APPENDIX 6

Responses to Commission's Questions from Proponent and Agencies

NSW Planning & Infrastructure
Responses to PAC Queries

Wallarah 2 Coal Project

1) **The PAC asked for advice on what has changed between the first project application and the second development application for the Wallarah 2 Coal Project that was sufficient for P&I to change its recommendation from refusal to approval.**

There were two important issues in P&I's recommendation to refuse the initial Wallarah 2 Coal Project application.

The first was a clear request from the consent authority (ie the then Minister for Planning) to draft a refusal instrument and supporting assessment report, rather than a recommendation for approval. This was entirely within the prerogative of the then-Minister, in exactly the same way as a Council retains the right to request its planning department as to how a development application should be assessed and consequently determined.

The second was the actual grounds on which refusal was recommended. These focused on information inadequacies in the original EA for the project application and later associated documents. As such, these inadequacies could be readily addressed by provision of a more extensive and detailed EIS, which P&I judged was indeed provided for the second development application.

Some of the ways in which the various grounds of refusal were addressed in the second EIS and P&I's assessment are set out below:

- *Subsidence – uncertainty around the subsidence predictions for the project, particularly in the western portion of the site under Jilliby Conservation Area and the Wyong State Forest:*
  - revised subsidence model/predictions which were peer reviewed by Hebblewhite;
  - additional geology report in EIS with peer review in RTS;
  - DRE (Dr Gang Li) raised no concerns about subsidence modelling/predictions;
  - only 7 of 35 proposed LWs within Jilliby SCA (and only at Year 24 of project); and
  - residual (inherent) uncertainties accepted by P&I and dealt with through performance measures and Extraction Plan process.

- *Surface Water – the project does not adequately address potential surface water quality impacts, resulting in uncertainty around the ability of the project to meet acceptable water quality outcomes:*
  - revised groundwater and surface water impact assessments;
  - extensive borehole network with Packer testing;
  - lack of connective cracking predicted and accepted (NOW assessed as Level 1 under AIP);
  - EPA provided discharge limits, Kores accepted;
  - P&I comprehensively assessed potential subsidence impacts in all streams, particularly Little Jilliby Jilliby and Jilliby Jilliby Creeks;
  - performance measures developed for both negligible and minor impacts, based on Bulli Seam Operations project, to deal with likely minor impacts; and
  - adaptive management approach in Extraction Plan process.

- *Ecology – uncertainty around the ecological impacts of the project, particularly in the western portion of the site, as a result of a lack of ecological survey effort combined with uncertainty as to subsidence predictions in the area:*
  - further ecological surveys provided in EIS;
  - note that P&I requested further surveys during adequacy test for EIS;
  - OEH raised concerns re survey effort in submission on EIS, addressed by further surveys and covered in RTS;
  - frogs were only residual OEH concern, and addressed by Frog Research Program in conditions;

- subsidence-induced impacts addressed in revised subsidence predictions, carefully considered by P&I in report and addressed by performance measures/Extraction Plan process.

- *Heritage – uncertainty around the heritage impacts of the project, particularly in the western portion of the site, as a result of a lack of heritage survey effort combined with uncertainty as to subsidence predictions in this area:*
  - revised heritage impact assessment in EIS, including additional survey work in western part of project area;
  - only 9 sites likely to experience subsidence-induced impacts; and
  - OEH satisfied with performance criteria of not greater than negligible.

- *ESD/Precautionary Principle – in light of the above, the project is not considered consistent with the principles of ecologically sustainable development, including the precautionary principle, and as a consequence is not considered to be in the public interest:*
  - the requirement to apply the precautionary principle in the absence of sufficient information was overcome by the provision of that information.

P&I also consulted with all key agencies on the DGRs for the second application and included careful consideration of grounds of refusal of previous project application and the PAC's recommendations.

P&I then undertook a comprehensive, detailed adequacy test (see timeline below) – not necessarily required under SSD provisions but considered important due to previous refusal.

- DGRs issued 12/1/12
- 1st EIS version received 16/10/12
- Agency comments sought
- Inadequacy / request for further information sent 5/11/12
  - comprehensive P&I comments provided – over 4 pages plus agencies comments attached
- 2nd version not received until 18/3/13
  - delay between 1st and 2nd due to additional information and survey work required
- Adequacy review of 2nd version contracted out to AECOM
  - AECOM provided 13 page comprehensive table summary of further additional information required
- 3rd and final version received 24/4/13
  - considered against previous comments and accepted, placed on exhibition 26/4/13

2) <u>The PAC asked for advice regarding recent mining and related development applications that had been granted for periods of greater than 21 years.</u>

Prior to around 6 years ago, P&I customarily prepared development consents for mining applications with a consent life of 21 years "from the date of grant of a mining lease" for the project. This project life reflected the maximum life of a mining lease under the *Mining Act 1992*. This period has no particular basis in planning law, and, in fact, most development consents (for other types of development, commonly including quarries) were granted without any limiting period to the consent (ie consents are ordinarily granted in perpetuity).

Around 6 years ago, P&I began to revise this practice, and to grant consents for mining, petroleum and extractive industry developments for the period sought by the applicant, up to a maximum of 28 – 30 years. It was considered that for these types of extractive development, a maximum consent life should be imposed (including for quarries), rather than providing a right to extract material without affording the power for a future generation to impose new conditions on that extraction. In some respects, this was in reflection of the ESD principle of intergenerational equity.

A list of recent mining and related approvals granted for greater than 21 years, over the past 2 years, follows.

Project	Application Number	Proponent	Development Type	Approval Date	Expiry Date	"Life" of Project
Lidsdale Siding Upgrade Project	MP 08_0223	Ivanhoe Coal Pty Ltd	Coal Mine	3-May-13	31-Dec-42	29 years, 8 months, 28 days
Maules Creek Coal Project	MP 10_0138	Aston Coal 2 Pty Ltd	Coal Mine	23-Oct-13	31-Dec-34	21 years, 2 months, 8 days
Boggabri Coal Project	MP 09_0182	Boggabri Coal Pty Ltd	Coal Mine	18-Jul-12	31-Dec-33	21 years, 5 months, 13 days
Bulli Seam Operations Project	MP 08_0150	BHP Billiton Illawarra Coal Holding Pty Ltd	Coal Mine	22-Dec-11	31-Dec-41	30 years, 0 months, 9 days
Abel Coal Project*	MP 05_0136 (MOD 3)	Donaldson Coal Pty Ltd	Coal Mine	4-Dec-13	31-Dec-30	23 years, 6 months, 24 days
Woodlawn Mine Project	MP 07_0143	TriAusMin Limited	Minerals	4-Jul-13	31-Dec-34	21 years, 5 months, 27 days
Bass Point Quarry Project	MP 08_143	Hanson Construction Materials Pty Ltd	Quarry	28-Jan-14	31-Jan-44	30 years, 0 months, 3 days
Calga Sand Quarry Project	MP 06_0278	Rocla Materials Pty Ltd	Quarry	23-Dec-13	31-Dec-38	25 years, 0 months, 8 days
Cooma Road Quarry Continued Operations Project	SSD-5109	Holcim (Australia) Pty Ltd	Quarry	27-Sep-13	31-Oct-35	22 years, 1 months, 4 days
Green Valley Sand Project	MP 08_0230	Rocla Pty Ltd	Quarry	21-Jun-13	31-Dec-43	30 years, 6 months, 10 days
Teralba Quarry Extension	MP 10_0138	Metromix Pty Ltd	Quarry	22-Feb-13	31-Dec-38	25 years, 10 months, 9 days
Oberon White Granite Quarry Project	MP 07_0122	Mudgee Stone Company Pty Ltd	Quarry	7-Sep-12	31-Dec-42	30 years, 3 months, 24 days

*Expiry Date was originally 31 Dec 2028, MOD 3 extended the project life by 2 years. Project "life" measured at both the original expiry date and modified date are greater than 21 years.

3) **The PAC asked for advice regarding:**
   a) **the extent of flooding impacts as a result of mine subsidence on land not previously subject to flooding, and whether this land needed special consideration;**
   b) **the relationship between the "yielding pillars" element of the mine design and the ability to repair residences and other structures subject to mine subsidence impacts;**
   c) **whether the mine's purchases of water access licences (WALs) could lead to an actual reduction in water available for town water supply for the CCWC, if the WALs were "sleeper" or "dozer" licences, rather than actively used licences; and**
   d) **the impact of subsidence on alluvial aquifer storage volumes, and whether such increase in storage represented a loss to available town water supply for the CCWC.**

P&I has sought advice from Kores's consultants on each of these issues. That advice is attached. If the PAC has residual questions on these matters, P&I will be happy to assist further.

---

1 RESPONSE TO DP&I ISSUES

This paper has been prepared in repsonse to a verbal query from DP&I requiring further information in relation to the Wallarah 2 Coal Project and potential implications in relation to flooding, pillar yield, water licensing and surface runoff. This response has been prepared by Hansen Bailey, Wyong Areas Coal Joint Venture (WACJV) and relevant specialists, where required.

1.1 FLOODING

1.1.1 Issue

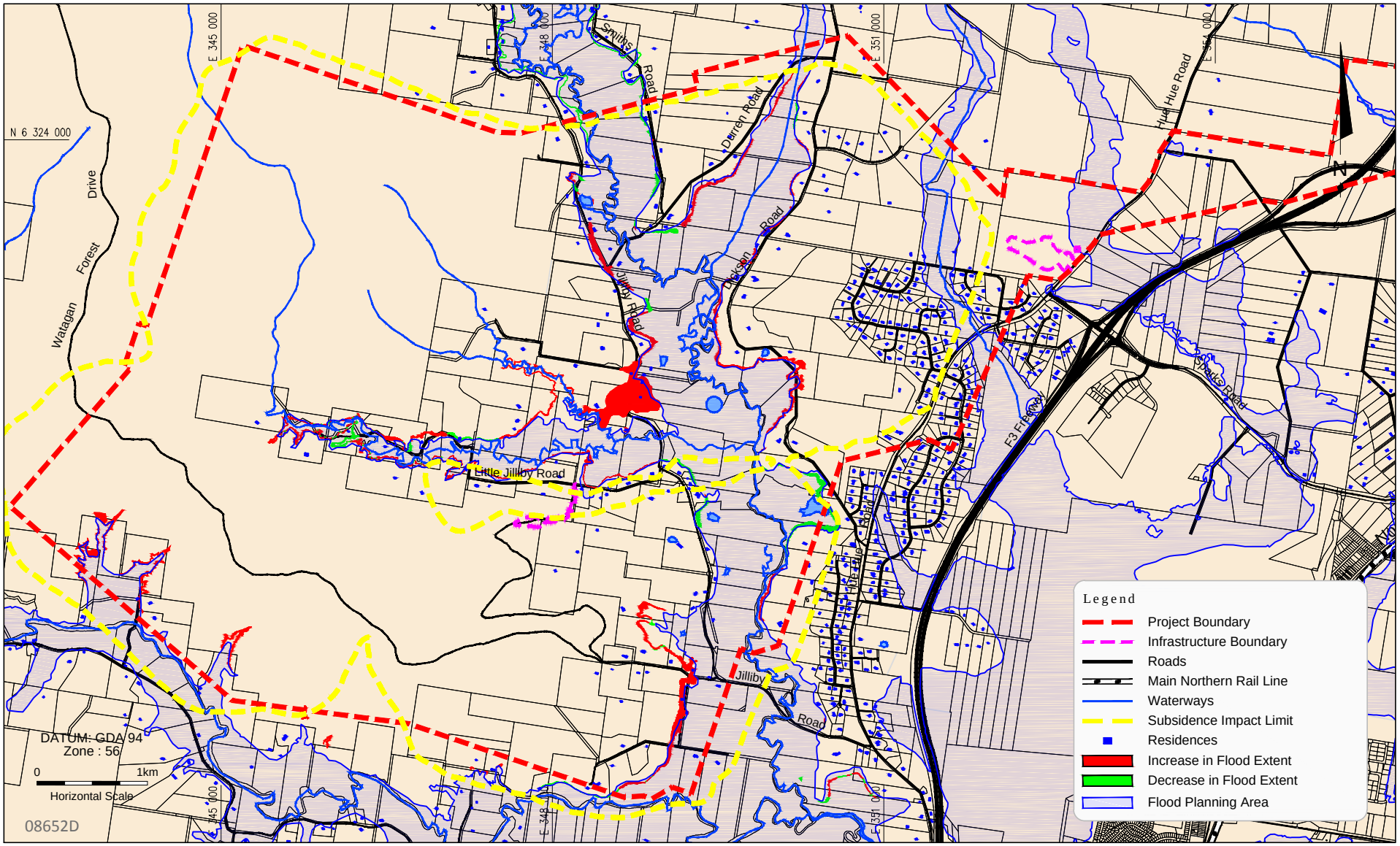
The Flood Impact Assessment has assessed the changes to flooding impacts on existing structures. The Project will cause some areas that are currently outside the 100 year ARI flood extent to become flood affected. The ability to build structures in these areas would be affected. What is the impact on the potential for future structures in areas that become flood affected as a result of the Project? How will WACJV manage these impacts?

1.1.2 Response

The Flood Impact Assessment (GHA, 2013) assessed the change in the 100 year ARI flood extent due to subsidence. This assessment predicted that the post-mining flood extent would increase in some locations and decrease in other locations. Figure 34 of the EIS identifies the areas where the flood extent will increase due to subsidence. These areas are currently outside the 100 year ARI flood extent but are predicted to become flood affected after subsidence occurs. These areas are shown in **Table 1**.

The *Wyong Local Environment Plan 2013* (Wyong LEP) designates certain land as "flood planning areas" (illustrated in **Figure 1**). The Wyong LEP also imposes constraints on development within flood planning areas. Clause 7.2 states that:

> *(3) Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that the development:*
>
> *(a) is compatible with the flood hazard of the land, and*
>
> *(b) is not likely to significantly adversely affect flood behaviour resulting in detrimental increases in the potential flood affectation of other development or properties, and*
>
> *(c) incorporates appropriate measures to manage risk to life from flood, and*
>
> *(d) is not likely to significantly adversely affect the environment or cause avoidable erosion, siltation, destruction of riparian vegetation or a reduction in the stability of river banks or watercourses, and*
>
> *(e) is not likely to result in unsustainable social and economic costs to the community as a consequence of flooding.*



WALLARAH 2 COAL PROJECT

Wallarah 2 COAL PROJECT | Hansen Bailey ENVIRONMENTAL CONSULTANTS

Subsidence Impacts on Flooding - 100 Year ARI Flood

FIGURE 1

As shown in **Figure 1**, some of the areas that are predicted to become flood prone are within the designated flood planning area. Under existing conditions, development in these areas can only be carried out if the conditions in clause 7.2 of the Wyong LEP are satisfied. The same conditions will need to be satisfied after subsidence has occurred. Therefore, the Project will not affect the ability to develop on this land.

However, there is also land outside the designated flood planning area that is predicted to become flood prone. There are multiple properties containing land that is predicted to become flood prone. However, the increase in the flood extent only accounts for a small portion of most of these properties. Accordingly, the Project is unlikely to preclude development on these properties.

There are only two privately owned properties where the increase flood extent accounts for a significant portion of the property area. These are located on low sloping land near the confluence of Jilliby Jilliby Creek and Little Jilliby Jilliby Creek. The Project may affect the potential for future development on these properties. However, both these properties contain existing dwellings. As such, it is less likely that the owners would have intentions of constructing further structures on these properties.

1.2 PILLAR YIELD

1.2.1 Issue

Residents within the Subsidence Impact Limit would be interested in understanding the timeframe for repair of their properties, if any damage arises. What is the Mine Subsidence Board's (MSB) policy for repair of damage to buildings?

What effect do the yielding pillars have on the time for subsidence movements to fully occur? This would affect the timeframe for the repair of damaged dwellings.

1.2.2 Response

The yielding pillar concept incorporated into the mine plan has been specifically designed to ensure that collapse of the goaf following longwall retreat occurs in a controlled and timely manner. Yielding pillars ensure that following completion of subsequent longwall panels, the final and ultimate extent of subsidence is complete, with no uncertainty associated with possible goaf "hang-up" (i.e. unpredictable delay in goaf collapse) and unexpected events occurring at unknown timeframes into the future.

The yielding pillar design therefore provides certainty to the operator, MSB and property owners in terms of the timeframe from the start of a panel until ultimate subsidence effects and impacts are complete. This certainty also supports a timely and well defined regime for pre-mining surveys (in consultation with individual owners), coincident inspections during mining and the repair of subsidence related impacts to structures.

In terms of extent to which MSB will undertake repairs, the priority is to ensure houses and other structures remain safe and serviceable. As such, MSB is committed to providing both interim (if required) and final repairs to structures in direct consultation with property owners

In relation to accepted subsidence damage claims, the usual practice is for the MSB to arrange, supervise and pay for the repairs, using its qualified and experienced staff. They consult the owners about the scope and timing of repairs, colour schemes and any other relevant matters. Sometimes final repairs must be deferred because subsidence is not complete.

Temporary repairs are made to ensure that the property remains safe and serviceable. At all stages of the process, the owner is consulted and kept informed of findings in easy to understand terms (summarised from 'Investigation of a Claim' http://www.minesub.nsw.gov.au).

This flexibility in being able to meet landholder requirements as much as practicable will also be addressed in the individual Property Subsidence Management Plans that will be progressively developed for every property in the Subsidence Impact Limit as mining progresses.

In summary, the yielding pillars mine design feature will not result in any extension to the duration of the primary subsidence process and therefore will not affect the timing of repairs undertaken by MSB. However, it will avoid the risk of any later unpredicted "secondary" subsidence activity that has been noted to have occurred in isolated cases in certain mines in the Newcastle mining district.

1.3 WATER LICENCES

1.3.1 Issue

WACJV will require Water Access Licences (WALs) to authorise the incidental water take associated with mining. The query drew a distinction between "active" water licences (which are regularly used) and "sleeper" water licences (which are rarely used). The query noted that if WACJV obtains WALs that are "sleepers", the actual water levels in the water authority's storages will be reduced because the Project will rely on the WAL on a more regular basis. It has been suggested that WACJV should be obligated to acquire active WALs.

1.3.2 Response

The requirement for WALs is established by the *Water Management Act 2000* (WM Act). The water management principles of the WM Act are set out in section 5. The principles in relation to water sharing are:

> *(3) In relation to water sharing:*
>
> *(a) sharing of water from a water source must protect the water source and its dependent ecosystems, and*
>
> *(b) sharing of water from a water source must protect basic landholder rights, and*
>
> *(c) sharing or extraction of water under any other right must not prejudice the principles set out in paragraphs (a) and (b).*

These principles are achieved through Water Sharing Plans (WSPs) which impose extraction limits for water sources. These extraction limits represent the maximum quantities that can be taken by WAL holders. The extraction limits ensure that there is sufficient water to maintain ecosystem health ("environmental water") and to satisfy basic landholder rights. The NSW Office of Water manages the issuing of WALs so that the total share component is generally consistent with the extraction limits. Provided that water is taken in accordance with WALs, there will be sufficient flows in the stream for environmental purposes and landholders' needs.

Therefore, the water management principles of the WM Act are achieved through limits on the quantities of water that can be taken. These principles will be achieved even if all licensed users take the maximum quantity that they are entitled to. Hence, the distinction between "active" WALs and "sleeper" WALs is immaterial.

WACJV will uphold the principles of the WM Act by obtaining WALs with the necessary share component. WACJV has already procured a WAL in the Jilliby Jilliby WSP area with a share component of 185 units. There is no additional benefit gained by compelling WACJV to obtain only WALs that are actively used.

In fact, the implementation of such a policy may disrupt other valid licence user activities (such as agricultural producers) when such displacement of competing users is not necessary. A condition of this kind would also create potential to significantly and artificially inflate the value of water shares within the WSP areas which have traditionally seen very limited trading.

Furthermore, the *Water Sharing Plan for the Central Coast Unregulated Water Sources 2009* imposes a long-term annual extraction limit of 36,750 ML/year on the local water utility. The availability of water for town water supply is governed by the WSP, rather than the quantity of water in dams. Therefore, imposing a requirement to obtain only active WALs does not generate any practical benefit.

It is also relevant to note that the Jilliby Jilliby Creek WSP excludes the alluvial groundwater from the WSP. It is the potential for a temporary increase in alluvial groundwater storage that gives rise to the requirement for the project to obtain WALs. A merging of the two local WSPs occur (i.e. Jilliby Jilliby Creek WSP and Central Coast Unregulated WSP) is scheduled to occur. If the revised WSPs include groundwater as part of the water source, then the requirement for WACJV to obtain such WALs is likely to be removed as there would be no taking of water from the water source.

1.4 REDUCTION IN SURFACE RUNOFF

1.4.1 Issue

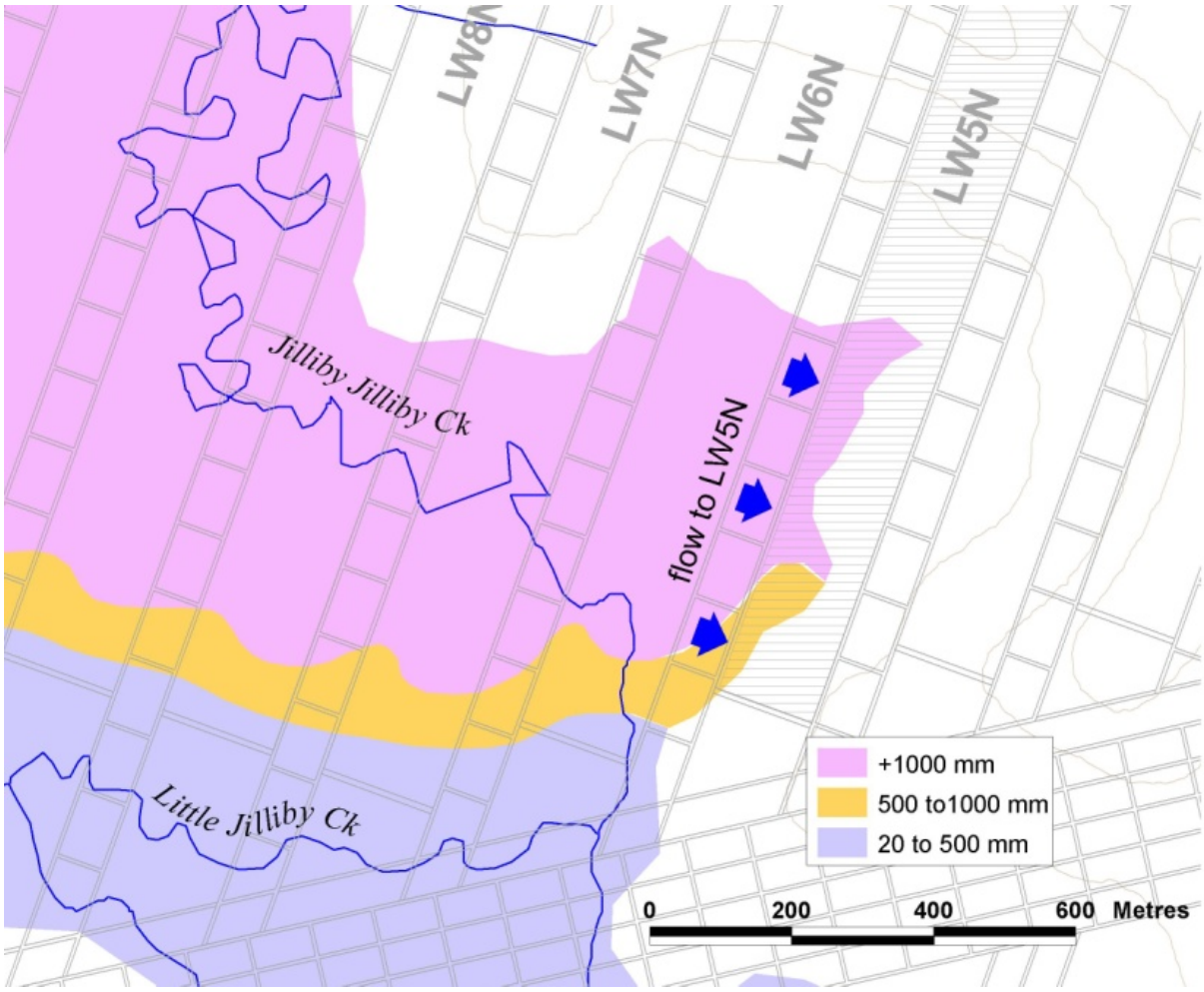
Subsidence of alluvial lands will temporarily increase the storage capacity of the alluvium. During the temporary increase in storage, a greater volume of rainfall and runoff may infiltrate into the alluvium. If this water is ultimately discharged into Jilliby Jilliby Creek, the additional infiltration of surface runoff is a transient diversion rather than a real water loss.

1.4.2 Response

The predicted change in groundwater storage attributed to subsidence is addressed in section 5.2.1 of the Groundwater Impact Assessment (MER, 2013). As a longwall panel is incrementally subsided downwards relative to an adjacent unsubsided area, there will be a hydraulic gradient established between the subsided and the unsubsided water tables. Groundwater will therefore flow to porous storage overlying the subsided panel from porous storage in the more elevated unsubsided area. This will lead to a fall in the water table in the unsubsided area and a rise in the water table in the subsided area until an equilibrium is attained.

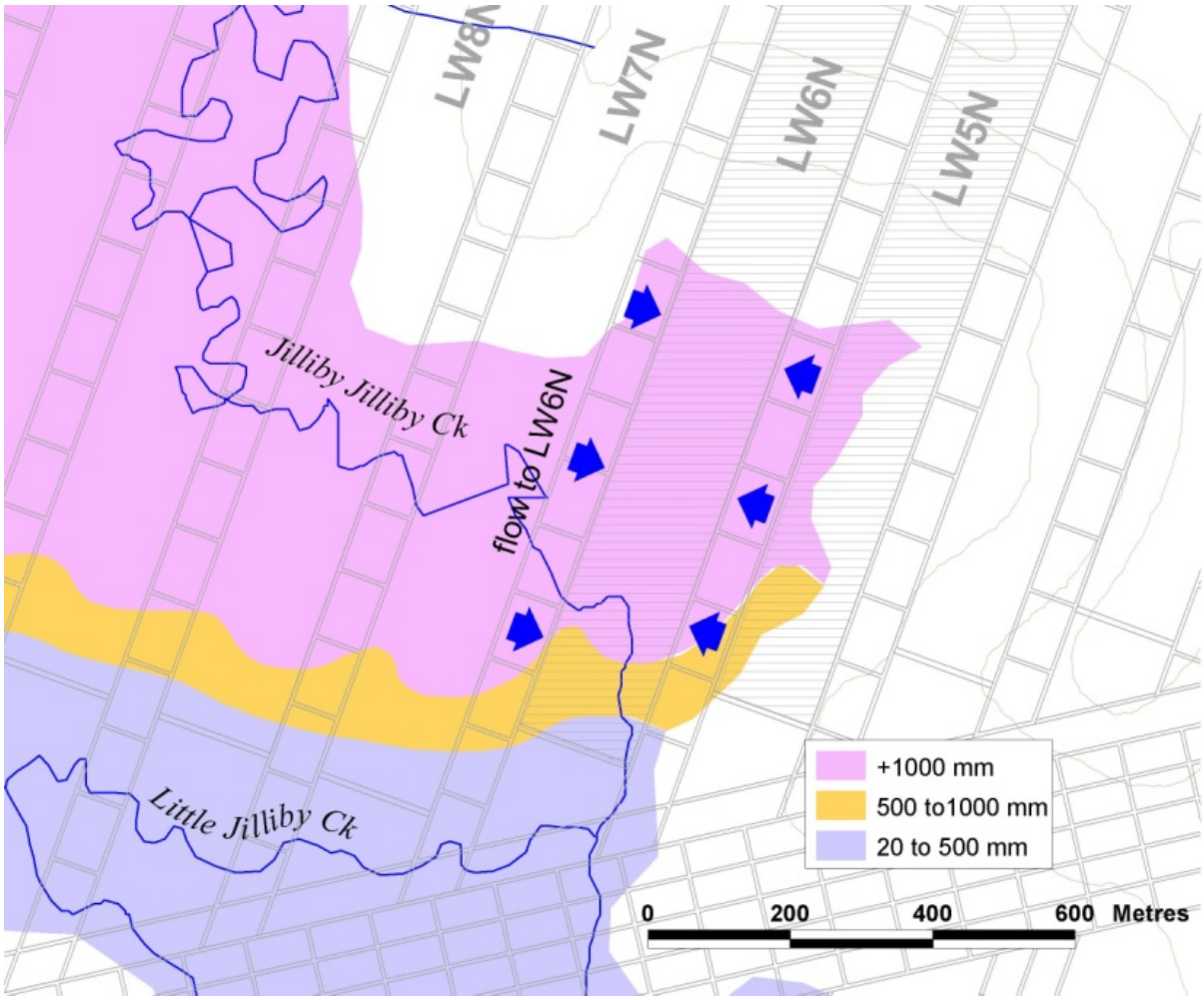
In the Dooralong Valley, this process will be first evident in LW5N (see **Figure 2**). As LW5N is extracted, groundwater will flow from the alluvium above the unmined LW6N to the subsided alluvium above LW5N, resulting in a lowering of the alluvial water table above LW6N, which will be replenished by rainfall recharge. The maximum redirection of runoff into alluvial storage is approximately equivalent to the subsided porous storage which has been estimated at 29ML for LW5N (refer to Table 4 of the Groundwater Impact Assessment).

Figure 2
Subsidence Zones and Alluvial Groundwater Flows to Area Above LW5N



Following subsidence of the next panel (LW6N) underlying Jilliby Jilliby Creek, groundwater will flow from the alluvium above the unmined LW7N to the subsided alluvium above LW6N and the process described above will be repeated. The temporary hydraulic gradient to the east (between the alluvial areas above LW6N and LW5N) will re-equilibrate towards a pre-mining scenario with groundwater migrating back to the alluvial zone above LW6N from the alluvial zone above LW5N (see **Figure 3**). Since the bed elevation of Jilliby Jilliby Creek is the fundamental control on the elevation of the groundwater table in the alluvium, the flow system is expected to closely resemble pre-mining conditions.

Figure 3
Subsidence Zones and Alluvial Groundwater Flows to Area Above LW6N



At a local scale (paddock scale) groundwater flow redirections will be quite complex and will depend upon surface topography, runoff systems and local variability in soil hydraulic properties. Adopting a highly conservative assessment where rainfall is negligible, the 'migrating' impact of the process described above has been assessed by calculating the porous alluvial storage overlying each subsided panel.

When subsidence of the alluvial lands is complete after extraction of LW15N, groundwater levels and flow directions at a regional scale are expected to be consistent with pre-mining conditions.

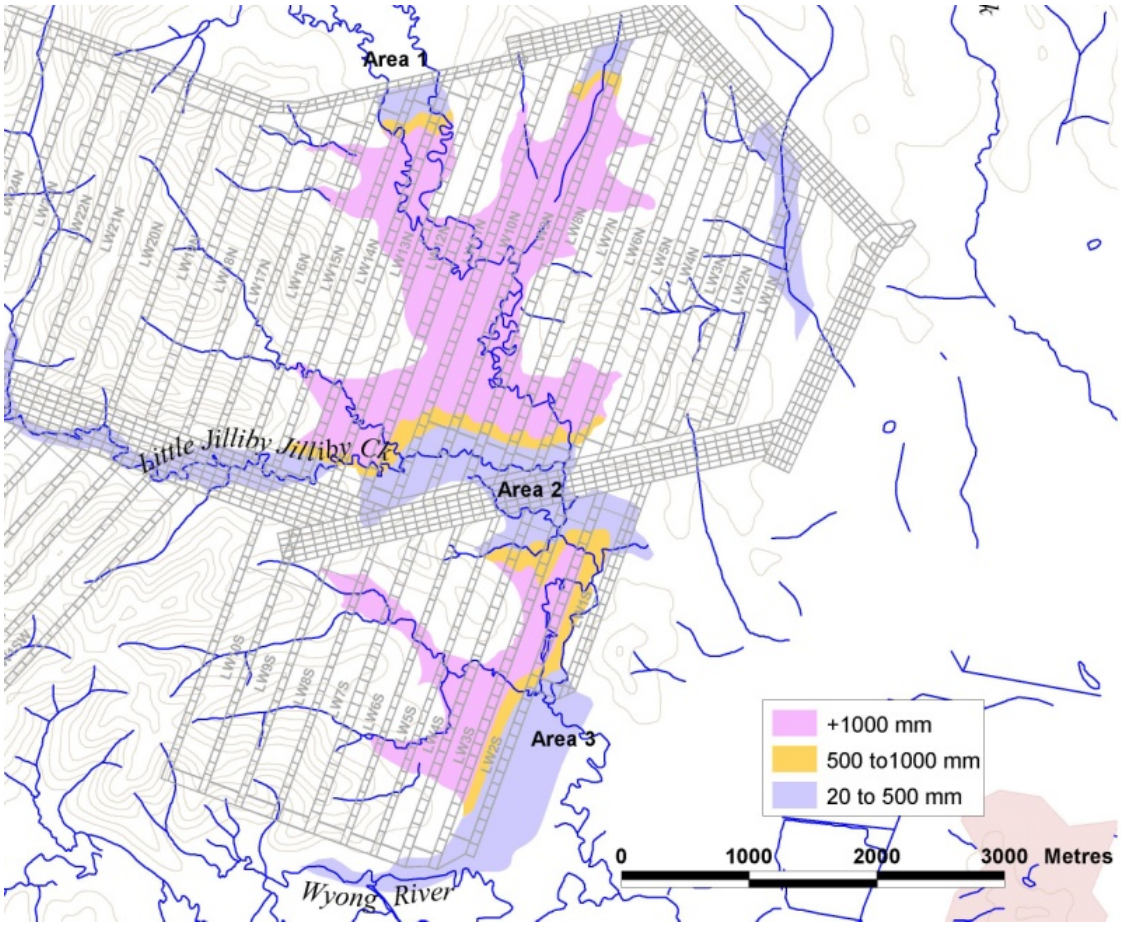
The exceptions are the areas identified on **Figure 4**:

- Area 1 – the northern fringe of the subsided alluvium where the long term range in elevations of the water table to the north of subsided areas may fall slightly and the range may rise slightly to the south;
- Area 2 – above the main headings and extending westward where the cumulative impacts of subsided panels to the north and south are expected to lead to a slight fall in the range in elevations of the water table; and
- Area 3 – the southern fringe of the subsided alluvium where the long term range in elevations of the water table to the north of subsided areas may rise slightly while to the south, the range may fall slightly.

In these areas, there may be a small component of runoff that is redirected and is not of a temporary nature. This water remains stored within the alluvial aquifer, so this does not represent a permanent loss of water to the system.

Figure 4

Subsidence Zones and Identified Areas of Long Term Change to the Alluvial Water Table Base Level



The *Water Sharing Plan for the Jilliby Jilliby Creek Water Source 2009* (Jilliby Jilliby WSP) applies to all water occurring on the land surface, but does not apply to any aquifers. As such, diversion of surface water into the groundwater system constitutes a "loss" of water from the Jilliby Jilliby Creek water source. Therefore, this water is administratively deemed to have been "taken" in a legal sense. However, this is not a loss in a practical sense, as groundwater remains a component of the hydrologic system.

To comply with the WM Act, WACJV will obtain the necessary WALs for the additional rainfall and runoff directed into the alluvium. This impact is considered to be temporary (as groundwater is not lost from the system). Once the water table re-equilibrates, the additional runoff will be returned to the surface water system via Jilliby Jilliby Creek. In the areas where differential subsidence will remain (see **Figure 4**), there may be some runoff that is retained in the alluvium. Although this water is taken from the water source in a legal sense, this water remains within the hydrologic system. Therefore, the increase in alluvial storage due to subsidence does not actually remove water from the regional water balance.

WACJV will obtain the necessary WALs for the maximum predicted impact of 270 ML/year. This maximum impact occurs in the year involving the extraction of LW9N, which results in the greatest increase in groundwater storage (181 ML).

The increase in groundwater storage associated with each longwall panel is shown in **Table 1**. This shows that the impact in most years will be significantly lower than the worst case year.

Table 1
Increase in Groundwater Storage Due to Subsidence

Panel	Mine year	Mine year	ML storage	Drainage catchment
LW 1N	3.0	3.5	11	Hue Hue Creek
LW 2N	3.5	4.0	4	Hue Hue Creek
LW 3N	4.1	4.6	2	Hue Hue Creek
LW 4N	4.9	5.5	0	Hue Hue Creek + Jilliby Jilliby Creek
LW 5N	5.6	6.3	29	Hue Hue Creek + Jilliby Jilliby Creek
LW 6N	6.5	7.2	55	Jilliby Jilliby Creek
LW 7N	7.3	8.2	92	Jilliby Jilliby Creek
LW 8N	.4	9.2	136	Jilliby Jilliby Creek
LW 9N	9.3	10.1	181	Jilliby Jilliby Creek
LW 10N	10.2	11.0	173	Jilliby Jilliby Creek
LW 11N	11.1	12.0	163	Jilliby Jilliby Creek + Little Jilliby Creek
LW 1S	12.1	12.5	83	Jilliby Jilliby Creek
LW 2S	12.5	13.2	119	Jilliby Jilliby Creek + Armstrongs Creek
LW 3S	13.3	14.0	92	Jilliby Jilliby Creek + Armstrongs Creek
LW 4S	14.1	14.8	62	Jilliby Jilliby Creek + Armstrongs Creek
LW 5S	14.9	15.6	37	Armstrongs Creek
LW 6S	15.7	16.3	19	Armstrongs Creek
LW 7S	16.4	17.0	24	Armstrongs Creek
LW 8S	17.1	17.7	12	Armstrongs Creek
LW 9S	17.8	18.3	0	Armstrongs Creek
LW 10S	18.4	19.0	5	Armstrongs Creek

Panel	Mine year	Mine year	ML storage	Drainage catchment
LW 1SW	19.1	19.8	7	Little Jilliby Creek + Wyong River
LW 2SW	19.8	20.5	5	Little Jilliby Creek + Wyong River
LW 3SW	20.6	21.2	5	Little Jilliby Creek + Wyong River
LW 4SW	21.3	21.9	5	Little Jilliby Creek + Wyong River
LW 5SW	22.0	22.6	6	Little Jilliby Creek + Wyong River
LW 6SW	22.7	23.2	8	Little Jilliby Creek + Wyong River
LW 12N	23.3	24.2	114	Jilliby Jilliby Creek + Little Jilliby Creek
LW 13N	24.3	25.1	116	Jilliby Jilliby Creek + Little Jilliby Creek
LW 14N	25.2	26.0	88	Jilliby Jilliby Creek + Little Jilliby Creek
LW 15N	26.2	26.9	44	Jilliby Jilliby Creek + Little Jilliby Creek
LW 16N	27.0	27.8	5	Jilliby Jilliby Creek + Little Jilliby Creek
LW 17N	27.9	28.6	0	Jilliby Jilliby Creek + Little Jilliby Creek
LW 18N	28.7	29.4	0	Jilliby Jilliby Creek + Little Jilliby Creek
LW 19N	29.5	30.2	0	Little Jilliby Creek
LW 20N	30.4	31.0	0	Little Jilliby Creek
LW 21N	31.2	31.9	0	Little Jilliby Creek
LW 22N	32.0	32.7	0	Little Jilliby Creek
LW 23N	32.8	33.4	0	Little Jilliby Creek
LW 24N	33.6	34.2	0	Little Jilliby Creek
LW 25N	34.3	35.0	0	Little Jilliby Creek
LW 26N	35.2	35.9	0	Little Jilliby Creek
LW 7SW	36.0	36.5	0	Little Jilliby Creek + Wyong River
LW 8SW	36.6	37.1	0	Little Jilliby Creek + Wyong River
LW 9SW	37.2	37.7	0	Little Jilliby Creek + Wyong River
LW 10SW	37.8	38.1	0	Little Jilliby Creek + Wyong River

Source: Table 4 of MER (2013)

In reply please send to: Head Office

Our reference:

Your reference:

Contact: G J Cole-Clark — CEO — (02) 4908 4395

17 April 2014

NSW Planning Assessment Commission
Commission Secretariat
Attention: Dr Shepherd AM
GPO Box 3415
SYDNEY NSW 2001

Dear Dr Neil Shepherd AM

WALLARAH 2 COAL PROJECT

Thank you for your correspondence dated 14 April 2014, seeking advice from the Mine Subsidence Board.

The *Mine Subsidence Compensation Act 1961,* provides a scheme for the payment of compensation, where improvements on the surface or household effects are damaged by subsidence, following the extraction of coal or shale. The Mine Subsidence Board is responsible for administering this legislation.

The Planning Assessment Commission correspondence covers a number of areas, and I am currently preparing a response. I will need to seek further information regarding the Warkworth decision, as it is not clear how this relates to the role of the Mine Subsidence Board under the Mine Subsidence Compensation Act. I anticipate providing the Board's response by 28 April 2014.

I will set 29 April 2014 aside in my diary, to provide the opportunity for a meeting, should additional information be required following consideration of my response by the Planning Assessment Commission.

Yours faithfully

G J Cole-Clark
Chief Executive Officer

MINE SUBSIDENCE BOARD

ABN: 87 445 348 918

NEWCASTLE
Ground Floor
NSW Government Offices
117 Bull Street
Newcastle West 2302
PO Box 488G Newcastle 2300
Telephone: (02) 4908 4300
Facsimile: (02) 4929 1032
DX 4322 Newcastle West

PICTON
100 Argyle Street
Picton 2571
PO Box 40 Picton 2571
Telephone: (02) 4677 1967
Facsimile: (02) 4677 2040
DX 26053 Picton

SINGLETON
The Central Business Centre
Unit 6, 1 Pitt Street
Singleton 2330
PO Box 524 Singleton 2330
Telephone: (02) 6572 4344
Facsimile: (02) 6572 4504

WYONG
Suite 3 Feldwin Court
30 Hely Street
Wyong 2259
PO Box 157 Wyong 2259
Telephone: (02) 4352 1646
Facsimile: (02) 4352 1757
DX 7317 Wyong

HEAD OFFICE
PO Box 488G
Newcastle 2300
Telephone: (02) 4908 4395
Facsimile: (02) 4929 1032

Certified System
Quality
ISO 9001
SAI GLOBAL

Email
mail@minesub.nsw.gov.au

Web
www.minesub.nsw.gov.au

24 Hour Emergency Service
Free Call 1800 248 083

In reply please send to: Head Office

Our reference:

Your reference:

Contact: G J Cole-Clark — CEO — (02) 4908 4395

19 May 2014

NSW Planning Assessment Commission
Commission Secretariat
Attention: Dr Shepherd AM
GPO Box 3415
SYDNEY NSW 2001

Dear Dr Neil Shepherd AM

Mine Subsidence Board - Claim review and alternate dispute resolution procedures.

Thank you for your inquiry seeking further advice from the Mine Subsidence Board regarding claim review and alternate dispute resolution procedures.

The *Mine Subsidence Compensation Act* 1961 *(Act),* provides a scheme for the payment of compensation or repair services, where improvements on the surface or household effects are damaged by subsidence, following the extraction of coal or shale. A claim for damage can be lodged under Section 12 of the *Act*.

All claims are assessed by qualified and experienced Mine Subsidence Board staff. Whenever necessary, staff will seek advice from external sources to assist with the determination of a claim. This could include soil testing, geotechnical or structural engineering advice, specialist information relating to specific features such as tiles, camera inspection of sewer and drainage pipe work and survey data.

The Mine Subsidence Board has introduced a range of policies and procedures to assist claimants where they are not satisfied with the initial decision on their claim or part of their claim by the Board.

Internal Review -All claimants are entitled to seek a review of their claim at no cost. The claim review procedure involves a reassessment of a claim by a technical officer not previously involved with the claim. All claim reviews are submitted to the Chief Executive Officer before submission to the Mine Subsidence Board members for determination. Claim reviews may involve further testing or ongoing monitoring and seek independent expertise in fields such as geotechnical or structural engineering.

The Board and most claimants prefer to resolve differences by consultation rather than the legal process. In almost all cases the claim review procedure achieves a successful resolution of issues. However, where this is not successful in finalising a claim, the Board has introduced other initiatives so the need to proceed to court is a less likely scenario. The Board has utilised numerous methods of alternate dispute resolution and the preferred method will depend on the circumstances of the claim. The following have been utilised by the Board in consultation with a property owner.

MINE SUBSIDENCE BOARD

ABN: 87 445 348 918

NEWCASTLE
Ground Floor
NSW Government Offices
117 Bull Street
Newcastle West 2302
PO Box 488G Newcastle 2300
Telephone: (02) 4908 4300
Facsimile: (02) 4929 1032
DX 4322 Newcastle West

PICTON
100 Argyle Street
Picton 2571
PO Box 40 Picton 2571
Telephone: (02) 4677 1967
Facsimile: (02) 4677 2040
DX 26053 Picton

SINGLETON
The Central Business Centre
Unit 6, 1 Pitt Street
Singleton 2330
PO Box 524 Singleton 2330
Telephone: (02) 6572 4344
Facsimile: (02) 6572 4504

WYONG
Suite 3 Feldwin Court
30 Hely Street
Wyong 2259
PO Box 157 Wyong 2259
Telephone: (02) 4352 1646
Facsimile: (02) 4352 1757
DX 7317 Wyong

HEAD OFFICE
PO Box 488G
Newcastle 2300
Telephone: (02) 4908 4395
Facsimile: (02) 4929 1032

Certified System
Quality
ISO 9001
SAI GLOBAL

Email
mail@minesub.nsw.gov.au

Web
www.minesub.nsw.gov.au

24 Hour Emergency Service
Free Call 1800 248 083

Direct negotiation - This involves development of a status report on all aspects a claim for discussion. The spreadsheet includes photographs, information from pre-mining inspections, a summary of advice from all sources and input from the property owner. Each item is discussed with the property owner with a view to resolution or an agreed position to accept advice following a specified action. Recently a number of claims have been successfully resolved utilising negotiation.

Independent engineering review - The Mine Subsidence Board will seek advice from an independent engineer. The engineering report is provided to the property owner and the advice relied upon to determine the claim. On occasions, the Board has provided a list of engineers with mine subsidence e experience from which the property owner can choose. The Board has also accepted suggestions from a property owner regarding a suitable engineer Negotiation between engineers representing the Board and a property owner has also been utilised, on occasions with assistance from the property owner's legal representatives.

Mediation/Arbitration -the Board has utilised both mediation and arbitration to assist with claim resolution. Arbitration is preferred as both parties agree to the process and a determination is provided. The Mine Subsidence Board pays for these arrangements and a person with the relevant experience is selected from the Institute of Arbitrators and Mediators Australia.

Expert opinion - this process may be utilised where information is required for specific damage. For example, brickwork or tiles.

Benefit of Doubt - The Board has a 'benefit of doubt' policy that is applied to claims at the time of mining

Pre-mining Inspections - where predicted mine subsidence is to have a significant effect on surface improvements, the Board offers to undertake Pre-Mining Inspections at no cost to the property owner. Pre-Mining Inspections establish the condition of a dwelling prior to mining inspections are completed free of charge. These inspections can be utilised to resolve a disagreement as to whether damage pre existed mining.

Appearance before the Board - when all avenues of investigation have been completed, a claimant may apply to appear before the Board Members to highlight any concerns they may have regarding their claim. This information is considered by the Board Members in determining a claim review.

Final inspection following repairs - Following repairs to mine subsidence damage, Board staff undertake a final inspection with the property owner or their representative. The Board writes to the owner to ensure there are no outstanding issues before finalising the claim.

Ultimately property owner have an ultimate right to appeal to the Land and Environment Court on:

- Decisions on Building or Subdivision Applications (if they are Integrated Development) under the *Environmental Planning and Assessment Act;*
- Quantum of compensation paid under the *Mine Subsidence Compensation Act; and*
- Decisions on whether damage has been caused by subsidence.

Very few claims have proceeded to Court and given the range of alternate dispute resolution procedures available to assist a claimant, the Board trusts this would only occur when all other avenues of resolution have been exhausted.

I trust this information is of assistance to the Planning Assessment Commission. As the method of alternate dispute resolution can vary on the circumstances, I would recommend property owners are referred to the range of brochures available from the Board rather than the details in this correspondence. These are available through he Board's website www.minesub.nsw.gov.au or further information is available by contacting one of the Board's four District Offices.

Yours faithfully

G J Cole-Clark
Chief Executive Officer