

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979

INTEGRATED STATE SIGNIFICANT DEVELOPMENT

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

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

The reasons for the imposition of the conditions are to:

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

Andrew Refshauge MP
Minister for Urban Affairs and Planning,

Sydney, 2 November 2000

File No. N99/00203

Schedule 1

Application made by: Coal Operations Australia Limited
 (“the Applicant”).

To: The Minister for Urban Affairs and Planning
 (DA 105-04-00)

In respect of: Lots 1,2,3, 5 & 6, DP 701496; Lot 11, DP632691; Lot 10,
 DP793428, Lot 110, DP727767; Lot 201, DP842045; Lot 64,
 DP850818. Public Road (Thomas Mitchell Drive) 8km south of
 Muswellbrook.

For the following: The construction and operation of the Bayswater Rail Loading
 Facility and Rail Loop (“the Development”).

BCA Classification: Class 5 - Crib Room/Amenities, Control Room
 Class 10a - Rail Loadout Bin
 Class 10b - Conveyor, Railway

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 2

Development Consent Conditions For Bayswater Rail Loading Facility and Rail Loop

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DEFINITIONS:

AEMR - *Annual Environmental Management Report*

CCC – *Bayswater mine Community Consultative Committee, or its equivalent*

Construction – *Construction of all surface facilities (including loadout bin, concrete spillage pit, Control Room, Drive Station, Crib Room and Amenities, Office, Sewerage Treatment Plant and Conveyors) and roadworks including the rail loading facility, rail loop and access road off Thomas Mitchell Drive*

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*

Operations – *Operation of the rail loading facility and rail loop and use of the new access road off Thomas Mitchell Drive*

Government Authorities

MSC - *Muswellbrook Shire Council*

DLWC - *Department of Land and Water Conservation*

DMR - *Department of Mineral Resources*

EPA - *Environment Protection Authority*

MSB - *Mine Subsidence Board*

NPWS - *National Parks and Wildlife Service*

RAC – *Rail Access Corporation*

RTA - *Roads and Traffic Authority*

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. 105-04-00, 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 Aboriginal relic's information requested by the NPWS and supplied by Umwelt (Australia) Pty Limited in a letter dated 10 May 2000;
 - (ii) additional 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";
 - (iii) Coal Operations Australia Limited Response to the 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.

1.2 Period of Approval/Project Commencement

- (i) The approval for the rail loading facility and rail loop is for a period of 25 years from the date of this consent.
- (ii) At least two weeks prior to the commencement of construction and operation respectively 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 construction and operation.
- (iii) Date of commencement of construction and operation is to be notified in writing to the Director-General, and MSC, at least two weeks prior to commencement of construction and operation respectively.

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, whose determination of the disagreement shall be final and binding on the parties.

2. Land and Site Environmental Management

2.1 Environmental Officer

- (a) The Environmental Officer(s) employed by Bayswater 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, NPWS, DLWC, MSC, and the CCC (refer condition 9.1) of any changes to the name and/or contact details of the Environmental Officer(s). Any new appointment of an Environmental Officer(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 construction. 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 construction and 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 construction, operation and decommissioning of the rail loading facility and rail loop, 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 construction and operation, 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 rail loading facility and rail loop;
 - (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; and
 - (ix) documentation of the results of consultations undertaken in the development of the Environmental Management Strategy.
- (c) The Applicant shall make copies of the Environmental Management Strategy available to MSC, EPA, DLWC, NPWS, DMR, MSB and the CCC within fourteen days of approval by the Director-General.
- (d) The Applicant shall prepare/update the following environmental management plans:
- Archaeology and cultural management plan (refer condition 2.3)
 - Flora and fauna management plan (refer condition 2.4)
 - Erosion and sediment control plan (refer condition 2.5(a))
 - Landscape management plan (refer condition 2.7)
 - Bushfire management plan (refer condition 2.8)
 - Land management plan (refer condition 2.9(a))
 - Site water management plan (refer condition 3.1)
 - Dust management plan (refer condition 5.1)
 - Noise management plan (refer condition 5.4.3(a))
 - Lighting Management Plan (refer to condition 5.5)
 - Joint Acquisition Management Plan (refer to condition 10.3)
- (e) The Applicant shall make copies of the Environmental Management Plans available to MSC, EPA, DLWC, NPWS, DMR, MSB and the CCC within fourteen days of approval by the Director-General.
- (f) 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.

2.3 Heritage Assessment, Management and Monitoring

Assessment and Management

The Applicant shall prior to the commencement of construction:

- (a) prepare an Archaeology and Cultural Management Plan to address Aboriginal and European cultural heritage issues. The Plan shall be prepared in consultation with the relevant local Aboriginal community, Upper Hunter Historical Society, and NPWS, and to the satisfaction of the Director-General. The Plan shall include but not be limited to:
 - (i) identification of all areas of conservation within the DA area;
 - (ii) provision of management strategies for all parts of the DA area not affected by the Bayswater rail loading facilities and rail loop;
 - (iii) identification of any future salvage, excavation and monitoring of any heritage/archaeological sites within the DA area, prior to and during development.

This shall include details of recording to be undertaken for identified heritage/archaeological sites, and future upkeep, storage, and relocation of salvaged artefacts within the DA area.

- (iv) details of measures to assist the Aboriginal community to maintain and manage cultural heritage in the DA area;
 - (v) details of management of Aboriginal heritage sites which will be unaffected by activities in the DA area, including provision for fencing;
 - (vi) identification and discussion of Aboriginal archaeological sites that will require a section 90 consent to destroy under the *National Parks and Wildlife Act 1974*, and potential Aboriginal sites that may require section 90 consents in the future;
 - (ix) details of measures to fully document, in accordance with the NSW Heritage Council guidelines, any non-indigenous heritage sites that will be destroyed by the development; and
 - (x) details of consultation undertaken in the preparation of this Plan.
- (b) ¹Members of the Aboriginal community are to be provided with the opportunity to recover relics from locations along the development impact areas as requested, as part of the section 90 consent to destroy under the *National Parks and Wildlife Act 1974*.
- (c) If, during the course of construction and operation of the rail loading facilities and rail loop, the Applicant becomes aware of any heritage or archaeological site not covered by a Consent to Destroy, all work likely to affect the site shall cease immediately and the relevant authorities consulted about an appropriate course of action prior to recommencement of work. The relevant authorities may include NPWS, the NSW Heritage Office, and the relevant local Aboriginal community. Any necessary permits or consents shall be obtained and complied with prior to recommencement of work.
- (d) The Applicant is to consult regularly during construction with the relevant local Aboriginal community using consultation principles and strategies consistent with those outlined in the *“Guidelines for best practice community consultation in the NSW Mining and Extractive Industries”*. The results of these consultations shall be documented in the AEMR.

- Notes**
1. No Aboriginal archaeological sites, that have been identified, shall be destroyed without the approval of the Director-General of NPWS, under section 90 of the *National Parks and Wildlife Act 1974*, prior to any disturbance of the identified sites by development activity.
 2. Wherever possible, the Applicant is to contract representatives of the relevant local Aboriginal community to assist in the proposed archaeological investigations and to undertake salvage of artefacts..
 3. Any proposed works that will affect non-indigenous heritage items, including demolition of the items, will require an approval under section 139 of the *Heritage Act 1977* and an application for an excavation permit under section 140 of the *Heritage Act 1977* to disturb the relics. This may also require additional approvals from MSC if the items are listed on the Heritage Schedule of the Local Environmental Plan.

¹ NPWS General Terms of Approval

Monitoring

- (e) The Applicant shall monitor the effectiveness of the measures outlined in the Archaeology and Cultural Management Plan [Condition 2.3(a)]. . A summary of monitoring results shall be included in the AEMR.

2.4 Flora and Fauna Assessment, Management and Monitoring

Assessment and Management

- (a) The Applicant shall prior to commencement of construction activities prepare and implement a Flora and Fauna Management Plan for the management of flora and fauna issues for the DA area. The Plan shall be prepared to the satisfaction of the Director-General. The Plan shall include but not be limited to:
 - (i) a detailed assessment of the current characteristics and ecological values of existing ecosystems likely to be affected by the development;
 - (ii) strategies to minimise the net loss of ecologically significant vegetation communities within DA area as a result of the development, including the provision of compensatory areas of equivalent ecological and habitat value where necessary;
 - (iii) strategies to manage the impact of surface water runoff, erosion and sediment control measures on flora and fauna, and also the impact of heavy machinery;
 - (iv) details of the methods for salvaging and relocating hollow bearing limbs/stags, that have been identified, to areas regenerated with native vegetation or existing areas of native vegetation, to augment and reconstruct faunal habitat (including hollow branches to be removed and re-erected in the proposed habitat compensation area). The limbs and trunks are not to be burnt;
 - (v) measures to connect existing areas and future areas of habitat rehabilitation to form a network of wildlife corridors throughout the site and to adjoining lands to facilitate species recruitment through natural immigration (including details of the habitat corridor proposed in Section 4.9.7 of the EIS);
 - (vi) details of the integration of this plan with the Bayswater flora and fauna management plan and this plan's inter-relationship with the proposed Mount Arthur North project, if approved.
- (b) The applicant shall ensure that the forested portions of the study area that will be retained under the proposed development, the habitat compensation area and the habitat corridor, as described in the EIS, will be fenced, or ensure that current fencing is maintained and upgraded, to restrict access for stock and unauthorised personnel.
- (c) The applicant shall ensure that appropriate nest boxes are installed in both the existing habitat areas and habitat compensation areas in consultation with NPWS. The nest boxes shall be designed to provide suitable nesting and roosting sites for Squirrel Gliders, Brushtail Possums, tree roosting bats and parrot and owl species identified in the EIS as likely to occur at the site.

- (d) Details of monitoring regeneration works, the effectiveness of the reforestation, the establishment of the habitat compensation area, the establishment of the habitat corridor and the impacts of the rail loading facility and rail loop on native vegetation are to be publicly reported annually as part of the AEMR.

Note: Results, if available, from the monitoring program currently being undertaken at Mt Owen Mine should be referenced in determining the appropriate height, aspect, design and location of nest boxes.

2.5 Prevention of Soil Erosion

- (a) ²The Applicant shall prepare an Erosion and Sediment Control Plan for the rail loading facility and rail loop in consultation with DLWC, taking account of any DLWC guidelines or requirements, to the satisfaction of the Director-General. The Plan shall be updated prior to the commencement of construction.
- (b) The Erosion and Sediment Control Plan shall include but not be limited to:
- (i) ³details of temporary and permanent sediment and erosion control systems to be used during both construction and operation of the rail loading facility and rail loop and for a time until the site is stabilised, including for earthworks associated with landscaping;
 - (ii) details of salinity management;
 - (iii) ⁴measures that will be employed to minimise soil erosion and the discharge of sediment and other pollutants to lands and/or waters during construction activities. The Plan should be prepared in accordance with the requirements for such plans outlined in *Managing Urban Stormwater: Soils and Construction* (available from the Department of Housing).
 - (iv) details of the proposed measures to maximise the retrieval of topsoil for subsequent use in the rehabilitation program;
 - (v) consideration and management of erosion and sedimentation of surface watercourses/waterbodies, including Ramrod Creek and all creeklines within the DA area;
 - (vi) measures to construct drains, banks, channels, and similar works to divert stormwater away from disturbed and contaminated land surfaces including the rail loading facility and rail loop. All diversion banks, channels and points of discharge must be constructed or stabilised so as to minimise erosion and scouring;
 - (vii) details of the integration of the erosion and sediment control plan for the Bayswater rail loading facility and rail loop with the existing erosion and sediment control plan for the Bayswater mine site; and

² DLWC General Terms of Approval

³ DLWC General Terms of Approval

⁴ EPA General Terms of Approval

- (viii) a program for reporting on the effectiveness of the sediment and erosion control systems and performance against objectives contained in the approved Erosion and Sediment Control Management Plan, and EIS.
- (ix) ⁵details of methods to be adopted to minimise area of disturbance during construction.
- (c) ⁶The Applicant shall, in consultation with DLWC, ensure that all soil and / or vegetation material to be removed from the area of operation is disposed of on an appropriate site where it will not be swept back into watercourses, including Ramrod Creek.
- (d) The Applicant shall ensure that cut batters made for the rail loop as shown on Figure 3.2 of the EIS be topsoiled and grassed in consultation with DMR and DLWC unless hard rock prevents the adhering of the topsoil.

Note: The *Rivers and Foreshore Improvement Act, 1948* permit holder and the owner and occupier of the land are responsible for any excavation or soil removal undertaken by any other person at the site.

Rail Line and Rail Loop Culverts

- (e) ⁷The size of culverts shall be determined by a practicing engineer in consultation with DLWC prior to construction.
- (f) ⁸The Applicant shall ensure that all culverts are constructed to comply with NSW Fisheries Policy and Guideline for culvert construction, where appropriate.
- (g) ⁹The Applicant shall ensure that the flows or hydraulic levels upstream and downstream of the culverts shall not hinder the passage of fish and aquatic animals.
- (h) ¹⁰The Applicant shall ensure the erosion of the bed and banks shall be prevented with suitable scour protection as recommended by the practising civil engineer referred to in subclause (e) above.

2.6 Site Rehabilitation Management

The Applicant shall:

- (a) carry out rehabilitation of all areas associated with construction and operation of the rail loading facility and rail loop to the satisfaction of the DLWC; and
- (b) report on the success or otherwise of progressive rehabilitation in the AEMR

2.7 Visual Amenity and Landscaping

The Applicant shall, prior to the commencement of construction, prepare and submit for the approval of the Director-General, in consultation with MSC, a detailed Landscape and

⁵ DLWC General Terms of Approval

⁶ DLWC General Terms of Approval

⁷ DLWC General Terms of Approval

⁸ DLWC General Terms of Approval

⁹ DLWC General Terms of Approval

¹⁰ DLWC General Terms of Approval

Revegetation Management Plan prepared by a suitably qualified person. The plan shall include, but not be limited to:

- (i) details of the establishment of vegetation, including:
 - the proposed habitat compensation area and proposed vegetation corridors between the rail line and Thomas Mitchell Drive as described in section 4.9.7 of the EIS, incorporating vegetation and animal protection corridors with regard to the Upper Hunter Synoptic Plan or its latest version;
 - the construction of visual screens along the top of the railway embankment as shown in Figures 4.16 and 4.21 of the EIS or other appropriate lighting controls determined in consultation with FreightCorp; and
 - the construction of mounding or bunding,
for the purposes of maintaining satisfactory visual amenity, ecological functioning and habitat provision;
- (ii) consideration of revegetation works along areas of Ramrod Creek owned by the Applicant;
- (iii) use of indigenous species;
- (iv) details of the visual appearance of all buildings, structures, facilities or works (including paint colours and specifications). Buildings and structures shall be designed and constructed so as to blend as far as possible with the surrounding landscape;
- (v) details, specifications and staged work programs to be undertaken, including a maintenance program of all landscape works, building materials and cladding.

2.8 Bushfire and other Fire Controls

Prior to commencement of construction, the Applicant shall prepare a bushfire management plan to incorporate the area of the rail loading facility and rail loop works to the satisfaction of MSC. The plan shall also describe its integration with the existing bushfire management plan for the Bayswater mine site.

2.9 Land Management

- (a) The Applicant shall, prior to commencement of construction, prepare a Land Management Plan for the areas of the proposed rail loading facilities and rail loop, and its holdings in the DA area, to provide for proper land management in consultation with DLWC, MSC, and to the satisfaction of the Director-General. The plan shall include, but not be limited to:
 - (i) pastures and remnant vegetation management;
 - (ii) prevention and rehabilitation of land degradation;
 - (iii) eradication of vermin and noxious weeds as required by the Rural Lands Protection Authority, the Upper Hunter Weeds Authority, the Prickly Pear Authority and other relevant authorities;
 - (iv) feral animal control; and
 - (v) details of the integration of this plan with the existing Bayswater mine Land Management Plan.

- (b) The Applicant shall minimise the removal of trees and other vegetation from the proposed rail loading facilities and rail loop, and restrict any clearance to the areas occupied by these activities, and those areas necessary for fire control (in accordance with MSC requirements).

Note:

Travelling Stock Reserve:

The travelling stock reserve detailed in Section 2.1.2.1 is Crown land and any proposal involving a private treaty sale/exchange of the land requires the consent of the Minister administering the *Crown Lands Act, 1989*. Enquiries in relation to the procedural aspects of the private treaty purchase of the Crown land as part of an exchange proposal should be directed to the DLWC District Manager, Land NSW (Maitland) PO Box 6, East Maitland 2323 or phone 4934 2280 (ref.MD99H 344).

Native Title:

Any proposal regarding Crown land needs to satisfy the requirements under Commonwealth and State Native Title Act legislation and address the issues of any native title rights or interests that may exist in the land. Enquiries in regard to native title matters should be directed to DLWC's Resource Access Works and Services division PO Box 6, East Maitland 2323 or phone 49342324.

3. Water Management and Monitoring

3.1 Surface & Ground Water Management Plans

- (a) The Applicant shall prior to the commencement of construction, prepare a Site Water Management Plan to the satisfaction of the Director-General and DLWC, which shall include, but not be limited to, the following matters:
- (i) measures to be undertaken to ensure that principles adopted in the surface water and groundwater management for the Bayswater No.2 and Bayswater No.3 sites are extended to the construction and operation stages of the rail loading facilities and rail loop;
 - (ii) management of the quality and quantity of surface and groundwater within the areas covered by the water management plans;
 - (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 below that identified in Table 2.5 of the EIS due to the construction and operation of the rail loading facilities and rail loop;
 - (v) identification of changes in flow of surface waters including Ramrod Creek and unnamed tributaries and all creeks within the DA area due to the construction and operation of the rail loading facilities and rail loop;
 - (vi) ¹¹demonstration of compliance with Sections 20Y and 22BA of the *Water Act (1912)*, concerning any embargoes on water extraction within the Hunter Catchment;
 - (vii) contingency plans for managing adverse impacts of the development on surface and groundwater quality;
 - (viii) ¹² measures to develop and implement a Stormwater Management Scheme to mitigate the impacts of stormwater run-off from and within the premises following the completion of construction activities. The Scheme should be consistent with the Stormwater Management Plan for the catchment. Where a Stormwater Management Plan has not yet been prepared the Scheme should be consistent with the guidance contained in *Managing Urban Stormwater: Council Handbook* or its latest version (available from the EPA).
 - (ix) ¹³details of water make and storage on site, including contingencies in the event of very wet conditions (75% and greater rainfall years) occurring on the site. This must be balanced against the operations water demand or transfer arrangements with adjacent holdings. Specific storage requiring assessment are the main raw water dam, 30 megalitre sedimentation basin and any existing structures that are to be used to supply water to the development;

¹¹ DLWC General Terms of Approval

¹² EPA General Terms of Approval

¹³ DLWC General Terms of Approval

- (x) measures to ensure that poorer quality class waters are effectively reused on the site including consideration of segregation of waters based on salinity classes and other levels of contamination;
 - (xi) measures to isolate heavily contaminated waters, including waters containing oil and grease, operation chemical residues or other criteria, to avoid mixing with reuse or discharge waters;
 - (xii) details of design and maintenance of all storages, diversions, transmission channels and sedimentation dams for the site, to minimise sedimentation of watercourses as a result of the construction and operation of the rail loading facilities and rail loop;
 - (xiii) ¹⁴details of any licensing requirements for any extractions, storages, or other constructions on the site, including any licence requirements for the use of the existing 1000 megalitre dam or the proposed 30 megalitre sedimentation dam;
 - (xiv) measures for assessing chemical water quality impacts of the operations above and below the site;
 - (xv) details of the design and implementation of dust suppression infrastructure as outlined in the EIS, including proposed overhead sprinklers for conveyor wash down;
 - (xvi) details of the integration of this plan with the existing Bayswater Mine Site Water Management Plan; and
 - (xvii) a program for reporting on the effectiveness of the water management systems and performance against objectives contained in the approved site water management plans, and EIS.
- (b) ¹⁵The Applicant shall obtain a licence from DLWC prior to the commencement of construction under Part 3A of the *Rivers and Foreshores Improvement Act 1948* for any development within 40 meters of the banks of any prescribed stream, including Ramrod Creek and several unnamed tributaries. Any permit subsequently granted is not transferable to any other person or company and does not allow operations at any other site.
- (c) ¹⁶The location and nature of any works under the *Rivers and Foreshore Improvement Act 1948* permit shall not be altered unless a subsequent permit is sought.
- (d) ¹⁷The works associated with the proposal shall not significantly damage:
- (i) vegetation outside the area of operation;
 - (ii) the stability of adjacent or nearby streams; or
 - (iii) the quality of water in Ramrod Creek.
- (e) ¹⁸If in the opinion of a DLWC officer any work undertaken in accordance with a permit under the *Rivers and Foreshores Improvement Act (1948)* is being carried out in such a

¹⁴ DLWC General Terms of Approval

¹⁵ DLWC General Terms of Approval

¹⁶ DLWC General Terms of Approval

¹⁷ DLWC General Terms of Approval

manner as it may significantly damage or detrimentally affect Ramrod creek beyond approved works, or damage or interfere in any way with any work, the operation on that section of the creek shall cease upon oral or written direction of such officer.

Note:

¹⁹ Pollution of waters

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.

3.2 Surface and Groundwater Monitoring

(a) The Applicant shall:

- (i) prepare a monitoring program in respect of ground and surface water quality and quantity, including water in and around the DA area during construction and operation of the rail loading facility and rail loop in consultation with DLWC, and to the satisfaction of the Director-General. The monitoring program shall:
 - include the duration (pre, during, and post operations), of any additional sites to be sampled, frequency of sampling, the parameters to be measured, the need for any contingency plans, the reporting procedure and determination of appropriate cut-off criteria for monitoring purposes determined in consultation with DLWC;
 - include long term monitoring of the condition of Ramrod Creek and affected downstream watercourses during the life of the rail loading facility and rail loop. This shall include the monitoring of the chemical and biological state of Ramrod Creek to assess the level of impact occurring as a result of the proposal. In the event that the monitoring identifies any adverse impacts are occurring, a plan of remediation shall be developed and implemented to the satisfaction of DLWC; and
 - outline the integration of this monitoring program with the monitoring program for the Bayswater mine site.
- (ii) construct and locate any additional surface and groundwater monitoring positions, as identified in the mine monitoring program in consultation with DLWC, and to the satisfaction of the Director-General, prior to the commencement of construction;
- (iii) ²⁰The Applicant shall submit a water quality monitoring report to DLWC to allow DLWC to assess water quality data handling requirements for the catchment water quality archive. This report must include site locations (mapped and AMG co-ordinates), water quality sampling design and data handling, and provision of electronic and hard copy water quality data to DLWC. This water quality reporting shall be incorporated into the AEMR (refer to condition 8.1).

4. Waste Management

4.1 Waste

¹⁸ DLWC General Terms of Approval

¹⁹ EPA General Terms of Approval

²⁰ DLWC General Terms of Approval

²¹The licensee must not cause, permit or allow any waste generated outside the premises to be received at the premises for storage, treatment, processing, reprocessing or disposal or any waste generated at the premises to be disposed of at the premises, except as expressly permitted by a licence under the Protection of the Environment Operations Act 1997.

Note: This condition only applies to the storage, treatment, processing, reprocessing or disposal of waste at the premises if it requires an environment protection licence under the Protection of the Environment Operations Act 1997.

²¹ EPA General Terms of Approval

5. Air Quality, Blast, Noise and Light Management and Monitoring

5.1 Air Quality Management and Monitoring

Dust Management Plan

- (a) The Applicant shall, prior to the commencement of construction, prepare a Dust Management Plan detailing air quality safeguards and procedures for dealing with dust emissions from the Bayswater rail loading facility and rail loop to the satisfaction of the Director-General. The Plan shall be prepared in consultation with the owners of Drayton mine with the aim of achieving a consistent approach in the preparation of the Dust Management Plans for the Bayswater and Drayton 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 Drayton rail loop and Antiene rail spur where necessary;
 - the procedure to notify property owners and occupiers likely to be affected by dust from construction and operation;
 - 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 the construction and operation is 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 any additional locations for dust monitoring and deposition gauges (including existing Bayswater monitoring locations if proposed to be used) at residential areas and frequency of monitoring, as agreed with the EPA;
 - details of the integration of this plan with the Bayswater mine dust management plan, and this plan's inter-relationship with the Drayton rail facilities dust management plan; and
 - a program to continue baseline monitoring undertaken prior to development consent.

Air Quality and Dust Monitoring

- (b) The Applicant shall:
- (i) undertake monitoring at locations described in the Dust Management Plan (Condition 5.1(a));
 - (ii) establish and/or supplement existing dust deposition and PM₁₀ monitoring locations for construction and operation, including sites for monitoring impacts of dust at the nearest non-mined owned residences, the location of existing relevant Bayswater or Drayton monitoring locations proposed to be used, and locations as may be determined to be necessary by the Director-General in

in accordance with 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) ²²Monitoring for the concentration of a pollutant emitted to the air required to be conducted by the EPA's general terms of approval, or a licence under the Protection of the Environment Operations Act 1997, in relation to the development or in order to comply with a relevant local calculation protocol must be done in accordance with:
- any methodology which is required by or under the POEO Act 1997 to be used for the testing of the concentration of the pollutant; or
 - if no such requirement is imposed by or under the POEO Act 1997, any methodology which the general terms of approval or a condition of the licence or the protocol (as the case may be) requires to be used for that testing; or
 - if no such requirement is imposed by or under the POEO Act 1997 or by the general terms of approval or a condition of the licence or the protocol (as the case may be), any methodology approved in writing by the EPA for the purposes of that testing prior to the testing taking place.

Note: The Clean Air (Plant and Equipment) Regulation 1997 requires testing for certain purposes to be conducted in accordance with test methods contained in the publication "Approved Methods for the Sampling and Analysis of Air Pollutants in NSW".)

- (d) ²³Monitoring 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 methods, 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
- (e) 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 costs of, in consultation with the owner's of the Drayton rail loop and Antiene rail spur, 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 and contribution of the Bayswater rail loading facility and rail loop;
 - (iii) modify the operation in accordance with the Dust Management Plan if exceedences are demonstrated to result from the rail loading facility and/or rail loop activities. This shall include:

²² EPA General Terms of Approval

²³ EPA General Terms of Approval

- 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 Drayton rail loop and Antiene rail spur and
- (iv) 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.

- (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.
- (g) 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.

5.2 Dust Suppression and Control

- (a) ²⁴Activities 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 co-operate with the relevant mining operators to limit the cumulative noise contributions from the operation of Bayswater rail loading facility and rail loop such that these noise levels in conjunction with the total cumulative noise emissions from the operations of the existing Bayswater mine, Drayton coal mine, Drayton rail loop, 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 Bayswater rail loop 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.

²⁴ EPA General Terms of Approval

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 co-operate with the relevant operators to limit the cumulative noise contributions from the operation of Bayswater rail loading facility and rail loop such that these noise levels in conjunction with the total cumulative noise contributions from the operations of the Bayswater mine, Drayton rail loop, Antiene rail spur, Drayton coal mine, 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 11.1). The applicant shall also ensure that the noise levels from the Bayswater rail loading facility and rail loop alone shall 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 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 Bayswater rail loop and rail loading facility alone 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 Drayton mine, 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 the contribution of the Bayswater rail loading facility and rail loop to the effect;
 - (iii) modify the rail loading facility and rail loop operations in accordance with a noise reduction plan prepared as part of the noise management plan, if exceedences are demonstrated to result from rail loading and rail loop 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 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 the Drayton rail loop and Antiene rail spur 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 Drayton mine 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 or EPA amenity criteria 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 Plans

- (a) The Applicant shall within three months of the date of this consent, prepare a Noise Management Plan for the Bayswater rail loading facility, to the satisfaction of the Director-General. The Plan shall be prepared in consultation with the owner of Drayton mine with the aim of achieving a consistent approach in the preparation of the Bayswater 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 $L_{eq(15\text{ minute})}$ (project alone) and $L_{eq(9\text{ hour}/4\text{ hour}/11\text{ hour})}$ (cumulative) noise emission levels due to normal operations of the rail loading facility and rail loop under adverse weather conditions;
 - details of the proposed methodologies including establishing the rail loading facility and rail loop 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 modelling or other studies including the means for determining the noise levels emitted by the rail loading facility and rail loop;
 - 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 Coal Operations Australia Limited Response to the 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 Drayton 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);
 - outline construction details of the acoustic screens to be constructed between

chainages 700 – 1100 and 5200 – 6600 as shown on Figure 7 of the COAL Response to Summary of Submissions Received from DUAP 2 June 2000, prepared by Umwelt (Australia) Pty Ltd, August 2000;

- 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 Bayswater mine Noise Management Plan, and the inter-relationship of this plan with the Drayton rail facility's noise management plan.
- (b) Prior to commencement of construction, the Applicant must prepare, and subsequently implement, a Construction Noise Management Plan to the satisfaction of the Director-General. The Plan shall include, but not be limited to, the following matters:
- compliance standards;
 - community consultation;
 - complaints handling monitoring/system;
 - site contact person to follow up complaints;
 - mitigation measures;
 - the design/orientation of the proposed mitigation methods demonstrating best practice;
 - construction times;
 - contingency measures where noise complaints are received;
 - monitoring methods and program.
- (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 (refer condition 8.1(a)).

5.3.3 Noise Monitoring

- (a) ²⁵The 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 $L_{Aeq, 9hour}$, $L_{Aeq, 15min}$, $L_{A90, 15 min}$, and $L_{A1, 1 min}$ and include an assessment of the impact of operational noise on adjoining residents.
- (b) ²⁶Noise 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

²⁵ EPA General Terms of Approval

²⁶ EPA General Terms of Approval

- (a) The Applicant shall prior to commencement of operations prepare a Light Management Plan to the satisfaction of MSC and the Director-General. The Plan shall include:
- (i) details of the implementation of visual controls discussed in section 4.12.4 of the EIS and as detailed section 2.8 of Response to Summary of Submissions Received from DUAP 2 June 2000, to screen or direct or manage all headlights from trains travelling along the Bayswater Rail loop away from Thomas Mitchell Drive and residences, to the satisfaction of MSC. These visual controls shall include:
 - planting of the vegetation corridors between the Bayswater rail line and Thomas Mitchell Drive; and
 - construction of visual screens along the top of the rail embankment as shown in Figures 4.16 and 4.21 of the EIS; and/or
 - other effective operating practices developed in consultation with FreightCorp.
 - (ii) details of any measures, apart from those listed in (i), to be adopted to screen and direct all on-site lighting away from residences and roadways.
- (b) The Application shall report the effectiveness of the visual controls in the AEMR.

6. Transport and Utilities

6.1 *Limits on Transportation of Coal*

- (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.

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 Drayton Coal Pty Ltd (Drayton) for increased coal transport tonnage using the existing Drayton Rail Loop and Antiene Rail Spur. Condition 6.1 of the Drayton consent is as follows:

- (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 is 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.

6.2 *Rail arrangements*

The Applicant shall consult with:

- (i) the owners of Drayton mine, prior to construction of the rail turn out from the Antiene Rail Spur to the Bayswater Rail Loop, to determine an appropriate period for construction when Drayton mine is not engaged in a coal haulage campaign; and

- (ii) Rail Access Corporation prior to the installation of signalling for the Bayswater Rail Loop to co-ordinate integration of the signalling system with Rail Access Corporation's existing signalling network.

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 Drayton 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 Drayton mine of its planned shipping schedule for coal haulage for each of the then ensuing three months.

6.3 Road Transport

No coal from Bayswater mine shall be hauled on public roads after commercial rail haulage from the Bayswater Rail Loading Facility has commenced, except under emergency or special situations and only with the prior written permission of the Director-General, RTA and MSC.

6.4 Thomas Mitchell Drive

- (a) ²⁷Access points to all construction sites off Thomas Mitchell Drive need to be identified in consultation with MSC. The access points shall be limited to no more than two, in addition to the construction corridor (for the purposes of bridge construction), and shall be properly developed with appropriate signs and traffic management plans.
- (b) ²⁸The location of the new access road to Bayswater mine and its intersection with Thomas Mitchell Drive shall be identified in consultation with MSC.
- (c) ²⁹A joint audit of road condition along Thomas Mitchell Drive shall be conducted by the Applicant and MSC prior to the commencement of construction and after the completion of construction activities to assess any damage caused by construction. The Applicant shall cover all cost of the audit.
- (d) ³⁰Under no circumstances is Thomas Mitchell Drive to be used for haulage of excavated materials around the construction sites.
- (e) ³¹Temporary closures shall also be advertised in a paper circulating in the local area 24 hours prior to any closures taking place.
- (f) ³²Construction work, within the road reserve, is to be carried out in accordance with Council's environmental requirements which include:
- appropriate dust mitigation measures to control dust generated as a result of the construction activities;
 - erosion and sediment control in accordance with MSC's Erosion and Sediment Control Policy and Code of Practice;
 - rehabilitation of any areas disturbed as a result of construction activities to its state prior to construction; and
 - the protection of Ramrod Creek and its tributaries from pollution as a result of the construction activities.

²⁷ Muswellbrook Shire Council General Terms of Approval

²⁸ Muswellbrook Shire Council General Terms of Approval

²⁹ Muswellbrook Shire Council General Terms of Approval

³⁰ Muswellbrook Shire Council General Terms of Approval

³¹ Muswellbrook Shire Council General Terms of Approval

³² Muswellbrook Shire Council General Terms of Approval

6.5 Provision of Utility Services

Prior to construction the Applicant shall consult with affected service authorities and make arrangements satisfactory to those authorities for the protection or relocation of services (such as transmission lines, pipelines, optic cables etc) prior to the commencement of construction activities. This shall include consultation with Energy Australia in regard to the relocation of the 11kv and 33kv transmission lines that currently traverse the Bayswater Rail Loop and Loading Facility locations.

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 2, 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 the use of the rail loading facility and rail loop in the DA area, or as otherwise directed by the Director-General, the Applicant shall conduct an environmental audit of the infrastructure areas of the development 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, as far as possible, be co-ordinated with the audit for the Drayton coal transport (rail) operations. Copies of the report shall be submitted by the Applicant to the Director-General, MSC, EPA, DLWC, DMR, NPWS 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 operation, 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 Bayswater 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 Bayswater Colliery AEMR to the satisfaction of the Director-General. The AEMR shall review the performance of the facility against the Environmental Management Strategy, the conditions of this consent, and other licences and approvals relating to the facility. To enable ready comparison with the predictions made in 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 facility in terms of EPA, DLWC, 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 the facility;
 - (v) an assessment of any changes to agricultural land suitability resulting from the facility operations, including cumulative changes;
 - (vi) a listing of any variations obtained to approvals applicable to the subject area during the previous year;
 - (vii) the outcome of the water budget for the year, the quantity of water used from water storages and details of discharge of any water from the site;
 - (viii) detail of rehabilitation of the site undertaken to date; and
 - (ix) 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 requests made by the Director-General for any additional requirements;
 - (ii) comply with any requirements of the Director-General or other relevant government agencies; and
 - (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 AEMR after the date of this consent.
- (c) The Applicant shall ensure that copies of each AEMR are submitted at the same time to DUAP, EPA, DLWC, NPWS, MSC and CCC, and made available for public information at MSC within fourteen days of submission to these authorities.

8.2 Recording and Reporting Requirements

Monitoring Records

- (a) ³³The results of any monitoring required to be conducted by the EPA's general terms of approval, or a licence under the Protection of the Environment Operations Act 1997, in relation to the development or in order to comply with the load calculation protocol must be recorded and retained as set out in subclauses b and c.
- (b) ³⁴All records required to be kept by the licence must be:
- in a legible form, or in a form that can readily be reduced to a legible form;
 - kept for at least 4 years after the monitoring or event to which they relate took place; and
 - produced in a legible form to any authorised officer of the EPA who asks to see them.
- (c) ³⁵The following records must be kept in respect of any samples required to be collected:
- the date(s) on which the sample was taken;
 - the time(s) at which the sample was collected;
 - the point at which the sample was taken; and
 - the name of the person who collected the sample.
- (e) The Applicant must provide an annual return to the EPA in relation to the development as required by any licence under the Protection of the Environment Operations Act 1997 in relation to the development. In the return the Applicant must report on the annual monitoring undertaken (where the activity results in pollutant discharges), provide a summary of complaints relating to the development, report on compliance with licence conditions and provide a calculation of licence fees (administrative fees and, where relevant, load based fees) that are payable. If load based fees apply to the activity the applicant will be required to submit load-based fee calculation worksheets with the return. This may form part of the AEMR.

³³ EPA General Terms of Approval

³⁴ EPA General Terms of Approval

³⁵ EPA General Terms of Approval

³⁶ EPA General Terms of Approval

9. Community Consultation/Obligations

9.1 Community Consultative Committee

- (i) The Applicant shall, at its own expense:
 - (a) provide to the existing Bayswater Community Consultative Committee (CCC), or its equivalent, regular information on the progress of the construction and operation of the rail loading facility and rail loop 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 construction and operation; and
 - (c) provide access for site inspections by the Committee.
- (ii) The Applicant shall co-ordinate with Drayton mine, joint meetings of the Bayswater and Drayton 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 Officer employed by Bayswater mine (refer condition 2.1) shall be responsible:
 - (i) for recording complaints with respect to construction and operation of the rail loading facility and rail loop in accordance with the existing Bayswater 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 construction, and operation of the Bayswater rail loading facility and rail loop throughout the life of the project every six months 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 with the existing complaints recording in the Bayswater mine AEMR, or its equivalent (condition 8.1(a)).
 - (iii) consult with the environmental co-ordinator employed by the Drayton mine to co-ordinate 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 Bayswater rail loading facility and rail loop and other nearby mining/industrial activities, including the Drayton rail loop and Antiene rail spur, 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 the Bayswater rail loading facility and rail loop 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 Singleton or Muswellbrook 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 operations of the Bayswater rail loading facility and rail loop, prepare a Joint Acquisition Management Plan with the owner of Drayton mine, 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 Drayton mine in regard to meeting the acquisition procedure requirements outlined in condition 11.2 of this consent relating to the cumulative impacts of the Bayswater rail loading facility and rail loop, the existing Bayswater mine, Drayton coal mine, Drayton rail loop, Antiene rail spur and 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, Rivers and Foreshores Improvement Act 1948, Water Act 1912, National Parks and Wildlife Act 1974, Mine Subsidence Act 1961 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, DMR, NPWS, DLWC, MSB, RTA, NSW Agriculture, NSW Fisheries, and RAC, are fully met.

(b) Structural Adequacy

Detailed plans and specifications relating to the design and construction of all structural elements associated with the proposed development are to be submitted to the Principal Certifying Authority prior to the commencement of construction works. Such plans and specifications must be accompanied by certification provided by a practicing professional structural engineer or an accredited certifier certifying the structural adequacy of the proposed building design and compliance with the Building Code of Australia.

(c) Verification of Construction

Upon completion of building works and prior to the issue of an occupation certificate, a certificate/s prepared by a suitably qualified person or a compliance certificate/s issued by an accredited certifier, is to be submitted to the Principal Certifying Authority certifying that the following building components, where relevant, have been completed in accordance with approved plans and specifications:

- (i) footings;
- (ii) concrete structures, including ground floor and any subsequent floors, retaining walls and columns;
- (iii) framing and roof structure;
- (iv) fire protection coverings to building elements required to comply with the Building Code of Australia; and
- (v) mechanical ventilation.

The certificate/s shall demonstrate at what stage of construction inspections were undertaken.

12.2 Approvals within a Mine Subsidence District

³⁷The Applicant shall seek the approval of the Mine Subsidence Board for the construction of any improvements, including those related to the rail loading facility and rail loop, any relocation or diversion of infrastructure or existing improvements, prior to undertaking the works.

³⁷ Mine Subsidence Board General Terms of Approval