



31 October 2017

Planning and Assessment Commission
Wallerah 2 Coal Project Wyong

Dear Commissioners

Thank you for the opportunity to lodge comments in regard to the PAC's Assessment Report for the Amended Development Application for Wallarah 2 Coal Mine located at Wallarah on the Central Coast of New South Wales.

Darkinjung Local Aboriginal Land Council (Darkinjung) remains strongly opposed to the amended development for reasons outlined in our earlier submissions to the Department (to the amended application) dated 31 August 2016, 9 December 2016, and more recently to the PAC on 5 April 2017 (Hearing), 10 April 2017 (Teleconference).

The PAC Report dated 19 May 2017 correctly summarises Darkinjung's objections as;

"...inadequate consultation as affected landowners, validity of the amended application, potential impacts on the proposed residential developments on the DLALC lands, the strategic significance of Nikko Road, loss of road access to the DLALC lands and rail access to the employment lands..." - 3.4

Darkinjung is the single greatest landowner in the immediate vicinity. Darkinjung is likely to also suffer the greatest in terms of direct impacts from the proposed significant coal loading infrastructure.

Whilst Darkinjung strongly objects to the Amended Development Application on the grounds expressed in our submissions to the PAC dated April 2017 we understand that the process has moved forward and that you are seeking comments to the Recommended Conditions detailed in the Department of Planning's Residual Matters Report dated September 2017. This further submission is relevant to the Residual Matters Report.

1.1 Lack of formal EIS prepared in regard to the Amended Development Application

Darkinjung repeats its concerns set out in previous submissions (including para [2.1]-[2.6] of its submission to the PAC in April 2017) in relation to the inadequacies of proper plans to enable the project to be assessed instead there are a series of concept plans or plans in progress that do not provide clarity of what is proposed.

The DGs Requirements required that the *"The EIS must include all relevant plans, architectural drawings, diagrams and relevant document required under Schedule 1 of the Environmental Planning and assessment Regulation 2000."* It added that *"these documents should be included as part of the EIS rather than as separate documents"*. The EIS and the Amended DA do not comply with this requirement.

The lack of clarity in relation to the proposal has continued since Darkinjung's submission in April.

Darkinjung met with WACJV to discuss access to our land on the eastern side of the Sydney to Newcastle rail line on 5 June 2017 and 23 August 2017. At the meeting of 5 June 2017 the applicant

displayed plans showing the proposed works within the 6 metre access road in the Nikko Road corridor. Such drawings do not form a part of the amended DA. The applicant refused to provide Darkinjung with a copy of the plans at that meeting.

In the absence of proper plans and diagrams the public notification processes are compromised as is the ability for the Amended DA to be properly assessed.

1.2 Road Closures

i) Tooheys Road

Darkinjung has entered into an Agreement to Lease lot 195 for a term of 60 years with CASAR Supporters Inc. See the location on fig. 1.2 below. CASAR Supporters Inc. lodged their Development Application with Wyong Shire Council (now Central Coast Council) on 30 June 2015. They are currently completing further ecological studies as requested by Council. Access to the site will be via lot 191 to the north. It is proposed that traffic to the development is directed off the M1 at the Motorway Link Road, to turn left into Tooheys Road at the overpass and along Tooheys Road to Bushells Ridge Road. This cannot happen if Road Closure Application W562973 is approved. CASAR Supporters Inc. will have to revise all traffic studies completed to date.

Tooheys Road is also an important emergency road to local residents. During bushfires Tooheys Road is used for access to the immediate area by emergency vehicles. Local traffic has used Tooheys Road as an emergency exit when Bushfires have closed Bushells Ridge Road and Hue Hue Road. Traffic has been directed along Tooheys Road when accidents have occurred on the M1. In fact this has happened earlier this year.

We note that the applicant has provided a commitment to keep Tooheys Road open. Darkinjung is concerned about this commitment on the following grounds:

1. We do not understand why a road closure application is necessary.
2. There is no legal agreement in existence that provides continued legal access over Tooheys Road by parties other than the applicant.
3. The security infrastructure proposed by the applicant does not have to be installed in the road corridor. It can be installed within the applicant's property.

In paragraph 4.4.3 of the Residual Matters Report the applicant states that "the application to purchase a section of Tooheys Road does remain in place to allow the installation, operation and service of a security monitoring system, such as cameras, along the length of Tooheys Road adjacent to the project's operations". Darkinjung insists that such installations could be addressed within the land already owned by WACJV and that ownership of Tooheys Road is not required.

ii) Nikko Road

Also of concern to Darkinjung is that the Amended DA is premised on the closure of Nikko Rd. Nikko Rd is a formed dirt road that fronts Lots 60, 196, 197 and 204. Nikko Rd is a Crown Road and the public currently have a right to access it. Darkinjung is currently able to access Nikko Rd through Lot 1 DP 1192889, Bushells Ridge. Darkinjung accesses Lots 196 and 197 as part of its use and enjoyment of the land as well as to comply with environmental monitoring requirements imposed by the WSC as a condition of separate development consent. See Fig. 1.1 above.

Darkinjung is entitled to have benefit of both legal and practical access that was available when the land was transferred to it under the ALRA. The members of Darkinjung are entitled to be able to access the land freely, and safely, without having the risk or inconvenience of having to traverse an operating coal transporting facility.

Removing legal access will have a clear immediate financial impact on the value of the land to Darkinjung. The absence of appropriate access, will also limit the ability of Darkinjung to utilise the land in future. Furthermore, it is clear that the removal of access to Nikko Rd has primary impact on Darkinjung's land only. No other land owners will become land locked by the proposal. It treats Darkinjung's interests as expendable while carefully avoiding the interests of all other land owners, and in this regard it is inequitable and discriminatory.

Darkinjung's Submission sets out a number of issues in relation to access that would arise in the event that Nikko Road and Tooheys Road are closed. They are not satisfactorily addressed in the WACJV Response. In relation to the issue of access being maintained Darkinjung makes the following additional observations:

- a. The WACJV Response states that the WACJV will create an easement over the Nikko Road corridor, but the terms of the easement are unknown. Neither the Department, nor the PAC can know or assess whether the terms will satisfactorily ensure safe ongoing access to all visitors to Darkinjung's properties.
- b. WACJV Response states in relation to the easement that will replace Nikko Road that "It is not intended to be used by the public". That highlights that there is an intention to alter access. It will clearly impact adjoining land owners. Darkinjung is entitled to invite whoever they want to its land, and they are entitled to have safe access for such invitees. They should not have the existing access removed and replaced by an easement that has to be shared with an operating coal loading facility.
- c. Although a plan of the proposed work was shown to Darkinjung at the meeting of 5 June 2017 it is not included in the Amended DA, nor does it form a part of the Department's Residual Matters Report. There are still no adequate plans showing the location of the easement and how it will connect with other access points. As plans showing finished levels have not been provided to Darkinjung or the Department, it is still unclear how the easement will link up with existing access.
- d. It is now unclear what the proposal is. The Amended DA and attached plans still show a 3m easement. The WACJV Response shows a 6m easement. Without the inclusion of plans clearly displaying the works proposed the PAC has no clear understanding of what the proposed access on Nikko Road will be.
- e. Darkinjung notes draft condition 31 requiring that Tooheys Road be kept open for the life of the development for access by the general public, so remain confused why the need for Wallarah 2 to pursue a Road Closure over this section of Tooheys Rd.

1.3 Strategic considerations

The Department of Planning and Environment have failed to understand the importance of the Nikko Road Reserve to the future growth of the North Wyong and southern Lake Macquarie regions. The newly released Central Coast Regional Growth Plan clearly states that a further 41,500 houses will be required over the next 20 years. Much of this development will happen across North Wyong. Nikko Road is the only land allocated for an arterial road to accommodate such access.

1.4 Updates since May 2017.

The report to PAC dated 19 May 2017, provided commentary and a position², in respect to Darkinjung claims that the Wallarah 2 amended application, will adversely impact on nearby residential rezoning

² 6.6.11.4 and 6.10

proposals. The view of the PAC, at the time, in essence, was that the rezoning proposals were still at an early stage, and that it was still too early to recommend acquisition of the affected residential lots all provide mitigation measures for residences when it is uncertain what will be affected and extent of the affectation.

Since May 2017, Darkinjung can advise that the following progress has been made in relation to the nearby planning proposals;

- The Department of Planning, through the Coordinator General, Lee Shearer, has established a regular monthly meeting protocol in response Direction 6 (Strengthen the economic self-determination of Aboriginal communities) of the Central Coast Regional Plan 2036 and Priority Actions for 2016–2018 points 5 and 6 of the Implementation Plan,

Points 5 & 6 of the Implementation Plan state;

5. Work with the Central Coast Council and the Darkinjung Local Aboriginal Land Council to strategically assess its landholdings to identify priority sites and create a pipeline of potential projects.

6. Incorporate the assessment of the Darkinjung Local Aboriginal Land Council landholdings into a revised North Wyong Shire Structure Plan.

- Darkinjung is working closely with the Department to achieve Priority Actions of the Central Coast Regional Plan 2036.
- The specialist consulting team required to investigate and report on each aspect of the Gateway Determinations, have been instructed to complete all reports by **30 November 2017**, for submission to the Department in early December 2017.
- Copies of draft consultant reports were provided to council in September 2017.
- Darkinjung LALC has recently informed the Department's Chief Planner, Mr Gary White, of this time to complete all necessary Gateway reports, with a view to have the Planning Proposal(s) ready for public exhibition early 2018. - refer attached letter to Mr White.
- On related matters concerning further residential development in this area, Lake Macquarie City Council in September 2017 resolved to extend business zoning in the Wyee township, **and** to investigate the servicing of approximately 200 "paper lots" immediately opposite Darkinjung's proposed 900 lot residential Gateway site(s). These are clear indications of growth in the future residential population at this locality. Separate discussions with the Department's planning teams suggest a review of potential housing stock closer to a commuter rail line is needed, but this growth would be in conflict with significant coal loading infrastructure also proposed in the locality.

1.5 **Economic Impact**

As explained previously, Darkinjung is an Aboriginal land council established under the Aboriginal Land Rights Act (ALRA) which was enacted to provide some remedy for the injustice of the dispossession of Aboriginal people from their lands. Under the ALRA, land is returned to Aboriginal land councils to enable them to pursue the cultural, social and economic object of the Act. The Amended DA does not adequately assess socio-economic impacts on the Aboriginal community.

Darkinjung is the largest private landowner on the Central Coast. We currently have freehold ownership of 3,275 hectares of land. There is a further 280 hectares awaiting transfer. Darkinjung has

carried out a detailed analysis of their assets and has identified that less than 10% is in locations suited to economic development. These economic landholdings are not necessarily ready for development. Many need to be rezoned in order to realise their full potential.

The process that Darkinjung has been through to identify the economic potential of its land has taken 8 years. In 2015 our rezoning applications across North Wyong were passed through to the Gateway process. The Department's Regional Growth Plan 2036 for the Central Coast sets down four strategic goals for the region. In each of the goals there are directions that relate directly to the realisation of Darkinjung's development potential across the northern area of Wyong. As you will see from figure 1.1 Darkinjung has a large number of future projects in the immediate vicinity to the proposed mine. Darkinjung still contends that the coal mine risks the commercial viability of these projects. As such, it will be difficult for the goals set within the Regional Growth Plan to be realised.



Fig. 1.1 Darkinjung Projects

1.6 Consultation with Affected Land Owners

The Department and the PAC continue to insist that the applicant engage with affected land owners (such as Darkinjung). Since the PAC Hearing in April 2017 Darkinjung has had two meetings with the applicant on 5 June 2017 and 23 August 2017 at which access arrangements were discussed. There were a number of emails back and forward that mostly related to setting up the meetings. At the two meetings the applicant failed to address a number of items shown below:

1. Whilst plans of the proposed Nikko Road's work were displayed at the meeting of 5 June 2017 the applicant was insistent that Darkinjung could not keep a copy. Hence, Darkinjung believes that a formal agreement over the proposed access road is yet to be completed.
2. A formal instrument granting the proposed access easement over Nikko Road was not tabled at these meetings, nor was it discussed.
3. Formal documentation providing access to the general public along Tooheys Road was not tabled at the meetings, nor was it discussed.

4. Darkinjung strongly urges the PAC that draft formal instruments over easements proposed on Nikko Road must be agreed before approval to the proposal is granted.
5. We also seek a clear legal access arrangement for the continued public use of Toohey's Road should the application for closure proceed.

Darkinjung is happy to answer any queries that the PAC may have in regard to this submission. Please feel free to contact Lynne Hamilton on 02 43512930.

Yours sincerely



Jodi Shannon

Acting Chief Executive Officer