THE WILDERNESS SOCIETY

21 January 2013

Submission to the Agriculture, Resources and Environment Committee in relation to the Mining and Other Legislation Amendment Bill 2012

The Wilderness Society welcomes the opportunity to make a submission to the Committee on the Mining and Other Legislation Amendment Bill 2012 (Bill).

Recommendation: That the Bill be amended to remove the exemptions for the Aurukun bauxite mine and PNG gas pipeline in the *Wild Rivers Act 2005* (sections 45 and 46), on the basis that all development proponents should have to adhere to uniform environmental standards and regulations.

Overview of issues

The key issue in the Bill for The Wilderness Society is the proposed extension of the Aurukun project mining exemption to any new Aurukun agreement(s) resulting from the Government's current Expressions of Interest (EOI) process for the development rights to the Aurukun bauxite resource on Cape York.

The policy underpinning the continuation and extension of the statutory exemptions currently contained in sections 45 and 46 of the Act is fundamentally flawed.

Rather than extending the current statutory exemption for the Aurukun project from the *Wild Rivers Act 2005* (Act), this Bill should be the vehicle to remove an anomalous historical legacy created by the previous Labor Government and, instead, provide for the uniform application of the Act in all declared Wild River areas.

Removing the exemptions would address concerns previously raised by elders of the Aurukun community about the anomalous treatment of the Aurukun project under the Act and ensure any future project(s) do not compromise the pristine qualities of the Archer River and surrounding wetlands.

Reasons

Queenslanders are privileged to retain some of the world's last free-flowing and healthy rivers. These wild river systems require a robust form of protection and management to ensure the ongoing health of the rivers.

The Wilderness Society QLD Inc
PO Box 5427, West End, QLD, 4101
Email: brisbane@wilderness.org.au Internet: www.wilderness.org.au

The Act provides practical protection of these priceless river systems, controlling environmentally destructive forms of development, but supporting sustainable economic activities. It is light touch regulation and it should be applied consistently across all resource projects.

In that context, it's worth noting that in declared Wild River areas, new strip mining is not permitted within the 500m – 1km protective buffer zone around major watercourses, springs and wetlands (existing mining leases are exempt). However, outside these areas strip mines are exempt from Queensland's tree clearing laws, so if the proponent can demonstrate that it meets the requirements of the Federal *Environmental Protection and Biodiversity Conservation Act 1999*, the mine will invariably go ahead. In reality, given a range of significant exemptions and the fact that most mining occurs away from waterways and springs, there are few constraints to this industry beyond the protective buffers in a Wild River declaration.

The Government has itself acknowledged water resource issues with the Aurukun mining site[1]. There are also considerable and well documented limitations with current environmental impact assessment processes in relation to dealing with cumulative environmental impacts, which will only be exacerbated by the possibility of multiple project proponents developing the resource area. Given both these issues, there is an unequivocal case for the consistent application of the Act to the project area to ensure a setback for highly destructive development away from sensitive waterways and wetlands (the "High Preservation Area") while regulating the impacts of such development in the major parts of the catchment (the "Preservation Area").

In the final analysis, the existing statutory exemptions are an anomalous historical legacy for which there has been little or no policy justification other than generalised statements that the Aurukun project was of "importance" to Government and had the "potential to attract large investment interest."[2] The current Bill provides no policy justification for the retention of the statutory exemption, and simply proceeds on the basis that some form of exemption continues to be warranted.

The Wilderness Society wholeheartedly rejects the proposition that exemptions to valid environmental protection laws should be made simply to make development proposals more attractive to investors. However, even if the Committee accepts that argument, the fact remains that the project(s) now on the table for Aurukun are of a fundamentally different order of magnitude than the 2005 Chalco project, which was the catalyst for the original statutory exemption.

The Chalco project represented a $3 billion investment in the development of a new bauxite mine at Aurukun as well as new downstream processing capacity on the east coast of Queensland. As part of

---

[1] "… the issue for the Aurukun Project is whether there is sufficient water for the Project after RTA Weipa's entitlements under the Comalco Agreement have been taken into account. The Comalco Agreement gives RTA Weipa rights to water that exist outside the Water Act 2000 (Qld). The rights include the right to take and use water from all sources within and adjacent to ML7024. Importantly, the State may not grant water entitlements to other users that diminish the volume of water RTA Weipa is entitled to take. Extensive shallow and deep drilling tests including long-term pumping tests of deep artesian aquifers were conducted by Coffee & Hollingsworth in 1972, 1973 and 1975, however further work has not been undertaken on RA315 since that time. The State cannot give a commitment to Proponents that sufficient water will be available for the Aurukun Project (or other development on Cape York) from surface and groundwater sources. The Preferred Proponent will need to undertake studies to confirm its water requirements and whether there is sufficient water available to be granted by the State for the Aurukun Project having regard to RTA Weipa's rights. It is for the Preferred Proponent to satisfy itself as to the sufficiency of available water for the Aurukun Project."
Aurukun Project, Invitation for Expressions of Interest, November 2012, Queensland Government, p12

[2] Wild Rivers Bill 2005, Explanatory Notes, p27

the Chalco agreement, the State agreed to provide $300 million for common user infrastructure. The proposal also involved an estimated direct construction workforce of 3,800 people over a three-year construction period, including 700 for the mine and washing plant at Aurukun and 3,100 for the refinery on the east coast. It was estimated there would be a direct operational workforce of about 600 people including 105 at the mine and washing plant and 407 at the refinery.

The current Aurukun EOI process explicitly excludes the development of new downstream processing capacity, drastically reducing (from almost 4,500 to less than 900) the potential direct employment opportunities from the project. Capital expenditure – and hence the broader economic benefits of the project – is also likely to be significantly less than the $3 billion mooted for the Chalco proposal.

As a final point, it's worth noting that - again, unlike the Chalco agreement - the State is not proposing to match proponent funding for any native title agreement. Under the Chalco agreement, the then Labor Government committed $3 million over two years to improve the coordination and delivery of government services and programs, and to assist the community to share in the benefits from this project. This was in addition to the $2 million per year committed by Chalco. Under the current EOI process, there is simply a requirement that the preferred proponent must address native title under the Native Title Act 1993 with the Wik and Wik Way people and develop a Cultural Heritage Management Plan, prior to the grant of a Mining Development Licence or a Mining Lease. There is nothing in the EOI documentation as regards the State's expectations about minimum Indigenous financial package requirements, and certainly nothing about the State providing additional funding.

In summary, there is nothing in either the Explanatory Notes to the Bill or in the documentation for the current Aurukun EOI process – in terms of either the overall economic benefits of the project or the specific benefits for local Indigenous communities and native title holders – that would justify a continued statutory exemption to valid environmental protection laws.

In this context, the Committee also needs to carefully consider objections raised by Aurukun community elders and other Indigenous commentators at the time of the introduction of the exemption, which questioned the legitimacy of exempting the Aurukun project from the application of the Act. In this regard, elders of the Aurukun community wrote to the then Minister for Natural Resources and Water in November 2008 asking that the exemption be revoked and requesting that the mining project be subject to the Act, without any exemption or concession. In that letter, the elders noted that "their positive and hopeful responses to the Wild Rivers Legislation and proposal for our beloved Archer River and Basin turn[ed] to fear, suspicion and deep concern…when it was pointed out …that the extensive legislation…contains a startling exemption clause…which effectively says that the massive Aurukun Bauxite Project does NOT have to abide by the legislation."[3]

The decision to exempt the Aurukun project was also subject to considerable public criticism by commentators such as Noel Pearson[4] and Tania Major[5].

The Committee needs to ensure that correspondence received by the then Government from Aurukun community members criticising the introduction of the exemption is factored into its

[3] http://www.wilderness.org.au/files/aurukun-wild-rivers-letter-to-qld-gov.pdf
[4] See, for example, http://www.crikey.com.au/2009/08/03/pearson-wild-rivers-run-with-the-stink-of-lobbyists/
[5] http://www.brisbanetimes.com.au/queensland/enhance-group-denies-wild-rivers-deal-for-chalco-20090731-e4dm.html#ixzz2IZGaftIU

deliberations about the Bill, in particular the underlying policy rationale for maintaining any statutory exemptions in the Act.

Conclusion

Exemptions to valid environmental protection laws should not be made simply to make development proposals more attractive to investors. The Bill fails to provide any policy rationale for the need to continue the current exemptions in sections 45 and 46 of the Act. The Bill should be amended to remove the exemptions for the Aurukun bauxite mine and the PNG gas pipeline, on the basis that all development proponents should have to adhere to the same environmental standards as everyone else. The consistent and uniform application of the Wild Rivers Act across all declared wild river areas reflects the basic protection and management arrangements that are required to ensure the ongoing health of these priceless river systems.

For further information of any of the matters raised in this submission, please contact Karen Touchie, Queensland Campaigner, The Wilderness Society (Qld) on 3846 1420 or via email at Karen.Touchie@wilderness.org.au.

Karen Touchie
Queensland Campaigner
The Wilderness Society (Qld)