

Dear Commissioners

“We've heard several comments relating to the conditions of consent, and specifically that they are not strong enough and do not contain consequences for Bowdens Silver”.

This is what Nicholas Warren, a principal consultant at RW Corkery & Co which prepared the OS for the Bowdens Silver project and oversaw the technical assessments commissioned for the project, told you on 17 February 2023. **Truer words were never said.**

You have received numerous submissions requesting you to refuse Bowdens Application and there is I believe ample evidence before you to do so. There is also evidence before you which puts into question the conduct of NSWDPPE and whether it has acted impartially and properly assessed the Application.

Notwithstanding this evidence, should you decide to approve the Application, it is I believe incumbent on you as Commissioners to ensure that the conditions of consent are *“strong enough and contain real consequences for Bowdens Silver”* so that the community is properly protected.

It is not of course the responsibility of the community or the objectors to give you precise drafts of conditions which will properly protect them. That is the Commission's and NSWDPPE's responsibility. NSWDPPE has clearly, given the evidence before you from experts appointed by it and from community submissions, been delinquent in that regard.

This submission includes suggestions as to how and why the Conditions relating to the following issues only, might be amended to provide the Lue community, and others living in what will be the immediately affected area, with what will properly protect or compensate them from Bowdens mining operations. The intention being that you as Commissioners make changes to the Conditions so there are real and appropriate consequences for Bowdens non-compliance with what are currently anything but “strong conditions of consent”.

Those issues are:

- Water of any landowner which is adversely and directly impacted by the development
- Agricultural production or tourism adversely and directly impacted by the development
- Air quality where the particulate matter and deposited dust generated by the development exceed the criteria listed in Table 5 and 6 as set out in Conditions B26 and B27 at any residence on privately owned land or Lue Public School
- Noise which exceeds the Construction Noise Criteria, the Operational Noise Criteria and the Blasting Criteria set out in Conditions B1-B8 and B10-B11

Bowdens' and RW Corkery & Co's assurances and representations

The following statements were made by Nicholas Warren from RW Corkery & Co to the Commission on 17 February 2023 and my comment on or submission to those statements appears in [blue](#) below:

- ***“It should be noted that the outcomes of these assessments present worst cases in order to understand the worst level of impact. It does not reflect the day-to-day outcomes expected for the project. By presenting these worst case outcomes, Bowdens Silver **must** also plan and manage the mine site for these events. Bowdens Silver notes that the only identified potential risk to water quality has been from TSF seepage. This was thoroughly assessed in Appendix 10 of the groundwater assessment, and the results are also presented in table 3.1 of the submissions report. **The results demonstrate that there would be no impact to quality in*****

Lawsons Creek, nor change to the [benefits] of this water. Notably, there will be no change to existing concentrations of- for lead in the waters of Lawsons Creek. This assessment was also subject to peer review and has been accepted by DPE.” As a result of these positive assurances and the evidence before you, can you be satisfied that there will be no impact to water quality in Lawsons Creek and no change to existing concentrations of lead in the waters of Lawsons Creek? If not, you must refuse the Application or include conditions of consent which have real consequences for Bowdens Silver and which provide for them to fully compensate or purchase the property of any person or landholder (at their option) who is adversely and directly impacted; and not just conditions to the satisfaction of the Planning Secretary.

- *While some conditions are standard for mining projects, most conditions specifically target the matters raised by the community and the predicted environmental and social impacts. This is carefully explained in the assessment report. An example of this is the inclusion of a requirement to monitor deposit dust, assess the lead content of that dust, and establish trigger levels for lead content. This is **despite predictions of very low deposited dust levels**”.*
- *“We heard from Dr. Barry Nola that measurement of TSB is not an appropriate approach to monitoring lead, and I note that the DPE condition requires monitoring to be of deposited dust. I also note that the highest predicted deposited dust level at a privately owned residence is 0.15 grams per meter squared, per month, which is less than 10% of the New South Wales EPA criteria for in- incremental dust deposition of two grams per meter squared per month.”*
- *“On the basis of the human health risk assessment and the peer reviews, **we confidently state that there will be no physical impact to agricultural production and no risk to tourism.** We acknowledge that some in the community may not accept this, and for these people, the prospect of a mine proceeding represents a source of fear for their way of life, including their ability to grow vegetables on their property and to run productive businesses. **The evidence provided to Bowdens Silver indicates these feel- these fears are not warranted.** We deeply respect the views and the local knowledge of the longterm residents of the Lawsons Creek Valley, but **our health risk assessment concludes that the health risks [are not] as expected by some in the community.**” To the contrary, the evidence provided to Bowdens Silver and the Commission indicates that the fears of the community are warranted. Can you be satisfied that there will be no impact to agricultural production and no risk to tourism and no health risk to the community? If not, you must refuse the Application or include conditions of consent which have real consequences for Bowdens Silver and which provide for them to fully compensate or purchase the property of any person or landholder (at their option) who is adversely and directly impacted; and not just conditions to the satisfaction of the Planning Secretary.*
- *“The approach to the risk assessment uses relative risk levels based on very conservative exposure standards agreed by government and scientific experts. The assessment by Enrinks **applied an assumed 70 years worth of depos- potential dust, and therefore deposition.** This clearly conservative method produced the results in the assessment. Review of existing pathways of exposure to all metals identified by b- that, by far, the highest pathway of lead exposure is in the food we consume. Yet, as a community, we continue to take this risk. Relative to existing exposures in food, **the project is conservatively- conservatively predicted to result in lead exposures- uh, lead exposure risks four times lower than the existing exposure to the food we eat.**” As a result of these positive assurances, can you be satisfied that there are no lead exposure risks to persons or agriculture or tourism? If not, you must refuse the Application or include conditions of consent which have real consequences for Bowdens Silver and which provide for them to fully compensate or purchase the property of any person or landholder(at their option) who is adversely and directly impacted?*

- *“We have heard that the project would not have a secure water supply. Firstly, **the comments quoted from the Earth Systems peer review were all responded to in detail and were considered satisfied by DPE.**” This is a misrepresentation of the truth to the Commission and the community and is dealt with in detail below.*

WATER SUPPLY

Condition B36 provides that **“the Applicant must ensure that it has sufficient water for all stages of the development, and if necessary, adjust the scale of the development to match its available water supply.**

Mr Warren, from Corkery, stated that ***“We have heard that the project would not have a secure water supply. Firstly, the comments quoted from the Earth Systems peer review were all responded to in detail and were considered satisfied by DPE.”***

Sometimes Mr Warren says that there is sufficient water and sometimes he does not. This statement by Mr Warren is equivocal as to water supply and is, to put it politely, misleading and inaccurate in relation to Earth Systems.

Earth Systems, (NSWDPE’s consultant) stated that *“sensitivity analysis indicates that only 86% (average) or 65% (worst case) of the processing plant water requirement may be met. **Furthermore, the sensitivity analysis did not include evaporation rates, dust suppressant effectiveness, other key input variables (aside from AWBM parameters and groundwater flows) or cumulative sensitivity for multiple parameters. Bowdens Silver [and definitely not Earth Systems] nevertheless considers the risk acceptable in terms of the financial viability of the project.”***

Quite obviously, Earth Systems were saying in “polite peer-review-speak” that if the sensitivity analysis took proper account of evaporation rates, dust suppressant effectiveness, other key input variables and cumulative sensitivity for multiple parameters, the percentages would be less than 86% (average) or 65% (worst case) of the processing plant water requirement. However, Mr Warren told the Commission wrongly that ***“the comments quoted from the Earth Systems peer review were all responded to in detail and were considered satisfied by DPE.”***; or was he suggesting that any response whether misleading or wrong was a “response in detail”?

Earth Systems recommendation to NSWDPPE was *“seek clarification of the project viability and the sensitivity of water supply reliability estimates to uncertainties that have not been modelled”* [Earth Systems Technical Memorandum dated 20 December 2022, page 8] The response by Corkery (2022a; Table A1) was ***“Bowdens has weighed up the magnitude and duration of the loss of production in deciding what is commercially sustainable for the project”***. That is not a response to the clarification sought by Earth Systems. However, Mr Warren told the Commission and the community that the comments quoted from the Earth Systems peer review were all responded to!

This answer by Bowdens and Corkery, that ***“Bowdens has weighed up the magnitude and duration of the loss of production in deciding what is commercially sustainable for the project”***, acknowledges that there is insufficient water to run the mine. Consequently, operations will have to be cut back, or the mine even closed down, from time to time: or given Earth Systems analysis probably cut back or even closed down more often than just from time to time.

I respectfully suggest that the Commissioners and/or the wider Commission have not come across a proposed mining development previously where:

- The Applicant (supported sometimes by its consultant) on the one hand stated that it had sufficient water for mine operations and on the other hand conceded (albeit indirectly) that this was not the case.
- Even though NSWDPPE's consultant/expert, Earth Systems, peer review recommendation to NSWDPPE was that it should *"seek clarification of the project viability and the sensitivity of water supply reliability estimates to uncertainties that have not been modelled"*, NSWDPPE accepted the Applicant's statement without question that it *"has weighed up the magnitude and duration of the loss of production in deciding what is commercially sustainable for the project"* and ignored its own consultant/expert's advice.
- NSWDPPE, have not only ignored its own expert's recommendation that it should *"seek clarification of the project viability and the sensitivity of water supply reliability estimates to uncertainties that have not been modelled"*. Instead NSWDPPE accepted the advice of the Applicant's own expert that the Applicant *"has weighed up the magnitude and duration of the loss of production in deciding what is commercially sustainable for the project"* then recommended to the Commission that the *"Potential Condition for NSWDPPE Approval"* should be ***"Not applicable based on the response provided"***.

These actions by NSWDPPE in rejecting its own expert's advice and accepting the Applicant's expert's advice and its lame recommendation to the Commission, is difficult to comprehend, given its responsibility to properly assess applications on their merits and without bias. It is in the vernacular known as a "hospital pass" and raises a number of questions, including:

- Why did NSWDPPE appoint Earth Systems to advise it and undertake a peer review of Corkery's report, when it ignored the advice given by Earth Systems?
- Where is the evidence that Bowdens, which appears to be in denial that it has insufficient water, has assessed the "commercial sustainability" of cutting back or closing down mining operations.
- Where is the evidence of Bowden's own financial ability to do so and safely mothball the mining operation during the cut back or closing down, terminate employees and other contracts relating to the operation of the mine, then re-employ and re-engage workers and contractors and pay for the consequences in doing so? A quick review of Bowdens balance sheet will show it has a very limited ability to do so, even if such things are practicable.
- Where is the evidence that NSWDPPE has discharged its responsibility to properly assess the commercial sustainability of the project in the event of a cutting back or closing down of mining operations and Bowdens financial ability to do so? The historical evidence shows that respectable and experienced mining companies with substantial financial backing and reserves concluded that the mining of this lease was not financially viable or commercially sustainable.

Notwithstanding all these circumstances, NSWDPPE accepts and concludes that *"Bowdens has weighed up the magnitude and duration of the loss of production in deciding what is commercially sustainable for the project"* and its *"Potential Condition for NSWDPPE Approval"* which it recommended to the Commission was ***"Not applicable based on the response provided"***.

Surely, the Commissioners are not satisfied with NSWDPPE's lame recommendation; and are not satisfied that NSWDPPE has acted in connection with this issue in a proper manner?

This recommendation by NSW DPE and the background to it is, I submit, one of many examples where NSW DPE has accepted reports or responses from Bowden's or its consultants/experts, which have been criticised or questioned by NSW DPE's own consultants/experts; and having done so made its recommended condition to the Commission which is contrary to or does not take proper account of its own experts' advice and recommendations.

There is I believe ample evidence before the Commission which supports this submission. Consequently, I believe that the handling of this Application by NSW DPE should be referred by the Commission to the Minister for review and appropriate action. I will be separately writing to the Minister in this regard and providing among other things a copy of this submission.

COMPENSATORY WATER SUPPLY

The relevant recommended conditions are:

B36. The Applicant must ensure that it has sufficient water for all stages of the development, and if necessary, adjust the scale of the development to match its available water supply.

B38. The Applicant must provide a compensatory water supply to any landowner of privately-owned land whose rightful water supply (groundwater, surface water and/or tank water) is adversely and directly impacted (other than an impact that is minor or negligible) as a result of mining operations, in consultation with the DPE Water, and to the satisfaction of the Planning Secretary. **This should be to the satisfaction of the landowner or the landowner should have the right to insist that the Applicant acquire the landowner's land under the Voluntary Land Acquisition Rights Policy.**

B39. The burden of proof that any loss of water supply is not due to mining impacts rests with the Applicant.

B40. 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. **This should only be the case if the landowner agrees. Otherwise, the landowner should have the right to insist that the Applicant acquire the landowner's land under the Voluntary Land Acquisition Rights Policy.**

B41. 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.

B42. If the Applicant is unable to provide an alternative long-term supply of water, then the Applicant must provide compensation to the landowner, to the satisfaction of the Planning Secretary. **The landowner should not be required to accept compensation and at the landowners option the landowner should have the right to insist that the Applicant acquire the landowner's land under the Voluntary Land Acquisition Rights Policy.**

Note: *The Water Management Plan is required to include trigger levels for investigating potentially adverse impacts on water supplies.*

B43. In the event of any complaint related to a privately-owned licensed groundwater bore which may, in the opinion of the Planning Secretary, have been adversely and directly impacted as a result of the development (other than an impact that is minor or negligible), the Applicant must, as soon as practicable, facilitate the provision of a temporary water

supply, pending the outcome of any groundwater investigation and/or provision of an alternative long-term supply of water as required under condition B41, to the satisfaction of the Planning Secretary. **The reference to Condition B41 is wrong. The landowner should not be required to accept the provision of an alternative long-term supply of water and at the landowners option the landowner should have the right to insist that the Applicant acquire the landowner's land under the Voluntary Land Acquisition Rights Policy.**

- B44. However, conditions B38 to B42 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.

These proposed conditions proposed by NSWDPPE are naïve, unworkable and grossly unfair. Given the Applicant has insufficient water itself for all stages of the development, how is it going to provide a compensatory water supply? Given the nature of the Applicants water supply (bore, harvesting and seepage from the mine area) how can it provide a clean compensatory water supply to an affected landowner? Is it proposing to provide tank water?

If the Applicant were intending to provide tank water as compensatory water this would not be providing like with like. If groundwater or surface water is compromised, then the provision of clean water by some other means cannot remedy the fact that the property has contaminated groundwater or surface water. That groundwater or surface water cannot be used for the same purpose in the future and the value of the property would be significantly impacted as a result. Clearly, when the Applicant has caused the problem it should resolve it to the satisfaction of the landowner.

For these reasons the above clauses should be amended to take full account of the comments in **blue** above.

AGRICULTURAL PRODUCTION AND TOURISM

Where agricultural production or tourism is adversely and directed impacted by the development, similar conditions to Compensatory Water Supply referred to above should be adopted so the landowner should not be required to accept Compensation and at the landowner's option the landowner should have the right to insist that the Applicant acquire the landowner's land under the Voluntary Land Acquisition Rights Policy if the Applicant has failed to meet its obligations and representations. It is presumably based on those obligations and representations that the Applicant will have received a Consent and it should be held to account for its failure.

AIR QUALITY AND NOISE

Where in relation to **air quality**, the particulate matter and deposited dust generated by the development exceed the criteria listed in Table 5 and 6 as set out in Conditions B26 and B27 at any residence on privately owned land, the landowner should not be required to accept Compensation or Mitigation and at the landowner's option the landowner should have the right to insist that the Applicant acquire the landowner's land under the Voluntary Land Acquisition Rights Policy. It is presumably based on those obligations and representations that the Applicant will have received a Consent and it should be held to account for its failure.

Where in relation to **noise** which exceeds the Construction Noise Criteria, the Operational Noise Criteria and the Blasting Criteria set out in Conditions B1-B8 and B10-B11 at any residence on privately owned land, the landowner should not be required to accept Compensation or Mitigation and at the landowner's option the landowner should have the right to insist that the Applicant acquire the landowner's land under the Voluntary Land Acquisition Rights Policy. It is presumably based on those obligations and representations that the Applicant will have received a Consent and it should be held to account for its failure.

CONCLUSION

The decision by NSWDPPE to recommend the Bowdens Silver Application for approval was so unreasonable that no **reasonable** authority could have decided that way.

I and others will approach the Minister and request a review of NSWDPPE's handling of this Application.

Your sincerely

Rob Wannan OAM