There is a distinct power imbalance between landholders and the proponent, and landholders and DPHI, which may lead to a somewhat defeatist attitude of 'there is nothing we can do, they are a big company/they are important politicians'. Poor consultation and engagement processes, and lack of recognition of articulated concerns in the assessment process, often lead landholders and local community feeling disempowered in the process. This results in a decline in trust and loss of social legitimacy for projects and companies. Furthermore, simply participating in the SIA process can make local residents feel as if they are agreeing to a project. This, in combination of consultation fatigue, experiences of powerlessness, disrespectful and culturally inappropriate engagement, and a sense of industry bias, can lead to communities withdrawing from the process. This is difficult to reconcile because withdrawal also means the community voice will be further diminished in the assessment process, and the emotional stress and community tensions that emerge during this time are negative social impacts.

Because the EIA, which includes the SIA, is paid for by the proponent, there will always be an issue of bias embedded in the process. Fuelling this bias is the dependency of the consultants whose future work relies on retaining a positive relationship with the industry. Consultants are often external to the local community and may not have insights into local dynamics and tensions, social values and culture. Understanding the social dynamics requires time. Consultants do, however, work

Photo Credit: Lock the Gate '*Pilliga Forest impacts from degassing holes from Narrabri Underground mine*'

to unreasonable timelines that do not support adequate engagement and consultation. Whilst it is recognised that using external consultants may be necessary due to lack of local SIA capacity and, also, beneficial, as local firms could carry a distinct bias and positionality in relation to the community and proponent. This issue calls for an approach that establishes pathways for collaboration and engagement. The SIA process needs to build partnerships that will foster engagement and collaborative decision-making, where time and energy are vested into understanding the lived experiences of place and projections of change to place as these link to a proposed development. Consultants need

Photo Credit: Hedda Askland *'Protest outside Wilpinjong mine'*

to have relevant social science backgrounds and methodological expertise to ensure that the diversity of values nested within the social locality are captured and a holistic assessment of impacts is conducted.

As consultants are not bound by the National Statement on Ethical Conduct on Human Research (Australian Government 2023), there are no checks and balances on the research design and conduct of proponent driven SIAs. This means there is no point for stakeholders to raise concerns, nor any set expectations or standards around research designs beyond what the private entity may have in place. The Guideline refers to the need for qualified people to have suitable qualifications in a relevant social science discipline and proven experience and substantial competence in social science research methods and SIA practice. There is a particular emphasis on the need for membership in relevant professional organisations that have an agreed code of ethics and professional standard (NSW DPIE 2021: 33). The Guideline also says that all *'practitioners should follow relevant ethical considerations that apply to research involving people' and that research 'must be conducted in a responsible, safe, secure, impartial and respectful manner'* (NSW DPIE 20211: 33).

Without a formalised framework for the review and oversight of the ethical conduct of research, time and financial pressures can lead to inappropriate consultation practices. As community members, we have experienced first-hand and heard stories of how community members are asked to engage in the SIA process with representatives of the proponent present and at the proponent's site. This is highly inappropriate and goes against the national guidelines for ethical research, which would emphasise the need to protect the privacy of participants and data confidentiality, particularly in the context of sensitive issues. It is important to note that the Guideline refers to the social impacts that may be experienced through the assessment process, such as stakeholder fatigue, stress, and disruption. In our view, requirements for ethical conduct and independent research protocols – for example by requiring SIA practitioners to be certified by a reputable certification body – should be written into the Guideline to ensure fairness, equity and justice.

A final issue with the assessment process concerns the use and integration of expert reviews. Although social research is as technical as any of the other components of the EIA process, a general familiarity with social concerns can commonly lead to a discrepancy in the weighting of expert advice, allowing hearsay that favours industry and government objectives over that of community. For example, the expert report prepared by Dr Alison Ziller (2020) for the Vickery Extension Project presented a range of public health data that was absent from DPHI's Assessment Report, despite it being provided to DPHI previously. In her report Dr Ziller compared the health statistics from Narrabri and Gunnedah LGA with those of general NSW. This exercise illustrated how the region endures significantly higher than average levels of intentional self-harm, maternal smoking, excessive alcohol consumption, death by suicide, mental health and mood affective disorders, domestic assault, apprehended violence orders, and breaches of AVOs. None of this material was cited in the IPC's Statement of Reasons, which only refers to the opinion of a local business owner: 'a local business owner noted the importance the mining industry plays in reducing alcohol and drug use in regional towns and that this is making a tangible difference in the local community.' (at [259]).

2.3
Gaps in SIA process

Once a SIA is completed it is reviewed and evaluated by DPHI, who then writes an Assessment Report that becomes the basis of the IPC's decision to either approve or refuse the development application. There are two major concerns about the evaluation process. Firstly, the bias within the SIA process itself; and secondly the lack of adequate resourcing within DPHI for SIA-specific knowledge and expertise. In relation to the former, the assessment process is, as mentioned in Section 2.2 above, framed around a presumption of approval, and the ongoing and cumulative impact of the extractive resource industry is often missed. In relation to the latter, DPHI remains vastly under-resourced in SIA, meaning that, when undergoing departmental review, SIAs are very rarely subject to the holistic and cross-sectional social scientific evaluation that best practice calls for.

The shortcomings in DPHI's approach to the SIA, are evident in:

1. **Lack of capacity:** Only one person with specialised SIA expertise is employed on a short-term contract by DPHI (as at April 2024). However, it is our understanding that this role is designed to build internal capacity rather than evaluate SIAs. DPHI's only SIA Specialist resigned in 2022 and the role has never been refilled. This means there is no one employed by DPHI to oversee the implementation of the Guideline and its translation into rigorous assessment at the level of approval. We understand that DPHI's expectation is that, if assessment teams feel they need expertise, they will hire a consultant to provide the expertise. This, however, assumes that they know when they 'need' expertise, i.e. that they have sufficient understanding of social impacts to evaluate whether an SIA has been prepared in accordance with the Guideline. It also assumes that appointed consultants will act more impartially than the original SIA author.
2. **Lack of expertise/skills:** Most DPHI officers come from environmental or planning backgrounds and do not have the required social science expertise. This means they do not understand, or only partially understand, the social science concepts that underpin the Guideline. For example, a biodiversity specialist or a groundwater ecologist cannot be expected to evaluate the significance of impacts of environmental change on people's sense of place. This leads to distorted analysis where biophysical impacts are weighted disproportionately over intangible social impacts. This is evident in typical Departmental Assessment Reports, which rarely analyse social impacts in any truly social scientific manner.
3. **Lack of time:** DPHI assessment officers are under immense pressure to complete assessments in ever-decreasing timeframes. In this context, social impacts tend to be relegated in importance because it is easier to assess impacts that are more quantifiable.
4. **Lack of leadership:** DPHI executive has consistently chosen not to invest in appropriate analysis and scrutiny of social impacts.
5. **Lack of community resources:** The planning system works on the assumption communities will engage in the system (generally by making submissions) if they are sufficiently interested or affected. This overlooks structural power and resourcing inequalities.
6. **Lack of genuine engagement:** Despite guidelines for engagement as well as SIA, what passes for engagement is often tokenistic and transactional informing or consulting, not meaningful dialogue.

These shortcomings have led to a lack of trust within the community about both the assessment process and the decision maker. There is a lack of transparency around the decision-making process, and community representatives have had to request access to information under the Government Information (Public Access) Act 2009 (NSW) to understand what is happening and how decisions around projects that will have significant impact on their communities, lives and wellbeing are being made. The experience has left communities feeling that the SIA process is not an assessment process but an approval process, in which they are not recognised as genuine partners with distinct interests but stakeholders to be managed. The amendments to the Mining SEPP that placed environment and community second to economy and industry, resulted in a deep distrust of the political system and the sense that industry and government walk together at the expense of community.

2.4
Gaps in implementation

When we consider issues in implementation, we are moving away from the assessment process and towards the management process. This is the third phase of the SIA process, which takes place post-approval. During this phase, how social impacts are managed will be verified and refined. Whilst not all projects require post-approval management and monitoring, this is an important part of most extractive projects.

The SIA report is the basis for the development of the SIMP. The aim of the SIMP is to offer strategies for monitoring and adaptive management that will protect and enhance the social environment through the life of the project (NSW DPIE 2021:25). DPHI plays a crucial role in regulating compliance with project conditions of consent or approval, and in circumstances where a SIMP is required will be responsible for approving the SIMP. As we discussed in Section 2.1.2, there are considerable problems with how SIMPs are developed. There are issues around the baseline and the delay in the approval of a SIMP to post-approval of the project that leaves community vulnerable with little power – as the approval is not conditioned on the quality of the SIMP, the SIMP can become a tick-a-box exercise rather than a process that builds a pathway for sustainable community outcomes. The process of implementation has proven to be a dismal failure mainly because of the problems with the process outlined above.

An example of a poor SIMP is in the approval of the Wilpinjong Coal Mine Extension Project in April 2017, outlined in Case Study II (above). The large open cut coal mine was first approved in 2006 and has since progressively expanded. This expansion has led to depopulation through property acquisition. Properties adjoining the mine have been acquired to allow the project to meet conditions of approval managing noise. This has led to the closure of the public school, loss of both churches, amalgamation of the local Bushfire Brigade, loss of health clinic services, closure of the general store, loss of access to local fuel supplies, and the loss of postal and other services. The SIMP approved by DPHI required the provision of post boxes at the closed general store. All other requirements already existed under the Voluntary Payment Agreement established with the Mid-Western Regional Council. There was no requirement to mitigate social decline or to address the eight criteria in the Guideline. Under the approved SIMP a minimum of 5 houses are to be demolished each year.

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3.

Recommendations and conclusions

Photo Credit: *Renee Marshall 'Dust at Wilpinjong Coal Mine'*

3.
Recommendations and conclusions

This report draws attention to the continued shortcomings in the NSW Planning process and its failure to protect communities at the extractive frontier. We bring attention to the gaps in the current Guideline, and in the assessment, evaluation and management of social impacts of extractive projects. Fairness, equity and justice requires a system that facilitates a fair and just process as much as a fair and just outcome.

Communities at the extractive frontier are currently fighting a double battle: one, we are fighting to ensure there are no new fossil fuel projects approved and no further expansions are granted, to ensure we do not compromise the fight to reduce carbon emissions and address the urgency of climate change; two, we are fighting for the survival of our communities and the rural communities of NSW that continue to be put second in the battle against the extractive resource industry. We need better SIA to protect community and diverse rural economies into the future. We need to protect the lived outcomes of community. The system retains a deep bias and presumption of approval for extractive resource projects, and it is time the NSW Government stood up to establish a structure that protects community and environment.

Based on our experience and analysis of the shortcomings of the current SIA process, we make seven key recommendations to support a more just SIA process for extractive resource projects. This will require changes to the current Guideline, the SIA process, and the SIA implementation process (SIMP).

Recommended changes to the SIA Guideline

1. Build greater recognition of the unique nature of the extractive resource industry within the Guideline.

The Guideline has been expanded to include all SSD projects. In our view, this change has led to a tension between two different types of projects – projects approved for a set period, such as a coal mine, and projects that are not (like a hospital). The change means that the social impacts of uniquely different projects are not differentiated and runs the risk of diluting the significant social impact concerns for extractive resource projects.

The Guideline should be revised and updated to include:

1.1. More guidance on how to evaluate the uneven distribution of benefits, risks and impacts according to spatial, social, cultural and economic concerns.

1.2. Better advice on how to recognise the temporal impacts of mining and establish an expectation of the development of post-mining scenarios.

1.3. Consideration of human rights and climate change.

1.4. A requirement for holistic assessment and better instructions on how to assess cumulative social impact.

1.5. A revision of the expectation of the social baseline to take into account ongoing impacts of existing projects, with a particular requirement for recognition of original baseline conditions in relation to expansion and modification applications.

1.6. A requirement of place-based analysis that obliges proponents' recognition of local values, livelihoods and aspirations.

1.7. Greater emphasis on culturally appropriate First Nations engagement in the SIA process, recognition of attachment to landscape and place of First Nations people, and emphasis on protection of Indigenous health, culture, economies and relationships to land and water.

1.8. Consideration of individual physical and mental health impacts and assessment of their social implications, as well as their impact on community health and cohesion.

1.9. A requirement for a structured mitigation approach that follows the eight assessment criteria in the SIA Guideline.

1.10. Technical supplement about how to develop and adopt co-design methods for SIA and requirement of consultants to use local procurement for local facilitators and resourcing for locals to be involved in the co-design process, ensuring there are areas/strategies that can be negotiated/changed in response to local needs.

2. Review and revision of the 2022 Cumulative Impact Assessment Guidelines for State Significant Projects.

The 2022 Cumulative Impact Assessment Guidelines for State Significant Projects is flawed because of the failure to establish a rigorous protocol for how to consider current and ongoing impacts associated with past and currently operating projects.

Recommended changes to the SIA Process

3. Extinguish Independent Planning Commission Public Hearings

To ensure all communities have a public meeting and retain their merit appeal rights in the Land and Environment Court.

4. Establish structures to ensure transparency, integrity and accountability.

Greater transparency around the assessment process and the decision-making process is required. The current proponent-driven SIA process is generating a significant bias that benefits industry and disadvantages community, causing an inequitable process in which key stakeholders do not have the same access to information and resources. This must be redressed and greater balance must be ensured within the SIA process by:

The Guideline should be revised and updated to include:

4.1. Requirement for all SIAs to be prepared or peer reviewed by a certified SIA practitioner.

4.2. Allocation of resources for affected communities to participate in the SIA process, for example by commissioning their own independent SIA.

4.3. Conducting an inquiry into alternatives to proponent-driven SIAs, ensuring the independence of consultants hired to conduct the SIA.

4.4. Establish formalised framework for review and oversight of SIA protocols and the ethical conduct of research.

4.5. Establish a community advisory board within key regions, including First Nations representatives, to ensure appropriate community engagement and local knowledge.

4.6. Establish an independent review board that approves all SIA research protocols in line with the Australian Government's National Statement on Ethical Conduct on Human Research.

4.7. Institute strong key principles to guide decisions with a transparent rubric to explain the decision-making process, which will be made available with DPHI's Final Assessment Report.

4.8. List DPHI's SIA Team and the Team Leader overseeing the assessment of applications prior to the Minister's sign off.

5. Improve DPHI resourcing

There is currently a major gap within DPHI's capacity to evaluate and assess SIAs, and to ensure that consultants follow appropriate processes, adopt rigorous methodologies, and adhere to expected professional standards and rules. There must be better resourcing of DPHI, including:

5.1. Establishment of a permanent, dedicated expert SIA team within DPHI to oversee all SIA approvals, with a minimum two experts on extractive projects specifically.

5.2. Generate provisions for knowledge sharing and ethical data sharing linked to the development expectations for consultants and DPHI staff.

6. Amend the Guideline to ensure the social impacts of climate change are assessed.

Recommended changes to the SIA Implementation Process (SIMP)

7. SIMPs to be developed, reviewed, assessed and approved prior to any development approval.

The current delay in the development of appropriate Social Impact Management Plans linked to Social Impact Assessments must be reversed and no approvals should be made without a clear outline of how projected social impacts will be managed, with a detailed SIMP to compliment the SIA.

8. Ensure all conditions of consent for SSD projects include a condition requiring proponents to comply with the specific social impact mitigation measures provided for in the SIMP

A SIMP finalised after development approval provides no recourse for affected community members if the approved SIMP fails to deliver adequate mitigation and management outcomes. Unless a condition of consent requires specific social impact mitigation measure, rather than simply the development of a management plan, there are no enforcement options available for a community if a proponent's promises in relation to social impact mitigation are not met.

Photo Credit: Anonymous *'locals overlooking the overburden of Maules Creek mine'*

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