



7 September 2018

Email

Committee Secretary
Economics and Governance Committee
Parliament House
George Street
BRISBANE QLD 4000

egc@parliament.qld.gov.au

Dear Madam,

Queensland Parliament - Economics and Governance Committee
Inquiry into the *Revenue and Other Legislation Amendment Bill 2018 (Bill)*

1. Introduction

- 1.1 Since its acquisition of ASX-listed Endocoal Limited (**Endocoal**) in May 2013, U&D Mining Industry (Australia) Pty Ltd (**U&D**) has been the proponent of the Meteor Downs South Coal Mine Project (**MDS Project**). The MDS Project has a 13 million tonne (**Mt**) Marketable Reserve. The MDS Project is U&D's first mining project and sees the company move from Developer to Producer status.
- 1.2 The Mining Lease for the MDS Project (ML 70452) was granted in November 2015, out of the underlying Exploration Permit for Coal (EPC) 1517. Other approvals, including Environmental Authority, Federal Government Approval and Regional Interests Development Authority, have also been obtained and mining has commenced.
- 1.3 On the basis of extensive geological investigation and assessment processes, the predicted production rate is anticipated to be up to 1.5Mt per annual of export grade thermal coal, which will be of direct to market quality.
- 1.4 The MDS Project is located within Central Queensland, 45km southeast and 30km northwest of the townships of Springsure and Rolleston respectively.
- 1.5 U&D is acutely aware of its obligation to adhere to the cultural heritage duty of care prescribed by the *Aboriginal Cultural Heritage Act 2003 (ACHA)*. More broadly, it is of the utmost importance to U&D that Aboriginal cultural heritage is given the respect and care that it inherently deserves. To that end, U&D:



- (a) has sought to implement a best practice approach to cultural heritage and its preservation by consulting extensively with the identified Aboriginal parties for the area of the MDS Project (**Project Area**), and ensuring all project works are conducted in accordance with agreed conditions; and
 - (b) has committed to working together with the Traditional Owners for the Project Area to build a positive and supportive working relationship to achieve optimal cultural heritage outcomes.
- 1.6 As we demonstrate below, U&D is directly affected by the aspect of the Bill that would seek to amend the ACHA to reinstate the previously accepted interpretation of what is known as the "last claim standing rule". In this regard, U&D:
- (a) receives legal advice in relation to its cultural heritage obligations associated with the carrying out of the MDS Project from Clayton Utz Lawyers (**Clayton Utz**);
 - (b) has read the submission provided by Clayton Utz to this Inquiry; and
 - (c) supports and adopts the contents of that submission.
2. **MDS Project - cultural heritage management**
- 2.1 The MDS Project is being undertaken in an area that was previously the subject of overlapping native title claims that included the Karingbal People #2 claim (QUD23/2006) (**Karingbal Claim**).
- 2.2 In May 2012, Endocoal commenced the process for developing a cultural heritage management plan (**CHMP**) for the Project by giving a written notice to the then registered native title claimant for the Karingbal Claim (**Karingbal Claimant**) under s.91(1)(c) of the ACHA. At the time, it is uncontroversial that the Karingbal Claimant was an Aboriginal party that was a Native Title Party for the proposed plan area, and (in the usual way, under s.98(1) of the ACHA) U&D subsequently endorsed the Karingbal Claimant to take part in developing the CHMP.
- 2.3 In September 2013, following a period of negotiations, Endocoal and the Karingbal Claimant executed the CHMP. Shortly afterwards, in December 2013, the Federal Court handed down its decision in *Wyman v State of Queensland (No 2)* [2013] FCA 1229, as a consequence of which (in March 2014) the Karingbal Claim was deregistered and the Karingbal Claimant ceased to be a RNTC for the area of the Karingbal Claim.
- 2.4 The CHMP was ultimately submitted for approval to, and approved by, the Chief Executive of the Department of Aboriginal and Torres Strait Islander Partnerships (**DATSIP**) in March 2016.
- 2.5 U&D understood that, notwithstanding the deregistration of the Karingbal Claim, the Karingbal Claimant remained an Aboriginal party that was a native title party for the plan





- area for the CHMP pursuant to the "last claim standing rule" in s.34(1)(b)(i)(C) of the ACHA. However, on 20 December 2017, the Supreme Court delivered its decision in *Nuga Nuga Aboriginal Corporation v Minister for Aboriginal and Torres Strait Islander Partnerships* [2017] QSC 321 (**Nuga Nuga Decision**).
- 2.6 The effect of the Nuga Nuga Decision, which dealt with an application lodged by two of the five individuals who comprise the Karingbal Claimant, was that the last claim standing rule did not in fact operate to make the Karingbal Claimant a last claim standing native title party following the deregistration of the Karingbal Claim as there had previously been a native title holder for the area. This is even though there is not, and there has never been, a native title determination for the area made under the *Native Title Act 1993* (Cth).
- 2.7 Following the making of the Nuga Nuga Decision, the applicant in that matter has applied to DATSIP for the MDS Project CHMP to be deregistered (on the basis that Endocoal's counterparty is no longer an Aboriginal party that is a native title party for the plan area. While U&D is strongly resisting this application, clearly the consequence of the Nuga Nuga Decision has been to throw U&D's cultural heritage management procedures (and, by implication, the viability of the MDS Project) into disarray.
- 2.8 In this regard, U&D (and its predecessor Endocoal) have commissioned and carried out extensive work to protect Aboriginal cultural heritage and associated values in the area of ML 70452. This work has included:
- (a) the carrying out of extensive Aboriginal cultural heritage surveys in April 2010, August/September 2013, October 2014, December 2014 - January 2015 and October 2017 (Aboriginal cultural heritage survey reports were published following the latter two of these surveys); and
 - (a) the salvage and relocation of the few artefact scatters and isolated finds discovered in the course of these surveys to a keeping place for safe custody.
- 2.9 The clear risk arising from the Nuga Nuga Decision that the Bill would mitigate is the risk of a finding that those of the above works that were carried out after the deregistration of the Karingbal Claim will not be considered to have been validly undertaken, and will not be effective to ensure that U&D (despite the massive cost, effort and time expended) has complied with its cultural heritage duty of care.
- 2.10 U&D strongly supports the passage of the Bill, which would:
- (a) reinstate the Karingbal Claimant as a last claim standing native title party for the MDS Project area; and
 - (b) revive the viability of the MDS Project by confirming that the extensive cultural heritage clearance work done for the project has been validly done with an Aboriginal party for the project area, and is therefore effective to ensure that U&D has discharged its cultural heritage duty of care and will not be exposed to the





risk of prosecution for breach of its cultural heritage obligations, or of the grant of stop orders or injunctions (both of which have been either sought or threatened).

2.11 The native title provisions were intended to introduce certainty to cultural heritage management processes. U&D firmly believes that passage of the Bill would achieve this end and would like to express its firm support for the Bill.

Thank you for the opportunity to make these submissions. If you have any questions, please feel free to contact us using the contact details below.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Peter Edwards', with a long horizontal stroke extending to the right.

for Peter Edwards
Chief Financial Officer

Ph: [REDACTED]

