

BEATTY LEGAL

11 December 2012

NSW Department of Planning
23-33 Bridge Street
SYDNEY NSW 2000

Attention: David Mooney

Email: david.mooney@planning.nsw.gov.au

Dear Sir,

Objection to Proposed Modification to DA 376-8-2003 for the Blakefield North Underground Mine Project ("the Proposal")

We act for Mr and Mrs Rath. Their company, Sandamire Pty Limited, the trustee for The Fordwich Estate Trust, is the registered proprietor of the land comprising 165-185 Fordwich Road, Fordwich ("the Property").

Our clients purchased the land known as "Fordwich" in 2003 for approximately \$1.5m and have spent approximately \$ 500,000 improving it since. In 2006 our clients purchased the adjoining land known as "Monkey Place" for approximately \$700,000 and have since spent approximately \$200,000 improving it. The Property therefore comprises these contiguous parcels of land of approximately 95 acres in total.

It was our clients' desire to purchase land in this rural locality which would be their ultimate place of retirement and also a retreat for the enjoyment of their children and grandchildren.

Investigation and Representations

Prior to purchasing "Fordwich", our clients spent nearly 10 years searching for the right property to meet their needs.

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Aware of some mining activities in the vicinity of the Property, before making the decision to purchase the land our clients were careful to make proper enquiries about the future of those activities in the area. For this purpose, our clients met with representatives from Xstrata Coal over the course of 2 days in 2003 in an effort to understand the future of nearby mining activities. During the course of those meetings, our clients visited nearby mining sites, reviewed plans and saw films about future mining plans. Our clients were also advised that:

1. The open cut mine would be closed in 2015;
2. The lease for longwall mining was limited to 27 years; and
3. The number of gas wells was limited to 4.

Once satisfied about the limited potential impacts on the Property from local mining interests, our clients decided to purchase "Fordwich".

Investment in the Property

Since acquiring the land comprising the Property, our clients have invested in excess of \$500,000 to improve them. Presently located on the Property is:

1. 4 bedroom house and small cottage which include fully automated reticulated irrigation systems;
2. Pumphouse;
3. Large shed;
4. A golf course and clubhouse adjacent to the golf course;
5. A cricket pitch; and
6. Approximately 27 acres is under vine for the growth of Shiraz, Chardonnay and Verdelho grapes.

The recreational facilities on the Property are for private use only consistent with our clients' desire that this Property is for the enjoyment of their friends and family.

The Surrounds

As the Department is aware, presently located near the Property are a number of operational coal and gas mines many of which also have future expansion plans.

Mr Rath is aware that in recent years the private land holdings located near the Property have been, or are, the subject of acquisitions by various mining companies. Some acquisitions are due to consent condition requirements, others have been negotiated. To our clients' knowledge, the Property remains virtually the only privately held land which is not subject to compulsory acquisition in the locality or which is not already owned by, or occupied by employees of, mining companies.

Despite the adverse impacts which are already suffered by our clients (as referred to below) and the fact that other properties in the immediate locality are being, or have been acquired, by mining companies, no offer has yet been made to our clients to acquire the Property by any mining company.

Current adverse effects

As described below, our clients have already been adversely affected by the impacts of the nearby mines. These impacts will be exacerbated if this Proposal is approved.

1. Our clients are frequently disturbed by the noise from existing mining separations at Bulga. Of late, that noise has disturbed our clients' sleep. Our clients' complaints to Xstrata Coal have not reduced the levels of disturbing noise.
2. Our clients' property is adversely affected by dust (including coal dust). This is having an ongoing adverse impact on the amenity of our clients who are now obliged to wash down their outdoor living areas at least once a week.
3. Vibrations caused by blasting, drilling and other activities have increased substantially over the last few months. Incidences of noticeable vibration recorded by our clients since August 2011 now exceed 40 of which at least a quarter are severe. Recently, our clients lost the ridge capping on their roof during strong winds. Upon examination, it was apparent that the screws and rivets had worked loose because of chronic (and occasionally, acute) vibration. An inspection of other rivets revealed that they too had worked loose and our clients' home has been "twisted" on its foundations.

Cumulative effects

It is clear that our clients are likely to suffer additional, cumulative adverse effects if the Proposal is approved and additional mining activity ensues. The approval of the Proposal will have a deleterious effect on the health of our clients, their amenity and of course the value of the Property into which they have invested so much.

Acquisition clause

If the Proposal is to be approved, despite this and any other objections, our clients have concluded that they will eventually have to leave the Property as their enjoyment of their land will be compromised. In the circumstances, our clients submit that the only appropriate course of action is the imposition of an acquisition clause in the planning consent if the Proposal is to be approved.

Conclusions

Our clients object to the Proposal for the reasons set out in this brief submission.

Our clients reserve the right to make a further and more comprehensive submission to the Department of Planning following the conclusion this truncated exhibition period.

Further, our clients seek an urgent meeting with the Department to discuss the terms of this and any further submission and our clients' request for the imposition of an appropriate acquisition clause.

Yours faithfully



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