



Department of Primary Industries

OUT14/38539

Ms Elle Donnelley
Mining Projects
NSW Department of Planning and Environment
GPO Box 39
SYDNEY NSW 2001

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20 NOV 2014

Dear Ms Donnelley,

**Warkworth and Mt Thorley Continuation Projects (SSD_6464 and SSD_6465)
Comment on the Response to Submissions Report**

I refer to your email dated 6 November 2014 to the Department of Primary Industries in respect to the above matter.

Comment by NSW Office of Water

The NSW Office of Water (Office of Water) has reviewed the Response to Submissions reports for the Warkworth and Mount Thorley Continuation Projects and provides comments for Warkworth in Attachment A and Mount Thorley in Attachment B

For further information please contact Alison Collaros, A/Senior Water Regulation Officer, [Newcastle Office], on 4904 2527 or at alison.collaros@water.nsw.gov.au.

Comment by Crown Lands

Crown Lands advise no issues relating to the Mount Thorley Operations proposal. Comments relating to the Response to Submissions report for Warkworth Continuation Project are found in Attachment C.

For further information please contact Mark Grace, Natural Resource Management Project Officer (Maitland office) on 4937 9331, or at: mark.grace@lands.nsw.gov.au.

Comment by Office of Agricultural Sustainability & Food Security

In accordance with procedures for mining projects that affect agricultural lands the Office of Agricultural Sustainability & Food Security will responded direct to your Office.

For further information please contact Rob Williamson, Leader Land Use Planning (Orange office) on 6391 3166, or at: rob.williamson@dpi.nsw.gov.au.

Yours sincerely

Kristian Holz
Director Policy, Legislation and Innovation

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Attachment A

Warkworth Continuation Project – SSD6464 Comment on the Response to Submissions Report Comment by NSW Office of Water (NOW)

Previous NOW Comment on the EA

1. NOW commented on water licensing arrangements.
2. The proponent to revisit the details for the bore alluvial network to review why their data is at odds with external sources.

Discussion

- The proponent met with the Office of Water prior to submitting this Response to Submissions, and has committed to ensure that the necessary licences are held with a sufficient share component and water allocation to account for all water taken from a groundwater or surface water source prior to commencement of works under the proposal. As such this issue has been satisfactorily addressed.
- The proponent has outlined a commitment to install three additional piezometers in the Wollombi Brook alluvium adjacent to Loders Pit to provide additional data by which to monitor the impact, if any, of mining. It is also outlined that they will continue to liaise with NOW with regard to the water monitoring network. It is recommended that once these additional bores are completed, that in consultation with NOW the water management plan triggers and thresholds applicable to represent the alluvial aquifers be re-evaluated.

Recommendation

1. It is recommended that once the three additional piezometers in the Wollombi Brook alluvium adjacent to Loders Pit are completed, the water management plan triggers and thresholds applicable to represent the alluvial aquifer be re-evaluated in consultation with NOW.

End Attachment A

Attachment B

Mount Thorley Coal Mine Continuation Project – SSD 6465 Comment on the Response to Submissions Report Comment by NSW Office of Water (NOW)

Previous NOW Comment on the EA

1. NOW commented on water licensing arrangements.
2. The placement of mine spoil should retain a suitable buffer from the mapped alluvial extent or appropriate engineering works be designed to ensure a low permeability barrier exists between the two.
3. MTO to revisit the details for the bore alluvial network to review why their data is at odds with external sources.

Discussion

- The proponent met with the Office of Water prior to submitting this Response to Submissions, and has committed to ongoing liaison with the Office of Water. Provided the proponent commits to ensure that the necessary licences are held this issue has been satisfactorily addressed.
- The proponent has outlined the constructed works that retard potential groundwater flow between mine spoil and Wollombi Brook Alluvium. This issue is considered to have been satisfactorily addressed.
- The proponent has outlined a commitment to install three additional piezometers in the Wollombi Brook alluvium adjacent to Loders Pit to provide additional data by which to monitor the impact, if any, of mining. It is also outlined that they will continue to liaise with NOW with regard to the water monitoring network. It is recommended that once these additional bores are completed, that in consultation with NOW the water management plan triggers and thresholds applicable to represent the alluvial aquifers be re-evaluated.

Recommendations

1. It is recommended that once the three additional piezometers in the Wollombi Brook alluvium adjacent to Loders Pit are completed, the water management plan triggers and thresholds applicable to represent the alluvial aquifer be re-evaluated in consultation with NOW.
2. MTO provide a commitment to ensure that the necessary licences are held under the *Water Act 1912* and the *Water Management Act 2000*.

End Attachment B

Attachment C

Mount Thorley Coal Mine Continuation Project – SSD 6465 Comment on the Response to Submissions Report Comment by Crown Lands

Crown Lands has previously requested that a condition of consent be applied that, within 12 months from the date of the approval, the Proponent shall acquire Lot 2011 DP 1137289 from the Crown by way of an application sale.

The Proponent has stated in the RTS that they cannot commit to such a condition on the grounds that Lot 2011 DP 1137289:

1. Has already been mined under an existing approval;
2. Previous approval, DA-300-9-2002-1, was not subject to a condition to purchase the site; and
3. Has land transaction issues, such as tenure, native title and capital availability, that need to be investigated.

Crown Lands contend that the above reasons are not valid as:

1. Under the proposed Development Application, Lot 2011 DP 1137289 is to be landformed and rehabilitated. According to the EIS “the proposal requires revision of previously planned and approved final landforms described in past development applications...” (13.2.2). As development plans are being revised under this application, so to must the development consent conditions. The conditions of consent must reflect best industry practice for this new proposal. Land acquisition is a standard condition of development consent applied by NSW Planning when a property is deemed to be ‘significantly affected’ by noise, air pollution, loss of visual amenity, etc... It is apparent the Lot 2011 DP 1137289 will be ‘significantly affected’ by the landforming and rehabilitation process. The public values of the site will be sterilised for the duration of the Project. See Diagram 1 below of a Nearmap aerial photograph of the site taken July 2014 that shows the extent of the impact of mining operations on the subject land.
2. The Proponent does not dispute that the parcel is not ‘significantly affected’ – they clearly state that it has already been mined. It has not been landformed and rehabilitated. This Development Application is an opportunity to apply conditions that appropriately reflect the impacts of the proposed development and should not just reflect the conditions of the previous, outdated approval. DA-300-9-2002-1 consent dates to 2003 and it appears that the acquisition of affected Crown Lands was not incorporated into the conditions of consent – we consider this to be an oversight that must now be addressed.
3. The land transaction issues raised by the Proponent (tenure, native title and capital availability) are all able to be dealt with readily by the Proponent and are, with the exception of Native Title, no different to issues faced when purchasing freehold land. If the 12 month time period is considered unreasonable then it could be extended to 2 or 3 years – we appreciate that it may take a significant amount of time to achieve the desired outcome. It must be noted that the Proponent has purchased all of the freehold land within the Project boundary that is subject to mining operations (see Diagram 2 below). We wish to highlight this discrepancy between purchasing significantly affected Crown land and significantly affected freehold land.

The Proponent has stated that it will “commit to ongoing discussions on the appropriate resolution of Crown land within the disturbance footprint of the existing and future mining area”. The Proponent does not provide details on what they consider to be an “appropriate resolution” to this matter. Our response is:

1. Crown Lands reiterate that the appropriate resolution is for the Proponent to purchase significantly affected parcels of land. The fact that the subject land is

within the “disturbance footprint” of an open cut coal mine means that is significantly affected and must require the Proponent to acquire the affected land if the landowner requests it. This is consistent with conditions of consent for mining development applications in NSW.

If the Proponent cannot commit to purchasing Lot 2011 DP 1137289, as a significantly affected parcel, then Crown Lands must object to the proposal.



Diagram 1: Lot 2011 DP 1137289 shown with red border. The impacts and extent of open cut mining disturbance requiring landforming and rehabilitation is shown.
Source of imagery – Nearmaps; Date of imagery 1 July 2014.

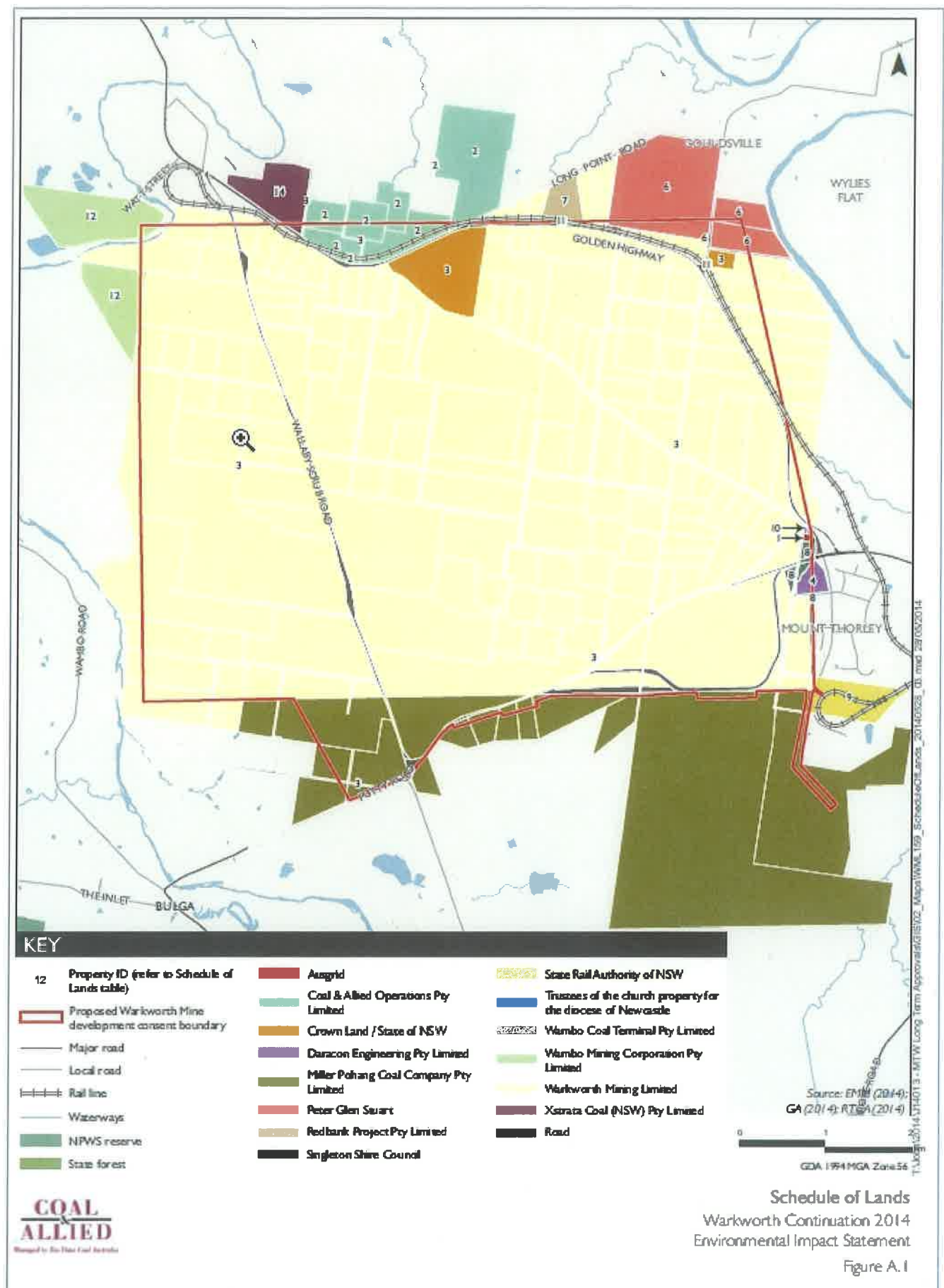


Diagram 1: Lot 2011 DP 1137289 shown with red border. The impacts and extent of open cut mining disturbance requiring landforming and rehabilitation is shown.

Source of imagery – Nearmaps; Date of imagery 1 July 2014.

Diagram 2. Land ownership map provided with the Proponent's EIS. Crown Lot 2011 DP 1137289 is coloured Orange. Proponent's land is coloured pale yellow.

End Attachment C