

3 September 2018

Mr Mike Young
Resource and Energy Assessments
Department of Planning and Environment
GPO Box 39
SYDNEY NSW 2001

Subject: Sunrise Mine Project - Modification 4: Proposed Consolidated Consent Conditions

Dear Mike,

Thank you for the opportunity availed to Forbes Shire Council (FSC) to comment on the proposed consolidated consent for the Sunrise Mine - Modification 4. FSC offers the following comments, some general and some specific.

1. General Comments

a) Allowing a Project Assessed and Approved 18 Years ago to now be built

Whilst the project has approval, that approval was granted 18 years ago and no actual project has materialised over those intervening 18 years.

Because no development has eventuated over such an unusually long time, the matter at hand, namely Modification 4, takes on much more significance than a minor change to an existing project.

FSC contests that Mod 4 - one of 6 modifications since the token 'construction commencement' of the 2 bores - should have been judged as a new DA, in part because so much time had elapsed and the project is not 'substantially the same development'. In effect, there has never been a development.

Because no project has materialised, the work undertaken to assess the likely environmental, social and economic costs and benefits of the project as a whole is about two decades out of date and needed to be refreshed consistent with today's assessment standards. Whilst assessment was undertaken on the Modification 4 component, that does not address the new project as an integrated whole.

b) Baseline Water Resource Conditions Have Changed Over Two Decades

The baseline existing environment has changed over the last twenty years since the original approval. The climate is changing, becoming hotter and dryer with increased intensity of storms. In addition, along the Lachlan River within 5 or so kms from the bore field there are now approximately 60 more bores than existed in Year 2000. Including 13 significant irrigation bores. Much more groundwater is being utilised by farmers than when the proposed bore field was initially assessed. FSC asserts these existing developments should take precedence and have existing use rights.

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The Mod 4 EIS is silent on the implications of climate change, the changed water resource dynamics and existing use rights for bore water users.

c) Transparency and Robustness of Consent Condition Wording

The wording of some of the consent conditions incorporates words such as 'minimise', 'reasonable', 'feasible', 'suitable', 'sufficient' and 'as soon as practicable'. These words are descriptive and subjective, with their definition open to broad and different interpretations. Because of this vagueness and definition is open to debate, it provides a rich vein of opportunity for Clean TeQ and its lawyers to argue an interpretation that suits their cause.

On the other hand, there are neighbours/affected parties such as farmers, villages, communities and local councils who are at a distinct disadvantage when compared to the miner on this point because, comparatively speaking, this group does not have the time, technical knowledge, financial capacity or political influence that Clean TeQ has, hence is unable to meet it on level terms.

The consequence therefore of consent conditions that are open to interpretation and lack transparency is that Clean TeQ receives an added bonus because it enshrines in the law unfairness and possibly a denial of natural justice for those who are relatively powerless.

d) Council Supports the Concerns of its Community along the Lachlan River near the Bore Field

FSC is aware of many of the concerns of our community, particularly the farming community along the Lachlan River from where water for the mine is to be sourced, and supports these concerns.

The Mod 3 amendment contemporised the Development Consent and for the first time presented a different, less prescriptive approach to the wording of consent conditions and in fact removed others. The contemporised consent was delivered in the absence of a community engagement process which the Department has recently acknowledged as being less than ideal. The resultant amendments in and of themselves have raised significant community concern.

The lack of transparency around the contemporisation process has contributed to the community's mistrust of the entire assessment process. This is evidenced by the individual (but qualified) statements of community support for the Clean TeQ project at the Community Consultative Committee meeting held in Condobolin on 27 August 2018. This support was qualified because of the inadequacy of the Conditions of Consent to address community concerns in relation to potential impacts of the mine and also the removal of the Acquisition Condition of the consent at the Mod 3 stage.

FSC shares the concern of our residents and ratepayers that the burden of proof of exceedance of relevant limits rests with the impacted individuals and their success in having issues addressed will be based on their individual capacity to convince the regulators to either investigate or take action in relation to a breach. And all of this without any off site scientific real time data being available to the community. FSC submits that the Department should make the wording of both the existing and proposed consent conditions that relate to water impacts more robust so that

these conditions are transparent, measurable and readily understandable by our community.

Finally, in relation to FSC support for community concern, we request that the acquisition Condition – removed in Mod 3 without discussion with affected community members - is reinstated. Given the confidence of both the government departments and the proponent that no adverse offsite impacts will occur, acquisition is not a risky proposition for the proponent moving forward. Having this safety net will give the community confidence that their interests are in fact protected should the “unforeseen occur”. The proponent should be prepared to support its assessment and show confidence in their modelling, particularly as the outcomes-based approach is predicated on an expectation that the proponent will perform within the required standards.

2. Specific Comments

FSC comments in relation to specific proposed draft consent conditions are provided below:

Schedule 2 – Administrative Conditions

There is scant attention regarding the water pipeline from the Lachlan River to the mine site. FSC requests that the following be added:

- That prior to construction of the pipeline, the applicant provide detailed construction plans to FSC which includes a survey of layout of the pipeline, environmental assessment, and any ancillary construction sites such as heavy vehicle parking and construction site offices;
- That a copy of written consent from any private landholders within FSC on whose land construction of the pipeline will take place be provided to FSC; and
- That all work, including the installation of utilities, in, on or over a public road or road reserve requires consent from Council in accordance with Section 138 of The Roads Act 1993.

Condition 12 - Updating & Staging of Strategies, Plans or Programs

FSC requests:

- the wording be amended to state updating strategies, plans or programs should be subject to consultation with the three impacted Councils – Parkes Shire Council, Forbes Shire Council and Lachlan Shire Council.
- the phrase ‘progressive basis’ is open to wide interpretation. Please redefine so is clear and transparent.

Condition 14 - Pipeline Construction and Operation

FSC requests that an additional Condition 14 (b) be inserted to read: an access agreement is to be negotiated with Parkes Shire Council, Forbes Shire Council and Lachlan Shire Council for the construction and operation of the water pipeline within the Councils road reserves.

Schedule 3 – Environmental performance Conditions

Condition 2: Construction Noise

Generators are planned to be used at the bore field, for an unspecified time. Hence FSC requests that the word 'minimise' be made more explicit as to what is required to be achieved.

Condition 3: Operations Noise

Given Clean TeQ plans to initially use generators at the bore field FSC requests that the consent be more expansive and stipulate the entitlements and safeguards afforded to neighbours in the event that noise exceeds permissible limits.

Condition 26: Water Supply

FSC submits that this condition requires significant elaboration to define "sufficient water". The condition needs to make it clear that harvestable rights, bore field supplies and river water supplies will not be increased without full, transparent and robust assessment and that Clean TeQ **must** have operational contingencies embedded in all its management plans approved by the DPE to scale back the development in the event of a water shortage.

Condition 28: Compensatory Water Supply

FSC submits that this condition provides no fairness or balance to the bore field neighbours in the event of adverse impacts. The process outlined will very time consuming (based on experience at other mine sites would unlikely to be resolved within 18 months) and provides no natural justice to farmers who would have to battle with the company and government agencies.

FSC kindly requests that:

- the wording of this condition be significantly revamped to provide fairness and protection to farmers and their rights.
- the words 'adversely' and 'directly impacted' be clearly and unambiguously defined.
- the Government place the burden of proof on the miner to show it has NOT caused these impacts.
- the compensatory water supply measures must provide an alternative long-term supply of water that is equivalent to the loss attributable to the development. Equivalent water supply must be provided (at least on an interim basis) as soon as possible after the loss is identified, unless otherwise agreed with the landowner. The term 'as soon as possible' is too vague. Is that 3 months, 12 months? Suggest be a measurable timeframe e.g. four weeks.
- If the Applicant is unable to provide an alternative long-term supply of water, then the Applicant must provide **alternative compensation** to the satisfaction of the Secretary. FSC requests that 'alternative compensation' should be clearly defined to avoid ambiguity.

Condition 30 - Water Management Plan

FSC submits that:

- after the words in the opening sentence "with DoI Water" be added "Lachlan Shire Council & Forbes Shire Council."
- The Condition be reworded to stipulate that in the case of groundwater, baseline data on water levels, yield and quality in a representative sample of 30 groundwater bores within a 10 km radius of the bore field be collected throughout the lifetime of the project and be made available to Council upon request.
- Groundwater and Surface water Management Plans: 30 (b) and 30 (c): Given the project was assessed nearly 20 years ago with no development since then, baseline data must be available and insisted upon as the yardstick for any assessment of impacts moving forward.

- Groundwater and Surface water Management Plans: should specifically require attention to the 10 kms radius to the bore field, rather than the ill-defined “within the region”.
- The onus of proof must be on the developer to prove that its activity has not caused any adverse impact, rather than a powerless farmer having to try to convince the miner and the government he/she has been adversely affected. The condition – effectively enshrined in the law – must provide a fair balance for all.
- The Groundwater Management Plan should include trigger levels for investigating any potentially adverse groundwater impacts associated with the development in the vicinity of the bore fields set in collaboration with the farmers adjoining the bore field.

Condition 43 - Road Upgrade and Maintenance Strategy

FSC submits that a new Condition 43A be added: “the program is to be consistent with the terms of the VPA”.

Schedule 4: Additional Procedures – Independent Review

FSC requests that the wording be expanded to include:

- who and how the terms of reference for a review are established, ensuring that any landholders who have a say will be treated with respect and understanding.
- an independent review must be commissioned within 28 days not two months. Two months is far too long in the event of a farmer experiencing bore water loss.
- provide in the process an open and transparent dialogue with any affected parties, and genuine engagement, understanding and empathy with any landholder’s position.

Schedule 5 – Environmental Management, Reporting and Auditing

Condition 3: Adaptive Management

FSC submits:

- that Condition 3(a) be altered to read “take all steps necessary to ensure that any exceedance ceases forthwith and does not recur”. The current wording is vague and ill-defined and favours the proponent and its lawyers and provides no legal protection of landholder’s rights
- that a new Condition 3(d) be inserted “notify Parkes Shire Council, Forbes Shire Council and Lachlan Shire Council”

Condition 5: Annual Review

FSC requests that point (g) be added stating “describe the perception, views and attitudes of the various communities to the performance of the project over the past 12 months and, if necessary, what steps it is taking to improve its social standing in the community”.

Condition 8: Incident Reporting

FSC submits that the words “including Parkes Shire Council, Forbes Shire Council and Lachlan Shire Council” be added after the words “any other relevant agencies”.

Appendix 3: VPA

FSC submits that the wording be altered as below to reflect the VPA document dated 22 August 2018. Note is a single document to be signed by all four parties.

TERMS OF VOLUNTARY PLANNING AGREEMENT

Community Enhancement Contribution

- Clean TeQ shall pay an annual total payment of \$400,000 plus CPI to Forbes Shire Council (FSC), Parkes Shire Council (PSC) and Lachlan Shire Council (FSC).
- The total payment shall be allocated 50% to Lachlan Shire Council, with 25% each to Parkes Shire Council and Forbes Shire Council, unless otherwise determined jointly by FSC, FSC and PSC.
- The first payment of \$400,000 shall be payable within 21 days of signing of this Agreement and then paid on the same date each year until Mining Operations cease.
- If the Final Investment Decision is not reached within 12 months of the initial payment, no further annual Community Enhancement Contributions will be made until the Final Investment Decision is reached. Once the Final Investment Decision is reached payments will resume within 21 days of the Final Investment Decision and continue annually.

Road Maintenance Contribution

- Clean TeQ shall pay an annual Road Maintenance Contribution totalling \$340,000 plus CPI as follows:
 - (i) Lachlan Shire Council: \$168,000
 - (ii) Parkes Shire Council: \$152,000
 - (iii) Forbes Shire Council: \$20,000
- The first annual contribution shall be paid within 21 days of the Final Investment Decision and then paid on the same date each year until Mining Operations cease.
- If the Final Investment Decision is not reached within 12 months of the initial payment, no further Road Maintenance Contributions shall be made until the Final Investment Decision is reached. Once the Final Investment Decision is reached, payments shall resume within 21 days of the Final Investment Decision payable annually on the same date.
- The Road Maintenance Contributions are to be used to maintain the following roads:

Parkes Shire Council

- Middle Trundle Road [SR83] (between Henry Parkes Way [MR61] and The Bogan Way [MR350]);
- The Bogan Way [MR350] (between Henry Parkes Way [MR61] and Fifield Trundle Road [SR171]);
- Fifield Trundle Road [SR171] (between The Bogan Way [MR350] and the Parkes Shire boundary);
- Fifield Road [MR 57] (between the Parkes Shire Boundary and The Bogan Way [MR350]);

- The Bogan Way [MR350] (between Fifield Road [MR57] and The McGrane Way [MR354]); and
- The McGrane Way [MR354] (between The Bogan Way [MR350] and the Parkes Shire Boundary).
- Scotson Lane between the rail siding access road and The Bogan Way [MR350].

Lachlan Shire Council

- Fifield Road [MR57] (between Henry Parkes Way [MR61] and Slee St [in Fifield Village] and between Slee St [in Fifield Village] and Red Heart Road [SR41]);
- Platina Road [SR64] (between the Lachlan Shire Boundary and Fifield Road [MR57]);
- Slee St [in Fifield Village] (between Fifield Road [MR57] and Wilmatha Road [SR34]);
- Wilmatha Road [SR34] (between Slee St [in Fifield Village] and Mine Access Road); and
- Fifield Road [MR57] (between Red Heart Road [SR41] and the Lachlan Shire Boundary).

Forbes Shire Council

- North Condobolin Road (between the bore fields and Ootha-Mulguthrie Road);
 - Ootha-Mulguthrie Road (between North Condobolin Road and Henry Parkes Way [MR61]);
 - Ootha- Ringwood Road (between Henry Parkes Way [MR61] and Burkes Road);
 - Burkes Road (between Ootha- Ringwood Road and Ootha North Road); and
 - Ootha North Road (between Burkes Road and the Forbes Shire Boundary).
- Clean TeQ shall maintain Sunrise Lane (between the accommodation camp site access road and Wilmatha Road [SR34]), to the satisfaction of FSC, during the construction and operation phase of the mine and processing facility.

Project Facilitation Contribution

Clean TeQ shall pay FSC, PSC and FSC each an annual Project Facilitation Contribution of \$30,000 within 21 days of the Final Investment Decision and then on the same date each year thereafter. The payments are to be made during the period between Final Investment Decision and two years to the day after the commencement of construction.

Consumer Price Index

The Community Enhancement Contribution, the Road Maintenance Contribution and the Project Facilitation Contribution are all subject to CPI. The three different contributions shall be indexed according to the CPI at the time of payments after the initial payment.

Major Repair Contributions

- Clean TeQ shall pay Major Repair Contributions on the Transport Route to address exceptional failure of or damage to roads where government grants do not cover the full cost of repairs.
- The Major Repair Contribution shall be undertaken on an as needs basis during the life of the Mine, but limited to a maximum 5 km of construction in any year, unless mutually agreed between Clean TeQ and the relevant council(s).
- Clean TeQ shall pay the Major Repair Contribution to the Council(s) within 30 Business Days of the date of the letter notifying the relevant Council of acceptance of the Cost Report. These contributions are to be mutually agreed by the Parties and do not substitute for the nominated Road Maintenance Contributions.

Road and Intersection Upgrades

Clean TeQ shall pay for and be responsible for the following Road and Intersection Upgrades. Such upgrades shall commence promptly following the Final Investment Decision, or earlier at the sole discretion of Clean TeQ:

Road Upgrades

Prior to the commissioning of the Accommodation Camp, Clean TeQ shall pay for and require the completion of the upgrade of Sunrise Lane (between the Accommodation Camp access road and Wilmatha Road [SR34]) to the following:

- all weather unsealed surface for an operating speed standard of 80 km/h; and
- carriageway width of 9 m (equivalent to two 3.5 m lanes and two 1.0 m wide shoulders).

Construction of the Road and Intersection Upgrades, and completed prior to the commissioning of the development

In addition, Prior to the Commissioning of the Development (meaning the date on which the testing of the Mine Processing Facility to verify that it functions according to its design objectives and specifications is completed), Clean TeQ shall pay for and be responsible for the delivery of the following upgrades:

- road pavement (8.0 m sealed pavement and 1.0 m gravel shoulders); and
- all private access roads (3.5 m sealed private access road approach and 3.0 m gravel shoulders along road 30 m either side of all private access roads).

to the following roads:

- Platina Road [SR64] (between the Lachlan Shire boundary and Fifield Road [MR57]);
- Fifield Road [MR57] (between Platina Road [SR64] and Slee St [in Fifield Village]);
- Wilmatha Road [SR34] (between Slee St [in Fifield Village] and the mine and processing facility access road); and
- Fifield Trundle Road [SR171] (between The Bogan Way [MR350] and the Parkes Shire boundary).

Clean TeQ shall prepare a road construction programme detailing the work specifications, timing and scheduling of road upgrades required. The programme shall be prepared by Clean TeQ in consultation with the relevant Councils. The road upgrades shall be undertaken in accordance with the road construction programme unless otherwise agreed the relevant Councils.

Intersection Upgrades

Prior to the Commissioning of the Development (meaning the date on which the testing of the Mine Processing Facility to verify that it functions according to its design objectives and specifications is completed), Clean TeQ shall pay for the following intersection upgrades:

- Platina Road [SR64] /Fifield Road [MR57];
- Fifield Road [MR57] /Slee Street [in Fifield Village];
- Slee Street [in Fifield Village]/Wilmatha Road [SR34]/Fifield Road;
- The Bogan Way [MR350] /Fifield Trundle Road [SR171] and Scotson Lane;
- Henry Parkes Way [MR61] and Middle Trundle Road [SR83];
- Henry Parkes Way [MR61] and The Bogan Way [MR350]; and
- Sunrise Lane/Wilmatha Road [SR34] - remove the transition between the gravel and dirt surfaces while Wilmatha Road remains unsealed, and then seal a minimum of 30 m of Sunrise Lane on the approach to the intersection once Wilmatha Road is sealed.

Clean TeQ shall prepare a road construction programme detailing the work specifications, timing and scheduling of intersection upgrades required. The programme shall be prepared by Clean TeQ in consultation with the relevant Councils. The road upgrades shall be undertaken in accordance with the road construction programme unless otherwise agreed the relevant Councils.

Road Safety Audits

Prior to Commissioning of the Development (as defined above), Clean TeQ shall pay for and deliver a road safety audit program to determine road upgrade requirements on the following roads (including intersections and rail crossings):

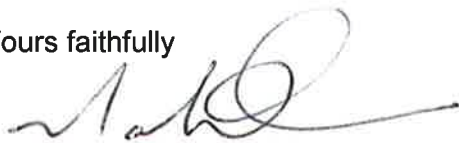
- Henry Parkes Way [MR61] (between Jones Lane [eastern outskirts of Condobolin] and Fifield Road [MR57]);
- Fifield Road [MR57] (between Henry Parkes Way [MR61] and Slee St [in Fifield Village] and between Slee St [in Fifield Village] and Red Heart Road [SR41]);
- Platina Road [SR64] (between the Lachlan Shire Boundary and Fifield Road [MR57]);
- Slee St [in Fifield Village] (between Fifield Road [MR57] and Wilmatha Road [SR34]);
- Wilmatha Road [SR34] (between Slee St [in Fifield Village] and Mine Access Road); and
- Fifield Road [MR57] (between Red Heart Road [SR41] and the Lachlan Shire Boundary);
- Henry Parkes Way [MR61] (between Westlime Road [western outskirts of Parkes] and The Bogan Way [MR350]);
- Middle Trundle Road [SR83] (between Henry Parkes Way [MR61] and The Bogan Way [MR350]);
- The Bogan Way [MR350] (between Henry Parkes Way [MR61] and Fifield Trundle Road [SR171]);

- Fifield Road [MR 57] (between the Parkes Shire Boundary and The Bogan Way [MR350]);
- The Bogan Way [MR350] (between Fifield Road [MR57] and The McGrane Way [MR354]);
- Fifield Trundle Road [SR171] (between The Bogan Way [MR350] and the Parkes Shire boundary); and
- The McGrane Way [MR354] (between The Bogan Way [MR350] and the Parkes Shire Boundary).

Prior to the Commissioning of the Development, Clean TeQ shall reach an agreement with the relevant Councils on funding and the timing of any additional road safety works deemed necessary by the road safety audit program.

Should you have any enquiries, please contact the Eliza Scarpellino, Town Planner, on **6850 2344**

Yours faithfully



Paul Bennett *pu*:

Director

ENVIRONMENTAL SERVICES & PLANNING