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Nature Conservation Saves for Tomorrow

27 September 2014

Mr Paul Forward
Chairman
Planning Assessment Commission for Airly Mine Modification 3
GPO Box 3415
SYDNEY NSW 2001

D323/14 – Centennial Coal Airly Mine Mod 3

Comments for the Planning Assessment Commission Meeting 30 September 2014

Dear Mr Forward,

The Blue Mountains Conservation Society opposes the extension of Airly Colliery operations for another year ie to 21 October 2015. The Society believes that Centennial Coal, as an experienced operator of seven coal mines in NSW would be well aware of the requirements and timeframes for approval of development consents and should not be in a position of running out of time. Any extension should be assessed in the context of the assessment of the Airly Extension Project.

In relation to the Department of Planning and Environment (DPE)'s Assessment Report regarding Airly Mine Modification 3 (DPE AR), the Society is pleased that:

- The maximum subsidence impact assessment criteria, particularly, of 125 mm for vertical subsidence are now part of the conditions of consent; and
- Additional conditions relating to environmental monitoring, review and management of subsidence have been added.

However, the Society has a number of concerns about the proposed project, in summary:

- Although the surface land of the project is now a state conservation area and managed under the *National Parks and Wildlife Act 1974* (NPW Act), the DPE AR and the proposed conditions do not recognise or discuss the significance of this for this project;
- The conditions to control subsidence do not go beyond the DPE Model Provisions for Underground Mining (Model Provisions) which are for any land, not land being managed under the NPW Act;
- new monitoring conditions will not be carried out until the term of the extension is virtually completed so they will be ineffective in relation to this one year extension. The results of the reviewing and monitoring will not be available in time to inform the assessment of the Airly Extension Project;

Additionally, it is of concern that the PAC has decided to exclude the 217 individuals who made submissions from the opportunity of expressing their concerns to the Planning Assessment Commission (PAC) before it makes its decision and that the reason given is that the proponent is running out of time.

Mugii Murum-ban State Conservation Area

State Conservation Area is not referred to in the Legislative Context section of the DPE AR nor is it mentioned in Condition 3 (Statutory Requirements) of the Conditions of Consent (as proposed to be amended for Mod 3).

Since 2011 the "site" for the project and consent has been declared a state conservation area under the *National Parks and Wildlife Act* (NPW Act). Under section 30G (1):

" (1) The purpose of reserving land as a state conservation area is to identify, protect and conserve areas:

(a) that contain significant or representative ecosystems, landforms or natural phenomena or places of cultural significance, and

(b) that are capable of providing opportunities for sustainable visitor or tourist use and enjoyment, the sustainable use of buildings and structures or research, and

(c) that are capable of providing opportunities for uses permitted under other provisions of this Act in such areas, including uses permitted under section 47J, **[Provisions relating to mining]**

so as to enable those areas to be managed in accordance with subsection (2).

(2) A state conservation area is to be managed in accordance with the following principles:

(a) the conservation of biodiversity, the maintenance of ecosystem function, the protection of natural phenomena and the maintenance of natural landscapes,

(b) the conservation of places, objects and features of cultural value,

(c) provision for the undertaking of uses permitted under other provisions of this Act in such areas (including uses permitted under section 47J) having regard to the conservation of the natural and cultural values of the state conservation area, ...

(f) provision for appropriate research and monitoring.

The land in which the project is conducted is no longer a State Forest (lands set aside for exploitation of their vegetation) and has become land reserved for its conservation values, albeit while allowing mining activity. The assessment needs to take these changed circumstance into account when considering approval and on what specific conditions. For instance, this could lead to stricter conditions than are currently in the Model Provisions, which is only a guidance document, not legislation.

The updated conditions relating to subsidence, monitoring, review and public access to information

- **Subsidence Impacts:** The subsidence monitoring in the amended conditions is not to the more detailed standard of the model provisions which include validating subsidence predictions. Comparing Condition C5(m) in Model provisions says with Condition clause 13B (i) in Airly Mine Mods 3 conditions.
- In a consent which ends on 21 October 2015:
 - The Environmental management strategy does not need to be approved by DPE until mid November 2015 (it has to be submitted by 30/9/2105 and then DPE is to approve in 6 weeks ie Mid November) (condition 36) .
 - The first independent environmental audit will not be completed by end of 2015 and submitted to DPE by mid February 2016 (condition 44);

Consequently, the new monitoring conditions will be ineffective in relation to this one year extension. As well, the reviewing and monitoring will also not provide data in time to inform the assessment of the Airly Extension Project;

- **Definition of an Incident** The definition of an "Incident" (Condition 42) is not defined. The consent conditions do not use the current definition in the *DPE Model Provisions for Underground Mining* which state that "the applicant shall notify, at the earliest opportunity, the director general ... of any incident that has caused or threatens to cause, material harm to the environment:" (MP, Condition F7). The wording is critical because it reflects the threshold of what constitutes an offence under the *Protection of the Environment Operations Act 1997*.
- Condition 46 (Access to information) needs to include reporting monitoring data not just summary reports and needs to be amended to include public reporting of incidents.

The PAC meeting for objecting groups only

The Society is pleased the opportunity to address the PAC meeting, however, it is concerning that the meeting is by "invitation only" to groups. The PAC does not list the PAC meeting at all. The PAC acknowledges that this is being done to assist the proponent whose consent is running out.

Although there is no statutory requirement to hold a meeting, the PAC Meeting guidelines say that "... the Commission considers that a meeting to hear public views on the Assessment Report and Recommendation will improve public participation and transparency of the decision-making process, particularly in matters that have a high level of community interest" [PAC Meeting Guidelines, para 1.3] As well, public participation is one of the objects of the EPAA Section 5 (c): "to provide increased opportunity for public involvement and participation in environmental planning and assessment." For these reasons, reducing the opportunity for public participation where a proponent has not allowed enough time to secure the necessary approvals for their activities sets a poor precedent.

According to their website, Centennial coal owns seven operating coal mines in NSW, "making Centennial one of the largest underground coal producers in NSW. Consequentially, BMCS believes that Centennial Coal would be well aware of the development consent process and usual timeframes needed for coal mine operations in NSW.

Yours sincerely



Madi Maclean
For the Management Committee