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Independent Planning Commission

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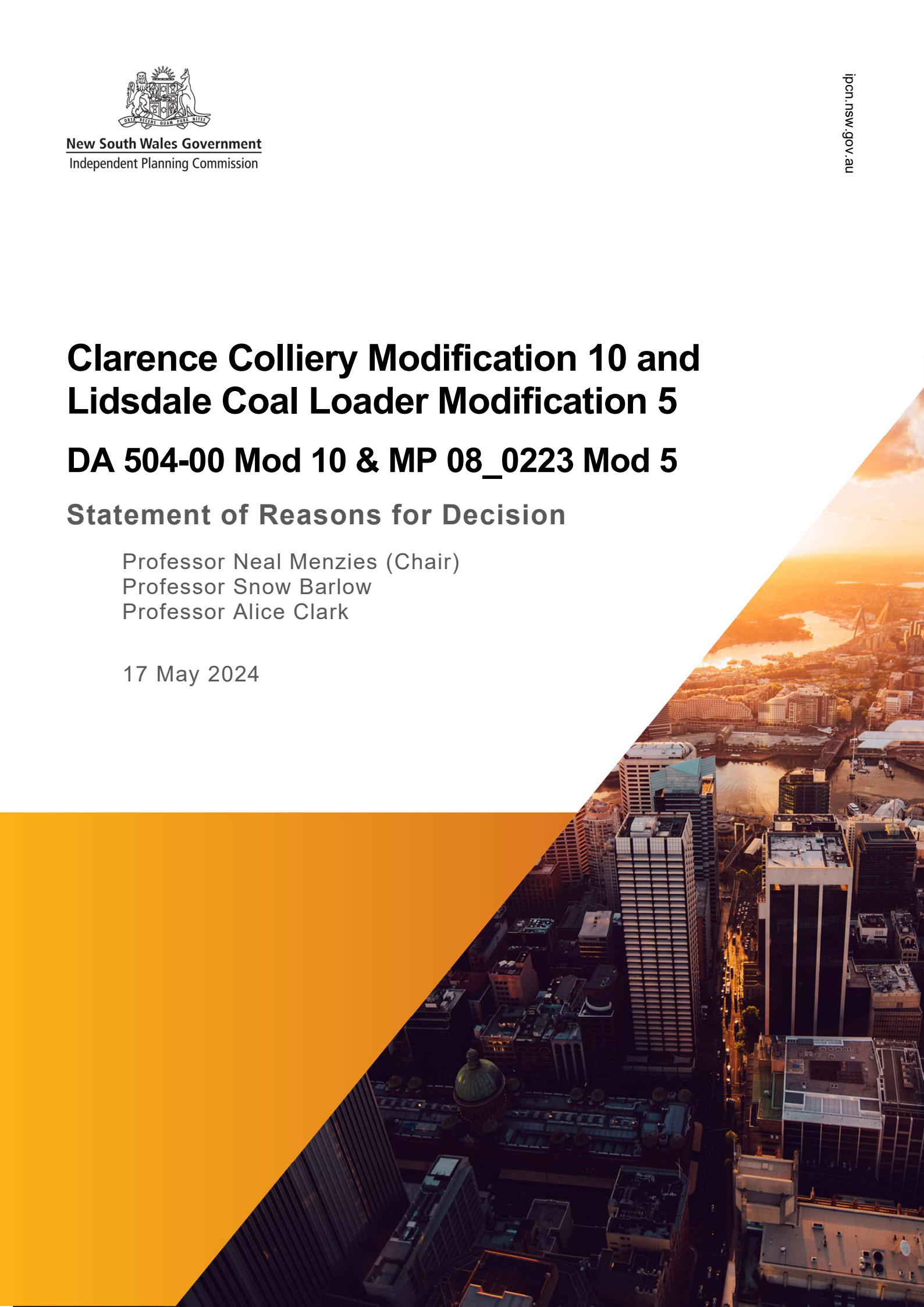
Clarence Colliery Modification 10 and Lidsdale Coal Loader Modification 5

DA 504-00 Mod 10 & MP 08_0223 Mod 5

Statement of Reasons for Decision

Professor Neal Menzies (Chair)
Professor Snow Barlow
Professor Alice Clark

17 May 2024



1. Introduction

1. On 16 April 2024, the NSW Department of Planning, Housing and Infrastructure (**Department**) referred the modification applications (MOD) Clarence Colliery Modification 10 and Lidsdale Coal Loader Modification 5 (together, known as the **Application**) from Centennial Coal Company Pty Ltd (**Applicant**) to the NSW Independent Planning Commission (**Commission**) for determination.
2. The Application seeks to modify the development consents for the Clarence Colliery (DA 504-00) and the Lidsdale Coal Loader (MP 08_0223) respectively (**Existing Approvals**) pursuant to section 4.55(1A) of the *Environmental Planning and Assessment Act 1979* (**EP&A Act**).
3. In accordance with section 4.5(a) of the EP&A Act and section 2.7(1)(c) of the *State Environmental Planning Policy (Planning Systems) 2021* (**Planning Systems SEPP**), the Commission is the consent authority as the Applicant disclosed a reportable political donation.
4. Mr Andrew Mills, Chair of the Commission, nominated Professor Neal Menzies (Chair), Professor Snow Barlow and Professor Alice Clark to constitute the Commission for the purpose of exercising its functions with respect to the Application.
5. The Department concluded in its Assessment Report (**AR**) that the proposed modifications are in the public interest and are approvable, subject to the recommended conditions of consent.

2. The Application

Clarence Colliery Modification 10

6. The Application proposes to modify the existing development consent for the Clarence Colliery (DA 504-00) to:
 - increase the maximum total annual road coal transport from Clarence Colliery from 200,000 tonnes per annum (**tpa**) to 300,000 tpa, until 31 December 2026; and
 - increase the maximum annual road coal transport from Clarence Colliery to Mount Piper Power Station (**MPPS**) or Lidsdale Siding from 100,000 tpa to 200,000tpa, until 31 December 2026.
7. The above increase in road coal transport would also require an increase in overall daily truck movements from 50 to 80 per day, with a maximum of 50 movements being along the existing, approved haulage route to MPPS or Lidsdale Siding.

Lidsdale Coal Loader Modification 5

8. The Application also proposes to modify the existing development consent for the Lidsdale Coal Loader (MP 08_0223) to:
 - receive up to 25 laden trucks per day from the Clarence site until 31 December 2026, between 7am and 10pm Monday to Saturday and 8am to 10pm Sundays and Public Holidays.
9. The Commission notes that recent modifications for Clarence and Lidsdale Siding (DA 504-00 Mod 9 and MP 08_0223 Mod 4) allowed for the activities set out above to be undertaken until 31 December 2023 (AR para 6). The Application is seeking an extension of these activities to 31 December 2026.
10. The haulage routes are illustrated in Figure 1 of the Department's AR.

3. The Commission's Consideration

3.1 Material Considered by the Commission

11. In this determination, the Commission has considered the following material (**Material**):
- the Applicant's Modification Report, dated 13 November 2023;
 - all Government Agency advice to the Department;
 - the Department's AR and recommended conditions of consent, dated 15 April 2024;
 - a public submission made to the Commission, dated 29 April 2024;
 - comments and presentation material at meetings with the Applicant on 2 May 2024 and Department on 3 May 2024; and
 - the Applicant's response to the Commission's questions on notice, dated 8 May 2024.

3.2 Statutory Context

12. The modification applications were lodged under section 4.55(1A) of the EP&A Act. Under section 4.55(1A), a development consent can only be modified if the consent authority is satisfied that the proposed modification is of minimal environmental impact and that the development would remain substantially the same as the originally approved development.
13. The Commission agrees with the Department that the Application consists of modifications involving minimal environmental impact and these would be substantially the same developments as originally approved (AR para 28 and 29). The Commission is therefore satisfied that the proposed modifications can therefore be determined under section 4.55(1A) of the EP&A Act.

3.3 Consideration of Submissions

14. The Department exhibited the Application from 24 November to 7 December 2023 and received two submissions for both proposed modifications (both in support) from Energy Australia and Lithgow City Council. The NSW Environment Protection Authority (**EPA**) and Transport for NSW (**TfNSW**) also provided advice on the modification applications.
15. The Commission received one submission from a member of the public. This submission took the view that adequate rail transport infrastructure and approvals are already in place to accommodate the proposed volumes of coal transfers between Clarence Colliery and Lidsdale Siding/MPPS. The submission stated that there was no need for the current Application to allow transport of coal via truck and that the transport of coal via rail would have less detrimental impacts on the local community. The Commission has given due consideration to these matters in section 4.1 below.

3.4 Mandatory Considerations

16. In determining this Application, the Commission is required by section 4.55(3) of the EP&A Act to take into consideration such of the listed matters as are of relevance to the development the subject of the Application under section 4.15(1) (**Mandatory Considerations**) and the reasons given by the consent authority for the grant of the consent that is sought to be modified.

17. The mandatory considerations are not an exhaustive statement of the matters the Commission is permitted to consider in determining the Application. To the extent that any of the Material does not fall within the mandatory considerations, the Commission has considered that Material where it is permitted to do so, having regard to the subject matter, scope and purpose of the EP&A Act.

Table 1 – Mandatory Considerations

Mandatory Considerations	Commission's Comments
Relevant EPIs	<p>Appendix B of the Department's AR identifies relevant EPIs for consideration. The key EPIs (in their present, consolidated form) include:</p> <ul style="list-style-type: none"> • Planning Systems SEPP; • State Environmental Planning Policy (Resources and Energy) 2021 (SEPP Resources and Energy); and • Lithgow LEP 2014. <p>The Commission agrees with the Department's assessment of EPIs set out in Appendix B of the AR. The Commission therefore adopts the Department's assessment.</p>
Relevant DCPs	<p>Section 2.10 of the Planning Systems SEPP states that development control plans do not apply to SSD. The Commission does not consider any development control plans to be relevant to the determination of the Application.</p>
Likely Impacts of the Development	<p>The likely impacts of the Application have been considered in section 4 of this Statement of Reasons.</p> <p>The Commission agrees with the Department's assessment and evaluation that the likely impacts are minimal and acceptable, subject to conditions imposed by the Commission.</p>
Suitability of the Site for Development	<p>The Commission finds that the Site is suitable because it is the site of an approved and operating development under the existing development consents DA 504-00 and MP 08_0223 (as previously modified), and the subject Application will not significantly change or impact on the existing use of that Site.</p>
Objects of the EP&A Act	<p>The Commission has considered the reasons given in Appendix B of the Department's AR relating to the Department's consideration of the Objects of the EP&A Act and is satisfied that the Application is consistent with those Objects.</p>
Ecologically Sustainable Development	<p>For the reasons set out in this report, the Commission finds that the Application is consistent with the ESD principles and would achieve an acceptable balance between environmental, economic and social considerations.</p>
The Public Interest	<p>The Commission has considered whether the approval of the Application is in the public interest. In doing so, the Commission has weighed the predicted benefits of the Application against its predicted negative impacts. The Commission's consideration of the public interest has also been informed by consideration of the principles of ESD, as set out above.</p>

The Commission finds that, on balance, the Application is consistent with ESD principles, and that the Project would achieve an appropriate balance between relevant environmental, economic and social considerations. The likely benefits of the Application, being the ongoing employment opportunities and associated economic benefits in the region, warrant the conclusion that an appropriately conditioned approval is in the public interest.

Reasons given by the consent authority for the grant of the consent that is sought to be modified

The Commission has considered the reasons given by the Department for its approval of DA 504_00 Modifications 2 – 7 and MP 08_0223 Modifications 1-3 and finds that there is minimal overlap with the current Application. Notwithstanding, the Commission finds that the approval of the current Application would not be inconsistent or conflict with the reasons given by the Department for those modifications.

4. Key Issues

4.1 Traffic and Transport

4.1.1 Coal transport

18. The Applicant in its meeting within the Commission stated that the dispatch of coal via truck from Clarence Colliery to MPPS or Lidsdale Siding provides greater operational flexibility compared to rail. The Applicant provided further information in its response to the Commission dated 3 May 2024. In this response the Applicant stated:
- the ability to organise and dispatch trucks is more flexible as compared to organising and dispatching trains and as a result deliveries can be tailored to demand;
 - the ability to truck coal products allows for delivery when there are issues with rail services, derailments and pauses in production at Springvale and or Airly;
 - loading and unloading trucks requires less double handling of coal material compared to rail. Loading a train requires more moving parts and logistics;
 - the rail loading process exacerbates the volume of fine coal product (compared to truck loading) and that this can result in the coal product not discharging effectively out of the wagon at the unloading point.
19. The Applicant on page 2 of its response to the Commission stated that “*dispatching coal by truck provides additional flexibility in terms of product mix, logistics and by virtue of the simple loading and unloading procedure, protects the coal product from additional pulverisation as compared to train load out and delivery*”.
20. In its meeting with the Commission, the Applicant stated that there are a number of complexities involved in transporting coal to MPPS via rail. In its response to the Commission, the Applicant stated that in addition to the physical complexities (set out above) logistical challenges include:
- conflict with yard issues at Lithgow - and under these circumstances, no trains can go west from Clarence;
 - increased light vehicle and pedestrian interaction at level crossings;
 - train unloading at Lidsdale Siding is limited to the amount the facility can receive daily (under consent SSD 08_0223) and the limited footprint of the stockpile;
 - limited human resourcing for rail providers, particularly in Lithgow;
 - logistics of crewing from Sydney for rail lines to the west; and

- trains are already being delivered from Airly Mine at (or close to) the maximum rate that can be unloaded at the Lidsdale facility within curfew hours.
21. The Commission acknowledges that there are operational and logistical constraints with transporting coal to MPPS via rail as described by the Applicant. The Commission accepts that transporting coal to MPPS via truck would give the Applicant greater flexibility to respond to demand from MPPS on a shorter notice period and finds that the Applications are an appropriate method of securing the necessary flexibility in the conduct of the underlying operations. The Commission has given consideration to the impacts associated with truck movements in section 4.1.2 below.

4.1.2 Traffic volumes

22. The modifications would generate an additional eight truck movements per hour between Clarence and MPPS or Lidsdale Siding. The overall traffic volumes are predicted to increase by approximately 1-8% along the haulage route. The Commission agrees with the Department that the proposed increase in traffic volumes is consistent with the previously approved trucking modifications (DA 504-00 Mod 9 and MP 08_0223 Mod 4) (AR para 47).
23. The Commission is satisfied that the modifications:
- would have minimal impact on the level of service at key intersections;
 - would not adversely impact the efficiency of the local road network;
 - are unlikely to significantly affect road safety; and
 - would result in a negligible increase in road traffic noise that is unlikely to be noticeable to receivers.
24. Accordingly, the Commission has determined to grant consent to the modifications. The Commission has imposed condition 7AA on DA 504-00 which permits the continued transport of coal to MPPS via truck up until 31 December 2026.
25. The Commission has also imposed condition 19B on DA 504-00 which requires the Applicant to prepare a Traffic Management Plan (**TMP**) in consultation with TfNSW. As part of the TMP the Applicant will be required to set out measures to be implemented to minimise traffic safety issues, disruption to local road users and impacts on road network efficiency along the haulage route. The Commission also notes that under existing conditions 18 and 19 of this consent, the Applicant must cover vehicles loaded with coal for the duration of their journey and must ensure all vehicles leaving the Site are cleaned of any materials that may fall onto the road.
26. The Commission is also of the view that opportunities exist for the Applicant to investigate rail as a long-term option for the transport of coal to MPPS.

4.2 Air Quality

27. As set out in section 2, the Applicant is seeking approval from the continuation of truck movements from Clarence Colliery to MPPS or Lidsdale Siding. The Commission notes that these truck movements would result in a small increase in particulate emissions from additional truck movements and coal loading/unloading. The Applicant in its response to the Commission stated that air quality monitoring over 2023 confirmed that with the additional activities of dispatching coal from Clarence Colliery, unloading coal at Lidsdale Siding and forward dispatch to MPPS, were able to maintain compliance with the air quality criteria under each consent. To support this statement, the Applicant provided air quality monitoring results from both Lidsdale Siding and Clarence Colliery for a period from 2023.

28. The Commission notes that no exceedances of air quality criteria were recorded during the previous period of increased trucking (AR Table 4). The Commission also acknowledges that the Applicant has committed to reducing particulate emissions by ensuring all trucks will pass through a wash bay before leaving Clarence, Lidsdale Siding or the Mount Piper Power Station, and covering all loaded trucks during transport.
29. The Commission is satisfied that the increase in emissions would be incremental and within the air quality criteria set out in the Existing Approvals. The Commission is of the view that the Air Quality Monitoring Program required by the Existing Approvals (condition 14 of DA504_00 and condition 10 of 08_0223) is sufficient to require the Applicant to continue to monitor air quality and compliance with the criteria set out in each consent.

4.3 Other Issues

30. The Commission agrees with the Department's assessment of other issues including air quality, greenhouse gas and socio-economic impacts. The Commission is of the view that these issues can be adequately managed by the existing conditions of consent under the Existing Approvals. The Commission is also satisfied that the modifications do not propose any activities which would materially impact on biodiversity, Aboriginal heritage, historic heritage, water or soils.

5. The Commission's Findings and Determination

31. The Commission has carefully considered the Material before it as set out in section 3.1 of this report. Based on its consideration of the Material, the Commission finds that the Application should be approved subject to conditions of consent for the following reasons:
- the Application is consistent with the NSW Government's regulatory framework;
 - the transport of coal by road undertaken as part of DA 504-00 Mod 9 and MP 08_0223 Mod 4 demonstrated to be of minimal environmental impact;
 - the Application would result in minimal environmental impact – and impacts would not extend beyond 31 December 2026;
 - these impacts are capable of being effectively managed through the conditions of consent imposed by the Commission; and
 - the Application is not inconsistent with the ESD principles, is in accordance with the Objects of the EP&A Act and is in the public interest.
32. For the reasons set out in paragraph 31 above, the Commission has determined that the consent should be approved subject to conditions.
33. The reasons for the Decision are given in the Statement of Reasons for Decision dated 17 May 2024.



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