

Notice of Modification

Section 75W 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

13 July

2018

SCHEDULE 1

The Development Consent (DA 60-3-2001) for the Dendrobium underground coal mine and associated surface facilities and infrastructure, granted by the Minister for Urban Affairs and Planning on 20 November 2001.

SCHEDULE 2

1. In the list of definitions delete the terms "DRE", "Independent Dispute Resolution Process", "MSB", "NOW", "SCA" and "Secretary", and their definitions, and insert the following in alphabetical order:

Annual Review	The review required by condition 5 of Schedule 8
DoI	Department of Industry – Lands and Water
DRG	Division of Resources and Geoscience within the Department
EA (MOD 8)	Modification application dated 26 February 2018 and accompanying letter report and attachments dated 19 June 2018 from Illawarra Coal Holdings Pty Ltd
Material harm	Is unauthorised harm that: <ul style="list-style-type: none">• 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)
	Note: This definition excludes "harm" that is authorised under either this consent or any other statutory approval
Modification 8	The modification to the development as described in EA (MOD 8)
SA NSW	Subsidence Advisory NSW
Secretary	Planning Secretary under the EP&A Act, or nominee

2. Delete all references to "shall" and replace with "must", except in:
- condition 3 of Schedule 2;
 - the second reference in condition 1 of Schedule 4;
 - the second reference in condition 2 of Schedule 4;
 - the second reference in condition 27 of Schedule 4;
 - condition 8 of Schedule 5;
 - the sixth reference in condition 6 of Schedule 7; and
 - the first reference in condition 8 of Schedule 7.
3. Delete all references to "DRE" and replace with "DRG".

4. Delete all references to "NOW" and replace with "DoI".
5. Delete all references to "MSB" and replace with "SA NSW".
6. Delete all references to "SCA" and replace with "WaterNSW" except in the document title in condition 13(e) of Schedule 3.
7. Delete all references to "AEMR" and replace with "Annual Review" except in:
 - a) condition 3 of Schedule 5;
 - b) the first reference in condition 7 of Schedule 5; and
 - c) Appendix 3.
8. In condition 2 of Schedule 2, delete the words "conditions of this consent" and insert the words "EA (MOD 8)".
9. In condition 2 of Schedule 2, insert the following:

2A. The Applicant must carry out the development in accordance with the conditions of this consent.
10. In condition 4 of Schedule 2, delete subparagraphs (a) and (b) and insert the following:
 - (a) any reports, strategies, plans, programs, reviews, audits or correspondence that are submitted in accordance with the conditions of this consent;
 - (b) any reviews, reports or audits undertaken or commissioned by the Department regarding compliance with the conditions of this consent; and
 - (c) the implementation of any actions or measures contained in these documents.
11. In condition 14 of Schedule 2:
 - a) delete the words "*Mine Subsidence Compensation Act 1961*" and replace with the words "*Coal Mine Subsidence Compensation Act 2017*"; and
 - b) delete the year "1991" and replace with the year "1992".
12. In condition 1 of Schedule 4, in the first bullet point in the notes, delete all words after the word "compliance" and insert a full stop.
13. In condition 7 of Schedule 4:
 - a) delete the words "and implement" after the word "prepare"; and
 - b) after subparagraph (d) insert the following:

The Applicant must implement the Noise Monitoring Program as approved by the Secretary.
14. In condition 10 of Schedule 4:
 - a) delete the words "and implement" after the word "prepare";
 - b) re-label "(a)", "(a)", "(b)" and "(c)" as "(a)", "(b)", "(c)" and "(d)", respectively; and
 - c) after subparagraph (d) insert the following

The Applicant must implement the Air Quality Monitoring Program as approved by the Secretary.
15. In condition 13 of Schedule 4:
 - a) delete the words "and implement" after the word "prepare"; and
 - b) after subparagraph (c) insert the following:

The Applicant must implement the Water Management Plan as approved by the Secretary.
16. In condition 19 of Schedule 4:
 - a) delete the words "and implement" after the word "prepare"; and
 - b) after subparagraph (d) insert the following:

The Applicant must implement the Landscape Management Plan as approved by the Secretary.
17. After condition 22 of Schedule 4, insert the following:

Photographic Archival Recording

- 22A. The Applicant must undertake photographic archival recording of significant built and landscape elements affected by Modification 8 prior to the commencement, during the works and after the completion of works, in accordance with the NSW Heritage Division publications '*How to prepare archival records of heritage items and Photographic Recording of Heritage Items using Film or*

Digital Capture. A copy of these archival recordings must be provided to the Heritage Council of NSW and WCC.

Unexpected Historical Archaeological Relics

22B. In the event that unexpected archaeological artefacts are uncovered during ground disturbing works, the Applicant must ensure work ceases in the subject area and a suitably trained archaeologist attends the site to inspect the find. Should archaeological material be identified as having heritage significance, the Applicant must obtain any necessary further approvals before works can proceed.

18. In condition 25 of Schedule 4:

- a) delete the words "and implement" after the word "prepare"; and
- b) after subparagraph (g) insert the following:

The Applicant must implement the Traffic Management Plan as approved by the Secretary.

19. In condition 1 of Schedule 6:

- a) delete the words "and implement" after the word "prepare"; and
- b) after subparagraph (g) insert the following:

The Applicant must implement the Greenhouse and Energy Efficiency Plan as approved by the Secretary.

20. In condition 3 of Schedule 7, delete the words "Where matters referred to the Secretary under this condition cannot be resolved by the Secretary within 28 days, the Secretary shall refer the matter to an Independent Dispute Resolution Process".

21. In condition 1 of Schedule 8:

- a) after the word "prepare" delete the words "and implement";
- b) in the last bullet point in subparagraph (d), delete the word "and";
- c) at the end of subparagraph (e) delete the full stop and insert the following:

; and

(f) include:

- references to any strategies, plans and programs approved under the conditions of this consent; and
- a clear plan depicting all the monitoring to be carried out under the conditions of this consent.

The Applicant must implement the Environmental Management Strategy approved by the Secretary.

22. Delete condition 2 of Schedule 8, including its heading and insert the following:

Management Plan Requirements

2. Management plans required under this consent must be prepared in accordance with relevant guidelines, and include:

- (a) a summary of relevant background or baseline data;
- (b) details of:
 - (i) the relevant statutory requirements (including any relevant approval, licence or lease conditions);
 - (ii) any relevant limits or performance measures and criteria; and
 - (iii) the specific performance indicators that are proposed to be used to judge the performance of, or guide the implementation of, the development or any management measures;
- (c) a description of the measures to be implemented to comply with the relevant statutory requirements, limits, or performance measures and criteria;
- (d) a program to monitor and report on the:
 - (i) impacts and environmental performance of the development; and
 - (ii) effectiveness of the management measures set out pursuant to condition 2(c);
- (e) a contingency plan to manage any unpredicted impacts and their consequences and to ensure that ongoing impacts reduce to levels below relevant impact assessment criteria as quickly as possible;
- (f) a program to investigate and implement ways to improve the environmental performance of the development over time;

- (g) a protocol for managing and reporting any:
 - (i) incident and any non-compliance (specifically including any exceedance of the impact assessment criteria and performance criteria);
 - (ii) complaint;
 - (iii) failure to comply with statutory requirements; and
- (h) a protocol for periodic review of the plan.

Note: *The Secretary may waive some of these requirements if they are unnecessary or unwarranted for particular management plans.*

REVISION OF STRATEGIES, PLANS AND PROGRAMS

2A. Within three months of the:

- (a) submission of an incident report under condition 4 of Schedule 8;
 - (b) submission of an Annual Review under condition 5 of Schedule 8;
 - (c) submission of an Independent Environmental Audit under condition 6 of Schedule 8; or
 - (d) approval of any modification of the conditions of this consent,
- the suitability of existing strategies, plans and programs required under this consent must be reviewed by the Applicant.

If necessary, to either improve the environmental performance of the development or cater for a modification, the strategies, plans and programs required under this consent must be revised, to the satisfaction of the Secretary and submitted to the Secretary for approval within six weeks of the review.

Note: *This is to ensure strategies, plans and programs are updated on a regular basis and to incorporate any recommended measures to improve the environmental performance of the development.*

23. In condition 4 of Schedule 8, delete the number “21” and replace with “7”.

24. In condition 5 of Schedule 8:

- a) delete the word “reporting” in the heading and replace with “review”;
- b) after the words “each year” insert the words “(or other such timing as may be agreed by the Secretary)”;
- c) after the words “relevant agencies” insert the words “reviewing the environmental performance of the development to the satisfaction of the Secretary”;
- d) delete the words in subparagraph (b) and replace with “describe the development (including any rehabilitation) that was carried out in the previous financial year”;
- e) delete the words in subparagraph (c) and replace with “describe the development (including any rehabilitation) that is proposed to be carried out over the current financial year; and
- f) delete subparagraphs (f) – (j) and insert the following:
 - (f) a comprehensive review of the monitoring results and complaints records of the development over the previous financial year, including a comparison of these results against the:
 - (i) relevant statutory requirements, limits or performance measures/criteria;
 - (ii) requirements of any plan or program required under this consent;
 - (iii) monitoring results of previous years; and
 - (iv) relevant predictions in the documents listed in condition 2 **Error! Reference source not found.** of Schedule 2.
 - (g) identify any non-compliance or incident which occurred in the previous financial year, and describe what actions were (or are being) taken to rectify the non-compliance and avoid reoccurrence;
 - (h) evaluate and report on:
 - (i) the effectiveness of the noise and air quality management systems; and
 - (ii) compliance with the performance measures, criteria and operating conditions in this consent;
 - (i) identify any trends in the monitoring data over the life of the development;
 - (j) identify any discrepancies between the predicted and actual impacts of the development, and analyse the potential cause of any significant discrepancies; and
 - (k) describe what measures will be implemented over the next financial year to improve the environmental performance of the development.

Copies of the Annual Review must be submitted to the affected Councils and made available to the CCC and any interested person upon request.

25. In condition 6 of Schedule 8:

- a) in subparagraph (b) after the word “agencies” insert the words “and the CCC”;
- b) in subparagraph (c) delete the word “approval” and replace with “consent”;
- c) in subparagraph (d) delete the words “and, if appropriate”;
- d) at the end of subparagraph (e) delete the full stop and insert the following:

; and

(f) be conducted and reported to the satisfaction of the Secretary.

26. Delete conditions 7 and 8 of Schedule 8 and insert the following:

7. Within three months of commencing an Independent Environmental Audit, or within another timeframe agreed by the Secretary, the Applicant must submit a copy of the audit report to the Secretary, and any other NSW agency that requests it, together with its response to any recommendations contained in the audit report, and a timetable for the implementation of the recommendations. The recommendations must be implemented to the satisfaction of the Secretary.

Note: *The audit team must be led by a suitably qualified auditor and include experts in any fields specified by the Secretary.*

Monitoring and Environmental Audits

8. 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.*

27. In condition 9 of Schedule 8:

- a) 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 "Department's Community Consultative Committee Guidelines: State Significant Projects (2016)"; and
- b) delete the note and replace with the following:

Notes:

- *The CCC is an advisory committee only.*
- *In accordance with the guidelines, the committee should comprise an independent chair and appropriate representation from the Applicant, Council and the local community.*

28. Delete conditions 11 and 12 of Schedule 8 and insert the following:

11. Before the commencement of Modification 8 until the completion of all rehabilitation required under this consent, the Applicant must:
- (a) make the following information and documents (as they are obtained, approved or as otherwise stipulated within the conditions of this consent) publicly available on its website:
- (i) the documents referred to in condition 2 of Schedule 2 of this consent;
 - (ii) all current statutory approvals for the development;
 - (iii) all approved strategies, plans and programs required under the conditions of this consent;
 - (iv) minutes of CCC meetings;
 - (v) regular reporting on the environmental performance of the development in accordance with the reporting requirements in any plans or programs approved under the conditions of this consent;
 - (vi) a comprehensive summary of the monitoring results of the development, reported in accordance with the specifications in any conditions of this consent, or any approved plans and programs;
 - (vii) a summary of the current stage and progress of the development;
 - (viii) contact details to enquire about the development or to make a complaint;
 - (ix) a complaints register, updated monthly;
 - (x) the Annual Reviews of the development;
 - (xi) audit reports prepared as part of any Independent Environmental Audit of the development and the Applicant's response to the recommendations in any audit report;
 - (xii) any other matter required by the Secretary; and
- (b) keep such information up to date, to the satisfaction of the Secretary.

29. Delete Appendix 5.

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