

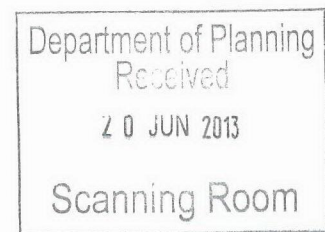
Local Aboriginal Land Council
DARKINJUNG

168 Pacific Highway Watanobbi NSW 2259
PO Box 401 Wyong NSW 2259
Phone (02) 4351 2930
Fax (02) 4351 2946
ABN 99 583 297 167
Email darkinjung@dlalc.org.au

18th June 2013

Executive Director, Major Projects Assessment
Department of Planning & Infrastructure
GPO Box 39
Sydney NSW 2000

Attention: Mr. Clay Preshaw



Dear Sir,

Re: State Significant Development Application No: SSD 4974, Wallarah 2 Coal Project

I refer to the above proposal and wish to submit the following comments in relation this matter.

The proposal is located within the boundary of the Darkinjung Local Aboriginal Land Council (LALC), and in fact, critical infrastructure for the development is a proposed rail spur across Darkinjung LALC owned land, being Lot 195 in DP 1032847.

The Darkinjung LALC is constituted under the *Aboriginal Land Rights Act 1983 (NSW)*. Section 51 of the Act defines the role of the Land Council as

"... to improve, protect and foster the best interests of all Aboriginal persons within the Councils area and other persons who are members of the Council."

The way in which it does this is to properly identify and manage its land holdings to establish and create meaningful outcomes that add value to the growing Aboriginal community. For these outcomes to be achieved, Darkinjung LALC must be provided an opportunity to exercise its functions under Section 52 of the NSWALR Act which are:

1. Land Acquisition
2. Land use and Management
3. Aboriginal Culture and Heritage
4. Financial Stewardship
5. Other functions prescribed by regulations

The Darkinjung LALC has viewed the exhibited material and recognise the significance of this project for the region. In terms of what the proposal means for the local Aboriginal community, the following comments are provided.

Aboriginal Culture & Heritage

The potential impacts from the proposal upon Aboriginal Cultural & Heritage have been investigated and documented within the Aboriginal Cultural and Heritage Assessment report, prepared by OzArk, dated December 2012, and forming Appendix S of the Environmental Impact Assessment for the proposal.

The Darkinjung LALC was consulted during field work and preparation of this report. A copy of Darkinjung LALC's comments are provided in the Appendices to the OzArk report.

It is noted that a number of cultural sites have been recorded within the area of potential impacts. Some of these sites may be susceptible to adverse impacts, particularly from subsidence. The extent of possible impacts can only be estimated at this stage.

It has been recommended that further survey, monitoring and documentation occur for these sites and other possible sites in the vicinity. It is also recommended that an Aboriginal Cultural Heritage Management Plan be prepared for proposal, and include further consultation with Registered Aboriginal Parties, including Darkinjung LALC.

The Darkinjung LALC requests that the recommendations contained in the OzArk Aboriginal Cultural and Heritage Assessment report, including previous correspondence from the Darkinjung LALC, be included as a condition on approval on any consent which may be issued for the project, to ensure appropriate measures are taken to preserve cultural records in the locality.

Access for critical infrastructure

The Darkinjung LALC is the registered owner of Lot 195 in DP 1032847, through and upon which Wallarah 2 Coal Project, is require to construct a rail line to transport coal from the stockpile area located off Tooheys Rd to the main northern rail line and then to the port of Newcastle.

We note that, despite part of the development intended to be constructed upon Darkinjung LALC's Lot 195, "*Landowner's consent*" (for Darkinjung LALC's Lot 195) was not considered necessary to enable lodgement of the development application with the Department of Planning, since the proposal has been lodged pursuant to SEPP (State & Regional Development) 2011, and is therefore not required under Cl. 49(2) of the Environmental Planning & Assessment Regulations 2000.

It should be noted that the requirements of Cl. 49(2) (lack of need to obtain *Landowners consent*) to the extent that they apply, should not be construed as satisfying the issue of 'informed consent' by the Darkinjung LALC for the proposal, including access across Lot 195.

The Darkinjung LALC reminds the Department of other obligations which, if the development is approved, will need to be in order before the rail corridor is physically constructed through Lot 195. This includes;

- Any compensation payable to the titled landowner, under the Mining Act 1992, and
- Any requirements of a *dealing approval certificate* and/or *registration approval certificate* issued under Division 4 of the Aboriginal Land Rights Act, 1983.

The Darkinjung LALC requests that in consideration of this matter and any consent which may be issued in respect to the proposal, contain relevant condition(s) to the effect of;

Satisfactory arrangements be made between the proponent and the Darkinjung Local Aboriginal Land Council prior to the commencement of any works through or upon Lot 195, or other land owned or vested to the Land Council and affected by the proposal, having regard to the relevant provisions of the Mining Act 1992, the Aboriginal Land Rights Act, 1983, or other similar and relevant legislation.

To date, the Darkinjung LALC has been involved in a number of meetings with the proponent to discuss various aspects of the proposal. These discussions are ongoing, particularly in relation to the development of a Memorandum of Understanding, Cultural Heritage and Access through Lot 195 as noted previously. The Darkinjung LALC will continue discussions with the proponent to find resolutions to these matters, which will be necessary, in the event that the Department approves the proposal.

Should you wish to further discuss this matter, please do not hesitate to call.

Yours sincerely



Sean Gordon
Chief Executive Officer
Darkinjung Local Aboriginal Land Council