

**GUNNEDAH SHIRE COUNCIL MAYORAL SPEECH TO PLANNING ASSESSMENT
COMMISSION
PROPOSED SHENHUA WATERMARK COAL PROJECT, 26 JUNE 2014**

1. Introduction

Madam Chair (Ms Kibble), Mr Payne and Mr Gilligan,

I welcome you to Gunnedah Shire and may I also acknowledge the original inhabitants of this land on which we meet, the people of the Gamilaroy nation both past and present.

Thank you for the opportunity to speak with you today on the proposed Watermark Coal Project which lies primarily in the Gunnedah LGA.

Council warmly welcomes the proposal as it represents the largest industrial project undertaken in the Gunnedah LGA for over 50 years.

Council is enthusiastic that the 500 odd jobs will provide employment opportunities within the community and provide an economic stimulus to the local region.

Notwithstanding the availability of the MAC Village at Werris Creek and its housing of most of the construction workforce, Shenhua's approach of encouraging operational employees to reside in the Gunnedah district over the life of the mine is warmly welcomed by Council.

Mindful that Council is the sphere of government directly responsible for the governance and wellbeing of the LGA, we carefully considered the wellbeing and long term sustainability of the community to ensure that it does not experience a net cost burden into the future as a result of the Project's impacts on the environment, public infrastructure or any broader social implications.

Only this morning we were to have had a meeting with the NSW Land and Water Commissioner, Jock Laurie, and his staff to discuss the new base-line information relating to groundwater levels and water quality - the sort of information essential to have available if Governments and bodies such as yourselves are to make the appropriate decisions relating to the long term environmental sustainability of water resources in communities which have extensive extractive industries such as coal and CSG.

This meeting has now been rescheduled for Mon 28 July.

I will point out that from the Council perspective we found the representatives of the Shenhua Watermark company to be very professional in their approach. They, like us,

recognised the potential impacts on our community in environmental, economic and social terms.

As such, they worked positively, in consultation with Council and the community, to address these issues whilst recognising that their primary intention was to get the mine into production.

However, today I would like to take the opportunity to canvas a few 'big picture' matters regarding the project planning process while General Manager, Mr Eric Groth, will talk about some of the Project related details.

2. Scene Setting

Over the last few years we have worked closely with mining companies and various state government departments on a number of major projects and I'd like to provide some overview comments on the general planning and assessment process.

I'd like to start by noting two points:

First, the assessment and approval playing field is quite skewed in favour of big business and big government, to the disadvantage of the general public.

The system would benefit from making allowances to help alleviate the community's technical, time, financial, legal and political disadvantages.

I believe it is important, post the recent ICAC revelations and the Bentley CSG matter, that the Government provides more robust, transparent and objective processes that provide a fairer opportunity for all parties, including local communities, to be heard and for accountabilities to be identified.

Secondly, the then ICAC Commissioner The Hon David Ipp AO QC in his report entitled 'Reducing the Opportunities and Incentives for Corruption in the State's Management of Coal Resources' (October 2013) recommended that '*an efficient and effective policy and regulatory environment was one where **opaqueness, uncertainty and discretion were eliminated from the decision making framework***'.

Commissioner Ipp also indicated that unless opaqueness and discretionary decisions are removed it tends to create an environment of 'great unease and opposition within the community' when mining permits were issued for areas of land that had competing land uses, different local populations, and perceived environmental value.

He went on to suggest that in such situations where there is little transparency it often led to claims that the Government regulators were biased towards the interests of mining proponents.

Mindful of these overarching observations I'd like to suggest some possible improvements in the process.

3. Government Process to Approve the likes of Shenhua

3 a) Planning Laws

The planning laws in this day and age should require developments to be based on ecologically sustainable principles. The NSW Government appears to have moved away from this position recently. Examples to support this claim include:

- After Justice Brian Preston's decision in the Land & Environment Court on the Bulga/ Warkworth case last year the Government changed the Mining State Environmental Planning Policy, which now directs that the consent authority must give primary consideration to the economic value of the resource; and
- The Planning Bill tabled in Parliament late last year (to replace the EP&A Act) significantly watered down the ecologically sustainable approach.

These moves run counter to best practice standards throughout the developed world. It would be prudent for the Government to reinstate a balanced, triple bottom line approach.

3 b) Department of Planning & Environment (DP&E)

- As explained earlier we have dealt closely with the planning department over a number of years. It has surprised me that there are no records shared as to the matters discussed and the decisions reached at meetings involving the Dept and Council and, as I understand is the case, between the Dept and proponents.

Given these are billion/multimillion dollar projects, the lack of an agreed record of meeting outcomes can cause uncertainty as to how matters are to be progressed.

Furthermore, it lends itself to the situation where the DP&E is able to make discretionary decisions at a later date with little transparency or accountability.

In the interests of transparency, accountability and certainty this matter requires rectification.

- The Director General's Requirements for EISs often set general, subjective standards that leave room for the DP&E to make discretionary judgements as to the acceptability of the assessment material provided in the documents. The DGRs could be improved by being more objective and performance based so that all parties reviewing the EIS can see what standard of assessment will be acceptable.
- Voluntary Planning Agreements (VPA): The current process to secure a VPA between rural councils and mining and energy proponents is somewhat variable and ad hoc. The lack of clear guidelines makes it difficult to formulate appropriate quantum for a project. A more equitable, transparent and robust technical process would be beneficial so both parties have an agreed mechanism to guide them when attempting to reach an outcome.

3 c) Planning Assessment Commission (PAC)

With regards to the PAC, again, the public looks to you for their rare chance to make learned submissions and for them to present a case that might differ from that of the proponent or government. This was evident outside in our streets today.

I think the community would appreciate a PAC that was more substantive, better resourced and out of the shadow of the Dept of Planning & Environment.

Given the DP&E acts as your Secretariat, there is a perception, rightly or wrongly, that the PAC appears reluctant to significantly alter the Department's recommendations.

3 d) Key Personnel Linked to Pro Development Department

The organisational chart for the Department of Trade & Investment (DT&I) shows two key community players, namely the Land & Water Commissioner (to whom I referred previously and with whom we will be meeting on July 28) and the Chief Scientist & Engineer reporting to the Head of that department.

Given DT&I's primary goal is to 'grow the NSW economy', it is perceived by many that the independence of these positions is being compromised by the reporting arrangement.

Let there be no mistake, the community looks to these two positions for an independent, objective perspective on topical issues.

For the community to have confidence in Government decisions, it is vital that these two positions are, and are seen to be, independent of any undue influences and for them to be making balanced, evidenced-based judgements.

Perhaps it would be more appropriate for the Land & Water Commissioner to report to the Minister for Agriculture and for the Chief Scientist & Engineer to report to the Environment Minister. Or for both to report directly to Parliament.

4. General EIA Process

EIS's are 'advocacy' documents. They are prepared by consultants who present the proponent's proposal in the best light. After all, the proponent pays the consultant's bill, often running into millions of dollars.

The public is unsure whether the public service is able to thoroughly examine EISs, particularly the complex, technical information, including hydrogeological and socio-economic impacts.

It may be time to consider having EISs prepared by independent specialists and peer reviewed by equally qualified, independent specialists.

5. Project Related Costs to Council

As for all proposed major projects, it is expected that Council will respond to the EIS and the Response to Submissions document, participate in the VPA negotiations, attend the PAC events and meet with Government.

In order to make a meaningful contribution Councils find the process costly in terms of time and resources. Ultimately, and somewhat ironically given the size of these projects, it is the ratepayer who pays the cost of this process.

By way of illustration, a report released by the Local Government Association of Queensland in 2010 showed that the costs to Councils of responding to major development proposals in that state about projects the size of this Shenhua Watermark project, amounts to about \$400,000.

It is recommended that there be a State Government mechanism to subsidise such costs incurred by councils.

6. Conclusion

I appreciate the opportunity to provide feedback on how the assessment and approval processes for major projects like Shenhua Watermark are performing. You will be aware that there is a degree of angst in some sections of our community in this region on proposed landuse changes. Some of the uncertainty and suspicion will dissipate and public confidence be restored if the State Government:

- a) Made the **impact assessment** process more robust and truly inclusive as well as adopting the Precautionary Principle and a Triple Bottom Line approach;
- b) **Evaluated and determined** projects in a more transparent manner and with the absence of discretionary decisions; and, finally,
- c) **Local communities** were able to deal with the proponent and Government on a more level playing field that gives them a **fair go** technically, time-wise, financially, legally and politically.

Thank you for the opportunity to express these very carefully considered observations and recommendations.

Owen Hasler

Mayor

Gunnedah Shire Council