

2 December 2021

Seq No: 73/21

Mr Steve O'Donoghue
Director Resource Assessments
Department of Planning, Industry & Environment
GPO Box 39
Sydney, NSW 2001

Dear Mr O'Donoghue,

Subject: Ulan Coal Mine Alternative Offset Site Modification (Modification 7) consolidated Modification Report

This report comprises a consolidated Modification Report for Ulan Coal Mines Pty Ltd's (UCMPL) modification 7 application (Modification 7) as requested by the Department of Planning, Industry and Environment (DPI&E) on 14 October 2021.

The information provided below has been prepared in accordance with the Secretary's requirements outlined in relevant State Significant Development Guidance material, including the *State Significant Development Guidelines- Preparing a Modification Report* and the *Environmental Planning and Assessment Regulation 2000*.

1. EXECUTIVE SUMMARY

UCMPL have secured all approved offset areas, with the exception of the 10 hectare privately owned-portion of Brokenback Conservation Area (BCA). UCMPL sought agreement from the landowner to secure the privately owned-portion of BCA via a number of mechanisms. However, after lengthy negotiations agreement was unable to be reached on conditions relating to on-going management of the offset areas and commercial terms. Accordingly, UCMPL are now pursuing a Modification of Project Approval 08_0184 to permit use of an alternative offset site.

UCMPL have undertaken comprehensive consultation with relevant stakeholders on the Modification and have undertaken assessment work and prepared this consolidated Modification Report based on feedback provided.

Detailed assessment undertaken by Eco Logical Australia Pty Ltd (ELA) concluded that the proposed alternative offset site provides an improved environmental outcome compared to the privately owned portion of BCA and meets and exceeds the requirements of UCMPL's State and Federal approvals (Project Approval 08_0184 and EPBC approval 2009/5252, respectively).

An analysis of statutory requirements has demonstrated the proposed modification is consistent with the objectives of the *Environmental Planning and Assessment Act (1979)* (EP&A Act) and other relevant statutory instruments.

2. INTRODUCTION

The Modification seeks to permit use of a proposed alternate biodiversity offset site. The following provides background to the proposed Modification to PA 08_0184.

The current status of security of UCMPL's approved offset areas as referred to in Schedule 3, Condition 43 of Project Approval PA08_0184, is summarised in the following Table.

Table 1: Status of Security for UCMPL's Approved Biodiversity Offset Areas

Offset Area	Area (ha)	Security Mechanism	Completion date
Spring Gully Cliffline Conservation Reserve	272.3	Crown Land Reservation – Government Gazettal No 165	6 December 2019
Brokenback Conservation Area – Area 1	21.9	Voluntary Conservation Agreement between UCMPL and NSW DPI&E- Biodiversity Conservation Division	7 May 2019
Brokenback Conservation Reserve – Area 2	10	NA	Not completed
Brokenback Conservation Reserve – Area 3	27.7	Crown Land Reservation - Government Gazettal No 165	6 December 2019
Bobadeen Vegetation Offset Area, including Bobadeen East	1369.8	Voluntary Conservation Agreement between UCMPL and NSW DPI&E- BCD	7 May 2019
Highbett Road <i>Acacia ausfeldii</i> Management Area	19.1	Voluntary Conservation Agreement between UCMPL and NSW DPI&E- BCD	7 May 2019

As can be seen in Table 1, the 10 hectare privately owned-portion of Brokenback Conservation Area (BCA- Area 2) is the only remaining offset area that has not yet been secured by UCMPL. This area accounts for approximately 0.6% of the total agreed offset package for the Ulan mine.

UCMPL sought agreement from the landowner to secure the privately owned-portion of BCA via a number of mechanisms. However, after lengthy negotiations agreement was unable to be reached on conditions relating to on-going management of the offset areas and commercial terms. Accordingly, UCMPL are now pursuing a Modification of Project Approval 08_0184 to permit use of an alternative offset site.

3. DESCRIPTION OF MODIFICATIONS

Section 4.55(1A) of the EP&A Act states that a consent authority may modify a development consent for activities involving minimal environmental impact, provided the activity is substantially the same as the development for which consent was originally granted.

The proposed Alternate Offset Site will provide an improved environmental outcome compared to use of the privately owned portion of BCA, will meet and exceed the requirements of Condition 41, Schedule 3 PA 08_0184 and will not change any other aspect of activities approved under PA 08_0184. Given this, UCMPL consider that Section 4.55(1A) of the EP&A Act is applicable to the proposed Modification of PA 08_0184.

It is proposed that Table 15, referred to in Condition 41, Schedule 3 of PA 08_0184 is revised such that the Brokenback Conservation Area contains 48 hectares of native vegetation and 2.2 km of cliffline (removing the area associated with BCA- Area 2). It is also proposed that Table 15 be revised to add a new column that refers to 22 hectares of native vegetation and 0.9 km of cliffline attributed to the Alternative offset area.

4. STATUTORY CONTEXT

UCMPL have prepared an analysis of statutory requirements and this is attached (Attachment 1). The analysis concluded that the proposed modification is consistent with the objectives of the EP&A Act, matters for consideration under section 4.15 of the EP&A Act and the requirements of all relevant environmental planning instruments, including the *Mid-Western Regional Council LEP (2012)* and *Mid-Western Regional Council DCP (2013)*.

5. STAKEHOLDER ENGAGEMENT

A summary of the comprehensive consultation undertaken with relevant stakeholders on the Modification is provided below.

NSW Department of Planning, Industry and Environment

UCMPL met with DPI&E on 15 October 2020 to provide an update on the status of security of UCMPL's offset areas and provide an overview of assessment work completed for the alternative offset site. This included discussing the following matters:

- Most recent security mechanisms considered in seeking to obtain approval from the landowner of the privately owned portion of Brokenback Conservation Area (BCA), including a possible boundary adjustment to facilitate purchase of a portion of land (including the private portion of BCA) from the owner;
- Objectives of the BCA and relevant State and Federal consent condition requirements;
- Assessment work completed in identifying a suitable alternate offset site;
- Outcomes of the assessment work completed and how the alternate offset site meets UCMPL's project approval requirements and provides an improved environmental outcome compared to the privately owned portion of BCA; and
- Requirements in seeking to modify PA08_0184 to permit use of the alternative offset site, including supporting information requirements.

Following a meeting with the Department of Agriculture, Water and Environment (DAWE) on 25 November 2020, UCMPL received written approval from DAWE for the alternative offset site on 4 March 2021 (refer below). UCMPL subsequently met with DPI&E on 31 March 2021 to present the proposed Modification and provide an update on additional work complete for the alternative offset proposal. The meeting included discussion on the following matters:

- Background and history as to why there is a need for an alternative offset site, including UCMPL's efforts to secure the privately owned portion of BCA;
- Summary of outcomes of previous assessment work completed in identifying a suitable alternate offset site and outcomes of a subsidence assessment completed by SCT Operations Pty Ltd in January 2021. This assessment concluded that subsidence impacts are generally minor in nature, imperceptible and no further subsidence impacts are expected;
- Outcomes of Agency consultation undertaken and proposed in seeking to modify PA08_0184 to permit use of the alternative offset site; and
- Confirmation of the approval pathway in seeking a modification of PA 08_0184 to permit the alternative offset site, agency consultation requirements and of supporting information requirements.

Commonwealth Department of Agriculture, Water and Environment (DAWE)

UCMPL met with DAWE on 25 November 2020, to present the proposed Modification and provide an overview of the alternative biodiversity offset site. This included discussion on the following matters:

- Status of security of all UCMPL's offset areas;
- Engagement with the landowner regarding the privately owned portion of BCA, including the various security mechanisms discussed between the parties;
- Objectives of the BCA and relevant State and Federal consent condition requirements;

- Assessment work completed in identifying a suitable alternate offset site and outcomes of the assessment work in terms of how the alternate offset site meets UCMPL's State and Federal approval requirements and provides an improved environmental outcome compared to the privately owned portion of BCA;
- Outcomes of previous discussions with DPI&E in relation to the requirement to modify PA 08_0184 to permit use of the alternative offset site; and
- Requirements in seeking approval from the Minister for use of the alternative offset site in accordance with condition 4(b) of EPBC approval 2009/5252.

In accordance with the requirements of Condition 4 of EPBC Approval 2009/5252, UCMPL subsequently submitted a request for approval for the alternative offset site to DAWE on 29 January 2021. On 4 March 2021 UCMPL received approval for the Alternative Offset site from DAWE (Attachment 2).

DPI&E- Biodiversity, Conservation and Science Directorate

UCMPL met with DPI&E- Biodiversity, Conservation and Science Directorate (BCS) on 16 April 2021 to discuss information requirements in support of a Modification to PA 08_0184 to permit the alternative offset site. This included discussion on the following matters:

- Background and history as to why there is a need for an alternative offset site, including UCMPL's efforts to secure the privately owned portion of BCA;
- Ecological assessment work completed in identifying a suitable alternate offset site and outcomes of the assessment work in terms of how the alternate offset site meets UCMPL's State and Federal approval requirements and provides an improved environmental outcome compared to the privately owned portion of BCA;
- Outcomes of the subsidence assessment completed by SCT Operations Pty Ltd in January 2021 (refer DPI&E meeting on 31 March 2021 above);
- Outcomes of assessment completed by ELA, which concluded there have been negligible impacts on the condition of vegetation, fauna habitat, including cliffline habitat and maternity roosts for the Large-Eared Pied Bat due to subsidence related impacts from underground mining to date;
- Outcomes of Agency consultation undertaken and proposed in seeking to modify PA 08_0184 to permit use of the alternative offset site, including outcomes of discussions with DPI&E in relation to the approval pathway and of supporting information requirements; and
- Confirmation of DPI&E- BCS' supporting information requirements for a modification to PA 08_0184 to permit use of the alternate offset site.

NSW Biodiversity Conservation Trust

UCMPL met with the NSW Biodiversity Conservation Trust (BCT) on 30 April 2021 to discuss the proposed alternative offset site and the mechanism to provide for long-term security. This included discussion on the same matters discussed with DPI&E- BCS (refer above). In addition, the following matters were discussed:

- Outcomes of discussions with DPI&E and DPI&E-BCS in relation to the approval pathway and of supporting information requirements to support a modification of PA 08_0184;
- Confirmation of BCT's supporting information requirements for a modification to PA 08_0184 to permit use of the alternate offset site;
- Confirmation that the alternative offset site would need to be secured via a Biodiversity Stewardship Agreement; and
- Confirmation of BCT's requirements and the process to be followed for Biodiversity Stewardship Agreements and associated timeframes.

Following consultation with the Agencies outlined above, UCMPL amended the supporting information referred to in this report, based on feedback provided by each Agency.

6. SITE ASSESSMENT FINDINGS

UCMPL completed an assessment of 3 properties owned by UCMPL and have identified a suitable alternative offset site within one of the properties assessed (the proposed alternative offset site). The assessment concluded that the proposed alternative offset site provides an improved environmental outcome compared to the privately owned portion of BCA and meets and exceeds the requirements of UCMPL's State and Federal approvals (Project Approval 08_0184 and EPBC approval 2009/5252, respectively). The outcomes of the assessment of the alternative offset site are provided in a report prepared by ELA as provided in Attachment 3.

The proposed alternative offset site has been subject to subsidence from mining. Mining in the area finished in December 2018. Subsidence assessments for the proposed alternative offset site, prepared by UCMPL and SCT Operations Pty Ltd (SCT) concluded that physical subsidence impacts observed at the time of post mining inspections were generally minor in nature and imperceptible. Subsidence movements within the proposal alternative offset area are effectively complete with no further subsidence impacts expected. The outcomes of the subsidence assessment prepared by UCMPL and SCT are provided in Attachments 4 and 5 respectively.

The findings of the subsidence assessments referred to above are supported by an assessment undertaken by Eco Logical Australia Pty Ltd in 2015. ELA assessed areas that had previously been mined and subject to subsidence, compared to control sites where mining had not been undertaken and where subsidence was not expected to occur. The assessment aimed to determine whether mine subsidence has had an impact upon the condition of vegetation communities within the mine and concluded that there was no statistical difference for the vegetation and habitat values between the control and impact sites surveyed (refer Attachment 6).

7. JUSTIFICATION OF MODIFICATION

As demonstrated above, the proposed Alternate Offset Site will provide an improved environmental outcome compared to use of the privately owned portion of BCA, will meet and exceed the requirements of Condition 41, Schedule 3 PA 08_0184 and is consistent with the objectives of the EP&A Act and other relevant statutory instruments.

If you require any additional information or have any questions, please contact Brad Tanswell on 0429 598 542 or via email: Bradley.Tanswell@glencore.com.au

Yours sincerely,



Charlie Allan
General Manager
Ulan Coal Mines Pty Limited

Attachments

Attachment 1: *Analysis of Statutory Requirements*

Attachment 2: *DAWE Alternative Offset Site Approval*

Attachment 3: *Alternative Offset Assessment- suitability of proposed alternative offset area as a suitable replacement for the privately owned portion of Brokenback conservation Area 2 (Eco Logical Australia, May 2021)*

Attachment 4: *Subsidence Condition Assessment Report for Alternative Offset Area (UCMPL, 2021)*

Attachment 5: *Subsidence Assessment for Alternative Offset Area (SCT Pty Ltd, 2021)*

Attachment 6: *Review of historical subsidence areas and impacts on vegetation (Eco Logical Australia 2015)*