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# 1. Sole effect of the precautionary principle is to deny one excuse for avoiding mitigating measures

## The Precautionary Principle

“If there are threats of serious or irreversible environmental damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation.”

This has been consistently applied in the courts to mean just what the principle says:

“The precautionary principle **permits the taking of preventative measures without having to wait** until the reality and seriousness of the threats become fully known.”

# The precautionary principle is not a reason to refuse a project

DPIE's Final assessment report:

- given the identified uncertainties and risks, proceeding with the project as proposed would not be consistent with the 'precautionary principle' and therefore should not be considered an ecologically sustainable development.
319. Consequently, the Department maintains that proceeding with the project as proposed would not be consistent with the precautionary principle.

**Vs**

- “The precautionary principle, where triggered, does **not necessarily prohibit the carrying out of a development** plan, programme or project until full scientific certainty is attained... If the precautionary principle were to be interpreted in this way, it would **result in a paralysing bias** in favour of the status quo and against taking precautions against risk. The precautionary principle so construed would ban “the very steps that it requires”.”

*Telstra Corporation Limited v Hornsby Shire Council [2006] NSWLEC 133 (24 March 2006) at [156, 179-180]*

# 2. Greenfield assessment criteria does not exist

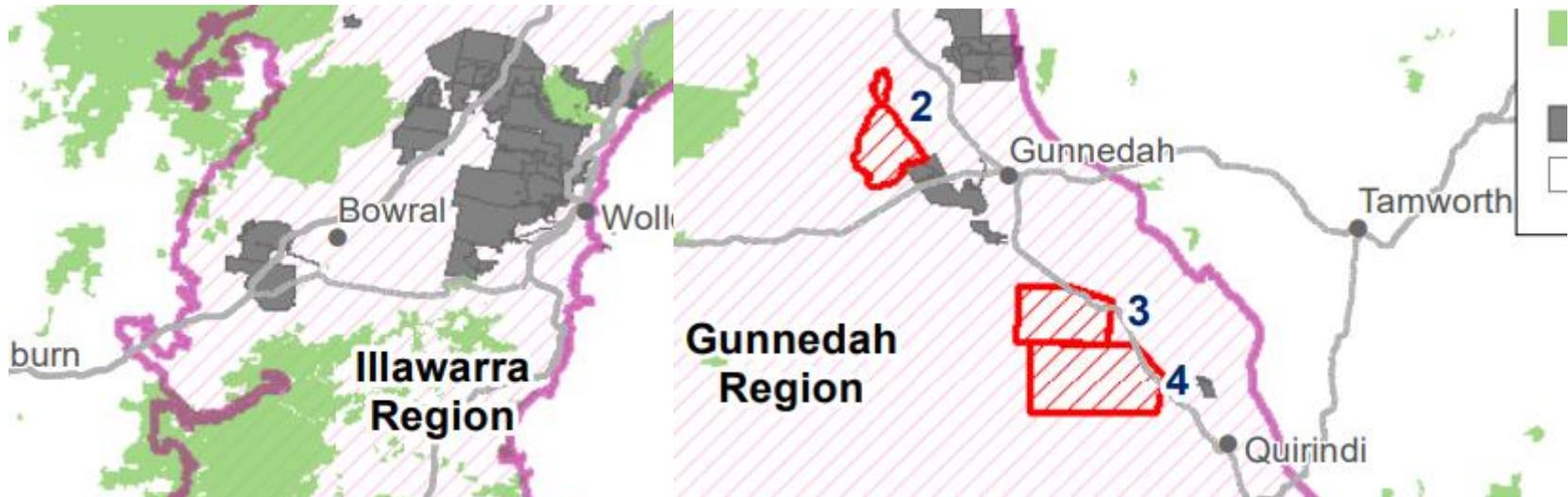
## DPIE FAR:

In June 2020, the NSW Government released its *Strategic Statement on Coal Exploration and Mining in NSW*. A key objective of the Statement is to support responsible coal production, with a focus on applications to extend the life of existing coal mines, and to ensure that any new release areas for coal exploration are in areas where “there are minimal conflicting land uses, where social and environmental impacts can be managed, and where there is significant coal production potential.” While, this objective does not directly apply to the project, as it is not a new exploration release area, it is currently the only greenfield site currently under assessment by the NSW Government, and the policy intent is an important consideration.

## Strategic statement on coal exploration:

- consider releasing a limited number of new areas for coal exploration. These will be areas where there are minimal conflicting land uses, where social and environmental impacts can be managed, and where there is significant coal production potential. New areas identified for coal exploration will be released

# Southern Highlands not prohibited under the Strategic Release Framework



## Legend

- Towns and cities
- Highways
- Region where coal is present
- Area to be released
- Potential areas for proactive release for coal exploration under the Strategic Release Framework
- Coal mining prohibited by State Environmental Planning Policy
- Open cut coal mining not supported
- No proactive releases for coal exploration under the Strategic Release Framework. New coal exploration can only occur adjacent to an existing coal title
- Land reserved under the National Parks and Wildlife Act 1974 - coal exploration and mining prohibited
- Company coal exploration or mining titles
- No coal present

### 3. Net economic benefit - DPIE discounts 'employment benefits' for Hume Coal but not Tahmoor South

- It is incorrect for the DPIE to discount the Net Economic Benefit (NEB) by employment benefits because the Treasury Guidelines do not apply to a private project

#### *"Description*

*The purpose of this Treasury policy and guidelines paper is to provide guidance and promote a consistent approach to appraisal and evaluation of public projects, programs and policies across the NSW Government. Agencies should use this NSW Government Guide to Cost-Benefit Analysis (Guide) when assessing all significant government on projects, programs, policies and regulations."*

# 4. Make good dispute resolution is the same

- We are asking for the standard ‘Compensatory water’ condition of consent that ALL coal mines work with.
- Tahmoor South
  - Tahmoor South has 46 bores with >2m drawdown, but DPIE only counted 10 bores because the drawdown effect “largely go unnoticed by most bore users”. No similar concession is afforded to Hume Coal.
  - Tahmoor’s cumulative bore impact is 94 bores. DPIE is effectively endorsing the ‘salami approach’