

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979

INTEGRATED STATE SIGNIFICANT DEVELOPMENT

**DETERMINATION OF DEVELOPMENT APPLICATION
PURSUANT TO SECTIONS 76(A)9 & 80**

I, the Minister for Urban Affairs and Planning, pursuant to Sections 76(A)9 & 80 of the Environmental Planning and Assessment Act, 1979 (“the Act) determine the development application (“the application”) referred to in Schedule 1 by granting consent to the application subject to the conditions set out in Schedule 2.

The reasons for the imposition of the conditions are to:

- (i) minimise the adverse impact the development may cause through water and air pollution, noise and visual disturbance;
- (ii) provide for environmental monitoring and reporting; and
- (iii) set requirements for infrastructure provision.

Andrew Refshauge

Minister for Urban Affairs and Planning

ORIGINAL CONSENT SIGNED BY MINISTER REFSHAUGE 14 MAY 1999.

Sydney,

1999

File No. N91/00544

Schedule 1

Application made by:	Powercoal Pty Ltd (ACN 052 533 070) (“the Applicant”).
To:	The Minister for Urban Affairs and Planning (DA 73-11-98)
In respect of:	The area of land as shown in red edge and orange hatch in Figure 1 of Appendix 1.
For the following:	Extension of an underground coal mine, and upgrade of associated surface facilities (“the Development”).
BCA Classification:	Class 10(a) (conveyor coal reclaim system, train loading bin (Newstan Colliery); ventilation shaft, men and materials access shaft and winder housing (Awaba Colliery)).
NOTE:	1) To ascertain the date upon which the consent becomes effective, refer to section 83 of the Act.

- 2) To ascertain the date upon which the consent is liable to lapse, refer to section 95 of the Act.
- 3) Section 97 of the Act confers on an Applicant who is dissatisfied with the determination of a consent authority a right of appeal to the Land and Environment Court exercisable within 12 months after receipt of notice.

23 September 2007 modification (DA73-11-98 MOD 1) shown in red type.

27 November 2009 modification (DA73-11-98 MOD 2) shown in blue type.

26 November 2010 modification (DA73-11-98 MOD 3) shown in green type.

16 March 2012 modification (DA 73-11-98 MOD 4) shown in pink type (Newstan Main West)

19 November 2012 modification (DA 73-11-98 MOD 5) shown in mauve type (Transport Modification)

06 January 2014 modification (DA 73-11-98 MOD 6) shown in orange type.

01 December 2015 modification (DA 73-11-98 MOD 7) shown in light blue type.

SCHEDULE 2

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DEFINITIONS:

Annual Review - *The review of operations required by Condition 9.1 of Schedule 2*

CCC - *Community Consultative Committee*

DA - *Development Application*

DA Area – *the area of land to which this consent applies, as shown in red edge and orange hatch in Figure 1 of Appendix 1*

Department – *Department of Planning and Environment*

Development Consent Area – *the area of the development as shown in the figure in Appendix 1*

EIS - *Environmental Impact Statement*

Executive Director, Mineral Resources – *the Executive Director of the Mineral Resources within DRE*

Feasible - *Feasible relates to engineering considerations and what is practical to build or implement*

LEA – *Lease Extension Area as shown in blue broken line in Figure 1 of Appendix 1*

Main West Mining Area – *the area shown in orange hatch in Figure 1 of Appendix 1*

Minister – *Minister for Planning, or delegate*

Relevant Area – *relevant area of surface facilities*

Reasonable - *Reasonable relates to the application of judgement in arriving at a decision, taking into account: mitigation benefits, cost of mitigation versus benefits provided, community views and the nature and extent of potential improvements*

SEE – *Statement of Environmental Effects*

SMP – *Subsidence Management Plan*

Surface facilities – *Ventilation and Men and Materials Access Shafts (Awaba Colliery).*

Section 138 – *section 138 of the Coal Mine Regulation Act, 1982*

Safe, serviceable and repairable criteria – *Category 3 to 5 for strain and/or category C or D for tilt, in accordance with Australian Standard AS2870-1996*

Secretary - *The Secretary of the Department, or nominee*

Government Authorities

EPA – *Environment Protection Authority*

DRE – *Division of Resources and Energy, within the Department of Trade and Investment, Regional Infrastructure and Services*

LMCC - *Lake Macquarie City Council*

MSB - *Mine Subsidence Board*

DPI Water – *Office of Water, within the Department of Primary Industries*

OEH – *Office of Environment and Heritage*

RMS – *Roads and Maritime Services*

1. General

There is an obligation on the Applicant to prevent and minimise harm to the environment throughout the life of the project. This requires that all practicable measures are to be taken to prevent and minimise harm that may result from the construction, operation and, where relevant, decommissioning of the development.

1.1 Terms of Approval

The Applicant shall carry out the development generally in accordance with the:

- (a) DA 73-11-98;
- (b) EIS titled *"Newstan Colliery Life Extension Project"*, dated November 1998;
- (c) SEE titled *"Newstan Colliery Modifications to Development Consent"*, dated April 2007;
- (d) Deleted;
- (e) Deleted;
- (f) the modification application DA 73-11-98 – MOD 4 and accompanying Environmental Assessment entitled *Centennial Coal Newstan Colliery Main West Mining Project Section 75W Modification Environmental Assessment*, dated June 2011; and the Response to Submissions document entitled *Centennial Coal Newstan Colliery Main West Mining Project Response to Submissions*, dated December 2011;
- (g) Deleted;
- (h) the modification application DA 73-11-98 MOD 6 and accompanying Environmental Assessment entitled *Newstan Colliery Modification of Development Consent Boundary Section 75W Modification to Development Consent DA 73-11-98*, dated November 2013; and
- (i) the modification application DA 73-11-98 MOD 7, dated 12 October 2015;

The Applicant shall carry out the development in accordance with the conditions of this consent.

If there is any inconsistency between the above documents, the latter document shall prevail to the extent of the inconsistency. However, the conditions of this consent shall prevail to the extent of any inconsistency.

1.2 Period of Approval/Project Commencement

- (i) The approval for mining is for a period of 21 years from the date of granting of a mining lease pursuant to this consent. If, at any time, the Secretary is aware of environmental impacts from the proposal that pose serious environmental concerns due to the failure of existing environmental management measures to ameliorate the impacts, the Secretary may order the Applicant to cease the activities causing those impacts until those concerns have been addressed to the satisfaction of the Secretary.

- (ii) At least one month prior to the commencement of: construction of the surface facilities; and secondary workings within the LEA, or within such period as agreed by the [Secretary](#), the Applicant shall submit for the approval of the [Secretary](#) a compliance report detailing compliance with all the relevant conditions that apply prior to the commencement: of construction of the surface facilities; and secondary workings within the LEA.
- (iii) Date of commencement of construction of the surface facilities and date of commencement of first and secondary workings in the LEA is to be notified in writing to the [Secretary](#) and LMCC, at least two weeks prior to commencement of the surface construction works, and underground mining in the LEA respectively.

1.3 Dispute Resolution

In the event that the Applicant and the LMCC or a Government agency, other than [the Department](#), cannot agree on the specification or requirements applicable under this consent, the matter shall be referred by either party to the [Secretary](#) or if not resolved, to the Minister, whose determination of the disagreement shall be final and binding on the parties.

1.4 Security Deposits and Bonds

Security deposits and bonds will be paid as required by [DRE](#) under mining lease approval conditions.

2. Mine Management

2.1 Deleted

2.2 Deleted

3. Land and Site Environmental Management

3.1 Appointment of Environmental Officer

- (i) The Applicant shall employ a suitably qualified Environmental Officer throughout the life of the mine, whose qualifications are acceptable to the [Secretary](#) and who shall report to the Mine Manager. The Officer will:
 - (a) be responsible for the preparation of the environmental management plans (refer condition 3.2);
 - (b) be responsible for considering and advising on matters specified in the conditions of this consent and compliance with such matters;
 - (c) be responsible responding to complaints in accordance with condition 10.2(a);
 - (d) facilitate an induction and training program for all persons involved with construction activities, mining and remedial activities; and
 - (e) have the authority and independence to require reasonable steps to be taken to avoid or minimise unintended or adverse environmental impacts and failing the effectiveness of such steps, to stop work immediately if an adverse impact on the environment is likely to occur.
- (ii) The Applicant shall notify the [Secretary](#), [DRE](#), [EPA](#), [DPI Water](#), LMCC and the CCC (refer condition 8.8) of the name and contact details of the Environmental Officer upon appointment and any changes to that appointment.

3.2 Environmental Management Strategies and Plans

- (a) The Applicant shall prepare an Environmental Management Strategy as a continuation of the existing Newstan Colliery Environmental Management System for the DA area including within the [LEA and proposed surface facilities](#). The Environmental Management Strategy shall be prepared in consultation with the relevant authorities and the Community Consultative Committee and to the satisfaction of the [Secretary](#), prior to commencement of construction of surface facilities or secondary workings, whichever is the sooner.
- (b) The Environmental Management Strategy shall include:
 - (i) statutory and other obligations which the Applicant is required to fulfill during construction and mining, including all approvals and consultations and agreements required from authorities and other stakeholders, and key legislation and policies;
 - (ii) definition of the role, responsibility, authority, accountability and reporting of personnel relevant to environmental management, including the Environmental Officer;
 - (iii) overall environmental management objectives and performance outcomes, during construction, mining and decommissioning of the mine, for each of the key environmental elements for which management plans are required under this consent;
 - (iv) overall ecological and community objectives for the water catchment, and a strategy for the restoration and management of the areas of the catchment affected by mining operations, including elements such as

- wetlands and other habitat areas, creek lines and drainage channels, within the context of those objectives;
- (v) identification of cumulative environmental impacts and procedures for dealing with these at each stage of the development;
 - (vi) overall objectives and strategies to protect existing economic productivity within the area affected by mining, including agricultural productivity and other businesses;
 - (vii) steps to be taken to ensure that all approvals, plans, and procedures are being complied with;
 - (viii) processes for conflict resolution in relation to the environmental management of the project; and
 - (ix) documentation of the results of consultations undertaken in the development of the Environmental Management Strategy.
- (c) The Applicant shall make copies of the Environmental Management Strategy available to LMCC, EPA, DPI Water, DRE, MSB and the Community Consultative Committee within fourteen days of approval by the Secretary.
- (d) The Applicant shall also prepare the following environmental management plans:
- Archaeology and cultural management plan (refer condition 3.3)
 - Flora and fauna management plan (refer condition 3.4)
 - Erosion and sediment control plan (refer condition 3.5(a))
 - Landscape management plan (refer condition 3.7)
 - Bushfire management plan (refer condition 3.8)
 - Land management plan (refer condition 3.9(a))
 - Wetland management plan (refer condition 3.9(c))
 - Site water management plan (refer condition 4.1)
 - Dust management plan (refer condition 6.1)
 - Noise management plan (refer condition 6.4(d))
- (e) The management plans are to be revised/updated at least every 5 years or as otherwise directed by the Secretary in consultation with the relevant government agencies. They will reflect changing environmental requirements or changes in technology/operational practices. Changes shall be made and approved in the same manner as the initial environmental management plan. The plans shall also be made publicly available at LMCC within two weeks of approval of the relevant government authority.
- (f) If the applicant is unable to prepare the relevant environmental strategies and plans within the period required by these conditions of consent, prior to commencing relevant works within the area of LW15A, the applicant shall prepare specific management strategies and plans for the area of LW 15A prior to commencement of those works. The preparation, content and approval of the plans for the area of LW15A shall not otherwise be inconsistent with the requirements for the management strategies and plans set out in this consent.
- (g) The Applicant shall implement the Environmental Management Strategy and the environmental management plans to the satisfaction of the Secretary.

3.3 Heritage Assessment and Management

- (A) The Applicant shall prior to construction of surface facilities or secondary workings within identified areas of archaeological sensitivity within the LEA:
- (i) Prepare an archaeology and cultural management plan which shall include, but not be limited to:
 - (a) identification of any future salvage, excavation, monitoring, and protection of any heritage and archaeological items, within the area of the surface facilities, and the area within the LEA prior to and during development;
 - (b) measures to undertake test excavations along Lords Creek to verify the archaeological potential of those areas identified as having low archaeological sensitivity at least one year prior to finalisation of the route of channelisation or other proposed works along Lords Creek;
 - (c) details of proposed investigations of rockshelters and grinding groove sites identified as having potential to contain archaeological deposit to be undertaken prior to mining being undertaken in the vicinity of the identified sites. The investigation will include test excavations undertaken in accordance with a permit issued under section 87 of the National Parks and Wildlife Act 1974, under a research design which is acceptable to the Aboriginal community and **OEH**;
 - (d) measures to protect Aboriginal sites from subsidence and mine working impacts, in consultation with **OEH**, the Aboriginal community and local residents to ensure integration of measures to protect Aboriginal sites.
 - (e) identification and documentation of Aboriginal cultural heritage issues;
 - (f) details of a monitoring program to document the effects of subsidence and mining works on Aboriginal sites and areas of archaeological sensitivity.

The plan shall be prepared in consultation with **OEH**, the Local Aboriginal Land Council, LMCC, and to the satisfaction of the **Secretary**, and shall be considered by the Applicant when completing the final underground mine layout;

- (B) The Applicant shall:
- (i) submit to and have approved by the **Secretary** of **OEH**, a Consent to Destroy application under section 90 of the National Parks and Wildlife Act 1974 for Aboriginal archaeological sites that have been identified to be damaged or destroyed as a result of the development prior to this consent and/or by the archaeology and cultural management plan, prior to any disturbance of the identified sites by mining activity; and
 - (ii) not undertake surface development works within the area of high archaeological sensitivity identified as the alluvial terrace along Lords Creek (within proposed Long Wall 42).

- (C) If, during the course of construction of any surface facilities, or mining in the LEA, the Applicant becomes aware of any heritage or archaeological material not previously identified, all work likely to affect the material shall cease immediately and the relevant authorities consulted about an appropriate course of action prior to recommencement of work. The relevant authorities may include **OEH**, the NSW Heritage Office, and the Local Aboriginal Land Council. Any necessary permits or consents shall be obtained and complied with prior to recommencement of work.
- (D) Deleted.

3.4 Flora and Fauna Assessment and Management

- (a) The Applicant shall prior to commencement of any construction works for surface facilities in the relevant area or secondary workings within the LEA, prepare and implement a Flora and Fauna Management Plan for the management of flora and fauna issues for the areas of the proposed surface facilities and LEA. The Plan shall be prepared in consultation with **OEH** and LMCC, and to the satisfaction of the **Secretary**, and shall include but not be limited to:
- (i) a detailed assessment of the current characteristics and ecological values of existing ecosystems likely to be affected by the development;
 - (ii) strategies to minimise the net loss of ecologically significant vegetation communities within DA area as a result of the development, including the provision of compensatory areas of equivalent ecological and habitat value where necessary;
 - (iii) strategies to provide increased security for existing habitats and communities (including the strengthening of riparian communities, the management of *Tetratheca juncea* plants in the vicinity of the proposed surface facilities and LEA, and habitats of other threatened species such as the Squirrel Glider and Threatened Bat Species identified in the species impact statement;
 - (iv) strategies to manage the impact of surface water management, erosion and sediment control measures, and flooding mitigation measures on flora and fauna, including the impact of heavy machinery;
 - (v) details of monitoring the mine's impacts on native vegetation and threatened fauna and flora, and outline contingency measures should impacts be identified as occurring (refer also condition 8.5);
 - (vi) measures to monitor the impacts on threatened species populations shall address:
 - 1. methods of clearing near existing vegetation and measures to protect existing vegetation from the edge effects. Consideration of buffers is essential, especially near drainage lines.
 - 2. measures to reduce sediment into drainage lines.
 - 3. subsidence impacts on *Tetratheca juncea* through a monitoring program. This program will be co-ordinated with a surveyed and levelled line to determine drops in the terrain, following mine subsidence;

4. development of a program to specifically monitor the success or otherwise of proposed ameliorative measures in relation to the threatened flora and fauna species over five years from the commencement of construction in the relevant area. The monitoring is to be undertaken by experienced Botanist(s)/ Zoologist(s). Annual progress reports and a final report outlining the implementation and success or otherwise of the ameliorative measures shall be included in the [Annual Review](#) during the monitoring period.
- (vii) measures to maintain trees with denning hollows for the protection of threatened arboreal fauna species such as the Squirrel Glider and small Bats. In the event that trees and/or nesting value relevant to these species are felled and tree hollows relocated to augment habitat, and/or in the event that individual animals are captured and relocated during construction, this work shall be undertaken by a Zoologist with knowledge and experience in the implementation of such ameliorative techniques for these species;
- (viii) a large scale plan showing quadrat number locations for *Tetratheca juncea* together with a table showing sub-population sizes and their relevant co-ordinates;
- (ix) strategies to maintain and enhance wildlife corridors around and through the site for the movement of fauna particularly for arboreal mammals, small birds, and squirrel gliders.
- (x) development of a protocol for identifying and managing significant impacts on any threatened flora and fauna species not identified in the EIS, during development through construction or **operation** of the coal mine.
- (b) **Deleted.**
- (c) [Deleted.](#)
- (d) The Applicant shall implement the ameliorative measures for *Tetratheca juncea*, Squirrel Glider, and Threatened Bat Species identified in sections 11.1 and 11.2 of the species impact statement.
- (e) Any fencing of native vegetation which is to be retained shall not consist of barbed wire fencing.

3.5 Prevention of Soil Erosion

- (a) The Applicant shall prepare Erosion and Sediment Control Plans for the surface facilities and the LEA in consultation with LMCC and to the satisfaction of [DPI Water](#) and [the Secretary](#), and submit these Plans to the [EPA](#) as part of applications for a licence under the Protection of the Environment Act. The Plans shall be prepared and implemented prior to the commencement of work in the relevant areas.
- (b) The Erosion and Sediment Control Plans shall include:

- (i) consideration and management of erosion and sedimentation of surface watercourses/waterbodies within the LEA; and
 - (ii) consideration of LMCC's Erosion and Sediment Control Policy and Code of Practice.
 - (iii) a program for reporting on the effectiveness of the sediment and erosion control systems and performance against objectives contained in the approved erosion and sediment control management plans, and EIS. (refer also condition (d) (i) below)
- (c) Deleted.
- (d) General Terms of Approval - EPA

(i) *Stormwater/sediment Control - Construction Phase*

The Erosion and Sediment Control Plan (ESCP) in sub clause (a) above must also be prepared to describe the measures that will be employed to minimise soil erosion and the discharge of sediment and other pollutants to lands and/or waters during construction activities. The ESCP should be consistent with the requirements for such plans outlined in *Managing Urban Stormwater: Soils and Construction*, (Landcom), or most recent version of these guidelines.

(ii) *Stormwater/sediment Control- Operation Phase*

A Stormwater Management Scheme must be developed and implemented to mitigate the impacts of stormwater runoff from the site following the completion of construction activities. The Scheme should be consistent with the Stormwater Management Plan for the catchment and the Water Management Plans in condition 4.1. Where a Stormwater Management Plan has not yet been prepared, the Scheme should be consistent with the guidance contained in *Managing Urban Stormwater: Council Handbook* (available from the EPA). The Scheme shall be prepared at the same time as the Water Management Plans in condition 4.1.

3.6 Site Rehabilitation Management

The Applicant shall carry out rehabilitation of all mine areas in accordance with the requirements of any Mining Lease.

3.7 Visual Amenity and Landscaping

- a) The Applicant shall, prior to the commencement of construction works in the relevant area, submit for the approval of LMCC a detailed landscape and revegetation management plan for the surface facility sites prepared by a suitably qualified person. The plan shall include, but not be limited to:
 - (i) details of the establishment of vegetation and the construction of mounding or bunding, for the purposes of maintaining satisfactory visual amenity, ecological functioning and habitat provision;

- (ii) consideration of revegetation works along creeklines;
- (iii) use of indigenous species;
- (iv) details of the visual appearance of all buildings, structures, facilities or works (including paint colours and specifications). Buildings and structures shall be designed and constructed so as to blend as far as possible with the surrounding landscape;
- (v) details, specifications and staged work programs to be undertaken, including a maintenance program of all landscape works, building materials and cladding.

The landscaping and revegetation plan must be consistent with the Environmental Management Strategy (condition 3.2).

b) Deleted.

3.8 Bushfire and other Fire Controls

The Applicant shall:

- (a) provide adequate fire protection works on the sites of surface works in accordance with the Coal Mine Regulation Act, 1982; and
- (b) prior to commencement of construction of surface facilities/works prepare a bushfire management plan for all its holdings contained in the DA, particularly the southern waste emplacement area to the satisfaction of the LMCC.

3.9 Land Management

The Applicant shall:

- (a) prior to commencement of construction works in the relevant area prepare a Land Management Plan for the areas of the proposed surface facilities, and its holdings in the LEA, to provide for proper land management in consultation with OEH, DRE, and LMCC, and to the satisfaction of the Secretary. The plan shall include, but not be limited to:
 - (i) pastures and remnant vegetation management;
 - (ii) prevention and rehabilitation of land degradation;
 - (iii) eradication of vermin and noxious weeds as required by the Rural Lands Protection Authority, the Prickly Pear Authority and other relevant authorities;
 - (iv) feral animal control.
- (b) minimise the removal of trees and other vegetation from the proposed surface facilities, and restrict any clearance to the areas occupied by mine activity, buildings and paved surfaces, and those areas necessary for fire control in accordance with LMCC's requirements.
- (c) prepare and implement a Wetland Management Plan for all wetland areas affected by the surface facilities. The Plans shall be prepared in consultation

with OEHL, DRE and affected landowners, and to the satisfaction of LMCC, prior to surface construction works in the relevant area. The plan shall include, but not limited to, replacement of habitat and in creek storages for water flows as part of the restoration of the emplacement areas.

3.10 Subsidence Management Plan

Prior to carrying out any underground mining operations that could cause subsidence, the Applicant shall prepare a Subsidence Management Plan (SMP) to the satisfaction of the Executive Director, Mineral Resources. This plan must be prepared in accordance with the:

- (a) *New Approval Process for Management of Coal Mining Subsidence - Policy*; and
- (b) *Guideline for Applications for Subsidence Management Approvals* (or the latest versions or replacements of these documents).

3.11 Subsidence Protection

In preparing the SMP, the Applicant shall pay particular attention to assessing and managing the potential surface impacts on all areas of the proposed underground mining area where:

- (a) cover depths are less than 100 metres (not including any depth of alluvium);
- (b) overlying mine workings occur; or
- (c) surface infrastructure such as power line towers and Hawkmount Road occurs.

3.12 Subsidence Management in the Main West Mining Area

The Applicant shall:

- (a) not conduct mining operations within 100 metres of points in the seam directly below Tension Tower # 18;
- (b) ensure that underground mining in the Main West Mining Area does not cause more than 20 mm of vertical subsidence at the surface in any location; and
- (c) remediate any unpredicted subsidence impacts on the 330 kV power transmission lines and towers in the Main West Mining Area, to the satisfaction of TransGrid.

4. Water Management

4.1 Surface & Ground Water Management

The Applicant shall:

- (a) prior to the commencement of construction of the new surface facilities, and prior to first workings within the LEA , prepare water management plans for the relevant developments, in consultation with [DPI Water](#), [EPA](#), LMCC, and [DRE](#) and to the satisfaction of the [Secretary](#), which shall include, but not be limited to, the following matters:
 - (i) management of the quality and quantity of surface and ground water within the areas covered by the water management plans, which shall include preparation of monitoring programs as provided by condition 8.2.;
 - (ii) management of stormwater and general surface runoff diversion to ensure separate effective management of clean and dirty water; (refer also condition 3.5 (d) (ii)).
 - (iii) measures to prevent the quality of any surface waters being degraded below the relevant water quality due to the operation of the mine workings;
 - (iv) [Deleted](#).
 - (v) identification of any possible adverse effects on water supply sources of surrounding land holders, as a result of the underground mining operations in the LEA and surface mine works, and implementation of mitigation measures as necessary;
 - (vi) identification of changes in flow of surface waters including all creeks within the LEA, particularly in Lord's Creek, due to subsidence;
 - (vii) identification of any stream rehabilitation works required to ameliorate subsidence effects on stream flows within Lords Creek;
 - (viii) contingency plans for managing adverse impacts of the development on surface and groundwater quality, including the matter in condition 4.1(d)(iv);
 - (ix) identification of the fresh quality groundwater resources within the project area, including the development of appropriate protection strategies;
 - (x) projection of potential groundwater changes during mining (short term) and post-mining (long term) with particular attention given to the affect of changes to groundwater quality and mobilisation of salts;
 - (xi) a monitoring and remediation strategy for all streams which may be adversely affected by subsidence including bed fracturing and/or degradation of the stream channel. Where the monitoring indicates any

adverse impacts due to mining, the company shall implement the remediation strategy to the satisfaction of [DPI Water](#);

- (xii) consideration of the State Wetlands Management Policy for all significant downstream wetlands that may be effected by mining activity within the LEA or the relevant area; and
 - (xiii) a program for reporting on the effectiveness of the water management systems and performance against objectives contained in the approved site water management plans, and EIS.
- (b) implement remediation measures, to the satisfaction of [DPI Water](#), where the development is responsible for the loss of groundwater quality or quantity below its current beneficial use; and
 - (c) obtain a license with [DPI Water](#) under part 5 of the Water Act (1912) prior to construction of all new excavations, test bores and production bores (including dewatering bores) that intersect the groundwater.
 - (d) General Terms of Approval – [DPI Water](#)

Pursuant to Part 2 of the Water Act, 1912:

- (i) the licensed works shall:
 - (a) be constructed in accordance with plans and specifications approved by [DPI Water](#);
 - (b) be constructed and maintained in a safe and proper manner;
 - (c) not impede or capture floodwater;
 - (d) not cause erosion or sedimentation of adjacent and downstream watercourses shall;
 - (ii) ~~Deleted~~;
 - (iii) an appropriate vegetative buffer zone shall be installed between the licensed works and any adjacent mining activities;
 - (iv) groundwater and surface water quality monitoring shall be conducted, to the satisfaction of [DPI Water](#), in the vicinity of the licensed works. The monitoring program is to identify any degradation in water quality as a result of the works (also refer to condition 8.2(ii)). A contingency plan shall be developed, to the satisfaction of [DPI Water](#), to remediate any such degradation (also refer to condition 4.1(a)(ix)). A copy of the finding shall be submitted to LMCC.
- (e) General Terms of Approval - [EPA](#)
 - (i) Pollution of Waters

The licensee must design construct and operate all plant and equipment and any other facilities on the premises so as to minimise the pollution of waters.

(ii) Deleted.

(iii) Deleted.

(iv) Deleted.

4.2 Deleted.

4.3 *Groundwater Monitoring Program – Main West Mining Area*

The Applicant shall prepare a Groundwater Monitoring Program for the Main West Mining Area. This program must:

- (a) be prepared in consultation with DPI Water, and be submitted to the Secretary by the end of August 2012 for approval;
- (b) include:
 - baseline data of groundwater levels (including alluvial and weathered rock aquifers), yield and quality in the region, and any privately owned groundwater bores that may be affected by mining operations;
 - groundwater assessment criteria based upon analysis of baseline data for groundwater, surface water, including trigger levels for investigating any potentially adverse groundwater impacts; and
 - a program to monitor and/or validate the impacts of mining in Main West on alluvial and coal seam aquifers, and any groundwater bores.

5. Hazardous Materials and Tailings Management

5.1 *Deleted*

5.2 *Deleted*

5.3 *Waste*

General Terms of Approvals - EPA

(a) Receiving or Disposing of Waste

Except as expressly permitted in a licence, waste must not be:

- received at the premises for storage, treatment, processing, reprocessing or disposal; or
- disposed of at the premises.

(b) Hazardous and industrial waste

Hazardous or industrial waste must be stored and disposed of in a manner that will minimise the wastes impact on the environment including appropriate segregation for storage or disposal and transportation by a waste transporter licensed by the EPA.

6. Air Quality, Blast, Noise and Light Management

6.1 Air Quality and Greenhouse Gas

Odour

6.1A The Applicant shall ensure that no offensive odours, as defined under the POEO Act, are emitted from the site.

Greenhouse Gas Emissions

6.1B The Applicant shall implement all reasonable and feasible measures to minimise the release of greenhouse gas emissions from the site to the satisfaction of the Secretary.

Air Quality Criteria

6.1C The Applicant shall ensure that all reasonable and feasible avoidance and mitigation measures are employed so that particulate matter emissions generated by the development do not cause exceedances of the criteria listed in Table 1 at any residence on privately owned land.

Table 1: Air Quality

<i>Pollutant</i>	<i>Averaging period</i>	<i>Criterion</i>	
Particulate matter < 10 µm (PM10)	24 hour	^a 50 µg/m ³	
Particulate matter < 10 µm (PM10)	Annual	^{a,d} 30 µg/m ³	
Total suspended particulates (TSP)	Annual	^{a,d} 90 µg/m ³	
^c Deposited dust	Annual	^b 2 g/m ² /month	^{a,d} 4 g/m ² /month

Notes to Table 1:

^a Cumulative impact (ie increase in concentrations due to the development plus background concentrations due to all other sources).

^b Incremental impact (ie increase in concentrations due to the development alone, with zero allowable exceedances of the criteria over the life of the development).

^c Deposited dust is to be assessed as insoluble solids as defined by Standards Australia, AS/NZS 3580.10.1:2003: Methods for Sampling and Analysis of Ambient Air - Determination of Particulate Matter - Deposited Matter – Gravimetric Method.

^d Excludes extraordinary events such as bushfires, prescribed burning, dust storms, fire incidents or any other activity agreed by the Secretary.

Operating Conditions

6.1D The Applicant shall:

- (a) implement best management practice to minimise the off-site odour and dust emissions of the development;
- (b) operate a comprehensive air quality management system on site that uses a combination of predictive meteorological forecasting and real-time air quality monitoring data to guide the day to day planning of surface activities and the implementation of both proactive and reactive air quality mitigation measures to ensure compliance with the relevant conditions of this consent;
- (c) minimise the air quality impacts of the development during adverse meteorological conditions and extraordinary events (see Note d to Tables 1-3);
- (d) minimise any visible off-site air pollution; and
- (e) minimise the surface disturbance of the site generated by the development, to the satisfaction of the [Secretary](#).

Air Quality and Greenhouse Gas Management Plan

6.1E The Applicant shall prepare and implement an Air Quality and Greenhouse Gas Management Plan for the development to the satisfaction of the [Secretary](#). This plan must:

- (a) be prepared in consultation with the EPA, and be submitted to the [Secretary](#) for approval by the end of September 2012;
- (b) describe the measures that would be implemented to ensure:
 - best management practice is being employed;
 - the air quality impacts of the development are minimised during adverse meteorological conditions and extraordinary events; and
 - compliance with the relevant conditions of this consent;
- (c) describe the proposed air quality management system;
- (d) include an air quality monitoring program that:
 - uses a combination of real-time monitors and supplementary monitors to evaluate the performance of the development;
 - adequately supports the proactive and reactive air quality management system;
 - includes PM_{2.5} monitoring;
 - evaluates and reports on the effectiveness of the air quality management system;
 - includes a protocol for determining any exceedances of the relevant conditions of this consent.

6.3 Blast Management

- (a) The Applicant shall only blast for the purposes of **underground mining or** constructing the vent shaft at the Awaba Colliery. (refer to condition 8.4 (b) for blast monitoring)

(b) Overpressure

The overpressure level from blasting operations on the premises must not:

- (i) exceed 115dB (Lin Peak) for more than 5% of the total number of blasts over a period of 12 months; and
- (ii) exceed 120dB (Lin Peak) at any time,

when measured or computed at a free field location within 30 metres of any potentially affected residential building or other noise sensitive location such as a school or hospital unless otherwise approved in writing by the **OEH**.

(c) Ground Vibration (ppv)

Ground vibration peak particle velocity from the blasting operations on the premises must not:

- (i) exceed 5mm/s for more than 5% of the total number of blasts over a period of 12 months; and
- (ii) exceed 10mm/s at any time,

when measured or computed at a free field location within 30 metres of any potentially affected residential boundary or other noise sensitive location such as a school or hospital.

(d) Time of Blasting

- (i) Blasting operations associated with **surface** construction works may only take place between the hours of *9am and 5pm Monday to Saturday inclusive*.
- (ii) **Deleted.**

(e) Blast Management Protocol

A Blasting/Vibration Management Protocol must be prepared and implemented which will include details on:

- Compliance standards;
- Mitigation measures;
- Remedial action;
- Monitoring methods and program;
- Monitoring program for flyrock distribution;
- Measures to protect underground utilities (eg: rising mains, subsurface telecommunication and electric cables), and livestock nearby;
- Notification of procedures for neighbours prior to detonation of each blast;
- Measures to ensure no damage by flyrock to people, property, livestock and powerlines.

6.4 Deleted

6.4A Deleted.

6.4B Deleted.

6.4C Deleted.

6.4D Noise Control – Newstan Ventilation Shaft Site at Awaba

Operational Noise Criteria

The Applicant shall ensure that the noise generated at the Newstan ventilation shaft site at Awaba does not exceed the noise impact assessment criteria in Table 3A for any privately owned residence.

Table 3A: Noise impact assessment criteria dB(A)

Location	Day $L_{Aeq}(15 \text{ minute})$	Evening $L_{Aeq}(15 \text{ minute})$	Night $L_{Aeq}(15 \text{ minute})$
All privately owned residences	38	40	36

Notes:

- Noise from the development is to be measured at the most affected point within the residential boundary, or at the most affected point within 30 metres of a dwelling (rural situations) where the dwelling is more than 30 metres from the boundary, to determine compliance with the $L_{Aeq}(15 \text{ minute})$ noise limits in the above table. The modification factors in Section 4 of the NSW Industrial Noise Policy shall also be applied to the measured noise levels where applicable.
- Where it can be demonstrated that direct measurement of noise from the development is impractical, the OEH may accept alternative means of determining compliance (see Chapter 11 of the NSW Industrial Noise Policy).
- The noise emission limits identified in the above table apply under meteorological conditions of:
 - wind speeds of up to 3 m/s at 10 metres above ground level; or
 - temperature inversion conditions of up to 3°C/100m, and wind speeds of up to 2 m/s at 10 metres above ground level.
- In this condition:
 - Day is defined as the period from 7am to 6pm on Monday to Saturday, and 8am to 6pm on Sundays and Public Holidays;
 - Evening is defined as the period from 6pm to 10pm; and
 - Night is defined as the period from 10pm to 7am on Monday to Saturday, and 10pm to 8am on Sundays and Public Holidays.

Construction Activities

The Applicant shall ensure that noise caused by construction activities at the Newstan ventilation shaft site at Awaba outside of the hours 7am to 6pm Monday to Friday and 8am to 1pm Saturdays does not exceed the operational noise criteria in Table 3A.

Noise Monitoring

Prior to the commencement of construction activities at the Newstan ventilation shaft site at Awaba the Applicant shall prepare and implement a Noise Monitoring Program for the Awaba surface facilities and ventilation shaft site to the satisfaction of the [Secretary](#). This program must:

- (a) be submitted to the [Secretary](#) for approval; and
- (b) provide for the monitoring of both construction and operational activities.

6.5 Light Emissions

The Applicant shall screen or direct all onsite lighting away from residences and roadways to the satisfaction of LMCC.

7. Transport and Utilities

7.1 Road Transport

- (a) Deleted.
- (b) Deleted.
- (c) The Applicant, in consultation with MSB, shall ensure that access within the DA area, to properties and within properties, is maintained at no less than the existing standard during the period in which mining occurs under the land and for a period of at least five years thereafter, in relation to condition, flood liability, public safety and flood hazard. The Applicant shall carry out any roadworks considered necessary by LMCC or the RMS to ensure compliance with this condition insofar as any works to maintain the existing standard at the time of mining are directly attributable to the operation of the mine, particularly on the M1 Sydney-Newcastle Motorway, Main Road 220 – Toronto to Freemans Waterholes and Main Road 217 – Toronto to Morisset.
- (d) The Applicant shall ensure that the efficiency and effectiveness of all drainage, culverts and watercourses affecting roadways within the DA area must be maintained in so far as any works to maintain the existing standard at the time of mining are directly attributable to the operation of the mine.
- (e) Pre-surveys of existing public road formations, roadways structures and drainage structures must be conducted prior to the commencement of mining activity and every year subsequent year until the possibility of potential subsidence has ceased. All datum collected must be submitted to the RMS Hunter Region and LMCC for review.
- (f) All mining activities and works related to mining in the LEA must be conducted in such a fashion as to ensure that there will be no subsidence within the M1 Sydney-Newcastle Motorway corridor.
- (g) The Applicant shall notify the RMS and LMCC of imminent mining operations at least 12 months prior to mining under any section of Main Road 217 and/or Main Road 220.

7.2 Deleted

8. Monitoring/Auditing

- (a) In addition to the requirements contained elsewhere in this consent, the [Secretary](#) may, at any time in consultation with the relevant government authorities and Applicant, require the monitoring programs in conditions 8.1 - 8.7 below to be revised/updated to reflect changing environmental requirements or changes in technology/operational practices. Changes shall be made and approved in the same manner as the initial monitoring programs. All monitoring programs shall also be made publicly available at LMCC within two weeks of approval of the relevant government authority.
- (b) All sampling strategies and protocols undertaken as part of any monitoring program shall include a quality assurance/quality control plan and shall require approval from the relevant regulatory agencies to ensure the effectiveness and quality of the monitoring program. Only accredited laboratories shall be used for laboratory analysis.

8.1 Meteorological

For the life of the development, the Applicant shall ensure that there is a meteorological station in the vicinity of the site that:

- (i) complies with the requirements in the *Approved Methods for Sampling of Air Pollutants in New South Wales* guideline; and
- (ii) is capable of continuous real-time measurement of temperature lapse rate in accordance with the *NSW Industrial Noise Policy*, unless a suitable alternative is approved by the [Secretary](#) following consultation with the EPA

8.2 Surface and Ground Water

- (a)
 - (i) The Applicant shall construct and locate surface and ground water monitoring positions, as identified in the site water management plan (condition 4.1 (a)), in consultation with [DPI Water](#), LMCC and [EPA](#), and to the satisfaction of the [Secretary](#) , at least three months prior to the commencement of construction works in the relevant area and first workings in the LEA;
 - (ii) The Applicant shall prepare a detailed monitoring program in respect of ground and surface water quality and quantity, including water in and around the Newstan mine site, Northern and Southern Emplacements, and LEA, and also consistent with condition 4.1(b)(iv), during construction works, mine operations and post mine operations in consultation with [DPI Water](#), [EPA](#), and to the satisfaction of the [Secretary](#). The monitoring program shall also include surveys of drainage channels within the LEA to update information obtained in the preparation of Property Subsidence Management Plans. The monitoring program shall be prepared prior to commencement of construction in the relevant area.

- (iii) The results and interpretation of surface and ground water monitoring are to be provided by the Applicant in an approved form to the [DPI Water](#), LMCC and [EPA](#) on a six monthly basis, unless otherwise directed by the [Secretary](#). The results are also to be contained and analysed in the [Annual Review](#) ([Condition 9.1](#)).
- (b) *The Applicant must conduct water quality monitoring for pollutants in accordance with any current Environment Protection Licence under the Protection of the Environment Operations Act 1997 for the site.*

8.3 Deleted

8.4 Blast

- (a) Deleted.
- (b) [Blasting - Newstan Ventilation Shaft Site at Awaba](#)

The Applicant shall:

- (i) monitor any blasts and record the overpressure and peak particle velocity as agreed by the [EPA](#), including details of monitoring locations; and
- (ii) include the results of the monitoring information as required by the [EPA](#) and in the [Annual Review](#) ([Condition 9.1](#)).

8.5 Fauna and Flora Monitoring

The Applicant shall prepare a detailed monitoring program of habitat areas, including any wetlands and aquatic habitats, during the development and for a period after the completion of the development to be determined by the [Secretary](#) in consultation with LMCC, [OEH](#) and [DRE](#). The program shall monitor impacts attributable to the development and include monitoring of the success of any restoration or reconstruction works. The Applicant shall include the monitoring program in the Flora and Fauna Management Plan (condition 3.4). The Applicant shall carry out any further works required by the [Secretary](#) as a result of the monitoring. A summary of monitoring results shall be included in the [Annual Review](#).

8.6 Cultural Heritage Monitoring

The Applicant shall monitor the effectiveness of measures outlined in the archaeology and heritage management plan (condition 3.3). A summary of monitoring results shall be included in the [Annual Review](#).

8.7 Subsidence Monitoring

The Applicant shall undertake a detailed and ongoing monitoring program of subsidence resulting from mining to the satisfaction of the [Secretary](#) and in consultation with [DPI Water](#), [DRE](#) and MSB throughout the life of the mine and for a period of at least five years after the completion of mining, or other such period as determined by the [Secretary](#) in consultation with [DPI Water](#) and [DRE](#). Monitoring shall include the following:

- (i) a survey of watercourses within areas mined within the DA Area;
- (ii) monitoring of groundwater levels and quality;
- (iii) monitoring of impacts on any buildings, structures and roads within areas mined within the DA Area;
- (iv) a monitoring program to identify any subsidence impacts on the 330kV power transmission lines and towers in the Main West Mining Area, developed in consultation with DRE and TransGrid;
- (v) monitoring of remedial measures; and
- (vi) a comparison of predicted impacts with actual impacts, including mapping of subsidence profiles within areas mined within the DA Area.

The Applicant shall include information on monitoring conducted and the interpreted results in the [Annual Review](#) (condition 9.2).

8.8 Community Consultative Committee

The Applicant must establish a Community Consultative Committee (CCC) for the development to the satisfaction of the Secretary. This CCC must be operated in general accordance with the Guidelines for Establishing and Operating Community Consultative Committees for Mining Developments (Department of Planning, 2007, or its latest version).

Notes:

- 1) Deleted
- 2) The CCC is an advisory committee. The Department and other relevant agencies are responsible for ensuring that the Applicant complies with this consent
- 3) In accordance with the Guidelines, the CCC must include an independent chair and appropriate representation from the Applicant, Council and the local community.

(ii) Deleted.

8.9 Independent Environmental Audit

- (i) Prior to 14 May 2009, and every 3 years thereafter, unless the Secretary directs otherwise, the Applicant shall commission and pay the full cost of an Independent Environmental Audit of the development. This audit must:
 - (a) be conducted by suitably qualified, experienced and independent team of experts whose appointment has been endorsed by the Secretary;
 - (b) include consultation with the relevant agencies
 - (c) assess the environmental performance of the project and assess whether it is complying with the relevant requirements of this approval and any relevant mining lease or EPL (including any strategy, plan or program required under these approvals);
 - (d) review the adequacy of strategies, plans or programs required under these approvals; and, if appropriate,
 - (e) recommend measures or actions to improve the environmental performance of the project, and/or any strategy, plan or program required under these approvals.

Note: This audit team must be led by a suitably qualified auditor.

- (ii) Within 6 weeks of the completion of this audit, or as otherwise agreed by the Secretary, the Applicant shall submit a copy of the audit report to the Secretary, together with its response to any recommendations contained in the audit report.
- (iii) Within 3 months of submitting the audit report to the Secretary, the Applicant shall review, and if necessary revise the strategies/plans/programs required under this consent to the satisfaction of the Secretary.

9. Reporting

9.1 Annual Review

Each year the Applicant shall submit an [Annual Review](#) to the [Secretary](#) and to all relevant agencies. This report must:

- (a) identify the standards and performance measures that apply to the development;
- (b) describe the works carried out in the last 12 months;
- (c) describe the works that will be carried out in the next 12 months;
- (d) include a summary of the complaints received during the past year, and compare this to the complaints received in the previous 5 years;
- (e) include a summary of the monitoring results on the development during the past year;
- (f) include an analysis of these monitoring results against the relevant:
 - impact assessment criteria/limits;
 - monitoring results from previous years; and
 - predictions in the EIS and SEE noted in condition 1.1;
- (g) identify any trends in the monitoring results over the life of the development;
- (h) identify any non-compliance during the previous year; and
- (i) describe what actions were, or are being, taken to ensure compliance.

9.2 Access to Information

- (a) Within 3 months of the approval of any plan/strategy/program required under this consent (or any subsequent revision of these plans/strategies/programs), or the completion of the audits or [Annual Reviews](#) required under this consent, the Applicant shall:
 - provide a copy of the relevant document/s to the relevant agencies;
 - ensure that a copy of the relevant document/s is made publicly available at the mine; and
 - put a copy of the relevant document/s on its website.
- (b) During the development, the Applicant shall:
 - make a summary of monitoring results required under this consent publicly available at the mine and on its website; and
 - update these results on a regular basis (at least every three months).

9.3 Recording and Reporting Requirements

General Terms of Approval – [EPA](#)

(i) Recording of Monitoring

The results of any monitoring required must be recorded and retained as set out in the licence.

(ii) Reporting Requirements

The EPA will require reporting on the environmental performance of the proposal as set out in the licence. The timing of reporting shall be consistent with the environmental reporting required by this consent, as far as practical.

10. Community Consultation/Obligations

10.1 Deleted

10.2 Community Consultation

(a) Complaints

The Environmental Officer (refer condition 3.1) shall be responsible:

- (i) for **responding to** complaints with respect to construction works and mine operations on a dedicated and publicly advertised telephone line, 24 hours per day 7 days per week, entering complaints or comments in an up to date **system**, and ensuring that a response is provided to the complainant within 24 hours; and
- (ii) providing a report of complaints **in the Annual Review** throughout the life of the project to the **Secretary**, LMCC, **EPA**, **DRE**, and CCC.

(b) Other community consultation required by this consent

Refer condition 8.8 - Community Consultative Committee

Refer condition 3.3 - Heritage Assessment and Management

11. Land Acquisition and Compensation

11.1 Land Acquisition as a Result of Subsidence

Initial Valuation and Options Agreement

- (a) The Applicant shall compensate landowners for compensable loss in accordance with the provisions of the Mining Act, 1992. Compensable loss is defined in that Act.
- (b) Within six months of the date of this consent, any landowner within the **Development Consent Area** may request in writing a valuation of their property from the Applicant. Upon receipt of the request, the Applicant shall:
 - (i) obtain a valuation within one month of receipt of the request, which includes proper consideration of a sum not less than the current market value of the owner's interest in the land as if the land was unaffected by the development proposal, whosoever is the occupier, having regard to:
 - the existing use and permissible use of the land in accordance with the applicable planning instruments at the date of the written request; and
 - the presence of improvements on the land and/or any Council approved building or structure which although substantially commenced at the date of the request is completed subsequent to that date ; and
 - (ii) within 14 days of receipt of the valuation, offer in writing to enter into an options agreement with the landowner to acquire the land when notification is received if the mine plan submitted with an application for approval under s138 of the Coal Mine Regulation Act, 1982 indicates that the landowner is entitled to acquisition under Conditions 11.1(B) and (C).
- (c) The valuation and options agreement shall also be available to any landowner who may be affected by noise and/or dust impacts from the surface facilities as proposed in the EIS. The options agreement shall be based on an option to sell if and when the landowner is entitled to acquisition under Condition 11.2.

(B) Acquisition and Compensation – Significant Structural Damage to Dwellings

- (a) Where a dwelling within the DA area is, or is likely to be, subject to damage beyond the safe, serviceable and repairable criteria as a result of the development, the landowner, after receiving notification from the Applicant, may request the Applicant in writing to:
 - (i) carry out such works as agreed by the landowner to remedy or mitigate any damage; or
 - (ii) compensate the landowner for such effects; or
 - (iii) acquire the whole of the property, or such part of the property requested by the landowner where subdivision is approved.

- (b) The Applicant shall comply with any such request for acquisition or compensation in accordance with Conditions 11.1(D) and (E). If necessary to confirm the impact, the Applicant shall, at the request of the landowner in writing, conduct a structural inspection.

(C) Acquisition and Compensation – Land Use Impacts

- (a) Where a landowner suffers a loss of agricultural productivity or other adverse impact on the use of land as a result of the development, the landowner, may request the Applicant in writing to:
- (i) carry out such works as agreed by the landowner to rectify the problem; or
 - (ii) compensate the landowner for such effects; or
 - (iii) acquire the whole of the property, or such part of the property requested by the landowner where subdivision is approved.
- (b) The Applicant shall comply with any such request for acquisition or compensation in accordance with Conditions 11.1(D)-(E). If necessary to confirm the impact, the Applicant shall, at the request of the landowner in writing, conduct a structural inspection.
- (c) Where the landowner requests acquisition, significant adverse impact to agricultural productivity or the use of the land or an enterprise must be demonstrated.

Note: The Independent Panel may be requested to advise on whether significant adverse impact has been demonstrated.

(D) Acquisition and Compensation – Procedure

- (a) Any disputes relating to land acquisition or compensation (except those relating to valuation matters) may be referred by either party to the Independent Panel for consideration and advice if no agreement is reached within three months of receipt by the Applicant of the written request, or to the Mining Warden at any time in accordance with the provisions of the Mining Act.
- (b) Upon receipt of a written request to purchase property in accordance with any conditions of this consent, the Applicant shall negotiate and purchase the whole of the property (unless the request specifically requests acquisition of only part of the property and subdivision has already been approved) within six months of receipt of the request. The Applicant shall pay the landowners an acquisition price resulting from proper consideration of:
- (i) a sum not less than the current market value of the owner's interest in the land as if the land was unaffected by the development proposal, whosoever is the occupier, having regard to:
 - the existing use and permissible use of the land in accordance with the applicable planning instruments at the date of the written request; and

- the presence of improvements on the land and/or any Council approved building or structure which although substantially commenced at the date of the request is completed subsequent to that date. In determining the effect of the development, consideration shall be given to any valuation conducted under Condition 11.1(A)(b);
- (ii) the owner's reasonable compensation for disturbance allowance and relocation within the Lake Macquarie or Wyong local government areas, or within such other location as may be determined by the [Secretary](#) in exceptional circumstances; (iii) the owner's reasonable costs for obtaining legal advice and expert witnesses for the purposes of determining the acquisition price for the land and the terms upon which it is to be acquired; and (iv) the purchase price determined by reference to points (i), (ii) and (iii) shall be reduced by the amount of any compensation awarded to a landowner pursuant to the Mining Act, 1992 or other legislation providing for compensation in relation to coal mining but limited to compensation for dwellings, structures and other fixed improvements on the land, unless otherwise determined by the [Secretary](#) in consultation with the [DRE](#) or MSB.
- (c) An offer by the Applicant to purchase a property under the conditions of this consent shall remain open to the landowner for the following periods from the date of the offer:
 - (i) for damage to a dwelling beyond the safe, serviceable and repairable criteria (Condition 11.1(B)), three years after completion of mining of longwall panels that affect the property;
 - (ii) for land use impacts (Condition 11.1(C)), five years after completion of mining of longwall panels that affect the property; and
 - (iii) for noise or dust impacts (Condition 11.2), for the life of the mine.
- (d) Notwithstanding any other Condition of this consent, the landowner and the Applicant may enter into any other agreed arrangement regarding compensation; or the Applicant may, upon request of the landowner, acquire any property affected by the project during the course of this consent on terms agreed to between the Applicant and the landowner.

(E) Independent Valuation

- (a) In the event that the Applicant and the landowner cannot agree within three months upon the acquisition price of the land and/or the terms upon which it is to be acquired under the terms of this consent, then either party may refer the matter to the [Secretary](#) who shall request an independent valuation to determine the acquisition price. The independent valuer shall consider any submissions from the landowner and the Applicant in determining the acquisition price.

- (b) If the independent valuer requires guidance on any contentious legal, planning or other issues, the independent valuer shall refer the matter to the [Secretary](#), who, if satisfied that there is a need for a qualified panel, shall arrange for the constitution of the panel. The panel shall consist of:
 - (i) the appointed independent valuer;
 - (ii) the [Secretary](#); and/or
 - (iii) the President of the Law Society of NSW or nominee.The qualified panel shall, on the advice of the valuer, determine the issue referred to it and advise the valuer.
- (c) The Applicant shall bear the costs of any independent valuation or survey assessment requested by the [Secretary](#).
- (d) The Applicant shall, within fourteen days of receipt of a valuation by the independent valuer, offer in writing to acquire the relevant land at a price not less than the said valuation.

(F) Independent Panel

- (a) The [Secretary](#) shall establish an Independent Panel to assist in the implementation of conditions of this consent relating to subsidence impacts, including remedial work, compensation, acquisition and decisions about impacts on agriculture and other land uses. The Panel shall be chaired by an independent mediator appointed by the [Secretary](#), and comprise representatives, as required, from Lake Macquarie City Council and government agencies and/or technical experts. The Applicant shall contribute reasonable funds to facilitate functioning of the Panel, at amounts determined by the [Secretary](#), for payment of the mediator and technical experts.
- (b) The purpose of the Panel will be to assist in the resolution of disputes and provide technical advice on matters relating to subsidence impacts, but not those relating to valuation of property. If matters cannot be resolved by the Panel, they shall then be referred to the appropriate statutory body (such as the MSB or the Mining Warden). The Panel shall report annually to the [Secretary](#) on its considerations. If at any time the Chairperson of the Panel considers it necessary, the Panel may refer a matter to the [Secretary](#) for advice or determination.
- (c) In considering matters referred to it, the Panel shall seek and consider submissions from all relevant parties.
- (d) Before considering any matters relating to the impact of the development on agricultural productivity or other land uses, the Panel shall prepare guidelines setting out the criteria on which it will base such advice. The Guidelines shall be prepared within two months of receipt of the first request for advice and be made available to any enquirer upon request.

11.2 Land Acquisition as a Result of Excessive Noise and/or Dust

Note: In Condition 11.2 (a)-(e) "land" means the whole of a lot in a current plan registered at the Land Titles Office as at the date of this consent.

- (a) (i) In the event that landowners consider that noise and/or dust from the Newstan mining operations, including surface facilities at their dwelling(s) is in excess of the noise levels set out in this consent or the relevant EPA amenity criteria for dust levels, and the Secretary, in consultation with the EPA, is satisfied that an investigation is required, the Applicant shall upon receipt of a written request:
- appoint a qualified independent person to undertake direct discussions with the landowners affected to ascertain their concerns and to plan and implement an investigation to quantify the impact and determine the sources of the effect, and
 - bear the cost of the independent investigation and make available plans, programmes and other information necessary for the independent person to form an appreciation of the past, present and future mining operations and their effects on noise and/or dust emissions.
- (ii) The investigation is to be carried out by a qualified independent person in accordance with a documented Plan. The Plan shall be designed and implemented to measure and/or compute (with appropriate calibration by measurement) the relevant noise and/or dust levels at the complainant's residence emitted by the current normal mining operations.
- (iii) The independent person, the Plan and the timing of its implementation shall be approved by the Secretary, in consultation with LMCC, the EPA, the affected landowner and the Applicant. A report of the investigation shall be provided to the Secretary, the EPA the Applicant and the affected landowner.
- (iv) The results of the investigation shall be assessed and reported by the independent person in the light of the mine's current operations and proposed short, medium and long term development plans.
- (v) If the independent noise and/or dust investigation finds that the relevant criteria are being exceeded by noise and/or dust emission from normal mining operations, the Applicant shall:
- modify those areas of the mining operation which are causing the exceedances; or
 - undertake other measures, as agreed with the affected landowner, to ameliorate the effects of the impact, within three (3) months or as otherwise directed by the Secretary in consultation with the EPA.
- (vi) Within two (2) months after the expiry of the three (3) month period in sub-clause (v) above, and upon written request from the landowner, the Applicant

shall arrange for a further independent noise and/or dust investigation to be completed.

- (vii) If the investigation in sub-clause (vi) above finds that the relevant noise and/or dust emission levels from normal mine operations exceed relevant amenity criteria or consent conditions, the Applicant shall purchase the property within six months of receipt of a written request from the owner of the affected property.
- (viii) Further independent investigations shall cease if the [Secretary](#), in consultation with the [EPA](#) is satisfied that the relevant consent limits or [EPA](#) amenity criteria are not being exceeded and are unlikely to be exceeded in the future.

(b) In respect of a request to purchase land arising under Condition 11.2(a), the Applicant shall pay the owner the acquisition price which shall take into account and provide payment for:

- (i) a sum not less than the current market value of the owner's interest in the land used for its existing use at the date of this consent who is the occupier and all improvements thereon at this date as if the land was unaffected by the development proposal.
- (ii) the owner's reasonable compensation for disturbance allowance and relocation costs within the Lake Macquarie City or Wyong Local Government Areas.
- (iii) the owner's reasonable costs for obtaining legal advice and expert witnesses for the purposes of determining the acquisition price of the land and the terms upon which it is to be acquired.

(c) In the event that the Applicant and any owner referred to in Condition 11.2(a) cannot agree within the time limit upon the acquisition price of the land and/or the terms upon which it is to be acquired, then:

- (i) either party may refer the matter to the [Secretary](#), who shall request the President of the Australian Institute of Valuers and Land Economists to appoint a qualified independent valuer, suitably qualified in compensation issues, who shall determine, after consideration of any submissions from the land owner and the Applicant, the acquisition price.
- (ii) in the event that the independent valuer requires guidance on any contentious legal, planning or other issues, the independent valuer shall refer the matter to the [Secretary](#), who if satisfied that there is need for a qualified panel, shall arrange for the constitution of the panel. The panel shall consist of:

- 1) the appointed independent valuer,
 - 2) the [Secretary](#),
- and/or

- 3) the President of the Law Society of NSW or his/her nominee.

The qualified panel shall, on the advice of the valuer, determine the issue referred to it and advise the valuer.

- (d) The Applicant shall bear the costs of any valuation or survey assessment requested by the [Secretary](#) in accordance with Conditions 11.2(a) - 11.2(c).
- (e) Upon receipt of a valuation, the Applicant shall offer to acquire the relevant land at a price not less than the said valuation. Should the Applicant's offer to acquire not be accepted by the owner within six (6) months of the date of such offer, the Applicant's obligations to such owner and in respect of that property under Conditions 11.2(a) - 11.2(e) above shall cease.

12. Structural Adequacy

12.1 Structural Adequacy

The Applicant shall ensure that all new buildings and structures, and any alterations or additions to existing buildings and structures, are constructed in accordance with the relevant requirements of the Building Code of Australia.

Notes:

- *Under Part 4A 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.*

12.2 Demolition

The Applicant shall ensure that all demolition work is carried out in accordance with *Australian Standard AS 2601-2001: The Demolition of Structures*, or its latest version.

APPENDIX 1 DA AREA

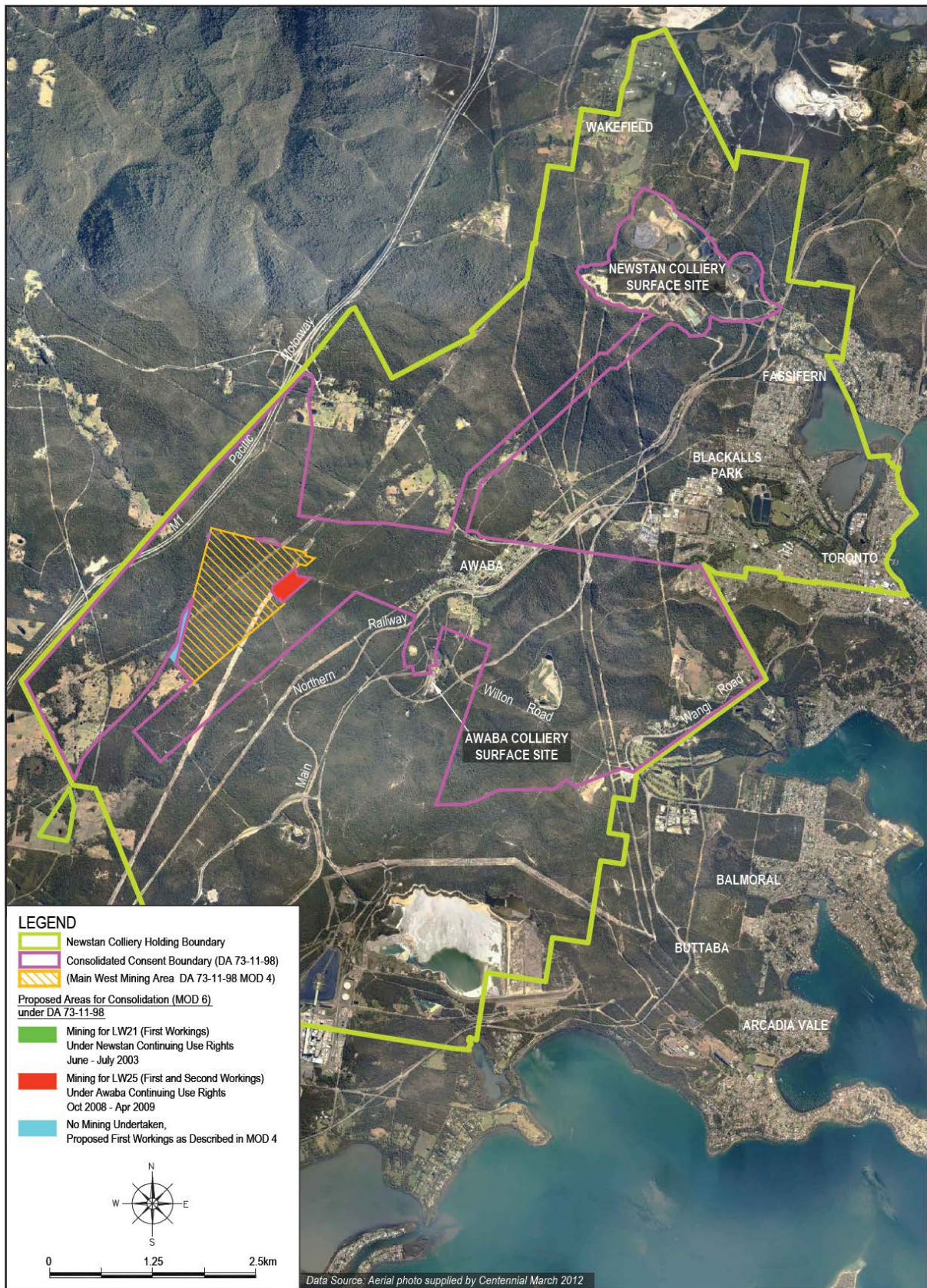


Figure 1: DA Area (combination of all areas within the purple boundary of DA 73-11-98, the orange hatched area of the Main West Mining Area, and the additions to that Area approved by MOD 6)

APPENDIX 2

Deleted