

Modification of Development Consent

Section 4.55(2) of the *Environmental Planning and Assessment Act 1979*

As delegate of the Minister for Planning and Public Spaces, I approve the modification of the development consent referred to in Schedule 1, subject to the conditions in Schedule 2.



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Director - Resource Assessments
NSW Department of Planning, Industry and Environment

Sydney

20 August 2021

SCHEDULE 1

The development consent for the extension of the Clarence Underground Coal Mine (DA 504-00 granted by the Minister for Planning on 19 December 2005.

SCHEDULE 2

1. In the list of definitions in Schedule 1, delete the definitions for “BCD”, “DRG”, “RMS” and “Water Division”, and insert the following definitions in alphabetical order:

BCS	Biodiversity, Conservation and Science Directorate, within the Department
DPIE Water	Water Group, within the Department
Resources Regulator	NSW Resources Regulator, within the Department of Regional NSW
TfNSW	Transport for NSW

2. In the definition of “EIS” in Schedule 1:
 - (a) delete the word “and” at the end of the fourth bullet point; and
 - (b) after the last bullet point, insert:
 - Modification 6 – *Clarence Colliery and Charbon Colliery Modification report for modifications to DA 504-00 and SSD 08_0211*, dated September 2020 as modified by *Submissions Report* dated January 2021 and additional information dated 1 March 2021, 15 March 2021 and 11 May 2021.
3. In Schedule 2 onwards, delete:
 - (a) all references to “BCD”, and replace with “BCS”;
 - (b) all references to “DRG”, and replace with “Resources Regulator”;
 - (c) all references to “RMS”, and replace with “TfNSW”; and
 - (d) all references to “Water Division”, and replace with “DPIE Water”.

4. In Schedule 2 onwards, delete all references to “shall” (except in conditions 3 and 5 of Schedule 2) and replace with “must”.
5. After condition 7B of Schedule 2, insert:
 - 7C. The Applicant may transport up to 350,000 tonnes of coarse coal reject material per calendar year to Charbon Colliery by rail.
 - 7D. Excavation and stockpiling of coarse coal reject from Reject Emplacement Area VI must only take place between the hours of 7 am to 6 pm Monday to Saturday and 8 am to 6 pm on Sunday and public holidays.
6. In condition 6 of Schedule 3, delete “SCA” and replace with “WaterNSW”.
7. In condition 13 of Schedule 3, delete the note following Table 5 and replace with:

Notes:

 - (a) *Deposited dust is assessed as insoluble solids as defined by Standards Australia, 1991, AS 3580.10.1-1991: Methods for Sampling and Analysis of Ambient Air - Determination of Particulates - Deposited Matter - Gravimetric Method.*
 - (b) *The air quality criteria in Tables 3, 4 and 5 do not apply where the Applicant and the affected landowner have reached a negotiated agreement in regard to air quality, and a copy of the agreement has been forwarded to the Planning Secretary and EPA.*
8. In condition 15 of Schedule 3, delete the notes following Table 6 and replace with:
 - (a) *The noise criteria do not apply where the Applicant and the affected landowner have reached a negotiated agreement in regard to noise, and a copy of the agreement has been forwarded to the Planning Secretary and EPA.*
 - (b) *Noise generated by the development must be monitored and measured in accordance with the relevant procedures and exemptions (including certain meteorological conditions) of the NSW Noise Policy for Industry (EPA, 2017).*
9. After condition 24 of Schedule 3, within the heading “REJECT EMPLACEMENT”, delete “EMPLACEMENT” and replace with “MANAGEMENT”.
10. After condition 24A of Schedule 3, insert:
 - 24B. Prior to the commencement of coarse coal reject transfers to Charbon Colliery, the Applicant must revise the Reject Management Strategy to the satisfaction of the Planning Secretary. The revised plan must be prepared in consultation with the EPA and Resources Regulator, and include:
 - (a) a definition and criteria for determining whether coarse coal reject material is geochemically suitable to be used for rehabilitation activities at Charbon Colliery;
 - (b) a process for assessing the geochemical suitability of coarse coal reject prior to transfer to Charbon Colliery; and
 - (c) a process for managing and/or treating coarse coal reject that does not meet the definition and criteria established in accordance with condition 24B(a).
11. In condition 28 of Schedule 3 after Mining Operations Plan, insert “/ Rehabilitation Management Plan”
12. In condition 28 of Schedule 3 delete “to the satisfaction of the Executive Director, Mineral Resources” and replace with “in accordance with the conditions imposed on the mining lease(s) associated with the development under the *Mining Act 1992*”

13. Delete condition 2 of Schedule 4, and replace with:

2. If a landowner considers the development to be exceeding any air quality or noise relevant criterion in Schedule 2 of this consent, they may ask the Planning Secretary in writing for an independent review of the impacts of the development on their residence or land.
3. If the Planning Secretary is not satisfied that an independent review is warranted, the Planning Secretary will notify the landowner in writing of that decision, and the reasons for that decision, within 21 days of the request for a review.
4. If the Planning Secretary is satisfied that an independent review is warranted, within 3 months, or other timeframe agreed by the Planning Secretary and the landowner, of the Planning Secretary's decision, the Applicant must:
 - (a) commission a suitably qualified, experienced and independent person, whose appointment has been approved by the Planning Secretary, to:
 - (i) consult with the landowner to determine their concerns;
 - (ii) conduct monitoring to determine whether the development is complying with the relevant criteria in Schedule 2; and
 - (iii) if the development is not complying with the relevant criterion, identify measures that could be implemented to ensure compliance with the relevant criterion; and
 - (b) give the Planning Secretary and landowner a copy of the independent review; and
 - (c) comply with any written requests made by the Planning Secretary to implement any findings of the review.

14. In Schedule 5, delete the headings "Incident Reporting" and "Regular Reporting".

15. Delete conditions 5A and 5B in Schedule 5, and replace with:

Incident Notification

- 5A. The Applicant must immediately notify the Department and any other relevant agencies immediately after it becomes aware of an incident. The notification must be in writing via the Department's Major Projects Website and identify the development (including the development application number and name) and set out the location and nature of the incident.

Non-Compliance Notification

- 5B. Within seven days of becoming aware of a non-compliance, the Applicant must notify the Department of the non-compliance. The notification must be in writing via the Department's Major Projects Website and identify the development (including the development application number and name), set out the condition of this consent that the development is non-compliant with, why it does not comply and the reasons for the non-compliance (if known) and what actions have been, or will be, undertaken to address the non-compliance.

Note: A non-compliance which has been notified as an incident does not need to also be notified as a non-compliance.

16. Delete condition 6 of Schedule 5 and replace with:

6. By the end of October 2023, and every three years thereafter, unless the Planning Secretary directs otherwise, the Applicant must commission and pay the full cost of an Independent Environmental Audit of the development. This audit must:
- (a) be prepared in accordance with the Independent Audit Post Approval Requirements (2020, or as amended from time to time);
 - (b) be led and conducted by a suitably qualified, experienced, and independent team of experts whose appointment has been endorsed by the Planning Secretary;
 - (c) be carried out in consultation with the relevant agencies and the CCC;
 - (d) assess the environmental performance of the development and whether it is complying with the relevant requirements in this consent, water licences and mining leases for the development (including any assessment, strategy, plan or program required under these approvals);
 - (e) review the adequacy of any approved strategy, plan or program required under the abovementioned approvals and this consent;
 - (f) recommend appropriate measures or actions to improve the environmental performance of the development and any assessment, strategy, plan or program required under the abovementioned approvals and this consent; and
 - (g) be conducted and reported to the satisfaction of the Planning Secretary.

End of modification
(DA 504-00 MOD 6)