

## STATEMENT OF FACTS AND CONTENTIONS

### COURT DETAILS

Court	Land and Environment Court of New South Wales
Class	1
Case number	10998 of 2010

### TITLE OF PROCEEDINGS

Applicant	<b>Hunter Environment Lobby Inc.</b>
First respondent	<b>Minister for Planning</b>
Second respondent	<b>Ulan Coal Mines Ltd (ABN 80 800189 248)</b>

### FILING DETAILS

Filed for	<b>Hunter Environment Lobby Inc.</b> Applicant
Legal representative	Kirsty Ruddock, Environmental Defenders Office
Legal representative reference	1015647
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## **PART A: FACTS**

### **The Project**

1. Ulan Coal Mines Limited (**UCML**) carries out existing coal mine activities at the Ulan Coal Mine, which is located 40 kms northeast of Mudgee.
2. UCML proposes to consolidate its 24 existing separate development consents into a single planning approval and expand its existing mining operations. It submitted a development application to NSW Department of Planning (**Department**) in September 2008, which is known as application number MP 08\_0184 (**Project Application**). A copy of the Project Application is attached to the Class 1 application.
3. The Project is known as Ulan Coal - Continued Operations (**Project**), and includes:
  - a) consolidating its existing development consents into a single planning approval for a further 20 years;
  - b) expanding its existing underground mining operations;
  - c) recommencing and expanding its open cut mining operations;
  - d) increasing its production rate from up to 10 million tonnes of coal a year, as is currently permitted, to 20 million tonnes of coal a year,
  - e) clearing of 409 hectares of vegetation including 69 hectares of endangered ecological communities, 150 specimens of a threatened flora species, *Acacia ausfeldi*, and habitat for several threatened fauna species;
  - f) rehabilitation of disturbed areas.
4. On 22 October 2008, the Director-General of the Department (**Director-General**) issued environmental assessment requirements (**DGRs**) for the Project under s 75F of the *Environmental Planning and Assessment Act 1979* (NSW) (**EPA Act**).

#### Particulars:

- a) The DGRs required the proponent to provide a detailed assessment of the cumulative impacts associated with the concurrent operation of the Project with any other existing or approved mining operations in the region, including on groundwater, biodiversity and greenhouse gas (**GHG**) emissions;
- b) The DGRs required the proponent to take into account *Draft Guidelines for Threatened Species Assessment under Part 3A of the Environmental Planning and Assessment Act 1979* (Department of Environment);
- c) The DGRs required the proponent to provide a detailed assessment of the key issues specified, which included a quantitative assessment of the potential

scope 1, 2, and 3 GHG emissions and qualitative assessment of the potential impacts of those emissions on the environment, and a description of the measures that would be implemented to avoid, minimise, mitigate and or offset the potential impacts of the Project;

- d) The DGRs required the proponent to provide a detailed description of the measures that would be implemented to maintain or improve the biodiversity values of the surrounding region in the medium to long term.
5. In accordance with s.75H of the EPA Act, an Environmental Assessment (**EA**) dated October 2009 was prepared on behalf of UCML by Umwelt (Australia) Pty Limited (**Umwelt**). The EA details the Project, describes the environment within and surrounding the Project site, presents mitigation measures UCML intends to incorporate in the operation of the Project, and assesses potential impacts that the operation of the Project will have on the local environment. A copy of the three volume EA document is attached to the Class 1 application.
  6. The EA was placed on public exhibition from 23 October until 4 December 2010.
  7. The Department received a total of 36 objections to the Project. The Hunter Environmental Lobby Group (**HEL**) made a submission to the Department objecting to the Project on 3 December 2009. HEL's submission describes the following grounds for objection:
    - a. The inadequacy of the EA;
    - b. The effects that mining impacts would have on the headwaters of the Goulburn River;
    - c. The cumulative impacts on threatened species in this region from the loss of key habitat values through vegetation clearing and cliff collapse;
    - d. The effect on native vegetation, specifically the cumulative loss of 69 hectares of the critically endangered ecological community listed under the *Environmental Protection and Biodiversity Conservation Act* , White Box – Yellow Box – Blakely's Red Gum Grassy Woodland and Derived Native Grassland (**White Box Woodland CEEC**); and
    - e. The impacts of the Project on climate change.
  8. The Director-General requested that the proponent respond to the issues raised in submissions received during the public exhibition of the EA. On behalf of the UCML, Umwelt prepared a *Response to Submissions* dated February 2010.
  9. In November 2010, the Director-General issued an environmental assessment report under s.75I of the EPA Act. The Director General's report concluded that the Project's

“benefits sufficiently outweighed its residual costs, and that it is in the public interest and should therefore be approved subject to strict conditions”. The Director General's report recommended a number of conditions to mitigate the impacts of the Project.

10. On 15 November 2010, the NSW Minister for Planning (**Minister**) determined to approve the Project under s.75J of the EPA Act, subject to conditions of consent (**Project Approval**). A copy of the Project Approval is attached to the Class 1 application.

### **The Project Site**

11. The Project is located in the headwaters of the Goulburn River catchment (draining to the east) and the Talbragar River Catchment (draining to the west), which straddles the Great Dividing Range (**Project Site**). Together with the Moolarben and Wilpinjong Coal Mines, Ulan forms part of an emerging “mining complex” in the Mid-Western region of the Hunter Valley that is permitted to produce up to 30 million tonnes of coal per year.
12. The mining complex is surrounded by a combination of large rural properties and bushland, including areas of significant conservation such as the Goulburn River National Park, Curryall State Conservation Area, Durridgere State Forest and Munghorn Gap Nature Reserve.
13. The Project site comprises 17,959 hectares, of which at least 75% of land area is directly or indirectly affected by existing or proposed mining operations.
14. The closest settlement to the Project site is Ulan Village, located 1.5 kms south of the mine. Most of the village properties are owned by mining companies. To the south and southwest of the mine there are several privately owned rural residential properties along Ridge Road (7 km south), Cope Road (6 km southwest) and Wongaroo Road (1 km west).

### **Statutory Controls**

15. The Project, being development for the purposes of mining, is classified as a Major Project under s.75B, Part 3A of the EPA Act and clause 5, Schedule 1 of the *State Environmental Planning Policy (Major Development) 2005*.
16. Section 75J(3) of the EPA Act provides that, in deciding whether or not to approve the carrying out of a Project, the Minister may take into account the provisions of any environmental planning instrument that would not (because of section 75R) apply to the Project if approved.
17. The Project site is located in the Mid-Western Regional Council local government area, which is an amalgamation of the Merriwa Shire Council (10 per cent), Mudgee

Shire Council (100 per cent) and Rylstone Shire Council (70 per cent). The *Mid-Western Regional Interim Local Environmental Plan 2008 (Mid-Western Regional LEP)* and the *Merriwa Local Environmental Plan 1992 (Merriwa LEP)* may apply to the Project.

***Merriwa LEP***

18. The Project site is zoned 1(a) General Rural and 1(f) Rural Forest under the Merriwa LEP. Mining is permissible in both these zones with development consent. The majority of the Project site is zoned 1(a) General Rural under the Merriwa LEP. The objectives of the 1(a) General Rural Zone are set out in clause 9 of the Merriwa LEP as follows:

- a) to encourage the productive and efficient use of land for agricultural purposes,
- b) to prevent inappropriate development of prime crop and pasture land for the purposes other than agriculture,
- c) to protect, conserve and enhance the natural and scenic resources of the Shire,
- d) to control subdivision of land having regard to the efficient use of land for the purposes of agriculture, and
- e) to ensure that the type and intensity of development is appropriate, having regard to the characteristics of the land, the rural environment and the cost of providing services and amenities.

19. Clause 10(1) of the Merriwa LEP also provides that:

the Council shall not consent to an application to carry out development on land within Zone No 1(a), 1(c) or 1(d) unless it has made an assessment of that development in relation to the following general principles:

- a) the development should be generally compatible with the suitability and capability of the land on which it is to be carried out, as indicated on maps prepared by the Department of Agriculture, and the Soil Conservation Service of the New South Wales, which are deposited in an office of the Council;
- b) the development should not materially reduce the agricultural production of the land on which it is to be carried out, or of the adjoining land;
- c) the development should be of a type compatible with the maintenance and enhancement, as far as practicable, of the existing rural and scenic character of the Shire;

- d) the development should not adversely affect the future recovery of known or prospective areas of valuable deposits of minerals, coal, petroleum, sand, gravel or other extractive materials;
- e) the development should not have the possible effect of creating demands for unreasonable or uneconomic provision or extension of services by the Council.

***Mid-Western Regional LEP***

20. The Project Site is zoned 'Agriculture' and 'Conservation' under the Mid-Western LEP. Mining is permissible in these zones with development consent.

21. The objectives of the Agriculture Zoning under the Mid-Western LEP are, amongst other things, to protect and maintain land for agriculture and other rural purposes.

22. The objectives of the Conservation Zoning under the Mid-Western LEP are:

- To conserve areas of environmental significance.
- To conserve biological diversity, native vegetation corridors, Aboriginal heritage or other social or cultural values of the areas, and their scenic qualities.
- To prevent development that could destroy or damage areas of environmental, social or cultural significance.
- To protect and preserve the landscape and environmental setting of the local government area of the Mid-Western Region, particularly the forested hill slopes, floodplain and floodways.
- To conserve natural areas and habitats and discourage clearing, subdivision and incompatible development in the zone.
- To ensure that development within this zone adjoining land within the Natural Areas Zone is compatible with the management objectives for that land.
- To ensure that development allowed in the zone will not adversely affect the environmental sensitivity of land in the zone.
- To recognise and conserve areas considered to have historical and archaeological significance, particularly relating to mining heritage.
- To prevent development which might adversely affect such historical and archaeological significance of the areas identified.
- To promote the conservation of productive agricultural land within the floodplain.

- To permit the development of recreational and ancillary land uses which do not result in increased flood hazard and damage potential or adversely affect the amenity of adjoining living areas.

***State Environmental Planning Policies***

23. The Project is listed under Schedule 1 of the *State Environmental Planning Policy (Major Development) 2005 (Major Development SEPP)* and therefore is to be assessed under Part 3A of the EPA Act.

24. *State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007 (Mining SEPP)* also applies to the Project.

25. The aims of the Mining SEPP set out in clause 2 include, inter alia:

(c) to establish appropriate planning controls to encourage ecologically sustainable development through the environmental assessment, and sustainable management, of development of mineral, petroleum and extractive material resources.

26. Clause 12 of the Mining SEPP requires that before determining an application for consent for development for the purposes of mining, petroleum production or extractive industry, the consent authority must:

a) consider:

- i. the existing uses and approved uses of land in the vicinity of the development, and
- ii. whether or not the development is likely to have a significant impact on the uses that, in the opinion of the consent authority having regard to land use trends, are likely to be the preferred uses of land in the vicinity of the development, and
- iii. any ways in which the development may be incompatible with any of those existing, approved or likely preferred uses, and

b) evaluate and compare the respective public benefits of the development and the land uses.

c) evaluate any measures proposed by the applicant to avoid or minimise any incompatibility, as referred to in paragraph (a)(iii).

27. Clause 14 of the Mining SEPP requires that:

- (1) Before granting consent for development for the purposes of mining, petroleum production or extractive industry, the consent authority must consider whether or not consent should be issued subject to conditions aimed at ensuring that the development is undertaken in an environmentally responsible manner, including conditions to ensure the following:

- a. that impacts on significant water resources, including surface and groundwater resources, are avoided, or are minimised to the greatest extent practicable,
  - b. that impacts on threatened species and biodiversity, are avoided, or are minimised to the greatest extent practicable,
  - c. that greenhouse gas emissions are minimised to the greatest extent practicable.
- (2) Without limiting subclause (1), in determining a development application for development for the purposes of mining, petroleum production or extractive industry, the consent authority must consider an assessment of the greenhouse gas emissions (including downstream emissions) of the development, and must do so having regard to any applicable state or national policies, programs or guidelines concerning greenhouse gas emissions.

28. The following SEPPs are also relevant to the Project:

- a) *State Environmental Planning Policy 33 (Hazardous and Offensive Development) 1992*;
- b) *State Environmental Planning Policy 44 (Koala Habitat Protection) 1995*;
- c) *State Environmental Planning Policy 55 (Remediation of Land) 1998*.

## **Relevant Legislation**

### ***Environmental Planning and Assessment Act***

29. The objects of the EP&A Act, set out in s 5, are to encourage, inter alia, ecologically sustainable development (**ESD**): s 5(1)(vii).

30. Section 4 of the EP&A Act, provides that ESD has the same meaning that it has in s 6(2) of the *Protection of the Environment Administration Act 1991* (NSW).

### ***Protection of the Environment Administration Act 1991***

31. Section 6(2) of the *Protection of the Environment Administration Act 1991* ("**PoEA Act**") provides as follows:

For the purposes of subsection (1)(a), ecologically sustainable development requires the effective integration of economic and environmental considerations in decision-making processes. Ecologically sustainable development can be achieved through the implementation of the following principles and programs:

- (a) the precautionary principle-namely, that if there are threats of serious or irreversible environmental damage, lack of full scientific certainty should not

be used as a reason for postponing measures to prevent environmental degradation.

In the application of the precautionary principle, public and private decisions should be guided by:

(i) careful evaluation to avoid, wherever practicable, serious or irreversible damage to the environment, and

(ii) an assessment of the risk-weighted consequences of various options,

(b) inter-generational equity-namely, that the present generation should ensure that the health, diversity and productivity of the environment are maintained or enhanced for the benefit of future generations,

(c) conservation of biological diversity and ecological integrity-namely, that conservation of biological diversity and ecological integrity should be a fundamental consideration,

(d) improved valuation, pricing and incentive mechanisms-namely, that environmental factors should be included in the valuation of assets and services, such as:

(i) polluter pays-that is, those who generate pollution and waste should bear the cost of containment, avoidance or abatement,

(ii) the users of goods and services should pay prices based on the full life cycle of costs of providing goods and services, including the use of natural resources and assets and the ultimate disposal of any waste,

(iii) environmental goals, having been established, should be pursued in the most cost effective way, by establishing incentive structures, including market mechanisms, that enable those best placed to maximise benefits or minimise costs to develop their own solutions and responses to environmental problems.

### ***Threatened Species Conservation Act 1995 (NSW)***

32. The *Threatened Species Conservation Act 1995* (NSW) (**TSC Act**) lists threatened species and Endangered Ecological Communities (**EECs**). The Project site contains a number of flora species and ecological communities listed under the TSC Act, including:

- Approximately 150 Ausfeld's wattle (*Acacia ausfeldii*) plants, listed as vulnerable under the TSC Act; and

- 2201 hectares of White Box – Yellow Box – Blakely’s Red Gum Woodland (**White Box Woodland EEC**) listed as an EEC under the TSC Act.

33. The Department of Environment and Climate Change has also developed principles for the development of biodiversity offsets in NSW (**DECC offset principles**). Those principles include:

(i) Principle One - Impacts must be avoided first by using prevention and mitigation measures;

(ii) Principle Five - Offsets must be underpinned by sound ecological principles.

They must:

- include the consideration of structure, function and compositional elements of biodiversity, including threatened species
- enhance biodiversity at a range of scales
- consider the conservation status of ecological communities
- ensure the long-term viability and functionality of biodiversity.

(iii) Principle Six - Offsets should aim to result in a net improvement in biodiversity over time. In particular, enhancement of biodiversity in offset areas should be equal to or greater than the loss in biodiversity from the impact site;

(iv) Principle Seven - Offsets must be enduring - they must offset the impact of the development for the period that the impact occurs. In particular, the offset should also be permanent and secured by a conservation agreement or reservation and management for biodiversity, and offsetting should only proceed if an appropriate legal mechanism or instrument is used to secure the required actions.

(v) Principle Nine - Offsets must be quantifiable and the impacts and benefits must be reliably estimated.

(vi) Principle Twelve – Offsets must be supplementary. In particular, offsets must be beyond existing requirements. Existing protected areas on private land cannot be used for offsets unless additional security or management actions are implemented.

#### ***The Environmental Biodiversity Conservation Act 1999 (Cth)***

34. The EPBC Act lists threatened species and critically endangered ecological communities (**CEECs**). The Project Site contains one CEEC listed under the EPBC Act, namely the White Box Woodland CEEC. The Project Site also contains one endangered flora species and three vulnerable fauna species listed under the EPBC Act. Accordingly, approval is required for the Project under the EPBC Act.

35. The Project has been referred to the Commonwealth Department of Sustainability, Environment, Water, Populations and Communities under the EPBC Act.

## **PART B: CONTENTIONS`**

1. The Applicant contends that the Court should refuse the application for approval to consolidate existing approvals and expand the Ulan coal mine for the reasons set out below.

### **Ecologically Sustainable Development**

2. The Minister must consider public interest as a mandatory relevant consideration. ESD is an element of the public interest. The Project is inconsistent with the following principles of ESD:

- the precautionary principle;
- intergenerational equity; and
- the conservation of biological diversity and ecological integrity, which are a fundamental consideration.

### **Groundwater**

3. The Project will significantly and permanently impact on the Ulan and Bobadeen groundwater systems, failing to conserve biological diversity and ecological integrity and breaching the principle of intergenerational equity.

Particulars:

- a) Water bores and groundwater seeps within the Project site are likely to be impacted by mining subsidence, and those located directly over the mining area are expected to dry up as a result of mining;
- b) The reduction in aquifer pressures caused by the longwall mining operations will impact on groundwater baseflows, causing losses to the Goulburn River catchment in the order of 0.11 ML/day by the time mining is complete;
- c) The reduction in aquifer pressures caused by the longwall mining operations will impact on groundwater baseflows, causing losses to the Talbragar River catchment in the order of 0.2 ML/day by the time mining is complete;
- d) There will be almost complete loss of baseflow contributions to Ulan Creek and Babadeen Creek catchments by 2020;

- e) Simulation of the recovery of groundwater levels indicates that it will take more than 200 years for groundwater levels and pressures within the depressurised strata to recover;
- f) Approval would be contrary to the precautionary principle with respect to hydrogeology in that there is scientific uncertainty as to the groundwater impacts.
- g) There is no certainty that The Drip, a significant natural feature which hosts localised groundwater dependent ecosystems, will not be adversely impacted by the drawdown effects of mining, offending against the precautionary principle.
- h) The DGRs required the proponent to provide a detailed assessment of the cumulative impacts associated with the concurrent operation of the Project with any other existing or approved mining operations in the region, including on groundwater.

### **Biodiversity**

- 4. The Project will have an adverse effect on the White Box Woodland EEC, failing to conserve biological diversity and ecological integrity.

#### Particulars:

- a) The Project will involve the clearing of approximately 69 hectares of White Box Woodland EEC;
  - b) The Project will result in the cumulative loss of the EEC, which is significant vegetation in the region, New South Wales and Australia;
  - c) The Project results in the loss of biological diversity and ecological integrity;
  - d) The loss of the vegetation and biodiversity values as a result of the Project is contrary to the principle of intergenerational equity;
- 5. The Project will fail to conserve biological diversity and have an adverse effect on *Acacia ausfeldii* (approximately 150 plants) due to the open cut operations.

#### Particulars:

- a) The Project will involve the removal of the entire local population of *Acacia ausfeldii* from its insitu site;
- b) The loss of the vegetation and biodiversity values as a result of the Project is contrary to the principle of intergenerational equity;
- c) The Project results in the loss of biological diversity and ecological integrity;

6. Offsets are not consistent with the conservation of biological diversity and ecological integrity as a fundamental consideration. Should the Court take the view that offsetting is appropriate, then the offset strategies as proposed are inadequate to compensate for the adverse impacts on biodiversity and ecological integrity.

Particulars:

- a) The Project will involve the clearing of 409 ha of native vegetation;
- b) The Project will involve the clearing of 69 ha of EECs;
- c) The DGRs required the proponent to provide a detailed description of the measures that would be implemented to maintain or improve the biodiversity values of the surrounding region in the medium to long term;
- d) The proposed Bobadeen offset area is already a salinity offset area protected under previous mining approval, decreasing the likelihood that the offset will result in a “net-gain”;
- e) The proposal to revegetate as part of the offset proposal requires a much greater ratio in order to secure a “net-gain” in the long term;
- f) The offset areas are not secured in perpetuity;
- g) The offset areas are not “like for like” in that they do not contain the same EECs proposed to be cleared.

#### **Anthropogenic climate change**

7. The Project will exacerbate global anthropogenic climate change and increase Australia’s contributions to greenhouse gas concentrations in the atmosphere, contrary to the principle of inter-generational equity and the conservation of biological diversity and ecological integrity.

Particulars:

- a) The Project as approved permits the mining of up to 20 million tonnes of coal per year;
- b) All of the coal extracted from the Project site will be burnt in thermal combustion to produce electricity in coal fired power stations;
- c) The burning of coal produces carbon dioxide;
- d) Carbon dioxide, once emitted, is dispersed throughout the global atmosphere and it remains in the atmosphere for, on average, approximately 100 years;
- e) Carbon dioxide is a greenhouse gas and currently makes the largest contribution to anthropogenic climate change of all greenhouse gases;

- f) Anthropogenic climate change is having, and will continue to have, environmental, economic and social impacts of a serious and irreversible kind across NSW and throughout Australia and globally, such as:
- rises in sea levels, including inundation of large areas of the coast of NSW of less than 2 metres above sea level;
  - inundation of and damage to infrastructure close to sea level, including Sydney airport, bridges, rail networks, roads and electricity, sewerage and water works;
  - increased annual average temperatures and number of hot days;
  - loss of housing within 50 to 100 metres of the low water mark;
  - more frequent and severe wild fires in south-eastern Australia;
  - decreased rainfall in south-eastern Australia;
  - more frequent and severe droughts;
  - adverse impacts on food production;
  - uninhabitability of parts of rural south-eastern Australia;
  - reduced biodiversity; and
  - increased ocean acidification resulting in harm to coral reefs and other marine organisms;
- g) The Project will emit scope 1, 2 and 3 greenhouse gas emissions totalling 28.7 million tonnes of carbon dioxide equivalents (CO<sub>2</sub>-e) each year;
- h) Over the 20 year lifetime of the Project, the Project will emit scope 1, 2 and 3 greenhouse gas emissions totalling 575 million tonnes of carbon dioxide equivalents (CO<sub>2</sub>-e);
- i) Scope 1 GHG emissions are direct emissions;
- j) Scope 2 GHG emissions are indirect emissions from the consumption of purchased electricity;
- k) Scope 3 GHG emissions are other indirect emissions and includes emissions generated from the burning of coal;
- l) The emissions from the burning of coal from the Project are scope 3 emissions for the Project and are also scope 1 and 2 emissions for the organisation or country that burns the coal;
- m) Approximately 81% of the coal extracted by the Project will be burnt in overseas countries. The greenhouse gas emissions from that coal is reported

as the Project's scope 3 emissions, but will also be reported internationally as that country's scope 1 and 2 emissions;

- n) Approximately 19% of the coal extracted by the Project will be burnt in Australia. The greenhouse gas emissions from that coal is reported as the Project's scope 3 emissions, but will also be reported nationally as Australia's scope 1 and 2 emissions;
  - o) Approximately 6% of the coal extracted by the Project will be burnt in NSW. The greenhouse gas emissions from that coal is reported as the Project's scope 3 emissions, but will also be reported at a State level as NSW's scope 1 and 2 emissions;
  - p) Domestic use of coal from the Project will generate 5.2 million tonnes of carbon dioxide equivalents (CO<sub>2</sub>-e) each year. The Project's scope 3 emissions, reported nationally as Australia's scope 1 and 2 emissions, will increase Australia's contribution to global greenhouse gas emissions by 1.3% per annum;
  - q) Combustion of coal from the Project in NSW will generate 1.4 million tonnes of carbon dioxide equivalents (CO<sub>2</sub>-e) per annum. The Project's scope 3 emissions, reported at a State level as NSW's scope 1 and 2 emissions, will increase NSW's contribution to global greenhouse gases by 0.8% per annum;
  - r) UCML have failed to quantify the Project's GHG emissions in the context of Australia's international commitments to reduce GHG emissions, in particular, the agreement of the parties to the Copenhagen Accord that to avoid dangerous anthropogenic climate change deep cuts in global emissions are required to limit the increase in global temperature to 2 degrees celsius;
  - s) UCML have not addressed measures that would be implemented to avoid, minimise, mitigate and or offset the scope 3 impacts of the Project;
  - t) The DGRs required the proponent to provide a detailed assessment of the key issues specified, which included a quantitative assessment of the potential scope 1, 2, and 3 GHG emissions and qualitative assessment of the potential impacts of those emissions on the environment, and a description of the measures that would be implemented to avoid, minimise, mitigate and or offset the potential impacts of the Project.
8. The Project is inconsistent with the precautionary principle with respect to the calculation of its contribution to scope 1 and 2 GHG emissions.

Particulars:

- a) There is significant uncertainty in relation to methods of calculating fugitive emissions for open cut coal mines as they relate to scope 1 and 2 emissions;
  - b) Therefore, the scope 1 and 2 emissions predicted in the Environmental Assessment underestimate the fugitive emissions for the Project;
  - c) There is no condition or mitigation strategy to address this issue.
9. Should the Court be minded to approve the Project, the scale of the Project should be reduced to reduce the GHG emissions resulting from the Project;
10. Should the Court be minded to approve the Project as currently approved, a condition to offset the GHG emissions arising from the mine should be imposed.

Particulars:

- a) There is no condition or mitigation strategy to address the scope 3 emissions.

### **LEP Provisions**

11. The Project is in conflict with the objectives of the 1(2) General Rural Zone under the Merriwa LEP which discusses need to preserve productive land for agriculture purposes and to protect, conserve and enhance the natural and scenic resources of the Shire.

Particulars:

- a) The impact of the Project on groundwater systems may compromise the productivity of the land surrounding the Project site for at least 200 years;
  - b) The Project will result in further depressurisation of the:
    - ii. Ulan seam 10 to 20 kilometres beyond the mine panel footprint;
    - iii. Permian interburden 5 to 15 kilometres beyond the mine panel footprint; and
    - iv. Triassic strata 3 to 5 kilometres beyond the mine panel footprint.
12. The Project will allow for the undermining of a conservation zone under the Mid-Western LEP, which is contrary to the zone objectives, including to conserve areas of biological diversity, native vegetation corridors and Aboriginal heritage.

Particulars:

- a) Cliff formations and overhangs within the conservation zone, which contain sites of Aboriginal significance and provide potential habitat for threatened bat species, are likely to experience collapse and/or rock falls as a result of mining-induced subsidence;

**SIGNATURE**

Signature of legal representative

Capacity

Solicitor

Date of signature

