

P O Box 317
KATOOMBA 2780
26 February 2017

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

Dear Sir/Madam,

**Springvale Mine - Modification to continue to discharge current highly polluted mine discharge
(SSD 5594 - MOD 2)**

I object to the proposed modification of the Springvale Mine consent (**SSD 5594 - MOD 2**) that would allow additional mine water treatment of the Springvale Mine discharge to be deferred for at least two more years. Springvale Mine discharges toxic mine water to Sawyers Swamp Creek which immediately flows into the Coxs River. Coxs River is part of Sydney's drinking water catchment. This consent modification proposal, if approved, would cause on-going pollution with toxic metal salts of the Coxs River catchment, the Greater Blue Mountains World Heritage Area and Sydney's drinking water resources. Centennial Coal must not be allowed to avoid the mine water discharge standards that it had previously agreed to with regulatory authorities while ever it discharges to the Coxs River as approved in September 2015.

The consent conditions subject to the modification application (MOD 2 conditions) set out a timetable for progressively cleaning up the discharge of mine waste water, with upper limits on salinity level to be met by 30 June 2017 (Springvale Mine Expansion Project (MEP) conditions of consent, Schedule 4, Condition 12) . Centennial is seeking to remove the requirements to meet reduced salinity levels by 30 June 2017 and to delay eliminating acute and chronic toxicity to aquatic species by two years (30 June 2019 rather than 2017). If approved, this would allow the current high level of discharge to continue for at least two more years. The only target remaining is meeting a limit of 500 micro siemens/cm by 30 June 2019. The applicant says that this would allow them to comply with the (amended) consent conditions and to meet them through the Springvale Water Treatment scheme (Springvale Water Treatment) (SSD 7592), if it is built and operating by 30 June 2019.

Centennial Coal agreed to the MOD 2 conditions in May 2015. The Managing Director and CEO of Centennial Coal wrote to the Environment Protection Authority (EPA) 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'. 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'.(emphasis added) 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 $\mu\text{S}/\text{cm}$, a 90th percentile of 900 $\mu\text{S}/\text{cm}$ for salinity and a 100th percentile limit of 1000 $\mu\text{S}/\text{cm}$ EC' (page 19). The 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 Planning Assessment Commission then added these conditions to the September 2015 consent.

While the modification retains the June 2019 target it removes the progressive reduction of salinity and toxics which was agreed to and added to the consent conditions. The health of the river is now being brushed aside on the basis of a mere proposal. This water transfer scheme is yet to be approved, built and commissioned so there are a lot of unknowns. If approved, it could still be delayed, it could be reduced in scale to meet funding constraints.

It is up to the mine operator how they meet these performance targets. They have already set out how they could achieve this (see quote above). For instance, they could install a temporary water treatment facility to meet the terms of its development consent so that mine water flowing into drinking water supplies receives at least a basic standard of treatment. These salinity reduction targets need to stay to reduce the discharge to the river as long as Springvale mine continues to discharge highly saline toxic waste to the river.

Improving the health of Coxs river was reason for imposing the conditions that MOD 2 seeks to remove

"The section 96 procedure cannot be used as an indirect means of challenging a condition imposed on the original consent.... It has been held that in order to properly assess and consider an application to modify a condition of consent, it is generally important to have regard to the perceived reason why the condition was imposed in the first place (*Randall Pty Ltd v Willoughby City Council* (200) 137 LGERA 25)"¹

The reasons for the MOD 2 conditions are clearly to progressively reduce toxicity in the Coxs River focussing particularly salinity in the short and long term. An indicator of how important these conditions were is that the EPA could not support the EIS "...given the absence of any commitment in the EISs to address the handling/treatment of the mine water, in either the short or long term"² The EPA had previously advised that "the EIS had not adequately assessed the potential environmental impacts of the proposed discharge of saline mine water to the Coxs River system"³ The EPA had an "ongoing program of improving the handling of mine water to either improve the quality before discharging to the environment or implementing an option of beneficial re-use, in order to protect the local aquatic environment"⁴ That ongoing program included a Pollution Reduction Program to treat mine water before discharge. The Program began in 2012 but was put on hold by the Springvale MEP application.

¹ D Farrier and P Stein, *The Environmental Law handbook* 6th Edition, 2016, p. 257.

² EPA Letter to Department of Planning 3 june 2014 p.2

³ EPA Letter to Department of Planning 3 june 2014 p.1

⁴ EPA Letter to Department of Planning 3 june 2014 p.2

Before the Springvale MEP was applied for, the “EPA’s current position (was) a continuation of a regulatory effort to reduce the salinity concentrations of the upper Cocks River.”⁵ As well, the EPA considered the discharge limits before Springvale MEP was approved were only “...interim until a change in the management of the mine water management (handling, treatment etc) was implemented”.⁶

EPA Chief Environmental Regulator reported on the agreement with Centennial Coal regarding staged reduction levels of salinity. He advised the Department of Planning (DPE) that the EPA’s “...support for Springvale MEP and agreement to licence this project (subject to planning approval) is dependent on these key limits being included as statutory variations to environment protection licences for any discharge from the Centennial Springvale Colliery”.⁷

These conditions were added to the consent conditions and became part of the approved conditions of consent in September 2014. The health of the river and its continuing improvement was clearly was the reason for the additional conditions. This should goal should not be abandoned while a replacement treatment process is not in place.

These same conditions were central to the approval process and meeting mandatory requirements under the Sydney Drinking Water SEPP

State Environmental Planning Policy No 58—Protecting Sydney’s Water Supply (SEPP 58) states that a development consent cannot be approved if it does not to satisfy the SEPP requirements. SEPP 58 contains a concurrence power in which the designated Chief Executive has to consider such matters including that “...the development or activity will have a neutral or beneficial effect on the water quality of rivers, streams or groundwater in the hydrological catchment...” [SEPP 58, cl 10 Matters for consideration].

The importance of the consent conditions, including specifically the staged reduction timetable, was recognised by the Land and Environment Court as important proof that SEPP 58 and its NorBE test had been applied. Pepper J said that :

[199] “The PAC was advised that the Department regarded the NorBE test as satisfied and that the discharge limits for salinity agreed between Centennial and the EPA would have a beneficial impact on water quality....”

“[202] “The PAC sought expert advice from the EPA and Water NSW which was recorded in the second PAC Review Report. The EPA advised the PAC that it was satisfied that NorBE existed through the recommended conditions, especially in relation to drinking water. Water NSW advised the PAC that it accepted the agreement between the EPA and Centennial as to salinity in the discharge of the mine water from the project (the 22 June 2015 agreement). The second PAC Review Report recorded the PAC’s satisfaction that the proposed discharge limits for salinity the subject of the agreement with the

⁵ EPA Letter to Department of Planning, 4 November 2014 p.2

⁶ EPA Letter to Department of Planning, 4 November 2014 p.2

⁷ EPA Letter to Department of Planning 22 June 2015 p.1

EPA, and the requirement for an Upper Cocks River Action and Monitoring Plan (included in the conditions attached to the consent), were appropriate.

[203] “The PAC had before it not only the text of cl 10(1) of the Catchment SEPP but was ... aware of its obligation under the clause. The PAC was also aware of the various assessments of the application of the NorBE test to the project and the advice of the Department and the EPA that the NorBE test would be satisfied if the recommended conditions concerning salinity were imposed. The granting of the consent with the adoption of the recommended conditions is, in my opinion, a powerful indicator that the PAC formed the requisite state of satisfaction.”

If this test had not been satisfied, the consent would have been refused. So what does it mean to now remove some of those key conditions? These conditions were key factors in the application of the NORBE test which were recognised and accepted by the regulatory authorities.

Attempting to use a loophole in the planning law to avoid consent requirements

It also appears that seeking to remove the timetable through a modification is using a loophole in the *Environmental Planning and Assessment Act, 1979* (EPAA) to weaken the consent. Section 96(4) of the EPAA 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...” As approving a modification is not in itself a separate development consent, (s.96(4)), SEPP 58 may not have the concurrence force which applies to the awarding of development consent. The applicant is attempting to use this loophole to remove conditions which it very clearly did not want in the first place.

DPE constrained if the water transfer scheme is delayed or does not go ahead

If for some reason, the water transfer scheme does not go ahead the conditions removed cannot be restored by the consent authority. Unlike the federal environmental protection law, the consent authority under the EPAA cannot initiate changes to consent conditions. Only the proponent can seek to change the consent.

In summary, the MOD 2 conditions should be retained for the continuing protection and improved health of the Cocks River; the aim the EPA so tenaciously pursued in the negotiation of the Springvale MEP consent and a key factor in the court's review of that decision. How the applicant meets the agreed targets is up to the applicant. Any need to review the conditions should be left until after the water treatment scheme is operating.

All Springvale related modifications application should be treated together

This proposed consent modification is one of five modification proposals by Centennial Coal related to Springvale's mine water treatment. The other proposals are: the mine water transfer, treatment and reuse at Mt Piper Power Plant; storage of treated mine water in Thompsons Creek Reservoir; the emplacement of waste from the water treatment plant; and effective treatment of highly polluting discharges from the emplacement area.

I request that these five proposals be considered together through the Department of Planning and Environment, and Planning Assessment processes. Each proposal will not be properly understood unless these matters are assessed together

A handwritten signature in black ink, reading "Madi Maclean". The signature is fluid and cursive, with a large initial 'M' and a trailing flourish.

Yours sincerely
Madi Maclean