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Executive Director
Major Project Assessments
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Warkworth Continuation Project. Project Application number SSD6464. Holding Submission from John Krey.

Dear Sir

Please accept this submission as a holding submission for the Warkworth Continuation Project SSD6464.

I object to the Warkworth Continuation Project for the reasons set out below.

Reasons for my objection

The Warkworth Project

The proposed Warkworth expansion is the same project rejected by the Land and Environment Court in 2013. The appeal against this decision by Rio Tinto and the NSW State Government was rejected by the Supreme Court of NSW in 2014. The findings of both courts apply to this Warkworth application and thus must be considered in this assessment. On the basis of the Court decisions alone you must reject this Warkworth application.

State Government has altered the assessment rules to suit Rio Tinto

The Government has altered certain assessment criteria to assist Rio Tinto/Warkworth Mining Ltd obtain inappropriate approvals. Changing the assessment criteria does not alter the projects impacts on the surrounding communities and the environment. This application must be rejected for all the reasons as set out in the two court judgements for Warkworth

Collusion between the Planning Authority and Rio Tinto

The Secretary's requirements were received 22 May, 2014, the date of the EIS was 13 June 2014. How could the Secretary's Requirements be properly addressed in the EIS in this short time? It appears the EIS reports were completed prior to the formal issuing of the Secretary's requirements.

Application complies with contemporary policies

The EIS states that “The proposed offset strategy fully satisfied contemporary policies and provides a significant ecological benefit in the long term”. These contemporary policies are of course those altered by the Government to ensure that the previously rejected proposal now meets “contemporary policies”. This does not detract from the fact that the Endangered Ecological Communities will be substantially damaged. It is not appropriate for Government to change the policy which will allow the destruction of endangered ecological communities. These policy changes will not save the endangered species and have been altered only to ensure this application receives approval.

Application meets majority of non-discretionary standards

The EIS states that the ‘majority’ of the mining SEPP non-discretionary standards are met. From this statement I assume that there are some mining SEPP non-discretionary standards which are not met. As stated before these non-discretionary standards have been brought about by the NSW Government desperate to give approval for the expansion. It is also noted that if these non-discretionary standards are not met the Government will still allow this mine to proceed even if it does not comply.

Application meets all government policies

The EIS states it meets all government policies. The government policies that are being met are those artificially put in place to ensure this mine gets approval. It does not meet the international standard of a balance between economics, environment, and the community.

Changes in legislative and policy environment

The change legislative and policy environment. It is important to note that changes in the legislative and policy environment does lessen the negative impact of the project on the environment and the residents of Bulga. The importance of the introduction of Clause 12 of AA (2) the State Environmental Planning Policy the Mining SEPP makes the principle consideration of the matters the minister is to consider is the value of the coal resource. This artificial change to the SEPP was introduced by ex-Minister Hatcher at the behest of Rio Tinto and other mining interests. This is a matter of dishonesty and disgrace to the current State Government and attempts to artificially create more value for the economic consideration than the ecology, social impact etc. This SEPP amendment puts an imbalance into the assessment process and must be rejected. It does not change the impact on the environment or on the village of Bulga.

Social and environmental impacts

The EIS states that the proposal has some 'residual social and environmental impacts some of which would be experienced locally but that the impacts meet all current government policies and would be managed in accordance with industry best practice.'

These 'residual' social and environmental impacts are the major impact that this expansion will have on the village of Bulga and other close locations. It states that this application would meet all current government policies and would be managed in accordance with industry best practice. The current government policies have been amended as required by Rio Tinto and with the concurrence of the Department of Planning and Environment in order to get mining projects approved. The management 'in accordance with industry best practice' is not what I have experienced over the past five years.

It states that the Warkworth Extension is in an area where the dominant land-use is mining. This of course is because the State Government over recent years has allowed the incursion of the mining industry into an agricultural and wine producing area. The impact and scar on the landscape and this dominance by this intrusive and destructive industry cannot be allowed to continue past the current approval.

Social impact

This social impact analysis where it states that "while immediate neighbours have expressed subjective concerns" they state that the objective evidence that the actual impacts meet the levels prescribed in various government policies. I refer you to the evidence submitted to Land and Environment Court. The evidence contained in the judgment was that the mine's method of measuring social impact was sadly lacking. The Department of Planning must give serious consideration of the Judgement from the Court. On a review of the Judgements it will be apparent that the social impact is very high and the outcomes arrived at in the EIS understate the impact on the community and must be rejected.

The EIS states that the social impact assessment that was prepared for this proposal was supported by a comprehensive stakeholder engagement program. I participated in the social impact interviews but found that the results of these interviews included in the EIS bear no relationship to what was discussed. It would appear that the SIA included in this EA was generally not based on the interviews carried out. To state that it was a comprehensive stakeholder engagement programme is far from the truth.

Back ground noise levels

One of the key matters raised in the Land and Environment Court judgement which WML state have been addressed is noise. WML maintain background noise has been confirmed with three further detailed studies and an advanced

method of allocating background noise levels to each individual receiver which was discussed by the New South Wales Environment Protection Authority. The details of such discussions should be made available to the residents of Bulga to allow us to understand the arrangements made between these two government departments as they are probably to the disadvantage of the community.

The independent consultant for the local progress association has established that the back ground noise for the location in which I live is 30dBA and not 33dBA as stated by EMM. This independent assessment of the EMM noise impacts places serious doubt on the whole of the noise reports and other reports as it appeared given this 'adjustment' to background noise levels. What other areas of the EIS have been similarly adjusted to suit the consultant's employer, Rio Tinto?

The EIS states that noise impacts will be below the acceptable noise levels and amenity of the village as a rural area would be maintained. It is our view and that of the BMPA consultant that the back ground noise for Bulga Village south and north is 30dba and thus a maximum limit of 35 should be applied. Weekly reports show noise levels now are well above 35dba and as high as 45dBA. It must be noted that the previous noise levels allowable for Warkworth mine were 35dba until artificially altered to 38 when the original 2010 application was approved. This 35dba is the maximum level that should be required for Bulga. The statements on noise levels provide an untruthful picture to the DPE and may prejudice a fair assessment

The EIS states that background noise levels have been determined in compliance with required processes for the INP in setting background levels. I cannot accept this statement and refer you to the independent acoustic report prepared for the BMPA The mine near to the Warkworth being the Bulga open cut reports in its EIS of having a the background noise level for Bulga Village as 29 DBA. Clearly the modelling input by the consultants for Warkworth Mining Ltd. are such that it is able to manipulate the outcomes to favourably suit and support the mine expansion. I do not accept modelling by the applicant for this application.

Reasonable feasible measures applied to control noise

The EIS states that "all reasonable and feasible measures have been applied to control noise from the Warkworth mine". This statement is broad and vague. All reasonable and feasible measures is a subjective assessment and made only in the interests of Warkworth mine.

Low frequency noise levels will not meet INP requirements but will for Broner rules

The EIS states that low frequency noise levels are predicted to meet the relevant Broner criteria for low frequency noise. The Broner criterion has not been accepted by the EPA and is not part of the industrial noise policy. It appears that the mining company is accepting a proposal that is not yet gazetted nor has it been reviewed in consultation and discussion with the community.

Bulga will have a rural level of amenity

EIS states that the residences at Bulga generally have a rural level of amenity as per the INP. As a resident of Bulga I strongly refute that statement and that the noise of the four mines surrounding Bulga is an unacceptable level of intrusion for a rural community.

Noise levels higher than predicted in previous application

The EIS notes that the noise limits at some residences will be even higher than those predicted previously because of the inability of the company to meet the machinery output noise as the previous 2010 report. This makes the noise impacts even worse than those submitted to the court in 2012 and is even more unacceptable to the residents.

Commitment to noise controls

This paragraph states that there is a commitment to continuous improvement for noise controls. Clearly when one views the numbers of complaints that had been received by the Warkworth mine and by the Department of Planning this does not represent the facts.

Their statement that compliance assessment monitoring has demonstrated a high level of compliance with noise criteria is not backed up by the various reports received by the residents and by the residents monitoring of the noise at their own receivers.

Bulga below cumulative noise limits

This clause notes that all residences and Bulga are below the mining SEPP for cumulative noise limits from all industrial noise sources. I do not accept that this is correct and I refer to the separate acoustic report.

Economic significance of the coal resource

The EIS states that "The resource within the proposed 2014 disturbance area approx. 230 million tonnes is economically significant". (It should be noted that the total ROM coal tonnage quoted here is not the saleable coal. This is stated elsewhere as 155 million tonnes). That may be the case but when considered by Chief Judge Preston in the Land and Environment Court the value of the resource does not outweigh the significant impacts on the ecology and the village of Bulga. The fact that the economic significance has been artificially altered in clause 12 of AA (2) does not change the impact that the extraction of coal will have on the surrounding population and the environment.

Economics

The summary of economic assessment speaks only of wages and other benefits. This study does not take into consideration the costs to the community should this application proceed.

The EIS states that it provides state significant economic benefit to the local regional state and national economies. A recent survey by the Australian Institute notes that in the Hunter Valley only five per cent of the working population is employed in mining and only two per cent of the total revenue to the State government is from royalties from coal mining

L&E Court judgement not a legal binding precedent

It is noted in the EIS that the decision by the Land and Environment Court was “a merit based appeal determined on those particular facts and the subject of the appeal and that it is not a legal binding precedent that limits the discretion of future decision makers in respect of the proposal”. There is overwhelming evidence that this new submission is exactly the same as the previous 2010 application which was soundly rejected by the Land and Environment Court and the Supreme Court. I do not accept that it is not a binding legal precedent. Clearly the findings of the two courts of New South Wales must be considered when assessing this project. This assessment must arrive at the conclusion that this project being virtually the same as the previous and must be rejected.

All reasonable and feasible measures applied to dust control

The EIS states that “all reasonable and feasible measures have been applied to control dust from Warkworth mine”. Clearly the company either cannot or will not control dust. The very nature of an open cut mining operation produces uncontrollable dust. The quality of the air in the Hunter Valley is not acceptable to residents and the majority of this dust is produced by open cut mines. There cannot further expansion of open cut mines near residential areas such as Bulga.

The EIS states that operational improvements in response to ongoing stakeholder engagement protect the regarding the proactive and reactive management of noise and dust resulting in changes to operations. I have not noted any operational improvements and the ongoing stakeholder engagement is simply the complaints made by the residents to Warkworth about dust and noise. It is wrong for the company to state that they have improved the management of these matters and I refer to the 800 complaints for noise last year and a continuing number of complaints this year.

Air quality met at Bulga village

It is claimed that the air quality according to the modelling at privately owned residential dwellings is met for Bulga Village and therefore air quality impacts are below acceptable air quality concentrations and amenity of the village should not be reduced.

I refer to the dust alarms experienced in the Hunter Valley last year. The majority of these are from the dust produced by open cut mines and no further expansion of mines should be allowed. It is not logical where an open cut mine moves two kilometres closer to a village that the dust impacts will not be greater.

No impact from diesel emissions

The EIS states that no air quality impacts are predicted to result from diesel emissions. This cannot be the truth. Where does the applicant anticipate the 20,000,000 litres of fuel burnt on the site each year together with another 20,000,000 from other nearby mines will go to? Logic dictates that these diesel fumes will fall initially on sites immediately near the mine and then will continue on to far greater areas of the Hunter Valley. I note a new study into this problem has been commissioned by the Government. Until the results of such research has been made available no further unfiltered diesel burning industries such as mining should be allowed to expand

Final Landform and rehabilitation

The EIS states that the rehabilitation of the areas mined under this proposal would continue to be undertaken progressively to create a stable, free draining landform etc... The performance of this company in rehabilitation of the landform does not measure up to their statements in this EA. Any visual inspection or photo of the mine will show the sad state of rehabilitation and it is a reflection on the Applicant's attitude and that is to extract coal and not rehabilitate the landscape in a proper manner.

Visual amenity

The EIS states existing topography and vegetation would continue to provide screening to Warkworth mine. The residences in Bulga are generally elevated which provides an unrestricted view of the damage and desolation this mine has and will produce. It further notes that the residents of potentially sensitive properties would be allowed to request site specific visual assessments which may identify the need for a site specific mitigation measures. The proposed site mitigation measures such as planting, trees etc. takes many years to develop into an appropriate visual screen and accordingly would not assist residents for many years to come.

Impact on near neighbours minimised

The EIS states that impacts on near neighbours have been minimised to the greatest extent possible using 'all reasonable and feasible measures while maintaining an economically viable mine plan'. Simply stated this is a matter of economics having priority over any other matters and this is not acceptable to the residents of Bulga.

History of minimal non-compliance

States that the Warkworth mine has a long history of minimal non-compliance with government conditions of approval. I refer to the 800 noise complaints for last year and a similar number will be received by the mine this year. The government and the mining company use loopholes in the INP and noise management plans to avoid compliance issues. One should ask the community of their views on this mines compliance and the real story will be evident. Warkworth and Mount Thorley mines run by Rio Tinto are unwelcome neighbours of Bulga and the other surrounding areas.

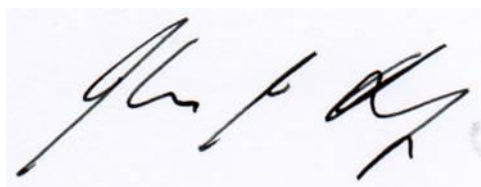
Justification.

The EIS states that Warkworth mine and adjoining Mount Thorley mines are longstanding members of the community. The residential community was established here almost two hundred years ago and many years before mining commenced. Generally the community regards the operation at Warkworth as an intrusion on their well-being, their health, and quiet amenity. The residents of Bulga state that there is no social licence for this company to continue operating considering the poor record of community relations and the disastrous environmental impacts.

Summary

In summary, this application must be rejected for all of the relevant reasons set out in the Land and Environment Court and Supreme Court Judgements applying to Warkworth Mine and the negative impact of this project on the residents of Bulga and surrounds. Rio Tinto does not have a social licence to continue operating in this area based on the poor relations with the community and the non-compliance with the approvals and the active discrimination against residents.

Yours sincerely.

A handwritten signature in black ink, appearing to read 'John Krey', written on a light blue background.

John Krey