



**BHP Billiton Mitsubishi Alliance**

10 November 2010

Mr Graeme Newton  
Coordinator-General  
Department of Infrastructure and Planning  
PO Box 15009  
CITY EAST QLD 4002

Dear Mr Newton

**Caval Ridge Project – Application to Coordinator-General to evaluate environmental effects of proposed changes**

As you know, BM Alliance Coal Operations Pty Ltd (**BMA**) is the proponent for the Caval Ridge Project (**Project**) and the Coordinator-General's report for the Project was issued on 9 August 2010 (**Report**).

The Report contained imposed conditions, three of which required certain steps to be taken prior to the grant of the Caval Ridge Mine (**CRM**) environmental authority. However, the last objection day for the mining lease application and associated environmental authority applications for the Project was 4 November 2010 and, unexpectedly, no objections were received.

This means, according to the requirements of section 228 of the *Environmental Protection Act 1994* (**EP Act**), the two relevant environmental authorities must be granted by 18 November 2010 (that is, within the statutorily specified maximum of 10 business days from the last objections day).

Neither the proponent nor the relevant government agencies involved will be in a position to have the relevant conditions satisfied by that date.

BMA therefore requests that the Coordinator-General, pursuant to his powers under Part 4, Division 3A of the *State Development and Public Works Organisation Act 1971* (Qld) (**SDPWO Act**), assess changes BMA proposes to the three relevant conditions currently imposed on the Project by the Report.

The reasons for this request are set out in more detail below.

This letter acts as a written application by BMA under section 35E of the SDPWO Act.

## 1. DESCRIPTION OF THE PROPOSED CHANGES AND THEIR EFFECTS ON THE PROJECT (s35E(a))

BMA seeks changes to conditions 2, 13 and 18 in Appendix 1, Schedule 1 to the Report as follows:

- (a) Condition 2 (Mine Water Management)- delete the words "being granted" wherever occurring and insert instead the words "taking effect".
- (b) Condition 13 (Mineral Waste) - delete the words "being granted" wherever occurring and insert instead the words "taking effect".
- (c) Condition 18 (Accommodation) - delete the words "is granted" wherever occurring and insert instead the words "takes effect".

BMA submits that these changes are of no material effect to the project (and of no environmental effect at all) as the above three conditions, if amended as requested, would still operate to restrain the CRM environmental authority from taking effect until the conditions have been satisfied.

BMA submits that there can be no material difference between:

- restraining *grant* of the CRM environmental authority until the three conditions are satisfied; and
- restraining the CRM environmental authority from *taking effect* until the three conditions are satisfied.

As explained below, the change would simply allow the Department of Environment and Resource Management (**DERM**) to ensure it is not in breach of its statutory obligations under section 228 of the *Environmental Protection Act* 1994, thereby not putting the legal integrity of the environmental authorities at risk.

## 2. REASONS FOR THE PROPOSED CHANGE (s35E(b))

Under the relevant statutory powers, the Mining Registrar in Emerald set the last day for objections to the Caval Ridge mining lease application (MLA 70403) as 4 November 2010.

This also became the last day for objections to the associated environmental authority applications, being the application for the CRM environmental authority and the associated application for an amended environmental authority for the Peak Downs mine.

As you know, unexpectedly, no objections to any of these applications were received. For the environmental authority applications, that meant the DERM was automatically put into a position where, by statute (section 228 of the EP Act), it must issue both the CRM environmental authority and the Peak Downs amended environmental authority by 18 November 2010.

Failure to do so may jeopardise the legal integrity of these key project approvals. However, the three imposed conditions contained in the Coordinator-General's report referred to above required steps to be taken prior to the grant of the Caval Ridge mine environmental authority.

In short, neither the proponent or the relevant government agencies involved will be in a position to have those three conditions satisfied prior by 18 November 2010.



As delaying the issuing of the environmental authorities is not open to DERM, BMA has proposed a twofold solution as follows:

- that BMA make this change request which, if you agree, would see the three relevant conditions altered so that they would operate, until they were satisfied, to restrain the CRM environmental authority from taking effect rather than restraining the DERM from issuing it; and
- that the DERM would issue the CRM environmental authority bearing the express notation that it would only take effect once all of the three relevant conditions had been satisfied (or, alternatively and simply to allow for contingencies, were waived by the Coordinator-General for any reason) and once the Caval Ridge mining lease had been granted. (Correspondence from BMA to the DERM, dated 8 November 2010 copied to Dr Geoff Dickie of your office refers.)

In the meantime, BMA assures you that it is progressing towards satisfaction of each of the relevant conditions.

BMA looks forward to receiving the Coordinator-General's change report.

Should you require any further information in relation to this request please do not hesitate to contact me.

Yours sincerely,



**Tony Willmott**  
Project Director

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