

Mr. Glenn Shepherd
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Wednesday, 29 October 2014

Ref: Submission in response to EIS: 83302

I would also like to speak at the Public Hearing to be held on Tuesday 4 November

Dear Sirs,

This submission wishes to respond to the response from Australian Zirconia Limited (AZL) to submissions responding to the EIS for this project. It is confined to the two main (and related) issues of public consultation and transport.

1. Public Consultation

The overwhelming approach to consultation has been to (quite rightly) discuss issues with Toongi residents immediately surrounding the mine. All other "consultation" has been via meetings where AZL has simply presented information as to what they may be going to do, and all were held prior to the EIS being submitted which actually contained the details of the project.

Response "f)" on Page 18 of the Response to Submissions (RtS) is typical of AZL's approach, *viz*,

AZL has engaged with the local community, including the residents of Margaret Crescent, through newsletters, community meetings and a general open door policy to enquiries.

Engagement via newsletter only occurred if you registered to receive them; AZL made no attempt to contact directly people on the Obley Road, despite the ease of doing this with a direct mailout. Why, given they are the group second-most affected by the development?

Of greatest concern was this statement in the EIS,

landowners of properties located further from the DZP site.....have been regularly consulted over the proposed operations and a general level of acceptance over the Proposal has been indicated

This is a blatantly untrue statement, presumably included to mislead the Department and the PAC. The specifics of this lack of contact and consultation are contained in my Response to the EIS (RtEIS, 83302). I raise them again here because they have not been addressed in the RtS, and this falls under your remit in Point 1 of your Terms of Reference (ToR).

The details of transport were so vague that people had little to enquire about, even with "a general open door policy". "Details" included ludicrous claims of people catching the train to work, when this is a patently ridiculous claim due to the frequency of train movements and the fact that passengers and dangerous goods could not be moved together. Again, I mention this purely to demonstrate the lack of concrete information and the impression information that was provided seemed to be to mask the reality of the preferred road transport option. It was only when the EIS was released that the true situation became apparent.

I will not repeat further information already provided in my RtEIS (83302). The important message to convey is that consultation did NOT occur with Obley Road residents; information and misinformation was provided at meetings – very different to consultation. I want the PAC to be very clear that there is no “general level of acceptance over the Proposal” from Obley Road residents, certainly in regard to transport.

1.1 Response to Submission

I note that Point 1 of the ToR requires you to examine the response to submissions. Hereunder I will provide a summary of where I believe this has been inadequate with respect to my submission (83302):

1. Communication

No response made to the lack of direct communication to residents along Obley Road or the rural railway line, despite them clearly being key stakeholders. The same response relating to public meetings is presented. This does not answer the question and to my mind the silence on the issue highlights the lack of engagement.

2. Rail preferred to road

Does not resolve the conflict in the EIS that discusses the various rail options and the clear statement that

the simplest and cheapest option would be to operate a road transport fleet only

(Section 6.1.7 of EIS). How can any credence be placed on AZL’s supposed commitment to rail when they refuse to even address this inconsistency.

3. Impractical to complete rail feasibility prior to consent being granted

Can the PAC satisfy itself that this is a reasonable response? I simply cannot accept that this is practically the case. Sure, from a cashflow and ease of operations for AZL it may be the case, but that is not the issue here. There are many examples where companies have to develop a business with contingencies in place. I fail to accept that AZL could not gain commercial agreements in principle with suppliers on the presumption a rail line will be built. Why could the development consent not be provided on the basis that a rail implementation plan is completed prior to consent being granted? This project has been on the table for 15 years!

4. Cost of rail construction

Simply not addressed in the response. The RtS noted the mine has a Present Value of \$4.257 billion; no justification is even offered as to why the cost of the rail should be prohibitive. Again I note that the cashflow of the business is for them to manage; residents should not be inconvenienced simply to satisfy a cashflow issue that represents less than 1% of the PV of the

project. I note that Alkane's Tomingley Gold Project is anticipated to supply \$20 million p.a. in free cash flow to develop the Toongi project¹.

5. Effect on property values

Not addressed at all. There was one throwaway statement in the EIS that property prices would not be affected, and quoted the Cadia mine at Orange as a reference. These are clearly very different projects. Whilst I don't think the PAC should or would stop the project on this basis, I think it is critically important that constraints be imposed on the project to minimise the impact on property values (see transport below).

6. Constraints to be applied on road transport

This was ignored totally. Actually, that is not quite correct. The RtS selectively used part of a paragraph to create a straw man argument that it then addressed. The paragraph in my submission read as follows:

Of greatest concern to Obley Road residents is the lack of information provided in the EIS with regard to transportation of reagents (and to a lesser degree, processed end products). Section 2.14.1 and Table 2.19 of the EIS outline the hours of operations of various aspects of the mine site. No mention is made at all of transportation, yet this single aspect of the DZP will impact on the most people. It again demonstrates how little regard has been given to Obley Road residents.

It is clear that in its entirety, the paragraph is concerned with when the transport will occur. In its RtS, AZL simply quoted the first sentence and then referred to its management plan for dangerous goods. It completely ignores the question – unacceptable. It makes me wonder how many times this has occurred throughout its RtS in areas I am unfamiliar with. I urge the PAC to be diligent in calling AZL out on these blatant efforts to avoid important issues.

No other reference was made to concerns about the complete change of amenity with 24 hour truck movements or to the selective use of data in AZL's "consultation" process.

2. Transport and its Impacts

I note that some of the key requirements in the PACs ToR are to:

...assess the merits of the project as a whole, paying particular attention to the likely ... transport impacts.

As outlined above, these concerns have been raised earlier, but are yet to be addressed. I will reiterate some of the major concerns I see for the project.

2.1 Rail

In the simplest terms, if the PAC does not mandate that a rail line be commissioned, I fail to see the point in having expended so much energy in including it in an EIS. I again quote

¹ <http://www.proactiveinvestors.com.au/companies/news/52868/alkane-resources-pours-first-gold-bar-at-tomingley-gold-project-in-nsw-52868.html>

Section 6.1.7 of the EIS, *“the simplest and cheapest option would be to operate a road transport fleet only”*. Clearly AZL has no intention of operating a rail line unless forced to do so. I urge the PAC to look closely at the figures and see the dramatic improvement in amenity for all Dubbo residents in removing so many trucks from the road. I cannot see an impediment to granting consent on the proviso a rail line is built. That would grant AZL the security it requires to develop relationships with suppliers, whilst protecting the rights of residents to have the development minimise its impacts upon them. If this means delaying the project for a short period of time, surely that is in the best interests of residents? Company pressure to get underway should not undermine that principle.

I note that the DPI OASFS recommends rail be required (page 65 of RtS) due to a similar range of concerns I have raised. I also note that TfNSW (Page 73 of RtS), referring to the request to do a rail feasibility study after approval is granted, *“does not consider this to be acceptable”*.

2.2 Road

Given the lack of interest from AZL in developing a rail line, it is imperative that restrictions be placed on transport (even in the unlikely scenario of a rail line eventuating). Quite rightly, some operations at the mine are restricted to certain hours to minimise their impact. The EIS notes there will be 24 hours transportation. I refer you to my submission (83302) and all the issues regarding restriction of movement that AZL did not bother to address. In short, restricting movements to daylight hours will greatly reduce the amenity impact for Dubbo residents along the transport corridor, particularly those on Obley Road. It should be noted that it is a rural-residential area for most of its length, so daytime movement will have the least impact.

The EIS and subsequent RtS continually refer to Obley Road noise adhering to freeway/arterial/sub-arterial standard (Page 10 of RtS is an example). The irony of this, and issue that AZL completely fails to address, is that it is only becoming such a road due to the development. If they were utilising an existing road that had such a rating, the steps outlined in the EIS to minimise impacts would be appropriate. But increasing heavy truck movements by 70-130% (depending on the option eventually chosen) is a massive change when the low number of existing movements is considered.

No consideration has been given to the time of truck movements. All AZLs data refers to daily measurements. As mentioned above, the Obley Road area is predominately rural-residential. According to AZLs own data (4.75 & 4.78 in EIS), currently there are approximately 100 heavy vehicle movements per day at Toongi and 230 at Dundullimal. My own observations at 136L Obley Road have concluded there are approximately 6 such movements between 1 hour after sunset and 1 hour before sunrise on any given day. With AZLs current submission allowing for 24 hour transport movement, the project will add between 100 and 160 truck movements per day to the road. This will add between 4 and 7 truck movements *per hour* if they were evenly spread throughout the day. It is claimed they will be evenly spread in the RtS (Page 74), but this is directly contradicted on Page 147, which is typical of responses from AZL; the answer tends to change depending on which question is getting asked. The EIS doesn't even bother to address frequency.

In reality, a vast majority of trucks could and up travelling at night if desired by AZL or if it matched transport operators schedules. If the PAC does not put restrictions on heavy vehicle movements, there will be no protection to amenity of residents. Note the claim on Page 120 of the RtS,

On the basis of implementation of the proposed mitigation measures, maximum noise levels received at the residences along Obley Road are likely to be reduced to below sleep disturbing levels.

i.e. AZL cannot even guarantee that its measures will work. If that is the case, why shouldn't measures be put into place mandating that truck movements be restricted to minimise impact on residents?

The RtS discusses the option of using HML vehicles to reduce truck movements, but again, there no requirement to do so (Page 20, RtS). This is typical of AZLs responses. It notes actions it can take, but does not commit to any of them. If consent is granted without mandating such requirements, the company can walk away from such "commitments".

The EIS and RtS do not consider the impacts on waste collection services provided on the Obley Road. The issues discussed regarding the school bus routes would be similar to those of the waste collection service.

AZLs sole method of mitigating transport impacts is to build a good road. Period. It discusses in its RtS road upgrades including some hot sealing (Page 11) on sections near the zoo and Toongi. Nowhere does it discuss maintaining road to a given quality. On Page 44 of the RtS, AZL states that the commitment schedule it provides to minimise impacts on residents is "extremely comprehensive and robust". The reality is AZL has committed to building a good road with no guarantee of upkeep or traffic flow management. This is hardly comprehensive or robust.

Who will monitor the quality of the road and enforce upgrades when required? Dubbo City Council? Self-regulated by AZL? What are the penalties for failing to comply? AZL maintains that a good road surface will minimise the banging of truck trailers that currently emit the most noise. If maintenance of the road surface is not mandated in the development consent, how can it be enforced?

Commitment 14.13 (Page 175 of RtS) notes AZL will "upgrade Toongi and Obley Roads to provide a 20 year pavement life". Will the standard at year 11 be the same as at Year 1, or Year 19? Who will monitor and enforce such commitments?

The RtS notes the impact of road noise on Mr. K Riley's abode (within 160m of Obley road). The solution was to improve the road surface (to higher standard than proposed for the rest of the upgrade, Page 11 RtS) to reduce noise, and also to supply airconditioning to allow all windows to be closed. There are currently 3 dwellings within 170m of the Obley Road and two further under construction within that distance. Will these dwellings be supplied with airconditioning as well and have the road upgraded outside their houses to reduce noise? Have they been advised that noise limits will exceed the L_{max} noise recommendations? AZL continues to address noise impact on residents indoors. No consideration given to general amenity being changed; it is presumed that residents will just have to accept the change rather than AZL actively looking for ways to minimise such impacts (e.g. via limitations on truck movement times).

In addition to the above, no consideration is given to the impact of large noise events from trucks against very low background noise as Obley Road is not currently a freeway/arterial/sub-arterial road. For example, residents on the Newell Highway have large background noise levels, and truck noise may only be 10-20% above this level. The Obley Road has occasional car movements and minor rural noise such as livestock. The discrepancy between these levels makes truck noise extremely noticeable and impacts on general amenity of the rural residential area. I am not aware if there are any standards that address this issue, but would like the PAC to consider this when examining the impact of transport. Please note I am purely speculating here on the quanta of relative noise impacts, but they are certainly real.

On Page 138 of the RtS, AZL claims,

the impact of the DZP on the local and regional social setting would be relatively limited, and unlikely to be noticeable beyond the immediate vicinity of the DZP Site

I would ask whether the PAC members would accept being told that a 70-130% increase in heavy vehicle movement outside their house would be “unlikely to be noticeable”! This statement is both arrogant and misleading.

Furthermore, on the same page, AZL notes that

considering the socio-economic benefits to be provided by the DZP, any residual impact on the social setting along Obley Road is considered acceptable

Why is spending less than <1% of value of AZL Present Value to help alleviate a large amount of that impact not considered a viable alternative? Clearly, this is AZL saying they would rather not spend money on rail, and/or incur some minor inconvenience of truck scheduling than genuinely address concerns of local residents.

In response to a question as to why Obley Road would not be upgraded prior to starting the infrastructure at DZP (Page 142 of RtS), AZL responds by saying “it is not practical”. No further justification is given! Clearly it is an example of being inconvenient, rather than that it is not practical. There is no reason this should not occur prior to commencing the building of the plant, particularly when the vehicular traffic required for this process is noted. Residents and road users need to be given priority over a company-driven timeframe.

The only other traffic mitigation tool considered by AZL is a Driver Code of Conduct (Page 146 of RtS). This code is not yet written. Yet again, AZL wants approval to be granted so it can then write its own rules and this is completely unacceptable. Some examples of the language used are

- *Avoid where possible where possible the operating periods of the local school bus operators*
- *The specific nature ... (yet to be confirmed)*
- *The aim of the specific rules...*

Nowhere does AZL commit to any restrictions, therefore to grant approval without having requirements in place is to leave AZL to write their own rules.

On Page 152 of the RtS, AZL says it will avoid scheduling trucks around bus times “where practicable”; again commitment is lacking. Is “where practicable” equivalent to not being practical

to upgrading road prior to the start of project (see previous point). i.e. it doesn't suit AZL, therefore they don't want to do it?

I will finish by restating that I am not against the AZL project. Whilst I would prefer it was not on my road, that is the reality. It is imperative that the PAC put reasonable protections in place for affected residents.