



# Hunter Environment Lobby Inc.

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Submission  
Independent Planning Commission Public Meeting  
Rix's Creek Coal Mine MOD 10  
Monday 20 May 2019

Hunter Environment Lobby is a regional community-based environmental organization that has been active for over 25 years on the issues of environmental degradation, species and habitat loss, and climate change.

We have been following the many modifications and expansions of the Rix's Creek Coal Mine for many years, particularly the proposed SSD 6300 Continuation Project currently under determination by the Commission.

We appreciate that the same Panel of Commissioners is considering this current Modification application. The two determinations are intricately linked.

Hunter Environment Lobby strongly objects to both proposals and continues to argue that both should be rejected.

We commissioned legal advice from the Environmental Defenders Office in regard to the Modification application being lodged under Section 455(1A) of the *Environmental Planning and Assessment Act 1979*. Also in regard to the relevance of the February decision in the NSW Land and Environment Court in *Gloucester Resources Limited v Minister for Planning*.

This advice was sent to the Commission on 16 May and we trust that the Panel has seen the document.

In summary, the advice details that Section 455(3) is relevant to applications lodged under 455(1A). Section 455(3) requires that the consent authority must take into consideration such of the matters referred to in section 4.15(1) as are of relevance to the development the subject of the application.

Section 4.15(1) provides that the consent authority is to take into consideration:

- Any environmental planning instrument
- likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality
- submissions made in accordance with this Act or the regulations
- public interest

The Planning Assessment Report refers to section 75W, which is no longer relevant, in the statement that the *“development, as proposed to be modified, would remain substantially the same development as last modified under section 75W.”*

Planning has taken the approach that previous assessments undertaken on air and noise impacts remain relevant and are not required to be updated.

We maintain that the determination is to be made under the statutory regime by which it was lodged.

Planning has failed to assess the Modification under the requirements of the Mining SEPP. The consolidated conditions for the Rix’s Creek Coal Mine do not meet the non-discretionary development standard for cumulative air quality levels as required by Clause 12AB(4) of the Mining SEPP.

This Clause requires consideration of changes in the receiving environment and not just what is proposed by the Modification.

We note that the Regional Air Quality Monitor at Camberwell regularly records air quality above the national standards and has reported poor air quality in the village 19 times so far this year. Other nearby monitors in Singleton and at Maison Dieu have also recorded numerous high levels of air pollution.

This is not a minor environmental impact and must be assessed, as required under the Mining SEPP, for cumulative annual averages of PM<sub>10</sub> and PM<sub>2.5</sub> air quality levels.

We note that the most recent air quality assessment for the current mining consent was undertaken by Todoroski in 2014, as referenced in the Applicant’s Response to Submissions Report.

Clause 12AB(3) of the Mining SEPP requires consideration of cumulative noise levels of the development. No assessment has been undertaken under the *Noise Policy for Industry 2017* in relation to the Modification.

Given the lack of certainty of the impacts of the Modification it is difficult to understand how Planning formed the view that the Modification was of *“minimal environmental impact”* for the purposes of s 4.55(1A).

Because of the intricate relationship between the SSD 6300 application and Modification 10 currently under determination by this Panel, we consider that the recent Land and Environment Court decision rejecting the Rocky Hill Coal Mine is highly relevant to both.

In the Rocky Hill Decision, Chief Justice Preston held that although noise and air quality impacts would comply with the relevant non-discretionary development standards in clauses 12AB(3) and 12AB(4) of the Mining SEPP, this did not preclude consideration of the social impacts of the mine’s noise and air quality impacts.

We note that there are regularly noise complaints lodged at Rix's Creek Mine. The 2017 Annual Review Report sites 38 noise complaints in 2016 and 34 noise complaints in 2017. There were also 10 complaints in regard to blasting impacts in 2017.

The Modification has not been assessed against the Social Impact Assessment Guidelines.

Also there has been no costs-benefits analysis conducted under the *Guidelines for the economic assessment of mining and coal seam gas proposals 2015*.

The Applicant and Planning reiterate that the purpose of the Modification is to prevent disruption to the workforce, contractors, suppliers and customers while the determination process for SSD 6300 is still underway. However, there is no information provided about the number of workers and associated businesses likely to be directly impacted, given that mining operations are still occurring at Rix's Creek North until 2035.

The proposal is to extract a further 1.9 Mt coal over a 9 month period with no contemporary assessment of environmental impacts, costs or benefits. There is no analysis of the economic impacts if this does not occur.

The future land use conflicts with the township of Singleton are another key social and economic consideration for the larger Rix's Creek project. The Rocky Hill decision found that the project would have significant social impacts on people's way of life; community; access to and use of infrastructure, services and facilities; culture; health and wellbeing; surroundings; and fears and aspirations.

These considerations are important for both the Modification and SSD 6300.

The Rocky Hill decision also rejected that mine on the basis of direct and indirect Greenhouse Gas Emissions and their cumulative impact on global climate change.

We note that the SSD 6300 application is to extract up to 4.5 Mtpa of ROM coal until 2038. The significance of this generation of new greenhouse gas emissions in terms of the carbon budget, as considered in the Rocky Hill judgement, must be taken into account in the determination.

Hunter Environment Lobby contends that it is in the broader public interest for the Panel to reject both the Modification and the SSD 6300 application in regard to the cumulative climate change impacts.

A further issue of concern is the ongoing loss of biodiversity connectivity across the floor of the Hunter Valley. The land proposed to be disturbed by the Rix's

Creek Continuation Project contains a significant remnant corridor between the north of the valley and the Hunter River.

We have outlined our concern in previous submissions in regard to the unassessed biodiversity impacts caused by the illegal mining of 96 ha outside the Rix's Creek mining lease. We note that the Applicant is required to retire 2,716 ecosystem credits under the Land and Environment Court consent order granted on 11 July 2017.

We understand that there is a 24 month period in which to meet this order, that is by July 2019.

It is disappointing that no clear information has been provided in the Modification application in regard to meeting this requirement.

The proposal to disturb an additional 200 ha of land, including a critically endangered ecological community, for the purpose continuing mining at Rix's Creek until 2038 is unacceptable. This is large-scale land clearing that cannot be adequately offset.

This issue has been the cause of a great deal of toing and froing between Government agencies and the Applicant. It is very unclear how the required biodiversity offset credits, including the additional 2,716 ecosystem credits under the consent order, will be met.

The recent United Nations Report on global species extinction is a reminder that we have a duty to protect threatened species and their habitats at a local, regional, national and global scale.

The Global Assessment Report on Biodiversity and Ecosystem Services released on May 6 found that around 1 million animal and plant species are now threatened with extinction, many within decades, more than ever before in human history.

The report exposed that "The health of ecosystems on which we and all other species depend is deteriorating more rapidly than ever. We are eroding the very foundations of our economies, livelihoods, food security, health and quality of life worldwide."

It was identified that 'transformative changes' are needed to restore and protect nature.

Transformative change means a fundamental, system-wide reorganization across technological, economic and social factors, including paradigms, goals and values.

We consider it imperative that the Commission consider this need for transformative change in the determination of both the Modification and SSD 6300. A number of the predicted extinctions are right here in the Hunter Valley.

Hunter Environment Lobby considers that the current planning system practiced in NSW does not allow for Environmentally Sustainable Development, particularly in regard to large scale mining projects in the Hunter Valley.

The Commission has a responsibility to consider ESD principles and the requirement for transformative change to protect our life support systems from both climate change and species extinction. Both are intricately linked.

Just as this Modification is intricately linked to the determination of SSD 6300.

While the Planning Report maintains that a decision on the Modification will not pre-empt a decision on the larger continuation project, it is concerning that discussions held with Planning staff in regard to mine rehabilitation and mine closure make it clear that Planning expect SSD 6300 to be approved.

Such statements from Planning staff appear in the transcript of a meeting held with the Panel on May 10, for example:

*'knowing that the SSD is nearing its finalisation, all these rehab conditions would be fully contemporised under the new consent.'*

*And 'with this extension they will also have to update their mining operations plan which is also referred to as their rehab management plan'*

This discussion was in regard to the current conditions for rehabilitating the Rix's Creek South mine site. We note that the Resource Regulator has identified that while the current conditions do not reflect contemporary best practice, any identified risks or opportunities can be effectively regulated through the conditions of mining authorities issued under the *Mining Act 1992*.

We also note that the Panel is meeting with the Resource Regulator this afternoon, after this public meeting.

There has been an undertaking to the Applicant to make the determination on the Modification as quickly as possible.

Hunter Environment Lobby maintains that the Modification cannot be considered to have "*minimal environmental impact*" because the required assessments have not been done.

Sincerley,

Jan Davis

President Hunter Environment Lobby Inc