

## Legislative Council Hansard – 11 October 2017 – Proof

**ENVIRONMENTAL PLANNING AND ASSESSMENT AMENDMENT (SYDNEY DRINKING WATER CATCHMENT) BILL 2017***Second Reading*

**The Hon. DON HARWIN (Minister for Resources, Minister for Energy and Utilities, and Minister for the Arts) ( 20:18 ):** I move:

That this bill be now read a second time.

I am pleased to introduce the Environmental Planning and Assessment Amendment (Sydney Drinking Water Catchment) Bill 2017. This bill will clarify how water quality impacts are assessed for ongoing development in the Sydney drinking water catchment. The bill also validates the State significant development consent for the Springvale mine extension. As members of the House would be aware, ensuring steady power supply underpins the energy security of the State. By making this amendment, this Government is ensuring the continued supply of coal to the Mount Piper Power Station, which is critical to local jobs, energy affordability, and security for the people of New South Wales.

When the Baal Bone, Cullen Valley and Invincible mines closed and Centennial decided in October 2014 to place its adjoining Angus Place mine on care and maintenance, Springvale's role became critical to the region. In the last financial year, the Springvale mine sent around 87 per cent of its coal to the nearby Mount Piper Power Station. As Mount Piper Power Station is 100 per cent dependent upon the coal supplied by the Springvale mine, the supply of power from the Springvale coalmine is critical to the ongoing operation of Mount Piper Power Station.

Mount Piper's existence is also essential to this equation as it contributes to around 11 per cent of New South Wales electricity on the grid. As the months get warmer in the lead-up to summer, the Australian Energy Market Operator projects risks of load-shedding, which may affect more than 400,000 households across the grid.

For energy security the message is crystal clear. Without Mount Piper we face almost certain blackouts this coming summer. Even if the court delays its orders until after this summer, the threat to power supplies will only be deferred. At the local level, closure of the mine would most likely have serious implications for the nearly 400 people employed by the Springvale mine. In addition, if the Mount Piper power station has to reduce its operations, or even possibly close, a further 197 local jobs would be at risk as well as up to 80 contractors based predominantly at the power station. This is more than 600 jobs for the community should the mine and subsequent shutting of Mount Piper take place. These jobs are critical to the communities surrounding the mine and are a driver of the local economy. In 1992, the Minister for Planning approved underground coalmining at Springvale, located north-west of Lithgow.

Mining operations began in 1995 and were allowed to continue until September 2015. On 21 September 2015, the Independent Planning and Assessment Commission approved a State significant development application to extend the existing mine, including by allowing it to continue operations until December 2028. The commission's decision followed two thorough reviews and public hearings. The assessment of the proposal by the Department of Planning and Environment gave detailed consideration to the water quality impacts and required a significant reduction in water pollution limits when compared to the discharge allowed under existing approval. The commission's decision was challenged on the basis that it could not have been satisfied that the Springvale extension would have a neutral or beneficial effect on water quality. The department argued that the test should be based on the levels of discharge that were allowed under the existing mine approvals. The Land and Environment Court agreed with the department's approach and dismissed the challenge.

**The DEPUTY PRESIDENT ( The Hon. Trevor Khan ):** Order! We will get through this without editorial comment.

**The Hon. DON HARWIN:** The Land and Environment Court's decision was then taken to the Court of Appeal. On 2 August 2017 the Court of Appeal overturned the Land and Environment Court's decision and held that the approach to applying the water quality test was incorrect.

The court observed that the basis for the water quality test must be the actual water quality before and after the proposed development, and that the actual water quality would not include the current mining activities, which were due to cease under the existing approvals.

In the Court of Appeal's view the commission needed to consider what would happen at the Springvale mine if the proposal was refused. Unusually, in this case the Court of Appeal did not declare the development consent to be invalid. Given the potential adverse consequences for the current mine operations and users of the coal supplied to the mine, the court instead gave the final orders back to the Land and Environment Court. The Land and Environment Court is due to hear submissions from 16 October 2017.

I have heard reports that there will be amendments to the bill—it is no secret—so I will address some remarks at this stage to those amendments. The bill principally clarifies the application of the water quality test for development that is extended or expanded, like mining or other resource projects. It does this by allowing a State environmental planning policy [SEPP] to deal with the application of the test to continuing development. Continuing development is development that is limited by time, area or intensity, but that is likely to be extended or expanded in the future. Mining projects are one example of continuing development. The bill then clarifies how the water quality test is to be undertaken for this type of development by amending the existing SEPP for the drinking water catchment. For continuing development the basis for determining the effect on water quality should be the new development—that is, the extended or expanded part of the proposal and not the development that is already authorised by an existing approval—even if it is time limited.

The existing impacts form part of the current water quality levels that will need to be compared. This is how the water quality test was understood to operate prior to the Court of Appeal's decision and is consistent with the interpretations of the independent Planning Assessment Commission and the Land and Environment Court of New South Wales. In short, it was settled law. Importantly, nothing in the bill will result in a reduction in the level of water quality currently required by the planning legislation or development consents. Development in the Sydney drinking water catchment will still need to have a neutral or beneficial impact on water quality in order to be approved.

Environmental protection conditions are also imposed on the approval by the Environment Protection Authority and the Commonwealth under the Environmental Protection and Biodiversity Conservation Act 1999. This reflects the department's longstanding practice of comprehensively assessing the water quality impacts of significant developments like coalmines. I can also confirm that the State significant development consent for the Springvale mine prohibits mine water discharge from the main discharge point after 1 July 2019. After this date mine water can be treated at the water treatment plant to satisfy the obligation. This condition was added to the Springvale consent as part of the 2017 modification. If the water treatment plant is not operational by 1 July 2019 any mine water discharged from the main discharge point will be done in breach of the development consent. This is an offence which could carry the highest possible penalty under the planning legislation—\$5 million, with an additional daily penalty of \$50,000 if the offence continues.

Finally, the bill will validate the State significant development consent for the Springvale mine extension project and ensure the clarified water quality test applies to previously approved projects. This will allow the mine to continue operations subject to the strict conditions set by the independent Planning Assessment Commission.

There are fewer than 50 days until the start of the summer season, which officially starts on 1 December 2017. We need to act now. This bill provides assurance to all parties and will remove the significant uncertainty hanging over the electricity market—indeed, the whole national electricity market. It will provide a clear signal that New South Wales believes in removing risks to electricity security this summer. By introducing this bill, the Government has acted swiftly to address job uncertainty and secure the coal supply to the Mount Piper power station, but I firmly believe that this ultimately is a win for the environment and a win for Sydney's drinking water catchment. I commend the bill to the House.

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