

9 October 2014

**Determination of the Airly Coal Mine – Life of Consent Modification
(DA162/91 MOD 3)**

1. Background

The Airly Coal Mine commenced trial mining in 1998 and upon completion of trial mining in 2002 was placed into care and maintenance. Construction to enable full operation mining commenced in 2009 with the first run of mine coal produced that year. Mining operations went into care and maintenance again in October 2012 with mining recommencing May 2014.

In 2011, under the National Parks and Wildlife Act 1974, the area overlying the majority of the underground lease was declared as the Mugii Murum-ban State Conservation Area.

Approval to mine under the existing consent, DA 162/91, will expire on 12 October 2014.

2. Project Modification

On 12 June 2014 Centennial Airly Pty Limited lodged an application to modify its project approval. In this project modification the proponent is seeking approval for the continuation of existing mining operations for a period of just over 12 months, to expire 31 October 2015.

The approved coal extraction methodology was bord pillar extraction with varying working methodology (such as first workings, partial pillar removal etc) relating to specific depths and proximity to Environmental Protection Zones.

The Proponent, Centennial Airly Pty Limited, has also submitted a State Significant Development (SSD) project application for its underground Extension Project (MP12_5581). This would significantly expand mining for a period of 20 years, and involves bord and pillar and pillar extraction mining methods. The E.I.S for the project is currently on exhibition (until 31 October 2014). The Department has advised the Commission the project is likely to be considered during the next 12 months.

3. DELEGATION TO THE COMMISSION

On 15 September 2014 the Project MOD was referred to the Planning Assessment Commission for determination under Ministerial delegation dated 14 September 2011 due to more than 25 objections being received.

For this determination, Mr Paul Forward, Acting Chair of the Planning Assessment Commission, nominated Mr Joe Woodward and himself (chair) to constitute the Commission for the project.

4. Commission's Consultation

On 30 September 2014 the Commission met with representatives of the following:

- Blue Mountains Conservation Society Inc;
- Capertee Valley Alliance Inc;
- Colo Committee;
- Greater Blue Mountains World Heritage Area Advisory Committee;
- Stop Coal Seam Gas Blue Mountains; and
- Upper Blue Mountains Bushwalking Club.

Written submissions were also received from special interest groups who could not attend on the day.

At the meeting the Chair for this determination (Mr Paul Forward) provided an outline of the process to date, the timing for a decision, the process compared to other matters, and the scope of documents reviewed.

It is clear from the submissions that there are concerns with the proposed future extension project noting the E.I.S for the major extension project is on exhibition. However, the Commission has not seen this proposal and is in no position to form any view on it. Consequently, the Commission's decision on the project application before it cannot be construed as any form of endorsement of any aspect of this future extension project.

On the same day, the Commission also met with the Department and the proponent (individually) for a briefing on the project. The Commission's summary of matters discussed at each of these meetings is available in Appendix A.

The Commission also visited the project site (including the underground workings) and surrounds on 7 October 2014.

5. DEPARTMENT'S ASSESSMENT REPORT

The Department's Assessment Report provided an assessment of the following key issues:

- Extension of life of consent
- Subsidence
- Water

The Assessment Report concluded the concerns raised have either been satisfactorily addressed or could be mitigated through conditions to facilitate the extension to the life of the consent. The application was recommended by the Department for approval, subject to modified conditions.

6. COMMISSION'S CONSIDERATION

The Commission has reviewed the Department's Assessment Report and associated documents, including submissions from the public (including representative community groups), public agencies and the proponent's response.

The key community concerns relate mainly to the timing (resulting in PAC not facilitating a public meeting); socio-economic factors; mining effects resulting in subsidence and water quality impacts on natural (i.e. cliff terraces and pagodas) and cultural features and the State Conservation Area.

6.1 Timing of the Decision and Process

The Commission received this project modification for determination on the 15 September 2014. The nature of the modification and the Commission's notification period for a public meeting created some issues for the determination process.

Under its usual procedures for a project of this type the Commission would hold a public meeting to give the general community and Special Interest Groups an opportunity to provide comment to the Commission on the content of the Department's Assessment Report and recommendation. These meetings require advertising, appropriate notice (four weeks) and a significant amount of organizing.

The Community Groups argued (and maintain the position) that a public meeting should have been held with the local community provided with the opportunity to present to the Commission.

But for this project, deferral of the public process to facilitate a public meeting would result in the closure of the mine and significant loss of employment. Faced with these opposing interests, the Commission made a decision to proceed as follows:

- invite the representative Community Groups who had been involved with the project assessment to a meeting with the Commission to discuss their issues directly. This meeting was held in the PAC offices, Sydney, on 30 September 2014.
- Briefings were also held on that day with the Department of Planning & Environment and the Proponent.

The Commission recognises that this does not completely satisfy the concerns of Community Groups and that some individuals were unable to attend the meeting with the Commission. However, a wide range of issues was discussed (see Appendix A) and the Commission considers that it was presented with a comprehensive overview of the issues of concern across the full spectrum from subsidence to impacts on the water catchment and the perceived deficiencies in process, and consultation associated with this modification and its assessment.

6.2 Socio-Economic Factors

The Community Groups argued that the lodgement timing of the modification by the Proponent should not be allowed to influence either the timing of the Commission's decision or the decision itself.

The Commission agrees with this assessment.

However, employment is a relevant consideration and there are some 59 jobs directly dependent on the decision. It appears to be common ground between the Proponent, and the Department that if the modification is not approved the mine will cease operations with the loss of these jobs. There have already been reductions in positions in line with similar reductions elsewhere in the mining industry.

Importantly, the Commission considers the timing did not restrict the Commissions consideration of the issues raised in submissions and meetings.

The Community Groups pointed out that there was no guarantee that the project modification to extend the life of the project by 12 months was anything more than a temporary measure that would need to be re-visited again in 2015. The Commission acknowledges the uncertainty of the ongoing mining operation due to the projects life of consent however it also notes the proposed extension project is currently on exhibition. The Commission considers the continuity of employment during the assessment of the extension project proposal to be highly desirable for the employees and their families.

In this uncertain framework the Commission is of the view that the balance lies with maintaining continuity of employment if this can be done within the context of the overall merits of the proposal and maintenance of proper decision-making processes.

6.3 Subsidence

The community raised significant concern of subsidence impacts on natural features including cliff lines, pagodas, cultural heritage and water courses in addition to impact on the Mugii Murum-ban SCA.

The Commission notes the existing project approval provides for a maximum vertical subsidence limit of up to 1.8 metres however following further discussions between the Department and the proponent, the proponent confirmed the modification proposal seeks limited extraction of the resource which will result in maximum vertical subsidence of 125 mm. The Department has recommended a robust suit of modified conditions to confirm this commitment from the proponent and to bring the conditions up to contemporary standards.

The Commission is satisfied that appropriate measures including ongoing monitoring; adaptive management; and enhanced management plans have been recommended to address the risk of subsidence. The Commission also notes various Community Groups 'strongly support' the Department's recommended modified subsidence conditions.

The Commission considers the recommended conditions, including an adaptive management strategy, provide a sound framework for ensuring adequate protection for natural features including cultural heritage and watercourses in the project area from project-related subsidence impacts.

6.4 Water Quality Impacts

The Community Groups raised concern that potential water discharges would be of poor quality and saline and would impact on Airly Creek and the Greater Blue Mountains World Heritage Area. The Community Groups also raised concern that the predicted subsidence could cause impacts on water courses.

The proponent advised the Commission that unlike most underground 'wet' mines, the project is a 'dry' mine which means there are no significant inflows of water from groundwater seepage.

The site is also subject to an Environment Protection Licence which any discharges would be required to satisfy.

The Commission notes the written advice from the EPA (23 June 2014) and the NSW Office of Water (24 July 2014) to the Department that the modification will not lead to impacts on the existing environment with respect to water quality beyond those already approved. The Commission agrees with the Department's conclusion that the recommended conditions would satisfactorily achieve the management of saline water on the site and are endorsed.

6.5 Draft Conditions

Draft conditions were discussed with the Department. The Community Groups also raised concern with a number of conditions however they were supportive of the proposed amendments to the conditions relating to subsidence (Condition's 13, 13A, 13B and 13 C).

The Community Groups sought to vary a number of conditions including outdated referencing and varying the submission date for plans required under the approval.

The Commission considers it is reasonable to modify the Department's conditions in response to the recommendations made by the Community Groups and as modified by the Commission. The Commission's summary of conditions to be amended is available in Appendix B.

7. Commission's Determination

The Commission has carefully considered the Department's Assessment Report, public (including representative community groups) and public authority submissions, recommended conditions of approval, and associated documents such as the Proponent's Response to Submissions. The Commission has also considered views expressed by the special interest groups and the Proponent.

The Commission considers that the proposed modification is within the scope of section 75W of the EP&A Act and that, on balance, the modification should be approved subject to the Department's modification conditions, as amended by the Commission.

The Commission's approach will secure the continued direct employment of up to 59 people during the next phase of this project development. The Commission considers that this is a significant benefit that weighs substantially in assessing the benefits and dis-benefits of the proposal.

A handwritten signature in black ink, appearing to read 'Paul Forward'.

Mr Paul Forward
Member of the Commission (Chair)

A handwritten signature in black ink, appearing to read 'Joe Woodward'.

Mr Joe Woodward PSM
Member of the Commission

APPENDIX A

BRIEFING NOTE

Meeting note taken by Rob Sherry	Date: Tuesday, 30 September 2014	Time: 9:00am
Project: Airly Coal Mine Project		
Meeting place: PAC		
Attendees: Mr Paul Forward, Mr Joe Woodward PSM & Rob Sherry (PAC) Howard Reed (HR) (Manager Mining); Colin Philips (Team Leader) – Department of Planning & Environment		
The purpose of the meeting is to brief the PAC on the proposal.		
A general briefing of the operation was provided. The main points of discussion are outlined below: • The proponents E.I.S for the extension project was rejected twice as it was inadequate; • The proponents EA for the modification was rushed and therefore had issues which concerned the community including indicating the proposal would result in a maximum vertical subsidence limit of 1.8 metres; • The PAC advised it was concerned over the limited time provided for it to consider the modification proposal; • The PAC advised it may tighten some of the recommended conditions; • The Department indicated the proponent had already raised concern with the recommended conditions; • The DRE are concerned over the proponents proposed mining methodology; • The current proposal would permit mining under the pagodas subject to an extraction plan; • Condition 12 and recommended 13 contain protective measures resulting in no structural damage; • The State Conservation listing came into effect post the original project approval' • The PAC indicated that the consent pre-dated current environmental standards and therefore should be brought up to date; • The Department indicated this was a concern – if measures were considered under the modification to protect the pagodas then a precedent may be set for the extension project; • The proponent has already mined the south eastern portion of the project which is within an Environmental Protection Zone which the consent allows; • The extension project is on exhibition and will be referred to PAC for a Review, probably early 2015; • PAC - The modification would require mining operations to cease October 2015 however there was a timing issue with the required compliance auditing. General wording for various recommended conditions was also discussed.		
Documents provided: N/A		
Briefing finished at 10:00am		

MEETING NOTE

Meeting note taken by Rob Sherry	Date: Tuesday, 30 September 2014	Time: 10:00am
Project: Airly Coal Mine Project		
Meeting place: PAC		
Attendees: Mr Paul Forward, Mr Joe Woodward PSM & Rob Sherry (PAC) Blue Mountains Conservation Society Inc – Madi Maclean Capertee Valley Alliance Inc – Donna Upton Colo Committee – Peter Green (on behalf of Dr Haydn Washington) Greater Blue Mountains World Heritage Area – Jacqueline Reid - Bob Anderson Stop Coal Seam Gas Blue Mountains – Peter Green Upper Blue Mountains Bushwalking Club – Peter Surgeon		
The purpose of the meeting is to provide the representative community groups the opportunity to present their issues on the modification to PAC.		
The PAC opened the meeting with an outline of the PAC’s role. The discussion then focussed on key issues raised by the community groups. A summary is provided below. <u>Blue Mountains Conservation Society Inc – Madi Maclean (Powerpoint presentation)</u> • The Department’s Assessment Report contained no reference to the State Conservation Area; • The Department has failed to consider its own Model Provisions; • The timing for the Environmental Management Strategies does not reflect the life of the modification being 12 months; • Talked to comments regarding the Department’s recommended conditions including no definition for ‘incident’ (Condition 42); monitoring data should be made available (condition 46(a)); No time frame for updating information (condition 46 (b)); • Public interest and ESD principles are not considered in the Assessment Report; • The PAC’s meeting with the Community Groups excludes 217 submissions from individuals. <u>Capertee Valley Alliance Inc – Donna Upton</u> • The Department’s Assessment Report refers to ‘pro forma’ submissions however the Department’s website provides for form submissions to be lodged therefore ‘pro forma’ submissions should be considered; • The Capertee Valley Alliance supports the proposed subsidence conditions; • The Capertee Valley Alliance submits that only 50% of the coal available should be extracted within the State Conservation Area; • The project has result in 2 toxic spill events in the past 8 months which are reflected on the EPA’s website; • The project should have additional monitoring bores; • Groundwater contains high sulphur levels; • Condition 46 (a) – 6 months to make information available is unreasonable – the proponent should be required to upload information within 1 month; • All monitoring data for the project should be made available to the public;		

- The lodgement of MOD 3 with the E.I.S for the extension project caused confusion within the community;
- Capertee Valley residents are not represented on the Special Monitoring Committee. The nominated representative was a mine neighbour. The mine refused to provide minutes of meetings or committee member details;
- The proponent has advised the Capertee Valley Alliance that it has legal advice stating Capertee Valley Alliance members cannot be members of the Special Monitoring Committee;
- The Capertee Valley Alliance is of the view the community are not represented on the committee.

Colo Committee – Peter Green (Powerpoint presentation)

- The proponent has indicated they are only extracting 50% of available coal from within the State Conservation Area however this is not reflected in the recommended conditions for the project;
- There have been partial collapses in recent times however there is no evidence of cause and effect from Airly Mine;
- The groups are concerned with the pillar sizes upon completion as the pillars will degrade over time and therefore may be too small;
- Details for the final pillar sizes need to be considered;
- Concern that an extraction plan is required while mining is still occurring;
- Monitoring is pointless in that if it identifies a collapse, there are no measures to rehabilitate any damage;
- The proponent provides larger pillar sizes whilst mining however they extract further coal from the pillars as they move out of the area making the final pillar smaller and therefore weaker;
- The eastern portal is within the State Conservation Area and would require clearing for access, roads, infrastructure etc;
- Mining can occur under the State Conservation Area but with no surface impacts;

Greater Blue Mountains World Heritage Area – Bob Anderson

- Aerials of the project are satisfactory however vertical sections through the project area would assist in identifying potential impacts, highlight depths etc;
- The GBMWhA do not support the extension due to the listing of the area;
- Request additional conditions be imposed, if approved, to protect the Hartley heritage structures;
- Any release of water from the project should be treated to a level equivalent of the receiving waters;
- Monitoring should be enforced;
- There is no 'sunset' condition in the approval;
- There are no bonds in place for any damage caused by mining;
- The GBMWhA do not want to form part of the CCC however they would like to be issued with updates.

Stop Coal Seam Gas Blue Mountains – Peter Green

- Gas will be released by the project, contributing to global warming.

Upper Blue Mountains Bushwalking Club – Peter Surgeon

- Has been walking in the area for 25 years;
- Concerned over potential for damage to occur to pagodas;
- Concerned over potential for damage to occur to old shale working heritage;
- Concerned over potential for downstream water impacts on world heritage area resulting from site discharges.

Documents provided:

Copies of presentations
Meeting finished at 1:30pm

BRIEFING NOTE

Meeting note taken by Rob Sherry	Date: Tuesday, 30 September 2014	Time: 2:00pm
Project: Airly Coal Mine Project		
Meeting place: PAC		
Attendees: Mr Paul Forward, Mr Joe Woodward PSM & Rob Sherry (PAC) Stephen Borgess, General Manager Projects and Engineering & Mary-Anne Crawford, Group Manager, Approvals		
The purpose of the meeting is to brief the PAC on the modification proposal.		
A general briefing of the operation was provided along with a general history of the area. The main points of discussion are outlined below: - the history of mining in the region; - the mine conducted trial works in 1998 and ceased in 2002; - Mine went into care and maintenance until 2009 when mining recommenced; - Mining ceased again in October 2012 going into care and maintenance however operations recommenced in May 2014; - Operates one production panel with 2 shifts, 5 days a week; - The mine operates to a factor of safety for pillars of industry standard being 2.1.1; - Extracted coal goes to Port Kembla (via rail) or to Newcastle; - The mine has short and long term contracts for both domestic (long term contracts) and international clients; - The 59 employees currently on site were transferred from the Charbon mine when it ceased operations; - The mine has a R.O.M of 1.8 Mt per annum; - The projects main on site dam is 35 mL; - There has only been one water discharge in the past 18 months; - The mine has prepared a draft plan of management for heritage items; - There has been no measurable subsidence or impacts on pagodas to date from mining; - The mine is producing 60,000 tonne per month and has produced 310,000 tonne this year; - Pillar sizes depend on the depth of cover; - Lithgow seam being mined – 3 metres in depth and 5.5 metres maximum width (roadway); - The timing, and therefore delay, issue arose as the mine did not expect the number of submissions it received for a life of consent modification General questions - Process - Site visit arrangements - Timing – will need to be determined by 12 October 2014		
Documents provided: Copy of powerpoint presentation		
Briefing finished at 3:00pm		

APPENDIX B

Revision to the Department of Planning & Environment recommended conditions.

Condition 5.

Delete.

Condition 12 (a)

Amend to read;

"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."

Condition 13B (e)

Amend to read;

Include detailed performance indicators for each of the performance criteria in Condition 12 and Table 1;

Condition 13B (f)

Amend to read;

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;

Condition 13B (j)

Amend to read;

Include a program to collect sufficient baseline data for any future Extraction Plans related to this approval.

Condition 36 (a)

Amend to read;

(a) be submitted to the Secretary for approval by 1 March 2015;

Condition 41.

Delete the third bullet point under 'Notes'.

Condition 42.

Add the following 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.*

Condition 44

Delete the words 'By the end of 2015' and replace with 'By the 1 March 2015'.

Condition 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.