

# **ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979**

## **DETERMINATION OF A DEVELOPMENT APPLICATION PURSUANT TO SECTION 92**

I, the Minister for Urban Affairs and Planning, pursuant to Section 91 of the Environmental Planning and Assessment Act, 1979 ("the Act") and clause 8 of State Environmental Planning Policy No. 34 - Major Employment Generating Industrial Development, 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 set out in Schedule 2. The reason for the imposition of conditions generally is to minimise any adverse effects from the development, consistent with the objectives of the Act.

Craig Knowles  
**Minister for Urban Affairs and Planning**

Sydney, 19 October 1995

File No. N90/00356

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### **Schedule 1**

<b>Application made by:</b>	Bloomfield Collieries Pty Ltd ("the Applicant").
<b>To:</b>	The Minister for Urban Affairs and Planning ("the Minister").
<b>In respect of:</b>	Coal Lease 352 and land subject to Coal Lease Application No. 17 Singleton.
<b>For the following:</b>	Construction and operation of surface coal mine extensions ("the development").
<b>Development Application:</b>	DA49/94 lodged with Department of Urban Affairs and Planning on 30 November, 1994 accompanied by an Environmental Impact Statement prepared by HLA-Envirosciences Pty Ltd dated 29 November, 1994, and a supplement dated April 1995.
	(1) To ascertain the date upon which the consent becomes effective, refer to section 93 of the Act.
	(2) To ascertain the date upon which the consent is liable to lapse, refer to section 99 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 this notice.

**SCHEDULE 2**  
**CONDITIONS OF CONSENT**

**Red type represents February 1999 modification**

**Blue type represents December 2003 modification**

**Green type represents June 2004 modification**

**Orange type represents August 2009 modification**

**Light Blue type represents November 2013 modification**

**Purple type represents November 2014 modification**

**Pink type represents February 2016 modification**

Note: References to the “Secretary” in this consent mean the Secretary of the Department of Planning & Environment, and include a nominee of the Secretary.

**General**

1. The Development is to be carried out generally in accordance with the:
  - (i) Environmental Impact Statement prepared by Envirosiences Pty Limited, dated November 1994;
  - (ii) Supplementary Document prepared by Envirosiences Pty Limited, dated April 1995;
  - (iii) Correspondence from Bloomfield Collieries Pty Limited accompanying the application seeking a modification to the development consent, dated 12 November 1998;
  - (iv) Information provided by Rix’s Creek Mine accompanying the application seeking a modification to the development consent, dated 20 November 2003;
  - (v) Information prepared by Hunter Development Brokerage Pty Ltd accompanying the application seeking a modification to the development consent, dated 14 April 2004;
  - (vi) the modification application “Rix’s Creek Mine Cut and Cover Tunnel, New England Highway: Statement of Environmental Effects”, prepared by Sinclair Knight Merz and dated May 2009;
  - (vii) the modification application DA 49/94 MOD 5 and accompanying documents entitled *Rix’s Creek Rail Loop Section 75W Modification Environmental Assessment* dated April 2013, *Submissions Report Modification No.5 – Proposed Rail Loop and Loading Facility* dated July 2013, and letter from Global Acoustics regarding Rix’s Creek Proposed Rail Loop Environmental Noise Assessment dated 10 September 2013;
  - (viii) the modification application DA 49/94 MOD 6 and accompanying letter from Rix’s Creek Pty Limited titled *Proposed Modification to Rix’s Creek Open Cut Mine Maximum Consented Production Rate* and dated 22 October 2014; and
  - (ix) the modification application DA 49/94 MOD 7 and accompanying document from Bloomfield Collieries Pty Ltd titled *Environmental Assessment for Proposed Modifications to Rix’s Creek DA 49/94 N90/00356 (Mod 7) and Integra Open Cut Project 08\_0102 (Mod 5)* and dated 4 February 2016.
- 1A. The Development is to be carried out in accordance with the conditions of this consent.
- 1B. If there is any inconsistency between the documents listed in condition 1, the more recent document shall prevail to the extent of the inconsistency. The conditions of this consent shall prevail over all documents listed in condition 1.

## **Duration**

2. Approval in respect of coal extraction is limited to a period of 21 years from the date of this consent or from the date of issue of a mining lease in satisfaction of Mining Lease Application No. 17 Singleton wherever is the later.

## **Statutory Requirements**

3. The Applicant shall ensure that all statutory requirements including but not restricted to those set down by the Local Government Act, 1993, Pollution Control Act, 1970, Clean Air Act, 1961, Clean Water Act, 1970, Noise Control Act, 1975, Protection of the Environment Administration Act, 1991 and all other relevant legislation, Regulations, Australian Standards, Codes, Guidelines and Notices, Conditions, Directions, Notices and Requirements of the [Office of Environment and Heritage \(OEH\)](#), [Environment Protection Authority \(EPA\)](#), [Department of Primary Industries Water \(DPI Water\)](#), [Division of Resources and Energy \(DRE\)](#) and [Roads and Maritime Services \(RMS\)](#), are fully met.

## **Production Level**

4. Mining plans for submission to [DRE](#) shall be based on a total movement of materials in mining not exceeding [16.1](#) million bank cubic metres in any year.

## **Transmission Line Relocation**

5. The Applicant shall relocate any TransGrid transmission lines within the mining lease to the satisfaction of TransGrid and at a mutually agreed time.

**Reasons:** To ensure that the development is constructed and operated in the manner set out in the application and in accordance with the relevant statutory requirements.

## **Visual Amenity**

6. The Applicant shall:
  - (i) within six (6) months of the date of this consent or within such further period as the Singleton Council ("the Council") may permit, submit for Council's approval:
    - (a) An updated detailed landscaping plan covering all portions within the proposed mining area and associated lands owned by the Applicant. The Applicant shall engage a suitably qualified person to assist in preparing the landscaping plan. The plan shall provide for the establishment of trees and shrubs and the construction of mounding. The plan shall incorporate appropriate erosion control and sediment control practices for earthworks associated with the development.
    - (b) 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/renovated so as to present a neat and orderly appearance and to blend as far as possible with the surrounding landscape.
    - (c) A comprehensive plan of landscape management which shall include detailed plans, specifications for the maintenance of all landscape works and plantings, and maintenance of building materials and claddings, proposed screen plantings and mounding along the New England Highway and mine overburden dumps.
  - (ii) apply a surface sealant such as bitumen emulsion, straw or seed within 30 days of its construction to any mounding or bunding as directed by [EPA](#).

- (iii) comply with the requirements of Council in respect to any supplementary tree planting and visual amenity enhancement works within or immediately outside the mining lease area which may be identified by the Council in consultation with relevant land holders as necessary for the maintenance of satisfactory visual amenity in the local area.

**Reasons:** To enhance the landscape quality in the vicinity of the mine.

### **Flood Lighting**

- 7. The Applicant shall screen or direct all on-site flood lighting and vehicular lights away from residences and roads, to the satisfaction of the Council.

### **Fire Protection**

- 8. The Applicant shall provide adequate fire protection works on site. This shall include one (1) fully equipped fire fighting unit on standby and annual hazard reduction works with particular attention to boundaries of adjoining land holdings.

### **Traffic Management**

- 9. The Applicant shall prepare a Traffic Management Plan for the development, to the satisfaction of the Secretary. The Plan must:
  - (i) be submitted to the Secretary for approval prior to commencement of construction of the cut and cover tunnel;
  - (ii) be prepared in consultation with the RMS and Singleton Shire Council;
  - (iii) include procedures for regular monitoring of compliance with this plan; and
  - (iv) include a Construction Traffic Management Plan for the construction of the rail loop and rail spur, including:
    - traffic control measures for vehicle movements along the New England Highway;
    - measures that would be implemented to minimise traffic and road safety impacts, and
    - management of heavy vehicles, particularly oversize loads to and from the site.

The Applicant shall implement the management plan as approved from time to time by the Secretary.

- 9A. The Applicant shall obtain all necessary approvals from the RMS prior to commencing construction.

### **Noise Levels**

- 10. The Applicant shall
  - (i) comply with L<sub>A</sub> 10 daytime noise level design goals set out below:

The Retreat	42dB(A)
Singleton Heights	42dB(A)
Maison Dieu Road	38dB(A)

- (ii) comply with L<sub>A</sub> 10 night time noise level design goals set out below:

The Retreat	40dB(A)
Singleton Heights	40dB(A)
Maison Dieu Road	38dB(A)

These goals relate to average conditions (neutral atmosphere) and not to inversion conditions.

### Noise and Vibration Monitoring and Management

#### 11. The Applicant shall:

- (i) measure, record and report the  $L_A$  10,15 min noise level over a representative 72 hour period at four (4) locations determined by the EPA from five (5) nominated locations closest to the mining operations. The report shall include a record of the meteorological conditions at the time of monitoring and shall be conducted on a quarterly basis. Monitoring shall commence immediately after the date of this Consent.
- (ii) submit a management plan for information of the Council and approval by EPA, detailing noise safeguards and procedures for dealing with noise episodes which exceed the above established  $L_A$  10 noise levels;
- (iii) establish noise monitoring stations in the vicinity of Maison Dieu Road, as required by EPA;
- (iv) upon receipt of a written request from an owner or occupier of a dwelling on property in the vicinity of Maison Dieu Road, make arrangements for and bear the cost of independent noise monitoring at that residence. The monitoring is to be carried out by a qualified independent person or team approved by the Secretary in consultation with the Council, EPA and the Applicant. The approved person or team will report directly to the Secretary and Applicant on a quarterly basis. Monitoring shall commence within one (1) month from receipt of the written request to determine the contribution of noise emanating from the mine to the surrounding acoustical environment over at least two (2) consecutive 15 minute periods, twice by day and twice by night over a 72 hour period. For the first six (6) months following this Consent the interval between two (2) consecutive monitoring periods shall not exceed four (4) weeks. Thereafter, the interval between two (2) consecutive monitoring periods shall not exceed three (3) months.
- (v) if a request for independent noise monitoring is made by an owner or occupier of a dwelling on property in the vicinity of Maison Dieu Road who has previously been monitored and received two (2) consecutive negative tests under sub-clause (iv), further independent investigations shall cease if the Secretary or his/her nominee, in consultation with the EPA, is satisfied that the relevant consent limits are not being exceeded and are unlikely to be exceeded in the future.
- (vi) upon the receipt of a written request from an owner or occupier that has received two (2) consecutive negative results under sub-clause (iv), the Applicant shall also justify to the Secretary or his/her nominee, in consultation with the EPA whether an investigation is required.
- (vii) survey and investigate noise reduction measures from plant and equipment every three (3) years or as otherwise directed by EPA and carry out remedial measures as directed by EPA.

#### 11A. Prior to construction of the rail loop and rail spur, the Applicant shall:

- (i) prepare (and during construction implement) a Construction Noise Management Plan prepared in accordance with the *Interim Construction Noise Guideline* (DECC, 2009) (or any relevant updated version), to the satisfaction of the Secretary; and
- (ii) install temporary noise barriers in a suitable location to minimise noise impacts resulting from construction of the southern section of the rail spur, unless otherwise agreed by the Secretary.

- 11B. The Applicant shall ensure that construction activities are restricted to standard construction hours specified in the *Interim Construction Noise Guideline* (DECC, 2009). If works are required outside standard construction hours, the Applicant shall consult with the community and seek approval from the Secretary prior to commencement of construction.

## **Blasting**

12. The Applicant shall:

- (i) ensure that noise and vibration monitoring and control is generally carried out in accordance with the recommendations of Australian Standard AS-2187-1993 and in terms of ANZECC Guidelines and to satisfaction of the EPA.
- (ii) not blast within 500m of the New England Highway or any approved deviation of the highway while either are open for traffic.
- (iii) design all blasts based on the results of monitored blasts designed to minimise air blast overpressure and ground vibration using the Nonel or equivalent system such that anyone (1) blast has less than a five per cent (5%) probability of exceeding an air blast overpressure of 115dBA and vibration with a peak particle velocity of 5mm/sec at the closest residence not owned by the applicant outside the mining lease.
- (iv) determine appropriate weather data by taking measurements immediately prior to blasting and from the data shall predict whether noise levels outside the project area are likely to be increased above the levels expected under neutral meteorological conditions. The data shall be recorded by the Applicant as part of its monitoring data.
- (v) not blast if the predictions in sub-clause (iv) herein indicate that noise level design goals given in Condition 10 are likely to be exceeded or as otherwise advised by EPA.
- (vi) monitor all blasts and record the overpressure and peak particle velocity at locations to be agreed by EPA and the DRE and as provided in Condition 11(iv).
- (vii) upon written request of the owner of any property located within two (2) kilometres of the boundaries of the proposed pits, and made within 6 months of issue of this Consent or after a large vibration event (likely to have exceeded 120 dB(L) overpressure and/or 10mm/sec ground vibration) at the residence, arrange at its own cost, for the inspection by a technically qualified person agreed to by both parties, to record the material condition of any structure on such property. The Applicant shall supply a copy of any inspection report, certified by the person who undertook the inspection, to the relevant property owner within 14 days of receipt of same and if warranted, shall undertake further action;
- (viii) immediately upon receipt of a written request from a resident within one (1) km of any blast site, record that resident's request for notification of blasts and henceforth notify that resident of any blasts from which they are potentially affected.

**Reasons:** To protect the acoustic amenity of residents adjacent to the mine and to provide for monitoring of noise and vibration.

## **Air Quality**

13. The Applicant shall:

- (i) install and utilise wind direction, velocity monitoring and recording station(s) at a non protected location immediately adjacent to the area to be mined in the vicinity of Maison Dieu Road and Middle Fallbrook Road over each ensuing 12 month period as directed by EPA.

- (ii) use the data collected by the wind monitoring and recording station referred to in subclause (i) above to determine when and how the mine operation is to be modified to minimise the potential for dust emissions.
- (iii) install 30 dust deposition gauges and in each calendar month shall determine the dust deposition rate in gm/m<sup>2</sup>/month such that the 4gm/m<sup>2</sup>/month isopleth for dust deposition is able to be plotted on an annual basis.
- (iv) continue meteorological monitoring as well as the monitoring of dust deposition rates and concentrations of total suspended particulates for the life of the mine subject to sub-clause (i). The extent and location of dust monitoring network to be specified by the EPA.
- (v) have three (3) high volume samplers equipped to sample particles of less than 10 microns located in positions approved by the EPA. Sampling is to be undertaken on a 24hr 6 days per week cycle with averaging periods (annual means) as well as monitoring equipment/procedures to follow AS2724.3 and AS3508.9.6.
- (vi) provide to the Secretary, EPA, DRE, and the Council results and analysis of air quality monitoring on an agreed basis.
- (vii) cease those mining operations located within 1000m of the limit of mining at such times when the average hourly wind velocity exceeds 10 metres per second and the operations are resulting in visible dust emissions blowing in a direction of the mining lease boundary so as to cross onto lands in non-company ownership.
- (viii) cease mining operations at any time when the driver visibility or traffic safety on the New England Highway is adversely affected, in accordance with the requirements of the RMS.

### **Dust Suppression**

#### **14. The Applicant shall:**

- (i) maintain sufficient equipment with the capacity to apply water to all unsealed trafficked areas at the rate of at least one (1) litre per square metre per hour or apply an equally effective dust suppressant;
- (ii) ensure the prompt rehabilitation of all disturbed areas to minimise the generation of wind erosion dust, in accordance with the requirements of DRE;
- (iii) install automatic water sprays on the coal stockpiles such that the stockpiles are sprayed when the wind speed from any direction exceeds 5.6m/s;

**Reasons:** To protect the air quality adjacent to the mine and to provide for monitoring of dust deposition and concentration.

### **Greenhouse Gas Emissions**

#### **14A. The Applicant shall implement all reasonable and feasible measures to minimise:**

- (i) energy use associated with the development; and
- (ii) greenhouse gas emissions produced by the development, to the satisfaction of the Secretary.

### **Water Management Plan**

#### **15. The Applicant shall prepare a Water Management Plan for the development to the satisfaction of the Secretary. This Plan must:**

- (i) be prepared in consultation with DPI Water by a suitably qualified expert whose appointment has been approved by the Secretary;
- (ii) be submitted to the Secretary by 31 March 2010; and
- (iii) include:

- a site water balance for the development, which includes details of sources and security of water supply, on site water use and management and off site water transfers and investigates and describes measures to minimise water use by the development.
- details on the diversion of Rix's Creek, including updates on monitoring and rehabilitation;
- a surface water monitoring program with:
  - detailed baseline data of surface water flows and quality in the watercourses that could be affected by the development;
  - surface water impact assessment criteria, including trigger levels for investigating potentially adverse surface water impacts of the development;
  - a program to monitor surface water flows and quality in the watercourse that could be affected by the development.
- a groundwater monitoring program with:
  - detailed baseline data of groundwater levels, yield and quality in the region, and privately owned groundwater bores, which could be affected by the development;
  - groundwater impact assessment criteria, including trigger levels for investigating any potentially adverse groundwater impacts of the development; and
  - a program to monitor:
    - groundwater inflows to the open cut mining operations; and
    - impacts of the development on the regions aquifers, any groundwater bores, and surrounding watercourses, including monitoring to the western boundary of the mine lease ; and
- a surface and groundwater response plan which describes the measures and/or procedures that would be implemented to:
  - respond to any exceedances of the surface water and groundwater assessment criteria;
  - offset the loss of any baseflow to the surrounding watercourse and/or associated creeks caused by the development;
  - compensate landowners of privately-owned land whose water supply is adversely affected by the development; and
  - mitigate and/or offset any adverse impacts on groundwater dependent ecosystems or riparian vegetation.

The Applicant shall implement the management plan as approved from time to time by the Secretary.

### **Erosion and Sediment Control Plan**

- 15A. The Applicant shall prepare an Erosion and Sediment Control Plan. This Plan must:
- (i) be consistent with the requirements of the *Managing Urban Stormwater: Soils and Construction Manual* (Landcom 2004, or its latest version);
  - (ii) identify activities that could cause soil erosion and generate sediment;
  - (iii) describe measures to minimise soil erosion and the potential for transport of sediment to downstream waters;
  - (iv) describe the location, function, and capacity of erosion and sediment control structures; and
  - (v) describe what measures would be implemented to monitor and maintain the structures over time.

The Applicant shall implement the plan as approved from time to time by the Secretary.



## **Rixs Creek Diversion**

16. The Applicant shall:

- (i) liaise with **DPI Water** and meet their requirements for the design, construction and maintenance of any diversion of Rixs Creek;
- (ii) not divert Rixs Creek in the southern mining area;
- (iii) not mine within 20m of the bank of Rixs Creek in Pit 2 and Pit 3.

**Reasons:** To protect water quality in Rixs Creek and to provide for water management measures at the site.

## **Landscape Management**

16A. The Applicant shall prepare a detailed Landscape Management Plan for the development to the satisfaction of the **DRE** and the **Secretary**. This plan must:

- (i) be prepared in consultation with **OEH**, **DPI Water** and Singleton Shire Council by suitably qualified expert/s whose appointment/s have been approved by the **Secretary**;
- (ii) include a:
  - Rehabilitation Management Plan to be submitted for approval by the **Secretary** by 31 March 2010;
  - Final Void Management Plan to be submitted for approval by the **Secretary** by 31 December 2011; and
  - Mine Closure Plan to be submitted for approval by the **Secretary** by 31 December 2011.

The Applicant shall implement the management plan as approved from time to time by the **Secretary**.

## **Rehabilitation Management Plan**

16B. The Rehabilitation Management Plan must include:

- (i) the objectives for rehabilitation of the site of the development;
- (ii) a description of the short, medium, and long term measures that would be implemented to rehabilitate the development and the remnant vegetation and habitat on the site;
- (iii) detailed performance and completion criteria for the rehabilitation of the site;
- (iv) a detailed description of how the performance of the rehabilitation of the mine would be monitored over time to achieve the stated objectives;
- (v) a detailed description of what measures would be implemented over the next 3 years, including the procedures to be implemented for:
  - minimising and rehabilitating disturbed areas;
  - protecting vegetation and soil outside the disturbance areas;
  - undertaking pre-clearance surveys;
  - managing impacts on fauna;
  - landscaping the site to minimise visual impacts;
  - conserving and reusing topsoil;
  - collecting and propagating seed for rehabilitation works;
  - salvaging and reusing material from the site for habitat enhancement;
  - controlling weeds and feral pests;

- controlling access; and
- bushfire management;
- (vi) a program to monitor the effectiveness of these measures, and progress against the performance and completion criteria;
- (vii) a description of the potential risks to successful rehabilitation and/or revegetation, and a description of the contingency measures that would be implemented to mitigate these risks; and
- (viii) details of who is responsible for monitoring, reviewing, and implementing the plan.

### Final Void Management

16C. The Final Void Management Plan must:

- (i) incorporate design criteria and specifications for the final void based on verified groundwater modelling predictions and a re-assessment of post-mining groundwater equilibration;
- (ii) assess the potential interactions between creeks on the site and the final void; and
- (iii) describe what actions and measures would be implemented to:
  - minimise any potential adverse impacts associated with the final void; and
  - manage and monitor the potential impacts of the final void.

### Mine Closure Plan

16D. The Mine Closure Plan must:

- (i) define the objectives and criteria for mine closure;
- (ii) investigate options for the future use of the site, including the final void/s;
- (iii) investigate ways to minimise the adverse socio-economic effects associated with mine closure, including reduction in local employment levels;
- (iv) describe the measures that would be implemented to minimise or manage the ongoing environmental effects of the development; and
- (v) describe how the performance of these measures would be monitored over time.

### Biodiversity

16E. The Applicant shall implement the biodiversity offset strategy as outlined in Table 2 and as generally described in the documents listed in condition 1 (vii) of schedule 2 (and shown conceptually in Appendix 2), to the satisfaction of the **Secretary**.

**Table 2: Biodiversity Offset Strategy**

Offset Type	Offset Area (hectares)							Total
	1	2	3	4	5	6	7	
Central Hunter Ironbark-Spotted Grey-Gum Box Forest EEC	6.89	1.47	0.51	3.14	6.70	3.07	1.49	23.27
Central Hunter Grey Box-Ironbark Woodland EEC	1.07	1.55	0.86	0.06	0	0.21	0	3.75
Hunter Lowlands Redgum Forest EEC	0	0	0	0	0	0	0.69	0.69
Derived Grassland	44.02	13.53	4.96	8.36	5.91	3.74	10.09	90.61
<b>Total</b>	<b>51.98</b>	<b>16.55</b>	<b>6.33</b>	<b>11.56</b>	<b>12.61</b>	<b>7.02</b>	<b>12.27</b>	<b>118.32</b>

- 16F. The Applicant shall prepare a Biodiversity Management Plan for the rail loop and rail spur as generally described in the documents listed in condition 1 (vii) of schedule 2, to the satisfaction of the **Secretary**. This plan must:
- (i) be prepared in consultation with OEH, and be submitted to the **Secretary** for approval prior to construction of the rail loop and rail spur;
  - (ii) describe how the implementation of the offset strategy would be integrated with the overall rehabilitation of the mine site;
  - (iii) include:
    - a description of the short, medium, and long term measures that would be implemented to manage:
      - the offset strategy; and
      - vegetation and habitat on the site and in the offset areas;
    - detailed performance and completion criteria for implementation of the offset strategy;
    - a detailed description of the measures that would be implemented for:
      - revegetation and regeneration within the disturbance areas and offset areas, including establishment of canopy, sub-canopy (if relevant), understorey and ground strata;
      - maximising salvage and beneficial use of resources in areas that are to be impacted, including vegetation, fauna habitat and soil;
      - protecting vegetation and soil outside the disturbance areas;
      - conserving and reusing topsoil;
      - undertaking pre-clearance surveys;
      - managing impacts on fauna;
      - collecting and propagating seed;
      - salvaging, transplanting and/or propagating threatened flora and native grassland;
      - controlling weeds and feral pests;
      - managing grazing;
      - controlling access; and
      - bushfire management;
    - a program to monitor the effectiveness of these measures, and progress against the performance and completion criteria;
    - a description of the potential risks to successful revegetation, and a description of the contingency measures that would be implemented to mitigate these risks; and
    - details of who would be responsible for monitoring, reviewing, and implementing the plan.

The Applicant shall implement the management plan as approved from time to time by the **Secretary**.

## **Heritage**

- 16G. The Applicant shall prepare a Heritage Management Plan for the rail loop and rail spur as generally described in the documents listed in condition 1 (vii) of schedule 2, to the satisfaction of the **Secretary**. This plan must:
- (i) be prepared in consultation with OEH, registered Aboriginal parties and the Heritage Council NSW, and be submitted to the **Secretary** for approval prior to construction of the rail loop and rail spur;
  - (ii) include the following for the management of Aboriginal heritage on site:
    - a plan of management for the disturbance of land associated with the rail loop, rail spur and visual bund; and
    - a program/procedures for:

- salvage, test excavation and/or management of Aboriginal sites and potential archaeological deposits within the project disturbance area;
  - protection and monitoring of Aboriginal sites outside the project disturbance area;
  - managing the discovery of any new Aboriginal objects or skeletal remains during the project; and
  - ongoing consultation and involvement with all registered Aboriginal parties in the conservation and management of Aboriginal cultural heritage on the site, including prior to any salvage works; and
- (iii) include the following for the management of historic heritage on site:
- a plan of management for the disturbance of land associated with the rail loop and rail spur; and
  - a program/procedures for:
    - avoiding and preserving culturally significant sites where possible;
    - monitoring, salvage and/or management of historic heritage sites within the project disturbance area;
    - taking full archival records of historic heritage sites that would be disturbed by the project;
    - protection and monitoring of heritage items outside the project disturbance area; and
    - managing the discovery of any new heritage items identified during the project.

The Applicant shall implement the management plan as approved from time to time by the Secretary.

## **Acquisition of Affected Lands**

17.

### **17A. Affected Lands defined in the Development Consent of 19 October, 1989.**

The Applicant shall forthwith upon receipt of a request to purchase land identified as being within the area of affectation defined in the development consent for Rixs Creek Coal Mine of 19 October 1989 and owned by any of:

R J Eveleigh

Wendy Bowman & G R Elder

Estate I H. Bowman

Elizabeth S. Bowman

Durian Holdings

purchase such land.

In the event of failure to complete the purchase within six (6) months, clause 17C(iv) below, applies.

### **17B. Affected Lands other than those defined in the Development Consent of 19 October, 1989**

- (i) The Applicant shall within six (6) months of receipt of a written request from any of the owners of the properties listed in Attachment 1 of this Consent, purchase the whole of the properties. In the event of failure to complete the purchase within six (6) months, clause 17C(iv) below, applies.
- (ii) Where acquisition has not been sought of a property subject to sub-clause 17B(i) an owner or occupier of a dwelling on the property may request the Applicant to carry out measures at the dwelling to mitigate the impact upon the residence of dust

fallout/concentration, noise, and vibration, emanating from the mine in excess of the criteria set out in this Consent. The Applicant shall forthwith carry out such measures at its own expense.

- (iii) In the event that within one (1) month of a request instigated under sub-clause 17B(ii), the Applicant and the owner or occupier cannot agree upon the measures to be carried out, either party may refer the matter to the Community Consultative Committee. The Applicant shall forthwith carry out the measures which may be required by the said Committee.

#### **17C. Potentially Affected Lands**

- (i) In the event that the EPA determines that noise from the mining operations at any residence (built or with building approval at the date of this Consent) or more than 25% of any property in the vicinity of Maison Dieu Road is in excess of the relevant noise level design goals set out in clause 10 of this Consent for two (2) consecutive monitoring periods, the Applicant shall purchase such property within six (6) months of receipt of a written request from the owner of the affected property.
- (ii) In the event that the EPA determines that dust from the mining operations increases the dust deposition rate by more than 2 gm/m<sup>2</sup>/month averaged over any six (6) month period, at any residence (built or with building approval at the date of this Consent) or over more than 25% of any property in the vicinity of Maison Dieu Road is the Applicant shall purchase such property within six (6) months of receipt of a written request from the owner of the affected property.
- (iii) In respect of a request to purchase land arising under subclause 17A, 17B, 17C(i) or 17C(ii), the Applicant shall pay the owners the acquisition price which shall take into account and provide payment for:
- a sum not less than the current market value of the owner's interest in the land or part thereof (as the case may be) having regard to the existing use of the land whosoever is the occupier and all improvements thereon immediately prior to the granting of this consent as if the land was unaffected by the development proposal. The provisions of this subclause do not apply to the holder of an authority under the Mining Act, 1992.
  - the owners reasonable compensation for disturbance allowance and relocation costs within the Local Government Areas of Singleton or Muswellbrook.
  - the owners 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.
- (iv) In the event that the Applicant and any owner referred to in subclause 17(A) and 17(B)(i) and 17(C) 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:
- either party may refer the matter to the Secretary who shall request the President for the time being of the Australian Institute of Valuers and Land Economists to appoint a qualified independent valuer, suitably experienced in compensation issues, who shall determine, after consideration of any submissions from the owners and the Applicant, the acquisition price as described and referred to in subclause (iii) herein.
  - in the event that the independent valuer requires guidance on any contentious

legal, planning or other issues, the independent valuer shall refer the matter to the **Secretary**, recommending the appointment of a qualified panel. The **Secretary**, if satisfied that there is need for a qualified panel, shall arrange for the constitution of the panel. The panel shall consist of:

- 1) the appointed independent valuer,
- 2) the **Secretary**, or her nominee,  
and/or
- 3) the President of the Law Society of NSW or his nominee.

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

The panel may recommend to the **Secretary** to request the Institution of Surveyors (NSW) to appoint an independent surveyor to determine the part of the land to be acquired in relation to the area of affectation which may reasonably be subdivided and acquired having regard to topography, provisions of planning instruments and other associated matters;

- c) The Applicant shall bear the costs of any valuation or survey assessment requested by the **Secretary** in accordance with subclauses (a) and (b) herein.
- d) Upon receipt of a valuation arising pursuant to subclauses (a) and (b), the Applicant shall offer to acquire the relevant land at a price not less than the said valuation. Should the Applicant's offer to acquire not be accepted by an owner within six (6) months of the date of such offer, the Applicant's obligations to such owner pursuant to this Clause shall cease.
- e) Upon settlement of the acquisition referred to in this Clause the Applicant shall also pay to the owner the costs and compensation assessed pursuant to subclause (iii) herein including the owner's reasonable costs in the event of a subdivision.

All acquisitions of land under this condition shall be reported in the Annual Report. Once sub-clauses 17A, 17B and 17C have been complied with they shall not be reapplied for the duration of the development consent. This applies to lands already purchased under the development consent of 19 October, 1989.

**Reasons:** To provide for acquisition of affected land.

#### **Environmental Officer**

#### *18. Deleted*

#### **Annual Review**

##### **19. The Applicant shall:**

- (i) prepare and submit to the **Secretary** for approval an Annual Review. The report shall include:
  - (a) short, medium and long-term mining plans;
  - (b) rehabilitation report in respect of open cut operations;
  - (c) a review of effectiveness of environmental management of the subject area in terms of **EPA**, **OEI** and **DRE** requirements;
  - (d) a review of performance in terms of the conditions of development consent;
  - (e) results of environmental monitoring in respect of air, water and noise pollution;

- (f) a listing of any variations obtained to approvals applicable to the subject area during the previous year;
- (g) the outcome of the water budget for the year, the quantity of clean water used from water storages. Details of the disposal of any contaminated water on site or into water courses;
- (h) set out environmental management targets for the next year.
- (ii) consult with the **Secretary** during report preparation concerning any additional requirements.
- (iii) ensure that copies of the **Annual Review** are submitted to the **Secretary, EPA, OEH, NOW, DRE**, and the Council.
- (iv) **ensure that the report for each calendar year is submitted by 31 March of the following year.**

### **Complaints**

20. The Applicant shall observe all requirements of the **DRE** complaints protocol and refer to complaints received in the Annual Report (Condition 19).

**Reasons:** To provide for environmental monitoring and performance reporting.

### **Community Consultative Committee**

21. The Applicant shall:
- (i) participate and co-operate in the establishment by the Council of a Community Consultative Committee including four (4) community representatives to monitor compliance with conditions of this consent during the term of the development. The Committee, initially chaired by the Council, shall be convened every four (4) months or as required at the request of any representative to discuss compliance matters.
  - (ii) The Applicant shall at its own expense:
    - (a) nominate two (2) representatives to attend all meetings of the Committee;
    - (b) provide to the Committee copies of the latest **Annual Review**, referred to in Condition 19;
    - (c) promptly provide to the Committee such other information as the Chairman of the Committee may reasonably request concerning the environmental performance of the development;
    - (d) provide access for site inspections by the Committee;
    - (e) take and distribute minutes of Committee Meetings and provide meeting facilities for the Committee.

**Reasons:** To provide community access to environmental monitoring and performance

### **Financial Contributions**

22. The Applicant shall pay to the Council a financial contribution pursuant to Section 94 of the Environmental Planning and Assessment Act 1979 in the amount of \$900.00 per additional employee (as identified within the EIS and Supplementary Document) according to the requirements of the Council's Section 94 Contributions Plan No. 1. The Applicant shall pay the contribution to Council within six (6) months of acting upon this consent;

**Reasons:** To meet the requirements of the Act in relation to community infrastructure contributions.



### **Closure of the New England Highway for blasting**

23. The Applicant shall:

- (a) The Applicant shall provide road deviations adjacent to the highway in accordance with Figure 34 of the EIS to the satisfaction of the **RMS** and the Council unless a valid Management Plan is in operation. These deviations shall be constructed at the Applicant's cost and be constructed to allow two-way traffic movement and to an all weather gravel standard for a design speed of forty (40) kilometres per hour.
- (b) The Applicant shall conduct all closures of the New England Highway for blasting in accordance with the Management Plan included in Appendix 2 of the EIS Supplementary Document to the satisfaction of the **RMS** and the Council.
- (c) In the event that the RT A, after consultation with the Applicant and the Council deems that the requirements of the Management Plan are not being met, the Applicant shall cease blasting within 500 metres of the highway.

### **Closure/Relocation of Middle Falbrook Road**

24. The Applicant shall liaise with the Council in regard to the future closure/relocation of Middle Falbrook Road in order to provide an alternative road link and proceed to construct such alternative road link as required, in conjunction with potential alternative road link to be provided by other mines to the north of the development. Any relocation shall be designed and constructed to the Council's bitumen sealed rural roads standard.

**Reasons:** To provide for road relocations in the event of road closures.

### **Dispute Resolution**

25. In the event that the Applicant and the Council or a Government body other than the Department, cannot agree on the specification or requirements applicable under this consent, other than in subclause 17C(iv), the matter shall be referred by either party to the **Secretary** or if not resolved, to the Minister, whose determination of the disagreement shall be final and binding on the parties.

**Reasons:** To provide for dispute resolution in respect to conditions of consent.

### **Independent Environmental Audit**

26. Within 12 months from the date of Consent, the Applicant shall make arrangements for and bear the total cost of an independent comprehensive environmental audit for the development. Further independent audits are to be conducted every fifth year (ie. from year 6 from the date of Consent) or as directed by the **Secretary**. The Applicant shall conduct an environmental audit of the mining and infrastructure areas of the development and submit the report to the **Secretary** who shall provide a copy to the Council.

The audit shall be conducted by a duly qualified independent person or team approved by the **Secretary** in consultation with Council.

The **Secretary** may, after considering any submission made by Council on the report, notify the Applicant of the **Secretary's** reasonable requirements with regard to any measures arising from or recommended by the independent environmental report. The Applicant shall comply with those reasonable requirements within such time as the



Secretary may reasonably require.

**Reason:** To provide for periodic independent environmental audits.

### Waste

27. The Applicant shall:

- (i) monitor the amount of waste generated by the project;
- (ii) investigate ways to minimise waste generated by the project;
- (iii) implement reasonable and feasible measures to minimise waste generated by the project;
- (iv) ensure irrigation of treated wastewater is undertaken in accordance with DECC's *Environmental Guideline for the Utilisation of Treated Effluent*; and
- (v) report on waste management and minimisation in the Annual Review, to the satisfaction of the Secretary.

### Revision of Strategies, Plans and Programs

28. Within 3 months of:

- (i) the submission of an incident report under condition 19 above;
  - (ii) the submission of an audit under condition 26 above; and
  - (iii) any modification to the conditions of this approval,
- the Applicant shall review, and if necessary revise, the strategies, plans, and programs required under this approval to the satisfaction of the Secretary.

*Note:*

- *This is to ensure the strategies, plans and programs are updated on a regular basis, and incorporate any recommended measures to improve the environmental performance of the project.*
- *Revisions related to the rail loop modification must be submitted prior to commencing construction.*

### Updating & Staging Submission of Strategies, Plans or Programs

29. To ensure the strategies, plans or programs under this consent are updated on a regular basis, and that they incorporate any appropriate mitigation measures to improve the environmental performance of the development, the Applicant may at any time submit revised strategies, plans or programs to the Secretary for approval. With the agreement of the Secretary, the Applicant may also submit any strategy, plan or program required by this consent on a staged basis.

With the agreement of the Secretary, the Applicant may revise any strategy, plan or program approved under this consent without consulting with all the parties nominated under the applicable conditions of consent.

*Notes:*

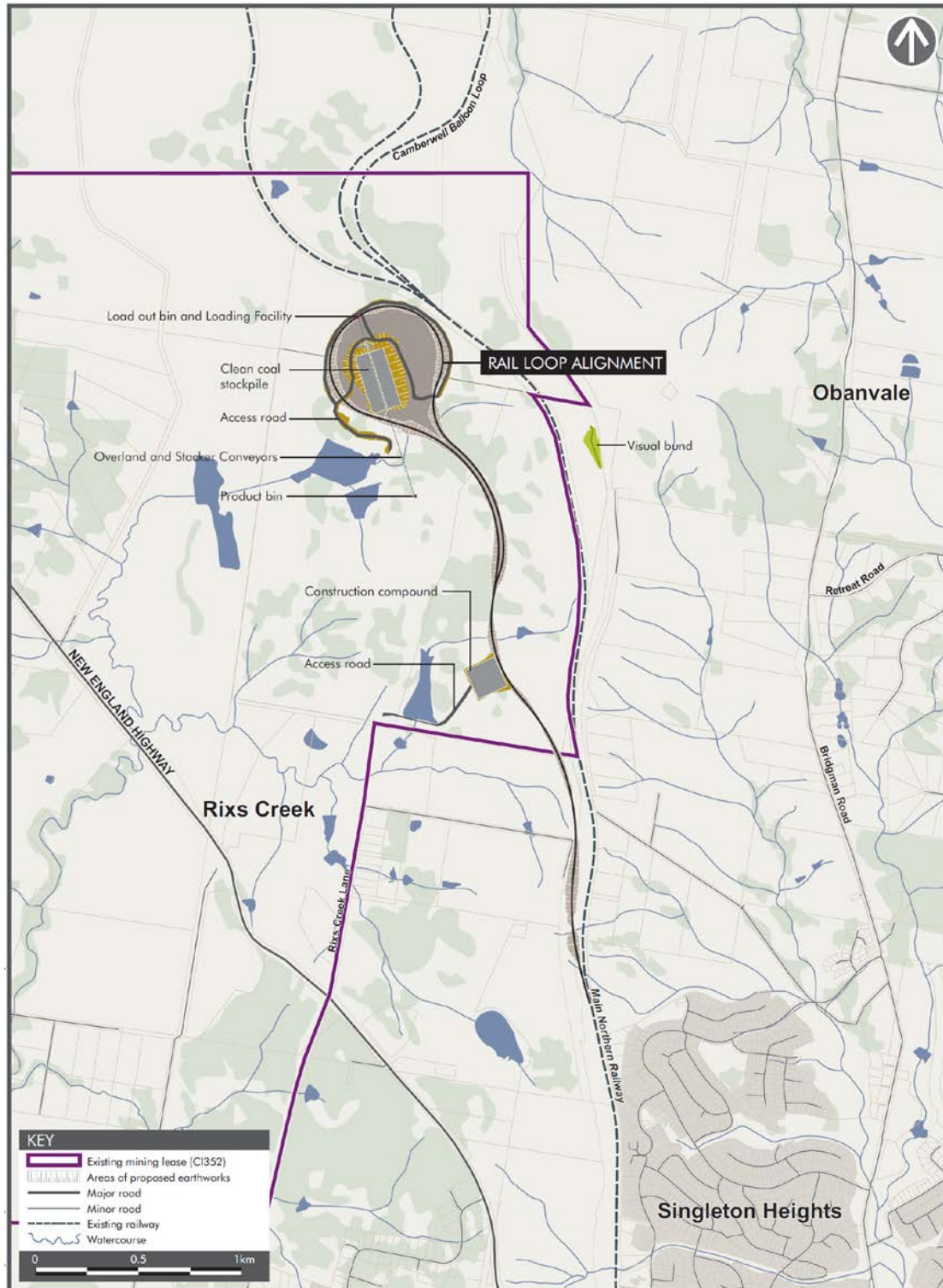
- *While any strategy, plan or program may be submitted on a progressive basis, the Applicant must ensure that the existing operations on site are covered by suitable strategies, plans or programs at all times; and*
- *If the submission of any strategy, plan or program is to be staged, then the relevant strategy, plan or program must clearly describe the specific stage to which the strategy, plan or program applies, the relationship of this stage to any future stages, and the trigger for updating the strategy, plan or program.*

**Note:** This approval does not relieve the Applicant of the obligation to obtain any other approval

under the Local Government Act, 1993 as amended, the Ordinance made there under including approval of building plans, or any other Act.

## APPENDIX 1

### Rail Loop Alignment





## APPENDIX 2

### Biodiversity Offsets

