

**WYONG SPECIAL AREA (PROTECTION) BILL 2015**

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**Bill introduced on motion by Mr David Harris, read a first time and printed.****Second Reading****Mr DAVID HARRIS** (Wyong) [10.17 a.m.]: I move:

That this bill be now read a second time.

The Wyong Special Area (Protection) Bill 2015 keeps an election promise made by NSW Labor and me during the 2015 State election campaign. Ironically it also keeps a promise made by the Liberal Party in the 2007 and 2011 election campaigns—a promise it was never to keep and about which I will speak later. I intend to deal briefly with the various aspects relating to this legislation in two parts. First, I will deal with the provisions contained in the bill and, secondly, I will deal with why the bill is necessary. This is a bill for an Act:

...to prohibit the granting, renewal or modification of exploration, prospecting and mining authorities and titles for minerals and petroleum, and certain planning approvals, that relate to land at Wyong that is the site of the Wallarah 2 coal mine project; and for other purposes.

The bill defines "Wyong special area" in clause 3 as:

**Wyong special area** means land subject to the following current and former mining authorisations:

- (a) exploration licence number EL6514 renewed on and from 24 October 2011,
- (b) exploration licence number EL4911 dated October 1995,
- (c) authorisation number A405 dated 1995.

Clause 4 prohibits the grant or renewal of any mining authorisation in relation to land in the Wyong special area and the making of any changes to the conditions to which such an authorisation is subject. Clause 5 prohibits the grant or renewal of any petroleum title in relation to land defined in the Act and the making of any changes to the conditions to which such a title is subject. Clause 6 provides that a planning approval is not to be given under the Environmental Planning and Assessment Act 1979 in relation to development for the purposes of prospecting and mining activities on the land in the Wyong special area and cancels any such planning approval already given.

I will now outline why this legislation is required and the history behind it. Essentially, the bill seeks to protect the Wyong water catchment area from destructive mining, thereby protecting the important water supply that services more than 300,000 people. Further, this bill is required to fulfil ironclad election commitments made by the Liberal Party in 2007 and 2011 and the Labor Party in 2015. The South Korean Government-owned mining company Kores submitted, under the Wallarah 2 Coal Project, a new application to build a longwall coalmine beneath the Dooralong and Yarramalong valleys Wyong water catchment area. Those valleys provide the major drinking water resource for more than 350,000 people. Wyong Shire Council, Gosford City Council and the Joint Water Authority employed Professor Philip Pells to prepare the water section of their submission against the Wallarah 2 Coal Project. Using the mining company's own data Professor Pells proved that there would be a catastrophic loss of water in the catchment.

In 1999, when BHP Billiton owned the lease under its subsidiary Coal Operations Australia Limited, its

well-credentialed and respected hydrology consultants, Mitchell McCotter, found in its report produced in 1999 that there were transient pathways in the geology that would enable surface water and aquifer water to travel to the mine workings should mining occur. Those facts were presented at the Chikarovski inquiry held in 2008 and were ignored by the panel members. In March 2011, prior to the last State election, then Minister for Planning Tony Kelly rejected the mine proposal. Mr Kelly said in a letter to the community group fighting against the mine, the Australian Coal Alliance:

The project does not adequately address potential surface water quality impacts, resulting in uncertainty around the ability of the project to meet acceptable water quality outcomes.

When rejecting the mine application Mr Kelly further said:

The project is not considered consistent with the principles of ecologically sustainable development, including the precautionary principle, and as a consequence is not considered to be in the public interest.

In the years leading up to that decision the Liberal Party in opposition championed the community's cause, particularly Chris Hartcher and Barry O'Farrell. The Liberal Party twice committed itself in writing that if elected it would not allow the coalmine in the water catchment valleys. I have a copy of a letter from then shadow Minister Chris Hartcher saying exactly that. In January 2009 Barry O'Farrell stood before a crowd of more than 300 people at a rally and said:

The next Liberal-National government will not allow mining to occur here, will not allow mining to occur in any water catchment. Mining leases and mining permits will reflect that common sense. No ifs, no buts, a guarantee.

In an email to community leader Alan Hayes the day after the rally Barry O'Farrell said:

I especially appreciate the opportunity to reiterate the Liberal Party's opposition to the coal mining proposal and our determination, in office, to prevent it going ahead.

Prior to the March 2011 election the Liberal Party said in writing that it was now Liberal Party policy that there would be no coalmining in the Wyong water catchment valleys. Members of the Liberal Party ran their election campaign on the Central Coast on the back of the anti-coalmine campaign, engaged the community's assistance through the Australian Coal Alliance and proudly wore their "Water Not Coal" T-shirts and waved their "Water Not Coal" placards throughout the four State electorates on the Central Coast. The picture I have in my hand shows how serious they were about the campaign. Chris Hartcher said on ABC Radio after the 2011 election:

No candidate would have been elected [on the Central Coast] had they not opposed the coalmine.

Chris Hartcher also said in a press release sent to Alan Hayes in April 2011 and published in the local community newspaper:

Having attended a number of public meetings and having been fully briefed by the Australian Coal Alliance, in 2007, the Liberal Party (through its leader Barry O'Farrell) declared support for the community campaign against the coal mine and pledged to ban the coal mine (with legislation in the Parliament if necessary) if elected in 2011.

Chris Hartcher further said in that press release:

On the 4th March, the last day at law that they could make a decision, the Labor Party caved in to community pressure and the ACA's campaign and promised what the Liberals had promised 4 years earlier. Well ... not exactly. The Liberals promised to introduce legislation to ban mining beneath the water catchment area around Wyong.

Barry O'Farrell confirmed to local residents at the Community Cabinet meeting held at Gosford in December 2012 that the mine would not proceed. Despite the ironclad promises of the Liberals in writing and at public rallies, the Liberal Government has reneged on its promise and allowed the South Koreans to lodge a new application. The Liberals said that they would be sued if they did not allow due process. That was incorrect. Section 127 (1) of the Mining Act 1992 No. 29, which is currently in force, states:

The holder of an authority is not entitled to compensation merely because the authority is cancelled.

The term "authority" includes exploration licences and mining leases. Professor Pells was again retained by local government and the Joint Water Authority to provide a report in their opposition to the Wallarah 2 Coal Project when a second environmental impact statement [EIS] was submitted. He proved, once again using the proponent's own data in its new environmental impact statement, that there will be an unacceptable loss of the major drinking water resource of the Central Coast. The proponent admitted in the executive summary of its new EIS that the proposed mine will probably kill people—but not many—from fine airborne particles of coaldust. Pages 9 to 17 of the health assessment risks in the EIS contain a full analysis of the possible increased deaths and sickness from the dust generated from the mine.

The possibility of even causing one death is an unacceptable risk. The mine surface facility is adjacent to the largest urban growth area in the region and the mortality figures in the EIS are, as quoted by the proponent, "conservative" and do not take into account the growing population of the area or the large volume of traffic travelling along the F3 expressway, now called the M1, or the link road past it. Which Central Coast families will have to sacrifice a loved one so that South Korea can extract coal for its energy needs? The Central Coast region already has the highest rate of avoidable respiratory-related deaths in the country. Dr Peter Lewis, the then Director of Public Health for the Central Coast and North Sydney, said in the report he prepared for the Wallarah 2 submission:

Increased particulate exposure (from the Wallarah 2 coal surface facilities) could cause deaths, require hospital admissions, and make children have more chest colds, night-time coughs and trips to the doctor.

He further stated that the mortality and morbidity figures would be sevenfold those estimated by the mine proponent. His report only became public after being uncovered by the Australian Coal Alliance, but it was still ignored by the State Planning Assessment Commission for the previous Wallarah 2 submission. Wallarah 2 further admitted in appendix H of the EIS that 245 homes would be subsided up to one metre, and in some cases up to two metres. That portion of the EIS states:

The overall movement predicted for the houses within the Study area are greater than those predicted to have occurred for the houses at Tahmoor, Teralba, West Cliff and West Wallsend Collieries. It is expected that impacts would be greater (for these houses in the Study area).

In addition, 755 rural structures and 420 rural dams will subside to varying degrees. Dooralong-Jilliby Road is predicted to fall 1.75 metres in places, as are Dickson, Durren and Smith roads. Many farms are predicted to subside 1.6 metres or more. This would make it worse than any other mine in the country. Sam Haddad, when Director General of Planning and Infrastructure, as part of the director general's requirements required the mining company in 2012 to consult individually with all subsidence-affected landholders during the preparation of the environmental impact statement [EIS].

This was not done.

During the 10 years that Kores has held the exploration lease it has never consulted directly with any of the 245 affected landholders. Dr Philip Pells, after spending many hours trying to work out the subsidence damage, concluded that the EIS, and in particular the Mine Subsidence Engineering Consultants [MSEC] subsidence impact prediction on houses, has been presented in such a way that it is impossible to determine the likely damage to any particular house. So it is impossible for a particular landowner to work out what is predicted for his or her house.

**Pursuant to sessional order business interrupted and set down as an order of the day for a future day.**

## **WYONG SPECIAL AREA (PROTECTION) BILL 2015**

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### **Second Reading**

**Debate resumed from 19 November 2015.**

**Mr DAVID HARRIS** (Wyong) [10.21 a.m.]: Professor Pells said in an email to Alan Hayes:

There is a list of 245 houses, numbered 1 to 245 but without location defined, and there are plans showing each house, but without being numbered. So one cannot relate the list and the damage details in that list, to the houses on the maps.

I thought I could work out the numbering system by carefully studying the subsidence prediction contours in relation to the house positions. My conclusion from this is that the numbering of the houses has been made "chaotic" so that it is impossible to know in what damage category a particular house will fall.

In a further email to Alan Hayes, Professor Pells said:

I have been following up over the weekend the issue of not knowing what the houses are for which damage assessments are given in the EIS. In the process I communicated with one of the people responsible with the subsidence assessments in the EIS. The following is a cut-and-paste from what they wrote to me today:

There was a recognition that mine plans can change over time and these predictions are based on one mine layout only. As you can appreciate, if the longwalls were to be shifted or reoriented within the extent of the Extraction Area, the individual houses would be predicted to experience greater or lesser movements, depending on their locations relative to the longwalls.

So the focus of the report at this stage of the approval process was to provide an indication of overall spread of subsidence predictions and potential impacts for houses rather than predictions and assessments at an individual level.

If landowners independently looked up our report to find what the predictions are based on the mine plan right now, they would be forgiven for thinking that these were the numbers that will apply to their house if the mine was approved.

They may not realise that mine plans can change in the future. This might create extra angst in the future if the predictions from the final layout were higher than those shown at the moment because the longwalls have shifted or changed orientation or something.

What I find extraordinary is that this means the EIS is not an EIS. It is supposed to be a statement of the environmental impacts—full stop. Human beings and their houses are part of that environment and what this is saying to me is that once the mine is approved they can change anything, so nothing in the present EIS has any substance. Not the water impacts, the noise, the dust or anything else. They may change longwall face widths and hence the magnitude and pattern of subsidence and impacts on groundwater, they may change the method of coal handling and hence dust, traffic and noise, etc etc.

In stage one of the proposed mine, 150 brick homes in the modern rural Hue Hue subdivision sit directly above the Awaba Tuff material, which is described as unstable and unpredictable, casting doubt on the validity of the miner's subsidence figures. Awaba Tuff is described in all mining manuals as being particularly difficult material to stabilise. This puts the Wallarah 2 proposal into the realms of a dangerous experiment risking the fabric of many family homes. From 2002 until 2012 the Mine Subsidence Board has only accepted 45 per cent of subsidence claims. Many of those remain unpaid as people are strung out in the Mining Warden's Court.

In 2014 the Planning Assessment Commission accepted that the economic analysis in the environmental impact statement was grossly flawed and that there will be little economic value flowing to the Government and the Central Coast region. It was further found that the royalties and other miscellaneous income streams back to the Government from the mine would be far less than the subsidised benefits the miners would receive from the Government, leaving New South Wales receiving less than it was paying—and that has become even worse with the current coal prices. The damage to public infrastructure, in particular the 39 high-voltage electricity transmission towers and rail upgrades, has never been fully addressed to determine who will cover the cost. This would run into multimillions of dollars.

Approval of the Wallarah 2 coal project was also dependent upon consent from the Darkinjung Local Aboriginal Land Council to allow the mining company to build a rail spur through its land. This consent was refused and the matter was taken to the Land and Environment Court, which ruled that the mining company's development application was defective and could not be approved without the land council's consent. The Government has accepted the court's decision. Forced mediation between the land council and the miners has also failed, with access consent still being withheld. Operation Spicer, which saw the demise of a number of Liberal parliamentary members, revealed secret meetings between the miners and senior Ministers of the O'Farrell Government, including a trip to South Korea to the miner's head office and dinner parties with senior Ministers and executives of the mining company at the home of one of the executives.

The community and local government have soundly rejected this project since its inception because the risks are so great to the water supply of the Central Coast region and because of the dangerous health outcomes to residents. The Dooralong and Yarramalong water catchment is the major water resource for more than 350,000 people and the growing housing development in the northern area of Wyong shire which sits beside the proposed coalmine loading and transport facility. It should be noted that in September 1950, New South Wales *Government Gazette* 153 proclaimed the Wyong Water Supply Catchment District to be preserved in connection with the Wyong water supply under the control of the Wyong Shire Council. I am proud to be presenting this legislation to the Parliament on behalf of the Wyong and Central Coast communities. It demonstrates that at least some politicians deliver on their election promises. I pay tribute to Labor leader Luke Foley for his support in meeting this election promise.

Since 2006 I have fought to have this project stopped. I publicly congratulated former Premier Barry O'Farrell at a rally held at Mardi for his ironclad commitment of "No ifs, no buts. We will move special legislation if necessary" to the people of the Wyong valleys. I acknowledge Greg Piper, the member for Lake Macquarie, and former Wyong mayor Councillor Bob Graham, a former Liberal member of this place, for their ongoing opposition to this mining project, which threatens our local area. Finally, I

acknowledge and thank Alan Hayes, OAM, Mike Campbell and Warren Simmons, together with all the supporters and members of the Australian Coal Alliance who formed the "Water Not Coal" campaign, who have stridently opposed Wallarah 2 since its inception. This Government, under Premier Baird and planning Minister Stokes, has the opportunity to right the wrongs of former Premier Barry O'Farrell and former Minister Chris Hartcher and keep the solemn promise made to the electorate, and across the State, and support this bill. I commend the bill to the House.

**Debate adjourned on motion by Mr Stephen Bromhead and set down as an order of the day for a future day.**