



27 February 2018

Director of Resource Assessment  
Department of Planning and Environment  
GPO Box 39  
SYDNEY NSW 2001

Attention: Mr Howard Reed

Dear Howard

**Dartbrook Mine  
Modification to DA 231-7-2000**

**1.0 INTRODUCTION**

AQC Dartbrook Management Pty Limited (AQC) is the owner of the Dartbrook Mine, which is located approximately 5 km north of Muswellbrook in the Upper Hunter Valley of New South Wales (NSW). AQC is a wholly owned subsidiary of Australian Pacific Coal Ltd, a publicly listed company on the Australian Stock Exchange. Dartbrook Mine is managed in accordance with Development Consent DA 231-7-2000.

AQC is seeking a modification to DA 231-7-2000 to facilitate further underground mining operations at Dartbrook Mine. The Modification proposes bord and pillar mining of the Kayuga coal seam (as an alternative to the approved longwall mining activities) and changes to the method of transferring coal to the train loadout facility. The Modification also seeks to extend the period of approval by 5 years (until 5 December 2027).

This letter seeks written confirmation from the Department of Planning and Environment (DP&E) that the proposed Modification should be sought via an application under Section 75W of the *Environmental Planning & Assessment Act 1979* (EP&A Act). It is understood that such an application would need to be made prior to 1 March 2018 and that an Environmental Assessment can be lodged at a later date.

We are also seeking confirmation from DP&E as to whether Secretary's Environmental Assessment Requirements (SEARs) will be issued in respect of this Modification, or whether the environmental studies listed in **Section 4.1.2** will be sufficient to address the issues associated with this Modification.

To assist you in considering this matter, we have provided a brief description of the approved development and the proposed Modification.

## 2.0 APPROVED OPERATIONS

DA 231-7-2000 was granted on 28 August 2001 under Part 4 of the *Environmental Planning and Assessment Act 1979* (EP&A Act) (as it was then). DA 231-7-2000 has since been modified on five occasions. DA 231-7-2000 (as modified) authorises the following development activities:

- Longwall mining operations in the Wynn, Kayuga, Mt Arthur and Piercefield coal seams;
- Construction and operation of surface infrastructure at the East Site, including the Coal Handling and Preparation Plant (CHPP), coal stockpiles, train load out, rail loop, reject emplacement areas, bathhouse, administration buildings and water management infrastructure;
- Construction and operation of surface infrastructure at the West Site, including the entry to the underground mine (Kayuga Entry), administration buildings, helipad, effluent pond, irrigation paddocks and water management infrastructure;
- Transfer of Run of Mine (ROM) coal from the underground mine to the East Site using the Hunter Tunnel (an underground passage);
- Extraction of up to 6 million tonnes per annum (Mtpa) of ROM coal;
- Transportation of product coal to the Port of Newcastle via the Main Northern Rail Line; and
- Employment of a maximum of 292 full time equivalent personnel.

DA 231-7-2000 allows for these activities to be undertaken until 5 December 2022.

## 3.0 PROPOSED MODIFICATION

The Modification includes the following changes to the approved operations at Dartbrook Mine:

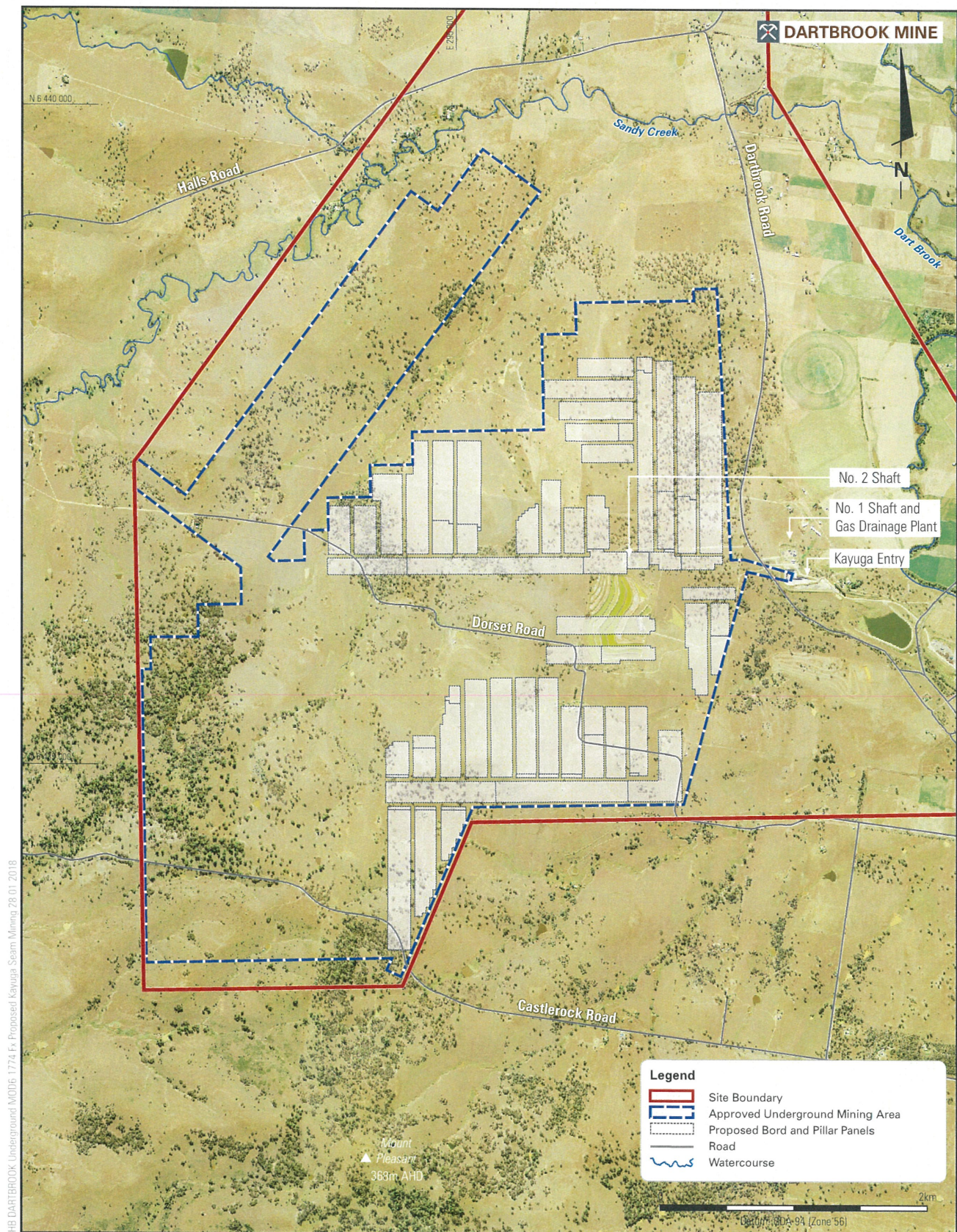
- Mining of the Kayuga seam using bord and pillar mining methods as an alternative to the approved longwall panels;
- Altering the coal clearance system for transferring ROM coal to the train loadout facility; and
- Extending the period of DA 231-7-2000 by 5 years.

### 3.1.1 Underground Mining

DA 231-7-2000 allows for longwall mining to be conducted in the Wynn, Kayuga, Mt Arthur and Piercefield coal seams. The Modification proposes bord and pillar mining of the Kayuga seam, as an alternative to the approved longwall mining activities. The proposed bord and pillar workings will be located within the Approved Kayuga Seam Mining Area under DA 231-7-2000 (see **Figure 1**). That is, the Modification will not increase the footprint of mining operations at Dartbrook Mine. The Modification will not alter the approved mining activities in the Wynn, Mt Arthur and Piercefield coal seams.

The proposed bord and pillar mining will consist of first workings only. These first workings will be designed such that bord and pillar mining does not result in measurable subsidence (<20mm).





DARTBROOK MINE

Conceptual Modification Layout

**FIGURE 1**



The proposed bord and pillar mining will facilitate the extraction of up to 1.5 Mtpa of ROM coal, with a total of 10 Mt to be extracted over a period of 10 years. The total production rate for Dartbrook Mine will remain within the approved maximum production rate of 6 Mtpa. The Modification seeks to extend the period of approval by 5 years (until 5 December 2027) to enable the proposed bord and pillar mining to be completed.

### 3.1.2 Coal Clearance System

DA 231-7-2000 allows for ROM coal to be transferred from the mine workings to the CHPP via the Hunter Tunnel. The Hunter Tunnel is an underground roadway that passes beneath the Hunter River and New England Highway. The conveyors in the Hunter Tunnel were removed by the previous owners of Dartbrook Mine during the care and maintenance phase. As such, AQC has developed an alternative coal clearance system for the Modification. ROM coal will be brought to the surface at the Kayuga Entry. Haul trucks will then transport ROM coal from the Kayuga Entry to a new shaft site located directly above the Hunter Tunnel. Approximately 400 m of the eastern portion of the Hunter Tunnel will be used to convey coal from the new shaft to the existing raw coal circular stockpile. Coal will then be crushed and directly conveyed to the train loadout facility for dispatch.

The proposed coal clearance system for the Modification is shown in **Figure 2**.

## 4.0 PROPOSED APPROVAL PATHWAY

### 4.1.1 Applicability of Section 75W

DA 231-7-2000 was granted on 28 August 2001 by the then Minister of Urban Affairs pursuant to Sections 76(A)9 & 80 of the EP&A Act (as it was then). Section 76(A)9 of the EP&A Act (as it was then) provided that “The Minister is the consent authority for State Significant development”. Clause 8J(8) of the *Environmental Planning and Assessment Regulation 2000* (EP&A Regulation) allows for certain Development Consents to be modified pursuant to Section 75W of the EP&A Act. Clause 8J(8) relevantly states:

*“(8) For the purposes only of modification, the following development consents are taken to be approvals under Part 3A of the Act and section 75W of the Act applies to any modification of such a consent:*

*...*

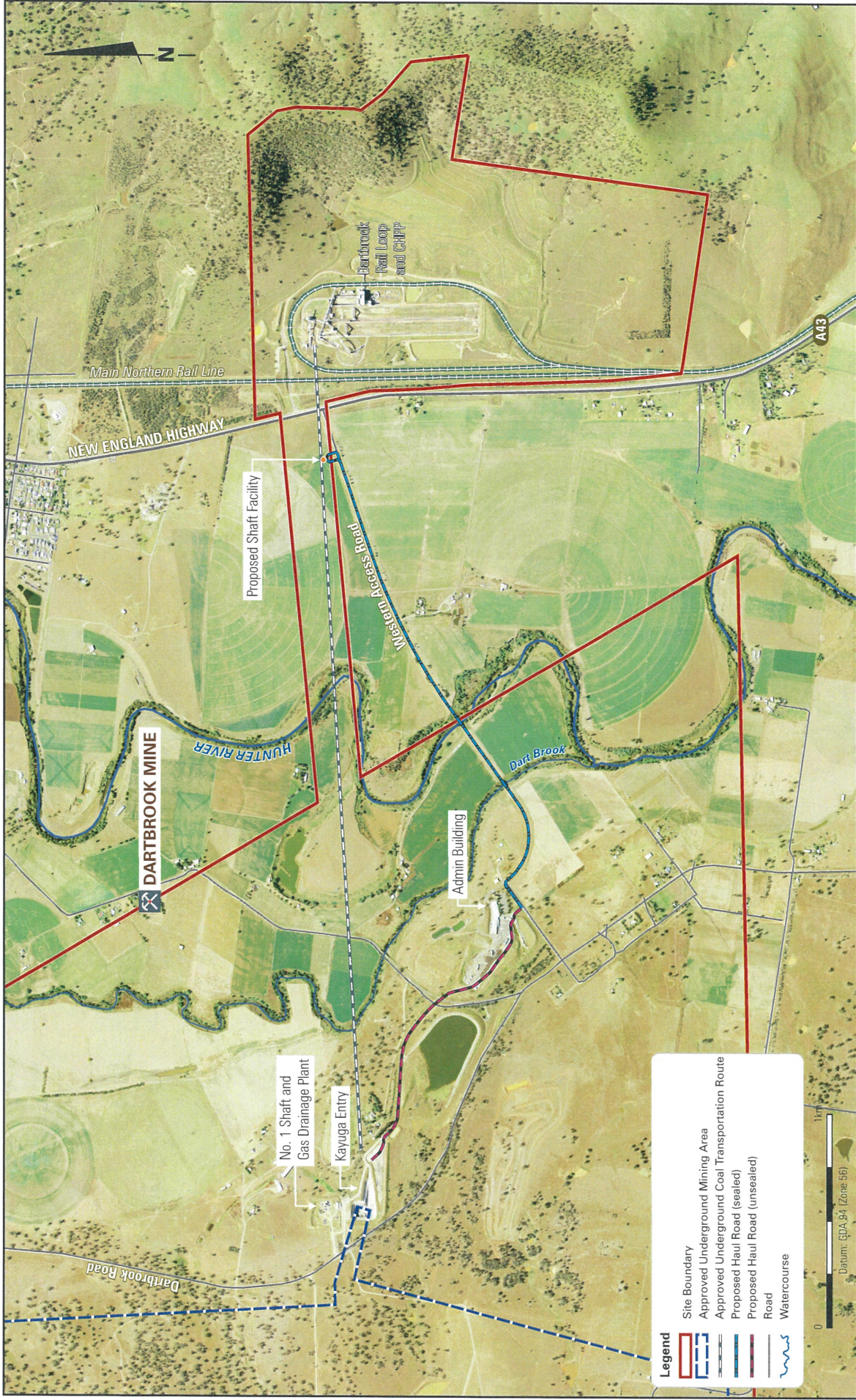
*(c) a development consent granted by the Minister under Part 4 of the Act (relating to State significant development) before 1 August 2005 or under clause 89 of Schedule 6 to the Act,*

*...”*

Given that DA 231-7-2000 was granted by the Minister under Part 4 of the EP&A Act prior to 1 August 2005, Clause 8J(8) allows for DA 231-7-2000 to be modified under Section 75W of the EP&A Act. It is acknowledged that the transitional provisions relating to the former Part 3A of the EP&A Act will cease on 1 March 2018. Accordingly, an application for modification under Section 75W must be lodged no later than 28 February 2018.

The scope of Section 75W to modify a planning approval was considered by the NSW Court of Appeal in *Barrick Australia Limited v Williams* [2009] NSWCA 275. The Court held that Section 75W cannot be relied upon where the proposed modification would amount to a “radical transformation of the terms of the existing development consent”. When determining whether a modification constitutes a “radical transformation”, the proposal is to be compared to the approved development (with previous modifications) rather than the development as originally approved.





HB DARTBROOK Underground M006 1774 F2 Coal Transportation Route 22 02 2018 Rev C

DARTBROOK MINE

Coal Transportation Route

**FIGURE 2**



The following aspects of the approved development will not be altered by the Modification:

- Coal extraction will be undertaken within the Approved Mining Area (i.e. no change in mining footprint);
- Mining activities within the Wynn, Mt Arthur and Piercefield coal seams will not be altered;
- Total Coal production will remain within the approved maximum rate of 6 Mtpa;
- Coal will continue to be transported to the Port of Newcastle by rail; loaded out from the existing approved train load out facilities;
- Operating hours will remain unchanged; and
- Operational workforce will remain within the approved personnel limit.

The extension of the approval period by 5 years will facilitate the recovery of coal resources that have not yet been extracted (as a result of Dartbrook Mine being placed under care and maintenance by the previous owners). The additional period of mining will not result in the extraction of any coal that was not previously approved for extraction.

The development, as originally approved by DA 231-7-2000, is characterised as an underground coal mining operation. Although the Modification alters the methods that are used to mine and handle coal, it does not alter the character of the development. Therefore, the modified development does not represent a “radical transformation” from the original development.

#### **4.1.2 Environmental Assessment**

The application under Section 75W of the EP&A Act will be accompanied by an Environmental Assessment (EA), which will be submitted after the initial modification application. The supporting EA will include the following items:

- Background;
- Existing Environment;
- Approved Operations;
- Modification Description (including a discussion of the alternatives considered);
- Regulatory Framework;
- Stakeholder Consultation:
  - Consultations with relevant State government agencies;
  - Consultation with local government authorities (Muswellbrook Shire Council and Upper Hunter Shire Council); and
  - Consultation with the local community (including Aboriginal stakeholders);
- Risk Assessment;
- Environmental Impact Studies:
  - Air Quality Impact Assessment to qualitatively assess the potential impacts associated with construction of the new shaft site and haulage of ROM coal from the Kayuga Entry to the new shaft site;
  - Noise Impact Assessment to qualitatively assess the potential impacts associated with construction of the new shaft site and haulage of ROM coal from the Kayuga Entry to the new shaft site;

- Ecological Impact Assessment to quantitatively assess the potential impacts associated with construction of the new shaft site;
- Aboriginal Cultural Heritage Impact Assessment to quantitatively assess the potential impacts associated with construction of the new shaft site; and
- Qualitative assessments of other minor environmental issues (e.g. traffic, visual, agriculture).
- Summary of measures to manage and mitigate environmental impacts; and
- Project justification.

The EA will not include a subsidence impact assessment because the proposed first workings (bord and pillar mining) will be designed such that it does not result in measurable subsidence (<20 mm). The EA will not include quantitative groundwater and surface water assessments as the proposed bord and pillar mining will result in lower water make than the approved longwall mining operations.

#### **4.1.3 Anticipated Timeline**

AQC will lodge a modification application under Section 75W prior to 28 February 2018. The EA is expected to be submitted in May 2018.

### **5.0 CONCLUSION**

AQC formally requests that DP&E provide:

- Written confirmation that an application under Section 75W is the appropriate approval's pathway for the Modification; and
- Written confirmation that the proposed content of the EA (as outlined in **Section 4.1.2**) is sufficient to address the potential issues associated with the Modification.

Should you have any queries in relation to this letter, please do not hesitate to contact me on 07 3221 0679.

Yours sincerely,



**Andrew Roach**  
Company Secretary