

# Notice of Modification

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

As delegate of the Minister for Planning, I modify the development consent referred to in Schedule 1, as set out in Schedule 2.

David Kitto  
Director  
Mining and Industry Projects

Sydney

14 JULY

2010

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### SCHEDULE 1

The development consent (DA 376-8-2003) granted by the Minister for Infrastructure and Planning for the development of underground mining operations at the Bulga Mining Complex on 23 February 2004.

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### SCHEDULE 2

1. Under the heading "DEFINITIONS" in schedule 2, delete the definitions for "DECC", "DWE" and "DPI", and insert in alphabetical order the following:

Bulga Mining Complex	The development approved under this consent, together with the development approved under the consent for the Bulga Open Cut Coal Mine (DA 41-03-99), considered collectively
DECCW	Department of Environment, Climate Change and Water
DII	Department of Industry and Investment
Director-General	Director-General of the Department of Planning, or delegate
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
NOW	NSW Office of Water
VAM Abatement Unit	Ventilation Air Methane Abatement Unit
2. Delete all references to "DECC" and replace with "DECCW".
3. Delete all references to "DPI" and replace with "DII".
4. Delete all references to "DWE" and replace with "NOW".
5. Renumber the page references in the "Table of Contents" in schedule 2, as required.
6. In the "Table of Contents" in schedule 2, delete all words after "Appendix 2:" and replace with:

RECEIVER LOCATION PLANS	28
APPENDIX 3: INDEPENDENT DISPUTE RESOLUTION PROCESS	30
7. In condition 2(f) of schedule 3, delete all words after "July 2007;" and replace with:
  - (g) the modification application 376-8-2003 MOD 4 and Environmental Assessment prepared by Umwelt (Australia) Pty Limited, dated December 2009, and the response to submissions letter dated 22 April 2010; and
  - (h) the conditions of this consent.
8. Insert the following condition after condition 4 of schedule 3:

#### Management Plans/Monitoring Programs

- 4A. Within 3 months of any modification to this consent, the Applicant shall review and if necessary revise all strategies/plans/programs required under this consent which are relevant to the modification, to the satisfaction of the Director-General.

9. In conditions 6 and 7 of schedule 3, delete the word "a" and replace with "per calendar".
10. In condition 1 of schedule 4, delete the words "Property 75 – Hedley" and "Property O – McInerney" from Table 1 and replace with:

6 – I.B. Headley	149 – E. McInerney
7 – I.B. Headley	150 – E. McInerney
9 – I.B. & J.D. Headley	151 – R.D. & L.M. Lewis
10 – I.B. & J.D. Headley	216 – R.D. & G.W. Turnbull

11. In condition 1 of schedule 4, delete all words after "Figure 4.1 of the EIS," from the Note and replace with "and for more information on the numerical references to land used in this condition, see the figures in Appendix 2."
12. Insert the following condition after condition 28 of schedule 4:

**Post Commissioning Report – Power Generation Plant and VAM Abatement Unit**

- 28A. Within 3 months of commissioning any gas engine within the power generation plant and/or the VAM abatement unit, the Applicant shall:
- (a) carry out air emissions monitoring (by sampling and obtaining results by analysis) of the concentration of each parameter in Table 11, for the stack serving each gas-fired engine and the stack serving the VAM abatement unit;
  - (b) demonstrate compliance with DECCW's ground level concentration criteria; and
  - (c) submit the results to DECCW.

Table 11: Power Generation Plant and VAM Abatement Unit Monitoring

Parameter	Units of Measure	Sampling method <sup>1</sup>
Carbon monoxide	mg/m3	TM-32
Nitrogen dioxide (NO <sub>2</sub> ) or nitric oxide (NO) or both, as NO <sub>2</sub> equivalent	mg/m3	OM-11
Volatile organic compounds	mg/m3	TM-34
Volumetric flow rate	m3/s	TM-2
Oxygen	%	TM-25
Moisture	%	TM-22
Dry gas density	kg/m3	TM-23
Molecular weight of stack gases	g/g.mol	TM-23
Selection of sampling positions	-	TM-1

<sup>1</sup> NSW EPA, 2001, *Approved Methods for the Sampling and Analysis of Air Pollutants in NSW*.

13. Delete conditions 29-32 of schedule 4, and replace with:

**Land Acquisition Criteria**

29. If the noise generated by the Bulga Mining Complex exceeds the criteria in Table 12 at any residence on privately-owned land or on more than 25 per cent of any privately-owned land, the Applicant shall, upon receiving a written request for acquisition from the landowner, acquire the land in accordance with the procedures in conditions 9-11 of schedule 5.

Table 12: Land Acquisition Criteria dB(A)

Day/Evening/Night <i>L<sub>Aeq</sub>(15 minute)</i>	Land
40	All privately owned land, excluding the land listed in Table 1.

**Notes:**

- Noise generated by the Bulga Mining Complex is to be measured and evaluated in accordance with the relevant procedures and exemptions (including certain meteorological conditions) of the NSW Industrial Noise Policy.
- These noise limits do not apply on land if the Applicant has a negotiated agreement with the relevant owner/s of that land to generate higher noise levels, and the Applicant has advised the Department in writing of the terms of this agreement.

## Noise Impact Assessment Criteria

30. The Applicant shall ensure that the noise generated by the Bulga Mining Complex does not exceed the noise impact assessment criteria in Table 13 at any residence on privately-owned land, or on more than 25 percent of any privately-owned land.

Table 13: Noise Impact Assessment Criteria dB(A)

Residence/Land	Day	Evening	Night	
	$L_{Aeq}(15 \text{ min})$	$L_{Aeq}(15 \text{ min})$	$L_{Aeq}(15 \text{ min})$	$L_{A1}(1 \text{ min})$
249	40	40	40	45
8, 195	39	39	39	45
157, 179, 307	38	38	38	45
1, 2s, 154, 237, 239, 250, 252, 261, 262, 308	37	37	37	45
232	37	37	36	45
97, 153, 163, 169e, 171, 183, 184, 197, 217s, 217m, 217n, 234, 235, 240, 263, 264, 266, 267, 272, 273, 274, 276, 279, 280, 282	36	36	36	45
33, 156w, 230, 281	36	36	35	45
All other privately owned land, excluding the land listed in Table 1.	35	35	35	45

### Notes:

- To interpret the numerical references to land referred to in Tables 1 and 13, see the applicable figures in Appendix 2.
- Noise generated by the Bulga Mining Complex is to be measured and evaluated in accordance with the relevant procedures and exemptions (including certain meteorological conditions) of the NSW Industrial Noise Policy.
- These noise limits do not apply at residences or land if the Applicant has a negotiated agreement with the relevant owner/s of that residence or land to generate higher noise levels, and the Applicant has advised the Department in writing of the terms of this agreement.

## Additional Noise Mitigation Measures

31. Upon receiving a written request from:
- a landowner of the land listed in Table 1 (unless the landowner has requested acquisition); or
  - a landowner of residence/land 8, 157, 179, 195, 249 or 307 (unless a negotiated agreement is in place); or
  - the owner of any other residence where subsequent operational noise monitoring shows the noise generated by the Bulga Mining Complex is greater than, or equal to, 38 dB(A)  $L_{Aeq}(15 \text{ minute})$  (unless a negotiated agreement is in place),
- the Applicant shall implement additional noise mitigation measures such as double glazing, insulation, and/or air conditioning at any residence on the land in consultation with the landowner.

These additional mitigation measures must be reasonable and feasible. The Applicant shall notify all landowners by 31 July 2010 that they are entitled to receive additional noise mitigation measures in accordance with this condition, to the satisfaction of the Director-General.

If within 3 months of receiving such a request from the landowner, the Applicant and the landowner cannot agree on the measures to be implemented, or there is a dispute about the implementation of these measures, then either party may refer the matter to the Director-General for resolution.

## Cumulative Noise Impact Assessment Criteria

32. The Applicant shall implement all reasonable and feasible measures to ensure that the noise generated by the Bulga Mining Complex combined with the noise generated by other mines does not exceed the amenity criteria in Table 14 at any residence on privately-owned land or on more than 25 per cent of any privately-owned land, to the satisfaction of the Director-General.

Table 14: Cumulative Noise Impact Assessment Criteria dB(A)  $L_{Aeq}(\text{period})$

Location	Day	Evening	Night
	$L_{Aeq}(11 \text{ hour})$	$L_{Aeq}(4 \text{ hour})$	$L_{Aeq}(9 \text{ hour})$
All privately owned land, excluding the land listed in Table 1.	50	45	40

*Note: Cumulative noise is to be measured and evaluated in accordance with the relevant procedures and exemptions (including certain meteorological conditions) of the NSW Industrial Noise Policy.*

### Cumulative Land Acquisition Criteria

- 32A. If the cumulative noise generated by the Bulga Mining Complex combined with the noise generated by other mines exceeds the amenity criteria in Table 15 at any residence on privately owned land, or on more than 25% of privately owned land, then upon receiving a written request from the landowner, the Applicant shall take all reasonable and feasible measures to acquire the land on as equitable basis as possible with the relevant mines, in accordance with the procedures in conditions 9-11 of schedule 5, to the satisfaction of the Director-General.

*Table 15: Cumulative Land Acquisition Criteria dB(A)*

Location	Day	Evening	Night
	<i>L<sub>Aeq</sub>(11 hour)</i>	<i>L<sub>Aeq</sub>(4 hour)</i>	<i>L<sub>Aeq</sub>(9 hour)</i>
All privately owned land, excluding the land listed in Table 1.	53	48	43

*Notes:*

- *For the purpose of this condition, the expression "Applicant" in conditions 9-11 of schedule 5 should be interpreted as the Applicant and any other relevant mines.*
- *Cumulative noise is to be measured and evaluated in accordance with the relevant procedures and exemptions (including certain meteorological conditions) of the NSW Industrial Noise Policy.*

### Continuous Improvement

- 32B. The Applicant shall:
- implement all reasonable and feasible best practice noise mitigation measures;
  - progressively upgrade and replace its mobile equipment fleet;
  - report the implementation and effectiveness of these measures in the AEMR, to the satisfaction of the Director-General.

### Noise Management Plan

- 32C. The Applicant shall prepare and implement a Noise Management Plan for the development to the satisfaction of the Director-General. This program must:
- be prepared by a suitably qualified expert whose appointment has been approved by the Director-General, and submitted to the Director-General for approval by 30 August 2010; and
  - include a:
    - combination of unattended and attended monitoring measures;
    - noise monitoring protocol for evaluating the contribution of low frequency noise;
    - noise monitoring protocol for evaluating compliance with the relevant criteria for noise impact assessment, land acquisition, cumulative impact assessment and cumulative acquisition in this consent; and
    - response protocol that will immediately be followed if noise emissions are nearing or exceeding these criteria and a description of what contingency plans will be implemented on site if this occurs.

*Notes:*

- *The management responses to be followed in the event that noise emissions are nearing or exceeding the noise criteria in this consent should be staged in a manner that is commensurate with the level of noise emissions that may occur.*
- *Management responses should include relocating, modifying and/or ceasing operations until the exceedance is addressed and rectified. In the event of a breach of the noise criteria in this approval, noise traces for the offending period should be forwarded to the Department and DECCW as soon as practicable following the event.*

- In condition 33 of schedule 4, delete all references to "Table 13" and replace with "Table 16".
- Delete conditions 1-2 of schedule 5, and replace with:

### NOTIFICATION OF LANDOWNERS

- Within 1 month of the date of this modification, the Applicant shall notify the landowners of the land listed in Table 1 of schedule 4 in writing that they have the right to require the Applicant to acquire their land at any stage during the development.

2. If the results of monitoring required in schedule 4 identify that impacts generated by the development are greater than the impact assessment criteria in schedule 4, except where this is predicted in the EA, and except where a negotiated agreement has been entered into in relation to that impact, then the Applicant shall notify the Director-General and the affected landowners and tenants (including tenants of mine owned properties) accordingly, and provide quarterly monitoring results to each of these parties until the results show that the development is complying with the criteria in schedule 4.

16. Delete conditions 4-6 of schedule 5, and replace with:

#### **INDEPENDENT REVIEW**

4. If a landowner considers the development to be exceeding the impact assessment 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, the Applicant shall within 3 months of the Director-General advising that an independent review is warranted:

- (a) consult with the landowner to determine his/her concerns;
  - (b) commission a suitably qualified, experienced and independent person, whose appointment has been approved by the Director-General, to conduct monitoring on the land, to:
    - determine whether the development is complying with the relevant impact assessment criteria in schedule 4; and
    - identify the source(s) and scale of any impact on the land, and the development's contribution to this impact; and
  - (c) give the Director-General and landowner a copy of the independent review.
5. If the independent review determines that the development is complying with the relevant impact assessment criteria in schedule 4, then the Applicant may discontinue the independent review with the approval of the Director-General.
6. If the independent review determines that the development is not complying with the relevant impact assessment criteria in schedule 4, and that the development is primarily responsible for this non-compliance, then the Applicant shall:
- (a) implement all reasonable and feasible measures, in consultation with the landowner, to ensure that the development complies with the relevant criteria and conduct further monitoring to determine whether these measures ensure compliance; or
  - (b) secure a written agreement with the landowner to allow exceedances of the criteria in schedule 4,
- to the satisfaction of the Director-General.

If the Applicant is unable to finalise an agreement with the landowner, then the landowner may refer the matter to the Director-General for resolution.

If the additional monitoring referred to under paragraph (a) above 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.

17. Delete conditions 9-11 of schedule 5, and replace with:

#### **LAND ACQUISITION**

9. 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 property at the date of this written request, as if the property 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 property and/or any approved building or structure which has been physically commenced 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 the 'additional noise mitigation measures' in condition 31 of schedule 4;
  - (b) the reasonable costs associated with:
    - relocating within the Singleton local government area, 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.



However, if at the end of this period, 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, then either party may refer the matter to the Director-General for resolution.

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

- (a) consider submissions from both parties;
- (b) 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;
- (c) prepare a detailed report setting out the reasons for any determination; and
- (d) provide a copy of the report to both parties and the Director-General.

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 shall 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 and the detailed report of the party that disputes the independent valuer's determination and any other relevant matters.

Within 14 days of the Director-General's 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.

- 10. The Applicant shall pay all reasonable costs associated with the land acquisition process described in condition 6 above.
- 11. If the Applicant and landowner agree that only part of the land shall be acquired, then the Applicant shall pay all reasonable costs associated with obtaining Council approval for any plan of subdivision (where permissible), and registration of the plan at the Office of the Registrar-General.

- 18. Insert the following condition after condition 11 of schedule 6:

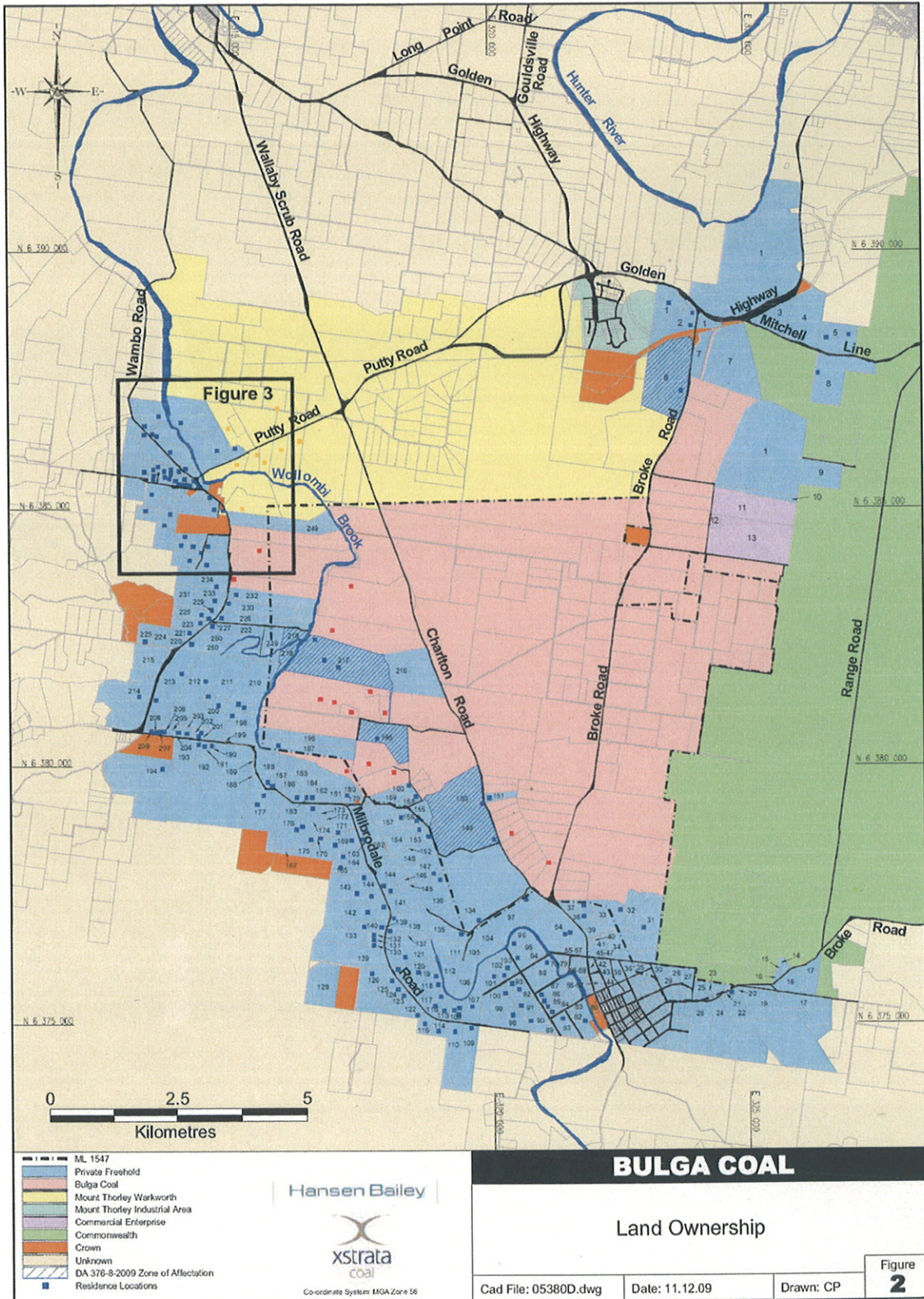
#### **INCIDENT REPORTING**

- 12. Within 24 hours of detecting an exceedance of the limits/performance criteria in this consent, or detecting an incident that causes (or may cause) material harm to the environment, the Applicant shall notify the Department and other relevant agencies of the exceedance/incident.
- 13. Within 6 days of notifying the Department and other relevant agencies of an exceedance/incident, the Applicant shall provide the department and these agencies with a written report that:
  - (a) describes the date, time and nature of the exceedance/incident;
  - (b) identifies the cause (or likely cause) of the exceedance/incident;
  - (c) describes what action has been taken to date; and
  - (d) describes the proposed measures to address the exceedance/incident.

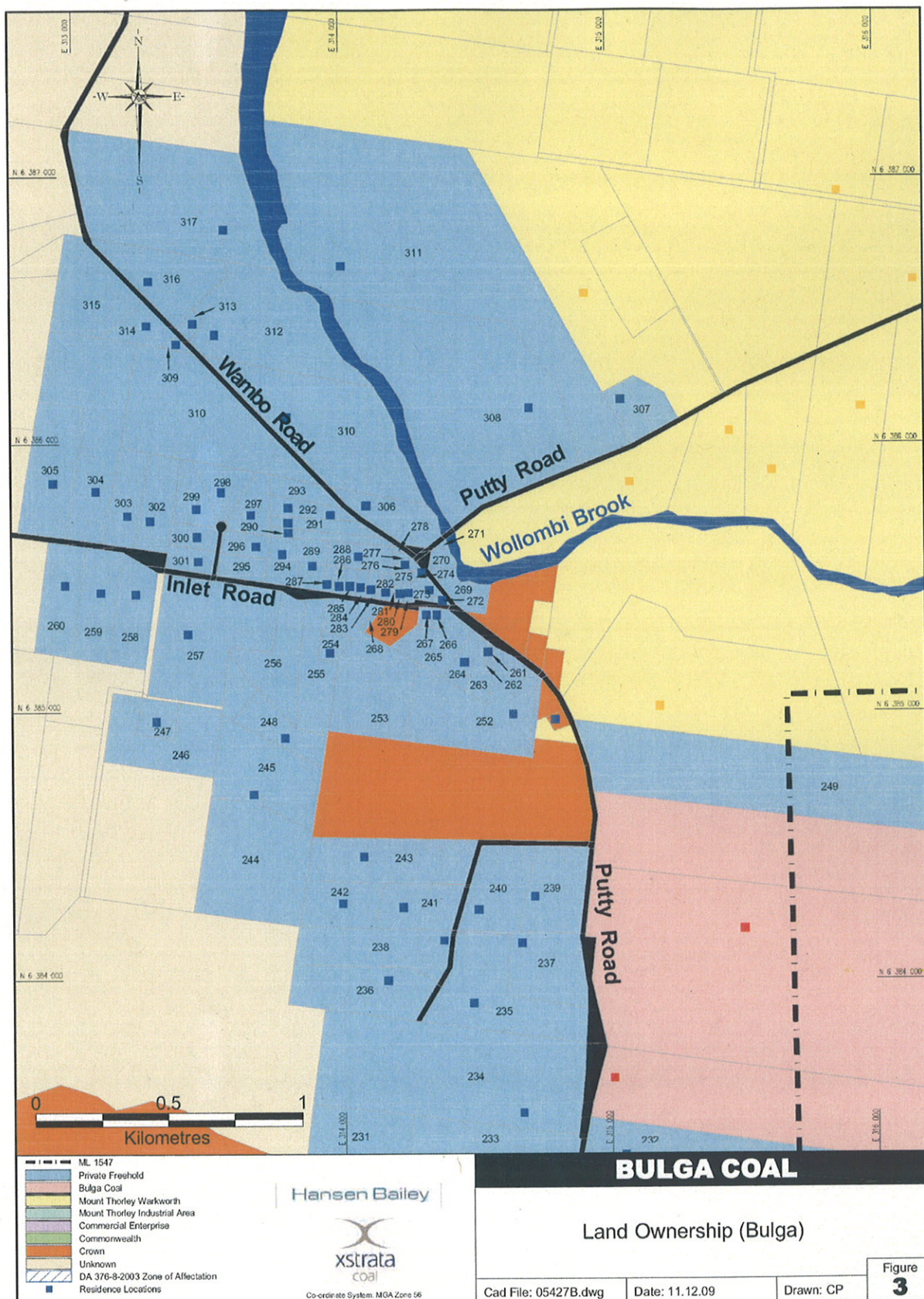
- 19. Renumber "Appendix 2" as "Appendix 3".

20. Insert the following after Appendix 1:

## APPENDIX 2 RECEIVER LOCATION PLANS\*







\* As identified in the Environmental Assessment dated 15 February 2010 and referenced in the development consent for Bulga Open Cut Coal Mine (DA 41-03-99).