

PROPOSED MODIFICATION TO BULGA OPEN CUT PROJECT

PLANNING REPORT ON THE ASSESSMENT OF A MODIFICATION OF DEVELOPMENT APPLICATION LODGED PURSUANT TO SECTION 96(2) OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979

1. INTRODUCTION AND BACKGROUND

1.1 The Applicant

Bulga Coal Management Pty Limited

1.2 Background

Bulga Coal Management Pty Limited (the Applicant) received Development Consent from the Minister for Urban Affairs and Planning on 23 December 1999. The approval allows continued mining of the Bulga Open Cut Pit operations in coal lease Areas 372 and 224 and out-of-pit emplacement of overburden on the South Whybrow site.

The consent conditions allowed mining to commence from the date of consolidation of the Saxonvale and Bulga Coal lease or the expiry of the Saxonvale Coal Lease, whichever occurred the sooner. The Saxonvale Coal lease does not expire until 23 December 2002 and the consolidation of the Saxonvale and Bulga Coal leases has not yet been initiated. The reason for this lack of initiation is that the Bulga Coal Complex was purchased by Glencore in 2000. This necessitated a comprehensive review of all future mining proposals and a hold was placed on any proposal to consolidate leases. The consolidation of all Coal and Mining leases at the Bulga Coal complex into one new lease is still the preferred approach.

Further to this issue, the Applicant is also awaiting the resolution of two other matters prior to initiating consolidation of these leases. Firstly, an associated mining lease application (MPL151) is currently being processed by Department of Mineral Resource. Once issued, this MLA will need to be included in the consolidated lease, and accordingly has delayed the initiation of consolidation of these leases. In addition, the South Bulga extension is currently being assessed. If consent is granted for this development, a new mining lease will be required which also need to be consolidated into the single lease which is proposed for the whole Bulga Coal complex.

1.3 Overview of the Proposal and its Location

The application is for land at Broke Road, Broke within the Singleton local government area. The modification is to allow the proposed extension of open cut mining to commence from the date of the consent. Under the existing conditions of consent, mining can not commence until either the consolidation of the Saxonvale and Bulga coal leases, or the expiry of the Saxonvale Coal lease in 2002, whichever occurs first. If the condition is not amended it will delay the start of the project from its preferred commencement date in early 2001. An amendment is also required to a condition for the timing of surrendering now obsolete consents that were tied to the mine lease consolidation.

1.4 Section 96 Modification of Consent

The Applicant indicates that the Minister can be satisfied that the development to which the consent as modified will relate is substantially the same development as that presently approved. The applicant justifies this position in that the development for which the modification is sought is exactly the same development for which the consent was granted. An equal amount of coal is to be extracted from the same locations and depths using the same extraction methods and associated infrastructure. The impact on the environment will therefore also be the same. All that is being altered is the trigger that determines the timing of the commencement of mining and the surrender of consents.

The Department is satisfied that the application to modify the development consent is substantially the same development as the existing December 1999 proposal.

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

1.5 Lodgement of Modification application and exhibition

On 5 December 2000, the application for a modification under Section 96(2) of the *Environmental Planning and Assessment Act 1979* (EP&A Act) and supporting documentation was lodged with the Department of Urban Affairs and Planning. Following notification of the modification in the Singleton Argus, the application was publicly exhibited from Tuesday 5 December 2000 to Tuesday 19 December 2000. The Department is satisfied that public exhibition of the proposal has been undertaken in accordance with the EP&A Regulation.

1.6 Local Council position

Singleton Shire Council did not object to the proposed modification.

1.7 Government agencies position

The Department of Land and Water Conservation was the only government agency that lodged a submission, and raised no objection to the proposed modification.

1.8 Local Community position

No submissions were received from the local community.

1.9 Applicants Position

The applicant has accepted the recommended conditions.

1.10 Applicant's Justification

The application of Section 96(2) is justified by the Applicant in that development for which the modification is sought is the same development for which the consent was originally granted, apart from the time at which construction may be commenced. The proposed modification relates only to the timing for commencement of construction for mining operation with no changes being proposed to the character of the mining operation itself. The volumes of coal proposed to be extracted remains unmodified, as do the locations and depths of the mining, the extraction methods and associated infrastructure.

2. STATUTORY PLANNING MATTER

The proposed modification does not alter the specifications of the mining operation, but simply allows the construction of this operation to commence from the date of the consent. As such the modification application raises no further planning issues than those previously assessed in the original application 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 Key Issues

The proposed modification, although significant for the timing of the mining operations schedule, involves only a minor rewording of the conditions of consent. This rewording does not alter the specifications of the mine operations or the associated infrastructure, nor result in any further impact than that which has already been assessed in the original application. The mining operation as proposed in the amended application will operate in exact accordance with

proposed development as originally submitted. The Department conducted a thorough assessment of these issues and impacts which were raised in the original application for the Bulga Open Cut. It is the Department's opinion that the modification which will allow commencement from the date of the consent does not raise any issues above and beyond the assessment which has previously undertaken for the original proposal.

3.2. Variations to Conditions of Consent

The proposed changes relate only to a rewording of conditions 1.3(a) and 1.2 (b) (attached as **Appendix A**). The following amendments are recommended :

i. that the existing condition 1.3 (a) be removed and replaced with:

"The approval for mining is from the commencement of this consent for the period of up to 21 years from the date of mine consolidation of the Saxonvale Coal Lease (CL224) and Bulga Coal Lease, or the expiry of the Saxonvale Coal Lease (CL372)"

ii. that at the end Condition 1.2(b) the words "by the date of the consolidation of the coal leases" be replaced with the words "prior to the commencement of mining".

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 Bulga Open Cut 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 commencement of construction being altered. It is recommended that the Minister:

- (i) Consider the findings and recommendations of this report;
- (ii) Approve the application under Section 96(2) of the Environmental Planning and Assessment Act 1979, subject to the modified conditions set out in the instrument of approval.

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Project Officer

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Development and Infrastructure Assessment

**APPENDIX A
AMMENDED CONDITIONS OF CONSENT**

Consent condition 1.3 (a), with amendment inserted in bold italics :

The approval for mining is ***from the commencement of this consent*** for the period of up to 21 years from the data of the mine consolidation of the Saxonvale Coal Lease (CL224) and Bulga Coal Lease (CL372), or the expiry of the Saxonvale Coal Lease, whichever is the sooner, pursuant to this consent.

Consent condition 1.2 (b), with words to be deleted indicated by strike through and amendments inserted in bold italics :

In accordance with section 80A(5) of the Environmental Planning and Assessment Act 1979 and clause 68 of the Environmental Planning and Assessment Regulation 1994, the Applicant shall, surrender to the Minister of Urban Affairs and Planning, the development consent for the Saxonvale Coal Lease (CL224) issued by the then Minister for Planning and Environment to Dampier Mining Company Limited on 26 March 1981, and the development consent for the Bulga Mine on Coal Lease (CL 372) issued by the Minister for Local Government and Planning on 21 December 1990, ~~by the date of consolidation of the coal leases~~ ***prior to the commencement of mining.***

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, and**
- (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 1999 proposal.

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

Only one submission was received in relation to the project, and no objections were raised.

(e) the public interest

The modification does not alter the specifications of the proposal, only the timing of the commencement of construction. The Department concludes that the modification would have no significant environmental impacts beyond those that have already been assessed as part of the original application. It is therefore considered that the proposed modification would be in the public interest.