



Sunnyside Coal Mine Modification 4

Highwall Drain

State Significant Development Modification Assessment
(MP06_0308-Mod-4)

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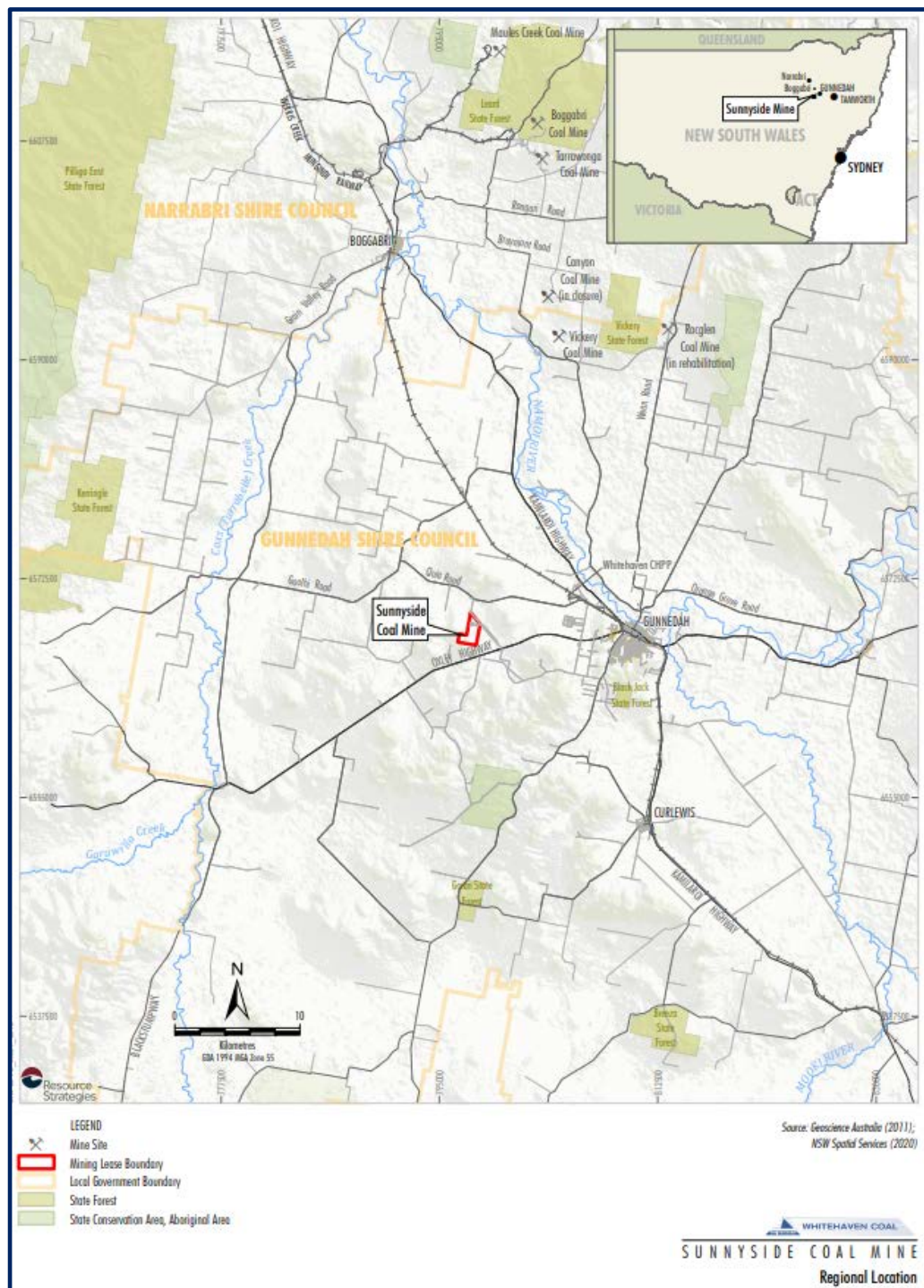
Contents

1	Introduction	1
2	Proposed Modification.....	2
3	Statutory Context.....	4
	3.1 Scope of Modification.....	4
	3.2 Consent Authority.....	4
	3.3 Mandatory Matters for Consideration.....	4
	3.4 Objects of the EP&A Act	4
	3.5 Impacts on Biodiversity Values	4
4	Engagement.....	5
5	Assessment	5
6	Evaluation.....	6
7	Determination.....	7
	Appendices	8
	Appendix A – Modification Report	8
	Appendix B – Instrument of Modification	8
	Appendix C – Consolidated Consent.....	8

1 Introduction

Whitehaven Coal Limited (Whitehaven) owns the Sunnyside Coal Mine (Sunnyside), located approximately 15 kilometres (km) west of Gunnedah (see **Figure 1**).

The project approval for Sunnyside was approved by the then Minister for Planning on 24 May 2008 and has been modified on three occasions. In November 2019, coal extraction at Sunnyside ceased and preparation for mine closure, including rehabilitation activities, commenced.



2 Proposed Modification

The approved final landform for the mine includes a section of highwall on the south side of the partially backfilled pit (formed to make a final depression in the landscape). There is a hill to the south of the highwall (Sunnyside Hill), which is outside the approved mine disturbance footprint. Surface water runoff from Sunnyside Hill drains north towards the highwall and during large rainfall events water can flow over the highwall, which poses an erosion risk to the highwall face.

Whitehaven is seeking a modification to its approval to construct an approximately 660 metre (m) long diversion drain along the top of the highwall to protect the highwall and rehabilitated areas from erosion and ensure the highwall remains stable after mine closure.

The drain footprint is shown in **Figure 2**. The drain would have an average width of 5m and would be revegetated, with rock protection used in erodible areas, as required.

Whitehaven does not propose to change any other aspects of mine closure or rehabilitation at the mine as part of the modification.

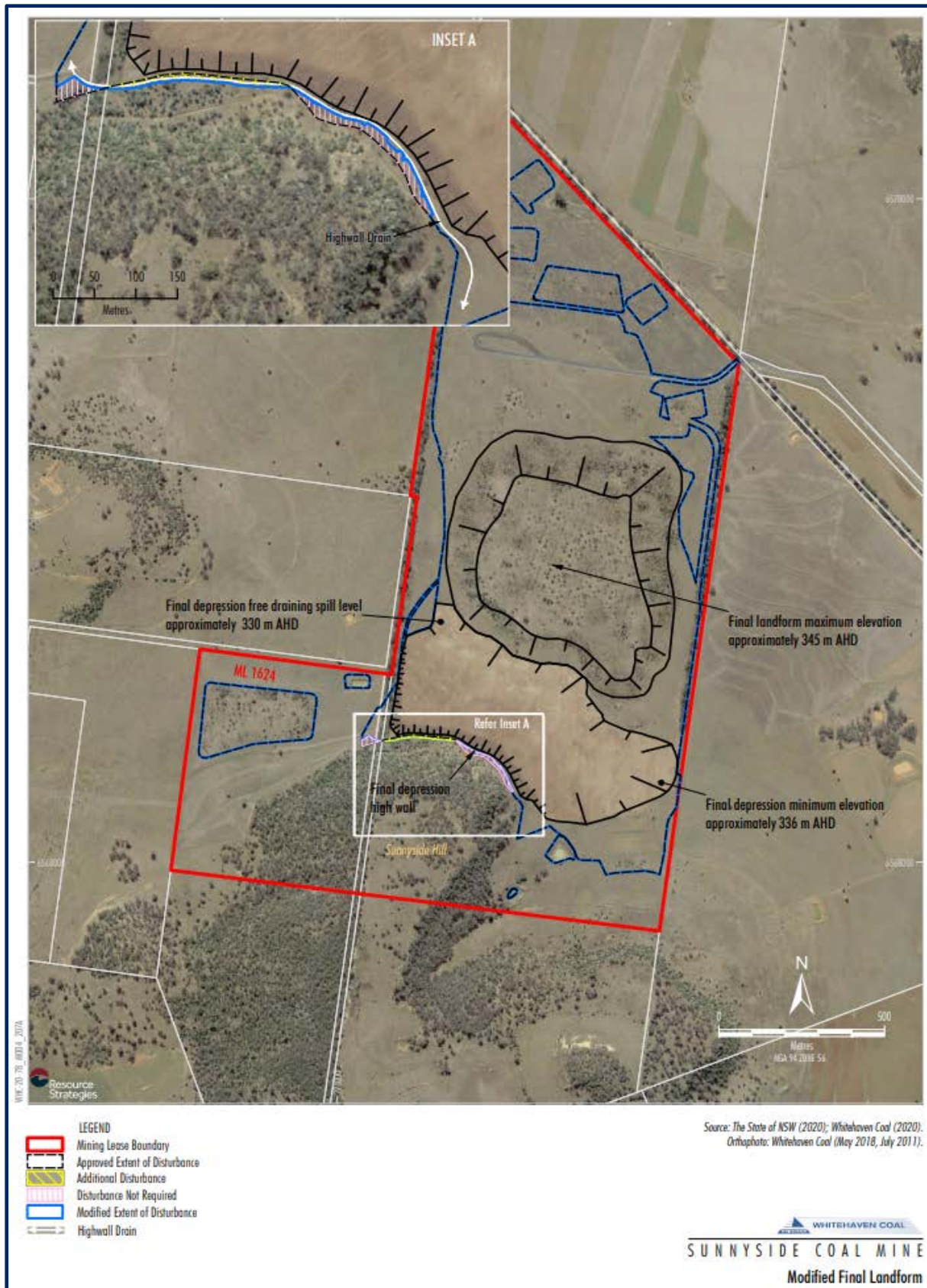


Figure 2 | Modified Final Landform (Source: Sunnyside MOD 4 Modification Report, Whitehaven)

3 Statutory Context

3.1 Scope of Modification

The modification application and modification report were lodged under Section 4.55(1A) of the *Environmental Planning and Assessment Act 1979* (EP&A Act). The Department has reviewed the scope of the modification application and considers that:

- the proposed changes are minor in comparison to the approved project;
- there would be minimal environmental impacts; and
- the development would remain substantially the same development as approved under the most recent modification under section 75W of the EP&A Act.

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 rather than requiring a new development application to be lodged.

3.2 Consent Authority

The Minister for Planning (the Minister) 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 9 March 2022, the Director, Resource Assessments, may determine the application. This is because Whitehaven has not made any reportable political donations, there were no public submissions by way of objection and Gunnedah Shire Council did not object to the proposed modification.

3.3 Mandatory Matters for Consideration

The Department conducted an assessment of the project against the mandatory matters for consideration as part of the original assessment of MP06_0308. The Department considers this modification application does not result in significant changes that would alter the mandatory matters for consideration under section 4.15 of the EP&A Act and conclusions made as part of the original assessment.

3.4 Objects of the EP&A Act

The objects of the EP&A Act are the underpinning principles for all decision making under the act. They must be considered by the consent authority when determining a development application under the act. The Department has assessed the modified project against the objects found in Section 1.3 of the EP&A Act.

3.5 Impacts on Biodiversity Values

Section 7.17 of the *Biodiversity Conservation Act 2016* specifies that if the approval authority is satisfied that a modification would not increase the impact of a project on biodiversity values, a Biodiversity Development Assessment Report (BDAR) is not required.

The modification would disturb 0.15 hectares (ha) of vegetation outside of the approved disturbance area. However, Whitehaven would forgo disturbing 0.32 ha of land with the same vegetation type within the approved disturbance area. This vegetation is considered to be in better condition, and the

Department's assessment concluded that this disturbance area swap would mean there would be no increase in impacts to biodiversity values. As such, a BDAR is not required.

4 Engagement

In accordance with the requirements for Section 4.55(1A) modifications, the proposal was not formally exhibited. Nevertheless, the Department made the modification application and modification report publicly available on the Department's website and referred it to the Biodiversity, Conservation and Science Directorate, the Resources Regulator and Gunnedah Shire Council for comment.

The Department's **Biodiversity, Conservation and Science Directorate** (BCS) agree that the modification would be unlikely to result in additional impacts to biodiversity values and that a BDAR is not required.

The **Resources Regulator** did not require any further information. Additionally, it was noted that the design in the modification report is conceptual only, and should the modification be approved it will be the requirement of the title holder under the *Mining Act 1992* to develop a detailed design of the drain to address potential risks that may compromise the overall intent of the modification.

Gunnedah Shire Council (Council) recommended that the extent of the change should be clearly marked during works and that no additional vegetation is removed beyond the proposed change.

5 Assessment

The Department has assessed the modification application and supporting information in accordance with the relevant requirements of the EP&A Act, including the matters for consideration, as set out in section 4.55(1A) of the EP&A Act.

The Department considers the key assessment issues relate to potential biodiversity, cultural heritage and water quality impacts as a result of the additional disturbance. The Department's assessment of these relevant to the proposed modification is summarised in **Table 1** below. The Department considers that other issues associated with the proposed modification, such as visual, noise and air quality impacts would not increase and can be adequately managed under the existing approval.

Table 1 | Summary of Department's Assessment

Issue	Findings	Recommendations
Biodiversity	• Construction of the drain would disturb 0.15 hectares (ha) of vegetation outside of the approved disturbance area, comprising 0.09 ha of disturbed plant community type (PCT) 147 and 0.06 ha of grassland and forbs dominated by exotic species. • However, Whitehaven is proposing to forgo clearing of 0.32 ha of vegetated land within the approved disturbance area. The relinquishment area contains 0.08 ha of PCT 147 and 0.24 ha of grassland and forbs dominated by exotic species. • Although there would be a net loss of 0.01 ha of PCT 147, the vegetation in the proposed relinquishment area is in better condition with a greater number of habitat features than the vegetation that would be lost.	No changes to conditions

Issue	Findings	Recommendations
	- Impacts to listed threatened species known to occur near the site or in the wider area (including koala) is considered to be negligible, due to the small size of the area and lack of key resources compared to other woody habitat types nearby. There is no core koala habitat and there are no trees that are recognized as koala use trees. - A small part of the proposed disturbance would occur within an area currently designated for planting vegetation to create koala corridors. However, the disturbance would be revegetated with native groundcover species and native trees and the modification is unlikely to reduce the ability of the koala to use the corridor. - BCS did not raise concerns about the proposed disturbance area swap and considers that the modification would be unlikely to result in increased biodiversity impacts. - The conditions of consent include a Statement of Commitments incorporating vegetation clearing protocols such as defining the extent of clearing, timing of clearing to minimise impacts on native fauna and salvaging habitat features. - The Department considers that there would be no increase in impacts on biodiversity values and as such, a BDAR is not required.	
Aboriginal Cultural Heritage	- Four Aboriginal heritage sites were identified within the project area during the field surveys for the Aboriginal Heritage Assessment undertaken for the original project in 2007. All four sites are located outside the modification area, with the closest site located approximately 400 m away. - Whitehaven operates the mine in accordance with an approved Aboriginal Cultural Heritage Management Plan (ACHMP), which includes a protocol for managing unexpected finds of Aboriginal sites.	No changes to conditions
Water Impacts	- The proposed diversion drain would collect upslope surface water runoff from Sunnyside Hill and convey it to two small gullies on each side of the highwall where it would flow to the downstream receiving environment and remain within the same water source. - The drain would be revegetated and rock protection used in erodible areas to limit erosion of the drain. - The Department considers the modification would not increase the water take of the mine and impacts to water quality is unlikely.	No changes to conditions

Additionally, the Department has recommended updating the rehabilitation conditions to address recent statutory changes to the *Mining Act 1992*.

6 Evaluation

The Department has assessed the modification application and supporting information in accordance with the relevant requirements of the EP&A Act, including the relevant matters for consideration.

The Department considers that the modification would reduce the risk of erosion of the highwall and help to ensure a stable and safe final landform.

The Department also considers that the modification would be unlikely to significantly increase the impacts of the project and that the existing conditions of consent would be adequate to manage the impacts of the modification.

The Department has recommended some minor changes to the rehabilitation conditions to reflect recent regulatory reforms under the *Mining Act 1992*. The relevant figures have also been updated to reflect the proposed changes to the final landform and koala habitat.

The Department considers that the proposed modification should be approved subject to the amended conditions. The Department has drafted an Instrument of Modification (see **Appendix B**) for the proposed modification, as well as a consolidated version of the development consent as modified (see **Appendix C**).

7 Determination

The Department recommends that the Director Resource Assessments, as delegate of the Minister for Planning:

- **considers** the findings and recommendations of this report;
- **determines** that the modification application (MP06_0308-Mod-4) falls within the scope of section 4.55(1A) of the EP&A Act;
- **forms the opinion** under section 7.17(2)(c) of the *Biodiversity Conservation Act 2016* that a BDAR is not required as the application would not increase the impact on biodiversity values;
- **accepts and adopts** all of the findings and recommendations in this report as the reasons for making the decision to approve the modification application;
- **agrees to modify** the consent (MP06_0308-Mod-4); and
- **signs** the attached Notice of Modification (**Appendix B**).

Recommended by:



15 June 2022

Brittany Golding

Planning Officer
Resource Assessments

Recommended by:



15 June 2022

Philip Nevill

Senior Environmental Assessment Officer
Resource Assessments

The recommendation is **Adopted / Not adopted** by:



15 June 2022

Stephen O'Donoghue

Director - Resource Assessments

as delegate of the Minister for Planning

Appendices

Appendix A – Modification Report

Appendix B – Instrument of Modification

Appendix C – Consolidated Consent

For all documents, refer to the Departments website at:

<https://www.planningportal.nsw.gov.au/major-projects/projects/mod-4-highwall-drain>