

Notice of Modification

Section 4.55(2) 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.

Howard Reed

Director
Resource Assessments

Sydney

19th December

2018

SCHEDULE 1

The development consent (SSD_5170) for the Bengalla Continuation Project, granted by the Secretary as delegate of the Minister for Planning, on 3 March 2015.

SCHEDULE 2

1. In the list of Definitions, delete the terms "Development", "DPI-Water", "DRE", "Feasible", "Incident", "Land", "Material harm to the environment", "MSB" and "Secretary" and their definitions, and insert the following in alphabetical order:

Development	The development described in the documents in condition 2(a) of Schedule 2
Dol	Department of Industry – Crown Lands and Water Division
DRG	Division of Resources and Geoscience within the Department
Feasible	Means what is possible and practicable in the circumstances
Incident	An occurrence or set of circumstances that causes or threatens to cause material harm and which may or may not be or cause a non-compliance
Land	Has the same meaning as the definition of the term in section 1.4 of the Environmental Planning & Assessment Act 1979, except for where the term is used in the noise and air quality conditions of this consent where it is defined to mean the whole of a lot, or contiguous lots owned by the same landowner, in a current plan registered at the Land Titles Office at the date of this consent
Material harm	Is harm that involves actual or potential harm to the health or safety of human beings or to the environment that is not trivial, or results in actual or potential loss or property damage of an amount, or amounts in aggregate, exceeding \$10,000, (such loss includes the reasonable costs and expenses that would be incurred in taking all reasonable and practicable measures to prevent, mitigate or make good harm to the environment). This definition excludes "harm" that is authorised under either this consent or any other statutory approval
Non-compliance	An occurrence, set of circumstances or development that is a breach of this consent
Registered Aboriginal Parties	As described in the <i>National Parks and Wildlife Regulation 2009</i>
SA NSW	Subsidence Advisory NSW (formerly the Mine Subsidence Board)
Secretary	Planning Secretary under the EP&A Act or nominee
SEE (Mod 4)	Statement of Environmental Effects titled ' <i>Bengalla Mine Development Consent Modification 4 Statement of Environmental Effects</i> ' dated December 2017 and prepared by Hansen Bailey, including the Response to Submissions document dated May 2018 and additional information dated July 2018 and November 2018

2. Delete all references to "DRE" and replace with "DRG".
3. Delete all references to "DPI-Water" and replace with "Dol".

4. Delete all references to "MSB" and replace with "SA NSW".
5. Delete the words "approved management plan as approved from time to time", wherever occurring, and insert "management plan as approved".
6. Delete all references to "Aboriginal stakeholders" and replace with "Registered Aboriginal Parties".
7. Delete condition 1 of Schedule 2 and replace with the following:
 1. In addition to meeting the specific performance measures and criteria established under this consent, the Applicant must implement all reasonable and feasible measures to prevent, and if prevention is not reasonable and feasible, minimise, any material harm to the environment that may result from the construction and operation of the development and any rehabilitation required under this consent.
8. In condition 2(a) of Schedule 2:
 - a) after the words "(Mod 2)" delete "and" and replace with a comma; and
 - b) after the words "(Mod 3)" insert the following "and SEE (Mod 4)".
9. Delete conditions 3 and 4 of Schedule 2 and insert the following:
 3. Consistent with the requirements in this consent, the Secretary may make written directions to the Applicant in relation to:
 - (a) the content of any strategy, study, system, plan, program, review, audit, notification, report or correspondence submitted under or otherwise made in relation to this consent, including those that are required to be, and have been, approved by the Secretary; and
 - (b) the implementation of any actions or measures contained in any such document referred to in paragraph 3(a) above.
 4. The conditions of this consent and directions of the Secretary prevail to the extent of any inconsistency, ambiguity or conflict between them and a document/s listed in condition 2(a) above. In the event of an inconsistency, ambiguity or conflict between any of the document/s listed in condition 2(a) the most recent document prevails to the extent of the inconsistency, ambiguity or conflict.
10. Delete condition 11 of Schedule 2 and insert the following:
 11. All new buildings and structures, and any alterations or additions to existing buildings and structures, that are part of the development, must be constructed in accordance with:
 - (a) the relevant requirements of the BCA; and
 - (b) any additional requirements of SA NSW where the building or structure is located on land within a declared Mine Subsidence District.

Notes:

 - Under Part 6 of the EP&A Act, the Applicant is required to obtain construction and occupation certificates for the proposed building works.
 - Part 8 of the EP&A Regulation sets out the requirements for the certification of the development.
 - The development is located in the Muswellbrook Mine Subsidence District. Under section 21 of the Coal Mine Subsidence Compensation Act 2017, the Applicant is required to obtain the Chief Executive of SA NSW's approval before carrying out certain development in a Mine Subsidence District.
11. After condition 16 of Schedule 2, insert the following:

EVIDENCE OF CONSULTATION

17. Where conditions of this consent require consultation with an identified party, the Applicant must:
 - (a) consult with the relevant party prior to submitting the subject document; and
 - (b) provide details of the consultation undertaken including:
 - (i) the outcome of that consultation, matters resolved and unresolved; and
 - (ii) details of any disagreement remaining between the party consulted and the Applicant and how the Applicant has addressed the matters not resolved.

COMPLIANCE

18. The Applicant must ensure that all of its employees, contractors (and their sub-contractors) are made aware of, and are instructed to comply with, the conditions of this consent relevant to activities they carry out in respect of the development.

APPLICABILITY OF GUIDELINES

19. References in the conditions of this consent to any guideline, protocol, Australian Standard or policy are to such guidelines, protocols, Standards or policies in the form they are in as at the date of this consent.

However, consistent with the conditions of this consent and without altering any limits or criteria in this consent, the Secretary may, when issuing directions under this consent in respect of ongoing monitoring and management obligations, require compliance with an updated or revised version of such a guideline, protocol, Standard or policy, or a replacement of them.

12. Delete Table 1 in condition 1 of Schedule 3 and replace with the following:

Acquisition Basis	Receiver No
Noise	152, 153, 156E, 156S
Noise and Air Quality	154

13. Delete Table 2 in condition 2 of Schedule 3 and replace with the following:

Acquisition Basis	Receiver No	Mine
Noise	120	Mt Arthur
Noise and Air Quality	112, 113, 114, 117, 118, 119, 155	
Noise	166	Mt Pleasant
Noise and Air Quality	168, 171	

14. Delete Table 3 in condition 3 of Schedule 3 and replace with the following:

Mitigation Basis	Receiver No
Noise and Air Quality	109 ³
Noise	105, 106 ³ , 108, 110 ³ , 126N, 167, 169 ² , 180, 184
Air Quality	66 ³ , 120 ³ , 152, 156E, 156S

15. In condition 4 of Schedule 3, delete Table 4 and replace with the following table:

Table 4: Noise Criteria dB(A)

Location	Day	Evening	Night	
	L_{Aeq} (15 min)	L_{Aeq} (15 min)	L_{Aeq} (15 min)	L_{A1} (1 min)
108, 109, 110	40	40	40	45
106	39	39	39	45
169	39	39	36	45
105, 126N	38	38	38	45
167, 180, 184,	38	38	35	45
102, 126C, 146	37	37	37	45
186N	37	37	35	45
43, 44, 130, 145, 126S	36	36	36	45
186S, 189	36	36	35	45
All other privately-owned residences	35	35	35	45

16. In condition 16 of Schedule 3:

- (a) delete Table 6, including the heading, and replace with the following:

Table 6: Long term criteria for particulate matter

Pollutant	Averaging Period	Criterion
Total suspended particulate (TSP) matter	Annual	^{a,d} 90 µg/m ³
Particulate matter < 10 µm (PM ₁₀)	Annual	^{a,d} 25 µg/m ³
Particulate matter < 2.5 µm (PM _{2.5})	Annual	^{a,d} 8 µg/m ³

and;

- (b) delete Table 7, including the heading, and replace with the following:

Table 7: Short term criteria for particulate matter

Pollutant	Averaging Period	Criterion
Particulate matter < 10 µm (PM ₁₀)	24 hour	^b 50 µg/m ³
Particulate matter < 2.5 µm (PM _{2.5})	24 hour	^b 25 µg/m ³

17. Delete condition 17 of Schedule 3 including the heading, tables and notes.

18. In condition 1(f) of Schedule 5, delete the words "copies of" and replace with the words "references to".

19. In condition 3(a) of Schedule 5, delete the word "detailed" and replace with the words "a summary of".

20. In condition 6 of Schedule 5, delete the words "*Guidelines for Establishing and Operating Community Consultative Committees for Mining Projects* (Department of Planning, 2007, or its latest version)", and replace with "*Community Consultative Committee Guidelines: State Significant Projects (2016)*".
21. Delete condition 7 of Schedule 5, including the heading "REPORTING" and subheading "Incident Reporting", and replace with the following:

Incident Notification

7. 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 to compliance@planning.nsw.gov.au and identify the development (including the development application number and name) and set out the location and nature of the incident.

Non-Compliance Notification

- 7A. 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 to compliance@planning.nsw.gov.au 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, the way in which 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.

Monitoring and Environmental Audits

- 7B. Any condition of this consent that requires the carrying out of monitoring or an environmental audit, whether directly or by way of a plan, strategy or program, is taken to be a condition requiring monitoring or an environmental audit under Division 9.4 of Part 9 of the EP&A Act. This includes conditions in respect of incident notification, reporting and response, non-compliance notification, compliance report and independent audit.

Note: For the purposes of this condition, as set out in the EP&A Act, "monitoring" is monitoring of the development to provide data on compliance with the consent or on the environmental impact of the development, and an "environmental audit" is a periodic or particular documented evaluation of the development to provide information on compliance with the consent or the environmental management or impact of the development.

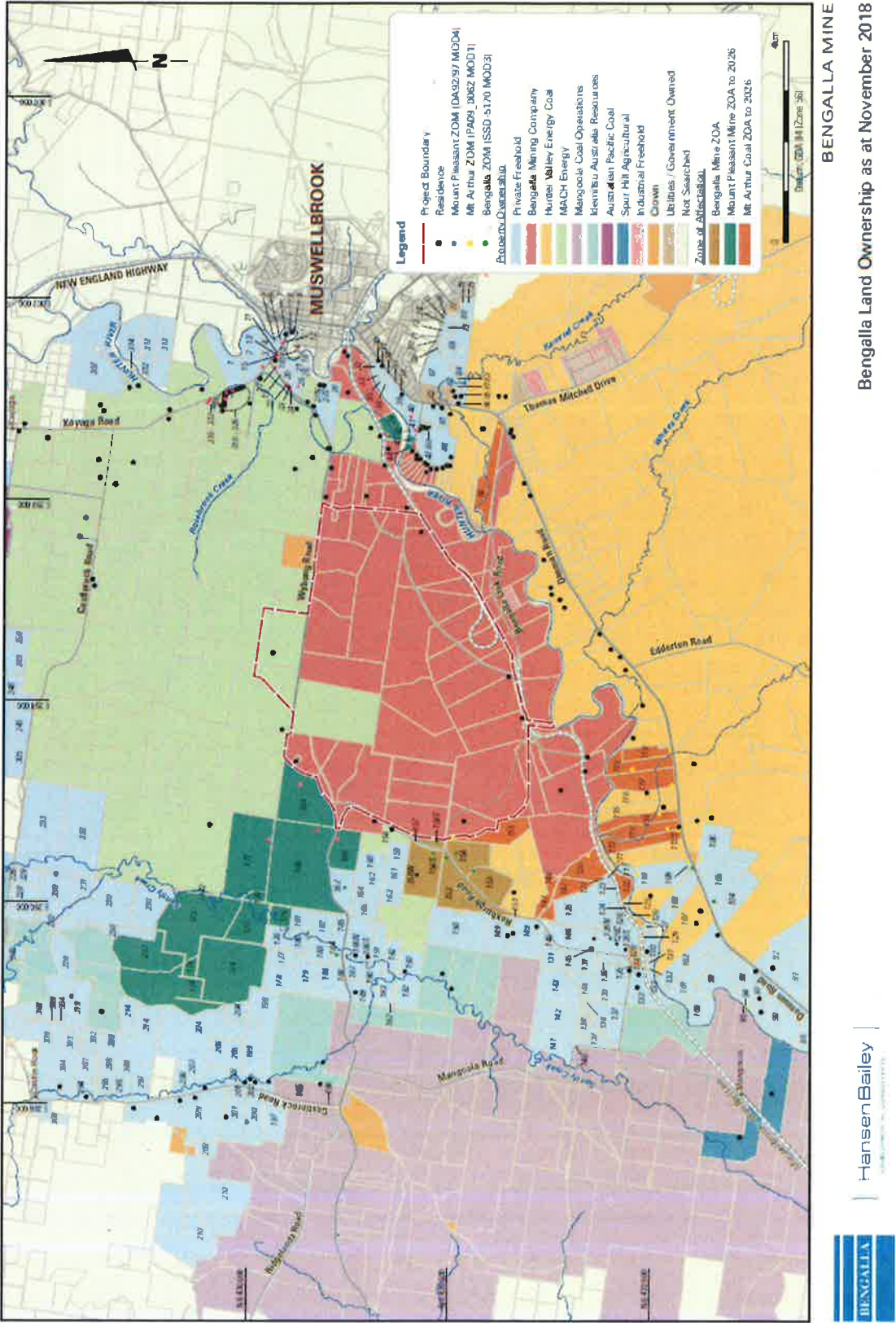
22. In condition 9(b) of Schedule 5, after the word "agencies" insert the words "and CCC".
23. In Appendix 2, delete the figure and replace with the following:



BENGALLA MINE

Conceptual Development Layout

25. In Appendix 4, delete the figure and replace with the following:



26. Update the Table of Contents to reflect the above changes.