



Ms Samantha McLean
Executive Director
Independent Planning Commission

By Email: Samantha.McLean@ipcn.nsw.gov.au

Dear Ms McLean

On 29 November 2019, the Department referred a request to the Independent Planning Commission to modify the development consent for the Glendell Coal Mine under section 4.55(1A) of the *Environmental Planning and Assessment Act 1979* (the Act).

It has come to my attention that the Department's modification assessment report (the report) contains two errors which require clarification and correction. This is in relation to the project being identified as State significant development (SSD) and that the Independent Planning Commission was identified as the consent authority. The Department also provides further clarification on the substantially the same development test and exhibition of the modification.

State significant development and consent authority

Firstly, Paragraph 17 of the report, correctly states that development consent DA 80/952 was originally approved under Part 4 of the Act.

However, paragraph 17 incorrectly states that the development is now taken to be State significant development under Part 4.1 of the Act and Schedule 2 of the *Environment Planning and Assessment (Savings, Transitional and Other Provisions) Regulation 2017* in Paragraph 17.

The Department confirms that Part 4 development consents previously modified under section 75W of the Act, such as was the case for the Glendell Coal Mine modifications 2 and 3, remain as Part 4 consents but are not SSD as they have not been declared as SSD under the current scheme of the Act in Division 4.7

In view of the fact that the development is not SSD, paragraph 20 of the report incorrectly refers to the Independent Planning Commission as the consent authority under clause 8A of the *State Environmental Planning Policy (SEPP) (State and Regional Development) 2011*. The consent authority for this modification is the Minister for Planning and Public Spaces.

However, under the Minister's delegations dated 14 September 2011 the Independent Planning Commission can determine the application as it relates to a modification of Part 4 development. A corrected draft Notice of Modification is attached to identify that the determination by the Commission would be under the delegation of the Minister.

Substantially the same development test

The Department confirms that clause 3BA(6)(b) of Schedule 2 of the *Environment Planning and Assessment (Savings, Transitional and Other Provisions) Regulation 2017* (EP&A STOP Regulation) does apply for the purposes of the 'substantially the same development' test discussed in paragraph 18 of the report. That is, the modification must be substantially the

same as the consent as last modified under s 75W, in this case Glendell Coal Mine MOD 3 on 1 December 2016.

This is because the Glendell Coal Mine is taken to be an approved project for the purpose of a modification due to the operation of clause 8J(8)(a) in Schedule 4 of the EP&A STOP Regulation.

Public exhibition


Paragraph 27 of the report details the way in which the modification application was publicly exhibited. We note that paragraph 27 refers to exhibition in accordance with cl 10 of Schedule 1 of the EP&A Act and cl 118 of the *Environmental Planning and Assessment Regulation 2000 (EP&A Regulation)*. These provisions do not set any mandatory exhibition requirements in relation to s 4.55(1A) applications.

Therefore, the exhibition carried out (as set out in paragraph 27) should be read in light of the fact that the Department is not required to publicly exhibit modification applications made under section 4.55 (1A) of the Act. This is because the EP&A Regulation does not require exhibition and the consent authority is not a council with a development control plan requiring notification of modification applications.

In this case the Department chose to publicly exhibit the modification application because of anticipated public interest and favoured community participation.

If you have any more questions, please contact me on [REDACTED]

Yours sincerely



21/1/20

Steve O'Donoghue
Director
Resource Assessments

Enc: Revised Draft Notice of Modification