

"Reclaiming our Valley"

Hunter Communities Network

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SUBMISSION

Ashton Coal Mine- South East Open Cut MOD 1 (MP 08_0182) - D519/18
Presentation to Public Meeting in Singleton
Thursday 9 August 2018

Introduction

The Hunter Communities Network (the Network) is an alliance of community based groups and individuals impacted by the current coal industry and concerned about the ongoing rapid expansion of coal mining in the region.

I wish to thank Commissioners for holding this public meeting today to hear the position of the community on the proposal before you. I am convenor of the Network and am an affected landholder living with an expanding coal industry at the far western end of the Hunter Valley. I am here today representing the many communities and individuals up and down the valley who are experiencing similar impacts on their lives and livelihoods.

The Network strongly objects to the proposed modification to the conditions of approval for the Ashton South East Open Cut Coal Mine. These conditions were approved by the NSW Land and Environment Court in 2015 and upheld by the NSW Supreme Court.

Community members living near the coal mining industry deserve and expect equal consideration in the decision-making process. We also expect a high level of certainty once a project has been subjected to a rigorous approvals process, as has the Ashton South East Open Cut.

This project was the last coal mine approved in NSW where the community had the right to appeal the merit of the decision in the Land & Environment Court. All approvals since late 2012 have had those rights extinguished.

While the project was given approval through the legal system, this approval was based on a rigorous set of conditions that must be upheld. There is no legitimate legal reason for these conditions to be over turned.

It is very disturbing to see the process undertaken by the Department of Planning and Environment (DPE) since the outcome of the court case and its appeal in 2015. We are here today to support the remaining members of the Camberwell community and to emphasise the importance of certainty for those impacted by the coal mining industry.

We trust the Commission will demonstrate its independence in considering this proposal and provide a full legal explanation for the final determining decision.

Background

Following the Yancoal appeal in the Supreme Court that was over-ruled, legal representation was made to DPE in December 2015.

DPE replied in January 2016 promising to give priority to any modification application. We consider this advice to be entirely inappropriate providing a back door appeal option outside the court system. DPE has demonstrated a bias towards the coal industry by advising and accepting a 75W modification that proposes to make significant changes to conditions of approval determined through the rigour of legal debate.

As Jan has mentioned, this issue should have been taken up with the High Court, not through a spurious application of a 75W modification.

The community has had a long standing opposition to the application of the 75W modification loophole for Part 3A mine approvals and objects to its application in this instance under DPE advice.

The Yancoal application for the 75W modification was not received by DPE until 19 January 2017. So while DPE promised to give the modification priority in early 2016, the proponent did not give the matter any great urgency.

This modification proposal was on public exhibition for comment for only two weeks between 2 to 16 February 2017. There was minimal consultation prior to the exhibition. This very short period of time that was afforded the community to comment on a complex and convoluted legal argument is further demonstration of the bias in the NSW planning system.

We are here before you today because community members strongly objected to the extent of change to the approved conditions. This modification should not have been accepted in the first instance.

The issue of the Ashton South East Open Cut Coal Mine has been highly contentious since it was first proposed in 2009. This 75W modification continues the ongoing conflict between the community and mining industry in this very heavily impacted area of the Hunter.

Cumulative Social Impacts from Mining

Hunter Communities Network was established in 2011 because of the growing tensions in the Hunter Region, the increased land use conflict and the massive scale of the coal industry expansion that has wiped out rural communities up and down the Valley.

Communities in the Singleton district such as Warkworth, Ravensworth, Glennies Creek and Mt Olive had already virtually disappeared. Camberwell and Bulga were the next in the firing line.

The severity of social impacts caused by large areas of displaced rural communities is only just becoming a consideration under the NSW planning system. There is now a requirement to undertake a social impact assessment under new guidelines only adopted last year.

This requirement for social impact assessment is a result of many years of campaigning by impacted communities across the Hunter Region.

Meanwhile there have been numerous, ongoing expansions of open cut mining operations in the Singleton area and further west. Camberwell is now one of the most heavily impacted communities in this part of the valley.

The Upper Hunter Air Quality Monitoring Network monitor based in Camberwell Village reports more exceedances of the national air quality standards than any other monitor in the network. There have been 37 exceedance alerts so far in 2018 with 14 of those occurring in July alone.

For nearly half of the month of July, the air quality in Camberwell was dangerous to the health of residents. These alerts are based on 24 hr average readings with air quality reaching extremely dangerous levels during that period.

These very poor air quality conditions, impacting severely on local resident's health, are caused by the fact that Camberwell Village is nearly entirely surrounded by open cut coal mines.

It is of considerable concern that the recent proposal to expand the Rix's Creek Mine, currently being reviewed by the IPC, did not identify any acquisition rights for private Camberwell residents. This is despite the project moving closer to the village and the regional air quality regularly exceeding national standards.

The only approval to date that has afforded acquisition rights to the remaining private property owners in Camberwell has been the approval of the Ashton South East Open Cut, supported by two courts of law.

These rights stand and must be maintained to provide certainty for these residents. The IPC, as the determining body, has a duty of care to consider the welfare of private community members.

We do not support the DPE position that this modification meets Object 1.3(a) of the EP&A Act:

'to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources'

The social and economic welfare of the remaining private residents of Camberwell must be maintained through this approval, as it stands.

The planning process has seriously eroded the social and economic welfare of Camberwell residents by the ongoing expansion of mining around them. The Rix's Creek Mine is proposing to move closer, the Mt Owen Mine has yet another expansion on exhibition, the nearby Hunter Valley Operations South has been approved to raise overburden dumps to the height of a 40 story building.

The Network strongly recommends that the current condition providing voluntary acquisition rights to the remaining residents of Camberwell be maintained as it now stands.

We consider it to be quite churlish of Yancoal to be pursuing this condition change. The net worth of the company with its recent acquisition of Rio Tinto mines and the scale of its operations in the Hunter is considerable. The cost of acquiring the remaining residents of Camberwell, if and when they desire to move on, would not cause an economic impost on the company.

We understand that there are now only 4 private properties in Camberwell village eligible for acquisition under this condition. This would not be an onerous economic imposition on this large multinational mining company.

The continued pursuit of the Ashton South East Open Cut coal mine by both Yancoal and DPE is difficult to understand. The project is approved to produce 12 mt of coal over a 7 year period. Many mines owned by Yancoal now produce more coal than that in one year.

The economic arguments and alleged 'unlawfulness' of the acquisition condition are ill founded and should not be accepted.

Certainty for community

The proposal to include a commencement condition is strongly rejected. We note that DPE supports the community position on this part of the modification application.

If this change to conditions were to be adopted, it would set a precedence across all mine approvals.

A new mine proposal or large expansion of existing operations in the Hunter is now highly contentious because of the scale of the industry and its cumulative social and environmental impacts. Land use conflict continues in the Hunter with social disruption, stranded assets and economic disadvantage for other industries and neighbours.

The Upper Hunter Strategic Land Use Plan fails to protect communities, other key industries, water sources, threatened biodiversity and amenity in the region. Therefore, land use conflict continues.

Because of the extent of current cumulative impacts, the coal industry now causes serious social and economic disruption by proposing a new or extension mining project. If approval is granted, which is currently the rule rather than an exception, it is entirely unacceptable for that approval to be taken up at the discretion of the proponent.

The key justification for mine approvals in the Hunter now depends on the weighting of the predicted jobs, taxes and royalties as a public benefit against the significant environmental and social costs. For the proponent to have discretion of when those public benefits will be provided through the access of a publicly owned resource, while already causing social and economic disruption, cannot be supported.

That is what Yancoal is proposing with the 'commencement condition' – that a mine approval can hang around over the community head with absolutely no certainty of when it may proceed.

The Mt Pleasant Mine is a case in point – even with the lapse condition, mining companies can get around this and prolong the actual development of an approved project. The social disruption of the very late activation of the Mt Pleasant Mine approval was outlined recently at an IPC public meeting in Muswellbrook. A number of today's Commissioners are also on that panel.

We trust that the proposed 'commencement' condition will not be accepted in the final determination of this modification.

Providing certainty to the community is paramount in this decision.

Changes to commitments

The Network supports the proposed updates to the conditions or commitments where there are specific requirements for compliance.

The timeframe of various actions such as the implementation of the biodiversity offset strategy, and the enhancement and management of a vegetation corridor should occur within 12 months of the development commencing, not at commencement of mining operations.

Many of the impacts, such as clearing, will occur prior to the commencement of mining and therefore mitigation measures should be in place within 12 months of the impacts occurring.

We fully support the legal position that has been put to you through Hunter Environment Lobby representations.

In Summary

Hunter Communities Network does not support the argument that the conditions of approval for the Ashton South East Open Cut Coal Mine are unlawful.

The community of Camberwell must have certainty that their right for voluntary acquisition stands now, as granted, at the commencement of approval in April 2015.

The proposed 'commencement' condition is a dangerous precedent to set for all state significant development.

The proposed timeframes for commitments are supported on commencement of development activities, not on commencement of mining.

This modification is not a minor administrative adjustment to conditions. It is a major change to the approval.

The community expects a clear legal response that lays out the reasons for the final determination of this highly questionable 75W modification.

Finally, the IPC review of the Rix's Creek open cut mine expansion heading towards Camberwell village needs to take into account the high level of air pollution that currently exists there.

The cumulative impact of mining operations in this area of the Hunter, the ongoing social and health stress and the economic disadvantage of local people who have lived in the area for most of their lives must be a key consideration.

We trust that a fully independent, closely considered and clearly explained determination will be made in whatever time it takes for the IPC to be satisfied that the full legal implications have been taken into account.

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