

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 on the environment; and
- (ii) provide for environmental monitoring and reporting.

Andrew Refshauge MP
Minister for Urban Affairs and Planning,

Sydney, 2 November 2000

File No. S99/01070

Schedule 1

Application made by: Drayton Coal Pty Ltd
 (“the Applicant”).

To: The Minister for Urban Affairs and Planning
 (DA 106-04-00)

In respect of: Land described in Schedule “1A”.

For the following: Increased coal transport tonnage using the existing Drayton Rail Loop and Antiene Rail Spur (“the Development”).

BCA Classification: Not Applicable

- 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.

SCHEDULE 1A

Land to which DA applies

DP	Lot
238862	1
241179	44, 45 (Part 1), 45 (Part 2)
701496	6
752486	1
812852	180
Public Road, 8 km south of Muswellbrook	
Public Road, 11.4 km southeast of Muswellbrook	
Railway land, 12 km southeast of Muswellbrook	
Conveyance No. 56 Book 2762 (Part 1 and Part 2)	
New England Highway, 8.6 km southeast of Muswellbrook	

SCHEDULE 2

Development Consent Conditions For Increased Coal Transport Using the Existing Drayton Rail Loop and Antiene Rail Spur

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DEFINITIONS:

AEMR - *Annual Environmental Management Report*

CCC – *Community Consultative Committee*

DA - *Development Application*

DA area - *Development Application area which includes all works described in the DA.*

Director-General - *Director-General of the Department of Urban Affairs and Planning or delegate.*

EIS - *Environmental Impact Statement*

Commencement of Operations – *operation of the Drayton Rail Loop over the rate of 3.3 MT/ annum*

Coal Transport Operations – *operation of the Drayton Rail Loop and Antiene Rail Spur*

Government Authorities

MSC - *Muswellbrook Shire Council*

EPA - *Environment Protection Authority*

DLWC - *Department of Land and Water Conservation*

DMR - *Department of Mineral Resources*

MSB - *Mine Subsidence Board*

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 Adherence to terms of DA, EIS, etc.

- (a) The development is to be carried out generally in accordance with development application No. 106-04-00, and the EIS dated March 2000, prepared by Umwelt (Australia) Pty Limited and certified in accordance with Section 78A(8) of the Act, and all other relevant documentation provided to DUAP, including:
 - (i) additional information requested by the EPA and supplied by Umwelt (Australia Pty Limited) in a letter dated 15 June 2000; with the results of extended noise monitoring, in a letter dated 20 July 2000 and accompanying report titled "Response to EPA Submission of 5 July 2000"..
 - (ii) Drayton Coal Pty Ltd Response to Summary of Submissions received from DUAP on 2 June 2000, prepared by Umwelt (Australia) Pty Ltd, August 2000.

as may be modified by the conditions set out herein.

- (b) If, at any time, the Director-General is aware of environmental impacts from the proposal that pose serious environmental concerns due to the failure of environmental management measures in place to ameliorate the impacts, the Director-General may order the Applicant to cease the activities causing those impacts until those concerns have been addressed to the satisfaction of the Director-General.
- (c) If any licence conditions are breached the applicant shall comply with any modification to the work as specified by the relevant agency.

Note: This consent should be read in conjunction with the existing Muswellbrook Shire Council Drayton Mine Project consent issued on 25 September 1980.

1.2 Period of Approval/Project Commencement

- (i) The approval for coal transport operations is for a period of 25 years from the date of this consent.
- (ii) At least two weeks prior to the commencement of operation or within such period as agreed by the Director-General, the Applicant shall submit for the approval of the Director-General a compliance report detailing compliance with all the relevant conditions that apply prior to the commencement of operation.
- (iii) Date of commencement of operation is to be notified in writing to the Director-General, and MSC, at least two weeks prior to commencement of operation.

1.3 Dispute Resolution

In the event that the Applicant, MSC or a Government agency, other than the Department of Urban Affairs and Planning, cannot agree on the specification or requirements applicable under this consent, the matter shall be referred by either party to the Director-General or if not resolved, whose determination of the disagreement shall be final and binding on the parties.

2. Land and Site Environmental Management

2.1 Environmental Coordinator

- (a) The Environmental Coordinator(s) employed by Drayton mine:
 - (i) shall be responsible for the preparation of the environmental management plans required by this consent (refer Condition 2.2);
 - (ii) shall be responsible for considering and advising on matters specified in the conditions of this consent and compliance with such matters;
 - (iii) shall be responsible for receiving and responding to complaints in accordance with Condition 9.2(a); and
 - (iv) shall 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.
- (b) The Applicant shall notify the Director-General, DMR, EPA, DLWC, MSC, and the CCC (refer condition 9.1) of any changes to the name and/or contact details of the Environmental Co-ordinator(s). Any new appointment of an Environmental Co-ordinator(s) is to receive prior approval of the Director-General.

2.2 Environmental Management Strategies and Plans

- (a) The Applicant shall prepare an Environmental Management Strategy providing a strategic context for the environmental management plans [refer condition 2.2(d)]. The Environmental Management Strategy shall be prepared in consultation with the relevant authorities and the Community Consultative Committee (refer condition 9.1) and to the satisfaction of the Director-General, prior to commencement of operations. The Strategy shall be provided to the Director-General no later than the time the first Environmental Management Plan under sub clause (d) below is submitted.
- (b) The Environmental Management Strategy shall include, but not be limited to:
 - (i) statutory and other obligations which the Applicant is required to fulfil during operation, 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, operation and decommissioning of the rail loop and Antiene rail spur, for each of the key environmental elements for which management plans are required under this consent;
 - (iv) overall ecological and community objectives for the project, and a strategy for the restoration and management of the areas affected by 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 economic productivity within the area affected by the operations;

- (vii) steps to be taken to ensure that all approvals, plans, and procedures are being complied with;
 - (viii) processes for complaint handling, investigation and resolution in relation to the environmental management of the project;
 - (ix) documentation of the results of consultations undertaken in the development of the Environmental Management Strategy.
 - (x) The Applicant shall make copies of the environmental management strategy available to MSC, EPA, DMR and the CCC within fourteen days of approval by the Director-General.
- (d) The Applicant shall prepare the following environmental management plans for the Drayton rail loading facility:
- Dust management plan (refer condition 5.1)
 - Noise management plan (refer condition 5.4.3(a))
 - Water management plan (refer to condition 3.1)
 - Joint Acquisition Management Plan (refer to condition 10.3)
- (e) The management plans are to be revised, and updated as necessary, at least every 5 years or as otherwise directed by the Director-General 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 MSC within two weeks of approval of the relevant government authority.
- (f) The Applicant shall make copies of the updated environmental management plans available to MSC, EPA, DMR and the CCC within fourteen days of approval by the Director-General.

2.3 Bushfire and other Fire Controls

The Applicant shall maintain the existing fire protection works on site at Drayton rail loading facility, including the availability of trained personnel, water tankers and fire fighting equipment and annual hazard reduction measures with particular attention to boundaries of adjoining landholdings.

3. Water Management and Monitoring

3.1 Surface & Ground Water Management and Monitoring

The Applicant shall:

- (a) Prepare a site water management plan and monitoring system for the Drayton rail loading facility to include the revised coal transport operations in consultation with DLWC prior to commencement of operations, and to the satisfaction of the Director-General . The plan shall include but not be limited to the following matters:
 - (i) details of the integration of the revised coal transport operations with the existing Drayton mine water management plan and monitoring system.;
 - (ii) management of the quality and quantity of surface and groundwater within the areas covered by the Site Water Management Plan, which shall include preparation of monitoring programs;
 - (iii) management of stormwater and general surface runoff diversion to ensure separate effective management of clean and dirty water;
 - (iv) measures to prevent the quality of any surface waters being degraded due to the revised coal transport operations, below that identified in Table 2.5 of the EIS
 - (v) contingency plans for managing adverse impacts of the development on surface or ground water quality and quantity below that identified in Table 2.5 of the EIS;
 - (vi) identification of any possible adverse effects on water supply sources of surrounding land holders as a result of the revised coal transport operations, and implementation of mitigation measures as necessary; and
 - (vii) a program for reporting on the effectiveness of the water management systems and performance against objectives contained in the this water management plan.

Pollution of waters

Note: Except as may be expressly provided by a licence under the Protection of the Environment Operations Act 1997 in relation of the development, section 120 of the Protection of the Environment Operations Act 1997 must be complied with in connection with the carrying out of the development.

4. Waste Management

The applicant shall ensure that the waste management system, including the management of waste water, is maintained and applied to the proposed increase coal transport operations along the Drayton rail loop and Antiene rail spur as detailed in Section 5.2.5 of the EIS.

5. Noise and Air Quality Management and Monitoring

5.1 Air Quality Management and Monitoring

Dust Management Plan

- (a) The Applicant shall, within 3 months of this consent, prepare a Dust Management Plan for the Drayton rail loading facility, detailing air quality safeguards and procedures for dealing with dust emissions to the satisfaction of the Director-General. The Plan shall be prepared in consultation with the owners of the Bayswater rail loading facilities with the aim of achieving a consistent approach in the preparation of the Dust Management Plans for the Drayton and Bayswater rail facilities respectively. The Plan shall include, but not be limited to, details of:
- the identification of dust affected properties and the relevant dust limits consistent with the EIS;
 - specifications of the procedures for the dust monitoring program for the purpose of undertaking independent dust investigations, including joint investigations with the owners of the Bayswater rail loading facility and rail loop where necessary;
 - outline the procedure to notify property owners and occupiers likely to be affected by dust from the operations;
 - the establishment of a protocol for handling dust complaints that include recording, reporting and acting on complaints;
 - appropriate mechanisms for community consultation;
 - outlining mitigation measures to be employed to minimise dust emissions;
 - equipment to be available and used to control dust generation;
 - methods to determine when and how operations are to be modified to minimise the potential for dust emissions if the relevant criteria are exceeded;
 - identification of longer term strategies directed towards mitigating dust levels that exceed the relevant EPA dust amenity criteria;
 - details of locations for dust monitoring and deposition gauges (including existing Drayton monitoring locations if proposed to be used.) at residential areas and frequency of monitoring, as agreed with the EPA;
 - a program to continue baseline monitoring undertaken prior to development consent; and
 - details of the integration of this plan with the Drayton mine dust management plan, and this plan's inter-relationship with the Bayswater rail facilities dust management plan.

Air Quality and Dust Monitoring

- (b) The Applicant shall:
- (a) undertake monitoring at locations described in the Dust Management Plan (Condition 5.1(a));
 - (ii) use existing relevant Drayton dust deposition and total suspended particulate (TSP) monitoring gauges for the Drayton Rail Loop and Antiene Rail Spur operations, including sites for monitoring impacts of dust at the nearest non-mined owned residences, and any additional locations as may be determined by the Dust Management Plan referred to in Condition 5.1(a); and

- (iii) provide all results and analysis of air quality monitoring in the AEMR including a determination of the annual dust deposition rate in gm/m²/month, which shall be plotted in the AEMR.
- (c) Monitoring of dust deposition and the concentration of PM₁₀ particulate matter in ambient air must be carried out at locations agreed to in consultation with the EPA. The sampling method, units of measure, interval and frequency of monitoring will be as set out in the "Approved Methods for Sampling and Analysis of Air Pollutants in NSW", or its latest version.
- (d) In the event that a landowner or occupier considers that dust from the project at their dwelling or over more than 25% of their vacant land is in excess of the relevant EPA dust amenity criteria, and the Director-General is satisfied that an investigation is required, the Applicant shall upon the receipt of a written request:
- (i) consult with the landowner or occupants affected to determine their concerns;
 - (ii) make arrangements for and bear the cost of, in consultation with the owner of the Bayswater rail loading facility and rail loop, appropriate independent dust investigations in accordance with the Dust Management Plan, and to the satisfaction of the Director-General, to quantify the impact and determine the source of the effect;
 - (iii) modify the operation in accordance with the Dust Management Plan if exceedences are demonstrated to result from the operation. This shall include:
 - introduction of additional controls, either of dust generation from individual sources on the site or on site operations or modify operations, to ensure that the dust criteria are achieved; and / or,
 - enter into an agreement with the landowner, or provide such forms of benefit or amelioration as may be agreed between the parties as providing acceptable amelioration/benefit for the dust levels experienced. The agreement may also be made in consultation with the owner of the Bayswater rail loading facility and rail loop and
 - conduct follow up investigations to the satisfaction of the Director-General, where necessary.

Note: Vacant land in this condition means the whole of the lot in a current plan registered at the Land Titles Office as at the date of this consent that does not have a dwelling situated on the lot and is permitted to have a dwelling on that lot.

- (e) If the independent dust investigations in sub-clause (e) above confirm that dust limits are in excess of the relevant EPA dust amenity criteria, the Applicant shall at the written request of the owner acquire the relevant property. Acquisition shall be in accordance with the procedures set out in Condition 10.1, 10.2 and 10.3.
- (f) Further independent investigations shall cease if the Director-General is satisfied that the relevant consent limits or relevant EPA dust amenity criteria are not being exceeded and are unlikely to be exceeded in the future.

5.2 Dust Suppression and Control

Activities occurring at the premises must be carried out in a manner that will minimise emissions of dust from the premises.

5.3 Noise Control

5.3.1 Noise Levels

- (a) For three years from the date of this consent, the applicant shall cooperate with the relevant mining operators to limit the cumulative noise contributions from the operation of Drayton rail loop and Antiene rail spur such that these noise levels in conjunction with the total cumulative noise emissions from the operations of the Drayton coal mine, Bayswater rail loading facility and rail loop, Bayswater mine, Antiene rail spur, and proposed Mount Arthur North project if approved, do not exceed the dB(A) $L_{eq(9 \text{ hour}/4 \text{ hour}/11 \text{ hour})}$ noise limits in Table 1 at any non-mine owned dwellings (refer also condition 10.1). The applicant shall also ensure that the noise levels from the Drayton rail loop and Antiene rail spur alone shall not exceed the dB(A) $L_{eq(15 \text{ minute})}$ noise limits also shown in Table 1 for the first three years from the date of this consent.

Table 1: Noise limits

Night time (10pm-7am)	Evening time (6pm-10pm)	Day time (7am-6pm)
42 dB(A) $L_{eq(9 \text{ hour})}$	42 dB(A) $L_{eq(4 \text{ hour})}$	42 dB(A) $L_{eq(11 \text{ hour})}$
40 dB(A) $L_{eq(15 \text{ minute})}$	40 dB(A) $L_{eq(15 \text{ minute})}$	40 dB(A) $L_{eq(15 \text{ minute})}$

- (b) After three years from the date of this consent, the applicant shall cooperate with the relevant mining operators to limit the cumulative noise contributions from the Drayton rail loop and Antiene rail spur such that these noise levels in conjunction with the total cumulative noise contributions from the operations of the Drayton coal mine, Bayswater rail loading facility and rail loop, Bayswater mine and the Antiene rail spur, and proposed Mount Arthur North project if approved, do not exceed the dB(A) $L_{eq(9 \text{ hour}/4 \text{ hour}/11 \text{ hour})}$ noise limits in Table 2 at any non-mine owned dwellings (refer also condition 10.1). The applicant shall also ensure that the noise levels from the Drayton rail loop and Antiene rail spur alone do not exceed the dB(A) $L_{eq(15 \text{ minute})}$ noise limits also shown in Table 2 after three years from the date of this consent.

Table 2: Noise limits

Night time	Evening Time	Day time
40 $L_{eq(9 \text{ hour})}$ dB(A)	40 $L_{eq(4 \text{ hour})}$ dB(A)	40 $L_{eq(11 \text{ hour})}$ dB(A)
38 $L_{eq(15 \text{ minute})}$ dB(A)	38 $L_{eq(15 \text{ minute})}$ dB(A)	38 $L_{eq(15 \text{ minute})}$ dB(A)

- (c) Notwithstanding condition 5.3.1 (b) above, the Director-General may otherwise agree to a request from the applicant to maintain the noise criteria of Table 1, provided that the Director-General is satisfied that the applicant can justify that it cannot achieve the noise criteria in Table 2 by:

- (i) providing full detail of whatever means are required to achieve the noise levels in Table 2, and a quantitative analysis of the cost effectiveness of such means to the satisfaction of the EPA; and
 - (ii) following the analysis at (i) above, the applicant is required to determine, to the satisfaction of the EPA, the best alternative mitigation measures that might not achieve the levels in Table 2, but are considered reasonable and feasible and will be put in place by the applicant.
- (d) Notwithstanding sub clauses (a), (b) and (c) above, the area of noise affectation for the cumulative operation of the Drayton rail loop, Antiene rail spur, Drayton coal mine, Bayswater rail loading facility and rail loop, Bayswater mine, Antiene rail spur, and proposed Mount Arthur North project if approved, is defined by demonstrated exceedence of noise levels at any non-mine owned dwellings of the dB(A) $L_{eq(9\text{ hour}/4\text{ hour}/11\text{ hour})}$ noise limits shown in Table 3 below. The area of noise affectation for the Drayton rail loop and Antiene spur is defined by demonstrated exceedence of noise levels at any non-mine owned dwellings of the dB(A) $L_{eq(15\text{ minute})}$ noise limits also shown in Table 3 below.

Table 3: Noise Affectation Criteria

Night Time	Evening Time	Day time
45 dB(A) $L_{eq(9\text{hour})}$	45 dB(A) $L_{eq(4\text{hour})}$	45 dB(A) $L_{eq(11\text{hour})}$
43 dB(A) $L_{eq(15\text{ minute})}$	43 dB(A) $L_{eq(15\text{ minute})}$	43 dB(A) $L_{eq(15\text{ minute})}$

- (e) In the event that a landowner or occupier considers that noise from the project at their dwelling is in excess of:
- the noise levels depicted in Table 1 within the first three years from the date of this consent; or
 - the noise levels depicted in Table 2 after the first three years from the date of this consent (or as agreed by the Director-General); or
 - the noise levels depicted in Table 3; or
 - that a landowner considers that the noise levels depicted in Table 3 is being exceeded over more than 25% of their vacant land,

and the Director-General is satisfied that an investigation is required, the Applicant shall upon the receipt of a written request:

- (i) consult with the landowner or occupants affected to determine their concerns;
- (ii) make arrangements for and bear the costs of, in consultation with the owner's of Bayswater rail loading facility and rail loop, appropriate independent noise investigations in accordance with the noise management plan, and to the satisfaction of the Director-General, to quantify the impact and determine the source of the effect and contribution of the Drayton rail loop and Antiene rail spur;
- (iii) modify the coal transportation activity in accordance with a noise reduction plan prepared as part of the noise management plan, if exceedences are demonstrated to result from the coal transportation activity. This shall include:
 - introduction of additional controls, either on noise emission from individual sources on the site or on site operations or modify operations, to ensure that the criteria in the Table 2 above are achieved;

- with the agreement of the landowner, undertaking of noise control at the dwelling to achieve acceptable internal noise levels;
 - entering into an agreement with the owner of Bayswater rail loading facility and rail loop and the landowner, or provide such other forms of benefit or amelioration as may be agreed between the parties as providing acceptable amelioration/benefit for the noise levels experienced;
- (iv) conduct follow up investigations to the satisfaction of the Director-General, where necessary.
- (f) If the independent noise investigations in sub-clause (e) above confirm that noise limits in Table 3 are being exceeded, the Applicant shall at the written request of the owner acquire the relevant property. Acquisition shall be in accordance with the procedures set out in Condition 10.2 and 10.3.
- (g) If continued complaints and noise investigations confirm that noise limits in Table 1 and/or 2 are being exceeded, but are less than the noise levels in Table 3, the Applicant shall continue to negotiate with the owner of the Bayswater rail loading facility and rail loop and the landowner until an acceptable resolution is reached.
- (h) Further independent investigations shall cease if the Director-General is satisfied that the relevant consent limits are not being exceeded and are unlikely to be exceeded in the future.

Note:

1. The noise emission limits in this condition apply for adverse weather conditions. “Adverse” weather conditions means the presence of winds up to 3 metres per second, and/or temperature inversions for up to 4 degrees C per 100 metres.
2. Vacant land in this condition means the whole of the lot in a current plan registered at the Land Titles Office as at the date of this consent that does not have a dwelling situated on the lot and is permitted to have a dwelling on that lot.

5.3.2 Noise Management Plan

- (a) The Applicant shall within three months of the date of this consent, prepare a Noise Management Plan for the Drayton rail loading facility and Antiene rail spur, to the satisfaction of the Director-General. The Plan shall be prepared in consultation with the owner of Bayswater rail loading facility with the aim of achieving a consistent approach in the preparation of the Drayton rail loading facility noise management plan. The Plan shall:
- include details of the conduct of noise investigations at three monthly intervals (unless otherwise agreed by the Director-General) to evaluate, assess and report the both the $L_{eq(15 \text{ minute})}$ (project alone) and $L_{eq(9 \text{ hour}/4 \text{ hour}/11 \text{ hour})}$ (cumulative) noise emission levels due to normal coal transport operations under adverse weather conditions;

- details of the proposed methodologies including establishing the Drayton rail loop and Antiene rail spur operating configuration; determining survey intervals; weather conditions and seasonal variations; selecting variations, locations, periods and times of measurements;
 - outline the design of any noise monitoring and noise modelling or other studies including the means for determining the noise levels emitted by the operations;
 - particularly focus on the management of night time noise (10.00pm – 7.00am) for each year of operation;
 - identify noise affected properties and the relevant noise limits consistent with the EIS, the additional noise information requested by the EPA and supplied by Umwelt (Australia Pty Limited) in a letter dated 15 June 2000; with results of extended noise monitoring and in a letter dated 20 July 2000 and accompanying report titled “Response to EPA Submission of 5 July 2000; and the Drayton Coal Pty Ltd Response to Summary of Submissions received from DUAP on 2 June 2000, prepared by Umwelt (Australia) Pty Ltd, August 2000;
 - specify the procedures for a noise monitoring program for the purpose of undertaking independent noise investigations, in consultation with the owners of Basyswater mine, as necessary;
 - outline the procedure to notify property owners and occupiers likely to be affected by noise from the operations;
 - establish a protocol for handling noise complaints that include recording, reporting and acting on complaints;
 - record appropriate mechanisms for community consultation;
 - outline mitigation measures to be employed on the site to limit noise emissions;
 - identify longer term strategies directed towards mitigating noise levels that exceed the noise criteria in Table 2 under adverse meteorological conditions;
 - outline measures to be used to reduce the impact of intermittent, low frequency and tonal noise (including any truck reversing alarms);
 - specify measures to be taken to document any higher level of impacts or patterns of temperature inversions, and detail actions to quantify and ameliorate enhanced impacts if they lead to exceedence of the relevant noise criteria;
 - survey and investigate noise reduction measures, if required, from plant and equipment annually, subject to noise monitoring results and/or complaints received, and report in the AEMR at the conclusion of the first 12 months of operations and set targets for noise reduction taking into consideration valid noise complaints in the previous year. The Report shall also include remedial measures to achieve compliance with the specified noise goals; and
 - include details of the integration of this plan with the existing Drayton mine Noise Management Plan, and its inter-relationship with the Bayswater rail facility noise management plan.
- (b) Prior to the commencement of operations the applicant shall ensure cladding is added to the northern side of the Drayton Coal Handling Facility, extending from ground level to the top of the conical section of both loading bins, with an internal facing of absorbing material and vibration isolated from the existing structure as described in the EIS.
- (c) The Applicant shall also:
- (i) make copies of the Plans available to the EPA, MSC and CCC within fourteen days of approval, or as otherwise agreed to be the Director-General; and

- (ii) include a summary of noise monitoring results in the AEMR .

5.3.3 Noise Monitoring

- (a) The levels of noise emitted from the premises must be monitored for 72 hrs every 3 months unless otherwise agreed by the Director-General at locations agreed to in consultation with the EPA. The monitoring must determine the $L_{Aeq,9hour}$, $L_{Aeq,15min}$, $L_{A10,15min}$, $L_{A90,15min}$, and $L_{A1,1min}$ and include an assessment of the impact of operational noise on adjoining residents.
- (b) Noise monitoring at the specified locations must be undertaken during daytime (7.00am-6.00pm), evening (6.00pm-10.00pm) and night time (10.00pm-7.00am).

5.4 Light Emissions

The Applicant shall screen or direct all on-site lighting away from residences and roadways, or manage such lighting to the satisfaction of MSC

6. Transport

6.1 Limits on Transportation of Coal

- (a) Coal transported along the Drayton Rail Loop is limited to seven (7) million tonnes per annum.
- (b) Coal transported along the Antiene Rail Spur is limited to twenty (20) million tonnes per annum.
- (c) The peak number of train movements along the Drayton Rail Loop are limited to 12 per day.
- (d) The peak number of train movements along the Antiene Rail Spur are limited to 30 per day.
- (e) The maximum annual rate of coal haulage shall be calculated from the date of commencement of this consent. The Applicant shall submit a statement every six (6) months regarding the number of daily train movements, quantities and destination of product hauled on the Drayton rail loop and Antiene rail spur in that period to the Director-General unless otherwise agreed by the Director-General, commencing from the date of commencement of this consent.
- (f) To ensure residents access on the northern side of Antiene Road is not restricted, the Applicant shall consult with RAC to ensure amendment of the RAC signal procedures manual is undertaken so that the signal located to the west of the level crossing near the junction of the Antiene rail spur and the Main Northern Railway (signal 60) is the priority signal for access to the Main Northern Railway as discussed in section 4.3.2.2 of the EIS.

Note: Condition 6.1 shall be read in conjunction with condition 6.1 Limits on Transportation of Coal of the consent issued by the Minister for Urban Affairs and Planning to Coal Operations Australia Limited (COAL) for the construction and operation of the Bayswater Rail Loading Facility and Rail Loop. Condition 6.1 of the COAL consent is as follows:

- (a) Coal transported along the Bayswater Rail Loop is limited to 13 million tonnes per annum during the simultaneous operation of the Drayton Rail Loop at 7 million tonnes per annum.
- (b) Coal transported along the Bayswater Rail Loop can only exceed 13 million tonnes per annum where the combined annual tonnage of operations along the Bayswater Rail Loop and Drayton Rail Loop do not exceed 20 million tonnes per annum.
- (c) The peak number of train movements along the Bayswater Rail Loop are limited to 18 per day, except in the event that Drayton mine does not utilise all of its 7 million tonnes per annum, the applicant may take up the spare capacity, with a total limit of 30 train movements per day along the Bayswater rail loop and Antiene rail spur.
- (d) The maximum annual rate of coal haulage shall be calculated from the date of commencement of rail haulage. The Applicant shall submit a statement every six (6) months regarding the quantities, number of daily train movements and destination of product hauled on Bayswater rail loop in that period to the Director-General unless otherwise agreed by the Director-General, commencing from the date of commencement of rail haulage.

6.2 Road Transport

No coal shall be hauled on public roads except under emergency or special situations and only with the prior written permission of the Director-General, RTA and MSC.

6.3 Rail scheduling

Note: A commercial agreement is in place between the owners of the Bayswater and Drayton rail facility proposals respectively which requires the applicant to advise the owners of the Bayswater rail facility, no less than sixty (60) business days before the commencement of each year, of its proposed Estimated Annual Tonnage and its planned shipping schedule for coal haulage on the Antiene Spur. On the first business day of each month, the applicant will advise the owners of Bayswater mine of its planned shipping schedule for coal haulage for each of the then ensuing three months.

7. Monitoring/Auditing

- (a) In addition to the requirements contained elsewhere in this consent, the Director-General may, at any time in consultation with the relevant government authorities and Applicant, require the monitoring programs in Conditions 3 and 5 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 MSC 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 laboratories with a nationally recognised relevant accreditation shall be used for laboratory analysis.

7.1 Third Party Monitoring/Auditing

Independent Environmental Audit

- (a) Every three years from the date of this consent until completion of coal transportation in the DA area, or as otherwise directed by the Director-General, the Applicant shall conduct an environmental audit of the Drayton Rail loop operation and Antiene rail spur operation in accordance with ISO 14010 - Guidelines and General Principles for Environmental Auditing, and ISO 14011 - Procedures for Environmental Auditing (or the current versions), and in accordance with any specifications required by the Director-General. The audit shall be co-ordinated as far as possible with the audit for the Bayswater rail loading facility and rail loop as directed by the Director-General. Copies of the report shall be submitted by the Applicant to the Director-General, MSC, EPA, DMR, and CCC within two weeks of the report's completion for comment.
- (b) The audit shall:
 - (i) assess compliance with the requirements of this consent, licences and approvals;
 - (ii) assess the development against the predictions made in the EIS;
 - (iii) review the effectiveness of the environmental management of the coal transportation operations, including any mitigation works;
 - (iv) be carried out at the Applicant's expense; and
 - (v) be conducted by a duly qualified independent person or team approved by the Director-General in consultation with MSC.
- (c) The Director-General may, after considering any submission made by the relevant government agencies, MSC and CCC on the report, notify the Applicant of any requirements with regard to any recommendations in the report. The Applicant shall comply with those reasonable requirements within such time as the Director-General may require.

7.2 Meteorological

The applicant shall utilise the existing meteorological station at Drayton mine or establish an alternative meteorological station at a relevant location, in accordance with the requirements of AS 2922 1987 "Ambient Air Guide for Siting of Sampling Units" or updated version. The meteorological station must be capable of recording wind direction and speed, temperature and sigma theta and be operated in accordance with the requirements of AS 2923-1987 "Ambient Air Guide Horizontal Wind for Air Quality Application", or subsequent relevant standards.

8. Reporting

8.1 Environmental Reporting

Annual Environmental Management Report (AEMR)

- (a) The Applicant shall, throughout the life of the rail loading facility and rail loop and for a period of at least three years after the completion of operations in the DA area, prepare and submit an Annual Environmental Management Report (AEMR), which may be incorporated into the existing Drayton AEMR to the satisfaction of the Director-General. The AEMR shall include a review of the performance of coal transportation against the Environmental Management Strategy, the conditions of this consent, and other licences and approvals relating to the coal transport operations. To enable ready comparison with the predictions of the EIS, diagrams and tables, the report shall include, but not be limited to, the following matters:
- (i) an annual compliance review of the performance of the project against conditions of this consent and statutory approvals;
 - (ii) a review of the effectiveness of the environmental management of the coal transport operations in terms of EPA, DMR, and MSC requirements;
 - (iii) results of all environmental monitoring required under this consent or other approvals, including interpretations and discussion by a suitably qualified person;
 - (iv) identify trends in monitoring results over the life of coal transport operations;
 - (v) a listing of any variations obtained to approvals applicable to the subject area during the previous year; and
 - (vi) environmental management targets and strategies for the next year, taking into account identified trends in monitoring results.
- (b) In preparing the AEMR, the Applicant shall:
- (i) respond to any request made by the Director-General for any additional requirements; and
 - (ii) comply with any requirements of the Director-General or other relevant government agencies.
 - (iii) ensure that the first report is completed and submitted within twelve months of this consent; or at a date determined by the Director-General in consultation with the DMR and the EPA; or in the next Drayton mine AEMR after the date of this consent.

9. Community Consultation/Obligations

9.1 Community Consultative Committee

- (i) The Applicant shall, at its own expense:
 - (a) provide to the existing Drayton Community Consultative Committee (CCC), or its equivalent, regular information on the progress of coal transport operations and monitoring results;
 - (b) promptly provide to the Committee such other information as the Chair of the Committee may reasonably request concerning the environmental performance of the coal transport operations; and
 - (c) provide access for site inspections by the Committee.
- (ii) The Applicant shall co-ordinate with Bayswater mine joint meetings of the Drayton and Bayswater CCCs, or their equivalents, on a basis to be agreed by the two CCCs, to discuss the management of the joint user rail facility.

9.2 Community Consultation

Complaints

- (a) The environmental coordinator employed by Drayton mine (refer condition 2.1) shall be responsible:
 - (i) for recording complaints with respect to coal transport operations along the Drayton rail loop and Antiene rail spur in accordance with the existing Drayton mine complaints handling procedures, or its equivalent, including use of the dedicated and publicly advertised telephone line, 24 hours per day 7 days per week, entering complaints or comments in an up to date log book, or other suitable data base, and ensuring that a response is provided to the complainant within 24 hours;
 - (ii) for providing a report of complaints received with respect to the Drayton coal transportation operations every six months throughout the life of the project to the Director-General, MSC, EPA, DMR, and CCC, or as otherwise agreed by the Director-General. A summary of this report shall be included in the AEMR (condition 8.1(a)).
 - (iii) consult with the environmental officer employed by the Bayswater mine to coordinate a response to any complaints received regarding the operation of the joint user rail facility .

10. Proponents Obligations

10.1 Cumulative Impact Assessment

- (a) In the event that the cumulative impact of noise or dust contributed by the operation of the Drayton rail loading facility, rail loop and Antiene rail spur and other nearby mining/industrial activities, including the Bayswater rail loop, Bayswater mine, Drayton mine, and Mount Arthur North Project if approved, at dwellings, or vacant land (as described in Condition 6.3.1(e)), in the vicinity of the operation, is in excess of the noise or dust criteria contained in these conditions of consent, the Applicant shall negotiate with the other mining companies appropriate arrangements to reasonably contribute to the management of the identified cumulative impacts to the satisfaction of the Director-General.
- (b) If it is identified from subclause (a) above that an industrial operator, other than a mining company, is the cause of an exceedence, the applicant shall provide a report to the Director-General the reasons for the cumulative criteria exceedences with demonstration that the applicant's activities are not the sole cause of the exceedences.
- (c) If agreement on appropriate contributions towards mitigation measures/ acquisition cannot be reached from negotiations undertaken in accordance with subclause (a), then the Director-General may appoint an independent panel to resolve the matter. The membership of the independent panel shall be as determined by the Director-General. The independent panel shall determine the responsibilities of each of the mining companies. The decision of the independent panel shall be final and binding on all parties. The responsibilities of the mining companies and the landowner as described in Condition 10.2 and 10.3 will apply.
- (d) Prior to the appointment of the independent panel, the applicant shall provide the Director-General a report detailing the applicant's reasons for being unable to get agreement with the other parties, and the reasons for the cumulative criteria exceedences with demonstration that the applicant's activities are not the sole cause of the exceedences.

10.2 Area of Affection – Land Acquisition

<p><i>Note:</i> In Condition 10.2 (a)-(h) "land" means the whole of a lot in a current plan registered at the Land Titles Office as at the date of this consent.</p>
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- (a) The Applicant shall negotiate and purchase a property, as identified in conditions 5.1, 5.3 and/or 10.1, within six (6) months of a written request from the affected land owner.
- (b) In respect of a request to purchase land arising under this condition, 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 at the date of this consent, as if the land was unaffected by coal transport operations along the Drayton rail loop and Antiene rail spur the subject of this DA, 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 request is completed subsequent to that date.
- (ii) the owner's reasonable compensation for disturbance allowance and relocation costs within the Muswellbrook or Singleton Local Government Area, or within such other location as may be determined by the Director-General in exceptional circumstances;
- (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.

Notwithstanding any other condition of this consent, the landowner and 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.

- (d) In the event that the Applicant and any owner referred to in this condition 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 Director-General, who shall request the President of the Australian Institute of Valuers and Land Economists to appoint a qualified independent valuer or Fellow of the Institute, who shall determine, after consideration of any submissions from the owners, a fair and reasonable acquisition price for the land as described in sub-clause (c) and/or terms upon which it is to be acquired;
- (ii) in the event of a dispute regarding outstanding matters that cannot be resolved, the independent valuer shall refer the matter to the Director-General, recommending the appointment of a qualified panel. The Director-General, 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 Director-General or nominee, and
 - 3) the President of the Law Society of NSW or nominee.

The qualified panel shall determine a fair and reasonable acquisition price as described in sub-clause (c) above and/or the terms upon which the property is to be acquired.

- (e) The Applicant shall bear the costs of any valuation or survey assessment requested by the independent valuer, panel, or the Director-General and the costs of determination referred to in sub clauses (c) and (d).
- (f) Upon receipt of a determination pursuant to sub-clauses (c) and (d), the Applicant shall, within 14 days, offer in writing to acquire the relevant land at a price not less than the determination. 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 purchase the

property shall cease, unless otherwise agreed by the Director-General.

- (g) In the event that only part of the land is to be transferred to the Applicant, the Applicant shall pay all reasonable costs associated with obtaining Council approval to any plan of subdivision and registration of the plan at the Office of the Registrar-General
- (h) The provisions of this condition do not apply to a land owner who is the holder of an authority under the Mining Act, 1992.

10.3 Joint Acquisition Management Plan

The Applicant shall prior to commencement of the increased operations of the Drayton rail loop and Antiene rail spur, prepare a Joint Acquisition Management Plan with the owner of Bayswater rail loading facility and rail loop, to the satisfaction of the Director-General. The plan shall:

- Provide details of a joint approach to be adopted by the Applicant and the owner of the Bayswater rail loading facility and rail loop in regard to meeting the acquisition procedure requirements outlined in condition 10.2 of this consent relating to the cumulative impacts of the Drayton rail loop and Antiene rail spur, Drayton coal mine Bayswater rail loading facility and rail loop, Bayswater mine and the Mount Arthur North project if approved, should acquisition be required.

11. Further Approvals and Agreements

11.1 Statutory Requirements

- (a) The Applicant shall ensure that all statutory requirements including but not restricted to those set down by the Local Government Act 1993, Protection of the Environment Administration Act 1991, Protection of the Environment Operations Act 1997, and all other relevant legislation, Regulations, Australian Standards, Codes, Guidelines and Notices, Conditions, Directions, Notices and Requirements issued pursuant to statutory powers by the MSC, EPA, DLWC, DMR, and RAC, are fully met.
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