

# Notice of Modification

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

As delegate of the Minister for Planning, I/we modify the Project Approval referred to in Schedule 1, subject to the conditions in Schedule 2.

Commissioner  
**Member of the Commission**

Sydney

2017

### SCHEDULE 1

**Development Approval:** **MP 10\_0215** granted by the Planning Assessment Commission on 30 September 2015

**For the following:** Construction and operation of a coal export terminal with capacity of up to 70 million tonnes per annum (calculated for each calendar year), including:

- contamination management and remediation works;
- site preparation ground treatment including pre-loading for foundation with sand dredged from the Hunter River South Arm;
- rail and coal receipt infrastructure comprising of up to four arrival tracks; two dump stations and up to four departure sidings;
- up to four coal stockpile pads and associated machinery for stacking and reclaiming;
- wharf and berth infrastructure for up to two shiploaders and berthing for up to three ships;
- coal conveyors, feeders and transfer stations;
- associated infrastructure including roads, electricity supply, water supply, relocation of a high pressure gas pipeline to the north of the site, dust suppression, firefighting systems, fences, amenities, landscaping, car parks, water management infrastructure and temporary facilities;
- habitat restoration and creation works at Tomago biodiversity offset site; and
- biodiversity offset sites at Ellalong Lagoon, Brundee and Tomago.

**Proponent:** Port Waratah Coal Services

**Approval Authority:** Minister for Planning

**The Land:** Lot 63 DP 1184943, Lot 1 DP 590032, Lot 13 DP 1097330, Lot 1 DP 775771, Lot 1,2,3&8 DP 77577 4, Lot 1 DP 608317, Lot 23 DP 1155723; Lot 1 DP 775775, Lot 11 DP 841542, Lot 1 DP 869622, Lot 121 DP 874949, Lot 18 DP 1119752, Lot 1 DP 1097327, Lot 16 DP 262783, Lot 1001

DP 1178025, Lot 1, 9, 10&11 DP 1119752, Lot 7&8 DP 1119752 (part), Lot 29&33 DP 1184229.

Biodiversity Sites: Lot 1002 DP1127780 (Tomago Offset Site); Lot 1 DP 1168335 (Ellalong Lagoon); Lot 21 DP 1194601, Lot 2 DP 725979, Lot 4 DP 738643, Lot 1 DP 725982, Lot 2 DP 725980, Lot 1&2 DP 514111 (Brundee Offset Site).

**Modification:**

**MP 10\_0215 MOD 1:** the modification includes amendment to the timing requirements and triggers for enabling works, which are required to be completed prior to the commencement of project construction.

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## SCHEDULE 2

The above Project Approval is modified as follows:

1. In Schedule A: Definitions, delete the definition of construction, and insert the following definitions in alphabetical order:

Construction	<p>Includes all work in respect of the Project other than:</p> <ol style="list-style-type: none"><li>a) survey, acquisitions, building/ road dilapidation surveys;</li><li>b) investigative drilling, excavation, or salvage;</li><li>c) minor clearing or translocation of native vegetation;</li><li>d) establishing ancillary facilities/ construction work sites (in locations meeting the criteria identified in the Conditions of Approval);</li><li>e) installation of environmental impact mitigation measures, fencing, enabling works;</li><li>f) actions to be implemented in accordance with the Site Management Plan approved by the Secretary under condition A6;</li><li>g) other activities determined by the Environmental Representative to have minimal environmental impact (e.g. minor access roads, minor adjustments to services/ utilities, etc).</li></ol> <p>Note - work where heritage, threatened species, populations or endangered ecological communities would be affected by that work is classified as construction, unless otherwise approved by the Secretary in consultation with the Office of Environment and Heritage.</p>
Priority Action Statement	The Priority Action Statement required under condition A6

2. In Schedule B: Conditions of Approval, delete condition A6 and insert the following conditions:

- A6. The Proponent shall, prior to the commencement of construction and within two (2) years of the date of this approval, prepare and submit to the Secretary for approval, a Site Management Plan for the project site. The Site Management Plan shall :
  - (a) be prepared in consultation with OEH, the EPA, relevant councils, the Commonwealth Department of Environment, NSW Fisheries (DPI), the Hunter Development Corporation and the Local Land Services (Hunter);
  - (b) include actions to be implemented to minimise further degradation of environmental values of the site, with particular consideration given (but not limited) to:
    - (i) measures to contain and treat (where appropriate) contamination ahead of any decision to proceed to construction; and
    - (ii) biodiversity values of both the site and the Hunter Estuary Ramsar Site, in particular its ecological character description; and
    - (iii) amending the stockyard layout, for example to provide sufficient space to adequately capture and contain stormwater runoff from the site and to retain Deep Pond as a freshwater system; and
  - (c) include a Priority Action Statement which commits to the actions that are to be completed within five years (5) of the date of this approval.

The Site Management Plan must be implemented upon receipt of the Secretary's approval and be reviewed at least annually. The Plan is to remain in place until such time as the actions are completed on the site. Once approved by the Secretary, the Proponent shall ensure the Plan is made publicly available on a suitable website, and that the website is kept up-to-date with details of its implementation.

*\* Notes:*

1. *Nothing in this condition requires the Proponent to remediate or cap any portion of the site which it does not own or hold a legally binding agreement to manage; or to*

*which a current and enforceable Approval of the Surrender of Licence is held by a third party.*

2. *Nothing in this condition prevents the implementation of approved remediation works on any part of the site.*

A6A. The completion of the works associated with the priority actions identified in the **Priority Action Statement** shall be deemed to constitute substantial commencement of construction for the purposes of condition A5 only. For the avoidance of doubt, the completion of those works does not constitute the commencement of construction for the purposes of other conditions of this Project Approval.

*Note: See condition A16.*

A6B. If the priority actions identified in the **Priority Action Statement** are not completed prior to the lapse date identified in condition A5, then this approval will be deemed to have lapsed.

3. In Schedule B: Conditions of Approval, insert new condition A16:

A16. The Applicant shall:

- (a) notify the Secretary in writing of the date of commencement of construction under this approval; and
- (b) may only commence construction under this approval once the Secretary has agreed in writing that all prerequisites to the commencement of construction under this approval have been met.

*Note: This Project Approval requires the Proponent to meet certain pre-requisites that are required to be approved prior to the commencement of construction. Notice is not required to be given under this condition to commence any works identified in the Site Management Plan required under condition A6 or works on the Biodiversity sites.*

### **End of Modification 1**