

Notice of Modification

Section 75W of the *Environmental Planning & Assessment Act 1979*

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



Chris Wilson
Executive Director
Major Development Assessment

Sydney

6 DECEMBER

2007

File No: S97/00573

SCHEDULE 1

The project approval (05_0065) granted by the Minister for Planning for open cut mining operations at the Invincible Colliery on 7 September 2006.

SCHEDULE 2

1. In the DEFINITIONS section, delete the definition of DEC and replace with:

DECC	Department of Environment and Climate Change
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2. Delete all references to "DEC" throughout the approval and replace with "DECC".
3. Delete condition 2(d) in schedule 2 and replace with:

(d)	Modification Application (05_0065 MOD 2) and accompanying EA titled <i>Application to Modify Project Approval 05_0065 to Improve Coal Recoveries Through Highwall Mining and Increase Production Levels of the Invincible Colliery Open Cut Extension</i> , dated October 2007; and
(e)	conditions of this approval."
4. Add a new condition immediately following condition 7 of schedule 2:

7A.	Auger mining operations at the site may only be conducted in the Irondale Seam.
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5. Add a new condition immediately following condition 12 of schedule 2:

13.	Prior to 31 May 2008, in addition to the monies required by condition 12, the Proponent shall contribute \$19,895.05 to Lithgow City Council for the provision of community facilities in the Cullen Bullen area. Any monies not expended within two years of their receipt by Council shall be returned to the Proponent.
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6. In Table 1 in condition 1 of schedule 3 delete "All privately owned land fronting the Castlereagh Highway and the village of Cullen Bullen" and replace with "All other privately owned land".

7. Insert immediately following condition 1 of schedule 3 the following:

Land Acquisition

- 1A. The Proponent shall upon receiving a written request for acquisition from the landowner of privately owned land listed in Table 1A acquire the land in accordance with the procedures in conditions 6-8 of schedule 4.

Table 1A: Land acquisition

<i>Residence / Location</i>
<i>Billabong</i>
<i>Hillview</i>

Additional Noise Mitigation Measures

- 1B. Upon receiving a written request made after 31 May 2008 from a landowner of:
- Billabong or Hillview (unless the landowner has requested acquisition); or
 - any other residence on privately owned land where subsequent noise monitoring shows the noise generated by the activities on the site in the evening is equal to, or greater than, 38 dB(A) L_{Aeq} (15 min) (unless a negotiated noise agreement is in place),
- the Proponent shall implement additional reasonable and feasible noise mitigation measures (such as double glazing, insulation and/or air conditioning) at any residence on the land in consultation with the landowner.

If within 3 months of receiving this request from the landowner, the Proponent and the landowner cannot agree on the measures to be implemented, or there is a dispute about the implementation of these measures, then either party may refer the matter to the Director-General for resolution.

8. Insert following condition 2 of schedule 3 the following:

- 2A. Prior to 31 May 2008, the Proponent shall develop and implement a Pollution Reduction Program (PRP) to the satisfaction of the DECC. This PRP shall include measures to attenuate noise emissions from:
- (a) the rotary breaker at the Invincible coal preparation plant;
 - (b) the jig washer at the Invincible coal preparation plant;
 - (c) reversing alarms on all mobile plant; and
 - (d) the operation of the jig washer and/or front end loader at the Invincible coal preparation plant during evening hours.

9. Insert following condition 27 of schedule 3 the following:

- 27A. The Proponent shall ensure the Castlereagh Highway between its junction with Boulder Road and the Wallerawang Power Station is not used to transport coal to the Wallerawang Power Station for more than two weeks in any three month period, and only after prior written notification has been given to all landowners of residences within 200 metres of this route, unless otherwise approved by the Director-General.

10. Insert following condition 5 of schedule 4 the following:

LAND ACQUISITION

6. Within 3 months of receiving a written request from a landowner with acquisition rights, the Proponent 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 project the subject of the project approval, 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 Condition 8 of Schedule 3;
- (b) the reasonable costs associated with:
 - relocating within the Lithgow City Council local government area, or to any other local government area determined by the Director-General;
 - obtaining legal advice and expert advice for determining the acquisition price of the land, and the terms upon which it is required; and
- (c) reasonable compensation for any disturbance caused by the land acquisition process.

However, if at the end of this period, the Proponent 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 (see Appendix 8).

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 or Fellow of the Institute, to consider submissions from both parties, and determine a fair and reasonable acquisition price for the land, and/or terms upon which the land is to be acquired.

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

If the landowner refuses to accept this offer within 6 months of the date of the Proponent's offer, the Proponent's obligations to acquire the land shall cease, unless otherwise agreed by the Director-General.

- 7. The Proponent shall bear the costs of any valuation or survey assessment requested by the independent valuer or the Director-General and the costs of determination referred above.
- 8. If the Proponent and landowner agree that only part of the land shall be acquired, then the Proponent shall pay all reasonable costs associated with obtaining Council approval for any plan of subdivision (where permissible), and registration of the plan at the Office of the Registrar-General.