

Notice of Modification

Section 5.25 of the *Environmental Planning and Assessment Act 1979*

I approve the modification of the critical State significant infrastructure approval referred to in Schedule 1, subject to the conditions in Schedule 2.



The Hon. Rob Stokes MP

Minister for Planning and Public Spaces

Sydney 8th October 2020

SCHEDULE 1

The Project Approval (MP 07_0176) for the Marulan Power Station 2 Project, granted by the Minister for Planning on 26 October 2009.

SCHEDULE 2

1. Delete "Department of Planning" in the footers and insert the following:
"Department of Planning, Industry and Environment"
2. In Schedule 1, delete "Delta Energy", and replace with "EnergyAustralia";
3. In Schedule 1, delete " , which is classified as critical infrastructure within the meaning of section 75C of the *Environmental Planning and Assessment Act* as it meets the definition of development for the purposes of a facility for the generation of electricity that has a capacity to generate at least 250 megawatts and is the subject of an application lodged pursuant to Section 75E or 75M of the Act prior to 1 January 2013, pursuant to the Minister's critical infrastructure declaration dated 26 February 2008", and replace with "On 20 November 2018, the project was transitioned to a critical State significant infrastructure (SSI) project by order under Clause 5 of Schedule 2 to the *Environmental Planning and Assessment (Savings, Transitional and Other Provisions) Regulation 2017*".
4. In Schedule 2, delete the definition table, and replace with the following:

Act, the	<i>Environmental Planning and Assessment Act, 1979</i>
CASA	Commonwealth Civil Aviation Safety Authority
Concept Plan	The approved concept plan for the Marulan Gas Fired Power Stations (07_0174)
Conditions of Approval	Conditions contained in Schedule 2
Construction	All physical works associated with the development, including but not limited to demolition and removal of buildings or works, erection or installation of

	buildings and infrastructure, road upgrades, and the carrying out of works, but excluding pre-construction minor works.
Council	Upper Lachlan, Goulburn Mulwaree and/ or Wingecarribee Councils as relevant.
Department, the	Department of Planning, Industry and Environment (DPIE)
DPIE Water	Water Group within the Department
EA	<i>Marulan Gas Turbine Facility Environmental Assessment Project Application (Delta Electricity)</i>, dated August 2008 and prepared by URS Pty Ltd, as amended by: • <i>Marulan Gas Turbine Facilities Submissions Report and Preferred Project Report</i>, dated May 2009, and prepared by URS Pty Ltd. • Modification application (MOD 2) - <i>Marulan Gas Fired Power Stations Project - Modification of Project Approvals (MP 07_0174, MP 07_0175 and MP 7_0176)</i>, dated October 2019, prepared by EnergyAustralia and <i>Marulan Gas Fired Power Stations Project - Submissions Report</i>, dated February 2020, prepared by EnergyAustralia.
EPA	Environment Protection Authority
Gunlake Quarry	Major Project 07_0074 granted project approval by the Minister on 24 September 2008.
Incident	An occurrence or set of circumstances that causes or threatens to cause material harm and which may or may not be a non-compliance
Marulan Power Station 1	The approved project for the Marulan Gas Fired Power Station 1 Project (07_0175)
Material harm	Is harm that: • involves actual or potential harm to the health or safety of human beings or to ecosystems that is not trivial; or • results in actual or potential loss or property damage of an amount, or amounts in aggregate, exceeding \$10,000 (such loss includes the reasonable costs and expenses that would be incurred in taking all reasonable and practicable measures to prevent, mitigate or make good harm to the environment)
Minimise	Implement all reasonable and feasible mitigation measures to reduce the impacts of the development
Minister, the	Minister for Planning and Public Spaces
Mitigation	Activities associated with reducing the impacts of the project
Operation	When the project commences contributing electricity to the grid but excluding commissioning activities.
Proponent	EnergyAustralia, or any person carrying out any development to which this approval applies
Publicly Available	Available for inspection by a member of the general public (for example available on an internet site or at a display centre).
Reasonable / feasible	Consideration of best practice taking into account the benefit of proposed measures and their technological and associated operational application in the NSW and Australian context. Feasible relates to engineering considerations and what is practical to build. Reasonable relates to the application of judgement in arriving at a decision, taking into account: mitigation benefits, cost of mitigation versus benefits provided, community views and nature and extent of potential improvements.
Secretary	Planning Secretary under the Act, or nominee
Secretary's Approval	A written approval from the Secretary and/or delegate
Site	Comprising the "Power Station Site", including land required for the power station facilities, construction lay-down area, transmission line and connection to the adjacent TransGrid switchyard, gas pipeline (purple dashed route or orange dashed route) and access road (including connection to and upgrade of the existing adjacent access road off Canyonleigh Road, as required) as generally identified in the concept plan.
TfNSW	Transport for NSW

5. In Schedule 2, delete:
 - (a) all references to "Director-General", and replace with "Secretary";
 - (b) all references to "RTA", and replace with "TfNSW".
 - (c) all references to "DECCW" and replace with "EPA", except in condition 6.2(d)(ii).
 - (d) all references to "*Approved Methods for the Modelling and Assessment of Air Pollutants in New South Wales* (DECC, 2005)" with "*Approved Methods for the Modelling and Assessment of Air Pollutants in New South Wales* (EPA 2017) or its latest version".
6. In Schedule 2, replace condition 1.1 with the following:

"The project may only be carried out:

 - a) in compliance with the conditions of this approval and the concept plan approval granted with respect to the Marulan Gas Fired Power Stations (07_0174);
 - b) in accordance with all written directions of the Secretary; and
 - c) generally, in accordance with the EA."
7. In Schedule 2, replace condition 1.2 with the following:

"The conditions of this approval and directions of the Secretary prevail to the extent of any inconsistency, ambiguity or conflict between them and the documents listed in condition 1.1(c). In the event of an inconsistency, ambiguity or conflict between any of the documents listed in condition 1.1(c), the most recent document prevails to the extent of any inconsistency, ambiguity or conflict."
8. In Schedule 2, condition 1.4, delete "reports, plans or correspondence" and replace with "documents".
9. In Schedule 2, delete condition 1.5, and replace with the following:

"This approval will lapse if the Proponent does not physically commence the project by 26 October 2024."
10. In Schedule 2, condition 2.8, delete "established consistent with Section 8.3 of the *New South Wales Industrial Noise Policy* (EPA, 2000)".
11. In Schedule 2, condition 2.8, delete "EnergyAustralia Power Station Project", and replace with "Marulan Power Station 1 Project".
12. In Schedule 2, condition 2.8, in Table 3, delete the text in the third row first column and replace with "All other residences".
13. In Schedule 2, condition 2.9, delete "Section 11 of the *New South Wales Industrial Noise Policy* (EPA, 2000)", and replace with "*Noise Policy for Industry* (EPA, 2017)".
14. In Schedule 2, condition 2.9 (c), delete "Section 4 of the *New South Wales Industrial Noise Policy* (EPA, 2000)", and replace with "*Noise Policy for Industry* (EPA, 2017)".
15. In Schedule 2, delete condition 2.10 and insert "Deleted".
16. In Schedule 2, condition 2.13, delete "EPA's *Environment Protection Manual Technical Bulletin Bunding and Spill Management*", and replace with "*Technical Guidelines: Bunding & Spill Management* (EPA)".

17. In Schedule 2, condition 2.19, delete “AS 4282-(INT) 1997 – Control of Obtrusive Effects of Outdoor Lighting”, and replace with “AS 4282 1997 – Control of Obtrusive Effects of Outdoor Lighting”.
18. In Schedule 2, condition 2.27, delete “Waste Classification Guidelines (DECC, 2008)”, and replace with “Waste Classification Guidelines (EPA, 2014), or its latest version”.
19. In Schedule 2, condition 3.1, delete “Approved Methods for the Sampling and Analysis of Air Pollutants in New South Wales (EPA, 2001)”, and replace with “Approved Methods for the Sampling and Analysis of Air Pollutants in New South Wales (EPA, 2007) or its latest version.”
20. In Schedule 2, condition 3.4(a) delete “guidelines provided in the New South Wales Industrial Noise Policy (EPA, 2000)”, and replace with “Noise Policy for Industry (EPA, 2017)”.
21. In Schedule 2, delete section 4., “COMPLIANCE MONITORING AND TRACKING”, and all conditions under this section, and replace with the following:

“4. COMPLIANCE MONITORING AND REPORTING

Incident Notification

- 4.1 The Proponent must immediately notify the Department and any other relevant agencies immediately after it becomes aware of an incident. The notification must be in writing and identify the development (including the development application number and name) and set out the location and nature of the incident.

Non-Compliance Notification

- 4.2 Within seven days of becoming aware of a non-compliance, the Proponent must notify the Department of the non-compliance. The notification must be in writing and identify the development (including the development application number and name), set out the condition of this consent that the development is non-compliant with, why it does not comply and the reasons for the non-compliance (if known) and what actions have been, or will be, undertaken to address the non-compliance.

Note: A non-compliance which has been notified as an incident does not need to also be notified as a non-compliance.

Compliance Reporting

- 4.3 The Proponent must provide regular compliance reporting to the Department on the development in accordance with the relevant requirements of the Department’s *Compliance Reporting Post Approval Requirements* (2020), or its most recent version,

Regular Reporting

- 4.4 The Proponent must provide regular reporting on the environmental performance of the development on its website in accordance with the reporting requirements in any strategies, plans or programs approved under the conditions of this approval.”

Independent Audit

- 4.5 No later than 4 weeks before the commencement of construction, an Independent Audit Program prepared in accordance with the Department’s *Independent Audit Post Approval Requirements* (2018) or latest version, must be submitted to the Department.

4.6 Independent audits of the development must be carried out in accordance with:

- a) the Independent Audit Program submitted to the Department under condition 4.5 of this approval; and
- b) the requirements for an Independent Audit Methodology and Independent Audit Report in the Department's *Independent Audit Post Approval Requirements (2018)*, or latest version.

4.7 In accordance with the specific requirements in the Department's *Independent Audit Post Approval Requirements (2018)*, or latest version, the Proponent must review and respond to each Independent Audit Report prepared under condition 4.6 of this approval and submit the response to the Department."

22. In Schedule 2, Replace Condition 5.4 with the following:

"Access to Information

5.4 From the commencement of the construction of the project, the Proponent must:

- a) make copies of the following information publicly available on its website:
 - the EA;
 - current statutory approvals for the project;
 - approved studies, strategies, plans required for the project under the conditions of approval;
 - a comprehensive summary of the monitoring results on the project, reported in accordance with the requirements in the conditions of approval or any approved studies, strategies or plans for the project;
 - the Compliance Reports of the project;
 - audit reports prepared as part of any Independent Audit of the project, and the Proponent's response to the recommendation in any audit report;
 - any other matter required by the Secretary; and
- b) keep the information up to date, to the satisfaction of the Secretary."

23. In Schedule 2, condition 6.2 delete "and implement" and insert "The Proponent must implement the approved CEMP for the project." at the end of condition 6.2.

24. In Schedule 2, condition 6.2 (d)(ii) delete "DECCW", and replace with "WaterNSW, DPIE Water and EPA".

25. In Schedule 2, condition 6.4 d(i) after "operational water management measures" insert ", prepared in consultation with the EPA and WaterNSW,"

26. In Schedule 2, condition d(ii) replace "condition 4.1b)" with "conditions 4.1 to 4.4"

27. In Schedule 2, condition 6.4 delete "and implement" and insert "The Proponent must implement the approved OEMP for the project." at the end of condition 6.4.

28. In Schedule 2, after condition 6.5 insert the following:

"Environmental Management Strategy

6.6 Prior to the commencement of the construction of the project, the Proponent shall prepare an Environmental Management Strategy for the project to the satisfaction of the Secretary. This strategy must:

- a) provide the strategic framework for the environmental management of the project;

- b) identify the statutory approvals that apply to the project;
- c) describe the role, responsibility, authority and accountability of all key personnel involved in the environmental management of the project; and
- d) describe the procedures that would be implemented to:
 - keep the local community and relevant agencies informed about the progress of the project;
 - receive, handle, respond to, record and report complaints;
 - resolve any disputes that may arise during the project;
 - respond to any non-compliance; and
 - respond to any incidents or emergencies.

Revision of Strategies, Plans and Programs

6.7 Within 3 months, unless the Secretary agrees otherwise, of:

- a) the submission of an incident notification under condition 4.1 of this approval;
- b) the submission of an Independent Audit under condition 4.6 of this approval;
- c) the approval of any modification to the conditions of approval; or
- d) a direction from the Secretary under condition 1.4 of this approval;

the Proponent must review and, if necessary, revise the studies, strategies or plans required under the conditions of approval to the satisfaction of the Secretary.

Where this review leads to revisions in any such document, then within 4 weeks of the review the revised document must be submitted to the Secretary for approval, unless otherwise agreed with the Secretary.

Note: This is to ensure the strategies, plans and programs are updated on a regular basis, and incorporate any recommended measures to improve the environmental performance of the development."

Updating and Staging of Studies, Strategies and Plans

6.8 To ensure the studies, strategies and plans for the project are updated on a regular basis and incorporate any required measures to improve the environmental performance of the project, the Proponent may submit revised studies, strategies or plans required for the project under the conditions of approval at any time. With the agreement of the Secretary, the Proponent may also submit any study, strategy or plan required under the conditions of this approval on a staged basis.

The Secretary may approve a revised strategy or plan required under the conditions of approval, or the stage submission of these documents, at any time. With the approval of the Secretary, the Proponent may prepare the revised or staged strategy or plan without undertaking consultation with all parties nominated under the applicable condition in this approval.

Notes:

- *While any study, strategy or plan may be submitted on a progressive basis, the Proponent will need to ensure that the existing operations on site are covered by suitable studies, strategies or plans at all times.*
- *clearly describe the specific stage to which the study, strategy or plan applies, the relationship of this stage to any future stages, and the trigger for updating the study, strategy or plan."*

29. In Schedule 2, delete section 7. "ENVIRONMENTAL REPORTING" and all conditions under this section.
30. The KEY TO CONDITIONS has been updated to reflect the above changes to conditions.