Professor Zada Lipman
Chair – Dartbrook Coal Mine Modification
Independent Planning Commission
L3, 210 Elizabeth Street
Sydney NSW 2000

HTBA
HUNTER THOROUGHBRED BREEDERS ASSOCIATION

Attention: Mr Bradley James

EMAIL TRANSMISSION

13 June 2019

Dear Professor Lipman

Re: Dartbrook Coal Mine Modification 7 (DA 231-7-2000MOD7) – HTBA Supplementary Submission

This supplementary submission responds to Australian Pacific Coal's ("AQC") submission to the Independent Planning Commission following the public meeting, AQC's further submission dated 22 May 2018 (sic) and the Department of Planning's response to the Commission's request for additional information dated 4 June 2019.

The attached document presents our comments on the AQC Submission to the Commission following the public meeting. Many of these comments are also pertinent to AQC's submission dated 22 May 2018. Also attached is supplementary advice from Beatty Legal.

AQC's recent submissions do not, in our view, present any new or relevant information which alters the serious concerns we expressed to the Commission at the public meeting and were reinforced in our submission of April 2019.

We remain of the view that this is a fatally flawed mine plan with a modification that will not provide positive benefits to NSW. In particular:

1. there is no economic benefit from this modification. Based on the work undertaken by Marsden Jacob Associates, this modification is in fact likely to result in a negative "benefit" to the national and state economies of $73m and $15m respectively;
2. the modification comprehensively fails to assess social impacts and will result in unacceptable air quality in an area already experiencing significant air quality exceedances;
3. the modification will result in unacceptable noise exceedances;
4. the modification is manifestly deficient in its assessment of:
    a. water issues,
    b. Aboriginal and non-Aboriginal heritage,
    c. visual impacts, and
5. the modification raises serious legal issues – including the validity of the s75W modification.

We note that there has been no decision regarding the proposed strategic partnership between AQC and Stella Natural Resources. We have no confidence in this modification proposal by an unproven miner with no mining experience. Nothing in AQC's recent submissions alters our view, and that of our experts, that this modification is economically, environmentally and socially damaging.

The unprecedented and significant opposition to this proposal voiced by some 1300 community submissions reinforces our view that this proposed modification does not have a social licence to operate, is not in the public interest and should be refused.

We and our experts stand by the scientific and technical assessments as tendered in our previous submission and reinforced in the attached document – including in particular the assessments tendered by Mr Michael White (mining consultant), Mr Owen Droop (specialist water consulting firm) and Marsden Jacob Associates (leading economic and public policy advisers).

We note that the Commission has withdrawn its request for an independent economic assessment as articulated in its request for additional information to the Department of Planning in April 2019.

This is disappointing as the Department's response to the Commission's request, dated 4 June 2019, mainly and merely reiterates AQC's position and demonstrates no independent or critical analysis of AQC's assertions. This is particularly the case with respect to capital cost assumptions, operational head count, costs associated with the reopening and operation of the coal washery, ground water, impacts on the Upper Hunter's Equine Critical Industry Cluster and cumulative air pollution impacts.

It is difficult to reconcile the Department's position that "as longwall mining is currently approved under DA 231-7-2000, there is no requirement to re-assess its potential impacts on overlying mapped ECIC" (p3) with:

- the Government's Strategic Regional Land Use Policy for the Upper Hunter 2012, (which promised heighted protection for the Hunter's critical wine and equine critical industry clusters);
- the objects of the Environmental Planning and Assessment Act – particularly:
    - (a) the promotion of the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources;
    - (b) to facilitate ecologically sustainable development; and
    - (c) to promote the orderly and economic use and development of land.
- the aim of the State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007 ("Mining SEPP") - with respect to the protection of strategic agricultural land and water resources;
- the Mining SEPP's legislated Gateway process – which as per s 17A (1) (a) (ii) of the Mining SEPP and supporting Government guidelines **requires Gateway applications for State significant mining development that requires a new or extended mining lease** (as is the case with this modification given the current mining lease, ML 1497, expires on 5 December 2022 but for which no Gateway application was lodged or determined);
  https://www.legislation.nsw.gov.au/#/view/EPI/2007/65/part4aa/div1/cl17a
  http://www.mpgp.nsw.gov.au/docs/Guideline%20for%20Gateway%20Applicants.pdf
- NSW Government's Agricultural Impact Statement – which best practice would suggest necessitates a thorough and comprehensive analysis of the impacts of mining developments on Strategic Agricultural Lands particularly given this proposed modification will impact on both Biophysical Strategic Agricultural Land and mapped Equine Critical Industry Cluster land.

The Department's position is difficult to reconcile not only because it is contrary to contemporary NSW Government policies and legislation, but also given the age of the original consent and the fact that the Dartbrook underground mine has been in care and maintenance for some 13 years.

We note that following the public meeting AQC submitted new and material information regarding Scope 3 greenhouse gas emissions and the economic impacts of these submissions. This information should have been included in AQC's Environmental Assessment and exhibited for public comment. It is concerning that this information was not only submitted very late in the process but also that the planning process, in the spirit of transparency and fairness, did not exhibit these documents for public scrutiny.

As we stated at the public meeting, it is with serious regret and concern for the integrity of the NSW planning process that we reiterate our lack of confidence in the Department's capacity and capability to effectively and fairly assess mining projects and provide fair and critically informed advice to the Commission.

We are seriously concerned that, prima facie, the Department seems willing to accept information provided by the Proponent with little or no independent or critical review of assertions being made.

We are further seriously concerned about the deficiencies in this particular planning process which in our view calls into question the integrity of this process and the validity of any resulting decision in favour of this proposal - viz:

- questions surrounding the legality of this s75W modification;
- the omission to require the lodgement of a Social Impact Assessment (SIA) as part of the modification's EA and, in line with the principles of transparency and community engagement, exhibit the SIA for public scrutiny;
- the very late lodgement of new information on Scope 3 Emissions and the economic impact of those emissions also not subject to public exhibition; and
- the total disregard for any proper assessment of the impact of this proposal on Strategic Agricultural Land (both mapped Equine Critical Industry Cluster and Biophysical Strategic Agricultural Land) contrary to NSW Mining SEPP legislation as it relates to the NSW Gateway process.

For all the reasons we presented to the Commission at the public meeting, submitted in our April 2019 submission and in this submission, we therefore respectfully submit that the proposed Dartbrook modification (both in terms of process and socio-economic and environmental consequences) is fatally flawed, not in the public interest and should be refused.

Yours sincerely

Dr Cameron Collins
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Our Ref: [redacted]
Your Ref:

14 June 2019

BY EMAIL

The President
Hunter Thoroughbred Breeders Association Inc
[redacted]
SCONE NSW 2337

Dear Sir

Re: Dartbrook Modification 7: Supplementary Legal Submission

We refer to the Australian Quality Coal Pty Ltd (**AQC**) submission to the Independent Planning Commission (**Commission**) dated 23 April 2019 (**AQC Submission**) and our legal submission dated 26 April 2019 which we understand has been submitted to the Commission (**Legal Submission**).

You have asked us to clarify the legal basis of several assertions made or inferred in the AQC Submission. We note that the AQC Submission was prepared not by lawyers but by Hansen Bailey, Environmental Consultants.

This letter addresses the following matters raised in the AQC Submission:

a) What is the test for determining whether a proposal is relevantly a modification under (the now repealed) s75W of the *Environmental Planning and Assessment Act* 1979?

b) What is the scope of a consent authority's assessment of a modification application and does a consent authority when determining a modification application have the power to impose conditions that are not sought or agreed to by the applicant?

c) What is the status of an existing approval if that approval is subsequently modified?

d) What is a "cumulative impact"?

e) What is the relevance of *Gloucester Resources Limited v Minister for Planning* [2019] NSWLEC 7(**Rocky Hill**) to this proposal?

f) What is the relevance of mapped strategic agricultural land?

1. What is a "modification" under Section 75W?

The Dartbrook modification application is to be assessed under s75W of the EP&A Act because it (a) relates to a consent for state significant development issued prior to 2005

and (b) was lodged prior to 1 March 2019[1]. While there is a clear statutory test for a "modification" under Part 4 of the Act, i.e. that it need be "substantially the same development"[2], there was no equivalent statutory test under s75W (Part3A).

In *Billinudgel Property Pty Ltd v Minister for Planning* [2016] NSWLEC 139 Justice Robson summarised the approaches taken by the Courts to this issue and identified 6 considerations that could be relevant in assessing whether an application was for a modification under s75W. In *Billinudgel*, his Honour concluded that the application sought to change an underlying or essential part of the project and was accordingly not a "modification" under s75W. We deal with this in our Legal Submission at section 1.1.

In summary:

- the "test" for what is relevantly a modification under s75W is multifaceted and is not properly captured by the AQC's use of the term "radical transformation"; and
- where an application seeks to change a core element of the original project it may not be a "modification" within the scope of s75W.

2. Scope of Assessment

The AQC Submission asserts that the Commission's assessment should be limited to the four aspects of the modification listed in section 1.3 of the AQC Submission. Together with this submission is an implied assertion that the Commission should not, and would not have the statutory power, to condition other aspects of the proposal such as the washing of coal, maximum coal output or blasting. This submission is overstated and incorrect.

The Commission's function is to consider the "application" before it. That application comprises the application form, the accompanying environmental assessment and the response to submissions. These documents describe the modified project for which AQC is seeking consent. In the environmental assessment materials AQC makes statements as to the likely impacts of the modified proposal. AQC's analysis of impacts is predicated on assumptions such as, for example, that the extracted coal will not be washed, rejects will not require disposal and that there will be a specified maximum volume of truck movements. Similarly, the economic impact and social impact assessments are

[1] Clause 8J(8) of Schedule 4 of the Environmental Planning and Assessment (Savings, Transitional and Other Provisions) Regulation 2017 provides:
"For the purposes only of modification, the following development consents are taken to be approvals under Part 3A of the Act and section 75W of the Act applies to any modification of such a consent: …
(c) a development consent granted by the Minister under Part 4 of the Act (relating to State significant development) before 1 August 2005 or under clause 89 of Schedule 6 to the Act, …
The development consent, if so modified, does not become an approval under Part 3A of the Act."

[2] See EP&A Act ss 4.55(1A)(b) and 4.55(2)(a)

dependent upon assumptions regarding the maximum ROM coal to be produced by the mine.

As summarised in the submission by HTBA's mining expert, Mr White, if coal is washed on site this will create additional (unassessed) noise and air quality impacts, will require additional water (and the disposal of contaminated water) and the disposal of rejects. Rejects disposal will create further consequential impacts as if they are to be disposed of in the location contemplated by the existing approval, this will require reopening rehabilitated areas and increasing visual impacts.

If the rehabilitated areas are reopened to allow rejects disposal this will have consequences for the area's future rehabilitation[3] as well as significantly increasing rehabilitation costs. Similarly, the magnitude of the impacts (which are of a different nature to those approved under the original consent) will change if the production rate of the mine exceeds 1.5Mtpa.

The provisions of the EP&A Act relating to modifications under Part 4:

a) prescribe in s4.55(3) the matters that are to be taken into consideration by the consent authority[4] (namely such of the s4.15 factors that are relevant); and

b) empower the consent authority to impose conditions on any modified consent.

While the consent authority's assessment function under s75W is not prescribed in the same way as it is under s4.55(3), the consent authority is also clearly directed to consider the environmental consequences of the modification sought[5] and the authority is given the express power "*to modify the approval (with or without conditions) or disapprove of the modification*"[6]. Accordingly, the key elements of the assessment function under s75W are largely the same as those under Part 4[7] and the powers of the consent authority with respect to the imposition of conditions is no less than under Part 4 of the EP&A Act.

[3] We note that rehabilitation arrangements are not addressed in any way in the applicant's environmental assessment materials.
[4] "s4.55(3) *In determining an application for modification of a consent under this section, the consent authority must take into consideration such of the matters referred to in section 4.15 (1) as are of relevance to the development the subject of the application. The consent authority must also take into consideration the reasons given by the consent authority for the grant of the consent that is sought to be modified*."
[5] See eg paras 41 and 53 of Barrick as cited in Meriton Property Services Pty Limited v Minister for Planning and Infrastructure [2013] NSWLEC 1260 at 48.
[6] Section 75W(4)
[7] We note that the Department appears to have assumed that factors prescribed by s4.15 are those to be considered in its assessment.

The role and function of a consent authority in relation to a modification application under Part 4 is clearly set out in the *Pittwater Council* case[8] (emphasis added):

> 40. …"*when an application is made to modify an existing consent, it will almost always be a request to modify a consent which has been granted subject to conditions. In these circumstances it would be impossible to consider the impact of the modification without an understanding of the effect of the existing conditions upon the modified consent. For the same reason it would be unreal to require a consent authority to evaluate an application to modify a consent without considering whether conditions made necessary by the modifications should be imposed*."
> …
> *51 Ultimately the limits of the discretion which may be exercised by a consent authority will be defined by the matters raised for consideration* ***by the application****. Accordingly, when an application to modify one aspect of a development is lodged, the consent authority must consider the matters under s 79C(1) relevant to the aspects of the development to which the application relates. Accordingly, if an application is made to modify the height of a building, consideration of any matter which is either directly or indirectly related to height will arise for consideration.*
> …
> *54. … An application to modify the consent having been made, the Council, when considering that application, could reconsider, at least relevant elements of the original consent and, if it perceived a need to cure a problem, which may not have been apparent previously but now is, impose a new condition."*

By way of example, in *Karlos v Tweed Shire Council*[9] Justice Moore identified that modification of a consent to alter the type of tanker truckers permitted to transport water would necessarily require him to also impose a new condition limiting the number of truck movements per year. Moore J indicated at [69] that the imposition of such a condition would be within power in the light of the *Pittwater Council* decision.

In the present case, AQC's modification application requests the Commission to assume that the washery will not operate and a lesser volume of coal will be produced. These assumptions lessen certain physical impacts of the proposal. A consent authority is tasked with weighing up benefits and impacts of the application before it. Accordingly, if the Commission were to consent to the modification, it would need to impose appropriate conditions to ensure that the impacts of the proposal did not exceed those impacts which it had assessed and deemed acceptable.

For completeness, we note that the *Oboodi*[10] case cited in the AQC Submission involved a determination by a single Commissioner regarding the Court's powers under s39(6)(b)

[8] 1643 Pittwater Road Pty Ltd v Pittwater Council 11 Elvina Avenue Pty Ltd v Pittwater Council Doering v Pittwater Council 1643 Pittwater Road Pty Ltd v Pittwater Council [2004] NSWLEC 685
[9] Karlos v Tweed Shire Council [2018] NSWLEC 164
[10] Oboodi v Hornsby Shire Council [2018] NSWLEC 1512

of the *Land and Environment Court Act* 1979 to impose a condition on a modification application for amendment of the layout of a driveway crossover (approved as part of a 3 lot subdivision). In that case, the Commissioner held that the Court had no relevant power to impose Council's requested additional condition regarding the layout of the driveway on lots 2 and 3 (the rear blocks) where the modification sought only related to the driveway crossover at the entrance to lot 1. In Commissioner O'Neill's opinion [at 43]:

> "*The condition sought by the Council regards an aspect of the development which is unaffected by the proposed modification to the consent and it is not a matter that directly or indirectly relates to the modification application*."

We note that unlike *Oboodi*, this is not an instance where some (minor) discrete geographically distinct element of a development is sought to be modified. The AQC modification application touches on most, if not all, elements of the original consent and operates geographically across the area of the existing consent.

In relation to the *Meriton Property*[11] case also cited in the AQC Submission, we note that Senior Commissioner Moore (as he then was) made the comment cited by AQC: "*The test for the resulting development as modified is "Is it acceptable?" It is not something that requires us to seek or endeavour to impose design nirvana*"[12] in a particular (and unusual) context.

The Court was required to determine a deemed refusal of s75W modification in circumstances where, by the time of the hearing (and following a s34 conciliation), the Minister had indicated a willingness to agree to consent orders for a slightly amended modification (subject to consultation with objectors).

The proceedings had been expedited (for an unexplained reason) and appear from the judgment to have been directed at ensuring that the interests of objectors (including Council) were heard and that legal representations made by a third party intervenor regarding the scope of s75W were addressed. Thus, in that case, once the Commissioners were satisfied that it was relevantly a s75W modification (the issue raised by the intervenor), they only needed to satisfy themselves that the amended modification proposal satisfactorily addressed the reasonable concerns raised by Council and other objectors.

Here it has not been asserted that this Commission has a responsibility to create a "design nirvana". Rather, it is required to assess and consider the implications of the application before it.

[11] Meriton Property Services Pty Limited v Minister for Planning and Infrastructure [2013] NSWLEC 1260
[12] IBID at 72

It is clear from the case law discussed above that:

a) the assessment task is not limited to the particular conditions requested to be modified by the applicant;

b) the consent authority is required to consider the environmental consequences of the modification in its context;

c) the consent authority has the power to impose additional conditions (not sought by the applicant) where the need for those additional conditions "arise as a consequence of the modification being sought and [are] reasonably in response to such a modification"[13]; and

d) where a modification is considered acceptable based on certain impacts, it is appropriate and even necessary for the consent authority to ensure that the project is conditioned so that it is undertaken in the manner proposed by the applicant.

3. Impact of modification of an approval

The AQC Submission presupposes some future reality where consent for the modification is granted and it acts on the modified consent for a period (until 2021) but then reverts to a different mining process for the remainder of the duration of the modified consent[14]. This supposition, coupled with the assertions within AQC's assessment materials ,that AQC can elect which coal extraction methodology to employ, whether or not to use the coal washery or increase production levels, demonstrates a fundamental misunderstanding of the effect of modification of the original approval.

If consent for the modification is granted, this will grant new rights to AQC as the existing consent and the modified consent will exist concurrently[15].

It is a matter for AQC (or any other holder of that consent) as to whether to act on that modified consent. If AQC chooses <u>not</u> to take up the consent as modified, then it may act under and in accordance with the existing consent. The existing consent specifies longwall mining and underground coal conveyance, permits the washing of coal and disposal of rejects and requires that mining cease by 2022. Alternatively, if a modification

[13] *David Kettle Consulting Pty Limited v Gosford City Council* [2008] NSWLEC 1385 at 12
[14] See eg the discussion of Scope 3 GHG emission in the AQC Submission
[15] See for instance the comments of Justice Talbot in *Waverley Council v C M Hairis Architects* [2002] NSWLEC 180 at [30]: "*There is no statutory or other legal constraint upon the number of development applications that a person can make in respect of the same land. A shopping centre complex is a demonstrative example of the way in which there can be a mosaic of development consents extending around the different parts or sections of a single site. Section 80A(1)(b) of the EP&A Act provides a facility for the consent authority to insist on the surrender of an existing development consent. It follows that the Act contemplates there can be more than one valid and operating consent in existence at the one time. The legislature has left the option or election whether to require surrender of an existing consent to the consent authority. There is no warrant to read the power to modify in s 80A(1)(b) as being akin to or in the context of a surrender as Mr Ayling suggests.*

of the consent is approved, AQC could take up the modified consent (which in our view must limit the project to the constraints proposed in the assessment materials). But what it cannot do is seek to create some new hybrid approval by cherry-picking elements of the original approval and the modified approval.

We note that in both the 2001 grant of consent and the 2005 modification of the consent the proponent was required to surrender certain previous consents and modifications of the 2001 consent.

4. Cumulative Impacts

The Commission is required to consider cumulative impacts[16]. Cumulative impacts are the "successive, incremental and combined impacts" predicted to be experienced if the proposal proceeds. Quantification of cumulative impacts necessarily requires consideration of existing and approved projects in the vicinity. The applicant has not quantified cumulative noise, visual or social impacts. The applicant has sought to quantify cumulative air impacts based on 2014 data with an additional contingency for the recently commenced nearby Mt Pleasant open cut coal mine[17]. The problems with this approach (in this context) are that:

- The predictions don't seem to match current current data; and
- This method fails to take into account that existing approved mines were operating under capacity in 2014 (ie they were operating at a production rate lower than that permitted by their approvals).

As a consequence, the cumulative air impacts predicted by the applicant may underestimate the actual cumulative impact likely to be experienced if the mine proceeds. This is particularly important in this context where current data (and the applicant's own assessment) demonstrates existing air quality conditions are close to, at, or in fact exceed NEPM standards.

Separate to the issue of how to quantify cumulative impacts is the assessment of whether the impacts as quantified are acceptable. The AQC Submission asserts that in making this judgment the Commission need only consider whether the impacts are less than that permitted under the existing consent (i.e. if they are less than that permitted under the existing consent, they are *ipso facto* acceptable). This cannot be the case.

In addition to the discussion in section 1.3 of our Legal Submission we note that:

- the Commission is required to consider the environmental consequences of the modification. The immediate consequence of the modification is that mining will commence where it has been abandoned for 13 years . If a relative assessment of

[16] See the discussion in section 4 of our Legal Submission.
[17] We note that the cumulative impact assessment for the Mount Pleasant mine did not assume that the Dartbrook mine would operate.

impacts is appropriate, then the impacts of the modification ought to be compared against the impacts of the existing mine in care and maintenance.

- it is self-evident that the cumulative impacts to which the consent authority had regard in approving (or modifying) the original consent are different to that currently experienced in the area;
- government health standards and policies regarding quantification and acceptability of impacts have changed since 2001;
- the mine has been in care and maintenance for 13 years and accordingly all impacts of the proposal (other than the ongoing water impacts of the existing mined areas and the Hunter Tunnel) will be experienced as new impacts; and
- the proposed modification touches on and alters all of the key cumulative impacts of the mine as approved (noise, air, visual and social): accordingly, the acceptability of all of these impacts are required to be considered as part of the modification application.

5. Relevance of the *Rocky Hill* decision

The decision in *Rocky Hill* is an important illustrative case. It is unusual for a coal mining project to the be the subject of a merit assessment by the Courts. Accordingly, the approach to the assessment task undertaken by Chief Justice Preston provides an important precedent for decision makers (such as the Commission in this case) when considering mining projects. Relevant to this modification application, the *Rocky Hill* case demonstrates:

- that noise and air quality impacts can have substantial (unacceptable) social impacts even if those impacts do not exceed the VLAMP (voluntary land acquisition) criteria established by the Department and assessment of noise impacts requires consideration of existing background noise;
- the relevance of local Council policies and planning instruments in establishing the likely preferred land uses of an area (relevant to the assessment required under the Mining SEPP);
- the need to properly consider impacts on Aboriginal people both in the context of social impacts and impacts on cultural heritage;
- the importance of social impacts (including impacts on “sense of place”) and the relevance of the “reasonable” views of the local community;
- that scope 3 GHG emissions are required to be considered both in the context of the Mining SEPP and in accordance with the principles of ESD and, accordingly, the

impact of a proposal on climate change is a relevant factor in the assessment of a project[18];

- in assessing public benefits of a mining project it is necessary to consider "*whether the benefits of the Project outweigh its costs to the members of a specified community and, secondly, whether the public benefits of the Project outweigh the public benefits of other land uses*"[19];

- the need to closely analyse and give weight to social impacts (negative and positive) using the categories listed in the SIA Guideline and to critically evaluate the likelihood of asserted benefits occurring and the likely scale of those asserted benefits (In the Rocky Hill instance the Court consider that many of the asserted social benefits were unlikely to occur and if they occurred would only be of moderate positive impact in contrast to the significant and probable adverse social impacts);

- in considering economic impact assessments it is necessary to closely scrutinise the base assumptions underlying the analysis (such as coal price assumptions, likely company tax revenue and worker and supplier benefits) and to ensure that environmental and social costs are adequately quantified (In the Rocky Hill case the Court considered the economic benefits to be uncertain and significantly overstated);

- that even if a project's NPV is positive this does not mean that the project is in the public interest; and

- that consideration needs to be given to how impacts (environmental, social and economic costs) and benefits (usually largely economic) are distributed between members of the present generation and also between present and future generations (intergenerational equity).

6. Strategic Agricultural Land

There are areas of strategic agricultural land being mapped equine critical industry cluster (ECIC) and biophysical strategic agricultural land (BSAL) located within and adjoining the proposed mine.

Clause 20 of Schedule 2 of the Environmental Planning and Assessment (Savings, Transitional and Other Provisions) Regulation 2017 specifies that where an application for modification of a development consent referred to in clause 8J(8)[20] relates to mining on land shown on the strategic agricultural land map and is relevantly "mining or petroleum development", a gateway certificate is required to be submitted with the application for modification[21].

[18] This is discussed further in section 6 of our Legal Submission
[19] Rocky Hill at [557]
[20] See section 1 and footnote 1 above
[21] This requirement is on the same terms as clause 17A of the Mining SEPP

Relevantly, "mining or petroleum development" is defined in subclause 20(2)(a) to include mining where a mining lease is required to be issued because:

> *(B) there is no current mining lease in relation to the proposed development*,

The "proposed development" is for mining to take place from the grant of any modification until December 2027. We are instructed that the relevant mining lease expires in December 2022 and accordingly, there is no current mining lease which applies to the entirety of the proposed development. We note that the Strategic Land Use Policy 2013 states on page 1:

> *"The Gateway process applies to certain types of State significant mining or petroleum development on Strategic Agricultural Land:*
>
> - *State significant mining development that requires a new or extended mining lease …"*

The proposed modification requires an extended mining lease.

Please contact us if you require further clarification on these issues.

Yours faithfully
Beatty Legal

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HTBA COMMENTS ON AQC SUBMISSION TO IPC FOLLOWING IPC PUBLIC MEETING
DATED APRIL 2019 AND ALSO RELEVANT TO AQC SUBMISSION OF 22 MAY 2019APRIL 2019 ALSO RELEVANT TO AQC SUBMISSION OF MAY 2019

#	Section Ref:	Comments/Observations
1	1.3 The Modification	• We note this section omits reference to extraction of up to 10 m tonnes of Run of Mine coal over a ten year period with a maximum production rate in any given year of 1.5 m tonnes per annum. (EA pii)
2	2.1 Assessment by DoP	• For the record we reaffirm that the **quantification of all environmental and socio-economic impacts have NOT been conducted in accordance with NSW policies and guidelines** as per our earlier submission. • Further, **allowing the Proponent to submit information post facto without any public scrutiny does not constitute a fair and transparent planning process**. This has demonstrably been the case with respect to the Proponent's: o Social Impact Statement o Scope 3 Emissions; and o Consideration of Scope 3 Emissions in Economic Impact Statement.
		• **Given material deficiencies we have raised in the Department's critical assessment** of this proposal, we respectfully submit the **IPC should NOT rely on the Department's Assessment Report**.
3	2.2 Determination Process	• **The Thoroughbred Breeding Industry refutes the claim that the "majority of objecting speakers were engaged or affiliated with the horse racing industry"** and the intended slight that the industry has a "documented history of opposing coal mining developments …"(p4) • This comment misrepresents and diminishes the significant community speakers expressing their concern and opposition to the Dartbrook Modification at the IPC meeting. • It also seeks to undermine the value of any scientific and technical information that is contrary to that professed by the mining industry. • It is noteworthy that the thoroughbred breeding industry and community stakeholders must invest significant time, resources and expense in order to ensure that scientific and technical evidence is put before the IPC because the **Proponent's EIS and the Department's evaluation of mining proposals does not stand up to independent scrutiny and cannot be trusted.** • This comment also ignores the fact that the thoroughbred breeding industry's material scientific and technical evidence has been found compelling by previous PACs and their decisions, particularly in the case of Drayton South, reflect this.
		• We, and our legal experts refute DPE's view that this modification application is in scope for s75W. • As outlined in our previous submission, the advice from Beatty Legal and the attached submission from Beatty Legal note that the "test" for what is relevantly a modification under s75W is multifaceted and is not properly captured by the AQC's use of the term "radical transformation" and where an application seeks to change a core element of the original project it may not be a "modification" within the scope of s75W.
		• Further as the attached submission from Beatty Legal demonstrates, neither the *Oboodi v Hornsby Shire Council ("Oboodi')* nor the *Meriton Property Services P/L v Minister for Planning and Infrastructure* ("Meriton"

		are relevant because: ○ unlike *Oboodi*, this modification is NOT an instance where some (minor) discreet geographically distinct element of a development is sought to be modified; and ○ unlike *Meriton* the Commission does NOT have a responsibility to create a "design nirvana". • It is clear from the case law as argued by Beatty Legal in the attached submission that: ○ the assessment task is NOT limited to the particular conditions requested to be modified by the applicant; and ○ the consent authority IS required to consider the environmental consequences of the modification in its context.
4	3.1 Rocky Hill Case	
	3.1.1 Relevance to Modification	• The attached Beatty Legal submission outlines why the Rocky Hill decision is an important illustrative case of relevance to the IPC's considerations and why Justice Preston's assessment provides an important precedent for decision makers when considering mining applications.
		• We particularly draw the Commission's attention to Justice Preston's consideration and decision on air quality and noise impacts which can have substantial (unacceptable) social impacts even if they do not exceed assessment criteria (which is not the case for this proposed modification).
5	3.1.2 Cumulative Visual Impact	• The Department of Planning in its Assessment Report states "**the social impacts actually experienced would be more akin to a new mine opening**." (p27). This statement clearly demonstrates that social impacts, including the visual and cumulative visual impacts of this Modification, should have but have not been fully addressed.
		• In assessing cumulative impact, the Proponent only considers the shaft shed in its assessment, which is **inadequate as the other sites and activities also contribute to cumulative impacts.** • To date the **full dimensions of the shaft shed remain unclear**. It remains the view of landscape expert Mr Michael Wright, that it is grossly incorrect that the proposed shaft shed would be "dwarfed by the neigbouring industrial structures including the concrete batching plant". The batching plant is set amongst mature trees and is partially screened from almost every angle and it comprises mostly mounds of stacked material with only one silo structure, which is below the surrounding tree canopy. By contrast **the shaft shed will be set in an open area of the flood plain clearly visible from many angles of view.**
		• The cross sections showing lack of visibility of the mining activities to receptors around Aberdeen are from **highly selective viewpoints where topographic screening clearly exists**. There are **other locations where mining activities would not be screened by topography but these have been ignored.**
		• Further as previously submitted by Mr Wright in our earlier submission, **the cross sections have ignored the closer and more exposed residences around the mine site** particularly the two homestead residences just south of Aberdeen on the hill overlooking the floodplain and the proposed shaft shed and haul road (shown in

		orange in the Proponent's Figure 2).
		• **None of the cross sections cover the haul trucks using the haul road** but mostly the Kayuga Entry, the shaft shed and the East Site crushing plant. **The crushing plant is quite visible from parts of Aberdeen and very clearly visible from the two homestead residences** on the hill just south of the town and yet this is not assessed.
		• The **Kayuga village residences are very close and visually exposed to the haul road, as are a number of other residences around the mine site**, and yet only the New England Highway is assessed for this visual impact.
6	3.1.3 Cognitive Mapping	• The Cognitive Mapping assessment, which is a similar definition to Indirect and Dynamic Impacts, is limited to the New England Highway. **It is totally unacceptable to ignore the bulk of the receptors in the vicinity of this mine**, including residents, other road users (eg Dartbrook and Blairmore Roads) as well as other impacts such as lighting impacts and dynamic impacts outside the immediate site area including digital web content.
7	3.1.4 Noise Emergence – Rocky Hill case	• Contrary to the views expressed by the Proponent, the Beatty Legal submission (attached) articulates why noise (and other environmental impacts) can have substantial (unacceptable) social impacts and that noise impacts require consideration of existing background noise.
8	3.1.5 Greenhouse Gas Emissions – Scope 3	• Scope 3 emissions have only now been submitted in Appendix B – ERM 2019. • **In our view it is inappropriate for these emissions to have been overlooked and that new information can be submitted by the Proponent and not be subjected to public exhibition and public scrutiny.**
		• Stephenson Environmental Management: ○ Advise that scenarios 1 and 2 (longwall mining versus bord and pillar) appear to be in conflict thus impacting on the greenhouse gas ("GHG") calculations used in the original ERM submission. ○ Query the confidence and quantification in future emissions based on assumptions and Input Data 1 , 3 and 4 ○ Query the use of Scenario 2 subdivision and the resultant reduction ○ Conclude that the concept of GHG emission reduction has been ignored in the ERM report – based on Assumption and Input Data 7.
9	3.1.6 Economics	• Gillespie economics have now undertaken an assessment to calculate global cost of Scope 3 emissions (Appendix C) • **In our view it is inappropriate that new and material information should be submitted by the Proponent and not be subjected to public exhibition and public scrutiny.** • Our economic advisers note that the valuation of the greenhouse emissions in the cost benefit analysis, issues of standing and whether global or national values are used are distractions from the policy considerations, namely that the full amount of Scope 1 and 2 emissions would be included in the NSW emissions account – https://climatechange.environment.nsw.gov.au/About-climate-change-in-NSW/NSW-emissions

		• Gillespie Economics is using global GHG emissions value but does not specify the value or detail the calculations. • This approach would support an underestimation of the true value of the greenhouse gas emissions thus presenting a more favorable assessment of the mine modification than would otherwise be the case., • We assume that the reason for this is because if the values from NSW guidelines are instead used and attributed to the NSW population the value of GHG emissions is far higher. This clever accounting positions the GHG matter to appear small. • **It is the continued view of Marsden Jacob Associates that the value of Scope 1 and 2 GHG emissions (even at $20/t) exceeds the return from royalties. This proposed Modification is therefore NOT in the public interest and the Modification application should be refused.**
		• Further it is worth noting that the Gillespie Economics response continues to fail to address the other significant problems that have been identified with their analysis – namely the underestimation of costs and over-estimation of benefits (such as): ○ Coal prices ○ Externalities (noise, air quality etc) ○ Capital and operating costs • Inconsistent consideration of "standing" across the analysis.
10	4.1 Open Cut Mining	While the Proponent seeks to disentangle linkages to future open cut mining from this Modification it should be noted that: • The Department in its Assessment Report recognised the proposed modification is "**complicated by the fact that Dartbrook has been in care and maintenance for the last 12 years and that AQC has publicly announced its intentions to investigate open cut mining opportunities at the site**. " (p ii) • JORC Reserves Statement 2017 ("JORC") has assessed a model which "**assumes the ability to subsequently implement open cut mining at Dartbrook**" (JORC p 62) • On a stand alone recommencement of underground mining at Dartbrook JORC concludes "The **financial and economic modeling and evaluation shows a negative NPV for the underground project as a stand-alone** …" (JORC p 71)
		Many statements made in the JORC (2017) validate the linkages between underground and future open cut mining at Dartbook, including: • "AQC's strategy has been to commence mining as soon as practically possible after conclusion of the sale process of the Dartbrook asset – this is deemed most possible with underground mining, considering established access and infrastructure on site, **allowing planning and start-up of open cut operations** concurrently while already generating income." (JORC p58)
		Why does this linkage "complicate matters" (as stated by the Department) and why is it important?

		• Because despite the Proponent's claim that this modification relates to "three relatively minor changes to an existing underground mine and its existing surface facilities" (to which we and the evidence submitted by our experts, the community and Council strongly disagree) **recommencing underground mining is not viable as a stand alone project.** • It is clear that the Proponent's intention is to use underground mining as a stop gap measure for future open cut mining**. It is neither the Government's, nor the Department's, nor the community's role to support and thereby underwrite a mining company venture which will have clear negative economic, social and public interest consequences**.
11	4.2 Cumulative Impacts	• We completely disagree with the Proponent's statement that "cumulative environmental impacts are relevant to a certain extent." This statement demonstrates a total disregard of NSW planning policies and standards, EPA legislation and the basis upon which consent authorities make decisions on planning applications.
		• We do not agree that "cumulative air quality and noise impacts have been assessed in EA and RTS, as required by relevant air quality and noise policies" and that the Department's Assessment Report should be relied upon – for the reasons set out in our previous submission and supported by expert scientific and technical analysis and evidence.
		• Beatty Legal (both previously submitted and attached) advises that the Commission is required to consider cumulative impacts. Quantification of cumulative impacts necessarily requires consideration of existing and approved projects in the vicinity. • The applicant has NOT quantified cumulative air, noise, visual or social impacts. • Further the applicant has sought to quantify cumulative impacts based on 2014 data with an additional contingency for the recently commenced nearby Mt Pleasant open cut mine. • As a consequence, cumulative air impacts predicted by the applicant seriously underestimate the actual cumulative impact likely to be experienced if the mine proceeds. • This is particularly important in this context where current data (and the applicant's own assessment) demonstrates existing air quality conditions are close to, at, or in fact exceed NEPM standards.
		• Separate to this issue of how to quantify cumulative impacts is the assessment of whether the impacts as quantified are acceptable.
		• The AQC submission asserts that in making this judgment the Commission need only consider whether the impacts are less than that permitted under the existing consent (ie if they are less than that permitted under the existing consent, they are ipso facto acceptable). Neither the premise nor the assumed outcome are acceptable.
		• Beatty Legal further notes that: ○ The Commission is required to consider the environmental consequences of the modification. The immediate consequence of the modification is that mining will commence where it has been

		abandoned for 13 years (and therefore it is entirely relevant that cumulative impacts must be assessed). ○ If a relative assessment of impacts is appropriate, then the impacts of the modification ought to be compared against the impacts of the existing mine in care and maintenance ○ It is self evident that the cumulative impacts to which the consent authority had regard in approving (or modifying) the original consent are different to that currently experienced in the area ○ Government health standards and policies regarding the quantification and acceptability of impacts have changed since 2001 ○ The mine has been in care and maintenance for 13 years and accordingly all impacts of the proposal (other than the ongoing water impacts of the existing mined areas and the Hunter Tunnel) will be experienced as new impacts, and ○ The proposed modification touches on and alters all of the key cumulative impacts of the mine as approved (noise, air, visual and social): accordingly the acceptability of all these impacts are required to be considered as part of the modification.
12	4.3 Hunter Tunnel	• **As per our previous submission, supported by legal advice, we remain steadfastly of the view that the Hunter Tunnel is an integral component of the Project rendering the modification beyond the scope of s75W.** • The attached submission from Beatty Legal reinforces why the Proponent has a fundamental misunderstanding of the effect of the modification of the original approval. • Beatty Legal reiterates that the existing consent specifies longwall mining and underground conveyance, permits washing of coal and disposal of rejects and requires that mining cease by 2022. Alternatively, the Proponent could seek to operate under a modified consent, which limits the project to constraints proposed by the modification application and assessment materials. BUT what the Proponent CANNOT do is seek to create some new hybrid approval by cherry-picking elements of the original approval and any modified approval (should this occur). • It is noted that in the 2006 modification of the existing consent the Proponent was required to surrender certain previous modifications of that consent. A similar decision was made with respect to the 2001 modification consent.
		• We do NOT agree that the appropriate test for determining s75W is whether the proposed modification would amount to a "radical transformation in the terms of the existing development consent." • As outlined in the attached submission from Beatty Legal, the "test" for what is relevantly a modification under s75W is multifaceted and is NOT properly captured by AQC's use of the term "radical transformation" and importantly, where an application seeks to change a core element of the original proposal it MAY NOT be a 'modification" within the scope of s75W.
13	4.4 Air Quality	• None of the matters raised in this submission alter the views submitted in our previous submission and

		supporting assessment provided by Stephenson Environmental Management. • As stated in our previous submission, we remain seriously concerned that this modification will result in unacceptable air quality exceedances, by the Proponent's own admission – worsening the Upper Hunter's already "dangerously dusty" air quality – which is already close to or on NEPM limits and considered the worst air quality region in NSW (with air quality exceedances already at levels of five to ten times above what is considered safe). • This is with several key elements of the proposal not having been assessed in terms of air quality impacts including cumulative and social impacts, such as the potential future use of the coal handling and preparation plant;
14	4.5 .1 Water Management 4.5.2 Water Balance 4.5.3 Impacts on Water Supplies & 4.5.4 Water Licencing	• None of the matters raised in this submission alter the views submitted in our previous submission and supporting assessment provided by OD Hydrology.
		• We have no confidence that this Project will have no impacts on Muswellbrook's water supply and the Hunter's equine and other agricultural industries – whose livelihoods rely on the Hunter River system and tributaries.
		• Community submissions have indeed requested further information on AQC's water licences. • We note that no details pertaining to AQC's water licences have been proffered. • This is of critical importance to the evaluation of the impacts of the Project on water quality and quantity and a considerable concern to community stakeholders particularly in times of drought.
		• With respect to aquifer interference, we refer the Commission to the OD Hydrology submission which clearly finds that "The groundwater assessment indicates that impacts of the modification exceed the minimal impact considerations of the Aquifer Interference Policy (Table 6.3 of AGE, 2018). " • It is curious therefore that the Proponent has not been required by the Department to comply with the NSW Government's Aquifer Interference policy.
15	4.6 Strategic Agricultural Land.	• The Proponent has stated that: ○ Areas of Equine Critical Industry Cluster ("ECIC") are mapped within the mining authority boundary – these are outside the Infrastructure Study Area & will not be subject to surface disturbance. ○ A "small" area of mapped ECIC is located above the Indicative Bord and Pillar Mining Area. ○ Subsidence due to bord and pillar mining will be maintained at levels that are less than currently approved. ○ BSAL mapped within mining authority boundary. 2.28ha will be impacted by the Modification.
		• We respectfully disagree that the environmental assessment of this proposed Modification should be limited to the "Infrastructure Study Area". This does not accord with Government guidelines, best practice assessment and community expectations. • **ECIC lands are:** ○ **Recognised as State and nationally significant by the NSW Government** ○ **Mapped and legislated for protection against coal seam gas**

		○ **Mapped, legislated and earmarked by the NSW Coalition Government for "heightened protection" to ensure that the ECIC is protected and enabled to expand and grow.** ○ **Earmarked for protection in the NSW Government's Strategic Land Use Plan for the Upper Hunter (2012) and the Hunter Regional Plan 2036**
		• **There has been no assessment of the impact of the proposed Modification on the ECIC and the Hunter's nationally and state significant thoroughbred breeding industry** which is world renown as the Australian Horse Capital, the second largest concentration of equine thoroughbred studs in the world, and one of three Centres of Thoroughbred Breeding Excellence in the world. • Given the Government's stated policies and legislation in place to protect or provide heightened protection to the Hunter's ECIC, approval of this modification would today be contrary to Government policy and legislation.
16	4.7 Cultural Heritage	• We respectfully submit that the Proponent's general statement that "Whilst there may be cultural values associated with this site, the Modification will not diminish these cultural values" does not provide any confidence to community stakeholders particularly given: ○ the highly sensitive cultural values that exist within the project boundaries; and ○ the fact that no serious attention or assessment of the Project's impacts on cultural values has been undertaken. • We refer the Commission again to the evidence submitted by GML Heritage on this matter at the public meeting and in our previous submission.
17	4.8.1 Social Impact Assessment	• The Proponent claims that the social Impacts of this proposed Modification will not be different in scale or intensity to those of the approved development. • We again note the Department's statements in their Assessment Report that "**the social impacts actually experienced would be more akin to a new mine opening**." (p27) • We respectfully disagree with the Proponent's statement and resubmit that the social impacts of the proposed modification are significant, material and unacceptable in the context of contemporary existing mining operations in the area, contemporary air quality standards and experiences, in the context of the Rocky Hill decision and in the context of contemporary community expectations.
18	4.8.2 Community Engagement	• The Social Impact Assessment is contrary to NSW Government guidelines and intent, was undertaken following the public exhibition of the Modification proposal EA and demonstrates a complete disregard for community concerns of the social and environmental impacts of the Dartbrook Modification proposal. • It is remarkable that the Proponent submits as their response to criticisms on community consultation that the public submissions in response to the EA "provided a good indication of community's concerns". • The Dartbrook Modification has received an unprecedented level of community opposition (1200 – 1300+ opposing submissions) reflecting the community's significant social and environmental concerns and

		demonstrating the lack of appropriate community engagement and understanding. • **The Proponent has made no genuine efforts to consult the community and it is clear that this Modification does not have a social licence to operate.**
19	4.9.1 Hunter Regional Plan	• **The Hunter Regional Plan articulates a vision to 2036, which recognises "the Upper Hunter is undergoing a transition with major transformation occurring in power generation, emerging technologies, growth opportunities in agriculture and changes in the mining sector."** (p24) • It also recognises that in the coming decades: o the growth and diversification of the Hunter's mining and energy industry will be influenced by global and national energy demands and policies and alternative energy resources (p24). o agricultural diversity and the growing demand for agricultural products (including viticulture and equine sectors) is needed to capitalize on new and emerging opportunities in both domestic and Asian markets and the importance of protecting the Upper Hunter's landscape and leveraging its established agricultural industries (particularly wine and equine) to help increase its appeal as a tourist destination. (p24) • The coal and power generation "restructuring" and "transition" is in anticipation of market downturns and/or substitution to alternative renewable energy sources whereas the protection, sustenance and growth of agricultural industries (particularly wine and equine) is in the context of building and capitalizing on their strengths and competitive advantages to "prepare for the diversification and innovation of the economy in response to long term restructuring in coal and power generation and the growth in new high-technology primary industry and associated specialist knowledge based industries and rural tourism." (p24) • The Hunter Regional Plan emphasises the need to create diversity and a thriving and prosperous economy built on industry growth and investment, the protection of agricultural industries, tourism, improving land use certainty and water security to shape future investment and economic development. • In this respect it is pertinent that mining proposals are not detrimental to the protection and growth of sustainable agricultural industries, which will be critical to the future diversification and economic resilience of the Hunter's regional economy. • **The proposed Dartbrook Modification in the context of the Hunter Regional Plan would be at odds with the Government's long term vision, mining structural adjustment and transition plan for the Hunter**.
20	4.10.1 Bickham & 4.10.2 Drayton South	• The examples and relevance of former PAC decisions on the Bickham and Drayton South Projects is to demonstrate the acknowledged highly sensitive reputational and environmental threats to thoroughbred breeding posed by mining in close proximity and the need to protect the thoroughbred breeding industry from those threats.
		• **We completely disagree with the Proponent's premise that "Minor changes to the Dartbrook Mine infrastructure proposed by the Modification do not warrant any buffers to other land uses**" – both in

		terms of the claim that changes are "minor" (which they are not) and that they do not warrant buffers to other land uses. • Australia (more specifically NSW) is the only location where an internationally renowned Centre of Thoroughbred Breeding Excellence is not protected by buffers or preservation zones from incompatible development. • Both the US (Kentucky) and the UK (Newmarket) - the other two Centres of Thoroughbred Breeding Excellence –have buffers or preservation zones in place to protect their internationally recognised Thoroughbred Breeding Industries from incompatible development – buffers from mining in the case of Kentucky and preservation zones from urban encroachment in the case of Newmarket.
		• **The Drayton South PAC recommended in 2015 that the "importance of the Equine Critical Industry Cluster, its sensitivities to intensive development and the landscape character of its central operators, … needs to be acknowledged with the development and enforcement of appropriate buffers, exclusionary zones or preservation measures to safeguard this important industry."**
21	4.11.1 Coal Price Quality	For the record, the findings regarding coal quality presented by Mr White, mining consultant, at the public meeting and in the follow up report to the IPC are based on the following:
		• The 10 million tonnes of coal extracted over the life of the MOD 7 project are the same 10 million mineable tonnes included in the 2017 JORC Reserve Statement. o AQC is now stating that the proposed MOD 7 mine plan "differs slightly" from the 2017 JORC Reserves Statement and "as such the coal qualities produced by the Modification will differ from the values reported in the 2017 JORC Reserves Statement" o In Mr White's opinion**, the likelihood that a "slight" change to the mine plan would result in a material change to the average ash content of the 10 million tonnes of run of mine coal is at best remote.**
		• The average ROM (run of mine) ash content of the 10 million tonnes of coal is stated as 26.16% in the 2017 JORC Reserves Statement, Table 5-1 Modelling Parameters, p72 o In both the RTS and in the recent supplementary submission to the IPC, AQC relies on simply referencing the raw ash content for each coal ply in the Kayuga seam (Table 3-1, p33 of the JORC Reserves Statement) to contend that a Newcastle 5500 NAR Export Thermal product is appropriate for the 10 million tonnes in the mine plan. o This is problematic because simply looking at "in situ" raw ash in target coal plies ignores the unavoidable constraints like dilution or a requirement to leave coal in the floor which occur during the actual mining process. o One objective of any good mine plan is to have a mining horizon which will minimize dilution and to aim for the best quality coal plies to be extracted while working within constraints like the overall seam height and support requirements.

		○ Utilising large productive mining equipment maximizes production rates but has an unavoidable trade-off in making selective mining of narrow coal plies without taking the stone interburden impractical. ○ In the Kayuga seam in areas where the seam height is less than 3.3 metres there will also be dilution from roof stone in order to maintain a practical working height (2017 JORC Reserves Statement, Table 5-1 Modelling Parameters, p 72) ○ To produce a JORC Reserves Statement (that must be signed of by a duly accredited person) one of the many requirements is that mining conditions and constraints like dilution must be accounted for. ○ The 2017 JORC Reserves Statement clearly does this and contains detail of mining horizons depending on the seam thickness and the requirement to maintain a 300mm thick coal floor because of weak underlying strata. ○ **In the Kayuga seam the resulting average run-of-mine ash content for the 2017 JORC tonnes is 26.16%. Average ash for Newcastle 5500NAR product is 20% with a range of 17-23%.** ○ The MOD 7 product will be unwashed which means that the run of mine ash content will be the product ash content. ○ **In Mr White's opinion across the MOD 7 10 million tonnes this will still average around 26% ash even allowing for a "slight" change in the mine plan as compared to the 2017 JORC tonnes.**
22	4.11.3 Proximity to Aberdeen	• We note that the Proponent has confirmed that the proximity of the mine to Aberdeen depends on location measurement point assumptions. ○ With distance measurements ranging from 4.5km to 1.1km (the latter being the distance to the nearest residences in Aberdeen. • We further note that in its Mod 5 Assessment Report, the Department of Planning states the Dartbrook mine is located approximately 4km west of Aberdeen, with main existing surface facilities and reject emplacement areas located on the eastern side of the New England Highway, approximately 3km south of Aberdeen. (p1) ○ A similar distance measurement from Aberdeen was included in the Department of Planning's Assessment Reports for Mods 1 and 2. • What is evident is that this **proposed Modification is far too close to Aberdeen residents** by the Proponent's own admission (1.1km). • **The NSW Government has legislated to prohibit coal seam gas mining which is on critical industry cluster land or within a 2km buffer zone from a residential zone or rural village land. (State Environmental Planning Policy (Mining, Petroleum Production and Industries) 2007 clause 9A).** • **In this respect it is noteworthy that the Dartbrook Modification 7 proposal is BOTH on mapped and legislated ECIC land and within 2kms of residential zoned land in a rural village.**
23	4.11.5 Truck haulage sound power levels	• It is difficult to make an assessment of the claimed lower levels of noise generated by trucks to be used given the level of detail on the trucks to be used. Consequently our previous comments on this matter stand.
24	4.11.6 Local Employment	• We are very skeptical about the Proponent's claimed employment benefits to the "local area."

		• Answers provided by AQC's CEO at the community forum conducted by the Friends of the Upper Hunter were at odds to the information provided in this submission and not supported by available statistics.
25	Appendix A – Visual Cross Sections	Please refer to comments made in point 5 above. In particular: • The cross sections showing lack of visibility of the mining activities to receptors around Aberdeen are from **highly selective viewpoints where topographic screening clearly exists**. There are other locations where mining activities would not be screened by topography but these have been ignored.
		• As previously submitted by Mr Wright in the earlier submission, **the cross sections have ignored the closer and more exposed residences around the mine site** particularly the two homestead residences just south of Aberdeen on the hill overlooking the floodplain and the proposed shaft shed and haul road (shown in orange in the Proponent's Figure 2).
		• **None of the cross sections cover the haul trucks using the haul road** but mostly cover the Kayuga Entry, the shaft shed and the East Site crushing plant. **The crushing plant is quite visible from parts of Aberdeen and very clearly visible from the two homestead residences** on the hill just south of the town and yet this is not assessed.
26	Appendix B – Scope 3 GGE	• **Entirely new information which should have been required and included in the EA and presented for public exhibition.**
27	Appendix C – Economic impact of Scope 3 GGE	• **Entirely new information which should have required and included in the EA and presented for public exhibition.** • See comments in Point 9 above.