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| Authorisation | Mining Lease 1376 (Act 1992) |
| Licence Condition | Standard Mining Operations Plan & Annual Rehabilitation Reporting. |
| Legislation | Clause 12 of Schedule 1B of the <i>Mining Act 1992</i> |
| Decision maker | Anthony Keon Executive Director, NSW Resources Regulator Department of Regional NSW |

DECISION TO VARY AN AUTHORISATION

As authorised by Clause 12 of Schedule 1B of the *Mining Act 1992* (**Act**), I Anthony Keon, having delegated authority from the Minister, have decided to attach the standard Mining Operations Plan (**MOP**) and Annual Rehabilitation Reporting (**ARR**) condition on Mining Lease 1376 (Act 1992) (**ML 1376**).

The condition states:

“Mining Operations Plan and Annual Rehabilitation Report

- (a) The lease holder must comply with an approved Mining Operations Plan (MOP) in carrying out any significant surface disturbing activities, including mining operations, ancillary mining activities and prospecting. The lease holder must apply to the Minister for approval of a MOP. An approved MOP must be in place prior to commencing any significant surface disturbing activities, including mining operations, ancillary mining activities and prospecting.
- (b) The MOP must identify the post mining land use and set out a detailed rehabilitation strategy which:
 - (i) identifies areas that will be disturbed;
 - (ii) details the staging of specific mining operations, ancillary mining activities and prospecting;
 - (iii) identifies how the mine will be managed and rehabilitated to achieve the post mining land use;
 - (iv) identifies how mining operations, ancillary mining activities and prospecting will be carried out in order to prevent and or minimise harm to the environment; and

- (v) reflects the conditions of approval under:
 - the *Environmental Planning and Assessment Act 1979*;
 - the *Protection of the Environment Operations Act 1997*; and
 - any other approvals relevant to the development including the conditions of this mining lease.
- (c) The MOP must be prepared in accordance with the *ESG3: Mining Operations Plan (MOP) Guidelines September 2013* published on the [Department's website](#).
- (d) The lease holder may apply to the Minister to amend an approved MOP at any time.
- (e) It is not a breach of this condition if:
 - (i) the operations which, but for this condition 3(e) would be a breach of condition 3(a), were necessary to comply with a lawful order or direction given under the *Environmental Planning and Assessment Act 1979*, the *Protection of the Environment Operations Act 1997*, the *Work Health and Safety (Mines and Petroleum Sites) Act 2013* and *Work Health and Safety (Mines and Petroleum Sites) Regulation 2014* or the *Work Health and Safety Act 2011*; and *Work Health and Safety Regulation 2017*.
 - (ii) the Minister had been notified in writing of the terms of the order or direction prior to the operations constituting the breach being carried out.
- (f) The lease holder must prepare a Rehabilitation Report to the satisfaction of the Minister. The report must:
 - (i) provide a detailed review of the progress of rehabilitation against the performance measures and criteria established in the approved MOP;
 - (ii) be submitted annually on the grant anniversary date (or at such other times as agreed by the Minister); and
 - (iii) be prepared in accordance with any relevant annual reporting guidelines published on the [Department's website](#).

Note: The Rehabilitation Report replaces the Annual Environmental Management Report.

This decision takes effect from **7 December 2020**.

REASONS FOR DECISION

Legislation

1. Clause 12(1) of Schedule 1B of the Act provides that the relevant decision-maker may vary an authorisation (including the conditions of an authorisation).
2. Clause 12(2)(a) of Schedule 1B of the Act provides that a variation of an authorisation may include the attaching of a condition (whether or not any conditions have already been attached).
3. Clause 12(3) of Schedule 1B of the Act enables the authorisation to be varied on the initiative of the relevant decision-maker.
4. Clause 12(4) of Schedule 1B of the Act enables the authorisation to be varied at any time during its currency.
5. Clause 12(5) of Schedule 1B of the Act requires the decision-maker to:
 - (a) give the holder of the authorisation notice of the decision, and
 - (b) invite the making of submissions to the decision-maker about the proposed decision and provide at least 28 days to make a submission, and
 - (c) take into consideration any such submission after the submission period has expired.
6. Clause 12(6) of Schedule 1B of the Act requires the decision to be given in writing to the licence holder.
7. Section 363(1) of the Act provides that the Minister may delegate any functions conferred under the Act to another person.
8. The Minister has delegated the functions to vary an authority under Clause 12(1) of Schedule 1B of the Act to the Executive Director of the NSW Resources Regulator (**Regulator**).

Background

9. ML 1376 was first granted on 28 August 1995 and was to expire on 28 August 2016.
10. ML 1376 is located approximately 7km south-south-west of Picton, in the Wollondilly Shire Local Government Area and forms part of the 'Tahmoor Colliery'. Tahmoor Coal Pty Ltd (**Tahmoor**) is also the lease holder of Mining Leases 1308 (Act 1992), 1539 (Act 1992), 1642 (Act 1992) and Consolidated Coal Lease 716 (Act 1973).
11. On 28 January 1997, ML 1376 was transferred to Tahmoor, previously known as Westcoal Pty Limited.

12. On 7 May 1998, the (then) Minister for Mineral Resources amended all mining leases by replacing existing environmental reporting conditions with a standard Mining Operations Plan and Annual Rehabilitation Reporting condition.
13. The Regulator has since confirmed that ML 1376 does not have this standard condition attached to the authorisation due to an administrative oversight.
14. An application to renew ML 1376 was received by the Department of Regional NSW (**Department**) on 14 September 2015 and is pending determination by the decision maker.
15. With the exception of ML 1376, all other mining authorisations held by Tahmoor have the standard MOP and ARR condition attached.

Representations

16. On 9 October 2020, I wrote to Tahmoor inviting submissions in response to my proposed decision to impose the standard MOP and ARR condition on ML 1376 by no later than 4.00 pm on 9 November 2020.
17. On 9 November 2020, the Regulator received a submission from Tahmoor in response to my proposal.
18. I note Tahmoor's submission raised no objections to attaching the standard MOP and ARR condition on ML 1376.
19. I also note Tahmoor requested that the annual submission date for the Rehabilitation Report be modified from the grant anniversary date of ML 1376 to 31 March of each year. This would allow the reporting requirements for ML 1376 to align with Tahmoor's existing tenements and development consents.
20. Tahmoor also advised that the ARR requirements will be incorporated into the Annual Review/AEMR and submitted as a consolidated report with a joint title of Annual Review/AEMR/Rehabilitation Report.

Considerations and findings

21. In making my decision, I have had regard to the objects of the Act.
22. I am satisfied that the requirements of clause 12(5) of Schedule 1B to the Act have been met and that the lease holder was provided an opportunity to provide a submission in response to my proposed decision.
23. Standard conditions are imposed by the Department on all authorities at the time of grant or renewal and are published on the [Department's website](#).
24. I note that the standard conditions were recently updated by the Department and published on the [Mining, Exploration and Geoscience](#) website and minor amendments were introduced to the wording of the standard MOP and ARR condition.

Reasons for decision

25. This includes “mining purposes” now replaced with “ancillary mining activities” at condition 3 (a), (b)(ii) and (iv).
26. The purpose of standard conditions is to ensure lease holders are held accountable for complying with mining operations plans, rehabilitation obligations, annual reporting requirements and other criteria subject to the lease.
27. In this instance, the omission of the standard MOP and ARR condition from ML 1376 was due to an historical administrative error.
28. Based on the material before me, I am satisfied that there are sufficient grounds to attach the standard MOP and ARR condition on Mining Lease 1376.
29. I therefore vary the authorisation by attaching the standard MOP and ARR Rehabilitation Reporting condition on ML 1376.
30. I am also mindful of the need to reduce regulatory burden by providing lease holders the opportunity to consolidate annual reporting requirements where appropriate. In this regard, I agree to vary the annual rehabilitation reporting date for ML 1376 from the grant anniversary date to 31 March annually.
31. This change will ensure the reporting obligations for ML 1376 aligns with Tahmoor’s other mining authorisations (ML 1308, ML 1642, ML 1539, and CCL 716).
32. This decision takes effect from 7 December 2020.

Date of decision: **4 December 2020**



Anthony Keon
Executive Director
NSW Resources Regulator

Note: In accordance with its Public Comment Policy, a copy of this decision will be published on the NSW Resources Regulator’s website: www.resourcesregulator.nsw.gov.au