THE COLONG FOUNDATION FOR WILDERNESS LTD.

Monday February 27th, 2016

Mining and Industry Projects
NSW Department of Planning and Environment
GPO Box 39
Sydney NSW 2001

Dear Sir/Madam,

Submission regarding Springvale Mine SSD 5594 Mod 2

The Colong Foundation objects to Springvale Mine modification 2 because the proponent must comply with the clean-up timetable specified for mine water discharge from LDP009 set in the September 2015 development consent and agreed by the proponent in an exchange of letters. We welcome the proposed improvements that will remove mine water from the Coxs River, but the Foundation opposes any weakening of initial consent conditions to allow continued pollution of Sydney's drinking water supplies.

In the June 2015 Review Report, the Planning Assessment Commission stated that the Applicant 'advised the EPA that it could meet a performance measure of 700 µS/cm to 900 µS/cm at LDP 9 by 31 December 2016, using a combination of pre-treatment of discharge water, duplication of existing reverse osmosis [RO] infrastructure and blending of water from Clarence Colliery. The EPA has since agreed to a timeframe of two years (i.e. until 30 June 2017) for the Applicant to meet a 50th percentile of 700 µS/cm, a 90th percentile of 900 µS/cm for salinity and a 100th percentile limit of 1000 µS/cm EC' (page 19). Further Mr David Moult Managing Director and CEO wrote to the Environment Protection Authority on May 29, 2015 to say that 'Centennial acknowledges and agrees to the EPA's proposal for 700/900 EC limits as discussed in your letter.' The terms agreed in the exchange of letters are clear and specific, so there are no reasonable grounds for Modification 2 to be granted.

The Environment Protection Authority (EPA) and the Department of Planning and Environment (DPE) do not state how liquid waste from LDP009 is to be cleaned up. The means of compliance is a matter for the proponent. The DPE and EPA role is to propose and negotiate a compliance timetable and set water quality standards, in consultation with the proponent and the community. Having done that, the Planning Assessment Commission reviews the information and makes first an assessment and then a determination. These steps have been taken and it is not appropriate for the proponent to now seek relief from its agreed obligations to clean up the discharge point, LDP009.

We understand that the proponent, Centennial Coal, cannot met these conditions with the proposed long term solution of mine water transfer, storage in Thompsons Creek reservoir and reuse of mine water in the Mt Piper power plant. It does not follow that the proponent must obtain a consent variation, although we acknowledge that the long term solution is a good solution.

The Colong Foundation for Wilderness is concerned that Centennial Coal is "gaming the planning system" by seeking this modification. Section 96(4) of the Environmental Planning and Assessment Act, 1979 (EP&A Act) states that "*The modification of a development consent in accordance with this*

section is taken not to be the granting of development consent under this Part, but a reference in this or any other Act to a development consent includes a reference to a development consent as so modified." As a consequence of this provision in the EP&A Act regarding consent modification, the evaluation of this current modification need not strictly apply the prohibition of clause 10(1) of the State Environmental Planning Policy (Sydney Drinking Water Catchment) 2011, as this applies only to new development applications.

Centennial Coal is using the section 96 (4) provision to game the development consent modification process in a manner inconsistent with the intent of modification of section. In other words Centennial Coal is not fixing an error in their consent or making a **minor** modification to the consent that causes **minimal** environmental impact, but rather Centennial are extracting an aspect of the consent they now no longer wish to comply with. The proposed modified consent **will then allow continuation of a major environmental impact** and so it can't be said to be substantially part of the same project. In under words, the proposed modification is not consistent with the modification provisions in the Act and this proposal and the Department of Planning and Environment (DPE) has to recommend refusal of consent.

The loophole created by section 96 (4) enables Centennial Coal to avoid the obligations they agreed to under the planning evaluation process of their own free will. As a result only section 79(C) of the EP&A Act will apply to the modification application. The determining authority need only *consider* the State Environmental Planning Policy (Sydney Drinking Water Catchment) 2011 and not strictly apply the neutral or beneficial effect test to mine water discharges from LDP0009. Again the intent of the modification provisions of the Act would be defeated, adding to the grounds on which the DPE should recommend refusal of this modification of consent.

The terms of the September 2015 consent should still apply

The terms of the consent require a short term solution to meet the above discharge standards. For example, the proponent could install additional temporary RO plant at LDP0009 to meet discharge standards by 30 June 2017.

Energy Australia installed a portable RO Plant at Wallerawang Power Plant to ensure Springvale's mine water was suitable for reuse at the power plant. So a temporary water treatment solution is not unusual in this region, and RO plants of a suitable size for LDP009 are available.

The Colong Foundation can envisage a scenario where the construction of its proposed long term treatment proposal is delayed, and further consent modifications as a means of gaining extensions of time. The current extension would bring to four years the period required before discharges from LDP009 need to be further treated. A few years after that and Centennial Coal may argue that the long term treatment proposal is not worthwhile for the time remaining before consent lapses.

Modification 2 should be refused and the proponent should be required to comply with the consent conditions. Centennial Coal should only be allowed to legally continue its discharge of 19ML/day of toxic mine water into Sydney's drinking water supplies if it treats the discharge to the standards specified by the 30 June 2017 deadline.

The Foundation also disputes that the mine water is no longer acutely toxic. We find the evidence presented regarding an unspecified change in discharge treatment in the environmental assessment to be unconvincing, given the state of the Coxs River and the levels of lead, cobalt, mercury and lead in the mine water discharge.

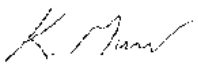
The Colong Foundation requests that the following proposals be dealt with together through Department of Planning and Environment, and the Planning Assessment Commission processes:

- Springvale Mine SSD 5594 Mod 2 Western Coal (the proposed discharge deregulation that is the subject of this submission);
- Springvale Water Transfer and Treatment Project SSD 16_7592 proposal;
- The foreshadowed modification of SSD 16_7592 proposal for the storage of treated mine water in the Thompsons Creek Reservoir proposal;
- The Western Services SSD 5579 Mod 1 (proposed emplacement of waste from the water treatment plant); and
- The revision of LDP006 discharge standard as this discharge is part of Springvale mining operations, water emplacement from the water treatment plant and the site is owned by Centennial Springvale.

The above proposals are all intimately related to one another and will only be properly understood if assessed together.

Thank you for the opportunity to comment.

Yours sincerely,



Keith Muir
Director
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