

Notice of Modification

Section 75W of the *Environmental Planning and Assessment Act 1979*

Under the Minister for Planning and Infrastructure's delegation of 14 September 2011, and as a member of the Planning Assessment Commission, I modify the project approval referred to in Schedule 1, subject to the conditions in Schedule 2.


Member of the Commission

Sydney 17 February

2012

SCHEDULE 1

The development consent for the Wambo rail and coal loading infrastructure (DA 177-8-2004), granted by the Minister Assisting the Minister for Infrastructure and Planning (Planning Administration) on 16 December 2004.

SCHEDULE 2

1. In Schedule 2, under DEFINITIONS, delete the definitions for "AEMR", "DEC", "Department", "Director-General", "Minister", "SEE" and "RTA" and insert the following in alphabetical order:

AHIMS	Aboriginal Heritage Information Management System
Annual Review	The review required by condition 3 of Schedule 6
Conditions of this consent	Conditions contained in Schedules 3 to 6
Department	Department of Planning and Infrastructure
Director-General	Director-General of Planning and Infrastructure, or delegate
EA (Mod 2)	The environmental assessment titled <i>Modification of DA 177-8-2004 – Locomotive Refuelling Station Wambo Coal Rail Loop</i> dated April 2011 and prepared by Wells Environmental Services, as modified by the letter dated 15 July 2011 titled <i>DA 177-8-2004 MOD 2 – Locomotive Refuelling Facility for QR National – Response to Submissions</i> , prepared by Wells Environmental Services
EPL	Environment Protection Licence issued under the POEO Act
Feasible	Feasible relates to engineering considerations and what is practical to build or carry out
Incident	A set of circumstances that causes or threatens to cause material harm to the environment, and/or breaches or exceeds the limits or performance measures/criteria in this consent
Material harm to the environment	Harm to the environment is material if it involves actual or potential harm to the health or safety of human beings or to ecosystems that is not trivial
Minister	Minister for Planning and Infrastructure, or delegate
MSB	Mine Subsidence Board
OEH	Office of Environment and Heritage
POEO Act	<i>Protection of the Environment Operations Act 1997</i>
Reasonable	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 the nature and extent of potential improvements
RFS	Rural Fire Service
RMS	Roads and Maritime Services
SEE	The statement of environmental effects titled <i>Proposed Alterations to the Wambo Development Project – Rail and Train Loading Infrastructure</i> , dated June 2004, and prepared by Resource Strategies, and letter from Wambo Coal Pty Ltd to the Minister for Infrastructure and Planning regarding the "Proposed Alterations to the Wambo Development Project Rail and Train Loading Infrastructure" dated 13 August 2004

SEE (Mod 1) The statement of environmental effects titled *Report for Upgrade of Wallaby Scrub Road / Golden Highway Intersection* dated April 2006 and prepared by GHD Pty Ltd

Wambo Mining Complex The development approved under this consent, together with the development approved under the consent for the Wambo Coal Mine (305-7-2003), considered collectively

2. Delete all references to DEC and replace with OEH.
3. Delete all references to RTA and replace with RMS.
4. Delete all references to AEMR and replace with Annual Review.
5. In condition 2 of Schedule 3, delete all words after "in accordance with the:" and insert the following:
 - (a) SEE;
 - (b) SEE (Mod 1);
 - (c) EA (Mod 2); and
 - (d) conditions of this consent.
6. In condition 3 of Schedule 3, delete the word "latter" and replace with "more recent".
7. Delete condition 6 of Schedule 3, and insert the following:
 6. The Applicant shall:
 - (a) not transport more than 15 million tonnes of product coal via this development each year;
 - (b) only permit trains being loaded with coal at the Wambo loading facilities to utilise the refuelling infrastructure; and
 - (c) restrict the number of trains utilising the refuelling infrastructure to a maximum of six trains on any day.

Note: For the purposes of this condition, each train entering and exiting the site is classified as 2 train movements and a day refers to the 24 hours from midnight to midnight the next day.

8. In condition 7 of Schedule 3, following the words "requirements of the BCA", insert "and MSB".
9. Following condition 10 of Schedule 3, insert the following:

Staged Submission of Plans and Programs

11. With the approval of the Director-General, the Applicant may:
 - (a) submit any plan or program required by this consent on a progressive basis; and
 - (b) combine any plan or program required by this consent with any similar strategy, plan or program required by the consent for the Wambo Coal Mine (DA 305-7-2003).
10. In condition 1 of Schedule 4, delete all rows in Table 1 and insert the row below:

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11. Delete condition 3 of Schedule 4, and insert the following:
 3. The Applicant shall ensure that noise generated by the development, combined with noise generated by any development in the Wambo Mining Complex, does not exceed the noise criteria provided in Table 2, unless higher noise criteria are specified in the consent for the Wambo Coal Mine (DA 305-7-2003).

Table 2: Noise impact assessment criteria dB(A)

Day <i>L_{Aeq}(15 minute)</i>	Evening/Night <i>L_{Aeq}(15 minute)</i>	Night <i>L_{A1}(1 minute)</i>	Land Number
35	35	50	All private residential or sensitive receptors, excluding the receptors listed in Table 1

Notes:

- Noise generated by the project is to be measured in accordance with the relevant requirements, and exemptions (including certain meteorological conditions), of the NSW Industrial Noise Policy.
- For this condition to apply, the exceedance of the criteria must be systemic.

12. Delete conditions 6 to 7 of Schedule 4, insert the following:

Rail Noise

6. The Applicant shall seek to ensure that its rail spur is only accessed by locomotives that are approved to operate on the NSW rail network in accordance with noise limits L6.1 to L6.4 in RailCorp's EPL (No. 12208) and ARTC's EPL (No. 3142) or a Pollution Control Approval issued under the former *Pollution Control Act 1970*.

Noise Monitoring

7. The Applicant shall monitor the noise generated by the development, and noise generated by the Wambo Mine, in general accordance with the Noise Management Plan for the Wambo Mining Complex and the *NSW Industrial Noise Policy*.
- 7A. By 31 May 2012, the Applicant shall review and update the Noise Management Plan for the Wambo Mining Complex, including a noise monitoring protocol for evaluating compliance with the criteria in condition 3 above.
- 7B. During the first 12 months of operation of the Rail Refuelling Facility, the Applicant must conduct attended noise monitoring at the nearest private receptor during refuelling events, no less often than every three months.
13. Delete condition 14 of Schedule 4 and insert the following:

Impact Assessment Criteria

14. The Applicant shall ensure that all reasonable and feasible avoidance and mitigation measures are employed so that particulate matter emissions generated by the Wambo Mining Complex do not exceed the criteria listed in tables 5, 6 or 7 at any residence on privately-owned land or on more than 25 percent of any privately-owned land, unless higher air quality criteria is specified in the consent for the Wambo Coal Mine (DA 305-7-2003).

Table 5: Long term impact assessment criteria for particulate matter

Pollutant	Averaging period	^d Criterion
Total suspended particulate matter (TSP)	Annual	^a 90 µg/m ³
Particulate matter < 10 µm (PM ₁₀)	Annual	^a 30 µg/m ³

Table 6: Short term impact assessment criterion for particulate matter

Pollutant	Averaging period	^d Criterion
Particulate matter < 10 µm (PM ₁₀)	24 hour	^a 50 µg/m ³

Table 7: Long term impact assessment criteria for deposited dust

Pollutant	Averaging period	Maximum increase in deposited dust level	Maximum total deposited dust level
^c Deposited dust	Annual	^b 2 g/m ² /month	^a 4 g/m ² /month

Notes to Tables 5-7:

^a Total impact (ie incremental increase in concentrations due to the Wambo Mining Complex plus background concentrations due to all other sources);

^b Incremental impact (ie incremental increase in concentrations due to the Wambo Mining Complex on its own);

^c Deposited dust is to be assessed as insoluble solids as defined by Standards Australia, AS/NZS 3580.10.1:2003 Methods for Sampling and Analysis of Ambient Air – Determination of Particulate Matter – Deposited Matter – Gravimetric Method;

^d Excludes extraordinary events such as bushfires, prescribed burning, dust storms sea fog, fire incidents, illegal activities or any other activity agreed by the Director-General in consultation with OEH.

14. Delete condition 17 of Schedule 4 and insert the following:

17. Prior to carrying out any development associated with the proposed refuelling facility, the Applicant shall review and update the Soil and Water Management Plan for the development, to the satisfaction of the Director-General. This plan must include:
- (a) an Erosion and Sediment Control Plan that:
 - is consistent with the requirements of *Managing Urban Stormwater: Soils and Construction* manual;
 - identifies activities that could cause soil erosion and generate sediment;
 - describes the location, function and capacity of erosion and sediment control structures; and
 - describes measures to minimise soil erosion and the potential for the migration of sediments to downstream waters;
 - (b) details of the dirty water management system to be implemented for the development including measures to prevent contamination from diesel and oil spills;
 - (c) a Surface Water Monitoring Program; and
 - (d) a strategy for decommissioning the water management structures on the site.
- 17B. The Applicant shall ensure any above-ground storage tanks containing materials likely to cause environmental harm are:
- (a) imperviously bunded with capacity 110% that of the largest container stored within the bund;
 - (b) designed and constructed in a manner which prevents the ingress of rain water into the tanks; and
 - (c) clearly labelled to identify contents.

15. Delete condition 19 of schedule 4, and insert the following:

19. The Applicant shall upgrade the Golden Highway/Wallaby Scrub Road intersection to the satisfaction of the RMS by the end of June 2013, or as otherwise agreed by the RMS. The intersection must be designed and constructed to a standard agreed to by the RMS, recognising both existing traffic usage and the proposed future closure of part of Wallaby Scrub Road.

16. Delete condition 24 of schedule 4, and insert the following:

24. The Applicant shall construct suitable and safe access to the rail refuelling facility, consistent with the access route shown in Figure 3 of Appendix 4. All tankers must enter and exit the site in a forward direction.

- 24A. The Applicant shall implement all reasonable and feasible measures to avoid dirt from the site being tracked onto the Golden Highway.

17. In condition 29 of Schedule 4, following the words "privately owned land" insert "and the Golden Highway".

18. In Schedule 4, beneath the heading "ABORIGINAL HERITAGE", insert the following note:

Note: Under the National Parks and Wildlife Act 1974, the Applicant is required to obtain approvals for any impacts to Aboriginal objects.

19. Delete conditions 36 – 37 of Schedule 4.

20. Following condition 41 of Schedule 4, insert the following:

BUSHFIRE MANAGEMENT

42. By 31 May 2012, the Applicant shall review and update the Bushfire Management Plan for the Wambo Mining Complex. The plan must include:
- (a) mitigation measures including ongoing landscape management in the asset protection zone setbacks surrounding the rail refuelling facility; and
 - (b) details of a static water supply suitable for fire fighting by the RFS in the immediate vicinity of the rail refuelling facility.

21. Delete Schedule 5 and insert the following:

SCHEDULE 5 ADDITIONAL PROCEDURES

NOTIFICATION OF LANDOWNERS

1. As soon as practicable following obtaining monitoring results showing an exceedance of the relevant criteria in schedule 4, the Applicant shall notify the affected landowner and/or tenants in writing of the

exceedance, and provide regular monitoring results to each of these parties until the development is complying with the relevant criteria again.

INDEPENDENT REVIEW

2. If an owner of privately-owned land considers the development to be exceeding the relevant criteria in schedule 4, then he/she may ask the Director-General in writing for an independent review of the impacts of the development on his/her land.

If the Director-General is satisfied that an independent review is warranted, then within 2 months of the Director-General's decision the Applicant shall:

- (a) commission a suitably qualified, experienced and independent person, whose appointment has been approved by the Director-General, to:
 - consult with the landowner to determine his/her concerns;
 - conduct monitoring to determine whether the development is complying with the relevant criteria in schedule 4; and
 - if the development is not complying with these criteria then:
 - determine if more than one mine is responsible for the exceedance, and if so the relative share of each mine regarding the impact on the land;
 - identify the measures that could be implemented to ensure compliance with the relevant criteria; and
- (b) give the Director-General and landowner a copy of the independent review.

3. If the independent review determines that the development is complying with the relevant criteria in schedule 4, then the Applicant may discontinue the independent review with the approval of the Director-General.

If the independent review determines that any relevant acquisition criteria in schedule 4 are being exceeded and that the project is primarily responsible for this non-compliance, then the Applicant shall:

- (a) implement all reasonable and feasible mitigation measures, in consultation with the landowner and appointed independent person, and conduct further monitoring until the development complies with the relevant criteria; or
- (b) secure a written agreement with the landowner to allow exceedances of the relevant criteria, to the satisfaction of the Director-General.

If the independent review determines that any relevant acquisition criteria in schedule 4 are being exceeded, and that the development is primarily responsible for this non-compliance, then upon receiving a written request from the landowner, the Applicant shall acquire all or part of the landowner's land in accordance with the procedures in conditions 6-7 below.

4. If the independent review determines that any relevant criteria in schedule 4 are being exceeded, but that more than one mine is responsible for this non-compliance, then together with the relevant mine/s, the Applicant shall:

- (a) implement all reasonable and feasible mitigation measures, in consultation with the landowner and appointed independent person, and conduct further monitoring until there is compliance with the relevant criteria; or
- (b) secure a written agreement with the landowner and other relevant mines to allow exceedances of the relevant criteria, to the satisfaction of the Director-General.

If the independent review determines that any relevant acquisition criteria in schedule 4 are being exceeded, but that more than one mine is responsible for this non-compliance, then upon receiving a written request from the landowner, the Applicant shall acquire all or part of the landowner's land on as equitable a basis as possible with the relevant mine/s, in accordance with the procedures in conditions 6-7 below.

LAND ACQUISITION

5. Within 3 months of receiving a written request from a landowner with acquisition rights, the Applicant shall make a binding written offer to the landowner based on:

- (a) the current market value of the landowner's interest in the land at the date of this written request, as if the land was unaffected by the development, having regard to the:
 - existing and permissible use of the land, in accordance with the applicable planning instruments at the date of the written request; and
 - presence of improvements on the land and/or any approved building or structure which has been physically commenced on the land at the date of the landowner's written request, and is due to be completed subsequent to that date, but excluding any improvements that have resulted from the implementation of any additional mitigation measures by the Applicant on the land;

- (b) the reasonable costs associated with:
 - relocating within the Singleton or Muswellbrook local government areas, or to any other local government area determined by the Director-General; and
 - obtaining legal advice and expert advice for determining the acquisition price of the land, and the terms upon which it is to be acquired; and
- (c) reasonable compensation for any disturbance caused by the land acquisition process.

If the Applicant and landowner cannot agree on the acquisition price of the land and/or the terms upon which the land is to be acquired within 28 days after the Applicant makes its written offer, then either party may refer the matter to the Director-General for resolution.

Upon receiving such a request, the Director-General will request the President of the NSW Division of the Australian Property Institute to appoint a qualified independent valuer to:

- consider submissions from both parties;
- determine a fair and reasonable acquisition price for the land and/or the terms upon which the land is to be acquired, having regard to the matters referred to in paragraphs (a)-(c) above;
- prepare a detailed report setting out the reasons for any determination; and
- provide a copy of the report to both parties.

Within 14 days of receiving the independent valuer's report, the Applicant shall make a binding written offer to the landowner to purchase the land at a price not less than the independent valuer's determination.

However, if either party disputes the independent valuer's determination, then within 14 days of receiving the independent valuer's report, they may refer the matter to the Director-General for review. Any request for a review must be accompanied by a detailed report setting out the reasons why the party disputes the independent valuer's determination. Following consultation with the independent valuer and both parties, the Director-General will determine a fair and reasonable acquisition price for the land, having regard to the matters referred to in paragraphs (a)-(c) above, the independent valuer's report, the detailed report disputing the independent valuer's determination, and any other relevant submissions.

Within 14 days of this determination, the Applicant shall make a binding written offer to the landowner to purchase the land at a price not less than the Director-General's determination.

If the landowner refuses to accept the Applicant's binding written offer under this condition within 6 months of the offer being made, then the Applicant's obligations to acquire the land shall cease, unless the Director-General determines otherwise.

- 6. The Applicant shall pay all reasonable costs associated with the land acquisition process described in condition 6 above, including the costs associated with obtaining Council approval for any plan of subdivision (where permissible), and registration of this plan at the Office of the Registrar-General.
- 22. In the Note to condition 1 of Schedule 6, after "construction works.", insert the following: "This condition does not apply in respect of minor works undertaken consequent to construction of the principal development, such as exempt and complying development, and the rail refuelling facility".
- 23. Following condition 4 of Schedule 6 insert the following:

REPORTING

Incident Reporting

- 5. The Applicant shall notify the Director-General and any other relevant agencies of any incident that has caused, or has the potential to cause, significant risk of material harm to the environment, at the earliest opportunity. For any other incident associated with the development, the Applicant shall notify the Director-General and any other relevant agencies as soon as practicable after the Applicant becomes aware of the incident. Within 7 days of the date of the incident, the Applicant shall provide the Director-General and any relevant agencies with a detailed report on the incident, and such further reports as may be requested.

Regular Reporting

- 6. The Applicant shall provide regular reporting on the environmental performance of the development on its website, in accordance with the reporting arrangements in any condition of this consent.

INDEPENDENT ENVIRONMENTAL AUDIT

- 7. The Applicant shall ensure that the development is included in the Independent Environmental Audit of the Wambo Mining Complex.

ACCESS TO INFORMATION

8. From 31 May 2012, the Applicant shall:

(a) make copies of the following publicly available on its website:

- the SEE, SEE (Mod 1) and EA (Mod 2);
- all current statutory approvals for the development;
- approved strategies, plans and programs required under the conditions of this consent;
- a comprehensive summary of the monitoring results of the development, which have been reported in accordance with the various plans and programs approved under the conditions of this consent;
- a complaints register, which is to be updated on a monthly basis;
- the AEMR (over the last 5 years);
- any independent environmental audit, and the Applicant's response to the recommendations in any audit;
- any other matter required by the Director-General; and

(b) keep this information up to date,
to the satisfaction of the Director-General.

24. Following Appendix 3, insert the following:

APPENDIX 4 RAIL REFUELLING FACILITY PLANS

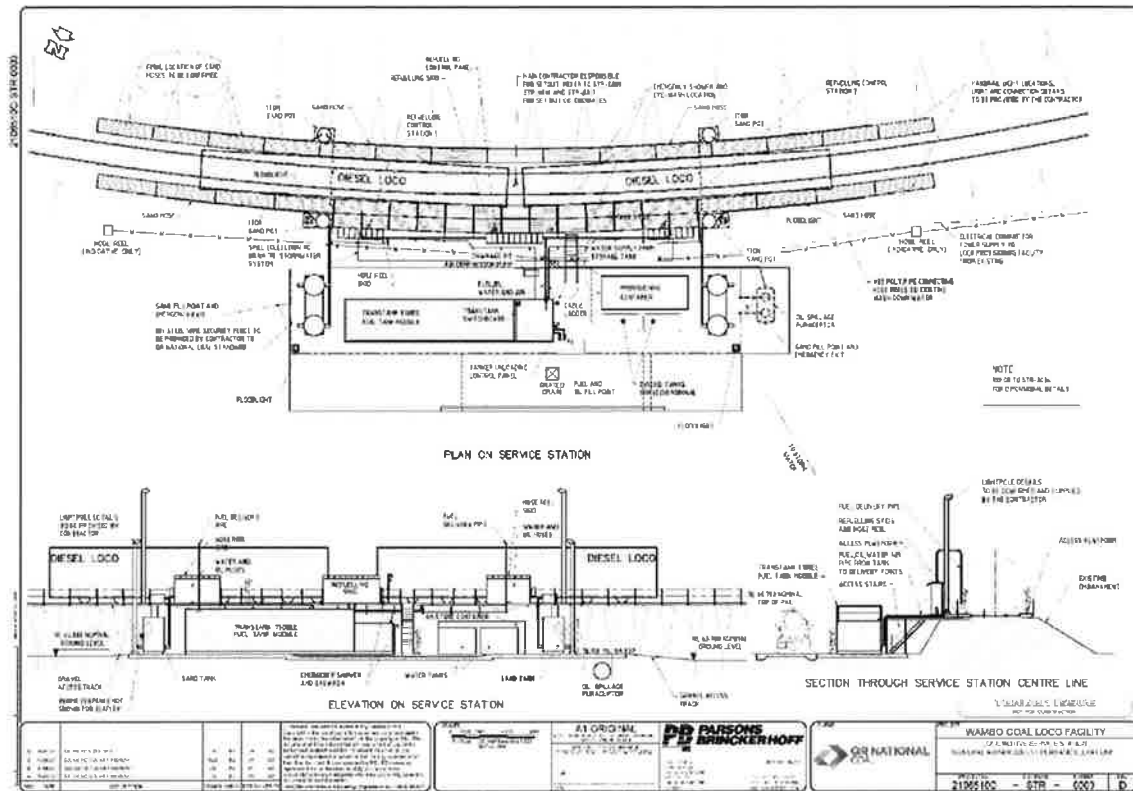


Figure 1: Rail Refuelling Facility site layout and elevation

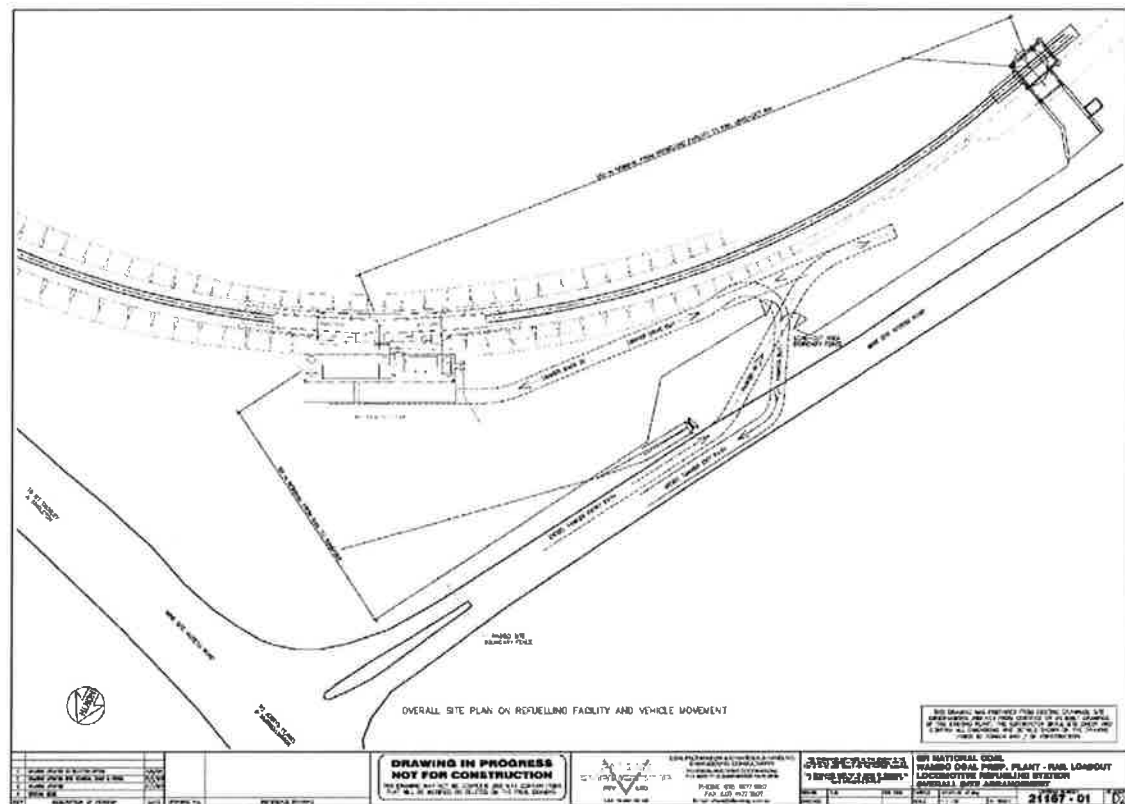


Figure 2: Rail Refuelling Facility site plan and vehicle movement

24. Update the table of contents to reflect the above changes.