

Notice of Modification

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

As delegate for the Minister for Planning, I modify the project approval referred to in schedule 1, subject to the conditions in schedule 2.



Richard Pearson
Deputy Director-General

Sydney

23 / 6 /

2009

SCHEDULE 1

The project approval (MP 06_0014) granted by the Minister for Planning for the Mangoola Coal Project (formerly the Anvil Hill Coal Project) on 7 June 2007.

SCHEDULE 2

1. Insert the following to the definitions list in schedule 1:

Construction Route 1	The access route described in the December 2008 Environmental Assessment.
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2. Delete condition 2(d) of schedule 2 and replace with:
 - (d) modification application MP 06_0014 MOD 2, and accompanying Environmental Assessment prepared by Umwelt Environmental Consultants and dated December 2008, including the Response to Submissions dated April 2009; and
 - (e) conditions of this approval.
3. Insert the following condition after condition 32 of schedule 3:

32A. By the end of September 2009, the Proponent shall update the Site Water Balance to take into account the necessary changes required as a result of the June 2009 modification (MOD 2), to the satisfaction of the Director-General.
4. Insert the following condition after condition 51 of schedule 3:

51A. Prior to commencing any works requiring the use of the section of Mangoola Road included within Construction Route 1, the Proponent shall update the Construction Traffic Management Plan to the satisfaction of Council, to include specific measures for this section of road in relation to:

 - warning signage, speed limits, barriers, and maintenance of the road surface condition; and
 - additional controls to manage pipeline construction underneath the road.
5. In condition 52 of schedule 3, insert "(apart from that section forming part of Construction Route 1 during construction of the project pipeline)" after the words "Mangoola Road".
6. Delete conditions 10 and 11 of schedule 4, and replace with:
 10. Within 3 months of receiving a written request from a landowner with acquisition rights, the Proponent shall make a binding written offer to the landowner based on:
 - (a) the current market value of the landowner's interest in the property at the date of this written request, as if the property was unaffected by the project the subject of the project application, having regard to the:
 - 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 property 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, but excluding any improvements

- that have resulted from the implementation of the 'additional noise mitigation measures' in condition 8 of schedule 3;
- (b) the reasonable costs associated with:
- relocating within the Muswellbrook local government area, 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 following this period, the Proponent 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 (API) to appoint a qualified independent valuer to:

- (a) consider submissions from both parties;
- (b) determine a fair and reasonable acquisition price for the land and/or the terms upon which the land is to be acquired, having regard to the matters referred to in paragraphs (a)-(c) above;
- (c) prepare a detailed report setting out the reasons for any determination; and
- (d) provide a copy of the report to both parties.

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

However, if either party disputes the independent valuer's determination, then within 14 days of receiving the independent valuer's report, they may refer the matter to the Director-General for review. Any request for a review must be accompanied by a detailed report setting out the reasons why the party disputes the independent valuer's determination. Following consultation with the independent valuer and both parties, the Director-General shall determine a fair and reasonable acquisition price for the land, having regard to the matters referred to in paragraphs (a)-(c) above, the independent valuer's report and the detailed report of the party that disputes the independent valuer's determination.

Within 14 days of the Director-General's determination, the Proponent shall make a binding written offer to the landowner to purchase the land at a price not less than the Director-General's determination.

If the landowner refuses to accept the Proponent's binding written offer under this condition within 6 months of the offer being made, then the Proponent's obligations to acquire the land shall cease, unless the Director-General determines otherwise.

11. The Proponent shall pay all reasonable costs associated with the land acquisition process described in condition 10 above.

7. Add the following to the schedule of land in Appendix 1:

11	112946	Xstrata Mangoola Pty Limited
21	8090	Xstrata Mangoola Pty Limited
22	8090	Xstrata Mangoola Pty Limited
23	8090	Xstrata Mangoola Pty Limited
1	1003300	Xstrata Mangoola Pty Limited
18	996754	Xstrata Mangoola Pty Limited
1	995693	Xstrata Mangoola Pty Limited
12	594674	Xstrata Mangoola Pty Limited
11	842072	Xstrata Mangoola Pty Limited
257	706955	Xstrata Mangoola Pty Limited
178	750924	Xstrata Mangoola Pty Limited
PT 11	750919	Muswellbrook Shire Council
	Part Coolabah Road	Muswellbrook Shire Council
	Part Mangoola Road	Muswellbrook Shire Council
	Part Muswellbrook – Ulan Rail Line	Rail Corporation New South Wales (RailCorp).