

Appendix A

Regulatory Correspondence





009 521
Established 1907

MUSWELLBROOK COAL COMPANY LIMITED A.C.N. 000

REGISTERED OFFICE

Level 11
79 Adelaide Street
Brisbane QLD 4000

POSTAL ADDRESS

P.O. Box 123
Muswellbrook NSW 2333

Telephone: (02) 65432799

Facsimile: (02) 65425010

26 May 2010

Director of Major Development Assessment
Department of Planning
GPO Box 39
SYDNEY NSW 2001

Ref: 1003 - 100524 MCC Modification Ltr to DoP.doc

Attention: Mr David Kitto

Dear Mr Kitto

Muswellbrook Coal Company

Section 75W Modification to Development Consent (DA 205/2002)

1.0 Introduction

Muswellbrook Coal Company (MCC) is proposing a Modification to the Muswellbrook Coal Mine (Muswellbrook Coal) Development Consent DA 205/2002. The Modification application will seek approval for the extension of mining operations into an adjacent 28.4 ha area known as Area C (the Modification). See **Figure 1** Attached.

MCC is seeking confirmation from Department of Planning (DoP) that a Modification Application under Section 75W of the *Environmental Planning and Assessment Act 1979* (EP&A Act) is the appropriate path to gain planning approval for the required mine plan alterations.

We would also appreciate confirmation from DoP that the assessment requirements as listed in **Section 3.3** of this letter adequately represent the issues to be addressed in the Environmental Assessment (EA) to accompany the application to modify DA 205/2002.

To assist you in considering this matter, we have provided a brief description of the existing approved development (including the previously granted Modification) and the Modification being sought.

2.0 Existing Operations

2.1 BACKGROUND

Muswellbrook Coal Mine is located approximately 2.5 km to the north-east of the township of Muswellbrook in the Upper Hunter Valley of NSW. MCC has a long history of underground and open cut coal mining in the Muswellbrook area, dating back to the opening of the Muswellbrook No. 1 Underground Colliery in 1907.

MCC operates within the following three mining leases:

- Consolidated Coal Lease 713 (valid to 24 November 2024);
- Mining Lease 1304 (valid to 12 January 2013); and
- Mining Lease 1562 (valid to 16 February 2026).

In 2008-09, Muswellbrook Coal produced 1.27 million tonnes (Mt) ROM coal. Product coal is trucked off site to the Ravensworth Coal Terminal (RCT) for loading on rail. This coal is then transported by train to Port Waratah for export.

2.2 PLANNING APPROVALS

MCC was granted DA 205/2002 by Muswellbrook Shire Council (MSC) for the “*Extension of MCCs No.1 Open Cut Coal Mine*” on 1 September 2003. The supporting document to this original approval was the MCC Environmental Impact Statement (MCC EIS) (HLA EnviroSciences 2002).

DA 205/2002 provided MCC approval for (at least) the following activities:

- Mining of up to 11.6 million tonnes of coal from a defined area known as the No. 1 Extension;
- Open cut mining operations within the No. 1 Extension with a combined maximum production rate of up to 2 Mtpa from the Muswellbrook Coal Mine out until 2015;
- Mining of coal from the No. 1 Extension utilising truck and shovel methods similar to those utilised within the No. 2 Open Cut;
- Utilisation of the service infrastructure from historical operations including: administration offices, bathhouse facilities, workshop and store facilities and coal handling and preparation facilities;
- Utilisation of the No. 2 Open Cut mining equipment;
- Transport of up to 2 Mtpa of product coal from the Muswellbrook Coal Mine by highway trucks either to the RCT for transport by rail to the Port of Newcastle for export, or to regional power stations for power generation; and
- 24 hours per day, seven days per week operation utilising a 10.5 hour shift roster and approximately 69 permanent employees and on average 39 contracted and casual employees.

MCC submitted an Application and supporting Section 96(1A) Modification to the Muswellbrook Shire Council (MSC) in October 2005 to modify DA 205/2002 for the relocation of powerlines and for some minor additions to the

workshop buildings (Parsons Brinkerhoff 2005). Development Consent Modification DA 205/2002 (M1) was granted by MSC on 19 December 2005.

A second modification to the Development Consent (DA 205/2002 (M2)) was granted by MSC on 13 July 2009 to allow the relocation of the existing office buildings, bathhouse and workshop to facilitate the mining of an approved coal resource. The supporting document to this second modification is the MCC Statement of Environmental Effects (MCC SEE) (Hansen Bailey 2009) which also illustrated a revised conceptual final landform in order to develop a more stable and free draining landform at the completion of mining at the Muswellbrook Coal Mine. This Modification also provided approval for the ongoing employment of up to 95 full time equivalent employees.

3.0 DEVELOPMENT CONSENT MODIFICATION

3.1 MODIFICATION DESCRIPTION

DA 205/2002 provides approval for the extraction of up to 11.6 Mt of coal from the No. 1 Extension. This area was originally defined by the extent of the known coal resource that was assessed to contain a viable open cut mineable resource. Other areas assessed were considered not viable for open cut operations at the time.

With extensive operational experience in extracting coal from areas of old underground mining operations, additional resources outside the originally approved No. 1 Extension have been identified for open cut mining operations. The new area identified is known as 'Area C' and comprises an additional 5.2 Mt of coal within an area of approximately 28.4 hectares (ha). Of this area 8.2 ha falls outside the current DA Boundary.

Mining operations will continue to be undertaken at the currently approved production rate of up to 2 Mtpa from the Muswellbrook Coal Mine. Mining operations will continue to be undertaken utilising the existing equipment fleet and currently approved 95 full time equivalent employees.

Despite the additional coal resource that is proposed to be extracted, mining of this area will be undertaken within the mine life currently approved under DA 205/2002 (i.e. end August 2015). The transport of product coal will continue to be undertaken via the New England Highway and operations will continue to utilise the currently approved infrastructure for the life of the Project.

The proposed mine plan change was presented to the Department of Industry and Investment NSW (I&I NSW) on 11 May 2010. At this meeting, chaired by Craig Campbell, the I&I NSW expressed their unqualified support for the proposal.

3.2 PLANNING APPROVALS PATH

Although MCCs Development Consent was originally granted by MSC under Part 4 of the EP&A Act, Clause 8J(8) of the EP&A Regulation allows, in certain circumstances, for a Development Consent which was in force immediately prior to the commencement of Part 3A to be modified under Section 75W of the EP&A Act.

Clause 8J(8) provides the power to the Minister for Planning to choose to modify a Part 4 Development Consent by action "... under section 75W of the Act as if the consent were an approval under that Part".

This path is available if:

"(a) the consent was granted with respect to a development that would otherwise be a project to which Part 3A of the Act applies but for the operation of clause 6(2)(a) of State Environmental Planning Policy (Major Projects) 2005; and

(b) *the Minister approves of the development consent being treated as an approval for the purposes of Section 75W of the Act...*”.

“Mining” related activities are categorised as a “Major Project” under Part 3A of the EP&A Act as set out in Schedule 1 of *State Environmental Planning Policy (Major Projects) 2005* (SEPP Major Projects).

The Minister for Planning needs to approve the Development Consent to be treated as an approval for the purposes of Section 75W prior to the submission of the application.

A Section 75W application does not need to satisfy the “*substantially the same development*” test. The Minister’s power to approve the Development Consent for being treated as an approval under Section 75W is limited to the extent of the definition of “*modify*”, or to “*alter without radical transformation*”. A Section 75W modification needs to consider the proposal against the currently approved operation (as modified).

The assessment and determination of the Modification must follow the process as specified under Section 75W of Part 3A of the EP&A Act, where the application must be considered as a ‘Project Application’ with all procedural aspects of Part 3A in respect of a Project Application applying. An EA is required to be prepared in support of the application.

MCC seeks confirmation from DoP that an application submitted under Section 75W of the EP&A Act is the relevant path for the proposed Modification to facilitate extraction of the additional 5.2 Mt of coal within Area C.

3.3 EA SCOPE

MCC wish to confirm that it is their intention to address the following environmental issues in the EA being prepared by Hansen Bailey to support the Section 75W Modification Application:

- Executive Summary;
- Background;
- Existing Operations;
- Modification Description;
- Regulatory Framework;
- Stakeholder Consultation;
- Environmental Impacts, Management & Mitigation:
 - Aboriginal Archaeology & Cultural Heritage;
 - Acoustics (Noise & Blasting);
 - Air Quality (including dust and scope 1, 2 & 3 greenhouse emissions);
 - Flora & Fauna;
 - Non-Aboriginal Heritage;

- Geochemistry and Spontaneous Combustion;
- Soils and Land Capability;
- Visual;
- Surface and Groundwater;
- Socio-economics;
- Rehabilitation & Final Landform;
- Statement of Commitments;
- Conclusion and Justification; and
- Minor sections, including description of the study team, references and abbreviations.

4.0 CONCLUSION

MCC formally request that DoP provide:

- Written confirmation that DoP will accept a Section 75W application and supporting EA for the proposed mine plan alterations; and
- Written confirmation that the environmental issues as outlined in **Section 3.3** to be addressed in the EA are adequate and that no further assessment requirements are appropriate.

Can you please also confirm the planning officer to be responsible for this proposed Modification so that we may forward any enquiries we may have during the preparation of the EA. We anticipate determining application fees for the Modification in the near future in consultation with DoP for payment prior to the Section 75W application being lodged in early August 2010.

Should you have any queries in relation to this letter, please do not hesitate to contact myself on 02 6542 2305 or James Bailey on 02 6575 2000.

Yours faithfully

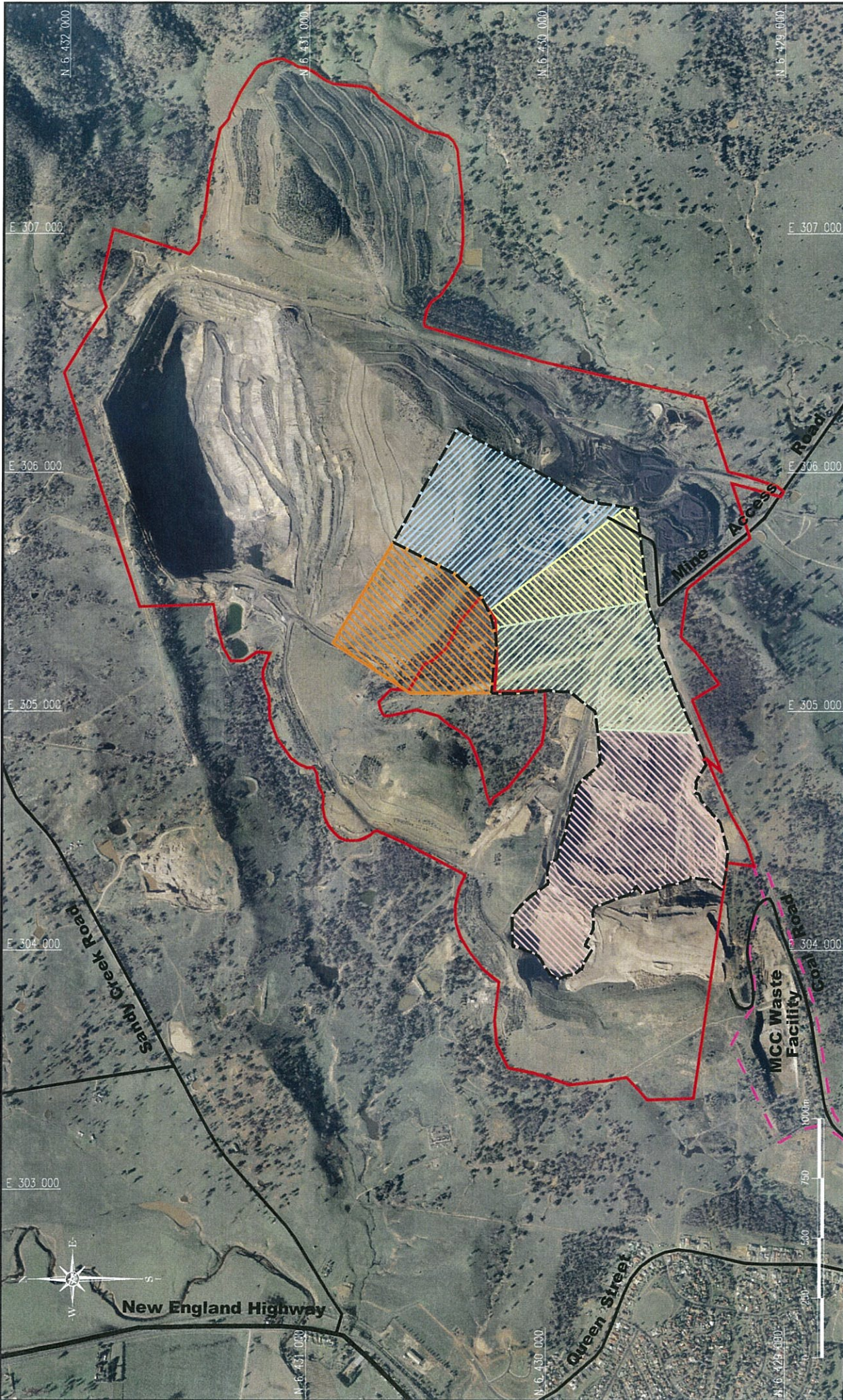
MUSWELLBROOK COAL COMPANY



Kim Nguyen

Engineering Manager

Attach: Figure 1



- DA Boundary
- No. 1 Extension Coal Extraction Boundary
- Existing Roads
- Area C

- Indicative Mining Sequence
- Year 1 - 3 (Complete)
 - Year 4 - 6
 - Year 7 - 8
 - Year 9 - 10

Hansen Bailey |



MUSWELLBROOK COAL COMPANY

Layout Plan

Cad File: 05605E.dwg	Date: 07.05.10	Drawn: JD	Figure 1
----------------------	----------------	-----------	--------------------

Source: MCC (2008)



15 JUN 2010

Contact: Howard Reed
Phone: 02 9228 6308
Fax: 02 9228 6466
Email: howard.reed@planning.nsw.gov.au

Mr Kim Nguyen
Engineering Manager
Muswellbrook Coal Company
PO Box 123
MUSWELLBROOK NSW 2333

Dear Mr Nguyen

Proposed Modification to Development Consent DA 205/2002

I refer to your letter of 26 May 2010 regarding Muswellbrook Coal Company's proposal to modify its existing development consent 205/2002.

I have discussed this matter with the company's planning consultant, James Bailey, and also the company's legal advisor, David White.

Please be advised that the Department is firmly of the view that the consent cannot be modified under section 75W of the *Environmental Planning & Assessment Act 1979*. This has been the case since certain changes were made to clause 8J(8) of the *Environmental Planning & Assessment Regulation 2000*, effective from 26 March 2010.

As you are aware, the existing consent was granted by Muswellbrook Shire Council in September 2003. The Department is of the view that the company can change its approved development by one of the following two mechanisms:

- a modification to the existing consent under s. 96(2) of the *Environmental Planning & Assessment Act 1979*, with the consent authority being the Council; or
- a project application under Part 3A of the *Environmental Planning & Assessment Act 1979*, with the approval authority being the Minister for Planning.

The Department would be loathe to consider a project application which did not seek to wrap up the entire Muswellbrook mine site, and lead to the surrender of DA 205/2002. That is, the Department would seek a single, consolidated, contemporary Part 3A approval over the minesite, should the company wish to pursue an approval under Part 3A.

I understand that your consultants are now exploring the possibility of a modification to the existing consent via s. 96(2).

Yours sincerely

David Kitto
Director Mining and Industry Projects

Notices

Muswellbrook Coal Company Development Consent Modification

Muswellbrook Coal Company Limited (MCC) wishes to advise that it is preparing an application and supporting Statement of Environmental Effects (SEE) for a Modification to its No. 1 Open Cut Extension Development Consent (DA 205/2002).

MCC seeks this Modification to extend mining operations to within a 28.4 ha area of which 8.2 ha falls outside the No. 1 Open Cut Extension Area boundary. No changes to the approved mining method, production rate, mine life or its coal transport arrangements are proposed.

MCC intends to submit an application to Muswellbrook Shire Council in September for determination under Section 96(2) of the *Environmental Planning and Assessment Act 1979*. An SEE to support the application is being prepared by Hansen Bailey Environmental Consultants. This will include the relevant social and environmental assessments for the proposed Modification.

Any stakeholders requiring further information are encouraged to contact:

Ms Melissa Walker
Hansen Bailey
Environmental Consultants
PO Box 473
SINGLETON NSW 2330
mwalker@hansenbailey.com.au
Tel: 02 6575 2005
Fax: 02 6575 2001