

Notice of Modification

Section 75W of the *Environmental Planning and Assessment Act 1979*

As delegate of the Minister for Planning and Infrastructure, the Planning Assessment Commission of NSW modifies the project approval referred to in Schedule 1, as set out in Schedule 2.

Member of the Commission

Member of the Commission

Sydney

2016

SCHEDULE 1

The development consent DA 376-8-2003 granted by the Minister Assisting the Minister for Infrastructure and Planning (Planning Administration) for the Bulga Coal Continued Underground Operations on 23 February 2004.

SCHEDULE 2

1. Delete the Table of Contents and insert the following at the end of Schedule 1:

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2. In the list of definitions in Schedule 2, delete the following terms and their definitions: “Department”, “Director-General”, “DRE”, “EAs”, “EA (Mod 4)”, “EA (Mod 5)”, “EIS”, “Minister”, “MSB” and “NOW”, and insert the following definitions in alphabetical order:

Department	Department of Planning and Environment
DPI Water	Department of Primary Industries – Water
DRE	Division of Resources and Energy within the Department of Industry
EA (MOD 4)	Modification application 376-8-2003 MOD 4, and accompanying Environmental Assessment prepared by Umwelt (Australia) Pty Limited titled <i>Environmental Assessment, Blakefield South Power Generation and Ventilation Air Methane Abatement</i> , dated December 2009, including the Response to Submissions dated 22 April 2010
EA (MOD 5)	Modification application 376-8-2003 MOD 5, and accompanying Environmental Assessment prepared by GSS Environmental titled <i>Proposed Modification to DA 376-8-2003 under Section 75W of Part 3A of the EP&A Act 1979, Blakefield North Underground Mine Project</i> and Statement of Commitments, dated November 2012, including the Response to Submissions dated 8 April 2013
EA (MOD 6)	Modification application 376-8-2003 MOD 6, and accompanying Environmental Assessment prepared by Bulga Underground Operations Pty Ltd titled <i>Modification to Bulga Underground Operations (DA 376-8-2003) – Noise Criteria, Flora & Fauna Criteria, and Independent Auditing</i> , dated 20 June 2016
EIS	Environmental Impact Statement prepared by Umwelt (Australia) Pty Ltd titled <i>Bulga Coal Continued Underground Operations</i> , volumes 1-5, dated July 2003
Minister	Minister for Planning, or delegate
Open cut mining operations	Includes overburden removal and the extraction, processing, handling, storage and transportation of coal under the consent for the Bulga Optimisation Project (SSD 4960), as modified
SANSW	Subsidence Advisory NSW
Secretary	Secretary of the Department, or nominee
SEE (MOD 1)	Modification application 4-1-2006, and accompanying Statement of Environmental Effects prepared by Umwelt (Australia) Pty Ltd titled <i>Section 96(1A) Modification of Bulga Coal Underground Operations (DA 376-8-2003) – Relocation of Men and Materials Drifts</i> , dated 23 December 2005
SEE (MOD 2)	Modification application 113-9-2006, and accompanying Statement of Environmental Effects prepared by Umwelt (Australia) Pty Ltd titled <i>Coal Handling and Processing Plant – Increased Throughput</i> , dated September 2006
SEE (MOD 3)	Modification application 19-3-2007, and accompanying Statement of Environmental Effects prepared by Umwelt (Australia) Pty Ltd titled <i>Statement of Environmental Effects for the Bulga Underground – Southern Mining Area Modification – Section 96(2) Application to Modify Consent DA 376-8-2003</i> , dated March 2007, including the Response to Submissions dated July 2007

3. In the list of definitions in Schedule 2:

- (a) under the definition of "Annual Review", delete the number "2" and replace with "4";
 - (b) under the definition of "Blakefield North Mine", delete the word "Mod" and replace with "MOD"; and
 - (c) under the definition of "Bulga Mining Complex", delete the words "Open Cut Coal Mine (DA 41-03-99)" and replace with "Optimisation Project (SSD 4960), as modified".
4. Delete all references to "Director-General" and replace with "Secretary".
5. Delete all references to "the MSB" and replace with "SANSW".
6. Delete all references to "NOW" and replace with "DPI Water".
7. Delete all references to "Applicant shall" and replace with "Applicant must".
8. Delete condition 2 of Schedule 3 and insert instead the following:
 2. The Applicant must carry out the project generally in accordance with the:
 - (a) EIS;
 - (b) SEE (MOD 1);
 - (c) SEE (MOD 2);
 - (d) SEE (MOD 3);
 - (e) EA (MOD 4);
 - (f) EA (MOD 5); and
 - (g) EA (MOD 6).
 - 2A. The Applicant must carry out the project in accordance with the conditions of this approval.
9. In condition 3 of Schedule 3, delete the words "above documents" and replace with "documents listed in condition 2 of Schedule 3".
10. In condition 1 of Schedule 4, delete Table 1 and the note, and insert the following:

Table 1: Land subject to acquisition upon request

Property 195 - Kennedy	Property L - Dwyer Estates P/L*
Property 217s - Russell	Property R – Myers*
Property H - Cobcroft Wines P/L*	149 – E. McNerney
6 – I.B. Headley*	150 – E. McNerney
7 – I.B. Headley*	151 – R.D. & L.M. Lewis*
9 – I.B. & J.D. Headley*	216 – R.D. & G.W. Turnbull*
10– I.B. & J.D. Headley *	

Notes:

- For more information on the numerical references to land used in this condition, see the figures in Appendix 2.
 - Properties marked with an asterisk have been acquired by Bulga Coal Management Pty Ltd.
11. In Table 1A in condition 4 of Schedule 4, delete all references to "EAs" and replace with "documents listed in condition 2 of Schedule 3".
 12. In conditions 7B, 7E, 7F, 24A, 32C, 38 and 49A of Schedule 4:
 - (a) delete the words "and implement" after the words "shall prepare"; and
 - (b) at the end of each condition, insert the following:

"The Applicant must implement the approved plan as approved from time to time by the Secretary."
 13. In conditions 11, 15, 16, 17, 18, 19, 20 and 53 of Schedule 4 and items 2 and 4 of Appendix 4, delete the word "shall" and replace with "must".
 14. In condition 28 of Schedule 4, delete the words "the 2007 SEE" and replace with "SEE (MOD 3)".
 15. In condition 30 of Schedule 4:
 - (a) delete the word "development" and replace with "Bulga Mining Complex"; and
 - (b) delete Table 13 and replace with the following:

Table 13: Noise Impact Assessment Criteria dB(A)

Location	Day <i>L_{Aeq} (15 min)</i>	Evening <i>L_{Aeq} (15 min)</i>	Night <i>L_{Aeq} (15 min)</i>	Night <i>L_{A1} (1 min)</i>
1A, 8	38	38	38	45
97	38	38	36	45
217n, 230, 232, 234, 323, 324, 325	37	37	37	45
1B, 94, 95, 103, 105A, 105C, 142A, 143B, 145, 164, 165, 179, 195, 217s, 217m, 222, 226, 227, 228, 229, 231, 233, 235, 237, 239, 240, 241, 261, 262, 263, 264, 265, 266, 272	36	36	36	45
All other privately-owned residences	35	35	35	45

(c) at the end of the condition, insert the following:

“In the event that, in the opinion of the Secretary, open cut mining operations at the Complex have been substantially completed, then condition 1 of Appendix 5 has effect in place of this condition.”

16. In condition 31 of Schedule 4:
 - (a) delete the second dot point; and
 - (b) in the third dot point, delete the word “other”.
17. Delete conditions 32 and 32A of Schedule 4.
18. In condition 32C of Schedule 4:
 - (a) delete the comma preceding the words “land acquisition” and replace with the word “and”;
 - (b) delete the words “, cumulative impact assessment and cumulative acquisition”;
 - (c) in the second dot point of subparagraph (c), delete the word “Construction”, and after the word “Noise”, insert “Impact”;
 - (d) insert an asterisk following all references to “receiver 160”; and
 - (e) after the second note, insert the following:

“• Properties marked with an asterisk have been acquired by Bulga Coal Management Pty Ltd.”
19. In condition 43 of Schedule 4, delete items (b), (c), (d), (f) and (g) and insert the following in alphabetical order:
 - (b) establish and maintain the proposed ecological corridors on site (see Appendix 6);
 - (c) ensure the corridors shown in Appendix 6 link to the Wollombi Brook Conservation Area;
 - (d) conserve, maintain and enhance the existing Warkworth Sands Woodland ecological community (see Appendix 7);
20. Delete condition 44 of Schedule 44 and replace with the following:

Biodiversity Management Plan

44. The Applicant must prepare a Biodiversity Management Plan for the Bulga Mining Complex to the satisfaction of the Secretary. This plan must:
 - (a) be prepared in consultation with OEH, and submitted to the Secretary for approval by 31 March 2017;
 - (b) include a detailed description of what measures would be implemented to satisfy the requirements in condition 43 and 43A of Schedule 4;
 - (c) describe the short, medium, and long term measures that would be implemented to:
 - manage the impacts of clearing vegetation, including pre-clearance surveys; and
 - manage the remnant vegetation and habitat on the site;
 - (d) include a detailed description of the measures that would be implemented over the next 3 years, including the procedures to be implemented for:
 - enhancing the quality of existing vegetation and fauna habitat in the conservation and offset areas;
 - restoring native vegetation and fauna habitat on the biodiversity areas and rehabilitation area through focusing on assisted natural regeneration, targeted vegetation establishment and the introduction of naturally scarce fauna habitat features (where necessary);
 - maximising the salvage of resources within the approved disturbance area – including vegetative and soil resources – for beneficial reuse in the enhancement of the biodiversity areas or rehabilitation area;
 - collecting and propagating seed from the local area;
 - protecting vegetation and fauna habitat outside the approved disturbance area on site;
 - minimising the impacts on fauna on site, including undertaking pre-clearance surveys;

- managing any potential conflicts between the proposed restoration works in the biodiversity areas and any Aboriginal heritage values (both cultural and archaeological);
 - managing salinity;
 - controlling weeds and feral pests;
 - controlling erosion;
 - managing grazing and agriculture on site;
 - controlling access; and
 - bushfire management;
- (e) include a seasonally-based program to monitor and report on the effectiveness of these measures, and progress against the detailed performance and completion criteria;
- (f) identify the potential risks to the successful implementation of the plan, and include a description of the contingency measures that would be implemented to mitigate these risks; and
- (g) include details of who would be responsible for monitoring, reviewing, and implementing the plan.

The Applicant must implement the approved management plan as approved from time to time by the Secretary.

21. Delete Schedule 6 and replace with the following:

SCHEDULE 6 ENVIRONMENTAL MANAGEMENT, REPORTING AND AUDITING

ENVIRONMENTAL MANAGEMENT

Environmental Management Strategy

1. The Applicant must prepare an Environmental Management Strategy for the Bulga Mining Complex to the satisfaction of the Secretary. This strategy must:
 - (a) be submitted to the Secretary for approval by 31 March 2017;
 - (b) provide the strategic framework for environmental management of the Bulga Mining Complex;
 - (c) identify the statutory approvals that apply to the development;
 - (d) describe the role, responsibility, authority and accountability of all key personnel involved in the environmental management of the development;
 - (e) describe the procedures that would be implemented to:
 - keep the local community and relevant agencies informed about the operation and environmental performance of the development;
 - receive, handle, respond to, and record complaints;
 - resolve any disputes that may arise during the course of the development;
 - respond to any non-compliance;
 - respond to emergencies; and
 - (f) include:
 - copies of any strategies, plans and programs approved under the conditions of this consent; and
 - a clear plan depicting all the monitoring required to be carried out under the conditions of this consent.

The Applicant must implement the approved strategy as approved from time to time by the Secretary.

Adaptive Management

2. The Applicant must assess and manage development-related risks to ensure that there are no exceedances of the criteria and/or performance measures in Schedule 4. Any exceedance of these criteria and/or performance measures constitutes a breach of this consent and may be subject to penalty or offence provisions under the EP&A Act or EP&A Regulation.

Where any exceedance of these criteria and/or performance measures has occurred, the Applicant must, at the earliest opportunity:

- (a) take all reasonable and feasible steps to ensure that the exceedance ceases and does not recur;
- (b) consider all reasonable and feasible options for remediation (where relevant) and submit a report to the Department describing those options and any preferred remediation measures or other course of action; and
- (c) implement remediation measures as directed by the Secretary, to the satisfaction of the Secretary.

Management Plan Requirements

3. The Applicant must ensure that the management plans required under this consent are prepared in accordance with any relevant guidelines, and include:
 - (a) detailed baseline data;
 - (b) a description of:
 - the relevant statutory requirements (including any relevant approval, licence or lease conditions);
 - any relevant limits or performance measures/criteria;
 - the specific performance indicators that are proposed to be used to judge the performance of, or guide the implementation of, the development or any management measures;
 - (c) a description of the measures that would be implemented to comply with the relevant statutory requirements, limits, or performance measures/criteria;
 - (d) a program to monitor and report on the:
 - impacts and environmental performance of the development;
 - effectiveness of any management measures (see c above);
 - (e) a contingency plan to manage any unpredicted impacts and their consequences;
 - (f) a program to investigate and implement ways to improve the environmental performance of the development over time;
 - (g) a protocol for managing and reporting any:

- incidents;
 - complaints;
 - non-compliances with statutory requirements; and
 - exceedances of the impact assessment criteria and/or performance criteria; and
- (h) a protocol for periodic review of the plan.

Note: The Secretary may waive some of these requirements if they are unnecessary or unwarranted for particular management plans.

Annual Review

4. By the end of March each year, or other timing as may be agreed by the Secretary, the Applicant must submit a report to the Department reviewing the environmental performance of the development to the satisfaction of the Secretary. This review must:
- (a) describe the development (including any rehabilitation) that was carried out in the past calendar year, and the development that is proposed to be carried out over the current calendar year;
 - (b) include a comprehensive review of the monitoring results and complaints records of the development over the past calendar year, which includes a comparison of these results against the:
 - relevant statutory requirements, limits or performance measures/criteria;
 - requirements of any plan or program required under this consent;
 - monitoring results of previous years; and
 - relevant predictions in the documents listed in condition 2 of Schedule 3;
 - (c) identify any non-compliance over the past calendar year, and describe what actions were (or are being) taken to ensure compliance;
 - (d) identify any trends in the monitoring data over the life of the development;
 - (e) identify any discrepancies between the predicted and actual impacts of the development, and analyse the potential cause of any significant discrepancies; and
 - (f) describe what measures will be implemented over the current calendar year to improve the environmental performance of the development.

Revision of Strategies, Plans and Programs

5. Within 3 months of the:
- (a) submission of an annual review under Condition 4 above;
 - (b) submission of an incident report under Condition 7 below;
 - (c) submission of an audit report under Condition 9 below; or
 - (d) approval of any modifications to this consent,
- the Applicant must review, and if necessary revise, the strategies, plans, and programs required under this consent to the satisfaction of the Secretary.

Within 4 weeks of conducting any such review, the Applicant must advise the Secretary of the outcomes of the review, and provide any revised documents to the Secretary for review and approval.

Note: This is to ensure the strategies, plans and programs are updated on a regular basis, and to incorporate any recommended measures to improve the environmental performance of the development.

Community Consultative Committee

6. The Applicant must operate a Community Consultative Committee (CCC) for the Bulga Mining Complex to the satisfaction of the Secretary. This CCC must be operated in general accordance with the *Community Consultative Committee (CCC) Guidelines for State Significant Projects* (Department of Planning, 2016, or its latest version).

Notes:

- *The CCC is an advisory committee. The Department and other relevant agencies are responsible for ensuring that the Applicant complies with this consent.*
- *In accordance with the guideline, the Committee should be comprised of an independent chair and appropriate representation from the Applicant, Council, recognised environmental groups and the local community.*

REPORTING

Incident Reporting

7. The Applicant must immediately notify the Secretary and any other relevant agencies of any incident. Within 7 days of the date of the incident, the Applicant must provide the Secretary and any relevant agencies with a detailed report on the incident, and such further reports as may be requested.

Regular Reporting

8. The Applicant must provide regular reporting on the environmental performance of the development on its website, in accordance with the reporting arrangements in any plans or programs approved under the conditions of this consent.

INDEPENDENT ENVIRONMENTAL AUDIT

9. By the end of 2015, and every 3 years thereafter, unless the Secretary directs otherwise, the Applicant must commission, commence and pay the full cost of an Independent Environmental Audit of the development. This audit must:
 - (a) be conducted by a suitably qualified, experienced and independent team of experts whose appointment has been endorsed by the Secretary;
 - (b) include consultation with the relevant agencies;
 - (c) assess the environmental performance of the development and assess whether it is complying with the requirements in this consent and any relevant EPL or Mining Lease (including any assessment, plan or program required under these approvals);
 - (d) review the adequacy of strategies, plans or programs required under the abovementioned approvals;
 - (e) recommend appropriate measures or actions to improve the environmental performance of the development, and/or any assessment, strategy, plan or program required under the abovementioned approvals; and
 - (f) be conducted and reported to the satisfaction of the Secretary.

Note: This audit team must be led by a suitably qualified auditor and include experts in any field specified by the Secretary.

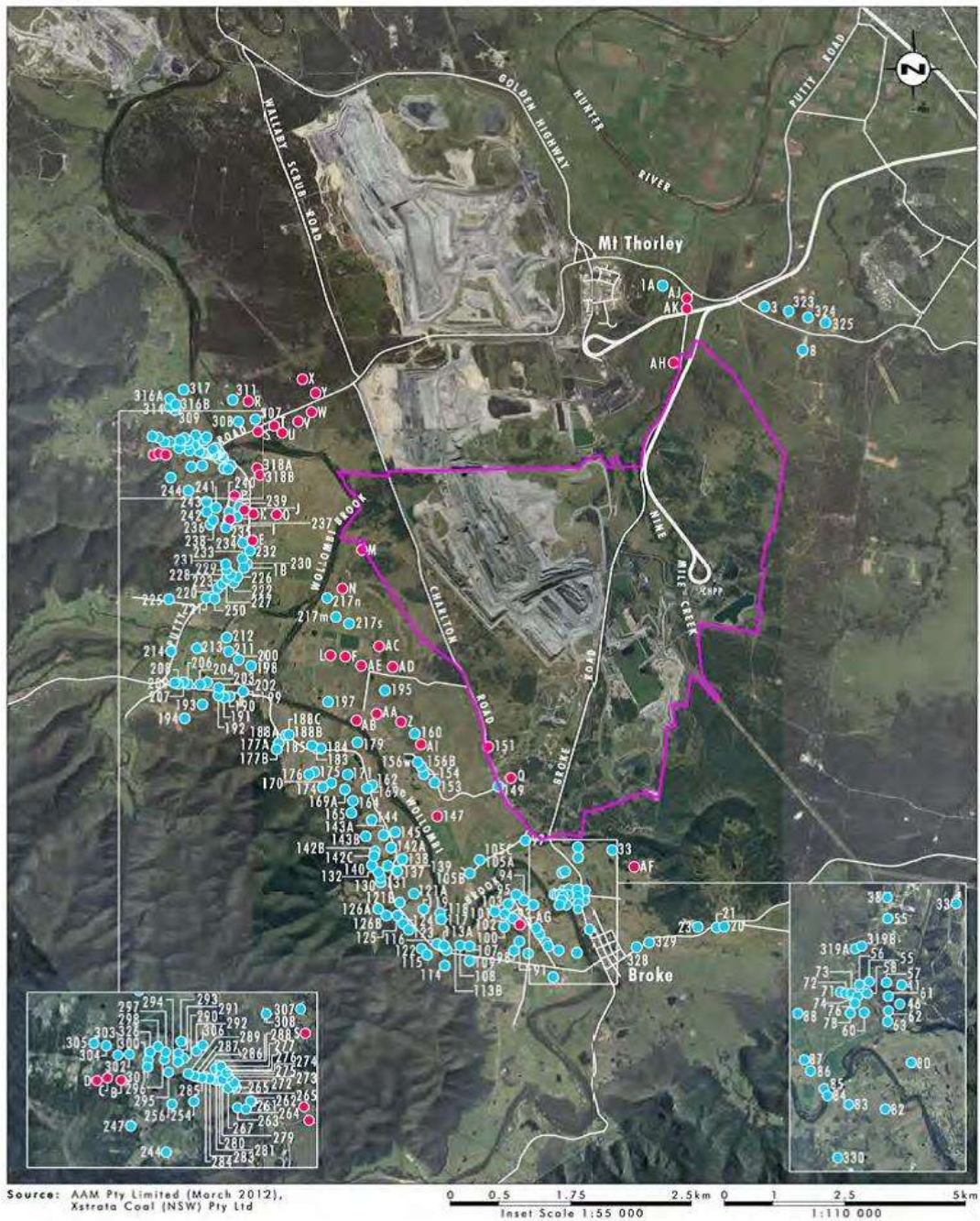
10. Within 12 weeks of commencing each audit, unless the Secretary agrees otherwise, the Applicant must submit a copy of the audit report to the Secretary, together with its response to any recommendations contained in the audit report, and a timetable for the implementation of any measures proposed to address the recommendations.

ACCESS TO INFORMATION

11. By the end of December 2016, the Applicant must:
 - (a) make copies of the following publicly available on its website:
 - the documents listed in condition 2 of Schedule 3;
 - current statutory approvals for the development;
 - approved strategies, plans and programs required under the conditions of this consent;
 - a comprehensive summary of the monitoring results of the development, reported in accordance with the specifications in any conditions of this consent, or any approved plans and programs;
 - a complaints register, which is to be updated monthly;
 - minutes of CCC meetings;
 - the annual reviews of the development (for the last 5 years, if applicable);
 - any independent environmental audit of the development, and the Applicant's response to the recommendations in any audit;
 - any other matter required by the Secretary; and
 - (b) keep this information up-to-date, to the satisfaction of the Secretary.
-

22. Delete Appendix 2 and replace with the following:

APPENDIX 2 RECEIVER LOCATION PLAN



Legend

- Project Area
- Private Residence
- Mine Owned Residence

FIGURE 2
Receptor Locations

23. In item 1 of Appendix 4:
- (a) after the number “12”, delete the comma and insert “and”;
 - (b) after the number “13”, delete the comma and the words “14 and 15”;
 - (c) after the word “conditions”, insert “and Table 18 of Appendix 5”;
 - (d) following subparagraph “d”, insert the word “or”, and the following subparagraph:
 - e. temperature inversion conditions between 1.5°C and 3°C/100 m and wind speeds greater than 2 m/s at 10 m above ground level.
24. In item 4 of Appendix 4, after the word “Policy”, insert the words “(as amended from time to time)”.
25. After Appendix 4, insert the following Appendices:

DRAFT

**APPENDIX 5
ALTERNATE NOISE CONDITION**

Noise Impact Assessment Criteria

1. Except for noise generated by gas drainage well construction for the Blakefield North Mine, the Applicant shall ensure that the noise generated by the development does not exceed the noise impact assessment criteria in Table 18 at any residence on privately-owned land, or on more than 25 percent of any privately-owned land.

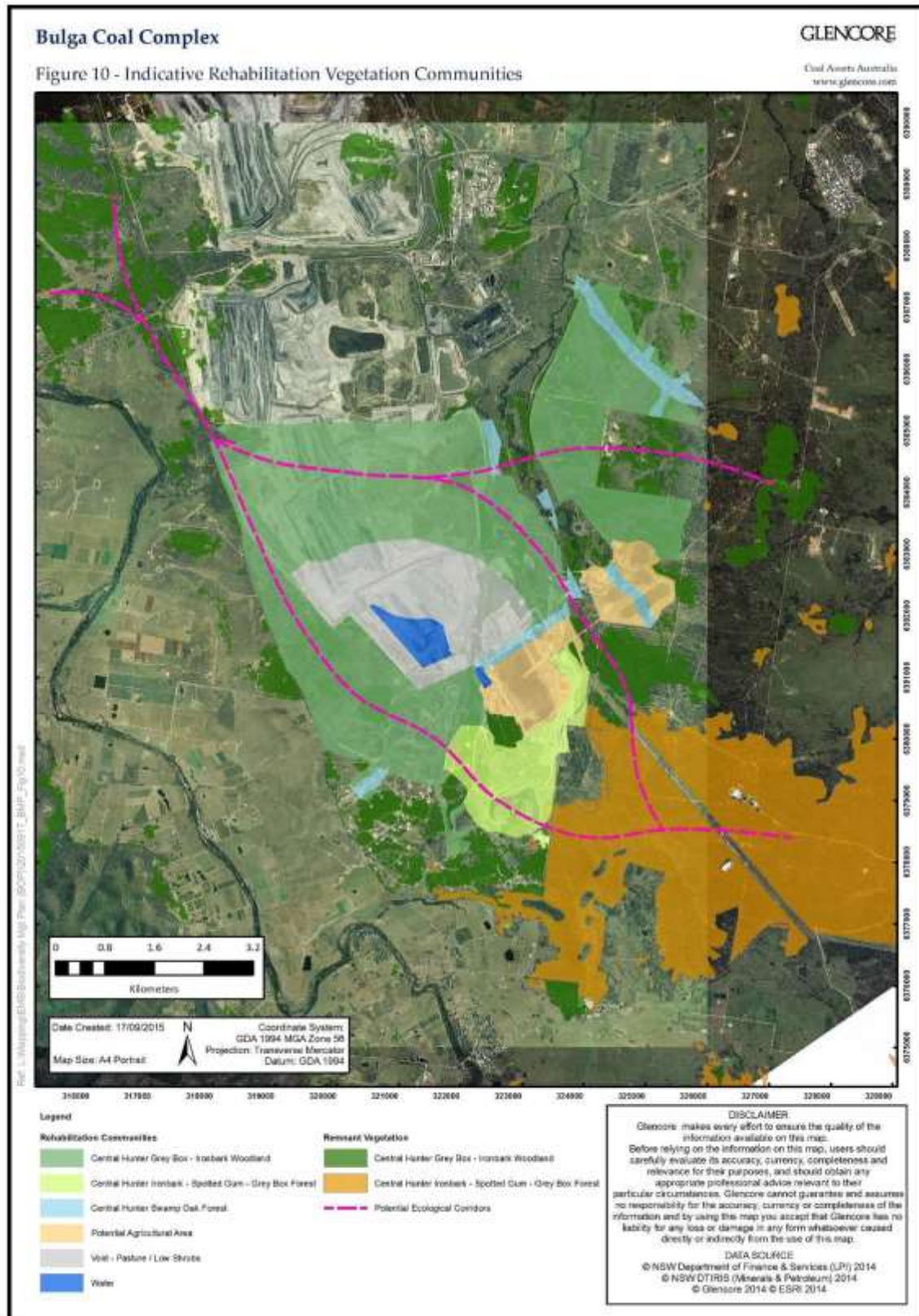
Table 18: Noise Impact Assessment Criteria dB(A)

Location	Day <i>L_{Aeq} (15 min)</i>	Evening <i>L_{Aeq} (15 min)</i>	Night <i>L_{Aeq} (15 min)</i>	Night <i>L_{A1} (1 min)</i>
All privately-owned residences	35	35	35	45

Notes:

- *For the purposes of this condition an “exceedance” is considered to have occurred when valid attended noise data from compliance monitoring (collected in accordance with the requirements in Appendix 4) indicates the noise generated by the Bulga Underground Mine has exceeded the criteria set out in Table 18.*
- *Appendix 4 sets out the meteorological conditions under which these criteria apply, and the requirements for evaluating compliance with these criteria.*
- *These noise limits do not apply at residences or land if the Applicant has a negotiated agreement with the relevant owner/s of that residence or land to generate higher noise levels, and the Applicant has advised the Department in writing of the terms of this agreement.*

APPENDIX 6 REHABILITATION VEGETATION COMMUNITIES



APPENDIX 7 WOLLOMBI BROOK CONSERVATION AREA

