

Detail 2

Ashton Coal Mine-South East open Cut Project  
MP 08\_0182 Modification 1

Background

Ashton was granted development consent for the NEOC and underground operation in 2002, on the onset of mining in the complex the community has experienced significant issues associated to mining in such proximity to the village, 500meters in exact to the closest neighbours.

Summary of Submission

Due to the concerns related to this modification, I object to the changes requested by the department of planning and Ashton coal.

On these grounds I base my objection:

- This modification is clearly a legal argument which should have been resolved in the court in 2014, where all parties had ample opportunities to make amendment's or submissions related to the conditions of consent and the opportunity in the appeal in 2015 of conditions set by the LEC
- All parties had the opportunity to work through conditions of consent in the court proceedings
- Landholders object to the administrative changes to the south east open cut project conditions set by the LEC
- Acquisition rights can be exercised at any stage of the project
- The approval should not be altered or modified to change the rights of acquisition of landholders
- The modification request by the Ashton and the department of planning places the position of acquisition rights of landholders against the property owner of 129
- Clearly there has been inadequate consultation process if Ashton coal and department make assumptions that the community didn't understand the LEC judgement

Legal Argument

Point 530 of Justice Pain 27/8/14

"On balance I consider the approval can be granted but that approval must be subjected to adequate conditions about which a number of issues of clarification and possible alteration remains"

Ashton Coal should not be provided the opportunity or right to alter a judgement of a court of law when there was ample time in the process of the merits appeal to submit arguments in relation to the approval, the conditions of consent and the appeal of the conditions of consent, which had considerable time-span apart of the court proceedings.

Also, if the department of planning legal representation and Ashton coal legal representation didn't understand the context of the information in the court room which is a part of their place of work, like any employee if you don't understand it is your responsibility to ensure the instructions are understood before commencing a task and also it your responsibility to provide communication of instructions that everyone understand the judgement.

Due to the legal arguments presented in this modification had taken two years after the judgement, which is absolutely absurd that Ashton to make assumptions related to understanding of the material when they were provided adequate time to do so in the court proceedings but the major concern now it has been presented to the IPC and this modification is not on merit of the application but a clear legal argument of understanding instructions provided by the court are the IPCN suitable qualified.

### Acquisition rights and Commencement of the project

The landholders understood the information provided in the consent conditions provided by the LEC related to acquisition and when Ashton can commence development of the SEOC

Now it is very clear the project is approved and that the proponent must not carry out any development work until conditions of 10A is met.

Also the conditions of consent are explicit on the time frame of the approval of 5 years and a condition of extended 2 years

Now on no terms does it state when Ashton wants to take up the project, the instructions are clear and precise that Ashton can commence development when it meets the requirements, it is Ashton responsibility to meet the requirements of the consent.

In relation to the acquisition component of the consent conditions it is clear that:

" Upon receiving a written request from acquisition from an owner in table 1 or table 2 the proponent shall acquire the land"

"Land listed in table 1 of schedule 3 that they have the right to require the proponent to acquire the land at any stage during the project"

This is a fair and just outcome related to acquisition that families have the right process in place apart of the conditions of consent to effectively activate their rights to be acquired at any stage of the project, developed or not developed as the approval has been granted, the responsibility of development of the resource is the responsibility of the proponent to meet the requirements of the LEC consent conditions under section 10A.

Ashton Coal had ample opportunity to make submissions related to these terms set in the consent conditions or request the court to explain consent condition section related to acquisition of the court case, it was not raised. So therefore the IPC under this legal argument absence in the original proceedings should not alter the intent of the rights of families in the village to request the right of acquisition at any stage of the project as the intent of the court.

The department report to recommend the terminology of "take-up" and change of acquisition to when the term "take-up" of the application has produced an outcome that effectively places the landholders against owner of 129 in demanding the owner to sell, to allow them to right of acquisition. This effectively forces the responsibility on to the families to ultimately to take-up the role of the proponent to get the SEOC to be developed which would not been the intent of the court.

### Consultation and objection of landholders

There seems to be large emphasis in the report by the department of planning that the landholders continue to object to the SEOC, what is the relevance of this in the context of the consent conditions

Ashton Coal sent a letter to Hon Minister Andrew Stoner in 2013 related Glennie's Creek Common Trust and the department of planning report related to objectors have a similar tone regards to the group of people.

Ashton Coal "that a group of people who strongly objected to the South East Open Cut Project could be possibly be appointed to the board of the Glennie's Creek Common Trust at the Annual General Meeting and if this was to occur the trust adopt various courses of action which could jeopardise the future of the project"

Department of planning report "several landowners with voluntary acquisition rights objected to the modification"

The only conclusion from my perspective is that the department has the same dislike towards these group of people.

Or is the departments dislike associated to the quest to seek information and explanation of the assessment of the SEOC from the landholder from the commencement and the complaints lodged to

- NSW Ombudsman
- State records Authority
- NSW Electoral authority
- NSW department of planning compliance related to political donations
- Finally a report to the minister of the concerns related to two departments actions and the perceived perception it has raised in the community, which went to the governance section.

In relation to the consultation process in the department's report my perceived perception is that the department believes we are stupid and no ability to comprehend information, as we totally confused on the context of the conditions of consent set out in the court.

The confusion arose from the non-existent consultation process with the landholders in the village and the assumptions made by Ashton and the Department that we didn't understand the context of the LEC judgement and conditions, hence the SEOC modification<sup>1</sup> application supported by the department of planning.

The consultation process I received was a phone call from the Department of planning director of resources Howard Reed related to the media announcement in the local paper of the SEOC mod 1 and that is only minor, nothing to worry about.

In the department of planning report "objectors were unsatisfied with the level of consultation", "Ashton conducted consultation with key stakeholder's prior to finalising the application".

Wouldn't you expect the key stakeholders would be the landholders with acquisitions rights under the consent conditions be consulted because the legal argument you made was that we didn't understand the LEC judgement and conditions consents related to our right of acquisition.

Also the 2016 and 2017 annual review which has a section 10 on Local Neighbours and the consultation process;

"Neighbours, particularly those that have the potential to be directly impacted by the operations are kept to date with operations and key projects through phone calls, regular emails and face to face meeting if required

As the meaning local neighbours mean "a group of people living in a particular local area" You would expect consultation process would be consulting the nearest neighbours to the operation as well, the landholders in the village, and yet on consultation with these said neighbours related to key projects would be considered inadequate and requires further explanation, reason for lodgement of compliant to the department of planning compliance section.

### Conclusion

These are the points that are relevant and importantly this modification should be rejected

- This is a legal argument which should have been raised in the court and dealt with
- It was Ashton and department of planning responsibility to seek understanding in the court if they didn't understand the conditions
- The assumptions that the landholders didn't understand is misleading when clearly there was no consultation process with the proponent
- This modification should not impede the rights granted by the LEC related acquisition on request anytime throughout the project
- The department of planning believe this is only minor and nothing to worry about and yet it changes the context of the conditions set by the court related to acquisition and commencement wording

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