# Notice of Modification

## Section 75W of the *Environmental Planning and Assessment Act 1979*

As delegate of the Minister for Planning, I modify the development consent referred to in Schedule 1, as set out in Schedule 2.

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David Kitto
**Director**
**Mining and Industry Projects**

Sydney 26 NOVEMBER 2010

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**SCHEDULE 1**

The development consent (DA 14-1-2004) granted by the Minister for Infrastructure and Planning for the development of mining operations at the Mt Owen Mine on 8 December 2004.

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**SCHEDULE 2**

1. Under the heading "DEFINITIONS" in schedule 2, delete the definitions for "AEMR", "DEC", "Department", "DWE", "DPI", and "Director-General", and insert in alphabetical order the following:

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|---|---|
| DECCW | Department of Environment, Climate Change and Water |
| Department | Department of Planning |
| DII | Department of Industry and Investment |
| Director-General | Director-General of the Department of Planning, or delegate |
| Incident | A set of circumstances that causes or threatens to cause material harm to the environment, and/or breaches or exceeds the limits or performance measures/criteria in this approval |
| Mt Owen Mining Complex | The development approved under this consent, together with the development approved under the consents for the Glendell open cut coal mine (DA 80/952) and the Ravensworth East coal mine (DA 52-03-99), considered collectively |

2. Delete all references to "DEC" and replace with "DECCW".
3. Delete all references to "DPI" and replace with "DII".
4. Delete the references to "a year" and replace with "in a calendar year".
5. Delete all references to "AEMR" and replace with "annual review".
6. Change section 4 of the Table of Contents to:



7. Delete all words after "Umwelt (Australia) Pty Ltd;" in condition 2(d) of schedule 3, and replace with the following:

   (e) modification application DA 14-1-2004-MOD 1 and accompanying letter prepared by Umwelt (Australia) Pty Limited, dated July 2010; and
   (f) conditions of this consent.

8. Delete condition 3 of schedule 3, and insert the following:

    3. If there is any inconsistency between the above documents, the most recent document shall prevail to the extent of the inconsistency. However, the conditions of this consent shall prevail to the extent of any inconsistency.

9. Re-number condition 25 of schedule 4 to "26", renumber condition 26 of schedule 4 to "25" and re-order the conditions to reflect this change.

10. Delete condition 27 of schedule 4, and insert the following:

**Air Quality & Greenhouse Gas Management Plan**

27. The Applicant shall prepare and implement a detailed Air Quality & Greenhouse Gas Management Plan for the Mt Owen Mining Complex to the satisfaction of the Director-General. This plan must:
    (a) be prepared in consultation with DECCW, and submitted to the Director-General for approval by 31 March 2011;
    (b) describe the measures that will be implemented to ensure compliance with the relevant conditions of this consent, including the real-time air quality management system;
    (c) include an air quality monitoring program that:
    - uses a combination or real-time monitors, high volume samplers and dust deposition gauges to monitor the performance of the development, and inform the real-time air quality management system; and
    - includes a protocol for determining exceedances with the relevant conditions of this consent; and

    (d) includes a protocol that has been prepared in consultation with the owners of the adjoining mines for minimising and managing the potential cumulative air quality impacts of the mines in the area.

11. Delete Conditions 4 to 12 in Schedule 5, and insert the following:

**Independent Review**

4. If an owner of privately-owned land considers the development to be exceeding the relevant criteria in schedule 4, except where this is predicted in the EIS, then he/she may ask the Director-General in writing for an independent review of the impacts of the development on his/her land.

    If the Director-General is satisfied that an independent review is warranted, then within 2 months of the Director-General's decision the Applicant shall:
    (a) commission a suitably qualified, experienced and independent person, whose appointment has been approved by the Director-General, to:
    - consult with the landowner to determine his/her concerns;
    - conduct monitoring to determine whether the development is complying with the relevant criteria in schedule 4; and
    - if the development is not complying with these criteria then:
        - determine if there is more than one mine responsible for the exceedance, and if so the relative share of each mine towards the impact on the land;
        - identify the measures that could be implemented to ensure compliance with the relevant criteria; and

    (b) give the Director-General and landowner a copy of the independent review.

5. If the independent review determines that the development is complying with the relevant criteria in schedule 4, then the Applicant may discontinue the independent review with the approval of the Director-General.

    If the independent review determines that the development is not complying with the relevant criteria in schedule 4, and that the development is primarily responsible for this non-compliance, then the Applicant shall:
    (a) implement all reasonable and feasible mitigation measures, in consultation with the landowner and appointed independent person, and conduct further monitoring until the development complies with the relevant criteria; or
    (b) secure a written agreement with the landowner to allow exceedances of the relevant criteria, to the satisfaction of the Director-General.

    If the independent review determines that the development is not complying with the relevant land acquisition criteria in schedule 4, and that the development is primarily responsible for this non-compliance, then upon receiving a written request from the landowner, the Applicant shall acquire all or part of the landowner's land in accordance with the procedures in conditions 7-8 below.

6. If the independent review determines that the relevant criteria in schedule 4 are being exceeded, but that more than one mine is responsible for this non-compliance, then the Applicant shall, together with the relevant mine/s:
   (a) implement all reasonable and feasible mitigation measures, in consultation with the landowner and appointed independent person, and conduct further monitoring until there is compliance with the relevant criteria; or
   (b) secure a written agreement with the landowner to allow exceedances of the relevant criteria in schedule 4,

   to the satisfaction of the Director-General.

   If the independent review determines that the relevant land acquisition criteria in schedule 4 are being exceeded, but that more than one mine is responsible for this non-compliance, then upon receiving a written request from the landowner, the Applicant shall acquire all or part of the landowner's land on as equitable a basis as possible with the relevant mine/s, in accordance with the procedures in conditions 7-8 below.

**Land Acquisition**

7. Within 3 months of receiving a written request from a landowner with acquisition rights, the Applicant shall make a binding written offer to the landowner based on:
   (a) the current market value of the landowner's interest in the property at the date of this written request, as if the property was unaffected by the development, having regard to the:
      - existing and permissible use of the land, in accordance with the applicable planning instruments at the date of the written request; and
      - presence of improvements on the property and/or any approved building or structure which has been physically commenced at the date of the landowner's written request, and is due to be completed subsequent to that date, but excluding any improvements that have resulted from the implementation of the 'additional noise mitigation measures' in condition 4 of schedule 4;
   (b) the reasonable costs associated with:
      - relocating within the Singleton or Muswellbrook local government area, or to any other local government area determined by the Director-General; and
      - obtaining legal advice and expert advice for determining the acquisition price of the land, and the terms upon which it is to be acquired; and
   (c) reasonable compensation for any disturbance caused by the land acquisition process.

   However, if at the end of this period, the Applicant and landowner cannot agree on the acquisition price of the land and/or the terms upon which the land is to be acquired, then either party may refer the matter to the Director-General for resolution.

   Upon receiving such a request, the Director-General shall request the President of the NSW Division of the Australian Property Institute to appoint a qualified independent valuer to:
   - consider submissions from both parties;
   - determine a fair and reasonable acquisition price for the land and/or the terms upon which the land is to be acquired, having regard to the matters referred to in paragraphs (a)-(c) above;
   - prepare a detailed report setting out the reasons for any determination; and
   - provide a copy of the report to both parties.

   Within 14 days of receiving the independent valuer's report, the Applicant shall make a binding written offer to the landowner to purchase the land at a price not less than the independent valuer's determination.

   However, if either party disputes the independent valuer's determination, then within 14 days of receiving the independent valuer's report, they may refer the matter to the Director-General for review. Any request for a review must be accompanied by a detailed report setting out the reasons why the party disputes the independent valuer's determination. Following consultation with the independent valuer and both parties, the Director-General will determine a fair and reasonable acquisition price for the land, having regard to the matters referred to in paragraphs (a)-(c) above, the independent valuer's report, the detailed report disputing the independent valuer's determination, or any other relevant submissions.

   Within 14 days of this determination, the Applicant shall make a binding written offer to the landowner to purchase the land at a price not less than the Director-General's determination.

   If the landowner refuses to accept the Applicant's binding written offer under this condition within 6 months of the offer being made, then the Applicant's obligations to acquire the land shall cease, unless the Director-General determines otherwise.

8. The Applicant shall pay all reasonable costs associated with the land acquisition process described in condition 7 above, including the costs associated with obtaining Council approval for any plan of subdivision (where permissible), and registration of this plan at the Office of the Registrar-General.

12. Delete Conditions 1 to 11 in Schedule 6, and insert the following:

**ENVIRONMENTAL MANAGEMENT**

**Environmental Management Strategy**

1. The Applicant shall prepare and implement an Environmental Management Strategy for the development to the satisfaction of the Director-General. This strategy must:
   (a) be submitted to the Director-General for approval within 6 months of this consent;
   (b) provide the strategic framework for environmental management of the development;
   (c) identify the statutory requirements 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 approval; and
   - a clear plan depicting all the monitoring required to be carried out under the conditions of this approval.

**Management Plan Requirements**

2. 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/consent, 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 Director-General may waive some of these requirements if they are unnecessary or unwarranted for particular management plans.*

**Annual Review**

3. By the end of March each year, the Applicant shall review the environmental performance of the development to the satisfaction of the Director-General. This review must:
   (a) describe the development (including any rehabilitation) that was carried out in the past calendar year, and the development that is proposed to be carried out over the next calendar year;
   (b) include a comprehensive review of the monitoring results and complaints records of the development over the past year, which includes a comparison of these results against:
   - the relevant statutory requirements, limits or performance measures/criteria;
   - the monitoring results of previous years; and
   - the relevant predictions in the EIS;

(c) identify any non-compliance over the past 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 next year to improve the environmental performance of the development.

**Revision of Strategies, Plans and Programs**

4. Within 3 months of:
   (a) the submission of an annual review under Condition 3 above;
   (b) the submission of an incident report under Condition 6 below;
   (c) the submission of an audit report under Condition 8 below; and
   (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 Director-General.

   *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 project.*

**Community Consultative Committee**

5. The Applicant shall establish and operate a new Community Consultative Committee (CCC) for the developments within the Mt Owen Mining complex in general accordance with the *Guidelines for Establishing and Operating Community Consultative Committees for Mining Projects* (Department of Planning, 2007, or its latest version), and to the satisfaction of the Director-General. This CCC must be operating within 6 months of this consent.

   *Notes:*
   - *The CCC is an advisory committee. The Department and other relevant agencies are responsible for ensuring that the Applicant complies with this approval; and*
   - *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.*

**REPORTING**

**Incident Reporting**

6. The Applicant shall notify the Director-General and any other relevant agencies of any incident associated with the development as soon as practicable after the Applicant becomes aware of the incident. Within 7 days of the date of the incident, the Applicant shall provide the Director-General and any relevant agencies with a detailed report on the incident.

**Regular Reporting**

7. 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**

8. By the end of December 2011, and every 3 years thereafter, unless the Director-General 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 Director-General;
   (b) include consultation with the relevant agencies;
   (c) assess the environmental performance of the Mt Owen Mining Complex and assess whether it is complying with the requirements in this consent and any relevant development consent, EPL or Mining Lease (including any assessment, plan or program required under these consents) that apply to the Mt Owen Mining Complex;
   (d) review the adequacy of strategies, plans or programs required under the above mentioned consents; and
   (e) recommend appropriate measures or actions to improve the environmental performance of the projects, and/or any assessment, plan or program required under the above mentioned consents.

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

9. Within 6 weeks of the completion of this audit, or as otherwise agreed by the Director-General, the Applicant shall submit a copy of the audit report to the Director-General, together with its response to any recommendations contained in the audit report.

**ACCESS TO INFORMATION**

10. From the end of March 2011, the Applicant shall:
    (a) make copies of the following publicly available on its website:
    - the documents referred to in Condition 2 of Schedule 3;
    - all current statutory consents for the Mt Owen Mining Complex;
    - all approved strategies, plans and programs required under the conditions of this consent;
    - the monitoring results of the Mt Owen Mining Complex, reported in accordance with the specifications in any conditions of this consent, or any approved plans and programs;
    - a complaints register, updated on a monthly basis;
    - minutes of CCC meetings;
    - the annual reviews of the development;
    - any independent environmental audit of the Mt Owen Mining Complex, and the Applicant's response to the recommendations in any audit;
    - any other matter required by the Director-General; and

    (b) keep this information up-to-date,

    to the satisfaction of the Director-General.

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13. Delete the words "conditions 10-12" in conditions 1, 5, 7, 23 and 24 of Schedule 4, and insert "conditions 7 - 8".