

27 July 2016

The Hon Anthony Roberts, MP
NSW Minister for Industry, Resources and Energy
Level 37 Governor Macquarie Tower
1 Farrer Place
Sydney NSW 2000

By email and post: office@roberts.minister.nsw.gov.au

Copy to: Kylie Hargreaves, Deputy Secretary, Department of Industry:
Resources & Energy (kylie.hargreaves@business.nsw.gov.au)

Dear Minister

Hume Coal – Cancellation of Mining Rights

1. We act for Coal Free Southern Highlands Inc. We are instructed to write to you regarding our clients assessment that Hume Coal is not a “fit and proper person” within the meaning of section 380A of the *Mining Act 1992* (NSW) (**the Act**). It is our client’s contention that if you are of the view that Hume Coal is not a fit and proper person its existing mining rights should be reconsidered and any further applications to mine coal in NSW by Hume Coal ought to be refused.
2. Our client understands that the introduction of the fit and proper person provision in the Act empowers you as the decision-maker to refuse to grant or renew a mining right, as well as to cancel or suspend a mining right, if you determine a person is not fit and proper to hold a mining right.
3. Under section 380A(2) of the Act, the decision-maker may take into consideration a number of matters in determining whether a company is a fit and proper person to hold a mining right. These considerations include:
 - criminal conduct issues;
 - whether the company or a director thereof is not of good repute; and
 - whether the company or a director thereof is not of good character, with particular regard to honesty and integrity.
4. We note that when then Premier O’Farrell read the *Mining and Petroleum Legislation Amendment Bill 2014* for a second time, he made the point that the Bill amends the provisions of the Act to introduce a “*new test ... allowing the decision-maker to cancel or refuse to grant or renew a mining right or petroleum authority if, in the decision-maker’s opinion, the applicant is not a ‘fit and proper person’*”.¹

¹[http://www.parliament.nsw.gov.au/prod/parlament/nswbills.nsf/0/0ea2e5897fe517bfca257c8a0012b284/\\$FILE/2r%20Criminal%20Assets%20&%20Mining.pdf](http://www.parliament.nsw.gov.au/prod/parlament/nswbills.nsf/0/0ea2e5897fe517bfca257c8a0012b284/$FILE/2r%20Criminal%20Assets%20&%20Mining.pdf).

5. We also understand, as the former Premier said at the time, that when “a decision-maker is taking action that will have a significant impact on a title holder's rights, such as cancelling a title, the decision-maker will have to be satisfied to a high standard of the relevant grounds.”²
6. Given the need to be satisfied to a high standard that there are grounds to suspend or cancel a mining right, our client has undertaken its own research in relation to compliance issues, potential human rights infringements and bribery and scandal convictions.
7. To understand part of our client's case that Hume Coal is not a fit and proper person in accordance with the law, it is necessary to understand the links between POSCO, POSCO C&E, Daewoo International and Hume Coal. These are set out at **Attachment A** of this letter.
8. It is our client's contention that as Hume Coal is not a fit and proper person in accordance with the Act, it would be appropriate for you to exercise your discretion and cancel or suspend Hume Coal's mining rights under the Act. Our client has set out its case in this regard and it is provided to you as **Attachment B** to this letter.
9. In light of the substantiated allegations (including from the UN) of human rights abuses by related corporations of Hume Coal in India and Uzbekistan, bid-rigging and bribery convictions by related corporations in South Korea, and serious environmental damage occasioned by misleading and deceptive conduct of related body corporates in Indonesia, our client asks that you give serious consideration to cancelling AUTH 349 and refusing to grant further mining rights to Hume Coal in the Sutton Forest, in accordance with the fit and proper person provisions in the Act.
10. Our client seeks a meeting with you to follow up on the matters raised in this letter and its attachments.
11. We look forward to your timely response to the matters raised. If there are any matters that you would like to discuss please do not hesitate to contact the writer on 0292626989 or by email at sue.higginson@edonsw.org.au.

Yours sincerely,
EDO NSW



Sue Higginson
Principal Solicitor

Enclosures: Attachment A
Attachment B

² *Criminal Assets Recovery Amendment Bill 2014 and Mining and Petroleum Legislation Amendment Bill 2014*, Mr Barry O'Farrell (Premier and Minister for Western Sydney), Second Reading Speech, (25th February 2014) p 55.