

Notice of Modification

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

As delegate of the Minister for Planning, I modify the development consent referred to in Schedule 1, as set out in Schedule 2.



Howard Reed
Director, Resource Assessments

Sydney 09 December 2016

SCHEDULE 1

The development consent (DA 450-10-2003) granted by the Minister for Infrastructure and Planning for the Hunter Valley Operations – North Coal Mine in 2004.

SCHEDULE 2

1. In the list of definitions in Schedule 2, delete the definitions for "AEMR", "Department", "Director-General", "DRE", "Executive Director Mineral Resources" and "NOW", and insert the following definitions in alphabetical order:

Annual Review	The review required by condition 9 of Schedule 6
Department	Department of Planning and Environment
DPI Water	Department of Primary Industries - Water
DRE	Division of Resources and Energy, within the NSW Department of Industry
Incident	A set of circumstances that: • causes or threatens to cause material harm to the environment; and/or • breaches or exceeds the limits or performance measures/criteria in this consent
Secretary	Secretary of the Department, or nominee
2. Delete all references to "shall", and replace with "must", except in:
 - (a) condition 3 of Schedule 3; and
 - (b) the fourth reference in condition 7 of Schedule 5.
3. Delete all references to "Director-General", and replace with "Secretary".
4. Delete all references to "NOW", and replace with "DPI Water".
5. Delete all references to "Executive Director Mineral Resources", and replace with "DRE".
6. Delete all references to "AEMR", and replace with "Annual Review".
7. In condition 2 of Schedule 3, delete the words "conditions of this consent", and replace with the following "modification application DA 450-10-2003 Modification 5 and accompanying environmental assessment entitled *Hunter Valley Operations North Modification 5 HVLP Sediment Basin and HVO North Communication Towers Environmental Assessment* and dated November 2016."
8. Delete conditions 3 and 4 of Schedule 3, and insert the following:
 - 2A. The Applicant must carry out the development in accordance with the conditions of this consent.

3. If there is any inconsistency between the documents listed in condition 2, the most recent document shall prevail to the extent of the inconsistency. The conditions of this consent shall prevail over the documents in condition 2 to the extent of any inconsistency.
4. The Applicant must comply with any reasonable requirement/s of the Secretary arising from the Department's assessment of:
 - (a) any strategies, plans, programs, reviews, audits, reports or correspondence that are submitted in accordance with this consent (including any stages of these documents);
 - (b) any reviews, reports or audits commissioned by the Department regarding compliance with this consent; and
 - (c) the implementation of any actions or measures contained in these documents.
9. Delete condition 14 of Schedule 3, including the heading.
10. In conditions 6, 10, 19, 27, 28, 41 and 62C of Schedule 4:
 - (a) delete the words "and implement" in the first sentence; and
 - (b) insert the sentence "The Applicant must implement the approved management plan as approved from time to time by the Secretary." following the last paragraph of each condition.
11. In conditions 28A, 31 and 32 of Schedule 4:
 - (a) delete the words "and implement" in the first sentence; and
 - (b) insert the sentence "The Applicant must implement the approved management strategy as approved from time to time by the Secretary." following the last paragraph of each condition.
12. After condition 31 of Schedule 4, insert the following:

31A. The Applicant must revegetate an area of at least 0.14 hectares using trees representative of the Swamp Oak Floodplain Forest community on land which adjoins existing riparian vegetation and is suitable for the establishment of this community.
13. In condition 32 of Schedule 4, following the words "condition 31", insert the words "and 31A".
14. In condition 35 of Schedule 4:
 - (a) delete the words "and implement" in the first sentence; and
 - (b) insert the sentence "The Applicant must implement the approved management procedures as approved from time to time by the Secretary." following the last paragraph of each condition.
15. Delete Schedule 6 and replace with:

SCHEDULE 6
ENVIRONMENTAL MANAGEMENT, MONITORING, AUDITING AND REPORTING

ENVIRONMENTAL MANAGEMENT

Environmental Management Strategy

1. If the Secretary requires, the Applicant must prepare an Environmental Management Strategy for the development to the satisfaction of the Secretary. This strategy must:
 - (a) be submitted to the Secretary for approval within 6 months of the Secretary requiring preparation of the strategy by notice to the Applicant;
 - (b) provide the strategic framework for the environmental management of the development;
 - (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; and
 - 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 any Environmental Management Strategy as approved from time to time by the Secretary.

Management Plan Requirements

2. 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; and
 - 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; and
 - effectiveness of any management measures (see (c) above);
 - (e) a contingency plan to manage any unpredicted impacts and their consequences and to ensure that ongoing impacts reduce to levels below relevant impact assessment criteria as quickly as possible;
 - (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;
 - (h) a protocol for periodic review of the plan; and
 - (i) a document control table that includes version numbers, dates when the management plan was prepared and reviewed, names and positions of people who prepared and reviewed the management plan, a description of any revisions made and the date of the Secretary's approval.

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

Updating & Staging Submission of Strategies, Plans or Programs

3. To ensure the strategies, plans or programs under this consent are updated on a regular basis, and that they incorporate any appropriate mitigation measures to improve the environmental performance of the development, the Applicant may at any time submit revised strategies, plans or programs to the Secretary for approval. With the agreement of the Secretary, the Applicant may also submit any strategy, plan or program required by this consent on a staged basis.

With the agreement of the Secretary, the Applicant may revise any strategy, plan or program approved under this consent without undertaking consultation with all parties nominated under the applicable conditions in this consent.

Notes:

- *While any strategy, plan or program may be submitted on a staged basis, the Applicant will need to ensure that the existing operations associated with the development are covered by suitable strategies, plans or programs at all times.*
- *If the submission of any strategy, plan or program is to be staged, then the relevant strategy, plan or program must clearly describe the specific stage/s of the development to which the strategy, plan or program applies; the relationship of this stage/s to any future stages; and the trigger for updating the strategy, plan or program.*

Revision of Strategies, Plans & Programs

4. Within 3 months of the:
 - (a) submission of an incident report under condition 7 below;
 - (b) submission of an Annual Review under condition 9 below; or
 - (c) submission of an audit report under condition 10 below; and
 - (d) approval of a modification 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 documents that have been revised 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.

Adaptive Management

5. 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 measures 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.

COMMUNITY CONSULTATIVE COMMITTEE

6. The Applicant must operate a Community Consultative Committee (CCC) for the development, 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, and the local community.*
- *With the approval of the Secretary, the CCC may be combined with any similar CCC for the HVO Mine Complex.*

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.

Annual Review

9. 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 previous 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 previous 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.

The Applicant must ensure that copies of the Annual Review are submitted to Council and are available to the Community Consultative Committee (see condition 6 of Schedule 6) and any interested person upon request.

INDEPENDENT ENVIRONMENTAL AUDIT

10. Prior to 1 December 2019, and every three 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 suitably qualified, experienced and independent team of experts whose appointment has been endorsed by the Secretary;
 - (b) include consultation with the relevant agencies and the CCC;
 - (c) assess the environmental performance of the development and whether it is complying with the relevant requirements in this consent and any relevant EPL and/or Water Licences (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, 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 fields specified by the Secretary.

11. Within 12 weeks of commencing each audit, or as otherwise agreed by the Secretary, the Applicant must submit a copy of the audit report to the Secretary and any other NSW agency that requests it, 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

12. By 31 December 2016, unless otherwise agreed by the Secretary, the Applicant must:
 - (a) make the following information publicly available on its website:
 - the documents listed in condition 2 of Schedule 3;
 - current statutory approvals for the development;
 - approved strategies, plans or 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, updated quarterly;
 - the Annual Reviews (over the last 5 years);
 - any independent environmental audit, 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.
16. Adjust the TABLE OF CONTENTS and page numbers to reflect changes made by this instrument.

