

OLIVEDENE WATER PIPELINE (MODIFICATION 5)

STATUTORY CONTEXT ADDENDUM

Under s 4.55(3) of the *Environmental Planning and Assessment Act 1979* (EP&A Act), the consent authority is required to take into consideration:

1. such of the matters referred to in s 4.15(1) as are of relevance to the development the subject of a modification application under s 4.55(1A); and
2. the reasons given by the consent authority for the grant of the consent that is sought to be modified.

Section 4.15(1) states:

(1) Matters for consideration—general

In determining a development application, a consent authority is to take into consideration such of the following matters as are of relevance to the development the subject of the development application—

- (a) the provisions of—
 - (i) any environmental planning instrument, and
 - (ii) any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority (unless the Planning Secretary has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved), and
 - (iii) any development control plan, and
 - (iiia) any planning agreement that has been entered into under section 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4, and
 - (iv) the regulations (to the extent that they prescribe matters for the purposes of this paragraph),
 - (v) (Repealed)that apply to the land to which the development application relates,
- (b) the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality,
- (c) the suitability of the site for the development,
- (d) any submissions made in accordance with this Act or the regulations,
- (e) the public interest.

The key environmental planning instruments which are relevant to Modification 5 are considered to be:

1. *State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007* (Mining SEPP);
2. *Narrabri Local Environmental Plan 2012* (NLEP);
3. *State Environmental Planning Policy No 33—Hazardous and Offensive Development* (Hazardous Development SEPP);
4. *State Environmental Planning Policy No 44—Koala Habitat Protection* (Koala Protection SEPP);
5. *State Environmental Planning Policy No 55—Remediation of Land* (Remediation SEPP);
6. *State Environmental Planning Policy (Infrastructure) 2007* (Infrastructure SEPP); and
7. *State Environmental Planning Policy (State and Regional Development) 2011* (S&R SEPP)

The purpose of this addendum is to:

- a) consider the abovementioned environmental planning instruments insofar as they are relevant to Modification 5; and
- b) provide some supplementary commentary as to why the MCCM as modified by Modification 5 would be "substantially the same development" as the currently approved MCCM.

CONSIDERATION OF KEY ENVIRONMENTAL PLANNING INSTRUMENTS RELEVANT TO MODIFICATION 5

1. Mining SEPP

Aims of the Mining SEPP

Clause 2 of the Mining SEPP states:

The aims of this Policy are, in recognition of the importance to New South Wales of mining, petroleum production and extractive industries—

- (a) to provide for the proper management and development of mineral, petroleum and extractive material resources for the purpose of promoting the social and economic welfare of the State, and
- (b) to facilitate the orderly and economic use and development of land containing mineral, petroleum and extractive material resources, and
- (b1) to promote the development of significant mineral resources, and
- (c) to establish appropriate planning controls to encourage ecologically sustainable development through the environmental assessment, and sustainable management, of development of mineral, petroleum and extractive material resources, and
- (d) to establish a gateway assessment process for certain mining and petroleum (oil and gas) development—
 - (i) to recognise the importance of agricultural resources, and
 - (ii) to ensure protection of strategic agricultural land and water resources, and
 - (iii) to ensure a balanced use of land by potentially competing industries, and
 - (iv) to provide for the sustainable growth of mining, petroleum and agricultural industries.

The ongoing supply of water to the MCCM enables the continuity of production at the MCCM and the employment of the 650 strong MCCM workforce during the ongoing drought.

Modification 5 would contribute towards ensuring that the MCCM is able to meet its essential operational water demand and properly develop the valuable coal resource with the MCCM.

As such, Modification 5 would facilitate or be consistent with the aims contained within cl 2(a), (b), (b1) and (c) of the Mining SEPP. With respect to promoting the social and economic welfare of the State, it is emphasised that:

- Whitehaven is the single largest private sector employer in North West NSW.
- The MCCM is a major source of regional employment and investment.
- There are approximately 650 employees and contractors at the MCCM, of which 13% are Indigenous.
- Salaries and wages of MCCM employees totalled \$79.5M in FY19 (traditional multipliers apply to this expenditure).
- MCCM spending on locally-based business was \$174.8M in FY19.
- MCCM contributed royalties to the NSW Government to the value of \$118.1M in FY19.

Part 2 of the Mining SEPP

Part 2 of the Mining SEPP concerns permissible development.

Clause 7 relevantly states:

(1) Mining

Development for any of the following purposes may be carried out only with development consent—

...

- (b) mining carried out—

- (i) on land where development for the purposes of agriculture or industry may be carried out (with or without development consent)

Clause 8 states:

- (1) If a local environmental plan provides that development for the purposes of mining, petroleum production or extractive industry may be carried out on land with development consent if provisions of the plan are satisfied—
 - (a) development for that purpose may be carried out on that land with development consent without those provisions having to be satisfied, and
 - (b) those provisions have no effect in determining whether or not development for that purpose may be carried out on that land or on the determination of a development application for consent to carry out development for that purpose on that land.
- (2) Without limiting subclause (1), if a local environmental plan provides that development for the purposes of mining, petroleum production or extractive industry may be carried out on land with development consent if the consent authority is satisfied as to certain matters specified in the plan, development for that purpose may be carried out on that land with development consent without the consent authority having to be satisfied as to those specified matters.

Part 3 of the Mining SEPP

Part 3 of the Mining SEPP contains numerous matters for consideration with respect to development applications for mining development. Some of these matters are also relevant to modification applications.

For the purpose of Modification 5, clauses 12, 13, 14 and 17 within Part 3 are most relevant.

Clause 12 states:

Before determining an application for consent for development for the purposes of mining, petroleum production or extractive industry, the consent authority must—

- (a) consider—
 - (i) the existing uses and approved uses of land in the vicinity of the development, and
 - (ii) whether or not the development is likely to have a significant impact on the uses that, in the opinion of the consent authority having regard to land use trends, are likely to be the preferred uses of land in the vicinity of the development, and
 - (iii) any ways in which the development may be incompatible with any of those existing, approved or likely preferred uses, and
- (b) evaluate and compare the respective public benefits of the development and the land uses referred to in paragraph (a) (i) and (ii), and
- (c) evaluate any measures proposed by the applicant to avoid or minimise any incompatibility, as referred to in paragraph (a) (iii).

The existing and approved land uses in the vicinity of the Modification area are predominately the use of land for the purposes of road infrastructure (Therrabri Road) and for agriculture. It is not expected that the likely preferred uses of land in this area will materially change in the foreseeable future.

The continued use of the Olivedene water pipeline and associated infrastructure is not considered to have any significant impact on, or be incompatible with, these existing land uses.

Further, the Olivedene pipeline has been designed to avoid or minimise any incompatibility with existing and likely preferred land uses in the vicinity of the Modification area. For example, the pipeline has been constructed underground within the shoulders of the road, and is not impacting on the ongoing use of the road corridor. Where the pipeline is located outside of the road reserve, it is within Whitehaven property and is not impacting ongoing agricultural land uses.

In terms of the public benefits of Modification 5, this modification will provide the MCCM with necessary alternative water supply to allow operations to continue during the ongoing drought. Continuity of water supply underpins mining operations and, at MCCM, directly supports 650 jobs in the local community. The MCCM spent \$174M locally in FY19 and continues to make a major contribution to the local economy, including by offsetting the economic impacts of drought.

Clause 13 states:

- (1) This clause applies to an application for consent for development on land that is, immediately before the application is determined—
 - (a) in the vicinity of an existing mine, petroleum production facility or extractive industry, or
 - (b) identified on a map (being a map that is approved and signed by the Minister and copies of which are deposited in the head office of the Department and publicly available on the Department's website) as being the location of State or regionally significant resources of minerals, petroleum or extractive materials, or

Note. At the commencement of this Policy, no land was identified as referred to in paragraph (b).

 - (c) identified by an environmental planning instrument as being the location of significant resources of minerals, petroleum or extractive materials.

Note. Sydney Regional Environmental Plan No 9—Extractive Industry (No 2—1995) is an example of an environmental planning instrument that identifies land as containing significant deposits of extractive materials.

(2) Before determining an application to which this clause applies, the consent authority must—

(a) consider—

- (i) the existing uses and approved uses of land in the vicinity of the development, and
- (ii) whether or not the development is likely to have a significant impact on current or future extraction or recovery of minerals, petroleum or extractive materials (including by limiting access to, or impeding assessment of, those resources), and
- (iii) any ways in which the development may be incompatible with any of those existing or approved uses or that current or future extraction or recovery, and

(b) evaluate and compare the respective public benefits of the development and the uses, extraction and recovery referred to in paragraph (a) (i) and (ii), and

(c) evaluate any measures proposed by the applicant to avoid or minimise any incompatibility, as referred to in paragraph (a) (iii).

The continued use of the pipeline to transfer groundwater from Olivedene to the MCCM is not considered to be incompatible with any current or future extraction or recovery of minerals.

Modification 5 will facilitate the continued current and future extraction of the valuable coal resource at the MCCM and thereby contribute to the considerable public benefits delivered by the MCCM.

Clause 14 states:

(1) Before granting consent for development for the purposes of mining, petroleum production or extractive industry, the consent authority must consider whether or not the consent should be issued subject to conditions aimed at ensuring that the development is undertaken in an environmentally responsible manner, including conditions to ensure the following—

- (a) that impacts on significant water resources, including surface and groundwater resources, are avoided, or are minimised to the greatest extent practicable,
- (b) that impacts on threatened species and biodiversity, are avoided, or are minimised to the greatest extent practicable,
- (c) that greenhouse gas emissions are minimised to the greatest extent practicable.

(2) Without limiting subclause (1), in determining a development application for development for the purposes of mining, petroleum production or extractive industry, the consent authority must consider an assessment of the greenhouse gas emissions (including downstream emissions) of the development, and must do so having regard to any applicable State or national policies, programs or guidelines concerning greenhouse gas emissions.

(3) Without limiting subclause (1), in determining a development application for development for the purposes of mining, the consent authority must consider any certification by the Chief Executive of the Office of Environment and Heritage or the Director-General of the Department of Primary Industries that measures to mitigate or offset the biodiversity impact of the proposed development will be adequate.

With respect to clause 14(1), it is noted that the SSD Consent for the MCCM already contains a suite of conditions aimed at ensuring that the MCCM is undertaken in an environmentally responsible manner. In particular, Modification 5 is consistent with condition 36 of Schedule 3 of the SSD Consent, which requires MCC to ensure that it has sufficient water for all stages of the MCCM.

Further, the Olivedene pipeline will continue to be used in an environmentally responsible manner. For example:

1. the Olivedene pipeline was installed within a trench or underbored to avoid impacts to relevant streams in accordance with the Controlled Activity Approvals;
2. no threatened flora species listed under the *Biodiversity Conservation Act 2016* or *Environment Protection and Biodiversity Conservation Act 1999* are known to occur within the Modification area;
3. no mature trees that may provide habitat for threatened fauna species or koalas were impacted during the construction of the pipeline;
4. the continued use of the pipeline is not expected to have any ongoing impacts to threatened species and biodiversity; and
5. the continued use of the pipeline would result in negligible greenhouse gas emissions.

Clause 17 states:

(1) Before granting consent for development for the purposes of mining, petroleum production or extractive industry, the consent authority must consider whether or not the consent should be issued subject to conditions aimed at ensuring the rehabilitation of land that will be affected by the development.

(2) In particular, the consent authority must consider whether conditions of the consent should—

- (a) require the preparation of a plan that identifies the proposed end use and landform of the land once rehabilitated, or
- (b) require waste generated by the development or the rehabilitation to be dealt with appropriately, or
- (c) require any soil contaminated as a result of the development to be remediated in accordance with relevant guidelines (including guidelines under clause 3 of Schedule 6 to the Act and the Contaminated Land Management Act 1997), or

(d) require steps to be taken to ensure that the state of the land, while being rehabilitated and at the completion of the rehabilitation, does not jeopardize public safety.

The rehabilitation of land affected by the construction of the water supply pipeline has commenced.

In this regard, it is noted that land disturbed during construction activities will be rehabilitated by replacing spoil within the excavated trenches, replacing topsoil and reseeding with native grasses. Further, rehabilitated land subject to construction activities is being returned to its previous use.

2. NLEP

Clause 1.9 of the NLEP states that the NLEP is subject to the provisions of any State environmental planning policy that prevails over the NLEP.

Aims of the NLEP

Clause 1.2 of the NLEP states:

(1) This Plan aims to make local environmental planning provisions for land in Narrabri in accordance with the relevant standard environmental planning instrument under section 33A of the Act.

(2) The particular aims of this Plan are as follows—

(a) to encourage the orderly management, development and conservation of resources by protecting, enhancing and conserving—

(i) land of significance for agricultural production, and

(ii) timber, minerals, soil, water and other natural resources, and

(iii) areas of high scenic or recreational value, and

(iv) native plants and animals including threatened species, populations and ecological communities, and their habitats, and

(v) places and buildings of heritage significance,

(b) to provide a choice of living opportunities and types of settlements,

(c) to facilitate development for a range of business enterprise and employment opportunities,

(d) to ensure that development is sensitive to both the economic and social needs of the community, including the provision of community facilities and land for public purposes.

The ongoing supply of water to the MCCM encourages the orderly management and development of the valuable coal resource within the MCCM (including by supporting necessary dust suppression activities) and supports employment in the local region by enabling the continued employment of the 650 strong MCCM workforce during the ongoing drought.

With respect to the aim of facilitating development for a range of business enterprise and employment opportunities, the MCCM is a major source of regional employment and investment, including within the Narrabri Local Government Area.

As set out in the Modification Report, the continued use of the pipeline is not considered to have significant impacts on agricultural land, areas of high scenic and recreation value, native plants and animals or places of heritage significance.

As such, Modification 5 would facilitate or be consistent with many of the aims contained within cl 1.2 in contributing towards ensuring that the MCCM is able to meet its essential operational water demand.

Part 2 of the NLEP

Part 2 of the NLEP provides for permitted or prohibited development in the various land use zones regulated by the NLEP.

However, as noted in the NLEP, a type of development referred to in a Land Use Table is a reference to development only to the extent that it is not regulated by an applicable State environmental planning policy such as the Mining SEPP.

The relevant land use zone under the NLEP for Modification 5 is RU1 – Primary Production.

Under cl 2.3(2) of the NLEP, the consent authority is required to have regard to the objectives for development when determining a development application in respect of land within a land use zone. Nevertheless, these objectives are also relevant to a modification application.

The Land Use Table for RU1 – Primary Production states:

1 Objectives of zone

- To encourage sustainable primary industry production by maintaining and enhancing the natural resource base.
- To encourage diversity in primary industry enterprises and systems appropriate for the area.
- To minimise the fragmentation and alienation of resource lands.
- To minimise conflict between land uses within this zone and land uses within adjoining zones.
- To allow for non-agricultural land uses that will not restrict the use of other land for agricultural purposes.

2 Permitted without consent

Building identification signs; Environmental protection works; Extensive agriculture; Farm buildings; Forestry; Home occupations; Intensive plant agriculture; Roads

3 Permitted with consent

Air transport facilities; Airstrips; Animal boarding or training establishments; Aquaculture; Bed and breakfast accommodation; Boat launching ramps; Boat sheds; Camping grounds; Cellar door premises; Cemeteries; Community facilities; Depots; Dual occupancies; Dwelling houses; Environmental facilities; Extractive industries; Farm stay accommodation; Flood mitigation works; Freight transport facilities; Helipads; Home businesses; Home industries; Information and education facilities; Intensive livestock agriculture; Landscaping material supplies; Open cut mining; Plant nurseries; Recreation areas; Recreation facilities (major); Recreation facilities (outdoor); Research stations; Roadside stalls; Rural industries; Rural workers' dwellings; Signage; Turf farming; Water recreation structures; Water supply systems

4 Prohibited

Any development not specified in item 2 or 3

With respect to the objectives for RU1 – Primary Production, Modification 5 is consistent with various of the listed objectives, including the objective to allow for non-agricultural land uses that will not restrict the use of other land for agricultural purposes.

Consistently with both the objective to allow non-agricultural land uses and the broader objectives of the NLEP, development for the purpose of "open cut mining" and "water supply systems" is permissible with consent under the RU1 – Primary Production Land Use Table.

The continued use of the constructed pipeline and associated infrastructure will not restrict the use of land for agricultural purposes because the disturbance caused by this linear infrastructure to existing agricultural land is minor. Similarly, Modification 5 would not result in the fragmentation and alienation of resource lands. As detailed in the Modification Report, it is also noted that the extraction of groundwater associated with Modification 5 will be regulated under the *Water Management Act 2000* (WM Act).

3. Hazardous Development SEPP

The aims of the Hazardous Development SEPP (clause 2) include the aim:

to ensure that in considering any application to carry out potentially hazardous or offensive development, the consent authority has sufficient information to assess whether the development is hazardous or offensive and to impose conditions to reduce or minimise any adverse impact

Clause 13 states:

In determining an application to carry out development to which this Part applies, the consent authority must consider (in addition to any other matters specified in the Act or in an environmental planning instrument applying to the development):

- (a) current circulars or guidelines published by the Department of Planning relating to hazardous or offensive development, and
- (b) whether any public authority should be consulted concerning any environmental and land use safety requirements with which the development should comply, and
- (c) in the case of development for the purpose of a potentially hazardous industry—a preliminary hazard analysis prepared by or on behalf of the applicant, and
- (d) any feasible alternatives to the carrying out of the development and the reasons for choosing the development the subject of the application (including any feasible alternatives for the location of the development and the reasons for choosing the location the subject of the application), and
- (e) any likely future use of the land surrounding the development.

The continued use of the constructed pipeline and associated infrastructure to transfer groundwater to the MCCM is not considered to pose any significant hazards or adverse impacts to the surrounding environment.

Notwithstanding, Modification 5 would be undertaken in accordance with appropriate environmental and safety standards to ensure that this use of land is managed so as to prevent any potential hazardous or adverse impacts to the surrounding environment.

4. Koala Protection SEPP

As stated in cl 3, the Koala Protection SEPP aims to:

encourage the proper conservation and management of areas of natural vegetation that provide habitat for koalas to ensure a permanent free-living population over their present range and reverse the current trend of koala population decline:

- (a) by requiring the preparation of plans of management before development consent can be granted in relation to areas of core koala habitat, and
- (b) by encouraging the identification of areas of core koala habitat, and
- (c) by encouraging the inclusion of areas of core koala habitat in environment protection zones.

Part 2 of the Koala Protection SEPP

Part 2 of the Koala Protection SEPP provides a three step process for development control of koala habitats. More specifically, Part 2 regulates certain development applications under the EP&A Act for which a council is the consent authority. Nevertheless, Part 2 is also relevant to modification applications.

Step 1 in the development control process involves the identification of "potential koala habitat". Clause 7 states:

7 Step 1—Is the land potential koala habitat?

- (1) Before a council may grant consent to an application for consent to carry out development on land to which this Part applies, it must satisfy itself whether or not the land is a potential koala habitat.
- (2) A council may satisfy itself as to whether or not land is a potential koala habitat only on information obtained by it, or by the applicant, from a person who is qualified and experienced in tree identification.
- (3) If the council is satisfied:
 - (a) that the land is not a potential koala habitat, it is not prevented, because of this Policy, from granting consent to the development application, or
 - (b) that the land is a potential koala habitat, it must comply with clause 8.

Modification 5 is considered to involve land that is a "potential koala habitat" within the defined meaning of the Koala Protection SEPP.

Step 2 in the development control process involves the identification of "core koala habitat". Clause 8 states:

8 Step 2—Is the land core koala habitat?

- (1) Before a council may grant consent to an application for consent to carry out development on land to which this Part applies that it is satisfied is a potential koala habitat, it must satisfy itself whether or not the land is a core koala habitat.
- (2) A council may satisfy itself as to whether or not land is a core koala habitat only on information obtained by it, or by the applicant, from a person with appropriate qualifications and experience in biological science and fauna survey and management.
- (3) If the council is satisfied:
 - (a) that the land is not a core koala habitat, it is not prevented, because of this Policy, from granting consent to the development application, or
 - (b) that the land is a core koala habitat, it must comply with clause 9.

Based on the environmental assessment work carried out in relation to Modification 5 (i.e. no trees that provide suitable habitat for koalas were located within the pipeline corridor where it was located above ground), Modification 5 is not considered to impact land that is "core koala habitat" within the defined meaning of the Koala Protection SEPP.

Clause 10 of the Koala Protection SEPP requires a council to take particular guidelines into consideration in determination applications for consent to carry out development on land to which Part 2 applies: see also cl 17.

The continued use of the constructed pipeline and associated infrastructure to transfer water to the MCCM is unlikely to have any impacts on "core koala habitat" or "potential koala habitat". Further, as the construction of the pipeline and associated infrastructure did not involve the removal of any significant trees, no significant impact to "potential koala habitat" is likely to have occurred.

5. Remediation SEPP

The object of the Remediation SEPP is contained within clause 2:

- (1) The object of this Policy is to provide for a Statewide planning approach to the remediation of contaminated land.
- (2) In particular, this Policy aims to promote the remediation of contaminated land for the purpose of reducing the risk of harm to human health or any other aspect of the environment—
 - (a) by specifying when consent is required, and when it is not required, for a remediation work, and
 - (b) by specifying certain considerations that are relevant in rezoning land and in determining development applications in general and development applications for consent to carry out a remediation work in particular, and
 - (c) by requiring that a remediation work meet certain standards and notification requirements.

Clause 7 of the Remediation SEPP provides for the contamination and remediation considerations applicable to the determination of a development application. This clause states:

- (1) A consent authority must not consent to the carrying out of any development on land unless—
 - (a) it has considered whether the land is contaminated, and
 - (b) if the land is contaminated, it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out, and
 - (c) if the land requires remediation to be made suitable for the purpose for which the development is proposed to be carried out, it is satisfied that the land will be remediated before the land is used for that purpose.
- (2) Before determining an application for consent to carry out development that would involve a change of use on any of the land specified in subclause (4), the consent authority must consider a report specifying the findings of a preliminary investigation of the land concerned carried out in accordance with the contaminated land planning guidelines.
- (3) The applicant for development consent must carry out the investigation required by subclause (2) and must provide a report on it to the consent authority. The consent authority may require the applicant to carry out, and provide a report on, a detailed investigation (as referred to in the contaminated land planning guidelines) if it considers that the findings of the preliminary investigation warrant such an investigation.
- (4) The land concerned is—
 - (a) land that is within an investigation area,
 - (b) land on which development for a purpose referred to in Table 1 to the contaminated land planning guidelines is being, or is known to have been, carried out,
 - (c) to the extent to which it is proposed to carry out development on it for residential, educational, recreational or child care purposes, or for the purposes of a hospital—land—
 - (i) in relation to which there is no knowledge (or incomplete knowledge) as to whether development for a purpose referred to in Table 1 to the contaminated land planning guidelines has been carried out, and
 - (ii) on which it would have been lawful to carry out such development during any period in respect of which there is no knowledge (or incomplete knowledge).

The land the subject of Modification 5 is not considered to be contaminated land. In this regard, no land within the Modification Area is listed in the EPA's Contaminated Land Register. Modification 5 is also not considered to involve the change of use on any of the land specified in cl 7(4).

Additionally, given the nature of the proposed development, Modification 5 is not expected to involve any remediation work regulated under the Remediation SEPP.

6. Infrastructure SEPP

The aim of the Infrastructure SEPP is to facilitate the effective delivery of infrastructure across the State: cl 2.

Part 3 of the Infrastructure SEPP provides for development controls relating to infrastructure development.

Clause 66A(1) states:

- (1) Development for the purpose of a pipeline may be carried out by any person without consent on any land if the pipeline is subject to a licence under the *Pipelines Act 1967* or a licence or authorisation under the *Gas Supply Act 1996*.

The constructed pipeline is not subject to a licence under the *Pipelines Act 1967* and such a licence is not required under that Act for Modification 5.

7. S&R SEPP

A key aim of the S&R SEPP is to identify development that is State significant development.

By way of a Ministerial order dated 15 August 2018, the approved MCCM was declared to be State significant development.

As Modification 5 is a modification application made under s 4.55(1A) of the EP&A Act, the Minister will be the consent authority for Modification 5 pursuant to s 4.5(a) of the EP&A Act.

"SUBSTANTIALLY THE SAME DEVELOPMENT" – RELEVANT CONTEXT RELATING TO WATER PIPELINES

The Modification Report sets out why the approved MCCM as modified by Modification 5 would remain "substantially the same development" in accordance with s 4.55(1A)(b) of the EP&A Act.

In this regard, it is emphasised that the currently approved MCCM already involves the use of water pipelines and associated infrastructure to meet the operational demand for water across the MCCM site. Most relevantly, the approved MCCM includes the continued operation of a significant overland water pipeline, pumping station and associated infrastructure to transfer water to the MCCM taken from the Namoi River.

Since originally approved in 2012, the MCCM has continuously relied on a significant overland pipeline and associated infrastructure to supplement water supply to the MCCM from a licensed external source in accordance with operational requirements (i.e. the Namoi River pipeline). The Namoi River pipeline is described and detailed in the environmental assessment documents incorporated in the MCCM SSD Consent. For example, the original 2011 *Environmental Assessment* stated:

Where additional water is required in the mine water management system, the Project proposes to utilise the current works approval and high security water allocation for up to 3,000 units from the Namoi River. This water allocation is proposed to be utilised during both the construction and operation of the Project. An electric pump station and associated water pipeline (see Figure 7) will be constructed to enable the transfer of water from the Namoi River, which will supplement water supplies required for the CHPP.

The pipeline and associated infrastructure for Modification 5 is of a substantially similar nature to the Namoi River pipeline and serves a similar function in that:

1. the pipelines are both overland water pipelines which provide MCCM with an external water supply to meet operational water demand;
2. the continued use of the pipelines have minimal environmental impacts;
3. the operation of the pipelines require associated infrastructure such as pumps;
4. the pipelines both connect to approved water supply works linked to water access licences under the WM Act (to account for the associated take of water); and
5. the pipelines safely convey clean raw water, rather than contaminated water or dirty water.

It is noted that the Modification 5 pipeline will be connected with the Namoi River pipeline and will effectively form one system of external water supply infrastructure.

In this regard, it is relevant that the need for the pipeline has arisen as a result of the inability to fully utilise the Namoi River pipeline due to the ongoing prolonged drought. Modification 5 ensures that the MCCM can continue to rely on an external source of licensed water provided via low impact pipeline infrastructure to meet its essential operational demand for water.

Further, in the context of the overall approved MCCM development, which is a major State significant development mining project, Modification 5 represents a relatively minor change to the continued operations at MCCM.