

PCU018023



16 December 2010

Donaldson Coal Pty  
Limited  
ABN 87 073 088 945

Minister for Planning  
c/- Director-General  
Department of Planning  
The Western Gallery  
Level 4, 23-33 Bridge Street  
SYDNEY NSW 2000



Head Office  
Level 7 167 Macquarie  
Street  
Sydney NSW 2000 Australia  
Phone +61 2 9220 9900  
Facsimile +61 2 9220 9999

**Attention: Mr Sam Haddad**

Dear Mr Haddad,

**RE: DONALDSON COAL MINE – DEVELOPMENT CONSENT MODIFICATION APPLICATION**

Donaldson Coal Pty Limited (DCPL) is the owner and operator of the Donaldson Coal Mine. DCPL requests the New South Wales (NSW) Minister for Planning modify the Donaldson Coal Mine Development Consent (File No. N97/00147, DA 98/01173 and 118/698/22) in relation to Condition 5 of Schedule 2 (Commencement and Duration). This request is made in order to extend the period of mining by approximately two years due to slower than expected pit development.

DCPL requests that the Minister for Planning assess the proposed modification under Section 75W of the *Environmental Planning and Assessment Act, 1979* (EP&A Act).

***Justification for the Modification of DA 98/01173 and 118/698/22***

Development Consent (DA 98/01173 and 118/698/22) for the Donaldson Coal Mine was granted on 14 October 1999 by the then Minister for Urban Affairs and Planning under section 101(8) of the EP&A Act. The Development Consent (DA 98/01173 and 118/698/22) was subsequently modified on 28 August 2005 following lodgement of the Statement of Environmental Effects titled *Modification to the Approved Mining Area at the Donaldson Open Cut Coal Mine, Beresfield* (DCPL, 10 November 2004).

Condition 5 in Schedule 2 (Commencement and Duration) of the Donaldson Coal Mine Development Consent (DA 98/01173 and 118/698/22) states:

- (1) *To ensure the employment benefits of this development are realised without delay, the Applicant shall commence mining within two years of the date of this Consent. This does not remove the obligation of the Applicant to comply with any other requirement listed in the Conditions of this Consent.*
- (2) *To minimise potential delays to development on adjoining lands, consent for mining shall lapse 11 years from commencement of mining.*

In accordance with Condition 5(1) in Schedule 2, DCPL commenced mining at the Donaldson Coal Mine on 25 January 2001 (i.e. within two years of the date of consent).

However, open cut mining operations at the Donaldson Coal Mine have been slower than originally scheduled. Enclosure 1 shows the approved extent of open cut operations and the remaining area to be mined. The current mining schedule indicates that open cut operations can be completed by 31 December 2013.

Therefore, to avoid the sterilisation of any coal reserve, DCPL requests that Condition 5(2) in Schedule 2 of the Development Consent (DA 98/01173 and 118/698/22) be modified to permit the extension of open cut mining operations to 31 December 2013.

### **Environmental Review**

#### *Direct Potential Impacts*

The potential direct impacts of the Donaldson Coal Mine would remain generally consistent with its existing approvals. There would be no change to the scale, nature or consequential potential environmental impacts of the existing Donaldson Coal Mine as approved under the Development Consent (DA 98/01173 and 118/698/22).

The proposed modification would result in an incremental increase (i.e. approximately two years) in the period over which the potential impacts (e.g. air quality and noise) permitted in the Development Consent (DA 98/01173 and 118/698/22) would occur.

#### *Indirect Potential Impacts*

Condition 5(2) in Schedule 2 of the Donaldson Coal Mine Development Consent (DA 98/01173 and 118/698/22) states:

- (2) *To minimise potential delays to development on adjoining lands, consent for mining shall lapse 11 years from commencement of mining.*

The proposed modification is expected to result in no material delay to development on adjoining lands.

During the time that the Donaldson Coal Mine has been operating (25 January 2001 until the present) there has been progressive industrial development of land adjacent to the mine. At no time has the Donaldson Coal Mine impeded these developments. These **existing developments** include (Enclosure 2):

- **Holmwood Industrial Estate** – situated east of Weakleys Drive. Development of this facility commenced prior to the approval of the Donaldson Coal Mine and continues today. Mining operations have previously occurred within approximately 1.5 kilometres (km) of this development and the remaining mining area is approximately 3.6 km from this development.
- **Freeway Industrial Park** – situated west of Weakleys Drive. Development of this facility commenced in 2001 and continues today. Mining operations have previously occurred within approximately 1 km of this development and the remaining mining area is approximately 3.1 km from this development.
- **EnviroKing** – a small industrial waste management company located to the west of the Donaldson Coal Mine. Development of this facility commenced prior to the approval of the Donaldson Coal Mine and has expanded during the period of operation of the open pit. Mining operations have previously occurred within approximately 1.7 km of this development and the remaining mining area is approximately 0.9 km from this development.

The extension of the approved period of mining to 31 December 2013 is not expected to impact on these existing developments given that these existing developments have not been impeded to date, mining will remain within the existing approved extent, and the extension of the approved period of mining is only approximately two years.

In addition to the above existing developments the following **proposed developments** are located in the vicinity of the Donaldson Coal Mine (Enclosure 2):

- **Freeway North** has been approved for industrial development. Freeway North is located approximately 3.1 km from the remaining mining area.
- **Freeway South** has been approved for industrial development. Freeway South is located approximately 2.5 km from the remaining mining area.
- Coal and Allied has a parcel of land proposed for industrial development (**Blackhill**) that is currently in its own approval process. Blackhill is located approximately 2.2 km from the remaining mining area.

The extension of the approved period of mining to 31 December 2013 is not expected to impact on or result in a material delay of these proposed developments, given that they are industrial developments in their own right (i.e. low sensitivity to the activities at the Donaldson Coal Mine) and due to their relative distance from the Donaldson Coal Mine open cut operations.

In addition, the Catholic Diocese of Maitland-Newcastle owns land immediately to the south of the Donaldson Coal Mine (Enclosure 2). Open cut operations north of John Renshaw Drive adjacent to these lands are undergoing progressive rehabilitation and the active open cut area is moving to the west further away from these lands. Therefore, no material delay in development of these lands is expected as result of the extension of the approved period of mining to 31 December 2013.

DCPL and the owners of the Abakk property (Enclosure 2) have signed an agreement for DCPL to purchase the property.

### **Approvals Pathway**

DCPL is requesting the Minister for Planning to modify the Development Consent under Section 75W of the EP&A Act.

Section 75W of the EP&A Act relevantly states:

#### **75W Modification of Minister's approval**

(1) *In this section:*

**Minister's approval** means an approval to carry out a project under this Part, and includes an approval of a concept plan.

**modification of approval** means changing the terms of a Minister's approval, including:

- (a) *revoking or varying a condition of the approval or imposing an additional condition of the approval, and*
  - (b) *changing the terms of any determination made by the Minister under Division 3 in connection with the approval.*
- (2) *The proponent may request the Minister to modify the Minister's approval for a project. The Minister's approval for a modification is not required if the project as modified will be consistent with the existing approval under this Part.*
  - (3) *The request for the Minister's approval is to be lodged with the Director-General. The Director-General may notify the proponent of environmental assessment requirements with respect to the proposed modification that the proponent must comply with before the matter will be considered by the Minister.*
  - (4) *The Minister may modify the approval (with or without conditions) or disapprove of the modification.*

...

Clause 8J(8) of the *Environmental Planning and Assessment Act Regulation, 2000* (EP&A Regulation) prescribes which development consents are to be modified under Section 75W of the EP&A Act. Clause 8J(8)(a) of the EP&A Regulation states:

- (8) *For the purposes only of modification, the following development consents are taken to be approvals under Part 3A of the Act and section 75W of the Act applies to any modification of such a consent:*
- (a) *a development consent granted by the Minister under section 100A or 101 of the Act,*

...

The Donaldson Coal Mine Development Consent (DA 98/01173 and 118/698/22) is a consent that can be modified under Section 75W in Part 3A of the EP&A Act because it falls within the criteria for Clause 8J(8)(a) of the EP&A Regulation (i.e. was granted by the then Minister for Urban Affairs and Planning under section 101(8) of the EP&A Act).

In this regard, Enclosure 3 includes a completed request to modify a major project application form and political donations disclosure statement.

#### ***Requested Modification of DA 98/01173 and 118/698/22***

DCPL requests that the Minister for Planning modify Condition 5 in Schedule 2 of the Donaldson Coal Mine Development Consent (DA 98/01173 and 118/698/22) under Section 75W(4) of the EP&A Act. In particular, DCPL requests the following change to this condition as indicated below:

- (1) *To ensure the employment benefits of this development are realised without delay, the Applicant shall commence mining within two years of the date of this Consent. This does not remove the obligation of the Applicant to comply with any other requirement listed in the Conditions of this Consent.*
- (2) *To minimise potential delays to development on adjoining lands, consent for mining shall lapse ~~11 years from commencement of mining on 31 December 2013.~~*

Please do not hesitate to contact Mark McPherson on (02) 4931 4700 if you should have any queries.

Yours sincerely,

**Donaldson Coal Pty Limited**



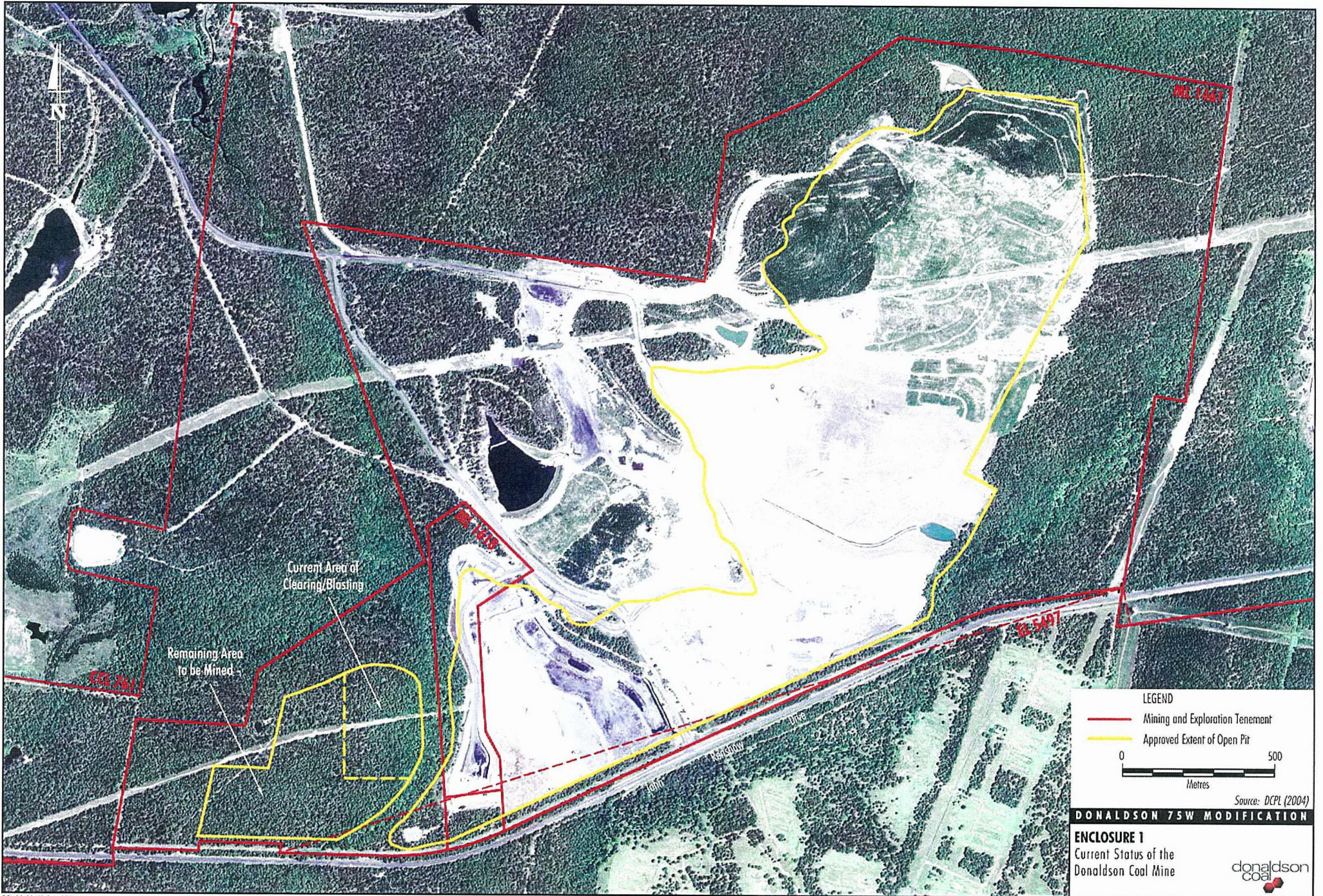
Brendan McPherson

**Chief Executive Officer – Donaldson Coal Pty Limited**

Enclosure 1: Current Status of the Donaldson Coal Mine  
Enclosure 2: Developments on Land Adjoining the Donaldson Coal Mine  
Enclosure 3: Request to Modify a Major Project Application Form and Political Donations Disclosure Statement

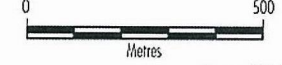
ENCLOSURE 1

CURRENT STATUS OF DONALDSON COAL MINE



LEGEND

- Mining and Exploration Tenement
- Approved Extent of Open Pit



Source: DCPL (2004)

**DONALDSON 75W MODIFICATION**

**ENCLOSURE 1**  
 Current Status of the  
 Donaldson Coal Mine



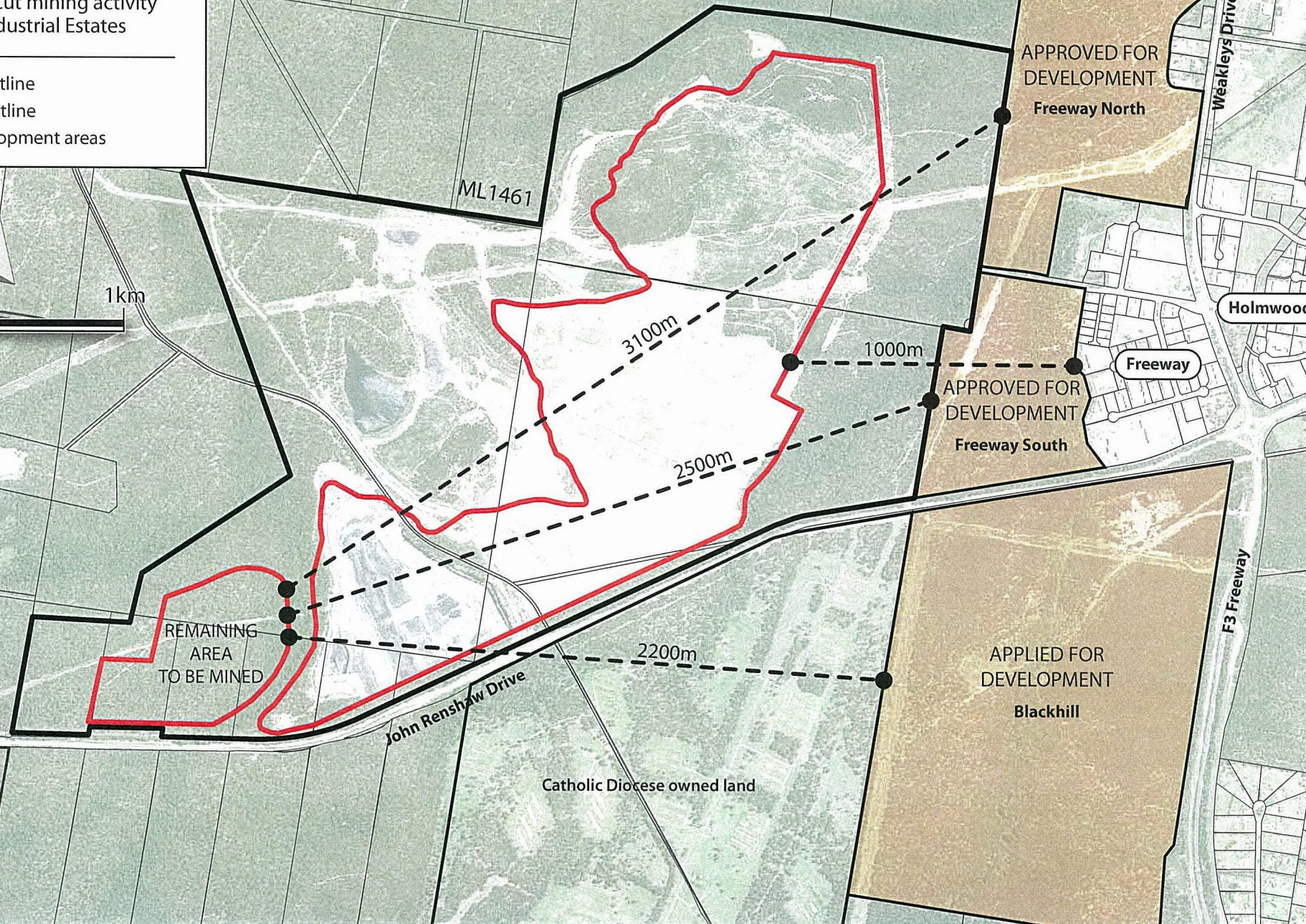
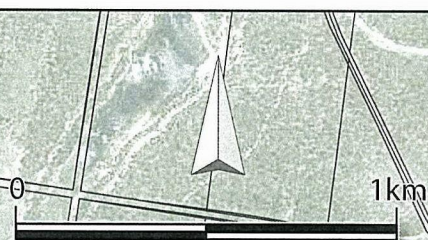
ENCLOSURE 2

DEVELOPMENTS ON LAND ADJOINING THE DONALDSON COAL MINE



Donaldson Open-Cut mining activity  
proximity to Industrial Estates

- Pit Outline
- ML outline
- Development areas





ENCLOSURE 3

REQUEST TO MODIFY A MAJOR PROJECT APPLICATION FORM AND POLITICAL  
DONATIONS DISCLOSURE STATEMENT

# Request to modify a major project



NSW GOVERNMENT  
Department of Planning

Date duly made: \_\_\_/\_\_\_/\_\_\_

Modification No. \_\_\_\_\_

## 1. Before you lodge

This form is required under section 75W of the *Environmental Planning and Assessment Act 1979* (the Act) in order to request the Minister to modify the Minister's approval to carry out a project or concept plan to which Part 3A of the Act applies.

Before making this request, it is recommended that you first consult with the Department of Planning (the Department) concerning your modification. The Director-General may issue environmental assessment requirements that must be complied with before your request will be considered by the Minister. If the changes proposed by the modification will result in a project that is consistent with the existing approval, the Minister's approval for a modification is not required.

### Disclosure Statement

Persons making a request to modify a project or concept plan are required to declare reportable political donations (including donations of or more than \$1,000) made in the previous two years.

Note: For more details about political donations disclosure requirements, including a disclosure form, go to [www.planning.nsw.gov.au/donations](http://www.planning.nsw.gov.au/donations).

### Lodgement

All modification requests must be lodged with the Director-General of the Department of Planning, by courier or mail. An electronic copy should also be e-mailed to the assessment contact officer assigned to the project.

NSW Department of Planning  
Ground floor, 23-33 Bridge Street, SYDNEY NSW 2000  
GPO Box 39 SYDNEY NSW 2001  
Phone 1300 305 695

## 2. Details of the proponent

Company/organisation/agency

Donaldson Coal Pty Ltd

ABN

87 073 088 945

Mr  Ms  Mrs  Dr  Other

First name

Brendan

Family name

McPherson

Position

Chief Executive Officer

STREET ADDRESS

Unit/street no.

Level 7, 167

Street name

Macquarie Street

Suburb or town

Sydney

State

NSW

Postcode

2000

POSTAL ADDRESS (or mark 'as above')

As above

Suburb or town

State

Postcode

Daytime telephone

(02) 9220 9900

Fax

(02) 9220 9999

Mobile

Email

donaldson@doncoal.com.au

### 3. Identify the land

STREET ADDRESS (where relevant)

Unit/street no.

Street or property name

Suburb, town or locality

Postcode

Local government area(s)

State Electorate(s)

REAL PROPERTY DESCRIPTION

Note: The real property description is found on a map of the land or on the title documents for the land. If you are unsure of the real property description, you should contact the Department of Lands.

Please ensure that you place a slash (/) to distinguish between the lot, section, DP and strata numbers. If the proposed modification applies to more than one piece of land, please use a comma to distinguish between each real property description.

OR: detailed description of land attached:

**MAP: A map of the site and locality should also be submitted with this request.**

### 4. Details of the original major project or concept plan

Briefly describe what the original approval allows

What was the original project application no.?

What was the date of the approval?

What was the original application fee?

Note: Clause 245K of the *Environmental Planning and Assessment Regulation 2000* provides information on calculating the maximum fee for a request for modification.

### 5. Describe the modification you propose to make to the approval

Describe the proposed modification

Your modification request may need to be accompanied by an Environmental Assessment, including plans. An electronic and hard copy of this document will be required.

**ESTIMATED CAPITAL INVESTMENT VALUE**

Please indicate the estimated capital investment value (CIV) of the modification to the project approval or concept plan (excluding GST).

\$0

**FULL TIME EQUIVALENT JOBS**

Please indicate the number of jobs created by the proposed modification. This should be expressed as a proportion of full time equivalent (FTE) jobs over a full year.

Construction jobs (FTE) **No change** Operational jobs (FTE) **No change**

**6. Landowner's consent (where required)**

As the owner(s) of the above property, I/we consent to this request being made by the proponent:

Land

Not required - Clause 8F of the Environmental Planning and Assessment Regulation, 2000 applies.

Signature

Name

Date

Land

Signature

Name

Date

Note: Under Clause 8F of the *Environmental Planning and Assessment Regulation 2000* (the Regulation), certain applications for approval under Part 3A of the Act do not require consent of the landowner, however, the proponent is required to give notice of the application (e.g. linear infrastructure, mining & petroleum projects, and critical infrastructure).

**7. Political donation disclosure statement**

Persons making a request to modify a project or concept plan are required to declare reportable political donations (including donations of or more than \$1,000) made in the previous two years.

Have you attached a disclosure statement to this request?

- Yes
- No

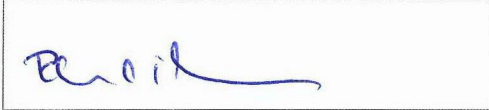
Note: For more details about political donations disclosure requirements, including a disclosure form, go to [www.planning.nsw.gov.au/donations](http://www.planning.nsw.gov.au/donations).

## 8. Proponent's signature

As the proponent(s) of the project and in signing below, I/we hereby:

- provide a description of the modification to the project approval or concept plan and address all matters required by the Director-General pursuant to Section 75W of the Act, and
- declare that all information contained within this form is accurate at the time of signing.

Signature



In what capacity are you signing if you are not the proponent

Name

Brendan McPherson

Name, if you are not the proponent

Date

16/12/10

# Political donations disclosure statement



NSW GOVERNMENT  
Department of Planning

Office use only:

Date received: \_\_\_/\_\_\_/\_\_\_

Planning application no. \_\_\_\_\_

This form may be used to make a political donations disclosure under section 147(3) of the *Environmental Planning Assessment Act 1979* for applications or public submissions to the Minister or the Director-General.

Please read the following information before filling out the Disclosure Statement on pages 3 and 4 of this form. Also refer to the 'Glossary of terms' provided overleaf (for definitions of terms in *italics* below). Once completed, please attach the completed declaration to your planning application or submission.

## Explanatory information

### Making a planning application or a public submission to the Minister or the Director-General

Under section 147(3) of the Environmental Planning and Assessment Act 1979 ('the Act') a person:

- (a) who makes a *relevant planning application* to the Minister or the Director-General is required to disclose all *reportable political donations* (if any) made within the *relevant period* to anyone by any *person with a financial interest* in the application, or
- (b) who makes a *relevant public submission* to the Minister or the Director-General in relation to the application is required to disclose all *reportable political donations* (if any) made within the *relevant period* to anyone by the person making the submission or any *associate of that person*.

### How and when do you make a disclosure?

The disclosure to the Minister or the Director-General of a *reportable political donation* under section 147 of the Act is to be made:

- (a) in, or in a statement accompanying, the relevant planning application or submission if the donation is made before the application or submission is made, or
- (b) if the donation is made afterwards, in a statement of the person to whom the relevant planning application or submission was made within 7 days after the donation is made.

### What information needs to be included in a disclosure?

The information requirements of a disclosure of reportable political donations are outlined in section 147(9) of the Act.

Pages 3 and 4 of this document include a Disclosure Statement Template which outlines the information requirements for disclosures to the Minister or to the Director-General of the Department of Planning.

Note: A separate Disclosure Statement Template is available for disclosures to councils.

**Warning:** A person is guilty of an offence under section 125 of the *Environmental Planning and Assessment Act 1979* in connection with the obligations under section 147 only if the person fails to make a disclosure of a political donation or gift in accordance with section 147 that the person knows, or ought reasonably to know, was made and is required to be disclosed under section 147.

The maximum penalty for any such offence is the maximum penalty under Part 6 of the *Election Funding and Disclosures Act 1981* for making a false statement in a declaration of disclosures lodged under that Part.

Note: The maximum penalty is currently 200 penalty units (currently \$22,000) or imprisonment for 12 months, or both.

## Glossary of terms (under section 147 of the *Environmental Planning and Assessment Act 1979*)

**gift** means a gift within the meaning of Part 6 of the *Election Funding and Disclosures Act 1981*. Note. A gift includes a gift of money or the provision of any other valuable thing or service for no consideration or inadequate consideration.

Note: Under section 84(1) of the *Election Funding and Disclosures Act 1981* gift is defined as follows:

**gift** means any disposition of property made by a person to another person, otherwise than by will, being a disposition made without consideration in money or money's worth or with inadequate consideration, and includes the provision of a service (other than volunteer labour) for no consideration or for inadequate consideration.

**local councillor** means a councillor (including the mayor) of the council of a local government area.

**relevant planning application** means:

- a) a formal request to the Minister, a council or the Director-General to initiate the making of an environmental planning instrument or development control plan in relation to development on a particular site, or
  - b) a formal request to the Minister or the Director-General for development on a particular site to be made State significant development or declared a project to which Part 3A applies, or
  - c) an application for approval of a concept plan or project under Part 3A (or for the modification of a concept plan or of the approval for a project), or
  - d) an application for development consent under Part 4 (or for the modification of a development consent), or
  - e) any other application or request under or for the purposes of this Act that is prescribed by the regulations as a relevant planning application,
- but does not include:
- f) an application for (or for the modification of) a complying development certificate, or
  - g) an application or request made by a public authority on its own behalf or made on behalf of a public authority, or
  - h) any other application or request that is excluded from this definition by the regulations.

**relevant period** is the period commencing 2 years before the application or submission is made and ending when the application is determined.

**relevant public submission** means a written submission made by a person objecting to or supporting a relevant planning application or any development that would be authorised by the granting of the application.

**reportable political donation** means a reportable political donation within the meaning of Part 6 of the *Election Funding and Disclosures Act 1981* that is required to be disclosed under that Part. Note. Reportable political donations include those of or above \$1,000.

Note: Under section 86 of the *Election Funding and Disclosures Act 1981* reportable political donation is defined as follows:

### 86 Meaning of "reportable political donation"

- (1) For the purposes of this Act, a reportable political donation is:
  - (a) in the case of disclosures under this Part by a party, elected member, group or candidate—a political donation of or exceeding \$1,000 made to or for the benefit of the party, elected member, group or candidate, or
  - (b) in the case of disclosures under this Part by a major political donor—a political donation of or exceeding \$1,000:
    - (i) made by the major political donor to or for the benefit of a party, elected member, group or candidate, or
    - (ii) made to the major political donor.
- (2) A political donation of less than an amount specified in subsection (1) made by an entity or other person is to be treated as a reportable political donation if that and other separate political donations made by that entity or other person to the same party, elected member, group, candidate or person within the same financial year (ending 30 June) would, if aggregated, constitute a reportable political donation under subsection (1).
- (3) A political donation of less than an amount specified in subsection (1) made by an entity or other person to a party is to be treated as a reportable political donation if that and other separate political donations made by that entity or person to an associated party within the same financial year (ending 30 June) would, if aggregated, constitute a reportable political donation under subsection (1). This subsection does not apply in connection with disclosures of political donations by parties.
- (4) For the purposes of subsection (3), parties are associated parties if endorsed candidates of both parties were included in the same group in the last periodic Council election or are to be included in the same group in the next periodic Council election.

**a person has a financial interest** in a relevant planning application if:

- a) the person is the applicant or the person on whose behalf the application is made, or
- b) the person is an owner of the site to which the application relates or has entered into an agreement to acquire the site or any part of it, or
- c) the person is associated with a person referred to in paragraph (a) or (b) and is likely to obtain a financial gain if development that would be authorised by the application is authorised or carried out (other than a gain merely as a shareholder in a company listed on a stock exchange), or
- d) the person has any other interest relating to the application, the site or the owner of the site that is prescribed by the regulations.

**persons are associated with each other** if:

- a) they carry on a business together in connection with the relevant planning application (in the case of the making of any such application) or they carry on a business together that may be affected by the granting of the application (in the case of a relevant planning submission), or
- b) they are related bodies corporate under the *Corporations Act 2001* of the Commonwealth, or
- c) one is a director of a corporation and the other is any such related corporation or a director of any such related corporation, or
- d) they have any other relationship prescribed by the regulations.

