

Notice of Modification

Section 75W of the *Environmental Planning & Assessment Act 1979*

As delegate of the Minister for Planning, the Planning Assessment Commission of New South Wales modifies the consent referred to in Schedule 1, as set out in Schedule 2.



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9 October 2014

SCHEDULE 1

The development consent (DA162/91) for the Airly Coal Mine granted by the Minister for Planning on 14 April 1993.

SCHEDULE 2

1. In condition 1 of Schedule 2 delete paragraphs (vii) and (viii), and insert the following:
 - (vii) Modification application and accompanying Environmental Assessment titled *Airly Mine Extension of Time*, dated June 2014;
 - (viii) Statement of Commitments dated August 2009 and July 2014 (see Appendix 1); and
 - (ix) Conditions of this consent.
2. Delete condition 2 of Schedule 2 and replace with the following condition:
 2. The Applicant may carry out coal mining, processing and transportation operations on the site until 31 October 2015.

Note: Conditions of this consent may require other activities such as monitoring, maintenance, rehabilitation of the site, etc to be carried out by the Applicant beyond this date.
3. In condition 4 (b) of Schedule 2, delete "Director-General of Planning (the Director-General)" and replace with "Secretary, Department of Planning and Environment".
4. Delete all other references to "Director-General" and replace with "Secretary".
5. Delete all references to "DII" and replace with "DRE".
6. Except for conditions 17(c), 18, 19, 20, 25, 27, 29(b), 29(c) and 30 (c) of Schedule 2 delete all references to "DECCW" and replace with "EPA".
7. In conditions 18, 19, 27(c), 29(b), 29(c) and 31 (a) of Schedule 2 delete all references to "DECCW" and replace with "OEH".
8. In conditions 17(c), 20, 25 and 27(a) of Schedule 2 delete all references to "DECCW" and replace with "NOW".
9. In condition 27(b) of Schedule 2 delete all references to "DECCW" and replace with "OEH and NOW".
10. In condition 30(c) of Schedule 2 delete all references to "DECCW" and replace with "EPA, OEH and NOW".

11. Delete condition 5 of Schedule 2.
12. Delete all references to “DTI” and replace with “RMS”.
13. Delete Condition 12 (a) and replace with “The Applicant shall ensure that all external high cliffs and rock formations known as ‘pagodas’ and ‘beehives’ located in Environmental Protection Zones as designated in Plan No ACP1 (such plan being part of this consent) are adequately protected so as to experience not greater than negligible structural or visual impact caused by mining.

High is defined as 20m or more change in elevation in any section with a slope greater than 75 degrees.”

14. In condition 3 of Schedule 2 delete “Department of Environment, Climate Change and Water (DECCW), Department of Industry and Investment (DII), Department of Transport and Infrastructure (DTI)” and replace with “Environment Protection Authority (EPA), Division of Resources and Energy (DRE), Office of Environment and Heritage (OEH), NSW Office of Water (NOW), Roads and Maritime Services (RMS)”.
15. Delete condition 13 of Schedule 2 and replace with the following condition:

13. The Applicant shall ensure that surface subsidence generated by the development does not exceed the criteria listed in Table 1.

Table 1: Subsidence Impact Assessment Criteria

| Maximum Vertical Subsidence | Tilt | Horizontal Strain (compressive and tensile) |
|-----------------------------|----------|------------------------------------------------|
| 125 mm | 2.5 mm/m | 2.0 mm/m |

- 13A. The Applicant may carry out first workings on site provided that DRE is satisfied that the first workings are designed to remain long-term stable and non-subsiding, except insofar as they may be impacted by approved second workings.

Notes:

- *The intent of this condition is not to require an additional approval for first workings, but to ensure that first workings are built to geotechnical and engineering standards sufficient to ensure long-term stability, in accordance with the subsidence criteria in Table 1 above.*
 - *First workings are defined as the extraction of coal by bord and pillar mining methods and from main headings and the like.*
- 13B. From 1 January 2015, the Applicant shall prepare and implement an Extraction Plan for second workings on site to the satisfaction of the Secretary. Each Extraction Plan must:
 - a) be prepared by suitably qualified and experienced persons whose appointment has been endorsed by the Secretary;
 - b) be approved by the Secretary before the Applicant carries out any of the second workings covered by the plan;
 - c) include detailed plans of existing and proposed first and second workings and overlying surface features;
 - d) include adequate consideration of mine roof and floor conditions, pillar width to height ratios, final pillar dimensions and long-term stability of pillars, which has been prepared in consultation with DRE;
 - e) include detailed performance indicators for each of the performance criteria in Condition 12 and Table 1;
 - f) describe the measures that would be implemented to ensure compliance with the performance criteria in Condition 12 and Table 1, and manage or remediate any impacts and/or environmental consequences;
 - g) include a Public Safety Management Plan, which has been prepared in consultation with DRE, to ensure public safety in the mining area;
 - h) incorporate measures to conserve and protect cliffs, watercourses, Stone Cottage and surface infrastructure including the telecommunications tower;
 - i) include a subsidence monitoring program, which has been prepared in consultation with DRE and OEH; and
 - j) include a program to collect sufficient baseline data for any future Extraction Plans related to this approval.

Note:

- *Second workings are defined as the extraction of coal by pillar extraction methods (including pillar splitting and pillar quartering) except where remnant pillars are designed to be long term stable and non-subsiding (ie leading to <20mm subsidence at the surface).*
- *Due to the sensitive and rugged terrain of the Mugii Murum-ban State Conservation Area, the Applicant may propose remote subsidence monitoring techniques.*

13C. The Applicant shall pay all reasonable costs incurred by the Department to engage suitably qualified, experienced and independent experts to review the adequacy of any aspect of an Extraction Plan.

16. In condition 35 of Schedule 2 replace "Land and Property Management Authority" with "NSW Trade and Investment Crown Lands"

17. Delete conditions 30 and 31.

18. After condition 35, insert the following:

ENVIRONMENTAL MANAGEMENT STRATEGY

36. The Applicant shall prepare and implement an Environmental Management Strategy for Airly Coal mine to the satisfaction of the Secretary. This strategy must:

- (a) be submitted to the Secretary for approval by 1 March 2015;
- (b) provide the strategic framework for environmental management of the Airly Coal mine;
- (c) identify the statutory approvals that apply to the development;
- (d) describe the role, responsibility, authority and accountability of all key personnel involved in the environmental management of the development;
- (e) describe the procedures that would be implemented to:
 - keep the local community and relevant agencies informed about the operation and environmental performance of the development;
 - receive, handle, respond to, and record complaints;
 - resolve any disputes that may arise during the course of the development;
 - respond to any non-compliance;
 - respond to emergencies; and
- (f) include:
 - copies of any strategies, plans and programs approved under the conditions of this consent; and
 - a clear plan depicting all the monitoring required to be carried out under the conditions of this consent.

ADAPTIVE MANAGEMENT

37. The Applicant shall assess and manage development-related risks to ensure that there are no exceedances of the criteria and/or performance measures in this consent. Any exceedance of these criteria and/or performance measures constitutes a breach of this consent and may be subject to penalty or offence provisions under the EP&A Act or EP&A Regulation.

Where any exceedance of these criteria and/or performance measures has occurred, the Applicant must, at the earliest opportunity:

- (a) take all reasonable and feasible steps to ensure that the exceedance ceases and does not recur;
- (b) consider all reasonable and feasible options for remediation (where relevant) and submit a report to the Department describing those options and any preferred remediation measures or other course of action; and
- (c) implement remediation measures as directed by the Secretary, to the satisfaction of the Secretary.

MANAGEMENT PLAN REQUIREMENTS

38. The Applicant shall ensure that the management plans required under this consent are prepared in accordance with any relevant guidelines, and include:

- (a) detailed baseline data;
- (b) a description of:
 - the relevant statutory requirements (including any relevant approval, licence or lease conditions);
 - any relevant limits or performance measures/criteria;
 - the specific performance indicators that are proposed to be used to judge the performance of, or guide the implementation of, the development or any management measures;

- (c) a description of the measures that would be implemented to comply with the relevant statutory requirements, limits, or performance measures/criteria;
- (d) a program to monitor and report on the:
 - impacts and environmental performance of the development;
 - effectiveness of any management measures (see c above);
- (e) a contingency plan to manage any unpredicted impacts and their consequences;
- (f) a program to investigate and implement ways to improve the environmental performance of the development over time;
- (g) a protocol for managing and reporting any:
 - incidents;
 - complaints;
 - non-compliances with statutory requirements; and
 - exceedances of the impact assessment criteria and/or performance criteria; and
- (h) a protocol for periodic review of the plan.

Note: The Secretary may waive some of these requirements if they are unnecessary or unwarranted for particular management plans.

ANNUAL REVIEW

39. By the end of March each year, unless the Secretary agrees otherwise, the Applicant shall review the environmental performance of the development to the satisfaction of the Secretary. This review must:
- (a) describe the development (including any rehabilitation) that was carried out in the past financial year, and the development that is proposed to be carried out over the next year;
 - (b) include a comprehensive review of the monitoring results and complaints records of the development over the past financial year, which includes a comparison of these results against the:
 - relevant statutory requirements, limits or performance measures/criteria;
 - requirements of any plan or program required under this consent;
 - monitoring results of previous years; and
 - relevant predictions in the EA;
 - (c) identify any non-compliance over the past financial year, and describe what actions were (or are being) taken to ensure compliance;
 - (d) identify any trends in the monitoring data over the life of the development;
 - (e) identify any discrepancies between the predicted and actual impacts of the development, and analyse the potential cause of any significant discrepancies; and
 - (f) describe what measures will be implemented over the current financial year to improve the environmental performance of the development.

REVISION OF STRATEGIES, PLANS AND PROGRAMS

40. Within 3 months of:
- (a) the submission of an annual review under Condition 39 above;
 - (b) the submission of an incident report under Condition 42 below;
 - (c) the submission of an audit report under Condition 44 below; or
 - (d) any modification to the conditions of this consent (unless the conditions require otherwise),
- the Applicant shall review, and if necessary revise, the strategies, plans, and programs required under this consent to the satisfaction of the Secretary.

Where this review leads to revisions in any such document, then within 4 weeks of the review, unless the Secretary agrees otherwise, the revised document must be submitted to the Secretary for approval.

Note: This is to ensure the strategies, plans and programs are updated on a regular basis, and incorporate any recommended measures to improve the environmental performance of the development.

COMMUNITY CONSULTATIVE COMMITTEE

41. By 31 December 2014, the Applicant shall establish and consequently operate a Community Consultative Committee (CCC) for Airly Coal Mine to the satisfaction of the Secretary. This CCC must be operated in general accordance with the *Guidelines for Establishing and Operating Community Consultative Committees for Mining Developments* (Department of Planning, 2007, or its latest version).

Notes:

- *The CCC is an advisory committee. The Department and other relevant agencies are responsible for ensuring that the Applicant complies with this consent.*
- *In accordance with the guideline, the Committee should be comprised of an independent chair and appropriate representation from the Applicant, Council, recognised environmental groups and the local community.*

INCIDENT REPORTING

42. The Applicant shall immediately notify the Secretary and any other relevant agencies of any incident. Within 7 days of the date of the incident, the Applicant shall provide the Secretary and any relevant agencies with a detailed report on the incident, and such further reports as may be requested.

Note: An incident includes a set of circumstances that:

- *causes or threatens to cause actual or potential harm to the health or safety of human beings or to ecosystems that is not trivial harm to the environment; and/or*
- *breaches or exceeds the limits or performance measures/criteria in this consent*

REGULAR REPORTING

43. The Applicant shall provide regular reporting on the environmental performance of the development on its website, in accordance with the reporting arrangements in any plans or programs approved under the conditions of this consent.

INDEPENDENT ENVIRONMENTAL AUDIT

44. By the 1 March 2015, and every 3 years thereafter, unless the Secretary directs otherwise, the Applicant shall commission and pay the full cost of an Independent Environmental Audit of the development. This audit must:
- (a) be conducted by a suitably qualified, experienced and independent team of experts whose appointment has been endorsed by the Secretary;
 - (b) include consultation with the relevant agencies;
 - (c) assess the environmental performance of the development and assess whether it is complying with the requirements in this consent and any relevant EPL or Mining Lease (including any assessment, plan or program required under these approvals);
 - (d) review the adequacy of strategies, plans or programs required under the abovementioned approvals; and
 - (e) recommend appropriate measures or actions to improve the environmental performance of the development, and/or any assessment, plan or program required under the abovementioned approvals.

Note: This audit team must be led by a suitably qualified auditor and include experts in any field specified by the Secretary.

45. Within 6 weeks of the completion of this audit, unless the Secretary agrees otherwise, the Applicant shall submit a copy of the audit report to the Secretary, together with its response to any recommendations contained in the audit report.

ACCESS TO INFORMATION

46. Within 3 months of the date of this consent, the Applicant shall:
- (a) make copies of the following publicly available on its website:
 - the EA;
 - current statutory approvals for the development;
 - approved strategies, plans and programs required under the conditions of this consent;
 - a comprehensive summary of the monitoring results of the development, reported in accordance with the specifications in any conditions of this consent, or any approved plans and programs;
 - a complaints register, which is to be updated monthly;
 - minutes of CCC meetings;
 - the annual reviews of the development (for the last 5 years, if applicable);
 - any independent environmental audit of the development, and the Applicant's response to the recommendations in any audit;
 - any other matter required by the Secretary; and
 - (b) keep this information up-to-date, to the satisfaction of the Secretary.

19. In Appendix 1, in the Statement of Commitments dated 6 August 2009, replace "Hawkesbury Nepean Catchment Management Authority" with "Local Land Services" and replace "DECC" with "OEH".

20. In Appendix 1, after the Statement of Commitments dated 6 August 2009, insert the following:

JULY 2014

| Aspect | Commitments/Mitigation measures |
|----------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Subsidence | <ul style="list-style-type: none"> • Airly Mine will satisfy the Division of Resources and Energy that the proposed first workings are designed to remain stable and non-subsiding in the long-term. The design of pillars will comply with the requirements of the <i>Coal Mines Health and Safety Act 2002</i> and <i>Coal Mines Health and Safety Regulation 2006</i>. • Appropriate impact management and mitigation strategies will be developed for natural features within the Project Application Area as required. • Existing management plans will be reviewed and updated if necessary to take into consideration potential impacts from the Modification. • No pillar splitting or quartering with a distance defined by half the depth of cover from the privately owned Stone Cottage in Airly Gap, identified in Figure 6 of the MOD 3 EA report will be undertaken. |
| Visual Amenity | <ul style="list-style-type: none"> • Tree plantings will be undertaken during the Mod 3 period to provide visual screening of the existing coal stockpile area. |