ASSESSMENT REPORT

Department of
Urban Affairs and Planning

PROPOSED MODIFICATION TO MANDALONG MINE

PLANNING REPORT ON THE ASSESSMENT OF A MODIFICATION OF DEVELOPMENT APPLICATION LODGED PURSUANT TO SECTION 96(1A) OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979

1. INTRODUCTION AND BACKGROUND

1.1 The Applicant

Powercoal Pty Ltd

1.2 Background

On 2 April 2001, Powercoal Pty Ltd (the Applicant) lodged an application to modify its existing conditional Development Consent granted by the Minister of Urban Affairs and Planning on 14 October 1998 for the extension of its underground coal mining activities at the Mandalong Mine (then known as the Cooranbong Mine).

Conditions 13 and 18 of the consent require the Applicant to prepare Property Subsidence Management Plans and Longwall Subsidence Management Plans, as far as practical and with appropriate consultation undertaken. The conditions require this to occur prior to the commencement of first workings.

The modification proposed seeks to clarify the timing of the consultation with property owners potentially affected by subsidence, and to formalise the arrangements for preparing plans that describe the specific impacts on each property referred to in these Conditions.

The interpretation of the legal effect of Conditions 13 and 18 (presented in full in ***Appendix A***) has been questioned on a number of occasions by the Mandalong Valley community In the period since the approval was granted. Specifically they have argued that the Conditions provide a right to each owner of a property likely to be affected by subsidence to be consulted prior to first workings for the mine. Such an interpretation would require all Property and Longwall Management Plans to be substantially prepared prior to the commencement of any underground works in the lease area, even though mining may not be scheduled under some properties until 10-20 years later.

The Applicant argues that this interpretation is illogical and impractical because the information needed to prepare the plans is not available for all properties so early in the project. The nature of the geological conditions that will determine the exact positioning of the early longwalls will not be known until certain first workings have been completed. Identification of the subsequent properties likely to be affected by subsidence is impossible before the precise location of each longwall is determined. The Applicant therefore considers that the most protective approach for the landowners is one in which the property subsidence plans are prepared for each property title as soon as the nature and location of any impacts of future longwalls become known .

The Applicant states that the modifications to alter the wording of Conditions 13 and 18 would clarify, for both the Company and the community, the requirements of Conditions 13 & 18 regarding the timing of the preparation of the management plans, and the manner in which property owners are consulted. The modification requests the replacement of the existing Conditions 13 and 18 with new ones that merely clarify the relationship between "first workings" and the preparation of the management plans. A minor modification to the wording of Condition 22 is also proposed to address consequential changes to Conditions 13 and 18.

1.3 Overview of the proposed modification

The proposed modification relates to properties predicted to be affected by underground mining in Coal Authorisations MLA 88, Part A405, CCL 746 and CCL 762 shown on ***Figure 1***.

The Applicant states that the application clarifies the requirements for the timing of the preparation of the management plans, and the manner in which property owners are consulted as required under Conditions 13 & 18. The modification requests the replacement of the existing Conditions 13 and 18 with new ones that merely clarify the relationship between "first workings" and the preparation of the management plans. A minor modification to the wording of Condition 22 is also proposed to address consequential changes to Conditions 13 and 18.

The Applicant claims to recognise the concerns of the community about the need for each landowner to have the information that they seek, and proposes that the Conditions require the company to: inform property owners of their rights under the consent; clearly describe the possible impacts of subsidence on each property; and develop a mechanism by which the Applicant can enter into agreements with affected property owners when they fully understand the nature of these impacts.

The Applicant therefore proposed the following amended wording to Conditions 13 & 18 :

> *13. The Applicant shall prepare a Property Subsidence Management Plan to the satisfaction of the Director-General of DMR (or delegate) for each property title likely to be affected by the effects of subsidence from the project in that area. Each Property Subsidence Management Plan shall be substantially prepared as far as practicable and consultation undertaken prior to commencement of first workings. Any subsequent adjustments to the Plan shall be undertaken as necessary and the Plan fully completed and approved prior to seeking an approval under s138 of the Coal Mine Regulation Act, 1982 for secondary workings. Each Property Subsidence Management Plan shall demonstrate consistency with the relevant MOP and the Environmental Management Strategy."*

> *18. The Applicant shall prepare a Longwall Subsidence Management Plan to the satisfaction of the Director-General of DMR (or delegate) for each mining zone. Each Longwall Subsidence Management Plan shall be substantially prepared as far as practicable and consultation undertaken prior to commencement of first workings. Any subsequent adjustments to the Plan shall be undertaken as necessary and the Plan fully completed and approved prior to seeking an approval under s138 of the Coal Mine Regulation Act, 1982 for secondary workings. Each Longwall Subsidence Management Plan shall be consistent with the conditions of this consent, the Environmental Management Strategy and any relevant management plans.*

Definitions of "first workings" and "secondary workings" are provided in Section 2.1 of this report.

1.4 Lodgement of the Modification Application and Public Notification

The application for a modification was lodged under s. 96(1A) of the *Environmental Planning and Assessment Act* 1979 (EP&A Act) by the Applicant with the Department of Urban Affairs and Planning on 2 April 2001. The Department advised the Applicant on 11 May 2001 that it was unable to accept the application because the information provided did not justify consideration under this Section of the EP&A Act. The Applicant subsequently submitted an amended application clarifying the circumstances on 22 May 2001 and the Department accepted it as complying with the provisions of s. 96(1A) of the EP&A Act.

As the Minister determined the original application, the Minister is the consent authority for the modification application.

Although public notification is not legally required under this Section, the Applicant advertised the proposed development on three occasions in the regional and local newspapers and provided copies of the modification to a substantial number of property owners and to the Lake Macquarie Council. The Applicant discussed its proposed modifications with the mine's Community Consultative Committee, and engaged a specialist social science consultant to hold workshops and undertake on-the-ground consultation with the Mandalong Valley community to ensure that their concerns had been fully clarified

The Applicant argues that the proposed modification meets the three tests outlined in the Act for it to be considered as a s.96(1) (A) application . Its reasoning is as follows:

- The modification is one which involves no new or different environmental impacts and instead merely clarifies the responsibilities of Powercoal regarding consultation in light of varying legal interpretations. The application does not alter the need for the Property Subsidence Plans and Longwall Subsidence Management Plans to be consistent with the MOP and Environmental Strategy. The Applicant argues that the modification sought meets the requirements of s96(1A) **Part (a)** as being of minimal environmental impact.

- The Applicant states that the development is the same as that described in the original Development Application and submissions to the Commission of Inquiry. It involves no physical alteration to the development as approved by the Minister. The Applicant argues that the modification therefore meets the requirements of s96(1A) **Part (b)** as being substantially the same development.

- The Applicant states that public notification is not required by the EP&A Regulations (2000) or Lake Macquarie Development Control Plan No 35, dated October 1999, which exempts designated development from the notification procedure. The Applicant argues that the modification therefore meets the requirements of s96(1A) **Part (c)** regarding notification.

The Applicant also considers that the modification should be regarded as a s. 96(1A) application because it will:

- give practical and logical effect to the operation of the consent in a manner than ensures equity and transparency;
- clarify the operation of Conditions 13 and 18 of the consent, and in particular the timetable required for the preparation of Property and Longwall Subsidence Management Plans for individual property titles likely to be affected by subsidence by longwall mining;
- provide a legal guarantee to property owners that at least two years prior to longwall mining under individual properties formal communication will commence to inform property owners of their rights under the development consent and any possible impacts of subsidence; and
- provide for a rigorous and structured community communication and consultation program.

The Department's consideration of the applicability of s. 96(1A) to the proposal is given in Section 2.2 below.

1.5 Applicants justification for the request

During 2000, the applicant argued to the Department that the debate over its capacity to commence first workings was preventing planning for the commencement of the operations. The Department therefore sought advice from senior counsel on the legal effect of the Conditions, and this was provided by Mr Peter McLellan QC.in October 2000.

Mr McLellan was of the view that the reference to the term "first workings" was material to the issue, and that it refers to all underground workings in the lease area. He agreed that consultation must be undertaken prior to the commencement of any underground workings in the entire lease area. The Conditions therefore require that all Property and Longwall Subsidence Management Plans be 'substantially prepared' for all properties within the development area prior to *any* first workings within the lease, irrespective of whether the works are for construction or coal extraction purposes, or are likely to have subsidence effects or not, and that an appropriate level of consultation be undertaken at an early stage.

The Applicant obtained its own legal opinion from Mr Tim Hale SC, who did not concur. He argued that the term "first workings" relates to first workings "for each property title likely to be affected by the effects of subsidence from the project in that area". He considered that the term 'area' referred to areas that will be subject to a specific s.138 mining application only. From this, the Applicant considered that the only properties potentially affected by subsidence would be those within the Mining Zones referred to in Schedule 3 of the Development Consent (see attached ***Figure 1***), since no properties outside of the mining zones would be subject to mining activities likely to cause subsidence effects.

The Applicant stated that "first workings" include the maingate headings and tailgate headings that would determine the exact location and delineation of each of the longwalls which would subsequently be the subject of a s.138 application. However, it also argued that the first workings *exclude* the main headings, the decline from the surface works, the shafts, and other activities required to construct access to the main coal body within the mining zones. These activities, which are outside the boundaries of the mining zones (see ***Figure 1***) would not have any subsidence effects, and are not in areas where a s.138 approval is required.

The Department advised that it considered that Mr McLellans advice should prevail. In response, the Applicant argued that it was not possible to give effect to the approach he described, because the information required to prepare the plans is unavailable. The geological conditions, which determine the exact position of the longwalls, would not be known until some of the activities caught up in the definition of 'first workings' had been completed, and until the precise location of the longwalls is determined, identification of the properties likely to be affected by subsidence is not possible. The Applicant also argued that this approach is contrary to the development as defined in the EIS and as modified by submissions to the Commission of Inquiry by Powercoal and the Department.

Therefore, for the mine to proceed in accordance with its approval, the Applicant considers that it is necessary to modify the Consent to eliminate the perceived anomaly described above.

The Department's consideration of the Applicant's justification is given in Section 2.1 below.

1.6 Council's Position

The relevant Council is the Lake Macquarie Council. They wrote to the Department advising that they did not object to the proposed modification. They indicated that they considered that the changes would "ensure that a structured community communication and consultation program will remain in place, so achieving the intent of the original conditions."

1.7 Local Community's Position

Submissions were received from the Mandalong Valley community to the Department, and in particular by the Mandalong Progress Association, objecting to the proposed modifications. Concerns relate to :

- The process of advertising and lodgement of submissions by a third party and not the Department.
- That the proposed modifications impinge upon the submitter's rights or recognised consultation procedures available under the current conditions of consent.
- Modification of the consent conditions would be an action which would be against, firstly, the Government's social justice policy and secondly, against the precautionary principle.
- That the variations do not allow for the concerns held by the community to be addressed effectively.
- The basis of the modification is based on puerile and contradictory arguments, together with a misleading analysis of the requirements of the current conditions of consent.

One point emphasised by the submissions is that the community was hostile to the proposal because of their view that not only had previous consultation arrangements been poor, but that the company had not met a number of obligations that it had agreed to during the negotiations leading up to the preparation of the EIS. The responses therefore indicated a distrust of the proponent in general.

As discussed in Section 1.4, the Applicant advertised the proposed development on three occasions in the regional and local newspapers and provided copies of the modification to a substantial number of property owners and to the Lake Macquarie Council. The Applicant discussed its proposed modifications with the mine's Community Consultative Committee, and engaged a specialist social science consultant to hold workshops and undertake on-the-ground consultation with the Mandalong Valley community to ensure that their concerns had been fully clarified

2. DEPARTMENT OF URBAN AFFAIRS AND PLANNING CONSIDERATIONS

2.1 Identification of the key issues

The Department considers that there are three key issues that need to be addressed for the modification to be justified, and for it to be considered under s.96(1)(A). These are whether or not the modification would:

1. result in any further environmental impacts than those which were assessed in the original application.
2. result in the project being substantially the same development as the development for which the consent was granted.
3. compromise the rights of the community.

It is also necessary to confirm that the application was appropriately notified and deals with any environmental or amenity implications.

The Department also considers that the terms "first workings" and "secondary workings" should be clearly defined. "First workings" are workings which establish access to the coal resource area. First workings do not include longwall extraction of coal and do not result in surface subsidence. "Secondary workings" involve the extraction of coal that requires approval under s.138 of the Coal Mines Regulation Act, 1982. Secondary workings include the extraction of coal from longwall mining that may result in surface subsidence.

2.2 Consideration of Key Issues

2.2.1 Environmental Impacts

The proposed modification involves a rewording of Conditions 13, 18 and 22 of the consent conditions relating to the timing of property owner consultation and the timing of preparation of Property Subsidence Management Plans and Longwall Subsidence Management Plans.

The requirement of s. 96(1A) (a) is as follows.

> A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:
>
> *(a) it is satisfied that the proposed modification is of minimal environmental impact.*

The Applicant argued that the rewording of the consent conditions will not result in any further impact than that which has already been assessed in the original application because no aspects of the mining operations are altered from those which were originally approved.

The Department conducted a thorough assessment of the original application for the Mandalong Mine underground extensions, and this was also the subject of a Commission of Inquiry. All issues associated with the proposal were addressed by both the Department and the Commission of Inquiry. It is the Department's opinion that the modification to clarify the timing of property owner consultation and management plan preparation does not raise any environmental issues above and beyond the assessment which was previously undertaken for the original proposal. The expected impacts of the modification will continue to be the effects identified in the Environmental Impact Statement dated 27 November 1997.

The Department therefore considers that the application to modify the development consent is a modification of minimal environmental impact. The Department considers that the modification application meets the requirements of s96(1A) Part (a) of the EP&A Act.

2.2.2 Substantially the same development

The requirement of s.96(1A) (b) is as follows:

> A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:
>
> *(b)* *it is satisfied that the development to which the consent as modified relates <u>is substantially the same development as the development for which the consent was originally granted</u> and before that consent as originally granted was modified (if at all) under this section.*

The Department considers that the nature of the modification does not alter the nature of the mine operations or the associated infrastructure, nor does it involve any physical alteration to the development. In addition, the management procedures specified in the 1997 EIS and conditioned by the October 1998 consent will continue to apply. Consequently, the Department considers that the requirements of s96(1A) Part (b) of the EP&A Act.

2.2.3 Public Notification

The requirement of s. 96(1A) (c) is as follows:

> A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:
>
> *(c)* *<u>it has notified the application</u> in accordance with:*
> - *(i) the regulations, if the regulations so require, or*
> - ***(ii)*** *a development control plan, if the consent authority is a council that has made a development control plan under section 72 that requires the notification or advertising of applications for modification of a development consent.*

Public notification of the modification is not required under clause 117 of the EP&A Regulation unless a Development Control Plan requires it. Lake Macquarie Development Control Plan No 35, dated October 1999 does not require the application to be notified.

As such, the Department considers that no notification of the application is required. The Department is satisfied that the application meets the requirements of s96(1A) Part (c) of the EP&A Act.

However, as discussed in Section 1.1, the Applicant advertised the proposed development on three occasions in the regional and local newspapers, and provided copies of the modification to a substantial number of property owners. The Applicant has also discussed its proposed modifications with the mine's Community Consultative Committee, and engaged a specialist social science consultant to hold workshops with the Mandalong Valley community to discuss the proposed modifications and the concerns of the community in relation to the modifications. In addition, DUAP officers met with the Community Consultative Committee and discussed their concerns in considerable detail.

2.2.4 The community's rights

S 96(1A) (d) requires that:

> *A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:*
>
> *(d) it has <u>considered any submissions made</u> concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.*

Submissions have been received from the Mandalong Progress Association (MPA) and other local residents objecting to the proposed modification. The principal objection can be summarised to the effect that the modification represents a move by the Applicant to abrogate the requirements placed upon it by the current consent conditions.

The Department considers that the proposed modification will not alter the responsibility of the Applicant to consult with landowners potentially affected by subsidence as required by Conditions 13 and 18. The proposed modification changes the requirement for the Applicant to consult with potentially affected landowners prior to the commencement of <u>any</u> mining operations, to a requirement to consult with each as far as practicable based on the information available at the commencement of mining.

The Department notes that the EIS *(s.44.1.3 of Vol 1 @p128)* provides considerable detail about each of the properties involved, so the recommended Conditions attached require Powercoal to have discussed the predictions about subsidence with each landowner within six months of the modification being approved. In addition, Powercoal is to finalise the negotiations for acquisition at least two years ahead of the commencement of mining below any affected properties.

The Department considers that the imposition of these Conditions on the approval ensures that all potentially affected landowners receive clear, timely and appropriate advice to allow them to decide whether or not mining should proceed below their dwelling and/or to negotiate compensation for the impacts on their land. It therefore considers that modification satisfies the requirements of s.96 (1A) Part (d) .

2.2.5 Characterisation of the flood risk from mining in the Mandalong Valley

Although unrelated to the issues faced in the modification application, one matter that has been prominent with the community both before and since the Minister granted approval for the mine, is the risk that the mining activity will increase damage from flood waters to both property and the environment of the Mandalong Valley.

This issue has been highly contentious and was thoroughly canvassed during the Commission of Inquiry. As a result, the original Conditions of Consent included requirements for both Powercoal and DUAP to give further assurances to the community, so DUAP commissioned an additional independent study in 1999 that it considered satisfactorily addressed their concerns. But this has been rejected by the community as inadequate, and they have publicly linked this tissue to their objections against the modification application.

DUAP has therefore undertaken to reconsider the issue. It has commenced negotiations with a specialist firm to conduct additional studies to further characterise the flood risk, but to do so in close collaboration with the Community Consultative Committee. This will be progressed independently of any matters covered by the modification, and has no bearing on the consideration of the application.

2.3. Variations to the Conditions of Consent

The proposed changes relate only to Conditions 13, 18 and 22 concerning Property Subsidence Management Plans Longwall Subsidence Management Plans, and Notification of Landowners, respectively.

The changes involve alteration of the wordings to Conditions 13 and 18 to clarify, for both the Company and the community, the requirements regarding the timing of the preparation of the management plans and the manner in which property owners are consulted. The modifications require the preparation of a Landowner Communication and Consultation Plan within one month of the date of the approval. The changes clarify procedures for approval of Subsidence Management Plans, the timing of plan preparation, and consultation proposed within 6 months after approval, and again at least two years prior to the commencement of secondary workings.

Minor changes to the wording of Condition 22 result from changes to Conditions 13 and 18.

3. STATUTORY PLANNING MATTERS

The proposal is in accordance with the provision of all relevant environmental planning instruments.

The proposed modification does not alter the specifications of the mining operation, but simply clarifies the timing of property owner consultation and the preparation of Subsidence Management Plans. As such the modification application raises no further planning issues than those previously assessed in the original application and is deemed to be consistent with this planning framework.

CONSIDERATION UNDER SECTION 79(C) EP&A ACT 1979 –EVALUATION

In determining an application for the modification of a consent, the Minister as consent authority is to take into consideration the relevant matters listed under Section 79C(1) of the *Environmental Planning and Assessment Act, 1979,* in accordance with Section 96(3) of the Act**.** This assessment is provided in ***Appendix B***. Based on this evaluation, it is considered that the merits of the modification warrant granting of consent, subject to the recommended conditions of consent.

5. CONCLUSIONS

The proposed modification to the consent for the Mandalong Mine underground extension will not have any substantially new or significantly different impacts (environmental nor amenity) beyond those which have already been assessed in relation to the original application for this development. The mining operation as proposed in the amended application will operate in exact accordance with the proposed development as originally assessed, with only the timing of consultation and the preparation of subsidence plans being clarified.

6. RECOMMENDATIONS

It is recommended that the Minister:

(i) Consider the findings and recommendations of this report;
(ii) Approve the application under Section 96(1A) of the Environmental Planning and Assessment Act 1979, subject to the modified conditions set out in the instrument of approval.

Val Smith
Project Officer

Richard Lloyd
Senior Environmental Planning Officer

APPENDIX A

MANDALONG MINE MODIFICATION APPLICATION

EXISTING AND RECOMMENDED CONDITIONS OF CONSENT

EXISTING CONDITIONS

13. The Applicant shall prepare a Property Subsidence Management Plan to the satisfaction of the Director-General of DMR (or delegate) for each property title likely to be affected by the effects of subsidence from the project in that area. Each Property Subsidence Management Plan shall be substantially prepared as far as practicable and consultation undertaken prior to commencement of first workings. Any subsequent adjustments to the Plan shall be undertaken as necessary and the Plan fully completed and approved prior to seeking an approval under s138 of the Coal Mine Regulation Act, 1982 for secondary workings. Each Property Subsidence Management Plan shall demonstrate consistency with the relevant MOP and the Environmental Management Strategy."

18. The Applicant shall prepare a Longwall Subsidence Management Plan to the satisfaction of the Director-General of DMR (or delegate) for each mining zone. Each Longwall Subsidence Management Plan shall be substantially prepared as far as practicable and consultation undertaken prior to commencement of first workings. Any subsequent adjustments to the Plan shall be undertaken as necessary and the Plan fully completed and approved prior to seeking an approval under s138 of the Coal Mine Regulation Act, 1982 for secondary workings . Each Longwall Subsidence Management Plan shall be consistent with the conditions of this consent, the Environmental Management Strategy and any relevant management plans.

RECOMMENDED CONDITIONS OF CONSENT

General

Modify condition 1 by inserting after "(refer to Schedule 5)", the words "and the modification application prepared by Powercoal dated 29 March 2001".

Property Subsidence Management Plans - Preparation

Delete existing condition 13 and replace with a new condition 13 as follows:

"Condition 13.

(i) The Applicant shall prepare and implement a "Landowner Communication and Consultation Plan" relating to longwall extraction throughout the DA area, within one month of the date of consent of this modification. The Plan shall be approved by the Director-General and the final approved plan shall be made available for public inspection. The plan shall include but not be limited to details of consultation with all landowners located in Mining Zones 1, 2, and 3 proposed over the life of the mine consistent with the conditions of this consent.

(ii) The Applicant shall prepare a Property Subsidence Management Plan to the satisfaction of the Director-General of DMR (or delegate) for each property title likely to be affected by the effects of subsidence from a longwall panel or groups of longwall panels, or other area of secondary extraction, for which an application for secondary workings approval under s.138 of the Coal Mines Regulation Act 1982 is being prepared.

(iii) At least two (2) years prior to the extraction of coal by longwall mining referred to in Condition 13(ii) or other secondary extraction requiring approval under s.138 of the Coal Mines Regulation Act, 1982, the

Applicant will advise each individual landowner within the area covered by the s.138 application referred to in Condition 13(ii) of:

(a) the expected impacts of longwall mining below the landowner's property based on best available information; and

(b) the rights of the landowner:
- to obtain financial assistance from the Applicant for independent legal advice on the landowner's rights under law and under the Conditions of Consent as detailed in Condition 22;
- to obtain financial assistance to meet reasonable landowner legal and associated costs for the landowner to obtain independent property valuations and advice on acquisition agreements; and
- to be provided with information to enable the landowner to negotiate with the Applicant over relevant matters arising from the application to mine below the landowner's property.

(iv) The relevant Property Subsidence Management Plans shall be completed in consultation with affected landowners prior to seeking approval under s.138 of the Coal Mines Regulation Act 1982 for the secondary workings referred to in 13(ii).

(v) Each Property Subsidence Management Plan shall demonstrate consistency with the relevant MOP and the Environmental Management Strategy".

Longwall Subsidence Management Plans

Delete the existing Condition 18 and replace with a new Condition 18 as follows:

"Condition 18.

(i) The Applicant shall prepare a Longwall Subsidence Management Plan to the satisfaction of the Director-General of DMR (or delegate) for each longwall panel or group of panels for which an application for secondary workings approval under s. 138 of the Coal Mines Regulation Act 1982 is being prepared.

(ii) The Longwall Subsidence Management Plan shall be completed prior to an approval under s.138 of the Coal Mines Regulation Act 1982 for secondary workings. Each Longwall Subsidence Management Plan shall be consistent with the conditions of this consent, the Environmental Management Strategy and any relevant management plans."

Notification of Landowners

Delete Condition 22(ii).

Add to Condition 22(v) the following words "*for reaching property agreement and valuations (if required).*"

APPENDIX B
SECTION 79C(1) CONSIDERATIONS

The following assessment is based on the matters listed for consideration under section 79c(1) of the *Environmental Planning and Assessment Act, 1979.*

(a) The Provisions of:

(I) Any environmental planning instrument, and
(II) Any draft environmental planning instrument that is or has been placed on public exhibition and details of which have been notified to the consent authority, and
(III) Any development control plans, and
(IV) The regulations (to the extent that they prescribe matters for the purposes of this paragraph)

that apply to the land to which the development application relates,

Relevant environmental planning instruments (EPIs) are addressed in section 3 of this report. It is considered that the proposed modification is generally consistent with the provisions of all relevant EPIs.

(b) the likely impacts of that development, including environmental impacts on both the natural and built environments, and the social and economic impacts in the locality,

The likely impacts of the proposed modification on the natural and built environments have been discussed in this Report in Section 2.

(c) the suitability of the site for the development,

It is considered that the subject site is suitable for the proposed development. The modification does not alter the specifications of the development as assessed in accordance with the 1998 proposal.

(d) any submissions made in accordance with this Act or Regulation

The modification application was not notified or advertised in accordance with Lake Macquarie DCP No 35.

(e) the public interest

The modification does not alter the specifications of the proposal, only clarifies the timing of property owner consultation and the preparation of Subsidence Management Plans. The Department concludes that the modification would have no significant environmental impacts beyond those that have already been assessed as part of the original application. It is therefore considered that the proposed modification would be in the public interest.

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