

NUCOAL
RESOURCES LTD

The NuCoal Story

Is there a Rule of Law in NSW?



ASX code NCR

Sydney Mining Club
June 2015

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The NuCoal Story



Why are we here??

- NuCoal had its major asset expropriated by an Act of Parliament in Jan 2014 after Operation Acacia
- NuCoal doesn't know, didn't know and couldn't have known if there was any corrupt activity associated with the grant of EL 7270
- NuCoal deserves to be compensated for this loss.



The History of EL 7270

EL 7270 Doyles Creek



In December 2008, Doyles Creek Mining (DCM) was awarded a four year exploration licence (EL 7270).

- Awarded without tender after 2 years of lobbying by DCM
- Department advised the Minister that this was one of 3 options open to him; EL conditions included the unavoidable requirement to establish a training mine.
- Other payments/commitments included \$1.1m to Government and \$1m to The University of Newcastle
- Only data available on EL 7270 was on the Department's data base - 4 boreholes, zero JORC Resource
- Department advised the Minister that they “thought” the area contained 60Mt of open cut material and was possibly intruded, faulted and folded
 - It was apparent at the time, including to the Department, that any company would need to get very lucky with exploration to have a chance of developing a long-term mine, with such a small starting resource base.

Listing of NuCoal



In February 2010, Supersorb (renamed NuCoal)

- purchased Doyles Creek Mining (DCM) from existing shareholders by issuing new shares worth \$94m (just like IGO recently announced that they will buy Sirius – absolutely no difference)
- Raised \$10m from issuing new shares at 20 cents per share
- Relisted on the ASX pursuant to a prospectus lodged with ASIC and ASX containing relevant legal, investigating accountants, independent geologists reports – none questioned the validity of the EL grant
- The prospectus elaborated the usual risks of a listing of this type, but certainly did not include the risk that the EL might have been improperly granted (would ASIC and ASX let such a prospectus through? But ICAC never called a witness from these bodies to the Public Inquiry)
- Significant escrow periods placed on some of the original DCM shareholders.

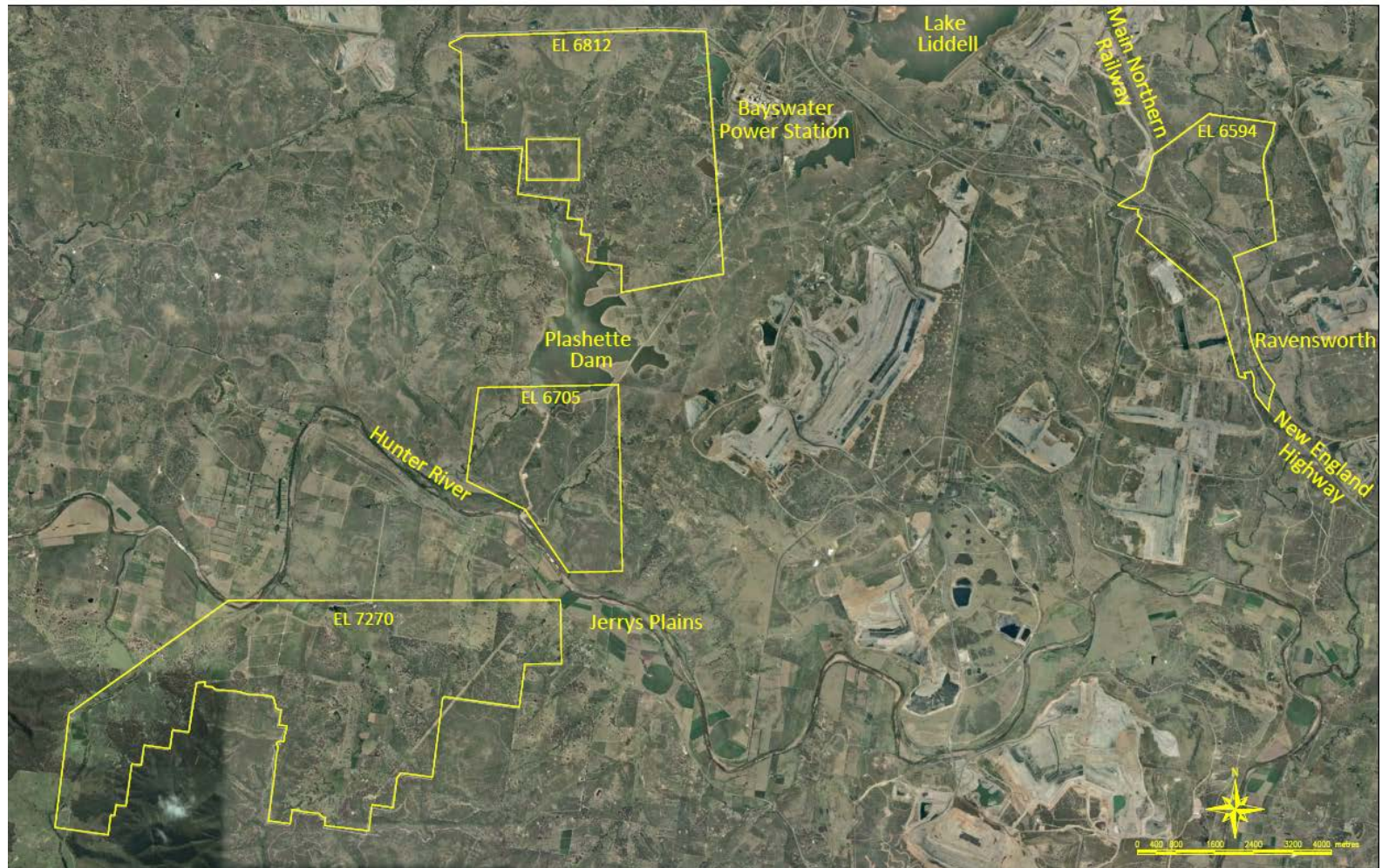
NuCoal Achievements



- NuCoal fully executed the requirements of the EL and achieved 100% compliance in a detailed compliance review of EL 7270
- Spent \$40m on the project by
 - Drilling 52 holes; establishing a JORC resource of 512Mt in 5 seams, purchasing all required land, Completing Concept and Pre Feasibility Studies
- Project Overview document submitted to NSW Department of Planning and Infrastructure for the Doyles Creek Project. Director Generals Requirements were received in May 2012
- Executed Joint Venture documents with Mitsui Matsushima for them to earn up to 10% of the Doyles Creek Project Joint Venture by spending \$40m
- Strategic Plashett acquisition Share Sale & Purchase Agreement executed
- Recruited Director of Doyles Creek Training School and completed construction of Stage 1 Training School Facilities

Does this sound like a company involved in some sort of “get rich quick” scheme?

Strategic Development Approach

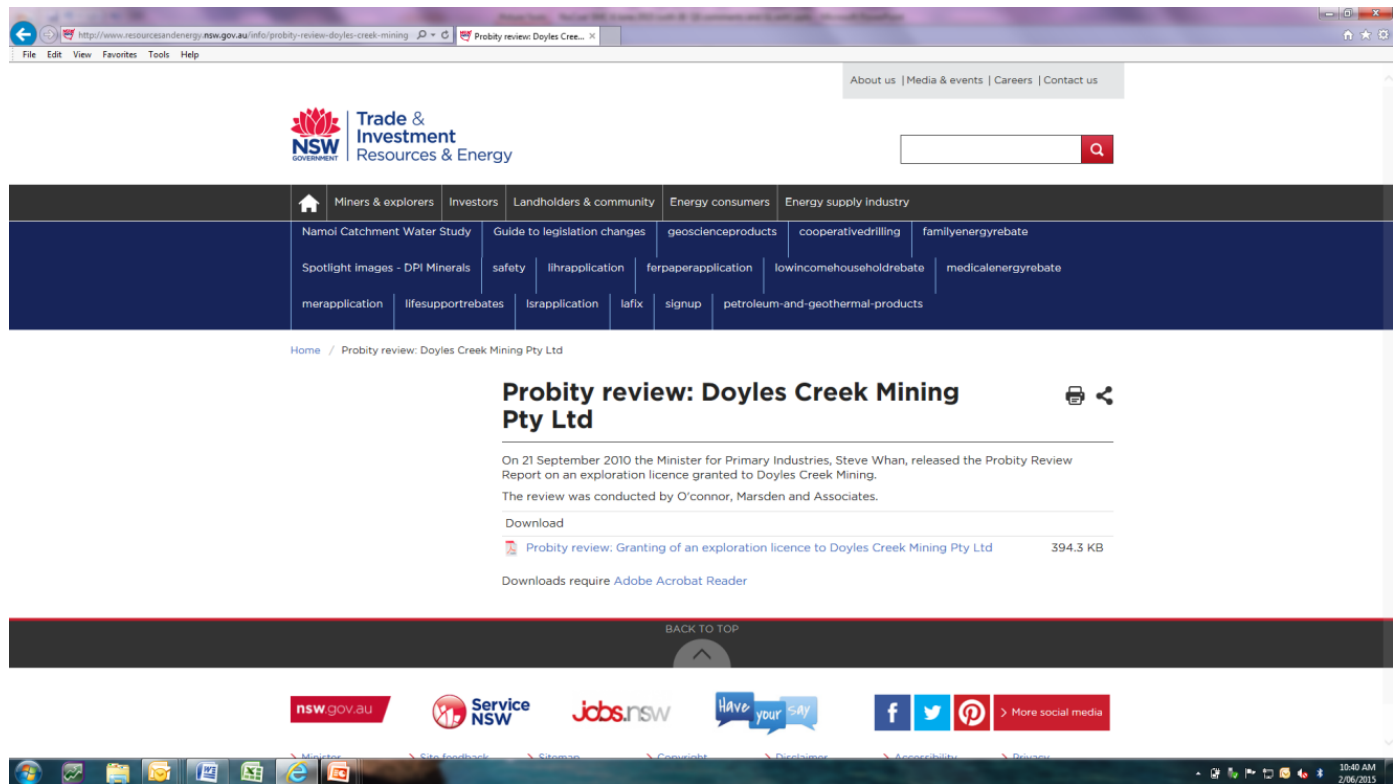


Probity Report



In August 2010 in response to questions raised by the Opposition, NSW (Labor) Government commissioned a probity report into the EL award that stated the Minister acted within his powers

— still on Trade and Investment website 2/6/15



Clayton Utz Report

- In November 2011 the newly elected O'Farrell Government tabled a report by Clayton Utz into the award of EL 7270
- This report recommended the establishment of a Special Commission to investigate the matter fully rather than ICAC noting..... “only a Special Commission can properly investigate”
- The O'Farrell Government ignored the recommendation and led the Parliament to refer the matter to the ICAC
 - Why did Government ignore the recommendation?



ICAC Operation Acacia produced two reports

1. June 2013

- McDonald corrupt for awarding EL7270 to his “mate” Maitland
- Maitland, Ransley, Poole, Chester corrupt for offering misleading information (eg a fraud) – but Department actually said in evidence they were not misled!
- During the hearings ICAC explored the possibility of not cancelling the licence if NuCoal paid some more money. NuCoal agreed but that idea disappeared without a trace!
- No NuCoal independent directors questioned or called as witnesses!

2. December 2013

- EL7270 to be expunged by special legislation as the Government might lose if they attempted to expunge through normal court processes (eg Metgasco)
- ICAC couldn’t find NuCoal guilty of anything, still needed to demonise NuCoal, so it found
 - not a third party purchaser for value without notice (surely a decision for a real court?)
 - there was “notorious public controversy” so investors acquired shares with awareness of risks re validity of the licence (evidence shows exact opposite; contemporaneously Barry O’Farrell not aware of notoriety stating on Channel 9 that NuCoal shareholders were “innocent parties”)
 - NuCoal deliberately relisted in WA to avoid investors getting to know about the “controversy”- (seriously?)
 - Prospectus anticipated the EL award could be faulty- (seriously?)
- ICAC said “consideration should be given to paying compensation to innocent parties” (Pontius Pilate recommendation)

Compensation?

- ICAC recommended that the NSW Government consider compensation for innocent parties – rejected by the Parliament
- It also recommended that the Yarrawa EL (mostly Whitehaven) remain in force because it had a vast number of “innocent investors” (total of one short paragraph in the report!) - accepted by Government
- To this day Yarrawa is still reputedly part owned by Obeid interests
- NuCoal only has 3,400+ shareholders...obviously not vast enough!



Mining Amendment Act 2014



- Government asked NuCoal to “show cause” why the EL shouldn’t be cancelled
- NuCoal filed a detailed submission (on time) in Jan 2014, but one week later the NSW Parliament passed an amazing law, which
 - Cancelled EL7270
 - Indemnified the State against any legal actions
 - Indemnified NSW officers against legal action
 - Took ownership of all Exploration data and studies from Doyles Creek Mining
 - Denied any compensation for these actions
- Clearly the law was already being drafted when the show cause notice was issued!
- Politicians from all sides in both houses voted for the Law (how many had read the ICAC transcripts? How many read NuCoal’s submission?)
 - One has subsequently said he did the wrong thing
- Barry O’Farrell defended it at a Community Cabinet in Maitland on 10 February 2014
 - said he would have given compensation but the State didn’t have any money!
- NuCoal Directors complained that Barry O’Farrell made defamatory remarks after this meeting. Barry O’Farrell subsequently publicly apologised, corrected the record and paid significant legal costs, but only after a year of being pursued by NuCoal Directors.

What does all this mean?



- NuCoal has been unjustly treated by the NSW Government acting on the “results” of a flawed ICAC process
- What should have been done?
- What will happen from here?



Unjustly treated



- NuCoal didn't know and couldn't have known there was anything wrong with the grant of the licence (even if there was). Due Diligence during the listing raised no concerns
- NuCoal truly is a third party purchaser for value without notice. If this is an issue it is one for a real court to determine- not an ICAC. Lots of case law supports our position
- Rationalisations made by the ICAC concerning NuCoal having itself to blame are unsupportable on the evidence
 - But you can see why ICAC said these things
 - It had to make NuCoal out to be guilty of something!

Flawed process

- The ICAC failed to do its job. It didn't allow any evidence or opinions contrary to its own beliefs to be put forward in the Public Inquiry. No independent expert witnesses, no right to call witnesses, minimal cross examination, no defensible logic...

“This inquiry is to be conducted by myself as Commissioner, this means that it is I and I alone who will decide what witnesses are to be called, it is also for me to decide to what matters their evidence will be directed. I also have to determine how witnesses will be examined bearing in mind the inquisitorial rather than the adversarial nature of the inquiry.”

(Commissioner Ipp quote)

- The Parliament was given minimal time to consider the proposed new Law. The Amendment Law was clearly being drafted while NuCoal's "show cause" submission was supposed to be under consideration
- Commissioner Latham has publicly stated the ICAC process is ..“like picking wings off butterflies”, and a “lot of fun”.....

Poole vs Chubb



- Even though NuCoal's case is independent of whether there was or wasn't a problem with the EL award, what if there actually wasn't any corruption?
- This proposition was tested in Poole vs Chubb in Feb 2015
 - Poole sued Chubb for his D&O costs. After an exhaustive 16 day Supreme Court hearing the judgement was (based on real "evidence" before the Court)
 - Minister not corrupt; Maitland not corrupt; Poole not corrupt
 - No proof that Maitland was a mate of McDonald
 - There was no "notorious public controversy"
 - Poole awarded D&O and all legal costs. Chubb didn't appeal

This "inconvenient decision" has been completely ignored by ICAC and NSW politicians

What should have been done?

- On many occasions NuCoal implored the O'Farrell Government to sit down and discuss the matter; this was absolutely and completely rejected
- The Government had a large number of alternatives
 - Let a real court determine the facts, including NuCoal's third party status
 - Continue the EL while pursuing allegedly corrupt participants
 - Ask for more money
 - Pay compensation as suggested by ICAC
- Barry O'Farrell even said he supported paying compensation but that NSW "had no money".



What will happen now?



- HCA challenge defeated – “legislative detriment should not be equated with legislative punishment”
 - State’s rights to expropriate without compensation are upheld
 - All States except Tas supported this right – so expect they will use it when it suits their political causes in the future
- JR verdict pending- Strategy will depend on the outcome
- AUSFTA action being pursued
- Complaint to ICAC Inspector being submitted, copy also to be sent to Gleeson/McClintock review of ICAC
- Today NuCoal is calling for a full Parliamentary Enquiry
- NuCoal will continue to highlight the incredible sovereign risk that is now over NSW as a result of this debacle
 - Submission made to poles and wires investigation
 - Prospectuses now need to include the specific risk that Government can expropriate without compensation by simply legislating away your rights


The NuCoal Story



- NuCoal has no intention of “going away”
- Today NuCoal is calling for a full scale Parliamentary Enquiry into the process and independence of ICAC during Operation Acacia so that the real truth about how ICAC went about its task, including specific reference to the interactions it had with the Government, can be made public

**“Justice will be done in the end
– because if it isn’t..... its not the end”**

(Howarth, 2014)



Thank you