



Mr Gordon Kirby
Chair – Warkworth and Mt Thorley Determinations
Planning Assessment Commission
GPO Box 3415
SYDNEY NSW 2001

Dear Mr Kirkby

**Mt Thorley Continuation Project (SSD 6465)
Additional Information – Statutory Considerations**

I refer to your letter dated 19 June 2015 requesting additional information in relation to the Mt Thorley Continuation Project (SSD 6465) and the Warkworth Continuation Project (SSD 6464). A response in relation to the Warkworth project is provided under separate cover.

The Planning Assessment Commission (PAC) has requested additional information in relation to a number of statutory considerations, including consideration of:

- matters contained under Section 79C of the *Environmental Planning and Assessment Act 1979* (EP&A Act);
- Section 5A of the EP&A Act;
- Clause 12AA of *State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007* (Mining SEPP); and
- principles of Ecologically Sustainable Development (ESD).

The Department confirms that it has considered all of these matters in its assessment of the Mt Thorley Continuation Project. A summary of this assessment, along with additional consideration, is provided in the attachment to this letter (see Attachment A).

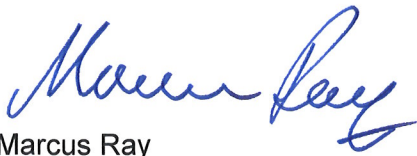
The PAC has also requested confirmation that the following statement in the Department's Assessment Report for the Warkworth project is correct:

"The site does not contain any Biophysical Strategic Agricultural Land, or any Critical Industry Clusters (CICs) mapped under the Upper Hunter Strategic Regional Land Use Policy. The nearest equine CIC is more than 15 km southeast of the site. However, there is a viticulture CIC mapped in the area between Bulga and Broke, approximately 4 km south of the site, which comprises a number of wineries that are part of the Broke Fordwich Wine District."

It is noted that the gateway certification process under the *Environmental Planning and Assessment Regulation 2000* and the Mining SEPP does not apply to the Mt Thorley Continuation Project as it is within an existing mining lease. The Department also notes that the project does not involve any additional disturbance beyond the boundary of the existing Mt Thorley development consent.

If you have any further queries about this matter, please contact Mike Young, Director Resource Assessments, on 9228 2091.

Yours sincerely



Marcus Ray
Deputy Secretary
Planning Services

26/06/2015

Attachment A

Consideration of Statutory Matters

Section 79C of the EP&A Act

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 *Environmental Planning and Assessment Regulation 2000* (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.

The Department has considered all of these matters in its assessment of the Mt Thorley Continuation Project. 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 Regulations (see Section 2.4 and Appendix B of the Assessment Report);
- the development can be undertaken in a manner that is generally consistent with the objects of the Act (see further information below);
- the impacts of the development can be adequately minimised, managed, or compensated for, to an acceptable standard;
- the site is suitable for the development, as it contains an existing coal resource in a long established coalfield (and would support development of a larger coal resource at the Warkworth mine), 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 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), on balance, the development is in the public interest, particularly as it would:
 - assist in shoring up society's continued demand for coal for basic energy and steel making purposes;
 - provide for the improved rehabilitation of the Mt Thorley mine, including the backfilling of existing approved voids; and
 - facilitate continued employment for approximately 1,300 people across the Mt Thorley Warkworth mine complex (with approximately 120 at Mt Thorley).

Objects of the EP&A Act

Section 5 of the EP&A Act outlines a range of objects that must be considered when making decisions under the Act. The Department confirms that it has considered the objects of the Act in its assessment of the Mt Thorley Continuation Project (see Section 4 of the Assessment Report). A further summary of the Department's consideration is provided below.

In this regard, the objects of most relevance to the consent authority's decision on whether or not to approve the project are found in Section 5(a)(i),(ii),(vi) and (vii). They are:

To encourage:

- (i) *the proper management, development and conservation of natural and artificial resources, including agricultural land, natural areas, forests, minerals, water, cities, towns and villages for the purpose of promoting the social and economic welfare of the community and a better environment;*

- (ii) *the promotion and co-ordination of the orderly and economic use and development of land;*
- (vi) *the protection of the environment, including the protection and conservation of native animals and plants, including threatened species, populations and ecological communities, and their habitats; and*
- (vii) *ecologically sustainable development.*

The Department is satisfied that the project encourages the proper development of resources (Object 5(a)(i)) and the promotion of orderly and economic use of land (Object 5(a)(ii)), particularly as:

- the project is a permissible land use on the subject land;
- whilst the coal resource (29 million tonnes) is not significant in absolute or relative terms, the project would provide essential support to the Warkworth Continuation Project which has been determined by the Department of Trade and Investment to be significant from a State and regional perspective;
- the coal resource is located within an existing mining lease in a region that is dominated by coal mining operations;
- the project does not involve disturbance beyond that already approved for the Mt Thorley mine;
- the project can be carried out using existing surface infrastructure; and
- the project, together with the Warkworth Continuation Project, would provide considerable socio-economic benefits.

Consideration of environmental protection (Object 5(a)(vi)) is provided in the Department's Assessment Report and Addendum Report. Following its consideration, the Department considers that the project is unlikely to result in any significant biodiversity impacts, given that the project does not involve disturbance beyond that already approved for the Mt Thorley mine.

The Department has considered the encouragement of ecologically sustainable development (Object 5(a)(vii)) in its assessment of the project. This assessment integrates all significant socio-economic and environmental considerations and seeks to avoid any potential serious or irreversible environmental damage, based on an assessment of risk-weighted consequences. Additional consideration of the principles of ESD is provided below. Following its consideration, the Department considers that the project is able to be carried out in a manner that is consistent with the principles of ESD.

Sections 5A-5D of the EP&A Act

Sections 5A to 5D of the EP&A Act relate broadly to threatened species assessment and management. The Department confirms that its assessment of the Mt Thorley Continuation Project has taken into account the matters listed in these sections in assessing whether there is likely to be a significant effect on threatened species, populations or ecological communities, or their habitats. These matters include:

- the factors in Section 5A(2), known as the '7 part test of significance';
- the threatened species assessment guidelines¹ identified in Section 5A(1); and
- the register of critical habitat as identified in Section 5B.

This assessment has considered the direct and indirect impacts of the project on threatened species, populations or ecological communities, or their habitats – both on the subject site and the broader study area, as defined under the threatened species assessment guidelines.

The Department notes that the project does not involve any clearing or direct vegetation disturbance beyond that already approved under the existing Mt Thorley consent, and that the site is already largely cleared for mining-related development. The Department is satisfied that the project is unlikely to have any significant impact on threatened species, populations, ecological communities or their habitats, having regard to the factors in Section 5A(2), the threatened species guidelines and the register of critical habitat.

¹ *Threatened Species Assessment Guidelines – The Assessment of Significance*, prepared by the then Department of Environment and Climate Change, dated August 2007.

Mining SEPP

The Department has considered the Mining SEPP in its assessment of the project (see Sections 2.4 and Appendix B of the Assessment Report). A further summary of the Department's consideration is provided below.

Part 3 of the SEPP outlines a number of matters that a consent authority must consider before determining an application for consent for mining-related development. These matters, and a summary of the Department's consideration of each in relation to the Mt Thorley Continuation Project, are outlined below:

- *significance of the resource (clause 12AA)* – While the extraction of the remaining coal resource at Mt Thorley (about 30 million tonnes) would not be significant in absolute or relative terms, the Department is of the view that the resource can be considered to be significant as:
 - it would provide essential support to the Warkworth Continuation Project by:
 - allowing up to 10 million tonnes of coal a year to be washed at the Mt Thorley coal preparation plant;
 - providing space for dumping overburden, tailings and coal rejects generated by the Warkworth mining operations; and
 - providing a range of supporting infrastructure, such as the roads and conveyors that currently link the Warkworth mine to the Mt Thorley Coal Loader; and
 - it would, together with the related Warkworth Continuation Project:
 - extract some 260 million tonnes of coal for the energy and steel making industries (with about 30 million tonnes from the Mt Thorley mine);
 - facilitate the continued employment of about 1,300 people across the mine complex (with about 120 at Mt Thorley);
 - involve a direct capital investment of about \$720 million in the mine complex (including about \$4 million at Mt Thorley);
 - generate approximately \$617 million in royalties for the NSW government (including about \$50 million from Mt Thorley); and
 - generate a net benefit of around \$1.5 billion to NSW (based on the cost benefit analysis).
- *compatibility with other land uses (clause 12)* – The Department's assessment has considered the potential impacts of the project on other land uses in the locality, including agriculture and, in particular, the residential land uses in Bulga and surrounding settlements. This assessment has been undertaken in consideration of the public benefits of the development and the surrounding land uses, and measures to avoid or minimise any land use incompatibility. The Department's assessment indicates there would be some residual impacts on a number of privately-owned residences, but that it is not likely to result in unacceptable impacts to surrounding land uses in general, and the Department is satisfied that the residual impacts are able to be minimised, mitigated or compensated for to achieve acceptable environmental and amenity outcomes;
- *voluntary land acquisition and mitigation policy (clause 12A)* – The Department's Assessment Report has been undertaken in consideration of the NSW Government's Voluntary Land Acquisition and Mitigation Policy (December 2014), and the recommended conditions providing acquisition and/or mitigation rights to surrounding receivers have been prepared in accordance with the policy;
- *compatibility with mining, petroleum and extractive industries (clause 13)* – The Department is satisfied that the project has been designed in a manner that is compatible with, and would not adversely affect, adjacent current or future mining-related activities;
- *natural resource management and environmental management (clause 14)* – The Department has recommended a number of conditions aimed at ensuring that the project is undertaken in an environmentally responsible manner, including but not limited to conditions in relation to water resources, biodiversity/revegetation, and greenhouse gas emissions;
- *resource recovery (clause 15)* – The Department has considered resource recovery in its assessment of the project, and is satisfied that the project can be carried out in an efficient manner in this regard. The Department has recommended conditions requiring Mt

Thorley to implement reasonable and feasible measures to minimise waste and ensure appropriate waste management;

- *transport (clause 16)* – The Department notes that the project does not involve the transport of coal by road, and is unlikely to result in significant additional truck movements in residential areas or near schools. The Department has consulted with the applicable roads authorities (including RMS and Singleton Council) in relation to the project, and taken these submissions into consideration in its assessment of the project; and
- *rehabilitation (clause 17)* – The Department has recommended a number of conditions aimed at ensuring the rehabilitation of land that would be affected by the project. These include requirements on Mt Thorley to prepare and implement a Rehabilitation Management Plan, to effectively manage waste, and to meet a number of rehabilitation objectives including ensuring that the mine site as a whole is safe, stable and non-polluting, and to ensure public safety.

Ecologically Sustainable Development

The Department has considered the principles of ecologically sustainable development (ESD) in its assessment of the Mt Thorley Continuation Project. It has also considered Mt Thorley's consideration of these principles (see Section 23.1.3 of the EIS).

A further summary of the Department's consideration against each of the principles of ESD as set out in Schedule 2 of the EP&A Regulation and Section 6 of the *Protection of the Environment Administration Act 1991* is provided below:

- *the precautionary principle* – The Department has assessed the threats of serious or irreversible environmental damage in its assessment of the project. Whilst the project would result in a number of impacts of varying significance, the Department is satisfied that the project is unlikely to result in serious or irreversible environmental damage. The Department's assessment has been guided by a careful evaluation of measures to avoid, where practicable, serious or irreversible environmental damage, and enable assessment of risk-weighted consequences of various options. The Department has taken a risk-based approach to the setting of recommended conditions to mitigate environmental impacts, and is satisfied that any residual threats do not outweigh the benefits of the project;
- *intergenerational equity* – The Department acknowledges that coal and other fossil fuel combustion is a known contributor to climate change, which has the potential to impact future generations. However, it also recognises that there remains for the foreseeable future a clear need to develop new coal deposits to meet society's basic energy needs. The Department also notes that climate change is a global phenomenon, and the project's contribution to climate change would be very small and Mt Thorley has considered greenhouse gas mitigation measures. The Department also acknowledges that the downstream energy and other socio-economic benefits generated by the project would benefit future generations, particularly through supporting national and international energy needs;
- *conservation of biological diversity and ecological integrity* – The conservation of biological diversity and ecological integrity has been a fundamental consideration of the Department's assessment of the project. As outlined above and in its Assessment Report, the Department is satisfied that the project is unlikely to result in any significant biodiversity impacts;
- *improved valuation, pricing and incentive mechanisms* – The Department has considered this principle in its assessment of the project, which has included independent review of Mt Thorley's cost benefit analysis (CBA) for the project against applicable NSW Government guidelines. The CBA seeks to identify, quantify and weigh up all of the project's benefits and costs based on its full range of environmental, social and economic impacts. As outlined in the Department's Addendum Report, the independent review by Deloitte Access Economics (DAE) raised some concerns about the presentation of the CBA, but concluded that these issues would not affect the overall findings of the analysis. Accordingly, the Department accepts the proponent's CBA, and its conclusion that the project, together with the related Warkworth Continuation Project, would result in a net benefit to NSW of approximately \$1.5 billion.

Attachment B Biophysical Strategic Agricultural Land

