

PCU072630

Submission for Maules Creek Coal Mine Sound Power Level Modification, 10th October 2017.

Department of Planning
Received
13 OCT 2017
Scanning Room

Leitch family strongly object to Maules Creek Coal Mine (MCCM) Sound Power Level Modification (SPLM).

MCCM SPLM Environmental Assessment (EA) is relying on misleading information that the proponent Whitehaven Coal (WHC) MCCM is describing in their attempt for a track record that would excuse them of non-compliance at the MCCM site. This has led to mine noise at privately owned residence that exceeds the noise criteria Project Approval 10_0138 Schedule 3 condition 7,

Except for the noise affected land in Table 1, the Proponent shall ensure that operational noise generated by the project does not exceed the criteria in Table 5.

All privately-owned residences, Day/Evening/Night LAeq(15min) 35 Night LA1(1min) 45

Note:

. Noise generated by the project is to be measured in accordance with the relevant procedures and exemptions (including certain meteorological conditions) of the NSW Industrial Noise Policy.

. Operational noise includes noise from the mining operations and the use of private roads and rail spurs.

However, these noise criteria do not apply if the Proponent has an agreement with the owner/s of the relevant residence or land to generate higher noise levels, and the Proponent has advised the Department in writing of the terms of this agreement.

There are a number of requirements to monitor mine noise, one being the attended noise monitoring (Global Acoustics) that takes place for ½ hour over 2 days a month. The sites are located (see attached A) NM1-NM6 etc, and at each site the noise is measure for a total of 1 hour per month. Given there are over 700 hours in a month the attended noise monitoring is a very small snapshot. The company Global Acoustics notify MCCM site prior to the monitoring that will take place. This has led to a pattern of machinery been stood down whilst Global Acoustics are in the area. Yet there are over 18 exceedances above the noise criteria set in the Project Approval and the EPL. Remembering this is attended noise monitoring for 1hour out of over 700 hours per month and still it shows on an all too regular occurrence noise exceedances above the noise criteria even as late as NM1 24/7/2017 (see attached B).

EPA has acknowledge the noise generated by MCCM project that led an untended noise monitoring to be located 329 Ellerslie Road (Compton family). This EPA untended noise monitoring measured MCCM noise above the noise criteria that led to the EPA writing to WHC MCCM,

The EPA considers that the above exceedances contravene condition L3.1 of EPL no. 20221.

Consequently, the EPA has written to Maules Creek Coal Pty Ltd about this matter and asked it to explain, in writing, why the EPA should not take regulatory action in response to this matter. (see attached C).

EPA installed untended noise monitoring 95 Ellerslie Road (Leitch residence) that can allow the EPA to download from their office in Sydney or Armidale in April 2017. EPA notified us (Leitch family) in late July 2017 of the unattended noise monitoring measurements between 14th April 2017 and 24th May 2017. The monitoring showed mine noise above the criteria set out in EPL and Project Approval. For the 40 days of unattended noise monitor 95 Ellerslie Road there were 13 exceedances above the noise criteria. (see attached D).

The community is unable to access the real time noise monitoring and when the EPA is asked for this data we are refused. The process is to GIPA and this is time consuming and in most cases the information is not provided. The community has asked WHC MCCM for this real time noise data with no success.

EPA implemented a Mandatory Noise Audit WHC MCCM (EPL 20221 E3). I believe this is not common for the EPA to implement a Mandatory Noise Audit (MNA) as it is recognised as a penalty for environmental harm. MNA has highlighted a number of concerning factors that should put this SPLM in the scrap heap.

MNA noted the worst case noise predictions are seeing an **increase** 3-4 db and in my opinion that figure is too conservative. Our experience taking into account of Global Acoustics attended noise monitoring and the EPA unattended noise monitoring the figure is 6-7 db higher than the worst case predictions noted in Environmental Assessment Statement (July 2011).

MNA 3.6 E3.8,

. it is unclear whether the consideration of low frequency noise and the INP penalty of 5db was applied,

. there are a number of person of properties with revised predictions above 30db, which if a 5db low frequency penalty were to apply during compliance monitoring, would result in levels above the noise limit of 35db. These are the locations 17,42,53,68,77,103 to 106,111,225 and 237;

. the acknowledgment that the future noise is expected to increase on previous EA predictions for the worst case year indicates that these will also be higher than current (ie 2015 and 2016) offsite noise levels.

MNA E3.9,

. 74 mobile plant items have been tested;

. eight fixed plant items were tested, including the coal preparation plant (CPP);

. in 2015 sound power levels from 32 items of plant exceeded of the EA adopted levels, and therefore were non-compliant with Condition 12. This includes 'A' or 'L' weighted exceedances;

.in 2016 retesting showed the majority of the 2015 exceedances were rectified to satisfy the EA sound power levels. There remains 12 items above the EA values by 1db or more; and

.the plant items that remain above the EA levels are two dozers, two dump trucks, two water carts, the primary sizer, two conveyors, train load out transfer station, CPP product transfer station and the CPP. The two items most in excess of EA levels are the rail load out transfer station (by 10dBA) and the CPP (8dBA and 7 dBA for the south-east façade and 3 dBA and 7dBL for the north- west façade). These are non-compliances with the EA and the project approval Schedule 3 Condition 12.

MNA 3.8 E3.8

As identified earlier, the sound power level for CPP from the 2015 test data shows this plant is operating above adopted levels in the EA, with test results demonstrating directional characteristics of the plant. As for other fixed plant operating above EA nominated levels, it is recommended to further investigate their contributions and whether mitigation measures would result in reduced noise off site.

The relevance of these MNA findings is very concerning as,

- a. noted the first 18 months a low frequency noise and the INP penalty of 5db was not applied,
- b. the Leitch families properties (ID 106,104) would result in levels above the noise limit of 35db,
- c. future noise is expected to increase that reflects with the EPA understanding(EPA ,File Number EF13/4240 , Background M.),
- d. not all mobile and fixed plant were tested (SPL),
- e. the acknowledgement of façade facing north-west where our properties are located and the topography surrounding that is consistent to a valley and the drainage flow for noise etc. This was acknowledge by Department of Planning 15th July 2014 and by the EPA 6th March 2015 (see attached E).
- f. given the mine noise is consistently above the noise criteria for plant and for privately owned residence, the acknowledgement MNA recommend investigate mitigation measures to **reduce noise off site**. This clearly has not been implemented by the WHC MCCM as once again the mine noise felt at privately owned residence is above the noise criteria.

WHC MCCM is acknowledging EA (Bridges Acoustics, 2011) were indicative and adopted for modelling purposes only. Community also acknowledges WHC MCCM were a granted Project Approval. Given that the NSW Government has granted WHC this license and the conditions required by WHC MCCM to implement are not compliant, the solution apparently is to shift the goal posts. So does this means I presume that if there is no one on the Newell Highway in my opinion, I can exceed the speed limit when there is clearly signed speed limit.

WHC MCCM is basing this whole SPLM on its track record of being compliant and compliant with privately owned residences. If this is the case there is no need for a modification and other modifications in the future. Put simply the Department of Planning and the EPA is required by the NSW Government and the expectations of the greater community to enforce all of the conditions noted in the Project Approval and EPL. The PAC signed off as the commitments made by the proponent. Project Approval has safe guards to protect the environment and the community that can be enforced from the commitments made by the proponent,

Response To Subsidiary Submissions (Hansen Bailey). page 5 - " Aston (WHC) has committed to in Section 4.3.1 of the Response to Submissions documents (Hansen Bailey 2011b) to continue ongoing consultation with all potentially affected private receivers to establish negotiated agreements prior to the worst case noise level predictions for the Project being experienced at residence". " Aston (WHC) also provides a status of discussions with neighbouring landholders that are predicted to be affected by the project, including those residences that are predicted to experience noise levels greater than 35 dba on occasion".

Project Approval 10_0138. page 37, Schedule 5, condition 2, "The Proponent (WHC MCCM) **must** assess manage project-related risk to ensure that there are **no exceedances of the criteria** and/or performance measures in schedule 3".

Project Approval page10, Schedule 3, condition 7, " Except for the noise affected land in Table 1, the Proponent shall ensure that operational noise generated by the project does **not exceed** the noise criteria in Table 5".

Table 5 Noise criteria db(A), All privately-owned residences **Day/Evening/Night Laeq**
(15min) 35 Night La1 (1min) 45.(see attached F)

Environmental Assessment Statement (EA) 7.3.4,

Aston will continue to consult with landholders shown in Table23, who are predicted to experience noise levels greater than the intrusive criteria. Aston will endeavour to establish negotiated agreements with each landholder prior to the worst case noise level prediction from the Project being experienced at the receiver.

Aston has commenced discussions with the relevant landholders as part of the ongoing process in establishing negotiated agreements. Aston will keep DP&I informed on the status of these agreements throughout the assessment of the Project.

For all other privately owned receivers not listed in Table 23 proactive and reactive noise minimisation practices will be implemented to ensure that the Project does not exceed the intrusive criteria. Specifically, operational controls will be adopted to ensure that impacts from the Projects at Receivers 77 and 82 remain within the intrusive criterion. (see attached G)

WHC MCCM seeking a modification of the Project Approval with sound power levels identified in the EA. From here does this mean the community will be experiencing a number of modifications as WHC MCCM is non-compliant with Project Approval identified in the Environmental Assessment Statement.

Conclusions,

The Leitch family is encouraged by the EPA to notify EPA hotline 13155 when we experience mine noise above the noise criteria set out in the EPL. This has led to EPA untended noise monitoring 95 Ellerslie Road (Leitch residence) experiencing MCCM noise above the noise criteria. To date WHC MCCM has no agreement in place that allows the noise **exceedances contravene condition L3.1 of EPL no. 20221 or Project Approval Schedule3 Condition 7** at our privately-owned residence. Project

Approval Schedule 3 Condition 7, **Note: noise generated by the project is to be measured in accordance with the relevant procedures and exemptions (including certain meteorological conditions) of the NSW Industrial Noise Policy.** NSW Industrial Noise Policy (INP) is a requirement for untended noise monitoring 95 Ellerslie Road (Leitch family).

With the non-compliance of MCCM noise criteria 95 Ellerslie Road under the INP it once again discredits the SPLM and puts it front and centre that the worst case noise predictions 35db contour line is grossly misleading. Given the MNA findings of the 35db contour line, one would encourage the EPA and the Department of Planning to implement a correct and accurate 35db contour line. I believe this further evidence to the objection MCCM SPLM, not only from the Leitch family but from the NSW Government.

EPA and the Department of Planning and Environment write 6th September 2017. **The MCCM EPL is currently allocated an overall environmental risk level 3.** (see attached H). I believe risk level 3 when put into context that only 2 other mines in NSW out of over 49 licensed mines are given a risk level 3 is enough evidence to the objection MCCM SPLM by the Leitch family and the NSW Government.

Development Application ; DA20/2017 (see attached). This DA approval is in corner of Lot 2 DP 614506. I strongly object to MCCM SPLM as the DA approval will be further impeded by MCCM noise at privately owned residence. (see attached I)

WHC MCCM has also submitted an informal modification relating to disregarding the noise criteria during a G-class inversion.(see attached J). Once again these modifications are putting the Leitch family and other families in a disturbing and anxious position.

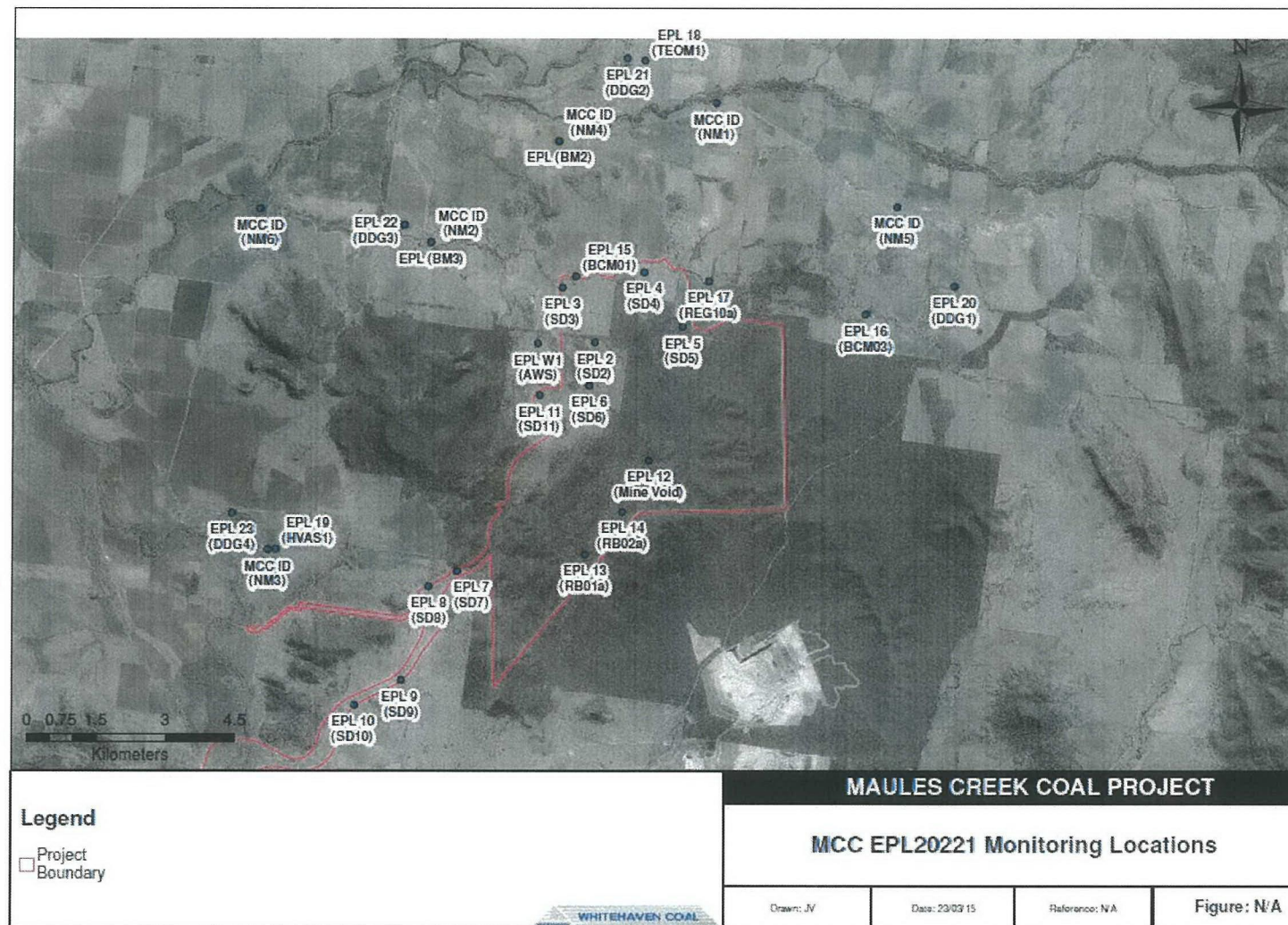
We keep getting told by industry and Governments of the coexistence between mining and agriculture. The only coexistence in our families experience is the Leitch family subsidizing a coexistence of a state significant project to the detriment of their health and our financial wellbeing. This can't continue, as the NSW Government granted the proponent a license to mine coal with the commitment of a Project Approval and EPL be implemented and enforced to this community and **NOT** just simply modified. I strongly reject the MCCM SPLM and simply ask the Department of Planning to step up and enforce the conditions set in the Project Approval 10-0138 and also ask the EPA to enforce the conditions set in EPL Licence NO. 20221.

Thankyou,

Lochie Leitch
"Marlow Downs"

Figure

Figure 1 – EPL 20221 Monitoring Locations

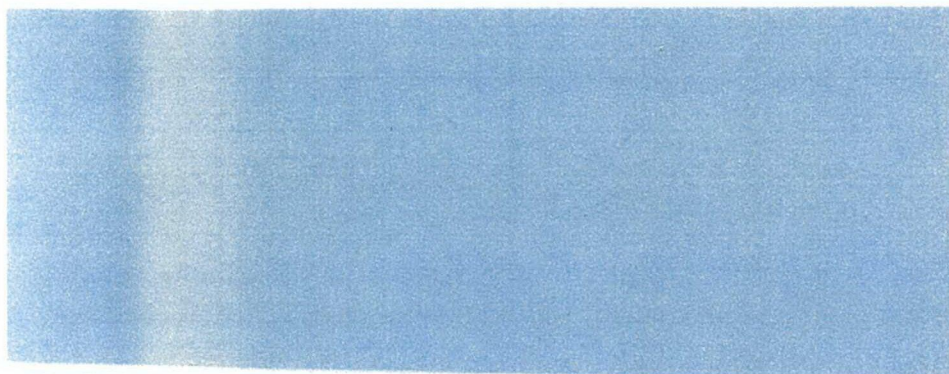


(B)



WHITEHAVEN COAL

1 August 2017



Re: Maules Creek Coal Mine – Notification of Environmental Monitoring Result

Please be advised of the following on behalf of Maules Creek Coal Mine (MCCM) of a recent attended noise monitoring result on 24 July 2017. The measured LAeq 15 minute noise levels attributed to MCCM that were recorded at the monitoring location NM1 in proximity to your property (Project Approval 10_0138 identification number 67 & 68) have remained below the regulated criteria. However, due to a low frequency noise modifying factor required under the New South Wales Industrial Noise Policy, a 5dB adjustment factor has been applied to one of these measurements as shown in the table below, resulting in 4 dB above the prescribed approval criteria.

Location	Date	Time	Measured MCCM only - dB(A)	Added LF Adjustment Factor ¹ - dB(A)	Criteria (dB)
NM1	24/07/2017	23:15	34	39	35 ²

¹ Low frequency (LF) modifying factor adjustment of 5dB as detailed in the NSW INP, added to MCC only.
² LAeq (15 minute) criteria within Project Approval 10_0138 and Environment Protection Licence #20221

Monitoring was completed by an independent acoustic consultant. There were no sustained exceedances of the applicable criteria measured during subsequent monitoring at this location.

Should you have any queries in relation to the above, please do not hesitate to contact myself on (02) 6749 7891.

Yours sincerely

Darren Swain
External Relations Superintendent

Maules Creek Coal Pty Limited ABN 70 140 533 875

Whitehaven Road, Boggabri NSW 2382 | P 02 6749 7300 F 02 6749 7393
GPO Box 99, Boggabri NSW 2382

WHITEHAVENCOAL.COM.AU



Our reference: : DOC15/368201-01
Contact: : Khari Turnbull – 02 6773 7000 – armidale@epa.nsw.gov.au
Date : 29 September 2015

Mr & Mrs Laurie & Sandra Compton
329 Ellerslie Road
MAULES CREEK NSW 2382

Dear Mr & Mrs Compton

Re: EPA Noise Monitoring Results - May 2015

The Environment Protection Authority (EPA) refers to our previous correspondence to you dated 17 September 2015, providing the EPA noise monitoring results for the period April 2015. The EPA has now reviewed the EPA noise monitoring data for the period of May 2015. Further details are provided below:

The environment protection licence (EPL no. 20221) for the Maules Creek Coal Mine premises includes the following conditions:

L3.1 Noise generated at the premises must not exceed the noise limits in the table below.

Locality and Location	Day- LAeq (15 minute)	Evening- LAeq (15 minute)	Night- LAeq (15 minute)	Night- LA1 (1 minute)
All privately owned residences	35	35	35	45

L3.2 The noise limits identified in the above table do not apply at privately owned residences that are:
a) identified as residences subject to acquisition or noise mitigation on request within the Project Approval Conditions (PA 10_0138); or
b) subject to a private agreement, relating to the noise levels, between the licensee and the land owner.

The EPA measured mine noise greater than the $L_{eq(15min)}$ 35 dBA licence limit in 4 measurements of fifteen minutes duration during May 2015. All identified exceedances included a low frequency modifying factor adjustment.

In summary, mine noise exceeded the licence limit of $L_{eq(15min)}$ 35 dBA with:

- two measurements of 37 dBA
- two measurements of 36 dBA.

Further details concerning the specific dates and times are enclosed in Attachment 1.

Email: armidale@epa.nsw.gov.au
PO Box 494 Armidale NSW 2350
85 Faulkner Street, Armidale NSW 2350
Tel: (02) 6773 7000 Fax: (02) 6772 2336
ABN 30 841 387 271
www.epa.nsw.gov.au

The EPA considers that the above exceedances contravene condition L3.1 of EPL no. 20221. Consequently, the EPA has written to Maules Creek Coal Pty Ltd about this matter and asked it to explain, in writing, why the EPA should not take regulatory action in response to this matter.

Please contact Kharl Turnbull on (02) 6773 7000 or by email to armidale@epa.nsw.gov.au if you wish to discuss this matter.

Yours sincerely



LINDSAY FULLOON
A/ Manager Armidale Region
Environment Protection Authority

Encl: Attachment 1 – Summarised results for May 2015 – mine noise above licence limit

Attachment 1 – Summarised results for May 2015 – mine noise above licence limit

End time ^a	Mine noise $L_{eq(15min)}$ (dBA) ^b
3/05/2015 3:15	37
6/05/2015 1:00	37
6/05/2015 1:15	36
6/05/2015 2:15	36

Notes:

- a. Noise loggers were set up to use Australian Eastern Daylight Time. Times after 5 April 2015 have been adjusted to Australian Eastern Standard Time.
- b. Including a low frequency modifying factor adjustment of +5 dB.



(D)

Our reference: : Doc17/378409 SF16/33742
Contact: : Jessica Creed, 02 6773 7000, armidale@epa.nsw.gov.au
Date : 19 July 2017

Mr Lochie Leitch
sonjaleitch@gmail.com

BY EMAIL

Dear Mr Leitch

UNATTENDED NOISE MONITORING – MARLOW DOWNS

I refer to the unattended noise monitoring being conducted by the Environment Protection Authority (EPA) at 'Marlow Downs' located on Ellerslie Road, Maules Creek since April 2017.

The EPA has installed the unattended noise monitor at 'Marlow Downs' with the monitor recording data on a 24 hour 7 days per week basis and recording audio from 7pm to 8am each day. The purpose of the unattended monitoring is to provide the EPA with information on noise levels experienced in the area that can then guide future actions taken by the EPA. As previously explained the EPA does not intend to use the data for compliance purposes.

The EPA has been reviewing the data and audio from the unattended monitor for dates on which an environment line complaint is received from Patricia Leitch that alleges excessive noise coming from Maules Creek Coal Mine. To date seven complaint events have been reviewed and assessed, which in total is equal to 223 fifteen minute measurements or 55.75hours. **Attachment A** contains the assessment undertaken by the EPA for complaints received in April and May 2017 and identified results.

In summary, the results are showing that of the 223 measurements reviewed, there are twelve measurements that have exceeded the 35dB limit, as set out in Environment Protection Licence No 20221. Of the twelve measurements over the 35dB, eleven of these are within 2dB of that limit. The NSW Industrial Noise Policy states that *'a development will be deemed to be in non-compliance with a noise consent or licence condition if the monitored noise level is more than 2dB above the statutory noise limit specified in the consent or licence condition'*.

One measurement, or 15-minute period, recorded an LAeq(15min) of 38dB. The Industrial Noise Policy states that *'failure to address and rectify sustained non-compliance will place a development in breach of its noise consent/licence limits'*. The EPA does not view one 15-minute measurement as a 'sustained non-compliance'.

Email: armidale@epa.nsw.gov.au
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www.epa.nsw.gov.au

The EPA is currently assessing the unattended monitoring data for complaints received after May 2017 and will forward these results through once finalised. A copy of these results will also be provided to Maules Creek Coal Pty Ltd for their information.

Please contact Jessica Creed by telephoning 02 6773 7000 or email armidale@epa.nsw.gov.au if you wish to discuss this matter further.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Lindsay Fulloon', written over a horizontal line.

LINDSAY FULLOON
Manager Regional Operations - Armidale
Environment Protection Authority

ATTACHMENT A - Unattended Noise Monitoring – Patricia Leitch 'Marlow Downs' Ellerslie Road Maules Creek

L_{Aeq(15min)} mine noise levels:

A review of the unattended noise monitoring has occurred for complaints made on seven dates. ^{Table 1} ~~Error! Reference source not found.~~ summarises the number of measurements during complaint periods, where the EPA detected mine noise: up to the limit, 1 dB, 2 dB or 3 dB over the limit. Noise levels were not detected above 3dB over the limit. It should be noted that each 'measurement' is a 15 minute long measurement period.

Table 1 – summary of L_{eq(15min)} results up to the night 24 May 2017

Night	Number of measurements with estimated mine noise L _{eq(15min)} :				Total number of measurements reviewed
	35 dBA or less	36 dBA	37 dBA	38 dBA	
14/04/2017	44	0	0	0	44
17/04/2017	16	0	0	0	16
26/04/2017	37	5	3	1	46
27/04/2017	25	1	2	0	28
14/05/2017	34	0	0	0	34
15/05/2017	19	0	0	0	19
24/05/2017	36	0	0	0	36
Total number of measurements	211	6	5	1	223
Total amount of time (hrs)	52.75hrs	1.5hrs	1.25hrs	0.25hrs	55.75hrs

L_{max(15min)} mine noise levels:

So far, of the 223 measurements assessed in response to complaints, only one 15-minute period has had a maximum noise level above the L_{A1(1min)} 45 dB limit. That was L_{max(15min)} 49 dBA, between 10:00pm and 10:01pm on 27 April 2017.

Summary:

Of the twelve measurements detected over the L_{Aeq(15min)} 35dB limit, 11 of these were within 2dB of the limit. As outlined in the Industrial Noise Policy, 'a development will be deemed to be in non-compliance with a noise consent or licence condition if the monitored noise level is more than 2dB above the statutory noise limit specified in the consent or licence condition'.

(E)

"Marlow Downs"
Boggabri NSW 2382

15 July, 2014

Mr Ben Harrison
Investigations (Lead) Northern Region Compliance
Suite 14 Level 1
1 Civic Ave
SINGLETON. NSW 2330

Dear Mr Harrison,

RE: LOCHIE LEITCH – BLAST MANAGEMENT PLAN FOR WHITEHAVEN COAL

I appreciate your time and willingness to understand our situation being a neighbour of Maules Creek Coal. The meeting held at Whitehaven Boggabri office on 14th July (2.30pm) outlined some of the aspects of blasting at the Maules Creek Coal site. I would like to thank Whitehaven Coal and staff for inviting me to the meeting. After 24hrs comprehending what was said by number of different people present at meeting, my first thought would be this Blast Management Plan which was briefly outlined seem to be very rushed in the sense getting it through the appropriate government departments or being the all important tick of approval as Whitehaven express they would like to start blasting at Maules Creek Coal site as early as August this year. By all means I fully understand deadlines have to be achieved, as a farmer my business is constantly working under deadlines eg. planting dates, irrigation, harvesting, picking etc. But at no stage do my deadlines effect the health and well being of my neighbours as there are stringent laws and appropriate government departments are there to enforce.

Environmental Assessment Statement does not address dominant wind direction coming from Maules Creek Coal. Judging by the data and diagrams in Environmental Assessment there was not enough focus on the micro climate in and around our properties being Marlow Downs. After listening to different speakers present at meeting I hold concerns some being the health and well being of my three children my wife and my mother as well as on a number of occasions wind direction was held to the greatest importance on blasting management and safety to their staff and neighbours.

This morning being 15th July once again I appreciate considerable amount of time given by yourself looking at location of properties in the topography and the micro climate surrounding the valley that my family calls home in and around relevant construction infrastructure MAULES CREEK COAL. Having the benefit of standing on Mr Murphy's hill I believe shows relevance of the data we made available to you and also seeing with our own eyes the wind direction looking back at Johnston quarry located at Wave Hill and seeing the westerly winds and turning our head's back to Maules Creek coal site and the dust was showing an easterly wind. The data on wind direction I would like

to be thoroughly investigated as the appropriate 12 monthly weather station data which was given to you to show a very high percentage of wind direction covering our properties.

I would encourage the Department of Planning to look at the relevant data close to Maules Creek coal site when making a determination on the Blast Management Plan as any decisions may have regrettable effect on our family well being. Note some guide lines could be that there will be no blasting at all on the Maules Creek coal site if the wind direction is towards our properties. The relevance to that would be if a member of our family is working with stock and/or the kids riding their horses etc. I think sending a SMS message to myself, wife, and mother would be advisable when Maules Creek coal site is blasting as it would be a safety aspect to my family's wellbeing.

I thank you again on your consideration and giving some time to our concerns and would encourage you and your Department on continuing open discussion.

Yours faithfully

.....

LOCHIE LEITCH

Cc. Mr. Dan Martin



Sonja Leitch <sonjaleitch@gmail.com>

Letter from Lochie Leitch

Simon Smith <Simon.Smith@epa.nsw.gov.au>

Fri, Mar 6, 2015 at 12:09 PM

To: Sonja Goldman <sonjagoldman@hotmail.com>

Cc: Robert O'Hern <Robert.OHern@epa.nsw.gov.au>, Kharl Turnbull <Kharl.Turnbull@epa.nsw.gov.au>, Lindsay Fulloon <Lindsay.Fulloon@epa.nsw.gov.au>

Sonja and Lochie,

Thank you for your email and letter of 10 February 2015 and I apologise sincerely for not replying earlier.

The camera installed on "Murphy's Hill" that you and Pat have supported is proving to be a very useful tool. As well as reviewing past images and being able to watch in real-time, we are able to log into the camera, look at specific areas and zoom in on areas of interest.

That has meant we can review the operations at the mine and observe dust coming from a variety of activities including clearing, vehicle movements, loaders and dust coming from the exposed areas.

We have also seen dust moving off the mine and the dust plumes responding to the variable and complex wind patterns in the area. That is, we have observed general haze or dust moving from a point sources in a north easterly direction and then changing direction as the dust plume encounters air moving in a north westerly or westerly direction. On occasions we have observed dust moving over both your property and Pat's property.

As a result of our observations from the RMTek camera and from our own (higher resolution and higher magnification) images taken from "Murphy's Hill" and in combination with our site inspections, I am not convinced that Whitehaven is applying best environmental management practices (BEMP) in order to control dust and that it is not applying all reasonable and feasible measures. I am also disappointed in Whitehaven's response to our questions about their activity and our requests for it to make improvements.

As a result, I emailed the mine's environment manager stating that I was not confident in its ability to manage the site properly. I have advised the mine management that we will be asking it to improve its performance to minimise dust being generated at the site and that the EPA will undertake a campaign of monitoring and frequent unannounced site inspections.

The EPA expects all mines to apply BEMP and has required other operating coal mines to implement a "Dust Stop" program. The Maules Creek Mine commenced after the Dust Stop program was initiated and now that the mine is operating, the EPA's environment protection licence will be varied to require Whitehaven to implement the same program.

In response to your question about "acceptable levels of dust" over your property I am not able to make any definitive statement. While we have identified dust moving in the general direction of your property, we do not currently have the ability to monitor the dust composition and levels and we are not able to determine if the

2/15/2017

Gmail - Letter from Lochie Leitch

levels are consistent with the ambient targets (being the general background) imposed by the consent conditions. My other concern is that an ambient dust level (based on a rolling 24-hour average) may not be appropriate for environmental compliance and may not be an appropriate target for the your situation.

The approach we adopt is to focus our effort to have the mine minimise the dust it generates on-site. In that way, we anticipate that dust moving off site will also be minimised to a point that it will meet the ambient target.

We do not accept that the mine is doing all it can to minimise dust and we will be requiring improvements and it will take time and effort before we see results.

I understand that this may not answer all your questions or concerns but hope that make some sense. I would also like to continue meeting with you, the Murphies and the Cromptons to let you know what we are doing and that what we have achieved.

Please call me at any time if you would like to talk about any matters.

Regards

Simon

Simon Smith

Manager Armidale and Far West Regions

Environment Protection Authority

PO Box 494 ARMIDALE NSW 2350

☎: (02)6773 7003 || Mobile ☎: 0408 686 744 || 📠: (02) 6772 2336

✉: simon.smith@epa.nsw.gov.au

☎: +32.830735 : 147.451465

From: Sonja Goldman [<mailto:sonjagoldman@hotmail.com>]

Sent: Monday, 9 February 2015 8:30 AM

To: Smith Simon

Subject: Letter from Lochie Leitch

Hi Simon,

[Quoted text hidden]

[Quoted text hidden]

This email is intended for the addressee(s) named and may contain confidential and/or privileged information. If you are not the intended recipient, please notify the sender and then delete it immediately.

Any views expressed in this email are those of the individual sender except where the sender expressly and with authority states them to be the views of the Environment Protection Authority.

PLEASE CONSIDER THE ENVIRONMENT BEFORE PRINTING THIS EMAIL



Sonja Leitch <sonjaleitch@gmail.com>

The proponent (WHC MCCM) has committed to establish negotiated agreements prior to worst case.

Sonja Leitch <sonjaleitch@gmail.com>

Mon, Sep 18, 2017 at 1:43 PM

To: Kirsty Ruddock <Kirsty.Ruddock@planning.nsw.gov.au>

Cc: Heidi Watters <Heidi.Watters@planning.nsw.gov.au>, Sue Higginson <sue.higginson@edonsw.org.au>, Warwick Giblin <wgiblin@bigpond.net.au>, Renne Murphy <patandrenee@bigpond.com>

Hi Kirsty,

I have attached some of the relevant documents that the WHC MCCM has committed to the NSW Government and the community.

Response To Subsidiary Submissions (Hansen Bailey). page 5 - " Aston (WHC) has committed to in Section 4.3.1 of the Response to Submissions documents (Hansen Bailey 2011b) to continue ongoing consultation with all potentially affected private receivers to establish negotiated agreements prior to the worst case noise level predictions for the Project being experienced at residence". " Aston (WHC) also provides a status of discussions with neighbouring landholders that are predicted to be affected by the project, including those residences that are predicted to experience noise levels greater than 35 dba on occasion".

Project Approval 10_0138. page 37, Schedule 5, condition 2, "The Proponent (WHC MCCM) **must** assess manage project-related risk to ensure that there are **no exceedances of the criteria** and/or performance measures in schedule 3".

Project Approval page10, Schedule 3, condition 7, " Except for the noise affected land in Table 1, the Proponent shall ensure that operational noise generated by the project does **not exceed** the noise criteria in Table 5".

Table 5 Noise criteria db(A), All privately-owned residences **Day/Evening/Night Laeq (15min) 35 Night La1 (1min) 45.**

Project Approval page 54, Appendix 5, condition 4 etc condition 10 etc. etc etc etc

They have committed Kirsty, in their license **PRIOR TO THE WORST CASE.** The attended noise monitoring shows a number of noise exceedances above the criteria at our residences and others. The unattended noise monitoring also shows exceedances above the criteria at our residence. Where in the conditions does it specify if attended or unattended is relevant or not relevant in a case to seek a negotiated agreements with privately-owned residences. Again Kirsty, the proponent has committed to the NSW Government and the community **PRIOR TO THE WORST CASE.**

The noise exceedances measured by attended and unattended noise monitoring is at least 6-7 dba above the worst case noise prediction for this MCCM project. That is a fact not a noise dba figure to apply "sustained" or the "INP 2 dba " it is 6-7 dba **above the worst case.**

WHC has not fulfilled its commitments. Please see attached email from WHC.

16th May 2016 " WHC - not interested"

17th August 2016 "WHC- MCCM does not propose to provide financial reimbursement to local landholders for any losses".

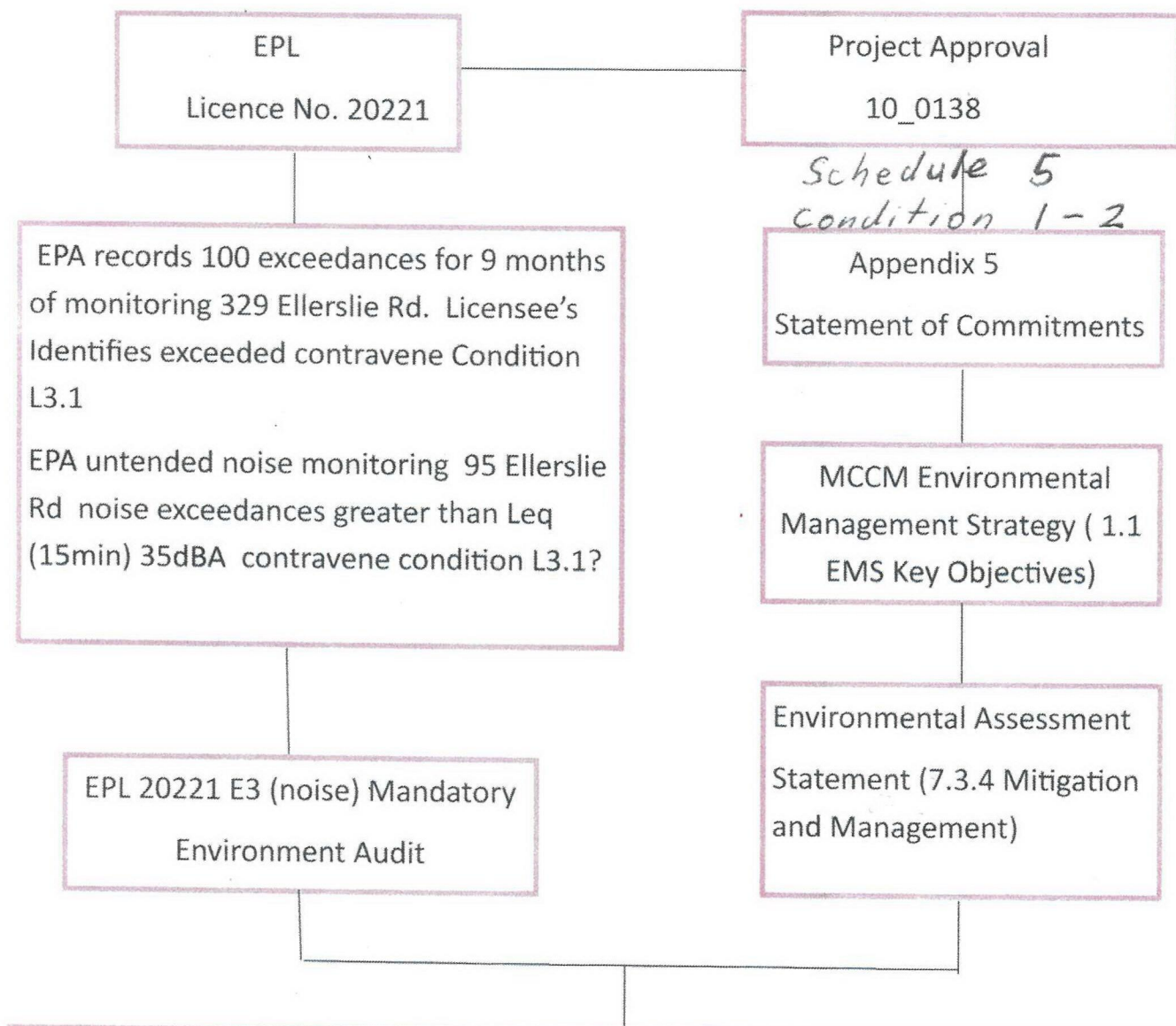
Thankyou, and I would encourage the Department of Planning to act as the community is fast losing its patients and its trust to the Department and the EPA position of "WHC MCCM is generally in compliance". In fact I would suggest with the Santos and Vickery projects with the intention of gaining a licence and relevant commitments made by these proponents will not be taken lightly after the display of WHC MCCM project.

Cheers Lochie Leitch

--
Sonja and Lochie Leitch
"Marlow Downs"
Boggabri NSW 2382
Mobile: 0428609299
Mobile: 0428789914

5 attachments

6



EIS (page 99). Proponent will continue to consult with landholders shown in Table 23, who are predicted to experience noise levels greater than intrusive criteria. Proponent will endeavour to establish negotiated agreements with each landholder prior to worst case noise level prediction from the Project being experienced at the receiver.

For all other privately owned receivers not listed in Table 23, proactive and reactive noise minimisation practices will be implemented to ensure that the Project does not exceed the intrusive criteria.

(H)



Planning &
Environment

DOC17/433943-02

Mr Pat Murphy
patandrenee@bigpond.com

Dear Mr Murphy

We refer to your e-mail of 16 August 2017. In this correspondence, you ask the Environment Protection Authority (EPA) and Department of Planning and Environment (DPE) to answer several questions to "better understand what impacts we should focus on that are likely to constitute a breach", in relation to the Maules Creek Coal Mine (MCCM) Environmental Protection Licence (EPL) and Project Approval. The EPA and DPE response to each question is provided below.

1. In their response to the Maules Creek Coal Project Environmental Assessment, the Office of Environment and Heritage (OEH) recommended a Reactive Particulate Management Strategy be undertaken as a condition of the Project Approval. Schedule 3 Condition 24 (Air Quality and Greenhouse Gas Management Plan) of the Project Approval incorporates the OEH recommendation. The MCCM Air Quality and Greenhouse Gas Management Plan and the BTM Air Quality Management Strategy, prepared to satisfy this condition, are available on the MCCM website.
2. Section 129 of the *Protection of the Environment Operations Act 1997* (POEO Act) refers to emissions of odours from premises. While s.129 has previously been used by the EPA to prosecute serious blast fume incidents at other mine sites, the EPA has since applied an additional condition to all open cut coal mine EPLs to ensure that mines take adequate precautions to ensure that offensive blast fumes do not impact people on surrounding lands. This condition is modelled on the wording used in s.129.

Condition O4.1 of the MCCM EPL states:

O4.1 Offensive blast fume must not be emitted from the premises.

Definition: Offensive blast fume means post-blast gases (whether visible or invisible, odorous or odourless) from the detonation of explosives at the premises that by reason of their nature, duration, character or quality, or the time at which they are emitted, or any other circumstances:

- (i) are harmful to (or is likely to be harmful to) a person that is outside the premises from which it is emitted, or*
- (ii) interferes unreasonably with (or is likely to interfere unreasonably with) the comfort or repose of a person who is outside the premises from which it is emitted.*

For the EPA to prove beyond reasonable doubt that the mine has not complied with this condition of the EPL, there must be clear evidence of each of the following elements:

- That blast fume (not just dust) left the premises;
- That the blast fume was offensive; and
- That the blast fume was harmful or likely to be harmful to a person outside the mine site; or

- That the blast fume interfered unreasonably with (or was likely to interfere unreasonably with) the comfort and repose of a person outside the mine site.

Without clear evidence for each element, the EPA is not in a position to consider any regulatory action.

3. The terms "consistent with" and "not consistent with" are not defined in legislation. In determining compliance with an EPL or Project Approval, the EPA and DPE are guided by their compliance policies and prosecution guidelines. These documents are publicly available on the EPA website (<http://www.epa.nsw.gov.au/legislation/prosguid.htm>) and DPE website (<http://www.planning.nsw.gov.au/Assess-and-Regulate/Compliance-functions/Compliance-policy-and-guidelines>).
4. The next statutory review of the MCCM EPL is due by 2 May 2018. The community can contribute to the review of any EPL and submissions regarding licence reviews can be made at any time. Details on EPL reviews are available on the public register website (<http://www.epa.nsw.gov.au/prpoeo/index.htm>) or by telephoning Environment Line on 131 555.
5. The MCCM EPL is currently allocated an overall environmental risk level 3, which is the highest risk level. The New South Wales risk based licensing system risk ratings are derived through transparent and objective processes that are applied consistently to all EPLs in NSW. Further information on the way the risk based licensing system operates can be found in a comprehensive guideline provided on the EPA's website at: <http://www.epa.nsw.gov.au/licensing/licencereg.htm>.
6. Over the last two years (from 1 January 2016), the MCCM Complaints Register has recorded 34 direct complaints regarding noise, dust and blasting. Three hundred and thirty six complaints have been made to the EPA's Environment Line (75% of these have come from two local landholder families) while DPE officers have received 46 direct complaints. All complaints received by EPA and DPE are examined using available information to determine if the issue raised warrants further investigation and for the majority of complaints received, this process has not revealed potential contravention of EPL or approval conditions, and no further action has been required.

Over the same time period, the EPA has issued MCCM two Penalty Notices and one Official Caution for non-compliance with the EPL conditions, while the DPE has issued MCCM one Official Caution.

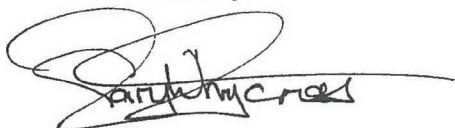
In addition to enforcement actions, EPA have:

- Implemented an ongoing program of additional independent noise monitoring at private receivers;
 - Required MCCM to undertake a Mandatory Environmental Audit examining its compliance with the noise conditions of the EPL;
 - Partnered with DPE to commission an independent Best Practice Dust Management Benchmarking Study (completed by Katestone Environmental Pty Ltd);
 - Installed a remote camera on Murphy's Hill to provide additional real-time and recorded imagery to enable it to objectively assess the validity of complaints about dust emissions from the site; and
 - Implemented an ongoing program of site inspections and covert surveillance at various times throughout the day and night.
7. Certification of the Environmental Management System (EMS) with ISO 14001 is not prescribed in the EPL or approval. ISO 14001 certification is a voluntary scheme which is not regulated by NSW Government departments or agencies. Any queries in relation to ISO 14001 certification (including requests for audit reports) should be made directly to MCCM.

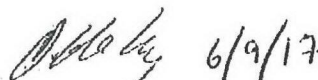
If you have any further questions in relation to matters regulated by the EPA, Mr Lindsay Fulloon, Manager Regional Operations - Armidale, EPA, can be contacted on (02) 6773 7000 or by email at: armidale@epa.nsw.gov.au.

If you have any further questions in relation to matters regulated by the DPE, Ms Kirsty Ruddock, Director Compliance – Investigations and Enforcement, can be contacted on (02) 92746414 or by email at: compliance@planning.nsw.gov.au.

Yours sincerely

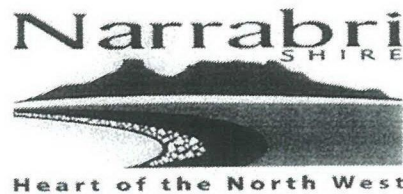


GARY WHYTCROSS
A/Chief Environmental Regulator
Environment Protection Authority

 6/9/17

OLIVER HOLM
Executive Director Resource Assessment
and Compliance
Department of Planning and Environment

(I)



NOTICE OF DETERMINATION OF A DEVELOPMENT APPLICATION

Issued Under Section 81 of the *Environmental Planning and Assessment Act 1979*

DEVELOPMENT APPLICATION:	DA20/2017
APPLICANT NAME:	Mr Lochie Leitch
APPLICANT ADDRESS:	"Marlow Downs" Boggabri NSW 2382
LAND TO BE DEVELOPED:	Lot 2 DP 614506 95 Ellerslie Road Maules Creek NSW 2382
PROPOSED DEVELOPMENT:	Dwelling House
BUILDING CLASSIFICATION:	Applicable to change of use where no building work proposed.
DATE OF DETERMINATION:	26 September 2016
DETERMINATION :	Consent granted subject to conditions as set out in the Schedule below.
CONSENT OPERATES FROM:	26 September 2016
CONSENT LAPSES ON:	26 September 2021
PUBLIC HEARING HELD BY THE PLANNING ASSESSMENT COMMISSION:	No
GENERAL TERMS OF APPROVAL OBTAINED FROM THE FOLLOWING EXTERNAL BODIES:	None
APPROVAL GRANTED UNDER S 68 OF THE LOCAL GOVERNMENT ACT 1993:	No



Sonja Leitch <sonjaleitch@gmail.com>

Fw: G Class Inversion MCCM concerns

Pat and Renee Murphy <patandrenee@bigpond.com>

Sun, Sep 10, 2017 at 12:09 PM

To: Kirsty Ruddock <Kirsty.Ruddock@planning.nsw.gov.au>, Steve O'Donoghue <Stephen.ODonoghue@planning.nsw.gov.au>, Lindsay Fulloon <Lindsay.Fulloon@epa.nsw.gov.au>, Heidi Watters <Heidi.Watters@planning.nsw.gov.au>, Mark Gifford <mark.gifford@environment.nsw.gov.au>
Cc: Sonja Leitch <sonjaleitch@gmail.com>, Sue Higginson <sue.higginson@edonsw.org.au>, Warwick Giblin <wgiblin@bigpond.net.au>

From: Pat and Renee Murphy

Sent: Thursday, September 7, 2017 8:31 PM

Subject: G Class Inversion MCCM concerns

Gday All,

Further on from the meeting in Sydney, 17/7/17.

At the meeting the EPA explained that WHC had submitted a EPL modification relating to disregarding the noise criteria during a G-class inversion. This of massive concern to us, as the experts below explained that "appropriate ameliorative measures must be implemented to meet the noise goals", this is consistent with the Polluter Pays Principle. WHC's seemingly disregard towards this Greenfield community in asking the Government – without any consultation with the community - to not having to comply with the noise criteria at times is more like "shifting the goal posts to fit the game".

WHC explained at the EIS stage that all modelled noise impacts were identified with certainty and under worst case scenarios. Therefore surely logic dictates that there is no need for noise during G Class inversions to be measured differently, as G Class inversions would have fallen into the "worst case scenarios" that WHC used to gain the approval to dig up the public reserves and operate in our community. If this is not the case, then this Greenfield community must not be the ones to wear the burden – Polluters Pays Principle- the Government should encourage WHC to investigate whether they have any legal recourse that they can take towards the consultant whom did the modelling. In the end this is not of concern to the community, as long as the community(especially children) are not forced to carry any more of WHC costs and risks.

No doubt as you're already aware the NSW DPE noise expert, Mr G Parnell, explains that G class inversions can increase the noise by 20db:

https://www.researchgate.net/publication/310462403_Are_cumulative_noise_criteria_relevant_for_the_assessment_of_mining_noise

3.1 Temperature Inversions

As described in detail in Parnell (2015), temperature inversions can cause the homogeneous hemispherical spreading of noise from a source to be altered so that noise normally radiated skyward (and hence of no impact to terrestrial located receivers) is refracted towards the ground. In perfectly calm conditions, such enhancement would occur evenly in all directions, however in most cases, a slight wind or drainage flow (less than 2 m/s at 10 m above ground level (AGL)) will preferentially enhance the propagation of noise in one direction, at the expense of another direction. The INP considers F-Class stability with a 2 m/s AGL wind as representing the limits of typical adverse meteorological conditions. Beyond this, conditions are considered extreme and therefore generally invalid for the purposes of compliance. Once wind speed increases beyond about 2 m/s, then the atmosphere becomes less stable and the ability for a temperature inversion to be maintained is progressively degraded. Very strong G-Class inversions have been observed by the author to increase noise in the order of 15 dB. Anecdotally,

enhancements of around 20 dB have been measured in NSW, particularly in the more arid areas.

This modification is unjust, unfair, unreasonable and contrary to everything the mine was approved under, contrary to the the Polluters Pays Principle and contrary to what WHC promised the community and the Government. For instance;

- **PAC review of the Maules Creek Coal Project, March 2012**

In this review, the independent experts of the PAC described the process for undertaking a noise assessment in accordance with the NSW Industrial Noise Policy (INP):

'An assessment in accordance with the guidelines involves identification of nearby residential dwellings (and any other sensitive receptors), assessing the existing ambient noise levels, setting noise goals from the EPA guidelines, establishing noise emission levels for all equipment and operations in the project and modelling the predicted noise levels to assess compliance with the noise goals at the receptors **under all weather conditions. Where compliance proves difficult, appropriate ameliorative measures must be designed to reduce the noise levels to meet the goals.'** (p32)

- "The noise levels from the mine **must not exceed** the noise levels prescribed under the INP, ie 35 LAeq 15 min and 45 LA1 1 min, at any privately owned residential receiver, **unless the proponent has the written agreement of the owner of the property**' (my emphasis).
- **1. OEH submission for Proposed Maules Creek Coal Project, 11 October 2011, p 3, Noise Assessment Recommendations**
- In this submission, OEH recommended:
 1. A PSNL [project-specific noise level] of 35LAeq, 15min day, evening and night and 45LA1, 1min night be required as a condition of consent;
 3. Where the PSNL is **predicted** to be exceeded at any residence, *Aston [now Whitehaven Coal]* ***be required to purchase or negotiate an agreement with the affected receptors in accordance with the Industrial Noise Policy prior to commencement of mining operations.***

Earlier in the submission OEH states:

'During a meeting between OEH, Aston (including their consultants), and DoPI [Department of Planning and Infrastructure] on 28 October 2010 Aston was encouraged to negotiate agreements or purchase receptors where impacts were predicted to be beyond the Project Specific Noise Level (PSNLs) ... defined in accordance with the *NSW Industrial Noise Policy* (INP). **Maules Creek is a "Greenfield Site" and Aston must make every effort to minimise noise impacts on the quiet surrounding rural community.**

During the meeting, OEH and DoPI advised Aston that the establishment of noise limits above the PSNLs could only be considered where all reasonable and feasible noise mitigation measures have been applied and bona-fide attempts to negotiate agreements with (or purchase) affected receptors had failed. The EA [environmental assessment] does not provide an economic or social benefit justification of the need for any noise limits to be set above the PSNL.

The EA submits that "all reasonable and feasible" noise mitigation measures have been applied as part of the assessment of the project. It is concluded in the EA that any additional noise mitigation of equipment would only achieve minimal improvement (i.e. around 0.5 db(A)) but would come at significant additional cost.

As application of "all reasonable and feasible" mitigation measures are claimed to be unable to attain compliance with the PSNL, Aston (now WHC) has chosen to seek purchase agreements with affected residents rather than spend additional monies for minimal acoustic improvement. OEH encourages Aston to continue to seek purchase/ noise agreements with affected receptors where compliance with the PSNL can not be achieved by noise attenuation or operational modifications to the mine.' (p3).

- Dr Tony Merritt of the NSW Department of Health highlighted these two issues in his review of the environmental impact statement for the Mt Thorley Coal Mine Continuation Project 2014. In his review he notes that:

'There is no evidence of a threshold below which exposure to PM is not associated with health effects. Therefore, it is important that all reasonable and feasible measures are taken to minimize human exposure to PM, even where assessment criteria are met'

He also notes in the same review:

'Environmental noise can have negative impacts on human health and well-being. Evidence concerning the adverse health effects of environmental noise is detailed in a number of publications, for example, the *World Health Organization Night Noise Guidelines for Europe* (2009) and the *WHO Guidelines for Community Noise* (1999). **To protect public health, it is prudent to take all reasonable and feasible measures to minimize public exposure to mine-related noise, irrespective of compliance with the relevant noise policies.**'

- The Australian Government publication *Leading Practice Sustainable Development Program for the Mining Industry*, developed by an expert panel comprising experienced mining industry figures with national and international experience, refers to World Health Organization (WHO) comments that:

'up to three per cent of heart disease deaths, or more than 200,000 globally, are due to long time exposure to chronic traffic noise' (p 88, under Airborne Contaminants, Noise and Vibration).

Whitehaven Coal promised "appropriative ameliorative measure"- regarding noise - to the community and Government:

Hansen Bailey response to submissions; Aston(now WHC) **has committed** to in Section 4.3.1 of the Response to Submissions document (Hansen Bailey 2011b) to continue ongoing consultation with all potentially affected private receivers **to establish negotiated agreements prior to the worst case noise level predictions for the Project being experienced at the residence.** PLEASE NOTE; this commitment is in accordance with the NSW Industrial Noise Policy, refer to 4th dot point,3.(PFM)

In a nutshell, WHC cannot be allowed to inflict more harmful noise onto this community. They cannot be rewarded for the seemingly contempt and disregard they show the locals by asking the EPA to be allowed to cause more offensive noise, without any consultation. That is not coexistence! WHC has had 7.5 years to gain agreements of some description in accordance with the INP as recommended by the EPA and PAC above. It is totally unfair to shift the goal posts in order to fit the game, the Government has already forced people (including children) to live in a adversely affected environment through not enforcing the requirements of the INP, we cannot handle a 20db increase of noise.

Request;

1/ a) The EPA please "hit on the head" any modification which allows more noise from the MCCM to be externalised onto the community.

b) The EPA give the community a assurance that WHC will not be allowed to externalise more noise under any circumstances, inversions or otherwise, onto the community unless –as the project approval states – *they have a agreement with the property owner to be allowed to generate more noise*".

2/ a) The DPE to investigate why WHC hasn't discussed this modification with the CCC or community?

b) Does the new Social Impact Guidelines have to be taken into account in relation to WHC seemingly wanting "to shift the goalposts"?

3/ Keep the community updated, and allowed to be included in discussions relating to any increase of noise at the MCCM.

4/ The EPA to investigate why WHC hasn't fulfilled the appropriate ameliorative measures they volunteered and reached a noise agreement with residents **prior** to them being impacted above the PSNL. The noise at the mine has to comply with the INP, the EPA explains above that "in accordance" with the INP, WHC must have agreements or purchase **prior** to someone being impacted.

5/ If meeting the noise criteria is having a detrimental materiel effect to the WHC owned MCCM – especially their shareholders through the mine shutting down thus losing production– then for the sake of fairness please encourage WHC to investigate to see if they have any legal recourse available that they can take towards WHC's noise consultant who possibly provided misleading or incorrect worst case noise scenarios at the EIS stage. Not externalize what would be someone else's mistake onto the community.

6/ In the hope of bypassing these sort of unfortunate experiences in the future, can the EPA and DPE make sure any "worst case" noise scenarios predictions used during the Vickery Extension approval include noise levels during G Class inversions so to comply with an assessment "in accordance" with the NSW INP.

Please keep us and the rest of the community updated on any and all developments and/or investigations.

regards Pat Murphy.



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