

Department of Planning, Housing and Infrastructure

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# Marulan Gas-Fired Power Station – Modifications

Critical State Significant Infrastructure Modification Assessment Report (MP 07\_0174 MOD 2, MP 07\_0175 MOD 2 & MP 07\_0176 MOD 3)

October 2024



# Acknowledgement of Country

The Department of Planning, Housing and Infrastructure acknowledges that it stands on Aboriginal land. We acknowledge the Traditional Custodians of the land and show our respect for Elders past, present and emerging through thoughtful and collaborative approaches to our work, seeking to demonstrate our ongoing commitment to providing places in which Aboriginal people are included socially, culturally and economically.

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# 1 Introduction

EnergyAustralia Development Pty Ltd (EnergyAustralia) owns the Marulan Gas-Fired Power Station (the project), located approximately 12 kilometres (km) north-east of Marulan, approximately 25 km east of Goulburn within the Upper Lachlan and Goulburn-Mulwaree local government areas, traversing the traditional lands of Gundungurra people.

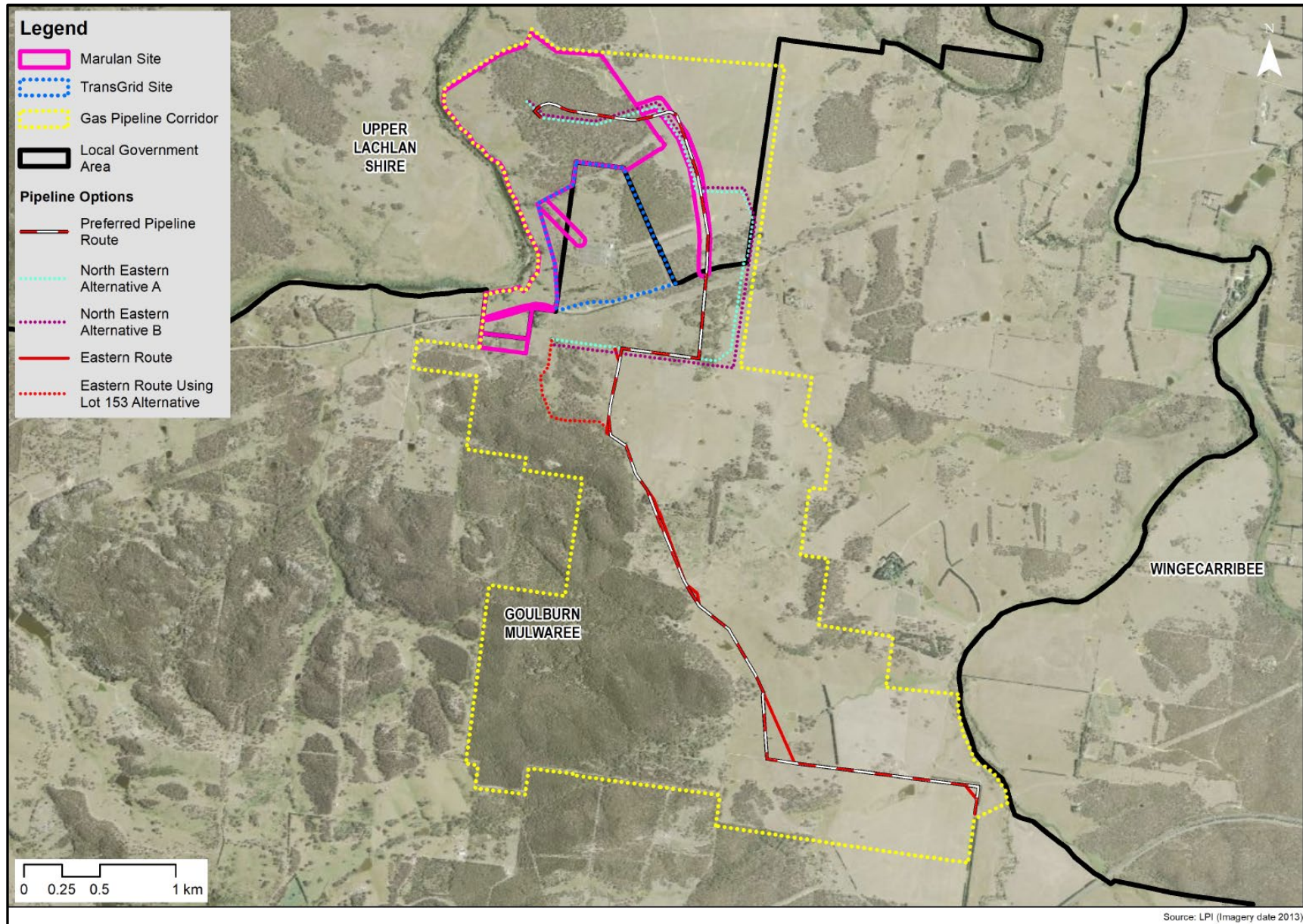
The project site is located at a strategic location near the existing gas and electricity infrastructure, being approximately 6 km north of APA Group's Moomba to Sydney high pressure natural gas pipeline and adjacent to Transgrid's electricity supply network and switchyard (see **Figure 1**).

The project was approved by the then Minister for Planning on 26 October 2009 through four separate approvals including:

- **Marulan Gas-Fired Power Stations Concept Approval** (MP 07\_0174) – EnergyAustralia and Delta Electricity (Delta) to develop two gas-fired power stations, and associated common infrastructure;
- **Marulan Gas-Fired Power Station 1 Project Approval** (MP 07\_0175) - EnergyAustralia to develop a 350 megawatt (MW) open cycle gas-fired power station;
- **Marulan Gas-Fired Power Station 2 Project Approval** (MP 07\_0176) – Delta to develop a 250 - 350 MW open cycle gas-fired power station or a 400 - 450 MW combined cycle gas-fired power station; and
- **Marulan Gas-Fired Power Stations - Common Infrastructure Project Approval** (MP 07\_0174) – EnergyAustralia and Delta to develop common associated infrastructure for the project, including a gas supply pipeline to connect into the Moomba to Sydney gas pipeline, a transmission line to connect into the Transgrid's switchyard and access roads.

The project was originally proposed to be carried out as joint concept plan approval between EnergyAustralia and Delta with the two power station sites to be operated independently and the common infrastructure area to be jointly managed. However, EnergyAustralia acquired Delta's interest in 2010 and is now the sole proponent for the project.

The approvals for the two power stations and common infrastructure projects have been modified once to allow extension of the lapse dates for five years (by 26 October 2024). EnergyAustralia has not commenced the project yet.



**Figure 1** | Approved project layout, existing and proposed supporting infrastructure (Source: EnergyAustralia, dated May 2020)

## 2 Proposed modification

EnergyAustralia is seeking to modify condition 1.5 of the project approvals for the two power stations and common infrastructure (MP 07\_0174, MP 07\_0175, and MP 07\_0176) and extend the approval lapse dates for further two years to physically commence the project (proposal).

The proposal would not change any other components of the approved project or other project approvals conditions and would allow additional time for EnergyAustralia to undertake options analysis for the final design of the project (including the proposed final turbine configuration).

EnergyAustralia proposes to request further modifications to the three project approvals within the two-year extension period to undertake the required stakeholder consultation, environmental assessments and technical studies in accordance with the relevant contemporary guidelines, policies and legislation to allow construction and operation of the project based on the final design. Subject to further planning approvals, EnergyAustralia anticipates completing the final investment decision by 2028, construction by 2030, and commencing commercial operation by 2032.

Full details of the proposal are available in the Modification Report submitted with the modification applications (see **Appendix A**).

## 3 Statutory context

### 3.1 Scope of Modification and Assessment Pathway

Details of the legal pathway under which modification is sought are provided in **Table 1** below.

**Table 1** | Permissibility and assessment pathway

Consideration	Description
<b>Scope of modification</b>	<p>On 26 February 2008, the then Minister for Planning declared that development for the purposes of generating electricity with a capacity of at least 250 MW was critical infrastructure pursuant to section 75C of the <i>Environmental Planning and Assessment Act 1979</i> (EP&amp;A Act). The project was declared critical, as it was considered essential for NSW, because it would contribute to the State's power supply capacity and complement increasing renewable energy generation over the medium and longer term.</p> <p>On 26 October 2009, the project was granted approval by the then Minister for Planning under Part 3A of the EP&amp;A Act. Following reforms of the EP&amp;A Act in March 2018, the project was transitioned from Part 3A to State significant infrastructure (SSI) by order on 20 November 2018 retaining its critical infrastructure status.</p> <p>In accordance with section 5.25 of the EP&amp;A Act, a proponent may request the Minister for Planning and Public Spaces (Minister) to modify the approval for SSI. The Minister's approval for a modification is not required if the infrastructure as modified will be</p>

Consideration	Description
	<p>consistent with the existing approval. The proposed approval lapse date extensions are not considered consistent with the existing approvals. Consequently, modification of the Minister’s approvals under section 5.25 of the EP&amp;A Act is required.</p>
<p><b>Transitional arrangements</b></p>	<p>On 28 February 2019, amendments were made to the transitional arrangements for former Transitional Part 3A projects which are relevant to the determination of these modification requests.</p> <p>These amendments prevent an approval for a Transitional Part 3A project that has been declared to be an SSI project from lapsing if a request to modify the relevant lapsing condition in the approval was duly made before the lapsing date, and the request was not determined before the lapsing date.</p> <p>When this occurs, the approval lapses 12 months after the date on which the modification request was duly made (i.e. 20 August 2024) unless the relevant modification is:</p> <ul style="list-style-type: none"> <li>• refused or withdrawn, in which case the approval lapses on the day it was refused or withdrawn; or</li> <li>• granted, in which case the approval lapses on the day specified in the modified approval.</li> </ul>
<p><b>Approval Authority</b></p>	<p>The Minister continues to be the approval authority under section 5.25(4) of the EP&amp;A Act and has the capacity to modify the approvals of the project.</p>
<p><b>Decision-maker</b></p>	<p>Under the Minister’s delegation dated 9 March 2022, the Director Resource Assessments, may determine the applications. This is because Goulburn Mulwaree Council (Council) did not object to the proposal and EnergyAustralia did not make a political disclosure statement.</p>
<p><b>Permissibility</b></p>	<p>At the time of project approvals in 2009, the land use zoning of the project site was classified as zone 1(a) - General Rural (rural zone) under the applicable <i>Mulwaree Local Environmental Plan 1995</i> and permissible with consent. The land use for the project site is now RU2 - Rural Landscape, following the merger of Goulburn and Mulwaree Councils in 2004 and adoption of the <i>Goulburn Mulwaree Local Environmental Plan 2009</i>, which replaced the <i>Mulwaree Local Environmental Plan 1995</i>.</p> <p>Consistent with the provisions of clauses 2.35 and 2.36 of the <i>State Environmental Planning Policy (Transport and Infrastructure) 2021</i>, the project is still permissible with consent, as it is for the purpose of electricity generating works, the RU2 – Rural Landscape is a defined as a prescribed non-residential zone.</p> <p>Under clause 2.15 of the <i>State Environmental Planning Policy (Planning Systems) 2021</i>, a critical SSI project may be carried out without development consent under Part 4 of the EP&amp;A Act.</p>

## 3.2 Other approvals and authorisations

Under section 5.23 of the EP&A Act, a number of other authorisations required under other Acts are not required for State significant development and SSI. This is because all relevant issues are considered during the assessment of the original project and subsequent modification requests.

The Department has consulted with, and considered the advice of, the relevant government agencies in its assessment of the proposal (see **Sections 4, 5 and 6**).

## 3.3 Mandatory matters for consideration

### 3.3.1 Objects of the EP&A Act

All decision-making under the EP&A Act is underpinned by objects of the EP&A Act. When determining a development application under the EP&A Act, these principles must be considered by the approval authority. The Department has therefore assessed the modified project against the objects found in Section 1.3 of the EP&A Act.

### 3.3.2 Application of the Climate Change (Net Zero Future) Act 2023

On 11 December 2023, the *Climate Change (Net Zero Future) Act 2023* came into force in NSW, establishing guiding action principles to address climate change, including setting targets and objectives for reducing net greenhouse gas (GHG) emissions by 2050 and making NSW more resilient to climate change. It also established the Net Zero Commission in December 2023 to independently monitor, review and report on the progress towards these targets, the adaptation objective and other matters. The Net Zero Commission's functions are monitored and reviewed by the Joint Standing Committee on Net Zero Future, which was established in June 2024.

The key targets under the *Climate Change (Net Zero Future) Act 2023* in NSW are:

- by 30 June 2030 – to reduce net GHG emissions by at least 50% from the net GHG emissions in 2005, and
- by 30 June 2035 – to reduce net GHG emissions by at least 70% from the net GHG emissions in 2005, and
- by 30 June 2050 – to reduce net GHG emissions to zero.

The Department's assessment has considered these requirements (see **sections 5 and 6** of this report).

### 3.3.3 Application of the Biodiversity Conservation Act 2016

Section 7.17(2) of the *Biodiversity Conservation Act 2016* (BC Act) requires all SSI modifications to be accompanied by a Biodiversity Development Assessment Report (BDAR) unless the authority or person determining the application is satisfied that the modification will not increase the impact on biodiversity values (as identified in the BC Act and in the *Biodiversity Conservation Regulation 2017*).

The Department is satisfied that the proposal would not increase the impact on biodiversity values and consequently a BDAR is not required, as the modification applications were sought to extend the lapse dates only.

## 4 Engagement

In accordance with the *Environmental Planning and Assessment Regulation 2021*, the Department made the modification applications publicly available on the Department's website on 23 August 2024. The Department did not receive any community feedback and referred the applications to Council and EPA. The advice by the EPA and Council's comments are published on the Department's website.

The EPA did not raise any issues with the proposal and outlined the updated environmental assessments in accordance with the contemporary guidelines and policies that must be provided prior to commencing construction of the project. This includes assessment of air quality and impacts as well as a Greenhouse Gas Assessment, Greenhouse Gas Mitigation Plan, and Climate Change Adaptation plan in accordance with the latest version of the EPA's *Greenhouse Gas Assessment Guide for Large Emitters*.

Council did not object to the proposal but raised EnergyAustralia's lack of consultation with Council and also broader community and had concerns about extending lapse dates without further consultation and assessments of impacts. The Department notes Council's references to the provisions under section 4.53 of the EP&A Act in relation to lapsing of consent are applicable to Part 4 Developments, and not to the project, which is critical SSI.

Since the lodgement of the Modification report, EnergyAustralia has provided additional information about changes to the area surrounding the project site and alignment of the project with the local policies and strategies (see **Appendix A3 – Additional Information**).

The Department's consideration of these matters is provided in **sections 5 and 6** of this report.



# 5 Assessment

EnergyAustralia has advised delays in commencing construction of the project has been due to its focus on delivery of Tallawarra B Power Station (MP07\_0124), as well as difficulties imposed by the COVID19 pandemic since 2020 and the continued uncertainty in the gas and energy markets. The Department also notes that an automatic two-year extension of lapse date was afforded to Part 4 development consents that had not yet physically commenced due to the COVID19 pandemic.

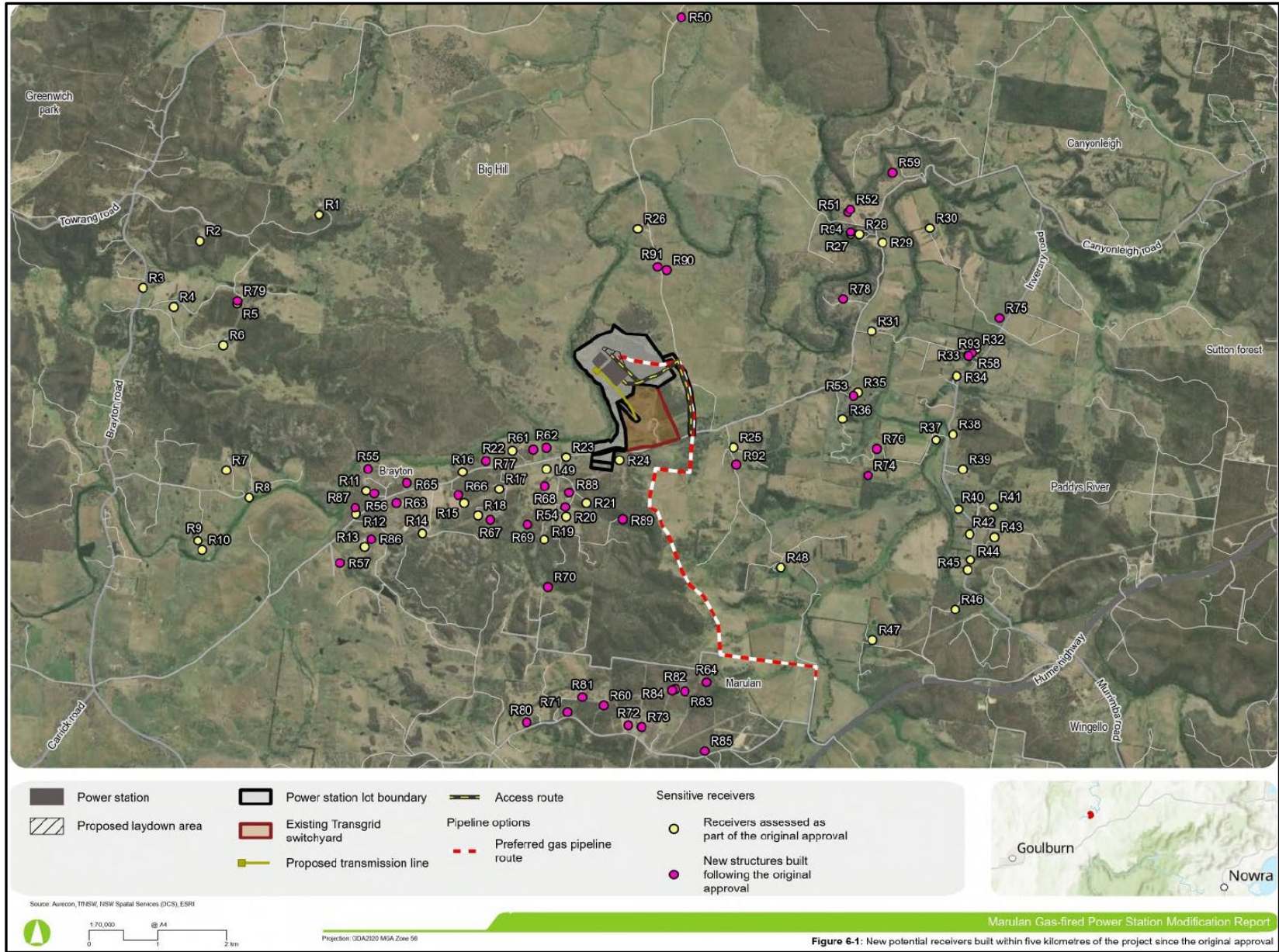
The Department's assessment and consideration of the proposal are outlined in the following sub-sections.

## 5.1 Project's impacts

The project was originally approved by the then Minister for Planning in 2009 subject to strict conditions of approvals following a comprehensive environmental, social and economic impact assessment in accordance with the EP&A Act. The existing conditions across the three approvals require EnergyAustralia to prepare an environmental management strategy to the satisfaction of the Planning Secretary, providing a strategic framework for the environmental management of the project as well as undertake a range of monitoring, management and reporting programs and plans in consultation with the relevant agencies. These include matters relating to biodiversity, amenity (air quality, noise, vibration and visual), water, traffic and transport, soil, hazards and waste, and Aboriginal cultural heritage.

The proposal would not change any aspects of the approved project and would only extend the approvals lapse date. However, the Department recognises the changes to the area surrounding the project site, including the 45 additional dwellings approximately within 1.5 km and 5 km from the project site that have been built since the project was approved in 2009 (see **Figure 2**). The Department also notes that some of the conditions of the existing project approvals are based on outdated legislation, strategies and policies. These include legislation administered by the NSW Environment Protection Authority (EPA), such as compliance with the relevant regulatory framework under the *Protection of the Environment Operations Act 1997* and associated regulations and guidelines; application of the *NSW Climate Change (Net Zero Future) Act 2023*; and the *Biodiversity Conservation Act 2016* and amendments to the *Local Land Services Act 2013*.

The Department considers that the extension in the lapse date would allow EnergyAustralia to complete the necessary options analysis for the project in preparation for requesting further modification applications to undertake an updated comprehensive assessment of project's impacts, including cumulative impacts, in accordance with the current limits and criteria. This would provide a pathway for contemporising conditions of the project approvals prior to commencing construction of the project, subject to further modification to the project approvals.



**Figure 2 |** Surrounding residences built since the project approval in 2009 (Source: Modification Report, dated August 2024)

## 5.2 Changes to strategic context

The project was declared to be a critical infrastructure in 2008 based on the strategic evidence on its benefits to the NSW, as supported by the findings of energy supply and demand investigations by the NSW Government, including the *Energy Directions Green Paper (2004)* and the inquiry into Electricity Supply in NSW (*the Owen Inquiry 2007*), as well as the National Electricity Market Management Company's *2008 Statement of Opportunities*, which identified:

- the need for additional base load generation capacity;
- gas-fired power generation to meet the base load and peaking electricity demand; and
- additional gas pipeline capacity would be required to meet forecast demand for gas in NSW, particularly if there was an increase in gas-fired electricity generation.

The Department considers that the proposal would allow benefits of the project to be realised and would be consistent with the key contemporary strategies, plans and policies, as outlined in **Table 2**.

**Table 2** | Summary of government strategies, plans and policies

Strategy, plan or policy	Comments
<b>NSW Electricity Strategy (NSW Government, 2019)</b>	Gas peaking power plants are identified as a source of dispatchable energy to offset decrease in the NEM capacity with the continued planned closure of NSW major coal fired power plants and when supply from intermitted renewable sources cannot meet demand.
<b>Staying Ahead: State Infrastructure Strategy 2022-2042 (NSW Government, 2022)</b> <b>Australia's Long Term Emissions Reduction Plan (2021) and Nationally Determined Contribution (2022)</b> <b>Net Zero Plan Stage 1: 2020 – 2030 (2020) and Implementation update (2022)</b> <b>NSW Electricity Infrastructure Roadmap (NSW Government, 2020)</b>	<p>The project would support the relevant objectives to boost economy-wide productivity and competitiveness and embed reliability and resilience as well as meeting Australia's commitment to its revised 2030 target of 43% below 2005 levels.</p> <p>The Integrated System Plan provides a comprehensive roadmap to Australia's energy transition to ensure the power generation meets demand as coal fired generators are retiring.</p> <p>The draft 2024 Integrated System Plan identifies the need for 50 GW of dispatchable storage, as well as 16 GW of gas-powered generation capacity, given the forecast for the Australian Energy Market Operator's (AEMO)'s most likely future scenario considers retirement of the NEM's entire coal fleet by 2040, with about 90% to occur before 2035.</p> <p>The roadmap requires new gas-fired power stations to be 'hydrogen-ready'. EnergyAustralia has advised that it would investigate use of hydrogen in the fuel mix as part of the options analysis. Use of</p>

Strategy, plan or policy	Comments
<p><b>Integrated System Plan (Australian Energy Market Operator (AEMO) 2022)</b></p> <p><b>Draft 2024 Integrated System Plan</b></p>	<p>hydrogen is not currently allowed for the project and would be subject to further planning approvals.</p> <p>If realised, the project would support the NSW Government strategic objective of achieving an orderly and efficient transition from coal-fired generation and towards net zero emissions and cleaner forms of energy.</p>
<p><b>Local Strategic Planning Statement for Goulburn Mulwaree 2020</b></p> <p><b>Goulburn Mulwaree Strategy 2020 (2006)</b></p> <p><b>Goulburn Mulwaree Development Control Plan 2009</b></p>	<p>The <i>Goulburn Mulwaree Strategy 2020</i> identified upgrade of the electricity generation infrastructure as critical, given the growing population increases the demand for energy and reliable infrastructure.</p> <p>The project supports the regional and local strategic plans towards securing reliable power supply for the growing population in Goulburn Mulwaree local government area, which are predominantly distributed in the towns of Goulburn, Marulan and Tarago as well as ensuring on-going employment opportunities.</p>

### 5.3 Conclusion

The key reasons impeding EnergyAustralia from developing the project are resolved and EnergyAustralia has advised that it would now be able to invest in developing the project, given:

- the commissioning of its Tallawarra B Power Station, which commenced feeding power into the NEM on 18 June 2024; and
- recent improvements in turbine and power generation technologies and opportunities for using alternative and cleaner fuels, such as hydrogen.

The Department notes EnergyAustralia’s provided timeline towards delivery of the project and that EnergyAustralia would not be able to construct the project as it stands. The Department also acknowledges the lengthy processes involved for completing investigations into technology options and undertaking relevant technical and financial studies.

Based on this assessment, the Department considers that a two-year extension to the approvals would give sufficient time to EnergyAustralia to complete the required investigation and request further modification applications to review and update the existing conditions to reference contemporary criteria and guidelines.

In addition to the two-year extension in condition 1.5 of the three approvals, the Department has recommended the following administrative changes:

- inclusion of the modification proposal in the project description;
- updates to the definition table and government agency names; and
- administrative changes to reflect the Department's standard approach for compliance related matters.

## 6 Evaluation

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

EnergyAustralia is proposing to extend the lapse dates under condition 1.5 of the three approvals for the project by a further two years from the current lapse dates without changing any other aspects of the approved project or changing any other conditions of approvals.

The 2009 critical infrastructure approvals for the project were based on a comprehensive assessment of likely social, environmental and economic impacts of the project and subject to a strict set of conditions. These include conditions relating, and not limited to, likely impacts of project on biodiversity values (measures to avoid, mitigate and offset), heritage, hazards and risks, amenity (air quality, noise and visual), traffic and transport, and rehabilitation of the affected areas in consultation with the relevant agencies and stakeholders.

The Department has consulted with the EPA and Council whose key concerns were around the project's impacts, should the proposal be approved and EnergyAustralia proceed with construction of the project based on the existing conditions of approvals. Council also raised EnergyAustralia's failure in consulting with Council and wider community about the proposed modifications.

Key considerations in the Department's assessment are:

- EnergyAustralia's justification for extending the lapse dates, given Tallawarra B Power Station is now operational, the improvements in the gas and energy markets and opportunities for incorporating alternative and cleaner fuels, such as hydrogen;
- the changes to the population and environment surrounding the project site;
- updated legislation and guidelines for environmental impact assessment, mitigation and management since the approvals in 2009 and that operation of the project would be subject to further impact assessments, including GHG emissions in accordance with the EPA's *Greenhouse Gas Assessment Guide for Large Emitters*, and in-line the relevant GHG emissions targets;
- EnergyAustralia's timelines for progressing with the project, including the proposed two-year extension to investigate options for project design and technology should this proposal be approved, and seeking a further modification application for undertaking updated impact

assessments based on the final project design in accordance with contemporary requirements for environmental and social impact assessments; and

- economic, social and environmental benefits of the project that would be realised by providing firming electricity generation as the State transitions away from more polluting coal-fired power generation and the associated employment opportunities.

EnergyAustralia has committed to engage and consult with the relevant government agencies, local councils and the community as it progresses with the project, should the lapse date extension be approved.

Based on this assessment, the Department considers that the proposal would provide a pathway for the project's benefits to State and wider region to be realised.

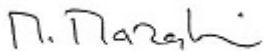
Consequently, the Department considers that the proposal is in the public interest and recommends that the approvals lapse dates to be extended by an additional two years (until 26 October 2026), subject to the recommended updates to the project approvals.

# 7 Determination

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

- **considers** the findings and recommendations of this report;
- **determines** that the applications for MP 07\_0174 MOD 2, MP 07\_0175 MOD 2 & MP 07\_0176 MOD 3 fall within the scope of section 5.25 of the EP&A Act;
- **accepts and adopts** the findings and recommendations in this report as the reasons for making the decision to approve the modifications;
- **modifies the approvals** for the Marulan Gas-Fired Power Station (MP 07\_0174, MP 07\_0175 and MP 07\_0176), subject to the conditions in the attached instrument of modifications; and
- **signs** the attached instrument of modification (**Appendix C**).

Recommended by:



10/10/2024

**Mandana Mazaheri**

Team Leader Assessments

Resource Assessments

The recommendation is **adopted/not adopted** by:



16/10/2024

**Steve O'Donoghue**

Director

Resource Assessments

# Appendices

## Appendix A – List of Documents

**A1 – Modification Reports:** Refer to folder ‘Modification Application’ under the ‘Assessment’ tab on the Department’s website:

- MP07\_0174-Mod-2: <https://www.planningportal.nsw.gov.au/major-projects/projects/mod2-lapse-date-extension>
- MP07\_0175-Mod-2: <https://www.planningportal.nsw.gov.au/major-projects/projects/mod2-lapse-date-extension-0>
- MP07\_0176-Mod-3: <https://www.planningportal.nsw.gov.au/major-projects/projects/mod3-lapse-date-extension>

**A2 - Agency Advice:** Refer to the folder ‘Agency Advice’ under the ‘Assessment’ tab on the Department’s website:

- MP07\_0174-Mod-2: <https://www.planningportal.nsw.gov.au/major-projects/projects/mod2-lapse-date-extension>
- MP07\_0175-Mod-2: <https://www.planningportal.nsw.gov.au/major-projects/projects/mod2-lapse-date-extension-0>
- MP07\_0176-Mod-3: <https://www.planningportal.nsw.gov.au/major-projects/projects/mod3-lapse-date-extension>

**A3 – Request for Information:** Refer to ‘Additional Information’ under the ‘Assessment’ tab on the Department’s website:

- MP07\_0174-Mod-2: <https://www.planningportal.nsw.gov.au/major-projects/projects/mod2-lapse-date-extension>
- MP07\_0175-Mod-2: <https://www.planningportal.nsw.gov.au/major-projects/projects/mod2-lapse-date-extension-0>
- MP07\_0176-Mod-3: <https://www.planningportal.nsw.gov.au/major-projects/projects/mod3-lapse-date-extension>

## Appendix B – Consolidated Approvals

Refer to ‘Determination’ under the ‘Assessment’ tab on the Department’s website:

- MP07\_0174-Mod-2: <https://www.planningportal.nsw.gov.au/major-projects/projects/mod2-lapse-date-extension>
- MP07\_0175-Mod-2: <https://www.planningportal.nsw.gov.au/major-projects/projects/mod2-lapse-date-extension-0>
- MP07\_0176-Mod-3: <https://www.planningportal.nsw.gov.au/major-projects/projects/mod3-lapse-date-extension>



## Appendix C – Instrument of Modifications

Refer to ‘Determination’ under the ‘Assessment’ tab on the Department’s website:

- MP07\_0174-Mod-2: <https://www.planningportal.nsw.gov.au/major-projects/projects/mod2-lapse-date-extension>
- MP07\_0175-Mod-2: <https://www.planningportal.nsw.gov.au/major-projects/projects/mod2-lapse-date-extension-0>
- MP07\_0176-Mod-3: <https://www.planningportal.nsw.gov.au/major-projects/projects/mod3-lapse-date-extension>