



8 September 2008

David Kitto  
Department of Planning  
GPO Box 39  
SYDNEY NSW 2000  
AUSTRALIA

*Our Reference: LETTER TO DOP RE RESPONSE DOC 8 SEPT 08 FINAL*

Dear David,

**RE: HVO SOUTH COAL PROJECT – RESPONSE TO SUBMISSIONS**

The Hunter Valley Operations South Coal Project (MP 06\_0108) Response to Submissions report was submitted to the Department of Planning (DoP) on the 10<sup>th</sup> of July, 2008 and forwarded at your request to the following on the 15<sup>th</sup> of July, 2008:

- Department of Climate Change (DECC);
- Department of Water and Energy (DWE);
- Department of Primary Industries;
- Department of Lands;
- Roads and Traffic Authority; and
- Singleton Shire Council.

As advised in your 4<sup>th</sup> of August 2008 letter, the DoP has reviewed the Response to Submissions Report and believes that in all but one instance, Coal & Allied (CNA) has addressed the matters raised in its letter (dated 10<sup>th</sup> of April 2008) in sufficient detail to enable the DoP's assessment of this project to proceed.

The DoP is seeking further information regarding the potential amenity impacts on the Hunter Valley Gliding Club (HVGC) members including consideration of the facilities being used for up to 72 hours at a time.

CNA acknowledges the DoP's request in regards to this issue. Consequently the results of the noise and air quality modelling undertaken for the HVO South Coal Project Environmental Assessment (EA) have been further reviewed. These results are provided with a discussion of the potential health impacts on the HVGC members. However the original mine plan that was assessed for the EA allowed for the mining of the western end of the HVGC airstrip and the relocation of the club facilities. This proposal will no longer proceed following discussions with the HVGC.

**Coal & Allied Operations Pty Ltd**

ABN 16 000 023 656  
Lemington Road, Ravensworth via Singleton NSW 2330 Australia  
PO Box 315 Singleton NSW 2330 Australia  
Telephone +61 2 6570 0300 Facsimile +61 2 6570 0377

Instead CNA propose to mine around the HVGC owned land and the existing facilities will remain in the current location. As a result a new mine plan is required to be developed. This has provided an opportunity to revise the approach to mining and identify measures to minimise the potential amenity impacts to the HVGC members when they are in attendance at the club's facilities.

### **HVGC Amenity**

As discussed with the DoP and DECC, although the HVGC is not approved as a permanent residential dwelling nor is it used as permanent residence, it is still occupied for up to 72 hours at any one time on various occasions.

For noise assessment purposes, it has been advised by the DECC and agreed by DoP that the appropriate amenity receiver category for the HVGC is an Active Recreation type of receiver. The recommended criterion in the DECC's Industrial Noise Policy for this receiver type is 55 – 60 dB(A)<sub>L<sub>eq</sub></sub>.

For air quality assessment purposes, the DECC has advised that in accordance with the DECC 2005 guideline, *Approved Methods and Guidance for Modelling and Assessment of Air Pollutants in NSW*, the HVGC should be categorised as a Sensitive Receiver. (Refer copy of email correspondence 28 September 2008 attached). DECC criteria for a Sensitive Receiver has been considered below.

In accordance with DECC's suggestion, CNA propose to develop an Amenity Management Plan for HVGC to manage potential issues at the HVGC in view of the fact that the HVGC land is not continuously occupied and to further reduce the risk of adverse impacts on the amenity of the HVGC members.

The Amenity Management Plan for HVGC will include a number of components as detailed following.

- 1 A risk assessment will be conducted to identify:
  - those parts of HVGC's land requiring additional mitigation measures such as areas where the potential health impacts may occur at the HVGC ie club house and where the caravans are located;
  - likely and scheduled times of occupation and high intensity use of HVGC land e.g. gliding festivals.
  - weather conditions when gliding activities do not occur; and
  - weather conditions and mining operations that would have the greatest potential to generate impacts on users of the HVGC land.
- 2 The planned modification to the mine plan which will exclude the HVGC owned land will take into consideration the results of the risk assessment. As a consequence future mining activities will be sensitive to potential significant impacts on the amenity of users of the HVGC.
- 3 Notification regime between CNA and HVGC in relation to mining activities and gliding activities.
- 4 Further air quality and noise modelling will be conducted reflecting the modified mine plan.

- 5 The modelling results will be used to modify mining operations where the modelling indicates the air quality and noise levels will occur above the agreed criteria.
- 6 Management measures will be developed to ensure the mining activities are conducted in a way that ensures air quality and noise emissions are at an acceptable level.

#### *Investigation of Management Options*

Flexibility in activities will be key in the development of management options. Options will consider equipment used, location of operations and the potential for campaign mining.

For example, winds are predominately from north west during winter and south east during summer. In winter, activities may be required to be modified when mining several hundred metres to the west of the HVGC facilities (ie moved further west or in a location where dust will not be transported to the HVGC). In summer, activities may need to be modified when mining to the south of HVGC facilities.

Similar consideration will need to be given to such winds as well as south westerly winds when considering noise impacts. Summer would be the most favourable time for mining at the western end of the strip, but there may be some occasions, when activities may need to be modified.

It is contemplated that CNA may seek to adopt campaign mining if negotiated with the HVGC which may result in a more concentrated period of mining close to the HVGC facilities but over a shorter time period. Any agreement with the HVGC will acknowledge the potential short-term impacts of campaign mining.

#### *Monitoring Considerations*

The most appropriate form of monitoring will be considered and discussed with the HVGC and DECC. The monitoring program will be detailed in the Amenity Management Plan for the HVGC. The monitoring mechanism would need to allow for the situations when the HVGC is not attended. Furthermore the HVGC activities in themselves may result in noise and air emissions. Therefore the monitoring program and review of results will need to allow for the HVGC existing site conditions and activities of the club including the use of the tug plane and group events. A schedule of activities, including times that the HVGC expect members to be in residence overnight, will be required from the HVGC to provide appropriate interpretation and mitigation measures.

#### ***Predicted Noise and Air Quality Impacts***

The expected noise levels at the HVGC club house and nearby caravan parking area that were presented in the EA Report are summarised in *Table 1*. This information was not presented in a tabulated format in the EA Report because at the time of the assessment the HVGC was not considered a Sensitive Receiver. This information has now been extracted from the modelling results for the HVO South Coal Project EA Report submitted in 2008.

*Table 1 NOISE LEVELS PREDICTED AT HVGC FACILITIES*

| EA Report              | Description                                                                                                                                  | Predicted Leq,<br>15min Noise Levels, dB(A)<br>(adverse INP winds) | DECC Active<br>Recreation Criterion |
|------------------------|----------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------|-------------------------------------|
| <b>Mining Scenario</b> |                                                                                                                                              |                                                                    |                                     |
| Scenario C2            | Operations in three pits (including South Lemington Pit 1 of HVGC but not through HVGC. Mining approximately 1.8km from the HVGC facilities. | 50-55                                                              | 55                                  |
| Scenario D             | No operations in South Lemington Pit 1. Operations approximately 1.8km from the HVGC facilities.                                             | 35-40                                                              | 55                                  |

*Table 1* indicates that the DECC Active Recreation criterion are met for Scenarios C2 (approximately year 2019) and D (approximately year 2024). These represent the expected range in noise levels at the HVGC, when excluding scenarios whereby plant is working virtually in and through the HVGC airstrip.

This suggests Scenario C2 operations be used as the threshold beyond which operational management to mitigate noise should be invoked.

The modelling work undertaken for the air quality assessment indicated that in 2006, when mining was approximately 800 m to the north west of the HVGC facilities (approximately the closest distance possible without intruding onto the airstrip itself), this point would have experienced:

- Maximum 24-hour PM<sub>10</sub> concentration of 100 µg/m<sup>3</sup>
- Annual average PM<sub>10</sub> concentrations of 40 µg/m<sup>3</sup>
- Annual average TSP concentration of 80 µg/m<sup>3</sup>
- Annual average dust (insoluble solids) deposition of 3.5 g/m<sup>2</sup>/month.

The predicted maximum 24-hour average PM<sub>10</sub> concentration does exceed the assessment criterion of 50 µg/m<sup>3</sup>. However future monitoring of air quality will need to consider the status of occupation of the HVGC facilities. For example this concentration may occur when the site is not occupied.

The predicted annual average PM<sub>10</sub> concentration of 40 µg/m<sup>3</sup> is also above the assessment criterion of 30 µg/m<sup>3</sup>. However the accuracy of the application of this particular criterion to a site occupied on a non-continuous basis is uncertain.

For the other assessed scenario (Scenario B1 - approximately year 2014 when mining is taking place closest to the airstrip but not actually on the airstrip), the predictions for HVGC facilities are:

- Maximum 24-hour PM<sub>10</sub> concentrations of 140 µg/m<sup>3</sup>
- Annual average PM<sub>10</sub> concentrations of 28 µg/m<sup>3</sup>
- Annual average TSP concentration of 35 µg/m<sup>3</sup>
- Annual average dust (insoluble solids) deposition of 2 g/m<sup>2</sup>/month

Apart from the maximum 24-hour PM<sub>10</sub> concentration, which exceeds the 24-hour PM<sub>10</sub> assessment criterion of 50 µg/m<sup>3</sup>, the values are below the relevant assessment criteria.

The predicted concentration of 140 µg/m<sup>3</sup> is above 50 µg/m<sup>3</sup> but it is below the United States EPA standard of 150 µg/m<sup>3</sup> (99-percentile of 24-hour concentration over a year). The 150 µg/m<sup>3</sup> level has been referred to in recent approvals as a criterion that should not be exceeded for a cumulative concentration. Conditions of approval for mining operations have often referred to 50 µg/m<sup>3</sup> as a level that should not be exceeded due to emissions from the mine considered in isolation and 150 µg/m<sup>3</sup> as a level that should not be exceeded cumulatively.

As previously stated, these modelling results reflect the mine plan that was initially developed and included the mining of the western end of the HVGC airstrip. A new mine plan will now be developed that will exclude the mining of the HVGC airstrip. Air quality and noise modelling will then be undertaken based on this plan and will be used in the development of the Amenity Management Plan for the HVGC. As such, the results described above will be superseded and management measures will be implemented to reflect the requirement to meet the necessary levels

### ***Agreement with HVGC***

The DoP requested a copy of the 2002 Agreement between CNA and the HVGC. This Agreement was developed in accordance with condition 7.4 of DA 114-12-98. A copy of the Agreement is attached to this letter. This Agreement is no longer relevant to the HVO South Coal Project and CNA request that the requirement for an Agreement is replaced with a condition of approval that references the obstacle limitation surface (OLS) instead of a physical distance to allow for mining equipment to operate below the gliding path. The OLS was defined in Figure 2.3 of the HVO South Coal Project Response to Submissions Report (2008) which is attached.

### ***Proposed Statements of Commitments Regarding HVGC***

CNA will update the Statement of Commitments and include the following conditions to address the concerns relating to the HVGC:

- I. An Amenity Management Plan for HVGC land will be developed in consultation with HVGC and submitted to the Director General 3 months before the date that mining in the Riverview South-East extension area commences under this Project Approval.*
- II. The Applicant shall ensure that noise emissions at the occupied HVGC facilities during times of overnight occupation that have been notified by HVGC to CNA do not exceed the noise limits for Active Recreation Receiver which is a maximum of 60 L<sub>Aeq</sub> dB(A) pursuant to the Industrial Noise Policy.*

*However, if CNA has a written negotiated noise Agreement with HVGC (including one relating to campaign mining) and a copy of this Agreement has been forwarded to the DECC, then CNA may exceed the noise limits in accordance with the negotiated noise Agreement.*

*III. The Applicant shall ensure that air quality thresholds at the HVGC facilities during times of occupation that have been notified by HVGC to CNA do not exceed air quality limits for a Sensitive Receiver unless otherwise in accordance with an agreement with the HVGC (or owner of the HVGC land). Pursuant to the Approved Methods for the Modelling and Assessment of Air Pollutants in NSW, these limits will be:*

- Maximum 24-hour  $PM_{10}$  concentration of  $50 \mu\text{g}/\text{m}^3$*
- Annual average  $PM_{10}$  concentrations of  $30 \mu\text{g}/\text{m}^3$*

*IV. CNA will not operate above the obstacle limitation surface (OLS) as defined in Figure 2.3 of the HVO South Coal Project Response to Submissions Report (2008) unless agreed with the HVGC.*

### ***Response to Department of Water and Energy's Letter***

DoP provided CNA with a copy of a letter dated 30<sup>th</sup> of July 2008 from the DWE.

DWE have reiterated their concerns in relation to the HVO South Coal Project.

CNA understand that DWE now have three areas of concern in relation to water management including:

1. Compliance with the *Hunter Regulated River Water Sharing Plan* (HRRWSP);
2. The retention of the 150 m buffer zone; and
3. Compliance with *draft Hunter Unregulated River Water Sharing Plan* (HURWSP).

### ***Overview***

CNA has consulted and continues to consult extensively with the DWE regarding the HVO South Coal Project application and other water related issues across HVO. CNA can confirm that work has continued to be undertaken and data collected as requested by DWE. DWE have made numerous requests for information via various emails, letters, meetings and water licence variations.

To improve efficiency of studies some of the works required for HVO South mining areas have also included the rest of HVO. This has resulted in longer timeframes for the completion of some of the studies.

CNA has responded to DWE requests by email, letter and phone discussions to ensure their requests are understood.

CNA has commenced all of the following works or studies and completed some of these works. Some of these apply to areas within HVO North. The studies will contribute to providing DWE with the information they have requested:

- Resistivity surveys of the alluvium in the vicinity of the South Lemington Pit 2 (2007), Cheshunt (Barry) Pit (2007) and Carrington Pit (2008);

- Modelling of groundwater - HVO South Coal Project EA Report (ERM 2008);
- Installation of new monitoring bores in the vicinity of the Cheshunt (Barry) Pit (2007) and Carrington Pit (2008);
- Installation of data loggers within the monitoring bores (2008);
- Modelling of groundwater – Hunter River and Cheshunt Pit cross section (Coffey 2008). This modelling will illustrate and quantify the impact of mining closer to the Hunter River;
- Modelling of groundwater – Wollombi Brook cross section. This modelling will illustrate and quantify the impact of approved and existing mining within the alluvium to the Wollombi Brook;
- Improved monitoring of pit seepage into Cheshunt and Carrington Pits (2008);
- Collation and assessment of groundwater data against model predictions;
- Investigation into geotechnical stability of the Cheshunt (Barry) Pit highwall (Golder 2008); and
- Research into fracturing resulting from open cut blasting.

CNA has now completed the additional groundwater modelling in relation to the Cheshunt Pit. The scoping for this modelling commenced in March 2008 following discussions with DWE. This report will be provided to both DoP and DWE along with further information that CNA hopes will address all of DWE's requests relating to the HVO South Coal Project that have been received over the last 12 months. This report will include all issues raised by the DWE during the assessment phase of the project and a description of how issues have been considered and/or addressed.

### ***Compliance with the Hunter Regulated River Water Sharing Plan***

DWE state in their letter that *“the regulated Hunter River is governed under the Hunter Regulated River Water Sharing Plan (HRRWSP). A basic tenet of all water sharing plans across NSW is the prohibition of transfer of water between water sources. In accordance with this policy, the HRRWSP does not recognise the transfer of regulated river water to another source”*.

CNA has obtained legal advice on the application of the current water legislation and Water Sharing Plans on its operations. A summary of this advice is attached and states that:

- the HRRWSP, and hence Parts 2 and 3 of Chapter 3 to the *Water Management Act 2000*, apply to operations affecting water sources within 40 m of the highest bank of the Hunter River, and any of its prescribed tributaries; and
- the HRRWSP does not apply to open cut mines located within HVO South as the limits of all pits associated with the proposal (Cheshunt, Riverview and South Lemington Pits 1 and 2) are greater than 40 m from the highest bank of the Hunter River.

Based on the interpretation provided by this legal advice, CNA believe that the HRRWSP does not apply to *water* seepage (if any) into a pit from hard rock aquifers and/or from alluvial aquifers associated with the Hunter River and its prescribed tributaries.

CNA expert consultants have undertaken modelling of predicted leakage and endeavoured to investigate methods to monitor leakage across HVO South. The requests from DWE in relation to monitoring reports and response mechanisms to account for surface flow loss, or loss of saturated head in connected alluvium are being addressed through investigations into appropriate mechanisms to enable CNA to comply with the requests.

It is important to recognise that the HVO South Coal Project is requesting approval for ongoing operations at HVO South along with extensions to mining in the existing open cut mines. In many instances the DWE is referencing requests in relation to existing approved operations that were approved and commenced prior to the *Water Management Act 2000* and prior to the proclamation of the HRRWSP in 2004. These requests are therefore in relation to existing open cut mines. The existing licences will be required to be modified once the HVO South Coal Project is approved at which time DWE requests can be satisfied in further detail if required.

### **Buffer Zone**

The DWE in their letter of 30 July 2008 reiterate the “significant risk” associated with any reduction of the existing 150 m buffer zone.

This buffer zone was referenced in the DIPNR *Draft Stream/Aquifer Guidelines for Management of Stream/Aquifer Systems in Coal Mining Developments* (DIPNR, April 2005) as a notification zone of 150 m between the highwall of open cut mining and streams or associated alluvial zones (buffer zone). CNA understand that these Guidelines are only in draft form despite having been published in April 2005 and have no statutory force. Nevertheless, CNA have considered the draft Guidelines and note that the draft Guidelines require specific merit based assessments for any proposed reduction of this buffer zone. Hence in accordance with the draft Guidelines, CNA conducted a specific and detailed merit assessment to provide evidence of negligible impact to justify a reduction of the buffer zone.

We also note that DWE have not explicitly advised what level of risk is acceptable and on what basis it disagrees with the expert assessment.

The DWE state that they are concerned that the “*potential impacts to all water users in Zone 1 of the HRRWSP which would result from permanent increase of induced seepage flow from the regulated Hunter River water source and connected alluvium into the mine pit, have not been addressed in the RTCA response.*”

The HVO South Coal Project EA Report has shown that the increase in leakage along the section of the Hunter River that adjoins HVO is minimal and accordingly this concern has been addressed by CNA.

Furthermore, it is understood that the 150 m buffer zone was defined arbitrarily to be twice the width of a zone in which fracturing could in principle be induced by blasting, such width being assumed to be 75 m. The evidence for this has not been provided by DWE. As such, CNA is researching the foundation for the 150 m requirement and 75 m impact zone to assess the actual and likely fracturing from blasting. Outcomes of this research will be provided to both DoP and DWE. This information should support the establishment of an evidence based and scientifically valid buffer zone.

CNA has also completed further geotechnical studies to assess the risk of wall failure within the zone between Cheshunt Pit and the Hunter River. Results of this study indicate that a suitable factor of safety against failure can be obtained under the current design and the conservative groundwater assumptions made. CNA consider the current pit wall design to be conservative, and are confident that the same conclusion with regard to stability would be reached if the buffer zone were reduced.

### **Compliance with draft Hunter Unregulated River Water Sharing Plan (HURWSP)**

DWE have stated that they do “*not accept the assertion that Lemington South extension is not to be accounted for in the framework of the draft Hunter Unregulated and Alluvial Water Sharing Plan.*”

As stated in the Response to Submissions Report CNA did not reference the *Water Act 1912* Order under Section 113A for an Embargo on any further Applications for Sub Surface Water Licences for the *Wollombi Brook Alluvium Water Shortage Zone GWMA 041*, in the EA Report because it is not relevant. The embargo only applies to applications made after publication of the Order on 2 February 2007 (CNA submitted its application to DWE to licence South Lemington Pit 1 in February 2006). CNA submits that there is no basis to suggest that this

application was not accepted or abandoned. DWE advise that they consider the application was not accepted, however CNA did not receive a written notification of this nor was the application fee that was paid to DWE refunded. Requests for additional information were made by the DWE however they acknowledged that the HVO South Coal Project EA was in progress and would contribute additional data to the water licence application.

Furthermore, the embargo does not apply to “bores” (in this case an excavation) “on a property which are the subject of a development consent that was granted prior to the date of this Order” (2 February 2007) “and which are consistent with the General Terms of Approval included in that consent”. Development consents for all HVO South mining operations were granted before 2 February 2007.

The draft HURWSP was only released in March 2008. Therefore the HVO South EA Report could not have considered this Plan. CNA's submission to the DWE on the draft HURWSP raised concerns that the water share components for existing CNA excavation licences that influence aquifers are not recognised and sought clarification.

CNA are investigating how to address the DWE's requests in relation to South Lemington Pit 1. However it is important to understand that this pit is already located less than 150 m from the edge of the alluvium on the north western end and the proposed extension will be greater than 150 m from the Wollombi Brook alluvium as shown in Attachment 5.

DWE questioned why the information provided in the Part 5 Water Act application for South Lemington Pit 1 submitted to the DWE in 2006 was different to the information in the EA Report. The application was for an existing approved open cut mine. The data provided was historical as it pertained to the original modelling predictions provided in the South Lemington EIS (1997). The HVO South Coal Project was in progress but had not been submitted at that time so the application reflected the current approved mine. The HVO South Coal Project EA Report did not produce results of the assessment including the South Lemington Pit 1 and the proposed extension area until late 2007. Therefore the data in the 2006 water licence application could not be the same.

The results of the HVO South EA have now indicated that two dimensional cross sections are necessary to determine the specific information requested by the DWE. This modelling is now in progress.

### ***Proposed Statements of Commitments for Groundwater***

CNA acknowledges DWE's comments in relation to the approval of the project application. CNA are of the understanding that the Part 3A process can continue and the project can be assessed. Most of the issues raised by the DWE relate to the *Water Management Act 2000* licensing aspects and apply to the existing approved operations and can therefore be managed through independent negotiations with DWE as part of its future licensing requirements.

To assist with the progressing of this project application CNA has considered the conditions of approval proposed by DWE in their letter. CNA propose instead to update the Statement of Commitments and include the following conditions in response to DWE concerns:

1) DWE Proposed Condition:

*No excavation may occur within 150 metres of the Hunter River or its connected alluvium.*

CNA still request approval from the DoP for mining up to 100 metres from the edge of the alluvium of the Hunter River within the Cheshunt Pit. However if this is not permitted CNA will accept the below condition.

CNA Proposed Condition:

*No excavation may occur within 150 metres of the Hunter River or its connected alluvium or as otherwise agreed by the Director-General.*

2) DWE Proposed Condition:

*No excavation may occur within 150 metres of the Wollombi Brook or its connected alluvium.*

CNA still request approval from the DoP for mining up to 100 metres from the edge of the alluvium of the Wollombi Brook within the South Lemington Pit 2. However if this is not permitted CNA will accept the below condition.

CNA Proposed Condition:

*No excavation may occur within 150 metres of the Wollombi Brook or its connected alluvium with the exception of areas already approved for South Lemington Pit 1 and South Lemington Pit 2 (DA 215/97) and as otherwise agreed by the Director-General.*

3) DWE Proposed Condition:

*RTCA must comply with the operating rules of the Hunter Regulated River Water Sharing and Hunter Unregulated and Alluvium Water Sharing Plan when enacted.*

It is unreasonable to expect CNA to commit to complying with a Plan that is in draft and not yet proclaimed, nor can a Project Approval condition require CNA to comply with legislation that is otherwise not applicable. Note CNA have provided a submission to DWE on the draft HURWSP.

CNA Proposed Condition:

*CNA must comply with the Water Management Act 2000 as relevant to the HVO South operations.*

4) DWE Proposed Condition:

*RTCA must submit an annual report which quantifies volumes of seepage into the mining operations and fully accounts for any and all interception of flow from the Hunter Regulated River and alluvium into mine works, and Wollombi Brook Unregulated River.*

CNA Proposed Condition:

*CNA must, in consultation with DWE, develop and apply an improved methodology to quantify volumes of seepage into the mining operations and report annually in the Annual Environmental Management Report (AEMR).*

5) DWE Proposed Condition:

*RTCA must develop trigger mechanisms to the satisfaction of DWE, for exception reporting related to increased seepage flow into mine workings.*

CNA Proposed Condition:

*CNA must, in consultation with DWE, develop trigger mechanisms for exception reporting relating to increased seepage flow into mine workings.*

6) DWE Proposed Condition:

*RTCA must present mechanisms to the satisfaction of DWE, which fully isolate the mining operation from the regulated Hunter River, and prevent induced ingress of alluvial groundwater to the mining excavation.*

CNA Proposed Condition:

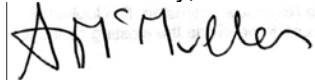
*CNA must present to the DWE a program of research aimed at identifying methods to reduce leakage from rivers and associated alluvium towards nearby open cut CNA pits within 12 months of commencement of operations under this Project Approval. The status of the research must be reported in the Annual Environmental Management Report (AEMR).*

CNA hopes that this information is adequate and will assist with the project assessment. CNA requests the opportunity to meet with the DoP to discuss any of the information provided to allow a resolution of any outstanding issues.

CNA would appreciate feedback on the potential timing of Project Approval as changes to existing approvals may be required to allow ongoing operations. Specifically an amendment to the Mining Operations Plan (MOP) for HVO South will be required by November 2008. The renewal of this MOP has been on hold since the commencement of the HVO South Coal Project. It was intended that a new consolidated MOP for HVO South would be prepared on approval of the HVO South Coal Project. Therefore any ability to expedite the issuing of the Project Approval would be gratefully acknowledged.

If you have any questions in relation to this response letter, please do not hesitate to contact me on (07) 3361 4131 or [Anna.McMullen@rtca.riotinto.com.au](mailto:Anna.McMullen@rtca.riotinto.com.au).

Yours sincerely,



Anna McMullen  
Manager – Project Approvals

Enclosed:

- 1 – DECC email
- 2 – HVGC and CNA Agreement
- 3 – Figure 2.3 – Proposed Obstacle Limitation Surface for Mining in Close Proximity to the HVGC
- 4 - Summary of Legal Advice
- 5 – South Lemington Pit 1 and Wollombi Brook High Bank Figure

**From:** Mattes Andrew [Andrew.Mattes@environment.nsw.gov.au]  
**Sent:** Monday, 28 July 2008 12:14 PM  
**To:** McMullen, Anna (RTCA)  
**Cc:** Luke Stewart; Clark Larry  
**Subject:** RE: HVO South Environmental Assessment  
Anna,

You have asked if:

*the Department of Environment and Climate Change could provide us with a letter with the recognised classification for the Hunter Valley Gliding Club (HVGC) facilities and any information on the levels we are required to comply with according to that classification.*

The *Approved Methods for the Modelling and Assessment of Air Pollutants in NSW* defines a sensitive receptor as:

*a location where people are likely to work or reside; this may include a dwelling, school, hospital, office or public recreational area*

A common sense application of this definition would include the HVGC as a sensitive receptor. The assessment criteria should be identical to those used for all other sensitive receptors impacted by the proposed development.

However, as the HVGC is not continuously occupied, there may be scope for fine particle management methods that would not be practicable to apply for a normal business or residence. For example, the EA may identify that adverse impacts at the HVGC occur:

- only for a number of hours per year; and
- under certain meteorological conditions; and
- have particular mine operations as the main contributor.

If this was the case, there would appear to be scope to develop a management plan that reduces the risk of adverse impacts at the HVGC by modifying mine activities under identified meteorological conditions when the HVGC is being used. Such a management plan would obviously require the co-operation of the HVGC.

Regards,

Andrew Mattes  
Manager Air Technical Advisory Services  
Air Policy NSW DECC  
02 9995 5836

---

**From:** McMullen, Anna (RTCA) [mailto:Anna.McMullen@rtca.riotinto.com.au]  
**Sent:** Friday, 25 July 2008 4:48 PM  
**To:** Mattes Andrew  
**Cc:** Luke Stewart; Todoroski Aleksandar; Clark Larry; najah.ishac@erm.com  
**Subject:** RE: HVO South Environmental Assessment

Hello Andrew,  
I am assuming today is Aleks' last day at DECC.

I was hoping you may be able to assist with my email query below?  
We are seeking assistance and guidance and would appreciate any information you can provide.  
If you require more details our consultants from ERM are able to assist:  
Luke Stewart (02) 8584 8866  
Environmental Approvals - Senior Project Manager  
Najah Ishac T: (02) 8584 8868 M: 0409 788 708  
Manager, Acoustics NSW

Regards,  
Anna

ES0-1168-4  
~~01-LOS-0076~~ ~~465-0454~~

# COAL & ALLIED

A Rio Tinto Group Company

20 December 2002

Mr J Kostiw  
Hunter Valley Gliding Club Co-operative Ltd  
Comleroi Road  
WARKWORTH NSW 2330

Dear Mr Kostiw,

**RE: HUNTER VALLEY OPERATIONS (RIVERVIEW PIT) – AGREEMENT FOR  
WARKWORTH AIRSTRIP**

Please refer to the document "Agreement for the Warkworth Airstrip" signed by representatives from Coal & Allied (CNA) and Hunter Valley Gliding Club Co-operative Ltd on 11 April 2002 (copy attached).

Further to discussions between Mick Lovely and yourself, CNA agree that dragline operations in the Riverview Pit shall at no stage occur within a 1.3 km radius of the western end of the Glider Club Strip for the life of the Riverview/Cheshunt Development Consent (DA114-12-98), unless a subsequent agreement is reached between CNA and the Hunter Valley Gliding Club Co-operative Ltd.

Please do not hesitate to contact me should you wish to discuss this matter further on 6570 0228.

Yours sincerely



**N Senapati**  
HVO General Manager

**Coal & Allied Operations Pty Ltd**

ABN 16 000 023 656

Lemington Road, Ravensworth via Singleton NSW 2330 Australia  
PO Box 315 Singleton NSW 2330 Australia  
Telephone +61 2 6570 0300 Facsimile +61 2 6570 0275

**COAL & ALLIED OPERATIONS PTY LTD**  
ABN 16 000 023 656

**and**

**HUNTER VALLEY GLIDING CLUB CO-OPERATIVE LIMITED**  
ABN 36 104 071 896

**AGREEMENT FOR WARKWORTH AIRSTRIP**

**This Agreement** is made on \_\_\_\_\_ 2002.

**Between: COAL & ALLIED OPERATIONS PTY LTD**  
ABN 16 000 023 656 of Lemington Road, Ravensworth via Singleton in the  
State of New South Wales ("CNA");

**And: HUNTER VALLEY GLIDING CLUB CO-OPERATIVE LIMITED**  
ABN 36 104 071 896 of \_\_\_\_\_  
("Gliding Club").

**Recitals:**

- A. CNA is the owner and operator of the Mine and holds the Development Consent.
- B. The Gliding Club is the owner and operator of the Airstrip.
- C. The Mine and the Airstrip have existed and operated in close proximity to each other for many years.
- D. The parties have had an effective and co-operative relationship in the past and seek to continue that relationship.
- E. Condition 7.4 of the Development Consent requires CNA and the Gliding Club to enter into an agreement "*to address the potential impact of the Mine on the use and operation of the (Airstrip)*".
- F. The parties enter into this Agreement to satisfy the requirements of the condition and to seek to continue the existing co-operative relationship between the parties.

**Operative Provisions:**

**1 Definitions and Interpretation**

**1.1 Definitions**

"Airstrip" means the "David Parker" airstrip owned and operated by the Gliding Club located adjacent to the Mine.

"CASA" means the Department of Transport and Regional Services, the Civil Aviation Safety Authority and Airservices Australia.

"CNA" means Coal & Allied Operations Pty Ltd ABN 16 000 023 656.

"Gliding Club" and "Glider Club" means Hunter Valley Gliding Club Co-operative Limited ABN 36 104 071 896.

"Mine" means the Hunter Valley Operations, Riverview Pit, owned by CNA, and located immediately adjacent to the western end of the Airstrip.

"Riverview Pit" means the pit of that name within the Mine.

## 1.2 Interpretation

In this Agreement unless the context otherwise requires:

- (a) **(headings)** headings, boldfacing and underlinings are for convenience only and do not affect interpretation;
- (b) **(singular)** the singular includes the plural and vice versa;
- (c) **(successors and assigns)** a reference to a party to a document includes that party's permitted successors, assigns, administrators and substitutes; and
- (d) **(rules of construction)** no rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of this Agreement.

## 2 Relevant Consent Condition

2.1 The Development Consent contains the following condition "*Within 1 month of the commencement of Dragline Operations, or as otherwise agreed to by the Director-General, the Applicant shall enter into a private agreement with the Hunter Valley Gliding Club to address the potential impact of the mine on the use and operation of the Glider Club. This includes the potential impacts to the flight paths from the draglines operation. The agreement shall take into consideration the impacts of the dragline position on:*

- *useable length of the runway;*
- *interference with flight paths; and*
- *Guidelines of the Department of Aviation.*

*Within the 1 month period, the Dragline Operations at no stage shall occur within a 1.3km radius of the western end of the Glider Club Strip. However, in the event that the Director General considers that the Dragline Operation is unduly impacting on the operational safety of the Glider Club, the Director-General may request modification to the Dragline Operation until such time as the safety issue is addressed to the satisfaction of the Director-General.*

*Should an agreement between the two parties be unable to be reached within 1 month of the commencement of the Dragline Operation, the matter shall be referred to the Director-General for mediation. The Director-General shall consider the matter and the Director-General's decision shall be final and binding on both parties".*

2.2 This Agreement is the agreement referred to in condition 2.1.

### 3 Guidelines

CNA will not knowingly breach any guidelines of CASA that apply to CNA.

### 4 Notification

The Gliding Club will notify CNA of any alleged impediment to the useable length of the runway and flight paths of the Airstrip, as a result of the operation of the dragline.

### 5 Agreement

#### 5.1 Exclusion Zone

*"Within 6 months of the commencement of Dragline Operations, or as otherwise agreed to by the Director-General, the applicant shall enter into a private agreement with the Hunter Valley Gliding Club to address the potential impact of the mine on the use and operation of the Glider Club. This includes the potential impacts to the flight paths from the draglines operation. The agreement shall take into consideration the impacts of the dragline position on :*

- *Useable length of the runway;*
- *Interference with flight paths; and*
- *Guidelines of the Department of Aviation*

*Within the 6 month period, the Dragline Operations at no stage shall occur within a 1.3km radius of the western end of the Glider Club Strip. However, in the event that the Director-General considers that the Dragline Operation is unduly impacting on the operational safety of the Glider Club, the Director-General may request modification to the Dragline Operation until such time as the safety issue is addressed to the satisfaction of the Director-General.*

*Should an agreement between the two parties be unable to be reached within 6 months of the commencement of the Dragline Operation, the matter shall be referred to the Director-General for mediation. The Director-General shall consider the matter and the Director-General's decision shall be final and binding on both parties".*

## **5.2 Further Investigation**

CNA, in consultation with the Gliding Club, will investigate options to ensure the continued long-term operation of the Gliding Club.

## **5.3 Blasting Notification**

CNA shall notify the Gliding Club, on each Thursday afternoon (via the agreed email and telephone procedure), of any proposed blasting within the Riverview Pit on the following Friday to Sunday.

A CASA approved strobe light will be installed on top of the Gliding Club clubhouse which will be activated by an authorised person ten (10) minutes prior to any blasting within the Riverview Pit.

Should the Glider Club propose to fly on weekdays, other than Friday, additional notification may be provided upon request.

## **5.4 Additional Strobe Lighting**

CNA will install:

- a) The clubhouse strobe will also be attached to a flashing light within the clubhouse of the Gliding Club.
- b) On the modular tower located in the Lemington Mine, with a CASA approved strobe light that will operate continuously.
- c) The top of the Riverview dragline boom will be fitted with a strobe that will only be activated when power is down on the dragline.
- d) The strobe lighting will be installed once the Glider Club has advised CNA of the appropriate CASA approved lighting.

## **5.5 Meeting**

CNA shall meet with the Gliding Club within six (6) months of the granting of the Consent to discuss and implement any additionally identified or required actions to ensure the continued operation of the Gliding Club.

## **6 Dispute**

Any dispute incapable of resolution by the parties within thirty (30) days of the meeting referred to in clause 6 shall be referred to the Director-General of the Department of Planning for mediation.

## 7 Authority

- 7.1 **By CNA** CNA warrants that it has the power and authority to enter into this Agreement and to perform its obligations herein.
- 7.2 **By Gliding Club** The Gliding Club warrants that it has the power and authority to enter into this Agreement and to perform its obligations herein.

## 8 Notices

- 8.1 **Address** All notices required to be given under this Agreement will be in writing and will be validly served by pre-paid post, hand delivery or facsimile and addressed as follows:

**"CNA"**

Attention: James Bailey, Manager Environmental Services  
Coal & Allied Operations Pty Ltd  
PO Box 315  
SINGLETON NSW 2330  
Telephone: (02) 6570 0252  
Facsimile: (02) 6570 0350

**"Gliding Club"**

Attention : Joe Kostiw  
Hunter Valley Gliding Club Co-operative Limited  
PO Box 9  
NEWCASTLE NSW 2300  
Telephone : (02) 49269965 (Mon-Fri 0900 – 1700 hrs)  
Telephone : (02) 49886120 (After Hours)  
Facsimile : (02) 49296712

- 8.2 **Post** A notice served by post will be deemed to have been served at the expiration of three (3) Business Days after the time at which it was posted.
- 8.3 **Facsimile** A notice served by facsimile will be deemed to have been served the first Business Day after the facsimile is sent by the party serving the notice provided that the sender has received an error free transmission report.
- 8.4 **Change of Address** A party may at any time, by giving written notice to the other, change the addressee, address, telephone and facsimile numbers at which it is to receive notices.

## 9 Entire Agreement

This document comprises the whole agreement between the parties as to its subject matter and may only be varied, modified or extended by agreement in writing expressed to be supplemental hereto and signed by the parties.

**10 Governing Law & Jurisdiction**

This Agreement is to be governed by and construed in accordance with the laws of New South Wales and the parties submit to the non-exclusive jurisdiction of the courts of that State.

**11 Costs**

CNA will pay for legal and other costs and expenses of preparing and executing this Agreement.

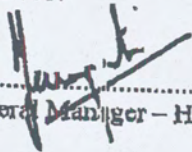
**12 Counterparts**

This Agreement may be executed in counterparts as may be deemed necessary or convenient and all such counterparts taken together will be deemed to constitute one and the same instrument.

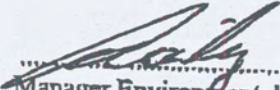
Executed as an agreement.

Executed by COAL & ALLIED  
OPERATIONS PTY LTD

pursuant to s.127(1) of the Corporations  
Act 2001:

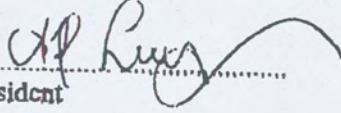
  
General Manager - HVO

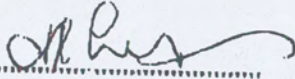
NIK SENAPATI  
Nik Senapati

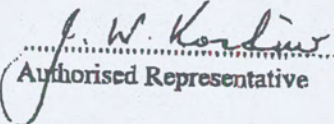
  
Manager Environmental Services

C. J. Bailey  
James Bailey

Signed by HUNTER VALLEY  
GLIDING CLUB  
CO-OPERATIVE LIMITED  
by its authorised representatives:

  
President

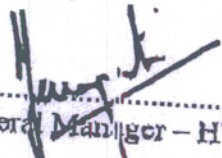
  
A.H. Levy

  
Authorised Representative

J.W. Kostiw 11/4/02.  
J.W. Kostiw

Executed as an agreement.

Executed by **COAL & ALLIED  
OPERATIONS PTY LTD**  
pursuant to s.127(1) of the Corporations  
Act 2001;

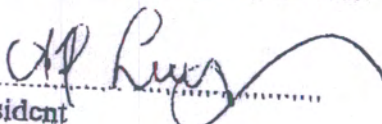
  
General Manager - HVO

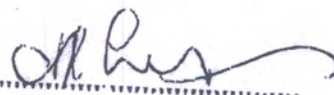
**NIK SENAPATI**  
Nik Senapati

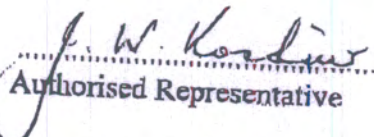
  
Manager Environmental Services

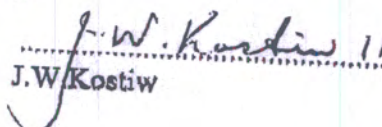
**C. J. Bailey**  
James Bailey

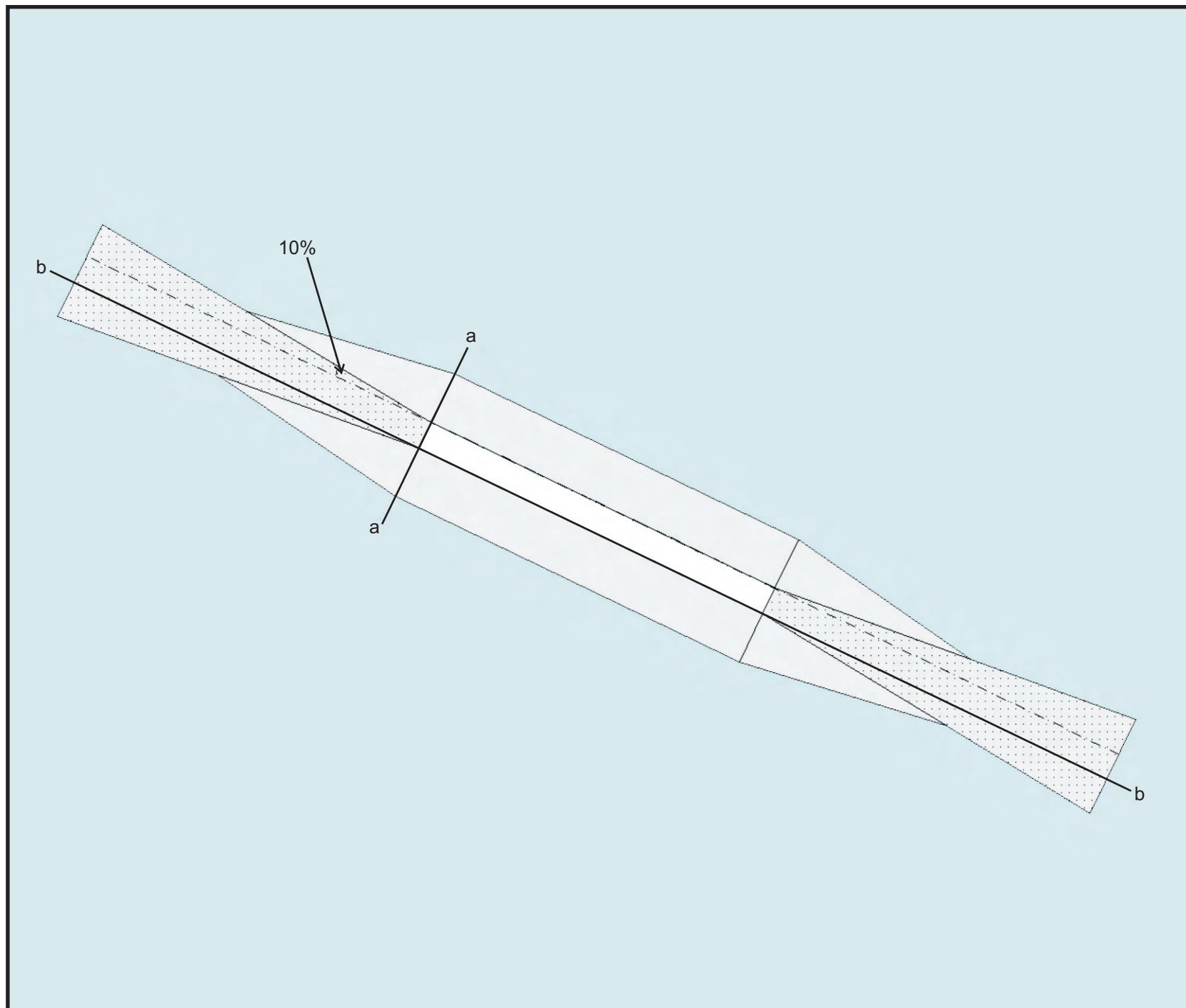
Signed by **HUNTER VALLEY  
GLIDING CLUB  
CO-OPERATIVE LIMITED**  
by its authorised representatives:

  
President

  
A.H. Levy

  
Authorised Representative

  
J.W. Kostiw 11/4/02.



#### Legend

-  Gliding airstrip
-  5% or 1:20 gradient from the ground surface level of the airstrip at **line a** to a maximum height of 80m
-  20% or 1:5 gradient from the ground surface level of the airstrip at **line b** to a maximum height of 45m

**Figure 2.3**

**Proposed obstacle limitation surface for mining in close proximity to HVGC**

Client: Coal & Allied Operations Pty Limited

Project: Response to Submissions Report

Drawing No: 0082598s\_RSR\_01

Date: 01/07/2008 Drawing size: A4

Drawn by: ML Reviewed by: LS

Source: -

Scale: Not to Scale

Environmental Resources Management Australia Pty Ltd  
Building C, 33 Saunders St, Pyrmont, NSW 2009  
Telephone +61 2 8584 8888



8 September 2008

AURORA PLACE 88 PHILLIP STREET SYDNEY  
GPO BOX 521 SYDNEY NSW 2001 AUSTRALIA  
DX 117 SYDNEY [www.minterellison.com](http://www.minterellison.com)  
TELEPHONE +61 2 9921 8888 FACSIMILE +61 2 9921 8123

**BY E-MAIL: [Anna.McMullen@riotinto.com](mailto:Anna.McMullen@riotinto.com)**

Anna McMullen  
Environmental Coordinator – Project Approvals  
Hunter Valley Services  
Rio Tinto Coal Australia

Dear Anna,

## **Hunter Valley Operations - South Coal Project**

### **1. Introduction**

- 1.1 We refer to recent correspondence between Coal & Allied ('CNA'), the NSW Department of Planning ('DoP') and the NSW Department of Water and Energy ('DWE') in relation to the Hunter Valley Operations - South Coal Project ('HVO South') and its potential impact on the Hunter River and Wollombi Brook.
- 1.2 CNA has requested legal advice in relation to the application of the *Water Sharing Plan for the Hunter Regulated River Water Source 2003* ('**Hunter River Water Sharing Plan**') and the *Draft Water Sharing Plan for the Hunter Unregulated and Alluvial Water Sources 2008* ('**Draft Hunter Unregulated and Alluvial Water Sharing Plan**') on mining operations at HVO South.

### **2. Hunter River Water Sharing Plan**

- 2.1 The Hunter River Water Sharing Plan commenced operation on the date of its proclamation on 1 July 2004 (see NSW Government Gazette No. 110, 1 July 2004).
- 2.2 All water sharing plans in NSW are made pursuant to the *Water Management Act 2000* ('**WM Act**'). In general, the WM Act and these water sharing plans govern activities associated with water sources in NSW.
- 2.3 Relevantly, the Dictionary in the WM Act defines *water source* as "*the whole or any part of:*
  - (a) *one or more rivers, lakes or estuaries, or*
  - (b) *one or more places where water occurs naturally on or below the surface of the ground,**and includes the coastal waters of the State.*"

- 2.4 By virtue of clause 4 of the Hunter River Water Sharing Plan this plan only applies to a discrete body of water. Clause 4 is titled '*Area and waters to which this Plan applies*' and it limits the application of the Hunter River Water Sharing Plan in the following manner:

*"(1) The water source in respect of which this Plan is made is:*

- (a) between the banks of all rivers, from the upstream limit of Glenbawn Dam water storage downstream to the estuary of the Hunter River, and from the upstream limit of Glennies Creek Dam water storage downstream to the junction with the Hunter River, which at the date of commencement of this Plan have been declared by the Minister to be regulated rivers, and*
- (b) **the unconsolidated alluvial sediments underlying the waterfront land of all rivers referred to in subclause (a), except those unconsolidated alluvial sediments within one metre of works taking water pursuant to licences issued under Part 5 of the Water Act 1912 or their equivalent aquifer access licences issued under the Act.***

*Note. A regulated river is a river that has been declared by the Minister, by order published in the New South Wales Government Gazette, to be a regulated river.*

*Note. The regulated rivers referred to in subclause (1) are listed in Appendix 1.*

*Note. Waterfront land has the meaning defined in the Act.*

*...'* [emphasis added]

- 2.5 Pursuant to section 5 of the WM Act, definitions in the Act are incorporated into the Hunter River Water Sharing Plan. Therefore, for the purposes of determining the application of the Hunter River Water Sharing Plan to mining operations at HVO South the term '*waterfront land*' is defined to mean:

- "(a) **the bed of any river, together with any land lying between the bed of the river and a line drawn parallel to, and the prescribed distance inland of, the highest bank of the river, or***
- (a1) the bed of any lake, together with any land lying between the bed of the lake and a line drawn parallel to, and the prescribed distance inland of, the shore of the lake, or*
- (a2) the bed of any estuary, together with any land lying between the bed of the estuary and a line drawn parallel to, and the prescribed distance inland of, the mean high water mark of the estuary, or*
- (b) if the regulations so provide, the bed of the coastal waters of the State, and any land lying between the shoreline of the coastal waters and a line drawn parallel to, and the prescribed distance inland of, the mean high water mark of the coastal waters,*

***where the prescribed distance is 40 metres or (if the regulations prescribe a lesser distance, either generally or in relation to a particular location or class of locations) that lesser distance. Land that falls into 2 or more of the categories referred to in paragraphs (a), (a1) and (a2) may be waterfront land by virtue of any of the paragraphs relevant to that land.***

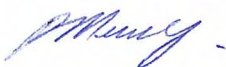
[emphasis added]

- 2.6 In light of the above definition, the application of the Hunter River Water Sharing Plan is limited to water occurring naturally in the unconsolidated alluvial sediments within 40 metres of the highest bank of the Hunter River and any of its regulated rivers or tributaries.
- 2.7 We have been provided with two plans dated 4 September 2008 and entitled Wollombi Brook and Hunter River (annexed) which appear to demonstrate that all proposed CNA open cut mine excavations at HVO South are *"greater than 40 metres from the highest bank of the Hunter River and Wollombi Brook"*. Therefore, the water source within these HVO mine pits (as depicted in these plans) are not subject to the Hunter River Water Sharing Plan.
- 2.8 The sections set out above generally relate to the land (eg. river beds and waterfront land) over or through which this water source flows. However, Hunter River Water Sharing Plan does not purport to govern all water that has the potential to or once flowed through this water source. Water outside the boundary as described above in clause 4 of the Hunter River Water Sharing Plan is not governed by the Plan.
- 3. Draft Hunter Unregulated and Alluvial Water Sharing Plan**
- 3.1 In addition to the Hunter River Water Sharing Plan, DWE is proposing to introduce the Draft Hunter Unregulated and Alluvial Water Sharing Plan.
- 3.2 The Draft Hunter Unregulated and Alluvial Water Sharing Plan was on public exhibition between March 2008 and 2 May 2008. We note from a recent conversation with a representative from the Newcastle Office of DWE, that DWE proposes that the Draft Hunter Unregulated and Alluvial Water Sharing Plan be gazetted in March 2009 and commence operation on 1 July 2009. Accordingly, the commencement of this plan and its application to mining at HVO South remains uncertain.
- 3.3 Further, the WM Act provides that water sharing plans only take effect once proclaimed. There is also no requirement in the WM Act to consider draft water sharing plans before these plans are proclaimed. In addition, the final form of the Hunter Unregulated and Alluvial Water Sharing Plan may not reflect the current version of the plan that CNA is being asked to address at this point in time.

If you have any questions in relation to this letter please contact Penny Murray at this office.

Yours faithfully

**MINTER ELLISON**



Penny Murray  
Partner

Contact: Kate Addinall Direct phone: +61 2 9921 4866 Direct fax: +61 2 9921 8287  
Email: kate.addinall@minterellison.com  
Partner responsible: Penny Murray Direct phone: +61 2 9921 4868  
Our reference: KXA:PLM:20-5526418

Annexure: Two figures dated 4 September 2008 and entitled Wollombi Brook and Hunter River

