



EDO Qld.

Environmental Defenders Office

*Using the law to protect
our environment.*

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8 November 2017

Justin Cagney
Executive Director, Coal and Central Queensland Compliance
Department of Environment and Heritage Protection

By email: Justin.Cagney@ehp.qld.gov.au

Copy to: peter.snedden@ehp.qld.gov.au; EHPSubmissions@ehp.qld.gov.au

Dear Mr Cagney

New Acland Stage 3 – application for amendment to environmental authority – non-statutory submissions process

We refer to the previous correspondence in this matter, and in particular our letter of 10 October 2017 and your letter of 13 October 2017 advising of the adoption of the non-statutory process.

Our letter of 10 October 2017 identified additional material, referred to in the material provided by NAC, that was not available in the Land Court process. Namely:

- a) AGE (2016) Groundwater Model Report - Army Aviation Centre Oakey. Prepared for AECOM Australia Pty Ltd by Australasian Groundwater and Environmental Consultants Pty Ltd (AGE);
- b) IES, 1999. Draft Impact Assessment Statement, Acland Mine, Power Station and Water Supply. Appendix 8 - Groundwater Levels. Prepared by Ison Environmental Planners;
- c) Jacobs, 2017. New Acland Stage 2 - Yearly water balance estimates. F Stark pers comm, June 2017;
- d) NHG, 2016a. NACP: Hydrogeological Model Development - Alluvial Investigation. Internal report prepared by the New Hope Group;
- e) NHG, 2016b. NACP: Hydrogeological Model Development - Underground Workings Investigation Internal report prepared by the New Hope Group;
- f) RAMA Geoscience, 2016a Acland Gravity Survey Area 3 – Structural Interpretation. Memo prepared for the New Hope Group by RAMA Geoscience;
- g) RAMA Geoscience, 2016b Gravity Surveys for Void Mapping – Acland and Acland A Collieries. Memo prepared for the New Hope Group by RAMA Geoscience;
- h) WSA, 2002. Pump tests of Landholder Bores. Prepared for New Acland Coal Pty Ltd by Waste Solutions Australia Pty Ltd;
- i) WSA, 2006. Acland Groundwater Investigation - Hutton Sandstone Groundwater Model. Prepared for New Acland Coal Pty Ltd by Waste Solutions Australia Pty Ltd; and
- j) WSA, 2007. Balgowan Feedlot - Groundwater Investigation. Prepared for the Acland Pastoral Company Pty Ltd by Waste Solutions Australia Pty Ltd.

We confirm that these documents are required if our client is to fairly engage in the non-statutory process, in particular to enable our client to meaningfully and comprehensively respond to the material submitted by NAC.

Our client has now received expert advice on the documents its experts would require to conduct a thorough review of the NAC material. The experts confirmed the requirement for the above documents, and in addition require:

1. Clarification regarding timing and locations of any drilling used to change fault locations in the updated modelling, namely, which of the ~3000 drill holes in the NAC geological model mentioned have been completed since the time of the Land Court case and how they have resulted in changes to the fault maps presented in the AEIS (other than what is already described in the Fault Zone Hydrogeological Investigation report, which was covered during re-opening of evidence in the Land Court).
2. Similar detail to point 1, but regarding any new (2017) boreholes used to revise the stratigraphic layering in the model.
3. Further details of the progress of stage 2 mining - e.g. more detail on the extent and depth of mining carried out under stage 2 to date, using detailed mine plans/LiDAR surveys. What has been the rate of progression (depth and width) of the Stage 2 mining pits over the last few years?

Please provide these documents and responses to these questions at the earliest possible opportunity.

If these documents are not within the control of EHP, the Department will need to request them from NAC and distribute them to objectors if the objectors are to have any hope of fairly and fully engaging in the process.

To be clear, our client is not consenting to the non-statutory process as being lawful or procedurally fair.

Yours faithfully

Environmental Defenders Office (Qld) Inc



s.73 irrelevant information

Principal Solicitor



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17 October 2017

Justin Cagney
Executive Director, Coal and Central Queensland Compliance
Department of Environment and Heritage Protection

By email: Justin.Cagney@ehp.qld.gov.au

Copy to: peter.snedden@ehp.qld.gov.au; EHPSubmissions@ehp.qld.gov.au

Dear Mr Cagney

New Acland Stage 3 – application for amendment to environmental authority – proposed further submissions process

We act for the Oakey Coal Action Alliance Inc. (OCAA).

We refer to your letter of 13 October 2017 and previous correspondence in this matter.

Retrospective adoption of the proposed process

Your letter of 13 October 2017 advised for the first time that the chief executive's delegate will proceed with a modified version of the process *proposed* by Mr Connor's letter of 25 September 2017. The modified process outlined in your letter of 13 October 2017 (**the non-statutory process**) extends by 10 business days the deadlines for each of the further submissions under step 3 and reply submissions under step 5 but is otherwise exactly the same as the process initially proposed in Mr Connor's letter, and about which we raised our client's serious concerns in the letters dated 28 September and 10 October 2017. Our client maintains those concerns in addition to the concerns raised in this letter.

As we noted in our letter of 10 October 2017, New Acland Coal Pty Ltd (NAC)'s new material totals 1,437 pages, including what NAC describes as "an extensive amount of work" and what appears to be a new, or at least significantly revised, groundwater conceptualisation and numerical model. We reiterate that the proposed timeframes for OCAA to reasonably respond to such extensive new material are inadequate and oppressive. The Queensland Land Court followed a highly accelerated timetable to receive evidence and submissions on groundwater impacts over the course of more than a year. The additional two weeks provided in the non-statutory process for further submissions and reply submissions does not ameliorate the gross inadequacy of the time provided to provide evidence and submissions to EHP on the revised conceptualisation and numerical model and associated submissions, to fairly present our client's position.

EHP's conduct and the non-statutory process, now confirmed to have been adopted by EHP, are manifestly unfair to our client and must be abandoned.

Opportunity to provide new factual material has lapsed

The only opportunity within the non-statutory process for OCAA to provide EHP with new factual material relating to the EA amendment application lapsed on 3 October 2017 – only 5 business days from when EHP first *proposed* the non-statutory process and 7 business days *before*

EHP had advised OCAA, and the other stakeholders, that the non-statutory process had in fact been adopted.

It is noteworthy that it took EHP *more than 2 weeks* to respond to our correspondence on behalf of OCAA and advise that it had adopted the non-statutory process, during which time the opportunity to provide any new factual material lapsed. EHP has denied our client any opportunity to provide new material following confirmation that the non-statutory process had been adopted.

The consequence is an adopted process that excludes factual material from all parties except the Applicant, NAC – a strikingly unfair result.

Response to NAC's new material requires expert input

As indicated in our most recent letter, even on a very preliminary review, NAC's new material is extensive, detailed and highly technical. It is material that requires considerable expertise to properly understand. Such expert input is imperative for any stakeholder seeking to make detailed or comprehensive submissions that will provide an important counterpoint for consideration by the Chief Executive's delegate.

Much of OCAA's case before the Land Court, and the evidence on which the Land Court's findings on groundwater were based, relied very heavily on the expert evidence from Dr Matthew Currell, on conceptual hydrogeology, and from Professor Adrian Werner, on numerical groundwater modelling. Given the extensive investment of time and resources in the Land Court proceedings, OCAA understandably and appropriately wants to retain the same experts retained in the Land Court, to allow it to meaningfully engage in the non-statutory process. OCAA has consulted those experts and provided them with the NAC documents disclosed so far.

We have been advised that the material disclosed by NAC so far is not complete for the purpose of technical analysis, nor has there been sufficient time to identify all of the further documents that would be required for the analysis to be undertaken.

Even if the necessary supporting material is provided immediately, Dr Currell and Professor Werner will not be able to provide expert advice until early to mid-December, considering the scale of the task and pre-existing commitments.

Our client has been afforded no reasonable opportunity to arrange for expert engagement, in circumstances where not only is it necessary, but where the NAC has had the benefit of using its preferred consultants to prepare the new material over a period of more than a year.¹

Non-statutory process provides no opportunity to respond with new factual material

Additionally, neither the non-statutory process nor the process first proposed in EHP's correspondence of 25 September 2017 provides for any stakeholder to reply to NAC's new material with new factual material. The only opportunity within the non-statutory process for any stakeholder to provide EHP new factual material relating to the EA amendment application is the now lapsed deadline of 3 October 2017, after which only further submissions and reply submissions are contemplated.

In light of the volume of evidence put before the Land Court, which was the basis of a recommendation that is favourable to every one of the objector stakeholders, it is not clear what factual material EHP expected the other stakeholders to be able to provide in advance of knowing what NAC's new material contained.

Leaving aside the unreasonableness of the timeframes contemplated in the non-statutory process for further submissions and reply submissions, it unfairly denies every other stakeholder the opportunity to consider NAC's new material and provide EHP with responsive material on which the submissions would presumably be based.

¹ Evidence in the Land Court shows that the early stages of this work were substantially complete by early October 2016 – see Exhibit 1907, "Further Statement of Evidence to the Land Court by Brian George Barnett dated 20 February 2017".

Proposed timeframes are manifestly unfair to stakeholders other than NAC

Your letter states:

“Because of the statutory timetable, strict adherence to the above timetable will be required. Only material and submissions of the kinds described above and received by the times specified will be considered.”

In taking this position, EHP has denied our client the opportunity to provide new material following confirmation that the non-statutory process had been adopted.

Even if EHP had clearly adopted the non-statutory process in its first letter, it is manifestly unfair to have provided our client only 5 business days – from 4.24 pm on Monday, 25 September 2017 until close of business on Tuesday 3 October 2017 – to provide any new factual material.

Statutory timeframes are no justification, and non-statutory process must be abandoned

Your letters suggest that “strict adherence” to the timetable set out for the non-statutory process is required by EHP, premised on the statutory timetable. However, s193(5) of the EP Act makes clear that any contravention of the statutory timeframes does not invalidate any subsequent decision or an EA issued under such a decision.

As such, the statutory timeframe cannot justify such an unfair process as has now been adopted by NAC.

The fairest way for the Chief Executive’s delegate to proceed is to abandon the non-statutory process and disregard the further evidence and submissions from all parties.

If the Chief Executive’s delegate takes into account NAC’s new material, the non-statutory process must be replaced by a fair process instead. Such a process would provide the stakeholders sufficient time to take advice from experts about NAC’s new material, and a reasonable time after this to make submissions as contemplated by the non-statutory process.

To avoid any uncertainty, OCAA does not accept the lawfulness of the non-statutory process, and this letter should not be taken as a submission on behalf of OCAA within that process.

We look forward to your timely reply to the issues raised above.

Yours faithfully

Environmental Defenders Office (Qld) Inc


s.73 irrelevant information

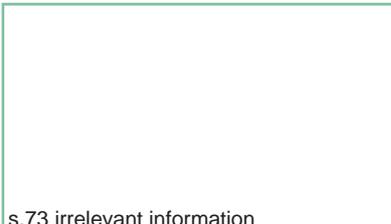
Senior Solicitor



Department of
**Environment and
Heritage Protection**

CTS No. 27973/17

20 October 2017



s.73 irrelevant information

Dear s.73 irreleva

Thank you for your email of 11 October 2017 to the Honourable Dr Steven Miles MP, Minister for Environment and Heritage Protection and Minister for National Parks and the Great Barrier Reef concerning the Stage 3 Expansion Project of the New Acland Coal Mine. The Minister has asked me to respond on his behalf.

Thank you also for your email of 29 September 2017 addressed to EHPSubmissions@ehp.qld.gov.au, in relation to the same matter.

I can confirm that the Chief Executive's delegate intends to proceed to make the decision required by section 194 of the *Environmental Protection Act 1994* (EP Act) as set out in Mr Connor's original letter and a previous letter from me sent on 13 October 2017.

My previous letter dealt with the issues you have raised as to whether New Acland Coal Pty Ltd's (NAC) new material and submissions ought to be accepted and reiterates that it is neither intended nor practicable for the delegate to duplicate the Land Court's objections hearing.

You may make submissions about whether the delegate ought to receive and consider NAC's material, and submissions on whether NAC should make a fresh environmental authority amendment application, as proposed in my letter.

In relation to other matters you raise, the Land Court's decision is entitled to respect, but it retains the character of a recommendation. Whilst the Chief Executive's delegate must have regard to the matters listed in section 194(4) of the EP Act, the delegate also may have regard to any other matter that is rationally connected with the subject matter of the decision and whose consideration is not otherwise expressly or impliedly prohibited by the EP Act.

As noted in Mr Connor's letter, in hearing and deciding NAC's stay application, Justice Applegarth indicated that if the stay were refused, interested parties might make submissions

to the Chief Executive or the Minister for State Development and Minister for Natural Resources and Mines in relation to matters arising from the Land Court's recommendation. A copy of Justice Applegarth's decision is now available on the Supreme Court Library website at *New Acland Coal Pty Ltd v Smith (Member of the Land Court of Queensland)* [2017] QSC 216 (see <https://www.sclqld.org.au/caselaw/QSC/2017/216>).

In this context, it is not intended to reopen the Land Court proceeding generally, but to strictly limit the subject-matter of any further material and submissions. Matters of the kind contemplated by the process may therefore be considered.

The Chief Executive intends to proceed as foreshadowed in Mr Connor's and my previous letters.

Should you have further enquiries, please contact Peter Snedden, Lawyer, Litigation Branch of the Department of Environment and Heritage Protection on telephone 07 3181 2409 or email peter.snedden@ehp.qld.gov.au.

Yours sincerely


s.73 irrelevant information

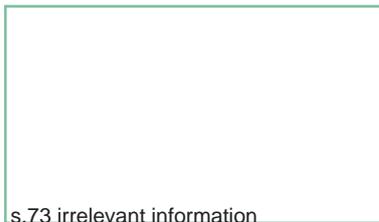
Justin Cagney
Executive Director, Coal and Central Queensland Compliance
Department of Environment and Heritage Protection



Department of
**Environment and
Heritage Protection**

CTS No. 27973/17

Date 20 October 2017



s.73 irrelevant information

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Department of Environment and Heritage Protection