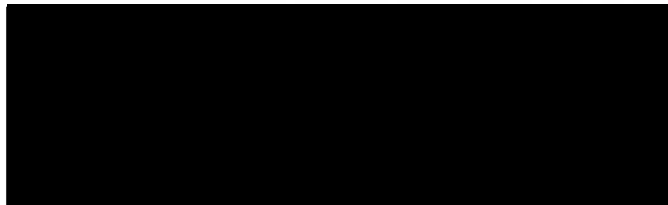




RED CHIEF LOCAL ABORIGINAL LAND COUNCIL



Thursday, 11 December 2014

Dear PAC Members

Re: Shenhua Coal Watermark Project

My name is Toni comber and I am the Chief Executive Officer of Red Chief Local Aboriginal Land Council. I am a Wiradjuri / Kamilaroi Woman and with respect I would like to acknowledge my Elders past and present and the youth who are the leaders of the future, and I also extend my thanks and appreciation to the Members of the PAC panel particularly the Chair Lynelle Briggs who are here today.

The first thing I would like to do is to extend an invitation to all the members of the PAC to accompany the Elders and Traditional Knowledge Holders of the Kamilaroi county to go out on country and be shown first-hand the destruction of Aboriginal Culture and Heritage that would result if the approval of this mining project was granted.

As we understand it - under the State's planning laws once a "public hearing" is held by the PAC this removes all merit appeal rights to the courts. I wish to strongly object to the removal of review and merits appeal and particularly object to s23F of the Act that reads: **23F No appeals against decisions by Commission after public hearings.** Could we please ask the PAC to include our objection to this section of the Act for the record and include our request to have this statement on the record that s23F of the Act will not be applied for the Shenhua Watermark Project and that our rights are protected

The Director Generals Requirements and the Commonwealth Minsters declarations are part of the problem – probably central to the problem - as they ignore our cultural and environmental rights and they write assessment requirements which support (even if unintentionally) structural barriers to effective assessment and Biodiversity dialogue. We ask if the PAC and government assessment teams and the regulators have adequate intercultural competence and understanding in order to identify deficiencies in these assessments before granting approvals.

Aboriginal people are the determinants of Aboriginal Culture and Heritage and decisions regarding Aboriginal Culture should not be determined nor driven from a scientific or archaeological perspective. Yet the ongoing preservation and protection of our Culture and Heritage within the project boundary of Shenhua Watermark is currently at the mercy of this PAC.

For those that don't know or understand - Part 5 division 1A 4a and b of the Aboriginal Land Rights Act of 1983 a Local Aboriginal Land Councils have the following role and function in relation to Aboriginal Culture and Heritage:

- To take action to protect the culture and heritage of aboriginal persons in the councils area, subject to any other law
- To promote awareness in the community of the culture and heritage of Aboriginal persons in the councils area.

I would like to go on record as strenuously objecting to the approval of the Shenhua Watermark Coal Project. The Australian Government is charged with upholding the laws of this country as well as making well informed decisions that should empower and improve the quality of the lives of the residents of our communities. In our region we fail to see this happening. We see a systemic failure of Government that flippantly approve mining projects without being fully armed with all the information necessary to make a decision that takes into consideration a number of keys issues, these being:

1. The cumulative impacts on community: particularly our community where numerous approvals have been given in the minerals and resources industry within the Red Chief Local Aboriginal Land Council boundary. There is no other community in Australia that is, or will be, as adversely affected as a direct result of the sheer volume of mining activity occurring in such a small geographical area. There is simply no or not enough research or data that is available that can be used to bring any sort of peace or comfort to local residents to ensure that the members of our community today and for generations to come will be safe from these life threatening impacts. Let me be very clear – it is us, the people who reside here and not yourselves who will be personally impacted by this approval. Your decision ultimately directly affects our lives. When is mining determined to be just 'too much in one area.
2. The health impacts: not only individually from each project but again collectively across all projects that may or may not have a major impact on the quality of our lives – we just don't know for sure as the very little anecdotal evidence that has been collected and made available is certainly not sufficient for a determination to be made that there will be little to no effects on the health of the people residing within our community – and I for one am not willing to take the risk – as the risks are such an unknown quality. I would suggest the Government demand additional investigations be undertaken regarding these impacts and review them and provide opportunity for whole of community to respond to any reports developed before any approvals are given, a set of conditions that comes with an approval is not a satisfactory measuring tool to analyse risk and take a proactive approach to managing risk from an after the fact position. I ask you would like these developments being approved in your own backyards based on these facts?
3. Water and Air Modelling: again the cumulative impacts of mining and the effects on the great artesian basin has not been adequately assessed and reported on. We need to consider that it is not actually the rainfall patterns that are having the major adverse impacts on quantity but also the quality of our water supply, it's actually the mining. There is simply not enough independent monitoring, evaluation and reporting being done to justifiably and with confidence approve yet another open

cut mine in our region– which is extremely alarming considering that water and air are basic essential elements to all human survival.

4. Liverpool Plains is a unique landscape – not just in NSW but across Australia. Just what do Government think is the ‘tipping point’ for biodiversity loss rather than no net loss or gain? What is the biodiversity and ‘ecosystem stress threshold’ for cumulative mining like this example in the Liverpool Plains? How are these measured and what robust framework can really be reviewed to confirm this? What is the ‘ecologically and culturally safe’ carrying capacity of such activity for a community and for its agricultural importance and its biodiversity protection needs and survival? Timing - why approve all three mining activities, over a successive rapid period of time, without substantive evidence that conservation outcomes can be achieved. How is government ensuring the science is right?
5. There are social responsibilities as part of an exploration licence being approved. I have been witness to the division within our community that has increased exponentially in the last 12 months. Mining companies have used the extreme poverty and low numeracy and literacy levels within our community to their advantage in order to achieve Governments tick a box processes. Community are not afforded the opportunity to engage with mining companies in a real and genuine way. It is a tokenistic measure at the very least. There is no accounting for the timeframes required by Government and the Proponent and the ability for our community to meet these timeframes and be expected to read, understand, digest, workshop and respond to these reports that will inform or even may influence the direction or approval of a project.
6. The desecration of Aboriginal sites and its impacts. When we destroy something we forgo the opportunities to hand down knowledge - once it's gone it's gone. Is the cumulative approval and co-location of proposed mines and coal seam gas, based on sound scientific evidence and effective mitigated Cultural and Environmental and Biodiversity management strategy or a ‘rash grab for coal’? I am concerned that the Pac and government have significantly underestimated ‘ecosystem stresses, cultural heritage stresses and water security food bowl security stress and how this is being calculated when there is such uncertainty for our future if this mine is approved.
7. Inadequate survey – the percentage of the project area that has actually been surveyed and the low visibility reported –was completed by vehicle not foot patrol does not begin to capture nor measure the loss of highly significant Aboriginal artefacts as well as the cultural values not being complete. The robustness of assessment reviews appears to be poor and complexities of ecosystem offsetting are fraught with failure. Even more profound is the complete absence of thorough consideration of the highly significant grinding groove sites located within the project boundary and the overstated assertions that the grinding grooves will be able to be moved. I can-not begin to stress enough the extreme level of concern and anxiety that this is causing within our community.
8. The sheer volume of approvals, modifications and expansions being sought over the last 12 months in particular has placed an unprecedented stress on our Community. The amount of time, money and expertise that has been required to

bring learning to our community in a meaningful way that can be understood has come at a great burden for many of our Elders and community. We have also been experiencing an extraordinary amount of sorry business for our community members – along with large number of Elders in palliative care. This has been extremely restrictive and highly frustrating for our community to be proactively engaged not just in the Shenhua project but all other projects in our region.

As you can see we have more questions than answers at this stage, and we would like to think that the PAC would be working on the precautionary principle. When we are faced with these real and genuine risks we should not be taking a reactive after the fact approach but be responsible and do our due diligence and research before-hand. We have a duty of care to one another – how can we show or demonstrate that if we are willing to put the lives of one another at risk. Water, health, social, biodiversity and cultural impacts can-not be determined by a \$\$ value, but it is real and it is tangible and has not been adequately captured, evaluated and reported on. I can't help but question whether the assessment is really controlled and as detailed and scientifically unchallengeable as asserted. How are these factors being scientifically measured to provide base line and longitudinal measurements?

The PAC's role is to take an independent review of the project. The advice from the previous PAC and office of water was to take a monitoring role – this is not in the best interest of our community. I acknowledge that the mine application has attempted to measure in some way cumulative impacts- but upon examination of these – it appears that they are not adequately dealt with in the areas of impact in the detail required to confidently assert mitigation and measurement of residual effects to justify this project. I assert all projects and their proposed mitigations to be considered against Protection priorities and ask that the **precautionary principle** be applied and **demonstrated**. This should be similar to that applied under Environmental Law) for all EA assessments and any consequential decision making relating to Biodiversity Offset decision making. For example *section 3 of the Environmental Law states that:*

In the application of the precautionary principle, public and private decisions should be guided by:

- I. Careful evaluation to avoid, wherever practicable serious or irreversible damage to the environment: and
- II. An assessment of the various risk –weighted options for the various options
- III. The normal standard of proof in Civil Law (including environmental law) is “balance of probability.” Criminal Law usually requires the higher standard of “beyond reasonable doubt.”

For the PAC to make its decision I urge you to urgently review the way in which you are undertaking assessment of Shenhua and recommend the concept of ‘burden of proof’ be applied to underpin all assessments of the offset ability of development impacts. The burden of proof refers to the obligation that lies with the developer to present evidence showing there is limited danger to biodiversity in shifting from the often lower-risk status quo (no additional development) to a new position (with development and offsets).

To be honest with you I just can't see these principles adequately applied in the approvals

consideration for the PAC to be able to state that the Shenhua Watermark project is approvable given all the uncertainties documented in the EIS and even the PAC findings. We ask the PAC to consider the merits of undertaking trials in areas where cumulative or multi-mining projects are underway or seeking approval in order to be able to develop more robust assessment methodologies and measurement tools. A rethink on approvals may be necessary if these trials scientifically document ecological failure.

I honestly believe the assessment outcomes should be one of requiring further assessment and further study. These studies should be provided as a supplementary to the EA and scrutinised for adequacy and whether a mine or development should be approved based on the cumulative impact study. While it is acknowledged that some steps are being taken in relation to an integrated cultural heritage strategy as a precinct or complex arrangement for the area, this is coming all too little and all too late in the process.

We are being asked to look at mining as the economic drivers of this community – but has there been a real conversation with community when all evidence points towards fossil fuels being left in the ground?

Where is the accountability – by what framework /measurement stick do Government use when approving projects. When is enough be enough especially when considering the inter-relationship and use of water within the Namoi catchment? When will the voice of community and the first peoples of this nation be heard. We fear significant irreversible biodiversity and cultural loss as a result. In other words we need to avert -Once it's gone it's gone.

In closing through government processes we as aboriginal people the first peoples of this Nation are being forced to break our own traditional lores and customs, which is unconstitutional. We demand that as first Peoples of this Nation that our Rights to preserve and protect not only our Culture and Heritage but the country and mother earth that we have been charged to do by our ancestors be respected.

Should you have any questions in relation to this submission please don't hesitate to contact me on the above details as I would be more than happy to explore in detail any of the issues raised.

Kind Regards

Toni Comber
Chief Executive Officer
Red Chief Local Aboriginal Land Council

