



Planning & Environment

FINAL ADDENDUM:

STATE SIGNIFICANT DEVELOPMENT ASSESSMENT Mt Thorley Continuation Project (SSD-6465)



Environmental Assessment Report
Section 89E of the
Environmental Planning and Assessment Act 1979
November 2015

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1. INTRODUCTION

1.1 Background

This report has been prepared to consider the recommendations made in the Planning Assessment Commission's (the Commission's) second review of the Mt Thorley Continuation Project (SSD-6465) (the project). The applicant for the project is Mt Thorley Operations Pty Ltd (Mt Thorley Operations), a subsidiary of Rio Tinto Coal Australia (Rio Tinto).

The report should be read in conjunction with the Department of Planning and Environment's (the Department's) Environmental Assessment Report for the project dated November 2014, the Department's Addendum Report dated May 2015, the additional documents identified in Table 1 below, and the corresponding documents for the related Warkworth Continuation Project (SSD-6464).

The application for the Mt Thorley Continuation Project (SSD-6465) will now be forwarded to the Commission for determination under Section 89E of the *Environmental Planning and Assessment Act 1979* (EP&A Act), as delegate for the Minister for Planning.

1.2 Chronology of Events

A brief chronology of the key events relevant to this addendum report in the time since the Department's referral of the assessment package to the Commission is presented in the following table.

Table 1: Chronology of Events

Date	Event
14 Nov 14	Department refers Environmental Assessment Report to the Commission for review
18-19 Dec 14	Commission holds public hearings in Singleton
4 Mar 15	Commission finalises its review and refers the review report to the Department
15 May 15	Department refers final assessment package (Addendum Report and recommended conditions) to the Commission for determination
26 Jun 15	Department provides additional information to the Commission regarding consideration of certain statutory matters
30 Jun - 1 Jul 15	Commission holds public meetings in Singleton
7 Jul 15	Minister for Planning releases Draft <i>State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) Amendment (Significance of Resource) 2015</i> (Mining SEPP Amendment) for public consultation
7 Jul 15	Department provides additional information to the Commission regarding consideration of the Draft Mining SEPP Amendment
13 Aug 15	Minister for Planning directs the Commission to undertake second review to consider, amongst other things, the Draft Mining SEPP Amendment
7-8 Sep 15	Commission holds public hearings for second review in Singleton
2 Oct 15	Department provides additional information to the Commission regarding consideration of matters relating to Aboriginal cultural heritage, social impact assessment, Warkworth Sands Woodland and cumulative impacts.
21 Oct 15	Commission finalises its second review and refers the review report to the Department

2. CONSIDERATION OF PAC REVIEW

2.1 Review Findings and Recommendations

The Commission's second review report for the project makes the following conclusion:

"The Commission is satisfied that the project's benefits as currently understood outweigh its potential impacts, and that on balance the project is approvable. The project should proceed to determination, subject to the recommendations outlined in this report."

In its report, the Commission has also made 5 recommendations asking the Department to:

1. Confirm the adequacy of consultation with Aboriginal stakeholders with the NSW Office of Environment and Heritage (OEH);
2. Ensure the conditions take into account the outcomes of any review of the NSW Government's current policy on final voids;
3. Revise the conditions to require vegetation screens to be implemented in a timely manner and include measures to screen views of the final void;
4. Address non-compliances or exceedances of the relevant performance criteria for noise and air quality, provide for independent investigations of complaints, and ensure the local community is provided with regular updates about noise and dust levels; and
5. Confirm that the social impact assessment adequately addresses the Environmental Assessment Requirements for the project.

The Department's consideration of these recommendations is provided below. Revised recommended conditions of approval are provided in Attachments B and C.

2.2 Aboriginal Cultural Heritage

Recommendation 1 – That the Department seeks confirmation from OEH about the adequacy of the consultation process with all relevant Aboriginal stakeholders, particularly in relation to the information presented to the Commission by the Wonnarua native title applicants and Tocomwall Pty Ltd.

The Department can confirm that OEH remains satisfied about the adequacy of the consultation process with all relevant Aboriginal stakeholders for the Warkworth and Mt Thorley Continuation Projects, in accordance with the *Aboriginal Cultural Heritage Consultation Requirements for Proponents (2010)* guidelines (the 2010 Guidelines).

OEH has provided additional consideration of the adequacy of the consultation process with all relevant Aboriginal stakeholders in accordance with the Commission's recommendation (see Attachment A).

OEH reconfirms that it is satisfied that all *"Aboriginal stakeholders have been given the opportunity to participate in and to provide comments on the Warkworth and Mt Thorley Continuation Projects as per the Aboriginal Cultural Heritage Consultation Requirements for Proponents (OEH 2010)"*.

OEH also comments on the role of the local Aboriginal community in the protection and restoration of cultural heritage (should the project be approved):

"When and if the Warkworth and Mt Thorley Continuation Project is approved, the proponent, in consultation with all Aboriginal stakeholders and OEH will prepare an Aboriginal Cultural Heritage Management Plan (ACHMP). The ACHMP will delineate the mechanisms by which the local Aboriginal community will be involved in the protection and restoration of cultural heritage."

The Department also provided additional consideration of the adequacy of the consultation process with all relevant Aboriginal stakeholders, based on the information presented to the Commission by the Wonnarua native title applicants and Tocomwall Pty Ltd, in its additional information letter to the Commission dated 2 October 2015.

As outlined in the Department's letter, Tocomwall's submission to the Commission is written on behalf of the Plains Clan of the Wonnarua People (PCWP), and claims that Rio Tinto has not adequately consulted with the PCWP about the cultural values within the project area and not provided a copy of the completed Aboriginal Cultural Heritage Assessment Report to the PCWP.

The 2010 Guidelines require applicants to notify Aboriginal stakeholders about a project, and for interested Aboriginal parties to register an interest in being involved in subsequent Aboriginal cultural heritage assessment. The Department understands that 82 Aboriginal parties registered such an interest in relation to the assessment for the Warkworth and Mt Thorley Continuation Projects. These included the PCWP and 10 of the 12 Wonnarua Traditional Custodian native title applicants.

However, the PCWP subsequently declined invitations to participate in the Registered Aboriginal Party (RAP) consultation process. Nevertheless, Rio Tinto has continued to consult with the PCWP, and Rio Tinto has confirmed that the PCWP was provided with copies of the Aboriginal Cultural Heritage Assessment and a number of other documents in relation to the projects.

OEH's original submission on the Warkworth Continuation Project¹ also contains specific consideration of the issue, an excerpt of which is reproduced below:

"The [EIS] report does outline that Mr Scott Franks, did register an interest as a Registered Aboriginal Party (RAP) for the Warkworth Continuation Project 2014 on behalf of the Plains Clans of the Wonnarua People native title claimant group, however, the group refused to participate in the [Cultural Heritage Working Group] CHWG RAP consultation process. Mr Franks stated that he did not support the proposal and they did [not] allow other people to make comment or decisions on or for their country, as such they would not attend meetings with other Aboriginal people that were not a part of their registered native title group. OEH notes that the proponent has continued to maintain continuous consultation with Mr Franks despite not supporting the proposed continuation proposal. OEH considers that all reasonable attempts have been made to consult with Mr Franks regarding this proposal and that as long as consultation is maintained, the consultation process to date has been adequate and reasonable."

Consequently, the Department's Environmental Assessment Report for the Warkworth Continuation Project states that both the Department and OEH are satisfied that the Aboriginal heritage assessment and consultation has been undertaken in accordance with applicable guidelines, including the 2010 Guidelines.

The Commission's review report notes that the Commission has carefully considered this information and is generally satisfied that the level of consultation with all relevant Aboriginal stakeholders was adequate. Nevertheless, the Commission recommended that Department sought confirmation from OEH about the adequacy of the consultation process given the new information that the Commission received through the second review process. As outlined above, OEH has now provided this confirmation.

¹ OEH's submission on the Mt Thorley Continuation Project noted that the project does not involve additional impacts on Aboriginal cultural heritage.

2.3 Final Void

Recommendation 2 – That the proposed condition of consent relating to the Rehabilitation Management Plan should be strengthened to take into account the outcomes of any review of the NSW Government's current policy on final voids.

It is noted that the Mt Thorley Continuation Project involves backfilling of the voids at the Mt Thorley mine, and as such the final landform would not have any long term final void. Nonetheless, the Department has amended the Rehabilitation Management Plan condition (ie. condition 36 of schedule 3) to reflect the Commission's recommendation. The amended condition requires Mt Thorley Operations to prepare the plan in accordance with any extant NSW Government policy on voids (to the extent that any such policy may be applicable in the short to medium term before the voids are filled).

Subsequent revisions to the plan as required under recommended condition 5 of schedule 5 would address any future updates to government policy on final voids following approval of the initial Rehabilitation Management Plan.

Recommendation 3 – That the conditions of consent relating to visual mitigation measures should expressly refer to final voids and be strengthened to ensure that vegetation screening or other mitigation measures are implemented in a timely manner.

The Department has amended the visual amenity conditions to reflect the Commission's recommendation. In this regard, the Department has amended the visual impact operating conditions (ie. condition 52 of schedule 3) to expressly refer to the need to implement measures to mitigate visual impacts associated with mining voids (as outlined above the Mt Thorley mine would not have any final voids). The Department has also expanded the condition to require the vegetation screening to be implemented within 6 months in accordance with a tree screening plan prepared in consultation with Council.

2.4 Noise and Air Quality

Recommendation 4 – That the proposed conditions of consent relating to the Noise Management Plan and Air Quality Management Plan should be strengthened to explicitly address non-compliances or exceedances of the relevant performance criteria. This may include requirements to independently investigate complaints and to respond effectively, and to undertake regular briefings with the community and provide updates on recent air quality and noise levels.

In response to the Commission's recommendation the Department has amended the noise and air quality management plan conditions (conditions 5 and 18 of schedule 3) to require Mt Thorley Operations to undertake regular briefings with the community on noise and air quality issues.

These amendments would strengthen the existing recommended conditions which provide a robust framework for addressing any non-compliances or exceedances of the relevant performance criteria. In this regard, the recommended conditions include a number of requirements on Mt Thorley Operations to address non-compliances or exceedances of the relevant performance criteria, undertake independent reviews, respond to complaints and to keep the community informed about noise and air quality emissions.

These include requirements on Mt Thorley Operations to:

- comply with noise and air quality criteria (conditions 2 and 15 of schedule 3);
- undertake independent reviews if landowners believe that the mine is exceeding the applicable noise and air quality criteria (condition 4 of schedule 4);
- develop procedures for, amongst other things (condition 1 of schedule 5):
 - o keeping the local community informed about the operation and environmental performance of the mine;
 - o receiving, handling, responding to and recording complaints; and
 - o resolving disputes;

- ensure that the various management plans (including noise and air quality management plans) include, amongst other things (condition 3 of schedule 5):
 - o a description of the measures to be implemented to ensure compliance;
 - o a contingency plan to manage any impacts and their consequences;
 - o a program to improve environmental performance over time; and
 - o protocols for managing and reporting incidents, complaints, non-compliances and exceedances;
- undertake adaptive management measures for any identified exceedance of the noise or air quality criteria (condition 2 of schedule 5); and
- make monitoring results publicly available on its website (condition 11 of schedule 5).

Any failure by Mt Thorley Operations to meet the noise and air quality criteria would be managed in accordance with the provisions of the consent (including the adaptive management requirements under recommended condition 2 of schedule 5), and may be subject to compliance and/or enforcement action under the EP&A Act.

The recommended conditions also require the Noise Management Plan (condition 5 of schedule 3) to include provisions for keeping the local community informed about the noise management system and monitoring results, including holding a public information session within 6 months of the date of consent. As outlined above the Department has amended this condition, and the air quality management plan condition (conditions 18 of schedule 3), to require Mt Thorley Operations to undertake regular briefings with the community on noise and air quality issues.

2.5 Social Impact Assessment

Recommendation 5 – That the Department should review the letter from Dr Michael Askew to the Commission dated 8 October 2015 and ensure that it is satisfied that the social impact assessment adequately addresses the Secretary's Environmental Assessment Requirements.

The Department has reviewed the additional letter received by the Commission from Dr Michael Askew and Dr Louise Askew dated 8 October 2015. This letter followed an earlier submission from the Askews to the Commission dated 8 September 2015. The additional letter responds to Rio Tinto's responses to the issues raised by the Askews in their 8 September 2015 letter.

In summary, the Askew's most recent letter disputes Rio Tinto's claims that:

- the social impact assessment has been produced by an adequately experienced team;
- the Askew's role in preparing the original social impact assessment was limited;
- the social impact assessment is consistent with leading practice; and
- the social impact was undertaken in accordance with Secretary's environmental assessment requirements and the issues identified in the LEC judgment.

As outlined in the Department's additional information letter to the Commission dated 2 October 2015, the Secretary's Environmental Assessment Requirements for the project require the Applicant to:

"undertake an assessment of the likely social impacts of the development (including perceived impacts), paying particular attention to any impacts on Bulga village."

The EIS for the project includes a detailed social impact assessment and economic impact assessment undertaken by suitably qualified consultants. Mt Thorley Operation's Response to Submissions includes further detailed information, including direct and detailed consideration of the matters raised by the Askews (which are similar to the issues raised previously by the Bulga Milbrodale Progress Association).

The Department acknowledges that for social assessments and cost benefit analyses experts can differ on what constitutes 'best practice' and the values that should be placed on various costs and benefits.

The social impact assessment includes detailed stakeholder and near neighbour consultation (including surveys and open community forums), community, workforce and supplier profiling, consideration of community perceptions and perceived impacts, and assessment of the range of potential social impacts and opportunities including impacts on community services, property values, health and well-being, loss of community and sense of place.

The assessment focused on engagement with near neighbours in the Bulga area, with around 20% of Bulga residents participating in the consultation process. This supported the consideration of perceived impacts on the Bulga Village presented in the EIS and Response to Submissions.

The Department acknowledges that the projects would give rise to a number of social and economic costs, as well as giving rise to a number of social and economic benefits. Like most major mining projects, the benefits would accrue to both the local community (eg. jobs, economic opportunities) and the wider community (eg. affordable energy, economic value add), while many of the costs (particularly amenity impacts such as noise, dust and visual, as well as other perceived social effects) would accrue more to the local community surrounding the mine site.

The Department has considered these amenity and other impacts in accordance with applicable NSW policy and guidelines, and recommended conditions requiring Rio Tinto to minimise, manage or at least compensate for the residual impacts. The Department's assessment concludes that the noise and dust impacts would be similar to those associated with the existing mine.

The Department notes that the EIS for the project also includes a detailed cost benefit analysis that attempts to weigh up all of the project's costs and benefits based on its full range of environmental, social and economic impacts and benefits. This includes consideration of costs associated with externalities such as impacts associated with noise and vibration, air quality, visual amenity, biodiversity, heritage, traffic, water resources and greenhouse gas emissions.

This analysis indicates that the Mt Thorley and Warkworth projects would result in a considerable net benefit to NSW of approximately \$1.5 billion. As outlined in the Department's Addendum Report dated May 2015, the Department's independent economics expert Deloitte Access Economics (DAE) has reviewed and broadly accepts the cost benefit modelling. Rio Tinto has also agreed to enter into a voluntary planning agreement with Singleton Council that would provide \$11 million in contributions toward local community infrastructure and services, including up to \$6 million in Bulga².

The Department agrees with the conclusion of the Commission in its first review report which stated:

"the Commission must balance the social impacts against the economic benefits associated with the proposal. In this regard, the Commission shares the Department's view that the impacts expected as a result of the Project are acceptable when compared to the standards and performance measures commonly applied to mining projects in NSW."

The Department also agrees with the Commission's conclusions in its second review report that the Mt Thorley Warkworth mine complex *"is a very important contributor to the local and regional economy"*, and that *"the project's benefits as currently understood outweigh its potential impacts, and that on balance the project is approvable"*

In summary, the Department confirms that it is satisfied that the social impact assessment for the project adequately addresses the Secretary's Environmental Assessment Requirements, including consideration of perceived and actual impacts on Bulga Village. The Department also remains satisfied that Mt Thorley Operation's environmental, social and economic assessments, together with the independent economic peer review undertaken by DAE on behalf of the Department, provide an adequate level of detail to enable the decision maker to consider the social and economic impacts and to determine the project.

² Rio Tinto's offer comprises a total contribution of \$11 million over 21 years for the Warkworth and Mt Thorley Continuation Projects.

3. RECOMMENDED CONDITIONS

The Department has made a number of amendments to the recommended conditions of approval for the project in response to the Commission's second review as discussed above (see Attachments B and C).

4. SECTION 79C

Section 79C(1) of the *Environmental Planning and Assessment Act 1979* (EP&A Act) outlines the matters that a consent authority must take into consideration when determining development applications. These matters can be summarised as:

- the provisions of environmental planning instruments (including draft instruments), development control plans, planning agreements, the EP&A Regulations and any coastal zone management plan;
- the impacts of the development;
- the suitability of the site;
- any submissions; and
- the public interest.

Section 5 of the EP&A Act also outlines a range of objects that must be considered when making decisions under the Act, and Sections 5A to 5D further outline provisions to be considered with regard to threatened species (including species, populations and ecological communities) and their habitats.

The Department has considered all of these matters in its assessment of the development. In summary, the Department believes that:

- the development can be undertaken in a manner that is consistent with the aims, objectives and provisions of the applicable environmental planning instruments, other applicable planning documents and the EP&A Regulations³. The Department has reconsidered the proposal in the context of the Mining SEPP Amendment that has now been made. In this regard, the Department is of the view that the project is consistent with the aims of the Mining SEPP as amended, the resource on the subject site is significant, and that the extraction of the resource would result in a number of substantial social and economic benefits for the region and the State as a whole;
- the development can be undertaken in a manner that is generally consistent with the objects of the Act⁴;
- the impacts of the development can be adequately minimised, managed, or at least compensated for, to an acceptable standard;
- the site is suitable for the development, as it contains a State significant coal resource in a long established coalfield, and is a permissible development on the land. The Department has carefully considered the potential impacts of the project on the site and surrounds in its assessment of the development, and is satisfied that the impacts of the development on the environment and the local community can be adequately minimised, managed, or at least compensated for, to an acceptable standard; and
- whilst there is strong opposition to the development from local landowners and special interest groups (most of which is more specifically related to the Warkworth Continuation Project), the development is in the wider public interest, particularly as it would:
 - o assist in meeting society's continued demand for coal for basic energy and steel making purposes;
 - o provide for the improved rehabilitation of the Mt Thorley mine, including the backfilling of existing approved voids; and
 - o facilitate continued employment for up to 1,300 people across the Mt Thorley Warkworth mine complex.

³ See Section 2.4 and Appendix B of the Environmental Assessment Report and the Department's additional information letters to the Commission dated 26 June 2015 and 7 July 2015.

⁴ See the Department's additional information letters to the Commission dated 26 June 2015 and 7 July 2015.

5. CONCLUSION

The Department has considered the Commission's second review report and other relevant information in accordance with the requirements of the EP&A Act, and strengthened its recommended conditions in accordance with the Commission's review.

Based on its consideration, the Department reaffirms the conclusions of the Department's Environmental Assessment Report for the project dated November 2014 and its Addendum Report dated May 2015.

That is, whilst the Mt Thorley resource is not significant in either absolute or relative terms, together with the related Warkworth Continuation Project the projects would generate royalties of around \$617 million for the NSW Government, and the continued employment of up to 1,300 workers. This includes the continued employment of about 120 people at the Mt Thorley mine. Economic assessment estimates that the two projects would have a net economic benefit of approximately \$1.5 billion.

The Department acknowledges that the project would result in some amenity impacts, including noise, air quality, blasting and visual amenity. However, these impacts would be similar to those associated with the existing mine, with only 1 additional residence predicted to experience significant noise impacts and a further 2 residences predicted to experience moderate noise impacts. Dust levels are predicted to comply with the applicable criteria at all residences, apart from one residence in Warkworth village which is principally affected by the Warkworth and Wambo mines.

The Department has recommended conditions that would require Mt Thorley Operations to address the predicted noise impacts in accordance with the NSW Government's *Voluntary Land Acquisition and Mitigation Policy*.

With regard to visual amenity, the Department is satisfied that the short to medium term impacts of the project would be similar to those associated with the existing mine, and that the proposed final landform at Mt Thorley would represent a significant improvement over the current approved final landform for the mine.

The Department is also satisfied that other impacts associated with the project, including impacts on heritage, water resources, transport and socio-economics, are acceptable and can be appropriately managed subject to conditions.

In this regard, the Department has drafted a detailed set of conditions to ensure that the project complies with applicable criteria and standards, and to ensure that the predicted residual impacts are effectively minimised, mitigated and/or compensated for. The Department believes that these conditions reflect current best practice for the regulation of coal mining projects in NSW and the Hunter Valley.

The Department has carefully assessed the project in accordance with the requirements of the EP&A Act. On balance, the Department believes that the project's benefits outweigh its residual costs, and that it is in the public interest and should be approved, subject to stringent conditions.

6. RECOMMENDATION

It is recommended that the Planning Assessment Commission:

- **considers** the findings and recommendations of:
 - the Department's environmental assessment report (November 2014);
 - the Commission's first review report (March 2015);
 - the Department's first addendum report (May 2015) and additional information letters (26 June 2015, 7 July 2015 and 2 October 2015);
 - the Commission's second review report (October 2015); and
 - the Department's second addendum report (this report);
- **approves** the development application for the Mt Thorley Continuation Project, subject to conditions; and
- **signs** the attached amended recommended conditions of approval (see Attachment B).


Mike Young
Director
Resource Assessments
4.11.15.


Marcus Ray
Deputy Secretary
Planning Services
05/11/15

ATTACHMENTS:

- A OEH Advice – 28 October 2015
- B Recommended Conditions of Consent (tracked changes)
- C Recommended Conditions of Consent

ATTACHMENT A:

ATTACHMENT B:

ATTACHMENT C:
