

From: EHP Submissions [EHPSubmissions@des.qld.gov.au]
Sent: Monday, 25 September 2017 2:11 PM
To: BIRCH Kerynne; BENNINK Kate; MOANA Taylah (Taylah.Moana@ehp.qld.gov.au)
Subject: Letter to stakeholders_New Acland Stage 3
Attachments: Letter to stakeholders_New Acland Stage 3 [s.73.irrelevant].pdf

Hey guys,

Please see attached an example letter to New Acland Stakeholders.

Is the subject line ok?

Is the naming of the document ok?

Would you like any wording in the email? See below

P.s. reply to my email not ehpsubmissions.

Hey [s.73.irrelevant]

Please see attached a letter to stakeholders regarding New Acland coal mine stage 3 EA amendment application – proposed decision-making process.

TO:

s.73 irrelevant information

Dear s.73 irre

1. I am writing to you in your capacity as a party to the Land Court objections hearing in respect of the proposed stage 3 of the New Acland coal mine. You would be aware that the Land Court recommended to the Chief Executive, Department of Environment and Heritage Protection (the **chief executive**) and the Minister for State Development and Minister for Natural Resources and Mines (the **NRM Minister**) that they refuse New Acland Coal Pty Ltd's (**NAC's**) application for an amendment of Environmental Authority EPML 00335713 (the **EA amendment application**) under the *Environmental Protection Act 1994* (the **EP Act**) and NAC's Mining Lease applications 50232 and 700002 (the **MLAs**) under the *Mineral Resources Act 1989* (the **MR Act**) respectively.¹
2. NAC has sought judicial review by the Supreme Court of the Land Court's recommendations. However, until the Court orders otherwise, the chief executive must take the recommendations to have lawful efficacy, and he is therefore required by the EP Act to proceed to decide the EA amendment application.
3. In the context of NAC's judicial review application to the Supreme Court, NAC applied for a stay of the Land Court's recommendations. If granted, that would have suspended the decision-making process under the EP Act and the MR Act. On 23 June 2017, Justice Applegarth refused NAC's stay application, and accordingly the decision-making processes under the EP Act and the MR Act must proceed.
4. In hearing and deciding NAC's stay application, Justice Applegarth indicated that if the stay were refused, interested parties might make submissions to the chief executive or the NRM Minister in relation to matters arising from the Land Court's recommendation.

¹ *New Acland Coal Pty Ltd v Ashman and Others* [2017] QLC 24.

5. Against this background, the purpose of this letter is to set out the decision-making process which the chief executive intends to adopt in relation to the EA amendment application.

Legal requirements

6. The period within which the NRM Minister may give the chief executive advice in relation to the EA amendment application under the EP Act, s 193 has been extended to 31 January 2018. That period cannot be further extended under that Act, and consequently, the delegate is required to decide the EA amendment application by 14 February 2018. That date cannot be further extended.
7. The chief executive's decision-making process under the EP Act has two broad purposes.
8. The *first objective* is to comply with the requirements of the EP Act.
9. The *second objective* is to afford an opportunity to put further material and submissions before the delegate. Ordinarily, the delegate would consider the Land Court's recommendations and the NRM Minister's advice, and there would be no need for further material or submissions to be put before them.
10. In the particular circumstances of this case, it is appropriate to afford the opportunity to provide further material and make further submissions. However, the process recognises that under the EP Act, the primary means by which evidence and submissions are collected and presented is through the Land Court objections hearing. This decision-making process is not intended to duplicate the Land Court process.
11. Rather, any further material or submissions should be limited to (a) material relating to the EA amendment application that was not before, and was not reasonably available at the time of, the Land Court hearing, and (b) matters relating to the EA amendment application raised in the judicial review proceeding which, consistently with Justice Applegarth's remarks, the delegate may properly take into account in deciding the EA amendment application.
12. There were significant issues in the Land Court hearing in relation to groundwater impacts of the project, and I understand that NAC has undertaken further work on that subject. For that reason, I expect that groundwater is likely to be the principal issue on

which new material and submissions may be provided, although it is possible there may be other issues in these categories.

Proposed decision-making process

13. In the circumstances, the chief executive's delegate intends to adopt a decision-making process which meets the legal requirements explained above. The delegate invites all parties to the Land Court objections hearing under the EP Act (that is, NAC and level 1 and level 2 objectors) to participate in the following steps as part of that process:

Step 1: Stakeholders provide to the delegate in the manner outlined in paragraph 15 and by close of business on 3 October 2017 the following:

- any factual material relating to the EA amendment application that was not before, and was not reasonably available at the time of, the Land Court objections hearing (***new material***);
- any submissions on that material (***new material submissions***); and
- any submissions on the Land Court's recommendation to the chief executive (***new Land Court submissions***).

Step 2: Delegate gives all stakeholders any new material, new material submissions and new Land Court submissions received.

Step 3: Stakeholders give the delegate (in the manner outlined in paragraph 15) by close of business on 30 October 2017 any further submissions (***further submissions***) in response to new material, new material submissions and new Land Court submissions.

Step 4: Delegate gives all stakeholders any further submissions.

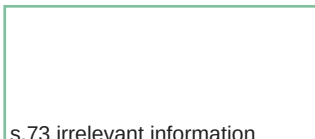
Step 5: Stakeholders give the delegate (in the manner outlined in paragraph 15) by close of business on 13 November 2017 any submissions in reply to further submissions (***reply submissions***).

Step 6: Delegate gives all stakeholders any reply submissions. This concludes the submissions process.

14. Because of the statutory timetable, strict adherence to the above timetable will be required. Only material and submissions of the kinds described above and received by the times specified will be considered.

15. All further material or submissions in relation to this letter are to be submitted by email. Each stakeholder must provide the delegate with their email address to facilitate this process, unless alternative arrangements are agreed to. The delegate's email address is EHPsubmissions@ehp.qld.gov.au.
16. If you have any queries, please contact Peter Snedden, Lawyer, Litigation Branch, (07) 3181 2409.

Yours sincerely



s.73 irrelevant information

Andrew Connor
A/Deputy Director-General, Environmental Services and Regulation
Department of Environment and Heritage Protection

From: EHP Submissions [EHPSubmissions@des.qld.gov.au]
Sent: Thursday, 28 September 2017 4:48 PM
To: BIRCH Kerynne
Subject: FW: Correspondence regarding the proposed stage 3 of the New Acland coal mine [3131]
Attachments: 170928 Letter EDO to EHP re proposed EA process.pdf

Importance: High

From: [s.73 irrelevant information]@edoqld.org.au
Sent: Thursday, 28 September 2017 10:56 AM
To: SNEDDEN Peter <Peter.Snedden@ehp.qld.gov.au>; EHP Submissions <EHPSubmissions@ehp.qld.gov.au>
Cc: RUSH Flynn <Flynn.Rush@ehp.qld.gov.au>; [s.73 irrelevant information]@edoqld.org.au; [s.73 irrelevant information]
[s.73 irrelevant information]@edoqld.org.au; CONNOR Andrew <Andrew.Connor@ehp.qld.gov.au>
Subject: RE: Correspondence regarding the proposed stage 3 of the New Acland coal mine [3131]
Importance: High

Dear Mr Connor

Further to the emails below, please see **attached** letter.

Kind regards

[s.73 irreleva

From: SNEDDEN Peter [<mailto:Peter.Snedden@ehp.qld.gov.au>]
Sent: Thursday, 28 September 2017 9:57 AM
To: [s.73 irrelevant information] EHP Submissions
Cc: RUSH Flynn; [s.73 irrelevant information] CONNOR Andrew
Subject: RE: Correspondence regarding the proposed stage 3 of the New Acland coal mine [3131]

Dear [s.73 irreleva

We acknowledge the receipt of your correspondence and note your advice that further details will be provided at the earliest possible opportunity.

Kind regards

Peter

Peter Snedden

Lawyer

Litigation Branch | Environmental Services & Regulation

Department of Environment and Heritage Protection



P 07 3181 2409

Level 7, 400 George Street, Brisbane QLD 4000

GPO Box 2454, Brisbane Qld 4001

From: [s.73 irrelevant information]@edoqld.org.au]
Sent: Tuesday, 26 September 2017 3:01 PM
To: EHP Submissions; CONNOR Andrew
Cc: SNEDDEN Peter; RUSH Flynn; [s.73 irrelevant information]
Subject: RE: Correspondence regarding the proposed stage 3 of the New Acland coal mine [3131]
Importance: High

Dear Mr Connor

We act for Oakey Coal Action Alliance Inc (OCAA) with respect to the proposed stage 3 of the New Acland mine.

We refer to your letter attached to the email below.

OCAA strongly opposes the process the chief executive intends to adopt, as explained in your letter.

We understand Mr Snedden is on leave, but this morning have had a preliminary discussion with Flynn Rush of the department's Litigation Unit regarding OCAA's concerns.

Principally, those concerns relate to:

- justification for, appropriateness of, the process;
- timing of the proposed steps; and
- uncertainty with respect to the matters at paragraph 11(b) of your letter.

As such, OCAA implores the chief executive not to adopt the process as proposed.

We will provide further details at the earliest possible opportunity.

Kind regards

[s.73 irrelevant information]

Senior Solicitor

Description: EDO-LogoSig



Environmental Defenders Office (Qld) Inc.
8/205 Montague Rd West End Qld 4101 (from 20/02/2017)
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From: EHP Submissions [<mailto:EHPSubmissions@ehp.qld.gov.au>]
Sent: Monday, 25 September 2017 4:24 PM
To: [s.73 irrelevant info](#)
Subject: Correspondence regarding the proposed stage 3 of the New Acland coal mine

Dear Oakey Coal Action Alliance Inc.,

Please find attached correspondence regarding the proposed stage 3 of the New Acland coal mine.

Kind regards,

Department of Environment and Heritage Protection

Email ehpsubmissions@ehp.qld.gov.au



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EDO Qld.

Environmental Defenders Office

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our environment.*

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28 September 2017

Andrew Connor
A/Deputy Director-General
Environmental Services and Regulation
Department of Environment and Heritage Protection

By email: andrew.connor@ehp.qld.gov.au
Copy to: peter.snedden@ehp.qld.gov.au; EHPSubmissions@ehp.qld.gov.au

Dear Mr Connor

New Acland Stage 3 – application for amendment to environmental authority – proposed further submissions process

We act for Oakey Coal Action Alliance Inc (OCAA) regarding the above matter.

We refer to your undated letter, received by email at approximately 4:25pm on Monday, 25 September 2017, which details a further submissions process the chief executive (or his delegate) intends to adopt in making a final decision on the environmental authority (EA) amendment application.

As foreshadowed in our preliminary email to you on Tuesday, OCAA has significant concerns with the proposal and implores the chief executive not to adopt the process for the reasons set out below.

Instead, in making the final EA decision, the chief executive or his delegate should follow the statutory process in the *Environmental Protection Act 1994 (EP Act)* by simply awaiting advice from the Mines and State Development Ministers, and should exclude from consideration of any new evidence or submissions from all stakeholders (including New Acland Coal Pty Ltd (NAC) or its representatives).

Departure from EP Act process is inappropriate and ultra vires

Section 194 of the EP Act sets out a limited process for the chief executive to follow in making a final decision on an EA amendment application after a Land Court objection decision. It follows a lengthy and detailed application process. It is not a decision at large. Nor is the chief executive entitled to undertake additional research or investigations. This is clear both from the terms of s 194 itself and the recent decision of Justice Bond in *Land Services of Coast and Country Inc v Chief Executive, Department of Environment and Heritage Protection & Anor* [2016] QSC 272 (LSCC), which involved a challenge to a decision under s 194 of the EP Act to approve an EA for the Carmichael Coal Mine following a lengthy objections hearing in the Land Court. Justice Applegarth's ex tempore comments in the stay application regarding the New Acland Coal Mine should not be construed as over-ruling the considered judgment of Justice Bond in LSCC regarding the limited nature of decisions under ss 194(2) and 194(4)(a).

Justice Bond noted in *LSCC*, at [11](d)-(f), that when making the final decision under s 194(4)(a) of the EP Act:

It is evident from the wording of s 194(4)(a) that the criteria to be taken into account were far narrower than:

- (i) the criteria set out in s 176(2) to be taken into account by the administering authority in deciding to issue the draft EA; and
- (ii) the criteria set out in s 191 to be taken into account by Land Court in making the objections decision.

In particular, the evident intention was to limit the considerations which the administering authority was to take into account to the three matters listed in s 194(4)(a). Notably, the administering authority was not required to have regard to the “standard criteria”.

This contrasted starkly with the considerations [under s 194(4)(b)] which would have had to be taken into account if a draft EA had not been given for the application. ...

His Honour reiterated and expanded upon the limited nature of a decision under s 194(4)(a) in *LSCC* at [19]-[20]:

[19] ... The final decision required by s 194 in the present context was not a decision which was at large. It was not a decision which required the delegate to consider afresh all the matters including the “standard criteria” and other criteria which were assessed (1) at the time of the decision made pursuant to s 176 to issue the draft EA; or (2) at the time of the objections decision made pursuant to s 191 by the Land Court. Nor was it a decision which required consideration afresh of all the evidence which the previous decision makers had before them on those matters. The evident intention of the EPA was that the detailed work in that regard had already been done by the time the s 194(4)(a) decision came to be made. That much is clear from the very short time frame within which the decision was required to be made and the constraints which s 194(4)(a) imposed on the matters to which the decision maker was required to have regard.

[20] Legislation structured in the way s 194(4)(a) was structured limits the mandatory considerations which a decision maker is required to take into account. In *Tarkine National Coalition Inc v Minister for the Environment* (2015) 233 FCR 254 at [27] Jessup J (Kenny and Middleton JJ agreeing) explained the role of a Minister as decision maker where a statute specified the range of matters that the Minister was to take into account by reference to specific concrete documents or other similar existing artefacts, in these terms (emphasis added):

Thirdly, while the range of things that the Minister was to take into account under subs (2) was extensive, with the exception of those referred to in paras (a) and (e), each was a concrete document or some similar existing artefact. **In effect, what the Minister had to take into account were the contents of those documents or artefacts.** This approach to regulation is to be contrasted with a situation in which the things to be taken into account were identified by description, or generically, such as, for example, where a decision-maker was required to take account of the condition of the habitat of a particular species. Subject to the exceptions mentioned, **the scheme of s 136 was one in which it was assumed that specific subjects of this and similar kinds were already dealt with in the documents or artefacts referred to. The role of the Minister was to take into account the things that were before him in this way, rather than being either obliged or entitled to undertake additional research or investigations.**

Justice Bond’s decision in *LSCC* is clear and binding authority for the chief executive that, given the express list of documents in s 194(4)(a) to which regard must be had, the EP Act does not intend for the chief executive to consider further evidence and submissions. Nor is the chief executive entitled to undertake additional research or investigations. The process that you propose to undertake directly contradicts this authority and is ultra vires.

OCAA, therefore, emphatically disagrees with paragraph 9 of your letter that an objective of the final EA decision-making process in the EP Act is to “afford an opportunity to put further material and submissions before the delegate”. Such an objective is simply not supported by the words of the EP

Act and directly contradicts Justice Bond's decision in *LSCC*. If Parliament had intended for the chief executive to allow further evidence and material from stakeholders after the Land Court hearing and recommendation, and before the final EA decision, the EP Act would plainly say so.

In addition to being contrary to s 194 of the EP Act, the process your letter proposes is also highly unusual. It appears to be a unique process created by the chief executive solely for this application. We are not aware of any other occasion where the chief executive has invited new evidence and submissions in the way proposed.

Further, unlike s 271A(1)(c) of the *Mineral Resources Act 1989* (**MR Act**), there is no provision in the EP Act for the chief executive to refer the matter back to the Land Court for further hearing of evidence. The absence of such a power makes it clear that the EP Act intends, with deference to the evidence and findings from the Land Court objections hearing, for the chief executive not to consider any new evidence in making the final EA decision.

Notwithstanding your comment about the Land Court being the primary source of material and findings, there is a real risk that, given any new evidence, the proposed process and any findings could supplant the Court's findings. This would occur without any of the rigour and safeguards of the Court process applied to that new evidence. For example, at paragraph 12 you state that you understand NAC has undertaken further groundwater work. In the Land Court objections hearing, the groundwater experts' sworn evidence was given not only under the Court's strict expert obligation rules, but was also subjected to weeks of cross-examination by experienced Queens Counsel for both OCAA and NAC, and by self-represented landholders. No such sworn declaration, scrutiny and testing of any new evidence could occur with the proposed process. The rigour of the Land Court's evidence gathering and assessment process is, presumably, precisely the reason why the MRA Minister has the express power to refer the matter back to the Land Court rather than to engage in his or her own process.

No justification given to depart from statutory process

In addition to the process being directly contrary Justice Bond's decision in *LSCC*, it is also unclear from your letter what the "particular circumstances of this case" are that might warrant a significant departure from EP Act procedure in proposing a further submissions and evidence process.

If a particular circumstance is that there was an extraordinarily lengthy objection hearing, then the depth, thoroughness and extent of the evidence tested, and the Court's subsequent findings in its recommendation, is further reason for the chief executive not to re-open the door to even more evidence. As you may be aware, NAC already had the Court hear further groundwater evidence in April 2017, some six months after closing submissions in September 2016.

If a particular circumstance is that the Land Court has recommended refusal, the administering authority should nonetheless simply follow ordinary process and decide the matter in light of the Court's recommendations and the advice of the MR Act and State Development Ministers. Where the Court has recommended *approval* after other EA objection hearings, we are not aware of any instance where the parties, particularly objectors, have been afforded any similar opportunity to that in the proposed process.

If a particular circumstance is that a Supreme Court judicial review of the Land Court recommendation has been sought, and no stay of the recommendation decision has been granted, then that is not an unusual circumstance. In another matter where judicial review of a Land Court recommendation was sought,¹ a stay was also not granted and the administering authority proceeded to make the final EA decision in the ordinary way without further stakeholder opportunity for new evidence and submissions.

¹ *Coast and Country Association of Queensland Inc v Smith & Anor; Coast and Country Association of Queensland Inc v Minister for Environment and Heritage Protection & Ors* [2015] QSC 260 regarding the proposed Alpha coal mine in the Galilee Basin.

If a particular circumstance is that NAC has done further groundwater and/or other work that it wants the chief executive to now consider, then that further work should be part of any new EA amendment application NAC chooses to make, rather than a last-minute addition after the independent and public evidence-gathering and assessment process in the Land Court has concluded. The EP Act does not intend for the application and assessment process to be open-ended or the evidence gathering process over-turned at the last minute, allowing a proponent multiple chances to continually revise and update its application with new material right up until the point of the final EA decision. For the reasons above, this is especially the case in the circumstances where the Land Court has held an extensive objection hearing and has made its recommendation.

The proposed timing is grossly inadequate to objectors, advantageous to NAC and does not afford procedural fairness

In addition to being contrary to s 194 of the EP Act and Justice Bond's decision in *LSCC*, the proposed process lacks procedural fairness.

The chief executive has proposed for stakeholders to have five business days until next Tuesday 3 October 2017 to provide new material and submissions. In no realm can this afford procedural fairness in the circumstances, particularly where NAC is likely to have been working on new evidence for anywhere up to 18 months. NAC would be at a great advantage to now provide the delegate with evidence such as a new groundwater model, which would avoid the scrutiny, rigour and safeguards of the Land Court process.

Without OCAA knowing the nature and extent of any new material to be provided by NAC, it is impossible for OCAA to know whether or not it can make further submissions and a sensible reply within the limited time proposed at Steps 3 and 5. Further, Steps 2 and 4 do not state a period within which the delegate would provide material and submissions. Again, the proposed process in these later steps cannot provide all stakeholders with procedural fairness.

We note that some three months has passed since Justice Applegarth's decision to refuse NAC's stay application. It is not apparent why only now stakeholders are being advised of the proposed process, which raises the acute timeframe concerns we address above. As at the time of writing, we are instructed that some EA objectors in the Land Court hearing have not received notification of the proposed process.

Uncertainty as to the nature of required submissions

Were such a process to proceed regardless, there is uncertainty as to what further material or submissions may be limited to in light of paragraph 11(b) of your letter. You state they should be limited to 'matters relating to the EA amendment application raised in the judicial review proceeding which, consistently with Justice Applegarth's remarks, the delegate may properly take into account in deciding the EA amendment application'.

While OCAA is firmly of the view that the delegate should only properly have regard to the documents in s 194(4)(a) of the EP Act, OCAA notes that Justice Applegarth's decision has not been published on the Queensland Court's website for all stakeholders to review and then attempt to interpret and apply. It is not clear whether His Honour's remarks to which you are referring are part of his decision, or part of the earlier hearing of the matter. Either way, stakeholders would be required to first pay for access to a transcript of that hearing and/or the ex tempore decision before being able to prepare any compliant submissions.

Should the chief executive proceed to adopt the proposed process, stakeholders require immediate clarification on this issue.

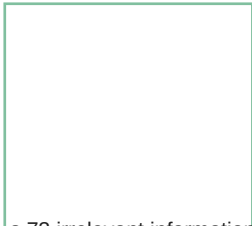
The proposed process should not be adopted

Given the threshold legal issues we address above, OCAA firmly requests that the chief executive not adopt the proposed process and abandon any attempts to engage in any modified process.

Instead, the appropriate course for the chief executive or his delegate is to simply follow the process set out in the EP Act, confine consideration to the documents listed in s 194(4)(a), and to not consider any further evidence or submissions from the parties, their representatives or other stakeholders.

Please advise us urgently as to whether or not the chief executive maintains his intention to adopt the proposed process or any modification of it.

Yours faithfully
Environmental Defenders Office (Qld) Inc



s.73 irrelevant information
Principal Solicitor

From: EHP Submissions [EHPSubmissions@des.qld.gov.au]
Sent: Tuesday, 10 October 2017 3:13 PM
To: CAGNEY Justin
Subject: FW: Correspondence regarding the proposed stage 3 of the New Acland coal mine [3131]
Attachments: 171010 Letter EDO to EHP re proposed EA process.pdf

From: [s.73 irrelevant information]@edoqld.org.au
Sent: Tuesday, 10 October 2017 1:25 PM
To: ELLWOOD Dean <Dean.Ellwood@ehp.qld.gov.au>
Cc: SNEDDEN Peter <Peter.Snedden@ehp.qld.gov.au>; EHP Submissions <EHPSubmissions@ehp.qld.gov.au>; RUSH Flynn <Flynn.Rush@ehp.qld.gov.au>; CONNOR Andrew <Andrew.Connor@ehp.qld.gov.au>; [s.73 irrelevant information]@edoqld.org.au;
[s.73 irrelevant information]@edoqld.org.au
Subject: RE: Correspondence regarding the proposed stage 3 of the New Acland coal mine [3131]

Dear Mr Ellwood

Please see the **attached** letter.

Kind regards

[s.73 irrelevant]

[s.73 irrelevant information]
Senior Solicitor

EDO-LogoSig



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From: [s.73 irrelevant info]
Sent: Thursday, 28 September 2017 10:56 AM
To: SNEDDEN Peter; EHP Submissions
Cc: RUSH Flynn; [s.73 irrelevant information] CONNOR Andrew
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Importance: High

Dear Mr Connor

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To: s.73 irrelevant info EHP Submissions
Cc: RUSH Flynn; s.73 irrelevant information CONNOR Andrew
Subject: RE: Correspondence regarding the proposed stage 3 of the New Acland coal mine [3131]

Dear s.73 irrelevant

We acknowledge the receipt of your correspondence and note your advice that further details will be provided at the earliest possible opportunity.

Kind regards
Peter

Peter Snedden

Lawyer



Litigation Branch | Environmental Services & Regulation

Department of Environment and Heritage Protection

P 07 3181 2409

Level 7, 400 George Street, Brisbane QLD 4000

GPO Box 2454, Brisbane Qld 4001

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Importance: High

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Principally, those concerns relate to:

- justification for, appropriateness of, the process;
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We will provide further details at the earliest possible opportunity.

Kind regards

s.73 irrelevant info

Senior Solicitor

Description: EDO-LogoSig



Environmental Defenders Office (Qld) Inc.
8/205 Montague Rd West End Qld 4101 (from 20/02/2017)
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Sent: Monday, 25 September 2017 4:24 PM
To: s.73 irrelevant info
Subject: Correspondence regarding the proposed stage 3 of the New Acland coal mine

Dear Oakey Coal Action Alliance Inc.,

Please find attached correspondence regarding the proposed stage 3 of the New Acland coal mine.

Kind regards,

Department of Environment and Heritage Protection

Email ehpsubmissions@ehp.qld.gov.au



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10 October 2017

Dean Ellwood
Deputy Director-General
Environmental Services and Regulation
Department of Environment and Heritage Protection

By email: dean.ellwood@ehp.qld.gov.au

Copy to: peter.snedden@ehp.qld.gov.au; EHPSubmissions@ehp.qld.gov.au

Dear Mr Ellwood

New Acland Stage 3 – application for amendment to environmental authority – proposed further submissions process

We refer to the recent correspondence regarding this matter. We understand Mr Connor has ended acting as Deputy Director-General and so address this letter to you.

Status of the process ‘intended to be adopted’ is unclear

We note we have not received a reply to our letter to Mr Connor dated 28 September 2017.

In his letter of 25 September 2017, Mr Connor outlined a proposed process that the chief executive and/or his delegate ‘**intends to adopt**’.

However, in the absence of any update to us from the department, it remains unclear whether or not the chief executive or his delegate has now decided to adopt the process.

By way of an email from Mr Snedden of the department’s Litigation Branch to us at approximately 4:08pm last Friday 6 October, our client was provided access to a link to NAC’s new material “in accordance with step 2 of the process set out in EHP’s letter”.

Does this mean that the process is going ahead, as proposed? Please urgently advise us as to the status of the process, as our client may be being prejudiced with respect to any process periods that have been adopted and thus commenced.

Further, we raised questions seeking clarification of what constitutes valid submissions regarding Applegarth J’s comments. At this point, those questions also remain unanswered.

To remove any doubt, this letter is not to be taken as a submission from OCAA as part of any process that the department has now adopted.

NAC’s new evidence appears to be a new groundwater model and is voluminous

We have accessed the new NAC material on OCAA’s behalf. However, as noted in our reply email to Mr Snedden at approximately 4:36pm last Friday 6 October, by doing so OCAA should not be taken to have agreed to either the lawfulness or the appropriateness of the proposed process.

As you may be aware, NAC’s new material **totals 1437 pages**. In paragraph 1.1.1 of its submissions, NAC itself describes it as “an extensive amount of work”.

Of this, some 1390 pages relates to what appears to be a new, or at least significantly revised, groundwater conceptualisation and numerical model. At paragraph 1.1.3, NAC now describes the evidence before the Land Court as “outdated.....now more than 3 years out of date”. NAC describes an additional 7 pages as a “peer review” of that groundwater model.

This is, of course, a substantial volume of extremely detailed, technical and specialised evidence. At this point, we have only been able to make preliminary inquiries into the availability of OCAA’s groundwater experts to advise OCAA on the nature of the new evidence.

In addition to the volume of material provided by NAC, these reports rely on a number of reference documents that are likely to be relevant and necessary to properly analyse the new modelling, but were not available in the Land Court process. These include:

- AGE (2016) Groundwater Model Report - Army Aviation Centre Oakey. Prepared for AECOM Australia Pty Ltd by Australasian Groundwater and Environmental Consultants Pty Ltd (AGE);
- IES, 1999. Draft Impact Assessment Statement, Acland Mine, Power Station and Water Supply. Appendix 8 - Groundwater Levels. Prepared by Ison Environmental Planners;
- Jacobs, 2017. New Acland Stage 2 - Yearly water balance estimates. F Stark pers comm, June 2017;
- NHG, 2016a. NACP: Hydrogeological Model Development - Alluvial Investigation. Internal report prepared by the New Hope Group;
- NHG, 2016b. NACP: Hydrogeological Model Development - Underground Workings Investigation Internal report prepared by the New Hope Group;
- RAMA Geoscience, 2016a Acland Gravity Survey Area 3 – Structural Interpretation. Memo prepared for the New Hope Group by RAMA Geoscience;
- RAMA Geoscience, 2016b Gravity Surveys for Void Mapping – Acland and Acland A Collieries. Memo prepared for the New Hope Group by RAMA Geoscience;
- WSA, 2002. Pump tests of Landholder Bores. Prepared for New Acland Coal Pty Ltd by Waste Solutions Australia Pty Ltd;
- WSA, 2006. Acland Groundwater Investigation - Hutton Sandstone Groundwater Model. Prepared for New Acland Coal Pty Ltd by Waste Solutions Australia Pty Ltd; and
- WSA, 2007. Balgowan Feedlot - Groundwater Investigation. Prepared for the Acland Pastoral Company Pty Ltd by Waste Solutions Australia Pty Ltd.

Even if NAC agreed to provide such documents, which it is under no compulsion to do as part of the proposed process, this would likely amount to a significant amount of further material.

As the new groundwater evidence essentially appears to constitute a new, or significantly revised, model, OCAA’s concerns as raised in our earlier letter are plainly substantiated.

OCAA’s concerns now realised

Our letter explained why the proposed process is inappropriate and ultra vires the EP Act.

NAC is clearly attempting to now supplant its own groundwater evidence that was considered, in great detail, by:

- both the public and EHP in the EIS processes for the initial (2007), then revised (2012), Stage 3 expansion applications;
- the Coordinator General in his evaluation, including requesting additional information from NAC;
- the Commonwealth Independent Expert Scientific Committee on Coal Seam Gas and Large Coal Mining Development, on three occasions, advising for the purposes of the EPBC Act;
- the Commonwealth Department of Environment and Minister in the EPBC Act process; and
- the Land Court.

The Land Court was the only forum where groundwater evidence from all the above was considered, and in fact it went further by hearing newer evidence when NAC requested the Land Court reopen the hearing in April of this year. By way of summary, in total the Land Court considered:

- a total of **14 written expert reports**;
- some initial **11 days** of sworn oral evidence from groundwater experts in early-mid 2016;
- at least **250 pages** of the parties' written submissions on groundwater after the hearing closed in September 2016;
- a further **4 days** of sworn groundwater expert evidence when the court reopened the case, at NAC's request, in April 2017; and
- at least a further **150 pages** of submissions on groundwater after the reopened hearing.

Apparently, NAC is now attempting to have substantial additional evidence, of essentially the same nature as that which has gone through the appropriate EP Act process, considered only by EHP in the determination of its EA amendment application. Critically, this is proposed to be done without anything approaching the same level of scrutiny, testing and legal safeguards as are required in the EP Act process. As we have previously mentioned, the Court process alone included evidence by sworn expert testimony, those experts declaring adherence to strict expert court rules, and cross-examination by parties (including by experienced Queens Counsel). Moreover, a highly-experienced and independent member of the judiciary then determined issues of witness credit and substantive merit of the experts' evidence.

The new material cannot be considered or adopted without the same level of scrutiny. NAC has relied on the consultancy SLR to prepare the further groundwater work, which was done by the very same hydrogeologists (Derwin Lyons and Brian Rask) who were principally responsible for the previous modelling at the consultancy Jacobs. It also seeks to rely on the same peer reviewer in Brian Barnett. Importantly, we note that although the past groundwater model survived the EIS and CG assessment processes, it was only in the Land Court where significant weaknesses were properly identified; in fact, Mr Barnett was ultimately the subject of adverse findings by the Court¹ –

“Whilst I was dissatisfied and concerned regarding Mr Barnett’s evidence and assistance to the Court at the original hearing, he presented quite differently during the concurrent evidence at the resumed hearing.

I find the change in Mr Barnett’s evidence at the reopened hearing when compared to the original hearing quite remarkable. Perhaps Mr Barnett was better “schooled up” or whatever the case may be during the reopening evidence; the impression that I gained was that either consciously or subconsciously Mr Barnett was much more at home and within his professional element when giving evidence concurrently with other experts. Also, he clearly had a point to prove as to his credibility. **At times, it also sounded as though he was making points for NAC rather than as an expert assisting the court.”**

This example shows that, with respect, EHP cannot, and should not attempt to, determine the relevance and weight to give the new material, or give it the scrutiny demanded in the circumstances. It simply does not have the time, tools or procedures to do so. Instead, the appropriate path for consideration of this new evidence is for NAC to lodge a fresh EA amendment application, which would then follow the proper EP Act process.

Further, it is clear from NAC’s submissions that NAC’s work on the new groundwater evidence has been developed over a significant period of time, well ahead of Mr Connor’s letter dated 25 September 2017. NAC states at paragraph 2.1.2 that it commenced updating the model “during late 2016”.

Under cross-examination by OCAA during the reopened hearing during April 2017, NAC’s expert Mr Barnett was asked why the Court should not simply wait for the improved modelling, based on reliable calibration targets, but Mr Barnett had no answer:²

MR HOLT: So why shouldn’t we just wait for that, Mr Barnett?

MR BARNETT: Wait for the inflows?

¹ See paragraphs 1493 and 1494 of the Land Court’s decision (**Emphasis added**).

² T94-150, line 45 to T94-151, line 5
17-347

MR HOLT: Wait for the data and – so his Honour can actually see what a model that's not based on a calibration target, using data that's a sanity check only, looks like. Why shouldn't we just wait till this modelling is done properly?

MR BARNETT: I – I – I've got no answer to that.

It is highly prejudicial to OCAA for NAC to now produce this new modelling, outside of the court process, in circumstances where NAC's own expert could not provide any justification whatsoever as to why the Court should not consider it.

While OCAA does not concede the appropriateness of the evidence and submissions process, the proposed timeframes for OCAA to respond to such extensive new material are simply inadequate in the context of the significant periods previously required to consider the now 'outdated' groundwater evidence. If EHP was to proceed on that basis, it would be grossly unfair, to OCAA in particular, given the volume and technical detail of the new evidence that requires significant time for expert analysis and meaningful response. Instead, NAC is at significant advantage given the extremely limited time proposed for stakeholder replies.

DEHP must place no weight on the material in making final EA decision

Given the above, OCAA reiterates that any process for new submissions and material must either not be adopted or be abandoned. Further, the chief executive or his delegate must put no weight on NAC's new material that the department has provided OCAA. Instead, the chief executive or his delegate must follow the process as set out in the EP Act.

Should NAC wish for EHP to consider any new evidence, the only appropriate and lawful path is for NAC to lodge a new EA amendment application.

We look forward to your timely reply to the issues raised in both this and our initial letter. OCAA urgently needs to know what process, if any, the chief executive or his delegate may have adopted.

Yours faithfully

Environmental Defenders Office (Qld) Inc

s.73 irrelevant information

Senior Solicitor

EHP Submissions

From: [s.73 irrelevant information]
Sent: Thursday, 12 October 2017 10:03 AM
To: EHP Submissions
Subject: RE: Correspondence regarding proposed stage 3 of New Acland coal mine - submission under step one



My email of 29th September was to EHP raising concerns and questions about your correspondence and proposed process. Your letter, which I only received on 28th September, said to contact Mr Snedden with any queries or concerns and as I noted below he was not available. Hence, my email, which was sent in advance of the 3rd October date for your urgent reply, was to raise my concerns about the proposed process. Your prompt reply would be appreciated. I really needed a reply before I could progress to the step 1 you indicated.

[s.73 irrelevant information]

From: EHP Submissions [mailto:EHPSubmissions@ehp.qld.gov.au]
Sent: Tuesday, 10 October 2017 5:21 PM
To: [s.73 irrelevant information]
Subject: Correspondence regarding proposed stage 3 of New Acland coal mine - submission under step one

Dear [s.73 irrelevant information]

We refer to your correspondence in your email dated 29 September 2017 below.

Is it your intention the correspondence be treated as a submission under step one of the *Proposed decision-making process (the process)* outlined in the letter from the department's Andrew Connor received by mail? If so, the delegate will forward your correspondence to all stakeholders as per step 2 of the process.

We look forward to your response.

Kind regards,

Department of Environment and Heritage Protection

Email ehpsubmissions@ehp.qld.gov.au

From: [s.73 irrelevant information]
Sent: Friday, 29 September 2017 11:16 AM
To: EHP Submissions <EHPSubmissions@ehp.qld.gov.au>
Cc: [s.73 irrelevant information]
Subject: : New Acland/EHP

From: EHP Submissions [EHPSubmissions@des.qld.gov.au]

Sent: Tuesday, 10 October 2017 5:22 PM

To: [s.73 irrelevant information]

Subject: Correspondence regarding proposed stage 3 of New Acland coal mine - submission under step one

Dear [s.73 irrelevant information]

We refer to your correspondence in your email dated 2 October 2017 below.

Is it your intention the correspondence be treated as a submission under step one of the *Proposed decision-making process (the process)* outlined in the letter from the department's Andrew Connor received by mail? If so, the delegate will forward your correspondence to all stakeholders as per step 2 of the process.

We look forward to your response.

Kind regards,

Department of Environment and Heritage Protection

Email ehpsubmissions@ehp.qld.gov.au



From: [s.73 irrelevant information]

Sent: Monday, 2 October 2017 10:53 AM

To: EHP Submissions <EHPSubmissions@ehp.qld.gov.au>

Subject: NAC V Ashman and Others

[s.73 irrelevant information]

From: EHP Submissions [EHPSubmissions@des.qld.gov.au]

Sent: Wednesday, 25 October 2017 10:29 AM

To: [s.73 irrelevant information]

Subject: Response to your correspondence regarding the proposed stage 3 of the New Acland coal mine

Attachments: Response_to_[s.73 irrelevant information].pdf

Dear [s.73 irrelevant information]

Please find attached a response to correspondence regarding the proposed stage 3 of the New Acland coal mine.

Kind regards,

Department of Environment and Heritage Protection

Email ehpsubmissions@ehp.qld.gov.au





Department of
**Environment and
Heritage Protection**

25 October 2017

s.73 irrelevant information

Dear s.73 irrelevant i

Thank you for your email of 2 October 2017 addressed to Mr Andrew Connor and EHPSubmissions@ehp.qld.gov.au concerning stage 3 of the New Acland coal mine.

I can confirm that the Chief Executive's delegate intends to proceed to make the decision required by section 194 of the *Environmental Protection Act 1994* as set out in Mr Connor's original letter and my previous two letters dated 13 October 2017 and 24 October 2017.

My letter reiterates that it is neither intended nor practicable for the delegate to duplicate the Land Court's objections hearing. You may make submissions about whether the delegate ought receive and consider New Acland Coal Pty Ltd's (NAC) material, as proposed in my letter.

The Land Court's decision is entitled to respect, but it retains the character of a recommendation. Whilst the Chief Executive's delegate must have regard to the matters listed in section 194(4) of the *Environmental Protection Act 1994*, the delegate also may have regard to any other matter that is rationally connected with the subject matter of the decision and whose consideration is not otherwise expressly or impliedly prohibited by the *Environmental Protection Act 1994*.

As noted in Mr Connor's letter, in hearing and deciding NAC's stay application, Justice Applegarth indicated that if the stay were refused, interested parties might make submissions to the Chief Executive or the Minister for State Development and Minister for Natural Resources and Mines in relation to matters arising from the Land Court's recommendation. A copy of Justice Applegarth's decision is now available on the Supreme Court Library website at *New Acland Coal Pty Ltd v Smith (Member of the Land Court of Queensland)* [2017] QSC 216 (see <https://www.sclqld.org.au/caselaw/QSC/2017/216>).

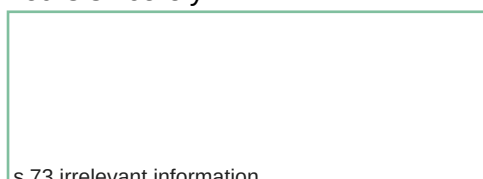
In this context, it is not intended to reopen the Land Court proceeding generally, but to strictly limit the subject-matter of any further material and submissions. Matters of the kind contemplated by the process may therefore be considered.



Department of
**Environment and
Heritage Protection**

Should you have further enquiries, please contact Peter Snedden, Lawyer, Litigation Branch of the Department of Environment and Heritage Protection on telephone 07 3181 2409 or email peter.snedden@ehp.qld.gov.au.

Yours sincerely



s.73 irrelevant information

Justin Cagney
Executive Director, Coal and Central Queensland Compliance
Department of Environment and Heritage Protection

EHP Submissions

From: s.73 irrelevant information
Sent: Sunday, 15 October 2017 5:57 PM
To: EHP Submissions
Subject: Re: Correspondence regarding proposed stage 3 of New Acland coal mine - New material available

Dear DEHP,

I have not been able to download the Submission and would you please forward this NAC New Submission to me on USB asp. It seems to be too long for me to download. I may need longer than the time allotted to submit my Submission so just warning you in advance.

Regards

s.73 irrelevant information

On Fri, Oct 6, 2017 at 4:33 PM, EHP Submissions <EHPSubmissions@ehp.qld.gov.au> wrote:

Good afternoon,

In accordance with step 2 of the process set out in EHP's letter sent by email on 25 September 2017, new material is available for consideration [here](#).

If you require this information to be provided to you in an alternative manner (i.e. on a USB stick or in hard copy), please reply to this email noting your preferred method.

Regards,



Queensland
Government

Department of Environment and Heritage Protection

Email ehpsubmissions@ehp.qld.gov.au

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RTI Act 2009

EHP Submissions

From: s.73 irrelevant information
Sent: Wednesday, 11 October 2017 9:27 AM
To: EHP Submissions
Subject: Re: Correspondence regarding proposed stage 3 of New Acland coal mine - submission under step one

sch4p4(6) Personal information

On Tue, Oct 10, 2017 at 5:25 PM, EHP Submissions <EHPSubmissions@ehp.qld.gov.au> wrote:

> Dear s.73 irrelevant informati

>

> We refer to your correspondence attached to your email dated 2 October 2017 below.

>

> Is it your intention the correspondence be treated as a submission under step one of the Proposed decision-making process (the process) outlined in the letter from the department's Andrew Connor received by email dated 25 September 2017? If so, the delegate will forward your correspondence to all stakeholders as per step 2 of the process.

>

> We look forward to your response.

>

> Kind regards,

>

> Department of Environment and Heritage Protection

>

> -----

> -----

>

> Email ehpsubmissions@ehp.qld.gov.au

>

>

> -----Original Message-----

> From s.73 irrelevant information

> Sent: Monday, 2 October 2017 3:28 PM

> To: EHP Submissions <EHPSubmissions@ehp.qld.gov.au>

> Subject: Rejection NAC new evidence.

>

> Andrew Connor

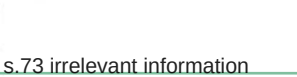
>

> 2 10 2017

> Deputy Director-General

>

> Environmental Services and Regulation
>
> Department of Environment and Heritage Protection
>
>
> Dear Mr Connor,
> Please find attached my rejection letter.
> Regards

> 
> s.73 irrelevant information
>

> -----

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> -----

EHP Submissions

From: s.73 irrelevant information
Sent: Monday, 2 October 2017 3:28 PM
To: EHP Submissions
Subject: Rejection NAC new evidence.
Attachments: DEHPPProcess.pdf

Andrew Connor

2 10 2017

Deputy Director-General

Environmental Services and Regulation

Department of Environment and Heritage Protection

Dear Mr Connor,
Please find attached my rejection letter.
Regards

s.73 irrelevant information

Published on DES Disclosure Log
RTI Act 2009

From: EHP Submissions [EHPSubmissions@des.qld.gov.au]

Sent: Wednesday, 25 October 2017 10:29 AM

To: [s.73 irrelevant information]

Subject: Response to your correspondence regarding the proposed stage 3 of the New Acland coal mine

Attachments: Response_to_[s.73 irrelevant information].pdf

Dear [s.73 irrelevant information]

Please find attached a response to correspondence regarding the proposed stage 3 of the New Acland coal mine.

Kind regards,

Department of Environment and Heritage Protection

Email ehpsubmissions@ehp.qld.gov.au



25 October 2017

[Redacted]
s.73 irrelevant information

Dear [Redacted]
s.73 irrelevant information

Thank you for your letter of 2 October 2017 addressed to Mr Andrew Connor concerning stage 3 of the New Acland coal mine. Thank you also for your emails of 11 October 2017 and 15 October 2017 addressed to EHPSubmissions@ehp.qld.gov.au, in relation to the same matter.

I can confirm that the Chief Executive's delegate intends to proceed to make the decision required by section 194 of the *Environmental Protection Act 1994* as set out in Mr Connor's original letter and my previous two letters dated 13 October 2017 and 24 October 2017.

My previous letter dealt with the issues you have raised as to whether New Acland Coal Pty Ltd's (NAC) new material and submissions ought to be accepted and reiterates that it is neither intended nor practicable for the delegate to duplicate the Land Court's objections hearing.

You may make submissions about whether the delegate ought receive and consider NAC's material, as proposed in my letter.

In this context, it is not intended to reopen the Land Court proceeding generally, but to strictly limit the subject-matter of any further material and submissions. Matters of the kind contemplated by the process may therefore be considered.

Should you have further enquiries, please contact Peter Snedden, Lawyer, Litigation Branch of the Department of Environment and Heritage Protection on telephone 07 3181 2409 or email peter.snedden@ehp.qld.gov.au.

Yours sincerely

[Redacted]
s.73 irrelevant information

Justin Cagney
Executive Director, Coal and Central Queensland Compliance
Department of Environment and Heritage Protection

EHP Submissions

From: s.73 irrelevant information
Sent: Tuesday, 17 October 2017 7:22 AM
To: EHP Submissions
Subject: Re: Correspondence regarding proposed stage 3 of New Acland coal mine - submission under step one

Yes I would have my correspondence treated as a submission if it is eligible s.73 irrelevant info

From: EHP Submissions
Sent: Tuesday, October 10, 2017 5:27 PM
To: s.73 irrele
Subject: Correspondence regarding proposed stage 3 of New Acland coal mine - submission under step one

Dear s.73 irrelevant inform

We refer to your correspondence attached to your email dated 3 October 2017 below.

Is it your intention the correspondence be treated as a submission under step one of the *Proposed decision-making process (the process)* outlined in the letter from the department's Andrew Connor received by email dated 25 September 2017? If so, the delegate will forward your correspondence to all stakeholders as per step 2 of the process.

We look forward to your response.

Kind regards,



Department of Environment and Heritage Protection

Email ehpsubmissions@ehp.qld.gov.au

From: s.73 irrelevant information
Sent: Tuesday, 3 October 2017 8:57 PM
To: EHP Submissions <EHPSubmissions@ehp.qld.gov.au>
Subject: Submissions NAC

Please find enclosed correspondence regarding submissions on NAC

s.73 irrelevant info

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EHP Submissions

From: s.73 irrelevant information
Sent: Tuesday, 3 October 2017 8:57 PM
To: EHP Submissions
Subject: Submissions NAC
Attachments: EHP.docx

Please find enclosed correspondence regarding submissions on NAC

s.73 irrelevant inform

From: EHP Submissions [EHPSubmissions@des.qld.gov.au]

Sent: Wednesday, 25 October 2017 10:29 AM

To: [s.73 irrelevant information]

Subject: Response to your correspondence regarding the proposed stage 3 of the New Acland coal mine

Attachments: Response_to_[s.73 irrelevant info].pdf

Dear [s.73 irrelevant information]

Please find attached a response to correspondence regarding the proposed stage 3 of the New Acland coal mine.

Kind regards,

Department of Environment and Heritage Protection

Email ehpsubmissions@ehp.qld.gov.au





Department of
**Environment and
Heritage Protection**

25 October 2017

[Redacted]
s.73 irrelevant information

Dear [Redacted]
s.73 irrelevant

Thank you for your letter of 3 October 2017 addressed to Mr Andrew Connor concerning stage 3 of the New Acland coal mine.

I can confirm that the Chief Executive's delegate intends to proceed to make the decision required by section 194 of the *Environmental Protection Act 1994* as set out in Mr Connor's original letter and my previous two letters dated 13 October 2017 and 24 October 2017.

My letter dealt with the issues you have raised as to whether New Acland Coal Pty Ltd's (NAC) new material and submissions ought to be accepted, makes it clear that the delegate is open to receiving factual material in response to NAC's material and submissions and reiterates that it is neither intended nor practicable for the delegate to duplicate the Land Court's objections hearing.

You may make submissions about whether the delegate ought receive and consider NAC's material, as proposed in my letter.

In relation to other matters you raise, the Land Court's decision is entitled to respect, but it retains the character of a recommendation. Whilst the Chief Executive's delegate must have regard to the matters listed in section 194(4) of the *Environmental Protection Act 1994*, the delegate also may have regard to any other matter that is rationally connected with the subject matter of the decision and whose consideration is not otherwise expressly or impliedly prohibited by the *Environmental Protection Act 1994*.

As noted in Mr Connor's letter, in hearing and deciding NAC's stay application, Justice Applegarth indicated that if the stay were refused, interested parties might make submissions to the Chief Executive or the Minister for State Development and Minister for Natural Resources and Mines in relation to matters arising from the Land Court's recommendation. A copy of Justice Applegarth's decision is now available on the Supreme Court Library website at *New Acland Coal Pty Ltd v Smith (Member of the Land Court of Queensland)* [2017] QSC 216 (see <https://www.sclqld.org.au/caselaw/QSC/2017/216>).

In this context, it is not intended to reopen the Land Court proceeding generally, but to strictly limit the subject-matter of any further material and submissions. Matters of the kind contemplated by the process may therefore be considered.

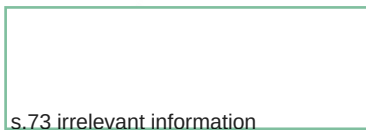
209 Bolsover Street Rockhampton
PO Box 413 Rockhampton
Queensland 4700 Australia
Website www.ehp.qld.gov.au



Department of
**Environment and
Heritage Protection**

Should you have further enquiries, please contact Peter Snedden, Lawyer, Litigation Branch of the Department of Environment and Heritage Protection on telephone 07 3181 2409 or email peter.snedden@ehp.qld.gov.au.

Yours sincerely


s.73 irrelevant information

Justin Cagney
Executive Director, Coal and Central Queensland Compliance
Department of Environment and Heritage Protection

From: EHP Submissions [EHPSubmissions@des.qld.gov.au]

Sent: Friday, 20 October 2017 5:02 PM

To: [s.73 irrelevant]

CC: ELLWOOD Dean; CONNOR Andrew; 'environment@ministerial.qld.gov.au'; SNEDDEN Peter; CAGNEY Justin

Subject: RE: Correspondence regarding proposed stage 3 of New Acland coal mine - submission under step one

Attachments: Letter to [s.73 irrelevant] 20171020_CTS27973-17.pdf

Dear [s.73 irrelevant]

Please find attached correspondence on behalf of Justin Cagney.

Kind regards,

Department of Environment and Heritage Protection

Email ehpsubmissions@ehp.qld.gov.au



From: [s.73 irrelevant information]

Sent: Wednesday, 11 October 2017 12:22 AM

To: EHP Submissions <EHPSubmissions@ehp.qld.gov.au>

Cc: ELLWOOD Dean <Dean.Ellwood@ehp.qld.gov.au>; CONNOR Andrew <Andrew.Connor@ehp.qld.gov.au>; environment@ministerial.qld.gov.au; SNEDDEN Peter <Peter.Snedden@ehp.qld.gov.au>

Subject: RE: Correspondence regarding proposed stage 3 of New Acland coal mine - submission under step one

Yours Sincerely

s.73 irrelevant information

From: EHP Submissions [<mailto:EHPSubmissions@ehp.qld.gov.au>]

Sent: Tuesday, 10 October 2017 5:18 PM

To: s.73 irrelevant information

Subject: Correspondence regarding proposed stage 3 of New Acland coal mine - submission under step one

Dear s.73 irrelevant information

We refer to your correspondence in your email dated 29 September 2017 below.

Is it your intention the correspondence be treated as a submission under step one of the *Proposed decision-making process (the process)* outlined in the letter from the department's Andrew Connor received by email dated 25 September 2017? If so, the delegate will forward your correspondence to all stakeholders as per step 2 of the process.

We look forward to your response.

Kind regards,

Department of Environment and Heritage Protection

Email ehpsubmissions@ehp.qld.gov.au



From: s.73 irrelevant information

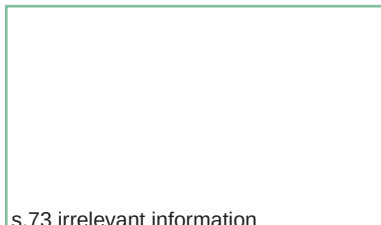
Sent: Friday, 29 September 2017 10:55 AM

To: EHP Submissions <EHPSubmissions@ehp.qld.gov.au>; SNEDDEN Peter <Peter.Snedden@ehp.qld.gov.au>

Subject: Acland - concern about process proposed by Mr Connor and questions about recent letter

CTS No. 27973/17

20 October 2017



s.73 irrelevant information

Dear s.73 irrelevant i

Thank you for your email of 11 October 2017 to the Honourable Dr Steven Miles MP, Minister for Environment and Heritage Protection and Minister for National Parks and the Great Barrier Reef concerning the Stage 3 Expansion Project of the New Acland Coal Mine. The Minister has asked me to respond on his behalf.

Thank you also for your email of 29 September 2017 addressed to EHPSubmissions@ehp.qld.gov.au, in relation to the same matter.

I can confirm that the Chief Executive's delegate intends to proceed to make the decision required by section 194 of the *Environmental Protection Act 1994* (EP Act) as set out in Mr Connor's original letter and a previous letter from me sent on 13 October 2017.

My previous letter dealt with the issues you have raised as to whether New Acland Coal Pty Ltd's (NAC) new material and submissions ought to be accepted and reiterates that it is neither intended nor practicable for the delegate to duplicate the Land Court's objections hearing.

You may make submissions about whether the delegate ought to receive and consider NAC's material, and submissions on whether NAC should make a fresh environmental authority amendment application, as proposed in my letter.

In relation to other matters you raise, the Land Court's decision is entitled to respect, but it retains the character of a recommendation. Whilst the Chief Executive's delegate must have regard to the matters listed in section 194(4) of the EP Act, the delegate also may have regard to any other matter that is rationally connected with the subject matter of the decision and whose consideration is not otherwise expressly or impliedly prohibited by the EP Act.

As noted in Mr Connor's letter, in hearing and deciding NAC's stay application, Justice Applegarth indicated that if the stay were refused, interested parties might make submissions

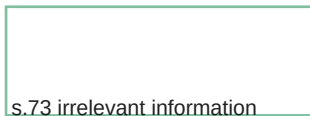
to the Chief Executive or the Minister for State Development and Minister for Natural Resources and Mines in relation to matters arising from the Land Court's recommendation. A copy of Justice Applegarth's decision is now available on the Supreme Court Library website at *New Acland Coal Pty Ltd v Smith (Member of the Land Court of Queensland)* [2017] QSC 216 (see <https://www.sclqld.org.au/caselaw/QSC/2017/216>).

In this context, it is not intended to reopen the Land Court proceeding generally, but to strictly limit the subject-matter of any further material and submissions. Matters of the kind contemplated by the process may therefore be considered.

The Chief Executive intends to proceed as foreshadowed in Mr Connor's and my previous letters.

Should you have further enquiries, please contact Peter Snedden, Lawyer, Litigation Branch of the Department of Environment and Heritage Protection on telephone 07 3181 2409 or email peter.snedden@ehp.qld.gov.au.

Yours sincerely


s.73 irrelevant information

Justin Cagney
Executive Director, Coal and Central Queensland Compliance
Department of Environment and Heritage Protection

EHP Submissions

From: s.73 irrelevant information
Sent: Wednesday, 18 October 2017 2:51 PM
To: EHP Submissions
Subject: Re: Correspondence regarding the proposed stage 3 of the New Acland coal mine
Attachments: Leter to DEHP.docx

Please find attached a letter in response to this email

On 25/09/2017 4:24 PM, EHP Submissions wrote:

Dear s.73 irrelevant inf

Please find attached correspondence regarding the proposed stage 3 of the New Acland coal mine.

Kind regards,



Queensland
Government

Department of Environment and Heritage Protection

Email ehpsubmissions@ehp.qld.gov.au

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From: EHP Submissions [EHPSubmissions@des.qld.gov.au]

Sent: Wednesday, 25 October 2017 10:29 AM

To: [s.73 irrelevant information]

Subject: Response to your correspondence regarding the proposed stage 3 of the New Acland coal mine

Attachments: Response_to [s.73 irrelevant info].pdf

Dear [s.73 irrelevant i]

Please find attached a response to correspondence regarding the proposed stage 3 of the New Acland coal mine.

Kind regards,

Department of Environment and Heritage Protection

Email ehpsubmissions@ehp.qld.gov.au





Department of
**Environment and
Heritage Protection**

25 October 2017

s.73 irrelevant information

Dear s.73 irrelevant i

Thank you for your letter of 18 October 2017 sent by email to EHPSubmissions@ehp.qld.gov.au concerning stage 3 of the New Acland coal mine.

I can confirm that the Chief Executive's delegate intends to proceed to make the decision required by section 194 of the *Environmental Protection Act 1994* as set out in Mr Connor's original letter and my previous two letters dated 13 October 2017 and 24 October 2017.

My previous letter dealt with the issues you have raised as to whether New Acland Coal Pty Ltd's (NAC) new material and submissions ought to be accepted and reiterates that it is neither intended nor practicable for the delegate to duplicate the Land Court's objections hearing. You may make submissions about whether the delegate ought receive and consider NAC's material, as proposed in my letter.

As noted in Mr Connor's letter, in hearing and deciding NAC's stay application, Justice Applegarth indicated that if the stay were refused, interested parties might make submissions to the Chief Executive or the Minister for State Development and Minister for Natural Resources and Mines in relation to matters arising from the Land Court's recommendation. A copy of Justice Applegarth's decision is now available on the Supreme Court Library website at *New Acland Coal Pty Ltd v Smith (Member of the Land Court of Queensland)* [2017] QSC 216 (see <https://www.sclqld.org.au/caselaw/QSC/2017/216>).

In this context, it is not intended to reopen the Land Court proceeding generally, but to strictly limit the subject-matter of any further material and submissions. Matters of the kind contemplated by the process may therefore be considered.

Should you have further enquiries, please contact Peter Snedden, Lawyer, Litigation Branch of the Department of Environment and Heritage Protection on telephone 07 3181 2409 or email peter.snedden@ehp.qld.gov.au.

Yours sincerely

s.73 irrelevant information

Justin Cagney
Executive Director, Coal and Central Queensland Compliance

209 Bolsover Street Rockhampton
PO Box 413 Rockhampton
Queensland 4700 Australia
Website www.ehp.qld.gov.au

EHP Submissions

From: s.73 irrelevant information
Sent: Saturday, 14 October 2017 4:41 PM
To: EHP Submissions
Subject: Proposed stage 3 of the New Acland coal mine
Attachments: Letter to The Delegate Signed14102017.pdf

To the Delegate,

Dear Sir/Madam,

We have been asked to respond to the matter of further submissions regarding the Proposed Stage 3 of the New Acland Coal Mine.

We have attached a signed letter in relation to the question of providing further evidence.

s.73 irrelevant information

Regards

s.73 irrelevant information

Sent from Mail for Windows 10

From: EHP Submissions [EHPSubmissions@des.qld.gov.au]

Sent: Wednesday, 25 October 2017 10:30 AM

To: [s.73 irrelevant information]

Subject: Response to your correspondence regarding the proposed stage 3 of the New Acland coal mine

Attachments: Response_to [s.73 irrelevant information].pdf

Dear [s.73 irrelevant information]

Please find attached a response to correspondence regarding the proposed stage 3 of the New Acland coal mine.

Kind regards,

Department of Environment and Heritage Protection

Email ehpsubmissions@ehp.qld.gov.au





Department of
**Environment and
Heritage Protection**

25 October 2017

s.73 irrelevant information

Dear s.73 irrelevant informa

Thank you for your letter of 14 October 2017 concerning stage 3 of the New Acland coal mine.

I can confirm that the Chief Executive's delegate intends to proceed to make the decision required by section 194 of the *Environmental Protection Act 1994* as set out in Mr Connor's original letter and my previous two letters dated 13 October 2017 and 24 October 2017.

My letter reiterates that it is neither intended nor practicable for the delegate to duplicate the Land Court's objections hearing. The Land Court's decision is entitled to respect, but it retains the character of a recommendation. You may make submissions about whether the delegate ought receive and consider New Acland Coal Pty Ltd's (NAC) material, as proposed in my letter.

As noted in Mr Connors' letter, in hearing and deciding NAC's stay application, Justice Applegarth indicated that if the stay were refused, interested parties might make submissions to the Chief Executive or the Minister for State Development and Minister for Natural Resources and Mines in relation to matters arising from the Land Court's recommendation. A copy of Justice Applegarth's decision is now available on the Supreme Court Library website at *New Acland Coal Pty Ltd v Smith (Member of the Land Court of Queensland)* [2017] QSC 216 (see <https://www.sclqld.org.au/caselaw/QSC/2017/216>).

In this context, it is not intended to reopen the Land Court proceeding generally, but to strictly limit the subject-matter of any further material and submissions. Matters of the kind contemplated by the process may therefore be considered.

Should you have further enquiries, please contact Peter Snedden, Lawyer, Litigation Branch of the Department of Environment and Heritage Protection on telephone 07 3181 2409 or email peter.snedden@ehp.qld.gov.au.

Yours sincerely

s.73 irrelevant information

Justin Cagney

**Executive Director, Coal and Central Queensland Compliance
Department of Environment and Heritage Protection**

209 Bolsover Street Rockhampton
PO Box 413 Rockhampton
Queensland 4700 Australia
Website www.ehp.qld.gov.au

From: EHP Submissions [EHPSubmissions@des.qld.gov.au]

Sent: Wednesday, 25 October 2017 3:28 PM

To: [s.73 irrelevant information]

Subject: RE: NAC

Dear [s.73 irrele

A hard copy of the information that was provided on the USB stick will be mailed to you promptly.

Kind regards,

Department of Environment and Heritage Protection

Email ehpsubmissions@ehp.qld.gov.au



From: [s.73 irrelevant information]

Sent: Wednesday, 25 October 2017 2:53 PM

To: EHP Submissions <EHPSubmissions@ehp.qld.gov.au>

Subject: NAC

To Department of Enviroment and Hertiage Protection

Can you Please forward this information in hard copy please

[s.73 irrelevant information]

From: EHP Submissions [EHPSubmissions@des.qld.gov.au]
Sent: Wednesday, 1 November 2017 10:07 AM
To: 'MOANA Taylah (Taylah.Moana@ehp.qld.gov.au)'
Subject: FW: Correspondence regarding proposed stage 3 of New Acland coal mine - New material available - please provide information

Hi Taylah, can you please prepare and send this today? Cheers

From [s.73 irrelevant information]
Sent: Wednesday, 1 November 2017 9:17 AM
To: EHP Submissions <EHPSubmissions@ehp.qld.gov.au>
Subject: RE: Correspondence regarding proposed stage 3 of New Acland coal mine - New material available - please provide information

Good morning, DEHP.

This message arrived [s.73 irrelevant information] and I returned to reconnect to the internet for messages late on Monday 29 October. I am still working through the backlog from early September and can now reply to your message dated 6 October.

Would you please send me, on a USB stick and in hard copy, the new material for consideration. My home address is [s.73 irrelevant information]
[s.73 irrelevant information]

Yours faithfully,

[s.73 irrelevant information]

From: EHP Submissions [<mailto:EHPSubmissions@ehp.qld.gov.au>]
Sent: Friday, 6 October 2017 4:34 PM
To: EHP Submissions
Subject: Correspondence regarding proposed stage 3 of New Acland coal mine - New material available

Good afternoon,

In accordance with step 2 of the process set out in EHP's letter sent by email on 25 September 2017, new material is available for consideration [here](#).

If you require this information to be provided to you in an alternative manner (i.e. on a USB stick or in hard copy), please reply to this email noting your preferred method.

Regards,

Department of Environment and Heritage Protection

Email ehpsubmissions@ehp.qld.gov.au



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From: EHP Submissions [EHPSubmissions@des.qld.gov.au]

Sent: Friday, 8 December 2017 12:57 PM

To: [s.73 irrelevant information]

Subject: Response to your correspondence regarding the proposed stage 3 of the New Acland coal mine

Attachments: Letter to [s.73 irrelevant information].pdf; Attachment 1_ Letter to stakeholders_New Acland Stage 3 [s.73 irrelevant information].pdf

Dear [s.73 irrelevant information]

Please find attached a response to your correspondence regarding the proposed stage 3 of the New Acland coal mine.

Kind regards,

Department of Environment and Heritage Protection

Email ehpsubmissions@ehp.qld.gov.au



TO:

s.73 irrelevant information

Dear

s.73 irrele

1. I am writing to you in your capacity as a party to the Land Court objections hearing in respect of the proposed stage 3 of the New Acland coal mine. You would be aware that the Land Court recommended to the Chief Executive, Department of Environment and Heritage Protection (the **chief executive**) and the Minister for State Development and Minister for Natural Resources and Mines (the **NRM Minister**) that they refuse New Acland Coal Pty Ltd's (**NAC's**) application for an amendment of Environmental Authority EPML 00335713 (the **EA amendment application**) under the *Environmental Protection Act 1994* (the **EP Act**) and NAC's Mining Lease applications 50232 and 700002 (the **MLAs**) under the *Mineral Resources Act 1989* (the **MR Act**) respectively.¹
2. NAC has sought judicial review by the Supreme Court of the Land Court's recommendations. However, until the Court orders otherwise, the chief executive must take the recommendations to have lawful efficacy, and he is therefore required by the EP Act to proceed to decide the EA amendment application.
3. In the context of NAC's judicial review application to the Supreme Court, NAC applied for a stay of the Land Court's recommendations. If granted, that would have suspended the decision-making process under the EP Act and the MR Act. On 23 June 2017, Justice Applegarth refused NAC's stay application, and accordingly the decision-making processes under the EP Act and the MR Act must proceed.
4. In hearing and deciding NAC's stay application, Justice Applegarth indicated that if the stay were refused, interested parties might make submissions to the chief executive or the NRM Minister in relation to matters arising from the Land Court's recommendation.
5. Against this background, the purpose of this letter is to set out the decision-making process which the chief executive intends to adopt in relation to the EA amendment application.

¹ *New Acland Coal Pty Ltd v Ashman and Others* [2017] QLC 24.

Legal requirements

6. The period within which the NRM Minister may give the chief executive advice in relation to the EA amendment application under the EP Act, s 193 has been extended to 31 January 2018. That period cannot be further extended under that Act, and consequently, the delegate is required to decide the EA amendment application by 14 February 2018. That date cannot be further extended.
7. The chief executive's decision-making process under the EP Act has two broad purposes.
8. The *first objective* is to comply with the requirements of the EP Act.
9. The *second objective* is to afford an opportunity to put further material and submissions before the delegate. Ordinarily, the delegate would consider the Land Court's recommendations and the NRM Minister's advice, and there would be no need for further material or submissions to be put before them.
10. In the particular circumstances of this case, it is appropriate to afford the opportunity to provide further material and make further submissions. However, the process recognises that under the EP Act, the primary means by which evidence and submissions are collected and presented is through the Land Court objections hearing. This decision-making process is not intended to duplicate the Land Court process.
11. Rather, any further material or submissions should be limited to (a) material relating to the EA amendment application that was not before, and was not reasonably available at the time of, the Land Court hearing, and (b) matters relating to the EA amendment application raised in the judicial review proceeding which, consistently with Justice Applegarth's remarks, the delegate may properly take into account in deciding the EA amendment application.
12. There were significant issues in the Land Court hearing in relation to groundwater impacts of the project, and I understand that NAC has undertaken further work on that subject. For that reason, I expect that groundwater is likely to be the principal issue on which new material and submissions may be provided, although it is possible there may be other issues in these categories.

Proposed decision-making process

13. In the circumstances, the chief executive's delegate intends to adopt a decision-making process which meets the legal requirements explained above. The delegate invites all parties to the Land Court objections hearing under the EP Act (that is, NAC and level 1 and level 2 objectors) to participate in the following steps as part of that process:

Step 1: Stakeholders provide to the delegate in the manner outlined in paragraph 15 and by close of business on 3 October 2017 the following:

- any factual material relating to the EA amendment application that was not before, and was not reasonably available at the time of, the Land Court objections hearing (***new material***);
- any submissions on that material (***new material submissions***); and
- any submissions on the Land Court's recommendation to the chief executive (***new Land Court submissions***).

Step 2: Delegate gives all stakeholders any new material, new material submissions and new Land Court submissions received.

Step 3: Stakeholders give the delegate (in the manner outlined in paragraph 15) by close of business on 30 October 2017 any further submissions (***further submissions***) in response to new material, new material submissions and new Land Court submissions.

Step 4: Delegate gives all stakeholders any further submissions.

Step 5: Stakeholders give the delegate (in the manner outlined in paragraph 15) by close of business on 13 November 2017 any submissions in reply to further submissions (***reply submissions***).

Step 6: Delegate gives all stakeholders any reply submissions. This concludes the submissions process.

14. Because of the statutory timetable, strict adherence to the above timetable will be required. Only material and submissions of the kinds described above and received by the times specified will be considered.
15. All further material or submissions in relation to this letter are to be submitted by email. Each stakeholder must provide the delegate with their email address to facilitate this

process, unless alternative arrangements are agreed to. The delegate's email address is EHPsubmissions@ehp.qld.gov.au.

16. If you have any queries, please contact Peter Snedden, Lawyer, Litigation Branch, (07) 3181 2409.

Yours sincerely



s.73 irrelevant information

Andrew Connor
A/Deputy Director-General, Environmental Services and Regulation
Department of Environment and Heritage Protection



Department of
**Environment and
Heritage Protection**

s.73 irrelevant information

Dear s.73 irrelevant info

I refer to your letter of 4 November 2017 and my recent correspondence to stakeholders regarding the decision-making process adopted by the chief executive's delegate in relation to New Acland Coal Pty Ltd's (NAC's) application for an amendment of Environmental Authority (EA) EPML00335713.

As you may be aware, the Land Court recommended to the Chief Executive, Department of Environment and Heritage Protection (the chief executive) and the Minister for Natural Resources and Mines (NRM Minister) that they refuse NAC's application for an amendment of their EA (Land Court recommendation).

NAC has sought judicial review by the Supreme Court of the Land Court Recommendation. However, until the Court orders otherwise, the chief executive must continue to decide the EA amendment application. The decision is required to be made by 14 February 2018.

You have asked the following questions about the decision-making process for the EA amendment application:

Question – How can a new decision-making process, with submission from interested parties, and a new EA application be developed? What is the background information for this? Where is the background reference material for “further information and submissions”? Surely this is duplicating the Land Court process and all information already scrutinised.

I refer to the department's correspondence (undated, sent on 25 September 2017), detailing the decision-making process adopted by the department. A copy of that correspondence is **attached** for your reference.

In that correspondence, the department noted that in hearing and deciding NAC's stay application of the Land Court recommendation, Justice Applegarth commented that interested parties might make submissions to the chief executive or the NRM Minister in relation to matters arising from the Land Court's recommendation.

Guided by these comments, the department has afforded an opportunity for interested parties to put further material and submissions before the delegate in relation to matters arising from the Land Court recommendation.

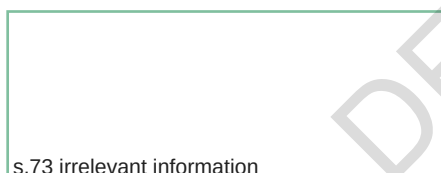
Question – Surely no further comment can be made until the judicial review, and examination of the evidence presented there, has been completed and a judgment has been finalised?

In the context of the NAC's judicial review application to the Supreme Court, NAC applied for a stay of the Land Court recommendation. If the stay had been granted, that would have suspended the decisions to be made under the *Environmental Protection Act 1994* (EP Act) and the *Mineral Resources Act 1989* (MR Act).

However, on 23 June 2017, Justice Applegarth refused NAC's stay application, and accordingly the decisions under the EP Act must proceed.

Should you have further enquiries, please contact Peter Snedden, Lawyer, Litigation Branch of the Department of Environment and Heritage Protection on telephone 07 3181 2409 or email peter.snedden@ehp.qld.gov.au.

Yours sincerely



s.73 irrelevant information

Justin Cagney
Executive Director, Coal and Central Queensland Compliance
Department of Environment and Heritage Protection
Date: 8 December 2017

From: EHP Submissions [EHPSubmissions@des.qld.gov.au]
Sent: Tuesday, 12 December 2017 12:35 PM
To: [s.73 irrelevant informat]
Subject: RE: Request for an extension of time for my further submission

Dear [s.73 irrelevant in]

Thank you for your letter dated 9 December 2017 directed to Mr Justin Cagney of this department.

We acknowledge your request for an extension of time to make your submissions, however because of the constraints of the statutory timetable an extension cannot be granted.

The chief executive's delegate will proceed according to the decision-making process, and timetable for that process, as set out in Mr Connor's original letter and as revised in Justin Cagney's letters dated 13 October 2017 and 24 October 2017.

Kind regards,

Peter Snedden

Lawyer

Litigation Branch I Environmental Services & Regulation

Department of Environment and Heritage Protection

P 07 3181 2409

Level 7, 400 George Street, Brisbane QLD 4000

GPO Box 2454, Brisbane Qld 4001

From: [s.73 irrelevant information]
Sent: Saturday, 9 December 2017 8:27 AM
To: EHP Submissions <EHPSubmissions@ehp.qld.gov.au>
Subject: Request for an extension of time for my further submission

Dear EHP and Mr Justin Gagney,

Following your stakeholders supplementary letter dated 24 October I attach my request for an extension of time for my further submission.

Trusting that you will understand my situation I remain, yours sincerely,

[s.73 irrelevant informat]

From: EHP Submissions [<mailto:EHPSubmissions@ehp.qld.gov.au>]
Sent: Tuesday, 24 October 2017 4:05 PM
To: s.73 irrelevant information
Subject: Further correspondence regarding the proposed stage 3 of the New Acland coal mine

Dear s.73 irrelevant information

Please find attached further correspondence regarding the proposed stage 3 of the New Acland coal mine.

Kind regards,

Department of Environment and Heritage Protection

Email ehpsubmissions@ehp.qld.gov.au



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From: EHP Submissions [EHPSubmissions@des.qld.gov.au]
Sent: Tuesday, 12 December 2017 12:14 PM
To: [s.73 irrelevant information]
Subject: RE: New Acland Coal , re ehpsubmissions

Dear [s.73 irrelevant information]

The Department of Environment and Heritage Protection (DEHP) records indicate that you are listed as a level 2 objector under the Mineral Resources Act in relation to the mining lease application.

The process being undertaken by DEHP is in relation to the environmental authority. Accordingly, those involved in the process are the applicant and the objectors to the environmental authority.

Kind regards,

Peter Snedden

Lawyer

Litigation Branch I Environmental Services & Regulation

Department of Environment and Heritage Protection



P 07 3181 2409

Level 7, 400 George Street, Brisbane QLD 4000

GPO Box 2454, Brisbane Qld 4001

From: [s.73 irrelevant information]
Sent: Sunday, 10 December 2017 8:51 PM
To: EHP Submissions <EHPSubmissions@ehp.qld.gov.au>
Subject: New Acland Coal , re ehpsubmissions

ehpsubmissions@ehp.qld.gov.au