

Professor Richard Mackay AM
Chair - Independent Planning Commission

Dear Professor Mackay

Tahmoor South Coal Project (SSD 8445) – Second Referral

I refer to the Tahmoor South Coal Project (SSD 8445) – Second Referral (**the project**) currently being considered by the Independent Planning Commission (IPC) and recent Public Hearings for the project held between 15 and 17 February 2021.

This submission is made to clarify key points regarding the claim process under the *Coal Mine Subsidence Compensation Act 2017* (**the Act**) and additional information relating to the project.

Recommended additional protections for homeowners

Subsidence Advisory NSW provided a number of submissions to the Department of Planning, Industry and Environment (DPIE) on the project. These submissions include key recommendations to reduce the number of homeowners potentially impacted by mine subsidence and provide additional protections for homeowners should the project be approved.

The original application submitted by Tahmoor Coal Pty Ltd (**Tahmoor Coal**) identified that 571 houses will be mined directly beneath. Analysis undertaken by Subsidence Advisory NSW resulted in Tahmoor Coal subsequently clarifying that, in addition to the houses mined directly beneath, an additional 762 houses will experience mine subsidence, bringing the total number of houses impacted to 1333.

Subsidence Advisory NSW recommended the proposal be modified to substantially reduce the predicted subsidence impact. Tahmoor Coal subsequently revised their mine plans to reduce the width of the longwall panels and remove proposed Longwalls 107b and 108b, with the forecast of properties impacted by subsidence reduced from 1333 to 143 houses.

The Act does not include provisions for social impacts resulting from mine subsidence damage to property, however, Subsidence Advisory NSW has also recommended the Development Consent include conditions for Tahmoor Coal to offer property acquisition where damage reaches certain thresholds or where substantial damage has occurred and there is subsidence expected for more than one year. This would provide further flexibility to property owners should they wish to sell and relocate.

Subsidence Advisory NSW reiterates its recommendation for the Development Consent for the project to include a requirement for Tahmoor Coal to offer property acquisition when the house:

1. reaches damage category R4 or R5; and/or
2. is in tilt of greater than 10mm/m; and/or
3. reaches damage category R3 or more and has/will be impacted by more than two longwalls.

Mine subsidence compensation system reforms

A wholesale review of the *Mine Subsidence Compensation Act 1961* (repealed) and its administration by the former Mine Subsidence Board (**MSB**) was completed in 2017.

This review was initiated in response to an inquiry by the Independent Commission Against Corruption into a former MSB employee and community complaints. The review identified considerable issues with the previous compensation framework, including a backlog of approximately 300 claims – some of which had been left unresolved for over 10 years.

In response to the review findings, significant reforms were introduced under the Act in 2018 to improve the claims experience for property owners and make mine operators accountable for subsidence damage arising from their operations. Key improvements include:

- Claim costs resulting from active mining are to be paid by the relevant mine operator, providing incentive for mine operators to reduce subsidence impacts
- Introduction of new independent claim assessments by technical experts in active mining areas
- Legislated 90 day timeframes for the assessment of claims (this timeframe commences on completion of subsidence in active mining areas)
- New option for independent review by the Secretary of the Department of Customer Service or their delegate for property owners who disagree with the outcome of their claim to request.

Notwithstanding recent reforms, Subsidence Advisory NSW recognises legacy brand issues still exist within the Southern Coalfields community and is working to rebuild community trust. Should the project be approved, Subsidence Advisory NSW will further engage with the local community to ensure property owners are aware of their rights under the Act and claim processes.

Subsidence periods

As a single longwall is extracted, subsidence of the land above occurs in front of the longwall face and continues as the longwall is extracted. This immediate subsidence typically lasts several months. Subsidence may be prolonged at a single property by other factors such as geology and the progression of mining.

A property may be impacted by subsidence by more than one longwall. The effect of this on a property is multiple periods of subsidence. For a single property, this means that extended time can pass before subsidence is considered complete.

Examples of subsidence timeframes, based on the schedule of mining provided by Tahmoor Coal in their submission and the estimated time that the properties would be located within the projected 20mm subsidence contour, are provided below.

- A property located within the zone of influence of longwall 106B would likely have measurable subsidence for a period of 3 to 6 months.
- A property located directly over the centreline of longwall 105B would be impacted by longwalls 104B, 105B and 106B. The estimated time period that the property would be subjected to subsidence is between 2 and 3 years.
- A property located over proposed longwall 104A would have subsidence occurring from longwalls 103A, 104A, 105A and potentially 106A. In this instance, the current schedule provided indicates that subsidence would be measurable for approximately 8 years due to the 5 year gap between longwalls 103A and 104A. As a result, Subsidence Advisory NSW has indicated in its submission to DPIE its intention to progress claims for subsidence damage at the completion of longwall 103A. The owners of properties impacted by subsidence from subsequent longwalls would be eligible to lodge further claims under the Act.

The schedule provided by Tahmoor Coal assumes 1 month between longwall moves and may be subject to delays due to unforeseen geotechnical issues which are commonplace in longwall mining operations. Operational and logistical challenges may also impact these timeframes.

In addition to the immediate phases of subsidence, residual subsidence typically occurs and is of a vertical magnitude similar to yearly reactive soil movements.

Management of properties during subsidence

Subsidence Advisory NSW operates a 24-hour emergency call line for the public to report suspected subsidence safety and serviceability issues. High risk reports are responded to within 4 hours and all other reports within 24 hours. The types of reports typically received in active mining areas relate to jamming doors and windows preventing closure or locking, trip hazards, leaks, and utility issues.

Subsidence Advisory NSW can arrange / direct the mine operator to arrange temporary or urgent works where subsidence impacts the continued use of an improvement or presents a danger to occupants.

Safety and serviceability reports are assessed based on all available information including subsidence survey data, pre-mining inspection reports, and the timing and nature of damage. It should be noted that there are occasions where urgent or temporary repairs are carried out, however, the results of later independent engineering investigations (completed as part of the full claim assessment) may show that the damage is not attributable to mine subsidence.

Due to the risks of properties sustaining further damage, claims are generally not progressed for final assessment until after subsidence from all longwalls that may potentially impact the property has ceased.

Claim process

Property owners whose homes are damaged as a result of mine subsidence can claim compensation through Subsidence Advisory NSW under the Act.

Subsidence Advisory NSW manages the claim process, coordinating the independent assessment of claims and ensuring mine proprietors pay fair and reasonable compensation in accordance with the Act.

Summary of claims process:

- a. Claim lodged by property owner
- b. Management of safety and serviceability items (if claim lodged before active subsidence is complete)
- c. Independent assessment of claim at the completion of active subsidence period
- d. Colliery compensates homeowner to a value not less than the independent cost estimate
- e. Where property owners do not agree with the determination, an independent review is undertaken by the Secretary of the Department of Customer Service or their delegate.

Independent assessment of claims

The 2017 Act introduced new independent assessments for claims in current mining areas.

Claims in current mining areas are assessed by independent technical experts. Subsidence Advisory NSW manages a panel of prequalified consultants with the relevant expertise who are engaged to complete the claim assessments.

The independent consultant is provided a comprehensive assessment guide which outlines all factors that must be considered as part of the assessment.

The assessment guide provided to consultants states:

“The independent consultant is required to come to a conclusion as to whether damage to any improvements arose from subsidence. A person is entitled to compensation when damage to improvements or goods “arises from” subsidence. In SA NSW’s opinion, this means that subsidence does not need to be the only, or even the primary cause of damage. In circumstances where, in the opinion of the independent consultant, subsidence is not the only or primary cause of damage, the independent consultant must consider whether the damage would have occurred if subsidence had not been present. If the answer to this question is no, it should be accepted that the damage arose from subsidence for the purposes of the damage assessment in the Independent Claim Inspection Report.”

Where the assessor determines the damage is attributable to mine subsidence, an independent Quantity Surveyor is engaged to prepare a cost estimate for the work. All cost estimates include provisions for project management fees and contingencies.

Compensation determinations

Under the Act and associated procedures, mine operators are required to determine claims in accordance with the findings of the independent assessor.

Compensation offers must be equal to or more than the independent cost estimate for the required repairs.

If the mine operator does not comply, Subsidence Advisory NSW has powers to step in and compensate property owners accordingly.

Claims are generally settled via monetary compensation payments allowing property owners to see out repairs of their own accord and by a builder of their choosing. However, the Approved Procedures for managing claims allow alternatives to monetary compensation such as purchase or project management of repairs in exceptional circumstances, i.e. ill-health, age, personal situations, severity of damage.

Claims settled via monetary compensation are generally subject to a Deed of Release, Indemnity and Agreement. The intention of the deed is to ensure that should the property owner not elect to use the compensation to complete the repairs, they are required to notify any subsequent purchasers of the property that the damage has already been the subject of a claim and a further claim for the damage with Subsidence Advisory NSW cannot be made.

Independent reviews and statutory appeals

A key change introduced as part of reforms to the mine subsidence compensation system in 2018 is a new independent review process. This new dispute resolution pathway provides appeal rights for property owners without initiating legal proceedings as required under the previous system.

There is no requirement for property owners to undertake/facilitate their own technical assessment.

Property owners who do not agree with the determination of their claim can now request an

independent review by the Secretary of the Department of Customer Service or their delegate. The outcome of this review is binding and mine operators must provide compensation in accordance with the review findings.

The option to appeal to the Land and Environment Court if a property owner disagrees with the findings of the Secretary's independent review is also available.

Customer feedback

Subsidence Advisory NSW receives close to 300 claims per year. The vast majority of property owners are satisfied with the outcome of their claim and limited complaints are received.

The management of homeowner expectations, where damage cannot be attributed to mine subsidence, remains a key challenge of the claims process. Subsidence Advisory NSW has recently introduced a new case advisory team with highly experienced case managers to support and provide guidance to property owners throughout the claim process.

Damage to homes and structures can be caused by a range of other factors including the impacts of extreme climatic conditions on reactive soils, adverse weather conditions, nearby trees and poor building practice. These impacts are common and can present similar types of damage to impacts caused by mine subsidence, such as movement of building footings, cracking of internal and external walls, and binding of doors and windows.

There are a small number of homeowners who remain dissatisfied with the outcome of their claim following both independent engineering assessments and a subsequent independent review by the Secretary or their delegate which have upheld findings regarding the extent of mine subsidence impacts to a property and / or the cost to repair any impacts. These homeowners have the option to lodge appeals in the Land and Environment Court. There are currently four claims undergoing a Secretary review and one subject to an appeal in the Land and Environment Court.

Development within a mine subsidence district

All development within mine subsidence districts requires Subsidence Advisory NSW approval prior to construction. Subsidence Advisory NSW regulates development in mine subsidence districts to help mitigate potential subsidence impacts. The Tahmoor South Coal Project area is within the Bargo district. The Bargo district was proclaimed in 1975 and notification of a property being located within a district is included on the Planning Certificate.

Contact

I would be pleased to meet with you to discuss the mine subsidence compensation framework in further detail should the IPC have any questions or concerns.

Please contact me on (02) 4908 4300 or at subsidenceexecutive@customerservice.nsw.gov.au if you have any questions or wish to discuss.

Yours sincerely



Joseph D'Ermilio
Director (Chief Executive), Subsidence Advisory NSW

24 February 2021