

REF SSD 12-5581

Submission of Capertee Valley Alliance with respect to Centennial Airly Pty Ltd Airly Mine Extension Proposal ("the Airly proposal") EIS ("the EIS")

Capertee Valley Alliance ("CVA") submits that, in the various respects identified and traversed in the submission below, and in other submissions to which the submission refers, the EIS contains significant omissions, inadequacies and defects with respect to environmental, social and economic elements of the proposal, the cumulative impact of which is that the Airly proposal constitutes an unacceptable risk, and not in the public interest.

CVA supports the submission of Capertee Valley Environment Group ("CVEG"), and relies upon the expert opinion evidence contained in such submission with the knowledge and consent of CVEG, and the authors of such expert reports. In the interests of brevity, and to avoid repetition, CVA's submission does not refer expressly to the entirety of the expert opinion evidence presented by CVEG.

Introduction

Capertee Valley Alliance Inc. **Background**

Mission Statement

Capertee Valley Alliance Inc. is an incorporated community group dedicated to assisting the Capertee Valley Community.

Statement of Purpose

The Capertee Valley Alliance Inc. is the coming together of the people of Capertee Valley and surrounds. We are privileged to live and work in, and enjoy a place of great natural beauty and special significance. Its environment has tremendous biodiversity and it is an important Bird Area world-wide. CVA strives to maintain strong supportive links with the extended community and represent the community on issues that affect the sustainability and enjoyment of this unique place.

The Alliance endeavors to inform residents on issues that affect the community, and is willing to work closely with residents and the local community groups to:

- Assess, represent and communicate the interests and desires of the whole Capertee Valley Community including residents, ratepayers, business owners and their employees to government and other organisations and agencies at all levels.
- Research, develop and maintain plans programs and undertake or sponsor projects where appropriate ensuring that the Capertee Valley Community and its unique environment become safer, stronger, sustainable and proper.
- Provide a non- profit entity to seek funding, encourage sponsorship and receive contributions and government grants for community enhancement and facilities in the Capertee Valley as identified in the above statements of purpose.

The members of the public most directly impacted by the proposal are those represented by Capertee Valley Alliance Inc. and CVEG. The members living in the valley carry on business in the fields of eco tourism, farming, grazing, environmental conservation and heritage preservation. Capertee Valley Alliance Inc. submits that, in the various ways identified and discussed in the expert reports relied upon by Capertee Valley Alliance Inc., CVEG and others in their submissions, the proposals articulated in the EIS expose each

of those activities and the persons dependent upon them to unacceptable risks of environmental harm, with consequential risks of social and economic harm

Heritage significance of area potentially impacted by the Airly proposal

The National Trust Register in its Industrial Heritage Site Listing Report dated 31 July 2014 describes the Airly mines and remains of the Torbane Refinery as "significant" in the history of oil-shale mining, and the Airly township as a "rare example of an abandoned mining town uncompromised by later development". The Torbane refinery is "significant" for its "role in the development of retorting technologies...and for the prototyping of retorts later used at Newnes".

The full report of the National Trust, upon which CVA relies, is attached to this submission as attachment "A".

Hydrogeology concerns

CVA relies upon the opinions and concerns articulated by Dr Phillip Pells in the report which appears in the CVEG submission.

CVA also relies upon the hydrogeology report of Dr Andrea Broughton dated 29 October 2014. Dr Broughton's full report is attached to this submission as attachment "B".

In the Executive Summary to her report, Dr Broughton articulates a number of significant defects in the hydrogeological model advanced in the EIS which are more fully advanced in the report. The absence of a published peer review of the model is submitted to be a significant defect in the model, for the reasons Dr Broughton records.

The absence of data, or acceptable or sufficient data identified by Dr Broughton is submitted to be a significant defect in the groundwater monitoring network relied upon by the proponent. The basic nature of the defects is submitted to be of grave concern to CVA members, both with respect to the security of the water resources of the Capertee Valley, and the trustworthiness of the proponent. The anomalies in the Airly proposal identified and explored by Dr Broughton, and absence of engagement with them by the proponent are submitted to further support the concerns of CVA, and render more problematic the proponent's disputed social licence aspirations.

Dr Ian Wright's report dated 30 October 2014 with respect to the surface water assessment relied upon in the EIS is relied upon by CVA as further evidence militating against acceptance of the EIS. As with the expert opinions of Dr Broughton, Dr Wright identifies serious inadequacies, inconsistencies and defects in the water assessment documents relied upon by the proponent. A copy of Dr Wright's report is attached to this submission as attachment "C".

CVA submits that, unless and until the proponent satisfies the requirements of the IESC guidelines, and satisfactorily addresses the issues articulated by Dr Broughton and Dr Wright, it cannot credibly contend that the Airly proposal does not constitute an unacceptable risk to water resources in the Capertee Valley. Dr Broughton's "conclusions" identify significant environmental risks posed by the Airly proposal, and support CVA's concerns with respect to the proponent's integrity, and commitment to the protection of water resources upon which survival in the valley is dependent. Those concerns find further support in the evidence of Dr Wright.

CVA submits that landholders in, and occupants of the Capertee valley are owed both common law and statutory (Civil Liability Act, 2002, NSW, Protection of the Environment Operations Act 1997 NSW, Water Management Act 2000 NSW, and Environment Protection Biodiversity Conservation Act 1999 Cth.) duties of care by the Department of Planning in the context of the department's assessment of and response to expert criticisms of the EIS. The risk of significant harm is readily foreseeable on any view of the submissions made to the department. CVA submits that no statutory authority acting reasonably could fail to respond to the expert criticisms of the EIS referred to in this, and other submissions to it with

respect to the EIS. CVA will look to the department to compensate its members for and in respect of any damages suffered as a result of the department's failure to take reasonable precautions to prevent that harm.

Environmental features having heritage and special significance

CVA relies upon the report of the Colong Foundation for Wilderness Ltd dated 31 October 2014, a copy of which is attachment "D" to this submission, and supports the conditions to be imposed if the Airly proposal is to be further considered.

CVA relies upon the report of Dr Haydn Washington dated 31 October 2014, a copy of which is attachment "E" to this submission, and to the "conclusion and recommendation" appearing at pages 15-16 of Dr Washington's report.

CVA contends that, unless and until the proponent satisfactorily addresses the concerns for the environment identified by Mr Muir and Dr Washington, and unequivocally commits to conditions of approval, and binding protocols to implement them, the Airly proposal should not be further considered. (Ian, do you want us to attach all reports that CVEG has acquired through EDO)

Although not attaché to this submission, as noted above, CVA relies upon the reports presented by CVEG namely –

- Airly Mine extension Proposal, Rod Campbell, October 2014, The Australian Institute.
- Review of Noise Management, Section 10.5 of Airly Mine extension EIS, John Bassett
- Pells Consulting, Airly Mine Extension – EIS, Philip Pells
- Airly Mine extension Project, Review of Surface water Assessment, Andrew Marr, October 2014
- Dr Alison Hunt & Assoc Pty Ltd.

Conclusion

CVA submits that the expert reports relied upon by it, and other entities which have made submissions with respect to the EIS comprehensively demonstrate that approval of the Airly mine proposal cannot be seriously contemplated unless and until the various cogently articulated concerns emerging from those reports are credibly addressed. As the experts have identified, the EIS contains many omissions, inaccuracies, and potentially misleading and deceptive statements, and a concerning absence of transparency, and intellectual rigour.

The proponent has relied upon reports provided by experts retained and paid to deliver the evidence which the proponent perceives that it requires. These experts are not, and cannot be independent". Against that background, the apparent reluctance of the proponent to subject those reports to independent scrutiny is concerning on a number of levels, including the potential harm which the proposal represents, the integrity of the proponent, and the absence of its entitlement to a social licence to proceed with the proposal. The concerns are heightened when regard is had to the qualifications and experience of the truly independent expert reports relied upon by entities criticising the EIS.

In addition to the various environmental, economic and social concerns articulated in the expert criticisms of the EIS, the department will be aware that the proponent has a demonstrated history of placing its mines in care and maintenance whenever it is considered economically advantageous to do so, without apparent regard to the social disruption, and financial hardship which its actions visit upon its workers, and the communities in which they live. I recent days, the proponent has announced its intention to place another of its Lithgow mines in care and maintenance, resulting in the loss of approximately 130 jobs. There is submitted to be a demonstrated divide between the economic benefits asserted in the EIS, and those which have historically been generated.

Further to the concerns for the environmental sustainability of the Capertee Valley, upon which its social and economic sustainability depends, the EIS offers grossly inadequate security for the environmental damage which the recent report into CSG by the Chief Scientist suggested was "inevitable".

CVA thus submit that the independent expert reports with respect to the EIS reveal unacceptable risks of environmental, social and economic harm of such magnitude as to preclude further consideration of the Airly proposal unless and until each of those risks has been addressed by appropriate independent expert evidence.

Donna Upton
Secretary
Capertee Valley Alliance Inc.