

Mark Jacobs  
Executive General Manager  
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Darling Park Tower 2,  
Level 18, 201 Sussex Street  
Sydney NSW 2000

08/04/2020

Dear Mr Jacobs

**Ashton South East Open Cut Project (MP 08\_0182)  
Timing of Commencement of Project**

I refer to your letter to the Secretary of the Department of Planning, Industry and Environment, dated 17 February 2020, requesting that the Secretary grant a two year extension of the time to commence the Ashton South East Open Cut Project (the Project) in accordance with condition 5A(b) of Schedule 2 of MP 08\_0182.

In considering this request, the Department notes that condition 5A(a) states that the Project approval shall lapse 5 years after the date that approval (i.e. 17 April 2020) unless the Project is commenced before that day, and that condition 5A(b) provides the Secretary with the ability, upon application by the Proponent, to extend the time to commence the project by two years.

Condition 10A of Schedule 2 requires that development work must not be carried out on the project site until Ashton Coal has purchased, leased or licenced Property 129. The Department understands that the owner of Property 129 continues to object to the Project and is entitled to maintain this position.

However, the Department notes that the merits of the project were considered in detail by NSW Land and Environment Court and was ultimately approved by the Court in 2015.

In approving the project, the Court considered the potential for the project to deliver significant economic and social benefits to NSW, including 130 construction jobs, continued employment for 160 people and \$83 million in additional capital investment. It also included a condition allowing the Secretary to consider granting additional time for a suitable agreement to be reached with the owner of Property 129 before the consent lapsed.

This is a non-standard condition, and the Court clearly recognised the complexity of reaching agreement with the owner of Property 129. In paragraphs 13-14 of *Hunter Environment Lobby Inc v Minister for Planning and Infrastructure (No 4) [2014] NSWLEC 200* Justice Pain found that "An amended condition 10A arguably creates certainty, which is otherwise lacking, that the project in its entirety will be carried out. The project which I have assessed as a whole requires utilisation of property 129 ... I have modified the timing provision in condition 5A to enable Ashton to seek an extension of time for the project."

Given the above, the Department considers it is reasonable to grant the request of Ashton Coal to extend the time to be able to commence the project by a further two years. Notwithstanding the objection of the owner of Property 129, this will provide additional time for Ashton Coal to negotiate a suitable agreement with the owner, and ultimately realise the benefits of the project for which it was originally approved.

I therefore wish to advise that the Secretary has agreed to extend the time to commence the Project by two years in accordance with the provisions of condition 5A(b) of Schedule 2 to MP 08\_0182.

If you have any more questions, please contact Mr Matthew Sprott, Director Resource Assessments at [matthew.sprott@planning.nsw.gov.au](mailto:matthew.sprott@planning.nsw.gov.au).

Yours sincerely



**Mike Young**  
Executive Director  
Energy, Resources and Compliance  
*as nominee of the Secretary*