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March 22nd, 2019

Emeritus Professor Chris Fell AM
Chairman,
IPC Panel on the Hume Coal Project
By email: ipcn@ipcn.nsw.gov.au

Re: Hume Coal 'opt – in' proposal for groundwater make-good.

Dear Professor Fell,

In the transcript from Hume Coal's session with your panel on February 11th, our organisation first learned that an 'opt in' concept applied to landowners affected by the proposed mine operation under the provisions of the Aquifer Interference Policy (AIP). No detail of how this might work in practice was provided on February 11th, or at the Public Hearings held on February 26th/27th.

However, prior to the deadline for submissions on March 6th, Mr Ian Wiskin, an associate and part time employee of Hume Coal submitted a document entitled:

Attachment A: Policy Framework for Hume Coal 'Make Good' Arrangements for Potential Mining Impacts to Affected Water Supply Works.

<https://www.ipcn.nsw.gov.au/resources/pac/media/files/pac/projects/2018/12/hume-coal-project-and-berrima-rail-project/submissions-received-before-the-6th-march-2019/ian-wiskin-irwipcmake-good-hume-coal-policy-discussion-paper.pdf>

This document is dated February 2019, and is not attributed to any specific author, but it is clearly designed to support Hume's 'opt in' concept. We doubt Mr Wiskin is the author, as the format, coloring and content clearly mark it as the work of Hume advisor EMM, presumably on the miner's behalf.

The purpose of this document is to canvas legislative changes and conditions of consent that would circumvent the significant challenges that Hume has in complying with the provisions of the AIP to landowner bores impacted by their mine. We assume that Hume chose to submit this discussion paper after the Public Hearing dates, and in the name of one of their associates, to minimize public awareness and discussion of what is a very important aspect of the approval of the Hume Project.

As currently there is no legislative framework for the application of make –good that would ease Hume's burden, this paper puts forward a proposal, principally based on some of the concepts outlined in the Voluntary Acquisition and

Mitigation Policy (VLAMP) of 2018 and the NSW Mining Act, 1992. VLAMP applies to State significant mining, petroleum and extractive industry developments, but is restricted to voluntary mitigation and land acquisition actions undertaken to address noise and dust impacts related to these projects. Consent authorities are required to consider this policy when assessing and determining mining development applications.

The proposed make-good framework

In brief, the 'Hume' paper proposes that the NSW Government use the framework of the VLAMP to as a guide for resolving groundwater impacts and disputes. When combined with suggested 'robust conditions of consent' for the project, the ultimate impact of the application of the these concepts to groundwater bores would be to force landowners to accept financial compensation, as determined by the Secretary of Planning, in situations where Hume is unable to provide an alternative long-term supply of water.

Further, the paper advocates the VLAMP provision that any obligations for make-good that Hume had would cease if a landowner refused to receive 'duly determined' make-good measures, compensation or otherwise. In combination these measures should be sufficient to bring recalcitrant landowners to heel.

The paper indicates that any legislation on make-good would not include the 'voluntary acquisition' aspect of the VLAMP, just the adoption of feasible avoidance or mitigation measures. It also highlights the differences between the noise and air quality issues covered by the VLAMP, which are problems of defined magnitude and duration and generally resolved prior to project approval, and the more nebulous issues involved with groundwater make-good.

However the paper omits the important point that while noise and air quality issues are important, groundwater access is a valuable asset which has facilitated a great deal of development in the mine area. Loss of this access will place the viability of these developments in jeopardy, particularly in adverse weather conditions when groundwater availability can be the difference between survival and destruction of a farming enterprise.

The position put in this paper, and elsewhere by Hume, is that the drawdown of water bores will be modest, the make-good measures that have been outlined will be adequate and there should be no requirement for the involvement of the Department of Planning in dispute resolution. However, the discussion paper argues for provisions that cater for a far more serious outcome, which we believe to be more likely than not.

Depletion of groundwater bores will occur at different times in the life of the project and continue for long after the mine is closed. The paper, and indeed the Hume EIS and RtS, envisages regular review and adjustment of the make-good provisions taking into account rainfall issues, the impact of other users and unexpected water table changes.

It is claimed that these processes are manageable as the work will be staged in 5 year intervals over the life of the mine, but clearly, at least for the most affected bores, the negotiations with landowners will be repetitive and cumulative. The Hume groundwater model is to be central to negotiations with landowners, a model that in the eyes of the landowners has been manipulated to suit the company's purposes in the many iterations it has gone through.

With the potential variability in the make- good reparations and with the proponent having control of the model and related processes, landowners will be most reluctant to enter into the legally binding agreements. The proposed make-good framework solves this problem by forcing landowners to comply or lose their make-good entitlement. 'Opt-in' or else!

Conditions of consent

The discussion paper recommends a set of 'robust conditions of consent' regarding make-good. The majority of these conditions are set out in the VLAMP as matters that are recommended be part of any voluntary agreement between a mining company and a landowner regarding noise and air quality.

Similar conditions apply to land access arrangements and are clearly set out in the NSW Mining Act 1992. This paper suggests that groundwater make-good conditions, which affect both the mining company and the landowner, can be determined by the approving authority without any legislative basis.

Clearly some form legislative authority is needed for the conditions the proponent seeks to have imposed on landowners, setting out where the landowner is entitled to protection, and procedures for compensation and dispute resolution; for consistency of application with other projects if for no other reason.

Summary

While the Attachment A discussion paper has not been officially transmitted to the IPC by Hume, it does refer to issues that are important in the determination of the approval of this project. In the absence of any alternative view from the company, and considering that the document was prepared just last month, we have assumed this to be their current position on make-good as required under the Aquifer Interference Policy, and have commented accordingly.

The document puts forward a policy mitigation framework covering water bore impacts from mining based on policy developed in September 2018 that applies to noise and air quality impacts. If this plan is adopted, landowners may find themselves in a position where they can be compelled to accept financial compensation in cases where a long-term compensatory water supply cannot be provided. The mining company will cease to have make-good obligations regarding the water bores of landowners who refuse to comply with a 'duly determined' make-good arrangement.

The arrangement that has been put forward in the discussion paper is grossly unfair to landowners who have developed their properties over many years based on their groundwater allocation. We have statements in the EIS, the RtS and in the Attachment A document, that all make-good situations are manageable and that all landowners will have access to the water they need. Yet this document, with its obvious Hume connections, sets out a plan whereby landowners can have their water allocation confiscated for a handful of dollars at some undetermined time in the future.

While the proposed arrangement would provide certainty for the miner, it creates great uncertainty for landowners who have a well-justified mistrust of Hume and its methods and who are entitled to have confidence that future investments made in their properties will be worthwhile.

The simple fact is that landowners want access to their ground water allocation not Posco's money. The proposed Hume mine is small, environmentally suspect and not essential for the economic well being of the local area or the State of NSW, and certainly does not justify the abrogation of landowner rights that the proposed arrangement would deliver.

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