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Nature Conservation Saves for Tomorrow

8 September 2016

The Hon Josh Frydenberg MP
Minister for the Environment and Energy
Parliament House
CANBERRA ACT 2600

Dear Mr Frydenberg,

Damage and likely future damage to nationally listed swamps and EPBC Act Springvale Mine Extension Project, NSW – EPBC 2013/6881

The Blue Mountains Conservation Society writes to you regarding the significant damage and likely future damage to nationally listed endangered swamps located in the Springvale Mining Extension Project (MEP) area. As you may be aware, 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 over 800 people and has been active since 1961.

A recent report by the Springvale Independent Monitoring Panel has concluded that the likely cause of the damage is from mining activity where the impact has not been assessed by the Environmental Impact Statement (EIS) for the Springvale Mine Extension Project (MEP) [EPBC 2013/6881]. This letter provides you with information which we believe may trigger the Minister's powers to vary, revoke or add conditions to an approval under *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) s.143, in relation to the damage to Temperate Highland Peat Swamps on Sandstone, an endangered ecological community listed under the EPBC Act.

The previous Minister for Environment, in approving the Springvale MEP under the EPBC Act, agreed with his department's recommendation that "based on the compliance history (of the proponent)" the proposal be approved "...subject to a relatively prescriptive set of conditions." ¹ Since that approval, there have been two

¹ Statement of Reasons for Approval for Springvale Coal Mine (EPBC 2013/6881) ,clause 163].

additional matters relating to the environmental history of the proponent company (see below).

Report of the Springvale Independent Monitoring Panel

The Springvale MEP Independent Monitoring Panel (IMP) was established under clause 11 of the Springvale MEP's conditions of development consent.² This clause 11 was specifically referred to in the EPBC approval at clause 2 as a means of minimising the impacts on endangered Temperate Highland Peat Swamps on Sandstone (THPSS). The IMP's role includes advising "...the applicant and the Secretary of the Department of Planning and Environment (DPE) regarding the collection of relevant data to predict and monitor the potential subsidence impacts and environmental consequences of second workings" [Schedule 4, condition 11(a)] In the Commonwealth Minister's Statement of Reasons for his approval of Springvale MEP, he also specifically stated that condition 2 of his consent was to reinforce the NSW consent condition establishing the independent monitoring panel.³

The IMP's first report (attached) concentrated on what was causing the damage to Carne West swamp which it reported was "... the very significant drop in the water level of Carne West Swamp and the cessation of flow in the watercourse through this swamp, with consequential drying out of the swamp and loss of the waterfall at the downstream end of the swamp"⁴ "These changes began to be detected when mining was up to 700 m away, well outside the impact zone predicted in the EIS for mining in this region of Springvale Mine." [IMP Report p.2] and "It appears to the Panel, on the basis of the information provided to it, that this swamp (Carne West) may have started to be impacted by mining at around July 2013." [IMP Report p.7] The IMP concluded that the likely cause was mining causing far field movement. They comment that while the EIS "...acknowledged the occurrence of far field movements, apparently these have not been measured in any detail to date at Springvale Mine. Based on behaviour in the southern Coalfield, reported in the EIS, these movements can be quite substantial (up to 100mm at a distance of 700m from the edge of a longwall panel.)" [IMP Report p.5]

The IMP Report has identified that the underground mining at Springvale is causing the destruction of swamps through a drop in water levels, which was not identified in the EIS, as the impacts are from a greater distance away than previously assessed.

In addition, the IMP report states that "It is now concluded by Centennial Coal ... that the mine subsidence interactions with lineament fault zones at Springvale Mine do appear to impact standing water levels well outside the designed buffer zone (designed by a 26.5 degree angle of draw or a 20mm vertical subsidence contour, whichever provides the widest buffer) and, furthermore, these water levels do not fully recover. In some cases the impacts extend for more than three times the width of the designed buffer zone. (IMP Report p.2)

² Granted by the NSW Planning Assessment Commission on 21 September 2015.

³ Springvale Statement of reasons, cl. 164

⁴ *Springvale Mine Extension Project - Extraction Plan for Longwall 19* (June 2016) (IMP Report), p.2.

IMP Report conclusions should trigger a variation under s.143 EPBC Act

The EPBC Act allows the Minister to vary conditions of consent, specifically as follows:

“Variation of conditions attached to approval

(1) The Minister may, by written instrument, revoke, vary or add to any conditions (other than the condition referred to in subsection 134(1A)) attached to an approval under this Part of an action if:

(a) any condition attached to the approval has been contravened; or

(b) both of the following conditions are satisfied:

(i) the action has had a significant impact that was not identified in assessing the action on any matter protected by a provision of Part 3 for which the approval has effect, or the Minister believes the action will have such an impact;

(ii) the Minister believes it is necessary to revoke, vary or add a condition to protect the matter from the impact; or

(ba) all of the following conditions are satisfied:

(i) the action has had a significant impact on a matter protected by a provision of Part 3 for which the approval has effect, or the Minister believes the action will have such an impact;

(ii) the Minister is satisfied that the impact is substantially greater than the impact that was identified in assessing the action;

(iii) the Minister believes it is necessary to revoke, vary or add a condition to protect the matter from the impact;...” [EPBC Act, s.143]

The impacts on Carne West Swamp, from the IMP’s report (and which is evident to visitors to the swamp), have had “a significant impact that was not identified in assessing the action” (EPBC Act s. 143 (b) (i)), that is, the likely cause of the damage to Carne West being from far field movement which was not assessed in the EIS. As well, the continuation of the approved mining activity (the “action” under *EPBC Act*) is likely to impact on the other endangered swamps. The Springvale MEP conditions of consent urgently need to be amended to protect these swamps from the rest of the approved mining. This could be by creating protection zones around each of the swamps or requiring mining to be relocated away from swamps in other parts of the MEP area.

The Springvale development consent allows for the possibility of some of the THPSS being damaged and, in their cases, only requires offsets to be used to compensate for the damage. As well damage to some THPSS is not a breach of the consent. (See Springvale Consent conditions, Schedule 3 conditions 4-6.) The society believes that all THPSS should be protected from damage from mining in Springvale MEP. Explicit protection for all the THPSS would provide the options of avoidance and mitigation first rather than only resorting to offsets or payments in lieu of offsets.

The IMP has recommended a modification to the Springvale Conditions of Consent which would increase the time and distance of impacts of mining given their concerns that damage to Carne West is likely to have happened from further afield. ⁵

⁵ IMP Report p.5

The IMP believes it is likely that damage to swamps occurred at distance of 700 metres whereas Springvale Consent puts a limit of 400 metres from swamps in relation to the release of a bond for damage.⁶

IMP Report critical of existing monitoring

The IMP has been critical of the existing monitoring in place and has recommended additional monitoring equipment be put in place as soon as possible in relation to Carne West swamp damage, particularly to identify far field movement. [IMP Report pp7-8] For instance, the IMP has stated:

- there appears to be no baseline data for Carne West before it was impacted by mining [IMP Report p.7];
- “the existing monitoring program has been restricted and limited across lineament zones ‘ [IMP Report, p.5];
- There is a lack of groundwater monitoring in the swamps [IMP Report, p.6];
- “apparently (far field movements) have not been measured in any detail to date at Springvale Mine” [IMP Report, p.5];
- There are inadequacies with soil moisture monitoring. “there is currently a knowledge gap in the status and dynamics of moisture content in the top 1 – 1.5m of the substrate of the swamps, with the most critical gap being in the 0.0 to 0.5m zone, which is the zone of greatest biological activity” [IMP Report, p.7];
- The Independent Experts Scientific Committee (IESC) recommendations regarding monitoring have not been implemented [IMP Report pp.6 and 7]; and
- Flow monitoring may be too late for Carne West [IMP Report, p.8].

Our request of the Minister

We request that you use the IMP Report and information provided in this letter to protect the nationally endangered swamps in Springvale MEP by amending the consent conditions to add a new condition which states that there should be no mining under the Springvale MEP area within a distance of 700 metres from an EPBC listed swamp, that this condition should override the current EPBC conditions and that a breach of this new condition would be a breach of the EPBC Act.

Impacts of Springvale Modification 1

A further concern is the Springvale MEP Modification 1 [SSD 5594], which will increase the annual coal production maximum from 4.5MTpa to 5.5MTpa (a 22% increase). It is currently being assessed by NSW Department of Planning and Environment. The *Statement of Environmental Effects (SEE) (July 2016)* accompanying the modification application did not refer to the IMP Report at all. This modification will accelerate the rate of production and, therefore, will accelerate the rate of damage which is likely to result from further undermining of swamps. It seeks to achieve the increased production partly by removing the six week turnaround time between longwalls. These changes are likely to reduce both the time and monitoring data available to the IMP to perform its role, in particular, using the monitoring results to inform its review of subsequent extraction plans.

⁶ Springvale Consent Conditions, schedule 3, condition 4

As well, Springvale MEP Modification 1 also proposes to make up time by preinstalling longwall machinery in the next panel using the retreat mining configuration before the current longwall is completed. [SEE, p.4] This could lead to pressure to have the required extraction plan approved earlier and to not change the mining plan even when it might be a necessary action depending on the outcomes and monitoring of previous longwalls.

Consideration of a person's environmental history when making decisions under the EPBC Act

When making a decision to vary a condition under the EPBC Act, you, as Minister, may have regard to the approval holder's environmental history [EPBC Act s.143 (3)] Since the approval of Springvale MEP, there have been two further matters affecting the environmental history of Springvale's parent company, Centennial Coal Company Pty Ltd.

Clarence Colliery (a subsidiary of Centennial Coal) pleaded guilty to charges under both the *Protection of the Environment Operations Act (NSW)* and the *National Parks and Wildlife Act (NSW)* for unlawfully discharging coal fines.⁷ The coal fines slurry entered the Wollangambe River within the Blue Mountains National Park which is a part of the Greater Blue Mountains World Heritage Area. A hearing date is yet to be set. It is still unknown whether charges will also be laid against Clarence under the EPBC Act.

In August 2016 Charbon Coal Pty Ltd (a subsidiary of Centennial Coal operating in the Western Coalfields near Kandos) was fined \$175,000 plus prosecutors' costs for failing to comply with the project approval, specifically for constructing a coal truck haul road outside of the approved location. (See *Secretary Department of Planning and Environment v Charbon Coal Pty Ltd* [2016] NSWLEC 106).

In addition to these three matters, the Minister would be aware of the following:

- In 2006 Centennial Newstan Pty Ltd was convicted of an offence under *POEOA* s.120 (1) for polluting waters. Centennial Newstan admitted that it had failed to prevent the discharge of sediment-laden water from a dam at its Fassifern colliery into a nearby watercourse which flows into Lake Macquarie [*Environment Protection Authority v Centennial Newstan Pty Ltd* [2006] NSWLEC 732]
- In 2010 Centennial Newstan was found guilty of polluting waters for five days when it failed to prevent approximately 1.4 to 1.8 megalitres of sediment-laden waters discharging from old underground workings of Newstan Colliery. The sediment-laden water entered an unnamed watercourse and flowed into Stony Creek. The court noted that this was a similar offence to the earlier conviction. [*Environment Protection Authority v Centennial Newstan Pty Ltd* [2010] NSWLEC 211]

⁷ http://www.epa.nsw.gov.au/epamedia/EPAMedia_16051002.htm

- In 2011 Springvale Coal Pty Ltd and Centennial Angus Place Pty Ltd Enforceable entered into an enforceable undertaking of \$1.45M under *EPBC Act* in relation to mining without approval. This was a case of actual harm. The undertaking stated that:

“3. Breach of the EPBC Act

The Minister considers that Springvale Coal and Centennial Angus Place have contravened the EPBC Act in that, contrary to section 18(6) of the EPBC Act, Springvale Coal and Centennial Angus Place have undertaken an action (being coal mining, and/or related mine groundwater discharge, at the Springvale and Angus Place collieries) without approval. The Minister considers that this action has had a significant impact on Temperate Highland Peat Swamps on Sandstone, specifically:

- (a) Narrow Swamp;
- (b) East Wolgan Swamp; and
- (c) Junction Swamp

These swamps are part of the threatened ecological community Temperate Highland Peat Swamps on Sandstone listed as “endangered” under the EPBC Act,…”⁸

Summary of request for Ministerial action under the EPBC Act

On account of the above information, the society requests that you, as Minister for the Environment, use the IMP Report and information provided in this letter to protect the nationally endangered swamps (THPSS) in Springvale MEP by amending the consent conditions to add a new condition which states that there should be no mining under the Springvale MEP within a distance of 700 metres from an EPBC listed swamp, that this condition should override the current EPBC conditions and that a breach of this new condition would be a breach of the EPBC Act.

We hope that you will consider the information provided in this letter and the new information in the IMP Report.

Yours faithfully,



Madi Maclean

For the Management Committee

⁸ Department of Environment website at <https://www.environment.gov.au/news/2011/10/21/centennial-coal-fund-145-million-research-program>