

WOLLAR PROGRESS ASSOCIATION

C/O- POST OFFICE

WOLLAR NSW 2850

Matthew Riley,
Senior Planning Officer,
Resource Assessment
Department of Planning and Environment
GPO Box 39
Sydney NSW 2001

Wednesday 15 June 2016

Dear Matthew

Feedback on Response to Submissions Wilpinjong Extension Project

Wollar Progress Association (WPA) wishes to provide feedback on the Peabody Energy response to our submission of objection lodged on 10 March 2016. We have considered the response provided and found it to be as inadequate as the environmental assessment (EA).

We consider it is critical for the Department of Planning and Environment (DPE) to take into account the following issues when developing the NSW Government's Assessment Report on the Wilpinjong Extension Project ('the extension proposal').

This document will follow the format of the Response to Submission (RTS) document as provided in Part B¹. While WPA has a number of comments on the whole range of issues raised in our submission of objection, this feedback will concentrate on three main areas of concern. These are the response to issues raised about noise impact, social impact and the viability of the operation.

1. Noise

WPA is aware that DPE has commissioned an independent review of the noise assessment for the extension proposal. We would appreciate the public release of that report prior to the finalisation of the DPE assessment report.

1.1 Predicted Noise Levels

The RTS fails to detail the number of property purchases undertaken during the period of the Independent Audit period between 2012 and 2014. The compliance with relevant noise limits has

¹ RTS p63

only been achieved by continuing to decrease the number of ‘nearest privately-owned receivers’.²

The predictive noise assessment for Modification 5 and Modification 6 was that noise levels in the village of Wollar and surrounding areas would not exceed 35 dBA and that only one property would be significantly impacted by noise and one property marginally impacted.³

The EA outlines the issue of noise complaints and the resolution of the problem by purchasing the affected properties.⁴ However, neither the EA nor the RTS identifies that many of the properties purchased were not predicted to be impacted by noise greater than 35dBA.

The key noise management response to meet the noise criteria specified in Project Approval 05-0021 has been ongoing property acquisition over and above any predicted impacts provided in assessment reports considered by the Department of Planning.

WPA has expressed major concern that the ongoing social impacts of property acquisition has been the key outcome of the Wilpinjong Noise Management Plan. These social impacts have not been identified or assessed in past decision-making processes nor have they been adequately assessed for the current extension proposal.

The relationship between real-time noise emissions and hours of lost production is evidently beyond the predictions made in assessing previous mine expansions. This issue has not been addressed in the RTS.

The fact that 600 hours of lost production occurred between November 2014 and October 2015 demonstrates that the operations were not able to meet the noise criteria specified in current conditions of approval.

The substantial loss of production has led to increased pressure on more private property owners to sell to Peabody Energy above any predicted noise impacts.

WPA expects that this will be a continuing issue if the mine is approved to expand to within 1.5km of Wollar village and has been the driver of the aggressive negotiations to purchase all remaining private property in the village.

1.2 Suitability of Noise and Acquisition Policy to Rural Villages

WPA does not agree with the statement in the RTS that the extension ‘*Noise and Blasting Assessment (SLR Consulting, 2015) has been prepared in accordance with the Project’s SEARs, which specifically refer to the INP.*’⁵

² RTS p64

³ EA Figure 4-4 p4-17

⁴ EA 4.3.1 p 4

⁵ RTS p64

We note that the extension project SEARs require ‘*particular attention to the obligations in Chapters 8 and 9*’ of the INP. Chapter 8 covers the issue of negotiation, including with affected land holders and community. Peabody Energy did not, at any time prior to the exhibition of the EA for public comment, consult with the Wollar community about predicted noise impacts from the extension proposal.

The process outlined below in the Industrial Noise Policy (INP) was not undertaken nor was any ‘typical’ consultation between the proponent and community.

8.1 The process leading to negotiation

This chapter deals with that part of the overall process shown in *Figure 1.1* in the box under the heading ‘Decision-making process’.

Any unacceptable impacts from a development proposal that are likely to persist after noise-mitigation action has been taken can be dealt with through negotiation—either by improved mitigation or by trade-offs with benefits.

Negotiation can be:

- between the proponent and the regulator—the traditional approach
- between the proponent and the affected community (which is in the best position for evaluating the trade-offs).

In the latter case negotiation is designed to be available to those people whose amenity is potentially affected by non-achievement of the project-specific noise levels. This type of negotiation process, which leads to the determination of an achievable noise limit, is in addition to the type of direct consultation that typically occurs between the proponent and the community throughout the impact assessment process in defining the important project parameters.

6

WPA assumes that all negotiation has occurred with the EPA, as regulators, with no requirement to consult with the community. The only contact private property owners in Wollar village have received is from a land valuer commissioned by Peabody to negotiate a purchase. This occurred in December 2014 before any noise impact predictions were made available.

⁶ INP p43

The ongoing references to the EPA submission throughout the RTS demonstrates that the implementation of Chapter 8 under the SEARs did not include or consider the need for community consultation on noise impacts.

1.3 Project Noise Level of 37 dBA

The extension project EA and RTS use the Voluntary Land Acquisition & Mitigation Policy (VLAMP) parameters to justify the increase of Project Specific Noise Levels (PSNL) by 2 dBA rather than the requirements of the Industrial Noise Policy (INP)

2.4 Project-specific noise levels

After determining the relevant noise levels from the intrusive and amenity criteria, the project-specific noise levels can be assigned.

The project-specific noise levels reflect the most stringent noise level requirement from the noise levels derived from both the intrusive and amenity criteria. They set the benchmark against which noise impacts and the need for noise mitigation are assessed.

Applying the most stringent requirement as the project-specific noise levels ensures that both intrusive noise is limited and amenity is protected.⁷

The proposal to increase the PSNL from 35dBA to 37 dBA will cause a major impact on remaining private residents in the Wollar district. It will result in a much higher trigger for acquisition rights, ie noise levels above 42 dBA.

The current conditions that trigger acquisition rights at 40 dBA have caused residents to suffer increases of over 12 dBA of mine noise from the original background levels measured in the Wollar district.

The fact that Peabody Energy key noise mitigation strategy is to keep buying out the community is a major social cost that has not been adequately assessed.

It is concerning that constant references to the EPA submission identify that the cost of noise mitigation to the viability of mining operations has become a key consideration in setting the PSNL and not the protection of community health or social function.

1.4 Low Frequency Noise (LFN) and Sleep Disturbance

The RTS refers to unattended monitoring conducted by SLR in December 2012⁸ when mining operations were greater than 5 kms from Wollar village and operations had not commenced in Pits 3 and 7. The monitoring demonstrated that 9% of the records showed a difference between dBA

⁷ INP p21

⁸ RTS p4

and dBC of greater than 15 dB with A-weighted readings above 30 dBA. These measurements indicate noise levels above the conditions of approval when the LFN modifier is applied.

WPA is concerned that no recent monitoring results were used. While the EA and RTS maintain that Wilpinjong noise emissions do not contain “dominant low frequency content”, we note with interest that the assessment for the Modification 5 expansion concluded that *‘current noise emissions of the mine do not “contain a low frequency content”*.⁹

It is concerning that Modification 5 was approved in 2014, two years after SLR monitoring measured 18% of periods analysed under adverse temperatures that triggered the LFN modifier.¹⁰

The fact that the assessment of LFN has changed from conclusions of ‘no LFN content’ to conclusions of ‘no dominant LFN content’ with no additional assessment being undertaken, is a key issue that needs to be addressed.

It is completely inappropriate for the extension proposal EA to consider that no further assessment of LFN is required.

WPA trusts that the independent noise assessment review will consider this issue.

2. Social Impact Assessment

WPA is aware that DPE has commissioned an independent review of the social impact assessment (SIA) for the extension proposal. We would also appreciate the public release of that report prior to the finalisation of the DPE assessment report.

Our submission provided an in depth analysis of the failings of the SIA. The RTS has failed to respond to any of these issues.

We trust that the independent review will identify the key failings. WPA would appreciate an indication of how DPE proposes to deal with the significant social impacts of the Peabody property acquisition policy as the key strategy of their Noise Management Plan.

3. Viability of the extension proposal

WPA is concerned that Peabody Energy has filed for Chapter 11 bankruptcy restructure since the public exhibition of the EA.

The recent annual financial reports for the Peabody Wilpinjong and Wambo Mines demonstrate significant reduction in income at both mines. It is also of interest that Wilpinjong purchased over \$70m worth of coal from Wambo in 2015 to meet its obligations.¹¹

This was not reported in the economic analysis of the project.

⁹ RTS p6

¹⁰ RTS p5

¹¹ 2015 Wambo Accounts p36

Wilpinjong Mine currently has approval to relocate Cumbo Creek and the Wollar-Ulan Rd to access coal resource assessed in the original project EA. There has been no justification provided for the lack of progress on both these approved activities.

The cost of these major infrastructure liabilities together with the cost of shifting the power line in Slate Gully has not been clearly identified in the costs benefits analysis or in the coal resource analysis.

While the RTS identifies the \$250m revolving Intercompany Loan Facility ¹² there is no mention that this loan is spread over the seven Peabody operations in Australia. There is also no mention that this loan is not for capital expenditure,¹³ so cannot be put to the expansion costs.

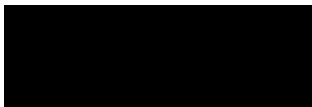
The recent financial report for the Peabody Australian Holding Company demonstrated financial problems across all operations. The accounts auditor, Ernst & Young, warned of doubts about the Australian company's ability to keep operating as a going concern.¹⁴

WPA wishes to know how DPE will consider the economic viability of the existing operations at Wilpinjong, and the expansion proposal, in light of the latest economic outlook for Peabody Energy.

Conclusion

There are many other issues and inconsistencies provided in the RTS that are too numerous to outline in this letter. WPA would appreciate some follow up on how DPE will consider the issues raised in this correspondence when finalising the assessment report.

Yours faithfully

A solid black rectangular box redacting the signature of Bev Smiles.

Bev Smiles
Secretary

¹² RTS p 79

¹³ 2015 Wilpinjong accounts p9

¹⁴ ABC Radio 2 June 2016, Peabody Australia coal company loses nearly \$3b in 2015, notes risk from parent's bankruptcy