

ASSESSMENT REPORT

PROPOSED MODIFICATION TO THE BAYSWATER NO. 3 PROJECT

PLANNING REPORT ON THE ASSESSMENT OF A MODIFICATION OF DEVELOPMENT APPLICATION LODGED PURSUANT TO SECTION 96(1A) OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979



Department of
Urban Affairs and Planning

1. INTRODUCTION AND BACKGROUND

1.1 The Applicant

Bayswater Colliery Company Pty Limited

1.2 Background

Bayswater Colliery Company (the Applicant) is seeking an extension to the period during which coal from the colliery may be hauled by road to the Ravensworth coal loader by 8 months from 1 July 2001 to 1 March 2002. The Applicant received Development Consent from the then Minister for Planning for the operation of the Bayswater No.3 open cut coal mine and associated facilities on 12 September 1994. A specific condition of consent was that the Applicant would undertake to transport all coal from Bayswater Colliery by rail within 3 years of the commencement of coal production at Bayswater No.3 Colliery, or by the time of the commissioning of the dragline, whichever occurred the earlier. Coal was permitted to be transported by road to the Ravensworth coal loader until that time. This condition was however superseded by a later development consent issued by the then Minister on 12 October 1997 which allowed for a further two years of road haulage of coal, from the date of the 1997 consent. In 1999, at which stage the rail dragline or conveyor had yet to be commissioned, the Applicant sought to modify the original 1994 consent to allow transport of coal from Bayswater No 3 to continue until alternative transportation arrangements could be developed and implemented, by 1 July 2001 at the latest. Following consideration of the Statement of Environmental Effects (SEE) for the modification, the Minister granted consent for the required time extension on 14 December 1999.

Following the 1999 modification, Coal Operations Australia Limited (owners of Bayswater Colliery) was also granted development consent for the construction and operation of the Bayswater rail loading facility and rail loop on 2 November 2000, which will provide the necessary infrastructure and facilities to enable to haulage of coal by rail from Bayswater No.3. The construction of this rail loading facility and rail loop commenced on 12 January 2001, however is not expected to be operational until 1 March 2002. The proposed modification lodged on 1 March 2001, would allow coal to continue to be transported by road until 1 March 2002 to allow sufficient time for the completion of the rail loading facility and rail loop.

1.3. Overview of the Proposal and its Location

The application relates to the continued road haulage of coal from Bayswater No 3 coal mine to the Ravensworth Coal loader, within Muswellbrook and Singleton Local Government Areas for a further 8 months. This extension will allow current haulage of coal on Thomas Mitchell Drive, New England Highway and Pikes Gully Road (as shown in Figure 1) to continue for this period to enable the completion of construction of the Bayswater Rail Loader and Rail Loop.

1.4. Section 96 (1A) Modification of Consent

The Applicant advises that the impacts of the modification will not alter the effects identified in the Statement of Environmental Effects (SEE) dated September 1999, prepared for the previous modification proposal. The Department reviewed the SEE as lodged for the previous modification, and concluded that the impacts of the modification would not be significant. The conditions of consent, resulting from the modification, require road funding for the maintenance and rehabilitation of Thomas Mitchell drive, along with the management procedures specified in the 1999 SEE. These conditions would still be applicable for the proposed extension for the period of road transport of coal. In light of the previous assessment, and subsequent information provided in the quarterly reviews, the Department concurs that the extension modification involves minimal environmental impact and considers the proposal to be substantially the same development to that originally approved.

The Department is satisfied that the application to modify the development consent relates is a modification of minimal environmental impact and relates substantially to the same development as the development for which the consent was originally granted.

As the Minister determined the original application, the Minister is the consent authority for the modification application.

1.5. Lodgement of Modification application

The application for a modification under Section 96(1A) of the *Environmental Planning and Assessment Act 1979* (EP&A Act) was lodged with the Department of Urban Affairs and Planning on 1 March 2001. The modification is not required to be advertised in accordance with Clause 117 of the *Environmental Planning and Assessment Regulation, 2000*.

1.6. Local Council position

Muswellbrook Shire Council does not object to the application.

1.7. Government agencies position

The application was referred to the Roads and Traffic Authority (RTA). In response, the RTA was satisfied with the progress to date on the construction of the coal loading facility and therefore did not object to an extension of road haulage of coal until 1 March 2002.

1.8. Local Community position

The development application was not publicly advertised and no submissions were received from the local community. The previous modification extending the road haulage period in 1999 was not contentious.

1.9. Applicant's Justification

The Application of Section 96(1A) is justified by the Applicant in that the development is expected to be of minimal environmental impact. The expected impacts of the modification will continue to be the effects identified in the Statement of Environment Effects dated September 1999. The Department assessed these effects at the time to be of no significant environmental impact. The management procedures specified in the 1999 SEE and December 1999 approved conditions will continue to apply during the extended period of road haulage. The Department considers the proposal is justified on this basis.

2. STATUTORY PLANNING MATTERS

The proposed modification does not alter the specifications of the haulage route or the quantity of material to be transported, but simply provides for extension in time during which coal may be transported by road. As such the

application for modification raises no further planning issues than those previously assessed in the original application and modifications, and is deemed to be consistent with this planning framework.

The proposal is therefore in accordance with the provision of all relevant environmental planning instruments.

3. DEPARTMENT OF URBAN AFFAIRS AND PLANNING CONSIDERATIONS

3.1. Assessment

The proposed modification, although important to avoid a technical breach of the conditions, does not alter the specifications of the route, the number of truck movements or the quantity of material being transported. The Department conducted a thorough assessment of the issues raised in the original application for the Bayswater No. 3 Colliery and in response to the 1999 modification lodged with an accompanying SEE. The Department also imposed conditions of consent, which will continue to apply throughout this additional period of road haulage. The conditions imposed various obligations on the Applicant, including provision of funds to Muswellbrook Council for road maintenance and rehabilitation of Thomas Mitchell Drive; the preparation of a Road Noise Management Plan; noise monitoring; restrictions on the number of truck movements and covering of loads. The Department also requires quarterly reports from the Applicant regarding the haulage of coal along this route. These reports have been regularly submitted to the Department, and recommendations for noise monitoring and mitigation have been implemented. The Department is also satisfied that appropriate measures are being undertaken to remove the haulage of coal from the public road system and with the progress of construction of the Bayswater Rail Loading facility.

3.2. Variations to Conditions of Consent

The proposed changes relate only to an extension to the period in which coal from the Bayswater No. 3 may be transported by road. This modification will require an amendment to Condition 17 (attached as **Appendix A**). The following amendments are recommended:

In Condition 17, subclauses (a), (h) and (i), delete words “1 July 2001”, and replace with “1 March 2001”

4. CONSIDERATION UNDER SECTION 79(C) EP&A ACT 1979 –EVALUATION

In determining an application for the modification of a consent, the Minister as consent authority is to take into consideration the relevant matters listed under Section 79C(1) of the *Environmental Planning and Assessment Act, 1979*, in accordance with Section 96(3) of the Act. Based on this evaluation (attached as **Appendix B**), it is considered that the merits of the modification warrant granting of consent, subject to the recommended conditions of consent.

5. CONCLUSION

The proposed modification to the Bayswater No.3 Colliery will not have any different or additional impact beyond those which have already been assessed in relation to the original application for this development. The mining operation as proposed in the amended application will operate in exact accordance with the proposed development as originally assessed with only the timing of the cessation of road haulage being altered.

It is recommended that the Minister:

- (i) Consider the findings and recommendations of this report;
- (ii) Approve the application under Section 96(1A) of the Environmental Planning and Assessment Act 1979, subject to the modified conditions set out in the instrument of approval.

Stacy Warren
Environmental Planning Officer

Richard Lloyd
Senior Environmental Planning Officer

Geoff Noonan
Director
Development and Infrastructure Assessment

APPENDIX A
AMENDED CONDITIONS OF CONSENT

Condition 1, with amendment inserted in bold italics:

The Development is to be carried out generally in accordance with the Environmental Impact Statement dated November 1993 and prepared by Resources Planning Pty Ltd certified in accordance with Section 77(3) of the Act, Drawing 30007 Plan of Proposed Acquisition, and the Applicant's submission to the Commission of Inquiry and the Statement of Environmental Effects, dated September 1999, **and the modification application dated 1 March 2001**, and as may be modified by the conditions set out herein.

Consent condition 17 (a), with words to be deleted indicated by strike through and amendments inserted in bold italics

Undertake to transport all coal from Bayswater Colliery by rail or conveyor as soon as practicable, at the latest, by ~~1 July, 2001~~ **1 March 2002**.

Consent condition 17 (h), with words to be deleted indicated by strike through and amendments inserted in bold italics

Within three months of the date of this consent, and at three monthly intervals thereafter, until ~~1 July 2001~~ **1 March 2002** or the cessation of road haulage, the Applicant shall provide a written report to the Director-General detailing measures undertaken during that period to pursue coal haulage options other than by road. The Applicant shall provide any reasonable additional information relevant to these reports and any other reasonable requirements for the reports, if requested to do so by the Director-General (or delegate). The Applicant shall notify the Director-General, and Muswellbrook Shire Council immediately should haulage, other than road haulage, commence prior to ~~1 July 2001~~ **1 March 2002**.

Consent condition 17 (i), with words to be deleted indicated by strike through and amendments inserted in bold italics

Ensure that no road haulage of coal will be undertaken after ~~1 July 2001~~ **1 March 2002**, except in emergency or special situations and only with the prior written permission of the Director-General, Muswellbrook Shire Council and the Roads and Traffic Authority.

APPENDIX B
SECTION 79C(1) CONSIDERATIONS

The following assessment is based on the matters listed for consideration under section 79C(1) of the *Environmental Planning and Assessment Act, 1979*.

(a) The Provisions of:

- (I) Any environmental planning instrument, and**
- (II) Any draft environmental planning instrument that is or has been placed on public exhibition and details of which have been notified to the consent authority,**
- (III) Any development control plans, and**
- (IV) The regulations (to the extent that they prescribe matters for the purposes of this paragraph)**

that apply to the land to which the development application relates,

Relevant environmental planning instruments (EPIs) are addressed in Section 2 of this report. It is considered that the proposed modification is generally consistent with the provisions of all relevant EPIs.

(b) the likely impacts of that development, including environmental impacts on both the natural and built environments, and the social and economic impacts in the locality,

The likely impacts of the proposed modification on the natural and built environments have been discussed in this report in Section 3.

(c) the suitability of the site for the development,

It is considered that the subject site is suitable for the proposed development. The modification does not alter the specifications of the development as assessed in accordance with the original development application and 1999 modification.

(d) any submissions made in accordance with this Act or Regulation

No submissions were required to be sought for this application under Section 96(1A) of the Act.

(e) the public interest

The modification does not alter the specifications of the proposal, only the period for which haulage of coal by road is permissible. The Department concludes that the modification would have no significant environmental impacts beyond those that have already been assessed as part of the original consent. It is therefore considered that the proposed modification would not be contrary to the public interest.

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