



Ms Carolyn McNally  
Secretary  
Department of Planning and Environment  
GPO Box 39  
SYDNEY NSW 2001

6 December 2017

Dear Ms McNally

**Determination of Modification Application for  
Port Waratah Coal Services Terminal 4 – MOD 1 (MP10\_0215 MOD 1)**

Thank you for your Department's letter received on 29 November 2017 referring the above modification application to the Planning Assessment Commission for determination under Ministerial delegation of 14 September 2011. The Chair of the Commission, Ms Lynelle Briggs AO has appointed Mr Paul Forward to constitute the Commission to determine the application.

Port Waratah Coal Services Limited (the proponent), has lodged a request to modify the project approval under section 75W of the Environmental Planning and Assessment Act 1979. The modification seeks to amend the timing requirements and triggers for enabling works which are required to be completed prior to the commencement of project construction works.

In response to the proponent's request the Department has provided a number of conditional amendments, which include:

- Amending the definition of construction to exclude actions undertaken in accordance with the Site Management Plan;
- Separate Condition A6 to create A6, A6A and A6B to simplify and provide better clarification to the consent requirements;
- Remove from Condition A6 the cross reference to Condition A1 which was a drafting error; and
- New Condition A16 to insert additional reporting requirements to the Secretary.

I have considered carefully the Department's assessment report, all of the information provided by the proponent, comments from government agencies and section 75W of the *Environmental Planning and Assessment Act 1979*.

The Commission met with the Department on 5 December 2017 to discuss the proposed modification request and the implication for the request on the delivery of the Priority Actions.

Key matter for this application identified by the Department is whether it is acceptable for the proponent to retain the ability to decide not to proceed with the project after it implements the Priority Actions, but before it is obliged to undertake other pre-construction works. I have reviewed the Department's assessment and am satisfied with its findings, which include the amendment to conditions of consent as listed above.

The modification seeks to minimise further degradation of environmental values of the site and surrounding lands and to commence Priority Actions set out in the Site Management Plan as early works, rather than as construction works. The modification does this by addressing the current anomaly in the approval wherein works set out in the Site Management Plan, such as management of contaminated land and biodiversity values, were defined as construction activities and could not commence until a number of unrelated prerequisites were met, including significant road and intersection upgrades were completed.

While these prerequisites were identified as critical for commencement of construction, there was no justified nexus to the commencement of Priority Actions set out in the Site Management Plan. Additionally, these requirements have discouraged the early commencement of Priority Actions under the Site Management Plan.

The application, as modified continues to prioritise the commencement of Priority Actions as early works, whilst also maintaining the certainty that all prerequisites for construction as set out in the original approval will be delivered prior to construction works commencing. The Commission is satisfied that the modification is consistent with the intent of the Commission's original determination.

The Commission considers the proposed modification of the Port Waratah Coal Services Terminal 4 does not fundamentally change the essential nature of the development in its currently approved form. In the Commission's view, the proposed changes are within the scope of section 75W and may be considered under section 75W.

For the reasons set out above, the Commission has determined to grant consent to the modification request subject to the conditions set out in the instrument of approval.



Paul Forward  
**Member of the Commission (Chair)**

cc. The Hon. Anthony Roberts, MP  
Minister for Planning  
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