

IN THE LAND COURT
OF QUEENSLAND

EPA026-21

MRA027-21

MRA028-21

BETWEEN

New Acland Coal Pty Ltd

Applicant

AND

Oakey Coal Action Alliance Inc & Ors

Objectors

AND

Chief Executive, Department of Environment and Science

Statutory Party

**AMENDED GROUNDS OF OBJECTION ON WHICH OCAA CONTINUES TO RELY AND
RELATED MATTERS (FILED TO COMPLY WITH ORDER 4 OF 11 MARCH 2021)**

Grounds of objection the active objector no longer relies upon (Order 4(a))

Mining lease objections - grounds

1. In respect of the Objection by Oakey Coal Action Alliance Inc. (OCAA) on 30 June 2015 to the grant of mining leases ML50232 and ML700002 (OCAA ML Objection), Exhibit 143 in the Original Hearing and eTrial Doc.Id EHP.0143, OCAA continues to rely on the following grounds:
2. The mining lease applications should be refused because (using the letters of the OCAA ML objection):
 - (b) ~~the land and the surface area of the land are not an appropriate size and shape for the mining activities proposed;~~
 - (e) the past performance of the applicant has not been satisfactory;
 - (g) there will be significant adverse environmental impacts caused by the operations to be carried out under the authority of the proposed mining lease ~~and there can be no confidence that conditions to address significant adverse noise and air quality impacts can or will be complied with;~~
 - (h) the public right and interest will be prejudiced; and

GROUNDINGS OF OBJECTION ON
WHICH OCAA CONTINUES TO
RELY AND RELATED MATTERS
Filed on behalf of Oakey Coal Action
Alliance Inc.

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- (i) good reasons can be shown for a refusal to grant the mining lease.
3. OCAA no longer relies on grounds (a), (b), (c), (d), (f), and (j) of the OCAA ML Objection.

Mining lease objections – facts and circumstances

4. For completeness, OCAA also advises that it no longer relies on the Facts and Circumstances in support of the grounds as stated in the OCAA ML Objection and replaces them with the following Facts and Circumstances:

- (a) The past performance of the applicant has been unsatisfactory, **including** in respect of noise, air quality, ~~consultation and treatment of its impacted neighbours, mining of West Pit since 2016 and the extension of South Pit beneath Bottle Tree Hill in 2018-2019.~~
- (b) The past performance ~~and conduct~~ of the Applicant are good reasons to refuse to grant the proposed mining leases to this Applicant.
- ~~(c) It is not in the public interest that the proposed mining leases be granted to this Applicant because of its prior conduct.~~
- (d) **Even if For** potential future noise and air quality impacts of the mine ~~could be adequately addressed by conditions~~, there can be no confidence that the Applicant ~~can and/or~~ will comply with the relevant conditions of approval.
- (e) ~~OCAA relies on the following facts and circumstances in relation to groundwater but accepts that the Land Court is presently bound by precedent, namely, the decision of Bowskill J in *New Aeland Coal Pty Ltd v Smith & Ors* [2018] QSC 88 to not consider groundwater availability impacts:~~
 - ~~(i) If the project proceeds, drawdown of groundwater levels will have an unacceptable impact on other water users and resulting impacts on agriculture.~~
 - ~~(ii) The groundwater assessments done for the project were inadequate to appropriately determine the extent of those impacts.~~
- ~~(f) The land and the surface area of the land are not an appropriate size and shape for the mining activities proposed because mining lease application (MLA) 50232 does not include:~~
 - ~~(i) the northern parts of Manning Vale East Pit or Willeroo Pit proposed to be mined on ML 50216; or~~
 - ~~(ii) the coal handling and processing plant located on ML 50170 where the coal mined from stage 3 of the mine is proposed to be processed;~~

~~in circumstances where ML 50216 and ML 50170 do not authorise those mining activities.~~

Environmental authority objections - grounds

5. In respect of the Objection by OCAA on 2 October 2015 to the grant of environmental authority amendment application EPML00335713 (**OCAA EAA Objection**), Exhibit 173 in the Original Hearing and eTrial Doc.Id EHP.0173, OCAA relies on the following grounds:

6. The application to amend the environmental authority should be refused on the basis that (using the letters in grounds of the OCAA EAA Objection):
 - (f) approval of the application and construction of the mine expansion will have adverse effects on the character, resilience and value of the receiving environment;
 - (g) approval of the application and construction of the mine expansion would be contrary to the public interest;
 - (h) approval of the application and construction of the mine expansion will cause material and serious environmental harm; and
 - (i) approval of the application would be contrary to appropriate consideration and application of the environmental protection policies on noise and air.
- ~~7. Even if the potential future noise and air quality impacts of the mine could be adequately addressed by compliance with conditions, there can be no confidence that such conditions could or would be complied with, accordingly it would be contrary to the public interest to grant an amended environmental authority to this Applicant.~~
- ~~8. Subject to being granted leave to any extent necessary, OCAA also relies on the grounds stated in its General Application filed on 10 March 2021 for declarations and a stay on the basis of the EA amendment application invalidity.~~
9. For the removal of doubt, OCAA no longer relies on grounds (a), (b), (c), (d), (e), (j), (k), (l) of the OCAA EAA Objection.

Environmental authority objections – facts and circumstances

10. For completeness, OCAA advises that it no longer relies on the amended Facts and Circumstances in support of the grounds of the OCAA EAA submission (Dated ~~18 January 2018~~ **8 January 2016**, Exhibit 427 to the Original Hearing, eTrial Number OCA.0003).
11. ~~OCAA relies on the following facts and circumstances in relation to groundwater but accepts that the Land Court is presently bound by precedent, namely, the decision of Bowskill J in *New Aeland Coal Pty Ltd v Smith & Ors* [2018] QSC 88 to not consider groundwater availability impacts:~~
 - ~~(i) If the project proceeds, drawdown of groundwater levels will have an unacceptable impact on other water users and resulting impacts on agriculture.~~
 - ~~(ii) The groundwater assessments done for the project were inadequate to appropriately determine the extent of those impacts.~~

For all grounds of objection on which the active objector wishes to continue to rely: a statement about whether the Draft EA filed by the Applicant on 15 February 2021 (Applicant Draft EA) would adequately address the objection (Order 4(b)(i))

12. The Applicant Draft EA would not adequately address the grounds of the OCAA ML Objection or OCAA EAA Objection.

For all grounds of objection on which the active objector wishes to continue to rely: if the active objector considers that the Applicant Draft EA does not adequately address the objection, particulars of the respects in which the active objectors says the Applicant Draft EA is inadequate (Order 4(b)(ii))

13. The grounds of the OCAA ML Objection and OCAA EAA Objection relate to ~~five~~ ~~four~~ three issues relevant to the Applicant Draft EA:
 - (a) **Prior conduct** of the Applicant (Ground (e), (h) ~~and (j)~~ of the OCAA ML Objection and Ground (g) of the OCAA EAA Objection);
 - ~~(b) **Inappropriate size and shape of the mining leases** (Ground (b) of the OCAA ML Objection);~~
 - (c) ~~**Groundwater** (Ground (g) of the OCAA ML Objections and Grounds (f) and (h) of the OCAA EAA Objection);~~
 - (d) **Air quality** (Ground (g) of the OCAA ML Objections and Ground (f), (h) and (i) of the OCAA EAA Objection); and
 - (e) **Noise** (Ground (g) of the OCAA ML Objections and Grounds (f), (h) and (i) of the OCAA EAA Objection).
14. ~~In respect of the **prior conduct** of the Applicant, the Applicant Draft EA does not address prior conduct of the Applicant or contain conditions to improve the relevant future conduct of the Applicant, other than in relation to noise and air quality.~~ The noise, air quality ~~and other relevant~~ conditions of the Applicant Draft EA do not adequately address the objections because the unsatisfactory prior conduct of the Applicant demonstrates that there can be no confidence that the Applicant will comply with the relevant conditions.
- ~~15. In respect of the **inappropriate size and shape of the mining leases** applied for, as particularised in paragraph 4(f) above, a condition of an amended environmental authority cannot authorise mining activities that are not authorised under a mining lease.~~
16. ~~In respect of **groundwater**, OCAA:~~
 - ~~(a) maintains its previous objections based on groundwater availability to surrounding farmers and inadequate groundwater assessment being relevant for the Court to consider in assessing both the ML and EA applications; and~~
 - ~~(b) maintains that the proposed conditions do not adequately address these impacts or the inadequate assessment of these impacts on groundwater; but~~
 - ~~(c) accepts for the purposes of this hearing that the Land Court is bound by precedent, namely, the decision of Bowskill J in *New Aeland Coal Pty Ltd v Smith & Ors* [2018] QSC 88 to not consider groundwater availability impacts.~~
17. In respect of **air quality**, the relevant conditions of the Applicant Draft EA do not adequately address the objection because:
 - (a) there can be no confidence they ~~can or~~ will be complied with;
 - (b) they do not limit the spatial extent of the mining activity;

- (c) monitoring conditions, including monitoring of meteorological conditions, are inadequate to assess compliance;
 - (d) monitoring locations listed in Table B1 of the Applicant Draft EA are insufficient to assess compliance;
 - (e) they do not adequately account for strengthening of emissions standards or guard against weakening of emissions standards; and
 - (f) there are insufficient requirements for reviewing and updating modelling and management measures and ensuring that an appropriately qualified person does so.
18. In respect of **noise** the relevant conditions of the Applicant Draft EA do not adequately address the objection because:
- (a) there can be no confidence they ~~can be~~ will be complied with;
 - (b) they do not limit the spatial extent of the mining activity;
 - (c) monitoring conditions are inadequate to assess compliance;
 - (d) monitoring locations and frequency specified in Table F2 of the Applicant Draft EA are insufficient to assess compliance;
 - (e) public access to monitoring data is inadequate; and
 - (f) they are not appropriately adjusted to the naturally low levels of background noise in the surrounding environment.

For all grounds of objection on which the active objector wishes to continue to rely: if the active objector wishes to, any proposed amendments to the Applicant Draft EA (including amendments set out in the affidavit filed by the Statutory Party on 10 March 2021) which the active objector says would adequately address the objection (Order 4(b)(iii))

19. One amendment to the Applicant Draft EA and the Statutory Party Draft EA that would reduce (but not adequately address) the OCAA EAA Objection is to provide certainty about the extent of mining activities authorised to be carried out by amending Condition A2 of the draft EA and inserting a corresponding additional Figure 1a as follows (showing changes in underlining):¹

Condition number	Condition
A2	<p>In carrying out the mining activity authorised under this environmental authority, the holder of this environmental authority must comply with Figure 1 (Revised Project Overview – Mine Area).</p> <p><u>The mine pit boundaries must not exceed the limits of the Stage 3 Pit Areas identified as Manning Vale West Pit, Manning Vale East Pit and Willeroo Pit in Figure 1a (New Acland Coal Mine Stage 3 project).</u></p> <p><u>No underground mining is permitted.</u></p>

¹ For clarification: this Figure is copied from the Coordinator-General, *New Acland Coal Mine Stage 3 project Coordinator-General's evaluation report on the environmental impact statement* (2014), p 2, Figure 2.1.



Figure 1a – New Acland Coal Mine Stage 3 project

20. OCAA otherwise reserves its rights to make submissions on other changes to conditions that may be appropriate following the evidence presented during the objection hearing.

Solicitor for OCAA
25 March 2021
18 June 2021