

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

I refer to the Inquiry on the planning process in Newcastle and the broader Hunter region and in particular Clause 1 which states "1. That a select committee be established to inquire into and report on aspects of the planning process in Newcastle and the broader Hunter Region."

My particular concerns relate to the relationship between the NSW Department of Planning and Environment (DPE) and Rio Tinto on the applications and approvals for the Warkworth Mine expansion. Over a period of four years I have observed what I believe is inappropriate behaviour at the best or corruption at the worst in the relationship between the DPE and the Officials and their consultants at Rio Tinto.

My concerns are as follows

The original bribe (DPE offer to council)

In 2010 Mr David Kitto from DPE in a letter to Council offered \$10 million dollars to Council if they would close Wallaby Scrub Road. The closure of Wallaby Scrub Road is essential for the Warkworth Application to proceed. Council unanimously voted not to close Wallaby Scrub Road and the offer was rejected. However in the DGR and the Conditions of Approval the DPE altered the offer and the Council was placed under pressure to close the road.

It is not the role of the DPE officers to offer monetary considerations on behalf of Rio Tinto. I consider that this was the start of a very corrupt process to get the Warkworth Open Cut Mine approved

The Deed of agreement

The 2003 a Deed of Agreement was entered into between the Government and Warkworth Mining Limited (Rio Tinto) and was intended to protect a large area of land and Endangered Ecological Communities and prevent open cut mining. I believe that at the request of Rio Tinto this protection was secretly removed by Minister Hazzard in 2013 under pressure from Rio Tinto and the DPE to allow the application by Rio Tinto to open cut mine these protected areas.

The secret committee

In the transcript of committee proceedings of the General Purpose Standing Committee No.1 of 21 August 2014 it was confirmed that meetings took place between the Department of Planning & Infrastructure (now DPE), the Office of Environment and Heritage, the EPA, Rio Tinto and their solicitors Minter Ellison together with Rio Tinto's consultants, EMM and Cumberland Ecology. These meetings have been held over the past two years since the Land and Environment Court overturned the approval to expand the Warkworth Mine and have been convened to explore and workshop ways around the court's decisions.

This secret meeting process to agree ways to gain approval for the expansion appears to us to run close to corruption. It is certainly against the stated objectives of the DPE to carry out independent assessments of mining applications.

In June 2014 Rio Tinto resubmitted the same application the Courts rejected because the NSW Government has changed the assessment rules to assist the Mine to overcome the Court's rulings and of course the coaching by the DPE on ways around the Court decisions.

The same DPE officials who have conspired with Rio Tinto to get Mount Thorley Warkworth Continuation projects approved are currently assessing the two applications. Probity requires that this corrupted assessment process must be discontinued until proper investigations have been completed into the dealings between DPE and Rio Tinto. Such actions by the DPE in secret dealings with a large mining corporation to secure an approval can only lead to possible legal action and loss of trust in the Government.

It is important that there is an immediate and independent investigation into the relationship between Rio Tinto and the DPE on the Mount Thorley Warkworth applications process. The secret dealings behind this latest application by Rio Tinto have corrupted this current application and assessment.

Warkworth Amendment 6 process

The two week public exhibition for this Amendment 6 to the Warkworth Mine approval and submission period closed on 29th November 2013. Incredibly, Rio Tinto's substantial Response to Submissions report was provided to the Government on 2nd December, the very next business day after submissions closed. It is completely implausible that Rio Tinto could have adequately responded to in excess of 1,000 submissions in that amount of time.

Just two days after the response report was lodged, the Department issued a 24 page Assessment Report –including a recommendation to approve the mine expansion – and a 35 page Consent Conditions report and referred the project to the Planning Assessment Commission on 4 December. This rapid response to the application could have only been possible with the cooperation of DPE and a completion of reports prior to the public exhibition period closing. This to me is corruption.

The Warkworth continuation EIS process

In 2014 without any consultation with the community, Rio Tinto submitted a new Warkworth expansion application which in my view is exactly the same as the previous scheme rejected by the Land and Environment court and the Supreme Court.

The DPE has set about corrupting the processes involved in the assessment of this application. I believe that the DPE has led a small group in an unofficial committee to ensure Warkworth approval get through. They meet regularly with the Consultants for Rio Tinto to discuss their proposal.

On the 22 of May 2014, Rio Tinto received the Secretary's Requirement and by the first week in June the EIS comprising thousands of pages of reports was printed. Clearly Rio Tinto had access and carried out negotiations with them as to the secretary's requirements. How else you could produce reports of this magnitude in the matter of two weeks?

It is my view that over the past four years the Dept. of Planning and Environment has engaged in corrupt practices which are to the advantage of large commercial enterprises such as Rio Tinto and to the disadvantage of communities such as Bulga.

Non-compliance by Rio Tinto with the NSW Industrial Noise Policy with unofficial agreement by the DPE For mining project approvals particularly in the Hunter Valley, the Minister for Planning includes requirements that set rules for the maximum noise allowable under the terms of the consent.

In accordance with the Conditions of Approval, noise produced by open cut mines is required to be measured and controlled in accordance with the requirements set down in the NSW Industrial Noise Policy (2000). Compliance with these noise levels is monitored by NSW DoPI compliance officers. The DPE is allowing the Mine to exceed the maximum limits set down in the Approval. The DPE and Rio Tinto have an agreement that the NSW INP will be ignored in certain areas and this is to the detriment of the community.

The DPE and the Rio Tinto refuse to use the Low Frequency Noise (LFN) data and apply the corrective factors as required by the NSW Industrial Noise Policy (INP) in operational noise monitoring. Despite many requests and discussions with the DPE and Rio Tinto the INP is being ignored.

This collusion is a corrupt practice.

Conclusion

It is my view that the very close working relationship between Rio Tinto and the Government is an indication of corrupt practices and not in the interests of the community or the ecology. The processing of this current application must be halted until this inquiry is complete.

Please consider my submission

Yours sincerely