

Good morning commissioners, ladies and gentlemen

My name is Lynne Hamilton. I am currently employed as the Planning and development manager by Darkinjung Local Aboriginal Land Council. Darkinjung has submitted their objections to the approval of this amended development application on numerous occasions. We have concerned the proposed conditions of consent for the amended DA and still have significant concerns about the proposed development and how it will affect Darkinjung's future plans across the immediate area.

Darkinjung repeats its concerns set out in previous submissions 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, nor the detail required to enable thorough consideration of the proposal. 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. At that meeting Darkinjung agreed that should the amended DA be approved, they would require 3 gates that provide access to our properties located on the eastern side of the Sydney Newcastle rail line. Final drawings of the proposed

access road and gates were tabled at the meeting of 23 August 2017. The applicant refused to provide Darkinjung with a copy of either set of plans at the meetings. Such drawings do not form a part of the amended DA. Darkinjung still argues, 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.

### **Tooheys Road**

Darkinjung has entered into an Agreement to Lease lot 195 for a term of 60 years with CASAR Supporters Inc. CASAR Supporters Inc. lodged their Development Application with Wyong Shire Council (now Central Coast Council) on 30 June 2015. Central Coast Council is currently assessing the application.

Access to Casar's 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. It appears that both the Department and the applicant have failed to address this in their assessment of the amended DA.

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.

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 over Tooheys Road is necessary.
2. 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.
3. There is no legal agreement in existence that provides continued legal access over Tooheys Road by parties other than the applicant.
4. The applicant would be free to close Tooheys Road at a later date.

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. Darkinjung would like to have the road closure application for Tooheys Road withdrawn.

### **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.

Darkinjung continues to argue that it 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.

There are 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 applicant's response. In relation to the issue of access being maintained Darkinjung makes the following additional observations:

- a. The WACJV Response states that the applicant 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 lodged with the amended DA showing the location of the easement and how it will connect with other access points.

Darkinjung notes draft condition 31 requiring that Tooheys Road be kept open for the life of the development for access by the general public. We remain confused why the need for Wallarah 2 to pursue a Road Closure over this section of Tooheys Road at all.

Since May 2016 Darkinjung has sought documents relating to the Road Closure Application (No. W562973). In March 2017 we finally received the last of those documents. The documents clearly show that the applicant has asked the Department of Industry Roads to

place the road closure application on hold until such time as the Department of Industry Lands is ready to proceed with a sale of the road corridors to the applicant. Darkinjung strongly objects to this process. As adjoining neighbours to the Nikko Road corridor Darkinjung would normally be approached by the roads division in regard to purchase of the closed road corridor. Documents provided within our GIPA application make no mention of an approach to Darkinjung as an alternative purchaser of the closed roads. Once again, Darkinjung is being denied fairness through the department's departure from the normal course that their business would take.

#### **1.1 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 to Darkinjung's properties 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 amended DA 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.

As mentioned on numerous occasions previously, Darkinjung is bewildered that the Department accepted a State Significant Development Application over land that is not owned by the applicant nor is there a legal agreement in place for the applicant to achieve ownership rights.