

# Notice

## *Environmental Protection Act 1994*

### **Decision about an application for an environmental authority (mining lease)**

*This notice is issued by the administering authority<sup>1</sup>, pursuant to section 225 of the Environmental Protection Act 1994 to advise of a decision made for an environmental authority application for a mining activity relating to a mining lease.*

To: Hancock Coal Pty Ltd  
PO Box 963  
BRISBANE CITY QLD 4000

Email: paul.taylor@gvkresources.com

Cc: The Mining Registrar  
Department of Natural Resources and Mines  
PO Box 3679  
Red Hill, Rockhampton QLD 4701

Your reference: MIN101017310  
Our reference: 344107

### **Decision about an application for an environmental authority for mining activities relating to a mining lease**

#### **1. Application details**

The application for an environmental authority, made by Hancock Coal Pty Ltd was received by the administering authority on 24 December 2009.

The application reference number is: MIN101017310.

Land description: Mining Lease 70426.

#### **2. Decision**

Mr Andrew Powell, Minister for Environment and Heritage Protection, decided on 29 August 2014 under section 225(1) of the *Environmental Protection Act 1994* (as in force at the time of the application) that the application be granted, but on conditions stated in the Minister's decision that are different to the conditions in the draft environmental authority.

The additional conditions include a condition reflecting the recommendation to insert three additional groundwater monitoring points in Table 15 of the draft EA, in accordance with page 2, paragraph 2(b) of the Land Court's objections decision dated 8 April 2014.

A copy of the environmental authority is attached.

#### **3. Material considered**

The material considered in reaching the decision is:

1. The provisions of the *Environmental Protection Act 1994*;
2. The draft environmental authority dated 17 December 2012;
3. The Coordinator-General's conditions included in the draft environmental authority;

<sup>1</sup> The Department of Environment and Heritage Protection is the administering authority under the *Environmental Protection Act 1994*.

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4. The objections decision of the Land Court of 8 April 2014 in *Hancock Coal Pty Ltd v Kelly & Ors and Department of Environment and Heritage Protection (No. 4)* [2014] QLC 12 (**Objections Decision**), which contained recommendations to the Minister for the *Environmental Protection Act (EPA Minister)* in the alternative that the draft Environmental Authority (Mining Lease) Non-Code Compliant Level 1 Number MIN101017310 – Alpha Coal Mine, is to be either:
  - a. refused; or
  - b. granted, subject to additional conditions:
    - i. (a) that approval be subject to Hancock first obtaining licences to take, use and interfere with water under s 206(1)(a) and (b) of the Water Act such that all concerns pursuant to the precautionary principle are resolved;
    - ii. (b) the draft Environmental Authority be amended by the insertion in Table 15 of three additional monitoring points, one located on each of the Anderson's, Currie's and Ms Cassoni's properties, with each given the parameter of water level, with at least one reading every twelve hours by electronic data reader;
    - iii. (c) that there be a condition in the draft Environmental Authority to the effect that Hancock enter into make-good agreements with the Currie's, the Anderson's, and Ms Cassoni, within either twelve months of the grant of ML 70426, or before commencement of mining activities, whichever is the sooner;

and which contained recommendations to the Minister responsible for the *Mineral Resources Act 1989* in respect of the application for MLA 70426, that is, either

  - c. That MLA 70426 be rejected; or
  - d. That MLA 70426 be granted, subject to the condition that approval be subject to Hancock first obtaining licences to take, use and interfere with water under s 206(1)(a) and (b) of the Water Act such that all concerns pursuant to the precautionary principle are resolved.
5. Advice provided to EPA Minister by the Department of Environment and Heritage Protection and the Department of Natural Resources and Mines; and
6. The assurance provided on behalf of the Minister responsible for the *Mineral Resources Act 1989* that a special condition will be imposed upon the grant of Mining Lease 70426, requiring the applicant to apply for water licences under the *Water Act 2000* that will effectively deal with the take of groundwater and associated impacts on existing water supplies.

#### 4. Reasons for decision

The findings on material facts and evidence were:

1. The Land Court objections decision has made two recommendations to the EPA Minister in the alternative, and which are mutually exclusive.
2. The additional conditions recommended by the Land Court in the objections decision, if the EA was granted, relate to groundwater impacts and the Water Act.
3. A 'make-good agreement' is a tool defined under section 420 of the *Water Act 2000* -
 

*A make good agreement* for a water bore is an agreement—

  - (a) entered into by the following parties—
    - (i) the responsible tenure holder for the make good obligations for the bore;

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- (ii) the bore owner; and
  - (b) that provides for each of the following matters—
    - (i) the outcome of the bore assessment for the bore;
    - (ii) whether the bore has or is likely to have an impaired capacity;
    - (iii) if the bore has or is likely to have an impaired capacity—the make good measures for the bore to be taken by the responsible tenure holder.
4. The Land Court made identical recommendations to the EPA Minister at page 2, paragraph 2(a) of the Objections Decision and to the Minister responsible for the *Mineral Resources Act 1989* at paragraph 1, namely that both the EA and ML be conditioned so that the applicant obtain relevant water licences, following the full processes under the *Water Act*, prior to grant of the EA and ML. If this recommendation was followed by both Ministers, it would have the potential to result in the EA and the grant of Mining Lease 70426 having the same / substantially the same / or inconsistent, conditions between the EA and ML 70426.
  5. The identical recommendation, if followed, could potentially contravene section 276A of the *Mineral Resources Act*. Section 276 prohibits a condition on the grant of mining lease that is the same as, or substantially the same as, or inconsistent with, any condition of the EA for mining activities relating to the lease.
  6. The Minister responsible for the *Mineral Resources Act 1989* has assured the EPA Minister that the Minister will impose a condition upon the grant of Mining Lease 70426, requiring the applicant to apply for water licences under the *Water Act 2000*, that will give effect to the intent of the Land Court recommendation at page 2, paragraph 2(a) and (c) of the objections decision.
  7. The EA will be conditioned to take effect only upon the grant of ML 70426.
  8. The inclusion in the EA of three additional monitoring points, one located on each of the Anderson's, the Currie's and Ms Cassoni's properties, will enable detection of any emerging adverse effects from the operation of the applicant's project.
  9. At paragraph [406] of the Objections Decision, Land Court Member Smith expressed his concern, namely his lack of confidence from a precautionary perspective, in the groundwater evidence and, because of that, his concerns regarding the knock-on effect to ecology should the predictive groundwater modelling relied on by Hancock not be correct. However Member Smith acknowledged that the groundwater research undertaken by Hancock was of high quality, based on much data and likely to be correct.
  10. The EPA Minister is satisfied that any take of groundwater and associated impacts on existing water supplies will be effectively dealt with:
    - a. by the inclusion in the EA of three additional monitoring points;
    - b. by the extensive ongoing monitoring requirements that the EA conditions will impose (which includes the Coordinator-General's recommended conditions) which can detect emerging adverse effects and take action in response to those effects;
    - c. by the rigorous water licence process that the applicant must go through under the *Water Act 2000* (including possible objector appeals to the Land Court).
  11. Having regard to the above considerations, the EPA Minister has decided that the draft EA will be granted, with the following conditions (additional to those in the draft EA):

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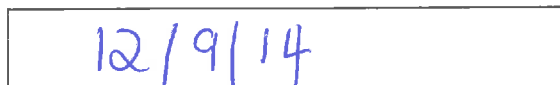
- a. The EA will be conditioned to take effect only upon the grant of MLA 70426. MLA 70426, if granted, will require the applicant to apply for water licences under the *Water Act 2000*, which will give effect to the intent of the Land Court recommendation to both Ministers. Accordingly, an identical or substantially similar condition to that proposed in the ML 70426 will not be imposed on the EA.
- b. The EA will be conditioned to include three additional monitoring locations in Table 15 under Condition C51, as recommended by the Land Court; and
- c. The EA will not include a condition requiring the entering of make-good agreements with the Currie's, the Anderson's and Ms Cassoni. This will be appropriately dealt with under the rigorous Water Act processes for obtaining the necessary water licences. Also, the additional monitoring locations and the extensive ongoing monitoring requirements to be imposed by the EA can detect any emerging adverse effects on their properties and take action in response to any detected effects.

Should you have any questions in relation to this notice, please contact Justin Cagney on telephone (07) 4987 9303.



Signature

Melissa Wells  
Department of Environment and Heritage Protection  
Delegate of the Administering Authority  
*Environmental Protection Act 1994*



Date

**Enquiries:**  
Justin Cagney  
ES - Reg Serv - Central Region Mining  
Emerald Office  
PO Box 3028  
EMERALD QLD 4720  
Phone: (07) 4987 9303  
Fax: (07) 4987 9399  
Email: [justin.cagney@ehp.qld.gov.au](mailto:justin.cagney@ehp.qld.gov.au)

**Attachments**

Environmental Authority MIN1010173