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15 July 2014

Mr David Kitto
Department of Planning and Environment
23-33 Bridge St
SYDNEY NSW 2000

Dear David

MOOLARBEN COAL PROJECT (STAGE 1) – PROJECT APPROVAL (05_0117)

We write this letter on behalf of Moolarben Coal Mines Pty Limited (MCM) and its joint venture participants.

We refer to the Planning Assessment Commission's (the Commission's) determination report and Notice of Modification for the Moolarben Coal Project Stage 1 Modification 9 application, and the subsequent consolidated conditions of Project Approval (05_0117).

Our review of these documents has identified some errors and inconsistencies in the Moolarben Coal Project Stage 1 conditions of approval (as modified). It would seem that these are clerical in nature and were unintended by the Commission in its drafting of the Notice of Modification, but note the imposition of these conditions will lead to inadvertent material consequences for the mine.

We request the Department review each of the following and advise on corrective actions as appropriate.

1. *Inconsistency between Statements in the Commission's Determination Report and Land Acquisition Criteria Conditions of Approval*

Section 8 of the Commission's Determination Report (*NSW Planning Assessment Commission Determination Report Moolarben Coal Mine Stage 1 Modification 9 Mid-Western LGA, 16 June 2014*) includes the following statement (underline added for emphasis):

The Commission's amendments include:

1. Retaining the noise provisions for property acquisition

The noise acquisition criteria prescribed in Condition 3 Schedule 3 of Project Approval (05_0117) immediately preceding determination of the Modification 9 application, was as follows:

Land Acquisition Criteria

3. *If the noise generated by the project exceeds the relevant criteria in Table 3 at any residence on privately owned land or on more than 25% of any privately-owned land, the Proponent shall, upon receiving a written request for acquisition from the landowner, acquire the land in accordance with the procedures in conditions 10-12 of Schedule 4.*

Table 3: Land acquisition criteria dB(A)

Day/Evening/Night LAeq(15min)	Land Number
43 / 43 / 43	26, 49
43 / 43 / 42	22, 23, 41A, 63, 64, 170, 171, 172,
42 / 42 / 42	169, 173
40 / 40 / 40	All other private land owners not listed in Table 1

Note: Noise generated by the project is to be measured in accordance with the notes presented below Table 2.

We have previously informed the Department that properties 26, 63 and 171 are the only specifically identified properties in the above table that remain in private ownership. Further, property 26 is now a commercial property and property 171 was incorrectly identified as being noise affected in the original approval.

Rather than retaining this condition (modified to reflect the updated property ownership status) the Commission has drafted different (noise) land acquisition criteria in the Notice of Modification as follows:

Land Acquisition Criteria

2. *If the noise generated by the project exceeds the relevant criteria in Table 2 at any residence on privately-owned land or on more than 25% of any privately-owned land, the Proponent shall, upon receiving a written request for acquisition from the landowner, acquire the land in accordance with the procedures in conditions 10-11 of Schedule 4.*

Table 2: Land acquisition criteria dB(A)

Day/Evening/Night LAeq(15min)	Land Number
35 / 35 / 35	All private land owners

We assume this discrepancy is a clerical error as it does not reflect the Commission's statement in the Determination Report to retain the noise provisions for property acquisition. Further, we note that the application of this condition is inconsistent with the application of the noise criteria prescribed in Condition 1 Schedule 3 of the modified approval. That condition prescribes the approved noise impact criteria at surrounding privately owned properties, with specific criteria at some identified properties having greater prescribed noise impact criteria than the noise acquisition criteria. To address this issue we request the previously prescribed (noise) land acquisition criteria be reinstated.

As previously discussed with the Department, it is important to MCM that the previous the land acquisition criteria are adopted promptly, as the conditions as currently drafted have the potential to significantly disrupt mining operations and/or result in significant and unintended negative cost implications for the Moolarben Coal Mine.

2. Internal Project Approval Inconsistencies due to Removal of Table 1

Prior to determination of Modification 9, Condition 1 Schedule 3 of Project Approval (05_0117) listed the properties that were provided “acquisition upon request” rights:

Acquisition Upon Request

1. Upon receiving a written request for acquisition from the owner of the land listed in Table 1, the Proponent shall acquire the land in accordance with the procedures in 10-12 of Schedule 4.

Table 1: Land subject to acquisition upon request

4 – M. Swords	5 – M & P Swords
6 – Thompson	15 – Green
20 – Williamson	25 – Tuck-Lee
29a – E. Mayberry	20b – E. Mayberry
29 – E. Mayberry	33 – K. & R. Mayberry
36 – Rayner	50 C. Mayberry
134 – M.J. & H. Swords	163 – C.M. & J.J. Key
164 – J.J. Key	166 – C.M. Key

Note: For information on the numbering and identification of properties used in this approval, see Appendix 5.

We previously informed the Department that all of the listed properties are now owned by MCM. Hence we understand the rationale underpinning the removal of this table and “acquisition upon request” condition from the Project Approval.

However, the removal of this condition and table has introduced cross-referencing inconsistencies and errors. . The following conditions continue to reference the previous Table 1 (i.e. Land subject to acquisition upon request):

- Condition 3 Schedule 3
- Condition 4 Schedule 3
- Condition 1 Schedule 4

The simplest remedy in our view is to re-introduce the previous Table 1, with a note that no properties have an entitlement to acquisition upon request given that all affected properties have since been acquired by the Applicant.

3. Minimisation of Impacts on the Area Located Between Open Cuts 1 and 2

Condition 36(b) Schedule 3 of Project Approval (05_0117) states (underline added for emphasis):

Biodiversity Management Plan

36. The Proponent shall prepare and implement a Biodiversity Management Plan for the project to the satisfaction of the Secretary. This plan must
 - (a) be prepared in consultation with OEH;
 - (b) describe the short, medium and long term measures that would be implemented to:
 - manage the remnant vegetation and habitat on the site and in the offset areas;
 - minimise biodiversity impacts, including disturbance, on the area located between Open Cut 1 and Open Cut 2;

This condition is inconsistent with Appendix 2 (General Layout of the Project) which shows that the area between Open Cuts 1 and 2 will be open cut mined as a component of the approved Modification 9. We note that the impact associated with this disturbance, including the biodiversity impacts, have been assessed in the Project Environmental Assessment.

4. Reference to NSW Office of Water in Condition 70 Schedule 3

Condition 70 Schedule 3 requires MCM to prepare and implement an updated Energy Savings Action Plan in consultation with NOW (NSW Office of Water). We understand that the Energy Savings Action Plan should be prepared in consultation with the Division of Resources and Energy (within Department of Trade and Investment, Regional Infrastructure and Services) not the NSW Office of Water.

Your early advice on a resolution of the above would be appreciated.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Mark Jacobs', with a large, stylized loop at the bottom left.

Mark Jacobs
General Manager, Environment & Community