

# **Re: Section 75W Modification to Project Approval MP10\_0046**

## **REQUEST TO MODIFY A MAJOR PROJECT**

### **Submission**

I object to the approval of this modification application.

The application is out of time and cannot therefore be considered.

This is because of Schedule 2 of the Environmental Planning and Assessment (Savings, Transitional and Other Provisions) Regulation 2017.

Schedule 2 is the former Schedule 6A to the Act. (The Umwelt correspondence dated 23 February 2018 incorrectly refers to Schedule 6A as part of the approval path-see 2.0 at page 2 of that correspondence).

Schedule 2 relevantly provides as follows:

#### **'SCHEDULE 2 – TRANSFERRED TRANSITIONAL ARRANGEMENTS ON REPEAL OF PART 3A--FORMER SCHEDULE 6A TO THE ACT**

##### **1 DEFINITIONS AND APPLICATION**

##### **3BA WINDING-UP OF TRANSITIONAL PART 3A MODIFICATION PROVISIONS ON CUT-OFF DATE OF 1 MARCH 2018 AND OTHER PROVISIONS RELATING TO MODIFICATIONS**

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(1) For the purposes of this [clause](#), the "cut-off date" is 1 March 2018.

(2) An approved project or a concept plan cannot be modified under section 75W on or after the cut-off date, except as provided by this [clause](#).

(3) Subclause (2) does not apply if the request to modify the approved project or concept plan under section 75W was lodged before the cut-off date. Accordingly, the provisions of this Schedule relating to a modification made pursuant to such a request continue to apply.

(4) A request to modify an approved project or concept plan under section 75W that may be dealt with because of subclause (3) cannot be dealt with under section 75W if:

(a) the request has not been determined by 1 September 2018, and

(b) the Secretary is of the opinion that insufficient information has been provided to deal with the request and notifies the person who made the request that it will not be dealt with under section 75W.

(5) A concept plan may continue to be modified under section 75W pursuant to a request lodged on or after the cut-off date (whether or not the project is or has ceased to be a transitional Part 3A project), but only if the Minister is satisfied that:

(a) the proposed modification is to correct a minor error, misdescription or miscalculation, or

(b) the proposed modification is of minimal environmental impact, or

*(c) the project to which the concept plan as modified relates is substantially the same as the project to which the concept plan currently relates (including any modifications previously made under section 75W).'*

The modification application cut-off date is the 1 March 2018.

That is, the application must be lodged 'before' the cut-off date.

This application was lodged on the 2 March 2018.

My interpretation of the date is consistent with other EA Exhibitions on the Department's website. For example, the proposed modification for the Wallerawang Ash Repository Mod 1 is a transitional Part 3A project as it involves an approved project to which Part 3A applies. Approval for that proposed modification is also sought under Section 75W of the EP&A Act.

Sub-clause (5) only refers to concept plans.

I have other objections including the highly unsatisfactory history of non-compliance by Wollongong Coal Ltd. with the consent condition imposed some 6 years ago regarding water diversion works designed by BECA for Bellambi Gully.

However, as stated above the application is out of time.

Michael Sergeant

26 March 2018