



Chitter and Tailings Reclamation Project Modification 4 – Bulk Sample Trial

State Significant Development Modification Assessment
(MP 06_0236 MOD 4)

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Executive Summary

The Chitter and Tailings Reclamation Project is located near Cessnock within the Cessnock Local Government Area. Hunter Enviro Mining Pty Ltd operated the project until its liquidation in 2015. The project is now managed by Premier Energy Resources (PER) on behalf of the liquidator, Pricewaterhouse Coopers. The project involves the extraction of reject coal (chitter) and fine carbonaceous material (tailings).

The project was approved by the then Minister for Planning on 24 September 2008 (MP 06_0236) under the now repealed Part 3A of the *Environmental Planning and Assessment Act 1979* (EP&A Act). The consent has since been modified on two occasions.

The approval permits the extraction of a combined total of 2.86 million tonnes of chitter and tailings from three former coal mining sites at Aberdare East, Neath and Richmond Main East at a maximum rate of 0.9 million tonnes per annum. The extracted material is transported to the nearby Hebburn No.3 coal handling preparation plant via a combination of State roads, as well as fire trails on Crown land and in Werakata National Park.

On 9 November 2021, PER submitted the Modification 4 application pursuant to section 4.55(1A) of the EP&A Act. PER is seeking to modify the consent to allow for a bulk sample trial which would involve the preparation and extraction of up to 840 tonnes of coal fines at the Aberdare East site and transporting it to the nearby Vales Point Power Station.

The proposed trial would be undertaken over two consecutive days of extraction and stockpiling followed by two consecutive days of transporting the stockpiled material via road. The frequency of truck movements and the hours of operation would be within those already approved by the conditions of consent.

The Aberdare East site is currently derelict with ongoing acid mine drainage issues from coal fine waste. The modification provides an opportunity to investigate and analyse the commercial viability of further extraction and transport of coal fines to Vales Point Power Station for use in power generation.

The Department is not required to exhibit the proposed modification. Nevertheless, the Department consulted with Mining, Exploration and Geoscience within the Department of Regional NSW (MEG), which did not raise any issues with the proposed modification.

The proposed modification limits hourly truck numbers, the daily period of activity and the number of days over which the trial would occur. Any impacts to local residents are in line with those already assessed and would only occur for a period of four days.

The Department considers the proposed modification to be in the public interest, would not cause impacts greater than those assessed and approved for the original development application, and is approvable.

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1 Introduction

1.1 Background

The Chitter and Tailings Reclamation Project is located near Cessnock, within the Cessnock City Local Government Area (LGA). Hunter Enviro Mining Pty Ltd operated the project until its liquidation in 2015. The project is now managed by Premier Energy Resources (PER) on behalf of the liquidator, Pricewaterhouse Coopers.

The project involves the extraction of approximately 2.8 million tonnes of reject coal (chitter) and fine carboniferous materials (tailings) at a rate of 0.9 million tonnes per annum (Mtpa) from three historic coal mining sites at Aberdare East, Neath and Richmond Main East (see **Figures 1 and 2**), and the transportation of this material to the Hebburn No.3 Coal Handling Preparation Plant (CHPP). The consent permits mining operations to be undertaken until 31 December 2018. The consent continues to apply in all other respects until the site has been rehabilitated to a satisfactory standard.

1.2 Project Setting

The Aberdare East reclamation site is located on the south-eastern fringe of Cessnock, adjacent to the South Maitland Railway and covers an area of 35 hectares. The site is bordered to the west by historic mine workings and to the south and southeast by Crown land. Residential development is situated to the east and north of the site. The site was formerly part of the Aberdare East Colliery which operated from 1968 until 1982.

1.3 Approval History

The original development consent was granted by the then Minister for Planning on 24 September 2008, under the now repealed Part 3A of the *Environmental Planning and Assessment Act 1979* (EP&A Act). The consent has since been modified on two occasions. Modification 3 was withdrawn.

2 Proposed modification

On 12 September 2021, PER submitted the Modification 4 application (**Appendix A**) under section 4.55(1A) of the EP&A Act to allow for the preparation and extraction of 840 tonnes of coal fines as part of a bulk sample trial. Once extracted and stockpiled, material would then be transported to the nearby Vales Point Power Station to assess its suitability as a fuel source.

The trial would involve the preparation of three small 400 tonne stockpiles and de-silting of two on-site dams. The stockpiles would then be left to dry out. Once the drying process is complete, the material would be loaded onto trucks by a frontend loader and transported to Vales Point Power Station for testing (see **Figure 2**). Truck movements would be limited to two consecutive days with 12 laden truck movements each day between 7:30 am and 4:30 pm, with an average of 1.3 trucks per hour.

The modification does not seek to change any other aspect of the approved operations.

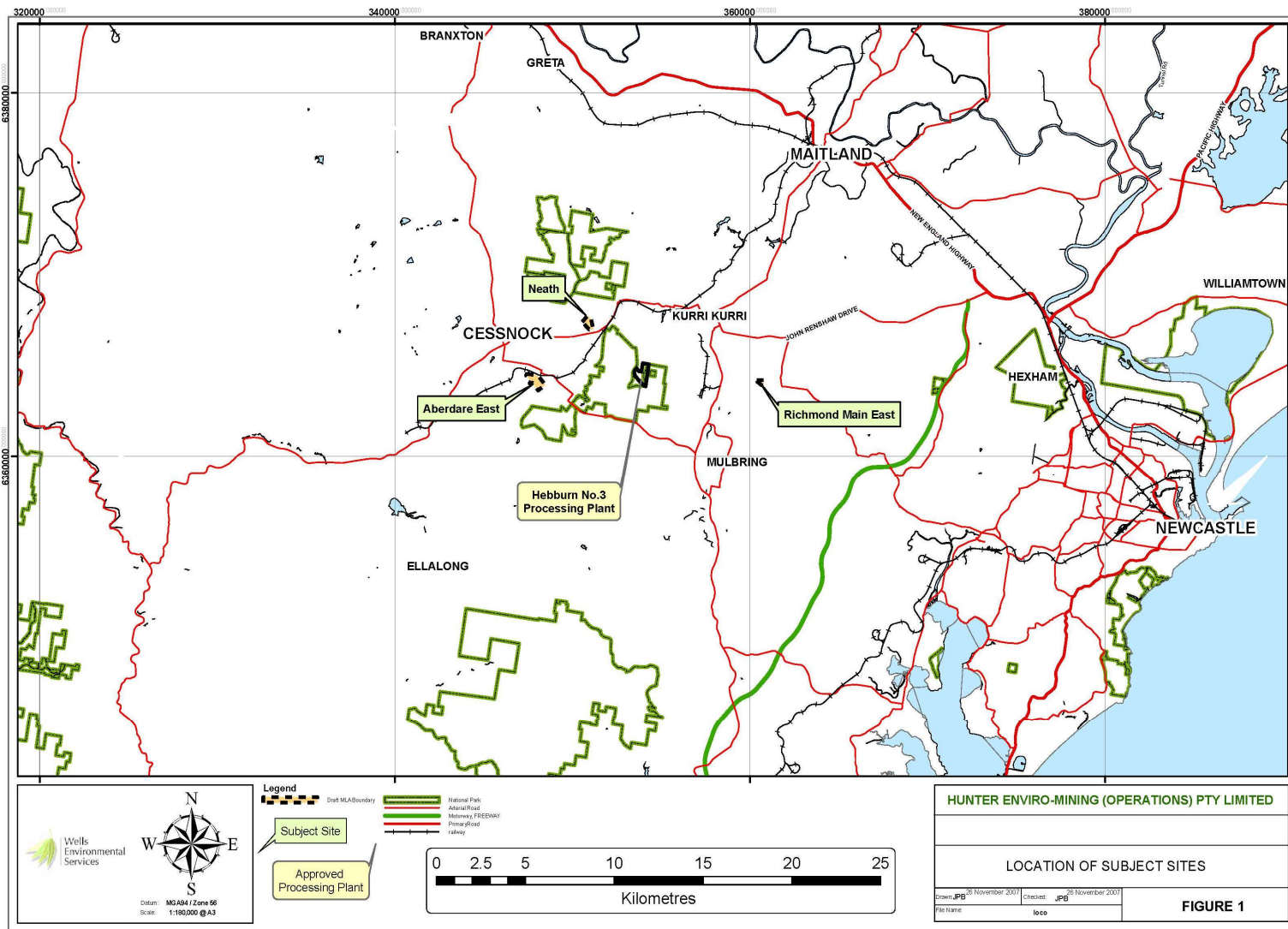


Figure 1 | Regional Context map

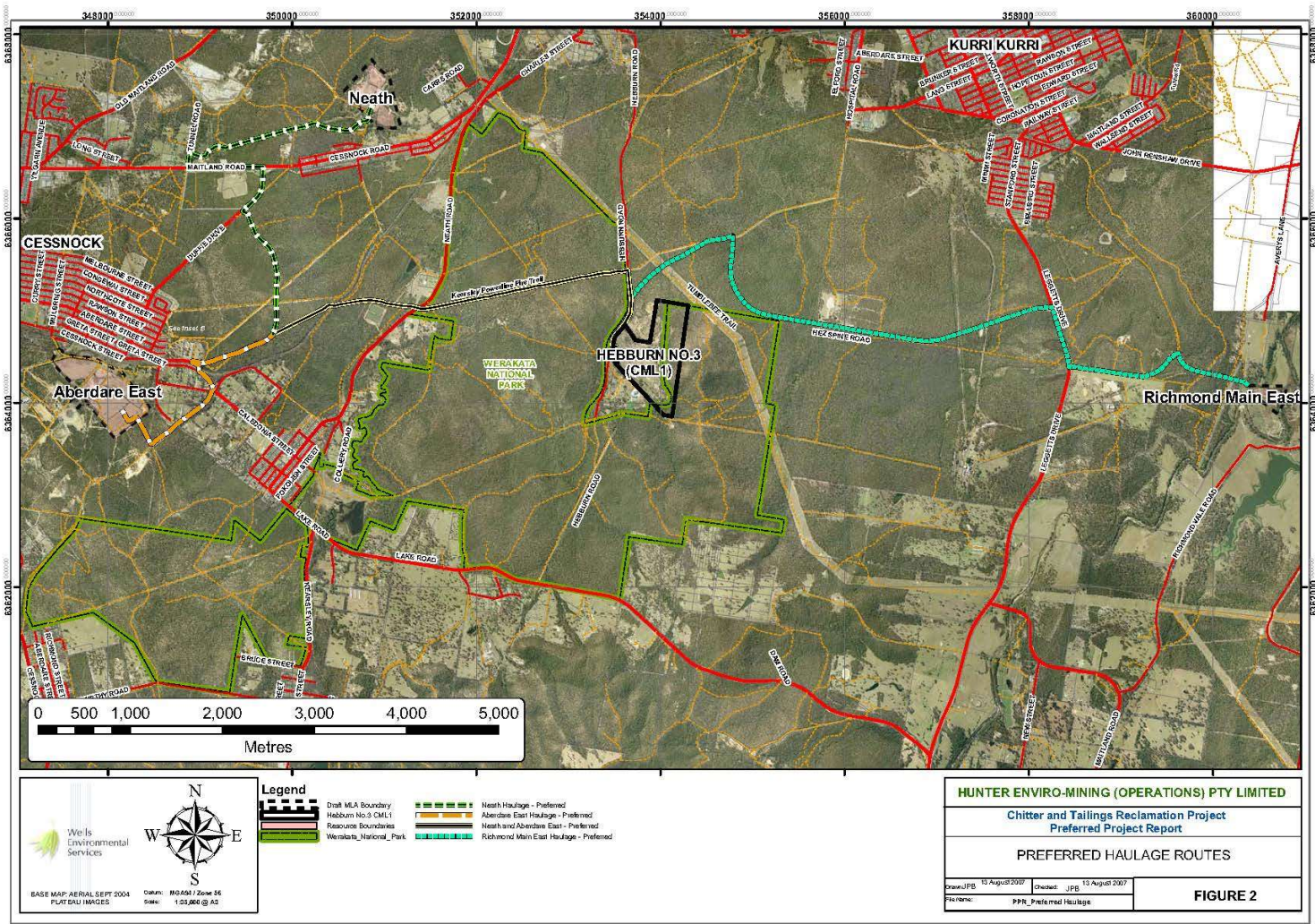


Figure 2 | Sites and transportation routes

2.1 Project Need and Justification

Extraction of material under the development consent commenced in October 2010 and ceased in 2015 due to HEM going into liquidation. Approximately 83% of the resource was extracted during this time. The remaining material must be removed for approved rehabilitation requirements to be met. PER state that the value of the remaining resource is sufficient to adequately cover the remaining rehabilitation liability of the site. An initial bulk sample trial (i.e. the subject of this modification) would also allow PER to confirm the suitability of the coal fines as a fuel source and assess the economic viability of any future removal of remaining coal fines from the site (i.e. the subject of a potential future modification).

3 Statutory Context

3.1 Scope of modifications

The Department has reviewed the scope of the modification application and considers that the application can be characterised as a modification involving minimal environmental impacts as the proposal:

- would remain substantially the same development as that which was last modified under the former section 75W of the EP&A Act;
- would not involve any further disturbance outside the already approved disturbance areas for the project; and
- seeks to address the rehabilitation requirements of the consent by removing waste material.

Therefore, the Department is satisfied the proposed modification is within the scope of section 4.55 (1A) of the EP&A Act and does not constitute a new development application. Accordingly, the Department considers that the application should be assessed and determined under section 4.55(1A) of the EP&A Act.

3.2 Consent authority

The Minister for Planning is the consent authority for the modification application under section 4.5(a) of the EP&A Act. However, under the Minister's delegation of 26 April 2021, the Director Resource Assessments may determine the application as:

- PER did not report any political donations;
- Cessnock City Council did not object to the modification; and
- no public submissions by way of objection were received.

3.3 Mandatory Matters for Consideration

In accordance with section 4.15(1) of the EP&A Act, a consent authority must consider the following matters, to the extent they are relevant, when considering the merits of the application:

- the objects of the Act (**Section 3.3.1**);

- the applicable environmental planning instruments (**Section 3.3.2**);
- any submissions (**Section 4**);
- likely impacts of the modification application, including environmental, social and economic impacts (**Section 5**);
- suitability of the site (**Section 3** and **Section 5**); and
- the public interest (**Section 6**).

The Department has considered these matters carefully and summarised the findings in the relevant sections of this report.

3.3.1 Objects of the EP&A Act

The Minister or delegate must consider the objects of the EP&A Act when making decisions under the Act. The Department has assessed the proposed modification against the objects set out in section 1.3 of the Act. The objects of most relevance to the proposed modification are:

- (a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources;
- (b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment;
- (c) to promote the orderly and economic use and development of land;
- (e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats;
- (i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State; and
- (j) to provide increased opportunity for community participation in environmental planning and assessment.

The Department considers the proposed modification encourages the proper management and development of resources (Object (a)) and promotion of the orderly and economic use of land (Object (c)). The Department has considered the principles of ecologically sustainable development (ESD, Object (b)) in its assessment of the proposed modification. The Department considers the proposal can be carried out in a manner that is consistent with the principles of ESD. The Department's assessment has sought to integrate all significant environmental, social and economic considerations.

Consideration of the protection of the environment (Object (e)) is provided in **Section 5** of this report. The Department considers the proposal has been designed to minimise potential environmental impacts.

The Department considers that consultation undertaken with key stakeholders satisfies the objectives to share responsibility between different levels of government (Object (i)), while making the application publicly available on its website and seeking submissions satisfies the objectives of Object (j).

3.3.2 Environmental Planning Instruments

In undertaking its assessment, the Department has considered the objects of the EP&A Act and the provisions of relevant environmental planning instruments (EPIs), including:

- *State Environmental Planning Policy (SEPP) (State and Regional Development) 2011*;

- *SEPP (Mining, Petroleum Production and Extractive Industries) 2007;*
- *SEPP (Infrastructure) 2007;*
- *SEPP No.33 – Hazardous and Offensive Development;*
- *SEPP No. 55 – Remediation of Land;*
- *Cessnock City Council Local Environmental Plan 2011.*

The Department considers that the proposed modification can be carried out in a manner that is generally consistent with the aims, objectives and provisions of these instruments.

3.3.3 Other Statutory Considerations

The site's activities are regulated under Environment Protection Licence (EPL) 13406 granted under the *Protection of the Environment Operations Act 1997*.

4 Engagement

4.1 Department's engagement

The Department is not required to exhibit the proposed modification under section 4.55(1A) of the EP&A Act. However, the Department made the application and the Modification Report publicly available on its website from 15 December 2021. The Department requested and received comments on the modification from Mining, Exploration and Geoscience within the Department of Regional NSW (MEG) which did not object to the proposed modification.

4.2 Agency Comments

Upon reviewing the modification application, MEG raised no issues regarding the bulk sample trial. MEG noted its advice was limited to only the bulk sample trial of 840 tonnes of coal fines to verify whether the material is suitable for use in power generation. MEG also noted that, due to the testing purpose of the bulk sample, there will be no royalty calculation for the extracted material. A copy of MEG's advice is provided in **Appendix B**.

5 Assessment

In assessing the merits of this proposal, the Department has considered the:

- assessment documentation for the original project;
- existing conditions of consent, as modified;
- Modification Report for the proposed modification;
- advice received from agencies;
- relevant EPIs; and
- requirements of the EP&A Act, including the objects of the Act.

The Department's consideration of the key issues associated with the modification are summarised in **Table 1**.

Table 1| Summary of issues

Issue	Assessment	Recommendations
Traffic and transport	<ul style="list-style-type: none"> The Department is satisfied that the proposed modification would not increase traffic and transport movements beyond those already assessed and approved. 	No additional conditions required to manage traffic and transport impacts.
Air quality	<ul style="list-style-type: none"> The current condition of material at the site is considered wet, with a moisture content above 20%. PER has committed to covering stockpiles to minimise wind generated dust. The Department notes that PER is required to prepare and implement an Air Quality Monitoring Program under the existing consent conditions. The Department considers that the proposal would not result in any adverse or unacceptable air quality impacts. The Department is satisfied that any air quality impacts can be appropriately managed by an approved Air Quality Monitoring Program. 	No additional conditions required to manage air quality impacts.
Noise	<ul style="list-style-type: none"> The noise generated during the bulk sample trial is expected to meet the current assessment criteria in the development consent. Extraction machinery would operate on two consecutive days between 7:30 am and 4:30 pm during a working week. No extraction would be undertaken on weekends. The Department notes that PER is required to prepare and implement a Noise Management Plan under the existing consent conditions. The Department considers that the proposal would not result in any adverse or unacceptable noise impacts. The Department is satisfied that any noise impacts can be appropriately managed by an approved Noise Management Plan. 	No additional conditions required to manage noise impacts.
Water quality	<ul style="list-style-type: none"> Discharges of effluent would remain within the site boundary as per the existing consent conditions. The Department notes that PER is required to prepare and implement a Water Management Plan under the existing consent conditions. The Department considers that the proposal would not result in any adverse or unacceptable impacts on water quality. The Department is satisfied that any water quality impacts can be appropriately managed by an approved Water Management Plan. 	No additional conditions required to manage water quality impacts.
Rehabilitation	<ul style="list-style-type: none"> The Department is satisfied the proposal would not result in any adverse or unacceptable impacts to site rehabilitation, nor would it inhibit PER's ability to rehabilitate the site in accordance with the current requirements of the conditions of consent. 	No additional conditions required to manage rehabilitation.

6 Evaluation

The Department has assessed the merits of the proposed modification in accordance with the requirements of the EP&A Act and in consultation with MEG, which did not object or raise any concerns with the proposal.

The Department's assessment concluded that the proposed modification would not result in impacts above those already assessed and approved. The proposed modification would also allow PER to confirm the suitability of the coal fines at the Aberdare East site as a fuel source and assess the economic viability of any future removal of remaining coal fines from the site.

The Department considers that any residual or unforeseen impacts from the proposed modification can be appropriately managed by the approved management plans which include management controls, compliance monitoring and corrective action requirements.

The Department considers that the benefits of the proposed modification outweigh any residual environmental impacts and considers that the proposed modification is in the public interest and should be approved, subject to conditions. In updating the conditions, the Department has also taken the opportunity to contemporise the development consent.

The Department has drafted a Notice of Modification (**Appendix C**) and a consolidated version of the development consent (**Appendix D**), as proposed to be modified. PER has reviewed the recommended conditions and accepts them.

7 Recommendation

It is recommended that the Director, Resource Assessments, as delegate of the Minister for Planning:

- **considers** the findings and recommendations of this report;
- **determines** that the application MP 06_0236 MOD 4 falls within the scope of section 4.55(1A) of the EP&A Act;
- **accepts and adopts** all of the findings and recommendation in this report as the reasons for making the decision to approve the modification;
- **modifies** the consent (MP 06_0236 MOD 4); and
- **signs** the attached approval of the modification.

Recommended by:



James McDonough
Team Leader
Resource Assessments

8 Determination

The recommendation is **Adopted** by:

A handwritten signature in black ink that reads "Jessie Evans". The signature is written in a cursive style with a large initial 'J'.

Jessie Evans

Director

Resource Assessments

as delegate of the Minister for Planning

Appendices

Appendix A – Modification report

<https://mpweb.planningportal.nsw.gov.au/major-projects/project/43211>

Appendix B – Agency advice

<https://mpweb.planningportal.nsw.gov.au/major-projects/project/43211>

Appendix C – Notice of modification

<https://mpweb.planningportal.nsw.gov.au/major-projects/project/43211>

Appendix D – Consolidated consent

<https://mpweb.planningportal.nsw.gov.au/major-projects/project/43211>