



27 November 2008

Mr Jason Perica  
Executive Director – Strategic Sites and Urban Renewals  
Department of Planning  
23-33 Bridge Street  
Sydney NSW 2300

Dear Jason

### **GWANDALAN – STATE SIGNIFICANT SITE AND CONCEPT PLAN**

We refer to our meeting (“Meeting”) on the 24<sup>th</sup> October 2008 with representatives of the Department of Planning (“DoP”), the Department of Primary Industries (“DPI”) and Peabody LakeCoal (“LakeCoal”) regarding the Coal & Allied (“CNA”) proposed Gwandalan development and the subsequent correspondence from LakeCoal to you dated 12 November 2008.

We take this opportunity to thank you for inviting CNA to attend the Meeting and now provide a summary of our understanding of the matters discussed at the meeting and the expected outcomes. Generally, the discussions covered the broad details of CNA’s Memorandum of Understanding (“MoU”) with NSW Government and the resultant benefits at a local, regional and state level, some specifics of CNA’s proposals at each of the three southern estates, being Catherine Hill Bay, Nords Wharf and Gwandalan, the DoP’s and the Independent Hearing and Assessment Panel’s (“IHAP”) involvement in the process to date and also some specifics relating to the Chain Valley Mine (“Mine”), LakeCoal’s undated submission (“Submission”) to the Department and CNA’s response to the Submission in its Preferred Project Report (“PPR”).

There was general acceptance that full extraction mining was not an acceptable outcome under areas of residential development and recognition that partial extraction mining enables reasonable quantities of coal to be recovered whilst maintaining acceptable levels of stability to the surface of the land. In discussing the current operation of the Chain Valley Mine (“Mine”), LakeCoal representatives advised that the Mine is currently conducting full extraction mining under the bed of Lake Macquarie under existing use rights. The LakeCoal representatives also advised that LakeCoal is currently preparing a Part 3A application in respect of the mine and that as part of preparing that application the DPI has requested LakeCoal investigate recovering coal with much higher ash content than that currently proposed in the mine plan provided in the Submission. As such, it was noted by the LakeCoal representatives that there would be an increase in the amount of coal to be recovered by the Mine, that mine plan would change as a result of this but the extent of the change had not yet been investigated.

It is our understanding that in consideration of the matters raised during the Meeting, LakeCoal was to conduct a merit assessment of altering the current mine plan to access the coal under the proposed Gwandalan development site in the near future as opposed to the 15 year delay proposed in the Submission.

We must preface the following comments relating to Peabody's correspondence dated 12 November 2008 by noting that whilst we have received a copy of the letter ("Letter") attached to that correspondence, LakeCoal has declined to provide us with either a copy of the report or a summary of the results of the economic modelling referred to in that Letter and as such our comments are limited to the statements contained in the Letter. Notwithstanding this, the Letter does not appear to contain the expected merit assessment of accessing the coal under the proposed development site at an earlier date than that proposed in the Submission. Nor does the Letter discuss the likely impact on the mine plan as a result of DPI's request, presumably this would further delay the proposed mining beneath the development site. At the time Peabody is proposing to mine under the CNA development estate at Gwandalan (Yr 2023 or later) the current existing use rights will have expired (expiry Yr 2010) and a new consent will be required. In fact, for the most part the Letter simply restates those matters raised in the Submission, such matters having been addressed by CNA in the PPR and further discussed during the Meeting. Given the Letter does not contain the merit assessment or discuss the likely changes to the mine plan as a result of DPI's request we have limited our response here to those matters not addressed in the PPR.

LakeCoal set out in Part 3 of its letter propositions as to the manner in which our State significant listing, concept plan application and project application should be dealt with. With respect to the concept plan application and project approval they are, in effect, suggesting that our approvals should not be given, or at least should be deferred in their commencement, until after LakeCoal undermines the area. As noted above, this will not be until at least 2023 and this proposition should be rejected out of hand for the reasons set out in this and our earlier submissions.

As to the amendments proposed to the State significant site listing, they put the proposition that mining is not listed as an expressly permissible use in Schedule 3 thus implying that they will be unable to mine in future.

This is misleading and the zoning is likely to be completely inconsequential because it is highly likely that LakeCoal planning approval, if any, to mine will be granted under Part 3A of the Act. Accordingly clause 9(a) of the insertion to Schedule 3 will apply to make the Mining SEPP applicable and this will remove any and all restrictions on the ability of the Minister to grant a Part 3A approval to LakeCoal to mine.

However if the Department considers that the Mining SEPP should also apply to allow Part 4 development consents to be granted then a minor amendment could be made to the Schedule. If this is the intended outcome, then all of the provisions of the Mining SEPP should apply and particularly the provisions of Part 3 of the Mining SEPP which set out specific matters for consideration where developments compete with mining projects, and vice versa. The way in which we have been advised this could most appropriately be effected is by including a new subclause 9(c) in the insertion to Schedule 3 of the Major Projects SEPP which would read as follows:

- (c) in the case of mining, State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007, which prevails over this Policy to the extent of any inconsistency.

If the Mining SEPP applies, the Development Code that LakeCoal suggests be prepared is unnecessary as such matters are already dealt with in Part 3 of that SEPP. CNA and the Department have, in a substantive way, dealt with the matter in clause 13 in this application, and LakeCoal will need to observe clause 12 in its future applications.

Further, despite claims to the contrary by LakeCoal, we believe CNA has given appropriate consideration to mining. The development area of the CNA Gwandalan estate impacted by the Peabody proposal represents only 3.4% of the total area of the Peabody mine leases (Leases 706 & 707). The CNA modelling has considered partial extraction mining occurring under the proposed development site using an extraction rate of 40%, such rate being confirmed by Mr David Kitto as an appropriate industry standard. Whilst we will not have control of the land that is proposed to be transferred to the Government, we have obtained independent advice which confirms that should the CNA land be dedicated as a conservation reserve, Peabody's mining rights would be maintained as an existing interest. In this respect, "conservation reserves" are defined as meaning any land intended to be reserved or dedicated under the NPW Act and includes references to a National Park, Nature Reserve, State Conservation Area or Regional Park as those terms are defined under that Act.

In closing, we advise that CNA remains committed to the outcomes of the MoU with the Government and confirm our intention to continue discussions with Peabody to enable access to the coal reserves beneath the proposed development site (in conformity with the original DPI submission) on a partial extraction basis as proposed in the PPR.

Please do not hesitate to call me on 0400 702 579 should you wish to discuss any aspect of this matter.

Yours faithfully

Keith Dedden  
General Manager Property Development

**CC**

**David Kitto** – Director, Major Development Assessments, DoP

**Caitlin Bennett** – Team Leader, Strategic Assessments, DoP

**Steve Hedges** – Chief Operating Officer, NSW Operations, LakeCoal

**Peter Doyle** – General Manager, Corporate and Operations Support, LakeCoal