

28 February 2017

Ms Carolyn McNally
Secretary
NSW Department of Planning and Environment
GPO Box 39
Sydney NSW 2001

Also by email: Carolyn.McNally@planning.nsw.gov.au

Copy to: Dr Sandie Jones, Manager Regional Operations (Central West Region)
Sandie.Jones@epa.nsw.gov.au; paul.freeman@planning.nsw.gov.au

Dear Ms McNally

Re: Springvale Mine SSD 5594 Mod 2 – Salinity Limit Amendment

We refer to the above matter in relation to which we act for 4nature Incorporated.

Our client has instructed us to write to you setting out our view on the legal effect of what is being sought by Centennial Coal in its second modification application concerning the salinity limit amendment (**Modification Application**).

Background

As you would be aware, clause 10 of the *State Environmental Planning Policy (Sydney Drinking Water Catchment) 2011* (**Catchment SEPP**) prohibited the PAC from approving the Springvale Extension Project unless it was satisfied that “the carrying out of the proposed development would have a neutral or beneficial effect on water quality.”

Through the Modification Application, Centennial Coal is seeking to amend Schedule 4, Condition 12 of SSD 5594 to remove the requirement to meet limits for salinity of 700 (50th percentile), 900 (90th percentile) and 1,000 (100th percentile) µS/cm EC by 30 June 2017 (the **30 June 2017 Requirement**).

As the Department would be aware, the mine’s impact on Sydney’s drinking water catchment was the source of much objection from members of the public, WaterNSW (formerly the Sydney Catchment Authority) and the EPA during consultation on the original development application (SSD 5594). Initially, the EPA did not support the initial SSD due to its impacts on the drinking water catchment, and only gave its support once Centennial Coal agreed to meet the 30 June 2017 Requirement. That agreement is found in a letter dated 29 May 2015 sent from Mr David Moul, Managing Director and the CEO of Centennial Coal to the EPA in which he states that, “Centennial acknowledges and agrees to the EPA’s proposal for 700/900 EC limits as discussed in your letter.”

Additionally, the PAC records in its First Review Report that, “The Applicant has 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 infrastructure and blending of water from Clarence Colliery.”

Centennial Coal’s agreement and active acceptance of the 30 June 2017 Requirement was acknowledged by the PAC in its Second Review Report (dated 15 September 2015, six days prior to granting consent, at p 4).¹

The Modification Application is not “substantially the same development”

Centennial Coal is now seeking a modification to those conditions under s 96(2) of the *Environmental Planning and Assessment Act 1979*, on the basis that the development as modified will be “substantially the same” as the project for which consent was given in 2015. With respect, we do not agree.

If the Modification Application is approved, this would constitute a substantial alteration to the mine as originally approved, as it would allow Centennial Coal to effectively increase the pollutant concentrations for salinity in the mine water it discharges into Sydney’s drinking water catchment, compared with the development that was originally approved containing the 30 June 2017 Requirement. Such a change would result in development that is not substantially the same as that which was originally approved.

The Modification Application cannot rely on the proposal for a Water Treatment Project

Centennial Coal relies in its Modification Application on its proposed Water Treatment Project (**WTP**) being approved and implemented, which is the subject of a separate SSD application (SSD 16_7592).

We note that the WTP is currently at the assessment stage, and has not yet been approved by the PAC, or implemented by Centennial Coal. The Department should avoid any perception that the SSD application for the WTP has been predetermined.

As such, we take the view that it would not be proper for the Department to assume that the WTP will be approved and built, given that this separate SSD project proposed by Centennial Coal is still subject to its own merits assessment, and even if approved is not required under the Springvale Mine Extension conditions to be built.

Request to consider the timing of the Modification Application

Our client is concerned as to the timing of the request to modify the consent. As set out above, the PAC Review Reports in 2015 referenced Centennial Coal’s agreement to the pollutant concentration limits for salinity (including the 30 June 2017 Requirement) proposed by the EPA on 29 May 2015.

¹ Available here:

<http://www.pac.nsw.gov.au/resources/pac/media/files/pac/projects/2015/08/springvale-mine-extension-project-second-review/review/springvalemineextensionprojectsecondreviewreportpdf.pdf>

Our client queries exactly when it was that Centennial Coal became aware that it would be unable to comply with the undertakings it gave to the EPA (and therefore also to the PAC during the course of the PAC's consideration of whether to approve the development), given that it applied for this modification on 22 December 2016, just 15 months after the PAC's approval of SSD 5594 subject to the conditions to which Centennial had agreed. For the WTP, Centennial Coal sought the Secretary's Environmental Assessment Requirements just four months after the PAC's approval of SSD 5594.

In this regard, our client asks that the Department satisfy itself as to the timing of when Centennial became aware that its agreement with the EPA made in May 2015 and referred to by the PAC in September 2015 could not be met, with a view to ensuring compliance with s148B of the *Environmental Planning and Assessment Act 1979* in relation to the approval of the Springvale Extension Project (SSD 5594).

If you have any queries, please contact myself or Elaine Johnson, Principal Solicitor, on (02) 9262 6989.

Yours sincerely

EDO NSW

A handwritten signature in black ink, appearing to read 'Rana Koroglu', is written over a light blue rectangular background.

Rana Koroglu
Senior Solicitor

Our ref: MAF24760