

Notice of Modification

Section 96(2) of the *Environmental Planning and Assessment Act 1979*

I, the Acting Executive Director, Sustainable Development Assessments, as delegate for the Minister for Planning, modify the development consent referred to in schedule 1 as set out in schedule 2.

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Chris Wilson
Acting Executive Director

Sydney

25 June

2006

SCHEDULE 1

The Hunter Valley Operations – West Pit Extension development consent (DA 450-10-2003) granted by the Minister for Infrastructure and Planning on 12 June 2004.

SCHEDULE 2

1. Delete the definitions of Department, Director-General, DMR and Minister in schedule 2 and insert in alphabetical order the following:

Department	Department of Planning
Director-General	Director-General of the Department of Planning, or delegate
DNR	Department of Natural Resources
DPI (MR)	Department of Primary Industries (Mineral Resources)

2. Delete all references to “DMR” and replace with “DPI(MR)”.
3. In conditions 22 and 29 of schedule 4, replace “Department” with “DNR”.
4. Delete “DIPNR” from footnotes 5, 7 and 8 and replace with “DNR”.
5. Delete condition 2 of schedule 3, and insert the following:
 2. The Applicant shall carry out the development generally in accordance with the:
 - (a) DA 450-10-2003;
 - (b) EIS titled *Hunter Valley Operations – West Pit Extension and Minor Modifications*, volumes 1 – 4, dated October 2003, and prepared by Environmental Resources Management Australia;
 - (c) the section 96(1A) modification application for the Hunter Valley Loading Point, dated 30 June 2005, and prepared by Matrix Consulting;
 - (d) *Carrington Pit Extended Statement of Environmental Effects* volumes 1 & 2, dated October 2005, and prepared by Environmental Resources Management Australia;
 - (e) *Carrington Pit Extension Response to Submissions Report*, dated May 2006, and prepared by Environmental Resources Management Australia;
 - (f) Summary of Commitments for Carrington Pit as Extended, dated 28 May 2006 and prepared by the Applicant; and
 - (g) conditions of this consent.
6. Delete condition 3 of schedule 3, and replace with the following:

3. If there is any inconsistency between the above documents, the latter document shall prevail over the former to the extent of the inconsistency. However, the conditions of this consent shall prevail over all other documents to the extent of any inconsistency.
7. Amend condition 7 of schedule 4 as follows:
- (a) delete "L_{Aeq}1(15 minute)" from column 1 and insert "L_{Aeq}(15 minute)";
 - (b) delete "or" where first occurring in Note (c); and
 - (c) delete "boundary." from Note (c) and insert "boundary, to determine compliance with the L_{Aeq}(15 minute) noise limits in the above table."
8. After condition 22 of schedule 4, insert the following:

Groundwater Barrier

- 22A. Within 2 years of commencing mining in the Carrington Pit Southern Extension, or as otherwise agreed with the Director-General, the Applicant shall construct a groundwater barrier wall across the eastern arm of the palaeochannel of the Hunter River, to the satisfaction of the Director-General and at a location no further south than shown in the figure "*Carrington River Red Gums, Billabong and Associated Infrastructure*" included in the *Carrington Pit Extension Response to Submissions Report*, dated May 2006.
- 22B. By 31 December 2006, or as otherwise agreed with the Director-General, the Applicant shall submit a report to the Department and the DNR that:
- (a) examines all reasonable and feasible options for the design and construction of the groundwater barrier wall (including matters such as materials, timing and method of construction, costs, projected initial and longterm effectiveness) to the satisfaction of the Director-General; and
 - (b) recommends a preferred option for the approval of the Director-General.
9. Delete condition 28 of schedule 4, and insert the following:

Final Void Management Plan

28. At least 5 years before the cessation of open cut coal extraction that will result in the creation of a final void, or as otherwise agreed with the Director-General, the Applicant shall prepare and implement a Final Void Management Plan for each void, in consultation with DPI(MR) and DNR, and to the satisfaction of the Director-General. Each plan must:
- (a) assess locational, design and future use options;
 - (b) be integrated with the Site Water Management Plan and the Landscape and Rehabilitation Management Strategy;
 - (c) assess short term and long term groundwater and other impacts associated with each option; and
 - (d) describe the measures to be would be implemented to avoid, minimise, manage and monitor potential adverse impacts of the final void over time.
10. Delete conditions 30 - 32 of schedule 4, and insert the following:
30. The Applicant shall not destroy or disturb more than 1 mature river red gum in the river red gum population associated with the Carrington billabong, and ensure that the mining highwall is located at least 150 metres from the standing water line of the billabong.
31. By 30 June 2007, the Applicant shall prepare and implement a comprehensive Rehabilitation and Restoration Strategy for the Carrington billabong and river red gum population, in consultation with DNR, and to the satisfaction of the Director-General. This strategy must be prepared by suitably qualified expert/s, and must include:
- (a) the rehabilitation and restoration objectives for the billabong and associated river red gum population;
 - (b) a description of the short, medium and long term measures that would be implemented to rehabilitate and restore the billabong and associated river red gum population (including measures to address matters which affect the long term health and sustainability of the billabong and river red gums such as surface and ground water supply, and controlling weeds, livestock and feral animals); and
 - (c) detailed assessment and completion criteria for the rehabilitation and restoration of the billabong and associated river red gum population.

Note. The billabong, standing water line and river red gum population referred to are the billabong, standing water line and endangered population of river red gums located on land owned by the Applicant between the Hunter River and Levee 5, as shown in the figure "Carrington River Red Gums, Billabong and Associated Infrastructure" included in the Carrington Pit Extension Response to Submissions Report, dated May 2006.

32. By 30 June 2007, the Applicant shall prepare and implement a conceptual Landscape and Rehabilitation Management Strategy, in consultation with affected agencies, to the satisfaction of the Director-General. The strategy must:
- include objectives for landscape management and rehabilitation of the site and a justification for the proposed strategy;
 - present a conceptual plan for landscape management and rehabilitation of the site;
 - be integrated with the relevant requirements of the Mining Operations Plan;
 - describe the measures that would be implemented to achieve the objectives (including an indicative timetable for mine closure);
 - include proposals to offset the flora and fauna impacts of the development (including proposals resulting from condition 30A above), and an outline of how the strategy would integrate with existing and planned corridors of native vegetation in areas surrounding the development; and
 - outline how the proposed strategy would be integrated with the landscape management and rehabilitation of the other operations within Hunter Valley Operations (both north and south of the Hunter River) and other coal mines in the vicinity.
11. Delete “, in consultation with the Hunter Coalfield Flora and Fauna Advisory Committee” from condition 35.
12. Delete “, in consultation with the Hunter Coalfield Flora and Fauna Advisory Committee;” from condition 36(a).
13. In condition 39 of schedule 4, include the following references to Aboriginal sites:
- 37-2-2078 (C1)
 - 37-2-2079 (C2)
 - 37-2-2080 (C3)
 - 37-5-0494 (C4)
 - 37-2-2083 (C8)
 - 37-2-2084 (C9)
 - 37-2-2085 (C10)
 - 37-2-1962 (CM45)
 - 37-2-1963 (CM46)
14. Delete conditions 40 and 41 of schedule 4, and insert the following:
40. The Applicant shall continue the Cultural Heritage Indigenous Management Agreement developed in consultation with, and to the satisfaction of, the Wonnarua Tribal Council, particularly in relation to the management of Aboriginal site 37-2-1877 (ie CM-CD1) and Older Stratum as shown in Drawing 002 – Revision A which may include consideration of permanent conservation status for the site CM-CD1, and also sites 37-2-1504 (ie CM1), part of 37-2-1505 (CM2), 37-2-1522 (CM19), and 37-2-1535 (CM32). Details of any agreement shall be provided to the Director-General within 14 days of any final agreement(s).
41. The Applicant shall not mine within 15 metres of the Aboriginal site 37-2-1877 (CM-CD1) and the Older Stratum, as measured from the margin of the predicted maximum extent of those deposits as identified in Drawing 002-Revision A, dated 4 August 2000.
- 41A. Prior to disturbance by mining, the Applicant shall ensure that the scarred tree 37-2-2080 (C3) is removed and relocated to a site where it will be protected from future development, in consultation with the Wonnarua Tribal Council, and to the satisfaction of the Director-General.

Note. In conditions 37 – 41A, all seven-figure numbers refer to Aboriginal site listings in DEC’s Aboriginal Heritage Information Management System (AHIMS). All other numbers are site numbers used by the Applicant in on-site Aboriginal heritage

studies. Site numbers beginning with C or CM are associated with the Carrington Pit, as shown in Fig 5.1 of Annex G of the Carrington Pit Extended Statement of Environmental Effects.

15. After condition 49 of schedule 4, insert the following:

Road Safety Audit

49A.

- (a) By 31 December 2006, the Applicant shall prepare and submit a road safety audit to the RTA and Council for all public roads used by mine employees and service vehicles in the vicinity of the development, including an audit of the existing intersections of all mine access roads with public roads;
- (b) any improvement to meet accepted road safety standards required by the relevant road manager (ie the RTA or Council) for public roads as a result of impacts related to the development as identified by the audit shall be undertaken at the Applicant's cost and to the satisfaction of the road manager;
- (c) any dispute between the Applicant and the relevant road manager in relation to the audit findings and the requirements of the road manager for improvements of public roads is to be determined by the Director-General; and
- (d) any maintenance of line marking and sign posting required by the relevant road manager at existing intersections of mine access roads with public roads shall be undertaken at the Applicant's cost and to the satisfaction of the road manager.

16. Delete condition 9 of schedule 5, and insert the following:

9. Within 6 months of receiving a written request from the landowner, the Applicant shall pay the landowner:
 - (a) the current market value of the landowner's interest in the land at the date of this written request having regard to:
 - in the case of any property listed in Table 1 of condition 1 of schedule 4, the assessment of current market value as if the land was unaffected by coal mining and related activities at Hunter Valley Operations (both north and south of the Hunter River);
 - in the case of any other property, the assessment of current market value as if the land was unaffected by the development the subject of this consent;
 - existing and permissible use of the land, in accordance with the applicable planning instruments at the date of the written request; and
 - presence of improvements on the land and/or any approved building or structure which has been physically commenced at the date of the landowner's written request, and is due to be completed subsequent to that date;
 - (b) the reasonable costs associated with:
 - relocating within the Singleton or Muswellbrook local government areas, or to any other local government area determined by the Director-General;
 - obtaining legal advice and expert advice for determining the acquisition price of the land, and the terms upon which it is required; and
 - (c) reasonable compensation for any disturbance caused by the land acquisition process.

However, if at the end of this period, the Applicant and landowner cannot agree on the acquisition price of the land, and/or the terms upon which the land is to be acquired, then either party may refer the matter to the Director-General for resolution.

Upon receiving such a request, the Director-General shall request the President of the NSW Division of the Australian Property Institute to appoint a qualified independent valuer or Fellow of the Institute, to consider submissions from both parties, and determine a fair and reasonable acquisition price for the land, and/or terms upon which the land is to be acquired.

Within 14 days of receiving the independent valuer's determination, the Applicant shall make a written offer to purchase the land at a price not less than the independent valuer's determination.

If the landowner refuses to accept this offer within 6 months of the date of the Applicant's offer, the Applicant's obligations to acquire the land shall cease, unless otherwise agreed by the Director-General.

17. After condition 2 of schedule 6, insert the following:
- 2A. Within 6 months of the completion of the Independent Environmental Audit, the Applicant shall review, and if necessary revise, the Environmental Management Strategy to the satisfaction of the Director-General.

18. After condition 3 of schedule 6, insert the following:
- 3A. Within 6 months of the completion of the Independent Environmental Audit, the Applicant shall review, and if necessary revise, the Environmental Monitoring Program to the satisfaction of the Director-General.

19. Delete condition 4 of schedule 6, and replace with the following:

UPDATING ENVIRONMENTAL MANAGEMENT REQUIREMENTS

4. The Applicant shall ensure that the Environmental Management Strategy, the Environmental Monitoring Program and all other environmental management plans and strategies required under this consent are reviewed and if necessary updated to reflect any changes to the development (or modifications to the development consent), to the satisfaction of the Director-General.

20. Delete condition 6 of schedule 6, and replace with the following:

6. Within 3 years of the date of this consent, and every 3 years thereafter, unless the Director-General directs otherwise, the Applicant shall commission and pay the full cost of an Independent Environmental Audit of the development. This audit must:
- (a) be conducted by suitably qualified, experienced, and independent expert/s whose appointment has been endorsed by the Director-General;
 - (b) assess the various aspects of the environmental performance of the development, and its effects on the surrounding environment;
 - (c) assess whether the development is complying with the relevant standards, performance measures, and statutory requirements;
 - (d) review the adequacy of any strategy/plan/program required under this consent; and, if necessary,
 - (e) recommend measures or actions to improve the environmental performance of the development, and/or any strategy/plan/program required under this consent.

21. In condition 7 of schedule 6, delete the word "commissioning" and insert the words "completion of".

22. After condition 9 of schedule 6, insert the following:

ACCESS TO INFORMATION

10. From 30 June 2007, and during the life of the development thereafter, the Applicant shall place a copy of the following documents and information (and any subsequent revisions) required under this consent on its website:
- (a) all current environmental management plans, strategies and programs;
 - (b) all Independent Environmental Audits;
 - (c) all AEMRs; and
 - (d) a summary of all environmental monitoring results (to be updated at least every 6 months),
- to the satisfaction of the Director-General.
