

# OFFICE OF THE MAYOR



Our Reference: OUT-21252/19

20 June 2019

Ms Samantha McLean  
Executive Director  
NSW Independent Planning Commission  
Level 3, 201 Elizabeth Street  
SYDNEY NSW 2000

Dear Ms McLean

## **Darbrook Coal Mine - Modification 7 (DA231-7-2000 MOD7)**

I write, on behalf of the Upper Hunter Shire Council, with reference to the Department of Planning & Environment's [DPE's] letter of June 4th, providing additional information regarding the Darbrook Coal Mine Modification 7 Development Application. We would be grateful if you would forward this correspondence to Commissioners Lipman, Carter and Cochrane who are considering this proposal.

The issues in chronological order of the DPE's correspondence are;

### **1). Coal price and quality assumptions**

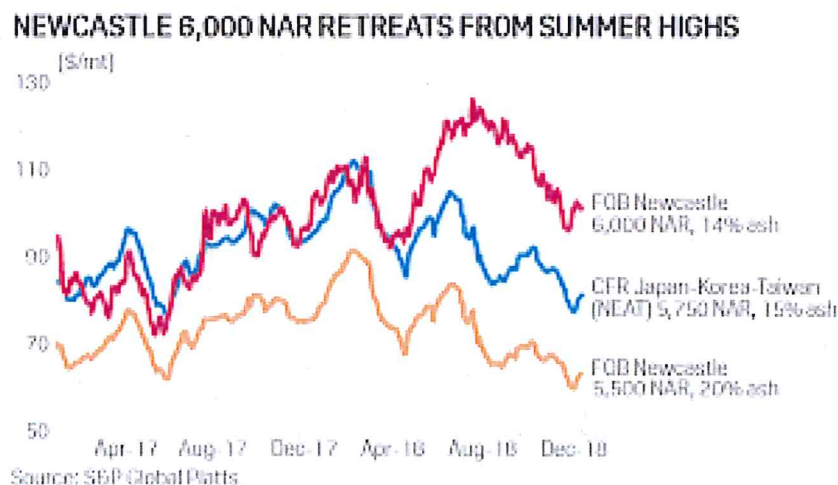
#### a) Coal Price

- The DPE's quoted figures of **AUD \$90/tonne** are already inaccurate and out of date. The DPE note "*that this AUD \$5 difference (5.6%) [to AQC's assumed price] would not materially affect the CBA outcomes*". As of today the Newcastle 5500 NAR export thermal coal price is **US\$52.00** or **AUD \$75.42/tonne** at today's exchange rate. Would the DPE still contend that this **AUD \$19.58 (20.6%)** difference would have no material affect on the CBA?
- The DPE also states that the assumed price "*is intended to reflect an average price over the next 9 years*". In Council's original presentation to the Commissioners we drew their attention to the Federal Government Chief Economist's March 2019 Resources and Energy Quarterly [REQ] which forecasts a decline in thermal coal prices out to 2024 and slackening demand for 5500 NAR coal in Asia "*due to Air Quality concerns*". Put simply, the outlook is not good in either the short or long term and an average price of AUD\$95 cannot realistically be attained or relied upon.

- Council notes that in their submission of May 22nd 2019 AQC assert that thermal coal market has undergone a “*structural upward pricing shift in recent years*”. Council would point out that this shift ended in 2018 and that prices have been falling sharply since August of last year and throughout 2019 to date.
- In the same submission AQC also attempt to justify their inflated assumed coal price by linking the 5500 NAR coal price to the 6000 NAR coal price via a 15 - 30% historical trading band. The graph reproduced below illustrates that the trend is for increasing divergence between the two prices. This, as was noted in the REQ, is being driven by increasing concerns in Asia regarding air quality and China enforcing their 15% coal ash content import restrictions.

#### b) Coal Quality

- The DPE has simply not addressed the issue of AQC’s coal quality assumptions. The Commission heard expert opinion at the Muswellbrook hearings from a highly qualified former mine manager that AQC’s coal quality assumptions could not be achieved without the recommissioning of the Coal Handling and Processing Plant [CHPP]. Indeed the proponent’s own Feb 2017 JORC Report noted that “*the coal will require beneficiation for export markets*”. The recommissioning of the CHPP specifically does not fall within the scope of Modification 7. A fundamental flaw has been pointed out to the DPE and they have completely ignored it.



- AQC have subsequently stated that they will target four plies: kya11, kya12, kya 21 and kya22 with raw ash content ranging from 9.39 to 24.48% all of which they note fall within the parameters of Newcastle 5500 NAR export thermal coal.
- In AQC’s Response to Submissions [RtS] a target ash range of 15 to 24% is detailed. Council notes that in 2019 China has moved to enforce longstanding restrictions on imports of seaborne thermal coal with ash content of 15% or more. This has caused considerable problems for the industry with Australian thermal coal being denied entry at Chinese ports.
- The sulphur content of Dartbrook’s coal has not been interrogated either. The Newcastle 5500 NAR sulphur content benchmark is less than 1%. Dartbrook’s Kayuga seam coal has a sulphur content ranging from 3.3% to 3.7%. This has become increasingly important after South Korea introduced a ban on the average sulphur content of imported thermal coal to

less than 4%. This ban explains why Korean imports of Australian thermal coal are declining and of Russian thermal coal (typically less than 1% sulphur) are increasing.

- As Council pointed out in our original presentation, the proponent has not demonstrated that there is a market for its unwashed coal. This is a proposal modelled solely on supply, while demand is not interrogated. The calorific value and ash and sulphur content of Dartbrook's unwashed product coal rules it out of all major markets for Australian Thermal Coal.

## **2) Tax, Royalty and VPA payments**

- Despite the Commission's invitation for them to do so, the DPE has not assessed the likelihood of a debt laden AQC and their still mooted Joint Venture Partner SNR Mineral Assets (a wholly owned subsidiary of foreign owned and debt laden Stella Natural Resources) ever paying the company tax attributable to NSW of A\$14M detailed by Gillespie Economics for AQC.
- Council remains of the view that the State of NSW would be extremely unlikely to receive *any* Company Tax from AQC via the Dartbrook coal mine and that for these receipts to be considered as part of the modification's economic justification constitutes a fundamental flaw in the project's assessment by the state's Planning Department.

## **3). Capital cost assumptions**

- AQC provided capital cost estimates in the project's EIA of A\$15M. This assumption did not even last until the RtS, wherein the cost increased to A\$45M. The Commission heard expert opinion at the hearings that the capex requirements could be as great as A\$162M.
- In response to the Commissioners' request for further advice, the DPE has simply restated the proponent's figures.

## **4). Head count for operation**

- Again, the Commission heard expert opinion that the proponent's head count figures were wrong. Again, they asked the DPE for further advice and again, the DPE simply restated the proponent's figures.

## **5) Site Rehabilitation Costs**

- In Council's original presentation we drew the Commission's attention to the potential inadequacy of the A\$9.245M rehabilitation bond held by the NSW State Government against Dartbrook, considering that the previous owner of the mine booked closure and impairment costs of A\$120M without completing any significant rehabilitation beyond the Rejects Emplacement Area [REA].
- Council remains strongly of the view that the size of the bond does not reflect the size of the risk to NSW. Regardless of whether Modification 7 is approved or not, we believe there is a clear need to increase the size of the bond held against Dartbrook.

## **6) Greenhouse Gas Emissions**

- Council notes the proponent's late submission of a Scope 3 Emissions report. Council remains in agreement with the legal opinion provided to us, which was expressed in our original submission, that "*without the requisite assessment being provided the Modification cannot be assessed and must therefore be refused*". The absence of a Scope 3 Emissions report in the EIS constitutes a clear breach of the assessment process.

- We note that proponent's excuse that it was following the DPE's *Guidelines for the Economic Assessment of Mining and CSG Proposals* (which states that Scope 3 emissions need not be considered). However the Mining SEPP, clause 14(2) states that they must be, "*the consent authority must consider an assessment of the greenhouse gas emissions (including downstream emissions) of the development ...*". Legally the Guidelines are clearly subservient to the Mining SEPP and the proponent cannot rely on the Guidelines as an excuse for failing to submit a Scope 3 Emissions report as part of their EIS.
- Further, the proponent's late submission of this report meant that it was not placed on Public Exhibition together with the main body of the EIS and thus effectively avoided the associated scrutiny and examination the required exhibition would have allowed. Council and other stakeholders, were effectively denied their opportunity to make comment.
- By way of example, Council submits that the Scope 3 Emissions report is fundamentally flawed as it is based on the premise that Dartbrook's product coal will be burnt 50% each in South Korea and Japan. Neither country typically imports 5500 NAR coal. South Korea favours 5700 to 5900 "Korean grade" coal and is actively sourcing lower ash, lower sulphur coal from producers who can supply it, both from Australia and, increasingly, from other countries (notably Russia and Indonesia). This is being done in an effort to curb air pollution. This is why Korean imports of NSW thermal coal are down 35% from 2015 levels. Japanese coal power plants are traditionally designed and built to run on higher grade 6000 NAR specification coal.
- Council believes AQC's Scope 3 emissions report would have been more accurate if they had opted for the more likely assumption that all of Dartbrook's coal would be burnt in China, which is typically where this grade of coal is exported to. Except of course that AQC cannot guarantee the sub 15% ash content required by China without recommissioning the CHPP which the DPE points out "*does not fall within the scope of the Modification*".
- Notwithstanding, Council urges the Commissioners to recommend in their Dartbrook Report that the DPE amends its Guidelines forthwith to include an assessment of Scope 3 Emissions so that the Guidelines may better reflect
  - The Mining SEPP clause 14(2)
  - This era of Climate Emergency and catastrophic global heating
  - The Preston Judgement on the Rocky Hill proposal.



## 7) Mine Safety

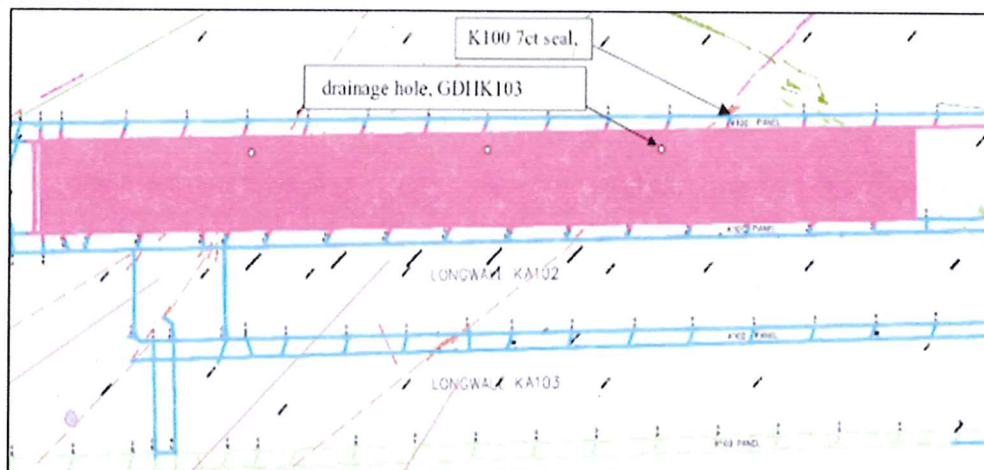
- In their response the Resources Regulator states it is *“unaware of any spontaneous combustion issues relating to extraction in the Kayuga seam at Dartbrook”*. Frankly, this beggars belief. The NSW Government’s own Guidelines, specifically MDG 1006 - Technical Reference Spontaneous Combustion Management, produced by the Mine Safety Operations Branch of Industry and Investment NSW May 2011 details two such incidents in the Kayuga Seam at Dartbrook. Link is <http://cb3mineservices.com/wp-content/uploads/2014/08/MDG-1006-TR.pdf> extracts copied below.
- Furthermore, both the DPE and the Resources Regulator have restated the proponent’s assertion that *“Kayuga in-seam gas content is considered relatively low”*. What the proponent has specifically omitted is that the Kayuga seam gas content is only considered *“relatively low”* in comparison to the Wynn Seam, where of course the gas take was sufficient for an experienced, and well resourced global mining giant to stop mining altogether. The MDG 1006 guideline document even states *“the mine with high gas seam content”*. This is astonishing.
- However, the Regulator goes on to tell us that *“There is no relationship between “gas” levels and the likelihood of spontaneous combustion”*. In other words whether the “gas” levels are high or low is not relevant to whether the Kayuga seam is prone to spontaneous combustion. Maybe the Kayuga seam’s demonstrated history - the one the Regulator is seemingly

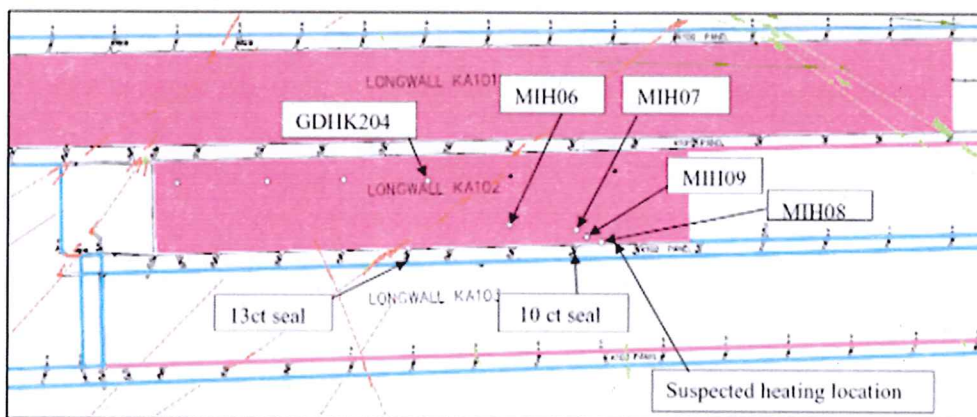
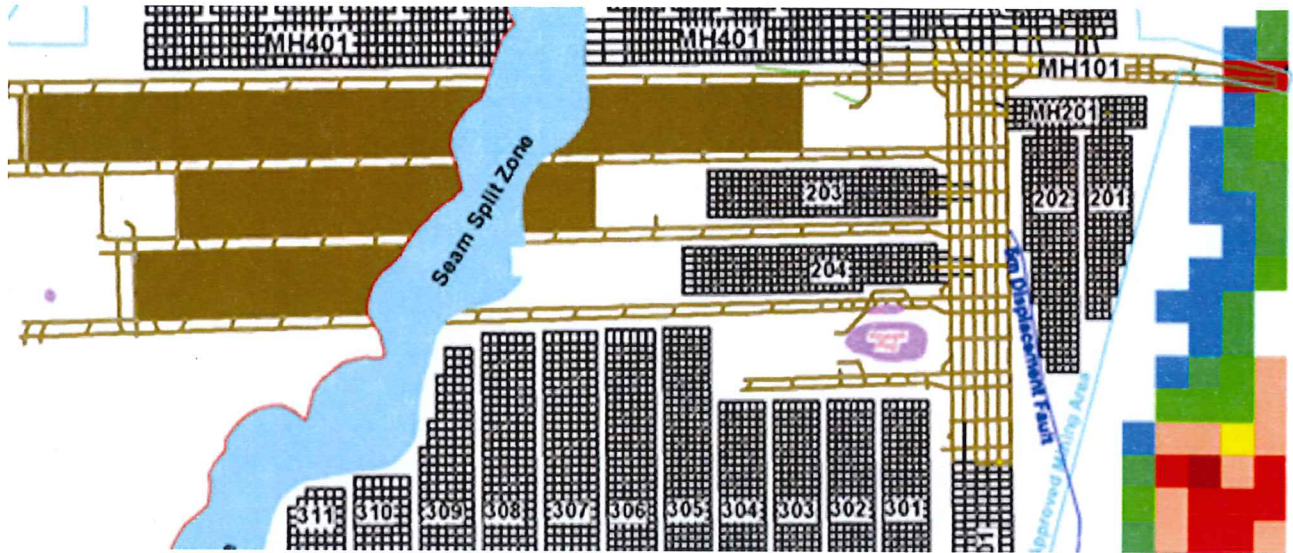
### 8.1.22 Dartbrook 2005

Operations re-located from Wynn seam to Kayuga seam in 2004. The Kayuga seam is overlain by the Mt Arthur seam. The heating took place in the first longwall block mined in the Kayuga seam.

Both seams were considered to have a medium to high propensity for spontaneous combustion. Goaf drainage & Perimeter road established for gas management. Systematic goaf inertisation, thermal imaging of seals and tube bundle monitoring of seals used as precautionary measures against spontaneous combustion.

The Mineshield was used to inject Nitrogen into the area through a goaf drainage borehole and the mine fan was slowed to reduce longwall quantity from 80m<sup>3</sup>/s to 60m<sup>3</sup>/sec. When the heating was controlled, mining recommenced with two Floxal units replacing the Mineshield.

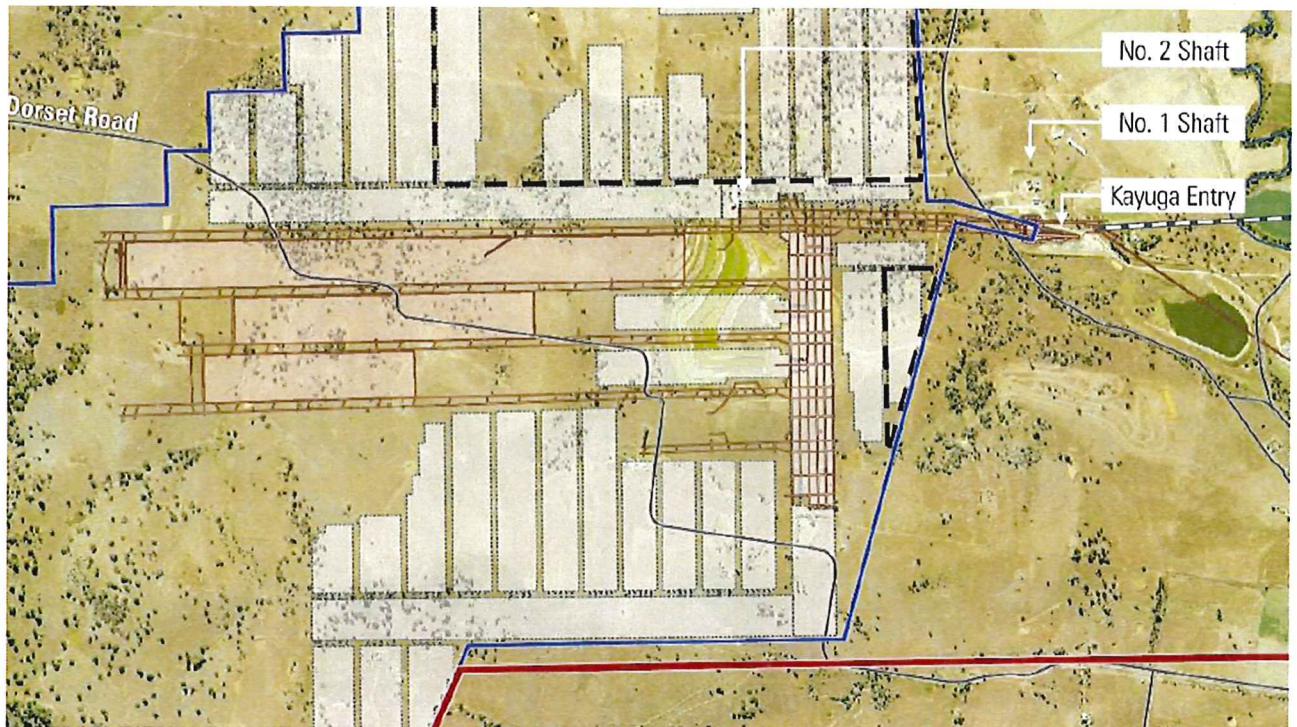




unaware of despite it being documented in its own literature - just might be? It can be seen from the proponent's documentation (reproduced below) that they are planning to mine in exceedingly close proximity to the previous heating incidents. Panels 203, 204, 305, 306, 307 and 308 are adjacent to former longwall panel ka102.

- The Regulator goes on to say it *“cannot support the proposition that high gas levels can be anticipated using the “bord and pillar” method. This will be dependent on the in-situ gas content of the virgin coal, and the competency of the ventilation arrangements ...”* This appears to be a tacit admission that the chosen mining method of bord and pillar over longwall will not lessen or alter the risk of a spontaneous combustion event at the mine, an argument that AQC has pushed hard and which the DPE has evidently accepted. Indeed Guideline MDG -1006 has a whole section relating to bord and pillar extraction at page 31.
- Despite being invited by the Commission to review its advice, the Regulator has chosen not to, and much like the DPE, the Regulator has seemingly not assessed the proposal with any form of depth, research or critical analysis. To quote Santayana, *“Those who cannot remember the past are condemned to repeat it”* and we might add, those who wilfully ignore it are putting lives at risk and might like to review their risk management and risk mitigation strategies, plans, policies and procedures as well as their own documents and guidelines.





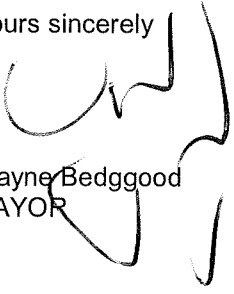
## 8). Cumulative Impact of Air Pollution

- It is abundantly clear from the data that Air Quality in the Upper Hunter valley is declining and that this is unacceptable. It is undeniable that this situation represents the ongoing failure of the DPE to both set and enforce appropriate conditions of consent on the region's mining industry. When the whole town of Muswellbrook is at or beyond the average annual deposition rates for PM10, something has gone badly wrong.
- It is also abundantly clear that the DPE has not been keeping an eye on either the data or the polluters, or else the department could not have expressed its view of being "confident" that the Mount Pleasant conditions were "recent and accurate". No one looked, no one double checked, and to make matters worse when the shocking situation was pointed out to the DPE by numerous experts and observers at the IPC hearings they are still not prepared to do anything about it other than approve a project which will only worsen Air Quality in the Upper Hunter valley. This is an unacceptable abrogation of their responsibilities and duty of care by the DPE.
- To add insult to injury, the DPE - with Orwellian cynicism - reminds the Commissioners that the *"consent authority is not prevented from granting consent if the non-discretionary development standards under the Mining SEPP cannot be complied with"*. This is doublespeak at its worst, a standard is either discretionary or non-discretionary. A standard cannot be both and cannot be named one whilst having the effect of the other, unless that standard is more concerned with perpetrating a cruel hoax on those very persons it is nominally intended to protect.
- Further to this issue, we have attached below a link to the latest review report of the Forum of International Respiratory Societies. Like the 70,000 studies that have gone before it, this report [https://journal.chestnet.org/article/S0012-3692\(18\)32722-3/fulltext](https://journal.chestnet.org/article/S0012-3692(18)32722-3/fulltext) details the known deleterious affects on human health of Air Pollution. Allergic Sensitization [sic] and Rhinitis, Autoimmune disease, Bone Diseases, Cancers, Cardiovascular Diseases, Cognitive

Function and Neurologic Diseases, Diabetes, Obesity and Endocrine Diseases, Eye Diseases, Gastro-Intestinal Diseases, Hematologic Diseases, Liver Diseases, Renal Diseases, Respiratory Diseases and Skin Diseases. We urge the Commission to review and consider the findings of this Report.

In summary, the Upper Hunter Shire Council remains steadfastly opposed to the recommencement of mining at Dartbrook and we urge the Independent Planning Commission to refuse this ill-conceived and ill-considered Modification 7 application.

Yours sincerely



Wayne Bedggood  
MAYOR