

27 October 2015

The Hon. Rob Stokes, MP
Minister for Planning
GPO Box 5341
SYDNEY NSW 2001

By email and post: office@stokes.minister.nsw.gov.au

Dear Minister

FW: Wollongong Coal – Cancellation of Mining Rights

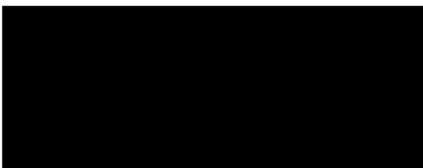
1. We act for Lock the Gate Alliance. We were recently instructed to write to the Hon Anthony Roberts, MP, Minister for Industry, Resources and Energy, regarding our client's assessment that Wollongong Coal is not a "fit and proper person" within the meaning of section 380A of the *Mining Act 1992* (NSW) (**Mining Act**). Please find a copy of that correspondence **attached**.
2. In that correspondence, our client contends that if, Minister Roberts is of the view that Wollongong Coal is not a fit and proper person, its existing mining rights should be reconsidered and any further applications to mine coal in NSW by Wollongong Coal ought to be refused.
3. We are of the view that this contention, and the issues outlined in the attached correspondence may be relevant to any decision made under the *Environment Planning and Assessment Act 1979* (NSW) (**EPA Act**) regarding Wollongong Coal's development application for the Russell Vale Underground Expansion Project (**Project**). We understand that the Project is currently being assessed by the Department of Planning and Environment (**DPE**).
4. The courts have said that the past unlawful activity of a proponent seeking development consent is not relevant to the decision to grant or refuse development consent, on the basis that development consent runs with the land and is not granted as a right in personam. However it is clear that the courts have said that the past conduct of a proponent may be of relevance in determining whether to grant or refuse development consent for proper planning reasons.¹
5. We also note that the decisions of the court to date on this point have considered non-State significant development applications and modifications. We note that by way of section 89K of the EPA Act a Mining Lease and an Environmental Protection Licence (**EPL**) cannot be refused if they are necessary for carrying out State significant development that is authorised by a development consent.

¹ *Jonah Pty Limited v Pittwater Council* [2006] NSWLEC 99; 144 LGERA 408

However both of these authorisations provide for and require the consideration of whether the applicant is a fit and proper person (section 380A of the Mining Act and section 45 of the *Protection of the Environment Operations Act 1997* (NSW) respectively). While the Mining Act by way of section 380A(4)(a) overrides section 89K there is no such exception in relation to the granting of an EPL.

6. If there are any matters that you would like to discuss please do not hesitate to contact the writer on [REDACTED] [REDACTED] [REDACTED] or by e-mail at [REDACTED].

Yours sincerely,
EDO NSW



Sue Higginson
Principal Solicitor