

Notice of Modification

Section 75W of the *Environmental Planning and Assessment Act 1979*

I modify the development consent referred to in Schedule 1, as set out in Schedule 2.



The Hon Tony Kelly MLC
Minister for Planning

Sydney

2010

26 NOV 2010

SCHEDULE 1

The development consent (DA No. 39-02-01) for the Bowens Road North coal mine, granted by the Minister for Urban Affairs and Planning on 25 July 2001.

SCHEDULE 2

1. Replace the term "Proponent's Obligations" in the Index in Schedule 2 with the term "Additional Procedures".
2. At the end of the Index in Schedule 2, add the following:

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3. Include the following definition after the definition of "mining operations":

Stratford Mining Complex – The Stratford and Bowens Road North mines, considered collectively
4. Change the names under the heading Government Authorities in Schedule 2 with the following:

DECCW – The Department of Environment, Climate Change and Water
The Department – The Department of Planning
GSC – Gloucester Shire Council
I&I NSW – The Department of Industry & Investment, trading as Industry & Investment NSW
NOW – NSW Office of Water
RTA – Roads and Traffic Authority
5. Throughout the consent, replace all references to the existing acronyms with the following:

DLWC – NOW
DMR – I&I NSW
DUAP – the Department
EPA – DECCW
NPWS – DECCW
NSW Agriculture – I&I NSW
NSW Fisheries – I&I NSW

6. After 1.1(vi) and prior to "as may be modified by the conditions set out herein.", insert the word "and" followed by:
 - (vii) the modifying application and accompanying environmental assessment titled *Bowens Road North Open Cut June 2010 Modification*,
7. Replace Condition 1.2(a) with the following:
 - (a) The Applicant may carry out mining operations on site until the end of 2013.
Note: Under this consent, the Applicant is required to rehabilitate the site and carry out additional undertakings to the satisfaction of the Director-General. Consequently, this consent will continue to apply in all other respects - other than the right to conduct mining operations - until the rehabilitation of the site and these additional undertakings have been carried out satisfactorily.
8. Condition 2.2(a) with the following:
 - (a) Run of mine coal production from the Bowens Road North mine shall not exceed 1 million tonnes per annum.
9. Replace Condition 3.5 with the following:

The Applicant shall rehabilitate the site in general accordance with the figure shown in Appendix 4, and the requirements of any Mining Lease granted by the Minister for Mineral Resources.
10. After Appendix 3, add the following text, and insert Figure 8 from the environmental assessment titled *Bowens Road North Open Cut June 2010 Modification*:

APPENDIX 4 CONCEPTUAL REHABILITATION PLAN

11. After Condition 4.6, insert the following:

By the end of January 2011, the Applicant shall update the Site Water Management Plan and Erosion and Sediment Control Plan for the mine to the satisfaction of the Director-General. The updated plans must accommodate the modifications described in the environmental assessment titled *Bowens Road North Open Cut June 2010 Modification*.
12. Replace Conditions 6.1 and 6.2 with the following:
 - 6.1 Odour**
 - (a) The Applicant shall ensure that no offensive odours are emitted from the site, as defined under the *Protection of the Environment Operations Act 1997*.
 - 6.1 A Greenhouse Gas Emissions**
 - (a) 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 Director-General.
 - 6.2A Air Quality Assessment Criteria**
 - (a) The Applicant shall ensure that all reasonable and feasible avoidance and mitigation measures are employed so that particulate matter emissions generated by the Stratford mining complex do not exceed the criteria listed in Tables 2a, 2b or 2c at any residence on privately-owned land or on more than 25 percent of any privately-owned land.

Table 2a: Long term criteria for particulate matter

Pollutant	Averaging Period	^d Criterion
Total suspended particulate (TSP) matter	Annual	^a 90 µg/m ³
Particulate matter < 10 µm (PM ₁₀)	Annual	^a 30 µg/m ³

Table 2b: Short term criterion for particulate matter

Pollutant	Averaging Period	^d Criterion
Particulate matter < 10 µm (PM ₁₀)	24 hour	^a 50 µg/m ³

Table 2c: Long term criteria for deposited dust

Pollutant	Averaging Period	Maximum increase in deposited dust level	Maximum total deposited dust level
^c Deposited dust	Annual	^b 2 g/m ² /month	^a 4 g/m ² /month

Notes to Tables 2a-2c:

- ^a Total impact (i.e. incremental increase in concentrations due to the Stratford mining complex plus background concentrations due to all other sources);
- ^b Incremental impact (i.e. incremental increase in concentrations due to the Stratford mining complex on its own);
- ^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, sea fog, fire incidents, illegal activities or any other activity agreed by the Director-General in consultation with DECCW.

6.2B Air Quality Acquisition Criteria

- (a) If particulate matter emissions generated by the Stratford mining complex exceed the criteria in Tables 3a, 3b or 3c at any residence on privately-owned land or on more than 25 percent of any privately-owned land, then upon receiving a written request for acquisition from the landowner the Proponent shall acquire the land in accordance with the procedures in Condition 11.2.

Table 3a: Long term acquisition criteria for particulate matter

Pollutant	Averaging Period	^d Criterion
Total suspended particulate (TSP) matter	Annual	^a 90 µg/m ³
Particulate matter < 10 µm (PM ₁₀)	Annual	^a 30 µg/m ³

Table 3b: Short term acquisition criteria for particulate matter

Pollutant	Averaging period	^d Criterion
Particulate matter < 10 µm (PM ₁₀)	24 hour	^a 150 µg/m ³
Particulate matter < 10 µm (PM ₁₀)	24 hour	^b 50 µg/m ³

Table 3c: Long term acquisition criteria for deposited dust

Pollutant	Averaging Period	Maximum increase in deposited dust level	Maximum total deposited dust level
^c Deposited dust	Annual	^b 2 g/m ² /month	^a 4 g/m ² /month

Notes to Tables 3a-3c:

- ^a Total impact (i.e. incremental increase in concentrations due to the Stratford mining complex plus background concentrations due to all other sources);
- ^b Incremental impact (i.e. incremental increase in concentrations due to the Stratford mining complex on its own);
- ^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, sea fog, fire incidents, illegal activities or any other activity agreed by the Director-General in consultation with DECCW.

6.2C Operating Conditions

- (a) The Applicant shall:
- implement best practice air quality management on site, including all reasonable and feasible measures to minimise the off-site odour, fume and dust emissions generated by the development, including any emissions from spontaneous combustion;
 - minimise any visible air pollution generated by the development;
 - regularly assess the real-time air quality monitoring and meteorological forecasting data and relocate, modify and/or stop operations on site to ensure compliance with the relevant conditions of this consent, to the satisfaction of the Director-General.

6.2D Air Quality & Greenhouse Gas Management Plan

- (a) The Applicant shall prepare and implement an Air Quality & Greenhouse Gas Management Plan for the Stratford mining complex to the satisfaction of the Director-General. This program must:
- be prepared in consultation with DECCW, and be submitted to the Director-General for approval by the end of May 2011; and
 - describe the measures that would be implemented to ensure compliance with the relevant conditions of this consent, including the proposed real-time air quality management system; and
 - include an air quality monitoring program, that uses a combination of real-time monitors, high volume samplers and dust deposition gauges to evaluate the performance of the development, and includes a protocol for determining exceedances with the relevant conditions of this consent.
- (b) The Applicant shall implement the approved Dust Management Plan for the Bowers Road North mine until it is replaced by the approved Air Quality and Greenhouse Gas Management Plan for the Stratford mining complex.

13. Replace Condition 6.4 with the following:

6.4A Noise Criteria

- (a) Apart from the land that is subject to acquisition upon request under the Stratford development consent (DA 23-98/99), the Applicant shall ensure that the noise generated by the Stratford mining complex does not exceed the criteria in Table 4 at any residence on privately-owned land or on more than 25 percent of any privately-owned land.

Table 4: Noise criteria dB(A)

Location	Day	Evening	Night	
	L _{Aeq} (15 minute)	L _{Aeq} (15 minute)	L _{Aeq} (15 minute)	L _{A1} (1 minute)
Craven Village	35	35	40	45
39 - Standen				
42 - D Blanch				
36 - Wallace	35	35	37	45
34 - Hall	35	35	36	45
25 - Thompson				
298 - Yates				
291 - Stackman				
All other privately-owned land	35	35	35	45

Notes:

- To identify the locations referred to in Table 4, see the figure in Appendix 5;
- For the purposes of this condition, the Craven Village is comprised on the land listed as Cr 2-8 in the figure in Appendix 5; and
- Noise generated by the Stratford mining complex is to be measured in accordance with the relevant procedures and exemptions (including certain meteorological conditions) of the NSW Industrial Noise Policy.

However, these criteria do not apply if the Applicant has a written agreement with the relevant landowner to exceed the criteria, and the Applicant has advised the Department in writing of the terms of this agreement.

6.4B Noise Acquisition Criteria

3. If the noise generated by the Stratford mining complex exceeds the criteria in Table 5 at any residence on privately-owned land or on more than 25 percent of any privately-owned land, then upon receiving a written request for acquisition from the landowner, the Applicant shall acquire the land in accordance with the procedures in Condition 11.2.

Table 5: Noise acquisition criteria dB(A) L_{Aeq} (15min)

Location	Day	Evening	Night
Stratford Village			
Craven Village	42	41	40
All other privately-owned land	40	40	40

Notes:

- Noise generated by the Stratford mining complex is to be measured in accordance with the relevant procedures and exemptions (including certain meteorological conditions) of the NSW Industrial Noise Policy;
- For the purposes of this condition, the Craven Village is comprised of the land listed as Cr 2-Cr3 in the figure in Appendix 5, and the Stratford Village is the land shown as urban development on the figure in Appendix 5; and
- For this condition to apply, the exceedences of the criteria must be systemic.

6.4C Operating Conditions

- (a) The Applicant shall:
 - (i) implement best practice noise management, including all reasonable and feasible noise mitigation measures to minimise the operational, low frequency and rail noise generated by the development; and

- (ii) regularly assess the real-time noise monitoring and meteorological forecasting data and relocate, modify, and/or stop operations on site to ensure compliance with the relevant conditions of this consent, to the satisfaction of the Director-General.

6.4D Noise Management Plan

- (a) The Applicant shall prepare and implement a Noise Management Plan for the Stratford mining complex to the satisfaction of the Director-General. This plan must:
 - (i) be prepared in consultation with DECCW, and submitted to the Director-General for approval by the end of May 2011;
 - (ii) describe the noise mitigation measures that would be implemented to ensure compliance with the relevant conditions of this consent, including:
 - a real-time noise management system that employs both reactive and proactive mitigation measures; and
 - a detailed program to replace or attenuate the existing plant on site;
 - (iii) include a noise monitoring program that:
 - uses a combination of real-time and supplementary attended monitoring measures to evaluate the performance of the development;
 - includes a program to monitor the actual sound power levels of the plant on site, compare it with the benchmark levels used in the most recent environmental assessment for the Stratford mining complex, and evaluate the effectiveness of any attenuation; and
 - includes a protocol for determining exceedances of the relevant conditions of this consent.
 - (b) The Applicant shall implement the approved Noise Management Plan for the Bowens Road North mine until it is replaced by the approved Noise Management Plan for the Stratford mining complex.
14. After Appendix 5, add the following text, and insert Figures 4a and 4b from the environmental assessment titled *Bowens Road North Open Cut June 2010 Modification*:

APPENDIX 6 RELEVANT LAND FOR THE NOISE CONDITIONS IN THE CONSENT

15. Replace Condition 11 with the following:
- 11. Additional Procedures**
- 11.1 Independent Review**
- (a) If an owner of privately-owned land considers the development to be exceeding the relevant criteria in this consent, then he/she may ask the Director-General in writing for an independent review of the impacts of the development on his/her land.

If the Director-General is satisfied that an independent review is warranted, then within 2 months of the Director-General's decision the Applicant shall:
 - (i) commission a suitably qualified, experienced and independent person, whose appointment has been approved by the Director-General, to:
 - consult with the landowner to determine his/her concerns;
 - conduct monitoring to determine whether the development is complying with the relevant criteria in this consent; and
 - if the development is not complying with these criteria, then identify the measures that could be implemented to ensure compliance with the relevant criteria; and
 - (ii) give the Director-General and landowner a copy of the independent review.
 - (b) If the independent review determines that the development is complying with the relevant criteria in this consent, then the Applicant may discontinue the independent review with the approval of the Director-General.

If the independent review determines that the development is not complying with the relevant criteria in this consent, then the Applicant shall:

- (i) implement all reasonable and feasible mitigation measures, in consultation with the landowner and appointed independent person, and conduct further monitoring until the development complies with the relevant criteria; or
 - (ii) secure a written agreement with the landowner to allow exceedances of the relevant criteria,
- to the satisfaction of the Director-General.

If the independent review determines that the development is not complying with the relevant acquisition criteria in this consent, then upon receiving a written request from the landowner, the Applicant shall acquire all or part of the landowner's land in accordance with the procedures in Condition 11.2 below.

11.2 LAND ACQUISITION

- (a) Within 3 months of receiving a written request from a landowner with acquisition rights, the Applicant shall make a binding written offer to the landowner based on:
 - (i) the current market value of the landowner's interest in the land at the date of this written request, as if the land was unaffected by the development, having regard to the:
 - existing and permissible use of the land, in accordance with the applicable planning instruments at the date of the written request; and
 - presence of improvements on the land and/or any approved building or structure which has been physically commenced on the land at the date of the landowner's written request, and is due to be completed subsequent to that date;
 - (ii) the reasonable costs associated with:
 - relocating within the Great Lakes or Gloucester local government areas, or to any other local government area determined by the Director-General; and
 - obtaining legal advice and expert advice for determining the acquisition price of the land, and the terms upon which it is to be acquired; and
 - (iii) reasonable compensation for any disturbance caused by the land acquisition process.

However, if at the end of this period, the Applicant and landowner cannot agree on the acquisition price of the land and/or the terms upon which the land is to be acquired, then either party may refer the matter to the Director-General for resolution.

Upon receiving such a request, the Director-General will request the President of the NSW Division of the Australian Property Institute to appoint a qualified independent valuer to:

- consider submissions from both parties;
- determine a fair and reasonable acquisition price for the land and/or the terms upon which the land is to be acquired, having regard to the matters referred to in paragraphs (a)-(c) above;
- prepare a detailed report setting out the reasons for any determination; and
- provide a copy of the report to both parties.

Within 14 days of receiving the independent valuer's report, the Applicant shall make a binding written offer to the landowner to purchase the land at a price not less than the independent valuer's determination.

However, if either party disputes the independent valuer's determination, then within 14 days of receiving the independent valuer's report, they may refer the matter to the Director-General for review. Any request for a review must be accompanied by a detailed report setting out the reasons why the party disputes the independent valuer's determination. Following consultation with the independent valuer and both parties, the Director-General will determine a fair and reasonable acquisition price for the land, having regard to the matters referred to in paragraphs (i)-(iii) above, the independent valuer's report, the detailed report disputing the independent valuer's determination, and any other relevant submissions.

Within 14 days of this determination, the Applicant shall make a binding written offer to the landowner to purchase the land at a price not less than the Director-General's determination.

If the landowner refuses to accept the Applicant's binding written offer under this condition within 6 months of the offer being made, then the Applicant's obligations to acquire the land shall cease, unless the Director-General determines otherwise.

- (b) The Applicant shall pay all reasonable costs associated with the land acquisition process described in Condition 11.2(a) above, including the costs associated with obtaining Council approval for any plan of subdivision (where permissible), and registration of this plan at the Office of the Registrar-General.

16. After Section 12 of the consent, add the following:

13. Biodiversity

13.1 Offset Strategy

- (a) The Applicant shall implement the offset strategy described in Section 3.1 of the environmental assessment titled *Bowens Road North Open Cut June 2010 Modification*, and depicted generally in the figure in Appendix 6, to the satisfaction of the Director-General.
- (b) To the greatest extent practicable, the Applicant shall ensure the implementation of offset strategy is properly co-ordinated with the implementation of the offset strategy for the Duralie coal mine, which is located on adjoining land.

13.2 Long Term Security Of Offset

- (a) By the end of December 2011, the Applicant shall make suitable arrangements to provide appropriate long term security for the offset strategy area to the satisfaction of the Director-General.

13.3 Biodiversity Management Plan

- (a) The Applicant shall prepare and implement a Biodiversity Management Plan for the development to the satisfaction of the Director-General. This plan must:
- (i) be prepared in consultation with DECCW, and submitted to the Director-General for approval by the end of December 2011;
 - (ii) describe how the implementation of the offset strategy would be integrated with the overall rehabilitation of the Duralie coal mine;
 - (iii) include:
 - detailed performance and completion criteria for the implementation of the offset strategy;
 - a description of the measures that would be implemented over the next 3 years to implement the offset strategy, including the procedures to be implemented for:
 - implementing revegetation and regeneration within the offset areas, including establishment of canopy, sub-canopy (if relevant), understorey and ground strata;
 - collecting and propagating seed;
 - controlling weeds and feral pests;
 - controlling access; and
 - bushfire management;
 - a program to monitor the effectiveness of these measures, and evaluate progress against the detailed performance and completion criteria; and
 - details of who would be responsible for monitoring, reviewing, and implementing the plan.
- (b) The Applicant may prepare a single Biodiversity Management Plan for the implementation of the offset strategies for the Bowens Road North and Duralie coal mines.

13.4 Conservation Bond

- (a) Within 6 months of the approval of the Biodiversity Management Plan, the Proponent shall lodge a conservation bond with the Department to ensure that the offset strategy is implemented in accordance with the performance and completion criteria of the Biodiversity Management Plan. The sum of the bond shall be determined by:
- (i) calculating the full cost of implementing the offset strategy; and
 - (ii) employing a suitably qualified quantity surveyor to verify the calculated costs, to the satisfaction of the Director-General.

If the offset strategy is completed to the satisfaction of the Director-General, the Director-General will release the conservation bond.

If the offset strategy is not completed to the satisfaction of the Director-General, the Director-General will call in all or part of the conservation bond, and arrange for the satisfactory implementation of the offset strategy.

17. After Appendix 5, add the following text, and insert Figure 6 from the environmental assessment titled *Bowens Road North Open Cut June 2010 Modification*:

**APPENDIX 6
BIODIVERSITY OFFSET AREA**

18. Delete Schedule C