



# Caroona Coal Action Group Inc.

www.ccag.org.au PO Box 119 Caroona NSW 2343

All correspondence c/-: Secretary, Mrs Fiona Simson "Plain Station", Bundella 2343

Ph: 02 6747 6251 Fax: 02 6747 6204 E-Mail: [plainstation@bigpond.com](mailto:plainstation@bigpond.com)

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## NEWSLETTER OCTOBER 2007

- Great news recently about the approval of the \$4.8m federal study that will model the effects of coal mining on aquifers under the Liverpool Plains catchment area. CCAG congratulates LPLMC on spearheading this campaign. Funding approval is binding irrespective of election results. With such a level of concern shown federally, and such concerns about the protocols of current BHP drilling practices (see below), CCAG now calls on the State Government to suspend EL6505 and any other exploration licences in the catchment area until the results of such a study are known. It is vital that any drilling or testing be performed under expert independent supervision.
- The current exploration drilling programme by BHP does not appear to be following protocols outlined to the community by Errol Briese/Philip Clark at the Information Forum with BHP held in Caroona last year. Expert supervision of all stages of the process (such as that provided for under the new study) is vital. Concerns centre on collection of samples and back-up samples, independence and transparency of process and data, identification and investigation of aquifers, and inspection of cores. It would seem from their current practices that all BHP is interested in is getting to the coal, and working out how much of it there is. CCAG demands proper independent and scientific testing of water and collation of samples, and has grave concerns that this process is not being adequately undertaken by BHP in its "free water testing" offer to landowners in the area. If landowners take BHP up on this offer, CCAG recommends that landowners keep their own back-up samples, clearly and properly labeled with date, time, location etc. CCAG is currently investigating discounts for bulk water sample testing for landowners.
- CCAG has recently met with the Board of the CMA, and is pleased with the outcome of its discussions. CMA showed great interest and support for the CCAG Access Agreement and the need for independent baseline data and a catchment wide study. Discussions to continue regarding further plans for a community based advisory/reference group.
- CCAG has made submissions (attached) to Minister Paul Lynch, Minister for Local Government, regarding the conduct of the Liverpool Plains Shire Council in its finalization of the latest round of Access Agreements with BHP Billiton for drilling on council roads. To date no confirmation in writing from the

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Department as to the results of their investigation has been received, but conversations with Department Staff confirm that it appears that protocols have been breached, aspects of Council process are not "as transparent as they would like", and that they will be writing to Council regarding various other issues raised in our letter. CCAG encourages landowners and ratepayers to contact Council and Councillors themselves if they are unhappy with Council conduct in this regard. Having been denied access to a copy of the Access Agreement signed by the General Manager under delegated authority with CMAL (BHP), CCAG will now be pursuing it under Freedom of Information legislation. The Council's failure to provide the document to ratepayers only heightens CCAG's suspicions as to the extent of environmental safeguards and guarantees contained. It is very frustrating that despite all our representations, Council and BHP do not have enough respect for the views and concerns of neighbouring ratepayers to formally notify them of impending drilling.

- CCAG are grateful for the help of Rod Mackerras and Jackie Crossing in finally starting to get their website back on track. Please bear with us during its construction. Any suggestions or offers of help please contact Rod (office@wombalong.com), or Jackie (collyblue@bigpond.com).
- CCAG are looking at placing signs at key spots along major roads, and looking for suggestions as to any suitable or catchy "slogans". Please forward any suggestions or offers of help to Stru Willis (ph: 6747 4768) or Robert Clark (ph: 6747 4601) ASAP. We are also investigating sponsorship of signs if anyone is interested.
- It seems that despite their vast resources, BHP arrogantly continue to submit paperwork to landowners seeking access to their land without completing even the rudimentary titles checks to ensure that all details are correct. It is BHP's responsibility to find and correct these errors prior to them seeking access to your land. Landowners are under no obligation to point these errors out to them, or to grant them access or attend arbitration if the relevant paperwork contains such errors. Contact Michael Clift (ph: 02 6744 5832) for more information.
- Subs are now due - set at this year's AGM at \$50. Donations are also of course always welcome. We are always looking for people with innovative fundraising ideas, so please do come forward if you have an idea, or are happy to help. We are hoping to run a grain/cattle drive again this year - any offers of grain/cattle, or offers of help in either respect gratefully received.

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**CCAG SUBS AND DONATIONS**

Please select box below, make cheques payable to CCAG and return this form with any monies to: Mr Frank McKinley, Treasurer CCAG, PO Box 119, Caroona 2343.

Receipts will be made out and forwarded as per your details below.

Please find enclosed subs for 07/08 financial year (\$50/person) for:

Name/s: .....

Address: .....

.....

.....

I would like to make a donation to the CCAG. (As a guide, we are suggesting that those within the EL Zone might use their quarterly rates notice as a guide. For those outside the zone, any amount welcome! )

Name/s: .....

Address: .....

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I would like to donate grain to the grain drive. Please contact me below to organise pick-up.

Name/s: .....

Daytime Contact Phone No. ....

Address: .....

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I would like to support the CCAG but am unable to donate as above. I would like to donate:

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We thank you for your support.

Fiona Simson (ph: 6747 6251)

[plainstation@bigpond.com](mailto:plainstation@bigpond.com)

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19 September 2007

The Hon. Paul Lynch, MLA  
Minister for Local Government  
Level 32 Governor Macquarie Tower  
1 Farrer Place  
SYDNEY 2000

**BY E-MAIL, ORIGINAL TO FOLLOW**

Dear Sir

**Re: Liverpool Plains Shire Council**

We write to you of very serious community concerns as to the conduct of the Liverpool Plains Shire Council (**the Council**). The background to this matter is as follows.

The Caroon Coal Action Group (**CCAG**) represents a wide cross-section of the community around Caroon and the registered proprietors of more than 80% of the 344 square kilometres of land within BHP Billiton's (**BHP**) coal exploration licence centred on Caroon (**the licence area**). Those landholders account for a very substantial part of the Shire's rates.

Much of the licence area is within the Liverpool Plains Shire. All of that land is within the area known as the Liverpool Plains. More than 80% is alluvial flood plain. It is some of the richest agricultural land in Australia. The Namoi River catchment is of course a very significant part of the greater Murray-Darling catchment. The licence area has extensive interconnected surface and groundwater resources. The groundwater provides irrigation, stock and domestic water and town water supplies throughout the Namoi catchment.

BHP represents to the world that it does or seeks to do zero harm to health, safety, the environment and communities (**BHP's environmental standard**).

BHP seeks access to public land under the Council's control for test drilling precisely because in every case where BHP has sought access to private land within the licence area it has so far been refused by neighbouring landholders, on the grounds that the terms proposed by BHP do not reflect BHP's own or any other environmental standard or include any environmental safeguards or guarantees.

Similarly, the terms proposed by BHP to the Council for access to public land do not reflect BHP's own or any other environmental standard or include any environmental safeguards or guarantees. Nor do they provide any material protection to Council against claims for damage caused to adjoining land. The terms proposed by BHP are grossly inadequate and offend BHP's own published environmental standards.

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BHP's ambitions include drilling more than three hundred deep test bore holes followed by longwall mining under the flood plain. Subsidence caused by such mining would crack the aquitards and pollute the freshwater aquifers and surface water downstream through the Namoi and Murray-Darling catchments. The uneven subsidence would cause ephemeral lakes, swamps and bogs across the flood plains. Together with any polluted water brought to the surface, the subsidence would destroy most if not all of the agricultural value of the land. The damage would be irremediable. There is no respectable scientific opinion which doubts that substantial environmental damage would result.

In contradiction of its published environmental standards, BHP's own expert hydro-geologist has stated in a public scientific forum that its deep test drilling would cause ingress of water from saline aquifers into high quality freshwater aquifers, that it would attempt to limit that ingress, but it could not and would not guarantee that freshwater aquifers would not be damaged.

The CCAG position is that BHP should be allowed access to private or public land but only upon terms which hold BHP to its published environmental standards and which include adequate safeguards to give effect to those standards and guarantees in the event of damage. So far, BHP has failed to agree to any such terms.

The Liverpool Plains Land Management Committee Inc. (**LPLMC**) is a broad based community body formed in 1992 to promote sustainable land use and development and biodiversity conservation across the Liverpool Plains. Namoi Water Inc. (**NW**) represents water users within the Namoi catchment. Both the LPLMC and the NW support the CCAG's position in the above matters.

It is in the above setting that the following most serious misconduct by the Council is referred to you for your information and action.

Since about March 2007, the CCAG has made submissions, in correspondence and in person, and in public and private meetings with councillors and senior Council staff, to the effect that the Council should not agree to BHP access to public land on BHP's terms, but should insist upon terms which include appropriate standards, safeguards and guarantees.

Since March 2007, Council's Mayor and/or General Manager have repeatedly included resolutions in Council meeting papers to the effect that Council agree to BHP access to Council land upon BHP's terms. To the credit of certain councillors, those resolutions were put and lost.

On several occasions since March 2007, Council resolved to take legal advice upon appropriate terms for access by BHP. In the result, the General Manager sought advice upon the question to the effect – "*Can Council refuse access to BHP?*" That question was entirely unhelpful. The question is never one of refusal but one of appropriate terms which, if needs be, could be resolved by arbitration or the Mining Warden's Court under the *Mining Act 1992*. The resulting advices were then selectively (mis)used in the General Manager's reports to Council.

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The General Manager's reports to Council of other legal advice also represented, without reference to any evidence of any fact situation whatsoever, that Councillors might be acting in "bad faith" by refusing BHP's terms of access and that they might become personally liable for costs and/or damages. The General Manager's conduct can only have tended to intimidate councillors into agreeing to terms of access preferred by BHP.

At Council's public meeting in June 2007 the Mayor and/or General Manager again included the resolution that Council agree to BHP access to public land. The resolution was put and lost, in part because the General Manager did not circulate to councillors the proposed terms of access and legal advice alleged to be on relevant matters until immediately before or during the meeting and without any sufficient time for councillors to give it consideration.

Subsequently, at Council's invitation, and after about a week's notice, Councillors met privately with BHP to discuss terms of access to public land.

On 10 July 2007, after the CCAG's request for equal access to councillors to that given to BHP, the Mayor, Councillor Ian Lobsey, did two things. First, with less than 24 hours notice, he invited the CCAG, LPLMC and NW to meet for one hour in private with Councillors to discuss BHP's access to public land immediately before Council's special public meeting of 11 July 2007.

Second, he revealed that he had pre-judged all matters which might be put in that private meeting. He did so by giving the CCAG and councillors less than 24 hours notice of a Mayoral Minute (No 4/07) for a resolution to be put at a special public meeting of Council later on 11 July 2007. The resolution was to the following effect –

*"That the General Manager sign the Access Agreement with the amendments previously made by Council and agreed by CMAL [BHP]"*

**The Mayoral resolution was put and lost.** Councillors opposed expressed annoyance at the short notice of the resolution, the late receipt of further legal advice, the fact that the legal advice did not address any clearly relevant questions, and that the community's interest in the very significant environmental values at stake required fully informed and careful consideration.

Representatives of the CCAG, LPLMC, NW and BHP were present at that special public meeting. In discussion in the meeting, the CCAG put to the Council that appropriate terms of access would at the very least hold BHP to BHP's own published environmental standards and would provide for safeguards to ensure those standards are met and guaranteed in the event of environmental damage.

In that regard, Councillors were referred to the comprehensive terms for BHP access to private land set out in the document provided by CCAG to Council in March 2007 (**the CCAG access agreement**). Council's General Manager informed the meeting that he had not sought any legal advice on the CCAG document; that his legal expertise made him competent to advise upon such legal matters; and that the document was entirely without merit. He did not state grounds for his claim to legal expertise in terms of training, qualifications, experience or right of practice. Nor did he explain the necessity for Council to have briefed out similar legal questions for advice. The CCAG access agreement was drafted by counsel of long experience and settled by senior counsel pre-eminent in this area of law.

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In further discussion, certain councillors expressed the wish to receive further legal advice upon relevant questions. A resolution was put and carried to the following effect –

*“That Council not consider the terms of BHP access to Council land until Council has investigated further risks to council under the indemnity offered by BHP Billiton and request a legal opinion on these risks under this Access Agreement”*

Conspicuous by its absence from this resolution is any reference whatsoever to the interests of the community or the environment. It is concerned only with “risks to council”.

In further discussion, certain councillors did however express the wish to hear from the community as to appropriate terms of access. Representatives of the CCAG and LPLMC agreed to meet councillors for that purpose. The NW representative had by then left the meeting. The BHP representative declined to make any commitment to participate in any such meeting.

Resolutions were put and carried to the following effect –

*“That Council not consider the terms of BHP access to Council land until Councillors have met with the CCAG to discuss appropriate terms of access and ask any questions and that BHP be invited to take part in that forum.”*

*“That the LPLMC and Namoi Water also be invited to that forum.”*

**(the resolutions)**

Discussion ensued as to convenient dates for the forum.

It was put to Councillors that the matter raised very serious issues for the community and the environment; that it might take some weeks or a month or two to organise relevant expert legal and scientific advice and/or speakers for the forum; that no date could yet be fixed; and that the parties should correspond to fix the earliest convenient date.

Publication by Council of its resolutions of 11 July 2007 was delayed for weeks. Council’s published record of the resolutions is not correct. CCAG representatives and others stand ready to confirm that it is incorrect.

Council has since neither rescinded the resolutions, nor made any attempt to convene the forum as required. Instead, in direct contravention of the express terms of Council’s resolutions –

- (1) the General Manager has continued to negotiate with BHP the terms of access to public land;
- (2) the Mayor and/or General Manager have failed to take any step in connection with convening the forum;
- (3) the Mayor has ignored all correspondence from the CCAG regarding suitable dates for the forum, at least until the Mayor and/or the General Manager in collaboration with BHP took certain steps intended to make the forum appear redundant;

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- (4) the Mayor and/or the General Manager have, in breach of relevant procedures, convened special closed meetings of Council to consider and if thought fit resolve to agree to BHP access to public land;
- (5) the Mayor and/or the General Manager, in breach of relevant procedures, convened on 15 August 2007, a special closed meeting of Council which purported to resolve to agree to grant BHP access to public land;
- (6) the Mayor and/or the General Manager has concealed from the community for weeks all aspects of the above proceedings at (4) and (5) above; and
- (7) the Mayor and/or the General Manager has so far refused to disclose all documents in connection with Council's agreement with BHP for access to public land.

Council's purported agreement with BHP not only contravenes Council's resolutions. Its conduct also involves serious breaches of Council Meeting Procedures under the *Local Government Act 1993*. Council's purported agreement with BHP is therefore vitiated by Council's misconduct and BHP's knowledge of, or knowledge of and participation in, Council's misconduct.

The Mayor's and/or the General Manager's determination to ignore community concerns, contravene Council's own resolutions and subvert relevant procedures for the purpose of entering into the purported agreement for BHP access to public land is cause for the worst kind of speculation as to their motives. That speculation is only further fuelled by the fact that on about 22 August, 2007 BHP offered all councillors a gift of tickets to a performance of the Sydney Symphony Orchestra.

It is a matter of public record that one councillor said:

*"I'd rather choke than accept the tickets."*

The Mayor said:

*"I'll have yours if you don't want it."*

and

*"Council's code of conduct allows them [councillors] to accept something like a bottle of wine." (P 3, Sydney Morning Herald, 28 August, 2007).*

According to Mr Garry Payne, Director-General, Department of Local Government:

*"It is not appropriate for councillors to accept such gifts." (P 3, Sydney Morning Herald, 28 August, 2007).*

If it is *"not appropriate"*, we trust that you will work to secure community confidence in local government and your administration, and apply all proper administrative and legal sanctions to Council's conduct.

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However, please be very clear that we raise the matter of the tickets only as further evidence of BHP's modus operandi and the Council's failure to proceed with all due propriety. It is trifling in comparison to the substantive issues outlined above which are the grounds for this complaint.

The need for the utmost propriety in the administration of local government could not be higher than in the present case where, having regard to the magnitude of BHP's financial resources and ambitions, and its record of causing catastrophic extensive and irremediable environmental damage including across whole catchments, the potential for undue influence must be regarded as almost overwhelming.

The CCAG has questioned the Council in connection with its purported access agreement with BHP with the result that the CCAG's concerns expressed above have not been allayed, only increased. The CCAG has also discussed aspects of the matter with the local members of the NSW Parliament, the Hon. George Souris MLA, and Mr Peter Draper, MLA.

The matters outlined here involve some complexity and other aspects continue to come to light. The CCAG is therefore preparing an exhaustive chronology of events which we will forward to you immediately it is complete.

We hope and expect that, among other things, you will immediately take all steps necessary to ensure that the purported agreement for BHP access to and works on public lands is treated as void.

In the meantime, we would welcome the opportunity to discuss these concerns with you.

Yours faithfully,

Doug Ranken  
Chairman  
Carroona Coal Action Group

Cc: George Souris, MLA  
Peter Draper, MLA

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