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"Reclaiming our Valley"

Hunter Communities Network

Planning Assessment Commission
Public Meeting Tuesday 11 April 2017

W. Trud. Owens

Wilpinjong Extension Project

The Hunter Communities Network is an alliance of community based groups and individuals impacted by the current coal industry and concerned about the ongoing rapid expansion of coal and coal seam gas exploration and mining in the region.

We appreciate the opportunity to present our final objection and analysis of the merit of the Wilpinjong Extension Project. Our legal right to appeal a final decision on this project has been extinguished by the holding of a Public Hearing here in Mudgee on 28 November 2016.

Therefore, we must trust that you, Commissioners, will take the time to rigorously consider the information provided to you over the assessment and approvals process for this major development proposal.

We were quite shocked that the PAC Review Report was brought down less than 3 weeks after the closing date for submissions at the end of last year. We note that there was no final recommendation provided in regard to the merit of the proposal.

Hunter Communities Network submitted a detailed submission to the Review PAC. Some of the key issues we raised rated only a passing mention in the Review Report. These include the social and economic stranding of the few remaining remote private landholders in the district and the provision of acquisition rights as formal compensation.

We consider that these two issues have not been addressed by the Review Report or the Department of Planning Final Assessment Report released in late March.

The recommendation from the Department that the benefits of the project outweigh its costs, and that the project is approvable subject to stringent conditions, is highly contestable.

We strongly disagree that the recommended conditions of consent provide, as stated, 'a comprehensive, strict and precautionary approach to ensuring the project can comply with relevant performance measures and standards, and ensure the predicted residual impacts can be effectively minimised'.

This submission will concentrate on the reasons why we do not support this position taken by the Department of Planning. We consider the recommended conditions to be very weak and full of legal loop holes. This makes them difficult to regulate effectively. They provide no assurance that the substantial environmental and social impacts of the project **will** be adequately mitigated.

Fifteen minutes will not allow a full analysis of the problems and loop holes in the proposed conditions.

However, I will attempt to give a ^{summary} ~~precis~~ of the key issues within the short time allotted. If this were the Land and Environment Court a more reasonable time would be available.

To begin with at least 22 of the conditions have a major loop hole that allows change after approval. This is the statement '*unless the Secretary agrees otherwise.*'

Time and time again we have seen this loop hole used so that the 'stringent' conditions are never met, or are significantly changed, or are delayed until a modification of the project allows a change. This significant loop hole provides no confidence or certainty for the community that these so-called stringent conditions will ever be met or will minimize residual impacts.

There are numerous examples of this loop hole rendering conditions useless across the Hunter Region.

For this operation, the Wilpinjong Mine, a perfect example is the lack of implementation of current condition 37 Schedule 3 which requires the ECAs and Biodiversity Offset Areas D & E to be protected in perpetuity by December 2015. This condition has not been met because it contains the loop hole, '*unless the Director General agrees otherwise.*'

We note that the ECAs were supposed to be protected by 2009 under the original consent – so much for the 'stringency' of conditions.

In the Hunter coal fields there are endless examples of the failure to comply with and to regulate conditions of consent.

Another perfect example, again with biodiversity offsets, is the Integra Mine near Singleton. This mine was approved in 2010 with condition 43 requiring long term security for the biodiversity offset areas to be provided by end of December 2011. This did not happen because there was the loop hole '*unless the Director General agrees otherwise.*'. Instead the time limit was extended to September 2012, then to March 2013 and then to September 2014.

These biodiversity offset areas were like-for-like offsets for significant biodiversity loss approved at the mine site. These offsets were never protected under the conditions of consent.

A modification was lodged in 2014 that cancelled these approved offset areas and approved different sites, a long distance from the impacts at the mine with no like-for-like characteristics.

The long term security for these new offsets still contains the loop hole '*unless the Secretary agrees otherwise.*' This was supposed to occur by June 2016. We haven't had a chance to find out if this condition has finally been met, ~~but I would wager that it hasn't.~~

The Department of Planning and Environment appears to have no interest in regulating the conditions of consent for large mining operations. It seems to fall on the community to become the regulatory watch dog.

How can the community have any assurance that the 22 conditions proposed for the Wilpinjong extension that contain this major legal loop hole will ever be implemented.

These are not 'stringent' conditions. They will not provide appropriate mitigation for environmental impacts because there is no guarantee that they will ever be met.

The Commission can not be certain that the project has merit if the conditions do not result in compliance with relevant performance measures and standards or the minimization of residual impacts because of a major regulatory loop hole.

Winkles Communities Network
HCN recommends that this loop hole be removed from all 22 conditions.

Some concerning examples where this loop hole currently occurs in the recommended conditions include:

Schedule 3 Condition 5: The preparation of a new Noise Management Plan

Appendix 6 Condition 4: Compliance noise monitoring

Appendix 6 Condition 5: Monitoring in accordance with the Industrial Noise Policy

Six of the conditions relating to the Biodiversity Offsets have the loop hole.

The most concerning of these are:

Condition 37: the development of the performance and completion criteria for the offset areas on mine rehabilitation.

Because over half of the land based offsets, 2 906 ha, are proposed to be achieved through the regeneration of Regent Honeyeater habitat on rehabilitated mine land, it is critical that this condition not have a loop hole.

Condition 44: lodging a revised Conservation Bond.

We consider that both these conditions must be met prior to carrying out any development under this consent. The poorly designed biodiversity offset strategy is weak enough. The proposed

weak conditions must be strengthened. This will provide some assurance that there is an intent to secure a semblance of an outcome to mitigate major environmental costs.

Condition 68: Social Impact Management Plan also has this loop hole that means it can continue to be put off or shoved out of the way.

The other key concern about the 'stringency' of conditions, or not, is the use of the terms '*where reasonable and feasible*'. There are 16 conditions with this loop hole.

The definition of feasible is provided as:

Feasible relates to engineering considerations and what is practical to build or implement

The definition of reasonable is provided as:

Reasonable relates to the application of judgement in arriving at a decision, taking into account: mitigation benefits, cost of mitigation versus benefits provided, community views and the nature and extent of potential improvements

We presume that if the proponent decides that it is not reasonable or feasible to carry out a condition with this loophole then it need not be complied with. If an argument is made that compliance with the condition will be too costly or impractical then the environmental impact will not be mitigated.

The conditions with this loop hole are predominantly associated with air quality and noise mitigation and avoiding impacts on cultural heritage values.

It concerns us greatly that this loop hole is used in relation to exceedances of criteria and implementation of remediation measures as outlined in Schedule 5.

Schedule 5 Condition 2 does mention that any exceedances of criteria and/or performance measures is a breach of consent and may be subject to penalty or offense provisions.

However, the legal application of 'all reasonable and feasible steps' to ensure that the exceedance ceases and all 'reasonable and feasible options' for remediation appears to be very loose.

The community considers that if an operation is exceeding criteria and/or performance measures it should cease operating until such time as the problem is fixed.

If exceedances can't be controlled by reasonable and feasible means then the project should not have been approved in the first place and should not be able to continue to operate.

These loop holes in the conditions do not afford the environment or the community any protection from, or mitigation of, the environmental impacts that have been predicted and approved.

These loop holes work in favour of the industry at the expense of the environment and the community. Conditions with these loop holes are not 'stringent', they are, in fact, a further concession to the industry and demonstrate that the Department of Planning and Environment has no commitment to environmentally sustainable development.

Because we are assured by the NSW Govt that this PAC process is similar to a merit appeal in the NSW Land and Environment Court, we appeal to you Commissioners to strengthen the proposed conditions by removing the loop holes we have discussed.

The community has had three opportunities to appeal the merit of decisions on mine approvals over the past 10 years. One case resulted in the total rejection of the project, the Warkworth case. The other two, the Ulan case and the Ashton South-East Opencut case, while approved, resulted in significant changes to the conditions of consent.

As the determining decision-makers we appeal to you to closely consider the issues and recommendations raised by the community here today.

We do not support the Department's conclusion that this mine expansion has merit under the consent conditions as proposed.

We put the following recommendations to you:

1. That the legal loopholes outlined above are removed from the 38 conditions
2. That Pit 2 and Pit 6 final voids are required to be backfilled
3. That the significant cultural heritage sites on the Rocky Hill Complex are protected
4. That the current noise assessment conditions for temperature inversions and low frequency noise are maintained
5. That the remaining private properties in the Wollar district be included in Condition 1 Table 1.

I thank you Commissioners for considering the issues raised by Hunter Communities Network today. We look forward to a satisfactory determination that clearly considers the environmental and social costs of the project as well as the economic benefits.

