



Environmental Defenders Office

Our Ref: RK:JB:S1468

23 November 2023

Mr Steve O'Donoghue
Director, Resource Assessments
Department of Planning and Environment

By email only: stephen.odonoghue@planning.nsw.gov.au

CC: Ms Gabrielle Allan gabrielle.allan@planning.nsw.gov; Ms Kristina Robinson
kristina.robinson@planning.nsw.gov.au

Dear Mr O'Donoghue

Western Coal Services SSD-5579 Mods 5 and 6; Angus Place Colliery MP 06_0021 Mod 8; Springvale Water Treatment Project SSD-7592 Mod 10

1. We act for Hunter Community Environment Centre (**HCEC**), a not-for-profit organisation concerned with facilitating environmental and social justice advocacy in NSW.
2. We write in respect of the recent modification applications made by Centennial Angus Place Pty Ltd and Springvale Coal Pty Limited (collectively, **Centennial**).

Modifications

Modifications 5 (SSD-5579) and 8 (MP06_0021)

3. On 19 September 2023, Centennial made an application for modifications to its Angus Place Mine and Western Coal Services developments (MP06_0021 (**MOD 8**) and SSD-5579 (**MOD 5**), respectively). Generally, these modifications involve:

MOD 5

- a. an increase in the receipt of mine water (to the Western Coal Services site) from Angus Place Colliery to a rate of up to 10ML/day; and
- b. operation of an offtake at the Springvale Coal Services Site from the existing Angus Place water transfer pipeline.

MOD 8

- a. a transfer of up to 10ML/day of underground mine water from Angus Place Colliery to the Western Coal Services site; and
- b. upgrades to existing Angus Place water transfer pipeline to provide the capacity to transfer up to 10ML/day.

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4. Centennial has not, to our knowledge, made a fresh application for development consent for either the Angus Place Mine or Western Coal Services developments.
5. We understand the water received by Western Coal Services (**WCS**) will be incorporated into the Springvale Coal Services Site Surface Water management system. Ultimately, that water will be discharged into Wangcol Creek, likely via licenced discharge point 001 (**LDP001**). The discharge of water into Wangcol Creek via LDP001 is regulated by EPL 21229. These discharges are highly polluting, causing elevated levels of metals and the high electrical conductivity of Wangcol Creek,¹ flowing to the Coxs River, an important tributary of Sydney's drinking water catchment.

Modifications 6 (SSD-5579) and 10 (SSD-7592)

6. On 6 October 2023, Centennial made an application for modifications to its Springvale Water Treatment Project (**SWTP**) and Western Coal Services developments (SSD-7592 (**MOD 10**) and SSD-5579 (**MOD 6**), respectively). Generally, these modifications involve:

MOD 6

- a. an increase in the receipt and emplacement of residual waste from the SWTP within the Reject Emplacement Area (**REA**).

MOD 10

- b. an increase in the amount of residual waste per day that can be transferred from the SWTP to the WCS REA.

Modification applications must be assessed concurrently and as a new Development Application

It is unlawful for MOD 5 to have been split from MOD 6

7. At the time that the application for MOD 5 was made, Centennial must have been aware that they would also make an application for MOD 6, given there was only three (3) weeks between each application.
8. Further, both MOD 5 and MOD 6 involve the receipt of increased volumes of wastewater into the WCS site. Although the sources and exact nature of the flows differ, both flows the subject of these modification applications have the **same** destination within the WCS site. That is, the flow from the Angus Place Colliery (MODs 5 and 8) and the flow from the SWTP (MODs 6 and 10), will ultimately feed into the WCS REA. Water from the REA eventually makes its way to Cooks Dam, and much of this is ultimately discharged from LDP001.
9. We note that a consent authority tasked with assessing a modification application under the *Environmental Planning and Assessment Act 1979* (**EP&A Act**) may modify a consent if it is satisfied that the proposed modification is of minimal environmental impact (s 4.55(1A)). Although it is apparent that even when assessed separately the proposed modifications are not of minimal environmental impact, it is plain that the modification applications, when assessed together, certainly have more than minimal environmental impact.

¹ See, for example, NSW Department of Planning and Environment, *Western Coal Services Modification 4: Water transfer and management system State Significant Development Modification Assessment (SSD 5579 MOD 4)*, October 2022.

10. Here, Centennial are segmenting a large, cumulative activity into smaller components. This is a process known as “salami slicing” which, when used to circumvent more stringent environmental controls, is unlawful.² In *Palm Beach Protection Group Incorporated v Northern Beaches Council* [2020] NSWLEC 156, which despite concerning a different statutory provision is nonetheless pertinent due to the obvious subversion of the EP&A Act, Preston CJ of the Land and Environment Court determined:

“...A proponent also cannot segment a large or cumulative activity into smaller components, sometimes termed “salami slicing”, in order to establish that each smaller component is not likely to significantly affect the environment and thereby bypass the obligation to prepare an EIS.”³

11. It is improper for Centennial to have split these modification applications into two separate applications, and for the Department to have accepted them as such. It is incumbent on the Department to consolidate and assess the modification applications together.

The modification applications for SSD 5579 ought to be assessed as a standalone development application

12. In addition to the above, we write to put the Department on notice that any application for modification of any of the mines that feed water into the WCS site must be refused. The consent authority would not reasonably be able to reach the requisite state of satisfaction as to the development being “substantially the same development as the development that was originally granted” so as to fall within s 4.55(2) of the EP&A Act.⁴
13. We note that the test in s 4.55(2) of the EP&A Act requires a comparison between the development as modified and the development *as it was originally approved* – i.e., prior to any subsequent modifications.⁵ Centennial’s modification application reports have misappropriated this test. Specifically:
- a. in the modification report for MODs 5 and 8, Centennial compare the effect of the modification relative to the existing operations. Centennial state that the modification will increase the receipt of mine water from Angus Place from a rate of up to 2.6 ML/day to a rate of up to 10 ML/day. While an increase from 2.6 ML/day to 10 ML/day is unlikely to constitute “substantially the same development”, the original SSD 5579 consent (dated 4 April 2014) does not authorise the receipt of any mine water from Angus Place. Nor do MODs 1, 2 or 3. It is MOD 4, approved on 21 October 2022 that allows the receipt of up to 2.6 ML/day of mine water to be transferred from Angus Place Colliery. As such, the relevant test is whether MOD 5, which allows the receipt of up to 10 ML/day of mine water into the WCS facility is substantially the same development as the original consent, which does not allow the receipt of any water from Angus Place; and
 - b. in the modification report for MODs 6 and 10, Centennial again compares the effect of the modification relative to the existing operations. Centennial state that the

² *Palm Beach Protection Group Incorporated v Northern Beaches Council* [2020] NSWLEC 156

³ *Palm Beach Protection Group Incorporated v Northern Beaches Council* [2020] NSWLEC 156 at [261](e).

⁴ See *Agricultural Equity Investments Pty Ltd v Westlime Pty Ltd (No 3)* [2015] NSWLEC 75 at [173].

⁵ *Scrap Realty Pty Ltd v Botany Bay City Council* (2008) 166 LGERA 342; [2008] NSWLEC 333 at [16] and *Arrage v Inner West Council* [2019] NSWLEC 85 at [24], cited by Preston CJ in *Feldkirchen Pty Ltd v Development Implementation Pty Ltd* (2022) 254 LGERA 114; [2022] NSWCA 227 at [112].

modification will increase the amount of residual waste that can be received and emplaced from the SWTP to the WCS REA. They state that this is an increase from 0.35 megalitres per day (as an annual average) or 0.43 megalitres per day (as a daily maximum) to up to 0.5 megalitres per day (as an annual average) or 1 megalitre per day (as a daily maximum). Whereas, the original consent did not allow the receipt of any residual waste from the SWTP, because the SWTP was not yet in operation. MOD 1, dated 19 June 2017, introduced the relevant condition with respect to the receipt of residual waste from the SWTP. As such, we consider the relevant test to be whether MOD 5, which allows the receipt of up to 0.5 ML/day (as an annual average) or 1 ML/day (as a daily maximum) of residual waste from the SWTP, is substantially the same development as the original consent, which does not allow the receipt of any residual waste from the SWTP.

14. Further, the consent authority could not be reasonably satisfied that such a development was “of minimal environmental impact” so as to fall within s 4.55(1A) of the EP&A Act.⁶ This is especially so where:
 - a. the proposed MOD 5 would see a **fourfold increase** in the volume of mine water to be received by WCS and ultimately discharged into Wangcol Creek when compared to WCS MOD 4, and an increase from 0 ML/day to 10 ML/day when compared to the original WCS development consent;
 - b. independent water expert, Dr Ian Wright, formed the opinion that environmental harm to Wangcol Creek and the Cocks River will increase;⁷ and
 - c. the proposed MOD 6 would see more than twice the maximum daily transfer of residual waste to the WCS REA, which is ultimately discharged into Wangcol Creek, and an increase from no allowed receipt of residual waste when compared to the original WCS development consent.
15. Given that most of the increased environmental impact will be realised in/around the WCS site (because WCS is the beneficiary of the increased volumes of wastewater), MODs 5 and 6 for SSD 5579 are properly considered a new development and ought to be determined by the Independent Planning Commission in accordance with Div 4.7 of the EP&A Act. We note that although MODs 5 and 8 are related, and MODs 6 and 10 are related, there is no requirement that they be assessed together.
16. On behalf of our client, we seek written confirmation that the Department will not permit a further modification of the existing consents. We note this letter is being provided both as a submission on MODs 6 and 10 and also as a direct letter to the Department. We respectfully seek a response by 6 December 2023.
17. Given this letter concerns the unlawful characterisation of MODs 5 and 8, we respectfully request that it also be considered as part of these modifications’ Response to Submissions.

⁶ See *King, Markwick, Taylor & Ors v Bathurst Regional Council* [2006] NSWLEC 505 at [84].

⁷ <https://envirojustice.org.au/wp-content/uploads/2023/10/2023-10-12-Submission-obo-LEG-w-Annexures.pdf> pp 20-21.

If you wish to discuss this matter, please contact me at jasper.brown@edo.org.au or +61 2 7229 0041.

Yours faithfully

Environmental Defenders Office

A handwritten signature in black ink, appearing to read 'Jasper Brown', with a stylized flourish at the end.

Jasper Brown

Solicitor