

Rio Tinto Warkworth Modification Application.

Application no. DA 300-9-2002-I MOD 6

I object most strenuously to this application to mine in areas previously deemed to be NDAs (Non Disturbance Areas) that were, previously, disallowed by the Land and Environment Court. The application to "amend" the 2003 Approval, before the decision of the Supreme Court relative to a counter-appeal mounted by RTCA against the Land & Environment Court verdict, itself smacks of cynical disregard of due process.

That the government would accept this amendment, considering the above, also shows total contempt for the people and active co-operation (? collusion) with Corporate interest, above the interest of the people of the village of Bulga.

I had always thought governments of whatever persuasion were elected "by the people, for the people" and that we had the protection of a rigorous and objective legal system

2003 Approval and the Deed

This Application is presented as "An Amendment" to the 2003 Approval.

As such, it fails to address many of the fundamental Conditions in that 2003 Approval.

Socially, a major provision was the Deed which promised to protect the village of Bulga "in perpetuity" by disallowing significant movement westwards and providing for NDAs (non-disturbance areas) and disallowing any destruction of Saddle Ridge which was acknowledged as a protective factor for the village in respect of noise and dust.

Schedule 4 "Specific Environmental Conditions"

4.4: Deed of Agreement: "PRIOR to carrying out any development in the extension area the Applicant SHALL enter into a Deed of Agreement with the Minister. In this agreement the Applicant SHALL AGREE to;

b) PERMANENTLY protect the land in the NDAs for conservation and EXCLUDE open cut mining"

The Company's failure to ratify the Deed and to lodge an Application to SSC to entrench the areas defined in the local LGA was a travesty of due process. RTCA's ongoing failure to lodge the Deed and now to actually seek to mine through some of the NDAs is cynical in the extreme.

This application seeks to circumvent the decision of the Land and Environment Court which is totally unacceptable.

In 2013 the NSW Land & Environment Court rejected the mining of Saddle Ridge as part of the previous application.

The Court decision must stand.

This new application to mine into Saddle Ridge must be refused.

A requirement of WML's Consent Conditions is that they set up a Community Consultative Committee (CCC), which they have done. Further, the **DoPI guidelines for such Committees**, state that "*the proponent (WML) must inform the CCC of any future plans, future applications etc. well in advance.*"

However, WML (RTCA) is making this development application with no prior consultation with the people of Bulga. Rio Tinto met with the CCC only three weeks before but, no advice was given on this proposed application even though clearly it was fully documented and ready to submit.

The residents of Bulga Village are the most impacted by any expansion of this mine and yet they were told about this the day before the application was lodged. This demonstrates the total arrogance of this company, something Bulga residents have experienced since the huge surge in coal-mining activity at the end of 2010 when the community saw RTCA's total disregard of the provisions within their DoPI "Conditions of Approval" It was this disregard and the attendant reluctance of DoPI to enforce those conditions that led to the Bulga Community appealing against the mine Approval of 2012. Had they stringently abided by those conditions and had DoPI policed and enforced them we would not have been forced into appealing.

Ecology

The amendment proposal is ecologically flawed. This extension will destroy an Endangered Ecological Community (EEC) containing Central Hunter Grey Box-Ironbark Woodland and Central Hunter Ironbark-Spotted Gum-Grey Box forest vegetation.

This was discussed at length in the Land and Environment Court and Judge Preston rightly stated that one cannot offset EECs like this with "like for like".

More importantly, this area is the area of NDA within the 2003 Deed. Thus, this area should be preserved in its own right, not as an offset.

My personal concerns are with the impacts of noise and dust; these are the factors that led us to turn, in desperation, to the Land and Environment Court when RTCA flouted their conditions and DoPI and EPA ignored breaches

Noise

WML, with the assistance of DoPI, ignore the requirements of the current Consent Conditions on noise measurement. They make no attempt to quantify Low Frequency Noise (LFN) as required by the Conditions with reference the NSW Industrial Noise Policy (INP).

Since the noise levels are not measured in accordance with the Conditions laid down in the Consent, the noise data they provide, in their EIS, is completely worthless.

In their current EIS in the preamble to NSW INP (6.2) They discuss differing subjective reactions to noise i.e. some are "very sensitive" others are less so then conclude;

"the bulk of the population lies within these two extremes, being unaffected by low levels of noise and prepared to accept levels that are commensurate with living in an urban industrialised society"

This statement is ridiculous! Bulga is a small rural village with almost no Low Frequency background noise! By day, the usual noises are High Frequency, generated by animals and birds with occasional contributions from tractors and the like. There is almost no road traffic in Inlet and Wambo Roads.

By night, the noise from crickets and frogs is also High Frequency, (and soothing rather than disturbing) When we heard no mine-generated noise, nights were profoundly quiet. It is **only** mining that generates the Low Frequency Noise and it is **this** LF noise that is impossible to screen out.

By its' nature, it is not ameliorated by double-glazing or insulation. It travels much further than High Frequency noise and attenuates over a much greater distance.

The distress of residents from 2010 was so great that an independent noise study was commissioned. (SKM Dec 2011-Jan 2012)) This study clearly showed that two properties were **significantly** impacted by LF noise; one of those was our property which is more than 6km

from the mine, a clear indicator of the ability of LF to travel greater distance with less attenuation than HF noise.

This report then sought to minimise this impact by applying the “Broner” method (which proposes an absolute level of C weighted noise at 65DbC) This is a level which personal experience shows to be totally unacceptable in a rural area and one which takes no account of differing ambient noise in differing environments i.e. urban, suburban and rural.

Other researchers are more discerning and do account for such differences.

Again, the use of “Broner criterion” was an exercise cynical in the extreme; **impact is impact!**

This approach is analogous to saying a car that speeds at 100km an hour when the speed limit is “65” is not actually speeding if it is expressed as miles per hour (62)!!

This example illustrates the same point **speed is speed!**

In the MTW EIS they, also, make reference to “The ‘New’ Noise Criteria” in their projections. Broner’s conclusions have not yet been adopted and only, currently, in the consideration phase by EPA and have yet to enter the public consultation phase (sometime in 2014) when they will be duly subjected to closer scrutiny.

The selective use of Broner’s work is another cynical exercise, seeking to minimise one of the most critical issues. People who seek to live in a rural environment, one which was assured by the 2003 Deed should not have that environment turned into “*an urban industrialised society*” simply to accommodate the mine’s wish to make more noise and the government’s desire to recover royalties.

That MTW have the assistance of DoPI to circumvent the current INP requirement (which requires a factor of 5 to be added to DbA measured noise when there is significant LF noise) is evidenced by the **Sworn Affidavit** of Mr. Jeff Parnell, (DoPI Acoustic Consultant) to The Land and Environment Court. He **swore-on Oath** that DoPI would follow the INP with respect to LFN. Outside the court, Parnell stated he wouldn’t be doing that and DoPI’s refusal to enforce the Condition that requires WML to do it, demonstrates absolute contempt for the judicial system.

In summary; evidence to date has shown that neither WML nor DoPI can be trusted to honour **any** Condition in **any** Approval.

MTW have not adhered to their conditions and DoPI have not enforced those conditions.

Thus, history has shown MTW to have been devious in their interpretation of their conditions and DoPI complicit. The information in the current EIS reflects this deviance by mentioning INP but not applying it in the data submitted.

The second issue of personal concern is the impact of dust on air quality.

It is becoming increasingly apparent that pollution from fossil fuels significantly impact on the health of people exposed to it.

Air Quality

The report by the Department of Health “Respiratory and Cardio-vascular Diseases and Cancers among residents in the Hunter New England Area Health Service” (May 2010) has reached the following preliminary conclusions;

Compared with the rest of NSW the Singleton and Muswellbrook areas have higher rates of

- emergency department attendance for asthma and respiratory disease
- emergency admissions for all respiratory conditions other than asthma
- hospital admissions for cardio-vascular disease
- death from all causes as well as cardio-vascular disease.

Clearly the Hunter Valley is already seriously affected by pollution from the open cut mines and further exacerbation of this condition should not be entertained.

It is undesirable for governments to inflict a proposal on a community that has a high apprehension of health, injury or other serious environmental dangers. The Government is delinquent in its’ Duty of Care.

Approving more open-cut mining can only exacerbate this situation.

When we first moved to Bulga, the air was clean, the house was clean. Since the rapid upscale of operations from 2010, everything around is coated in black dust both inside and out.

This is in the air all around us; it is in our house, our drinking water, on plant foliage and **in the air we take into our lungs!**

Most importantly, this is the air that young children are exposed to and take into their developing lungs!

A University of Sydney report of 2012 "Health and Social Harms of Coal Mining in Local Communities" states as the key finding that;

"There are clear indications from the international health research literature that there are serious health and social harms associated with coal mining and coal fire power stations for people living in surrounding communities".

Government has a responsibility to the people, not an obligation to Corporate interest or to filling their coffers at the expense of those people.

Jobs

Government must weigh up the benefit of jobs versus the cost to the community of intrusive industries like mining.

Mines may provide jobs but if this is at the expense of the community's health associated with living near an open cut mine then it is too big a price to pay.

In any case the "Job Argument" is seriously overstated. (See "Economics")

Social Impact

Bulga is a rural village first settled almost 200 years ago. Descendants of the first settlers still live here

It is not a Tourist Destination or a place for Sightseeing (although much European and Aboriginal Cultural history resides here)

It is "A much-loved Home" to many families.

Encroachment of the mine with attendant increase in noise and dust problems has considerably decreased the value of homes in the area, particularly those most prized by long-term residents. These properties comprise many acres of natural beauty populated by native animals, birds and trees they require time and effort to upkeep and have become virtually "unsaleable" due to proximity to mining activity.

Such properties are not desirable to mine workers working long shifts. These are the only people now seeking to live in the area.

The disruption attendant on mining operations has made the area unattractive for other prospective buyers.

This has the effect of changing the cohesiveness of the village. People who work long and unsociable hours are unable or unwilling to be involved in the community.

Judge Preston's finding accurately summarised the impact(s) on the people who love this place and wish to remain living here;

"In relation to social impacts, I find that the Project's impacts in terms of noise, dust and visual impacts and the adverse change in the composition of the community by reason of the acquisition of noise and air quality affected properties, are likely to cause adverse social impacts on individuals and the community of Bulga.

The Project's impacts would exacerbate the loss of sense of place, and materially and adversely change the sense of community, of the residents of Bulga and the surrounding countryside."

Social impact is not only measured in numbers such as falling property values it is an impact felt “existentially” i.e. in the lived experience of the people who live here and wish to remain.

Visual Impact

The overburden removal and the ever increasing overburden dumps are already evident to the residents of Bulga who live on the more elevated properties. Further, the massive excavation into the eastern side of Saddle Ridge will have a major visual impact when viewing the Ridge from the east. The reinstatement and rehabilitation of the devastated Saddle Ridge will be impossible.



View from our property, today towards the mine complex

Aboriginal Cultural Heritage

The Aboriginal Cultural heritage in the expansion area must not be destroyed. Four out of seven artefacts remain from those identified in the earlier EA. With this expansion the remaining four will be destroyed. These artefacts were intended for preservation under the Deed of Agreement of 2003. This will not be honoured under this expansion.

Project Justification

Curiously, although the latest SEPP provides for economic justification to be the supreme point under consideration for Approval, no economic assessments in support for the project have been provided and no evidence is available to justify statements that Rio Tinto must expand the mine, into the area proposed, to maintain its viability and the maintenance of jobs.

The complete lack of economic analysis or justification of this project is contrary to the NSW government's adopted position that greater weight should be given to the economic aspects of mining proposals and also to the guidelines issued by NSW Treasury and the Department of Planning last year, *"Guidelines for the use of cost benefit analysis in mining and coal seam gas proposals."*

The intent is clear. One way or another, they want to mine the land in the 2012 Approval that was disallowed by the court. This is an underhand and dishonest tactic to circumvent the court process and judicial system.

Economics

The stated reason for applying for this amendment now, when they still have until 2021 to mine under their current 2003 Approval, is simply a reflection of their huge upsurge in mining activity when coal prices were high.

That, during this time, MTW chose to increase their operations and employ more people to optimise coal extraction have led to the current lease being almost exhausted and consequent job losses as the coal price dropped.

This is, hardly, the "fault" of the people of Bulga nor is it reasonable to now seek to mine NDAs as a result of a commercial decision made by Rio Tinto and MTW management in the past.

Now, dealing with falling coal prices, they are faced with the possibility of having to terminate jobs...jobs that were created in the days of high coal prices and at ridiculously high wages.

The preservation of these jobs will depend on only one thing – the price of coal.

It is **disingenuous** to shift this focus to a need to **immediately** mine parts of Saddle Ridge.

It would also be **ingenuous** to believe that; if permitted to do this once, MTW will not apply again in the future and continue to "nibble" at what was formerly (2003 Agreement) a "no-go" area as well as an area that Judge Preston in the Land and Environment Court confirmed as NDA.

Nor is it credible that, with the continuing drop in coal prices, more jobs will not be sacrificed. The "job justification" is a furphy. The real justification lies in RTCA's wish to sell this mine as an apparently viable concern, the most likely buyers were, formerly, India Coal.

In short this amendment is a cynical attempt to subvert both the 2003 Deed and the findings of Judge Preston in The Land and Environment Court.

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