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Mt Thorley-Warkworth Continuation Project

Submission to NSW Planning Assessment Commission following proposed changes to the State Environment and Planning Policy, or ‘Mining SEPP’

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TAI

Submission

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Introduction

The Planning Assessment Commission for the Mt Thorley-Warkworth Continuation Project (Warkworth Project) has requested further submissions relating to a proposal to change the State Environmental Planning Policy (mining, petroleum production and extractive industries) (Mining SEPP). The current Mining SEPP requires consent authorities to give the “significance” of a resource the greatest weight in their assessment of mining projects. The proposed amendment would revert to the earlier approach of a balance of social, environmental and economic factors.

The Australia Institute has been involved in debate over the Warkworth Project since two of our economists presented expert evidence in the NSW Land and Environment Court (LEC) case which resulted in the project’s approval being overturned. We have since made numerous submissions and presented at all public hearings. Our opinion throughout our involvement has been that the economic benefits of the project have been overstated by Rio Tinto and its economists and that costs have been consistently downplayed. Overall, we believe the economic benefits do not outweigh the significant environmental and social impacts.

Repeal of the Mining SEPP

If the Mining SEPP is repealed, the regulatory context for assessment on the project returns to that under which the LEC found the costs of the project do not outweigh its benefits. As the Chief Judge of the LEC stated:

> *I am not satisfied that the economic analyses provided on behalf of Warkworth support the conclusion urged by both Warkworth and the Minister, namely that the economic benefits of the Project outweigh the environmental, social and other costs.*[1]

The LEC’s findings were upheld on appeal to the NSW Court of Appeal. While the appeal was on points of law, the economic evidence was re-examined at great length, with Rio Tinto arguing the evidence from its economists had been ignored. The Court of Appeal was also emphatic in rejecting the appeal including points relating to economic evidence:

> *Although his Honour did not expressly state his preference for the evidence of a particular expert, it is clear from his Honour's reasoning that he accepted the expert evidence of [The Australia Institute’s] Mr Campbell in preference to the expert evidence of [Rio Tinto’s] Mr Gillespie and Dr Bennett.*[2]

Both these decisions confirmed our expert evidence that the economic benefits of the project would not outweigh its other impacts. Not only would change of the Mining SEPP revert regulation to that under which these decisions were made, but would do so at a time when there has been substantial change to the coal market. Current prices are lower and the longer term outlook far more uncertain. At the time of the LEC case coal prices and forecasts were at US$94 per tonne. Prices have now returned to historic averages of US$65 per tonne. The Australian Federal Treasury is forecasting a long term coal price of around AUD$80 per tonne.[3]

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[1] (Preston 2013) p155
[2] See Warkworth Mining Limited v Bulga Milbrodale Progress Association Inc [2014] NSWCA 105, p51
[3] (Bullen et al. 2014)

Economic assessment of Warkworth Project

Despite the change in coal market outlook, the economic assessment in the environmental impact statement (EIS) for the Warkworth Project is based on a long-term price of AUD$100 per tonne. Rio Tinto's economists, BAEconomics, estimate that at this price, the project has a net present value (NPV) of AUD$1,507 million. Changing no aspect of their analysis other than the coal price to the Federal Treasury's long term forecast, this value reduces to around zero, as demonstrated in The Australia Institute's submission to the December 2014 PAC:

Project net production benefits BAEconomics assumptions and current prices

		BAEconomics 2014	TAI
Coal Price	USD/t	$85	$63
Exchange rate	USD:AUD	0.85	0.80
AUD coal price	AUD/t	$100	$78.75
Additional production	Million tonnes	156	156
Discount rate	%	7%	7%
Present value of additional production	AUD (m)	$7,527	$6,232
Present value operating costs	AUD (m)	$5,306	$5,306
Present value capital costs	AUD (m)	$714	$714
Net value of production	AUD (m)	$1,507	-$93

Source: TAI submission to December 2014 PAC, p8

The simple fact is that at current and Treasury long-term prices, the project is financially marginal. This fact has been avoided by Rio Tinto's consultants and the Department of Planning and Environment (the Department):

- The original EIS avoids discussion of project financial viability at lower prices. Its sensitivity analysis estimates royalty and wage values at these prices, but assumes the project would operate at full capacity regardless of making a financial loss.
- The Department's assessment report claimed to have independently tested the economic assessment, but later admitted to The Australia Institute that they had not. This deception received recent media attention.[4]
- The review PAC requested that the economic assessment "should be updated to reflect the current economic climate."[5] This has not been done. BAEconomics have

[4] http://www.theherald.com.au/story/3211039/planning-department-misled-pac/
[5] See Review PAC report p21

simply assumed lower prices for five years, before returning to their original $100 per tonne for the life of the project.[6]

- The Department have been unconcerned by criticism in their own commissioned review of the BAEconomics work, by Deloitte Access Economics, which stated:

  We are concerned that the report takes the approach of doing the minimum required to address the Secretary's requirements, without making sufficient effort to provide analysis that is useful for decision makers and stakeholders.[7]

While it is clear the Warkworth Project is marginal at current prices, BAEconomics do not provide any contrary analysis, but stated in the Response to Submissions:

> *TAI's findings are somewhat surprising. Presumably Rio Tinto would not go to the trouble of applying for development consents and engaging in the associated stakeholder consultation processes if it did not believe that the proposals would generate a positive return.*

While the project will struggle to generate a positive return, there are considerable benefits for Rio Tinto of gaining approval:

- Approval provides the option of developing the resource in future.
- Extending the life of the mine delays rehabilitation liabilities.
- Both of these points add considerably to the sale value of the project.

Long-term rumours that Rio Tinto would like to sell its coal assets are now openly discussed in the media:

> *Rio Tinto is open to exiting thermal coal, or selling down its portfolio of assets, if a decent offer comes their way.*[8]
>
> *Rio Tinto may finally have created some competitive tension to help it get out of the coal business at a decent price.*[9]
>
> *Mount Thorley-Warkworth is the third-biggest coal complex in the Hunter Valley and it sits front and centre of the Australian coal operations that everyone imagines Rio Tinto would rather like to sell…*[10]

It appears that Rio Tinto do not intend to develop and manage this project through its life in a manner consistent with that presented in the EIS. If approved, the project is likely to be sold and the new owners will look to delay or alter the project.

The most obvious change to make is to reduce the workforce. The Warkworth mine has considerably higher staffing than the neighbouring Bulga mine, despite being of similar size. In a recent Community Consultative Committee (CCC) meeting, a community representative reported:

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[6] See BAEconomics, *Response to Planning Assessment Commission Recommendations on Economic Impact Assessment for Warkworth and Mount Thorley Continuation Projects*, p3-4

[7] See Deloittes April 2015 Peer review of Economic Assessment of Warkworth Continuation Project, page ii.

[8] http://www.smh.com.au/business/mining-and-resources/x2s-mick-davis-eyes-rio-tinto-thermal-coal-20150630-gi134o.html#ixzz3hQrCuQor

[9] http://www.theaustralian.com.au/business/mining-energy/rio-tinto-in-talks-to-sell-coal-mines-to-former-xstrata-boss-mick-davis-report/story-e6frg9df-1227421448894

[10] http://www.afr.com/business/mining/coal/open-and-shut-for-rios-hunter-coal-flagship-20150707-gi73iz

At the last CCC that I attended I questioned Mark Rogers re the 1300 jobs. His reply was that he would be a fool to guarantee that number into the future.[11]

As soon as the Warkworth Project gains approval, it is likely that substantial numbers of jobs will be lost. This has happened in many other projects in the Hunter Valley in the last year. This is problematic for the economic assessment of the mine, which assumes the project will employ 1,300 people throughout its life, at an average salary of $170,000, nearly 25 per cent above industry averages.[12] In reality, the claimed economic benefits to NSW would be far lower than estimated in the EIS.

Without the exaggerated wage estimates, the economic assessment in the EIS shows that the main benefit to NSW of the project is royalties, which BAEconomics estimate at present value $617 million. At Treasury's long term price estimate, this value would be $486 million. In evidence to the LEC, Rio Tinto's economists estimated the net benefits of the project to NSW at $626 million.[13]

Conclusion and recommendations

With near agreement on financial benefits to NSW between the evidence presented to the LEC and the current PAC and the move to amend the Mining SEPP to the form under which the LEC rejected the project, it is clear that the PAC should also reject this application.

If the PAC finds that the BAEconomics estimate of economic benefits is realistic and bases approval on that estimate, conditions should be written in which guarantee their realisation:

- Rio Tinto should be required to own and manage the project for its life, with approval not transferable to other companies.
- The project should be required to maintain employment of 1,300 employees at an average wage of $170,000 per year, as estimated in the EIS.

This would be in effect a take-or-pay agreement for labour, a form of agreement which is common for other parts of mining projects such as rail and port commitments.

[11] As reported to the Bulga Milbrodale Progress Association by CCC member Graeme O'Brien following CCC meeting on 22 May 2015.
[12] See The Australia Institute submission to December 2014 review PAC, p11-12
[13] (Bennett & Gillespie 2012) p20. Exact comparison with the BAEconomics analysis is difficult due to quite different approaches taken on employment values, royalty and tax estimates. Further analysis and discussion of these differences can be provided to the PAC if necessary.

References

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