

Submission
No 157

**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**

Organisation: Captains Flat Community Association Inc

Date Received: 16 October 2023



CAPTAINS FLAT COMMUNITY ASSOCIATION INC.
Subject: Captains Flat Lead Working Group

204 Foxlow Street

Captains Flat
NSW 2623

Monday 16 October 2023

Attn: Dr Amanda Cohn
Chair - Portfolio Committee No.2
NSW Legislative Council

Submission - 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 (the Inquiry)

I refer to the invitation to make submissions to the above Inquiry. We thank the Inquiry committee for agreeing to an extension of time to make this submission.

Background

The Captains Flat Community Association Inc (CFCA) is the peak body representing the community of Captains Flat. The CFCA has established a sub-committee known as the Captains Flat Lead Working Group (the Working Group) to consider lead contamination risks and issues on private and public land in and around Captains Flat resulting from historic mining operations that ceased in 1962. The Terms of Reference for the Working Group can be provided if required.

The companies responsible for the mining have long since dissolved and are not available to fund remediation for the contamination they caused.

The working group's current focus is to examine and respond to recently released local council and government policies, guidelines and plans intended to address lead contamination and health risks in the Captains Flat area, Molonglo River, and disused rail corridor to Bungendore (the areas of concern). The main body of reports have been published by the NSW Government Taskforce (<https://www.nsw.gov.au/regional-nsw/captains-flat>) and NSW Transport (<https://www.transport.nsw.gov.au/projects/current-projects/captains-flat-contamination>). Due to the technical nature of these reports and the size of the area of concern, this submission provides only high-level summary of key points, concerns, and recommended solutions. The working group can provide provenance in reports, supporting documents or evidentiary source for our submission if further information is required. The working group can also host a visit by the Committee to view the sites firsthand and to discuss the various issues in detail with the community.

Executive summary

The Working Group submit that the government response to contamination within the areas of concern is highly deficient, mainly due to lack of proper investigations, disjointed coordination between agencies, inadequate funding, and failure to consult with the community. Whilst significant issues have been identified with the government responses to date, the Working Group contends that a revamped Taskforce working with the community would ensure community concerns and impacts are identified and considered throughout the decision making process, more cost effective outcomes identified that will significantly reduce mental and physical risks to the community, the provision of appropriate financial assistance and a reduction of environmental risks.

Issues of concern and solutions

State Government responsibility for costs of investigations and remediation

- Once the mine company dissolved in 1962, government and local council authorities from that time became legally, financially, and morally responsible to investigate contamination, ensure safety measures were in place, to fund and undertake remediation on both private and public land and ensure transparent communication to the community.
- A key historic failing of government was to prevent the spread of contaminated materials being used throughout the village as fill on crown/council public land and private land.
- There have been inadequate detailed investigations meaning the extent of the presence of contaminated fill is unknown. The EPA offers free testing for existing dwellings however it is indicative and surface level only and the testing method is non-compliant, exposing residents to risk of complacency if lead is not indicated but is still present. If lead is indicated, it only enlivens the need for expensive Detail Site Investigations (DSIs), the cost of which falls to landowners. DSIs can cost thousands of dollars beyond the means of most residents and landowners. When lodging a Building Application (DA) to build on vacant land a DSI is mandatory (even if EPA has "cleared"). Current government and council policy is for private landowners to pay for DSIs and any required remediation recommended by an Environmental Consultant including any removal and disposal of soil.. This is unacceptable and government needs to indemnify landowners from all costs of the spread of contaminated fill. The residents were not responsible for the spread of contamination, and most were unaware of potential contamination issues until the last few years as information has crept out in an adhoc fashion, through both formal and informal channels.
- The remediation plans under the Lead Management Plan (LMP) (https://www.nsw.gov.au/sites/default/files/2023-07/Lead_Management_Plan_Captains_Flat_1.pdf) reflects the work of the Taskforce as an attempt at a multiagency response. However, the LMP only governs remediation on limited public land sites in the village and not private land or other contaminated sites such as the mine site. Such a limited LMP is a significant failing. The works proposed in the LMP are expensive, complex and require many years to implement. Another failing is the plan imposes costs upon the local council who are the primary land owner and manager for the public areas around the streets, parks, and oval. The council does not have the resources, capacity, and funds to implement the plan in a timely way. State Government need to fund all costs to ensure abatement work is undertaken to reduce health risks in a timely manner as private landowners and council cannot afford these costs.
- The current policies ensure that the true delineation of private land lead contamination through adequate testing methods is reliant on DSI testing undertaken by private landowners. This will result in a lack of delineation of the actual risks to residents and the public due to the excessive costs of DSIs. This ensures an unacceptable level of risk remains to health and needs to be addressed with revised State government policy and revised LMP that imposes costs solely upon State Government.
- There are anomalies with the remediation cost responsibilities on private freehold land. Much of the old mine site is privately owned. Significant government funded remediation has occurred on private freehold land. This is applauded as sediment drains and silt ponds have been constructed with more remediation planned. Government acceptance of costs for remediation needs to be extended to all private land.

- The detail of past remediation and the project plans for the future for private land at the former mine site, including the costs is not publicly available. This needs to be made public in the interests of transparency.
- Another anomaly is that in 2022, Transport for NSW bought a privately owned, heritage listed, cottage previously used as the Station Master's residence and that had been owned by Transport up till 1979. . When purchased in 2022, this was freehold residential zoned land. The cottage was a private residence until recently and is now vacant. The reasons for Transport buying back this cottage are not clear as they were under no legal obligation to buy back a private property that was known to be contaminated and would incur significant taxpayer funds. The current proposal is to demolish the cottage and remediate which will cost in excess of \$367K. DSI, planning and decision making documents for the former station masters cottage are not publicly available.
- Heritage listed structures in Captains Flat have been previously demolished by mistake. The heritage listing mode of key structures in Captains Flat appear to have changed over the years and recent plans seem to recommend demolition despite heritage listing status.
- Both of these examples reflect an inconsistent approach by NSW government to dealing with remediation costs for private land. A precedent has now been set for NSW government to pay for remediation of privately owned land at no cost to the owner, or buy back privately owned contaminated land. These anomalies need to be investigated and transparent reporting upon the processes and decision making. This precedent of government assistance to private land owners needs to be established in policy and applied equitably to all landowners in Captains Flat.
- Where the current policy is imposed due to legislation, for example the council being required to impose responsibilities for contamination on private land owners due to the *Contaminated Land Management Act 1997* (NSW), this legislation and related policies and guidelines should be reviewed and amended to specifically cater for the management of private land within the Captains Flat village.
- A contaminated lands clause was added to Section 7 of the planning certificates issued under 10.7(2) of the *Environmental Planning and Assessment Act 1979* for all residential properties in Captains Flat in July 2021 without true delineation of the contamination, and without any notification to residents. This information was only confirmed to residents, when questioned during information sessions held in May 2023. No formal notification has been made. The clause itself is highly deceptive to landowners and potential purchasers as it does not state if a property is. or is not. contaminated, only that contaminated lands policies *may* apply. We contend that the NSW government had long term awareness of the potential for contamination in the immediate surrounds of the mine, although this was only noted in planning instruments relevant to private lands from July 2021.

Health issues

- The extent of physical health risks to the community since 1962 from the contamination for Captains Flat residents (both former and current) is not known. There has recently been an invitation for residents to undergo individual testing with their own doctors if concerned, but under general NSW health system and reporting guidelines no collation of data will occur if the lead level does not exceed the reportable level. This means there is no collation of the data specifically for Captains Flat due to normal privacy restrictions.

- A proper study of health risks should be the foundation data to guide all other risk assessments to guide the development and prioritisation of remediation plans. Without this baseline health data, all risk assessments will be flawed as they do not have a fact or evidential based starting point of the impacts on the community.
- One resident has undergone testing which reveals elevated lead levels but the levels did not meet or exceed NSW government mandated reporting levels. Further investigation is needed. There may be many other residents with elevated levels, but the extent of health issues is not known. Government needs to very carefully engage and consult with the community so as not unnecessarily cause concern, or equally to not downplay risks, as government cannot provide clear information until factual data is available.
- A NSW government funded health study of current and former residents is required as a matter of priority.
- This study will take some years. In the meantime, residents undergoing private testing should have all out of pocket medical costs covered.
- The mental health and wellbeing risks to the residents of Captains Flat is of concern. This is due to concern for the health of themselves and children, a lack of transparent factual and incoherent and overly technical information from the Taskforce and the potential financial costs, insurance issues, resale value of homes etc. Clearly, it is not possible for government, consultants, or any other person to provide authoritative expert opinion or factual data on physical or mental health risks until such time that a proper research study is undertaken.
- Appropriate mental health support needs to be provided to former and current residents under a government funded program at no cost.

Inadequacy of investigations and remediation plans

- The Lead Management Plan (LMP), released August 2023, sets out a framework for remediation plans for the public land in the village and a standard Remediation Action Plan for private dwellings. There have been numerous other plans <https://www.nsw.gov.au/regional-nsw/captains-flat>) completed by Ramboll at huge costs. A significant gap in the report is that the Ramboll remediation recommended options were not subject to detailed written independent assessment or review. No documented decision making or reasons by a senior NSW government official for recommendations that will result in millions of dollars of taxpayer's money, disruption to the community and potential environmental risks has been provided. Rather the Ramboll recommendations and final plans (which accepted the preferred recommendation without exception) appeared to have been drafted concurrently and accepted without following normal government processes for receiving and assessing advisory reports from consultants.
- The LMP is incomplete as it only provides a level of detail for 7 sites in the township. It does not adequately cover five other significant related areas; (1) Mine site and containment cell details (2) DSI's for private land (3) Areas of concern such as visually toxic seepage points from southern tailing dumps near dam road and Jerangle Road and the old tennis court next to Molonglo River (4) Rail precinct and disused rail corridor to Bungendore (4) The Molonglo River downstream Molonglo River.
- There has been inadequate sediment testing of the Molonglo River.
- The LMP and precursor Ramboll reports cost hundreds of thousands of dollars (amount unknown due to lack of transparency) and reflect the lack of a holistic and coordinated response to lead contamination in the area of concern. The current LMP is of grave concern

as it will be exorbitantly expensive and slow to implement, potentially wasting millions of taxpayer's dollars on projects that are poorly conceived and will not achieve the desired outcomes, diverting scarce resources from true risk areas, which may result in increased environmental risks due to disturbing contaminated areas close to the Molonglo River that are low risk with vegetation. The current plans require extensive removal of contaminated fill, including existing vegetation and stabilisation, however retaining all contaminated fill under the proposed depths for removal exposed until clean fill capping is placed over the top. Especially in areas of flood risks and water runoff, this will expose the community and environment to potential of contamination spread both during and after the works due to destabilisation and exposure of bare contaminated fill. All that is needed in many areas is additional clean fill capping which is cost effective and can occur in a significantly shorter timeframe than the LMP suggested projects.

- As a matter of priority, the scope and effectiveness of the LMP needs to be reviewed. A much broader Strategic Eastern Molonglo Catchment Contamination Plan is needed, that covers not only Captains Flat precinct but the rail corridor and the Molonglo River to Lake Burley Griffin. This proposed Strategic Plan needs to provide a framework for high level plans for detailed investigations, health and environmental risks issues, legislative issues, policy/guidelines and remediation project prioritisation and planning. Such a Strategic Plan could effectively be the very long term roadmap for managing the impact of actual and potential contamination lands in the entire area that will be needed for a minimum of 20 years, particularly to ensure ongoing monitoring and testing of health, water, soil and air quality.
- A stakeholder in the proposed Strategic Plan needs to be the Commonwealth and ACT Government. This is due to the Molonglo River being protected under the Constitution from pollution at its source above Captains Flat. The protection is under Section 4 of the First Schedule of the *Seat of Government Act 1909* (Cth) (Extract at Tab A)
- As an example, the LMP needs to be reviewed to have greater priority on interim safety measures such as fencing, signage and sediment drains/traps.

Lack of effective and coordinated response by the Taskforce

- The multiagency government Taskforce has lacked transparency, effectiveness, and community engagement since it was established in 2021. Significantly, the Taskforce did not include community representation from Captains Flat. An anomaly was the Mogo Aboriginal Land Council (MALC) were considered stakeholders and consulted yet Captains Flat Community Association was not.
- The Working Group will invite MALC to be a stakeholder, along with other interested groups such as Landcare, CF Pre-School Association, Molonglo Rail Trail Inc etc.
- At the Taskforce community drop in session on 29 August 2023, A Regional NSW representative stated the Taskforce would be discontinued but there would be coordination of the LMP amongst the various agencies (about 7 agencies and QPRC). We submit it is unacceptable to discontinue the Taskforce.
- An example of the slow pace of progress and uncertainty is that there are no firm updates on the status of preliminary or detailed site investigations for the former Captains Flat Train Station past Beverly Hills Road out to distance of 2km north from along the station. This section is not covered the in preliminary site investigation of the 32km rail corridor. There are residents living adjacent to the corridor on Railway Crescent who have observed

investigations occurring, it would be beneficial for real time updates from NSW Transport and the Taskforce about the work in progress investigations.

To improve a coordinated response to contamination in the areas of concern, the Working Group submits:

1. The Taskforce be specifically funded and undergo governance enhancements to be a long term, effective lead body to coordinate investigations, planning and government responses (including safety measures) to contamination in the areas of concern. Specifically, primary objectives of the Taskforce should include developing a high level strategic plan and bespoke policies for management of contamination in the areas of concern within the Eastern Molonglo Catchment.
2. Provide a reliable source of factual information on health data and contamination risks in CF, including regular information updates.
3. The Taskforce needs to continue until the contamination issues are resolved to the satisfaction of government, community, and stakeholders.
4. The governance structure of the Taskforce needs to include focused working groups include community representatives (such as Working Group, MALC, Landcare, Molonglo Rail Trail etc) that focus on specific areas such as health, private land financial assistance, public land, the Molonglo River, and the rail corridor.

Future opportunities for health and economic benefits

Captains Flat will face challenging times due to the historic contamination, health, and economic uncertainties. It is important remediation planning and project work have positive outcomes to encourage an active and healthy community and attract tourism with economic benefits. These opportunities can be integrated as part of the remediation works and include both:

- Enhancing existing infrastructure, such as upgrading the tennis courts, so they are suitable for tennis/pickleball/badminton courts, top dressing, and levelling park/oval, expanding the Heritage Trail into a proper walking/cycling trail, a riverside walk/garden and/or improving the lookout.
- Building new infrastructure such as a pump track, skate park or a gravel recreation trail on sections of the disused rail corridor, such a trail forming the basis of a future rail trail.

This improved and additional infrastructure can be constructed at a minimal expense, considering that heavy machinery and earthmoving will already be underway as part of the remediation efforts. With adequate planning and consultation with the community, there will be ample opportunity to submit grant applications, including those available through the NSW Get Active program. These enhancements will make CF an attractive place to live, fostering an active community with associated health advantages, and boosting tourism, thereby generating positive economic impacts.

Additional documents required

The Working Group has requested the following documents from relevant NSW government agencies that are not available on the internet:

We would appreciate if your committee could also formally request the documents.

- Station Masters cottage PSI and DSI (Transport)

- Any PSI or DSI in relation to the old Train Station and Beverly Hills Road rail corridor areas.
- Planning and project documents for both public and private lands at the old mining site and, proposed containment cell.
- The following reports regarding the mine and its surrounds referenced by NSW Regional on their [Captains Flat, Lake George mine webpage](#):
 - Survey and Remediation Action Plan (RAP) developed between 1999-2002
 - Remediation Action Plan (RAP) prepared in 2004.
 - Heritage assessment prepared in 2005-06
 - Reports prepared in 2012 relating to the stabilisation design of the northern face of the south tailings dump.
 - Detailed investigation report/s into capping, revegetation design and water treatment options prepared in 2018-19.
 - Bench scale testing analysis in 2020 (a form of water analysis) designed to better inform water treatment facility design.

Concluding comments.

The Working Group is happy to host a visit by your committee so you can view the contamination issues in context and to hear firsthand from residents about their very real concerns about the government response to contamination, lack of financial assistance and worry about health issues for themselves and children.

Yours faithfully,

Captains Flat Community Association Inc.

15 October 2023

Tab A

Seat of Government Acceptance Act 1909 (Cth)

First Schedule

...

4. The State shall not pollute and shall protect from pollution the waters of the Queanbeyan and Molonglo Rivers throughout their whole course above the Territory.