Fax Cover Page

To:	**Steve Barry**
Pages:	**~~21~~ (Incl) 22**
From:	**Neville Diamond**
Date:	**30 July 2015**
Fax #:	**02 9228 6555**
Subject:	**This is the complete non name version.**

If you require further information, do not hesitate to ring.

0426 886 882

Regards, Neville

Neville Diamond
c/- The Secretary, DA Adjustors
110 Kissing Point Road
Turramurra NSW 2074
0426 886 882 9th July 2015

STATUTORY DECLARATION
No Names Version

I Neville Diamond, Environmental Litigation Researcher and part-time English teacher of 110 Kissing Point Road Turramurra say on oath:

I say: what happens if we all start telling the truth !

KEY ISSUES: KAOS OR REFORM ? EXECUTIVE SUMMARY

I say the key issues relevant to reform lay in

- **The predisposition of planners to flavour the EIS to get approval.**
- **The failure of consultants and planners to properly consider DUAP guidelines as set out in the DRG's and the recommendations of the EPA and others etc.**
- **The failure of the consultants preparing the EIS/EA to highlight any issues which may affect approval. This is a serious issue if the DA becomes unsafe re damages etc.**
- **Further to this, they do not require sub-consultants/experts to sign off on the EA.**
- **The almost total failure of bureaucrats in the State Planning, EPA and NOW/DLWC (inter alia) to coordinate in the proper assessment of any new DA for mining prior to the submission of the EIS in the PEA's.**
- **The almost total failure of bureaucrats in the State Planning, EPA and NOW/DLWC (inter alia) to coordinate in the proper assessment of any new DA for mining prior to the submission of the EIS during the assessment process.**
- **The almost total failure of bureaucrats in the State Planning, EPA and NOW/DLWC (inter alia) to coordinate in the proper assessment of any new DA for mining prior to the submission of the EIS in the PEA's**
- **The almost total failure of bureaucrats in the EPA and NOW/DLWC to coordinate with existing outstanding non-compliance when Major Projects takes over an existing consent such as in the case study.**
- **And the subsequent failure of the existing supervising body (HCC in the case study) to fully inform State Planning of existing abuses and non-compliance etc.**
- **Relevant to the Major Projects' assessment officers, there seem to me to be a severe lack of 'coal face' experience relevant to enforcement, litigation and to some extent assessment of the outstanding issues (from objectors etc).**
- **In the recommendations at the end of this submission, I have set out to the best of my knowledge and from 20 years' experience directly relevant to sand mines, how the Department could better deal with assessment and compliance in the future.**
- **The NOW, and to a lesser extent EPA, do not have the will, skill, ability or resources to properly administer their responsibilities and they do not coordinate with DOPE.**

I say:

SUMMARY OF RECOMMENDATIONS

The Department of Planning, the EPA and the NOW/DLWC need to revise their approach to planning relevant to mines and other major projects and there should be **check lists** and **'notices to admit'**. There should be check lists for every stage and for every department relevant to all DA's and approvals.

1. This submission is directly relevant to improving mining regulations in New South Wales and compliance with NOW, EPA and DOPE, and is also relevant to a submission to Chief Judge of the L & E Court, Brian Preston, and the investigation by RTA/RMS re state fraud (Section 94).

CRIMINAL OFFENCES

2. Giving false and misleading information to a consent authority (State Planning) is a serious (criminal) offence under 283 of the EPAA and REGS and specifically, under the Crimes Act 1900 307 A, B and C (and 178). Extract attached for your information.

3. In the strongest possible terms, my submission basically is that, the regulations should be strengthened and all consultants organising EA's or EIS's, should be made aware in the strongest possible terms that the complete EA and/or complete EIS, must contain 100% truthful material. **Consultants have a financial agenda re approval.**

'RECKLESS' SUBMISSIONS BY CONSULTANTS/PLANNERS.

4. I suggest in the strongest possible terms that numerous EIS's and EA's contain false and misleading information contrary to the certifications requirements of the Director General's Recommendations (DGR's). **Obviously, consultants are pro-development (motherhood statements, bias?).**

NSW DUAP GUIDELINES, OBLIGATORY READING, Mining Extract Ind. etc

5. Further to this, I suggest again in the strongest possible terms, that the recommendations specifically the EPA's (in attachment 1) and the recommendations of the DPI ((NSW Office of Water) also require compliance with the various NSW DUAP Guidelines (1996 etc).

MAJOR FAILURES

6. I again bring to your attention the almost total failure of the majority of EIS's and EA's that I have read over the last 10 or 20 years, failed to comply with the DUAP Guidelines and the DGR's and the recommendations of both the EPA and DLWC/DPI/NOW etc.

CLEAR AND COGENT EVIDENCE OF MALADMINISTRATION (in the past?)

7. I have substantial pertinent evidence of maladministration buy EPA and DLWC/NOW which have been detailed to Mike Young and Chris Ritchie from the Department of Planning in recent submissions as an objector (and subsequent complaints) to the **a sand mining operation** illegally operating for the last 30 years under the questionable **'supervision'** of a Hawkesbury City Council **(more information available on request).**

'INTERESTING' HCC OFFICERS AND CONSULTANTS

8. Further to this, submissions were lodged setting out that the consultants (relevant to false and misleading information) in the Hawkesbury Quarry, and the consultants for a **mushroom composting** operation polluting for 20 years, had operated with complicity by **'interesting' officers** in HCC (along with the Hawkesbury Quarry debacle).

LOCAL SAND MINING ISSUES directly RELEVANT TO COAL MINING

9. **Now I clearly understand these two rogue developments are not specifically relevant to coal mining etc and coal seam gas (CSG) but the issues are the same in that the EPA and the DLWC/NOW are almost totally ineffectual relevant to compliance with EPA licences and specifically the water licences under the Water Act of 1912 and the subsequent water licencing legislation purportedly granted by 'interesting' officers from the DLWC/NOW.**

   THE EPA FAILED to comply with prosecution guidelines and staff code of conduct relevant to the 1500 complaints on the mushroom composting factory and 19 failed PRP's. **(total cover-up)**

   THIS SITE HAS BEEN POLLUTING FOR OVER 20 YEARS WITH IMPUNITY.

ENDEMIC NEGLIGENCE OF EPA, DLWC AND NOW, (in the past?)

10. Both these departments have allegedly investigated numerous complaints over the last 20 years but **certain officers** in both the EPA and the DLWC have affectively orchestrated major cover-ups in

the granting of licences/compliance and in the investigations into the compliance with the conditions of the licence for both the developments mentioned above. (IAB)

DLWC OFFICERS ALLOWED THIS QUARRY TO OPERATE FROM 1995 TO 2005 WITH NO WATER LICENCE AND THEN FABRICATED A LICENCE USING FRAUDULENTLY MODIFIED LOCALITY PLAN AND FAILED TO ENFORCE ETC.

11. Further to this, for all intents and purposes, the EPA and the DLWC/NOW are almost **totally ineffectual** and should not be given any credibility as to their ability to grant EPA/water licences or to properly investigate any complaint against the misuse of those licences or against the officers who were allegedly investigating any (original) complaint relevant to non-compliance etc.

ONGOING COVER-UPS EPA AND DLWC/NOW

12. Further to this, the EPA's failures on mushroom composting operation in Hawkesbury area, and the issues relevant to the apology from the EPA relevant to its failures at Pazminco at Newcastle should be considered in any considerations by State Planning relevant to compliance under any consent granted by State Planning under Major Projects. (Hogans' apology at CLC mushroom operation at Windsor etc)

NOTE: There is a current new approach (some hope) again thanks Greg.

RELEVANT TO COAL MINING

13. **Relevant to coal mining** my experience is directly linked to sand mining at Maroota and at the **sanding mining Hawkesbury Quarry** but the issues **I suggest are identical or similar to the issues for coal mining** that is, **all the coal mines require water licences** for washing and/or dust suppression and I have given clear and cogent evidence to both the DLWC (recently and in the past) and evidence to the EPA (recently and in the past) and significantly the same information has been supplied to State Planning (currently under their consideration).

INAPPROPRIATE CULTURE of the 'rubber stamp brigade' in State Planning

There has been a (inappropriate) culture of approving almost all DA's under Major Projects by the Department of Planning up until the arrival of the Minister for Planning the Honourable Rob Stokes, and I thank him for this new approach from the Department of Planning and Environment (yes minister approach by Yolande 3A and SAM etc).

YES MINISTER **PERSONAL NOTE TO ROB STOKES.....a new broom?**

Under press releases and associated publication in the Daily Telegraph of the last few months, Minister Stokes, in my opinion, has brought sanity to the Department of Planning and specifically put various interests on notice that there is a new regime in State Planning directly relevant to increases in fines, compliance and coming to terms with previous development approvals etc.

INEXPERIENCED PLANNING OFFICERS, (with no mining or litigation experience)

The problem as I see it is that some new (DOPE) officers do not have the '**coal face experience**' of enforcement relevant to compliance and specifically, but not limited to, they do not have the practical experience relevant to litigation in the Land and Environment Court directly relevant to any non-compliance/enforcement or failure of the applicant to comply with the various consent conditions etc etc.

CASE STUDIES - Sand Mining in Hawkesbury & Compost Factory in Hawkesbury (under HCC)

14. As set out briefly in the previous paragraphs, there is a sand mine in the Hawkesbury previously 'supervised' from 1986 to 2015 by a series of 'interesting' HCC planning officers.

15. This Quarry had 5 retrospective consents **purportedly** granted by HCC and later in 2009 by the L & E Court after the submission of false and misleading information in all DA's and all the submissions relevant to compliance specifically, but not limited to, the consent of the owner (the Crown) and the fabrications relevant to no water licences etc.

16. In 1986 consent was purportedly granted to a '**hole in a swamp**' which was of course in ground water and illegal under Part 5 of the Water Act of 1912 and it was retrospective.

17. In 1995 the proponent lodged a DA for retrospective approval without the consent of the Crown for the second parcel of land relevant to the deposition of tailings and HCC approved the consent contrary to the EPAA and regulations (no annual reports re water licencing etc).

    A **mediation conference** was held with the Quarry and objectors etc, on **4/12/1996** and at that meeting, resolution was reached on suggested conditions of consent attached to the report. At that meeting, Diamond explained the need for water licences etc and explained that under the Water Act Part 5, the excavations/tailings dams/**sediment devices**, had to be moved various distances from the fence between Lot 1 and Lot 2 to comply with the Act etc.

    The Consent Condition 4, was relevant to the **erosion and control devices** the 'details' for which were to be submitted to the DLWC (NOW).

    These **details** were obviously the **details** required for a **written** submission to the DLWC for a **water licence** under Part 5 of the Water Act of 1912.

    There is standard application form and Condition 4 of the DA134/95 (the approved consent) states:

    > "**Erosion and sedimentation control devices** shall be installed and maintained during construction and on-going operations. **Details** shall be submitted and approved by Department of Land and Water Conservation prior to any works commencing."

THE KEY WORDS that misled Justice Pain (L&E)

The key words are '**devices**' and '**details**' and '**prior to commencing**'.

The dictionary definition of the **device** is 'a thing designed for a purpose' (the tailings dams).

Obviously the Quarry needs a water licence to operate and wash sand (as do coal mines).

NOTE: The **water licence** required by the Quarry **was granted some ten years later in 2005.**

It follows that the Quarry operated unlawfully between 1996 and 2005 **without** a water licence.

In 2008, after legal advice provided by the EDO by Diamond to HCC, the Counsellors voted unanimously that the Quarry consent had lapsed through the failure to comply with Consent Condition 4 and the Quarry subsequently appealed their lapsing of consent to the Land & Environment Court in front of Justice Pain. HCC planner wrote to the Quarry on 19/12/2008 and stated inter alia, the following:

"1. Due to non-compliance with condition 4 of the original consent, the consent has lapsed and Council is unable to consider the application."

Diamond and Sneddon, the two objectors, were asked by HCC's lawyers to give evidence in HCC's lawyers' letter dated 24/2/2009. The objectors were materially obstructed by a senior HCC officer and HCC's lawyer from giving evidence in the appeal by the operator of 2009.

Justice Pain was materially misled by HCC officers, their solicitors and the solicitor and barrister for the Quarry when they failed to point out, specifically but not limited to, the Quarry had no water licence between 1996 and 2005 **and these were the details which were required under Consent Condition 4 reinforced by Consent Condition 27 and Consent Condition 33, which required an annual report stating compliance with the water licence.**

The Council materially failed to supervise and to properly monitor the consent DA134/95 and materially misled Justice Pain and later Commissioner Brown.

18. The **retrospective** consent purportedly granted on 10/12/1996 allowed for the Quarry to continue operations subject to Consent Condition 4 and 27 and 33 which came about after mediation where the issues of retrospective licencing under the Water Act Part 5 were required relevant to the need for details directly relevant to the need for water licence under Part 5 of the Act for the operation of ground water relevant specifically to the need for water licences for excavations (the **tailing dams/excavation/'devices'**) as required under Consent Condition 4 and 27 and 33.

19. **These details for the devices under Consent Condition 4 obviously required the submissions to the DLWC for 'details' (for the 'devices'/excavations/tailings dams) and these were not lodged by the applicant prior to commencement. DLWC was aware in 1995 the need for water licences under Part 5 of the Water Act of 1912 (but ignored that requirement).**

20. These details for the water licence under Part 5 of the Water Act 1912 for the operations in ground water were not submitted to HCC until 2005 when the DLWC granted a water licence and those details are currently and have been in the HCC files since 2005.

21. **All this information (inter alia) was deliberately withheld** from Justice Pain and later Commissioner Brown in the Land and Environment court case of 2009 when an HCC officer and the consultant for the Quarry misled the Land and Environment Court despite the strongest opposition from the objectors who had been asked to give evidence to the L & E but were materially obstructed by the Council's solicitor, the HCC Planner with complicity from the consultant who claimed to be an expert witness (with the main responsibility being to the Honourable Court) **not the applicant.**

    a. Further to this, obviously Diamond put numerous complaints to government ministers, specifically but not limited to, the Minster for Natural Resources, Primary Industries and Mineral Resources 'The Honourable' Ian Macdonald MLC and HCC (never investigated).

    b. I complained bitterly to Minister Craig Knowles that the water licences granted by the DLWC/DIPNR had been fraudulently obtained through the submission of a **fraudulently modified locality plan** of where the excavations/tailings dams were to be placed relevant to the granting of the water licence.

    c. The DLWC officers involved in the granting of this licence had visited the site in 1995 and they knew the site was in ground water yet they failed to licence it in 1995 and took no further action until 2004 when I again lodged another complaint with Craig Knowles, the Minister for Natural Resources.

    d. **Any interested party should source Ian Macdonald's letter (not dated) Ref: MP1068.**

    e. **Unfortunately for the applicant** .....(now in mediation).....**'watch this space'.**

    f. **Unfortunately for the applicant for reasons I do not understand, the consultant moved the supervision/stewardship to the Department of Planning in an extension of the development under major projects which has led to the current investigations by State Planning etc etc.**

    g. **CURRENT STATE OF PLAY**

    For the benefit of all parties, recently we have had meetings with Department of Planning and Environment, the NSW Office of Water, and the new owners of the particular sand mine which we have briefed you about in this case study.

    We are currently awaiting responses from all parties with a view to a mediated settlement to restore water flows to the creek which stopped flowing in 1996 (apart from major flooding/rainfall).

    Obviously we are seeking compliance with the new consent recently granted by State Planning along with the previous consents purportedly granted by HCC.

    h. **STATE FRAUD**

    There is a further serious issue relevant to Section 94 payments based on the tonnages removed from the Quarry under the previous consent DA134/95 relevant to STATE FRAUD.

    Due to lack administration by HCC, mainly due to the fact that the applicant failed to lodge annual reports for approximately 20 years, the Council failed to collect some $48,000.00 owed to the RTA/RMS. **I say this was state fraud.**

    This money was to be spent by the RTA for road maintenance, not to be paid for Council debts (from the deliberate loss of the court case of 2009) which was sabotaged by HCC.

The Council eventually (courtesy of Diamond) served an order to pay the $48,000.00 and Justice Lloyd, from the Land and Environment Court, in a most excellent judgment handed down his decision in favour of Hawkesbury Council that the $48,000.00 was owing (to the RTA) and was to be collected by Hawkesbury City Council and sent to the RTA under Section 94 Policy.

Unfortunately dark forces were at work and the applicant appealed that decision (the rollover) HCC and their **little mates.**

It followed that certain interesting officers in HCC organised a trade-off (in orders by consent) in front of another judge in the L & E and wrote off the $48,000.00 owing to the RTA against a debt where again interesting officers from HCC orchestrated the loss in the Land and Environment Court in front of Justice Pain (re lapsed consent). See EDO legal advice (provided by Diamond).

For all intents and purposes, HCC officers conspired or orchestrated **state fraud** to the tune of some $48,000.00 plus, contrary to the **public interest** (signed off by the GM in letters dated).

This is currently under investigation with assistance from Diamond by the Fraud Investigation Section of the RTA/RMS.

More information is available in the form of hard copy on request.

i. **FURTHER TO THIS**

Further to this, the **most interest thing I have found** from the **land and environment case** in front of Justice Pain was that a **senior** officer from the Department of DPI, NSW Office of Water, signed and affidavit, and gave verbal evidence **under oath,** relevant to consent condition 4 (as previously set out) stating for all intents and purposes, that the DLWC back in 1996 had no authority to grant approval to anything relevant to consent condition 4. **This was obviously incorrect** (water licence).

This affidavit was prepared by HCC's solicitors under instructions from a planner.....**NOW**

Everybody knows to get a drivers' licence you fill in forms (**'details'**) and then you get your licence to drive the car approval equals satisfaction etc, details is the same as application.

Based on logic it follows that you need a water licence to operate a sand mine to wash the sand and **divert the creek** and that water licence was granted in 2005 by NSW Office of Water **(surprise!! surprise!!)**

How can it be that the barristers involved, the solicitors involved, the allegedly honest planners involved and the applicants' consultant, **did not know** or did not consider the fact that there were no water licences till 2005. **Everybody knew that the water licences were granted in 2005** and that the Quarry had **no water licence** from 1986 through to 1996 through to 2005 (cover-up?).

How do these things happen ????? $$$$$?????

Who misled Justice Pain ????????? With respect, please think about it.

I say: the major evidence lays in the substance of this complaint supported by any investigation by the EPA and the NSW Office of Water/DLWC and DOPE and RTA re state fraud.

JUST WHEN THEY THOUGHT IT WAS SAFE

See the two case studies.

The main evidence will lay in any investigation followed through eventually by the EPA and/or the DLWC/NOW and/or State Planning in consideration of material given to Mick Young and Chris Ritchie along with the material supplied with this stat dec to EPA, NOW and RMS.

The EPA complaints line codes are: CO8029, CO8576, CO8293, CO9310, CO9455, CO9714, CO9722, CO9736, CO9788, IO9469, CO10136, 115911, CO9618 – attached to this stat dec.

With no prosecutions and no investigations.

THE SEALED SECTION

22a Hawkesbury Sand Mine (sub judice subject to the current investigation)

22b Hawkesbury Mushroom Composting Factory (sub judice subject to the current investigation)

22c Shenhua Watermark (sub judice pending)

22d Consultant Hawkesbury Sand Mine 283 EPAA REGS and 307 Crimes Act 1900 relevant to false and misleading (sub judice pending)

22e Contempt proceedings re Order 9905, 283 and 307 etc (sub judice)

22f Consultant 283 and 307 relevant to false and misleading (sub judice)

22g Damages case against HCC pending re Tuscany (sub judice)

22h Hawkesbury Council state fraud (Section 94) etc, investigation pending.

22i Criminal charges against various parties for contempt of court (Pain J.)

22j Criminal charges for contempt of court (Lloyd J.) (pending)

Criminal charges are expected to be laid against certain HCC officers in the immediate future relevant to false and misleading information and state fraud subject to current investigations provided State Planning investigate properly as promised.

Further to this, criminal charges relevant to false and misleading information and contempt of court in front of Pain J. and Lloyd J. are expected to be laid relevant to contempt and state fraud (inter alia) provided State Planning investigate properly as promised.

- Barrister for the sand mine
- Solicitor for the sand mine
- Solicitors son for the sand mine
- Another lawyer and several witnesses relevant to contempt and possible conspiracy
- A senior HCC officer covering up state fraud and possible conspiracy
- Another HCC officer relevant to contempt and perjury
- A senior officer in the NSW Office of Water

More information available subject to subpoena and/or written request.

Recommended for use by Compliance (DOPE)
NOTICE TO ADMIT - Relevant to Compliance
Questions to be answered to State Planning under your current consent. (RPA
Note to Department of Planning, quote paragraph and crimes act and 283, etc.

QUESTIONS	YES/NO	SIGNATURE
1. Is it a fact that the consents granted to the Tinda Creek Quarry by HCC in 1986, 1996, 2004 and 2009 were all retrospective consents without the consent of the crown for the second parcel of land below 15.24 metres relevant to the deposition of tailings as required by the EPAA and the REGS (the crown land).		
2. Is it a fact that the consent DA134/95 was granted with 33 conditions and a part A for a trial period of 2 years subject to extension after the submission of a letter that the consent had been properly complied with (and they did not submit that letter).		
3. Is it a fact that there were two mediation conferences on 4/12/1996 and later confirmed in the L & E where the appeal was dropped after promises which had been confirmed at the first mediation conference relevant to the submission of details as required by the Water Act part 5, the operation of the quarry in ground water. Under consent condition 4 there was requirement for submission of details relevant to water licences etc which would be then confirmed under consent condition 27 and later in the annual reports relevant to consent condition 33 (and 8).		
4. Is it a fact that the quarry unlawfully operated without a water licence from 1996 till 8/11/05 and 27/7/05 as set out in the letter from Mr Bruce dated 18/4/2006 (inter alia).		
5. Is it a fact that Mr Bruce from Birdon Contracting failed to submit any complete EMP as required by consent condition 27 within the one month required by consent condition 27 (water licence).		
6. Is it a fact that no EMP ever submitted by Birdon Contracting or Mr Peter Jamieson from Umwelt ever submitted details of compliance with their water licence in any document relevant to consent condition 33 of DA134/95.		
7. Is it a fact that Birdon Contracting never submitted a complete submission relevant to the compliance with part B of the consent directly relevant to consent conditions 1, 2, 3, 4, 8, 17, 27 and 33.		
8. Is it a fact that the lawful consent for DA134/95 operated from 27/1/1997 through to 27/1/1999 at which point it lapsed through non-compliance with the consent directly relevant to the rehabilitation inter alia and compliance as set out at the mediation conference of 4/12/1996 which was adopted by HCC on 10/12/1996 by the full council after consideration of the results of the medication conference of 4/12/1996.		
9. It is a fact that the consent of DA134/95 was appealed by TCSEC through Diamond and that appeal led to a mediation conference in the Land and Environment Court where it was further confirmed that Birdon Contracting would seek water licences under DA134/95 and the Water Act of 1912 Part 5 for its operations in groundwater and		

those water licences were only granted in 2005 as set out in the letter of 18/4/2006 from Birdon Contracting.		
10. Is it a fact that the consent of DA134/95 lapsed through non-compliance on 27/1/1999 and that HCC purportedly granted a consent in 2004 full well knowing that there was no crown consent for the original application for the section 96 application and that the quarry had no water licence under part 5 of the Water Act and there would be no compliance relevant to the submission of an annual report and that the section 94 payments required relevant to tonnages extracted etc had never been increased by the CPI as required by consent condition 8 and that there was general non-compliance as set out by Diamond and others. Further to this, the consent had lapsed through the failure of Birdon to comply with consent condition 4, 27 and 33 etc. See Enders (HCC) letter 25/6/1999.		
11. Is it a fact that in the 2009 case in front of Justice Pain (and later Commissioner Brown) the head planner in his affidavit and his statement of facts, failed to advise the L & E specifically Justice Pain, that the details as required by consent condition 4, 27 and 33 were details required relevant to the submission of an application by Birdon which was required for a water licence with the details required by consent condition 4 as set out in the documents that Diamond attempted to provide to the court in the document given to Owens on 17/3/2008 relevant to distances for the tailings dams to be moved and the necessary application under the Water Act part 5.		
12. Is it a fact that in that stat dec and statement of facts to the L & E, Owens failed to advise Justice Pain that Birdon Contracting did not have the consent of the crown for the deposition of tailings in the crown land as set out in document provide to Owens on 18/8/2009 in the letter from Department of Lands to Diamond on 17/8/2009. This is further confirmed in the letter from Steve Cook to Diamond Ref: 09/03343 undated to Diamond in response to his letter 11/10/2012.		
13. Is it a fact that Birdon Contracting do not have a mining lease and never have had a mining lease for the area below 15.24 (the crown land) for the deposition of tailings as required by the consent of DA134/95 and that Jamieson from Umwelt, the consultant for Birdon, misled the L & E in the 2009 case where he falsely stated that Birdon Contracting did have a lease and had applied for consent from the crown for the submission of the section 96 of July 2006 and Mr Jamieson materially misled the L & E in that 2009 case.		
14. Is it a fact that considering the quarry had no water licence from 1996 through to 2005 Mr Diamond lodged a complaint with the DLWC/DIPNR (now the Office of Water) and Connors (DIPNR) and Hariman and Cudmore (EPA) along with Tom Bruce inspected the quarry relevant to unauthorised water usage on 12/1/2004 as set out in Robertson's complaint memo dated 13/1/2004.		
15. Is it a fact that in that complaint memo he refers to a site plan (he meant the locality plan) which Tom Bruce lodged with his water licencing application the locality plan 7.2 was from the 1995 EIS of November and Mr Bruce fraudulently modified the locality plan in the bottom right hand corner by adding 4 stripes to that locality plan (an area of approximately 5-10 acres) and changed the header from		

Poyneed and Premier Sands to Birdon Contracting when he lodged the details for the water licence under part 5 of the Water Act which required excavations/tailings dams/sediment devices.		
16. Is it a fact that a senior DLWC officer from the NSW Office of Water gave evidence in the form of an affidavit prepared by HCC's solicitors to the effect that the department, the DLWC in 1996 had no authority to grant approval under the legislation it administered for this type of activity. This is set out in part 55 of Justice Pain's decision of 2009.		
17. Is it a fact that that same officer gave verbal evidence on oath, the department had no authority relevant to consent condition 4, 27 and 33 and the DLWC in 1996 did have authority re the granting of water licences (which was later granted in 2005).		
18. Is it a fact that this senior DLWC/NOW officer obviously gave false and misleading information to Justice Pain relevant to consent condition 4, relevant to the word devices and details which of course were the details required by a water licence application under part 5 of the Water Act for the operation of ground water and the devices were sedimentation dams, tailings dams and erosion and control devices which under the water act required the submission of details directly relevant to consent condition 4, 27 and 33.		
19. Is it a fact that to get a drivers licence or register a car you need to submit details to the RTA/RMS and it follows that to get a water licence (from the DLWC in 1996(for the lawful operation of a sand mine (or a coal mine) you need to submit details for that water licence and that consent condition 4, 27 and 33 were all directly relevant to the submission of those details for the licence required etc etc.		
20. Is it a fact that the barrister for the quarry, the lawyer for the quarry, the lawyer for HCC and the head planner from HCC all must have known that there was a need for a water licence for the lawful operation of the quarry at Tinda Creek and that necessity had been brought to the attention of the L & E court and has been signed off by Russell Byrnes and HCC's solicitor Adrian Hawkins from Pikes, in the orders in front of Justice Bignold, in the orders from the L& E in 9/9/2005 which required the quarry Birdon Contracting to obtain a water licence inter alia etc.		
21. Is it a fact that all the above information was directly withheld from Justice Pain in the false and misleading material supplied by all parties in the appeal by Birdon against the lapsing of consent in 2009 in front of Justice Pain and later Commissioner Brown. Further to that, all this material was directly withheld from Department of Planning in the EA of 2014 by Jamieson (and Owens) in the EA/EIS given to state planning in the PEA's and DA of Rhyolite and that represents false and misleading information because DA134/95 is cross referenced in the EA of Jamieson/Umwelt etc. Contrary to certification under the DGR's.		
22. It follows that the consent of 2009 and the consent of 2014 are unsafe and all the **answers to these 22 questions are YES.**		

NOTE

Relevant to the recommended Notice to Admit with regard to compliance for the Hawkesbury Quarry, I say, the following under oath.

1. It is a fact that the consents granted to the Tinda Creek Quarry by HCC in 1986, 1996, 2004 and 2009 were all retrospective consents without the consent of the crown for the second parcel of land below 15.24 metres relevant to the deposition of tailings as required by the EPAA and the REGS (the crown land).
2. It is a fact that the consent DA134/95 was granted with 33 conditions and a part A for a trial period of 2 years subject to extension after the submission of a letter that the consent had been properly complied with (and they did not submit that letter).
3. It is a fact that there were two mediation conferences on 4/12/1996 and later confirmed in the L & E where the appeal was dropped after promises which had been confirmed at the first mediation conference relevant to the submission of details as required by the Water Act part 5, the operation of the quarry in ground water. Under consent condition 4 there was requirement for submission of details relevant to water licences etc which would be then confirmed under consent condition 27 and later in the annual reports relevant to consent condition 33 (and 8).
4. It is a fact that the quarry unlawfully operated without a water licence from 1996 till 8/11/05 and 27/7/05 as set out in the letter from Mr Bruce dated 18/4/2006 (inter alia).
5. It is a fact that Mr Bruce from Birdon Contracting failed to submit any complete EMP as required by consent condition 27 within the one month required by consent condition 27 (water licence).
6. It is a fact that no EMP ever submitted by Birdon Contracting or Mr Peter Jamieson from Umwelt ever submitted details of compliance with their water licence in any document relevant to consent condition 33 of DA134/95.
7. It is a fact that Birdon Contracting never submitted a complete submission relevant to the compliance with part B of the consent directly relevant to consent conditions 1, 2, 3, 4, 8, 17, 27 and 33.
8. It is a fact that the lawful consent for DA134/95 operated from 27/1/1997 through to 27/1/1999 at which point it lapsed through non-compliance with the consent directly relevant to the rehabilitation inter alia and compliance as set out at the mediation conference of 4/12/1996 which was adopted by HCC on 10/12/1996 by the full council after consideration of the results of the medication conference of 4/12/1996.
9. It is a fact that the consent of DA134/95 was appealed by TCSEC through Diamond and that appeal led to a mediation conference in the Land and Environment Court where it was further confirmed that Birdon Contracting would seek water licences under DA134/95 and the Water Act of 1912 Part 5 for its operations in groundwater and those water licences were only granted in 2005 as set out in the letter of 18/4/2006 from Birdon Contracting.
10. It is a fact that the consent of DA134/95 lapsed through non-compliance on 27/1/1999 and that HCC purportedly granted a consent in 2004 full well knowing that there was no crown consent for the original application for the section 96 application and that the quarry had no water licence under part 5 of the Water Act and there would be no compliance relevant to the submission of an annual report and that the section 94 payments required relevant to tonnages extracted etc had never been increased by the CPI as required by consent condition 8 and that there was general non-compliance as set out by Diamond and others. Further to this, the consent had lapsed through the failure of Birdon to comply with consent condition 4, 27 and 33 etc. See Enders (HCC) letter 25/6/1999.
11. It is a fact that in the 2009 case in front of Justice Pain (and later Commissioner Brown) the head planner in his affidavit and his statement of facts, failed to advise the L & E specifically

Justice Pain, that the details as required by consent condition 4, 27 and 33 were details required relevant to the submission of an application by Birdon which was required for a water licence with the details required by consent condition 4 as set out in the documents that Diamond attempted to provide to the court in the document given to Owens on 17/3/2008 relevant to distances for the tailings dams to be moved and the necessary application under the Water Act part 5.

12. It is a fact that in that stat dec and statement of facts to the L & E, Owens failed to advise Justice Pain that Birdon Contracting did not have the consent of the crown for the deposition of tailings in the crown land as set out in document provide to Owens on 18/8/2009 in the letter from Department of Lands to Diamond on 17/8/2009. This is further confirmed in the letter from Steve Cook to Diamond Ref: 09/03343 undated to Diamond in response to his letter 11/10/2012.

13. It is a fact that Birdon Contracting do not have a mining lease and never have had a mining lease for the area below 15.24 (the crown land) for the deposition of tailings as required by the consent of DA134/95 and that Jamieson from Umwelt, the consultant for Birdon, misled the L & E in the 2009 case where he falsely stated that Birdon Contracting did have a lease and had applied for consent from the crown for the submission of the section 96 of July 2006 and Mr Jamieson materially misled the L & E in that 2009 case.

14. It is a fact that considering the quarry had no water licence from 1996 through to 2005 Mr Diamond lodged a complaint with the DLWC/DIPNR (now the Office of Water) and Connors (DIPNR) and Hariman and Cudmore (EPA) along with Tom Bruce inspected the quarry relevant to unauthorised water usage on 12/1/2004 as set out in Robertson's complaint memo dated 13/1/2004.

15. It is a fact that in that complaint memo he refers to a site plan (he meant the locality plan) which Tom Bruce lodged with his water licencing application the locality plan 7.2 was from the 1995 EIS of November and Mr Bruce fraudulently modified the locality plan in the bottom right hand corner by adding 4 stripes to that locality plan (an area of approximately 5-10 acres) and changed the header from Poyneed and Premier Sands to Birdon Contracting when he lodged the details for the water licence under part 5 of the Water Act which required excavations/tailings dams/sediment devices.

16. It is a fact that a senior DLWC officer from the NSW Office of Water gave evidence in the form of an affidavit prepared by HCC's solicitors to the effect that the department, the DLWC in 1996 had no authority to grant approval under the legislation it administered for this type of activity. This is set out in part 55 of Justice Pain's decision of 2009.

17. It is a fact that that same officer gave verbal evidence on oath, the department had no authority relevant to consent condition 4, 27 and 33 and the DLWC in 1996 did have authority re the granting of water licences (which was later granted in 2005).

18. It is a fact that this senior DLWC/NOW officer obviously gave false and misleading information to Justice Pain relevant to consent condition 4, relevant to the word devices and details which of course were the details required by a water licence application under part 5 of the Water Act for the operation of ground water and the devices were sedimentation dams, tailings dams and erosion and control devices which under the water act required the submission of details directly relevant to consent condition 4, 27 and 33.

19. It is a fact that to get a drivers licence or register a car you need to submit details to the RTA/RMS and it follows that to get a water licence (from the DLWC in 1996(for the lawful operation of a sand mine (or a coal mine) you need to submit details for that water licence and that consent condition 4, 27 and 33 were all directly relevant to the submission of those details for the licence required etc etc.

20. It is a fact that the barrister for the quarry, the lawyer for the quarry, the lawyer for HCC and the head planner from HCC all must have known that there was a need for a water licence

for the lawful operation of the quarry at Tinda Creek and that necessity had been brought to the attention of the L & E court and has been signed off by Russell Byrnes and HCC's solicitor Adrian Hawkins from Pikes, in the orders in front of Justice Bignold, in the orders from the L& E in 9/9/2005 which required the quarry Birdon Contracting to obtain a water licence inter alia etc.

21. It is a fact that all the above information was directly withheld from Justice Pain in the false and misleading material supplied by all parties in the appeal by Birdon against the lapsing of consent in 2009 in front of Justice Pain and later Commissioner Brown.
Further to that, all this material was directly withheld from Department of Planning in the EA of 2014 by Jamieson (and Owens) in the EA/EIS given to state planning in the PEA's and DA of Rhyolite and that represents false and misleading information because DA134/95 is cross referenced in the EA of Jamieson/Umwelt etc. Contrary to certification under the DGR's.

22. It follows that the consent of 2009 and the consent of 2014 are unsafe and all the **answers to these 22 questions are YES.**

The Onus of Proof

The onus of proof is reversed through the use of the Crimes Act 1900 307 A, B and C, provided you notify the accused, in this case, it is the consultants or planner who puts false and misleading information before the Department of Planning or any other authority.

Note to all parties

It is a criminal offence to put false and misleading information as set out in 307 A, B and C in the extract attached to this stat dec.

Again the onus of proof is reversed if you use 307 A, B and C of the Crimes Act.

And this will of course force consultants to speak the truth for a change instead of using motherhood statements and pro-development statements when they know full well that they are leaving our pertinent information by omission which makes their EIS's 'reckless' as set out in Crimes Act.

It follows, they become the accused.

COAL MINING ISSUES that need changing and adjustment

22. k Shenhua Watermark

I say, all the issues around Shenhua lay in the lack of coordination between State Planning, the NSW Office of Water and the EPA.

For all intents and purposes, the three departments that will be policing, supervising and dealing with compliance for this 1.7 billion dollar quarry have not coordinated their approvals or their considerations directly relevant to the following issues.

- The Departmental Officer from the Department of Planning brushes aside the issues of water licencing by NOW and he leaves the supervision of water licencing to the Tamworth office under.
- It is reasonable to consider that there were riparian water licences for the agricultural pursuits before Shenhua organised the water licences (I believe there are 3) for the operation of the coal mine.
- The question comes to mind is did the water licencing approval officer properly consider the amount of water needed for dust suppression on the coal mine which covers approximately 7000-8000 hectares.
- **I have deep concerns** about this particular issue directly relevant to the quantity of water needed for dust suppression with or without the use of chlorides added to the water used in the tankers to handle the dust suppression relevant to the moisture contact on the surface.
- Considering the size of the proposed mine, the quantity of water must be enormous, specifically if there is any '**chitter fire**'.
- Directly relevant to **chitter fire** for those of you who don't know, **chitter** is the inferior coal fragments between the coal seam and whatever topsoil is being removed to access the open cut coal supply.
- If the **chitter catches fire**, as it did in Yallourn in Victoria, it took months and huge amounts of water (thousands of litres) to put out the fire with a consequential bill from the fire brigade of **$24 million** and the coal mine doesn't want to pay it (subject of litigation).
- It follows that if something similar happened at the Shenhua mine, the huge amount of water needed to kill the fire, if the standard practice of bulldozing etc fails, it follows where will they get the water from, and the answer is…..from the aquifer.
- Under the current water licences, they have a limited amount of excessible legal water.
- I do not believe that the water licences granted to any of these quarries are sufficient to handle the dust issues and the emergency issues relevant to fire or emergency etc.
- **Everybody who is considering appealing should consider the EPA and NOW incompetence.**

FURTHER TO THIS ISSUE

Further to this, it follows, that when you mix small amounts of water in the initial attempt to quell the fire, the water super heats and breaks up into hydrogen and oxygen and the oxygen adds fuel to the fire which requires more water (huge amounts, many megalitres).

And it follows, that they don't have the capacity under the current water licences which were granted by the Tamworth office under David and Ben (unfortunately).

Further to this, when you add water to the chemical mix in coal, you end up with an acid which obviously would leach into the ground water contaminating the ground water used by the local farmers.

These are the forensic issues which the Department of Planning, the NSW Office of Water and the EPA have failed to consider and the licencing officers and/or approval officers have failed to properly consider in the approval granted by Department of Planning and the Feds.

This is because they have all been misled by the consultant for Shenhua, no one's properly looked at the lack of coordination by all the above named departments.

FAILED RISK ASSESSMENT

There is a 30% risk of the aquifer, no departmental officer could possibly consider a 30% risk as being acceptable in the public interest to a quarry which intends to expand to 7000 or 8000 hectares as set out in the EIS.

THE NSW GOVERNMENT is 'addicted'/dependent to royalties

Relevant to coal mining and CSG (the NSW economy is co-dependent)

This could not possibly be in the public interest as the financial risk to Shenhua and the government would obviously be over the top of any financial gain from royalties etc.

The NSW Office of Water (formerly the DLWC) is grossly understaffed and the Department of Planning generally fails to coordinate in any professional manner with the NSW Office of Water and the EPA as it stands at the moment (subject to review).

The devil is in the detail (relevant to non-compliance)

For all intents and purposes the EPA is understaffed and doesn't know what the NSW Office of Water is thinking and no one (properly) looks at the assessment of the approval officer relevant to the application for water or the water licence by Shenhua, and (Question - did the DOPE officer check the water licencing application).

Further to this, the NSW Office of Water and the associated Tamworth office doesn't look (and didn't look) at what the EPA is licencing, and (Question - did the planning officer check with what the EPA was licencing and what the NOW was licencing – the answer is NO).

The elephant in the room lays in the failure of the risk assessment

The risk assessments from consultants are always flawed through the failure of the three main departments (DOPE, EPA, NOW) to coordinate their assessments, and

The elephant in the room is the consideration in the approval by the planning officer who approved Shenhua for the Department of Planning on balance.

He will have granted a recommendation similar to the one in the Quarry at Hawkesbury as set out in the case study from the standard Department of Planning file relevant to any water lost.

The standard **paragraph** (see extract) from the Department of Planning's computer states the following relevant to surface and ground water contingency strategy.

The flock of elephants in the room

With respect, the issues relevant to coal mine and others lay in the false and misleading information and motherhood statements and **weasel words** in the EIS's and EA's put forward by the consultants.

The real issues apart from these lay in the compliance factors supervised by the Department of Planning with references to water licences and EPA licences.

The obvious problem is EPA does not enforce consent conditions of their licence.

The EPA has a passive approach to compliance and rarely prosecutes, if ever.

Corruption is rife in the NSW Office of Water.

READ THIS

"(f) include a Surface and Groundwater Contingency Strategy, that includes:

- a protocol for the investigation, notification and mitigation of identified exceedances of the surface water and groundwater impact assessment criteria;
- **measures to mitigate and/or compensate potentially affected landowners of privately-owned land, including provision of alternative long-term supply of water to the affected landowner that is equivalent to the loss attributed to the development; and**
- **the procedures that would be followed if any unforeseen impacts are detected during the development."**

As a direct result of the Quarry that the downstream neighbours (and it follows that the groundwater downstream neighbours, the farmers) are required to be reimbursed by the Quarry for their loss of water.

In their risk assessment, no consultant highlights to the Department the possible **catastrophic financial losses** which might follow any losses relevant to any negative effects in groundwater flows.

Financial losses for the mine

The financial losses to Shenhua and other quarries that destroy or might destroy the water table, the consequential losses will be huge and render the whole proposal uneconomical due to the costs of replacing the water to the farmers for ground water losses.

Whitehaven (Eddie, Macdonald, Hartcher, ICAC etc)

This is also relevant to Whitehaven

This is also relevant to Whitehaven which has recently, through the failure of all parties to properly consider the original applications relevant to penetration of the aquifer.

The mine has flooded and the downstream (groundwater) to the local farmers has been intercepted and the ground water flows have entered the base of the mine and now Whitehaven is seeking or has sought a water licence from NSW Office of Water to pump groundwater, which may or may not be contaminated with chlorides and possibly acid, from the floor of the mine onto local farmland.

Allegedly the water table has dropped by 15 metres as opposed to the 10cm some idiot proposed in the EIS.

Everybody knows groundwater is 'just a professional guess' with some B. S. modelling (Taurus extractus).

This is the problem with motherhood statements from flaky consultants who push the approval limits in EIS while stating under the certification that there is nothing false and misleading in their professional opinions as required by the Director Generals Requirements (DGR's).

The consequential losses

The consequential losses under the current consent or in the alternative under the **tort of negligence** will render the whole Whitehaven proposal as uneconomic and this is relevant to numerous other mines throughout NSW.

This is simply relevant to the cost of transporting water or replacing the water for all the affected farmers.

Relevant to Centennial Coal

Recently on 24/7/2015, I attended an EPA information night up at Kurrajong, attended by about 60-80 aggravated residents relevant to the collapse of the tailings dams at Centennial Coal in the Hawkesbury area.

Three senior EPA officers gave a brilliant submission to the aggravated residents explaining how the EPA was doing a brilliant job, but they only consider EPA issues.

As you can imagine, there was some robust conversations, but the EPA officers were able to establish that they are doing a good residents. Unfortunately, the EPA didn't consider water.

Unfortunately, you can't trust the EPA or NOW (licence)

A series of numbers were given by the Colong Society and they said that the mine was extracting 25 megs, 50 megs and/or up to 75 megs per day, that's over 9,000 megs per annum (**WTF**).

Now I haven't seen these figures, but this quantity of water could not have been licensed legally by Sydney South Coast and any reasonable person would understand that if these figures are true, then the mine must be devastating the groundwater table.

The silly little sand mine that I have been fighting with for 30 years is licenced for 40 megs, they're using 155 as set out in the DLWC correspondence from Connors (Sydney South Coast).

Their foolish consultant states they're using .3 megs per annum in his recent EIS, that he misled State Planning by omission by failing to advise where the other 39.7, 154.7 etc megs came from. They're stealing that water from the ground water for the last 20 years and they've killed Tinda Creek back in 1996. **(With associated cover-up by HCC and their lawyers.)**

Relevant to Whitehaven an extract of the copy from their consent dated 30/6/2005 is attached and it is particularly interesting to read the section under Land Acquisition Criteria on page 6. This section states:

> "2. If the dust emissions generated by the development exceed the criteria in Tables 4, 5 and 6 at any residence on, or on more than 25 percent of, any privately owned land, the Applicant shall, upon receiving a written request for acquisition from the landowner, acquire the land in accordance with the procedures in conditions 6-8 of schedule 4."

FAR BE IT FROM ME to cast aspersions

Far be it from me to suggest that the Whitehaven quarry would want to push their neighbours off their property by not complying with the EPA licence, which they must have.

But if, a rogue operator decided that they wanted to push the next door neighbours off their property (which is what happened to Diamond in Hawkesbury) then that rogue operator would simply not comply with the conditions of its EPA licence and it follows that through the deposition of coal dust onto the neighbouring property they could force the neighbouring land owner off his own property (by not complying) and State Planning consider this issue, see page 6.

SIMPLY BY NOT COMPLYING WITH ITS EPA LICENCE, AND FROM WHAT I CAN SEE, THE EPA TAKES A PASSIVE APPROACH TO ALL THESE ISSUES AS SET OUT PREVIOUSLY RELEVANT TO THE MUSHROOM SUBSTRATE FACTORY AT MULGRAVE, AND THAT'S THE PROBLEM WITH THE EPA !!

It follows

You can't trust the EPA to enforce their own licences as all they seem to do in all the cases I've seen is give them warnings (or tiny little $1500.00 fines for 20 years of pollution at Mulgrave).

For all intents and purposes the EPA is like a police officer who never gives out speeding tickets….just warnings……you can't trust the EPA.

The financially affected farmers

It follows

The affected farmers who have lost their water will have a legal case for **negligence** against

- The consultants who wrote the EIS
- The sub-consultants and planners who contributed to the EIS
- NSW Office of Water negligence (and failure to properly assess)
- The officer from the NOW who granted the water licence
- Department of Planning negligence (and failure to properly assess)
- The DOPE officer who considered the development application/EIS
- EPA negligence (and failure to properly assess)
- The EPA officer who grants the EPA licence negligence (and failure to coordinate with NOW)
- And the various compliance officers from each Department who supervise the EPA licence, the water licence and the planning approval as appropriate (failure to coordinate with EPA/DOPE/NOW).

It should be considered that in the **case study** of the mushroom composting factory at Windsor and in the **case study** of the sand quarry in the Hawkesbury, there was absolutely no follow through by EPA, DLWC/NOW and HCC relevant to proper compliance and it follows, all parties are liable for their gross negligence under the **tort of negligence.**

I recommend you all read **the pollution line complaints attached to this stat dec. and associated documents.**

Please consider the issue on the Hawkesbury Quarry there was no rehabilitation in 30 years under the supervision of HCC and the EPA.

However, we have currently established a good working relationship with State Planning (DOPE and EPA) but unfortunately the NSW Office of Water needs a little bit more work and that will probably be done in the contempt proceedings.

THANKS AGAIN GREG, MIKE, CHASE AND BEN.

Further examples of maladministration in New South Wales by DOPE, EPA and NOW/DLWC.

Further examples of maladministration in New South Wales by DOPE, EPA and NOW/DLWC lay in the continuing mismanagement of the following (apart from the M5 and Lane Cove Tunnel – **unfiltered emissions**) (obviously for economy cuts) another **EPA cover-up.**

- The Warkworth Mine (no real rehabilitation and water compliance and dust suppression)
- The Centennial Mine (tailings dam collapse, rehabilitation and dust suppression)
- The Pazminco lead processing at Newcastle (collapsed tailings dams, leachate etc)
- The copper smelter at Wollongong mismanaged by the EPA etc
- The sand mines at Maroota relevant to inappropriate water licences, dust suppression etc
- The Tinda Creek Quarry with no rehabilitation in 30 years under HCC, **noncompliance** etc
- and any other coal mining quarry that I haven't mentioned
- any sand mine with water licences granted specifically, but not limited to the DLWC/NOW by Sydney South Coast (subject to further complaints) dust suppression, illegal water.

FINAL RECOMMENDATIONS **in the public interest**

- **The Department of Planning should use this IMP and the SEPP reform system to re-educate junior planning officers and notify them of their duty of care in their considerations relevant to 283 of the EPAA Regulations and specifically 307 A, B and C of the Crimes Act 1900.**

- **In the Director General's requirements (the DGR's), it should be mandatory that a copy of 283 of the EPA Regs, and a summary of the Crimes Act A, B and C should be inserted in all EIS's/EA's. Directly relevant to possible 2 year jail terms and 200 penalty points for consultants who fabricate EA's/EIS's without the proper considerations (risk assessment etc).**

- **There should be a check list (similar to immigration at the airport) which would be mandatory or compliance with all the requirements of the DGR's and the EPA's and NOW's requirements as set out in EA's and/or EIS's for consultants, the assessment officers, and objectors.**

- **This check list should require the signature of every consultant and every approval officer stating or signing off in that check list that they have properly considered every issue raised in community consultation and/or every issue raised by objectors and government authorities.**

- **This obviously would lead to a clearer understanding and proper considerations by all parties that the DA was compliant with all the laws of NSW, specifically but not limited to EPA licencing, water licencing, WorkCover etc as set out in the DUAP guidelines etc.**

- **This would be in the public interest and would assist in avoiding appeals in the Land and Environment Court and would lead to a better understanding of the approval system by all parties.**

- **This check list, I recommend that any compliance should be in the form of a Notice to Admit.**

THIS CHECK LIST

This check list that I recommend relevant to compliance should be in the form of a Notice to Admit (similar to legal issues relevant to appeal in the L & E Court etc).

NOTICE TO ADMIT

The Notice to Admit should be in the form of say, a 22 point Notice to Admit

- **for the Department of Planning**
- **the EPA/NOW/National Parks/NPWS etc**
- **as per the sample and attachments**

IN CONCLUSION IN THE PUBLIC INTEREST

- EA's and EIS's should be available for purchase on request for $25.00 in the public interest
- Check lists should be available relevant to objectors' submissions.
- Check lists should be available relevant to the DGR's.
- Check lists should be available relevant to EPA licence etc (specifically Attachment 1 of the EPA).
- Check lists should be available relevant to water licencing, NOW (relevant to legal obtained water for dust suppression, washing etc etc)
- Check lists should be made mandatory for assessment officers.
- A mandatory review should be conducted by Department of Planning in conference with NSW Office of Water and the EPA relevant to all the issues raised in submissions by government departments and the objectors.
- All these check lists should be signed off by the Department of Planning director after an internal review by a qualified person with mining experience and/or sand mining experience.
- All parties should be made clearly aware of the criminal sanctions under 283 of the EPAA REGS and specifically, the possibility (in extreme cases) of 2 years jail for placing false and misleading information to a consent authority as set out in

"ENVIRONMENTAL PLANNING AND ASSESSMENT

REGULATIONS 2000 – REG 283
283 False or misleading statements
(cf clause 115 of EP & A Regulation 1994)
A person is guilty of an offence if the person makes any statement, knowing it to be false and misleading in an important respect, in or in connection with any document lodged with the Director-General or a consent authority or certifying authority for the purposes of the Act or this Regulation."

- **I suggest all parties read the extract from the Crimes Act 1900 specifically relevant to reckless submissions under 307 A, B and C (and consider the criminal sanctions.**

I, ..., a JP for NSW....., certify:
[full name of JP] *[JP registration number]*

[include only the text that applies]*

1. * I saw the face of the declarant/deponent *OR*
   * I did not see the face of the declarant/deponent because he/she was wearing a face covering, but I am satisfied that he/she had a special justification for not removing it, and

2. * I have known the person for at least 12 months *OR*
   * I confirmed the person's identity with .....
   [describe identification document relied on]

....
[signature of JP] *[date]*

Will Sign HARD17- Copy ASAP

Crimes Act 1900 No 40 307A False or misleading applications

(1) A person is guilty of an offence if:
(a) the person makes a statement (whether orally, in a document or in any other way), and
(b) the person does so knowing that, or reckless as to whether, the statement:
(i) is false or misleading, or
(ii) omits any matter or thing without which the statement is misleading, and
(c) the statement is made in connection with an application for an authority or benefit, and
(d) any of the following subparagraphs apply:
(i) the statement is made to a public authority,
(ii) the statement is made to a person who is exercising or performing any power, authority, duty or function under, or in connection with, a law of the State,
(iii) the statement is made in compliance or purported compliance with a law of the State.
(2) Subsection (1) does not apply as a result of subsection (1) (b) (i) if the statement is not false or misleading in a material particular.
(3) Subsection (1) does not apply as a result of subsection (1) (b) (ii) if the statement did not omit any matter or thing without which the statement is misleading in a material particular.
(4) The burden of establishing a matter referred to in subsection (2) or (3) lies on the accused person.
(5) In this section:

application includes any claim, request or other form of application and also includes, in the case of an application for an authority, any application for the issue, grant, amendment, transfer, renewal, restoration or replacement of the authority and any other application in connection with the authority.

authority includes any licence, permit, consent, approval, registration or other form of authority.

benefit includes any advantage and is not limited to property.

307B False or misleading information

(1) A person is guilty of an offence if:
(a) the person gives information to another person, and
(b) the person does so knowing that the information:
(i) is false or misleading, or
(ii) omits any matter or thing without which the information is misleading, and
(c) any of the following subparagraphs apply:
(i) the information is given to a public authority,
(ii) the information is given to a person who is exercising or performing any power, authority, duty or function under, or in connection with, a law of the State,
(iii) the information is given in compliance or purported compliance with a law of the State.
Maxium penalty: Imprisonment for 2 years, or a fine of 200 penalty units, or both
(2) Subsection (1) does not apply as a result of subsection (1) (b) (i) if the information is not false or misleading in a material particular.
(3) Subsection (1) does not apply as a result of subsection (1) (b) (ii) if the information did not omit any matter or thing without which the information is misleading in a material particular.
(4) Subsection (1) does not apply as a result of subsection (1) (c) (i) if, before the information was given by a person to the public authority, the public authority did not take reasonable steps to inform the person of the existence of the offence against subsection (1).
(5) Subsection (1) does not apply as a result of subsection (1) (c) (ii) if, before the information was given by a person (the ***first person***) to the person mentioned in that subparagraph (the ***second person***), the second person did not take reasonable steps to inform the first person of the existence of the offence against subsection (1).
(6) The burden of establishing a matter referred to in subsection (2), (3), (4) or (5) lies on the accused person.
(7) For the purposes of subsections (4) and (5), it is sufficient if the following form of words is used:

"Giving false or misleading information is a serious offence."

307C False or misleading documents

(1) A person is guilty of an offence if:
(a) the person produces a document to another person, and
(b) the person does so knowing that the document is false or misleading, and
(c) the document is produced in compliance or purported compliance with a law of the State.
Maxium penalty: Imprisonment for 2 years, or a fine of 200 penalty units, or both
(2) Subsection (1) does not apply if the document is not false or misleading in a material particular.
(3) Subsection (1) does not apply to a person who produces a document if the document is accompanied by a written statement signed by the person or, in the case of a body corporate, by a competent officer of the body corporate:
(a) stating that the document is, to the knowledge of the first-mentioned person, false or misleading in a material particular, and
(b) setting out, or referring to, the material particular in which the document is, to the knowledge of the first-mentioned person, false or misleading.
(4) The burden of establishing a matter referred to in subsection (2) or (3) lies on the accused person.