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Nature Conservation Saves for Tomorrow

22 September 2015

Ms Robyn Kruk AM
Chair
Planning Assessment Commission
GPO Box 3415
SYDNEY NSW 2000

Dear Ms Kruk,

Submission on Airly Mine Extension R033/15 (SSD 5581)

The Blue Mountains Conservation Society is a community organisation working to achieve the preservation and regeneration of the natural environment of the Greater Blue Mountains. The Society has a membership of around 900 people.

The proposed project area contains 85% (3,090 ha) of Muggie Murum-ban State Conservation Area (MMSCA). Mining has been taking place in the western part of the park. However, this proposal would extend underground mining into the eastern part, that is, to include Genowlan Point and the eastern part of Genowlan mountain (an additional 1238 ha or 32%). Genowlan mesa is a recognised biodiversity hotspot and the location of the only known population of Genowlan Point *Pultenea*.

The Conservation Values of MMSCA

“MMSCA is dominated by two prominent mesas which are major visual features of the Capertee Valley. The Statement of Significance in the draft Plan of Management (POM) for MMSCA describes the area as having the greatest range and concentration of pagodas within the greater Blue Mountains ... and is known by some as the ‘three hundred sisters’ in reference to the number and diversity of pagodas. The park contains a great diversity of ecosystems, supporting several threatened plants and animals and two threatened ecological communities. The area is of particular significance to the Wiradjuri people and also contain numerous historic heritage sites.”¹

¹ MMS CA POM, statement of Significance, p.2

This area has been described as the 'jewel in the crown' of Gardens of Stone area by an expert in the area's biodiversity.²

The purpose of reserving land as a state conservation area is to identify, protect and conserve areas: (1) (a) *that contain significant or representative ecosystems, landforms or natural phenomena or places of cultural significance, ...*³ A state conservation area is to be managed in accordance with the following principles:

- (2) (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,*⁴

Whilst underground mining is permitted in a SCA it should not be at the expense of the very values that made that SCA worthy of conservation under the *National Parks and Wildlife Act*. As a mine underneath an SCA it would be expected that the level of protection for the environmental aspects of the land above, the very things which made the land worthy of conservation declaration, should have stronger protection and outcomes when compared with an underground mine under farming land or a state forest.

In 2014 Centennial Coal committed through Modification 3 to a maximum of 125mm subsidence throughout the current mining area rather than the 1.8 metre subsidence of past approvals. This change is contained in the current consent conditions and is a major improvement to protecting the area mostly contained in the Mugii Murum-ban State Conservation Area.

Key Concerns

The Society has a number of key concerns with the proposal for the mine expansion in its current form. These are in summary:

- Inadequate protection of cliffs, high cliffs and pagoda rock formations – some conditions worse than current consent;
- Protection of endangered flora and fauna including the real risk of extinction of at least one protected species
- Inadequate protection of endangered species including one species at risk of extinction;
- Potential impacts on Greater Blue Mountains World Heritage Area (GBMWA);
- Impacts on enjoyment of the state conservation area
 - Loss of natural springs
 - Noise impact and quite enjoyment of area;

² Colo Committee Submission at p.1

³ *National Parks and Wildlife Act 1974* section 30G

⁴ As above

- Impact of mining and exploration on use of the park – closure, new trails are all possible;
- Economic benefits overstated and removal of clause 12AA from Mining SEPP;
- Visual impacts from Glen Davis Road

Cliffs, pagodas not adequately protected

The current proposal increase the potential damage to cliff and pagoda rock formations (and in a wider area as the MEP is across the authorisation area as well so double area). Current consent conditions are for “all external high cliffs and rock formations known as pagodas or beehives located in the environmental protection zones experience not greater than negligible structural ... impact by mining” together with “...minimise disturbance to the ‘internal ‘ high cliffs and ‘pagodas’ within the mining area not included in the protection zones...”⁵ However, the current proposal would allow negative impacts (rock falls, displacement or dislodgement of boulders or slaps less than 30m² or fracturing) to 2% of cliffs and pagodas within a 26.5 degree AoD of underground mine workings⁶ and pagodas in the Interaction Zone would be allowed to have damage no less than is in the EIS. **The angle of draw of 25 degrees in the environmental protection zone in the existing consent needs to be maintained.**

The proposed subsidence for the interaction zone would increase the current limits for subsidence from 125mm; 2.5mm/m, 2.0 mm/m for the current mining area. These limits were included in the conditions as part of Modification 3 in September 2014.⁷ The limits to subsidence in the current conditions are wrongly reported in Table 1 on page 8 of DPEAR as being 1.8 maximum vertical subsidence. This was the limit before Modification 3.

Conditions of consent for Airly MEP proposes up to 500mm (half a metre) vertical subsidence; 3.8mm/m and up to 16.7mm/m for the maximum subsidence in the Interaction Zone.⁸ This is being increased even though it is admitted that the extent and impacts from the earlier mining in the Interaction Zone is largely unknown and therefore unpredictable besides predicting greater subsidence to occur in this zone.⁹ This is all for the sake of 1Mt predicted yield or around 3% of the total yield from MEP¹⁰.

This is an about-face by Centennial from when they finally agreed to the reduce the maximum subsidence level only twelve months ago. In 2014 Centennial Coal offered to make a commitment to the lower levels of subsidence but resisted having this conditioned. Perhaps they knew they were going to exceed it with their MEP. **This is retrograde step and should be rejected. Subsidence maximums should at least remain at the standard in the current consent.**

⁵ Current Consent for Airly Mine, schedule 2, condition 12.

⁶ DPEAR at p.29

⁷ Current Consent for Airly mine, schedule2, condition 13

⁸ DPEAR P.6, Table 1.

⁹ DPEAR at p, 28

¹⁰ DPEAR at p.

DPE's model provisions for underground mining recognise in the performance measures for natural and heritage features (condition C1) "cliffs of special significance", aboriginal heritage sites determined to be of 'special significance' from studies and 'buildings or structures of state or national heritage'. These are to be given the impact performance measure from subsidence of "negligible environmental consequences".

The Draft MMSCA PoM says that desired outcomes for the geology now it is a SCA is that the high geological scenic and landscape values are protected against damage from human activities" and "mining and mineral exploration activities have minimal impact on natural and cultural values"¹¹

The significance of the pagodas and cliffs of the Gardens of Stone area and MMSCA have been identified, researched,¹² and recognised at the State level by OEH and previous PAC Reviews and determinations and by the Greater Blue Mountains World Heritage Advisory Council. Referring to the pagoda structures in the nearby Ben Bullen State Forest which is part of the same recognised Gardens of Stone area, the PAC stated that they were "a unique landform on a world scale..." Further, "...They are part of a landform consisting of multiple pagoda structures and intervening sections of cliffs, with steep slopes and dissecting gullies below".¹³ **This same status as rock formations and cliffs of special significance and level of protection should be accorded to the pagoda rock formations and high cliffs of MMSCA.**

The Society supports the recommendations of the Colong Foundation submission that:

Ensure that the historical New Hartley oil Shale Mine, cliffs over 50 metres in height (including those at Point Hatteras and Genowlan Point), pagodas , the grotto and the Valley of the Kings are defined as sensitive heritage of special significance and fully protected from any subsidence movement and impacts; and

No first workings under cliffs over 50 metre in height, due to the high inherent instability of these areas.

Biodiversity: Endangered flora and fauna at risk including at least one species in danger of extinction

MMSCA is a biodiversity hotspot, particularly in the Genowlan Point area. This area of the SCA was originally recommended for a Nature Reserve until the SCA position was finally reached. The National Parks and Wildlife Act 1974 states that "*The purpose of reserving land as a nature reserve is to identify, protect and conserve areas containing outstanding, unique or representative ecosystems, species, communities or natural*

¹¹ MMSCA POM at p. 8.

¹² H Washington and R Wray (2011), The Geoheritage and Geomorphology of the Sandstone Pagodas of the North-Western Blue Mountains Region(NSW) *Proceedings of the Linnean Society of NSW* 132, 131-143 at p.131

¹³ Planning Assessment Committee (PAC)'s *Review Report on the Coalpac Consolidation Project* and quoted in PAC *Determination Report for Coalpac Modifications 2014* at page 9

phenomena¹⁴ While ML 1331 is under the western part of the park, Exploration Authorisation 232 (which will become a ML if the MEP proposal is approved) covers much of the eastern portion of the park¹⁵ including the Genowlan mesa.

MMSCA POM states that “the natural and cultural heritage values of the Mt Airly – Genowlan area have been recognised for many years and since 1932 the area has been subject of a number fo national park proposals designed to protect its many heritage values”.¹⁶ The MMSCA PoM states that “The park is regarded as a site of high floral diversity with up to 340 plant species known to occur on the (Mt Airly and Genowlan) mesas alone. Many of the vegetation communities identified within the park contain threatened species, although the exact number ... is yet to be determined.”¹⁷ Two species are critically endangered.

The park supports populations of at least 30 native animals 96 birds and 24 reptiles. A number of threatened animals are recorded in the park including the Regent Honeyeater and Swift parrot. While these are both described as classified as endangered by EPBC and TSC Act in draft PoM, the Regent Honeyeater was upgraded to “Critically endangered” under both acts on 9 July 2015.¹⁸ Nearby Capertee Valley is designated as an important breeding area for the Regent Honeyeater. **The assessment of the potential impact on the Regent Honeyeater needs to be reassessed to take into account its new status as “critically endangered”.**

The mining area is home to four threatened plants: *Pultenea* sp Genowlan, *grevillea obtusiflora* (endangered EPBC and TSC Act) *Prosanthera stricta* (vulnerable under both acts) and *Eucalyptus cannonii* (vulnerable under TSC Act)¹⁹. MMSCA is the only site of the *Pultenea* sp Genowlan Point which is classified as “critically endangered” under both the EPBC act and the TSC Act. The 2005 survey found that its numbers had declined by 50% from 1993 to 2005.²⁰ If damaged through mining by Airly MEP there is a real risk it could become extinct. It is very hard to fathom why the DPE thinks this risk is low.²¹

MMSCA is also home to two threatened ecological communities. The PoM states that the MMSCA is “particularly significant for Genowlan Point *Allocasuarina nana* heathland EEC on Genowlan Point”. It occurs in combination with a number of other plants which makes it “unique as far as it is known”²² (the other EEC is Box-Gum Woodland.

In summary, there are three critical issues to be addressed in relation to biodiversity preservation:

¹⁴ National Parks and Wildlife Act 1974, s. 30J (i)

¹⁵ MMSCA PoM at p.7

¹⁶ MMSCA POM at p.1

¹⁷ MMSCA PoM at p.9

¹⁸ Birdlife Australia website

¹⁹ MMSCA PoM at p.9

²⁰ MMSCA PoM at pp. 9-10

²¹ DPEAR at p.2

²² MMSCA PoM at page 10

- Pultenea – is at risk of extinction;
- Heathland EEC at Genowlan Point is unique and must be protected
- Assessment of impacts on Regent Honeyeater which has recently been declared as “critically endangered ‘ bird.

Mine Discharge Water

The Mine Discharge water is not well described and its issues are not adequately addressed. The current Environment Protection Licence (EPL) for Airly Mining operations does not identify the pollutants being discharged or seek to control their impacts by mandating limits. This does not give transparency to the issues that may arise. Similarly, the proposed conditions of consent for the MEP do not recommend any salinity limits or toxicity issues as has been done with the Springvale MEP consent. Salinity only mentioned in the proposed conditions in the context of the Biodiversity Management Plan.²³ There is evidence that Airly Creek is polluted, with mining contributing to that pollution. The proposed water treatment seems to assume that the mine water is benign and can be mixed with or diluted by clean water eg rain water in a system of open ponds. Diluting pollution with clean water and putting it all in a river is the lowest standard of waste water management. Industrial uses on our urban waterways were prohibited from doing this years ago. It is not the standard required today.

Airly Creek is not any river but one which flows into the GBMWAH downstream. Significant impacts on the values of world heritage areas are a matter of national environmental significance under the EPBC Act. The safest approach would be to keep the mine water separate and treat it chemically to safe levels before releasing it.

The water management process needs to be fully explained, the mine discharge water needs to be kept separate and treated to remove any toxicity so that there is a neutral or beneficial effect on the water chemistry and aquatic life downstream in the Capertee National park and Gardens of Stone national park (GBMWAH) when it is released.

The conditions of consent have to explicitly set the parameters for acknowledging and addressing these water management issues and has to specifically recognise the issues in its water management performance measures and plan. This is because the consent is the primary decision and in the case of State Significant Development, as Airly MEP is, an EPL has to be consistent with the consent under EPAA s. 89K (1) (e). This has been done explicitly in other conditions of consent.

DPE’s Model Provisions for Underground Mining on Performance measures for Subsidence to Natural and heritage features assigns “negligible environmental consequences” for specific named rivers and no less than EIS for “other watercourses”.

²³ Proposed Conditions of consent at p.17

Although Airly Creek is significant as it flows into the GBMWA, it is not assigned the “negligible environmental consequences” in the Proposed conditions for Airly MEP.²⁴

The Society supports the recommendations of Colong Foundation in relation to managing the mine waste water and discharges.

Uncertainty about the estimated royalties from the project

DPEAR notes that DRE estimates the royalties from the project to be \$36M less than was quoted in the EIS. This is because DRE estimates a lower price for domestic thermal coal than for exported coal and has assumed a 50:50 split on the coal destination.²⁵ Compared with other Centennial Coal expansion applications and consents (Springvale, Angus Place and Clarence) there is very little information on where this coal would be sold. The current consent only allows transport of coal by rail.²⁶ The proposed consent for the Airly MEP says that Centennial must ensure that “all product coal is transported from the site by rail”.²⁷ Once the coal is on a train it either travels to Port Kembla for export or has to be unloaded somewhere else. This is not explained and it is our understanding that there are no unloading facilities from trains in the area. If that is correct, the current consent would need to be varied to allow delivery of the coal to a domestic customer.

The method of transport is a relevant consideration under Mining SEPP clause 16 which requires the consent authority consider whether to require that all or part of the materials in connection with the development are transported not on a public road. It is unclear what is proposed for the coal, consequently, the impact on the road travel and the quantum of royalties for the project are uncertain.

Other socio-economic benefits overstated

The quantum of the benefit to the community of the Airly Mine extension project through the proposed voluntary planning agreement between Centennial and Lithgow Council is never stated. Only the combined maximum of \$200,000 per annum if all three mines are approved is referred to throughout the DPEAR which is a bit misleading.²⁸ When assessing the Airly MEP development application, this proposal alone could only contribute up to \$54,000 a year. That is achievable only if the maximum production of 1.8Mt/pa was met which hasn't happened under the current consent. If you take the benefit to be \$200,000 you are counting it three times ie for each of the three expansion projects involved. It will be considerably less than \$54,000 if all three mines are operating as the total contribution from all three mines is capped at \$200,000. If the combined total was not capped it could go up to \$279,000 per year.

²⁴ Proposed conditions for Airly MEP Schedule 3 condition 1

²⁵ DPEAR at p. 51

²⁶ Airly Mine current conditions at Schedule 2 condition 6. This is apart from a maximum of 500,000 tonnes pa for two years from the Trial Mine.

²⁷ Proposed MEP conditions at schedule 2 condition 8

²⁸ DPEAR at p.53.

Direct jobs expected to be created by the proposal are provided in units of FTEs (full time equivalents) whereas the indirect jobs are not full time equivalents but just some work for an estimated number of people. Indirect jobs converted to FTE would be considerably less.

Consideration of the Mining SEPP

Appendix G of DPEAR is out of date now that cl 12AA has been repealed. The significance of the resource is no longer a principal consideration under the Mining SEPP and the term significance of the resource is no longer defined. One of the aims of Mining SEPP is clause 2 (b1) “to promote the development of significant mineral resources”, however Department of Resources and Energy’s letter (dated 7 April 2015) which was written to address cl 12AA, does not now make out a strong case that the coal underneath MMSCA is a significant mineral resource. It has local and area significance in keeping the current jobs going but, it is, according to DRE, a relatively small mine in the sub-region and the state. As well, land uses in the vicinity (a consideration under the Mining Sepp clause 12) include national parks to the north and west, which have world heritage status.

Impacts on use of MMSCA

1. Exploration activities follow the required statutory process

Allowing as yet undefined exploration activities to be permitted through this consent without the requirement to prepare an review of environmental factors as required under EPAA Part 5, sets a poor precedent and is inappropriate for activity within a conservation area. This removes the proponent’s requirement to specify what those activities will be and any opportunity for public comment on these activities and their impacts. The proposed exploration activities should be removed from the development consent and required to follow the existing process of assessment under EPAA Part 5.

What is proposed is less transparent. An Exploration Activities and Surface Infrastructure Plan would have to be made public but only after the plan is approved²⁹ As well, there is no timeframe for when it has to be made public. The proponent should be following legislative process rather than denying public any oversight or opportunity to comment.

2. Access to park could be curtailed due to exploration or mining activities for an unspecified period

While the MMSCA PoM proposes to limit the use and expansion of vehicle access tracks which can cause habitat fragmentation, vegetation damage, soil erosion and sedimentation of waterways. Management responses include prohibiting the building of new roads and restricting access to Genowlan Point track. It also foreshadows that

²⁹ Schedule 6 Condition 15 Access to Information

parts of the park may have to be closed for certain mining activities to be carried out. Exploration activities can also override landowner objections so this will be a difficult area to manage and still protect the more sensitive parts of the park.

3. Loss of water sources in MMSCA

The applicant should provide a compensatory water supply to the park managers, OEH, for loss of any water supply to park users such as the Airly Village spring which is foreshadowed in DPEAR. This would be consistent with the Compensatory water supply clause (sched 4, cl 11) for the owner of any for privately owned land.

4. Noise criteria for park and camp areas are too high

It is not clear what “when in use” in condition 2 table 4 Noise criteria means. Does it mean when being used by visitors to the park? It allows noise levels to be higher if there is a negotiated agreement with the landowner (which would be OEH in the case of MMSCA). The applicant only has to advise the DPE in writing. There is no notification to the public and potential visitors. The term of the mine operation is 20 years so that is a long time for park users to be affected. If a negotiated agreement was being considered, it should be advertised to public for comments and then if necessary changes made to PoM.

Other changes to the conditions of consent

Expert panel to assist with the preparation and implementation of parts of the extraction plan to include as well “water resources and biodiversity” [Schedule 4 condition 6] The panel should be independent and not include a representative from DRE as is possible with Airly but not with Springvale MEP.

Sch 4 condition 15 Monitoring of Coal transport

Add “(c) make these records publicly available on its website at the end of each calendar quarter”. There is clearly public concern about train noise. This addition would be consistent with the proposed conditions for Springvale MEP.

Yours sincerely



Madi Maclean
For the Management Committee