SUBMISSION TO SHOOTERS, FISHERS & FARMERS PARTY

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Introduction

We are presenting this submission to provide a background to your party on what the Association has been critically involved in for your information, as promised at the meeting in Forbes on 10th May 2019. It is in three parts – Voluntary Planning Agreement Working Party with NSWMC and MERC, with Stephen Free SC as Chair and secretariat done by Department Planning background and attachments; PhD Research Project and the Resources for Regions Program (with its flaws)

(A) Voluntary Planning Agreement Working Party

1. Preamble

The NSW Minerals Council (NSWMC) and the Association of Mining and Energy Related Councils (MERC) have been involved in discussions to deliver greater clarity as to the means by which the monetary contribution for a mining related Voluntary Planning Agreement (VPA) can be calculated.

To date the NSWMC and MERC have agreed on:

- The various steps and timeframes involved in the VPA negotiation process. Refer 'Draft VPA Negotiations Process Schematic V8.1' (October 2016) in Attachment 1; and
- A 'Roads Contribution Framework' (July 2016) in Attachment 2.

This document provides herein, for the benefit of mining proponents and local councils ('Parties') embarking on the VPA journey, guidance and in particular, on how to secure an appropriate VPA monetary contribution that represents a fair outcome for the mining proponent and the council, residents and ratepayers of the affected LGA(s). It is a guide only.

2. Background

VPAs are one of the development contribution collection mechanisms permitted under the EPA Act. The others relate to the provision of public amenities and services and other public purposes at the local government level (section 7.11 contributions - to cover infrastructure costs and Section 7.12 contributions – a levy of 1%). At a regional or state level there are Special Infrastructure Contributions and Affordable Housing provisions.

A VPA is an agreement between one or more planning authority (council) and a proponent/developer, whereby the proponent agrees to dedicate land free of cost, pay a monetary contribution, or provide any other material public benefit, or any combination of them, to be used for or applied towards a public purpose or purposes.

Public purposes include the following:

a) the provision of or the recoupment of the cost of providing or extending public amenities or public services, affordable housing, transport or other infrastructure;
b) the funding of recurrent expenditure relating to the provision of public amenities or public services, affordable housing or transport or other infrastructure;
c) the monitoring of the planning impacts of development; and
d) the conservation or enhancement of the natural environment.

VPA contributions should be fair and reasonable and the benefits afforded by the contribution should bear some relationship to the development, even if indirectly.

However, it is not necessary to satisfy nexus or a direct relationship between the infrastructure or programs to be funded by the contributions and the impact generated by the project. For instance, contributions can be aimed towards direct and indirect impacts, including Indigenous and European heritage, and intangible aspects such as broad community wide social impacts.

VPAs are a discretionary development contributions mechanism in that they are voluntarily entered into by the Parties. The annual monetary contributions are generally allocated to a Community Enhancement Fund, road maintenance and council's management, planning and governance functions.

The general terms of the secured VPA are referenced in a development consent condition.

3. Roads

3.1 Up Front Road Upgrades

A report has been prepared by the Parties that provide a framework that can be used for determining the potential impact of the construction and operation of a new mining development on the public road network. The methodology is based on pavement engineering and transport planning standard principles. The report is entitled 'Roads Contribution Framework', it was prepared by GHD Pty Ltd in July 2016 – refer Attachment 2

As the council is the designated roads authority for local roads within an LGA, it will determine the road upgrade requirements in consultation with the miner. The mining proponent will in turn directly fund the agreed road and intersection upgrades.

3.2 Ongoing Road Maintenance for the Life of the Project

The local councils will determine, in consultation with the miner, which roads require ongoing maintenance during the life of the project, mindful of predicted traffic flows – both types and volumes. The agreed annual, ongoing financial contributions for road maintenance are stipulated in the VPA.

4. Calculating the VPA Monetary Contribution - Proposed Methodologies

Whilst there are general guidelines issued by the NSW Government regarding VPAs, they are generally silent on exactly ***how*** the VPA monetary contribution ought to be calculated.

In essence it is incumbent upon the Parties involved, in this case the miner and one or more councils, to strive to reach agreement. There is a raft of background documentation that can be referred to for helping the Parties frame their position – see the reference list in Attachment 4 for this.

4.1 Methodology Models

As guidance, the NSWMC and MERC suggest that the monetary contribution for a major coal project be framed utilising one of the following methodologies being:

Model - 1 A % of capital expenditure and/or cents per production cost such as 1-1.3% of the Capital Investment Value (CIV) and/or an amount of Run of Mine (ROM) or product coal of say 8cents/product tonne.

Model - 2 A combination of a % of capital expenditure and cents per production cost of 70% and a Worker Domicile Model of 30%. This model would work utilizing the following factors:

(a) That the remaining 70% of the contribution be calculated by adopting one, or a combination of, the following:

- 1.0 -1.3% of the CIV; or
- An amount in cents per tonne of ROM or product coal (say 8 cents/product tonne); or
- Any other methodology.

(Note: In the case of a non-coal project, a comparable amount per tonne of concentrate could be secured).

(b) That 30% of the contribution be determined adopting the NSWMC's Local Infrastructure Contributions Calculator ('Calculator') – commonly called the Worker Domicile Model. This Calculator aims to identify the quantum relevant to addressing impacts on local infrastructure and services (apart from road upgrades) arising from population increases caused by mine employees/contractors and their families relocating to that LGA.

The Section (a) components of the contribution provide the miner with the opportunity to acknowledge there may be some impacts on environmental, social and economic wellbeing that are difficult to quantify and that occasionally the mitigation measures may not always be completely effective. Such an approach is also likely to enhance the proponent's social licence.

Model 3 A Worker Domicile model based on a sliding scale which recognises the economic benefit for the host council. This Calculator aims to identify the quantum relevant to addressing impacts on local infrastructure and services (apart from road upgrades) arising from population increases caused by mine employees/contractors and their families relocating to that LGA.

A key consideration in the application of the Calculator outlined in Model 2 (b) is determining which LGAs are ***predicted*** to be affected by the relocating of new mine related residents to that area. It is commonly the case that newly relocated workers reside in shires outside the one 'hosting' the mining development.

The Parties may need to consider the fairness of any quantum being allocated to different councils, taking account of the size and sustainability of various towns and cities and the relative benefits accruing from the monetary contribution. For example, the funds may be even more critical to the shires with smaller, more financially vulnerable towns than those LGAs with large, self-sustaining cities.

Model 4 A further model that could be considered, is one that can be negotiated using any of the above or some other methodology that may not be included in this paper, however it suits the particular LGA and proponent. The aforementioned models may not be suitable to the council and proponent for any LGA and are included as options to consider.

An example of how this might work is where Singleton Council, in 2019, negotiated a VPA quantum for the Wambo coal mine, with Glencore, which resulted in a 50:50 split in the quantum. 50% of the funds are to be preserved in the Singleton Community and Economic Development Fund ('the Fund") for distribution to the wider LGA (which will be used to address the impacts of mining on the community now and into the future on projects that reflect the greatest community and economic benefit, as reflected in the Council's Community Strategic Plan). The other 50% is for distribution to locally affected communities.

A policy, deed and strategy to implement the expenditure from "the Fund" is to be established and will be adopted by Council in due course, with the objective that they will use 'the Fund" to build resilience and improve liveability of Singleton Council LGA during and post mining.

This is a longer term view on the use of VPA funds to address the issues and to buffer their community against the future decline of the coal industry.

4.2 Current Practice

Current practice is that member Councils should be clear that most of the VPA's negotiated to date by councils have utilized the model outlined in Model 1 in their negotiations to achieve a satisfactory VPA but MERC recognizes that anyone of the alternative models or whatever the council and proponent may negotiate may be seen as more appropriate to the situation of council's presently contemplating the negotiation of a VPA.

4.3 The Calculation Process

How the outcome might look in reality for one of the packages in Model 2 is as follows:
Concurrent Step A: The council plans the mix of CIV and/or cents per tonne, calculates the financial quantum and then multiples the sum by 0.7. (70%)
Concurrent Step B: The proponent applies the Worker Domicile Model to the proposed project and the resultant financial quantum is then multiplied by 0.3. (30%)
The quantum arising from Steps A and B are then added to deliver the final monetary contribution.

4.4 Methodology Option Calculations

Details regarding each of the various calculation options outlined above and the background to the calculations used in the various models are provided below:

4.4.1 An Amount Based on 1.3% of the Capital Investment Value

Historically the planning and assessment system has accepted 1% of CIV as the default value for calculating a VPA quantum for State Significant Developments. However, an independent analysis by GLN Planning Pty Ltd for the DPE in November 2018 for the Wambo project near Singleton suggests that the typical quantum secured on this basis over the past decade, have been more in the order of 1.3% of CIV.

Given the precedent as set, Councils have typically used this metric as general guidance for the order of magnitude of the monetary contributions that can reasonably be expected.

The CIV is found in the EIS and in the on-line application form submitted by the proponent.

4.4.2 An Amount Based on Cents per Tonne of Run-of Mine (ROM) or Product Coal.

ROM coal is the coal delivered from the mine pit to the coal preparation plant. It consists of coal, rocks and other materials. ROM extraction could be considered more representative of the industrial activity that could generate off-site impacts such as dust, noise, blast fumes and vibrations, water supply decline, night lighting and visuals associated with the building of overburden stockpiles, coal preparation plant activity, etc., that could impact adversely on the community.

On the other hand, an amount per product tonne could be seen as the LGA sharing in the economic productivity of the mining project – the more product sold, the more the LGA benefits.

The predicted ROM and product tonnages are stated in the EIS. The financial quantum per tonne of ROM coal would be less than that for product coal, however the tonnages are higher.

Some project examples in 2018 dollars of quantum per product coal include:

- Rocky Hill Coal Mine Project (2016): 52c/t product coal. (Project refused consent in the Land & Environment Court);
- Tarrawonga Mine Extension Project (2013): 8c/t product coal
- Maules Creek Coal Project (2012): 8c/t product coal

A variation on the above is to consider a different percentage contribution based on the coal ***type,*** be it thermal or coking.

Coking coal, also known as metallurgical coal is used as fuel in steelmaking and has a higher sale price than thermal coal. Thermal coal is used to create steam which powers turbines which in turn creates electricity.

Considering 8 cents/product tonne as a percentage of the sale price of the two different coal types over the period 2014-2017 equates to approximately 0.04% of the sale price of coking coal and 0.086 % of thermal coal.

Hence, an option in calculating a monetary contribution based on product tonnes could be by applying these or comparable percentages to the different coal types produced.

4.4.3 An Amount Based on Cents per Tonne of Concentrate (Non-Coal).

Higher value mineral resources such as gold, copper, zinc, lead, tin, cobalt, scandium, etc., rarely concentrate at significant levels in nature, hence the mined ore is required to be mechanically and/or chemically concentrated, at extra cost.

With tin, for example, the ore, even after concentration, is still only 40-60% tin. The sale price of pure tin is approximately $20,000/tonne. The ore concentrate is what is sold to market by the miner, so at say 50% tin the sale price will be well short of $20,000/t for the refined mineral. Scandium is another high value mineral yet is found at very low concentrations. It is estimated that only 15 tonnes are produced globally per year. The May 2019 price of scandium oxide is A$ 5,360/kilogram (i.e. $5.36 Mil/tonne).

In the case of such high value commodities, it would not be appropriate to apply the same percentage as nominated above for coal as the amount of money generated would be excessive. An option in such circumstances could be to apply say 10 cents/t for the ore concentrate as the VPA contribution.

4.4.4 An amount based on the Local Infrastructure Contributions Calculator – also known as the Worker Domicile Model.

The NSWMC seeks at least 30% of the calculation of the monetary contribution be generated by its Local Infrastructure Contributions Calculator (‘Calculator’).

The Calculator, produced by Umwelt Australia Pty Ltd for the NSWMC in 2016, is based on the principle that, if the project is predicted to increase the population in an LGA due to workers relocating to live in that LGA, then this may place additional demands on infrastructure, for instance housing, water, sewerage and drainage, recreation facilities, etc., that warrants additional expenditure.

This need for additional expenditure is to be funded by the proponent. See more details regarding the Calculator in Attachment 3.

The key components in the Calculator are:

a) An amount based on population increase due to mine employees/contractors and their families relocating to live in the LGA and hence the need to possibly increase housing and infrastructure capacity. This quantum could be in the order of $3,000-$12,000/employee or contractor. The amount could be increased if there is a need to significantly upscale capacity, for remoteness or a long construction phase. The amount could be decreased if there is ample infrastructure capacity, only a small increase in population increase or a short construction phase;

b) An amount that acknowledges the displacement of local residents when land is acquired by the miner and people are required to relocate. This quantum could be in the order of $3,000 - $12,000/house vacated;
c) An amount to attend to a high priority situation when, for example, the sewerage or water systems or other infrastructure is at a tipping point and requires immediate upgrading, even if only a few extra services are required; and
d) An amount to acknowledge additional demands on a Council's management, planning and governance functions. For instance, managing the Community Enhancement Fund, attending Community Consultative Committee Meetings, ongoing dialogue with the miner, reviewing performance data and engaging with the broader community on project-related matters.
This amount could be in the order of $100,000 for every 0.5–1.0 % of population increase.

5. Checklist of Other VPA Matters to Consider

Below is a list of other matters recommended for consideration by the Parties in deliberations on the VPA process:

1) Commence background discussions on the VPA well before the EIS is placed on exhibition;
2) If other LGAs are likely to be affected by the proposed project, for instance workforce domicile, project related traffic on local roads, water source, etc., then it is recommended all the relevant councils be invited to negotiate a joint VPA;
3) Councils carefully examine the details in the EIS before finalising the VPA negotiations;
4) All monetary contributions be subject to the Consumer Price Index (CPI) from the date of commencement of project construction;
5) The Parties agree on how and when the actual employee/contractor domicile data for different LGAs is to be monitored and verified. Also, allow some mechanism to amend the monetary contribution allocations if the domicile data changes over time;
6) Councils request that the DPE/IPC not settle on the granting of development consent until such time as the in-principle terms and conditions of the VPA have been determined;
7) Both Parties be aware of the public exhibition provisions of a draft VPA before any final settlement of the deal; and
8) A Council that has entered into a VPA is required to include in its annual report particulars of compliance with and the effect of the VPA during the year to which the report relates.

Attachments

Attachment 1: VPA Negotiations Process Schematic. Under separate cover.
Attachment 2: Roads Contributions Framework (Oct 2018).Under separate cover.
Attachment 3: Local Infrastructure Contributions Calculator (July 2016).Under separate cover.

Reference Documents

- Local Council Development Contributions Plan and Community Strategic Plan
- DPE's Social Impact Assessment Guideline for State Significant Mining, Petroleum Production and Extractive Industry Development (August 2017)
- DPE's Draft Practice Note – Planning Agreements (November 2016)
- DPE's Draft Planning Agreement Guidelines – For State Significant Mining Projects (July 2015)
- Former Department of Infrastructure, Planning and Natural Resources (DIPNR), Development Contributions - Practice Notes (July 2005)
- DPE's Guidelines for the Economic Assessment of Mining and Coal Seam Gas Proposals (December 2015)
- DPE's Technical Notes Supporting the Guidelines for the Economic Assessment of Mining and Coal Seam Gas Proposals (April 2018)
- GLN Planning Report for the DPE regarding the Development Contributions for the proposed VPA between Singleton Council and the United Wambo JV Partnership (November 2018)

(B) PhD Research Project

MERC is involved in negotiations with the University Technology Sydney (UTS) with Senior lecturer Dr Juan Castilla – Rho and PhD student Peter Dupen to undertake a project to develop a better system for consultation than what the government has in place now. It is called Participatory Modelling and improves the social licence for Councils and developers in communities.

The aim is to deal with the issues in groups of affected persons before the EIS is put on exhibition to endeavour to resolve the issues in a participatory fashion with developers meeting stakeholders and issues/solutions modelled. UTS have an international expert on this (Dr Alexei Voinov) and whilst Juan is Chilean he has demonstrated to our delegates how the models have worked internationally in Chile and how this can be translated to NSW to improve the quality of consultation and get better outcomes from the proponent for the community.

To get the project up and running will require the acquisition of grant funds and sponsorship which MERC is contributing to, hopefully UTS and NSW Minerals Council will as well.

(C) Resources for Regions Program (R4R)

The Executive Officer of MERC, sits on the Regional Independent Assessment Panel (RIAP) as an independent person from MERC not from any Council who may apply for R4R with NSW Farmers, Roger Fletcher is the Chair, NSW Minerals Council, LGNSW, to "rubber stamp" what the bureaucrats from NSW Infrastructure, Treasury, Premiers & Cabinet, etc., have agreed on based on the criteria established by the NSW Government. There after it went to the Cabinet to consider.

The current criteria for rounds 5 and 6 meant that Councils had to co-contribute up to 50% then this was reduced to 25% for round 6, of projects with a minimum value of $1m plus the project had to have a cost benefit value of greater than 1 to get the jersey. The Councils had to demonstrate their mining affectation and were allocated a location quotient for this.

This meant that of the $50m that was put aside for each round, it did not get allocated in full, only half of it – Round 5 ($28m) and Round 6 ($22m) not allocated, so in last 12 - 18 months $50m did not get allocated through the R4R program, meaning very worthy mining projects for affected communities missed out due to the criteria being so fund hungry with the co – contribution and the project did not meet the requirements of the regional and state plan for a higher BCR >1.

The results of Round 6 were held back by the Cabinet until after the election, however the seats of Dubbo, Heathcote and Upper Hunter where Nationals were at risk the results were leaked which may have helped them all get over the line.

Comments from the Director on how Round 6 works as follows when it was queried:
Quick background - the Government has announced that $50 million was available for this round in total. Applications are open from 12th June – 23rd July 2018. Eligible projects are those that offer improvements to local infrastructure across health, water, road, education, tourism and CBD renewals to attract new business, tourists and residents.

As to levels of funding: The minimum grant amount is $1 million and there is no maximum grant amount. All projects must have a minimum financial co-contribution of 25 per cent of the total grant amount (unless hardship can be made out – I emailed you the info relating to that). The co-contribution for the project must be from sources other than the NSW Government and commitments must be confirmed before detailed applications are assessed.

To be eligible for funding, applications must satisfy four criteria; Strategic assessment, Economic assessment, Affordability and Deliverability. Department of Premier and Cabinet administer the program and Chair the Senior Officers Group that put forward the recommendations to the RIAP.
FAQs, and other supporting information – more information is available https://www.nsw.gov.au/improving-nsw/regional-nsw/regional-growth-fund/resources-for-regions/.