

**Submission
No 137**

**INQUIRY INTO CURRENT AND POTENTIAL IMPACTS OF
GOLD, SILVER, LEAD AND ZINC MINING ON HUMAN
HEALTH, LAND, AIR AND WATER QUALITY IN NEW
SOUTH WALES**

Name: Ian Manning

Date Received: 6 September 2023

Parliament of New South Wales

Legislative Council

Portfolio Committee No. 2 – Health

Inquiry into current and potential impacts of gold, silver, lead and zinc mining on human health, land, air and water quality in New South Wales

Submission

by

Ian Manning

Cattle producer accredited under the

Livestock Producer Assurance Program

Located in the Bathurst Region Local Government Area,

downwind and less than 2 kilometres from the

McPhillamys Gold Project

Term of Reference

1. (c) the impact on land and soil, crops and livestock, including through biomagnification and bioaccumulation

Request:

That the Portfolio Committee No. 2 – Health recommend that the Planning Secretary not approve any Air Quality and Greenhouse Gas Management Plan for the McPhillamys Gold Project near Blayney unless the Planning Secretary is satisfied that:

1. Provisions of the approved Plan will enable broadacre livestock producers accredited under the Livestock Producers Assurance program to co-exist with the McPhillamys Gold Project.
2. The Plan comprises mandatory and practical measures for prompt, fair and equitable restitution for broadacre agricultural producers injured by contaminated air emissions from the McPhillamys Gold Project.

Background

Red meat animal producers who become accredited under the Livestock Producer Assurance (LPA) Program commit to carrying out specific on-farm practices in order to fulfill their responsibility to produce red meat that is safe, ethically produced and with due consideration for biosecurity. [LPA Guidebook, February 2021]

The Explanatory Notes for completion of a National Vendor Declaration for Cattle (NVD) made under the LPA Program requires cattle producers to answer “Yes” to the food safety questions of the NVD if the producer is uncertain about whether to answer “Yes” or “No”.

The Performance Checklist for the LPA Property Risk Assessment element requires consideration to be given to “adjacent enterprise activities” such as a gold mine located in the vicinity of a farm operated by a red meat animal producer accredited under the LPA Program.

I understand that during August 2023 the New South Wales Environment Protection Authority announced it would prosecute the operator of the Cadia Gold Mine for an alleged breach of the Clean Air Regulation which occurred during March 2022, about 17 months earlier. I further understand that the alleged breach is unlikely to have been detected had the operator of the Cadia Gold Mine not applied for a modification of the conditions of consent.

It has been reported that the levels of air contaminants emitted by the Cadia Gold Mine are about eighteen times the levels predicted.

The McPhillamys Gold Project is either unable or refuses to guarantee that air contaminants emitted by the McPhillamys Gold Project will not cause food safety risks on farms in the vicinity of the proposed gold mine.

Accordingly a cattle producer accredited under the LPA and located in the vicinity of the McPhillamys Gold Project must answer “Yes” to the food safety questions in the NVD.

Cattle covered by an NVD where the food safety questions are answered “Yes” are virtually if not completely unsaleable.

I contend that the NSW DPI Agriculture response to the Environmental Impact Statement for the McPhillamys Gold Project was inadequate to the extent that it did not deal with this issue.

My written submission to the New South Wales Independent Planning Commission Panel (IPC) which determined the Development Application (DA) for the McPhillamys Gold Project dated 19 February 2023 (which was accepted by the IPC) requested the IPC to liaise with NSW DPI Agriculture to find a remedy for this impasse before the IPC determined the DA. Extracts shown in Attachment A.

I am unaware of any evidence which shows that liaison between the IPC and NSW DPI Agriculture occurred before 22 March 2023.

My written submission to the IPC dated 19 February 2023 also requested amendments to Conditions B34 and B38 recommended by the Department of Planning and Environment’s Assessment Report dated 17 November 2022. Extracts shown in Attachment B.

The IPC refused to consider submissions I presented to the IPC between 22 and 29 March 2023. Extracts on the topic of co-existence between McPhillamys Gold Project and red meat livestock producers accredited under the LPA Program are shown in Attachment C.

On 30 March 2023 the IPC approved the DA for the McPhillamys Gold Project subject to conditions.

The IPC’s Statement of Reasons for Decision dated 30 March 2023 Section 5.1.4 do not refer to the above issues in my written submission. Those reasons are shown in Attachment D.

The conditions of consent imposed by the IPC do not include the amendments to conditions B34, B38, B104, B105 and B 106 requested in my written submission to the IPC. Those conditions are shown in Attachment E.

The draft Air Quality and Green House Gas Management Plan for the McPhillamys Gold Project dated 2 June 2023 does not include a remedy for the impasse created by the risk of unpredicted contaminated air emissions from the McPhillamys Gold Project which could cause a food safety risk for red meat animals depastured in the vicinity of the McPhillamys Gold Project.

Under that Plan there will be no instruments to monitor air quality installed on the downwind (eastern) side of the mine. My land is downwind of the mine site. The two real time air samplers referred to in that Plan will be operated only one day in six.

(The above draft Management Plan was sent to me by the Community Consultative Committee under instructions that I was not to disclose its contents.)

Attachment F shows the amendments which I requested be made to the draft Air Quality and Greenhouse Gas Management plan dated 2 June 2023.

From liaison between McPhillamys Gold Project and me I am not confident that the amendments to the draft Management Plan which I requested as a remedy for the impasse created by the risk of unpredicted emissions from the McPhillamys Gold Project which could cause a food safety risk for red meat animals depastured in the vicinity of the McPhillamys Gold Project will be included in the Management Plan which McPhillamys Gold Project will lodge with the Planning Secretary for approval.

I have not received from an officer who I understand is the Manager of Post Approvals within the Department of Planning and the Environment a response to my request to be able to comment upon the Management Plan yet to be lodged by the McPhillamys Gold Project for approval by the Planning Secretary.

On 22 June 2023 the NSW DPI Manager, Agricultural Land Use Planning, advised me that my concerns have been sent to the Department of Planning and Environment. I have not received a response to follow up inquiries about the outcome.

Unless the impasse is resolved I contend red meat livestock producers accredited under the LPA who are located in the vicinity of the McPhillamys Gold Project will be unable to co-exist with the proposed mine.

Term of Reference

1. (h) whether the regulatory framework for heavy metals and critical minerals mining is fit for purpose and able to ensure that the positive and negative impacts of heavy metals and critical minerals mining on local communities, economies (including job creation) and the environment are appropriately balanced

Request

That the Portfolio Committee No. 2 – Health recommend that the Portfolio Committee No. 7 – Planning and Environment conduct an inquiry into whether:

- a) The Independent Planning Commission should be modified or abolished.
- b) The determination of the Independent Planning Commission into the McPhillamys Gold Project (SSD 9505) dated 30 March 2023 should be either suspended, and if the Independent Planning Commission is abolished, revoked ab initio.

Background

I supported a motion carried at a meeting of the Central West Environment Council at Orange NSW on 17 June 2023 which called for a review into the Independent Planning Commission and revocation of the determination of the IPC determination of the McPhillamys Gold Project dated 30 March 2023.

The background material presented in support of my first request demonstrates that the IPC did not consider my submissions in relation to food safety for broadacre agriculture in the vicinity of the McPhillamys Gold Project.

Other issues which were apparently similarly ignored by the IPC include:

- a) A proposal to establish a community trust to be funded by the McPhillamys Gold Project for up to \$25 million per quarter.
- b) A proposal to adopt a protocol for co-existence and separation.
- c) Whether existing mitigation agreements were unconscionable.
- d) My supplementary submissions presented to the IPC between 22 and 29 March 2023 pursuant to advice from the DPE to me.
- e) The requirements of the NSW Aquifer Interference policy to be observed when an unpredicted adverse impact on users of an aquifer occurs.

Many of the IPC's procedures are inconsistent with the rules of procedural fairness. Consequently they are not fit for purpose to deal with the inherent imbalances associated with the assessment of mining projects.

In plain English, the test for apprehended bias is the pub test. I contend it would not be difficult to find a pub which would find that the IPC determination of the McPhillamys Gold Project development application fails the pub test.

I understand from the Minutes of the 4 August 2023 McPhillamys Gold Project Community Consultative Committee that Regis Resources, the owner of the McPhillamys Gold project, does not intend to make a financial investment decision on that project until June 2024.

Attachment G shows an exchange of emails between the IPC and me between 22 and 29 March 2023. I contend those emails show that the conduct of IPC is inconsistent with the rules of procedural fairness.

If the Standing Committee is inclined to consider this request in more depth, I could provide additional details in support of this request. Between 4 December 2022 and 29 March 2023 there were numerous exchanges of correspondence between the IPC and me largely on the topic of procedural fairness.

If the No. 7 Standing Committee on Planning and the Environment decides to conduct an inquiry of the type requested and receive submissions from members of the public, I would intend to present a detailed submission to any such inquiry.