



24 October 2018

Environmental Assessment Officer  
Resource Assessments  
Department of Planning and Environment  
GPO Box 39  
SYDNEY NSW 2001

**Attention: Melissa Anderson**

Dear Melissa,

**Subject: Newstan Colliery (DA 73-11-98) - Modification 8**

**Request for comments - Lake Macquarie City Council**

Thank you for the opportunity to comment on the above modification application. Lake Macquarie City Council has reviewed the information contained in the supporting documentation and makes the following response.

**Introduction**

Council has a direct interest in the proposal to extend the area of mining at Newstan Colliery both as a local planning authority and as the owner of land impacted by the proposal.

There does not appear to have been any formal consultation between the applicant Centennial Coal or its consultants and Council in relation to the proposal.

**Proposal**

The proposal is to modify an existing consent to undertake first workings coal extraction from an extended area of about 229 ha and to extend the consent by 12 months.

Information in the environmental assessment (Appendix A) indicates that this proposal is an interim development to provide for geological exploration of the resource, ahead of a foreshadowed State Significant development application for the Newstan Extension project. This would be likely to result in additional mining activity.

**Background**

Land owned by Lake Macquarie City Council is partly within the project area. This land is described as Lot 463 DP 1138964 and is incorrectly shown in the environmental assessment (Figure 2-6) as being owned by the NSW Aboriginal Land Council.

Our Ref: MISC/81/2010/A

This land is known as the Awaba Biodiversity Conservation Area and is a biodiversity offset site managed for the protection of biodiversity in accordance with the Awaba Biodiversity Conservation Area – Plan of Management 2015. Council consulted with Centennial Coal in the preparation of this plan and Centennial Coal was made aware of the biodiversity significance of the site at that time.

#### *Mining Leases and Licences*

Lot 463 DP 1138964 is within and surrounded by various mining authorities held by Centennial Newstan Pty Ltd. Exploration Licence No 5138 (EL5138) and Mining Lease No 1452 (ML1452) are granted under the *Mining Act 1992*.

EL5138 includes the surface and land below a depth of 15.24m and gives the holder various rights to explore for coal. ML1452 was granted on 6 July 1999 for a period of 21 years and operates until 2020.

ML1452 permits underground mining and was granted following development consent for the Newstan Life Extension Project. It appears that no current development consent for mining exists under the land. Under the *Mining Act 1992*, the holder of a sub-surface mining lease can make application to carry out various surface activities related to mining but is required to reach agreement with the landowner, prior to commencing surface works. The mining lease holder advised Council in 2015 that in the event of future underground mining, surface disturbance to the land may be required.

#### *Awaba Waste Management Facility approval*

Under the terms of the development consent for the Awaba Waste Management Facility (condition 51A), Council was required to register a restriction burdening the land (Lot 463 DP 1138964) in favour of the Minister for Planning and Infrastructure to implement the Biodiversity Offset Strategy in condition 50 of the consent.

The Awaba Biodiversity Conservation Area is also subject to consent requirements for the Awaba Waste Management Facility under the terms of the *Environment Protection and Biodiversity Conservation Act 1999*. These restrictions applying to the land are not identified in the project environmental assessment.

Council recognises existing rights to mine under its land. This is recognised in condition 51A(c) of the consent for the Awaba Waste Management Facility which notes that the restriction instrument for the land “not restrict or constrain the holder of an authority granted or renewed under the *Mining Act 1992* or any Act consolidating or replacing that Act from carrying out on the subject land prospecting, mining operations, mining purposes and related improvements and activities authorised by or under any such authority”.

#### **Comments**

Council identifies the following assessment matters that should be considered in determining the proposal:

##### *Biodiversity and ecological assessment*

The majority of the proposed area of mining is located within the proposed Awaba Conservation Area that has been identified as a proposed conservation reserve since 1995. The proposed mining should avoid any adverse biodiversity or environmental impacts on this area.

Conservation of biodiversity, especially threatened species habitat and endangered ecological communities within the Lake Macquarie LGA and habitat connectivity is provided through local and regional strategic and statutory plans and strategic actions. In particular, the Lake Macquarie Development Control Plan 2014 identifies the vegetated areas affected by the proposal on its Native Vegetation and Corridors Map 2015 as providing local and regional scale habitat connectivity. This is a supporting document in the Lake Macquarie Flora and Fauna Survey guidelines.

Maintaining water quality and natural hydrology and flows in Kilaben Creek and to Lake Macquarie are important for maintaining the Lake environment and amenity. Previous coal mining in the Lake Macquarie LGA has affected groundwater flows and quality, which has adversely affected groundwater and surface water dependent ecosystems including endangered ecological communities.

The project environmental assessment has included no data to indicate that the matters identified above have been adequately considered. The assessment assumes that there will be no impact on the surface, even though there will be minor subsidence and changes to groundwater conditions, and past experience from underground mining within the Lake Macquarie LGA has shown that unanticipated impacts do occur.

In addition the implications of processing of additional coal and reject material at Newstan Colliery do not appear to have been addressed. For example, the existing approved arrangements for reject emplacement should be reviewed, as to their adequacy for enabling the proposal to proceed in an environmentally satisfactory manner.

#### *Aboriginal archaeology*

The proposal includes an Aboriginal Heritage Impact Assessment Report, which supplements the previous archaeological assessments.

The report was undertaken in accordance with the Aboriginal Cultural Heritage Consultation Requirements (ACHCR) for Proponents (2010) by OEH and consultation with the Aboriginal parties has been ongoing since 2010, and more specifically regarding the proposed modification since May 2018.

It is noted that no impact is proposed to the registered sites within the subject site.

The report includes recommendations in accordance with the Northern Holdings ACHMP, which require a 3-phase monitoring program to be implemented for the identified sites. The recommendations of the report should be adopted as conditions of consent.

#### *Lake Macquarie City Council as landowner*

It appears that the proponent has undertaken biodiversity surveys on Council land without consultation or permission. Council requests all ecological information collected including the plot data for biodiversity surveys be provided (in Excel spreadsheet format if possible).

Council has obligations to conserve biodiversity and threatened species on the land under both NSW and Commonwealth legislation and approvals. The management arrangements for the land are outlined in the Awaba Biodiversity Conservation Area – Plan of Management 2015.

Council expresses its concern about any impacts from mining that may adversely affect biodiversity on its land. Notwithstanding the comments made in the project environmental assessment, Council is not satisfied that mining would not affect surface and groundwater flows on its land, and cause consequent impacts on surface and groundwater dependent

ecosystems downstream, including endangered ecological communities. The environmental assessment does not consider the requirement under the *Biodiversity Conservation Act 2016* for impacts on biodiversity to be avoided. This matter should form a key part in the environmental assessment of the project.

Whilst the environmental assessment indicates that there will be no surface disturbance, previous advice given by Centennial Coal to Council indicates that surface disturbance may be required, either for exploration activities or for ventilation purposes.

It is noted that the Council land affected by the proposed development contains identified priority *Tetratheca juncea* habitat as shown in the Awaba Biodiversity Conservation Area – Plan of Management 2015. This plant species is a matter of national environmental significance listed under the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999*. The environmental assessment erroneously concludes that there is no likelihood of occurrence (Appendix C of the Proposed Newstan Modification 8 Biodiversity Thresholds Test (RPS 24 August 2018), yet this is a significant matter for consideration in the application. The incorrect statement in the Appendix that “Likelihood of Occurrence: None. Suitable formation level vegetation habitat surrogates are absent from the study area. Species incidence is not expected and, if present, would represent atypical habitat usage” should be corrected.

It is unreasonable to extend the existing mining lease by a further 12 months when it has already operated for around 20 years, and is not supported by any justification within the environmental assessment. This should be assessed as part of the Newstan extension project that is subject to a separate approval process. Furthermore, legislative changes now place a responsibility on project proponents to avoid impacts on biodiversity and this is inconsistent with a lease extension.

If the development were to proceed, Council would require the following consent conditions to be imposed on any modified consent:

1. Centennial Coal is to undertake a program of surface and groundwater monitoring within the Kilaben Creek catchment to determine baseline conditions and post mining changes to the satisfaction of Lake Macquarie City Council. Monitoring data is to be made available to the Council.
2. Centennial Coal is to undertake a program of biodiversity monitoring, on that part of Lot 463 DP 1138964 as is affected by the proposal, to the satisfaction of Lake Macquarie City Council, consistent with monitoring required in the Awaba Biodiversity Conservation Area – Plan of Management 2015.
3. The project applicant is to enter into a legal agreement with Lake Macquarie City Council to indemnify the Council against any loss or damage to its land, or biodiversity, or any management cost that may arise from disturbance to the land. The agreement is to provide for financial security to adequately cover potential losses or damage.
4. In the event that any surface disturbance to Lot 463 DP 1138964 results from the development, the project applicant agrees to find and make all necessary arrangements to secure additional biodiversity offsets to compensate for that surface disturbance, to the satisfaction of the Lake Macquarie City Council, the NSW Minister for Planning, and the Commonwealth Department of Environment and Energy.

## Summary

Council is not satisfied that the environmental assessment of the project proposal is adequate to consider the potential risks of impacts arising from the development. The project

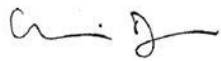
is likely to directly affect Council's land and legal obligations to maintain biodiversity values on its land as an offset site.

The Council does not support a 12 month extension of the mining lease for the project, and considers that this aspect of the project should be part of the comprehensive assessment of the Newstan Extension project.

In the event that the proposal is approved, the Council requests the imposition of conditions identified above to protect the environment and its interests.

Should you require further information, please contact me on 4921 0311.

Yours faithfully



Chris Dwyer

**Principal Development Planner  
Development Assessment and Compliance Department**