



7 December 2023

Jessie Evans  
Director  
Energy and Resource Assessments  
NSW Department of Planning and Environment

via email [REDACTED]

Dear Jessie,

### **Airly Mine Mod 5 – Request for Information**

I refer to the State significant development application for Airly Mine Mod 5 (SSD 5581 Mod 5) (**Application**), currently before the Independent Planning Commission (**Commission**) for determination.

The Commission is seeking information from the NSW Department of Planning and Environment (**Department**) on the following matters:

#### Modification power

1. The NSW Court of Appeal made potentially relevant findings with respect to the Commission's power to decide this modification in **Ku-ring-gai Council v Buyozo Pty Ltd [2021] NSWCA 177**, including that the power in s 4.55(1A) of the *Environmental Planning and Assessment Act 1979* to modify a consent can only be exercised if the modification will effect some change to the development the subject of the development consent. Can the Department please confirm that this power has been enlivened by the Application and on what grounds?

#### Employment increase

2. Can the Department please confirm how the extra 35 workers are intended to be utilised (with respect to traffic and other impacts) – e.g. more/larger teams within existing shift hours as opposed to additional shifts at different hours?

#### Mine closure water management

3. With respect to the proposed change to Schedule 4 Condition 27 (Rehabilitation Management Plan) and the consequent removal of clause (e) of that condition requiring a Closure Groundwater Monitoring and Management Plan, can the Department please confirm how the objectives of clause (e) would be addressed under the recommended conditions for Mod 5?

Assessment Report

4. The version of the Department's Assessment Report provided to the Commission on 24 November 2023 contains a number of broken hyperlinks (see paragraphs 1, 5 and 26). Can the Department please provide an updated copy with working links?

The Commission requests that the Department provide a response by **5pm on Wednesday 13 December 2023**.

Should you require any clarification in relation to the above, or wish to discuss further, please contact me at [REDACTED] or [REDACTED].

Yours sincerely,



**Stephen Barry**  
**Planning Director**