

**Submission
No 162**

**INQUIRY INTO PLANNING PROCESS IN NEWCASTLE
AND THE BROADER HUNTER REGION**

Name: Mr John Krey

Date received: 23/10/2014

John Krey

23 October 2014

The Director
Select Committee on the Planning Process in Newcastle and the Broader Hunter
Region
Parliament House
Macquarie St
Sydney NSW 2000

Re NSW Senate Inquiry into the planning process in Newcastle and the broader Hunter region

Dear Sir,

Thank you for this opportunity to make a submission on what I believe is substantial corruption in the Dept. of Planning and Environment (previously known as Dept. of Planning and Infrastructure) and their engagement in a close working relationship with Rio Tinto to get mining applications approved.

Over the past four years we in the community of Bulga have been fighting for our survival because of the proposed expansion of Warkworth Mine to within 2.6 kilometres of our village. Our community has won twice in the courts against this application only to have the DPE and Rio Tinto working closely together to change the rules of assessment and get around the court's ruling.

The current application to expand Warkworth

On the 24th of June 2014 Rio Tinto submitted another application for the very large Warkworth Mine expansion project which is exactly the same as the one rejected by the Land and Environment Court and the Supreme Court (2013 and 2014 respectively).

Rio Tinto has sought and received the cooperation from the State Government in getting this new submission into the Dept. of Planning & Environment (DPE) in record speed. The normal procedure for of this type of major project is that the mine submits its outline proposal and, in response to that submission, the government produces what used to be known as the Director General's Requirements. Since the dispatch of the Director General Sam Haddad it is now the Secretary's Requirements. This document sets out what the DPE requires the applicant to address in its Environmental Impact Statement (EIS) and the application.

Following receipt of the Secretary's Requirements the applicant commences its environmental impact statement, a study which normally takes about 12 months or so. In this case Rio Tinto had the documents finished and completed and signed three weeks after receiving the Secretary's Requirements.

Clearly there had been a very close working relationship between the DPE, Rio Tinto and its consultants. We understand from information we have received that the DPE has established a working committee within the Department to get this Warkworth project approved.

It is stated in the EIS documents that this project is a different project to that rejected by the Courts. On examining the documents it is exactly the same project as the Courts rejected but they state this is 'different' because the Government has changed the rules of assessment. This of course does not make the application a different project and does not reduce the impacts on the community or the ecology. The only difference is the rules under which the Government will give approval.

The dirty tricks of Government (DPE)

What we have now since the rejection by the Courts of the Rio Tinto approval is a Government hell bent on getting this Warkworth mine expanded despite all the impacts the Courts found. Since Rio Tinto's meeting with Barry O'Farrell in 2013 the State Government has taken the following actions to help Rio Tinto get an approval for Warkworth mine expansion.

1. The SEPP Amendment (Resource Significance) was produced by the former disgraced Minister Hartcher but of course signed off by the previous Minister for Planning. This amendment to the SEPP puts the emphasis on the value of the coal above all other matters. This SEPP amendment was directed at overturning the basis of the judgment by the Supreme Court and the Land and Environment Court. Those courts looked at the balance between the environment, the social impact, the value of coal etc. What the SEPP amendment does is to place more value on the coal resource such that it overcomes all other impacts for assessment purposes.
2. During the course of the Supreme Court hearing Minister Hazzard at the request of the DPE signed an amendment Deed of Agreement (produced by the Rio Tinto Lawyers) which effectively nullified the original Deed of Agreement signed by the Government and the Mine in 2003. The original Deed gave the ecology and the people of Bulga protection from the open cut mine. We believe that this step was at the request of this group within the DPE as part of their overall plan to get this project approved.
3. In addition to those other two matters the DPE has also amended the act where no longer does the mine have to consider absolute like for like when it will destroy the Warkworth Sands Woodlands and establish an offset somewhere else and which is not like for like. This of course was one of the main items that the Judge found that the mine was not establishing absolute like for like such as the Warkworth Sands Woodlands. This Endangered Ecological Community is world unique and cannot be reproduced nor are there other major stands available for Rio to use as similar Woodlands for offsetting. The judge found that was unacceptable but under the new rules of course this now becomes acceptable.

4. Finally the Govt removed the right of communities to use a merit based appeal to the Land and Environment Court to challenge mining approvals. This merit based appeal was how we managed to overturn the previous big expansion of Warkworth Mine. That right has been removed. The right of an appeal on an error at law is still there but our view is that the PAC hearings are before commissioners who are not lawyers and the hearing is not a in a court of law. The non-legal PAC commissioners make their decision based on the merits of the arguments put forward and so if the community regards the Commissioners have made a mistake in arriving at their decision then the merit based review should be available to us. This appeal process is a right of the community and should not be taken from us.

The Politicians

The installation of the new Premier and of course the new Minister for Planning Pru Goward, has come at an appropriate time. The new Premier stated that he wished to regain the communities' trust in the government and of course Pru Goward is a new minister who we believe wishes to distance herself from those dealings which apparently Hartcher had been involved.

So far little has been done by the new Premier to re-establish the community's trust. What is of concern is the DPE Mining Division headed by David Kitto will be briefing the new Ministers and the Premier on projects such as the Warkworth extension and of course will have the same approach that an approval will be 'good for the government, good for the economy and good for jobs. And to help this approval process the government to date has changed the rules which may allow this application to get through despite the findings of the courts and the experts.

There has been an application made under freedom of information (GIPA) to gain access to letters between Rio Tinto, the Minerals Council, and the DPE prior to the issuing of the SEPP amendment. We are awaiting these items.

The campaign by the Minerals Council and Rio Tinto

Both Rio Tinto and the Minerals Council are investing very large sums of money in campaigns to encourage their workers, suppliers, and contractor to support their case for expansion. Of course there is no mention the campaign about the broken promise of the Deed of Agreement, the impact on Bulga and the environment and also in the corruption within Government which is assisting them to get this through.

Conclusion

I believe there is corruption happening in the background with regard to the DPE and Rio Tinto on this and other projects. We cannot easily get access to this information but your Committee should be able to get to the bottom of what we believe is two years of blatant corruption by the DPE in dealing favourably with Rio Tinto's applications.

To date the ICAC is concentrating at the top of the tree but I believe that corruption is actively supported from the lower branches within the DPE.

I would welcome an opportunity to appear before you to provide additional evidence and answer any questions you may have on my knowledge of the DPE/Rio Tinto relationship. This relationship has tainted the application process for this current Warkworth Continuation Project and the assessment cannot be allowed to continue. The same team within DPE who have corruptly changed all the rules in favour of Rio Tinto and other mining companies is the same team at this moment which is assessing the application.

There is no probity in this current process. Until this corruption can be identified and removed the community cannot trust that any application for coal or gas extraction will be treated fairly and honestly by the DPE.

Yours sincerely

John Krey