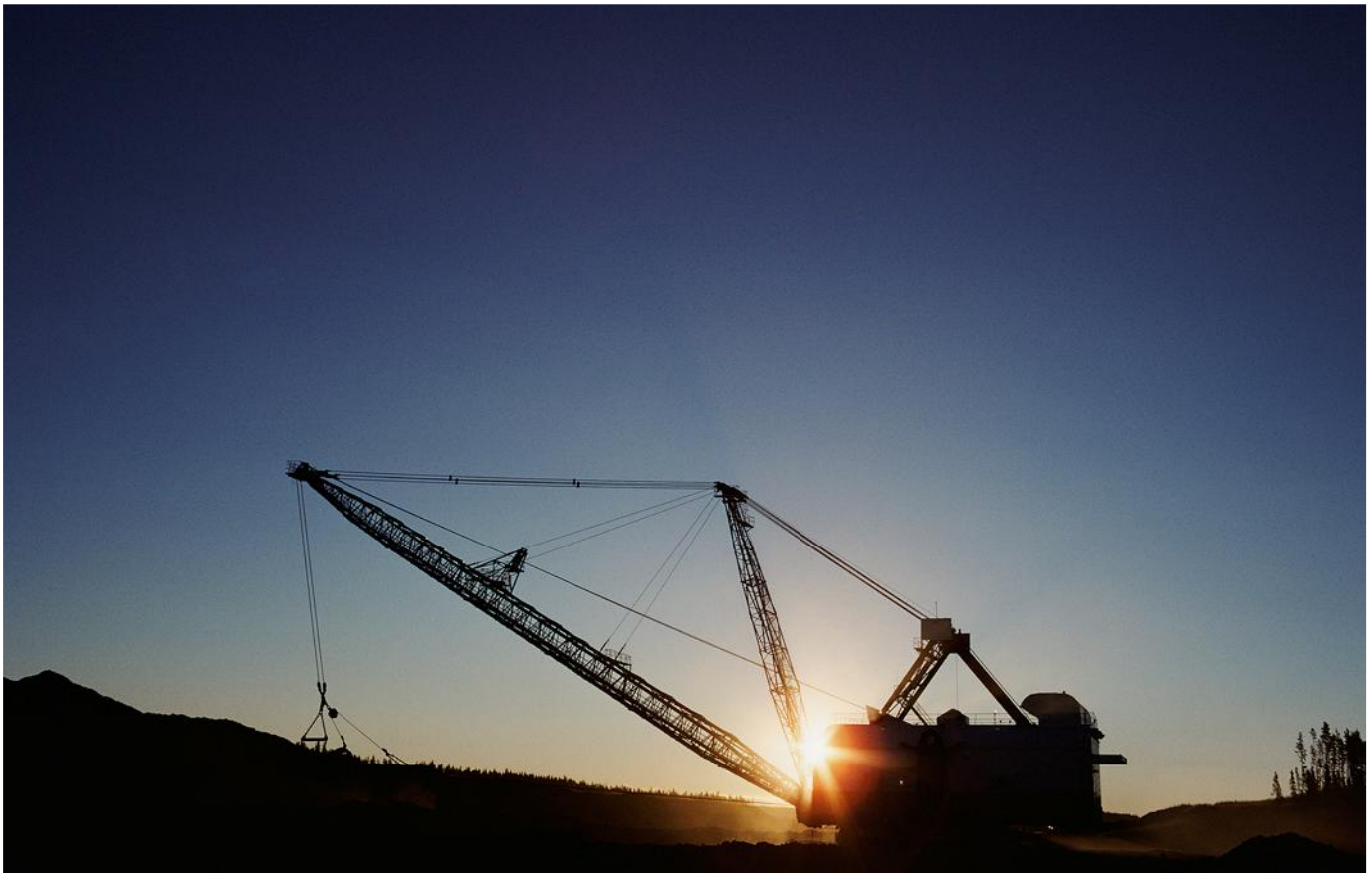


Idemitsu Australia Resources

**Boggabri Coal Mine - Project Approval Modification
Environmental Assessment (MOD 4)
Response to Submissions Report**

3 March 2015






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Abbreviations

AEMR	Annual Environmental Management Report
ASCF	Aboriginal Stakeholder Consultative Forum
BCPL	Boggabri Coal Pty Limited
BMP	Biodiversity Management Plan
Boggabri EA Offset Strategy	Biodiversity Offset Strategy (BOS) for the Boggabri Coal Project
BOS	Biodiversity Offset Strategy
CCC	Community Consultative Committee
CHMP	Cultural Heritage Management Plan
DoE	Department of the Environment
DP&E	Department of Planning and Environment
DRE	Division of Resources and Energy
EA	Environmental Assessment
EEC	Endangered Ecological Community
EPA	Environment Protection Authority
EP&A Act	<i>Environmental Planning and Assessment Act 1979</i>
EPBC Act	<i>Environment Protection and Biodiversity Conservation Act 1999</i>
EPL	Environment Protection Licence
GMP	Groundwater Management Plan
GTC	Gomeroi Traditional Custodians
ha	Hectares
IBRA	Interim Biogeographic Regionalisation for Australia
Idemitsu	Idemitsu Australia Resources Pty Ltd
MIA	Mine Infrastructure Area
MOD	Modification
MOP	Mining Operations Plan
Namoi CMA	Namoi Catchment Management Authority
NWLLS	North West Local Land Services
OEH	Office of Environment and Heritage
PA	Project Approval (PA 09_0182)
RAPs	Registered Aboriginal Parties
SD	Sediment Dam
WMP	Water Management Plan

1. Introduction and background

1.1 Purpose

This submissions report relates to public submissions received during the public display of 'Boggabri Coal Mine – Project Approval Modification Environmental Assessment (MOD 4), 16 December 2014' (the EA).

The EA was prepared to support an application under Section 75W of the *Environmental Planning and Assessment Act 1979* (EP&A Act) to modify Project Approval PA09_0182 to include for additional activities and ancillary infrastructure that is required as part of ongoing operations at the Boggabri Coal Mine (the proposal). This response to submissions report should be read in conjunction with the EA.

The EA was placed on public display and submissions relating to the proposal and the EA were received by the Department of Planning and Environment (DP&E) and provided to Idemitsu Australia Resources Pty Limited (Idemitsu) (the proponent). Idemitsu engaged Parsons Brinckerhoff to assist with preparing this report, which summarises the issues raised in received submissions (Section 2) and provides responses to each of these issues (Section 3).

1.2 The proposal

As part of the ongoing development of the Boggabri Coal Project, Boggabri Coal Pty Ltd (BCPL) has identified the need for amendments to the conceptual project design approved under PA 09_0182 to provide for the following activities:

- Amendment of the project boundary to include infrastructure built under other approvals or by other proponents – this will allow for existing infrastructure used by BCPL to be included in the project area and managed as part of the overall operation.
- Modifications within the existing mine infrastructure area (MIA) (including extension of stockpile and laydown areas, minor amendment of haul road alignment and increasing sediment dam capacities).
- Other additions required to augment the project – including: construction of a boundary fence, use of additional portable fuel storage containers, creation of an equipment recycling yard and modification of water management structures.

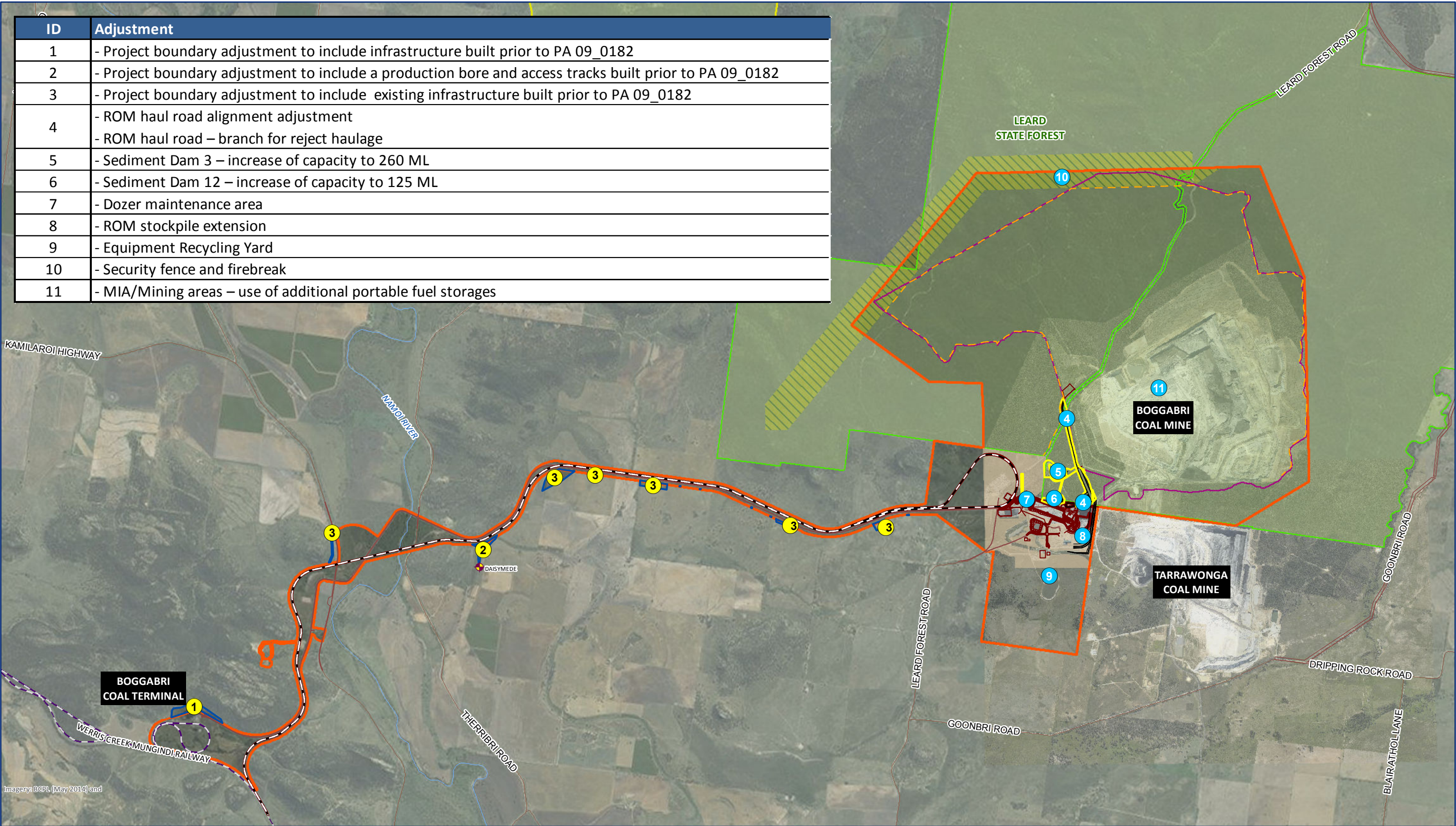
Individual components of the modification are summarised in Table 3.1 of the EA. Figure 1.1 provides an overview of where each component of the modification is located within Boggabri Coal Mine.

1.3 EA display

Parsons Brinckerhoff prepared the EA to assess the environmental impacts of the proposal. The EA was publically displayed between 12 January 2015 and 9 February 2015. The EA was placed on the Department of Planning and Environment (DP&E) website and made available for download.

\\APNTLFP501\proj\1\demitsu_Aus_Resources\2200545A_BOGGABRI_MODIFICATION_EIS\10_GIS\Projects_Drawings_Figures_Sketches\2200545A_GIS_F001_A4.mxd Author: MitchellEm 2/03/2015

ID	Adjustment
1	- Project boundary adjustment to include infrastructure built prior to PA 09_0182
2	- Project boundary adjustment to include a production bore and access tracks built prior to PA 09_0182
3	- Project boundary adjustment to include existing infrastructure built prior to PA 09_0182
4	- ROM haul road alignment adjustment - ROM haul road – branch for reject haulage
5	- Sediment Dam 3 – increase of capacity to 260 ML
6	- Sediment Dam 12 – increase of capacity to 125 ML
7	- Dozer maintenance area
8	- ROM stockpile extension
9	- Equipment Recycling Yard
10	- Security fence and firebreak
11	- MIA/Mining areas – use of additional portable fuel storages



- 1

Project boundary adjustment, ground disturbance not required
- 2

Project boundary adjustment not required ground disturbance required
- Existing bore
- Proposed security fence
- Proposed mine infrastructure
- Existing mine infrastructure
- Existing/operational rail
- Proposed rail
- Proposed new project area
- Modification within existing project area
- EPBC Approval boundary
- Boggabri Project Approval Area
- Mine infrastructure area
- Biodiversity offset corridor
- Leard State Forest
- Leard State Conservation Area

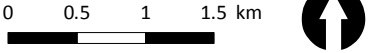


Figure 1.1
Summary of proposed modifications

2. Overview of submissions

2.1 Submissions received

Idemitsu received seven submissions during public display of the EA. Table 2.1 lists the respondents and allocates each with a submission number. The table also indicates where the issues from each submission have been addressed in Section 3 of this report.

Table 2.1 Respondents

Respondent	Submission no.	Section of this report where the issue is addressed
NSW Division of Resources and Energy (DRE)	1	3.1.1
North West Local Land Services (NWLLS)	2	3.1.2
Environment Protection Authority (EPA)	3	3.1.3
Australian Department of the Environment (DoE)	4	3.1.4
NSW Office of Environment and Heritage (OEH)	5	3.1.5
Gomerai Traditional Custodians Elders and Community	6	3.2.1
NTSCORP Limited	7	3.2.2

2.2 Summary of issues raised

A total of seven submissions were received in response to the display of the EA from four state and one federal government agencies, one private company and one Aboriginal community group.

Six submissions provided comments or did not offer a position at all on the proposal. One submission specifically objected to the proposal. No submissions specifically provided support for the proposal.

The main issues raised in submissions included:

- management of cultural heritage issues
- consultation process
- biodiversity, vegetation clearing and offsets
- security
- planning, licencing and approvals.

3. Response to submissions

3.1 Government agencies

3.1.1 DRE – 30 January 2015 (submission number 1)

Summary of submission

- No objections to the proposed modification.
- Should the proposed modification be approved, DRE requires the proponent to submit a Mining Operations Plan (MOP) consistent with the modified Project Approval and should include:
 - area of proposed additional ground disturbance
 - proposed activities relating to rehabilitation and mine closure.

Response

BCPL operates under a MOP that was approved by DRE in January 2014. If the proposal is approved, BCPL would amend the MOP to include the proposal in accordance with the relevant MOP guideline and submit this to DRE for approval. It is noted that the current MOP guidelines prepared by DRE (ESG3, September 2013) require delineation of ground disturbance and proposed activities relating to mine closure and rehabilitation.

3.1.2 NWLLS – 14 January 2015 (submission number 2)

Issue summary

- The NWLLS has reviewed the proposed modification and has no comment.

Response

Noted.

3.1.3 EPA – 28 January 2015 (submission number 3)

Issue summary

- Impacts associated with the modification can be managed in accordance with existing consent conditions and mitigation measures.
- If the proposed modification is approved, the proponent may need to submit an application to vary its Environment Protection Licence (EPL).

Response

The EPL for Boggabri Coal Mine (No. 12407) permits the following activities that are listed under Schedule 1 of the *Protection of the Environment Operations Act 1997*: 'Coal Works', 'Crushing, Grinding or Separating' and 'Mining for Coal' at the mine site. The EPL permits discharge of waters from four sites associated with the mine, providing certain water quality parameters are met.

BCPL has reviewed the EPL for Boggabri Coal Mine against the activities proposed in the modification and believes that the EPL does not need to be modified, as the proposed modification is not expected to:

- result to any change to scheduled activities associated with the mine
- require any changes to the discharge arrangements associated with the site
- result in any changes to noise, air, surface or groundwater quality impacts associated with the mine.

3.1.4 DoE – 25 February 2015 (submission number 4)

Issue summary

- DoE advised DP&E that it does not intend to provide a formal submission.

Response

Noted.

3.1.5 OEH – 27 January 2015 (submission number 5)

Issue summary

- BCPL to ensure alternative offset includes equivalent vegetation types to those excised, particularly for the small area of EEC involved.
- DP&E to ensure that the current revision of the Biodiversity Offset Strategy incorporates the additional required offsets as detailed in Table 6.3 of the EA.
- DP&E to ensure that the mitigation activities proposed in S6.2.2 of the EA are implemented.
- DP&E to ensure that pre-clearing surveys for *Tylophera linearis* are undertaken as part of the BMP for the Boggabri Coal Project.
- BCPL to investigate propagation and translocation procedures for *Tylophera linearis* along the lines of, or in cooperation with, Maules Creek Coal Project.
- OEH has no comments regarding the proposed construction fence (1.2 m stock fence with three strands of barbed wire). However, OEH may have concerns if a more substantial fence was proposed which would prove a barrier to dispersal to terrestrial species.

Response

As described in Section 6.1.3.2 of the EA, BCPL is currently refining its Biodiversity Offset Strategy (BOS) to meet the requirements in Condition 43 of the current project approval for Boggabri Coal Mine (PA 09_0182).

The BOS will be modified to include offsets for the impacts of the proposed modification, if it is approved. Offsets will be provided for the proposed modification in accordance with the quantum (ratio) and principles of the existing BOS. The BOS will be amended to ensure the lands previously identified within the Namoi River Offset Area and subsequently excised for the proposed new project area will be replaced by an alternative offset. It is considered that the quantum of this transfer will comprise up to 4.5 ha of 'like-for-like' native vegetation and threatened species habitat.

The BOS is currently undergoing an independent verification process and will be subject to further revisions following the implementation of a regional offset strategy being developed for the Boggabri/Tarrawonga/Maules Creek mine complex and the identification of an additional 1,103 ha of residual offset requirements required under PA 09_0182.

Table 6.3 of the EA identifies the vegetation communities that would be impacted and require offsets for the proposed modification. As identified in this table, a total of 127.1 ha of native vegetation offsets would be required for the proposed modification. BCPL is seeking to offset impacted vegetation communities with 'like-

for-like' offsets wherever possible. BCPL would establish offsets for the proposed modification that will be targeted to contain the specific species, habitat and vegetation impacted by the overall mine. The proposed offset sites currently being investigated by BCPL generally contain vegetation types of similar or greater conservation value, are located in the same Interim Biogeographic Regionalisation for Australia (IBRA) subregion and contain similar habitat values for threatened species and threatened ecological communities as those being impacted.

BCPL would consult with the Maules Creek Coal Project regarding propagation and translocation procedures for *Tylophora linearis* should the proposed modification be approved. Procedures for translocating and/or using impacted individuals of this species for propagation will be developed through this process and incorporated into the Boggabri Coal Mine Biodiversity Management Plan. If pre-clearance surveys identify potential impacts to individuals of this species, the translocation/propagation procedures would be followed.

3.2 Community submissions

3.2.1 Gomeroi Traditional Custodians Elders and Community – 1 December 2014 (submission number 6)

The submission from the Gomeroi Traditional Custodians Elders and Community was made prior to the public exhibition period based on information provided through the Boggabri Coal Project Aboriginal Stakeholder Consultative Forum (ASCF). This information included development activities that were under consideration, but were not included in the proposed modification. This submission therefore related to some activities outside the scope of the proposed modification.

The issues raised in the submission and responses to these are detailed in Table 3.1.

Table 3.1 Gomeroi Traditional Custodians Elders and Community submission summary

Category	Issue	Response
Approval	Opposed to approval of modification areas- water bores and for areas recently determined to have been in breach of approvals with intraburden stockpiling without adequate Aboriginal cultural heritage and environmental assessments in place.	<ul style="list-style-type: none"> ■ This issue is outside the scope of the proposed modification. ■ A cultural heritage assessment was undertaken for all activities associated with the proposed modification and is included as Appendix C to the EA.
Overall project scope creep	<p>Project boundary creep appears to be progressively being approved without having sufficient base line data and understanding of cumulative impacts relating to:</p> <ul style="list-style-type: none"> ■ Existing environmental impacts. ■ Current ground water and subsurface water table impacts. ■ Threats to river gum and other highly valued fauna identified as culturally and environmentally important to Gomeroi people. ■ There is also concern that the Aboriginal consultative committee for the Naomi catchment authority have been inadequately (if not failed) to be consulted. ■ The adequacy of consultation with the community consultative committee to reference them as being consulted is questioned in terms of adequacy and reference for validity. 	<ul style="list-style-type: none"> ■ This issue is outside the scope of the proposed modification. ■ The Boggabri Coal Project EA assessed local and regional impacts to a range of factors, including groundwater and surface water, biodiversity and Aboriginal heritage. ■ Regional biodiversity, surface and groundwater, and Aboriginal heritage issues are being assessed and will be managed through the Leard State Forest Regional Biodiversity Strategy and Cultural Heritage, Water and Groundwater Strategies for the BTM Complex. ■ Aboriginal stakeholders were given the opportunity to identify areas/sites of cultural significance and any concerns regarding the consultation process through Aboriginal heritage impact assessments undertaken for EA and subsequent modification applications, including the proposed modifications. These assessments cover all approved and proposed impacted areas. ■ The Aboriginal consultative committee for Namoi Catchment Management Authority (CMA) (now North West Local Land Services) is outside the control of BCPL.
Interburden stockpiling	The development and operation of the Boggabri open cut coal mine and associated infrastructure has not been undertaken in accordance with the development consent and has offended the legislative objective of the statutory provision concerned (s 76A(1)) and also thwarted the attainment of the objects of the Act.	<ul style="list-style-type: none"> ■ This issue is outside the scope of the proposed modification as it relates to the overall Boggabri Coal Mine and actions previously undertaken in developing the mine.

Category	Issue	Response
Interburden stockpiling	<p>There was no assessment for stockpiling of interburden for the project.</p> <p>A regulatory breach of interburden stockpiling has occurred as this material was emplaced before an application for approval had been made, and approval was granted. Consideration of Aboriginal cultural practices was not given before emplacement of the stockpile and cultural heritage impacts have occurred.</p> <p>Approval should have been sought for interburden stockpiling prior to emplacement and this would have given the approval authority and Aboriginal stakeholders the opportunity to review alternative areas and place conditions on the activity to ensure impacts were minimised.</p> <p>Impacts associated with interburden stockpiling have affected more areas than were previously recorded. The cost and loss of landscape and cultural heritage values are completely hidden/unrealised and therefore understated.</p> <p>The area affected by interburden stockpiling needs to be rehabilitated and the intraburden removed and landscape returned to its cultural and environmental state.</p> <p>Steps should be undertaken to relocate the intraburden stockpile in accordance with appropriate assessments and environmental cultural considerations.</p> <p>The intraburden stockpile will have further impacts on the cultural landscape values for the Gomeroi people therefore it should be removed and the area culturally mapped and protected.</p> <p>The modification should not be approved for areas of apparent and proven breaches.</p>	<ul style="list-style-type: none"> ■ This issue is outside the scope of the proposed modification. ■ Interburden associated with Boggabri Coal Mine is handled and stored in approved mining areas, such as overburden emplacement areas, or within the pit. ■ The proposed modification does not include any changes to the site's handling of interburden.
Objection	Boggabri Coal should not be awarded project approval.	<ul style="list-style-type: none"> ■ Approval of the modification would be determined by the DP&E and any issues or concerns regarding this process should be directed to the Department.

Category	Issue	Response
Water use and demonstrated longitudinal study of impacts	<p>Previous versions of the GMP (assumed to be Groundwater Management Plan) were not prepared in consultation with the Aboriginal committee for the Namoi CMA and the Community Consultative Committee (CCC) (there is a vacant seat at the table and no Aboriginal representative is currently participating).</p> <p>It is unclear what the intended extraction of water will be as a result of an approved modification therefore an understanding of erosion (a threat to Aboriginal culture and heritage) the risk of adverse impacts to redgums and traditional bush foods and resources as a result of changes to the water table is poorly understood.</p> <p>Boggabri Coal has failed to engage with traditional peoples about the use and impact of water and the cumulative impact concerns held about its future and sustainability.</p>	<ul style="list-style-type: none"> ■ This issue is outside the scope of the proposed modification. ■ BCPL is not proposing to extract water as part of the proposed modification. ■ Schedule 2, Clause 38 of PA 09_0182 requires BCPL to prepare and implement a Water Management Plan (WMP) in consultation with the OEH and the North West Local Land Services (previously Namoi CMA) (and others). Appendix A of the WMP, which includes the site's GMP, includes details of consultation with North West Local Land Services. ■ Issues associated with the functioning or staffing of the North West Local Land Services are outside the control of BCPL. ■ It is noted that the Aboriginal representatives on the CCC chose to discontinue their participation in the CCC due to the distance between their residence and the location of CCC meetings. BCPL has consulted with the Gomeroi Traditional Custodians and individuals from Red Chief Local Aboriginal Land Council and advised of its intention to recruit new Aboriginal representatives for the CCC. Recruitment of new CCC representatives will be undertaken in accordance with the CCC guidelines. ■ BCPL has not consulted with Aboriginal stakeholders regarding water extraction and use as this is not part of the proposed modification.
Aquifer interference policy	<p>According to the Aquifer Interference Policy, monitoring bores required under the <i>Protection of the Environment Operations Act 1979</i>, identified as an aquifer interfering activity in the WMA 2000 and identified in the relevant development consent, are not required to be licensed or issued an approval. It is stated that these works are considered to be low risk and have minimal impact on water-dependent assets.</p> <p>The GTC requested but was not provided –despite requests for this information- details relating to risk management and minimal impact assessment processes for the modification of the project to include more aquifers/bores.</p> <p>Strategic agricultural lands may become affected and it is noted that these important agricultural lands are also important to the community in terms of Aboriginal cultural heritage. Water is very important to Gomeroi people both spiritually and culturally</p> <p>The approval of the project without evidence required to accurately record data record data as it becomes available on natural variations in the groundwater system and on how the system responds to anthropogenic influences, including mining operations and extractions from irrigators (to be</p>	<ul style="list-style-type: none"> ■ This issue is outside the scope of the proposed modification. ■ BCPL is not proposing to extract water or interfere with groundwater as part of the proposed modification. ■ Strategic agricultural land considerations do not apply to existing mining operations.

Category	Issue	Response
	<p>recorded as part of the hydrocensus) is not in keeping with Environmentally sustainable development principles.</p> <p>The proposed aquifer development does not inform or provide evidence to inform the decisions for approval of modification we strongly assert that the Department should not approve any modification without an independent assessment of likely impacts.</p>	
Cultural heritage values	<p>The cultural values of this project are not adequately captured. There is a risk although this may be deemed to be moderate that megafauna may be found in the old soil profiles where there is proposal for bore drilling.</p> <p>We categorically state that all test drilling should be preceded by cultural archaeological test pitting as the bore drilling will not allow for protection nor appropriate cautionary principles to be put into place prior to any drilling.</p> <p>The ACHMP needs to be amended to reflect a methodology for potential megafauna locations.</p>	<ul style="list-style-type: none"> ■ An assessment of the cultural significance of the Aboriginal heritage sites that are predicted to be impacted by the proposed modification was not possible, as no responses were received from the RAPs regarding this issue. The Aboriginal community are the determinants of cultural significance. ■ Information regarding the proposed modification and impacts to these sites was provided to the RAPs through the following means: <ul style="list-style-type: none"> ▶ 16 October 2014 – open meeting with all RAPs invited (ASCF meeting). ▶ 23 October 2014 – additional information, meeting minutes and a request for information regarding cultural values that may be relevant to the proposed modification were mailed to all RAPs, RAPs advised that comments needed to be received by 28 November 2014 to be included in the assessment. ▶ 17 November 2014 – meeting with Gomeroi Traditional Custodians. ▶ 18 November 2014 – open meeting and site inspection with all RAPs invited (ASCF meeting). ▶ 28 November 2014 – field visit with Gomeroi Traditional Custodians. ■ At the time of finalisation of the Cultural Heritage Assessment, no comments relating to cultural significance had been received. ■ The submission from the Gomeroi Traditional Custodians does not identify any areas or matters of cultural significance, or cultural heritage considerations associated with the proposed modification. ■ Potential impacts to megafauna were considered for the proposed modification and are discussed in Section 6.2.1 of the EA and 5.1 of the Cultural Heritage Assessment. It was determined that the proposed modification was unlikely to result in impacts to any known or undiscovered megafauna remains.

Category	Issue	Response
Biodiversity impacts	<p>The clearance or additional vegetation could not be adequately explained by Boggabri Coal to the Elders and community to make any informed comment.</p> <p>Culturally important vegetation and fauna is not considered and planned for neither in the process or clearances nor in the process of revegetation.</p> <p>Impacts to environment and to animals and other artefacts of cultural importance were not adequately discussed and information relating to specific impacts to flora and fauna was not forthcoming despite requests for this information.</p> <p>GTC are unable to make more informed comment relating to the widening of the road corridor. The project creep is increasing the impact footprint of the Gomeri ancestors.</p>	<ul style="list-style-type: none"> ■ A detailed biodiversity assessment of the proposed modification is provided in Appendix B of the EA, and summarised in Section 6.1 of that document. ■ BCPL is currently developing a strategy for identifying and managing culturally significant flora as part of pre-clearance ecology surveys and this will be appended to the CHMP. ■ The proposed modification does not include the widening of any public road corridor.
Aboriginal Stakeholder Consultation	<p>The initial approach by Insite Heritage appears to the community that attempts were made to attain community RAPS agreement “to the strategic methodology for modification” (wording of Insite Heritage) at a RAPS meeting the day after the Elders meeting which clearly discussed concerns.</p> <p>Signatures were attained from some of the Elders and community who stated that they felt duped and confused about the meaning of the documentation. Formal requests were made in writing followed by phone calls to Insite Heritage to request that these signatures be removed as there were concerns that these signatures were provided without “informed consent” and that the signatures were sought despite the lengthy discussions held with Boggabri Coal and Insite Heritage.</p> <p>This request for removal of names was overturned by decisions by Insite Heritage to instead put the “signatures on hold until after a site visit” held on Friday 28 November 2014. This is not the position of the parties. We are seeking that the details described in this document and the minutes of the meeting held with elders on Monday 24 November 2014 be included in the modification application public comment reports to be tabled to the regulator for consideration and that these are the only record our concerns not a document signed under confusion and misinformation to make an informed comment.</p> <p>The Gomeri people are highly critical of the language used in obtaining the agreement signatures and highly recommend that the department ensure that the company is counselled about using PLAIN ENGLISH wording in any and all communications with the Aboriginal community to reduce risks for uninformed consent.</p> <p>The Elders and GTC request that the Department of Water and DPI consider attending any future information discussions in order that concerns raised are</p>	<ul style="list-style-type: none"> ■ Issues raised in this letter relating to specific activities undertaken during the consultation process for the Cultural Heritage Assessment for the EA should have been raised as part of that process. It is not possible to act on these issues at this stage of the proposed modification. ■ The form seeking signatures simply stated “Review of the 75W Mod 2014” It then had a ‘name, representing and comments’ column. Stakeholders were encouraged to consider that, should the proposed modification be approved, the area involved would be included in the CHMP and the management strategies within the CHMP would be applied. At the time, comments were also being sought on the effectiveness of the salvage methodology, on a similar form. ■ Subsequently, because of phone calls from three RAPs stating confusion with the form – the form was withdrawn from the modification application and has never been submitted as a supporting document to the EA.

Category	Issue	Response
	<p>understood and that the appropriateness of the consultation is monitored and complied with.</p> <p>The one aspect which was helpful in the process to inform this report was the Elders meeting convened at the Red Chief LALC and the site visit requested by the Elders and arranged by Boggabri Coal. For this we thank Boggabri Coal as these opportunities provided a more informed approach to providing feedback relating to the proposed production bore modification of the project.</p> <p>The GTC seek to have greater influence in the management of their culture and heritage and the biodiversity and water they hold so important to their custodial rights and obligations.</p> <p>Intergenerational equity and sustainable development principles must be applied in the consideration of this proposed production bore modification.</p>	
Water management	<p>The Department of water and DPI should provide clarification if the relocation of a pipe to be laid side by side to one of the approved pipeline facilities which results in twice as much water being drawn from a singular site meets the considerations of adverse impact to the Namoi River and to the fish habitat areas.</p> <p>Water is being extracted from the Gomeroi people's sacred river and the proposed additions of bores will cumulatively place at risk communities and the survival of their totemic fish and redgums and cultural trees.</p> <p>The Gomeroi people have asked for management information relating to these concerns and are awaiting responses.</p>	<ul style="list-style-type: none"> ■ The proposed modification does not include any water pipes or extraction from surface water.

3.2.2 NTSCORP – 6 February 2015 (submission number 7)

Issue summary

- NTSCORP has concerns that the Aboriginal stakeholder consultation process undertaken for the Cultural Heritage Assessment for the EA did not follow the requirements of OEH's *Aboriginal Cultural Heritage Consultation Requirements for Proponents 2010* (the Consultation Guidelines). The consultation process for the modification appears to have been treated like an ongoing process associated with the original Cultural Heritage Assessment undertaken for the Boggabri Coal Project EA in 2010.
- NTSCORP did not receive any records of notification of the consultation process for the modification, as is required under Section 4.1.2 of the Consultation Guidelines.
- The EA and Cultural Heritage Assessment, and information provided to RAPs inconsistently refer to whether impacts will actually occur to the two Aboriginal heritage sites identified within the project area. These impacts should be clarified and if it has been determined that insufficient information was provided to stakeholders regarding the impacts of the modification, then the consultation process should be considered to have not been appropriate.
- The Cultural Heritage Management Plan referred to in the EA is not publicly available, therefore NTSCORP and other stakeholders cannot assess if the proposed salvage and management processes are sufficient.
- There is no detail in the EA on compliance with the *Native Title Act 1994*, in particular whether the proposed modification constitutes a 'future act' under this act.

Response

Consultation

Consultation with Aboriginal stakeholders was treated as an ongoing process associated with the original assessment for the Boggabri Coal Project as this conforms with the Consultation Guidelines. As continuous consultation has occurred with Aboriginal stakeholders who have registered interest in the Boggabri Coal Project (and are therefore known as Registered Aboriginal Parties (RAPs)), the requirements for recommencement of the consultation process under the Consultation Guidelines were not triggered for the proposed modification.

RAPs associated with Boggabri Coal Mine were identified during the EA for the Boggabri Coal Project in 2010 and as part of subsequent assessments for modifications and development of the site's Cultural Heritage Management Plan (CHMP).

BCPL communicates with these RAPs on an ongoing basis through an Aboriginal Stakeholder Consultative Forum (ASCF). The ASCF is open to all RAPs and Aboriginal stakeholders who have been previously associated with Boggabri Coal Mine. The ASCF provides a platform for information exchange between BCPL and Aboriginal stakeholders and has been confirmed by the RAPs as a preferred method of disseminating information to the Aboriginal community. The ASCF generally meets quarterly, although meetings with the ASCF were held during October 2014 and November 2014 to discuss the proposed modification.

It is noted that NTSCORP is not a RAP for the Boggabri Coal Project and therefore was not included in consultation undertaken with the ASCF and RAPs. BCPL will consult with NTSCORP regarding this issue, if NTSCORP wish to be included as part of the ASCF.

Significance assessment

An assessment of the cultural significance of the Aboriginal heritage sites that are predicted to be impacted by the proposed modification was not possible, as no responses were received from the RAPs regarding this issue. The Aboriginal community are the determinants of cultural significance.

Information regarding the proposed modification and impacts to these sites was provided to the RAPs through the following means:

- 16 October 2014 – open meeting with all RAPs invited (ASCF meeting).
- 23 October 2014 – additional information, meeting minutes and a request for information regarding cultural values that may be relevant to the proposed modification were mailed to all RAPs, RAPs advised that comments needed to be received by 28 November 2014 to be included in the assessment.
- 17 November 2014 – meeting with Gomeroi Traditional Custodians.
- 18 November 2014 – open meeting and site inspection with all RAPs invited (ASCF meeting)
- 28 November 2014 – field visit with Gomeroi Traditional Custodians.

At the time of finalisation of the Cultural Heritage Assessment, no comments relating to cultural significance had been received.

A submission from Gomeroi Traditional Custodians was received following finalisation of this study as detailed in Section 3.2.1 above.

Inconsistency regarding impacts to Aboriginal heritage sites

BCPL confirms that the following impacts to Aboriginal heritage sites are predicted to occur as a result of the proposed modification:

- BC52 – this Aboriginal modified tree is located in the expected footprint of Sediment Dam 12 (SD12). This tree has been previously identified in the site's approved Cultural Heritage Management Plan (CHMP) as a site that can be salvaged if impacts cannot be avoided.
- BC42 – The extension of SD 12 will impact on an area that is predicted to be likely to contain subsurface materials from the site BC42. The partial excavation of BC42 as part of previous construction activities associated with SD 12 resulted in 52 artefacts being retrieved and it is considered likely that further sites will be located in the proposed expanded footprint of the dam. BC42 is nominated in the CHMP as a site that can be salvaged if impacts cannot be avoided.

Public accessibility of the CHMP

The CHMP is publicly available at the following link and to BCPL's knowledge, this link was operational prior to, during and following preparation of the Cultural Heritage Assessment for the proposed modification.

https://www.idemitsu.com.au/uploads/files/bcenviro/EMPS/Boggabri_CHMP_19.12.13_complete.pdf

It is noted that the link referred to by NTSCORP as evidence that the CHMP is not publicly available (<https://www.idemitsu.com.au/content/cms/Management+Plans/502/>) refers to management plans associated with Muswellbrook Coal Mine.

It is also noted that BCPL will provide a copy of the CHMP upon request.

Native Title Act

It is understood that Native Title has been extinguished over the lands associated with the proposed modification. Therefore the proposed modification is considered to comply with the *Native Title Act 1994*.