



MT THORLEY CONTINUATION PROJECT (SSD 6465) DETERMINATION REPORT

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DETERMINATION REPORT MOUNT THORLEY CONTINUATION PROJECT (SSD 6465)

EXECUTIVE SUMMARY

The Mt Thorley Continuation Project is a proposed extension of the existing Mt Thorley open cut coal mine, which is located approximately 8 kilometres south-west of Singleton and approximately 3 kilometres from the village of Bulga in the Hunter Valley. The proposal is seeking consent for the continued extraction of coal from Loders Pit and Abbey Green North Pit, at a rate of up to 10 million tonnes of run-of-mine coal per year. Under the current consent coal extraction at the Mt Thorley mine would cease in 2022, however a 21 year consent period is proposed to enable the ongoing provision of services to the Warkworth mine, which is critical to its viability.

The Commission has carefully balanced the key areas of concern about the mine's continuation, including the socio-economic benefits, the impacts on the village of Bulga, Aboriginal cultural heritage, final voids, air quality and noise. The Commission is satisfied that the Project's significant benefits outweigh its potential impacts.

The Commission has determined that the Mt Thorley Continuation Project should be approved, subject to stringent conditions.

The Commission notes that a number of important changes in government policy and legislation have been made in the past three years, and these are relevant to the assessment of this application. The Commission is satisfied that the Project is consistent with current government policy, particularly in relation to biodiversity, noise, air quality and socio-economic impacts.

The Commission considers that the Project would deliver substantial benefits to the local government area and the Hunter region. The Warkworth-Mt Thorley mine complex is the biggest employer in Singleton and is a very important contributor to the local and regional economy. The Commission also notes that Singleton Council has reached a preliminary agreement with the Applicant about a Voluntary Planning Agreement that will include approximately \$11 million in contributions, including \$5 to \$6 million to be spent on the construction of water and sewerage treatment facilities for the village of Bulga within the first five years.

The Commission notes that the conditions of consent have been progressively strengthened throughout the development assessment process in order to address the key environmental and social impacts of the Project having regard to relevant criteria and standards established in government policy.

In relation to the final void, the Commission notes that the current Project includes the emplacement of overburden from the Warkworth mine at Mt Thorley mine to enable the void to be backfilled. The Commission has strengthened the relevant conditions of consent to require that initial works for the establishment of vegetation along the boundary of the site, including adjoining public roads, are to be initiated within six months of the commencement of the development.

In relation to noise and air quality impacts, the Commission had amended the conditions to include the publication of real time monitoring on the Applicant's web site to provide timely and detailed information to the public rather than retrospective summaries. Overall, the Commission is satisfied that there is a robust set of conditions that will ensure that compliance with noise and air quality limits is achieved, or appropriately managed and mitigated in accordance with government policy.

The Commission has also amended the conditions of consent to reinstate acquisition rights for properties that were given the right for acquisition upon request in the previous approval for the Warkworth Extension Project which was disapproved by the Courts. Although the Applicant had offered to reinstate acquisition rights for these properties, the Commission considered that the obligation should be enforced as a condition of consent to tie the requirement to the consent and provide consistent dispute resolution provisions.

The Commission notes that the Project has been the subject of a comprehensive development assessment process over the past 18 months, including several assessment reports by the Department and two reviews undertaken by the Commission. There has also been extensive public consultation, including two public hearings, one public meeting and multiple opportunities for written comments from the general public.

1. INTRODUCTION

Mount Thorley Operations Pty Ltd (the Applicant) is seeking consent to continue operation of the Mount Thorley mine, which is an open cut coal mine located in the Singleton local government area. The Mount Thorley mine is located immediately to the south of Warkworth mine and the two mines are managed as a single integrated operational complex (the mine complex). Equipment, personnel, water, rejects and coal preparation are all shared between the mines, and there is a single management team responsible for all the operations. The Applicant is also seeking consent to extend and alter aspects of the existing approval for the Warkworth mine (see separate Determination Report SD 6464).

1.1 Purpose of this Report

There is a complex history of applications lodged for modification and extension of mine operations at the Mt Thorley site. It should be noted that this report specifically addresses the Mt Thorley Continuation Project (the Project), which is distinct from the previous applications. The purpose of this report is to outline the Planning Assessment Commission's (the Commission) determination of the Mt Thorley Continuation Project in accordance with section 79C of the *Environmental Planning and Assessment Act 1979*.

The Commission notes that the Project has been the subject of a comprehensive development assessment process over the past 18 months, including two reviews undertaken by the Commission and extensive public consultation. The majority of issues have been addressed through the two previous review reports prepared by the Commission and the three assessment reports prepared by the Department of Planning and Environment (the Department), as well as the provision of additional information from the Applicant and consultation with relevant government agencies.

This determination report focuses on the key residual issues and refers to the Commission's previous review reports in relation to issues that have already been addressed in those reports.

1.2 History of the Mine

The Mount Thorley mine has been operating for more than 30 years, with mining operations commencing in 1981. The mine is currently operating under a consent issued by the then Minister for Infrastructure and Planning in 1996 under Part 4 of the *Environmental Planning and Assessment Act 1979* (EP&A Act) (DA 34/95). This consent expires on 22 June 2017.

Despite operating under separate Ministerial consents, the two (Mt Thorley and Warkworth) mines share a cross-linked ownership and management structure, with both mines managed by Coal and Allied Ltd (a subsidiary of Rio Tinto Ltd). Given this structure, the mines have operated as an integrated mine complex since 2004, known as the Mount Thorley-Warkworth mining complex (MTW). Under these arrangements, the mines share employees and surface infrastructure, and connect via a series of haul roads, conveyors and pipelines. The mines are also interdependent in an operational sense with coal, overburden, tailings and water being moved between them.

1.3 Surroundings

Mt Thorley mine is approximately 10 kilometres (km) south-west of Singleton in the Hunter Valley, NSW. The landscape character of the local area is dominated by moderate to gently sloping hills with several locally dominant ridges. The mine is located in an area with large-scale and intensive mining operations.

While much of the land in the vicinity of the mine is owned by mining companies, large areas are used for a range of agricultural activities. One of the largest stands of remnant vegetation on the Hunter Valley floor is located immediately to the west of the complex. This vegetation forms part of a fledgling vegetation corridor between the Wollemi and Yengo National Parks to the southwest of the mine complex and the Barrington Tops National Park, which is located on the northern edge of the valley floor.

The nearest settlement to the mine complex is Bulga village, which is located about 4 to 5 km to the west of the mines. The village has a population of approximately 358 residents, with the majority of residences located off The Inlet Road. The residences at the western limit of The Inlet Road are slightly elevated and have direct views of the Bulga and Mt Thorley mine overburden dumps. There are also several rural-residential properties located in close proximity to the complex. Bulga village has a pub, service station and café, police station and rural fire brigade.

1.4 Previous Application

Figure 1 (below) represents a summary of the history of the former Warkworth Extension Project application. A detailed outline of the history of former the Extension Project application is available in the Commission's Mt Thorley Continuation Project Review Report dated March 2015 (the First Review Report).

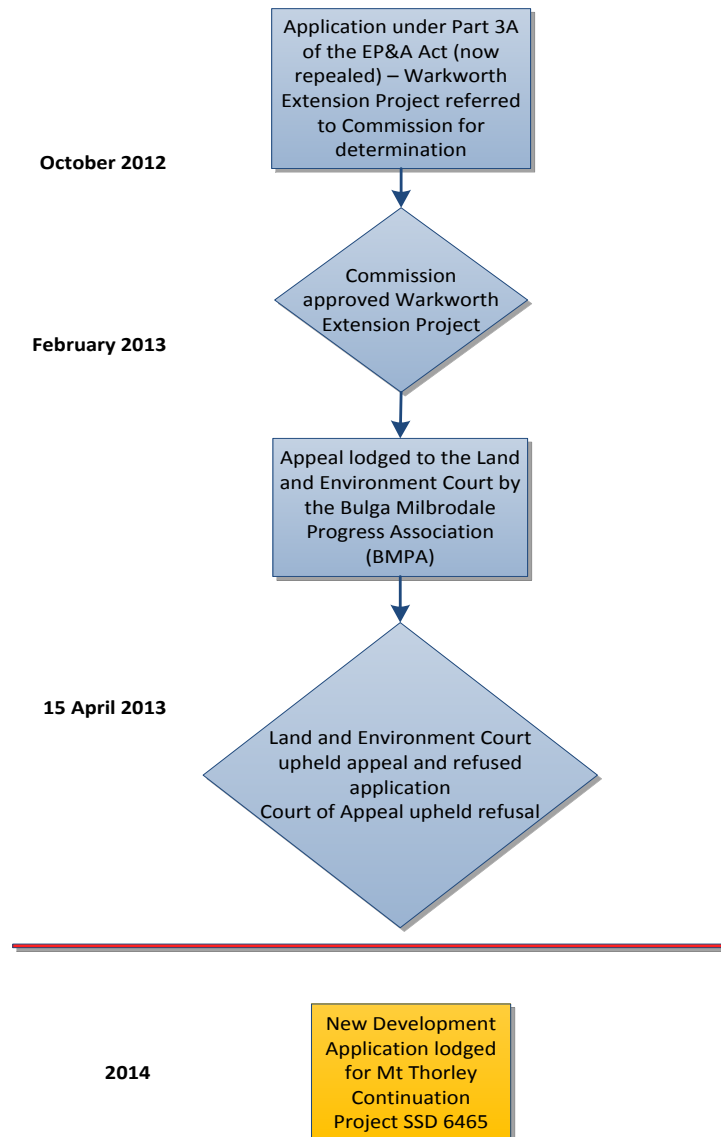


Figure 1: History of the Warkworth Extension Project

1.5 Recent Changes to Government Policy

The Commission notes that a number of important changes in government policy and legislation have occurred since the Courts' two refusals of the previous application, and these are relevant to the assessment of the current project application. In particular, the NSW government has made changes to the *State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007* (the Mining SEPP) and introduced the *NSW Biodiversity Offsets Policy for Major Projects* (the Biodiversity Offsets Policy) dated October 2014, and the *Voluntary Land Acquisition and Management Policy* (the VLAMP) dated December 2014.

1.5.1 NSW Biodiversity Offsets Policy for Major Projects

The Biodiversity Offsets Policy is supported by the Framework for Biodiversity Assessment tool prepared by the Office of Environment and Heritage (OEH), which is used to calculate biodiversity impacts on a proposed development site and determine the offset requirements for those impacts.

The purpose of the Biodiversity Offsets Policy is to provide a standardised, detailed and quantifiable methodology for assessing biodiversity offset requirements for major projects. The new methodology provides a more strategic approach to the identification and management of biodiversity offset sites, which have traditionally been identified by individual Applicants on a project by project basis.

The Policy is based on the following six principles:

1. Before offsets are considered, impacts must first be avoided and unavoidable impacts minimised through mitigation measures. Only then should offsets be considered for the remaining impacts.
2. Offset requirements should be based on a reliable and transparent assessment of losses and gains.
3. Offsets must be targeted to the biodiversity values being lost or to higher conservation priorities.
4. Offsets must be additional to other legal requirements.
5. Offsets must be enduring, enforceable and auditable.
6. Supplementary measures can be used in lieu of offsets.

The Biodiversity Offsets Policy enables biodiversity liability to be addressed through direct offsets, by translating liability into a monetary value to provide funding into an offset account, or through supplementary non-land based offsets.

1.5.2 Voluntary Land Acquisition and Mitigation Policy

The VLAMP seeks to protect landholders from noise and dust impacts associated with mining, petroleum and extractive industries. Consent authorities must consider the policy when determining all existing and future State Significant Development applications.

The VLAMP sets out the criteria for noise and particulate matter where voluntary mitigation and acquisition rights apply, but only encourages acquisition as a last resort after all reasonable and feasible mitigation measures have been undertaken. The preferred approach is to manage exceedances of the relevant assessment criteria through negotiated agreements between the mine and the affected landowners.

In circumstances where acquisition is the only option, the policy provides that the acquisition price to be paid by the Applicant should not be less favourable than a 'market value' rate. This rate is calculated as if the land was unaffected by the development and with reference to section 55 of the *Land Acquisition (Just Terms Compensation) Act 1991*.

1.5.3 Previous Mining SEPP Amendments

The Mining SEPP was amended in November 2013 with the aim of establishing environmental and amenity criteria for mining projects. The amendment established non-discretionary development standards and introduced specific criteria for noise, air quality, air blast overpressure, ground vibration and aquifer interference. The establishment of non-discretionary development standards means that if the criteria are met, a proposal cannot be refused on those grounds.

The November 2013 amendment also sought to elevate the importance of OEH in the assessment process, by ensuring a consent authority must consider any certification by OEH regarding the adequacy of biodiversity mitigation and offsets.

1.5.4 Recent Mining SEPP Amendments

On 7 July 2015, the Minister for Planning released the draft *State Environmental Planning Policy (Mining, Petroleum and Extractive Industries) Amendment (Significance of Resource) 2015* (the 2015 Mining SEPP Amendment) for public comment. In light of the proposed 2015 Mining SEPP Amendment, the Commission invited additional written comments on both projects from 9 July 2015 until 31 July 2015. Over 1,800 submissions were received which were addressed in the Commission's Second Review Report.

The 2015 Mining SEPP Amendment took effect on 2 September 2015. The Amendment repealed clause 12AA of the SEPP, which required that the consent authority provides principal consideration to the relative significance of the resource and the economic benefits from the development of the resource, both to the State and the region in which the development is proposed to be carried out. The Department has stated that the aim of the 2015 Mining SEPP Amendment was to provide a more balanced framework whereby economic, social and environmental impacts are given equal consideration.

2. CURRENT APPLICATION

2.1 Mt Thorley Continuation Project

The Mount Thorley Continuation Project involves the continuation of the existing open cut mining operations from Lodgers Pit and Abby Green North Pit (see Figure 2) at a rate of up to 10 Mtpa of ROM coal. Under the current consent coal extraction at the Mt Thorley mine would cease in 2022, however a 21 year consent period is proposed to enable the ongoing provision of services to the Warkworth mine. These services are considered critical to the viability of the Warkworth mine and rehabilitation of both mines, and include equipment, personnel, overburden transfer, water, coal rejects and coal preparation.

In addition, the Applicant is seeking the following changes to the existing Mount Thorley consent:

- Upgrade of the Mount Thorley Coal Preparation Plant to facilitate an increased maximum throughput of 18 Mtpa of ROM coal;
- Transfer of overburden between Mt Thorley and Warkworth mines to assist in the rehabilitation and final landform design of the MTW complex; and
- Upgrade of the MTW integrated water and tailings management systems.

2.2 Changes to the Current Application

Since the Courts' refusal of the previous application, a number of significant changes have been made by the Applicant to the current project application, including:

- a revised assessment of biodiversity impacts and a revised biodiversity offset strategy for the Warkworth mine prepared in accordance with the Biodiversity Offsets Policy and the *Framework for Biodiversity Assessment*;

- a revised noise assessment, social impact analysis and economic assessment;
- operational changes in response to ongoing stakeholder engagement, particularly regarding the management of noise and dust;
- additional commitment to include an area within the Wollombi Brook Aboriginal Cultural Heritage Conservation Area, and the establishment of local heritage conservation initiatives;
- changes to the final landform, including the emplacement of overburden at the Mount Thorley mine, enabling the void at Mount Thorley to be backfilled; and
- extraction of coal as part of the Warkworth mine's operations which is approved for mining operations under Mount Thorley mine's consent, avoiding the need to relocate Putty Road.

2.3 Development Assessment Process

Figure 2 (below) represents a summary of the development assessment process for the current Project. A detailed history of the application is outlined in the Commission's Second Review Report.

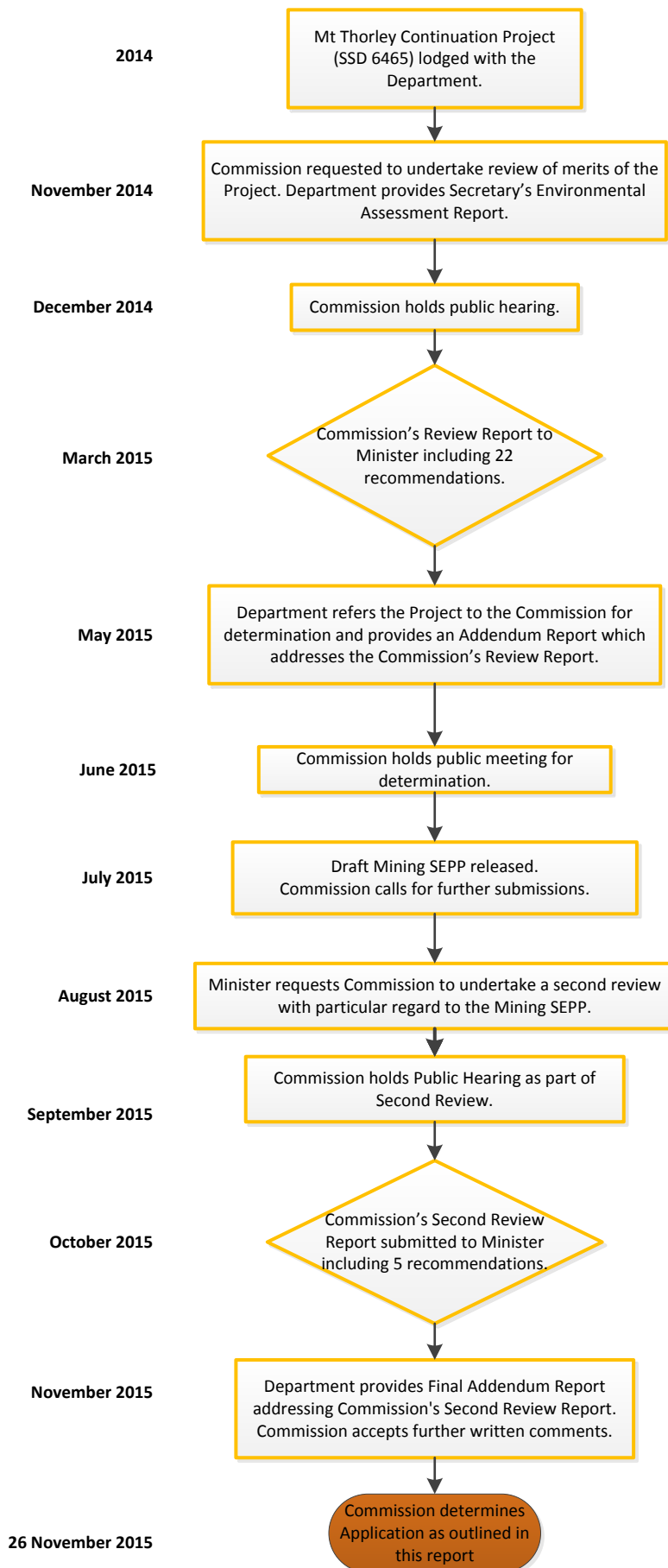


Figure 2: Development Assessment Process for the Mt Thorley Continuation Project

2.4 Commission Members

The constitution of the Commission for each stage of the assessment and reviews has varied slightly as follows:

- First Review Public Hearing: Paul Forward (Chair), Lynelle Briggs AO, Gordon Kirkby.
- Original Determination Public Meeting: Gordon Kirkby (Chair), Garry West, Paul Forward (vice Lynelle Briggs AO).
- Second Review Public Hearing: Lynelle Briggs AO (Chair), Paul Forward, Garry West and Gordon Kirkby.
- Final Determination: Lynelle Briggs AO (Chair), Paul Forward, Garry West and Gordon Kirkby.

Ms Briggs was on leave at the time of the Public Meeting and did not attend some other meetings at that time.

Overall, the four Members of the Commission who have been involved in the assessment of the Project have compiled a deep knowledge of the Project throughout the process. To take full advantage of this knowledge, the Chair of the Planning Assessment Commission has included all previous Members associated with the Project on the Commission panel for the determination of the application.

3. THE COMMISSION'S CURRENT DETERMINATION PROCESS

3.1 Public Meeting and Submissions

The Commission held a public meeting on 30 June and 1 July 2015 at the Singleton Heights Diggers Club. A total of 100 verbal submissions were made to the Commission at the public meeting including from the Applicant, Singleton Council, representatives of special interest groups and individual community members. A list of the speakers is provided in **Appendix 1** and a summary of the issues raised at the public meeting is provided in **Appendix 2**. The Commission also received over 2,000 written submissions, the majority of which were pro-forma style submissions. Approximately 65 percent of the submissions were in support of the proposals.

Following the Commission's Second Review Report and the Department's Final Addendum Report, the Commission accepted additional written comments from 5 November until 20 November 2015. A total of 46 written comments were received in relation to the mine complex by 20 November 2015, which have been taken into consideration.

Table 1 (below) provides a summary of the key issues raised in the submissions and the Commission's response.

Table 1: Summary of key issues raised in submissions and responses

Issues	Commission's Response
Mine being sold, therefore economic benefits change.	The Commission understands that if the mine complex is sold, a new operator of the mine will still be required to employ a certain quantity of specialists and satisfy the conditions of consent. The Commission also notes that regardless of the ownership the economic benefits will still be substantially positive for the region.
Screening of the final void and impacts to groundwater	Section 5.7 of the Commission's 1st Review Report Section 4.5 of the Commission's 2nd Review Report Section 4.4 of this Determination Report

Issues	Commission's Response
Health issues of mine dust and air quality	Sections 5.2, 5.3 and 5.5 of the Commission's 1st Review Report Section 4.6 of the Commission's 2nd Review Report Section 4.3 of this Determination Report
Regeneration of Warkworth Sands Woodland	Sections 5.6 and 5.8 of the Commission's 1st Review Report Section 4.4 of the Commission's 2nd Review Report Section 4.2 of this Determination Report
Voluntary Planning Agreement	Sections 5.1 and 5.2 of the Commission's 1st Review Report Section 2.4 of the Commission's 2nd Review Report
Public interest	The Commission notes that the Project benefits outweigh its residual costs. Regardless of future ownership arrangements all consent conditions will be required to be complied with as they run with the land.
Loss of biodiversity	Sections 5.1, 5.6 and 5.8 of the Commission's 1st Review Report Section 4.4 of the Commission's 2nd Review Report Section 4.2 of this Determination Report
\$1M Bond is not sufficient	As noted in the Department's Addendum Report, the bond is intended as an additional incentive to ensure that the Applicant commits adequate resources to the WSW restoration in a timely manner. In the event that the restoration does not meet the performance criteria, the \$1 million bond would be forfeited and the Applicant would still be required to complete all the restoration works. The Commission is satisfied that the bond should not be seen as the sole condition but rather as part of the strengthened conditions. Further information on the bond and conditions can be found in: Section 5.6 of the Commission's 1st Review Report Section 4.4 of the Commission's 2nd Review Report
Acquisition based on noise impacts	The Commission notes a condition of consent requires acquisition of the most affected properties in relation to noise impacts. Although noise is perceived differently by different people, the Applicant complies with the Industrial Noise Policy for the remainder of the locations. However, a condition of this determination will require real time noise monitoring to be made available.
Adequacy of the Aboriginal Heritage Consultation Process	Section 4.3 of the Commission's 2nd Review Report Section 4.6.2 of this Determination Report

3.2 Meetings

Table 2 (below) provides a summary of the following meetings held in relation to this determination.

Table 2: *Summary of meetings*

Date	Attendees	Matters Discussed
3 June 2015	Commission and Applicant	The Commission was briefed on the Project by representatives of the Department.
3 June 2015	Commission and Department	The Commission met with the Applicant to discuss the Project and receive feedback on the Review Reports.
6 June 2015	Commission and Singleton Council	The Commission met with representatives of Singleton Council to hear its view of the Projects and the Commission's Review Reports.
6 June 2015	Commission and BMPA	The Commission met with representatives of the Bulga Milbrodale Progress Association (BMPA) to hear its view of the Projects and the Review Reports.
8 July 2015	Commission and Department	The Commission met with representatives of the Department to discuss the key issues raised at the public meeting and in submissions.
15 July 2015	Commission and Applicant	The Commission met with the Applicant to discuss the progress of the VPA negotiations.
21 July 2015	Commission and Council	The Commission held a teleconference with representatives of Singleton Council to discuss the progress of the VPA negotiations.

A summary of the matters discussed at each of the Commission's meetings is provided in **Appendix 3** of this report.

Two other meetings were proposed to the Commission by members of the community (the Australia Institute and the Askews) as a means of resolving other matters. Nevertheless, the Commission decided not to proceed with the meetings as it was confident that it understood the information and views involved.

3.3 Documents

Table 3 (below) provides an outline of the key reports that relate to the assessment of the Project.

Table 3: *Summary of Reports*

Date	Title and Comment	Prepared by
June 2014	Environmental Impact Statement (EIS)	Applicant
November 2014	Response to Submissions (RTS)	Applicant
November 2014	Secretary's Environmental Assessment Report (SEAR)	Department
7 November 2014	Peer Review of Economic Assessment of Mount Thorley Warkworth Extension Project	Deloitte Access Economics
10 December 2014	Response from Applicant to the Deloitte's Peer Review	Applicant
Undated	Response from Applicant regarding air quality, cost benefit analysis and final landform	Applicant
4 March 2015	First Review Report: made a total of 22 recommendations and subject to these, the Commission was satisfied that the Project was consistent with government policy, and approvable	Commission
March 2015	Response to the First Review Report	Applicant
May 2015	Addendum Report: considered the findings and 22 recommendations of the Commission's Review Report	Department
October 2015	Second Review Report: made a total of 6 recommendations and subject to these, the Commission was satisfied that the Project was consistent with government policy, and approvable	Commission
November 2015	Final Addendum Report: considered the findings and 6 recommendations of the Commission's Second Review Report	Department

4. CONSIDERATION OF KEY ISSUES

The Commission notes that the Project has been subject to a thorough assessment process by both the Department and the Commission over the past 18 months, including two comprehensive reviews by the Commission. There has also been extensive public consultation, including two public hearings, one public meeting and multiple opportunities for written comments from the general public.

The assessment of the Project has been an iterative process and the various issues raised in public submissions have been progressively addressed through the Commission's two review processes. The Commission therefore advises that this Determination Report should be read in conjunction with the Commission's March and October 2015 Review Reports, the SEAR and addendum reports, which are available on the Planning Assessment Commission and Department websites. These reports provide in depth analysis of the issues considered by the Commission in its deliberations on the Project in accordance with the requirements of section 79C of the *Environmental Planning and Assessment Act 1979*.

In its First Review Report, the Commission made 22 recommendations, which were largely addressed by the Department's Addendum Report and the provision of additional information from the Applicant. A summary of the 22 recommendations and the Commission's comments on how these were addressed is included as a table in Appendix 1 of the Second Review Report.

However, there were a small number of key issues that arose in the second review process that required further consideration and clarification, and these were the subject of a further five recommendations in the Commission's Second Review Report. The Department has since addressed these five recommendations in its Final Addendum Report, which includes reference to further consultation with OEH and various amendments to the recommended conditions of consent.

This Determination Report focuses on the five recommendations of the Second Review Report, as well as any other residual issues that were raised in the public meeting in June 2015 and other written submissions or comments associated with the determination process.

4.1 Village of Bulga

The Commission has thoroughly assessed the concerns raised by the residents of Bulga about potential impacts on the village, particularly in relation to potential declines in property value, and the impacts from dust and noise in its review reports.

The 2003 development consent and Ministerial Deed of Agreement included the retention of Saddleback Ridge and Wallaby Scrub Road. This aspect of the approval provided a physical and visual buffer between the mining complex and Bulga village. As a consequence, a number of Bulga's residents are understood to have purchased properties, made improvements to existing properties and encouraged family members to relocate to Bulga village.

As raised in the submissions, the Commission accepts that property values could be negatively affected by the proposal and that the encroachment of mining would make it more difficult for land owners to sell their property. Nevertheless, any adverse impact on private property values is not a relevant consideration under section 79C of the *Environmental Planning and Assessment Act 1979*.

The Commission understands the difficult position faced by the residents of Bulga village, particularly given the apparent degree of certainty provided by the 2003 consent and Ministerial Deed of Agreement, and the extent of the proposed mining in the vicinity of the village.

Nevertheless, in its first review, the Commission considered that the potential substantial economic benefits from the mine extension warranted further consideration of the Project.

As a result, the Commission proposed three alternative options that might assist the residents of Bulga village. These options were not taken up by, nor were they given much support in, the Bulga village, beyond some interest in buy-backs.

In the absence of any evident interest from the community in any of the options that the Commission proposed, the Commission's view remained unchanged that the potential economic benefits of the mine warranted approval.

The Applicant and the Department did not initially support the options. However, at the Commission's urging, the Applicant considered the third option viable, which involved the implementation of a program of works or similar through a Voluntary Planning Agreement (VPA) with Council. The Commission has continued to pursue the implementation of that option to assist the residents of Bulga and has encouraged the parties to meet.

Council and the Applicant informed the Commission that they had reached a preliminary agreement that the VPA will include a total of approximately \$11 million in contributions, including \$5 to \$6 million to be spent on the construction of water and sewerage treatment facilities, and associated infrastructure, for Bulga consistent with a program of works considered and costed by Council. The VPA would also include provisions to ensure that the water treatment facility is constructed within the first five years of any consent. The Applicant and the Council have agreed that a portion of the remaining funds be committed to provide further education and training programs for non-mining activities in the region.

Throughout the review processes and as part of this determination, a number of Bulga residents have sought assurances that previous offers by the Applicant to acquire properties as part of the 2012 application, be honoured.

As part of the determination process, the Applicant made a formal offer (see Appendix 4) to acquire upon request properties originally identified for acquisition in the Warkworth Extension Project approval, which was disapproved by the Courts' decision. The Applicant made the offer in recognition of the uncertainty for residents who were granted and, subsequently lost, acquisition rights, due to changes in government policy.

As assurance to the Bulga community, the Commission considers that this obligation should be encompassed within the consent to ensure that it is tied to the land rather than sit outside the consent as an offer by the Applicant. The inclusion of these properties will extend acquisition rights to an additional 13 properties for the mine complex (one in the Mt Thorley mine consent and 12 in the Warkworth consent) and apply consistent dispute resolution provisions.

The Commission has also considered other potential social and amenity impacts on the village of Bulga, particularly in relation to noise, air quality and visual impacts, and these are addressed later in the report in **Sections 4.3, 4.4 and 4.5**.

4.2 Noise and Air Quality

One of the key concerns raised in verbal and written submissions throughout the development assessment process relates to the potential air quality and noise impacts of the Project.

The Commission notes that noise and air quality are long-standing issues between the Warkworth and Mount Thorley mines and the Bulga community. Noise impacts in particular, were a key reason for the refusal of the application by the Land Environment Court in 2013. However, since the court cases, the NSW Government has made a number of changes to policy and legislation in relation to mining assessments, as discussed in **Section 1.5** of this report.

In its First Review Report, the Commission made 12 recommendations relating to noise and air quality. The Commission was generally satisfied that these were addressed through the provision of additional information from the Applicant and the Department, including independent advice from a noise consultant, consultation with relevant agencies and the amendment of various recommended conditions of consent. A summary of these recommendations and the Commission's consideration of how they have been addressed are provided in a table in Appendix 1 of the Second Review Report.

Nevertheless, in its Second Review Report, the Commission recommended that the Noise Management Plan and Air Quality Management Plan should be further strengthened to explicitly address non-compliances and exceedances of the relevant performance criteria. The Commission is satisfied that these recommendations have been addressed and notes that there are additional requirements in the management plans to include provisions for keeping the local community

informed about the operations of the noise and air quality management systems and monitoring programs. This would include regular briefings and a public information session within six months of the granting of any development consent.

In relation to potential noise impacts, the Commission is satisfied that the predicted noise exceedances and recommended treatments are consistent with the current applicable government policies. In relation to air quality impacts, the Commission considers that the predicted air quality levels would largely comply with the relevant criteria as specified in government policy, with the exception of one privately owned location in Warkworth Village, which is recommended for acquisition.

The Commission has amended the condition which specifies the requirements for community access to information to include reporting of real time noise monitoring to provide timely and detailed information to the public rather than retrospective summaries.

Overall, the Commission is satisfied that there is a robust set of conditions relating to noise and air quality impacts, and notes that a number of important improvements have been made to these conditions throughout the development assessment process, which would ensure that compliance with noise and air quality limits is achieved, or appropriately managed and mitigated in accordance with government policy.

4.3 Socio-Economic

4.3.1 Social Impact Assessment

As part of the second review process, the Commission addressed concerns raised by Dr Michael Askew and Dr Louise Askew who are both social and environmental researchers and were engaged by the Applicant to undertake an early phase of the Social Impact Assessment (SIA). In the Second Review Report the Commission recommended that the Department be given the opportunity to review the letter from Dr Askew dated 8 October 2015.

The Department addressed the Askew letter in the Final Addendum Report, confirming *“that it is satisfied that the social assessment for the project adequately addresses the Secretary’s Environmental Assessment Requirements (EARs) including the consideration for the perceived and actual impacts on Bulga.”*

The Commission has considered the issues raised in the latest Askew letter and believes that they have been addressed in the various responses from the Department and the Applicant. The Commission acknowledges that there are a variety of methods available to undertake social impact assessments, and notes that while the EARs included a requirement that a SIA was to be undertaken, there was no reference to any required specific methodology.

In the Final Addendum Report the Department states that for social assessments and cost benefit analyses, experts often disagree on what constitutes “best practice” and the values that should be placed on various costs and benefits. Nevertheless, the Commission finds that the requirements for the SIA were not specific and that the Department should consider specifying with greater clarity the methodology and basic considerations that should be required for future assessments.

Notwithstanding the lack of detailed guidance regarding the requirements for the SIA, the Commission finds that the information provided by the Applicant is adequate when assessed against the EARs. Furthermore, the Commission is satisfied that the SIA has adequately considered the perceived and actual social impacts on the broader Singleton community and the village of Bulga.

4.3.2 Economic Impacts and Benefits

Throughout the development assessment process, concerns have been raised about the economic impacts of the Project, particularly in relation to the actual benefits that the Warkworth and Mount Thorley Continuation Projects would bring to the State, the region and the local community.

The Commission emphasises that there has been a considerable amount of additional work undertaken in relation to the economic assessment since the submission of the original assessment included in the EIS dated May 2014, including:

- an independent peer review undertaken by Deloitte Access Economics;
- additional information from the Applicant in response to issues raised in the peer review;
- an updated cost benefit analysis from the Applicant to reflect the current economic climate; and
- an updated peer review undertaken by Deloitte Access Economics that considers the Applicant's additional information and updated cost benefit analysis.

The Commission has carefully considered all of this material and all verbal and written submissions relating to the economic impacts of the Project. The Commission notes that there are inevitably some uncertainties relating to economic impact assessments, particularly in relation to the volatility of coal prices, exchange rates and the treatment of externalities. However, these issues have been addressed in the peer review and the additional information provided by the Applicant, including a sensitivity analysis that considers other scenarios.

The Commission is satisfied that the Project would result in significant economic benefits to both the State and the region, including:

- extraction of the remaining coal resources (about 29 Mt of ROM coal);
- Net capital expenditure with a net present value (NPV) of \$4 million;
- net capital expenditure with a net present value of \$715 million;
- the continuation of approximately 120 jobs (on average) for an additional 14 years; and
- the payment of \$50 million in royalties in NPV terms to the State.

The Department has stated that the Project is required to facilitate the neighbouring Warkworth Continuation Project which would result in significant economic benefits. The Commission also notes that the Project, combined with Warkworth mine, would result in other indirect economic benefits. Approximately 35 per cent of the mine complex's employees and long-term contractors live in the Singleton local government area, and it is estimated that the local flow-on effect from the expansion of the mine complex would be \$84 million in additional income and the continued employment of 61 full-time equivalent workers.

The Commission accepts the Department's view that if the Project did not proceed, it would result in a range of adverse social impacts such as:

- workers and their families moving away from the area;
- workers and their families facing unemployment and financial difficulties;
- reduced local spending and decreased local business;
- reduced viability of services such as local schools; and
- reduced community activities and participation.

The Commission recognises that if the Project was not approved, there would be substantial adverse economic impacts, especially to the towns of Singleton and Cessnock. There would also be the loss of significant royalties to the NSW government, a likely reduction in infrastructure projects to the Hunter region, and lower wage and salary income for both current employees and contractors.

4.4 Visual Impact

The Mt Thorley Continuation Project includes progressively backfilling the void with the emplacement of overburden from the Warkworth mine. The Department states that the final landform proposed by the current Project is a significant improvement over the current approved landform of the mine, which includes the creation of a narrow valley leading to a large void. The Commission recognises the potential for adverse visual impacts arising from the landform and has strengthened the conditions of consent to require vegetated bunds along the boundaries of the project including adjoining public roads. The Commission has imposed a condition that requires the Applicant to initiate works to establish the landscaping with 6 months of commencement of the development. Consequently, the Commission is satisfied that appropriate measures have been included in the conditions to mitigate the visual impacts.

4.4.1 Cumulative Impacts of Final Voids

The Commission recommended in the Second Review Report that the condition of consent relating to the Rehabilitation Management Plan should be strengthened to reflect any future Government policy position on final voids. The Department has amended the conditions accordingly. The Commission considers that any Government policy on final voids should be imposed in a timely manner and therefore the Commission has strengthened the conditions to require the applicant to revise its plans and programs within 3 months of the commencement of a void policy.

4.5 Other Issues

4.5.1 Aboriginal Heritage

The Commission's First Review Report addressed submissions regarding impacts on known Aboriginal sites, the adequacy of consultation and the special significance of Saddleback Ridge. The Commission concluded that the assessment undertaken as part of the application was comprehensive and that the proposed management commitments are appropriate.

As part of the second review process, further concerns were raised regarding the adequacy of consultation with specific Aboriginal groups. The Commission recommended that Department seek confirmation from OEH about the adequacy of the consultation process in relation to the information presented to the Commission by the Wonnarua native title applicants and Tocomwall Pty Ltd.

The Department responded that OEH maintains that the consultation process was adequate and undertaken in accordance with the *Aboriginal Cultural Heritage Consultation Requirements for Proponents Guidelines*.

Consequently, the Commission is satisfied that the consultation undertaken for the Aboriginal cultural heritage assessment and recommended conditions is adequate and that the process provided sufficient opportunity for Aboriginal groups to present their views on the proposal.

5. COMMISSION'S DETERMINATION

The Commission has carefully considered all the relevant information about the Project and its associated impacts, including the EIS, the RTS, the SEAR, the Addendum Report, the Final Addendum Report, the Commission's previous review reports, additional information provided by the Applicant, the Department and other expert consultants, submissions from government agencies, and all verbal and written submissions from the public.

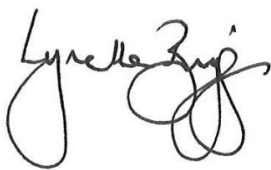
The Commission has also carefully considered the 2015 Mining SEPP Amendment in its determination and has ensured that it has given a balanced consideration to the potential economic, social and environmental impacts of the project.

In terms of economic impacts, the Commission notes that the Warkworth-Mt Thorley mine complex is now the biggest employer in Singleton, and is an important contributor to the local and regional economies. In terms of environmental and social considerations, the Commission notes that the conditions of consent have been progressively strengthened throughout the development assessment process in order to address the key environmental and social impacts of the Project, particularly in relation to biodiversity, final voids, air quality and noise.

The Commission also notes that Singleton Council has reached a preliminary agreement with the Applicant about a Voluntary Planning Agreement that will include approximately \$11 million in contributions, including \$5 to \$6 million to be spent on the construction of water and sewerage treatment facilities for Bulga within the first five years.

The Commission is satisfied that the project is able to be managed in a manner that is consistent with the aims, objectives, and provisions of the Mining SEPP and the objects of the *Environmental Planning and Assessment Act 1979*, including the principle of ecologically sustainable development.

The Commission has considered the merits of the Project in accordance with section 79C of the *Environmental Planning and Assessment Act 1979* and has approved the Project subject to stringent conditions.



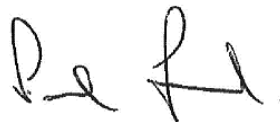
Lynelle Briggs AO (Chair)
Member of the Commission



Gordon Kirkby
Member of the Commission



Garry West
Member of the Commission



Paul Forward
Member of the Commission

APPENDIX 1: LIST OF SPEAKERS

Date & Time: **1:00pm, Tuesday 30th June 2015 (Day 1)**

Place: Singleton Diggers Club, Dorsman Drive, Singleton Heights NSW

1. Kevin Taggart & Warren Taggart (Wonnarua Traditional Custodians)
2. Mark Rodgers (Warkworth and Mt Thorley)
3. Mark Ihlein (Singleton Council)
4. Holly Creenaune (Land Water Future)
5. Georgina Woods (Lock the Gate Alliance)
6. Deirdre Heitmeyer (Singleton High School)
7. Kristen Keegan (Hunter Business Chamber)
8. Geoffrey Williams (Diversity Native Seeds)
9. Keith Hart (Nature Conservation Council of NSW)
10. Jolieske Oips (Running Stream Water Users Assoc)
11. Vanessa Wiebford (Hunter Community Environment Centre)
12. Steve Robinson (Groundswell Gloucester)
13. Wayne Diemar (Hunternet)
14. James Whelan (Environmental Justice Australia)
15. John Krey (Bulga Milbrodale Progress Association)
16. Beryn Jewson
17. Peter Donley
18. Susanna O'Brien
19. Bronwyn Vost
20. Paul Konz & Darryl Brock
21. Suzie Gold
22. Graeme O'Brien
23. Gerard Gayton
24. Ryan Fox
25. Sharyn Munro
26. Alana West
27. Rod Campbell (The Australian Institute)
28. Steven Gould
29. Nic Clyde
30. Daniel Kostava
31. Kassandra Bossell
32. Jim Morris
33. Keith Huang
34. Nell Schofield
35. Kristy Harris
36. Robert McLaughlin
37. Helen Johnston
38. Fiona Taylor (Lake Macquarie Coastal Residents Inc.)
39. Jann Dark
40. Anne Maree McLaughlin
41. Felix Nankivell
42. Leslie Krey
43. Geoffrey Stevenson
44. Paul Boundy (.org)
45. Peggy Fisher
46. Robert Garnsey
47. Carrie Tsai
48. Hubert Upward
49. Paige Livingston
50. Wayne Merrick
51. Grant Tory
52. James Murphy
53. Elaine Valton
54. Glenn Anthony Albrecht
55. Kevin Waldock

Date & Time: **8:00am, Wednesday 1st July 2015 (Day 2)**

Place: Singleton Diggers Club, Dorsman Drive, Singleton Heights NSW

1. Chris Cork (Singleton Business Chamber)
2. John Hayes (Correct Planning and Consultation for Mayfield)
3. Phil Jones
4. Ryan Fitzpatrick
5. Darren Gardiner
6. Glen Brown
7. David Willoughby
8. Veronica Corbett
9. Josephine Tobin
10. Judith Leslie
11. Alan Leslie
12. Beverley Smiles (Hunter Communities Network)
13. Jemma Callaghan
14. Trudie Larnach
15. Toni Silk
16. Jerry Johnson
17. Trevor Woolly
18. John Robert Lamb
19. Deidre Olofsson
20. Geoff Mullard
21. Marie Mitchell
22. Jan Hedley
23. Melissa O'Toole
24. Kristy Hedley
25. Ian Hedley
26. Michael Adair Campbell OAM
27. Alexander Williams
28. Stephen McDonald
29. Heather Davis
30. Brian Walker
31. Lyn Brattan
32. Soo Cheol Shin
33. Malcolm Smith
34. Tim Standen
35. Melanie Caban
36. Melissa Creagh
37. David Paull
38. Wendy Wales (Hunter Environment Lobby)
39. Richard Boulton
40. Kay Monro
41. Ron Fenwick
42. Wendy Bowman
43. Margaret Roberts
44. David Watson
45. Robin Mosman (Grandparents for Generational Equity)

APPENDIX 2: SUMMARY OF ISSUES RAISED AT THE PUBLIC HEARING

1. Aboriginal Heritage

- Impacts this project is causing to Aboriginal land especially in the interaction between coal mines and environmental features.
- The presentation by Kevin Taggart mentioned that the project was destroying their community's shared history and rights to their home, taking away places where generations have lived and passed.

2. Cumulative Impacts

- Concerns regarding the cumulative impacts of mining activities in the region have not been taken into consideration and that the EPA and the Department should assess these impacts, especially for water resources and air pollution.
- The proposed void size represents an imminent risk to surface and underground waters and the Applicant should not avoid the proper remediation regardless of the cost arguing that environmental remediation is part of the mining cost.
- The Department's knowledge on void remediation was questioned, and concerns that climate change should be an important consideration for determining the proposal's outcome as coal contributes to climate change.

3. Impacts on Warkworth Sands Woodlands

- Ecology specialists presented their professional findings on the flora and fauna that lives in the woodlands, especially the endangered ecological communities.
- It brings specific breed of migrating birds from Tasmania every year
- Vegetation ecologists had been working in the area and have identified endangered core species and some are occasionally represented.
- Dr Stephen Bell presented that WSW according to the IUCN Red List of Ecosystems, would be considered critically endangered and that it would also qualify in state, national and international terms.
- Regeneration of the WSW will not result in restoring it to its original conditions but rather the creation of a "novel ecosystem" which show resemblance to, but are not equivalent to, original ecosystems.
- Applicant's commitment was questioned from when the Deed of Agreement was signed, stating that it would not expand its activities to the woodlands and the ridge.
- If the project was already denied by the LEC and the Supreme Court, why was the project once more under consideration by the Department and the PAC?
- Most of the WSW is located on land owned by mining companies, which reduces confidence that the WSW will be adequately protected.

4. Noise

- It was raised several times that the Applicant has breached its approval by not complying with noise and air quality standards a number of times.
- Applicant's noise assessment was questioned as it did not show that the proper methodology was applied for low frequency noise.
- The noise predictions presented by the Applicant are subject to dispute as prediction modelling can be easily manipulated
- Noise monitoring should be undertaken continuously to show peaks when rocks get dumped into trucks as this was not considered in the noise program but just the machinery attenuation.
- The potential for health impacts arising from low frequency noise and infrasound was also raised. Some speakers argued there are clearly documented health impacts and that some

people are currently suffering sleep disorders including interrupted sleep, humming sounds and palpitating heart conditions on awakening.

5. Other Issues

- A large number of speakers expressed their support to the expansion.
- The Applicant assuring future work if the project goes ahead does not guarantee that will take place, instead due to the decline of coal in the market, jobs will be cut regardless of the determination of the proposal
- Concerns regarding determination of the project prior to the new mining SEPP.
- The need for a much larger security bond for remediation; especially the void.
- Additional requirements for fair acquisition rights to the homeowners affected by the noise and pollution caused by the mining activity.
- Concerns regarding coal pricing and the demand for coal.
- Social impacts were said to have already occurred because the proposal has divided the community between those against the project and those in support of the mining expansion.
- A number of speakers expressed concerns regarding the closing and removal of Wallaby road for the mining operations. The locals expressed that the road not only is a strategic road for emergency vehicles but it has a considerable heritage value.

APPENDIX 3: RECORDS OF COMMISSION MEETINGS

MEETING NOTE

This meeting is part of the Determination process.		
Meeting note taken by Kate Wedgwood	Date: Wednesday, 3 June 2015	Time: 2:40pm
Project: <i>Warkworth Continuation Project and Mt Thorley Continuation Project</i>		
Meeting place: <i>PAC office</i>		
Attendees: PAC Members: Ms Lynelle Briggs AO, Mr Garry West & Mr Gordon Kirkby PAC Secretariat: Kate Wedgwood Applicant: Anthony Russo – Manager, Project Approvals Simon Ellinor – Chairman, Coal & Allied Chris Collier – Superintendent, Mine Plan Mark Rodger – General Manager, Operations Nicola Proctor – Specialist, Project Approvals		
The purpose of the meeting is for the Applicant to provide comments to the Commission on the Review Report and Department’s final assessment and recommended conditions.		
The Applicant provided an overview of the applications and confirmed that no changes have been made to the proposals since the Reviews were undertaken. The Applicant also addressed the issues and recommendations contained in the Commission’s Review Report, as summarised below: Economic impacts • CBA has been updated to reflect the current economic climate. • Net benefit marginally smaller, though still \$1.5 billion to NSW economy. • Regional and local benefits are insensitive to coal price and exchange rate. Noise • Setting lower noise criteria would significantly impact the economic viability of the proposals. • The amenity criteria for noise outlined in the Mining SEPP is satisfied for all properties in Bulga. • Noise data is based on expert assessment and peer reviewed. • The Noise Management Plan provides for regular monitoring of the attenuated fleet. • The Trigger Action Response Plan and the noise monitoring process have been communicated with the Community Consultative Committee. • Additional noise modelling was undertaken to consider the noise impacts associated with the Coal Processing Plant. The modelling found that there were no changes at the receivers according to the Voluntary Land Acquisition and Mitigation Policy. Blasting • The Blast Management Plan will be amended so that daily blast schedules are provided on the company’s website for the following day’s activities. Biodiversity • Department’s conditions reflect the Biodiversity Offset Policy. • All land-based offsets have been acquired. • It is proposed to retire credits via the Upper Hunter Strategic Assessment (Interim Policy). • Re-establishment of Warkworth Sands Woodlands has been certified by OEH. Final void		

- Proposal includes a reduction in currently approved voids, including the filling of Lodgers Pit (Mt Thorley).
- Options for the final void have been considered, however none are reasonable and/or feasible.
- Size and depth of void will be reduced where reasonable and feasible as part of the mine closure strategy.

Rehabilitation

- Mine Operations Plan under the Mining Act includes timeframes for achieving specified rehabilitation benchmarks.

Compensation

- All properties in Bulga village comply with the amenity criteria for dust and noise contained in the mining SEPP.
- 1 property exceeds PSNL and is entitled to acquisition upon request.
- 5 properties in Bulga village entitles to mitigation measures.
- Rio Tinto is committed to reinstate acquisition rights under disapproved 2012 approval, outside of current applications.
- Relocation of Bulga not supported by Rio Tinto and is not considered to be justified.

VPA / Village Enhancement Strategy

- Supported by applicant
- An “in principal” agreement has been reached with Singleton Council on a VPA offer of \$11 million.

Aboriginal heritage

- Further information has been provided to the Department, detailing the heritage value of the proposed Loders Creek Aboriginal Cultural Heritage Conservation Area.

Documents to be provided: Detail of the letters sent to residents entitled to acquisition under the rescinded 2012 approval; and details of the current storage location of collected Aboriginal cultural heritage objects.

Meeting closed at 3:30pm

MEETING NOTE

This meeting is part of the Determination process.		
Meeting note taken by Kate Wedgwood	Date: Wednesday, 3 June 2015	Time: 3.30pm
Project: <i>Warkworth and Mt Thorley Continuation Projects</i>		
Meeting place: <i>PAC</i>		
Attendees: PAC Members: Mr Gordon Kirkby, Mr Garry West and Mr Paul Forward. PAC Secretariat: Kate Wedgwood and Helena Miller. NSW Department of Planning and Environment: Mike Young and Phil Jones		
The purpose of the meeting is for the Department to brief the PAC on its recommendation contained in its addendum report.		
Below is a summary of the issues discussed at the meeting: • The Department has thoroughly considered the PAC's Review Reports • The Department's compliance officers are preparing a report on noise in the Upper Hunter region. Early indications suggest that noise generated from the mine is generally consistent with the applicable noise criteria. • An independent noise audit is also being undertaken on the current operations. • The Department has discussed the VPA with Singleton Council; however it is not the Department's role to get involved in negotiations. • The Department understands that Singleton Council wants compensation for the closure of Wallaby Scrub Road, if the projects are approved. • The Department explained that road closure is dealt with under the Roads Act and is a separate process to the VPA negotiations. • The Department's conditions reflect current government policy, including the NSW Biodiversity Offsets Policy for Major Projects. • The Department is taking on board the recommendations contained in the PAC's Review Report regarding Project Specific Noise Levels and a lack of government policy regarding final voids.		
Meeting closed at 4:15pm		

MEETING NOTE

This meeting is part of the Determination process.		
Meeting note taken by Kate Wedgwood	Date: Tuesday, 16 June 2015	Time: 11:00am
Project: <i>Warkworth and Mt Thorley Continuation Projects</i>		
Meeting place: <i>Singleton Council</i>		
Attendees: PAC Members: Mr Gordon Kirkby, Mr Garry West and Mr Paul Forward. PAC Secretariat: Kate Wedgwood and Helena Miller. BMPS: John Krey, Stewart Mitchell, Alan Leslie, Anne-Maree MacLaughlin, Stewart Ewen and John Lamb.		
The purpose of the meeting is to discuss the Department's Addendum Reports and recommendations for the Warkworth and Mt Thorley Continuation Projects.		
Below is a summary of the issues raised by the BMDA at the meeting:		
Future of Bulga - The residents of Bulga have a positive and long-term view for the village. - Bulga has strong links to the wine industry, tourism, farming, national parks and is the home of the Hunter Valley fire control centre. - There is a strong sense of place in Bulga, which the residents are keen to preserve. - There is concern that the long-term future and social infrastructure of the village is at risk. - There is increasing concern from the community regarding the impact on Bulga and the potential future expansion of the mine.		
Noise and air quality/dust - The noise and dust impacts from the mining complex are very real. - The logic that there will be no or reduced impacts on the village of Bulga arising from the proposals is not accepted. - Additional compliance officers will not solve the problem. - The current regulations do not control the issues and are not acceptable. - Low frequency noise is a real issue and has a lot of impacts. - Independent noise modelling has found that the impacts of low frequency noise are much greater than those projected by the Department, and that the background noise level is higher than that considered by the Department.		
Potential compensation to residents - No compensation measure/s will adequately address the noise, dust and air quality issues associated with the mining complex. - The only reasonable options for Bulga are for the expansion to not proceed, or to commence underground mining. - While water and sewerage infrastructure would be useful, it would not address the key issues associated with the mine.		
Void The Applicant should be required to backfill the void.		
Aboriginal heritage - The land of native people will be destroyed by the voids and mining activities. - Sacred land should be left undisturbed.		
1.		

Environment

- Unacceptable impact on the Warkworth Sands Woodlands.

Other issues

- The Department's Addendum Reports do not completely consider the PAC's recommendations (including village relocation and/or compensation).
- Rio Tinto has never approached the residents of Bulga to discuss issues associated with the mine and proposals.
- A Social Impact Assessment was previously undertaken on behalf of Rio Tinto. This document was never submitted to the Department because the findings were that the social impacts of the proposals on the village of Bulga were too great.

Meeting closed at 12:30pm

MEETING NOTE

This meeting is part of the Determination process.		
Meeting note taken by Kate Wedgwood	Date: Tuesday, 16 June 2015	Time: 10:00am
Project: <i>Warkworth and Mt Thorley Continuation Projects</i>		
Meeting place: <i>Singleton Council</i>		
Attendees: PAC Members: Mr Gordon Kirkby, Mr Garry West and Mr Paul Forward. PAC Secretariat: Kate Wedgwood and Helena Miller. Singleton Council: Mark Ihlein (Director Planning and Sustainable Environment) and Lindy Hyam (General Manager) via teleconference.		
The purpose of the meeting is to discuss the Department's Addendum Reports and recommendations for the Warkworth and Mt Thorley Continuation Projects.		
Below is a summary of the issues discussed at the meeting: General issues • Council is aware that there is a heightened level of interest in the projects, particularly from local businesses and income earners. This is thought to be due to recent job losses in mining. • Council's believes that there appears to be a disconnect between the local management of the mining complex and the head office in Brisbane. • Council is concerned about the Department's addendum reports and recommendations, including a lack of balance and failure to address all issues. Noise • Although the noise impacts of the proposals may comply with Government criteria, the impact of the mine expansion within a rural setting will be very intrusive. • There is increasing concern from the community regarding the impact on Bulga and the potential future expansion of the mine. VPA • Council is generally satisfied with the VPA amount (\$11 million over 21 years), but would like to see additional benefits to Bulga, such as the delivery of water and sewerage infrastructure. This should be provided as separate mitigation measures, above and beyond the VPA. • Council does not have a confirmed schedule of works to be undertaken with the VPA funds, but indicated that they are considering benefits to the broader community. Wallaby Scrub Road • The closure of Wallaby Scrub Road is a separate issue to the planning considerations associated with the Warkworth and Mt Thorley applications • The closure will be considered once Council receives an application under the Roads Act. • Council is seeking compensation for the closure of the road. Voids • There is increasing concern from the community regarding the size of the proposed final void. • Council is seeking a better outcome than that proposed by the Applicant.		
Meeting closed at 11:00am		

MEETING NOTE

This meeting is part of the Determination process.		
Meeting note taken by Kate Wedgwood and Jorge Van Den Brande	Date: Wednesday, 8 July 2015	Time: 10:00am
Project: <i>Warkworth and Mt Thorley Continuation Projects</i>		
Meeting place: <i>PAC</i>		
Attendees: PAC Members: Mr Gordon Kirkby, Mr Garry West and Mr Paul Forward. PAC Secretariat: Kate Wedgwood, Jorge Van Den Brande and Helena Miller. NSW Department of Planning and Environment – Mike Young, Marcus Ray and Phil Jones		
The purpose of the meeting is to discuss key issues arising from the public meeting for the Warkworth and Mt Thorley Continuation Projects.		
Below is a summary of the issues discussed at the meeting: Draft amendment to Mining SEPP - The Department has received legal advice on the implications of the draft amendment on the Department, Minister and PAC. - Legal advice recommends that the PAC seek public comment on the draft amendment and the associated correspondence from the Department to the PAC. - The draft amendment is a matter for consideration under Section 79C of the EP&A Act. - Timing for gazettal of the draft amendment is unknown. VPA / Community Enhancement Program for Bulga. - The Department has been provided with a payment schedule from the Applicant, which indicates that 50% of the VPA funds will be allocated to Bulga. The Department indicated that the condition should be updated to reflect this offer. - The PAC is unsure what the proposed community enhancement plan involves, and believes that this should be determined before the commencement of works (if approved). - The PAC is considering a separate community enhancement fund condition, in addition to a VPA condition. - The Commission explained to the Department that a number of speakers at the public meeting raised concern regarding the mine's complaint handling procedure. The Department explained that their auditing indicates that the procedure is working well. Biodiversity and EPBC Act - The Department explained that the new EEC does not need to be considered by the Commonwealth; however they will ask the Commonwealth to confirm there are no concerns. - The Commission is concerned that the Department's recommendation to secure the offset areas within three years of the date of commencement of the consent provides too much time to the Applicant. The Department believes three years is appropriate. - The Department has no view on the submission made to the PAC by Mr David Paull (a former employee of the OEH). Air quality - The Department is aware on the process for the new air quality standards, however this process is ongoing and the timeframe is unknown. Noise - The new INP will address low frequency noise. - Low frequency noise will be addressed in the Department's auditing (no timeframe for audit).		

- The Department is undertaking complex noise monitoring in the area in order to have the measurements of different climate conditions, especially during winter noise inversion.

Roads

- The Department understands that there is an agreement in place that would allow emergency services to use a secure access road within the mine site, following the closure of Wallaby Scrub Road.

Social impacts

- The Department is aware of the BMPA's concern that a Social Impact Assessment was prepared for Rio Tinto but never submitted. This report has never been provided to the Department and therefore is not a matter for consideration.

Documents to be provided: Legal advice provided to Department regarding implications of the Mining SEPP amendment on the decision making process.

Meeting closed at 12:00pm

MEETING NOTE

This meeting is part of the Determination process.		
Meeting note taken by Kate Wedgwood and Jorge Van Den Brande	Date: Wednesday, 15 July 2015	Time: 3:00pm
Project: <i>Warkworth and Mt Thorley Continuation Projects</i>		
Meeting place: <i>PAC</i>		
Attendees: PAC Members: Mr Gordon Kirkby, Mr Garry West and Mr Paul Forward. PAC Secretariat: Kate Wedgwood, Jorge Van Den Brande and Helena Miller. Applicant: Anthony Russo – Manager, Project Approvals Tony Field – Corporate Counsel Mark Rodger – General Manager, Operations Nicola Proctor – Specialist, Project Approvals		
The purpose of the meeting is to discuss the Voluntary Planning Agreement (VPA)		
Below is a summary of the issues discussed at the meeting: • The PAC requested clarification regarding the likely benefits of the VPA to Bulga and whether the delivery of specific infrastructure is proposed. • The Applicant explained that it is difficult to establish the specific needs of Bulga. • If approval is granted, research will be undertaken to engage with the Bulga community and ascertain what it wants. • There is no final agreement in place with Council regarding the distribution of funds. • Rio Tinto explained that the VPA amount is not intended to be indexed, and that making the payment upfront would not be financially viable. • Rio Tinto explained that the VPA amount is consistent with VPAs for other mining approvals in the region. • The PAC raised concern in relation to the value of the payment over the life of the mine. • Rio Tinto is committed to working with Council to achieve the best outcome for the community. • Rio Tinto told the PAC that it intended to meet with Council on 24 July 2015 to discuss the VPA. • The PAC explained that it would discuss its concerns regarding the VPA with Council separately, prior to the Applicant and Council's meeting on 24 July 2015. • A tri-party meeting may be arranged following independent discussions between Council and Rio Tinto. Rio Tinto's offer to purchase properties outside of those required under the consent (if granted) was also discussed at this meeting. The PAC's view is that the best approach would see an independent arbitrator appointed to oversee negotiations.		
Meeting closed at 4:00pm		

MEETING NOTE

This meeting is part of the Determination process.		
Meeting note taken by Kate Wedgwood and Jorge Van Den Brande	Date: Tuesday, 21 July 2015	Time: 2:00pm
Project: <i>Warkworth and Mt Thorley Continuation Projects</i>		
Meeting place: <i>Teleconference</i>		
Attendees: PAC Members: Ms Lynelle Briggs, Mr Gordon Kirkby, Mr Garry West and Mr Paul Forward. PAC Secretariat: Kate Wedgwood, Jorge Van Den Brande and Helena Miller. Singleton Council: Lindy Hyam (General Manager) and Mark Ihlein (Director Planning and Sustainable Environment).		
The purpose of the meeting is to discuss the Voluntary Planning Agreement (VPA)		
Below is a summary of the issues discussed at the meeting: • The PAC requested clarification regarding the likely benefits of the VPA to Bulga and whether the delivery of specific infrastructure is proposed. • Council has not yet made any decisions regarding specific projects. • If the applications are approved, there will six months to finalise the contents of the VPA. • The Bulga community has not provided any serious indication of suggested improvements works to the village. • No payment schedule has been agreed to at this stage, however Council's preference is for one upfront payment of \$3 million, followed by the balance over three payments (two years apart). If payments are not made at the start of the 21 year project life, the figure should be indexed. • Council's view is that there is a range of issues that make this VPA unique. These include the history associated with the proposal and the biodiversity impacts. • The VPA should benefit the whole local government area (LGA), not just Bulga. This is because the whole LGA will be affected by the projects, by way of impact on infrastructure. • The majority of VPAs in the LGA go towards the cost of infrastructure across the whole council area. • Council's preferred approach is for water and sewerage infrastructure to be provided to Bulga by the Applicant, in addition to the works delivered through the VPA. Council suggested that this could be required as a condition of consent. • The PAC advised that it would seek advice from the Department of Planning and Environment regarding the ability to condition this type of work. • Council is currently in the process of preparing master plans for the villages within the LGA.		
Meeting closed at 2:45pm		

APPENDIX 4: APPLICANT'S LETTER TO ACQUIRE RESIDENCES

RioTinto

Rio Tinto Coal Australia Pty Limited
GPO Box 391
Brisbane QLD 4001
Australia
T +61 (0) 7 3361 4200
F +61 (0) 7 3361 4370

22 July 2015

Mr Gordon Kirkby
Chair - Warkworth and Mount Thorley Determinations
Planning and Assessment Commission
GPO Box 3415
Sydney 2001

Dear Mr Kirkby

Determination of Warkworth Continuation Project (SSD 6464) and Mount Thorley Continuation Project (SSD 6465) - additional information

We refer to a meeting with the Planning Assessment Commission (PAC) and representatives of the applicant on 15 July 2015.

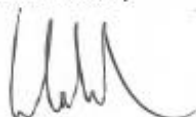
The PAC raised concerns that the applicant's commitment to reinstate acquisition rights under the 2012 disapproval does not have the same dispute resolution process as those entitled to acquisition under the Voluntary Land and Mitigation Policy (VLAM) and development consent conditions. The PAC requested inclusion of this commitment within the applicant's statement of commitments.

The properties that the applicant has publicly committed to reinstate acquisition rights are not entitled to acquisition under the VLAM policy as noise and dust predictions do not significantly exceed the relevant criteria. Therefore, the commitment to reinstate acquisition rights remains outside the above-mentioned development applications. The applicant has written to the relevant landholders (refer copy in Attachment 1) stating that it would be prepared to acquire these properties in good faith upon request on the same valuation methodology and premises as outlined in Condition 8, Schedule 4 of the rescinded Warkworth Extension Project Approval (09_0202).

In response to the feedback from the PAC, the applicant is prepared to further write to these landholders following determination with a commitment to dispute resolution as outlined in Attachment 2.

If the PAC requires any further information or clarification, please do not hesitate to contact Anthony Russo, Manager - Projects Approvals on 07 3625 4823.

Yours sincerely



Chris Salisbury
Managing Director

Enclosures

- Attachment 1 Written Offer for Reinstatement of 2012 Acquisition Rights
Attachment 2 Dispute Resolution Process for Public Commitment to Reinstatement 2012 Acquisition Rights

Rio Tinto Coal Australia Pty Limited
Registered Office: Level 3 - West Tower, 410 Ann Street, Brisbane QLD 4000. ABN 74 010 542 140.

Attachment 1

Written Offer for Reinstatement of 2012 Acquisition Rights



22 September 2014

[insert property owners' name]
[insert property owners' address]
[insert property owners' address]

Dear [insert property owners' name]

Property: [insert Lot/DP] being [insert street address]

On 23 June 2014 Warkworth Mining Limited and Mt Thorley Operations Pty Ltd lodged applications with the NSW Department of Planning and Environment seeking planning approval for the Warkworth Continuation 2014 Project and the Mount Thorley Operations 2014 Project, respectively (the **2014 Projects**).

As you are aware, under the former Warkworth Extension 2012 Planning Approval you were granted acquisition rights. You will recall that those rights were extinguished when the Warkworth Extension 2012 Project was disapproved by the Land and Environment Court in April 2013.

Prior to lodging the applications for the 2014 Projects we publicly committed to "*offering voluntary acquisition to those residents who were granted acquisition rights under the Warkworth Extension 2012 planning approval, prior to the Land & Environment Court refusing the application for this planning approval*" subject to approval of the 2014 Projects (Media Release of 20 March 2014). This offer was made recognising that there has been much uncertainty for residents who were granted, and subsequently lost, acquisition rights under the Warkworth Extension 2012 Planning Approval.

The offer

The intention behind our commitment to reinstate your voluntary acquisition rights is to put you in a comparable position to that which you were in prior to the Land and Environment Court judgment which disapproved the Warkworth Extension 2012 Project and removed your acquisition right.

This offer is made separate to any requirement of government, a regulator, law or policy and without consideration of the modelled impacts under the 2014 Projects. The offer is however conditional upon the 2014 Projects being approved, and such approval not being appealed and/or subsequently disapproved by any Court with jurisdiction to make such a determination, and the conditions of such approval or consent being acceptable to

Warkworth Mining Limited and Mt Thorley Operations Pty Ltd respectively (in their absolute discretion).

Acquisition Options

You will be able to make a written request to Warkworth Mining Limited that it acquire your Property up until [31 March 2033 / 31 December 2020], subject to a current consent being in place which approves the operation of the 2014 Projects. This time frame is consistent with your extinguished rights under the Warkworth Extension 2012 Planning Approval.

If you choose to seek acquisition of your Property by Warkworth Mining Limited we will follow the general principles previously afforded under the Warkworth Extension 2012 Planning Approval to arrive at a purchase price for your Property. This process will involve:

1. A written request from yourself to Warkworth Mining Limited requesting acquisition of your Property;
2. Warkworth Mining Limited making you a conditional purchase price offer based on:
 - a) the current market value of your Property as at the date of your written request, as if your Property was unaffected by the Mount Thorley and/or Warkworth mines, having regard to the:
 - existing and permissible use of your Property, in accordance with the applicable planning instruments at the date of your written request; and
 - presence of improvements on the Property and/or any approved building or structure which has been physically commenced at the date of your written request, and is due to be completed subsequent to that date, but excluding any improvements that have resulted from any additional noise and/or air quality mitigation measures implemented by us in the past;
 - b) the reasonable costs associated with relocating within the Muswellbrook, Singleton or Cessnock local government area; and
 - c) your reasonable legal advice and expert advice costs, up to the total value of \$2,500.00 inclusive of GST, associated with determining the acquisition price of your Property and the terms upon which it is to be acquired. These fees would be paid direct to your conveyancer/solicitor or other expert advisor upon provision of relevant tax invoices on settlement; and
 - d) reasonable compensation for any disturbance caused by the land acquisition process.
3. The Contract for Sale of Land which would be entered into to record the agreed purchase price and the sale terms would be conditional upon and subject to Warkworth Mining Limited and Mt Thorley Operations being granted a project approval for the 2014 Projects by the Minister for Planning or her delegate and such approval not being appealed and/or subsequently disapproved by any Court with jurisdiction to make such a determination, and the conditions of such approval or

consent being acceptable to Warkworth Mining Limited and Mt Thorley Operations Pty Ltd respectively (in their absolute discretion).

4. Any purchase price offer Warkworth Mining Limited makes under this process will be open for you to accept for a period of up to six weeks from the date on which Warkworth Mining Limited makes the offer.

We would be happy to meet in person and discuss our offer with you so that we will be able to address any questions that you may have in relation to this process.

It may also be beneficial to you, to make your own enquiries as to the market value of your property through, for example, a market appraisal by a local real estate agent.

Given the nature of this matter, any discussion or correspondence between us is on a private and confidential basis. As is customary, there will not be a legally binding agreement between us until the terms of any sale of your Property are agreed to by both parties and a formal Contract for Sale of Land has been executed and formally exchanged.

If you would like to make a time to meet with us and discuss this letter please contact Travis Bates on 0467 798 230.

Please direct all written correspondence to:

Warkworth Mining Limited
Mount Thorley Warkworth Mine
Attention: Coal & Allied Singleton Community Shopfront
PO Box 315
Singleton NSW 2330

Yours faithfully

Mark Rodgers
General Manager, Mount Thorley Warkworth

Attachment 2

Dispute Resolution Process for Public Commitment to Reinstate 2012 Acquisition Rights

Within three (3) months of the Proponent making its written offer to the landowner, the landowner must notify the Proponent, in writing, of their acceptance or rejection of the offer ("**Landowners' Notice**").

If the Proponent's offer is not accepted by the landowners the following process applies:

1. The Landowners' Notice must clearly state the reasons for rejecting the Proponent's offer and detail their counter position, including copies of any evidence upon which the landowner relies on for seeking a specific acquisition price or acquisition term ("**Landowner's request**");
2. Within three (3) months of the date the Landowners' Notice, the Proponent must advise the landowner in writing, whether it has revised any of the terms of the Proponent's offer or whether it rejects the Landowner's request ("**Proponent's Reply**").
3. The parties must use best endeavours to resolve any disagreement on acquisition price and/or the terms of acquisition.
4. If the Proponent and landowner have not reached agreement on the acquisition price and/or the terms upon which the land is to be acquired within one (1) month of the Proponent's Reply, the Proponent will refer the matter to the President of the NSW Division of the Australian Property Institute for resolution by a qualified independent valuer ("**Referral**").

The Proponent must advise the landowner, in writing, of the date of Referral.

In referring the matter to the independent valuer the Proponent will instruct the President of the NSW Division of the Australian Property Institute to appoint a qualified independent valuer (the "**Valuer**") to:

- consider submissions from both parties, which must be provided to the Valuer within one (1) month of the date of Referral;
- determine a fair and reasonable acquisition price and/or the terms upon which the land is to be acquired;
- prepare a detailed report setting out the reasons for their determination; and
- provide a copy of the report to both parties.

The parties must comply with any reasonable request of the Valuer.

If the landowner does not comply with any reasonable direction of the Valuer within one (1) month of the Valuer's request, including failure to provide their submission to the Valuer, then the original offer made by the Proponent is open for the landowner to accept for 6 (six) months after the date of the Referral of the dispute to the Valuer after which time the Proponent's obligations to acquire the land shall cease.

Within three (3) months of receiving the Valuer's report, the Proponent shall make a binding written offer to the landowner to purchase the land at a price and on the terms (if any) provided for in the Valuer's determination.

If the landowner does not accept the Proponent's written offer under this condition within 6 months of the offer being made, then the Proponent's obligations to acquire the land shall cease.