

ITEM 22

NOTICE OF MOTION - COUNCILLOR CATH BLAKEY - MINE EXPANSION IN THE CATARACT DRINKING WATER CATCHMENT

Councillor Cath Blakey has submitted the following Notice of Motion –

“I formally move that Council -

- 1 Write to the Independent Planning Commission to object to the Russell Vale Underground Expansion Project on the basis of community concerns of increased heavy vehicle traffic, dust, noise, threat to the drinking water catchment, Aboriginal heritage sites and greenhouse gas emissions, as well as Wollongong Coal’s poor track record on workplace safety, debt servicing and operating compliance. Council also requests that if the project is approved then the conditions should require:
 - a the completion of infrastructure at Russell Vale Colliery to protect residents from particulate and noise pollution before any coal is extracted
 - b the fulfilment of outstanding consent conditions of the 1989 and 1990 development approvals for Russell Vale mine operators, including the payment of security bond to Wollongong Council, the remediation of the Russell Vale Emplacement Area to an agreed final landform and the dedication of the parcel of golf course land to Council.
- 2 Write to the Planning Minister to seek reform of the Environmental Planning and Assessment Act to enable a Fit and Proper test of a proponent to be encompassed in the assessment process for state significant developments.”

Background provided by Councillor Blakey:

The proposed Russell Vale Colliery Underground Expansion Project is an extension application for bord-and-pillar extraction within the Cataract Reservoir catchment. If approved, the project will also activate permission to longwall mine the remaining 25 metres of longwall 6. The project aims to extract 3.7 million tonnes of run-of-mine coal over a five-year period from the Wongawilli Seam beneath the Bulli and Balgownie seams which have already been extracted. Approximately 50% of the material to be extracted is high quality metallurgical coal, 25% is thermal coal and the remaining 25% is other rock. The metallurgical and thermal coal is destined for over-seas markets, being sold by the proponent, Wollongong Coal, to their parent company, Jindal Steel and Power Ltd, India.

The Russell Vale Expansion Proposal is identified as -

- Generating noise and dust from the new coal processing plant and 2 new coal stockpiles very close to residents
- Adding 34 truck movements per hour between the mine and Port Kembla coal terminal
- Requiring a license to release mine-affected water into Bellambi Gully Creek with exceedance of the ANZG (2018) default guideline values for freshwater aquatic ecosystems (95% species protection level) for copper, zinc and nickel
- Occurring under significant Aboriginal Heritage sites with rock shelter with art, grinding groves along water courses and camp sites
- Generating 304,600 tonnes of CO₂-e greenhouse gas emissions
- Blocking public access to the Lower Escarpment Fire Trail adjacent to Brokers Nose.

The mine operates underneath the catchment of the Cataract Reservoir. This is located within the Metropolitan Special Area, a restricted-access area designated to protect Sydney and Illawarra’s drinking-water catchments.

The project is on the Woronora Plateau which supports groundwater-dependent ecosystems such as Coastal Upland Swamps in the Sydney Basin Bioregion. These swamps are listed as Endangered Ecological Communities under the Environment Protection and Biodiversity Conservation Act 1999 and the New South Wales Threatened Species Conservation Act 1995. Where upland swamps are impacted by subsidence, they dry out and increase the bushfire fuel load in the Illawarra Escarpment.

The NSW Department of Planning, Industry and Environment referral states the project is “approvable, subject to strict conditions of consent”. The Independent Planning Commission is currently considering the matter with the deadline for written submission being 5pm Tuesday 27 October 2020. The proponent, Wollongong Coal, has a history of non-compliance when it comes to the conditions of consent. Wollongong Coal has been fined and issued with orders by multiple agencies, regulators and courts for offences including polluting Bellambi Gully Creek, “poor maintenance and operation” of infrastructure, failing to publicly disclose water monitoring data, failing to hold community consultative meetings and for stockpiling 200,000 tonnes of waste coal on Council land in breach of its development consent at Russell Vale. On 8 November 2017, a conviction was recorded in the Downing Centre Local Court for the failure of Wollongong Coal to pay annual rental fees and administrative levies under section 292C(3) of the Mining Act. In March 2018, the NSW EPA stated that “in recent years” Wollongong Coal “has demonstrated they cannot consistently manage and maintain pollution control equipment and plant on site”.

In March 2018 the NSW Resources Regulator shut down the proponent’s Wongawilli operation due to a serious roof collapse leading to a determination that workplace safety issues were too serious for underground work to continue. In dealings with Wollongong City Council, Wollongong Coal has also a long-standing practice of obfuscation in relation to land dedication of the Russell Vale Golf Course, security bonds, remediation of the emplacement area and creek realignment.

Wollongong Coal currently has no income and debts which exceed its current assets by more than a billion dollars (AUD\$1,089,243,000). Current auditors UHY Haines Norton noted in March 2020 that “a material uncertainty exists that may cast significant doubt on the Group’s ability to continue as a going concern and therefore, the Group may be unable to realise its assets and discharge its liabilities in the normal course of business.” In August 2020 Wollongong Coal delisted from the Australian Stock Exchange. Wollongong Coal was first suspended from trade on the Australian Stock Exchange in 2017 when it failed to lodge its half-yearly report. Wollongong Coal estimates rehabilitation of its Russell Vale mine would cost \$215 million. The NSW Government hold a bond of just \$12.4 million for the mine site. Since 2013 Wollongong Coal has paid \$0 corporate tax.

In India, the courts have determined that there is sufficient evidence for a criminal corruption case to be brought to trial against the majority owner of Wollongong Coal, Jindal Steel and Power (JSPL) and its chairman Naveen Jindal. In July 2019, Naveen Jindal and four other JSPL officials were charged under sections 420 (cheating) and 120-B (criminal conspiracy) of the Indian Penal Code. All have pleaded not guilty. JSPL, via a holding company, JSPL Mauritius, is majority shareholder in Wollongong Coal Ltd. Then Minister for Resources, the Honourable Don Harwin, described JSPL’s problems in India in response to a question in the NSW Parliament on 1 June 2017: “On 29 April it was announced that Jindal Steel and Power Limited, and one of its directors had been investigated by India’s Central Bureau of Investigation on potential criminal corruption charges. The courts in India decided that there was sufficient evidence for a case to be brought to trial. I am advised that no conviction of criminal corruption has been made at this stage.”

In the NSW Department of Planning, Industry and Environment final assessment report on the Russell Vale Expansion Project it states that a “fit and proper test is not a requirement under the EP&A Act and is an irrelevant consideration for a consent authority when making a determination on a development application”.

The “Fit And Proper” test is within the Protection of the Environment Operations (POEO) Act which governs the Environmental Protection Agency (EPA) and awards pollution licenses, and the Mining Act through which the NSW Resource Regulator awards mining leases. However, these agencies have

rarely denied an operating license or lease on the Fit and Proper test. To do so would likely be contested through the courts.

The NSW Resources Regulator regulates the mining leases on the basis that the right to mine coal that belongs to the people of NSW is a “special privilege” which our community expects the government to regulate to “prevent harm to the community, other industries and the environment”. The regulator’s ‘Fit And Proper Person Policy’ requires that the right of exploration and mining is “only conducted by companies that can and will respect that privilege”. The NSW Resources Regulator commenced investigation in mid-2016 over whether Wollongong Coal is a “fit and proper person” to hold a mining licence. In July 2020, the Illawarra Mercury reported that the state's mining regulator had “quietly shelved” this investigation, saying there was “insufficient evidence to support a finding that the company is not a fit and proper person”. It appears that the NSW Resources Regulator - under the NSW Mining Act - may choose not to escalate action against Wollongong Coal unless convictions are recorded in India against significant individuals within JSPL.

A review of the evidence already in the public domain causes great community concern over whether Wollongong Coal should be granted further rights to mine in NSW.