

Mining and Industries Projects  
NSW Department of Planning & Infrastructure  
GPO Box 39 SYDNEY NSW 2001

15<sup>th</sup> July 2014

**Objection - Airly Colliery DA 162/91 Modification 3  
Existing Consent Conditions are Inappropriate"**

**Supplementary Submission**

In the regrettably short time permitted for submissions with respect to Centennial Coal's application to extend the time of its Airly mine, Capertee Valley Alliance ("CVA") makes the supplementary submission appearing below as agreed by the Department.



The endangered Regent Honeyeater, one of the attributes of the Capertee Valley

Capertee Valley Alliance Inc is a community group which encompasses the villages and localities within the Capertee Valley NSW.

The Capertee Valley is the second largest enclosed canyon in the world, has spectacular scenery, over 260 bird species and is registered internationally as an Important Bird Area (IBA). It also has many rare and endangered plant species some of which are only found in the valley. The valley boasts a birdwatchers bird trail and guide, both printed and online.

Agriculture consists of beef cattle, sheep, alpacas, goats, horses and of course, chooks. Tourism forms a large part of the economy of the valley includes many overseas bird watchers who come to view the birds and particularly the endangered Regent Honeyeater. Water is of paramount importance to the farming community and without groundwater it is likely that farming would not be viable.

CVA's general submission is that Centennial's application proceeds on the false premise that it is entitled to a "presumption of continuance" of the consent approval which expires in October 2014. CVA submits that Centennial must, in accordance with the provisions of the EPA Act, and the relevant mining SEPP, satisfy the consent authority that the extension of time it seeks for the Airly mine should be granted. CVA submits that Centennial has essentially made a series of assertions which are overwhelmingly unsupported by acceptable evidence. The "environmental assessment" relied upon was prepared by an employee of Centennial whose expertise to express many of the opinions contained in the document is not apparent. There is a demonstrable absence of methodology, sources of data, and general intellectual rigor throughout the document. The expert engineer's report annexed to the environmental assessment was prepared by a consultant paid by Centennial. The document lacks independence, and was not peer reviewed, or otherwise supported by other peer reviewed research.

As is not in dispute, Centennial's consent approval for the Airly mine was obtained more than 20 years ago, in reliance upon the provisions of the EPA Act which were then applicable. Australia had not then ratified the Kyoto Protocol. The 2007 and 2013 mining SEPPs were respectively 14 and 20 years from being legislated. CVA submits that Centennial must satisfy the consent authority that the time should be extended by reference to the planning regulations currently applicable to SSDs, as Airly mine undoubtedly is. CVA submits that, properly understood, Centennial has made no attempt to provide evidence which, in accordance with the "precautionary principle", establishes that the extension should be granted. Unless and until Centennial provides evidence of the matters required by the SEPP, and stakeholders have the right to comment on such evidence in accordance with the principles of natural justice, CVA submits that the application should not be considered by the consent authority. The fact that Airly mine was in care and maintenance mode from December 2012 to March 2014 is submitted to be irrelevant for present purposes.

CVA disputes Centennial's contention that the proposed extension will have minimal environmental impact is not supported by independent expert evidence, and, in reality is a case of "it is because we say it is". The consent authority has received credible independent expert evidence from a number of sources identifying environmental risks posed by the extension of mining at Airly on the basis now proposed by Centennial which differs materially from that previously represented by Centennial to have been undertaken.

With their knowledge and consent, CVA relies in this context upon the evidence of Dr Haydn Washington, Keith Muir of the Colong Foundation, Engineer K W Bayly, and hydro geologist Larry Cook to which more extensive reference will be made in CVA's supplementary submission. In short, this evidence suggests risks to the environment from subsidence, to water resources, and to the environmental heritage of the region in which Airly operates. It is to be remembered that the extension, if granted, permits public resources to be appropriated for private, foreign gain. The consent authority is submitted to be legally and morally obliged to reject the application unless Centennial discharges the onus of proof which it bears.

The 2013 SEPP affords economic considerations principal importance in the assessment of applications for mining licenses. The Centennial submission is transparently devoid of any attempt to place evidence of the economic impact of the extension before the consent authority. Other than the kinds of platitudes seen in television advertisements extolling the virtue of mining, the submission provides no evidence capable of satisfying the requirements for approval. To the extent that Centennial has referred, however superficially, to economic factors, such references raise more questions than they answer: why was the mine placed in care and maintenance in 2012, what became of the then 120 workforce, why was a workforce from another Centennial mine

brought in in March 2014, what was the impact on the area from which that workforce was removed, what is their tenure, what is to become of that workforce after October 2015, in what way(s) is it suggested that Airly has benefited the community economically, or will in the future, such as by way of enduring community infrastructure or other tangible benefits, and so the list goes on. To its credit, the PAC has in recent times rejected approval applications in reliance upon inadequate evidence with respect to economic benefits- other than those of the miner. The present application is submitted to fail totally to establish that the extension will have economic benefits for anyone but Centennial Coal.

CVA submits that Centennial's claim that it "acknowledges the need to co-exist with its regional community" is not supported by its own actions with respect to the natural environment of the Capertee Valley, the water resources of the valley, and its conservation, heritage and tourism. A number of submissions by experts qualified to do so address these issues, and CVA relies upon such submissions. Many of these values have been preserved and enhanced by residents of the Valley who were here before Centennial, and will be here long after Centennial has taken what it wants and gone. The justifiable concerns of the long term stewards of this unique place, and entitlement of future generations to enjoy it demand recognition, both legally and morally. CVA submits that the onus is on Centennial to establish the absence of risk, and not on the community to demonstrate its presence.

Centennial's submission does not even acknowledge the reality that agriculture and pastoralism have been the economic and social backbone of the Capertee Valley for more than 170 years, and continue to provide food and fibre for domestic consumption. These enterprises depend on the continued availability of clean safe groundwater, as does life in the Valley itself. Centennial's dismissive assertion that its proposed extension will have no impact on agriculture is unsupported by independent expert evidence, and contradicted by expert evidence which is, or will be, before the consent authority. CVA submits that the quantity of groundwater likely to be extracted, and return to the eco-system of processed water by the proposed extension of Airly mine demand that Centennial provide independent expert evidence establishing that the Valley's water resources would not be at risk before the application is considered.

It is reasonable to expect that a hydrological impact assessment (including impacts on groundwater) for the period of the extension should have been included in the EA and should be made publicly available prior to any further approval

In requesting specific conditions, please consider the following issues:

- The approved mining area under the application should be limited to Panels 101, 121, 122, 205 and 420 as described in the EA;
- Mining should be limited to first workings only;
- References to an allowable maximum subsidence of 1.8m should be removed and replaced with:
  - Negligible surface impacts resulting from subsidence;
  - Vertical subsidence to be no greater than 125 mm;
  - A maximum tilt of 2.5 mm/m; and
  - A maximum strain of 2.0 mm/m.
- Condition 12 (b) of the 1993 Consent should be updated to specify that damage to the 'internal' high cliffs and 'pagodas' and 'beehives' must be avoided as per the commitment in the Subsidence Assessment.

- Condition 13 of the 1993 Consent should be updated to require negligible surface subsidence as part of the commitment in the Subsidence Assessment.

In our view, the documents publicly exhibited in support of the MOD3, namely the EA and the Subsidence Assessment do not provide sufficient certainty for the community that the subsidence predictions will remain at the levels set out in the Subsidence Assessment. Accordingly, it is imperative that if the MOD3 is approved conditions of consent such as those set out are imposed to make it clear that the maximums currently allowed under the 1993 Consent are no longer acceptable.

Whilst we do not concede that the modification should be granted on any condition, if it is to be, it should be conditional on subsidence not exceeding 125mm, and extraction not exceeding the previously promised limits, as referred to by Keith Muir. Monitoring of water usage from surface and groundwater sources, and its return to the environment by an independent company nominated by the Office of Water and paid for by Centennial should be a condition of any approval of the modification application. All monitoring results should be made public.

Yours faithfully

Donna Upton,  
Secretary

Attached documents as support for this submission

1. Airly Mine Consent Modification	Roderick Campbell The Australian Institute
2. Airly Mine Extension of Time	Pells Consulting
3. Objection to Airly Colliery modification 3 – (extending 162/91 consent for a year) due to inappropriate consent conditions for a NPW Act reserve	Keith Muir Colong Foundation for Wilderness
4. Objection to Airly Colliery modification 3 – (extending the 162/91 consent for a year) due to <i>inappropriate consent conditions</i>	Dr Hadyn Washington The Colo Committee
5. NOT WHAT IT “SEAMS” May 2012	K. W. Bayly NSW Department of Trade & Investment.