

**BOGGABRI COAL
OPERATIONS
PTY LTD**

ABN 76 600 191 455

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Ref: 05-115-706

20 February 2019

Stephen O'Donoghue
Acting Director - Resource and Energy Assessments
Department of Planning & Environment
320 Pitt Street
Sydney NSW 2000

Email: Stephen.ODonoghue@planning.nsw.gov.au
cc: Robert.Bisley@ipcn.nsw.gov.au; Matthew.Todd-Jones@ipcn.nsw.gov.au

Dear Sir,

**RE SECTION 75W MODIFICATION 09_0182 MOD 7 TO BOGGABRI COAL MINE - RESPONSE
TO REPRESENTATIONS FROM COMMUNITY AND SPECIAL INTEREST GROUPS**

We refer to your email dated 1 February 2019 enclosing five representations made in response to the proposed modification of the Boggabri Coal Mine (**BCM**) (MP09_0182 Mod 7) (**the Modification Application**), which has recently been referred to the Independent Planning Commission (**IPC**) for determination.

The DPE's assessment report on the Modification Application recommends approval and confirms there are no new impacts to be assessed. However, instead of determining the Modification Application, Department of Planning and Environment (**DPE**) has in our view taken an unnecessary step (given there are no impacts to assess) of referring the Modification Application to the IPC to determine.

The purpose of this letter is to:

1. clarify some matters of concern that were raised in the five representations that have been provided to us by DPE (see list in Appendix 1); and
2. request that the IPC proceed to make its determination as soon as practicable after it has had meetings with DPE and Boggabri Coal Operations Pty Ltd (**Boggabri Coal**).

Summary

The Modification Application comprises a number of tidy up or administrative changes to the Project Approval conditions arising from

- changes in legislation
- inconsistencies in the current Project Approval conditions
- some operational changes including minor boundary adjustments with the adjoining Tarrawonga Coal Mine (**TCM**).

The impacts of the Project Approval have already been assessed and approved under previous modifications (see majorprojects.planning.nsw.gov.au). The proposed changes to conditions will not introduce any new impacts at either the BCM or TCM.

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The DPE's assessment report has given due consideration to the concerns of the public raised in the letters received, and has concluded as follows (excerpted from the [DPE's Assessment Report](#)):

- **Biodiversity Offset Security Measures** - despite public concern, the offsetting obligations do not change biodiversity commitments and actually strengthen the protection of the approved offsets of the project.
- **Coal Stockpile Area** - the impacts have already been assessed and the infrastructure is partially constructed. The use of Boggabri coal instead of Tarrawonga coal provides additional operational flexibility and efficiency for Boggabri Coal and would not change the approved impacts of the Project.
- **Drilling and Exploration Activities** - these activities would not change the approved environmental impacts of the project. They will be undertaken within the approved disturbance area and managed in accordance with existing environmental management plans. They are standard mining activities that are typically implicitly permitted under the project approval.
- **Transportation of Coal Samples by Road** - this will be limited by a condition and have negligible impacts on the capacity, efficiency or safety of the approved road network. It is standard practice for coal mines to test small volumes of product coal to ensure that it meets customer specifications and the proposed condition will restrict movement to less than 10 heavy vehicles per year. Boggabri Coal notes that the DPE's comment here is expressed as a maximum based on the maximum tonnage that can be transported divided by the capacity of heavy vehicles. In practice, coal samples are usually small (and may be as small as single 220 litre drum (150kg)), and only require light vehicle transportation (see page 30 of the [Environmental Assessment](#)). Boggabri Coal does not object to a maximum heavy vehicle per year limit in respect of coal samples but does not wish to be restricted in terms of the more common light vehicle movements that currently occur.
- **Project Boundary Adjustment** - this is an administrative change arising from existing overlapping project boundaries and does not result in any changes to the approved impacts. It will ensure clear delineation of the responsibilities for rehabilitation between the two mines.

It is almost a year since Boggabri Coal commenced the Modification Application process with the DPE. The delay in determining the Modification Application is giving rise to significant commercial and operational impacts at BCM. The DPE has assessed and addressed the concerns of the public raised in respect of the Modification Application in the DPE's assessment report and taken the additional step of referring the matter to the IPC to determine, presumably in response to an explicit request from a member of the public within the representations it received.

As there has been such significant delays to the assessment process already, Boggabri Coal respectfully requests that the IPC proceed to determine the Modification Application as soon as possible. There is no public interest in holding a public meeting as there are no new impacts to be assessed and a public meeting would give rise to unnecessary further delay and costs to both Boggabri Coal and NSW Government.

Response to representations provided to Boggabri Coal

We set out our response to issues raised in the representations in the following table.

| | Issue | Boggabri Coal's response | DPE's Assessment of Impact |
|----|---|---|---|
| 1. | Assessment under former Part 3A Lock the Gate Alliance raised a concern regarding | The Modification Application is a s75W application because it was lodged in February 2018 with the consent of the Minister prior to the 'cut-off' date, in accordance with the transitional | The Department has considered the nature of the proposed modification and is satisfied that it is within the scope of |

| | Issue | Boggabri Coal's response | DPE's Assessment of Impact |
|----|---|---|---|
| | the lack of supporting evidence for the project to be assessed under the former part 3A of the <i>Environmental Planning and Assessment Act (1979 (NSW) (Act)</i> | regulations that have been in place for Part 3A projects such as this. Unfortunately, there has been a significant delay in the assessment of the Modification Application. Contrary to the Lock the Gate Alliance representation, the confirmation from the DPE that this is a s75W application can be found on the NSW Major Project website . | s75W of the Act (see Pag 3 of the DPE's assessment report). |
| 2. | <i>Biodiversity Impacts and the modification to Condition 47 (the Offset Security condition)</i> Concerns were raised that the Modification Application will change or reduce the biodiversity impacts of the Project Approval and that the alternative mechanisms for securing Boggabri Coal's offsets (the Alternative Security Options) provide less statutory protection. | To facilitate the Alternative Security Options, Boggabri Coal is seeking an extension to the date by which the offset security agreement is required to be finalised until February 2020 to provide sufficient time to arrange the Alternative Security Options which are available as a result of changes in the biodiversity legislation framework since the original conditions of approval were granted. We note from the DPE's assessment report that the Office of Environment and Heritage (OEH) considers this to be a reasonable timeframe. All biodiversity offset land will continue to be managed for conservation purposes in accordance with the approved Biodiversity Management Plan (BMP) which is an existing requirement of Boggabri Coal's Project Approval. The proposed modification of the Offset Security will not change, alter or diminish Boggabri Coal's offset obligation and there will be no change to the biodiversity impacts of the Project Approval. Indeed, the Offsets already being managed for conservation purposes. Boggabri Coal simply requires this modification so that the offsets can be secured in perpetuity in accordance with current NSW legislation and policy. | Despite public concern, the offsetting obligations do not change as a result of including alternative security mechanisms. Those mechanisms still require offset areas to be secured in perpetuity and in the meantime Boggabri Coal must manage the offset areas in accordance with their approved BMP. The Department and OEH consider that the alternative security options would actually strengthen the statutory protection of the approved offset areas and are consistent with current NSW legislation and policy (see Page 7 of the DPE's assessment report). |
| 3. | <i>Assessment of the Modification Application</i> Concerns were raised regarding the fact that the Modification Application was not publicly exhibited by the Department and that the Modification Application should | Whilst the decision as to whether the Modification Application needed to be formally placed on exhibition was made only by the DPE, Boggabri Coal wishes to clarify that it actively engaged with the local community and Narrabri Shire Council prior to the lodgement of the Modification Application as part of its quarterly meetings with the Community Consultative Committee, which is comprised of active community members who are approved by the State Government as representative of | The Department has assessed and responded to the responses it received throughout its assessment of the Modification Application (between October to December 2018) (see Page 5 of the DPE's assessment report). |

| | Issue | Boggabri Coal's response | DPE's Assessment of Impact |
|--|--|---|----------------------------|
| | be placed on public exhibition for a further 28 days and the IPC should be the consent authority, if necessary | <p>the community. A copy of the meeting minutes can be found here. Boggabri Coal is proud of the level of engagement it has with the community and considers this to be important to the long term sustainability of its operations.</p> <p>There is no need for further engagement with the community as there are no new impacts to be assessed and thus no issues to engage on. It is contrary to the public interest for every minor modification application to be referred to the IPC for determination and is an unnecessary waste of Government resources. Despite this, Boggabri Coal remains willingly to engage constructively and assist the IPC.</p> | |

Other representations

The DPE has provided Boggabri Coal with five representations in relation to the Modification Application. The DPE Assessment Report states that DPE received 23 representations from local landholders and the general public and 13 representations from special interest groups during its assessment of the Modification Application. We further note the letter from the IPC to the DPE dated 17 January 2019 requesting that Boggabri Coal be given an opportunity to respond to the representations referred to in the DPE's assessment report. We have assumed for the purpose of this response that any other representations provided to DPE do not raise any new issues beyond those expressed above. If any new issues are raised with the IPC, or if any other representations are provided to the IPC, Boggabri Coal requests the opportunity to respond in writing within a reasonable timeframe and prior to the IPC's determination.

No need for a public meeting

Boggabri Coal requests that the IPC proceed to exercise its discretion not to hold a public meeting in advance of determining the Modification Application as exceptional circumstances exist, namely:

- There are no new environmental impacts of the project to engage on and thus little utility in holding a public meeting. The only potential impact referred to by the DPE was a minor increase in heavy vehicle movements of up to 10 vehicles per year for the specific purpose of the transport of coal samples to offsite laboratories. The Project Approval already allows Boggabri Coal to transport coal from the site by road subject to the agreement of RMS and Council and with the Secretary's approval. and Boggabri Coal has already transported coal samples by road in consultation with these authorities, which is standard practice for mining operations. The modification is sought to expressly incorporate this aspect of its operations within the Project Approval. Although the DPE's assessment report notes that the proposed modification will allow for up to 10 heavy vehicles per annum, in reality most coal will be transported via light vehicles as only small coal samples are usually involved. Historically, Boggabri Coal has only sent approximately one to four large coal sample via road per annum (with the rest being transported by light vehicles) and we expect this pattern to continue in the future. This is an activity that is already occurring and has been for a number of years. Consequently, there is no new impact to assess.
- Boggabri Coal has already engaged with the community and Narrabri Shire Council through the Community Consultation Committee, discussing the aspects of this modification.
- Boggabri Coal is not aware of any other case where such a minor administrative modification has been referred to the IPC for determination. Such modification applications are usually determined by the DPE;

- The responses received by the DPE have fundamentally misunderstood the proposed modifications and the process for determining modification applications;
- The proposed modifications will ensure the Project Approval conditions are aligned with the latest legislative changes and also clarify some inconsistencies and minor operational issues; and
- There has already been considerable delays in determining Modification 7 which is giving rise to significant operational and efficiency constraints. This has placed Boggabri Coal at a competitive disadvantage compared to other proponents who have had such modification applications determined by DPE.

We respectfully request that the IPC have regard to the above submission in determining the Modification Application.

Yours sincerely



Anthony Margetts
Acting General Manager

Appendix 1

Outline of responses received by DPE on Mod 7 provided to Boggabri Coal

1. Letter from Knitting Nannas New England North West addressed to Carolyn McNally, Secretary, Department of Planning and Environment, dated 31 October 2018;
2. Letter from Libby Laird to Carolyn McNally, Secretary, Department of Planning and Environment, dated 31 October 2018;
3. Email from Vanessa Peterson to Carolyn McNally dated 1 November 2018;
4. Letter from Lock the Gate Alliance to Stephen O'Donoghue, Planning Officer, dated 31 October 2019; and
5. Letter from unknown sender to Carolyn McNally, Secretary, Department of Planning and Environment, dated 2 November 2018.