

**ANNEXURE 1 –
SUPPORTING INFORMATION –
APPLICATION FOR REVIEW OF
ORIGINAL DECISION –
ENVIRONMENTAL EVALUATION NOTICE
FOR CALLIDE MINE**

GLT 948/STAT 764

2 MAY 2013

RTI/DL RELEASED

Part A – Introduction and summary of the reasons for review

Callide Mine has received a Notice to conduct or commission an environmental evaluation (in this instance, an environmental audit).

We have already given to the administering authority much of the information that is requested in the Requirements section of the Notice. The balance of the information is work that Callide Mine already has to do in order to comply with existing conditions of Callide Mine's environmental authority, with the difference that some of those existing obligations did not need to be contracted out to a third party consultant and could have been achieved more effectively internally. We would like to make it clear that we do not have any concerns in principle with providing information to the Department of Environment and Heritage Protection (EHP) generally covering the topics listed in the Requirements section of this notice.

In broad summary, the grounds for seeking an internal review are:

- (a) The stated Grounds for the Notice to conduct or commission an environmental evaluation contain numerous unfortunate errors, and this situation has led EHP to a mistaken impression that Callide Mine has problems which in fact do not exist. We would like the opportunity to correct these errors.
- (b) We believe there is no unlawful environmental harm being caused or likely to be caused in the future by any of the activities or events referred to in the remaining Grounds of the Notice (that is, leaving aside the aforementioned inaccuracies), with the exception of trivial environmental harm, so we believe there is no jurisdiction for the environmental evaluation notice under Section 321(a) of the *Environmental Protection Act 1994* (Qld). Some of the issues referred to in the Grounds section of the notice were actually only administrative or monitoring issues, rather than environmental harm issues. Other issues were based on clerical or factual errors in conditions of Callide Mine's environmental authority, which Callide Mine has raised previously with EHP. We believe the remaining issues were so minor that they would be regarded as satisfying the legal principle of '*de minimis*'.
- (c) Some of the information specified in the Requirements has previously been given to the administering authority, while other information specified in the Requirements is already required to be provided to the administering authority under existing conditions of Callide Mine's environmental authority, so we believe that there is no need for these Requirements to be duplicated in the Notice. Callide is concerned that the only logical reason seems to be that an environmental evaluation notice is a type of punitive measure and would justify EHP in imposing additional punitive measures that could not otherwise be imposed, under Section 326 of the *Environmental Protection Act 1994*.

Part B –Further details of the Reasons for Review

1. Errors in the Grounds in the Environmental Evaluation Notice

1.1 Errors in the references to transitional environmental programs in Grounds 2 and 3

Ground 2 states:

'In 2010 the department issued two penalty infringement notices (PINs) and approved two transitional environmental programs (TEPs) to Anglo Coal (Callide) Pty Ltd in response to non-compliant releases of mine affected water from the premises.'

Ground 3 states:

'In 2011 the department issued three warning notices, three PINs and approved two TEPs to Anglo Coal (Callide) Pty Ltd in response to non-compliant releases of mine affected water from the premises.'

[**Bold** added so as to highlight the relevant references to TEPs.]

Our records indicate there was only one TEP approved for Callide Mine in 2010 (for Dunn Creek Dam on 24 December 2010) and two TEPs approved for Callide Mine in 2011 (for Lake Gasteen Dam and Oak Creek Diversion Lake Dam).

These three TEPs that were approved at about the commencement of the 2010-11 wet season were in fact not *'in response to non-compliant releases of mine affected water from the premises'*. In early December 2010, the former Department of Environment and Resource Management (DERM) contacted the holders of environmental authorities for all coal mines in the Bowen Basin and invited them to submit TEP applications in preparation for the wet season, essentially because the model conditions that were imposed on all mines in the region at the time did not enable them to release sufficient water in the context of the Queensland Floods 2010-11. **Annexure 2** sets out copies of key items of relevant correspondence between the administering authority and the Queensland Resources Council on behalf of the mining industry about these TEPs for the coal mining industry in the Bowen Basin, all of which is on the public record in evidence before the Commission of Inquiry (Queensland Floods). DERM specifically agreed with QRC that merely obtaining these TEPs would not be cited for punitive consequences. There is a summary of the reasons why the administering authority invited these TEPs to be obtained by the mining industry and the flaws in that process, contained in Chapter 13 of the Queensland Floods Commission of Inquiry *Final Report* Volume 2. **Annexure 3** sets out some relevant excerpts from the findings of the Commission of Inquiry.

Given that the Commission of Inquiry has already comprehensively examined the reasons why these TEPs were invited from coal mines in the Bowen Basin, there is clearly no need for this Notice to Conduct or Commission an Environmental Evaluation to re-examine the circumstances which led to these Bowen Basin TEPs by singling out one mine that simply obtained *pro forma* TEPs in response to the general invitation.

No other TEPs were approved for Callide Mine in 2010 or 2011 except for the *pro forma* TEPs that were obtained in response to the administering authority's general invitation.

1.2 Mistaken information about exceedences of contaminant limits for passive releases from Dunn Creek Dam to Dunn Creek

Bullet point 5 of the Grounds states (in part) that: *'Between 25 January and 4 February 2013, Anglo Coal (Callide) Pty [sic] contravened a condition of an Environmental Authority due to the non compliant release of mine affected water from – Dunn Creek Dam that exceeded authorised contaminate limits on Environmental Authority MIN 100507307 (EA)...'*

At the time that Callide Mine submitted its '28 Days Report' in relation to passive releases from Dunn Creek Dam over this period (resulting from ex-cyclone Oswald), Callide Mine was under the impression that the water quality that was being monitored by sampling at the Callide Dam Headwaters monitoring point would have been representative of the water quality being released from Dunn Creek Dam.

However, since then, on 11 April 2013, Callide Mine has been advised by SunWater, which is the owner and operator of Callide Dam, that in fact Callide A Power Station was also releasing water into Dunn Creek during approximately the same period that Callide Mine was passively releasing from Dunn Creek Dam. Having made some further enquiries, we understand that CS Energy was releasing for a period of approximately 20 days into the same watercourse at a rate of about 20,000 litres per day. We understand that, unlike Callide Mine, CS Energy does not have to monitor for electrical conductivity, which is a method of approximating salinity. Callide Mine has no information about the water quality parameters of the release from Callide A Power Station. However, the water quality that we thought we were measuring for a release from Callide Mine would have included cumulative releases from at least one other party, which Callide Mine was not aware of at the time.

We have heard that Mr Phil Steer is the relevant EHP officer who would be aware of the releases from Callide A Power Station.

Generally, Callide Mine's water quality from the Dunn Creek Dam is very good. Electrical conductivity is normally around 1200-1300 EC, with the authorised limit being 1400 EC. Therefore we were surprised to see some apparent exceedences of water quality parameters from time to time in the water quality monitoring results from Callide Dam headwaters. However, we were obviously missing some critical information at that time. In future it is suggested that better communication from EHP would assist with this.

1.3 Incorrect descriptions of penalty infringement notices (PINs)

Grounds 1 and 2 also describe each of the penalty infringement notices that were issued to Callide Mine as having been *'in response to non-compliant releases of mine affected water from the premises'*, which is not correct. For example, while Ground 2 is correct that there were two penalty infringement notices that were issued to Callide Mine in 2010, the second of these related to a delay in installing a stream flow gauge for the Oaky Creek Diversion Lake Dam. Under an amendment application dated 28 November 2011, Callide Mine explained to the administering authority that Oaky Creek Diversion Lake Dam was not even designed as a dam for mine affected water but a sediment dam, and the administering authority finally accepted this and removed this dam from monitoring requirements for mine affected water on 14 December 2012.

1.4 Minor correction to reference to 'the' holder in Ground 1

Ground 1 states that '*Anglo Coal (Callide)* is the holder of Environmental Authority MIN100507307'. The use of the definite article is not strictly correct because in fact there are two holders of that environmental authority: Anglo Coal (Callide) Pty Ltd is the principal holder, while Anglo Coal (Callide) No. 2 Pty Ltd is the joint holder.

73(2)Irrelevant

RTI DL RELEASE - EHP

73(2)Irrelevant

RTI DL RELEASE - EHP

3. No need for the Requirements of the Environmental Evaluation Notice

Requirement 1) of the Environmental Evaluation Notice states:

R

'Provide an evaluation of water management systems, processes and plans to identify the factors and circumstances which have resulted in Anglo Coal (Callide) Pty Ltd 's non-compliance regarding water releases from the premises.'

In fact, for every 'non-compliance regarding water releases from the premises', there is already a legal requirement under condition W15 of Callide Mine's environmental authority to notify the administering authority of each exceedence. Condition W16 imposes a duty to provide details of the reasons and other related information within 28 days of each such release. Callide Mine has provided all the information required by those conditions, in considerable detail. EHP has not identified in the Notice any defect in that regard.

Requirement 2) states:

'Specify the standards or benchmark employed to evaluate compliance. The audit methodology should be based on the requirements specified in the EA and any other relevant standards.'

Again, the standards for compliance relating to water quality parameters are all set out in detail in Schedule W of Callide Mine's environmental authority, in exactly the same format as all other conditions for coal mines in the region. It is not understood what other possible 'standards or benchmarks' for compliance the Notice is seeking to elicit.

Requirement 3) states:

'Quantify the environmental risk/s associated with all deficiencies identified.'

Again, this information is already required under environmental authority conditions relating to reporting in Schedule W of Callide Mine's environmental authority. In each of Callide Mine's 28 Days Reports submitted under Condition W16, Callide Mine has already explained why each of the technical non-compliances identified could not have created an environmental risk. EHP has not identified in the Notice any deficiencies in the reporting in that regard.

Requirement 4) requests:

'Details of mine site water management including but not limited to:

- a) A study of the sources of contaminants*
- b) A water balance model for the site*
- c) A water management system for the site*
- d) Measures to manage and prevent saline drainage*
- e) Contingency procedures for emergencies and*
- f) A program for monitoring and review of the effectiveness of the water management plan.'*

As EHP is aware, these are among the topics already dealt with under Callide Mine's existing water management plan. Under Callide Mine's amended environmental authority dated 14 December 2012, Callide Mine was required to prepare an updated version of the WMP 'within 3 months of the date of approval of amendments to this environmental authority in response to the application for amendment dated 28 May 2012'.

The difficulty was that the amended environmental authority dated 14 December 2012 was not in fact an 'approval' of Callide Mine's application for amendment dated 28 May 2012. Instead, this version of the environmental authority included a number of changes to Table W4 which were not sought by Callide Mine in the amendment application, were not part of the information process and did not make sense in the context of the Explanatory Notes for the *Final Model Water Conditions for Coal Mines in the Fitzroy Basin* on pp4-6. An example of the errors in the conditions is explained in Section 2.2 of this Supporting Information Report. This is only one of many errors in the conditions.

Callide Mine requested correction of the errors by agreement in January 2012 and subsequently requested an extension of time to submit an updated WMP after the errors had been corrected. However, EHP advised that this could only be done by lodging an application for amendment of environmental authority conditions. Callide Mine lodged this application on 20 March 2012 and the application not only requests that the errors be corrected but also seeks a new schedule of regulated dams conditions and a revised date for the updated water management plan after these new conditions have been approved. That application also foreshadowed that Callide Mine would shortly be lodging a further amendment application relating to relocation of groundwater monitoring points and updates to groundwater monitoring parameters to take account of the water quality objectives and environmental values that have been published since the original groundwater monitoring parameters were imposed. That groundwater application was lodged on 22 April 2013. The application also ended up including recommendations about updates to Callide Mine's receiving environment monitoring program.

Callide Mine has underway updates to our water management plan but we still believe that EHP should get the environmental authority conditions finalised before we finalise our updated water management plan. Callide Mine would welcome EHP to explain a reason why this would not be a more logical order of events. This point is, of course, also relevant to the second last ground set out in the Grounds section of the Environmental Evaluation Notice.

Requirement 5) states:

'Detail recommendations to achieve sustained compliance with the EA in respect to water management. The audit report should include but not be limited to –
a. A description of any recommended capital works programs or other improvements to be carried out to achieve compliance with the EA
b. Having regard to the information gathered for this audit, an analysis of risks identified and a program to address those risks.'

Callide Mine's environmental authority dated 14 December 2012 was received too late to implement changes to monitoring equipment so as to facilitate the changes to release points approved under that amendment decision before the 2012-13 wet season and it was granted without the benefit of any transitional condition. John McDougall of Callide Mine raised this concern with Mr John Frankish of EHP on that date and John Frankish gave reassurance that EHP would take this into account on an interim basis for the 2012-13 wet season. Ultimately, EHP allowed Callide Mine to adopt an interim monitoring program for the 2012-13 wet season, a copy of which is at **Annexure 4**. It was these monitoring equipment changes that were the capital works that Callide Mine was concerned about for the 2012-13 wet season.

Callide Mine's major capital works in 2013 to manage water releases are voluntary works, not compliance works. They are pipelines to provide beneficial re-use water to graziers and farmers in the local area. Callide Mine has updated EHP about this previously and explained that delays in the correction of a typographical error in the beneficial re-use conditions were delaying implementation of this work. That issue has now been resolved by a corrected EA issued to Callide Mine on 4 April 2013.

RTI DL RELEASE - EHP

Application form

Environmental Protection Act 1994

Application for review of original decision

This document is the approved form that is to be used when a person is dissatisfied with an original decision made by the administering authority under schedule 2 of the Environmental Protection Act 1994 (EP Act) and is seeking a review of that decision under section 521 of that Act.

Checklist for making an application

You must complete this checklist before you continue with the application form.

Checklist questions		Guidance
Do you fit the definition of a dissatisfied person under section 520 of the EP Act?	☒ YES ☐ NO	If no, you cannot make this application as only a person who meets the dissatisfied person definition can apply for a review of an original decision.
Is this application being lodged within either: <ul style="list-style-type: none">• Ten business days after the day on which you received notice of the original decision; or• A longer period, as specifically stated in the notice of the original decision?	☒ YES ☐ NO	If no, you cannot make this application.

GUIDE

If more space is required for any responses, please attach additional information as a separate page.

Application details

1. Applicant details

INDIVIDUAL OR BUSINESS NAME (INCLUDE TRADING NAME IF RELEVANT)

ANGLO COAL (CALLIDE) PTY LTD

ABN/ACN/AN (IF RELEVANT)

ACN 081 022 228

RESIDENTIAL ADDRESS OR REGISTERED BUSINESS ADDRESS (NOT A POST OFFICE BOX ADDRESS)

201 CHARLOTTE STREET, BRISBANE QLD 4000

POSTAL ADDRESS (IF DIFFERENT FROM ABOVE)

PO BOX 144, COAL ROAD, BILOELA QLD 4175

Application form
Application for review of original decision

CONTACT PERSON JOHN MCDOUGALL, ENVIRONMENTAL SUPERINTENDENT	
PHONE 07 4990 1840	FACSIMILE 07 4990 1687
EMAIL JOHN.MCDOUGALL@ANGLOAMERICAN.COM	

State the original decision that you want reviewed. A full list of all original decisions can be found under schedule 2 of the EP Act. An example is a decision to require another way of giving or publishing application notice

2. Details of the original decision

ORIGINAL DECISION NOTICE TO CONDUCT OR COMMISSION AN ENVIRONMENTAL EVALUATION
ORIGINAL DECISION REFERENCE NUMBER GLT948/STAT764
DATE YOU RECEIVED NOTICE OF THE ORIGINAL DECISION 22 APRIL 2013 (BY REGISTERED POST) AND A COPY BY E.MAIL ON 17 APRIL 2013

The original decision reference number will be shown on the top of the notice of decision as 'our reference'

If you reference any supporting information, please attach to this application

3. State the reasons why you believe the decision is unreasonable or inappropriate.

PLEASE REFER TO THE ATTACHED SUPPORTING INFORMATION.

R

Application form Application for review of original decision

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For a list of the people who were given notice of the original decision, you can contact the following offices:

- For ERAs 2, 3 or 4, contact the relevant local office of the Department of Agriculture, Fisheries and Forestry (DAFF)
- For all other ERAs, contact the relevant local office of the Department of Environment and Heritage Protection (EHP).

Privacy statement

The Departments of Environment and Heritage Protection (EHP) and Agriculture, Fisheries and Forestry (DAFF) are collecting the information on this form to process your application for an environmental authority. This collection is authorised under section 521 of the *Environmental Protection Act 1994*. Some information may be given to the Department of Natural Resources and Mines (DNRM) for the purposes of processing this application and/or the administration of the *Strategic Cropping Land Act 2011*. Your personal information will only be accessed by authorised employees within these departments and will not be disclosed to any other parties unless authorised or required by law.

For queries about privacy matters please email privacy@ehp.qld.gov.au or telephone: (07) 3330 5436.

4. Have you given a review notice and a copy of this application and supporting documents to the other people who received notice of the original decision?

- ☐ Yes → Include relevant details in the table below.
- ☒ No → This application cannot proceed until all persons who were given notice of the original decision have been given a copy of the review notice and a copy of this application and supporting documentation.

PERSON WHO THE REVIEW NOTICE AND A COPY OF THE APPLICATION WAS GIVEN TO	DATE THE REVIEW NOTICE AND A COPY OF THE APPLICATION WAS GIVEN
N/A - NO OTHER PERSONS RECEIVED NOTICE OF THE ORIGINAL DECISION NOR WAS ANY OTHER PERSON ENTITLED TO NOTICE, SO THE QUESTION IS LEGALLY INCORRECT.	

5. Declaration

Note: If you have not told the truth in this application you may be liable for prosecution under the relevant Acts or Regulations.

I declare that:

- I am applying for the review of the original decision made by the administering authority as detailed in this application.
- ~~I have given a review notice to the other people who received notice of the original decision, informing them that submissions about this application must be received by the administering authority within 5 business days after this application is submitted.~~ Section 78B(2) RTI Act 2013
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- The information provided is true and correct to the best of my knowledge. I understand that it is an offence under section 480 of the *Environmental Protection Act 1994* to give to the administering authority, or an authorised person, a document containing information that I know is false, misleading or incomplete in a material particular.
- I understand that all information supplied on or with this application form may be disclosed publicly in accordance with the *Right to Information Act 2009* and the *Evidence Act 1977*.

R

Application form
Application for review of original decision

NAME DAVID PALMER	
SIGNATURE _____ 49-Sch4	
POSITION OF SIGNATORY DIRECTOR AND GENERAL MANAGER	DATE 2 MAY 2013

Applicant checklist

- ☒ Application form has been signed and completed.
- ☐ Question 3: Supporting documentation attached (if applicable).

Further Information

The latest version of this publication and other publications referenced in this document can be found at www.ehp.qld.gov.au using the relevant publication number (EM709 for this document) as a search term.

Please submit your completed application kit to:

For ERA 2, ERA 3 or ERA 4

Post:
Senior Environmental Scientist
Animal Industries
Department of Agriculture, Fisheries
and Forestry
PO Box 102
TOOWOOMBA QLD 4350

Enquiries:
Phone: (07) 4688 1374
Fax: (07) 4688 1192
Email: livestockregulator@daff.qld.gov.au

For all other ERAs

Post:
Department of Environment and
Heritage Protection
GPO Box 2454
BRISBANE QLD 4001

Courier or hand delivery:
Permit and Licence Management
Department of Environment and
Heritage Protection
Level 3, 400 George Street
BRISBANE QLD 4000
Business hours: 8:30am–4:30pm
business days

Enquiries:
Permit and Licence Management
Phone: 13 QGOV (13 74 68)
Fax: (07) 3330 5875
Email: palm@ehp.qld.gov.au

ANNEXURE 4

CALLIDE MINE

INTERIM WATER MONITORING

PROGRAM

RTI DL RELEASE - EHP

Contents

Introduction

On 14 December 2012, Callide Mine received an amended environmental authority from the Department of Environment and Heritage Protection, making significant changes to water release conditions. Before that date, Callide Mine had already put in place most of the infrastructure necessary to facilitate reliance on the amended conditions, but had not yet made changes to the locations of various monitoring equipment (in some cases, involving negotiation of access agreements with landowners) pending receipt of the amended conditions, mainly because EHP had raised various questions with Callide Mine about the appropriate locations of monitoring equipment during the application process and so Callide Mine was awaiting the outcome of EHP's consideration of submissions in response to those questions.

Accordingly, on 14 December 2012, Callide Mine discussed with John Frankish of EHP that, given our EA amendment was issued at a time which did not allow us to install some parts of the relevant infrastructure before the commencement of the wet season, this would need to be taken into consideration on an interim basis for the current wet season. In reliance on that discussion, Callide Mine did not seek review or appeal of the amended conditions so as to include an interim condition for the current wet season.

The particular monitoring equipment issues that Callide Mine had mentioned in that correspondence were not in relation to Dunn Creek Dam, as the conditions remain unchanged for Dunn Creek Dam. At the time EHP requested an interim monitoring program, Callide Mine had intended to cease any further release from Dunn Creek Dam due to cessation of rainfall (and receiving waters flow) from the ex-cyclone Oswald event, but subsequently further heavy rainfall has been experienced and flow has recommenced from Dunn Creek Dam, so it is now appropriate to add to this interim monitoring program a point that had been discussed informally in relation to Dunn Creek Dam. The flow gauging station for Dunn Creek Dam, located at the Callide Dam headwaters, was damaged as a result of flooding caused by ex-cyclone Oswald and is currently not capable of recording flow volumes for receiving waters, so Callide Mine has been relying on representative flow data provided by SunWater until the flow gauging station is able to be repaired or replaced.

Currently, no releases are being made (or proposed) from RP1a (Turkey's Nest Storage) or RP2 (Ghost Ryder's Storage), so it is not necessary for this interim monitoring program to address those items. The release points for current relevant releases are:

- Table A - Dunn Creek Dam;
- Table B RP1b - Trap Gully Pipeline; and
- Table B RP3 - Lake Gasteen Dam.

This interim monitoring program only sets out the particular issues where it is proposed to undertake a different temporary monitoring arrangement from that specified in our current EA. Otherwise, the EA sets out all monitoring requirements.

Table A - Dunn Creek Dam Release Point

Due to flooding caused by ex-cyclone Oswald, the flow gauging station described in Table W4 – Part A of the EA has been damaged and is not recording receiving waters flow volumes.

Representative flow data is obtained from SunWater and will be used for reporting purposes. Callide Dam is currently in flood again. (It is not possible for Callide Mine to commit SunWater to any particular monitoring regime, obviously.)

73(2) Irrelevant

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- ~~I have given a copy of this application and supporting documents to the other people who received notice of the original decision.~~ 2013
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TOOWOOMBA QLD 4350

Enquiries:
Phone: (07) 4688 1374
Fax: (07) 4688 1192
Email: livestockregulator@daff.qld.gov.au

For all other ERAs

Post:
Department of Environment and
Heritage Protection
GPO Box 2454
BRISBANE QLD 4001

Courier or hand delivery:
Permit and Licence Management
Department of Environment and
Heritage Protection
Level 3, 400 George Street
BRISBANE QLD 4000
Business hours: 8:30am–4:30pm
business days

Enquiries:
Permit and Licence Management
Phone: 13 QGOV (13 74 68)
Fax: (07) 3330 5875
Email: palm@ehp.qld.gov.au

METALLURGICAL COAL**Anglo Coal (Callide Management)
Pty Ltd****CALLIDE MINE
Coal Road
PO Box 144
Biloela Q 4715 Australia**

Kylie Dunlop
Senior Environmental Officer
Department of Environmental and Heritage Protection
PO Box 1762
ROCKHAMPTON QLD 4700

By e.mail

2 May 2013

Dear Kylie

Application for internal review of original decision relating to the notice to conduct or commission an environmental evaluation

As discussed this morning, enclosed is a copy of an application for internal review of original decision relating to the notice to conduct or commission an environmental evaluation (ref: GLT948/STAT764). The original has been hand delivered today at the PALM office by our solicitors, as required by the form.

Callide Mine has already provided some parts of the information required by the environmental evaluation notice and we already have underway the balance of the information (because it is required anyway, either directly or indirectly, for the purposes of our existing environmental authority conditions). So, the information itself is not a practical problem (although it is perhaps questionable why it was considered necessary to be duplicated by way of an environmental evaluation notice process). We would like to make it clear that we do not have a difficulty in principle with providing information to the Department of Environment and Heritage Protection (EHP) generally covering the topics listed in the Requirements section of this notice. Our aim is to ensure that any requirements are directed towards good environmental outcomes.

Unfortunately, the grounds set out in the environmental evaluation notice contain numerous errors, and this situation has led EHP to a mistaken impression that Callide Mine has various problems that in fact we do not have. Obviously, you personally were not involved until very recently, so it is understood and accepted that you may not be aware of all of the relevant history. It is our concern that, if EHP is working from a mistaken understanding of the background (as shown by the stated grounds), this would leave us open to mistakes in the way that EHP would assess an environmental audit and the types of action that the Department may then believe that it had to take under Section 326 of the Environmental Protection Act.

Callide Mine would appreciate an opportunity to meet with the senior officer who has the responsibility for making the review decision, preferably together with yourself. Our objective is to achieve good environmental outcomes for the site, which will be considerably helped if

Member of the Anglo American plc group

Anglo Coal (Callide Management) Pty Ltd.
Coal Road, Biloela 4715, Australia. PO Box 144, Biloela 4715, Australia T +61 (0)7 4990 1811. F +61 (0)7 4990 1887.

ABN 75 009 686 200



EHP progresses our current applications for amendment of environmental authority conditions. We believe that a meeting would be useful to identify the appropriate path forwards and also for EHP personnel who were not involved at the times referred to in the environmental evaluation notice to gain a more thorough understanding of the background and detail. Could you please advise times and dates that would be convenient to EHP.

In the meantime, please contact me if you have any questions about this notification, either by e.mail or on my mobile telephone

49-Sch4

Yours sincerely

49-Sch4

John McDougall
Environmental Superintendent
T: (07) 4990 1840
E: john.mcdougall@angloamerican.com.au
www.angloamerican.com.au

cc: Sam Tarlinton and Chris Loveday, EHP by e.mail

RTI DL RELEASE - EHP

From: McDougall, John [john.mcdougall@angloamerican.com]

Sent: Thursday, 2 May 2013 5:07 PM

To: Dunlop Kylie; Tarlinton Sam

CC: Hampson, Michael;

49-Sch4

Grant, Carl

Subject: FW: Application for review of original decision - environmental evaluation notice

Attachments: Letter from Callide Mine to EHP enclosing copy application for review 2 May 2013.pdf; Application Form for Review of Original Decision.pdf; Annexure 1 supporting information.pdf; Annexure 2 Bundle of correspondence between DERM and QRC and excerpt from statement relating to TEPs 2010-11.pdf; Annexure 3 - Excerpts from Final Report of the Queensland Floods Commission of Inquiry march 2012.pdf; Annexure 4 - Interim Water Monitoring Program.pdf

Kylie

As discussed earlier today please find attached application for review of the EE. Thank you so much for your understanding on the phone today and your cooperation regarding the process.

Callide certainly looks forward to achieving better environmental outcomes and strengthening the relationship with EHP.

Kind Regards

John

John McDougall

Environmental Superintendent



E john.mcdougall@angloamerican.com

D +61 (0) 7 4990 1840

49-Sch4

METALLURGICAL COAL

CALLIDE MINE

Coal Road, PO Box 144, Biloela, 4715

Australia

T +61 (0) 7 4990 1611

F +61 (0) 7 4990 1687

www.angloamerican.com

A member of the Anglo American plc group

RTI DL RELEASE - EHP

Notice

Environmental Protection Act 1994

Environmental Evaluation

Notice to conduct or commission an environmental evaluation

This notice to conduct or commission an environmental evaluation is issued by the administering authority pursuant to s322 and s521(5)(c)(ii) of the Environmental Protection Act 1994.

Anglo Coal (Callide) Pty Ltd
Ground Floor, 201 Charlotte Street
BRISBANE QLD 4000

Your reference: MIN100507307

Our reference: GLT948 / STAT764

Take notice: that under the *Environmental Protection Act 1994* (the Act) a notice to commission an environmental audit is served on you by the administering authority. The administering authority is the Chief Executive of the Department of Environment and Heritage Protection (the department).

The notice to commission an environmental audit is issued in respect of the activities of Anglo Coal (Callide) Pty Ltd at Callide Coal mine on mining leases ML5632, ML5641, ML5653, ML5654, ML5655, ML5662, ML6993, ML6994, ML80030, ML80092, ML80093, ML80107, ML80115, ML80117, ML800118, ML80122 and ML80151 (the premises).

A. Grounds

The notice to commission an environmental audit is issued on the following grounds:

(1) The administering authority may, by written notice (an audit notice) require the holder of an environmental authority to –

- (a) commission an audit (an environmental audit) about a stated matter concerning a relevant activity; and
- (b) give the administering authority an environmental report about the audit.

(2) However, an audit notice may be given under subsection (1) only if the administering authority is reasonably satisfied the audit is necessary or desirable.

The facts and circumstances forming the basis for these grounds are:

- Anglo Coal (Callide) Pty Ltd is the principal holder of Environmental Authority MIN100507307 (EA) for the operation of mining activities at Callide Mine on mining leases ML5632, ML5641, ML5653, ML5654, ML5655, ML5662, ML6993, ML6994, ML80030, ML80092, ML80093, ML80107, ML80115, ML80117, ML800118, ML80122 and ML80151.

Notice to conduct or commission an environmental evaluation

- In 2010 the department issued two penalty infringement notices (PINs) to Anglo Coal (Callide) Pty Ltd in response to non-compliances against the EA in relation to water management.
- In 2011 the department issued three warning notices and three PINs to Anglo Coal (Callide) Pty Ltd in response to non-compliances against the EA in relation to water management.
- In November 2012 the department issued Anglo Coal (Callide) Pty with two PINs in response to non-compliances against the EA in relation to water management.
- The PINs referred to above include PINs issued in response to non-compliant releases of mine affected water.
- On a number of occasions between late January 2013 and mid February 2013, Anglo Coal (Callide) Pty Ltd contravened a condition of the Environmental Authority due to the non-compliant (with respect to contaminant concentrations) release of mine affected water from Dunn Creek Dam.
- Anglo Coal (Callide) Pty Ltd has not provided the department with an updated Water Management Plan in accordance with condition W31 of the EA.

The non compliances with conditions of the EA indicate systemic deficiencies in the mine site's water management practices. The department is directing the holder of the EA to commission a third-party environmental audit to assess ongoing deficiencies in order to determine corrective actions to address the continued non compliances.

B. Requirements

The report on the environmental audit must address the following relevant matters.

- 1) Provide an evaluation of water management systems, processes and plans to identify the factors and circumstances which have resulted in Anglo Coal (Callide) Pty Ltd's non-compliance regarding water releases from the premises.
- 2) Specify the standards or benchmark employed to evaluate compliance. The audit methodology should be based on the requirements specified in the EA and any other relevant standards.
- 3) Quantify the environmental risk/s associated with all deficiencies identified. Risks quantified must include, but not be limited to, risks to environmental values off site and downstream from the mining leases. Environmental values must include, but not be limited to, drinking water and water for irrigation, in addition to ecological values.
- 4) Details of mine site water management including but not limited to,
 - a) A study of the sources of contaminants
 - b) A water balance model for the site
 - c) A water management system for the site
 - d) Measures to manage and prevent saline drainage
 - e) Contingency procedures for emergencies and
 - f) A program for monitoring and review of the effectiveness of the water management plan
- 5) Detail recommendations to achieve sustained compliance with the EA in respect to water management. The audit report should include but not be limited to –

Notice

Notice to conduct or commission an environmental evaluation

- a. A description of any recommended capital works programs or other improvements to be carried out to achieve compliance with the EA
 - b. Having regard to the information gathered for this audit, an analysis of risks identified and a program to address those risks
- 6) An environmental report on the audit must be prepared by a third party auditor and be accompanied by a statutory declaration by the recipient and the auditor.

The environmental report must be submitted to the department on or before:

- **close of business on Tuesday 20 August 2013**

As the recipient of this notice, you are also required to provide a statutory declaration in the form attached, to accompany the environmental report submitted to the department. The auditor must also provide a statutory declaration in the form attached to accompany the environmental report submitted to the department.

You can view an electronic version of the statutory declaration for a recipient using the following search term: (EM494).¹

Take notice:

- the requirements of the notice to commission an environmental audit take effect immediately upon service of this notice,
- this notice remains in force until further notice from the department, and
- you are responsible for meeting the costs of conducting or commissioning the environmental evaluation, preparing the environmental report and providing any further information as requested by the department

C. Reviews and appeals

The provisions regarding reviews of decisions and appeals are found in sections 519 to 539 of the Act

Once the original decision has been reviewed, a person who is dissatisfied with the review decision may be able to appeal against that decision to the relevant court within 22 business days after receiving notice of the review decision.

A person whose interests are or would be adversely affected by a decision of the department may also be able to request a statement of reasons for a decision or a statutory order review under the *Judicial Review Act 1991*.

For further information about reviews and appeals see the:

- Information sheet - internal review and appeal to the Planning and Environment Court (EM1866).
- Information sheet - internal review and appeal to the Land Court (EM1157).

You may have other legal rights or obligations and should seek your own legal advice.

¹ This is the publication number. The publication number can be used as a search term to find the latest version of a publication at <www.ehp.qld.gov.au>.

Notice to conduct or commission an environmental evaluation

D. Penalty

Failure to comply with a notice to conduct or commission an environmental evaluation is an offence.

- The maximum penalty for an individual is 300 penalty units, totalling \$33,000.
- The maximum penalty for a corporation is 1500 penalty units, totalling \$165,000.

Should you have any queries in relation to this notice, please contact me on telephone number 0411 401 355.

49-Sch4

Signature

29-5-13

Date

Mark Evans

Regional Manager

Delegate of the Chief Executive

Department of Environment and Heritage Protection

Environmental Protection Act 1994

Enquiries:

Mark Evans

Regional Manager

Ph: 49-Sch4



Department of
**Environment and
Heritage Protection**

Ref GLT948 / STAT764

29 May 2013

Mr David Palmer
Director and General Manager
Anglo Coal (Callide) Pty Ltd
PO Box 144
BILOELA QLD 4175

Dear Mr Palmer

Application for review of original decision

I refer to the application for *Review of Original Decision* received recently by the Department of Environment and Heritage Protection (the department). Your application relates to the decision made by the department to issue a Notice to commission an environmental audit, relating to water management on the relevant mining leases of Callide Mine.

I also refer to the supporting material submitted with your application and a teleconference held in relation to this matter (at the request of Anglo Coal (Callide) Pty Ltd) between Mr John McDougall and ^{49-Sch4} of Anglo Coal (Callide Management) Pty Ltd, and Ms Kylie Dunlop and myself of the department.

I am a duly authorised delegate of the Administrative Authority for the purposes of the review decision. My decision, made on 16 May 2013, is to vary the original decision to issue the Notice to Anglo Coal (Callide) Pty Ltd (section 521(5)(c)(ii) of the *Environmental Protection Act 1994* refers). Please find enclosed the varied decision Notice.

In varying the original decision I have decided to amend part A ("Grounds") of the Notice, to clarify the Facts and Circumstances, and to correct clerical errors.

In varying the original decision I have also decided to slightly amend aspects of part B ("Requirements") of the Notice to further clarify these requirements.

I have made this decision as I am satisfied, on reasonable grounds, that:

- a. No information provided in the application to review the original decision has caused me to revoke the original decision;
- b. Varying part A is appropriate to accurately reflect the circumstances and avoid any misunderstanding in relation to this; and
- c. Varying part B is appropriate to achieve the desired outcome of the Notice.

The varying of the Notice does not, in any way, obviate the requirement for Anglo Coal (Callide) Pty Ltd to comply with all conditions of the environmental authority (Permit Number MIN100507307).

Please find enclosed information outlining the review and appeal processes under the *Environmental Protection Act 1994*. This information is intended as a guide only. You may have other legal rights and obligations.

Should you have any queries in relation to this, please feel free to call me on

49-Sch4

Yours sincerely

49-Sch4

Mark Evans
Regional Manager

Att/Enc: Notice to conduct or commission an environmental evaluation

Information sheet

Environmental Protection Act 1994

Internal review and appeal to Land Court

This information sheet forms part of an information notice under the Environmental Protection Act 1994. It gives a summary of the process for review and appeal under the Environmental Protection Act and subordinate legislation. Refer to ss. 519 to 530 and Part 1 of Schedule 2 of the Environmental Protection Act for complete information about the process for internal review and appeal to the Land Court.

Introduction

The *Environmental Protection Act 1994* (EP Act) provides for a right of internal review of certain decisions made under the EP Act. Decisions that can be reviewed are listed in Schedule 2 of the EP Act. The EP Act also provides that a dissatisfied person for a review decision listed in Part 1 of Schedule 2 of the EP Act may appeal against the original decision or the review decision to the Land Court.

Summary of the process for internal review and appeal to the Land Court

Chapter 11, Part 3 of the EP Act

Division 1—Interpretation

Section 519 Original decisions

- 1) A decision mentioned in schedule 2 is an 'original decision'.
- 2) A decision under an environmental protection policy or regulation that the policy or regulation declares to be a decision to which this part applies is also an original decision.

Section 520 Dissatisfied person

This section nominates the dissatisfied person for an original or review decision.

Division 2—Internal review of decisions

Section 521 Procedure for review

- 1) A dissatisfied person may apply for a review of an original decision.
- 2) The application must—
 - a) be made in the approved form to the administering authority within—
 - i) 10 business days¹ after the day on which the person receives notice of the original decision or the administering authority is taken to have made the decision (the 'review date'); or
 - ii) the longer period the authority in special circumstances allows; and
 - b) be supported by enough information to enable the authority to decide the application.
- 3) On or before making the application, the applicant must send the following documents to the other persons who were given notice of the original decision—
 - a) notice of the application (the 'review notice');

- b) a copy of the application and supporting documents.
- 4) The review notice must inform the recipient that submission on the application may be made to the administering authority within 5 business days after the application is made to the authority.
- 5) If the administering authority is satisfied the applicant has complied with subsections (2) and (3), the authority must, within 10 business days after receiving the application—
 - a) review the original decision;
 - b) consider any submissions properly made by a recipient of the review notice; and
 - c) make a decision (the 'review decision') to—
 - i) confirm or revoke the original decision; or
 - ii) vary the original decision in a way the administering authority considers appropriate.
- 6) The application does not stay (i.e. suspend or stop) the original decision.
- 7) The application must not be dealt with by—
 - a) the person who made the original decision; or
 - b) a person in a less senior office than the person who made the original decision.
- 8) Within 10 business days after making the review decision, the administering authority must give written notice of the decision to the applicant and persons who were given notice of the original decision.
- 9) The notice must—
 - a) include the reasons for the review decision; and
 - b) inform the person of their right of appeal against the decision.
- 10) If the administering authority does not comply with subsection (5) or (8), the authority is taken to have made a decision confirming the original decision.
- 11) Subsection (7) applies despite the *Acts Interpretation Act 1954*, s. 27A.
- 12) This section does not apply to an original decision made by—
 - a) for a matter, the administration and enforcement of which has been devolved to a local government—the local government itself or the chief executive officer of the local government personally; or
 - b) for another matter—the chief executive personally.
- 13) Also, this section does not apply to an original decision to issue a clean-up notice.

Section 522 Stay of operation of particular original decisions

- 1) If an application is made for review of an original decision mentioned in schedule 2, part 1 or 2, the applicant may immediately apply for a stay of the decision to—
 - a) for an original decision mentioned in schedule 2, part 1—the Land Court; or
 - b) for an original decision mentioned in schedule 2, part 2—the Court.
- 2) The Land Court or the Court may stay the decision to secure the effectiveness of the review and any later appeal to the Land Court or the Court.

- 3) A stay may be given on conditions the Land Court or the Court considers appropriate and has effect for the period stated by the Land Court or the Court.
- 4) The period of a stay must not extend past the time when the administering authority reviews the decision and any later period the Land Court or the Court allows the applicant to enable the applicant to appeal against the review decision.

Division 3—Appeals

Subdivision 1—Appeals to Land Court

Section 523 Review decisions subject to Land Court appeal

This subdivision applies to original decisions mentioned in Schedule 2, Part 1 of the EP Act.

Section 524 Right of appeal

A dissatisfied person who is dissatisfied with the decision may appeal against the decision to the Land Court.

Section 525 Appeal period

- 1) The appeal must be started within 22 business days after the appellant receives notice of the decision.
- 2) However, the Land Court may at any time extend the time for starting the appeal.

Section 526 Land Court mediation

- 1) Any party to the appeal may, at any time before the appeal is decided, ask the Land Court to conduct or provide mediation for the appeal.
- 2) The mediation must be conducted by the Land Court or a mediator chosen by the Land Court².

Section 527 Nature of appeal

The appeal is by way of rehearing, unaffected by the review decision.

Section 528 Land Court's powers for appeal

In deciding the appeal, the Land Court has the same powers as the administering authority.

Section 529 Decision for appeals against refusals under s. 207

- 1) This section applies if the decision appealed against is a decision under s. 207 to refuse to allow an application for environmental authority (mining lease) to proceed.
- 2) In deciding the appeal the Land Court must confirm the decision or allow the appeal.
- 3) If the appeal is allowed—
 - a) the relevant period for the administering authority to make the decision is taken to have been extended to when the decision on the appeal is made; and
 - b) the authority is taken, at the end of the period, not to have made the decision.

Section 530 Decision for other appeals

- 1) This section applies if the decision appealed against is not a decision mentioned in s. 529(1).
- 2) In deciding the appeal, the Land Court may—
 - a) confirm the decision;
 - b) set aside the decision and substitute another decision; or

- c) set aside the decision and return the matter to the administering authority who made the decision, with directions the Land Court considers appropriate.
- 3) In setting aside or substituting the decision, the Land Court has the same powers as the authority.
- 4) However, this part does not apply to a power exercised under subsection (3).
- 5) If the Land Court substitutes another decision, the substituted decision is taken for this Act, other than this subdivision, to be the authority's decision.

¹ Under the *Environmental Protection Act 1994* business days—'generally, does not include a day between 26 December and 1 January in the following year'.

² For information on how to start the appeal, see the *Land and Court Rules 2000*. For information on the conduct of the mediation, see the *Land Court Act 2000*. Information is also available on the Land Court website at <www.landcourt.qld.gov.au>.

RTI DL RELEASE - EHP

Information sheet

Environmental Protection Act 1994

Internal review and appeal to Planning and Environment Court

This information sheet forms part of an information notice under the Environmental Protection Act 1994. It gives a summary of the process for review and appeal to the Planning and Environment Court under the Environmental Protection Act and subordinate legislation. Refer to ss. 519 - 539 and schedule 2 of the Environmental Protection Act for complete information about the process for internal review and appeal to the Planning and Environment Court.

Introduction

The *Environmental Protection Act 1994* (EP Act) provides for a right of internal review and appeal against certain decisions made under the EP Act. Decisions that can be reviewed or appealed are listed in schedule 2 of the EP Act and within certain sections of the regulations and subordinate legislation¹ made under the EP Act. The EP Act also provides that a dissatisfied person for a review decision, other than those listed in part 1 of schedule 2 of the EP Act², may appeal the decision to the Planning and Environment Court (the Court).

Summary of the process for internal review and appeal to the Court

Chapter 11, Part 3 of the EP Act

Division 1 — Interpretation

Section 519 Original decisions

- 1) A decision mentioned in schedule 2 is an 'original decision'.
- 2) A decision under an environmental protection policy or regulation that the policy or regulation declares to be a decision to which this part applies is also an 'original decision'.

Section 520 Dissatisfied person

This section nominates the dissatisfied person for an original or review decision.

Division 2 — Internal review of decisions

Section 521 Procedure for review

- 1) A dissatisfied person may apply for a review of an original decision.
- 2) The application must—
 - a) be made in the approved form to the administering authority within—
 - i) 10 business days³ after the day on which the person receives notice of the original decision or the administering authority is taken to have made the decision (the 'review date'); or
 - ii) the longer period the authority in special circumstances allows ; and
 - b) be supported by enough information to enable the authority to decide the application.
- 3) On or before making the application, the applicant must send the following documents to the other persons who were given notice of the original decision—

Information sheet

Internal review and appeal to Planning and Environment Court

- a) notice of the application (the 'review notice');
 - b) a copy of the application and supporting documents.
- 4) The review notice must inform the recipient that submission on the application may be made to the administering authority within five business days after the application is made to the authority.
- 5) If the administering authority is satisfied the applicant has complied with subsection (2) and (3), the authority must, within 10 business days after receiving the application—
- a) review the original decision;
 - b) consider any submissions properly made by a recipient of the review notice; and
 - c) make a decision (the 'review decision') to—
 - i) confirm or revoke the original decision; or
 - ii) vary the original decision in a way the administering authority considers appropriate.
- 6) The application does not stay the original decision.
- 7) The application must not be dealt with by—
- a) the person who made the original decision; or
 - b) a person in a less senior office than the person who made the original decision.
- 8) Within 10 business days after making the review decision, the administering authority must give written notice of the decision to the applicant and persons who were given notice of the original decision.
- 9) The notice must—
- a) include the reasons for the review decision; and
 - b) inform the person of their right of appeal against the decision.
- 10) If the administering authority does not comply with subsections (5) or (8), the authority is taken to have made a decision confirming the original decision.
- 11) Subsection (7) applies despite the *Acts Interpretation Act 1954*, section 27A.
- 12) This section does not apply to an original decision made by—
- a) for a matter, the administration and enforcement of which has been devolved to a local government, the local government itself or the chief executive officer of the local government personally; or
 - b) for another matter — the chief executive personally.
- 13) Also, this section does not apply to an original decision to issue a clean-up notice.

Section 522 Stay of operation of original decisions

- 1) If an application is made for review of an original decision, the applicant may immediately apply for a stay of the decision to—
- a) for an original decision mentioned in schedule 2, part 1—the Land Court; or
 - b) for an original decision mentioned in schedule 2, part 2—the Court.
- 2) The Land Court or the Court may stay the decision to secure the effectiveness of the review and any later appeal to the Land Court or the Court.

Internal review and appeal to Planning and Environment Court

- 3) A stay may be given on conditions the Land Court or the Court considers appropriate and has effect for the period stated by the Land Court or the Court.
- 4) The period of a stay must not extend past the time when the administering authority reviews the decision and any later period the Land Court or the Court allows the applicant to enable the applicant to appeal against the review decision.

Division 4 — Appeals to Court

Section 531 Who may appeal

- 1) A dissatisfied person who is dissatisfied with a review decision, other than a review decision to which subdivision 1⁴ applies, may appeal against the decision to the Court.
- 2) The chief executive may appeal against another administering authority's decision (whether an original or review decision) to the Court.
- 3) A dissatisfied person who is dissatisfied with an original decision to which s. 521 does not apply may appeal against the decision to the Court.

Section 532 How to start appeal

- 1) An appeal is started by—
 - a) filing written notice of appeal with the registrar of the Court; and
 - b) complying with rules of court applicable to the appeal.
- 2) The notice of appeal must be filed—
 - a) if the appellant is the chief executive—within 33 business days after the decision is made or taken to have been made; or
 - b) if the appellant is not the chief executive—within 22 business days after the day the appellant receives notice of the decision or the decision is taken to have been made.
- 3) The Court may at any time extend the period for filing the notice of appeal.
- 4) The notice of appeal must state fully the grounds of the appeal and the facts relied on.

Section 533 Appellant to give notice of appeal to other parties

- 1) Within 8 business days after filing the notice of appeal, the appellant must serve notice of the appeal on—
 - a) if the appellant is the chief executive—all persons who were given notice of the original decision; or
 - b) if the appellant is not the chief executive—the other persons who were given notice of the original decision.
- 2) The notice must inform the persons that, within 10 business days after service of the notice of appeal, they may elect to become a respondent to the appeal by filing in the Court a notice of election under rules of court.

Section 534 Persons may elect to become respondents to appeal

A person who properly files in the Court a notice of election becomes a respondent to the appeal.

Section 535 Stay of operation of decisions

- 1) The Court may grant a stay of a decision appealed against to secure the effectiveness of the appeal.

Information sheet

Internal review and appeal to Planning and Environment Court

- 2) A stay may be granted on conditions the Court considers appropriate and has effect for the period stated by the Court.
- 3) The period of a stay must not extend past the time when the Court decides the appeal.
- 4) An appeal against a decision does not affect the operation or carrying out of the decision unless the decision is stayed.

Section 535A Stay of decision to issue a clean-up notice

- 5) This section applies to an application under section 535 for a stay of a decision to issue a clean-up notice.
- 6) In deciding the application, the Court must have regard to—
 - a) the quantity and quality of contamination of the environment that is likely to be caused if the stay is granted; and
 - b) the proximity of the place at or from which the contamination incident is happening or happened to a place with environmental values that may be adversely affected by the contamination.

Section 536 Hearing procedures

- 1) The procedure for an appeal is to be in accordance with the rules of court applicable to the appeal or, if the rules make no provision or insufficient provision, in accordance with directions of the judge.
- 2) An appeal is by way of rehearing, unaffected by the administering authority's decision.

Section 537 Assessors

If the judge hearing an appeal is satisfied the appeal involves a question of special knowledge and skill, the judge may appoint one or more assessors to help the judge in deciding the appeal.

Section 538 Appeals may be heard with planning appeals

- 1) This section applies if—
 - a) a person appeals against an administering authority's decision (whether an original or review decision) to refuse to grant a registration certificate or to accredit an environmental risk management plan (ERMP); and
 - b) a person appeals against the assessment manager's decision under the *Sustainable Planning Act 2009* about a planning or development matter for the premises to which the certificate or the ERMP or the application for the certificate relates.
- 2) On the application of a party to either of the appeals, the Court may order—
 - a) the appeals to be heard together or one immediately after the other; or
 - b) one appeal to be stayed until the other has been decided.
- 3) The application may be made—
 - a) by an appellant when starting an appeal or at any time before the appeals are decided; or
 - b) by another party at any time before the appeals are decided.
- 4) This section applies even though the parties, or all of the parties, to the appeals are not the same.

Section 539 Powers of Court on appeal

- 1) In deciding an appeal, the Court may—

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Information sheet

Internal review and appeal to Planning and Environment Court

- a) confirm the decision appealed against; or
 - b) vary the decision appealed against; or
 - c) set aside the decision appealed against and make a decision in substitution for the decision set aside.
- 2) If on appeal the Court acts under subsection (1)(b) or (c), the decision is taken, for this Act (other than this part), to be that of the administering authority.

Further information

The latest version of this publication can be found at <www.ehp.qld.gov.au>. Note: where available, the publication number (e.g. EM1866 for this document) can be used as a search term.

¹ The original decisions under the subordinate legislation are subject to change. As at 11 May 2010 they are listed in:

- Regulation 110 of the Environmental Protection Regulation 2008; and
- Regulation 68C of the Environmental Protection (Waste Management) Regulation 2000.

² An appeal may be made to the Land Court for original decisions in part 1 of schedule 2.

³ Under the *Environmental Protection Act 1994* "business days does not include a business day between 26 December and 1 January in the following year".

⁴ Subdivision 1 is about appeals to the Land Court and information about this is contained in ss. 519 - 539.

Statutory Declaration

Environmental Protection Act 1994

Environmental Evaluation

Recipient

A Statutory Declaration is a written statement of facts that is sworn or declared under the Oaths Act 1867. In accordance with section 326E of the Environmental Protection Act 1994 (the Act), this Statutory Declaration must be completed by the recipient of an environmental evaluation notice and must accompany the environmental report submitted to the Department of Environment and Heritage Protection (the department).

Oaths Act 1867

QUEENSLAND

TO WIT

I

Insert the name of the person making this declaration

of

Insert the street address of the person making this declaration

in the State of Queensland do solemnly and sincerely declare that in accordance with section 326E of the *Environmental Protection Act 1994* (the Act), I have:

- not knowingly given any false or misleading information; and
- given all relevant information

to the auditor who conducted the environmental audit, over the period

to

Insert start date

Insert end date

for the purpose of submitting a report in accordance with the environmental evaluation notice issued by the department under the Act to:

Insert name of recipient of the notice

Insert date of the notice

**Statutory Declaration
Recipient**

A copy of the report is attached to this statutory declaration and marked "A".

I make this solemn declaration conscientiously believing the same to be true, and by virtue of the *Oaths Act 1867*.

Taken and declared before me, at

_____ Insert location,
this _____ day of _____ in the
_____ year
Insert day (e.g. 18th) Insert month Insert year

Signed
(Person making this declaration)

Signed
<INSERT Justice of the Peace / Commissioner
for Declarations / Lawyer>

Printed name and registration number (if
applicable)

From: Evans Mark [Mark.Evans@ehp.qld.gov.au]

Sent: Thursday, 30 May 2013 3:14 PM

To: Dunlop Kylie

Subject: FW: Internal Review by EHP of decision to issue EE to Callide Mine

Attachments: internal review on EE - decision - Callide May 2013.pdf; is-bi-internal-rev-appeal-land-court-em1157.pdf; is-bi-review-and-appeal-court-em1866.pdf; stat dec form.pdf; varied notice to conduct EE - Callide May 2013.pdf

Kylie,

FYI

Mark Evans

Regional Manager – Gladstone & Biodiversity

Central Region

Environmental Services and Regulation

Department of Environment and Heritage Protection

Phone: 07 4971 6527 (Gladstone - generally Mon - Tue and Thur - Fri)

Phone: 07 4837 3516 (Rockhampton - generally Wed)

Mobile: 49-Sch4

From: Evans Mark

Sent: Thursday, 30 May 2013 3:14 PM

To: 'dave.palmer@angloamerican.com'

Cc: 'McDougall, John'

Subject: Internal Review by EHP of decision to issue EE to Callide Mine

Dave,

Please find attach documents relating to the result of the internal review I have conducted following your recent "Application for review of original decision". Your application related to the decision by the Department of Environment and Heritage Protection to issue a "Notice to conduct or commission an environmental evaluation" to Anglo Coal (Callide) Pty Ltd.

Original documents are being sent by registered post.

Should you have any queries in relation to this, please do not hesitate to contact me.

Regards

Mark

Mark Evans

Regional Manager – Gladstone & Biodiversity

Central Region

Environmental Services and Regulation

Department of Environment and Heritage Protection

Phone: 07 4971 6527 (Gladstone - generally Mon - Tue and Thur - Fri)

Phone: 07 4837 3516 (Rockhampton - generally Wed)

Mobile: 49-Sch4

LAND COURT OF QUEENSLAND

CITATION: *Anglo Coal (Callide) Pty Ltd v Chief Executive, Department of Environment and Heritage Protection* [2013] QLC 20

PARTIES: Anglo Coal (Callide) Pty Ltd
(applicant)

v.

Chief Executive, Department of Environment and Heritage Protection
(respondent)

FILE NO: EPA133-13

DIVISION: General Division

PROCEEDING: Application for stay

DELIVERED ON: 7 May 2013 [Ex tempore]

DELIVERED AT: Brisbane

HEARD ON: 7 May 2013

HEARD AT: Brisbane

A/PRESIDENT: PA Smith

ORDERS:

1. The operation of the original decision comprising a Notice to conduct or commission an environmental evaluation (ref GLT948/STAT764) directed to the applicant until the applicant's rights of review and any later appeal have been determined is stayed.
2. The costs of today's proceedings are reserved.

CATCHWORDS: Practice and Procedure — Stay application — Duration of Stay — whether any appeal period should be included — no material against making broad stay order — s.522 *Environmental Protection Act 1984*

Environmental Protection Act 1984

APPEARANCES: Mr D O'Brien of Counsel for the applicant
Mr P Brown for the respondent

SOLICITORS: Bowie Lawyers
Litigation Unit, Department of Environment and Heritage Protection

[This matter came on for mention as a result of an originating application filed in the Court on 3 May 2013; the matter was referred to the Land Court under section 522(1)(a) pursuant to Environmental Protection Act 1994. The application sought to stay the operation of a "Notice to Conduct or Commission an Environmental Evaluation" issued by the Chief Executive, Department of Environment and Heritage Protection. Ex tempore reasons were then delivered.]

Background

- [1] By this Originating Application, Anglo Coal (Callide) Pty Ltd (the applicant) seeks an order pursuant to s.522 of the *Environmental Protection Act 1994 (EP Act)* to stay the operation of a 'Notice to Conduct or Commission an Environmental Evaluation' (the Notice) which was issued to it by the respondent purportedly pursuant to s.322 of the *EP Act*.
- [2] The stay is sought until the latter of the determination of a review of the decision to issue the Notice or any appeal to this Court from such a review.
- [3] The applicant (along with Anglo Coal (Callide No.2 Pty Ltd) is the holder of Environmental Authority MIN100507307 (EA) for the operation of mining activities at what is known as the Callide Mine.
- [4] The Callide Mine is operated pursuant to a number of mining leases and consists of a series of open cut coal mines. It is located outside of Biloela in Central Queensland.
- [5] On 9 April 2013, the respondent issued the Notice purportedly pursuant to s.322 of the *EP Act*. Section 322, as recently amended, provides:

"322 Administering authority may require environmental audit about environmental authority

- (1) The administering authority may, by written notice (an *audit notice*) require the holder of an environmental authority to—
 - (a) commission an audit (an *environmental audit*) about a stated matter concerning a relevant activity; and

Examples of matters for paragraph (a)—

 - 1 whether the conditions of the environmental authority have been complied with
 - 2 the environmental harm a relevant activity is causing compared with the environmental harm authorised under the environmental authority
 - 3 whether a plan of operations for an environmental authority complies with the conditions of the environmental authority
 - 4 the accuracy of a final rehabilitation report given to the administering authority by the holder
 - (b) give the administering authority an environmental report about the audit.- (2) However, an audit notice may be given under subsection (1) only if the administering authority is reasonably satisfied the audit is necessary or desirable."

- [6] Section 324 sets out the requirements for an audit notice:

"324 Content of audit notice

- (1) An audit notice must state the following—
 - (a) the name of the recipient;
 - (b) if the notice is given under section 322—the environmental authority;
 - (c) the matter for which the environmental audit is required;
 - (d) that the recipient must, within a stated reasonable period—
 - (i) commission the environmental audit; and
 - (ii) give the administering authority an environmental report about the audit;
- (2) Also, an audit notice must be accompanied by or include an information notice about the decision to give the notice and to fix the stated period."

- [7] Section 325 of the *EP Act* creates an offence for a person to whom an audit notice has been given not complying with the notice, unless the person has a reasonable excuse.
- [8] The grounds on which the Notice was issued were that:
- (a) there have been contraventions of the conditions of the EA for non-compliant releases of mine affected water from Dunn Creek Dam in that the water released exceeded authorised contaminate limits;
 - (b) there have been contraventions of the conditions of the EA for non-compliant releases of mine affected water from Lake Gasteen Dam that exceeded authorised contaminate, flow and volume rates;
 - (c) there has been a contravention of condition 31 of the EA for failure to provide an updated water management plan; and
 - (d) these contraventions of the EA indicate 'systematic deficiencies in the mine site's water management practices'.¹
- [9] The Notice requires the applicant, as holder of the EA, to commission a third party environmental audit to 'assess ongoing deficiencies in order to determine corrective actions to address the continued non-compliances'.²
- [10] The Notice requires the following to be undertaken in relation to the water management systems, processes and plans:
- (a) provide an evaluation of water management systems, processes and plans to identify the factors and circumstances which have resulted in Anglo Coal (Callide) Pty Ltd's non-compliance regarding water releases from the premises;
 - (b) specify the standards or benchmark employed to evaluate compliance. The audit methodology should be based on the requirements specified in the EA and any other relevant standards;
 - (c) quantify the environmental risk/s associated with all deficiencies identified;
 - (d) details of mine site water management including but not limited to:
 - (i) a study of the sources of contaminants
 - (ii) a water balance model for the site
 - (iii) a water management system for the site
 - (iv) measures to manage and prevent saline drainage
 - (v) contingency procedures for emergencies and
 - (vi) a program for monitoring and review of the effectiveness of the water management plan.

¹ See Affidavit of Leanne Meredith Bowie sworn 6 May 2013, Exhibit 'LMB-2' page 4.

² Ibid.

- (e) detail recommendations to achieve sustained compliance with the EA in respect to water management. The audit report should include but not be limited to —
 - (i) a description of any recommended capital works programs or other improvements to be carried out to achieve compliance with the EA; and
 - (ii) having regard to the information gathered for this audit, an analysis of risks identified and a program to address those risks.
 - (f) an environmental report on the audit must be prepared by a third party auditor and be accompanied by a statutory declaration by the recipient and the auditor.
- [11] On 2 May 2013, the applicant applied to the respondent pursuant to s.521 of the *EP Act* for an internal review of the respondent's decision to issue the Notice (the Internal Review). The application contained detailed grounds of review, including that:
- (a) the Notice contained significant factual errors; and
 - (b) the requirements in the Notice were neither necessary nor reasonable from an environmental or any other perspective.
- [12] The Internal Review seeks that the Notice be revoked.
- [13] The lodging of the application for Internal Review did not have the effect of staying the original decision to issue the Notice.
- [14] Under the EP Act, the respondent has 10 days from 2 May 2013 to make its decision on the Internal Review (**Review Decision**) and a further 10 business days thereafter to give notice of that decision to the applicant. The applicant then has 22 business days to appeal to this Court against the Review Decision.
- [15] On 3 May 2013, and with a view to securing the utility of the Internal Review and any appeal from that Internal Review, the applicant filed this Originating Application for a stay of the Notice until the latter of the determination of a review of the decision to issue the Notice or any appeal to this Court from such a review.

The Dispute

- [16] The Court has been greatly assisted by Mr O'Brien and Mr Brown in not taking any unnecessary or time wasting stances by either party to only incur additional costs in this matter for no good reason.
- [17] In this regard they are both to be commended, in particular the position taken by the respondent, in agreeing to have the application heard at the mention today as the full hearing of the substantive application of the applicant for the stay. I ask that the Court's comments in that regard be referred onto the Chief Executive by the respondent's representative.

- [18] It is indeed pleasing when Government departments placed in the position that the respondent is in this matter, do not use the Court's time and the processes of a Court proceeding to simply obstruct, delay, or to incur additional costs for all parties.
- [19] The core part of the argument that remains, given that the respondent accepts that on the affidavit evidence placed before the Court the applicant has made out the legal basis for granting of a stay, is simply the duration of time that it is appropriate for that stay to encompass. There are, in effect, two opposing viewpoints. The first is that the stay should operate during the time of any review being undertaken by the respondent as required by the EP Act and also any appeal that may flow to this Court arising out of the review decision. That is the position strongly put by the applicant.
- [20] The respondent contends that the period of time should only relate to the review decision and the time given by the legislation for the making of any appeal but not encompass the time for the hearing of the appeal itself.
- [21] While I have some sympathy with the position put forward by the respondent it is, of course, a matter of record, as pointed out by Mr O'Brien, that the respondent has not placed any material before the Court in support of its contentions in this regard and I can understand at this early point in the proceedings that that may indeed be a matter of some difficulty.

Potential Environmental Harm

- [22] I note from the material that there are questions arising as between the parties as to the existence or otherwise of actual or potential environmental harm flowing from the alleged activities of the applicant and this is something that this Court must always take serious heed of. However, given the affidavit evidence placed before the Court as to the minimal environmental harm, if any, that has flowed as a consequence of any of its actions and, indeed, noting that the applicant contends that at least part of any environmental harm may have been occasioned by the actions of a third party, I am satisfied on balance in this matter that the case put by Mr O'Brien for the applicant should be allowed.
- [23] I do this, in particular, given the wording of s.522(2) of the EP Act which relevantly states that the Land Court may stay a decision to secure the effectiveness of a review and any later appeal to this Court. I am concerned that there are serious consequences that could flow to the applicant if the date of 20 August 2013 by which it is required to undertake certain activities in accordance with the respondent's notice was passed without it having undertaken those activities because of the existence of an appeal to this Court following a review decision. I would not like the situation to arise simply because of a technical gap in any orders that may occur which would render the applicant liable for the consequences that a breach would bring in circumstances where it is clearly not the intention of this Court nor I

take it that of the respondent to have the applicant fall into technical breach during the time in which the decision is under review, and indeed, at least from the Court's perspective, during the period of any appeal arising out of that review.

Determination

- [24] Accordingly, I intend to make orders in the terms sought by the applicant but with this further proviso, and the proviso is this; clearly if an appeal is lodged against any review decision that is made in this matter, the expectation would be, given the normal practices of this Court in such matters, for the first review of that appeal to be listed by this Court within a short period of the appeal being filed.
- [25] If the respondent at that time has concerns regarding issues of serious environmental harm or other such concerns before it that it has not chosen to bring before the Court's attention today, but those concerns crystallise as a result of the review and appeal process, then I would certainly encourage the Court to entertain any application that the respondent may seek to bring to review the decision that I make today to stay the operation of the original decision in the terms as proposed.
- [26] I understand, of course, that my proviso in this way is by no means legally binding and merely, in effect, stating little more than what rights the respondent has, but I wish it to be made clear to the Court in the event that another Member other than myself is hearing the matter in the future, that I have been mindful in making the orders in the manner I have today, of the consequences which may flow from making what could be a lengthy stay order. Specifically, I have taken the courteous and permissive response displayed today by the respondent into account in making the orders as sought by the applicant.
- [27] Accordingly, the orders of the Court will be that there shall be an order staying the operation of the original decision comprising a notice to conduct or commission an environmental evaluation reference GLT948/SCAT764 directed to the applicant until the applicant's rights of review and any later appeal have been determined.
- [28] The applicant seeks a further order that costs should be reserved to this application. Mr Brown has no submissions in that regard. Accordingly, I will further order that the costs of today be reserved.

Orders

1. The operation of the original decision comprising a Notice to conduct or commission an environmental evaluation (ref GLT948/STAT764) directed to the applicant until the applicant's rights of review and any later appeal have been determined is stayed.
2. The costs of today's proceedings are reserved.

P A SMITH
MEMBER OF THE LAND COURT

RTI DL RELEASE - EHP

Notice

Environmental Protection Act 1994

Environmental Evaluation

Notice to conduct or commission an environmental evaluation

This notice to conduct or commission an environmental evaluation is issued by the administering authority pursuant to s322 of the Environmental Protection Act 1994.

Anglo Coal (Callide) Pty Ltd
Ground Floor, 201 Charlotte Street
BRISBANE QLD 4000

Your reference: MIN100507307

Our reference: GLT948 / STAT764

9 April 2013

Take notice, that under the *Environmental Protection Act 1994* (the Act) a notice to commission an environmental audit is served on you by the administering authority. The administering authority is the Chief Executive of the Department of Environment and Heritage Protection (the department).

The notice to commission an environmental audit is issued in respect of the activities of Anglo Coal (Callide) Pty Ltd at Callide Coal mine on mining leases ML5632, ML5641, ML5653, ML5654, ML5655, ML5662, ML6993, ML6994, ML80030, ML80092, ML80093, ML80107, ML80115, ML80117, ML800118, ML80122 and ML80151 (the premises).

A. Grounds

The notice to commission an environmental audit is issued on the following grounds:

(1) The administering authority may, by written notice (an audit notice) require the holder of an environmental authority to –

- (a) commission an audit (an environmental audit) about a stated matter concerning a relevant activity, and
- (b) give the administering authority an environmental report about the audit.

(2) However, an audit notice may be given under subsection (1) only if the administering authority is reasonable satisfied the audit is necessary or desirable.

The facts and circumstances forming the basis for these grounds are:

- Anglo Coal (Callide) is the holder of Environmental Authority MIN100507307 for the operation of mining activities at Callide Mine on mining leases ML5632, ML5641, ML5653, ML5654, ML5655, ML5662,

Notice Notice to conduct or commission an environmental evaluation

ML6993, ML6994, ML80030, ML80092, ML80093, ML80107, ML80115, ML80117, ML800118, ML80122 and ML80151.

- In 2010 the department issued two penalty infringement notices (PIN's) and approved two transitional environmental programs (TEP's) to Anglo Coal (Callide) Pty Ltd in response to non compliant releases of mine affected water from the premises.
- In 2011 the department issued three warning notices, three PIN's and approved two TEP's to Anglo Coal (Callide) Pty Ltd in response to non compliant releases of mine affected water from the premises.
- In November 2012 the department issued Anglo Coal (Callide) Pty with two PIN's for non-compliant releases from the premises.
- Between 25 January and 4 February 2013, Anglo Coal (Callide) Pty contravened a condition of an Environmental Authority due to the non compliant release of mine affected water from –
 - Dunn Creek Dam that exceeded authorised contaminate limits on Environmental Authority MIN100507307 (EA) and
 - Lake Gasteen Dam that exceeded authorised contaminate and flow rates and volume as authorised in the EA

Anglo Coal (Callide) Pty Ltd has not provided the department with an updated Water Management Plan in accordance with condition W31 of the EA.

The non compliances with conditions of the EA indicate systemic deficiencies in the mine sites water management practices. The department is directing the holder of the EA to commission a third-party environmental audit to assess ongoing deficiencies in order to determine corrective actions to address the continued non compliances.

B. Requirements

The report on the environmental audit must address the following relevant matters:

- 1) Provide an evaluation of water management systems, processes and plans to identify the factors and circumstances which have resulted in Anglo Coal (Callide) Pty Ltd's non-compliance regarding water releases from the premises.
- 2) Specify the standards or benchmark employed to evaluate compliance. The audit methodology should be based on the requirements specified in the EA and any other relevant standards.
- 3) Quantify the environmental risk/s associated with all deficiencies identified.
- 4) Details of mine site water management including but not limited to,
 - a) A study of the sources of contaminants
 - b) A water balance model for the site
 - c) A water management system for the site
 - d) Measures to manage and prevent saline drainage
 - e) Contingency procedures for emergencies and
 - f) A program for monitoring and review of the effectiveness of the water management plan.

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Notice to conduct or commission an environmental evaluation

- 5) Detail recommendations to achieve sustained compliance with the EA in respect to water management. The audit report should include but not be limited to –
 - a. A description of any recommended capital works programs or other improvements to be carried out to achieve compliance with the EA
 - b. Having regard to the information gathered for this audit, an analysis of risks identified and a program to address those risks
- 6) An environmental report on the audit must be prepared by a third party auditor and be accompanied by a statutory declaration by the recipient and the auditor.

The environmental report must be submitted to the department on or before:

- **close of business on Tuesday 20 August 2013** As the recipient of this notice, you are also required to provide a statutory declaration in the form attached, to accompany the environmental report submitted to the department. If an auditor is commissioned to prepare the environmental report, the auditor must also provide a statutory declaration in the form attached to accompany the environmental report submitted to the department.

You can view an electronic version of the statutory declaration for a recipient using the following search term (EM494) ¹

Take notice:

- the requirements of the notice to commission an environmental audit take effect immediately upon service of this notice,
- this notice remains in force until further notice from the department; and
- you are responsible for meeting the costs of conducting or commissioning the environmental evaluation, preparing the environmental report and providing any further information as requested by the department.

C. Reviews and appeals

The provisions regarding reviews of decisions and appeals are found in sections 519 to 539 of the Act.

A person who is dissatisfied with certain decisions of the department, may be able to apply to have the department review that original decision.

Generally, a request to have a decision reviewed must be made

- within 10 business days of the decision being notified to the person;
- be supported by enough information to enable the department to decide the application for review; and
- be made using the application for review of an original decision form (EM790)

Where an application has been made for a decision to be reviewed, the applicant may also apply to the relevant court for a stay of the decision to secure the effectiveness of the review.

¹ This is the publication number. The publication number can be used as a search term to find the latest version of a publication at www.ehp.qld.gov.au

Notice

Notice to conduct or commission an environmental evaluation

Once the original decision has been reviewed, a person who is dissatisfied with the review decision may be able to appeal against that decision to the relevant court within 22 business days after receiving notice of the review decision.

A person whose interests are or would be adversely affected by a decision of the department may also be able to request a statement of reasons for a decision or a statutory order review under the *Judicial Review Act 1991*. For further information about reviews and appeals see the

- Information sheet - internal review and appeal to the Planning and Environment Court (EM1866)
- Information sheet - internal review and appeal to the Land Court (EM1157)

You may have other legal rights or obligations and should seek your own legal advice

D. Penalty

Failure to comply with a notice to conduct or commission an environmental evaluation is an offence

- The maximum penalty for an individual is 300 penalty units, totalling \$33,000
- The maximum penalty for a corporation is 1200 penalty units, totalling \$132,000

Should you have any queries in relation to this notice, please contact Kylie Dunlop of the department on telephone number (07) 4837 3501.

[Signature box]

49-Sch4

Signature

[Date box]

12 April 2013

Date

Christopher Loveday
A/Regional Manager
Delegate of the Chief Executive
Department of Environment and Heritage Protection
Environmental Protection Act 1994

Enquiries:

Kylie Dunlop
Senior Environmental Officer
Ph: (07) 4837 3501
Email: kylie.dunlop@ehp.qld.gov.au