



19 December 2011

PAC Determination of the Ashton Coal Mine Proposal

Background

Ashton Coal Operations Limited operates a mining complex near the village of Camberwell in the Singleton Local Government Area. The complex comprises two separate mining areas, an open cut mine to the north of the village, and an underground mine to the south west of the village. The Commission understands Ashton has recently completed active mining in the existing open cut mine and that underground mining is expected to continue for approximately 12 years.

Project Application

Ashton is now proposing to develop a new open cut mine south of Camberwell. The application seeks to remove approximately 16.5 million tonnes of run of mine coal from the new mine over a 7 year period (i.e. ~3.6 million tonnes a year). The mine would connect with the existing facilities via an overland conveyor. The project has an area of 315 ha and would have an 18 year life span, including 7 years of active mining, 7 years to fill voids with rejects and 4 years for rehabilitation.

Modification Application

Ashton is also seeking to modify its development consent for the existing mining complex, to integrate the two operations. The modification seeks to:

- Increase the maximum production rate at the mine complex from 5.45 to 8.6 million tonnes a year;
- Increase the maximum production rate from the underground mine from 2.95 to 5 million tonnes a year;
- Modify the coal handling and preparation plant and associated facilities; and
- Dispose of fine reject from the underground mine in the new open cut pit (in in-pit storage cells and in the final void).

Delegation to the Commission

On 14 September 2011 the Honourable Brad Hazzard MP, Minister for Planning and Infrastructure delegated his powers and functions to determine certain project applications to the Planning Assessment Commission. This delegation came into effect on 1 October 2011 and revoked the Minister's previous delegation to the Commission.

Ms Gabrielle Kibble AO nominated Dr Neil Shepherd AM to chair the Commission for the project. Mr Brian Gilligan and Ms Gabrielle Kibble AO were the other members to constitute the Commission for the project.

Director-General's Environmental Assessment Report

The Director-General's Environmental Assessment Report provided an assessment of the following key issues:

- Air Quality
- Noise

- Blasting
- Greenhouse Gas Emissions
- Surface Water and Groundwater
- Flora and Fauna
- Heritage
- Traffic and Transport
- Visual; and
- Socio-economic impacts.

The Department's assessment found that the project as revised would still have a number of adverse environmental impacts, in particular significant noise and/or dust impacts on 8 privately owned properties. Further the Department believes the predictions are not without risks, and that the actual impacts of the project would need to be closely monitored to ensure they remain acceptable.

The Department recommended requirements to:

- acquire properties that are significantly affected by noise and dust;
- to pay for the provision of alternative accommodation for certain Camberwell residents during the active open cut mining operations;
- to offer architectural treatments for residences moderately or significantly affected by noise or dust;
- to implement comprehensive real-time noise and dust monitoring and management systems; and
- to develop a Camberwell Village Enhancement Strategy in consultation with the local community.

With the implementation of these measures the Department has indicated it is satisfied that the project's residual impacts can be adequately mitigated, managed, offset and/or compensated for. The assessment also found that the project represents a reasonable extension of the existing mining complex making use of existing infrastructure and facilities. The economic and social benefits of the project include:

- a direct capital investment of \$83 million
- maintaining 160 direct jobs at the mining complex; and
- directly and indirectly generating approximately 680 new jobs across the Hunter region.

Meetings

Briefing from the Department

On 16 August 2011 the Commission received a briefing on the project from representatives of the Department of Planning and Infrastructure.

PAC Meeting

Following the briefing from the Department the Commission advertised its intention to hold a public meeting to hear submitter's views on the assessment report and recommendation. Notice of the meeting was advertised in the Singleton Argus on 19 August 2011. The Commission also wrote to all those who had made written submissions on the proposal to invite them to register to speak at the meeting.

The public meeting was held on 6 September 2011 at the Glennies Creek Hall, Middle Falbrook. Twenty Four (24) people spoke at the meeting, including representatives from 7 special interest groups and 17 individuals.

Other Meetings

On 30 August 2011 the Commission met with senior representatives from the NSW Office of Water. The NSW Office of Water explained the contents of a letter it had forwarded to the Department of Planning and Infrastructure dated 29 August 2011 and also provided a copy to the Commission. The representatives confirmed the NSW Office of Water had considered the available information very carefully before coming to the conclusion it could not support the proposal as presented.

On 5 September 2011 the Commission visited the project site and existing mine complex accompanied by the Proponent. The Proponent also provided a presentation on the current operations and proposal.

On 20 September 2011 the Commission met with senior representatives from NSW Health. NSW Health reiterated its concerns about health impacts and advised it would provide additional correspondence on this matter.

Correspondence

Although it did not call for submissions, the Commission received correspondence from a number of individuals and organisations, as well as NSW Health and a copy of correspondence from the NSW Office of Water. On 8 September 2011 the Department advised that it was likely that an addendum to the Director-General's Environmental Assessment Report and amended recommended conditions would need to be provided to the Commission.

On 9 December 2011 the Commission formally advised the Department of Planning and Infrastructure that the latest date for submission of any additional material for consideration was 16 December 2011. No further advice was received by this date.

The Commission's Comments

Water

The Commission has carefully considered the surface and groundwater issues discussed in the Director-General's Environmental Assessment Report, including NSW Office of Water's earlier submissions on the project. The latest correspondence from the NSW Office of Water, dated 29 August 2011 maintains its concerns about the information and conclusions in the Environmental Assessment, the analysis used and the predicted impacts. The Office of Water is particularly concerned about the potential for:

- uncontrolled drawdowns on the Hunter Regulated River and its connected alluviums (which includes Glennies Creek); and
- creation of a long-term point source of salinisation to the Regulated River.

The Office of Water is the State agency with regulatory authority and technical expertise on water. The Office of Water has maintained its concerns throughout the assessment process, including after the various meetings and discussions between the Department, the Proponent, and the Office of Water and their various experts, which followed submission of the letter of 29 August 2011 from the Office of Water. If the Office of Water cannot be convinced that its concerns have been satisfactorily resolved then two questions arise for the Commission:

- (i) whether there is persuasive evidence before the Commission that would enable it to be satisfied that the Office of Water's concerns are ill-founded and, if not,
- (ii) whether the concerns raise a sufficient level of uncertainty about the nature and magnitude of potential consequences that the Department's recommendation and relevant conditions are unacceptable.

The answers to these questions are clear:

- (i) The Commission has no such evidence before it other than assertions by the Proponent and the Department that they and their experts disagree with the Office of Water's position; and
- (ii) It is not disputed that the Glennies Creek water resource is a critically important part of the Hunter regulated system. It also does not appear to be disputed that if the Office of Water's position is correct that unacceptable risks to that resource could arise.

Given this situation, the Commission has little option but to find that the level of uncertainty is such that the potential risks to the water resource must be considered of paramount concern.

The Commission notes that it is regrettable that the Government Agencies could not reach an agreed technical position on this issue before the matter was referred to the Commission for determination. The result has been significant delay in the decision-making process and considerable uncertainty for the Proponent and the public.

In this context the letter dated 13 December 2011 from the Proponent to the Department suggests that the Commission may wish to convene a conclave of experts to try to resolve the water-related uncertainties. The Commission considered this option but was of the view that while such an approach may be appropriate when exercising its review role, it was not appropriate in the decision-making role. As indicated above the Commission considers that it is the responsibility of Government Agencies to provide the Commission with technical material within their spheres of expertise which it can then use to assess the merits of the project.

Health

The Director-General's Environmental Assessment Report indicates that 5 privately owned properties would experience significant dust impacts. The Department recommended a number of conditions to deal with this, including a requirement that Ashton purchase, or provide alternative accommodation for landowners, where significant noise or dust impacts are predicted to occur.

The Commission notes however, that the Office of Environment and Heritage have raised concerns that significantly affected properties owned by the Company could still be leased for residential occupation.

NSW Health's submission also considers the cumulative impacts on the population of Camberwell Village. NSW Health considers that it is unacceptable for the residents of Camberwell Village to be exposed to further additional PM₁₀ concentrations and additional noise.

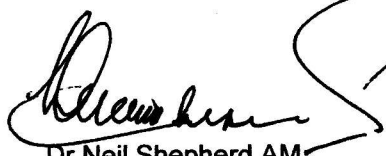
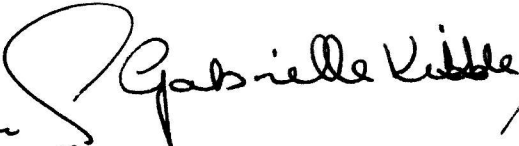
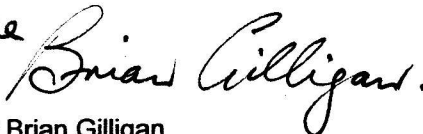
NSW Health concludes that the cumulative impacts of the proposed and existing coal mines around Camberwell would have an unacceptable cumulative impact on the human health and wellbeing of the residents of Camberwell Village. NSW Health indicated that on public health grounds, it cannot support the project.

The Commission's Determination

After carefully considering the available information, including the changes to the original proposal designed to mitigate or manage potential adverse impacts, the Commission has determined that on balance the benefits of the project do not outweigh the combined risks from the project's potential impacts on Glennies Creek and its associated water resources

and its potential dust and noise emissions. Therefore, the Commission has refused the project application.

In relation to the modification application, the Commission notes that it includes changes to the underground mining operation, which the Proponent may still wish to pursue. The Commission does not know whether the Proponent wishes to continue with the modification application, but notes it would need to be amended in light of the Commission's decision on the project application. Consequently, the Commission has returned the modification to the Department for further consideration.

		
Dr Neil Shepherd AM Member of the Commission	Ms Gabrielle Kibble AO Member of the Commission	Mr Brian Gilligan Member of the Commission