



*A Community Legal Centre specialising  
in public interest environmental law.*

6 August 2009

Olympic Dam EIS Submissions

GPO Box 1815

ADELAIDE SA 5001

Via email [OlympicDamEIS@state.sa.gov.au](mailto:OlympicDamEIS@state.sa.gov.au)

Dear Sir/Madam

**RE: PROPOSED EXPANSION OF THE OLYMPIC DAM MINE-COMMENT ON DRAFT ENVIRONMENTAL IMPACT STATEMENT**

The Environmental Defender's Office (SA) Inc ( the "EDO") welcomes the opportunity to provide comment on this most significant document. The EDO is a community legal centre specialising in public interest environmental law. This organisation has over ten years experience in litigating environmental matters and participating in environmental law reform processes. EDO functions include legal advice and representation, law reform and policy work and community legal education.

**EXECUTIVE SUMMARY**

The proposed expansion of the Olympic Dam mine site will create the largest open - cut mine in the world. BHP Billiton proposes creating a open pit measuring approximately 20 cubic kilometres. The predicted greenhouse gas emissions from the proposed expansion will be nearly 5 million tonnes per year , water consumption will increase to 150 million litres daily, and the production of radioactive tailings will increase to 70 million tonnes per year.

**REGULATORY FRAMEWORK**

The current mining operation is not subject to regulatory standards as rigorous as those imposed on smaller projects and the proposed expansion may well be regulated in the same way.

The existing facilities and operations at Olympic Dam are regulated by the Roxby Downs (Indenture Ratification ) Act 1982 and subsequent amendments. This piece of legislation applies to all aspects of the Olympic Dam operations located on the Indenture land as defined by the Olympic Dam Special Mining Lease. Its provisions largely exempt the operators of the Roxby Downs (Olympic Dam) uranium/copper mine from South Australian environmental and Aboriginal heritage protection laws and also curtails the Freedom of Information Act.

### **Recommendation**

The EDO recommends the repeal of the privileges contained in the Roxby Downs ( Indenture Ratification ) Act 1982 in relation to the existing operation and any expansion should be subject to the same regulatory provisions as other projects in this State.

### **ENERGY USE AND GREENHOUSE GAS EMISSIONS**

A major environmental concern with the proposed expansion is the issue of greenhouse gas emissions. Electricity usage at the mine will increase from 120 megawatts to 690 megawatts, approximately 42 per cent of South Australia's total electricity consumption. The substantial increase in the State's greenhouse gas emissions is in conflict with the SA Government's policies and laws relevant to reducing the States greenhouse gas emissions, in particular the State Strategic Plan and the Climate Change Act and in complete contrast to the direction in which the majority of the world's scientists say we must head to have an impact on climate change.

### **Recommendation**

The EDO recommends careful consideration of the substantial greenhouse gas emissions from this project in the decision making process and the finalisation of a sector agreement prior to any work starting should the project be approved.

### **REGULATION OF THE OLYMPIC DAM OPERATION**

The Roxby Downs Indenture Act ( the Act ) was created to establish the operation of the Olympic Dam copper and uranium mine, which was then owned by a joint venture comprising BP and Western Mining Corporation (which later became WMC Resources Ltd). The Act ratifies an Indenture or agreement between the State of South Australia and the joint venturers dated the 3rd March 1982. Western Mining Corporation negotiated exemptions from South Australian state laws on environmental protection, natural resources (including water), Aboriginal heritage and Freedom of Information. In 2005 BHP acquired WMC Resources Ltd. BHP inherited these exemptions when it bought Western Mining.

The Act came into operation on the 21<sup>st</sup> June 1982 and was amended in 1996, 1997 and 2001.

Essentially the Act and the Indenture comprehensively regulate current and future mining developments in the Olympic Dam area and the Selected Areas together with associated

treatment and transportation facilities and related infrastructure. The Schedule to the Act contains the main terms of the Indenture covering such matters as the protection and management of the environment, provision of infrastructure, leases and licences.

The Act and the Indenture it ratifies are without precedent, out of date and out of step with practices under modern environmental laws. The Indenture style of regulation should not be used with respect to the Olympic Dam operation, rather it should be subject to the same laws as other projects in South Australia.

BHP has argued that the mine expansion requires the certainty that only an Indenture Act can provide. This is not a reason for weakened environmental and Aboriginal heritage protections.

It is important to note that the Act has no effect on the Commonwealth jurisdiction, thus the regulatory provisions of the EPBC Act and any other relevant heads of power stand.

### **Section 7 - Modification of State Law**

One of the significant features of the Act is that certain state laws are modified to give full effect to the Indenture. Where there are inconsistencies between the Indenture Act and other State Act or Law, the provisions of the Indenture will prevail. The provisions of the Act override existing State law, essentially allowing activities on the Indenture land to be governed primarily by the provisions of the Act. Specifically, section 7 of the Act provides:

- (1) The law of the State is so far modified as is necessary to give full effect to the Indenture and the provisions of any law of the State shall accordingly be construed subject to the modifications that take effect under this Act.
- (2) Without limiting the generality of subsection (1), in the case of any inconsistency between the provisions of any Act or law and of the Indenture, the provisions of the Indenture shall prevail and in particular—
  - (a) the following Acts are to be construed subject to the provisions of the Indenture:
    - (i) the Commercial Arbitration Act 1986; and
    - (ii) the Crown Lands Act 1929; and
    - (iii) the Development Act 1993; and
    - (iv) the Electricity Corporations Act 1994; and
    - (v) the Environment Protection Act 1993; and
    - (vi) the Harbors and Navigation Act 1993; and
    - (vii) the Mining Act 1971; and
    - (viii) the Petroleum Act 1940; and
    - (ix) the Real Property Act 1886; and
    - (x) the Residential Tenancies Act 1995; and
    - (xi) the Stamp Duties Act 1923; and
    - (xii) the Water Resources Act 1990,and, to the extent of any inconsistency between the provisions of those laws and of the Indenture, the provisions of the Indenture prevail

Of most concern perhaps is the exclusion of the Environment Protection Act. The exclusion of this Act means that the proponent's operation is not subject to the regulatory framework applicable to most other industry in South Australia and the Environment Protection Authority has no role to play if there are instances of environmental harm. In fact the Department of Primary Industries and Resources South Australia (PIRSA), is responsible for overseeing the project's environmental standards and arguably this amounts to a conflict of interest.

It should be noted that the Water Resources Act has been largely substituted by the enactment of the Natural Resources Management Act 2004. However clause 1 of the Indenture ( Defined Terms ) states that the Act applies to any Acts which are a substitute for the Water Resources Act.

The scale of the expansion proposal has the potential to create much greater risks to the health of the environment than has occurred to date. Thus legal accountability is even more important should the proposal be approved.

### **Section 9 - Modification of the operation of the Aboriginal Heritage Act 1988**

The operation of the Aboriginal Heritage Act is modified by section 9 of the Act. This provision effectively gives BHP control over the way in which aboriginal heritage matters are dealt with. BHP can control all matters to do with recognising aboriginal heritage including the nature and manner of any consultations, which groups they consult with, what sites are recognised and the level of recognition. As the owner of the land on which the operation occurs BHP arguably has a conflict of interest in dealing with aboriginal heritage issues. It is noted that the operation of the Aboriginal Heritage Act is not affected with regard to operations/land outside the Stuart Shelf and Olympic Dam Area.

### **Clause 35 of the Indenture - Access to Information**

Clause 35 grants BHP veto power over information relating to activities undertaken within the 1.5 million hectares covered by the Indenture.

## **ENERGY USE AND GREENHOUSE GAS EMISSIONS**

The proposed expansion will require 520 megawatts of additional energy a day. The sources of the additional energy required for the proposal potentially include on-site co-generation, construction of an additional power transmission line and construction of a gas pipeline from Moomba to Olympic Dam.

The Olympic Dam operation is currently one of the largest emitters of greenhouse gases in South Australia. The proposed expansion will add enormously to the operation's and South Australia's emissions if it proceeds.

## **The Climate Change and Greenhouse Emissions Reduction Act 2007 (The Climate Act)**

The Climate Act came into operation on the 3 July 2007.

The Climate Act does not have any binding provisions applicable to the Olympic Dam operation. However, the scope of the Climate Act clearly intends for South Australian emission reduction targets to be achieved through action from all sectors in South Australia, including the mining industry. Under the Act, the Minister is given a broad function to work with business to promote action to reduce greenhouse emissions and meet the SA targets. The Minister's Climate Change Council is an independent body that advises the Minister on Climate Change related issues.

The Act was established with the following objectives: - to provide for measures to address climate change with a view to assisting to achieve a sustainable future for the State; to set targets to achieve a reduction in greenhouse gas emissions within the State; to promote the use of renewable sources of energy; to promote business and community understanding about issues surrounding climate change; and to facilitate the early development of policies and programs to address climate change.

Section 3 of the Act expands on these objectives including the development of specific targets (as appropriate) for various sectors of the State's economy; various interim targets and to encourage the commercialisation of renewable energy and of technologies that will reduce or limit greenhouse gas emissions or support adaptation to climate change.

Section 5 states that targets of emissions to be achieved with the principle target being to reduce by 31 December 2050 greenhouse gas emissions within this State by at least 60% to an amount that is equal to or less than 40% of 1990 levels. The section also authorises the Minister to:

- 1 determine the method for calculating greenhouse gas emissions for the purposes of setting relevant 1990 levels (the "baseline"), and then determine a figure that represents that baseline;
- 2 determine the method for calculating any reduction in greenhouse gas emissions;
- 3 set sector-based targets and additional interim targets;
- 4 set specific baselines for particular areas of activity (as components of the overall baseline); and
- 5 make other determinations that assist in measuring greenhouse gas emissions within the State (s5(3)).

Section 14 of the Act states that the Minister should seek to develop policies that are aligned with the targets; promote and implement measures to facilitate adaptation to the effects of climate change, and encourage innovations in this sector of the State's economy.

Section 15 allows the Minister to take steps for the recognition, promotion or facilitation of emissions offset programs initiated on a voluntary basis. The section suggests provisions on how to do without limiting the section to those.

Section 22 allows for the creation of regulations to the Act by the Governor and includes suggestions for the content of the regulations including requiring notice before a certain class of activity commences (s22(2)(d)), and the provision of a scheme under which the Minister may set targets, including interim targets, for the State Government, and specific targets for specific government agencies or instrumentalities, to reduce greenhouse gas emissions from their activities within the State that are at least equivalent to the SA target (s22(2)(e)).

There are currently no regulations or sector based agreements in place in relation to the mining industry.

The proposed 50 year lifespan of the Olympic Dam operations means that any expansion will make a significant medium term and long term contribution to SA's greenhouse emissions. Efforts to reduce its emissions has the potential to make a vital contribution to the realisation of the Climate Act's 2050 target levels.

The provisions of the Climate Act need to be considered and influence decision making on the proposal.

### **Tackling Climate Change: South Australia's Greenhouse Strategy 2007-2020**

This document was released by the Premier on 31 May 2007. The strategy provides a framework for the State as a whole to respond to Climate Change, including specific goals and strategies for Industry and Energy. This policy and strategy is a very broad. reference to the industry and energy sector goals and relevant strategies could be cited to strengthen a submission made under the Climate Act.

Two of the six sectors are relevant to the proposal namely Industry and Energy

With respect to Industry the following goals are relevant;

- a. Industry will be a leader in managing greenhouse gas emissions and tackling climate change
- b. Objective 4.2-reduce greenhouse gas emissions whilst driving and enhancing business competitiveness
- c. Strategy is to build business capacity to reduce greenhouse gas emissions, use supply chains to increase greenhouse gas abatement and promote the achievement of SA business "to ensure energy investment and markets follow a transition pathway to low greenhouse emissions".
- d. Objective of government action is to establish sectoral agreements that put in place measures to achieve agreed goals and targets

With respect to the energy sector the following goals are relevant

- a. South Australia's energy systems will significantly reduce greenhouse emissions while continuing to support productivity and prosperity.
- b. Objective 5.2 -increase take-up of renewable and low emission technologies.

- c. Objective 5.3 –ensure energy investment and markets follow a transition pathway to low greenhouse emissions.

### **South Australia’s Strategic Plan**

The Plan provides 6 objectives “for our shared future”. It “expresses our values; its targets reflect our priorities”. The SA Strategic Plan “is for everyone – business, community and government”. Clearly the Strategic Plan is applicable to BHP’s ODE. Clearly, the Strategic Plan is also applicable to the SA Governments assessment and approval of the proposal.

Importantly, the plan identifies key interactions and emphasises that “Achieving one target should not come at the expense of another”. The specific measurable impact of the proposal needs to be assessed against the relevant specific, measurable targets contained in the Strategic Plan.

Two objectives are particularly relevant to the proposal:

#### **Objective 1 – Growing Prosperity**

“South Australians want a dynamic economy that is competitive, resilient and diverse. The state’s prosperity should benefit all citizens. Our growth will be managed in an environmentally sustainable way...”,

Topic: Exports

T1.17 Minerals exploration: exploration expenditure in South Australia to be maintained in excess of \$100 million per annum until 2010.

T1.18 Minerals production: increase the value of minerals production to \$3 billion by 2014.

T1.19 Minerals processing: increase the value of minerals processing to \$1 billion by 2014

#### **Objective 3 – Attaining Sustainability**

“South Australians value the natural beauty of our state. We are concerned about the depletion of natural resources and want to minimise the impact of human activity on the environment. Our legacy must be a thriving and well-cared-for environment. The challenge of sustainable development requires the focus, commitment and ingenuity of all South Australians”.

Topic: Climate change

T3.5 Greenhouse gas emissions reduction: achieve the Kyoto target by limiting the state’s greenhouse gas emissions to 108% of 1990 levels during 2008-2012, as a first step towards reducing emissions by 60% (to 40% of 1990 levels) by 2050.

Topic : Ecological footprint

T3.7 Ecological footprint: Reduce South Australia’s ecological footprint by 30% by 2050.

It is noted that the time frame of target means that the proposal will have significant impact on our footprint over the life of the mine.

Topic: Water

T3.9 Sustainable water supply: South Australia's water resources are managed within sustainable limits by 2018.

T3.10 River Murray – flows: increase environmental flows by 500GL in the River Murray by 2009 as a first step towards improving sustainability in the Murray-Darling Basin, with a longer-term target of 1500 GL by 2018.

Topic: Energy

3.12 Renewable energy: support the development of renewable energy so that it comprises 20% of the state's electricity production and consumption by 2014.

### **Key Interactions**

Of major importance is the key interactions section. This section states that "neither the objectives nor any individual targets stand alone - they are all part of a larger inter-related framework. Achieving one target should not come at the expense of another".

Therefore it is vital that this project be considered in light of all the objectives set out in the SA Strategic Plan and in the light of all related policies and legislation. Economic prosperity must not be seen as the most important objective and must be just one of the factors to be considered. The environmental concerns are weighty and sustainable growth must be the guiding principle in any decision on this most significant of projects.

Please feel free to contact the writer should you have any queries in relation to the contents of this submission.

Yours faithfully



Melissa Ballantyne  
Coordinator/Solicitor  
Environmental Defenders Office (SA) Inc

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Office: 1st Floor, 408 King William St, Adelaide, South Australia  
Postal Address: GPO Box 170, Adelaide, SA 5001  
E-mail: [edosa@edo.org.au](mailto:edosa@edo.org.au) ~ Web: [www.edo.org.au](http://www.edo.org.au)  
Ph: (08) 8410 3833 ~ Fax: (08) 8410 3855  
Country Freecall: 1800 337 566