

## DEPARTMENT OF PLANNING

*Office of Sustainable Development Assessment and Approvals*

### **For Decision**

## **PURPOSE**

To determine an application from Badger Mining Company Pty Ltd (Badger Mining) to modify the Minister's development consent for the Luddenham clay/shale quarry.

## **BACKGROUND**

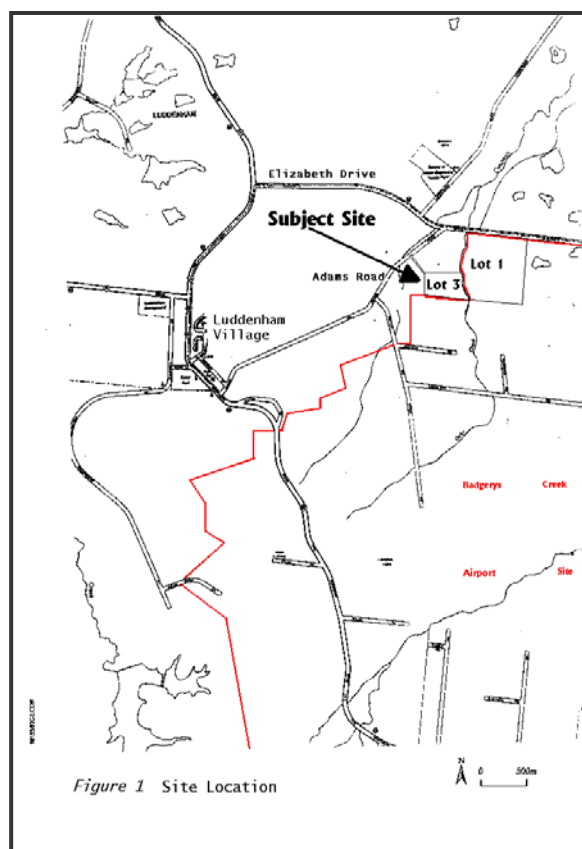
On 23 May 2004, the then Minister for Infrastructure, Planning and Natural Resources approved a development application (DA) from Badger Mining for the Luddenham clay/shale quarry and associated infrastructure.

The proposed quarry is located about 3 kilometres northeast of Luddenham in the Liverpool local government area (see Figure 1).

Under the Minister's approval, Badger Mining may extract up to 300,000 cubic metres of clay/shale a year for about 10 years, and transport this material to regional brickworks by truck.

The proposed quarry has a capital value of \$4 million, and will employ 13 full-time workers.

Construction of the quarry is planned to commence in early 2006.



*Figure 1: Location of Luddenham Clay/shale*

*Quarry*

## **PROPOSED MODIFICATION**

Badger Mining proposes to relocate the internal access road of the quarry 200 metres to the south (see Figure 2).

On 16 November 2005, Badger Mining submitted an application (DA 315-7-2003-MOD-1) to the Department, seeking approval for the proposed changes to the internal access road under Section 96(1A) of the *Environmental Planning and Assessment Act 1979* (EP&A Act).



## STATUTORY CONTEXT

### **Consent Authority**

The Minister was the consent authority for the original DA and is consequently the consent authority for this application.

On 12 September 2005, the Minister delegated his powers and functions as a consent authority to modify development consents under Section 96(1A) of the EP&A Act to the Deputy Director-General, Office of Sustainable Assessments & Approvals, Department of Planning.

Consequently the Deputy Director-General may determine this application under delegated authority.

### **Section 96(1A)**

Under Section 96(1A) of the EP&A Act a consent authority can modify a development consent if it is satisfied that the:

- (a) *...proposed modification is of minimal environmental impact, and*
- (b) *...development to which the consent as modified relates is substantially the same development for which consent was originally granted and before that consent as originally granted was modified (if at all).*

The Department is satisfied that the proposed modification meets these criteria.

## CONSULTATION

Under the EP&A Act, the Department is not required to consult over the proposal, however, it has consulted the Department of Environment and Conservation (DEC), the Department of Natural Resources (DNR) and Liverpool City Council (LCC).

The DEC did not object to the proposed modification as Badger Mining has not sought to change the noise limits applicable to the proposed development.

The DNR did not object to the proposed modification, and reissued its General Terms of Approval GTAs) under Part 3A of the *Rivers and Foreshores Improvement Act 1948* for the proposed relocated road crossing of Oakey Creek. They are unchanged from its previous GTAs, which were incorporated into the conditions of the Minister's consent.

The LCC did not object to the proposed modification.

## CONSIDERATION OF ISSUES

### Impacts on Oakey Creek

At the site of the proposed relocated road crossing, Oakey Creek consists of an often dry channel 2 to 3 metres wide (see Figure 3). Badger Mining proposes to move the Oakey Creek road crossing 200 metres to the south, and importantly, upstream of its approved location. This means that, compared to its approved location, the proposed creek crossing would benefit from a reduced upstream catchment, and in times of flooding, reduced volumes of water passing under the crossing. Accordingly, the relocated crossing would have reduced impacts on upstream flood depths and a reduced potential to restrict flood flows and increase downstream water velocities.



*Figure 3: Proposed Site of Relocated Creek Crossing*

Mathematical modelling, undertaken by Larry Cook and Associates, confirms this analysis and concludes that the flood event resulting from a 1% Annual Exceedance Probability (AEP) storm *“will not impact the proposed development”*, and *“the new bridge will not significantly impede the Probable Maximum Flood (PMF) flow”*.

The Department believes the conditions of the Minister’s consent are appropriate, without change, to manage and mitigate the impacts of the creek crossing’s construction and operation. These conditions also require Badger Mining to produce a range of management plans before operations can commence on the site. Any minor alterations to impacts of the creek crossing would be considered in the production of these plans.

#### Noise

The relocated creek crossing would move clay/shale product trucking operations 200 metres closer to several residences located to the south of the proposed quarry. However, these trucks would be no closer to these residences than noise emissions from the proposed quarry (see Figure 2).

Without any noise attenuation, noise impacts at the southern residences would increase by 1.5 dB(A). Badger Mining’s assessment of noise impacts demonstrates that rising topography to the south of the site would provide an acoustic shielding effect to attenuate noise impacts so that there would be no net increase in received noise levels. For residences to the north and west, noise levels are predicted to decrease, and for residences to the east noise levels are predicted to be unchanged.

Badger Mining has not sought to increase the noise limits of the Minister’s consent. It intends to operate the quarry and relocated access road to comply with these noise limits (including noise limits applicable to residences to the south of the proposed quarry).

As Badger Mining will be required to restrict noise emissions to below limits contained in the Minister’s consent, the proposed modification would result in no additional noise impacts on the amenity of nearby residents. The Department believes the noise limits in the Minister’s consent should not be altered.

#### Other Issues

The Department has also considered potential impacts on riparian vegetation, Aboriginal sites, air quality and traffic movements. The Department is satisfied that there would be no change to these impacts as a result of the proposed modification when compared to the impacts of the approved development.

Consequently, the Department believes the proposed modification would not change the environmental impacts of the quarry and would not materially change the development for which consent was granted.

### **RECOMMENDED CONDITIONS**

The Department has drafted a notice of modification for the proposal (tagged A). Badger Mining does not object to this draft notice.

### **RECOMMENDATION**

It is RECOMMENDED that the Acting Deputy Director-General:

- consider this submission;
- approve the application under Section 96(1A) of the EP&A Act; and
- sign the attached notice of modification (tagged A).

David Kitto  
**Acting Director**  
**Major Development Assessment**

Yolande Stone  
**Acting Deputy Director-General**