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30 October 2017

Mr David Johnson
Chair
Wallarrah 2 Coal Project Hearing
Planning Assessment Commission
Level 3
201 Elizabeth Street
Sydney 2000

Dear Sir

**D482-17 Wallarah 2 Coal Project
Fourth Planning Assessment Commission Hearing**

Our major concern is that the Proponent, the Department of Planning and Environment (the Department) and other authorities persistently fail to address issues raised by the Commission in the Review Reports of June 2014 and May 2017. These issues concern

WATER

SUBSIDENCE RELATED DAMAGE

WATER RESOURCES

COAL TRANSPORT

GREENHOUSE GAS EMISSIONS

ECONOMIC BENEFITS

These issues were considered by the Commission to be of critical significance to the assessment of the proposal. As such they could not be dealt with by way of conditions. Details of the continuing deficiencies in the materials provided in support of the proposal are set out below.

In addition, we are concerned about the potential impact of this long wall coal mine on the environment, including our property in the Yarramalong Valley. We are particularly concerned about subsidence and the acknowledged impact on stream flows and groundwater.

MATTERS RAISED BY THE COMMISSION

Examination of the Review Reports of June 2014 and May 2017 discloses a number of instances where the Commission identified matters of concern that called for further information, investigation or consideration. In some cases the Commission called for the material to be provided " **Before submission of the project for determination (by) the consent authority** " (emphasis added). In other cases the Commission said " **If the consent authority cannot be satisfied....the consent authority will have to consider whether the residual impacts make the project unacceptable in terms of s79C of the Act** " (emphasis added).

Examples of the matters of concern to the Commission, in the order in which they occur in the Review Reports, which does not necessarily reflect the significance or importance of a particular matter, are:-

REVIEW REPORT 6/2014

1. WATER

A. At page 77 the report states-

" Potential Losses of Baseflow from Impacts on Groundwater
Before submission of the project for determination the consent authority be provided with revised estimates by year for: "
(There is then specified the data considered necessary by the Commission that in the interests of some brevity is not repeated here.)

The report then states

"These estimates must indicate whether the losses are expected to be temporary or extend beyond the life of the mine. The estimates should also have been reviewed by NOW."

These obviously are matters of extremely critical significance to the Central Coast Water Supply and those of us who are permitted to draw water from the rivers or from bores.

What has happened, or rather, not happened is explained below under the heading Water Resources.

B. At page 78 the Report states-

"Potential Impacts on Stream Morphology
Before the project is submitted to the consent authority, the risks to stream morphology of interaction between significant rainfall event(s) and the interface between subsided and unsubsidied sections of a stream be assessed with a view to properly describing the risk(and quantifying if possible), and providing a detailed assessment of the options available to

deal with any such eventuality and an assessment of the capacity to implement any such options on the Project Area streams"

Again, these obviously are matters of extremely critical significance to the Central Coast Water Supply and those of us who are permitted to draw water from the rivers or from bores.

What has happened, or rather, not happened is explained below under the heading Water Resources.

2. SUBSIDENCE RELATED DAMAGE

At page 79 the Report states-

"Infrastructure and Improvements Impacted by Subsidence

"... before granting any consent , the consent authority satisfy itself that the proposed compensation measures for subsidence-related damage to privately-owned built features will deliver a fair and reasonable outcome for affected property owners. **If the consent authority cannot be satisfied that the outcomes will be fair and reasonable then the consent authority will have to consider whether the residual impacts make the project unacceptable within the terms of s79C of the Act.**" (emphasis added)

The response to this recommendation appears to be draft Conditions 5 and 6(g)(ii) on page 10 of the Draft Development Consent proposed by the Department.

As to the First Workings, there are **no proposals whatsoever for compensation measures** for subsidence-related damage to privately-owned built features- see Condition 5. This may be the result of a view that there will be no subsidence caused by First Workings. Such a view cannot stand as the condition itself contemplates the possibility of subsidence by reason of the proviso it contains.

As to Second Workings, all that draft Condition 6(g)(ii) does is propose a mechanism to recommend-

"appropriate remedial measures and include(s) commitments to mitigate ,repair, replace or compensate predicted impacts on potentially affected built features...."

The Commission has said the consent authority must be satisfied that the compensation measures will deliver a fair and reasonable outcome for affected property owners. The Department's response falls far short of this. As to first workings there is no proposal for compensation, whatsoever, and for Second Workings all the Commission has before it a scheme in Condition 6(g)(ii) that should lead to a Built Features Management Plan that contains presently **unknown** compensation measure.

This matter was raised in the Review Report of June 2014 following the public hearing in April 2104. The material presently before the Commission is not relevantly different to that before the Commission at the time of the public hearing in May 2017.

The hearing scheduled for 3 November 2017 will be the fourth conducted by the Commission and the fifth public hearing concerned with this proposal. The first public hearing was in 2007 and the first Commission hearing, chaired by Gabriel Kibble, was in 2010. There has to be some finality to this matter. After all this time, the proponent and the Department are unable to put forward any compensation measures for subsidence-related damage to privately-owned built features, let alone measures that are fair and reasonable. Accordingly, the Commission, acting as consent authority under the delegated authority, has no alternative but to determine that the residual impacts are unacceptable as foreshadowed in the Review report of June 2014.

The Commission cannot be satisfied that the outcomes for affected property owners will be fair and reasonable as presently there is absolutely no basis for that assessment.

Clearly, the residual impacts make the project unacceptable in terms of s79C of the Act and the Commission has no option but to REFUSE consent under its delegated authority.

REVIEW REPORT 5/2017

A. WATER RESOURCES

This material relates back to the recommendations at page 77 and 78 of the June 2014 report referred to above.

At page 17 the May 2017 Report states-

" In addition to the above, the Commission also notes DPI Water has yet to provide its comments on the applicant's response to the Commission's 2014 Review recommendations 5(d) and 5(e), which require estimates of potential losses to baseflow from any changes to catchment flows and other potential sources of loss of water from subsidence induced changes. **This should be resolved and assessed before the application is determined by the consent authority**" (emphasis added).

Clearly, the Commission, through two completely differently constituted panels, sees this issue as being of critical significance, as does the Central Coast Council and the community. The community, east of the M1, is historically dependent on Wyong Creek/River for 40% of the water supply for some 300,000 people. Personally, we are only licensed to pump water from Wyong Creek as the adjoining billabong is considered a wetland. Any loss of flow is critical.

DPI Water has now had three years to respond to the Commission's 2014 recommendations. Clearly the absence of any such response is a matter of no concern to the Department, albeit that the Department is the government body charged with responsibility for providing an impartial and unbiased assessment of the proposal to the consent authority.

In the Department's Residual Matters Report at page 12 it is stated-

"DPI Water

"In its 2017 review, the Commission observed that DPI Water had not provided comments on WACJV's response to the Commission's 2014 Review recommendations 5(d) and (e) which required estimates of potential losses to baseflow from any changes to catchment flows and other potential sources of loss of water from subsidence-induced changes. The Department notes that in January 2017, WACJV provided revised estimates regarding temporary potential losses to the CCWS."

As in the case of Economic Benefits, as noted below, the Department appears content to accept, almost unquestioningly, material provided by the proponent. Coupled with the Department's acceptance of the proponent's Economic Benefits, notwithstanding the Department's own consultant's contrary views, questions must arise as to the impartiality of the advice tendered by the Department.

B. COAL TRANSPORT

At page 30 it is stated-

"The commission's 2014 Review recommends the Department and EPA consider the broader implications for potential emissions from rail transport of coal before a final assessment report is submitted to the consent authority."

"The Commission also notes the Chief Scientist's report indicates further studies will be carried out to better understanding(sic)the various components of the issue."

Later at page 55 at 7.4 the Commission states in its findings and recommendations-

"Additional studies are currently being carried out by the Chief Scientist and Engineer and the NSW EPA to address the issue of dust generated by coal wagons along rail corridors. **These will be relevant to the consent authority's consideration at the time of determination** (emphasis added)."

No reference can be found to these studies in the Department's Residual Matters Report.

Again, there is no information, about matters identified in 2014 and 2017 as significant, to assist the Commission. Another reason to conclude that the residual impacts are unacceptable and refuse consent.

C. GREENHOUSE GAS EMISSIONS

At page 31 it is stated-

"The departure from the Commission's 2014 Review report has not been fully justified. This should be clarified before the application is determined by the consent authority."

Again, this does not appear to have been done. Another reason to conclude that the residual impacts are unacceptable and refuse consent.

D. ECONOMIC BENEFITS

The May 2017 Review Report states at page 42

"In the Commissions view, this is a matter that should be brought to the attention of the consent authority so that it can make an informed determination of the application as the economic benefits of the project could be as low as \$32 million. The applicant may wish to provide clarification on this issue prior to determination."

and then at page 43

"The Department **in consultation with the applicant** (emphasis added) should provide greater clarity in its conclusion on the net economic benefits of the project to the consent authority, having regard to the conclusion of its consultant that the economic benefits of the project are likely to be less than those claimed by the applicant."

and then at page 53

"The Commission recommends that the economic assessment be updated prior to consideration by the consent authority to inter alia reflect any potential impacts on the CIV as a result of the stringent conditions that are recommended to protect catchment health, management of water resources, other changes in the operating environment and the variance in estimated greenhouse gas cost."

In the Department's Residual Matters Report at page 22 it is stated-

"..In general, the CIE estimates are considered to be conservative, whereas the Gillespie estimates are considered to be theoretical maxima. **In the Departments' view, the most likely outcome lies somewhere between the two** (emphasis added). "

Amazingly, in light of the differences of opinion between the consultants and the Department's own comment at page 22 the Department at page 37 still quotes the economic benefits claimed by the proponent as the likely benefits.

Has any thing been resolved or changed? The economic benefits could still be as low as \$32 million.

Equally significantly, questions must be raised again as to the Department's impartiality. The material in the Department's Residual Matters Report raises the perception of bias, even if it does demonstrate not actual bias.

PERSONAL CONCERNS

We are the owners of property on Yarramalong Road with approximately 1km of frontage to Wyong Creek. We hold a license to pump up to 80ML/year of water from the creek. Our property is within the subsidence impact zone that extends south from the northern side of Wyong Creek past Boyds Lane and across Yarramalong Road.

The totality of the material before this Commission satisfies us that this long wall coal mine will cause a loss of groundwater and stream flow in Wyong Creek. That this will occur is confirmed by Commission's prior comments, the Departments comments and the inclusion of the conditions in the draft consent providing for compensatory water supply for private landowners and a compensatory arrangement for the Central Coast Water Supply.

Any loss of water from Wyong Creek will not only impact us and our neighbours, but also the fauna that is dependent on the creek. Along our boundary to the creek are waterholes that are the habitat of a platypus colony. This colony was the subject of a study when the Mardi-Mangrove pipeline was under investigation.

Towards the end of the last drought in 2007 in the vicinity of Boyds Lane the bed of Wyong Creek was dry. You could walk along the bed of the creek collecting the shells of fresh water mussels and not get your shoes wet. This was a very difficult time with no water in the creek. Should the subsidence from the long wall coal mine, which it appears agreed will occur, crack the bed of the creek the flow of water will be lost. This is not fanciful scaremongering, as it occurred in Diega Creek in Lake Macquarie where the mining company acknowledged responsibility.

Clearly the Department anticipates the loss of water from the streams and the groundwater. This is demonstrated by the inclusion of draft Conditions 16 and 17. In the event the water in Wyong Creek is lost we will have permanently the disastrous situation we experienced in 2007. Condition 16 will be cold comfort when no one as yet has identified where the 80ML/year compensatory water supply will come from. The proponent and the Department and other authorities have ruled out the transfer of appropriately treated mine water to the upper reaches of Wyong Creek.

The loss of water from Wyong Creek/River will also impact on the Council's ability to pump water from Mardi Dam to Mangrove Creek dam. That scheme cost some \$120,000,000 and was meant to drought proof the Central Coast. The experts claim the subsidence won't damage the infrastructure, but if the stream flow

in Wyong Creek/River is lost there will no water to pump to Mangrove Creek Dam.

We don't know how the experts came to the conclusion that the predicted loss of water would be of the order of 300ML/year. However, this appears to be a rather inconsequential volume when we are permitted to pump 80ML/year and the weekly water usage on the Central Coast varies between 500 and nearly 800 megalitres a week. We note that the current capacity of Mangrove Creek Dam, the Central Coast's main storage is 137,719 megalitres or 72%.

The compensatory arrangement would return annually about half of one weeks consumption of water by those east of the M1 motorway. This would not be of any real assistance in the drought proofing of the Central Coast. The storage in Mangrove Dam has gone from 10% to 70% since the completion of the Mardi to Mangrove pipeline mainly as a result of pumping from Wyong River in times of higher flows. The loss of the water source would devastate the Central Coast. There is no alternative supply available of the necessary capacity. The Hunter cannot make up any shortfall.

The Commission is asked to refuse consent to this application given the unsatisfactory state of the assessment by the Department and the irreversible impacts on the local community and the environment that will flow from a long wall coal mine.

There is no proper basis upon which a consent authority, in this case the Commission, under delegated authority, properly understanding it's functions could come to the conclusion the outcomes will be fair and reasonable with residual impacts that make the project acceptable. So to conclude would be perverse and result in a decision that is legally flawed.

Yours faithfully

Warwick O'Rourke BA LLB and Margaret Sidis LLM

