

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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Director
Mining and Industry Projects

Sydney

28 FEBRUARY

2011

SCHEDULE 1

The development consent (DA 305-7-2003) granted by the Minister for Planning for the Wambo Coal Mine on 4 February 2004.

SCHEDULE 2

1. In the list of definitions in schedule 2, delete the definitions for "OoW" and "AEMR" and insert in alphabetical order the following:

Annual Review	The review required by Condition 5 of Schedule 6
Environmental consequences	The environmental consequences of subsidence impacts, including: damage to infrastructure, buildings and residential dwellings; loss of surface flows to the subsurface; loss of standing pools; adverse water quality impacts; development of iron bacterial mats; cliff falls; rock falls; damage to Aboriginal heritage sites; impacts on aquatic ecology; ponding
NOW	NSW Office of Water
Rehabilitation	The treatment or management of land disturbed by the development for the purpose of establishing a safe, stable and non-polluting environment, including the remediation of impacts
Safe, serviceable & repairable	Safe means no danger to users who are present, serviceable means available for its intended use, and repairable means damaged components can be repaired economically
Subsidence effects	Deformation of the ground mass due to mining, including all mining-induced ground movements, such as vertical and horizontal displacement, tilt, strain and curvature
Subsidence impacts	Physical changes to the ground and its surface caused by subsidence effects, including tensile and shear cracking of the rock mass, localised buckling of strata caused by valley closure and upsidence and surface depressions or troughs

2. Delete all references to "OoW" and replace with "NOW".
3. Delete all references to "AEMR" and replace with "Annual Review".
4. In condition 2 of schedule 3, delete all words after "dated July 2009;" and insert the following:
 - (l) the modification application DA 305-7-2003 MOD 9 and accompanying letter prepared by Wambo Coal Pty Ltd; and
 - (m) conditions of this consent.

5. Following the heading "SUBSIDENCE" in schedule 4, delete all words up to the end of condition 22 and insert the following:

Performance Measures – Natural and Heritage Features, etc

22. The Applicant shall ensure that the development does not cause any exceedances of the performance measures in Table 14A, to the satisfaction of the Director-General.

Table 14A: Subsidence Impact Performance Measures

Water	
Wollombi Brook	Negligible impact. Controlled release of excess site water only in accordance with EPL requirements
Biodiversity	
Wollemi National Park	Nil impact.
Warkworth Sands Woodland Community	Minor cracking and ponding of the land surface or other impact. Negligible environmental consequences
White Box, Yellow Box, Blakely's Red Gum Woodland/Grassy White Box Woodland Community	Minor cracking and ponding of the land surface or other impact. Negligible environmental consequences
Heritage	
Wambo Homestead Complex	Negligible impact on heritage values, unless approval has been granted by the Heritage Branch and/or the Minister

Notes:

- 1) The Applicant will be required to define more detailed performance indicators for each of these performance measures in the various management plans that are required under this consent (see condition 22C below).
- 2) The requirements of this condition only apply to the impacts and consequences of mining operations undertaken following the date of approval of modification 9.

Performance Measures – Built Features

- 22A. The Applicant shall ensure that the development does not cause any exceedances of the performance measures in Table 14B, to the satisfaction of the Director-General of DII.

Table 14B: Subsidence Impact Performance Measures

Built Features	
All built features	Always safe. Serviceability should be maintained wherever practicable. Loss of serviceability must be fully compensated. Damage must be fully repairable, and must be fully repaired or else replaced or fully compensated.
Public Safety	
Public Safety	No additional risk

Notes:

- 1) The Applicant will be required to define more detailed performance indicators for each of these performance measures in Built Features Management Plans or Public Safety Management Plan (see condition 22C below).
 - 2) The requirements of this condition only apply to the impacts and consequences of mining operations undertaken following the date of modification 9.
 - 3) Requirements regarding safety or serviceability do not prevent preventative or mitigatory actions being taken prior to or during mining in order to achieve or maintain these outcomes.
 - 4) Compensation required under this condition includes any compensation payable under the Mine Subsidence Compensation Act 1961 and/or the Mining Act 1992.
- 22B. Any dispute between the Applicant and the owner of any built feature over the interpretation, application or implementation of the performance measures in Table 14B is to be settled by the Director-General of DII. The Director-General of DII may seek the advice of the MSB on the matter. Any decision by the Director-General of DII shall be final and not subject to further dispute resolution under this consent.

Extraction Plan

22C. The Applicant shall prepare and implement an Extraction Plan for the second workings within each seam to be mined to the satisfaction of the Director-General. Each Extraction Plan must:

- (a) be prepared by a team of suitably qualified and experienced persons whose appointment has been endorsed by the Director-General;
- (b) be approved by the Director-General before the Applicant carries out any of the second workings covered by the plan;
- (c) include detailed plans of the proposed first and second workings and any associated surface development;
- (d) include detailed performance indicators for each of the performance measures in Tables 14A and 14B;
- (e) provide revised predictions of the potential subsidence effects, subsidence impacts and environmental consequences of the proposed second workings, incorporating any relevant information obtained since this consent;
- (f) describe the measures that would be implemented to ensure compliance with the performance measures in Tables 14A and 14B, and manage or remediate any impacts and/or environmental consequences;
- (g) include the following to the satisfaction of DII:
 - a coal resource recovery plan that demonstrates effective recovery of the available resource;
 - a subsidence monitoring program to:
 - provide data to assist with the management of the risks associated with subsidence;
 - validate the subsidence predictions; and
 - analyse the relationship between the subsidence effects and impacts under the plan and any ensuing environmental consequences;
 - a Built Features Management Plan to manage the potential subsidence impacts and/or environmental consequences of the proposed second workings, and which:
 - addresses in appropriate detail all items of public infrastructure and all classes of other built features; and
 - has been prepared following appropriate consultation with the owner/s of potentially affected feature/s;
 - a Public Safety Management Plan to ensure public safety in the mining area; and
 - appropriate revisions to the Rehabilitation Management Plan required under condition 40A; and
- (h) include a:
 - Water Management Plan, which has been prepared in consultation with DECCW and NOW, which provides for the management of the potential impacts and/or environmental consequences of the proposed second workings on surface water resources, groundwater resources and flooding, and which includes:
 - surface and groundwater impact assessment criteria, including trigger levels for investigating any potentially adverse impacts on water resources or water quality;
 - a program to monitor and report groundwater inflows to underground workings; and
 - a program to manage and monitor impacts on groundwater bores on privately-owned land;
 - Biodiversity Management Plan, which has been prepared in consultation with DECCW and DII, which provides for the management of the potential impacts and/or environmental consequences of the proposed second workings on flora and fauna;
 - Land Management Plan, which has been prepared in consultation with any affected public authorities, to manage the potential impacts and/or environmental consequences of the proposed second workings on land in general;
 - Heritage Management Plan, which has been prepared in consultation with DECCW, the Department's Heritage Branch and relevant stakeholders for Aboriginal and non-Aboriginal heritage, to manage the potential environmental consequences of the proposed second workings on heritage sites or values; and
- (i) include a program to collect sufficient baseline data for future Extraction Plans.

Notes:

- 1) *An SMP approved by DII prior to 30 July 2011 is taken to satisfy the requirements of this condition.*
- 2) *Management plans prepared under condition 22C(h) should address all potential impacts of proposed underground coal extraction on the relevant features. Other similar management plans required under this consent (eg under conditions 30 - 35 and 44 - 48) are not required to duplicate these plans or to otherwise address the impacts associated with underground coal extraction.*

22D. The Applicant shall ensure that the management plans required under condition 22C(h) above include:

- (a) an assessment of the potential environmental consequences of the Extraction Plan, incorporating any relevant information that has been obtained since this consent;
- (b) a detailed description of the measures that would be implemented to remediate predicted impacts; and
- (c) a contingency plan that expressly provides for adaptive management.

First Workings

22E. The Applicant may carry out first workings within the underground mining area, other than in accordance with an approved extraction plan, provided that DII is satisfied that the first workings are designed to remain stable and non-subsiding in the long term, except insofar as they may be impacted by approved second workings.

Note: 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, with negligible resulting direct subsidence impacts.

Payment of Reasonable Costs

22F. The Applicant shall pay all reasonable costs incurred by the Department to engage independent experts to review the adequacy of any aspect of an Extraction Plan.

6. Renumber condition 22A of Schedule 4 as condition 22G.
7. Delete conditions 35(c) and 36 of schedule 4.
8. In condition 37 of schedule 4, delete the words "Prior to seeking approval from the DII for each set of longwall panels (excluding the first set of longwall panels)," and replace with "Prior to seeking approval from the Department for each Extraction Plan,".
9. Delete condition 94 of schedule 4 and insert the following:

Progressive Rehabilitation

94. The Applicant shall carry out the rehabilitation of the DA area progressively, that is, as soon as reasonably practicable following disturbance.

Note: See also condition 81 of schedule 4.

Rehabilitation Management Plan

94A. The Applicant shall prepare and implement a Rehabilitation Management Plan for the development, to the satisfaction of the Director-General of DII. This plan must:

- (a) be prepared in consultation with the Department, DECCW, NOW, Council and the CCC;
- (b) be prepared in accordance with any relevant DII guideline;
- (c) build, to the maximum extent practicable, on the other management plans required under this consent; and
- (d) be submitted to the Director-General of DII for approval by the end of December 2011.

Note: The Rehabilitation Management Plan should address all land impacted by the development, whether prior to or following the date of this consent. See also conditions 69 and 81 of schedule 4.

10. Delete conditions 5-7 of schedule 6 and insert the following:

ANNUAL REVIEW

5. The Applicant shall submit an annual review of 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 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 year, which includes a comparison of these results against the:
 - 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

6. Within 3 months of:
- (a) the submission of an annual review under Condition 5 above;
 - (b) the submission of an audit report under Condition 7 below;
 - (c) the submission of an incident report under Condition 10 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 development.

INDEPENDENT ENVIRONMENTAL AUDIT

7. Every 3 years, 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 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 consents/approvals);
 - (d) review the adequacy of strategies, plans or programs required under the abovementioned consents/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 consents.

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

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.

11. Following condition 9 of schedule 6 insert the following:

REPORTING

Incident Reporting

10. 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

11. 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.

ACCESS TO INFORMATION

12. From the end of June 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 development;
 - all 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, updated on a monthly basis;
 - minutes of CCC meetings;
 - the annual reviews of the development;
 - any independent environmental audit of the development, 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.
12. In the 'Table of Contents' in schedule 2:
- (a) delete the words "Annual Reporting" and insert the following:
 - "Annual Review
 - Revision of Strategies, Plans and Programs"
 - (b) after the words "Community Consultative Committee" insert the following:
 - "Reporting
 - Access to Information"
 - (c) update the page number references.