

RUSSELL VALE UNDERGROUND EXPANSION PROJECT

Response to Additional Information

Thank you, Commissioners, for seeking further information regarding the rehabilitation security deposit, economic return, pillar stability and risk to upland swamps.

The overall net economic of \$96.1 million, assuming that there is zero local shareholding and zero company tax, is insufficient to overcome the public expenses of groundwater pollution, health impacts through coal dust, increased heavy vehicle congestion and greenhouse gas emissions, to name a few. For example, Wollongong City Council has committed \$32 million to reduce carbon emissions Council operations by 25% (~35,200 tonnes CO₂-e p.a) over the next 2 years. Meanwhile, if approved the Russell Vale UEP will generate 304,600 t CO₂-e per annum of Scope 1 and 2 emissions. A \$96.1million return for 1,523,000 tonnes CO₂-e over 5 years, equates to generating \$63/tonne CO₂-e p.a. Whilst Council is investing \$454/tonne CO₂-e p.a to reduce emissions. This is a crude comparison, it fails to take into account the many economic and health disruptions caused by climate change. I use it to illustrate that the expansion of this project goes against economic sustainable development in Wollongong. If Scope 3 emissions were included that the cost effectiveness of emissions prevention by rejecting the Russell Vale UEP would be even greater.

The Wollongong City Council report on the Climate Mitigation Plan 2020 to the meeting on 16th November 2020 is available here:

https://www.wollongong.nsw.gov.au/_data/assets/pdf_file/0032/119948/Item-4-Post-Exhibition-Climate-Change-Mitigation-Plan.pdf

A direct link to the Climate Mitigation Plan 2020 is available here:

https://www.wollongong.nsw.gov.au/_data/assets/pdf_file/0014/121343/Climate-Change-Mitigation-Plan-2020.PDF

It is important that the Resources Regulator have stated that if the proposed expansion is granted that a new Rehabilitation Cost Estimate will be calculated and the rehabilitation security deposit collected. However, it is concerning that Wollongong Coal deny seek to “WCL has advised that, should the UEP proceed it would not result in any material change in rehabilitation costs.”

It is concerning that the 2017 Audit Office report showed that “mine rehabilitation security deposits are still not likely to be sufficient to cover the full costs of each mine's rehabilitation in the event of a default.” <https://www.audit.nsw.gov.au/our-work/reports/mining-rehabilitation-security-deposits> There have been on-going questions about the contingency, and how well accounted they are in the rehabilitation costs. Fully funded rehabilitation is essential to avoid costs to the tax-payer, impacts to the environment and surrounding resident community, as well as providing employment pathways.

It has been Wollongong Council's experience that the proponent has sought to delay and avoid rehabilitation liability. On the 20th October Wollongong City Council unanimously resolved to lodge an objection to the Russell Vale Underground Expansion Project. Amongst the reasons given was Wollongong Coal's poor track of debt servicing and operating compliance, an out-standing security bond to Wollongong Council and emplacement area remediation. The notice of motion can be viewed here: https://www.wollongong.nsw.gov.au/_data/assets/pdf_file/0018/118170/Item-22-Notice-of-Motion-Councillor-Cath-Blakey-Mine-Expansion-in-the-Cataract-Drinking-Water-Catchment.pdf

The background to Notice of Motion illustrates why Wollongong residents and elected representatives are so concerned that the Wollongong Council mine is proposed to be operating again and expanded.

“The proposed Russell Vale Colliery Underground Expansion Project is an extension application for bord and-pillar extraction within the Cataract Reservoir catchment. If approved, the project will also activate permission to longwall mine the remaining 25 metres of longwall 6. The project aims to extract 3.7 million tonnes of run-of-mine coal over a five-year period from the Wongawilli Seam beneath the Bulli and Balgownie seams which have already been extracted. Approximately 50% of the material to be extracted is high quality metallurgical coal, 25% is thermal coal and the remaining 25% is other rock. The metallurgical and thermal coal is destined for over-seas markets, being sold by the proponent, Wollongong Coal, to their parent company, Jindal Steel and Power Ltd, India.

The Russell Vale Expansion Proposal is identified as

- Generating noise and dust from the new coal processing plant and 2 new coal stockpiles very close to residents
- Adding 34 truck movements per hour between the mine and Port Kembla coal terminal
- Requiring a license to release mine-affected water into Bellambi Gully Creek with exceedance of the ANZG (2018) default guideline values for freshwater aquatic ecosystems (95% species protection level) for copper, zinc and nickel
- Occurring under significant Aboriginal Heritage sites with rock shelter with art, grinding groves along water courses and camp sites
- Generating 304,600 tonnes of CO₂-e greenhouse gas emissions
- Blocking public access to the Lower Escarpment Fire Trail adjacent to Brokers Nose.

The mine operates underneath the catchment of the Cataract Reservoir. This is located within the Metropolitan Special Area, a restricted-access area designated to protect Sydney and Illawarra’s drinking-water catchments.

The project is on the Woronora Plateau which supports groundwater-dependent ecosystems such as Coastal Upland Swamps in the Sydney Basin Bioregion. These swamps are listed as Endangered Ecological Communities under the Environment Protection and Biodiversity Conservation Act 1999 and the New South Wales Threatened Species Conservation Act 1995. Where upland swamps are impacted by subsidence, they dry out and increase the bushfire fuel load in the Illawarra Escarpment.

The NSW Department of Planning, Industry and Environment referral states the project is “approvable, subject to strict conditions of consent”. The Independent Planning Commission is currently considering the matter with the deadline for written submission being 5pm Tuesday 27 October 2020. The proponent, Wollongong Coal, has a history of non-compliance when it comes to the conditions of consent. Wollongong Coal has been fined and issued with orders by multiple agencies, regulators and courts for offences including polluting Bellambi Gully Creek, “poor maintenance and operation” of infrastructure, failing to publicly disclose water monitoring data, failing to hold community consultative meetings and for stockpiling 200,000 tonnes of waste coal on Council land in breach of its development consent at Russell Vale. On 8 November 2017, a conviction was recorded in the Downing Centre Local Court for the failure of Wollongong Coal to pay annual rental fees and administrative levies under section 292C(3) of the Mining Act. In March 2018, the NSW

EPA stated that "in recent years" Wollongong Coal "has demonstrated they cannot consistently manage and maintain pollution control equipment and plant on site".

In March 2018 the NSW Resources Regulator shut down the proponent's Wongawilli operation due to a serious roof collapse leading to a determination that workplace safety issues were too serious for underground work to continue. In dealings with Wollongong City Council, Wollongong Coal has also a long-standing practice of obfuscation in relation to land dedication of the Russell Vale Golf Course, security bonds, remediation of the emplacement area and creek realignment.

Wollongong Coal currently has no income and debts which exceed its current assets by more than a billion dollars (AUD\$1,089,243,000). Current auditors UHY Haines Norton noted in March 2020 that "a material uncertainty exists that may cast significant doubt on the Group's ability to continue as a going concern and therefore, the Group may be unable to realise its assets and discharge its liabilities in the normal course of business." In August 2020 Wollongong Coal delisted from the Australian Stock Exchange. Wollongong Coal was first suspended from trade on the Australian Stock Exchange in 2017 when it failed to lodge its half-yearly report. Wollongong Coal estimates rehabilitation of its Russell Vale mine would cost \$215 million. The NSW Government hold a bond of just \$12.4 million for the mine site. Since 2013 Wollongong Coal has paid \$0 corporate tax.

In India, the courts have determined that there is sufficient evidence for a criminal corruption case to be brought to trial against the majority owner of Wollongong Coal, Jindal Steel and Power (JSPL) and its chairman Naveen Jindal. In July 2019, Naveen Jindal and four other JSPL officials were charged under sections 420 (cheating) and 120-B (criminal conspiracy) of the Indian Penal Code. All have pleaded not guilty. JSPL, via a holding company, JSPL Mauritius, is majority shareholder in Wollongong Coal Ltd. Then Minister for Resources, the Honourable Don Harwin, described JSPL's problems in India in response to a question in the NSW Parliament on 1 June 2017: "On 29 April it was announced that Jindal Steel and Power Limited, and one of its directors had been investigated by India's Central Bureau of Investigation on potential criminal corruption charges. The courts in India decided that there was sufficient evidence for a case to be brought to trial. I am advised that no conviction of criminal corruption has been made at this stage."

In the NSW Department of Planning, Industry and Environment final assessment report on the Russell Vale Expansion Project it states that a "fit and proper test is not a requirement under the EP&A Act and is an irrelevant consideration for a consent authority when making a determination on a development application".

The "Fit And Proper" test is within the Protection of the Environment Operations (POEO) Act which governs the Environmental Protection Agency (EPA) and awards pollution licenses, and the Mining Act through which the NSW Resource Regulator awards mining leases. However, these agencies have Ordinary Meeting of Council 26 October 2020 718 rarely denied an operating license or lease on the Fit and Proper test. To do so would likely be contested through the courts.

The NSW Resources Regulator regulates the mining leases on the basis that the right to mine coal that belongs to the people of NSW is a "special privilege" which our community expects

the government to regulate to “prevent harm to the community, other industries and the environment”. The regulator’s ‘Fit And Proper Person Policy’ requires that the right of exploration and mining is “only conducted by companies that can and will respect that privilege”. The NSW Resources Regulator commenced investigation in mid-2016 over whether Wollongong Coal is a “fit and proper person” to hold a mining licence. In July 2020, the Illawarra Mercury reported that the state's mining regulator had “quietly shelved” this investigation, saying there was “insufficient evidence to support a finding that the company is not a fit and proper person”. It appears that the NSW Resources Regulator - under the NSW Mining Act - may choose not to escalate action against Wollongong Coal unless convictions are recorded in India against significant individuals within JSPL.

A review of the evidence already in the public domain causes great community concern over whether Wollongong Coal should be granted further rights to mine in NSW.”

The Wollongong Council discussion on this notice of motion can be viewed here:
<http://webcasts.wollongong.nsw.gov.au/archive/video20-1026.php#placeholder>

At the Local Government NSW Annual Conference on Monday 23rd November 2020, it was clear that Council’s across NSW share a concern that the ecological, health and economic costs of mining under the Sydney drinking catchment outweigh any economic benefit. At the conference Local Government NSW unanimously endorsed the following motion #52, as proposed by the City of Sydney.

“ That Local Government NSW:

- (i) opposes the approval of long-wall coal mines under Sydney's drinking catchments;
- (ii) lobbies the NSW Government against the issue of long-wall mining approvals under Woronora reservoir, and other mines which have the potential to risk contaminating Sydney's drinking water supply; and
- (iii) opposes the approval of any mines which have the potential to contaminate drinking water supply of any community in NSW.

This can be viewed here:

<https://www.lgnsw.org.au/common/Uploaded%20files/Annual%20Conference%20documents/2020/Record-of-Decisions-LGNSW-2020-Annual-Conference.pdf>

In regards to the additional information on subsidence scientific uncertainty, due to the lack of data or surveying difficulty, should not be used as an excuse to approve this mine. Furthermore, I find it concerning that the Independent Panel has not been provided with the information that the Resource Regulator has available to it, or the Department’s recommended conditions. This is problematic as the enforceability of the conditions has significant bearing as to whether they are effective. I also note concern from the Independent Panel that certain conditions are unworkable.

The assumptions regarding the pillar condition in the Bulli Seam, and the lack of any workable non-invasive surveying techniques, puts too much risk for our catchment area.

Thank you commissioners for investigating the risk of pillar stability in the proposed excavations of the Wongawilli seam. There was a well-publicised roof collapse in 2014 in the Wongawilli seam in Wollongong Coal's Wongawilli Mine, highlighting how grave the risk is. The ABC has also documented damage to a Dharawal art gallery, known as Whale Cave, caused by the bord-and-pillar mining method in the Wongawilli Seam from 1979 workings of the Nebo Mine.



Whale Cave .(ABC Illawarra: Tim Fernandez)



Continued subsidence is causing Whale Cave's internal wall to collapse and destroying the art it contains.(ABC Illawarra: Tim Fernandez)

Image source: <https://www.abc.net.au/news/2020-10-02/illawarra-indigenous-sites-being-destroyed-behind-barricades/12717976> accessed 2020-11-03

How long are swamps are able to tolerate a level of incremental vertical subsidence? 100mm seems more than sufficient, and any more would threaten to increase water ingress. It's clear that pillar collapse with a metre subsidence or more will have a deferential impact on upland swamp.

These Aboriginal artworks are thousands of years old. Upland swamps are also millennia old. Would the pillars be stable for an equivalent time? While I recognise there are many different factors to be considered by the commissioners regarding the RVUEP, the concerns for enduring water security, ecological preservation and Aboriginal cultural heritage should not be put at risk for short-term extraction. As we saw with the 2016 pollution from the Russell Vale mine, for which they received a \$30,000 fine from the EPA, infringement notices for breaking their conditions do not un-do damage.

Best wishes in your deliberations.

Kind regards,

Cath Blakey

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