



Mr Steve Barry  
Planning Director  
Independent Planning Commission of NSW

Via email: [REDACTED]

Dear Mr Barry

**Hume Coal Project and Berrima Rail Project (SSD 7172 & SSD 7171)  
Second Referral- Request for Information**

I refer to the Independent Planning Commission's (the Commission's) letter to the Department of Planning, Industry and Environment (the Department) dated 7 July 2021, concerning the assessment of the Hume Coal Project and Berrima Rail Project (the project).

The Commission acknowledges the Department's recommendation for refusal, but has requested an overview of the terms and conditions that could be imposed, particularly in relation to the management of groundwater, subsidence and mine worker safety.

As outlined in the Department's Final Assessment Report and in its briefing to the Commission, the Department does not consider that the residual risks associated with the project can be appropriately managed through post approval conditions of consent, given the potential impacts and uncertainties of the project.

The Department considers that conditions of consent should only be entertained, and can only be appropriately formulated, where the predicted impacts of the project are known with an adequate level of certainty, and/or are considered acceptable.

The Department's assessment indicates that uncertainty remains around a number of issues, including mine design and subsidence, groundwater and surface water. Further, the Department's assessment concludes that where these impacts are known to an adequate level of certainty, particularly around groundwater, the predicted impacts are considered unacceptable.

Notwithstanding, the Department has considered the terms and nature of conditions that could be imposed, as requested by the Commission.

To address the uncertainties, particularly around mine design and the lack of contingency measures around potential surface water discharges, one such conditioning mechanism could be via a deferred commencement condition, whereby the Applicant would be required to address the residual uncertainties prior to commencing the project.

However, the Department believes that deferred commencement conditions should only be used when the range of residual impacts are already known with an acceptable level of certainty. The Department is not satisfied that this level of certainty has been reached for the project.

Another possible conditioning mechanism, particularly in relation to the mine design issues and subsidence, would be to rely on the Extraction Plan process. In this regard, all underground mining projects in NSW are required to obtain an Extraction Plan approval prior to commencing secondary extraction. Many of the finer details regarding mine design, subsidence, monitoring, and environmental impact mitigation and management are routinely addressed in these plans. **Attachment 1** provides a summary of the types of conditions that would be required to manage the uncertainty associated with mine plan progression and environmental performance.

However, the Department recommends that residual matters are only left to the Extraction Plan process where the scope of environmental impacts is known with an adequate level of certainty at the time of determination. The Department does not consider that this threshold has been met for the project at this stage.

Further, where the scope of environmental impacts is known for the project, namely for the predicted groundwater impacts, the Department is not satisfied that these impacts are acceptable. In this regard, the Department is not satisfied that the predicted impacts on up to 94 registered bores based on the 67<sup>th</sup> percentile predictions, or 118 registered bores based on the 90<sup>th</sup> percentile predictions, is acceptable.

Whilst make good on this number of bores may be technically feasible, it is not practical, and is likely to lead to significant ongoing dispute.

This matter could potentially be addressed by a deferred commencement condition (or other condition), that required the Applicant to obtain make good agreements with all (or a certain number) of the affected landowners prior to commencing the project (or other project milestone such as prior to causing the impact).

However, the Applicant has not been successful in obtaining any make good agreements with affected landowners to date, and it is considered that such a mechanism would likely cause significantly social division and/or disruption in the surrounding community.

Such a condition would also unlikely resolve all of the practical issues and disputes around the establishment and ongoing implementation of the make good arrangements.

An example of the Department's standard conditions for provision of compensatory water supplies is reproduced below:

#### **Compensatory Water Supply**

- B41. The Applicant must provide a compensatory water supply to any landowner of privately-owned land whose rightful water supply is adversely and directly impacted (other than an impact that is minor or negligible) as a result of mining operations, in consultation with DPIE Water, and to the satisfaction of the Planning Secretary.
- B42. The compensatory water supply measures must provide an alternative long term supply of water that is equivalent, in quality and volume, to the loss attributable to the development. Equivalent water supply should be provided (at least on an interim basis) as soon as practicable after the loss is identified, unless otherwise agreed with the landowner.
- B43. If the Applicant and the landowner cannot agree on whether the loss of water is attributed to the development or the measures to be implemented, or there is a dispute about the implementation of these measures, then either party may refer the matter to the Planning Secretary for resolution. The burden of proof that any loss of water supply is not due to mining impacts rests with the Applicant.
- B44. If the Applicant is unable to provide an alternative long term supply of water, then the Applicant must provide compensation, to the satisfaction of the Planning Secretary.
- B45. However, conditions B41 to B44 do not apply if the Applicant has a compensatory water agreement with the owner/s of the land and the Applicant has advised the Department in writing of the terms of this agreement.

**Note:**

- *The Water Management Plan (see condition 28) is required to include trigger levels for investigating potentially adverse impacts on water supplies.*

These conditions are generally applied only as a contingency measure, and as outlined in the Final Assessment Report, relatively few make good arrangements have been required to be implemented in the past for mining projects in NSW.

Where these have been required, the Department's experience is that they require intensive negotiation and regulatory oversight, with considerable scope for dispute in all stages of the process, including:

- property access;
- monitoring and determining baseline conditions;
- monitoring and determining the mine's impact over and above other influences (including other water users and natural fluctuation);
- agreement on compensatory measures, including post-mining impacts and compensation;
- the mediation and dispute resolution process itself; and
- water licencing and other secondary approvals.

**Attachment 2** provides a further summary of the complexity of such an arrangement and the issues that would need to be considered in establishing a process for making good or providing compensatory water to landholders.

The Department notes that there is no established statutory process under the *Water Management Act 2000* for dispute resolution similar to the provisions under mining and petroleum legislation and managed under the NSW Land Access Arbitration Framework. This is a dispute resolution process set up to allow access to land and compensation associated with mining and petroleum exploration, with the Land and Environment Court being the final arbiter to resolve a dispute. This process was specifically established to allow coal and gas explorers to access private land and the framework has a detailed set of rules and procedures to govern these access arrangements.

In regards mine safety aspects, this is managed under the *Work Health and Safety (Mines and Petroleum Sites) Act 2013* and associated regulation. There are strict statutory requirements set out in this legislation which is regulated by the Resources Regulator. The Department does not recommend conditions to manage mine safety issues as part of conditions under a development consent.

The Department trusts that this information provides an overview of potential conditioning. If the Commission requires further consideration, and/or a set of actual conditions, please contact me on [REDACTED]

Yours sincerely



20/7/2021

**Stephen O'Donoghue**  
**Director Resource Assessments**

## **ATTACHMENT 1 TYPE OF CONDITIONING FOR MINE PROGRESSION**

Establishment of an Independent Expert Panel (IEP) to provide advice on:

- Initial/pre-commencement mine design changes
- Ongoing panel stability issues
- Revised predictions of subsidence/stability issues
- Proposed performance indicators and measures
- All relevant sub-plans of the Extraction Plan

Restrictions and/or additional setbacks on mining (at least initially) from key surface features, e.g.

- Hume Highway
- Jemena high pressure gas pipeline
- Illawarra Highway

Subsidence performance measures with negligible impact criteria on all natural, heritage and built features:

- Oldbury Creek
- Other watercourses
- Critical infrastructure – Hume Highway, Jemena Gas Pipeline
- Residences and structures
- Heritage structures
- Heritage gardens

Extraction Plans including sub-conditions and sub-plans

- Requirement for approval of Resources Regulator on key issues i.e. panel stability
- Consultation with other relevant agencies on various other matters.
- Monitoring programs and Trigger-Action-Response Plans
- Sub Plans including:
  - Subsidence monitoring
  - Water
  - Heritage
  - Built Features
  - Biodiversity
  - Land Management
  - Public Safety

Water Balance and Reject Emplacement Scheduling:

- Annual review of water balance/ reject generation and placement
- Contingency planning

## **ATTACHMENT 2**

### **DRAWDOWN IMPACTS AND MAKE GOOD CONSIDERATION**

Performance measures based on maximum predicted drawdown impacts for landholders

- Bore pressure/ groundwater depth
- Average pumping rates

Establishment of baseline information and performance of bores, e.g.

- Bore depth
- Bore type and use
- Average pumping rates
- Consideration of climate change impacts
- Historical groundwater use
- Proposed groundwater use

Establishment of monitoring regime for each bore

- Bore depth
- Bore type and use

Process of seeking access and responding to complaints about water loss

- Includes landowners outside predicted impact zone
- Managing cumulative impacts, for example if increases in bore extraction rate from other landowners

Dispute resolution process and rules

- Triggering criteria
- Establishment of Arbitration Panel
- Requirements for specialist expertise
- Appointment of arbitrator
- Site inspection by arbitrator
- Escalation to mediation
- Escalation to arbitration hearing
- Interim and final determinations
- Payment of costs/ compensation

Establishment of code to provide mandatory rules on land access, e.g.

- Duration and periods of access
- Parts of the land and means of access to those parts of the land
- Kinds of operations that may be carried out in or on the land
- Conditions to be observed when accessing the land
- Protection of property and the environment while having access to the land including for example biosecurity arrangements
- Variations to access arrangements