

ASSESSMENT REPORT

Section 75W Modification Ethanol and Dairy Project (MP 06_0020 MOD 2)

1. INTRODUCTION

This report assesses a modification request by Eagle Energy (the Proponent) to extend the project approval lapse date for the Ethanol and Dairy Project in Coleambally (MP 06_0020). The request has been lodged pursuant to section 75W of the *Environmental Planning and Assessment Act 1979* (EP&A Act).

The approval involves the construction and operation of an ethanol and dairy plant off Kidman Way in Coleambally. The ethanol plant would produce up to 300 megalitres (ML) of ethanol per year. The dairy would contain 18,000 head of cattle and produce up to 77 ML of milk per year.



Figure 1: Site Location

2. SUBJECT SITE

The site is located on 359 hectares (ha) of agricultural land situated off Kidman Way, approximately 7 kilometres (km) north of Coleambally in the Murrumbidgee local government area (LGA) (see Figure 1).

The site is located within the Coleambally Irrigation Area and is predominately surrounded by agricultural land. Directly north of the site is a rice mill that is currently not in operation. Nearby natural features include the Boona State Forest, located 500 metres (m) to the east, and the Bretts State Forest, located 1.5 km to the north-west.

Key infrastructure in the surrounding area includes:

- Kidman Way;
- the Sturt Highway, an east-west transport and freight corridor linking Sydney and Adelaide;
- an electricity transmission line running adjacent to the eastern boundary of the site;
- a water supply channel adjacent to the northern boundary of the site; and
- the Willbriggie Rail siding, approximately 25 km north of the site.

The site was purchased from Four Arrows Ethanol Pty Ltd, the original Proponent, by Eagle Energy in 2011.

3. APPROVAL HISTORY

3.1 Original Approval (MP 06_0020)

In the mid-2000s, the Federal and State Government introduced initiatives to promote a viable ethanol industry in Australia. The *Biofuels Act 2007* included a mandate that 2% of the total volume of sales of petrol in NSW must be ethanol. Further, the Proponent had identified dairy as a key agricultural industry in Australia, in both local retail and export markets.

On 21 December 2007, the then Minister for Planning granted project approval (MP 06_0020) for the development of an ethanol plant and dairy in Coleambally. Under the project approval, the ethanol plant would have a production capacity of 300 ML per year of ethanol and the dairy would accommodate 18,000 head of cattle to produce 77 ML per year of milk.

The major components of the approval included:

- an ethanol production facility;
- an intensive free stall dairy;
- cattle housing to accommodate 18,000 head of cattle;
- waste management and effluent systems; and
- road access and intersection improvements.

3.2 Site Plan Amendment (MP 06_0020 MOD 1)

A modification request was lodged in 2012 to change the land to which the project applies and amend the site layout and site access. The modification request was formally withdrawn on 5 October 2012 to allow the Proponent to rework its business model, given that project approval would not lapse until 2016.

3.3 Council Ethanol Plant Approval (DA 121213)

On 28 February 2013, Murrumbidgee Shire Council, now Murrumbidgee Council (Council), approved a development application for the construction and operation of an ethanol plant with a production capacity of 5.5 ML/annum (DA 121213). The location of the ethanol plant on the site differs to the site proposed under the Minister's approval (see **Figure 2**). The plant is approved to operate 24 hours per day, seven days per week. Components of the plant have been over-engineered to allow future expansion.

Construction commenced in 2012 and the plant is approximately two-thirds complete. However, construction has since been halted. As such, occupation certificates have not been sought from Council, road upgrades required by Roads and Maritime Services (RMS) have not been constructed and an Environment Protection Licence (EPL) from the Environment Protection Authority (EPA) has not been issued.

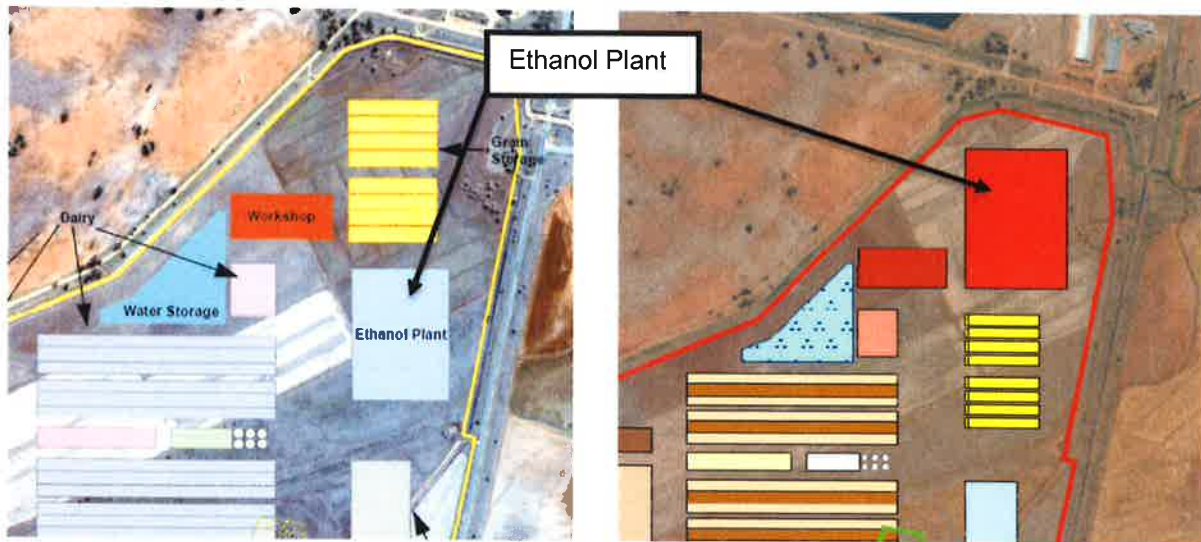


Figure 2: Relative location of Ethanol Plant (left: as built under Council consent, right: as per Minister's approval)

4. PROPOSED MODIFICATION

The purpose of the modification is to extend the lapsing date for MP 06_0020, the Ethanol and Dairy Project. On 1 October 2011, Part 3A of the *Environmental Planning and Assessment Act 1979* (EP&A Act) was repealed. As a transitional arrangement, Clause 11(1) of Schedule 6A of the EP&A Act introduced a lapsing date of five years from the repeal of Part 3A unless:

- (a) the project is physically commenced (within the meaning of section 95) on or before that day on the land to which the approval relates; or
- (b) the approval of the project is subject to a condition in force under section 75Y that provides for the approval to lapse on an earlier or later day.

No physical works associated with the approval have commenced and the approval does not contain a lapse date condition. As such, the lapse date for the project approval is 1 October 2016 as prescribed by Clause 11(1) of Schedule 6A of the EP&A Act.

Clause 11A of Schedule 6A of the EP&A Act allows a Proponent to lodge a modification request to extend the date that a Part 3A approval lapses, provided the request is made prior to the lapse date. The Department notes that Clause 11A(2) extends the lapse date to the date upon which the modification request is determined or withdrawn, or the date that is 12 months after the request was made, whichever occurs first.

On 30 September 2016, the Proponent lodged a modification request under section 75W of the EP&A Act to modify the project approval to extend the lapse date for an additional three years to 1 October 2019. As such, the modification request was made prior to the lapse date.

The modification request initially sought to consolidate Council's approved ethanol plant (DA 121213) with the Department's project approval (MP 06_0020). However, the Department was not satisfied the request provided enough information, particularly in relation to hazards and risks. Consequently, the Proponent amended their modification request to remove this component.

The modification is described in full in the request included in **Appendix B** and in the letter included in **Appendix D**.

5. STATUTORY CONTEXT

5.1 Approval Authority

The Minister was the approval authority for the original project, and is consequently the approval authority for this modification request.

On 16 February 2015, the Minister for Planning delegated responsibility for determination of section 75W modification requests to Directors who report to the Executive Director, Planning Services where:

- the relevant local Council/s has not made an objection;
- a political donations disclosure statement has not been made; and

- there are no public submissions in the nature of objections.

The Department is satisfied the modification request meets the terms of the delegation as Council did not object to the proposal, a political donations disclosure statement has not been made and no public submissions were received. As such, the Director, Industry Assessments may determine the modification request under delegated authority.

5.2 Section 75W

The approval for the Ethanol Plant and Dairy was granted under Part 3A of the EP&A Act. Although Part 3A was repealed on 1 October 2011, the project remains a 'transitional Part 3A project' under Schedule 6A of the EP&A Act. Consequently, the proposed modification is to be determined under section 75W of the EP&A Act.

The Department notes that:

- the primary function and purpose of the approved development would not change as a result of the proposed modification;
- the modification is of a scale that warrants the use of section 75W of the EP&A Act; and
- any potential environmental impacts would be minimal and appropriately managed through the existing or modified conditions of approval.

Therefore, the proposed modification is considered within the scope of section 75W of the EP&A Act. Consequently, the Department considers that the request should be assessed and determined under section 75W of the EP&A Act rather than requiring a new development application to be lodged.

6. CONSULTATION

Under section 75W of the EP&A Act, the Department is not required to notify or exhibit the modification request. Upon receipt, the request was placed on the Department's website and following a review of the documentation, the Department did not consider that further consultation was necessary. Notwithstanding, the Department sought comments from Council, the EPA, the Office of Environment and Heritage (OEH), the Department of Primary Industries (DPI), Department of Industry – Geological Survey of New South Wales (GSNSW), RMS, Riverina Local Land Services (LLS) and NSW Health.

A total of seven submissions were received, none of which were objections.

The **OEH** noted changes to the *Threatened Species Conservation Act 1995* (TSC Act) and the *National Parks and Wildlife Act 1974* (NPW Act) since the original project approval in 2007. A number of additional species have been listed under the TSC Act. The OEH recommended the Proponent ensure these species are not impacted by the modification request, however noted this is unlikely due to the disturbed nature of the site. The OEH also advised the NPW Act was amended in 2010 to introduce a 'strict liability' offence relating to the harm of Aboriginal objects. The OEH suggested the Proponent update their assessment and include an unexpected finds protocol.

RMS did not object to the modification request subject to the conditions and Statement of Commitments of the original project approval (MP 06_0020). The conditions include intersection treatments and a road upgrade at the full cost of the Proponent. RMS also noted that design standards and reference documents have changed since the original project approval.

The **EPA** advised the Proponent must consult with the EPA regarding the requirement for an EPL prior to commencement of construction works.

Council, Riverina LLS, DPI and GSNSW raised no issues with the modification request and provided no further comment.

The Proponent provided a Response to Submissions (RTS) letter, which is further discussed in the Department's assessment in **Section 7** of this report. All submitting agencies were given the opportunity to review the RTS and provide further comment. The agencies that provided input indicated no further comment.

7. ASSESSMENT

The Department has assessed the merits of the proposed modification. During this assessment, the Department has considered the:

- environmental assessment and assessment report for the original project;
- existing conditions of approval;
- environmental assessment for the proposed modification (**Appendix B**);
- submissions from government authorities (**Appendix C**);
- RTS and letter describing revised scope of modification (**Appendix D**);
- relevant environmental planning instruments, policies and guidelines; and
- requirements of the EP&A Act, including the objects of the EP&A Act.

The Department considers the key assessment issues are the justification for the delay in the commencement of the project and the justification for the extension of the approval lapse date.

The Department's assessment of other issues is provided in **Table 1**.

The *Biofuels Act 2007* introduced an ethanol mandate which specified a minimum ethanol volume of 2% for petrol sales by primary wholesalers and major retailers. The minimum ethanol percentage was increased to 4% in January 2010 and 6% in January 2011, with the intention to reach 10% over time. The NSW Government removed the 10% mandate in 2012, and to date the 6% mandate has not been met.

Profitability of the ethanol plant is highly dependent on fuel prices. The project was approved in 2007, at which time fuel prices were rising. In 2008, fuel prices dropped during the global financial crisis. Fuel prices recovered in 2011 and construction of the ethanol plant commenced in 2013. Fuel prices then dropped again in 2014, and even further in 2016 to below the 2008 global financial crisis levels. Historical fuel price trends from 2007 to 2016 are depicted in **Figure 3**.

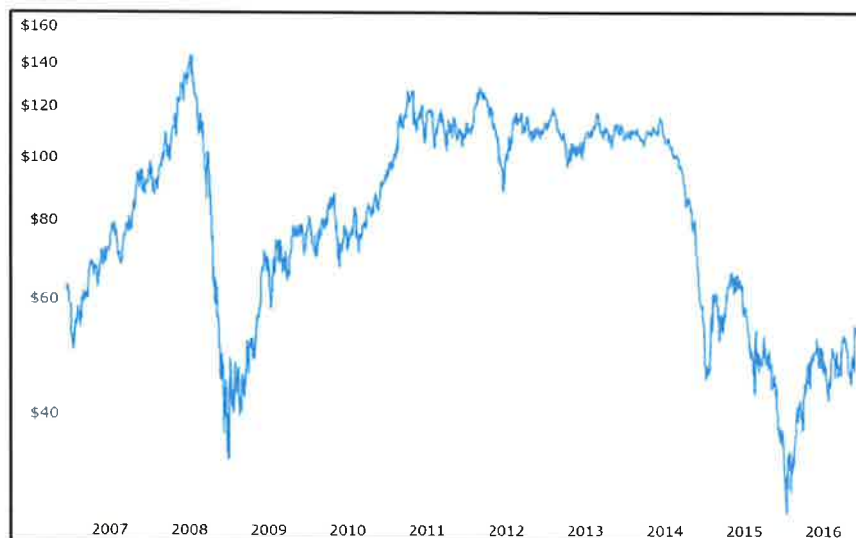


Figure 3: Brent Crude Oil Prices, 2007-2016

In 2014 and 2015, the Proponent revisited the integration of the ethanol plant and dairy in response to a boom in the dairy industry. This boom was followed by a price drop to less than \$5/kg of milk solids in 2016 by Murray Goulburn, the largest dairy processor in Australia.

Given the shifts in government policy direction, combined with the uncertainty of both the fuel and dairy markets, the Proponent put construction of the development on hold to review its business model.

The Proponent argues a three year extension to the lapse date of the approval is necessary to:

- align with the existing timeframe for project development;
- respond to fuel and dairy pricing cycles;
- seek an investment partner for the dairy and/or ethanol plant; and

- explore sourcing future specialised components and expertise that may be manufactured or located outside Australia.

The Department considers both the delay in the commencement of the project approval and the need for an additional three years before the approval lapses has been adequately justified. Market and policy uncertainties have contributed to delays in project commencement and an additional three years provide a reasonable timeframe for the Proponent to rework their business model.

7.1 Other Issues

The Department's assessment of other issues is provided in **Table 1**.

Table 1: Assessment of Other Issues

Issue	Assessment
Threatened Species	<ul style="list-style-type: none"> • The OEH raised no objection to the modification request, however noted the addition of new species listed under the TSP Act. • The RTS acknowledged the changes to the TSP Act and noted that the obligations and commitments under the conditions of consent (MP 06_0020) require due diligence of its ongoing operation. • The Proponent committed to the inclusion of due diligence requirements while preparing the environmental management plans. • The Department's assessment concludes that both the existing conditions of approval and the Proponent's RTS adequately address concerns regarding threatened species. Further, the modification request does not increase the footprint of the project.
Aboriginal Heritage	<ul style="list-style-type: none"> • The OEH advised the introduction of a 'strict liability' offence under the NPW Act, which relates to the harm of Aboriginal objects. As such, the OEH recommended an updated Aboriginal cultural heritage assessment and the inclusion of an unexpected finds protocol in the conditions. • The RTS noted engagement was undertaken with the Darlington Point and Griffith Local Aboriginal communities as part of the original project application. The Proponent remains committed to the recommendations and outcomes of this engagement and believes this satisfies the <i>Due Diligence Code of Practice for the Protection of Aboriginal Objects in New South Wales</i> (ECCW 2010). • The RTS noted and accepted an unexpected finds protocol. • The Department invited the OEH to provide input on the RTS, however no submission was received. • The Department has included an unexpected finds protocol in the recommended modifying conditions. The Department's assessment concludes that the existing conditions (MP 06_0020) and the recommended conditions adequately address Aboriginal cultural heritage concerns.
Road Upgrades	<ul style="list-style-type: none"> • RMS raised no objection to the modification request subject to the completion of road and intersection works, at the full cost of the Proponent. RMS also noted that engineering road standards have been updated. • The RTS noted and accepted the comments from RMS. • The Department's assessment concludes that the existing conditions (MP 06_0020) requires road and intersection works. However, given that engineering road standards have been updated since project approval in 2007, the Department has modified the conditions to update the engineering road standards references.

8. CONCLUSION

The Department has assessed the proposed modification and is satisfied with the justification for the delay in the commencement of the project and the need for an additional three years before the approval lapses. The extension will provide an opportunity for the project's benefits to be realised, including significant capital investment and jobs in a regional community and the promotion of the renewable fuel industry in NSW. As such, the Department's assessment concludes the extension of the approval lapse date to 1 October 2019 should be approved.

9. RECOMMENDATION

It is RECOMMENDED the Director, Industry Assessments:

- **consider** the findings and recommendations of this report;
- **approve** the proposed modification under section 75W of the EP&A Act; and
- **sign** the attached instrument of modification (refer **Appendix A**).

Bianca Thornton
Planning Officer
Industry Assessments

Endorsed by:

Approved by:



Joanna Bakopanos
Team Leader
Industry Assessments



Chris Ritchie
Director
Industry Assessments

APPENDIX A – INSTRUMENT OF MODIFICATION

The instrument of modification can be viewed on the Department's website at the link below:

http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=7997

Modification of Minister's Approval

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

As delegate for the Minister for Planning, under the Instrument of Delegation executed on 16 February 2015, I approve the modification of the project approval referred to in Schedule 1, subject to the conditions outlined in Schedule 2.



Chris Ritchie
Director
Industry Assessments

Sydney 7 MARCH 2017

SCHEDULE 1

Project approval (MP 06_0020), granted by the former Minister for Planning on 21 December 2007 for the Four Arrows Ethanol and Dairy Project on Kidman Way in the Murrumbidgee local government area.

SCHEDULE 2

This approval is modified as follows:

In the Definitions

1. replacing the definition of 'Proponent' with Eagle Energy Pty Ltd.
2. inserting the following definition in alphabetical order:

MOD 2 Modification request MP 06_0020 MOD 2, submitted on 30 September 2016, with supporting documentation titled *Eagle Energy Input into Modification of Part 3A Approval Four Arrows Ethanol and Dairy Project*, prepared by Booth Associates and as amended on 7 December 2016, with supporting documentation titled *Re: Request for extension of and modification of Part 3A Approval for Coleambally Dairy*, prepared by Booth Associates.

In Schedule 2

3. replacing Condition 2(c) with the following:
(c) MOD 2.
4. replacing Condition 3 with the following:
 3. If there is any inconsistency between the plans and documentation listed under Condition 2 above, the most recent document shall prevail to the extent of the inconsistency. However, conditions of this approval prevail to the extent of any inconsistency.
5. inserting new Condition 8A after Condition 8 as follows:
8A This approval shall lapse on 1 October 2019 unless works associated with the project have physically commenced on or before that date.

In Schedule 3

6. replacing all references to "RTA's Road Design Guide" in Condition 27 with "Austroads Guide to Road Design, as amended".

7. replacing the words "Auxillary Left Turn" in Condition 27 with the words "Channelised Right Turn – short (CHR(s))".
8. inserting new Condition 41 and heading after Condition 40 as follows:

Unexpected Finds Protocol

41. If any Aboriginal object is discovered and/or harmed in, or under the land, while undertaking the proposed development activities, the Proponent must:
 - (a) not further harm the object;
 - (b) immediately cease all work at the particular location;
 - (c) secure the area so as to avoid further harm to the object;
 - (d) notify the Office of Environment and Heritage (OEH) as soon as practical, providing any details of the object and its location; and
 - (e) not recommence any work at the particular location unless authorised in writing by OEH.

In the event that skeletal remains are unexpectedly encountered during the activity, work must stop immediately, the area secured to prevent unauthorised access and NSW Police and OEH contacted.

In the Appendices

9. replacing Appendix 1 with new Appendix 1, as follows:

**APPENDIX 1
SCHEDULE OF LAND**

Lot	DP	Owner
1, 2	519450	AgCAP Pty Ltd
83, 84, 85, 89, 90, 91, 92, 110, 111, 112, 113, 116, 117, 156, 157	750885	AgCAP Pty Ltd
78	750896	Margaret Sheppard
79 and 80	750896	Eagle Energy
112	750896	Adrian Hays
31, 32, 33, 34, 35, 36, 37, 39, 71, 72, 73, 74	750898	AgCAP Pty Ltd
1, 2	1177368	AgCAP Pty Ltd
1, 2, 3, 4	1185251	AgCAP Pty Ltd

APPENDIX B – MODIFICATION REQUEST

The modification request can be viewed on the Department's website at the link below:

http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=7997

APPENDIX C – SUBMISSIONS

The submissions can be viewed on the Department's website at the link below:

http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=7997

APPENDIX D – RESPONSE TO SUBMISSIONS

The Response to Submissions and letter describing the revised scope of the modification can be viewed on the Department's website at the link below:

http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=7997