

From: Alan Lindsay, Vice-President, Coal Free Southern Highlands Inc.

To: The Independent Planning Commission

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By email: ipcn@ipcn.nsw.gov.au

Re: Second referral of the Hume Coal Project

Comments on Hume Coal presentations to the 2nd Public Hearing
July 12th and 13th, 2021

The principal Hume Coal Project representatives at the second Public Hearing were Project Manager Rod Doyle and General Counsel Chris Kim.

Mr Doyle's presentation is notable for selective and misleading quotations, unwarranted generalizations and misinterpretations, wrapped up in up in the general complaint that Hume has been discriminated against relative to other projects. Mr Kim echoed the assertions of discriminatory treatment and provided some dubious legal interpretations, particularly of the Precautionary Principle.

The following commentary covers what CFSH considers to be the key matters arising from the Hume presentations. Much more could be said but time is a limitation.

- **Referring to groundwater bores Mr Doyle declares that: "All experts agree Hume's water model is 'fit for purpose', there is across the board confidence in the modelling and the water model is by nature a conservative model".**

Contrary to Mr Doyle's assertions, all experts don't agree, certainly not DPIE Water and the experts that have been engaged by community groups. The DPIE has agreed to use the Hume model as the basis for ongoing discussion but notes the view of their water agency that the results predicted by the model are likely to understate the impact of the mine.

Regarding the 'conservative' nature of model, it is instructive to note the words of hydrogeologist and Hume consultant Dr Lloyd Townley in his report for the IPC on the Bylong Project.

"Ultimately, it is important that stakeholders have confidence in predictions. Nevertheless, a numerical groundwater flow model has many parts, and even for professionals with many years of experience, there are always challenges that lead to uncertainties".

Later he goes on to say the intention of the authors of the Groundwater Modelling Guidelines was that all models of greenfields mining projects such as Bylong would have a Class 1 Confidence-Level Classification, that is greater uncertainty than models of Class 2 or 3. Townley stated that while a Class 1 model can be used to assess the potential impacts of mining in these circumstances, model predictions must be uncertain.

These statements posed a potential problem for Dr Townley when he was commissioned by Hume to do a further peer review of the Hume GW model. However, he demonstrated his flexibility in these

matters and described the Hume model as Class 2 with elements of Class 3 by declaring the Hume mine area to be “brownfields” as an extension of the Berrima Colliery.

The DPIE expert hydrogeologist, Mr Middlemis, was retained by Boral for the LEC merits hearing into the expansion of the Berrima Colliery in 2013. Under cross examination he conceded that the data on Berrima Colliery was ‘barely adequate’ for modelling purposes. The hydrogeologist currently working on the closure of the Berrima mine says her model is Class 1 given the extent of the Berrima data, and currently a further refinement of her work is under discussion with the Resources Regulator. Dr Townley’s upgrading of the classification of the Hume model appears to be an attempt to reduce expectations of uncertainty surrounding the model but is not justified by the data from the Berrima Colliery.

- **On the issue of groundwater make-good, Mr Doyle says: We have a credible and achievable pathway to make good each and every bore.**

Hume endlessly quotes DPIE groundwater expert, Mr Middlemis, saying that the make-good mechanisms proposed by Hume are feasible. However they always omit his additional statement that this does not apply to irrigation bores. Hume understands that they will destroy some large capacity bores, and any suggestion that they can simply drill a replacement bore is fanciful.

In fact, Hume’s documentation makes it clear that there may be a number of occasions where they will be unable to meet their make good obligations. For this reason, Hume is asking for a special set of ‘conditions of consent’ that implement a specific dispute resolution process that mirrors the land access legislation in the Mining act, and a process based very loosely on the Voluntary Land Acquisition and Mitigation Policy (VLAMP) for resolving noise and dust issues and modified to cover groundwater issues.

The VLAMP framework is an entirely unsuitable to cover groundwater, but Hume needs this process to provide an escape for Hume in situations where they are unable to physically supply water to landowners. In this situation the Hume wants the DPIE Secretary to step in, VLAMP style, to determine the financial compensation due to the landowner, effectively confiscating the landowners water license. It is most unlikely that this approach can be implemented without legislation, and this would be problematic, the definition of the elements of compensation being just one issue. (refer to appendix K1 of the Hume’s IPC Response for details).

Mr Doyle’s ‘credible and achievable’ pathway to make-good depends on landowners agreeing to a level of usage of their bore (which will vary enormously depending on climatic conditions), accepting that the Hume GW model provides an accurate picture of the impact the mine has on the bore, and then signing a legally binding contract that defines the make-good mechanism prior to the mining impact taking place. According to Hume’s proposal, the refusal of a landowner to acquiesce to Hume’s process would relieve the company of any responsibility.

The procedures requested by Hume are hardly ‘credible and achievable’ pathways to resolve the make-good problem. They are, in the view of the DPIE, unworkable; to which we would add, unfair, amateurish and self-serving. They are a recipe for constant friction.

Make-good dispute resolution.

Mr. Kim claims that Hume is asking for the standard ‘compensatory water’ condition that all coal mines work with. This is entirely misleading, as pointed out by the DPIE in the FAR.

The standard condition for compensatory water does not work for the Hume situation, with a large number of landowners and significant risk of being unable to make-good on water intercepted. As indicated earlier, Hume wants a special set of 'conditions of consent' to permit a specific dispute resolution process that mirrors the land access legislation in the Mining act, and a process based very loosely on the Voluntary Land Acquisition and Mitigation Policy (VLAMP) for resolving noise and dust issues and modified to cover groundwater issues.

Hume wants the impact of the mining to be determined based on their GW model, in advance of it actually occurring. They have said that if the impact of the mine is greater than expected, then they are open to renegotiation, but as the DPIE has pointed out there is the potential for endless dispute over the reasons for the greater impact. Weather and climate factors, increased use by other users and no doubt a myriad of other reasons will be offered to explain why the problem has not been caused by the miner.

With a legally binding agreement of the form that Hume has in mind, the balance of power is with the company and any landowner would be poorly advised to agree to it.

- **Invalid Comparisons with Tahmoor Colliery extension**

The Hume representatives take exception to the DPIE description of the impact on bores by their project as 'unprecedented' and point to the Tahmoor Colliery to back their claim. The DPIE FAR clearly explains why they consider that comparisons with the Tahmoor Colliery extension are invalid, geology and the difference in depth of mining being the principal factors.

In the Tahmoor situation, hundreds of metres of the semi-imperious Narrabeen Group (mainly shales and claystones) lie between aquifer bearing sandstone and the coal seam. This layer is absent in the Hume mining area, with a so-called interburden layer, 0.4 to 4 metres thick being the only separation between the sandstone and the coal. Mr Doyle is a geologist, surely he understands this.

Mr Doyle selectively quotes and underplays concerns of the DPIE mine safety and geotechnical experts.

Emeritus Professor Galvin and Professor Canbulat may agree with Hume's experts on some points, but they remain concerned on the short term and long-term stability of the web pillars, risks to personnel and environmental damage. They reinforced these long-held concerns in their discussion with the IPC panel on Friday July 9th.

The DPIE FAR states that discussions between Hume's experts and those from the DPIE have reached an impasse. They have elected to reflect the advice of their own experts in the FAR which is totally appropriate and prudent.

- **Mr Doyle's criticism of a drawdown chart in the 2014 SHCAG groundwater report is a result of his misunderstanding of the chart and GW modelling principles.**

The Southern Highlands Coal Action Group (SHCAG) commissioned a report on the Hume GW issues from Pells Consulting in 2013, and it was published in April 2014. As expected, Hume and its associates were critical of aspects of the report, it was only Class 1 after all and had been prepared on a minimal budget. However, none of Hume's GW consultants raised the issue of the drawdown chart that Mr Doyle took exception to in his presentation.

Mr Doyle has misunderstood and misinterpreted the chart. The colouring on the chart aids the understanding of areas affected by the mine, the contours on the chart indicate the degree of groundwater drawdown from a horizontal and vertical perspective, the maximum being around 100m, the depth of the coal seam. Sea level is used as a reference for modelling purposes as it is necessary to set a lower boundary.

- **Mr Doyle commented on the seismic data interpretation chart shown by CFSH to the IPC panels, but it was unclear what his concerns were.**

Mr Doyle made the point that the seismic data was part of a report on a partial relinquishment of A349 and not representative of the mine area itself. The fact that the seismic data was from outside the mine area is well understood by CFSH and this was clearly addressed in the IPC presentation.

CFSH believes that is important to understand the degree of fracturing that exists within the mine boundaries, and it was interesting that in their response to the IPC report we learned for the first time that 35 km of seismic data in the mine area had been available for some years, even though there was no analysis of this data in the EIS or the Response to Submissions, or even a mention of its existence.

- **There are issues with Mr Doyle's claim for the employment benefits of the Hume Project.**

In her excellent presentation to the recent Public Hearing on the Hume Project, local recruitment professional Lynne Watson pointed out that unemployment in Wingecarribee Shire is very low and that the skills that Hume would be looking for are not present here.

She also drew attention to the 400-person accommodation facilities that will be provided for 2 years at the mine and compared this to the population of Berrima, currently around 600 people. The prospects for social dislocation in these circumstances are very real.

Then there is the degree to which the economic benefits of the construction phase of the project of that will flow to the community, local, state and national. It should be noted that POSCO is a vertically integrated steel company to the extent that it has a large Engineering and Construction subsidiary that boasts operations in around 40 countries.

One of the attractions of the Hume Project to POSCO would be the ability to maximize the use of their steel and their extensive and low-cost foreign workforce during the construction phase. Nothing wrong with this of course, but if these arrangements are to be put in place, a degree of openness would have been appropriate as there would be an impact on the level of economic benefit accruing within Australia from these construction activities.

No doubt there will be some work opportunities for Australians during the construction phase, the firms who arrange 457 visas being one likely beneficiary, but it should not be assumed that the majority benefits will flow locally or even nationally. If POSCO follow the strategies used elsewhere, they will prefabricate the steel structures needed for the project in South Korea and transport them to Australia on empty coal or iron ore carriers and assemble the components using their overseas E&C workforce.

- **Misapplication of the Precautionary Principle by the DPIE**

Mr Kim claims that the DPIE misapplied the Precautionary Principle (PP) and that "the sole effect of the (use of) the Precautionary principle is to deny one excuse for avoiding mitigating measures". He

referred to the LEC decision in the Telstra v Hornsby Council case where Justice Preston provided some useful commentary on the Precautionary principle and its application. An information paper issued by Clayton Utz at the time of this decision in 2006, summarized Justice Preston as stating that the application of the PP and the need to take precautionary measures is triggered by the satisfaction of two conditions precedent:

- A threat of serious or irreversible environmental damage, and
- Scientific uncertainty as to the nature and scope of the environmental damage

There is little doubt that both conditions precedent are met in the case of the Hume Project, with concerns and considerable uncertainty over the mining method and groundwater impacts. Hume admits as much in their documentation and argues that any problems can be managed post approval, when presumably the scope of the damage can be better understood.

However, Mr Kim prefers to focus on the part PP that permits the taking of preventative measures to avoid serious environmental threats without waiting to ascertain the extent and reality of these threats. Mr Kim implies that the make-good process Hume is advocating falls into the category of “preventative measures”.

However, make-good provisions are an obligation on the company to redress impacts on landowner’s bores and have nothing to do with the mitigation of serious environmental damage. The damage that will occur from Hume activities will happen regardless of make-good and is in fact the reason for the existence of the make-good obligations.

The conditions precedent for the application of the Precautionary Principle are in place, the DPIE is correct to refer recommend refusal of the project on the basis of the PP, and Mr Kim’s argument falls squarely in the “red herring” basket.

Mr Doyle and Mr Kim express confusion over “Greenfield” assessment criteria.

There are no ‘greenfield’ assessment criteria for this or any other project. The terms ‘greenfield’ and ‘brownfield’ are simply descriptors of types of projects that help in understanding the issues and uncertainties that the projects would face. In the common use of the term, ‘greenfield’ projects are often saddled with higher overhead and office investment costs compared to projects that are an extension of an existing operation.

In the case of mining projects, the term ‘greenfield’ may also indicate potential geological uncertainty, as noted by Dr Lloyd Townley, in his report for the IPC on the Bylong project quoted earlier.

The DPIE is right to use the term ‘greenfield’ to describe the Hume Project and thus label the GW model as Class 1, the most uncertain classification, using the criteria set out by Dr Townley in his report on the Bylong project.

Economic modelling guidelines –

Mr Kim is concerned that the DPIE has used NSW Treasury guidelines to evaluate the economics Hume Project. The reality is the DPIE is at liberty to use whatever guidelines it wishes for economic evaluation of the proposals that are presented to it. The fact that the Treasury Guidelines were developed for the appraisal of public projects, programs and policies does not prevent them from being used to evaluate Hume if the DPIE chooses to do so.

Relationships with the local community.

Mr Doyle indicates in one of his slides that Hume is looking for an ongoing partnership with the community. If so, the company should have started a long time ago.

Hume Coal, and the consultants that are advising them on their strategy with the local community, has consistently denigrated the landowners that will be affected by the mine. These landowners are blow-ins from the city, they are only part time residents, privileged, wealthy and retired. For one family they went to the trouble of a property search to try to justify a claim of part-time residency. This attitude has prevailed from the start of this project, from the preliminary EIS to this very day.

In his recent submission to the IPC, Mr Doyle describes the land associated with the mine site as 'cow-paddocks', ignoring the fact that these 'cow-paddocks' provide the scenery that attracts many thousands of visitors to the area each year and are home to vineyards, olive groves, truffieries and other agricultural enterprises. To Mr Doyle, and the others who have come and gone from Hume Project over the years, the local landowners are simply troublemakers standing in the way of the greater goal of coal production.

Mr Rohan Begg, farm asset manager for Hume, went even further at the recent Public Hearing, accusing the people opposed to the mine of bullying those who don't agree with them. In the whole 2 years that Mr Begg has been in the Highlands, he says 95% of the people he has spoken to support the mine. He must have a very lonely existence out there at Mereworth or very selective friends.

Coal Free Southern Highlands categorically rejects Mr Begg's allegations. Our understanding of the interaction between Hume and the community goes back to the start in 2010, 9 years before Mr Begg arrived on the scene.

Closing Comments

The POSCO/Cockatoo Coal JV acquired the rights to the A349 exploration lease in 2010. Cockatoo was hardly a wise choice for as a partner for POSCO, but at least they had some equity in the business and were able to provide some staff with mining experience. When the JV was dissolved in 2013, POSCO assumed 100% ownership, the Cockatoo staff transferred to the restructured Hume Coal entity, and POSCO sought assistance from consultants to manage the company.

POSCO understands coal quality but has questionable mining experience in its ranks. The Hume Project has essentially been driven by consultants with no skin in the game since Cockatoo departed. In recent times, staff levels have dropped dramatically, down to a geologist, a legal manager, a project director from POSCO who keeps his eye on money matters, a junior engineer from POSCO who seems to be here for training, and the farm manager.

The lack of proper managerial direction is clearly apparent in the quality of the submissions to the IPC from Hume Coal. If this project is approved, an organization will have to be built from the ground up, and the IPC panel will have made a decision to approve without any knowledge of the credibility of the senior management who will be running the company.

During the IPC process, assurances and commitments are being given on behalf of Hume Coal by its consultants, who will disappear into the darkness once the determination is handed down, having been well paid for their efforts and with the benefit of riskless professional development using other people's money.

The Hume Coal Project has been a financially painful experience for POSCO, with estimates of their costs so far being in the \$250mm-\$300mm range. It has been equally painful for a number of Southern Highlands landowners who have incurred substantial costs defending their properties.

This has been a sorry saga, with only one clear winner, Anglo-American Coal, who could not believe their luck in 2010 when Cockatoo Coal, with POSCO in tow, walked through door and paid a reported \$71 mm for an exploration lease that they had acquired in a package deal from Shell Coal in 2000, and which they had no desire to develop.

The Southern Highlands community sincerely hopes that the IPC will see the merits of the arguments that have been put forward against this project and will refuse approval. If the determination goes this way, we believe that POSCO will also owe them a debt of gratitude, even if is not clear to them now. The losses that will be incurred if this project moves into an operational phase, will totally overshadow those that they have incurred to date.

Alan Lindsay

Vice President
Coal Free Southern Highlands Inc.