

Colin Phillips - Submission re Mandalong Coal Mine - Centennial Coal

From: Candace Barron <candace.barron@smallbusiness.nsw.gov.au>
To: <Colin.phillips@planning.nsw.gov.au>
Date: Thursday, 12 December 2013 4:16 PM
Subject: Submission re Mandalong Coal Mine - Centennial Coal

Dear Colin,

I withdraw my request that the submission on this matter be held confidentially.

Kind regards
Candace

Candace Barron, Director
Dispute Resolution Unit (inc Retail Tenancy Disputes)
Office of the NSW Small Business Commissioner
Level 43 MLC Centre | 19 Martin Place | GPO Box 5477 | Sydney NSW 2001
T: +61 2 8222 4808 | **F:** +61 2 8222 4816 |
E: candace.barron@smallbusiness.nsw.gov.au |
W: www.smallbusiness.nsw.gov.au |

This message is intended for the addressee named and may contain confidential information. If you are not the intended recipient, please delete it and notify the sender. Views expressed in this message are those of the individual sender, and are not necessarily the views of their organisation.



The Director-General
New South Wales Government
Department of Planning

CONFIDENTIAL SUBMISSION - SSD-5144, Mandalong Southern Extension Project.

As the Director of Dispute Resolution of the NSW Small Business Commissioner who is the advocate for small businesses in their dealings with other businesses and government by: providing dispute resolution services; delivering quality business advice through the Small Biz Connect program; and by speaking up for small business within government.

The Office of the Small Business Commissioner has received an application for assistance with a dispute from Gillian and Barry Vaughan, the owners of a small business called the "Rainbows Reach Retreat" with the Centennial Coal Mining Company in relation to the Development Application for the Mandalong Southern Extension Project ("the Mandalong Development"). Our office has been assisting the Vauhans in understanding the process of negotiating with Centennial Coal for a reasonable settlement for the impact of the development on their business. The parties have not been able to reach a consensual agreement. I am concerned that the development will adversely impact on the viability of the Vaughan's business and that they will suffer significant losses.

**Compensation for Impact to Residential Amenity and Impact on the Business
Of the "Rainbow Reach Retreat"**

I understand, the Vaughan's purchased the property (DP 755238 – 193) 15 years ago on the basis that it was in a 72A conservation zoning flanked by bushland and state forest. They report that they have invested a significant amount of time and money building and operating an eco tourism/spiritual retreat. I'm told the Vaughans will not be able to continue with the current land use which is intrinsically linked with the tranquility of the pristine natural bushland environment. They are concerned there will be an impact of the Mandalong Development and operation of the development which will negatively affect the sustainability of the business. The Vaughans do not wish to continue to live on the property without the business, and the goodwill is not transferable to another location. The Vaughans are not at the stage in their lives where they are able to contemplate rebuilding another similar business in an alternative location.

Furthermore, attempts to sell the property at market value have been thwarted by the proposed development and its potential impact to the residential amenity. The market value of the property (before the mine extension project) was estimated to be \$1,200,000. A nearby residential property, which is smaller and without infrastructure, recently sold for \$950,000. A recent offer was made to purchase the Vaughan's property for \$1.1M. The offer was withdrawn following the purchaser's consideration of the potential impacts of the Mandalong Development to the residential amenity.

I am aware that the parties have attempted to negotiate for the voluntary purchase of the property by Centennial Coal. A letter of offer was made by Centennial Coal for compensation. The offer was declined by the Vaughans on the basis that the terms were uncertain and the amount did not reflect the loss of the value of the business and the market value property prior to the Development Application.

Centennial has expressed concern over the possibility that they may be required to compensate future owners of the property for the potential impacts of construction and the operation of the mine. However, it seems they are reluctant to assume the burden of risk with on-selling the property to purchasers who may be put off by the potential impacts of the mine extension. It is estimated that the loss in value to the Vaughans as a result of the Mandalong Development, will be in the vicinity of \$600,000. This amount is based on a separation of the business interests from the property value, including limits that would be put on a new purchaser to claim compensation.

Potential Conflict of Land Use

The pre-mining land use within the project area has been a mix of grazing and native forest, with a small area of residential and special uses land. The Vaughan's report they purchased their property 15 years ago in an area that is bushland zoned (72A conservation) to secure an environment that was suitable for their specific business and lifestyle purposes. Centennial's proposal to build a 15 acre industrial operation, the Mandalong Surface site, poses a potential conflict with current agricultural and recreational land uses. The Vaughan's property is the nearest residence and is located approximately 900 metres from the proposed infrastructure site.

Impacts of Noise and Emissions

The "Rainbow Reach Retreat" is a sensitive business and land use in a passive recreation and residential area for the purpose of the *Interim Construction Noise Guideline 2009* (Table 3). It is also assessed as a "sensitive land use" for the purpose of the *Interim Construction Noise Guideline 2009* (Department of Environment & Climate Change NSW).

The Mandalong Development will significantly impact on the Vaughan's residential and business amenity, with noise effects on a 24/7 basis from the construction and operation of the proposed development which includes:

- The construction noise of sinking shafts 24 hours seven days a week;
- Noise of the mine extractor fans (which will exceed EIS projections because the fans used will be larger than those assessment); and
- Exploration drilling.

The EIS noise impact is predicted to be below the relevant "noise affected" level however, shaft sinking activity outside of standard recommended hours is predicted to marginally exceed (by 1 dBA) the relevant "noise affected" level at the Vaughan's property. Mitigation measures to provide acoustic shielding have been proposed in the EIS, however, I am concerned that more stringent conditions should be placed on shaft sinking activity as there is some uncertainty as to whether the predicted level of noise will not exceed the affected level. I'm told that the base ambient noise reading undertaken was not measured as required "field free" but recorded in a row of trees which would have increased the levels as a result of the reflected noises. This would be a breach of the integrity of the Noise Impact Assessment undertaken by SLR (Appendix R of the EIS).

Small businesses such as the Vaughan's are notoriously ineffective at advocating in their own interests due to the inherent time and financial challenges of operating a small business. As a result, the Vaughans have not been able to meet the expense estimated at \$3,000 to support the revelations regarding the ambient noise

readings, which were revealed in discussions with an employee of SLR. In assessing the impact on amenity and potentially intrusive level of noise impacts, I also recommend that a condition of development approval is that stringent mandatory and regular noise impact monitoring is conducted to ensure that noise is maintained at amenity level. The sufficiency of mitigation measures such as the construction of a temporary noise barrier 20 meters from the drill rig is questionable.

Reverberations, pollution emissions, odour and the operational noise of the mine ventilation fans is a significant source of concern considering the location of the fans on the surface and one fan's proximity to the Vaughan's property. I note that the fans will operate 50% of the time during a 24 hour period at full engine speed.

In summary I suggest there is a possibility that the EIS estimates of the predicted noise impacts have underestimated the extent of the noise impact on the Vaughan's property during construction and operation of the project. The credibility of SLR's assessment of the impacts and ability of the mitigation management proposed to reduce noise to achieve ambient noise criteria is questionable and lacks credibility.

Recommendation

On the basis of the considerations outlined above, I submit that more stringent conditions be attached to the development, and consideration be given as to whether development is granted subject to a suitable agreement being reached between the Vaughans and Centennial Coal in relation to fair compensation for the likely loss of their business, impacts to residential and business amenity, and the loss in value to the property.

Yours sincerely



Candace Barron
Director, Dispute Resolution
11 December 2013