

## **SUBMISSION OBJECTING TO AGL'S S. 75W "MODIFICATION" APPLICATION FOR AN EXTENSION OF TIME TO THE LAPSE DATE OF THE CONDITIONAL APPROVAL OF THE DALTON POWER PROJECT**

Australians Against AGL Dalton Power Project hereby submit our objection to the application by AGL to have the lapse date of the conditional approval they received in 2012 with respect to the Dalton Power Project (DPP), extended by 2 years.

### **INTRODUCTION:**

We submit that this MOD1 Application is a cynical attempt by AGL to keep the DPP within the Part 3A Transitional provisions which are soon to be repealed. In January this year, a Media Release from Planning Minister Rob Stokes announced "proposed amendments to the *Environmental Planning and Assessment Act 1979* ", the purpose of which were to "target delays in Development Application (DA) processing by councils, while also **enhancing community confidence in the planning system**". The Media Release also provided that "Other proposed changes include leveling the playing field for the assessment of major projects by **ending transitional arrangements** under Labor's controversial Part 3A development assessment which will prevent the **misuse of modifications**."

We submit that AGL is responding to commentary, such as that from Addison's Lawyers in January 2017 in which Natalie Rodwell and Stephanie Mulvey advised, in response to the Planning Minister's Press Release:

"Developers wishing to ensure that Transitional Part 3A projects continue to be assessed pursuant to s 75W rather than the "substantially the same development" test in s 96 of the EP&A Act, should lodge s 75W applications as a matter of urgency and in any event within the Two Month Window. "  
<http://www.lexology.com/library/detail.aspx?g=1381b0f0-98a6-4854-96a7-03fcebfc5d>)

Mr Stokes has gone a bit quiet since this announcement. He has been shuffled out of the Planning portfolio. It is unclear whether the Part 3A reform is still on the agenda, and if it is, who is driving it. But there has been a frenzy of activity at AGL since this was brought to their attention, trying to put something together to enable them to clutch at the tail of the dying beast that is Part 3A. This flawed application is the best they obviously could come up with.

### **FIRST GLANCE AT THE APPLICATION ITSELF.**

While this assessment is ostensibly limited to the extension of lapse date modification (MOD1), we submit that by AGL's MOD 1 Application, MOD1 and MOD2 are inextricably intertwined. AGL in their MOD1 application state their reason for seeking the modification. MOD1 is not an application for an extension of time to allow the commencement, construction and operation of the DPP as it is approved. This possibility isn't canvassed at all.

In their application at p. 2-3, AGL explains:

"Extending the lapse date will allow adequate time for AGL to review and update the DPP in line with current technology and energy market circumstances. Since the original EA was prepared, energy technology has evolved, resulting in greater efficiencies. For example, the current Project Approval requires 'F Class' turbines to be used. This fails to take into account new and more efficient technologies,

such as 'fast start' aero derivative gas turbines. In addition battery storage is emerging as a complementary technology able to supply energy for the period while gas turbines are increasing output.

AGL seeks that the MOD1 (lapse extension) be approved to allow AGL adequate time to evaluate the most efficient and cost effective solutions for the project, in addition to current market conditions, in order to lodge a more substantive modification (MOD2) including updated expert reports."

**AGL seeks MOD1, in order to lodge MOD2.** It couldn't be clearer. It is submitted that AGL has explicitly conceded that they have no intention of commencing the DPP as it is approved. Had they such an intention, they would either have made an application simply to extend the lapse-date (as contemplated by s. 75Y), or just actually commenced prior to the July 19 lapse date. AGL has made no attempt to comply with the pre-commencement Conditions of Approval (see Appendix 2). AGL has conceded, in their MOD1 Application, that the DPP, as approved, is dead. The DPP was suspended in October 2012. It has not been revived by this MOD1 application. Quite to the contrary, MOD1 is its death notice. There is no project to apply an extension of lapse-time to. The approval expires on July 19, but AGL have already killed it.

MOD1 is simply an application to allow AGL to keep the illusion of the DPP alive under Part 3A. It is MOD2 for which the lapse time extension is sought. An approval of the MOD1 application, incorporating **ANY reference to the mooted MOD2** would create an absurd situation whereby any future modifications, even under s. 96, would be assessed against the vague description in this MOD1 application of what MOD2 might involve. Again, from Addison's Lawyers, "

"Although the broader modification power under s 75W will not be available for modifications of previous Transitional Part 3A projects after the Two Month Window, the s 96 power will be arguably broader for previous Transitional Part 3A projects than for ordinary modification applications lodged pursuant to s 96. This is because the modified project will be required to be substantially the same as the project as it was last modified rather than by reference to the original Part 3A approval." (<http://www.lexology.com/library/detail.aspx?g=1381b0f0-98a6-4854-96a7-03fcebfaa5d>)

This would clearly create a result that could never have been contemplated by even this flawed piece of legislation. The circular logic involved in approving a modification based on some blurry crystal ball gazing, and then assessing a subsequent modification against the "project as it was last modified" makes us really dizzy.

It would clearly be a fantastic outcome for AGL. It would mean that they could propose anything in MOD2 and have the environmental impact assessed against whatever it is that MOD2 proposes in this Application. Perhaps this is the true intention behind the way that AGL has gone about this. An attempt to have the environmental impacts of MOD2 assessed against itself.

We have no idea, either from this MOD1 application or from statements made by AGL representatives, as to what it is AGL are actually wanting to do. We don't think AGL do either. On the one hand, as Tony Chappel, Head of AGL Government and Community Relations stated at the "Community Engagement Activity" on April 5 in Dalton,

"We are not seeking any change to the project that has been approved by the NSW Government. What we are seeking is a 2 year extension of that approval and that is the only change we are seeking. But we are asking for that 2 years so that we may properly

consider it in this context of transformative change". (@ 7.40. See attached video file)

Yet AGL has tied this MOD1 application to their MOD2. The opportunity to lodge of their MOD2 is **the** reason provided for the MOD1 application. Chappel stated later at that meeting, "So we don't have a crystal ball" (@9.22). And at the Extraordinary Meeting of the ULSC in Gunning on April 12 he provided, "Whatever form it might ultimately take. It may not even be a gas project." (Goulburn Post April 11, 2017 "AGL Not Popular In Dalton", by Bronwyn Haynes). On March 31, 2017, AGL's Stakeholder Relations Manager, Dianne Knott, provided the following in an email to Community representative, Alister Waine: "Technology that AGL may consider to make the project more efficient and complement New South Wales' energy needs may include additions of solar, batteries, **diesel**, and higher-efficiency gas turbine options." (email attached hereto in Appendix A).

There is obviously a complete is lack of clarity in the MOD1 application. Either MOD2 is relevant or it is not. AGL can't have it both ways. **We submit that the proponent is not seeking an extension of time to allow them to undertake the DPP as it was approved. They are seeking time to consider MOD2. We submit that the DPP as approved is dead and therefore there is no longer a valid approval to which an extension of time can be applied.**

If the proponent argues to the contrary, then MOD2, any "alternative technologies", any future "community engagement", are completely irrelevant to this application.

We will assume that AGL will argue that the DPP is still alive. The Director-General and the Minister have obviously decided that this is the case. Whether their decisions were based on the "radical transformation" test espoused by Briscoe J in *Williams v Minister for Planning* [2009] NSWLEC 5 or the "limited environmental consequences beyond those already approved" test from Basten JA in *Barrick Australia Ltd v Williams* [2009] NSWCA 275, they could not possibly have found that what AGL describes for MOD2 is a mere "modification" of the DPP. We will proceed, therefore, on the basis that this MOD1 modification application is for an extension of time to allow AGL to commence the DPP, as it is currently approved, with "no changes to the scope as a result of extending the lapse-date".

#### **JUSTIFICATION FOR EXTENDING THE LAPSE DATE:**

- **Importance of the Project – Change in Market Conditions.**

A critical element of our objection to MOD1 is the fact that AGL repeatedly justify the proposed modification by discussing what has changed for them, and what may change in the future, while slipping this modification through s. 75W and denying us the opportunity to identify the things that have changed for us, and our environment and to have the impacts of the modification assessed under a new Environmental Assessment. We will discuss these matters later under **"Changes to the Surrounding Environment"**.

The proponent raises the "potential for a regional blackout" and refers to the recent blackouts in South Australia. AGL then goes on to state that the DPP "does have the potential to improve network reliability".

It is widely accepted that the first of the South Australian blackouts last year resulted from failure of the transmission infrastructure in high winds. The blackout earlier this year has been attributed to the failure of the Pelican Point gas peaking plant to respond to the crisis because of technical issues and/or gaming the system by the operator.

<http://www.news.com.au/finance/business/cold-hard-economic-reality-of-power-supply-in-australia/news-story/e9518d5f8532b812881ba0f21c7511e5>

It is submitted that the DPP would contribute nothing to network reliability that would prevent similar occurrences in NSW. Dalton is a long way from the centres where the power is needed. Therefore the supply generated would be highly susceptible to transmission interruption not only from the same sort of extreme wind events as South Australia experienced, but also from bushfire and earthquakes, Dalton being the earthquake capital of Australia.

The MOD1 application also refers to “unplanned generation outages”, exactly what happened with Pelican Point. Having one large generator as “backup” creates greater risk and less reliability to the NEM and energy security.

It is submitted that rather than approving one huge facility to provide the necessary “backup” to the system, network reliability would be far better served by a number of smaller generators closer to the centres where the power is demanded and required.

- **Improved Efficiency, Flexibility and Greater Community Consultation.**

As discussed above, if this MOD1 application is deemed, contrary to the prima facie evidence in this application itself, to be for an extension of time to the lapse date of the **DPP as approved**, any reference to MOD2 or anything that might be contained therein, is irrelevant to the current assessment. If MOD1 is simply an application to extend the DPP as approved, “More efficient technologies” or “cost effective solutions” are simply irrelevant to the assessment of MOD1. It is submitted that consideration of any such discussion should not be included in the assessment process for MOD1.

AGL, in this section of the Application, then go on to mention “some ongoing uncertainty for the community”. This matter will be addressed below under “**No Change to Scope as a Result of Extending the Lapse Date**”, where again the proponent raises “uncertainty”.

Which brings us to AGL’s “consultation” and “engagement”. Again we submit that if this MOD1 Application is deemed, contrary to the prima facie evidence in this application itself, to be for an extension of time to the lapse date of the **DPP as approved**, any reference to any proposed future engagement with respect to MOD2 is irrelevant. There is no need for us to engage with AGL if this application is rejected. If this is an assessment of the impacts of MOD1, then a full page of this Application is a distraction. It is a pointless collection of empty rhetoric and cant.

However, not knowing how this application is to be assessed, we will address the points raised by the proponent.

It is probably helpful if we provide some definitions which reflect our understanding of the terms used repeatedly by AGL. We understand that when words are repeated over and over and over and over again, they can sometimes lose all of their meaning and become just a collection of sounds. We hope that the definitions will assist AGL in formulating their Submissions Response.

**Consultation:** Public consultation, a process by which the public's input on matters affecting them is sought

**Engagement:** Engagement measures the extent to which a consumer has a meaningful brand

experience when exposed to commercial advertising, sponsorship, television contact, or other experience.

AGL, in this MOD1 Application, offers, as a “justification for extending the lapse date”, as a **benefit** of an approval of MOD1, that “the additional time will enable AGL to recommence engagement with the local community....” We cannot see any benefit, to either AGL or ourselves, which can come from this.

AGL has made no attempt over the last 4 ½ years since their suspension of the DPP to consult or engage with us. AGL have failed to comply with the Condition of Consent which required them to establish a *Community Consultative Committee*.

Our communities have had a “meaningful brand experience” with AGL. And it hasn’t been at all positive or beneficial. The only reason that we would need to have anything to do with AGL would be if this MOD1 Application was to be approved. And if this happened, we would be subjected to the grave uncertainty, stress and financial insecurity that a pending industrial facility would visit upon us.

Our communities do not want to have to re-establish engagement, or **any** sort of contact with AGL. As of July 19, we will hopefully never have to have anything to do with AGL again. That will make us very happy. “Engagement” would only be necessary if the MOD1 application was approved. It is irrelevant to the assessment of MOD1.

With respect to the regurgitation of the AGL’s marketing department’s spin which makes up such a significant part of this MOD1 Application, we defer to the wisdom of Dr. Phil who sums the point up beautifully with his oft quoted catch-phrase:

**“The best indicator of future behaviour is past behaviour”**

AGL’s “consultation” (see definition above) hasn’t been bad. It has been non-existent. At the “AGL Community Engagement Activity” at St. Matthews Hall in Dalton on April 5, Tony Chapple gave a syrupy, “heart-felt” apology for AGL **having done absolutely nothing** to keep our communities informed for the last **5 years**. Even AGL acknowledges how disrespectful they have been.

Since the DPP was first proposed, we have been shown no respect at all. We have had to deal with disrespect, mistruths and deception. There never was any consultation. And for the last 5 years, we have heard absolutely nothing at all. Then we were ambushed by this latest application, without warning. Without any attempt at adequate notice. With no consultation whatsoever. **WE** had to do AGL’s work and try to disseminate notice to our community. **WE** needed to request an extension of time to ensure that we “stakeholders” were all notified and had time to respond to this Application. **WE** had to make AGL come to Dalton to “engage” with us. AGL has always had an adversarial approach to their “engagement” with our communities.

On the 2 occasions that AGL representatives have come to town in the recent weeks with respect to this MOD1 Application, we have been treated with the same arrogance and disrespect to which we have become accustomed. We can only assume that perhaps the commencement date for the implementation of AGL’s new and improved Community Engagement Policy hasn’t yet arrived but is expected to occur some time before MOD2 negotiations might become necessary.

We have no confidence in AGL’s rhetoric with respect to consultation. There is no up-side to our communities in having to engage with AGL. It will only be necessary if MOD1 is approved. It is irrelevant to the assessment of MOD1.

In this section of the MOD1 Application, AGL also asserts, in the context of their Community Engagement Policy, that they seek to “Be a trusted and respected member of the communities in which we operate” .... We refer DP&E to the above discussion regarding AGL’s “engagement” with our communities. We don’t trust AGL. We have as much respect for them as they have shown to us.

Further, AGL has owned the relevant land for over 7 years. During this time, numerous complaints have been made by immediate neighbours regarding AGL’s failure to control noxious, invasive weeds. These weeds are encroaching onto neighbour’s agricultural land and the Lachlan River. These complaints have been **ignored** by AGL.

AGL has shown complete contempt for their neighbours and our communities. It is submitted that any discussion by AGL regarding their desire to be part of our community has no basis in reality. AGL’s disrespect for us has continued since their ambush with this MOD1 Application.

“AGL considers that extending the lapse-date to review the project and enable recommencement of community and stakeholder engagement will provide maximum transparency for the local community in relation to the future of the DPP”. It is submitted that “maximum transparency” will be achieved by AGL discontinuing this farce, submitting a new Application for whatever it is that they might like to propose later, and to have that proposal assessed in the context of a new Environmental Assessment. The data in the original EA is already 6-7 years old. It will be 8-9 years old by the time the extension sought expires.

**It is submitted that all references to “alternative technologies” or “cost effective solutions”, all rhetoric about future consultation and any discussion about engagement or reengagement are irrelevant to the assessment of this MOD1 Application.**

**NB.** We have just this evening (Thursday April 13 at 6.30pm) received an update from AGL purporting to address our concerns as expressed at the “Community Engagement Activity” in Dalton on April 5. A Q&A response. Never have we seen such a crock. Such a misrepresentation of reality. Even from them. Well, to be honest, we probably have seen even worse. But at this point in the process.... Unbelievable... We don’t have time to address the mistruths that are in that document. I trust that the discussion above is sufficient to describe how we feel. We have attached to this submission a video of the meeting.

- **Increased Private Sector Investment Consistent with Government Policy:**

With respect to the assertions in this section of the MOD 1 Application, we simply point out that if a \$1.5 Billion facility can return a profit from operating “typically 3-5% of the year”, it couldn’t possibly “restrain costs for the whole economy”. It is the fact that “peaking” generation can demand **thousands** of times the price of base-load generation that makes projects such as the DPP viable. A facility like AGL’s proposed DPP does nothing to “restrain costs”. It is all about maximizing profits, at the expense of consumers.

- **Socio-Economic Benefits**

AGL asserts that the lapse date extension “would not change the positive socio-economic benefits of the DPP, rather would better enable the positive employment and other socio-economic benefits of the DPP to be realised”.

So, given that AGL have raised the issue, we must **again**, revisit this AGL spin about the “positive socio-economic impacts”. This requires an examination of the “benefits” mooted, and the context within which these **opinions** are espoused.

Firstly we must point out that the “value-add GDP and household income effects” of \$291.3 million are based on “780MW of generating capacity” of Stage 1. Stage 1 is approved up to 750MW generating capacity. We cannot allege that this is an intentional misrepresentation of the facts. At best it represents indifference to the detail. Inattention. Disrespect, even contempt, for the process. AGL will assert that it is a typo. Even though it occurred in both Chapter 11 of the EA and in this MOD 1 Application.

So what are these “value-added GDP and Household income effects”? There is absolutely no foundation provided for this. What does it mean? What is it based on? How is it calculated? Is this an annual contribution or perhaps over 40 years? Is it “net” of the negative economic impacts that have already been visited upon us and will be exacerbated by any commencement of the DPP? Given the complete lack of engagement with our communities, how could AGL be even remotely aware of the negative economic impacts on us? Again, AGL is dismissive, disrespectful and arrogant with respect to their treatment of “us”.

We are not in a position to know what evidence will be required by DP&E from AGL to support this “economic benefit” statement. We hope that AGL will be required to provide some evidence, any evidence, with respect to the “economic benefits” that they have included in this application as a justification for it. The onus is on us to disprove such assertions, yet no basis is provided to allow us the opportunity to do so. If we similarly pulled some figures out of our collective butts about the negative impacts, AGL would simply say in their Submissions Response that such figures had no basis. But we acknowledge that the anus (sorry: typo) is on us. We will proceed on the basis that negative impacts on our communities have not been included in AGL’s estimations.

### **Jobs:**

AGL continues to spruik the possibility of jobs for locals. As you will be aware, in the EA the numbers of workers varies greatly depending on the matter being addressed. “250,” “200,” “150” ... “10 long-term” jobs, “operated remotely”, “maybe a job for a cleaner”. Perhaps the most detailed consideration of staffing numbers is in Appendix F of the EA relating to Traffic and Transport. At p. 20 thereof, the “typical workforce” is 45 construction staff. The peak workforce is stated to be “140 construction for a period of up to 2 months”. Where the “250 employees for each stage of construction” comes from is not clear. It may not even be true...

As competent as we are here in Dalton and Gunning, there are not many of us with the skills or experience that would be required to build a \$1.5 Billion power station. We have previously asked AGL to provide us with job descriptions for the jobs that they are saying we might get preferential treatment in securing. AGL has referred us to Leightons who have no idea what we are talking about. Regardless, I’m not sure that any of us would give up the jobs we have to get a 2 month stint building something that will have serious negative impacts on where we live.

What is clear however, is the impact that this Application is having on local jobs. Not the extension that is proposed. Not the construction or operation of the DPP. Just the Application for the extension of time. There are at least two building projects that have been put “on hold” since AGL’s ambush. Almost \$1 million in construction that is no longer going ahead because of the uncertainty created by the resurrection of the DPP. \$1 million that would have been contributed directly to the local economy.

Further, the towns of Gunning and Dalton have changes significantly in the intervening years between the suspension of the DPP and its current attempted resuscitation. There are many new

businesses and the significantly increased tourism that our district is attracting ensures that these businesses are succeeding. And they are employing far more local people than the DPP ever will.

**It is submitted that the representations made in the MOD1 Application with respect to socio-economic impacts of jobs for locals are as deceptive and spurious as they were when they were made in the context of the original assessment, 5 years ago.**

#### **Land values:**

Despite the assurances of the AGL Engineer who attended the “AGL Community Engagement Activity” at Dalton, we know that the value of our properties has declined since the announcement of AGL’s attempted resuscitation of the DPP.

The existence of an approval for an industrial facility on our doorstep is now something that real estate agents are aware of, and therefore must disclose to any prospective purchaser. At the aforementioned “activity”, immediately preceding the espousing of the engineer’s opinion about massive power stations in idyllic rural locations not impacting property values, we heard from Michael Gray, Principal, Yass Real Estate(@ 1.32). Michael purchased land just south of Dalton. Since the MOD1 application was brought to his attention, he has put his house-build “on hold”. Like so many others, he was not aware of AGL’s DPP conditional approval when he purchased his land.

Michael spoke of his experience as a consultant and valuer. He stated that it was indeed difficult to provide any estimate of the devaluation of property that resulted from a development, or proposed development, such as the DPP. Not because it was difficult to quantify. But because it was **impossible to sell a property** if such a development was brought to the attention of the prospective purchaser. So the “engineer” wasn’t necessarily wrong. There may very well be no evidence of property devaluation. But it is because the properties don’t sell at all ( or are acquired by the operator under a “negotiated settlement” to which a confidentiality agreement applies, so that the settlement price is never disclosed).

We know that our properties are devalued. Now. Before any decision has been made with respect to MOD1. Before the DPP, whatever that now is, has commenced. We live where we live for the peace, quietness, clean air and community. These are the same things that prospective purchasers are looking for. But we, and any real estate agent we might engage, have a Duty of Disclosure to bring the DPP to their attention.

Similarly, the DPP is a material matter that affects the value of the security afforded by property in mortgage contracts with lenders. It creates uncertainty in the eyes of lenders and, again, is something that must be disclosed in applications for finance. This is concerning for us all. But it is extremely concerning for our older residents, some of whom are looking at having to move to aged-care residential facilities in the very near future. For many, their home is the only asset they have against which the necessary finance can be secured. Common sense, and the evidence of property experts clearly indicates that their property values have already been adversely affected and that they will struggle to find a buyer for their properties at any price. The stress and fear this MOD1 Application is causing for these older community members is an abhorrent and unacceptable consequence. It cannot simply be swept aside by references to the “carbon constrained environment” or other AGL spin used to avoid addressing our concerns.



It is submitted that the mere possibility of the DPP has already had serious and significant negative impacts on the value of our properties. Any approval of this MOD1 extension of time Application will extend the uncertainty and financial insecurity that has already resulted from it

**It is submitted that the “socio-economic benefits” discussed by AGL in their MOD1 Application are unsubstantiated and fail to consider the negative impacts on residents and our communities.**

- **No Change to Scope as a Result of Extending the Lapse Date:**

**scope/skōp/**

noun

1. the extent of the area or subject matter that something deals with or to which it is relevant.
2. the opportunity or possibility to do or deal with something.
3. a telescope, microscope, or other device having a name ending in *-scope*.
4. the length of cable extended when a ship rides at anchor.
5. the range of the effect of an operator such as a quantifier or conjunction.

verb

1. assess or investigate (something).
2. look at carefully; scan.

Regarding “scope” a verb, it is submitted that extending the lapse date could dramatically change the ability of the DP&E, or anyone else, to assess and investigate any subsequent MOD2 Application. As discussed above, if any approval granted referenced AGL’s mooted MOD2, the environmental impacts of that Mod could end up being assessed against itself.

Regarding “scope” as a noun, any extension of the lapse date will clearly change “the opportunity or possibility (for AGL) to do or deal with something.” That is the whole point of this MOD1 Application.

Further, we agree that an extension of the lapse date will not change “the extent of the area or subject matter that (the DPP) deals with or to which it is relevant”. We think that AGL is trying to say that, while SO much has changed for them over the last 4 ½ years since they suspended the DPP, nothing has evolved in the rest of world in the 6-7 years since the DPP EA was prepared. The situation for AGL is apparently quite fluid and uncertain in the 2 years ahead of them, but nothing is expected to change in the rest of the world over that same period.

Globally, nationally, regionally and locally, things have changed dramatically and will continue to do so. But the “scope” of the DPP is limited to the environment existing 6-7 years ago. The “scope” of the DPP should change. The DPP is relevant to many issues and stakeholders either not identified in the original EA, or that have experienced “transformative change” (Thanks Tony Chappel, we love the smell of a good tautology in the morning) over the intervening years. The Gunning community, through the very heart of which the insane amount of construction traffic will flow for up to 4 years, has changed dramatically. There are many new businesses and the significantly increased tourism that our district is attracting ensures that these businesses are succeeding. And they are employing far more local people than the DPP ever will. There are a significant number of new residents and property owners in the Dalton community, many within the immediate vicinity (3km) of the proposed DPP site. Nearly all were completely unaware (because of AGL’s total lack of consultation and engagement) of the DPP. Communities of several critically endangered species have been discovered. Lots of things have changed. The problem is

that an approval of MOD1 denies the recognition of the change that has occurred and an assessment of the impacts of the DPP in light of those changes.

An approval of this MOD1 Application will enable AGL to continue to ignore the changes that have occurred in our environment since they prepared their EA. **We submit that changes in the “scope” of the DPP must be recognised and that the MOD1 should be refused because of it’s failure to acknowledge what has changed in the rest of the world. Any proposal must be the subject of a new application.**

- **Changes to The Surrounding Environment**

AGL have acknowledged in their application that shit has changed since they got their approval. Mr. Bean provides us in the MOD1 Application with a couple of variations on the theme:

“AGL seeks to review the DPP in line with current technology and energy market circumstances.”

“Since AGL suspended development of the DPP, energy conditions have changed.”

“Since the original EA was prepared, energy technology has evolved...”

A great deal has also “evolved” in our lives too Nigel, in our communities and our physical environment, in the 6-7 years since AGL prepared their EA.

#### **New residents and property sales.**

AGL announced their suspension of the DPP in October 2012. Since that announcement our communities have neither seen nor heard from them. There has been no engagement, no consultation, not even a whisper. Until the MOD1 ambush on 16 March 2017. In the intervening 4 ½ years, significant changes in the populations and communities of Dalton and Gunning have occurred.

AGL’s complete absence from Dalton and Gunning and their total failure to keep our communities informed regarding the status of the DPP, has resulted in significant investment decisions being made that otherwise might not have. Since 2013 there has been at least \$8.1 million in land sales and nearly \$1 million in sales of houses (All Homes data for “Dalton”). There has been over \$2 million spent on construction. There is another nearly \$1 million in construction that has been put on hold since the announcement of the MOD1 Application. There are a number of blocks of land (approved sub-divisions included) and houses which were on the market prior to the ambush. Evidence from real estate experts (rather than engineers) suggests that the vendors will struggle to find buyers given their legal obligation to disclose the potential of the DPP to prospective purchasers.

Real Estate Agents were not aware of even the existence of the DPP proposal or that it was still “live”. Vendors, even if they had been aware of the initial approval, had no cause to believe that it would be revived. We have heard nothing. We had no reason to think that we would be in the situation that we find ourselves in now. Both vendors and agents involved in the many property transactions that have taken place in this context, are now exposed to litigation for their failure to disclose this very material fact to prospective purchasers.

Apart from AGL’s failure to communicate which, it is submitted, is the real root of the problem now faced by those affected, there is also a complete failure in the Planning and titles registration system. In the absence of AGL keeping the communities informed about their intentions, relevant

parties to property transactions had no reasonable way of knowing about the DPP. There is nothing registered on the titles to land of even the “sensitive receptors” identified in the EA. The ULSC has assessed and approved Development Applications for sub-divisions and building approvals without informing applicants about the DPP.

Banks have lent money to facilitate these property transactions. The security backing these loans is now compromised. People may be sued for failures to disclose this material fact which clearly impacts the security they are offering against their mortgages.

Without going to the DP&E website and checking for Major Projects in Dalton, there was no way for purchasers, vendors, agents or financial institutions to know about the DPP. There is no reason that anyone would make such a search. There is no reason to suspect that there might be a major industrial facility proposed at the end of the valley, so close to a town, on the banks of the Lachlan River, amidst productive agricultural land.

Banks don't lend against questionable property values. But even the banks did not know about the DPP. A purchaser of land adjoining the AGL property did every title search imaginable. They were informed that AGL owned the adjoining property, but even AGL's own land upon which this DPP would be constructed had no notification on the title regarding the proposed DPP.

**In light of this, it is submitted that it is unreasonable and unconscionable that AGL's failure to keep stakeholders informed about the status of the DPP should lead to the exposure to litigation of those who did nothing wrong. The MOD1 extension of time Modification Application should be rejected so that the costs of AGL's failures are not borne by property purchasers whose property values may now be lower than the value of the mortgages they have secured to make those purchases OR by the vendors and agents who failed to disclose the material fact of this DPP proposal in a context where they genuinely had no way of knowing.**

### **Outdated policies and guidelines**

There are a number of important guidelines and models that were used or referenced in the original DPP EA. A quick search indicates just a couple of these guidelines that have now been superseded (see below). The DPP needs to be reassessed using the most up to date information at hand. AGL need to seek reports and assessment from the relevant agencies whose policies or guidelines have changed in the intervening years since the preparation of the EA.

1. The potential impact on air quality resulting from the operation of the DPP was assessed in accordance with the Approved Methods and Guidance for the Modelling and Assessment of Air Pollutants in NSW (2005). This model is now more than 10 years out of date and has been replaced by the Approved Methods and Guidance for the Modelling and Assessment of Air Pollutants in NSW (2016; <http://www.epa.nsw.gov.au/air/appmethods.htm>).
2. The aviation hazard analysis was compiled in accordance with the Civil Aviation Safety Authority's (CASA) Advisory Circular “Guidelines for Conducting Plume Rise Assessments” (June 2004). In 2012 these guidelines for conducting plume rise assessments were reviewed and they replace the 2004 guidelines (<https://www.casa.gov.au/standard-page/project-1107-review-guidelines-conducting-plume-rise-assessments-ac-139-05>).

3. The preliminary hazard analysis (PHA) assessment has been undertaken in accordance with the DoPs Hazardous Industry Advisory Papers (HIPAP) No 6 (Guidelines for Hazard Analysis) and HIPAP No 4 (Risk Criteria for Land Use Planning). These guidelines were updated in 2011 (<http://www.planning.nsw.gov.au/Policy-and-Legislation/Hazards>).
4. • The Environmental Assessment included reference to the Environmental Criteria for Road Traffic Noise (EPA, 1999), this document was replaced by the NSW Road Noise Policy from July 2011 (<http://www.epa.nsw.gov.au/noise/traffic.htm>).

### **Changes to physical environment**

A fresh assessment of habitat is required given the fact that intensive grazing ceased on the relevant land some 6 years ago. In this time, natural ecosystems and habitats are often revived.

Further, since the DPP's suspension, populations of several critically endangered species have been discovered– Golden spotted bell frog, Southern Pygmy Perch. It is vital that these creatures be afforded the protection of an assessment of the impacts of the DPP under a fresh EA.

### **Failure to comply with pre-commencement consent conditions**

AGL has failed to comply with several consent conditions in the conditional approval they received for the construction and operation of the DPP.

- (a) AGL has failed to establish a Community Consultative Committee, as they were required to do under the Project Approval. Although there was no timeframe attached to this condition, it is clear that many of the issues which have been identified in this submission could have been avoided, or the impacts lessened, had the proponent complied with this condition. It would simply have required AGL to, in their own words regarding their aspirations, 'Engage beyond baseline regulatory requirements'. AGL's lack of consultation and engagement and their failure to establish the CCC has perpetuated the antagonistic and adversarial engagement strategy that AGL first brought to town 6 years ago.
- (b) AGL has failed to comply with condition C 45 of the Conditions of Approval for the DPP. They did establish a "weather monitoring" station in accordance with condition C 41 but as to its effectiveness in reflecting local weather conditions, we are not convinced. An under-resourced DPE cannot go out to check the siting of these things. We, when retrieving run-away dogs and/or children have had cause to be in the vicinity thereof and, in inclement weather, found it a good place to seek shelter from the wind. In a nice depression surrounded by trees. Irrespective of the placement of the weather monitoring station and our concerns regarding the veracity of the data recorded by it, AGL have failed to comply with the Consent Condition c 45. AGL has neither made the weather data available in the prescribed manner within the prescribed time frame, nor secured an agreement from the Director-General to not do so. Further, it was brought to our attention, by none other than AGL's Dianne Knott, that the weather monitoring station has not been operating for the last couple of years. I understand that the recipient of this information has submitted a statutory declaration attesting to this conversation having taken place.

The weather data required to be collected is vital for the assessment of AGL's compliance with the noise propagation and air quality limits set in the Conditions of Approval for the DPP. Failure to comply with this condition has serious consequences for the veracity of the data in the EA upon which the modeling assumptions are made. It is submitted that failure to comply with this condition should be fatal to continued validity of the DPP approval.

## **CONCLUSION:**

It is our considered opinion that the proponent is seeking to whip us with the tail of the dying beast that is Part 3A, with the same consequences visited upon us as those surrounding the Uranquinty facility who were subjected to its first breaths.

AGL's time is up. If anything is to happen here, it must be looked at afresh, rather than allowing AGL to avail themselves of the discredited, disgraced and repealed Part 3A. Any proposal must be assessed in the context of a fresh Environmental Assessment and through the now vigilant and suspicious eyes of those whom it will affect. For the following reasons, we **OBJECT** to any approval of the DPP MOD1 Modification Application that the DP&E and the PAC might consider.

### **1. THE DPP IS DEAD**

It is submitted that the DPP, as it was approved in 2012, is no longer a 'live' project to which a lapse date extension Modification Application could apply.

- **Failure to comply with consent conditions:**

AGL has failed to comply with several of the consent conditions attached to their 2012 conditional approval for the DPP. **It is submitted that there is, therefore, no 'live' DPP to which an extension of time might be applied. The MOD1 Application should therefore be refused, declined, rejected.**

- **MOD1 is Application to allow time to make MOD2**

The terms of AGL's extension of lapse date MOD1 Modification Application make it clear that AGL seeks the extension of time to enable them to assess their options in order to proposed something other than the DPP as it is currently approved (MOD2). By specifically stating this as the reason for the MOD1 Application, and having at no part of the Application stated that a commencement of the DPP as approved is even contemplated, AGL has expressly conceded that the DPP is no longer a viable option for them. AGL has killed their own project. **It is submitted that there is, therefore, no 'live' DPP to which an extension of time might be applied. The MOD1 Application should therefore be refused, declined, rejected.**

### **2. If not dead, anything to do with MOD2 is irrelevant**

It is submitted that if the DPP is, somehow, deemed to still be alive and weakly kicking, the impacts of an extension of time modification thereto must be assessed without reference to

anything that may or may not occur in the future. **It is submitted that if this MOD1 Application is merely a request for an extension of time to commence, construct and operate the DPP, in the form in which it has been conditionally approved, any matter raised in the MOD1 Application pertaining to “alternative technologies” or “cost effective solutions”, all rhetoric about future consultation and any discussion about engagement or reengagement are irrelevant to the assessment of this MOD1 Application.**

### **What is relevant?**

Any extension of time to the permissible commencement of the DPP will perpetuate the real fears and insecurities that our communities are experiencing from the mere request for it. Significant investment decisions have been made in the absence of any indication that the DPP was even on the table, let alone the possibility of it being revived as it was about to pass into oblivion.

The Environmental Assessment against which the impacts of this proposal were assessed no longer reflects an accurate picture of the environment into which the DPP might be imposed. It is 6-7 years since the data in the EA was collected. There have been a significant change in our population and demographics. There are many new residents who have purchased property in the years since AGL disappeared, all whom have made such purchases because of the clean, green environment in which we live, and without any notice from the proponent regarding their intention to revive the DPP. There have been significant changes in the focus of our towns, toward tourism and related service businesses which provide employment for many local residents. Critically endangered species have been discovered. The Guidelines and policies of many agencies have been updated and superceded.

The only possible justifiable and quantifiable benefit that might come from the approval of this modification application will accrue to AGL. The uncertainty, stress, financial insecurity and real fear that we in our communities are currently experiencing will continue for another 2 years. We will pay the price for AGL's each-way bet. We will pay the premium for their “insurance policy”.

Part 3A was repealed before the DPP was approved. The transitional provisions under which the DPP is still being assessed are about to be repealed. This is a cynical attempt by AGL to avail themselves of the last breaths of Part 3A, to hold us hostage to their indecisiveness and pontification about their profitability while we wait and worry about what the future may hold for us. Any proposal by AGL to pursue the DPP, or whatever else they may have in mind now or at some future date, must be considered and scrutinised under a new Application and a fresh EA that will allow the proposal to be assessed against our environment as it is today.

**We object, most strongly to this AGL MOD1 Application for an extension of time to commence the DPP, as it is approved.**

**Alister Waine**

**On behalf of *Australians Against AGL Dalton Power Project (AAADPP)***

**We wish to attach the following online petition to this objection submission**

**<https://www.change.org/p/malcolm-turnbull-no-agl-gas-fired-power-station-for-dalton>**

## APPENDIX A

**From:** Dalton Power <daltonpower@agl.com.au>  
**Subject: RE: Dalton Power Station Community update March 2017**  
**Date:** 31 March 2017 11:35:01 AM AEDT  
**To:** Alister Waine

Good morning Alister

As we've discussed, AGL Energy's current application provides time to consider the gas-fired peaking power station in light of new technology, proposals including the Snowy Hydro pumped storage, and energy market conditions. Technology that AGL may consider to make the project more efficient and complement New South Wales' energy needs may include additions of solar, batteries, diesel, and higher-efficiency gas turbine options.

We are not considering modifying the approved project to a baseload power station.

If the extension to the approval is granted, we will continue to provide information and opportunities for the community to provide feedback as we review the proposal.

When Mr Cooke said "*it is important in the first instance for people to understand that this is a 'peaking' power station which will only operate at times of peak electricity demand. We estimate this means it will run for about 340 hours a year, or less than 20 days*" he meant exactly that.

The approximate 340 hours a year, or less than 20 days, are not consecutive and will be based on high electricity demand, such as extreme heat.

Kind regards

Dianne Knott

## APPENDIX B

### NON-COMPLIANCE WITH PRE-COMMENCEMENT CONSENT CONDITIONS:

This is the list.

THE PROPONENT SHALL...

B16. [Within 12 months of the date of this approval](#), unless otherwise agreed by the Director-General, the Proponent shall enter into a Planning Agreement with Council in accordance with Division 6 of Part 4 of the Act, to provide contributions to Council for a Community Enhancement Fund.

The contributions shall be consistent with those contributions identified in the letter from the Proponent to the Department dated 30 May 2012 titled "Dalton Power Station Planning Agreement with Upper Lachlan Shire Council".

<http://www.upperlachlan.nsw.gov.au/sites/upperlachlan/files/public/images/documents/uppe%20Council%20-%20Dalton%20Project.PDF> DONE - Dated August 2012

#### Ecological Monitoring

C7. An **Ecological Monitoring Program** shall be developed to monitor the effectiveness of the ecological mitigation measures implemented as part of the Project. The Program shall be developed by a suitably qualified and experienced ecologist(s) in consultation with the OEH and shall include, but not necessarily be limited to:...

*NSW Government 6 Department of Planning and Infrastructure (MP10-0035)* The Program shall be submitted to the Director-General for approval [no later than one month prior to the commencement of any clearing or construction that would result in the disturbance of native vegetation](#), unless otherwise agreed by the Director-General.

#### Biodiversity Offset Strategy

C10. The Proponent shall develop a **Biodiversity Offset Strategy** to outline how the ecological values lost as a result of the Project will be offset in perpetuity, with consideration to the *Principles for the Use of Biodiversity Offsets in NSW* (Office of Environment & Heritage website, dated June 2011). The Strategy shall be developed in consultation with the OEH and shall include, but not necessarily be limited to:....

The Biodiversity Offset Strategy shall be submitted to the Director-General for approval [at least one month prior to the commencement of any construction work that would result in the disturbance of any existing native vegetation, threatened species and/or their habitats and endangered ecological communities](#), unless otherwise agreed by the Director-General.

#### Biodiversity Offset Package

C11. The Proponent shall develop a **Biodiversity Offset Package** in consultation with the OEH... The Biodiversity Offset Package shall be submitted to the Director-General for approval. [Construction of the Project shall not commence until such time that the Biodiversity Offset Package has been approved](#) by the Director-General, unless otherwise agreed by the Director-General.

#### Hazards Studies

C13. [Prior to the commencement of construction](#) of the Project, (except for construction of those preliminary works that are outside the scope of the hazard studies) or as otherwise agreed by the Director-General, the following studies shall be prepared:



- (a) a **Fire Safety Study...**
- (b) a **Hazard and Operability Study (HAZOP)...**
- (c) a **Final Hazard Analysis...**
- (d) a **Construction Safety Study...**

## **Design and Landscape Plan**

### **C24. A Design and Landscape Plan**

The Plan shall be submitted for the approval of the Director-General at least one month prior to the commencement of construction of the Project,

## **WEATHER MONITORING**

C41. The Proponent shall establish and maintain a meteorological station on site within one month of the approval of the Project, with the capability of continuously monitoring the parameters set out in Table 1. DONE

C45. After a period of 12 months of meteorological monitoring, the Proponent shall forward to the Director-General a report describing the type and frequency of temperature inversion conditions prevailing at the site. The report shall be made available on the dedicated website for the project within 1 month of it being forwarded to the Director-General.

## **COMMUNITY INFORMATION, CONSULTATION AND INVOLVEMENT**

PAC Determination p.6 a community consultative committee to be established in general accordance with the *guidelines for Establishing and Operating Community consultative Committees for Mining Projects*.

### **Community Communication Strategy**

D1. The Proponent shall maintain and implement the Strategy throughout construction and operation of the Project. The Strategy shall be approved by the Director-General prior to the commencement of construction, or as otherwise agreed by the Director-General.

### **Complaints and Enquiries Procedure**

D2. Prior to the commencement of construction, or as otherwise agreed by the Director-General, the Proponent shall ensure that the following are available for community enquiries and complaints for the duration of construction and operation of the Project:

### **Provision of Electronic Information**

D4. Prior to the commencement of construction, or as otherwise agreed by the Director-General, the Proponent shall establish and maintain a new website, or dedicated pages within an existing website, for the provision of electronic information associated with the Project, for the duration of construction and the operation of the Project. The Proponent shall, subject to confidentiality, publish and maintain up-to-date information on the website or dedicated pages including, but not necessarily limited to:

### **Compliance Tracking Program**

D5. The Proponent shall develop and implement a **Compliance Tracking Program** to track

compliance with the requirements of this approval. The Program shall be submitted to the Director-General [for approval prior to the commencement of construction](#) and operate for the duration of the operation of the Project...

### **Clearing**

E2. [Prior to commencement of clearing](#), the Proponent shall implement mitigation measures, as identified in the Construction Flora and Fauna Management Plan required under condition E45(f), to minimise impacts to native vegetation (particularly threatened species and endangered ecological communities and their habitat).

### **HERITAGE**

E16. The Proponent shall [undertake consultation with the Buru Ngunawal Aboriginal Corporation prior to commencement of construction](#). The outcomes of the consultation shall be addressed in the Construction Heritage Management Plan required under condition E45(e).

### **TRAFFIC AND TRANSPORT**

E32. The Proponent shall temporarily seal Walshs Road from the intersection of Loop Road to the proposed southern site entrance to the Project site, and Loop Road from the intersection of the Gunning/Dalton Road to the intersection of Bevendale Road, [prior to the use of the roads by construction traffic](#).

### **ENVIRONMENTAL REPRESENTATIVE**

E43. [Prior to the commencement of construction of the Project](#), or as otherwise agreed by the Director-General, the Proponent shall nominate for the approval of the Director-General a suitably qualified and experienced Environment Representative(s) that is independent of the design, construction and operational personnel.

### **CONSTRUCTION ENVIRONMENTAL MANAGEMENT PLAN**

E44. [Prior to the commencement of construction of any stage](#), or as otherwise agreed by the Director-General, the Proponent shall prepare and implement (following approval) a Construction Environmental Management Plan for the Project....

The Plan shall be [submitted](#) for the approval of the Director-General [no later than one month prior to the commencement of each construction stage](#), or as otherwise agreed by the Director-General. [Construction works for each stage shall not commence until written approval has been received from the Director-General.](#)