

Notice of decision – Mount Owen Continued Operations Project (SSD 5850 MOD 2)

Section 2.22 and clause 20 of Schedule 1 of the *Environmental Planning and Assessment Act 1979*

Application type	State significant development modification
Application number and project name	Mount Owen Continued Operations Project Modification 2 (SSD 5850 MOD 2)
Applicant	Mt Owen Pty Ltd
Consent Authority	Minister for Planning & Public Spaces

Decision

The Acting Executive Director, Energy and Resources under delegation from the Minister for Planning & Public Spaces has, under section 4.55(2) of the *Environmental Planning and Assessment Act 1979* (**the Act**) modified the consent subject to the recommended conditions.

A copy of the instrument of modification and the consolidated conditions of consent, as modified, are available [here](#).

A copy of the Department of Planning, Industry & Environment's assessment report is available [here](#).

Date of decision

4 September 2019

Reasons for decision

The following matters were taken into consideration in making this decision:

- the relevant matters listed in section 4.15 and section 4.55 (3) of the Act and the additional matters listed in the statutory context section of the Department's Assessment Report;
- the prescribed matters under the *Environmental Planning and Assessment Regulation 2000*;
- the objects of the Act;
- all information submitted to the Department during the assessment of the modification application;
- the findings and recommendations in the Department's Assessment Report; and
- the views of the community about the project (see Attachment 1).

The findings and recommendations set out in the Department's Assessment Report were accepted and adopted as the reasons for making this decision.

The decision maker was satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted.

The key reasons for granting the modification are as follows:

- the modification would provide a range of benefits for the region and the State as a whole, including approximately \$59 million in royalties for the State and continued employment for up to 660 people at the Mount Owen Mine for a further six years;
- the modification is permissible with consent, and is consistent with NSW Government policies including *State Environmental Planning Policy (State and Regional Development) 2011* and *State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007*;
- the modification is unlikely to significantly increase the impacts of the approved project on the community and the environment, and these impacts can continue to be appropriately minimised, managed or offset to an acceptable level, in accordance with applicable NSW Government policies and standards, including the *Voluntary Land Acquisition and Mitigation Policy For State Significant Mining, Petroleum and Extractive Industry Developments (September 2018)* and the *NSW Biodiversity Offsets Policy for Major Projects*;
- the issues raised by the community during consultation and in submissions have been considered and adequately addressed through existing and recommended conditions of consent;
- weighing all relevant considerations, the modification is in the public interest.

Attachment 1 – Consideration of Community Views

The Department exhibited the modification from 9 August 2018 until 5 September 2018 (28 days) and received 15 community submissions, including 12 objections, and 3 in support of the project.

The key issues raised by the community (including in submissions) and considered in the Department's Assessment Report and by the decision maker include air quality impacts, mine rehabilitation, strategic planning and sustainability issues, social impacts, impacts on water resources, noise and biodiversity.

The existing conditions of consent provide a robust framework for the management of environmental and social impacts, in accordance with best practice and a comprehensive suite of management plans. The Department has taken the opportunity to update these conditions to reflect its current standards. The modified conditions also require the preparation of an updated suite of management plans following Modification 2.

<i>Issue</i>	<i>Consideration</i>
<p><i>Air Quality</i></p> <ul style="list-style-type: none"> Cumulative impacts of mining operations and associated health effects and loss of amenity Effectiveness of existing monitoring and mitigation measures Need for further acquisition and mitigation rights 	<p><i>Assessment</i></p> <ul style="list-style-type: none"> The Department has carefully reviewed the Air Quality Impact Assessment (AQIA), in consultation with the Environment Protection Authority (EPA) and NSW Health. The AQIA indicates that the proposed modification is unlikely to significantly increase the air quality impacts of the approved project. The Department also considers that Mt Owen's existing mitigation and monitoring strategies are reasonable and appropriate. Nonetheless, the Department recognises that there are existing cumulative air quality issues in the locality, due to the combined impacts of multiple mining operations and other sources in the region. Therefore, the Department considers that further safeguards are needed for the protection of local residents, including more stringent air quality criteria and acquisition and mitigation rights for additional receivers in Middle Falbrook and Camberwell. The EPA has advised that Mt Owen has sufficiently addressed its concerns regarding the proposal. NSW Health has advised that predicted air quality impacts at privately-owned receivers have been addressed by a range of recommended conditions, including additional acquisition rights. However, NSW Health stressed the need to use every opportunity to reduce cumulative air quality impacts. <p><i>Recommended Conditions</i></p> <ul style="list-style-type: none"> Updated air quality performance criteria to reflect the <i>Approved Methods for the Modelling and Assessment of Air Pollutants in New South Wales 2016</i>. Voluntary acquisition and mitigation rights for 12 privately-owned properties.
<p><i>Rehabilitation</i></p> <ul style="list-style-type: none"> Incorporation of final voids Water management in the final landform 	<p><i>Assessment</i></p> <ul style="list-style-type: none"> The modification application does not seek to increase the number of final voids. The Department considers that the proposed final landform remains generally consistent with the approved final landform. Existing conditions impose strict obligations with respect to mine rehabilitation and water management in the final landform. The Department has taken the opportunity to further refine and strengthen these obligations. Relevant agencies, including the Resources Regulator, the Department's Division of Resources and Geoscience and Council, did not raise any concerns regarding the proposed final landform. However, Singleton Council (Council) recommended that Mt Owen prepare a Mine Closure Plan prior to the conclusion of mining. <p><i>Recommended Conditions</i></p> <ul style="list-style-type: none"> Designing the final voids as permanent groundwater sinks, to prevent the release of saline water into the surrounding environment. Ensuring that any water discharged from the site is suitable for receiving waters, aquatic ecology and riparian vegetation. Preparation of an updated Rehabilitation Strategy which establishes clear completion criteria for each component of the final landform, investigates opportunities to refine and improve the final landform (including the final voids) and includes a stakeholder engagement plan to guide rehabilitation and mine closure planning.

	<ul style="list-style-type: none"> Preparation of a detailed Mine Closure Plan which investigates potential post-mining beneficial land uses for the site (including the final voids), in consultation with Council, the community and relevant agencies.
<p><i>Strategic Planning and Ecological Sustainability</i></p> <ul style="list-style-type: none"> Climate change impacts Need for transition to renewable energy sources 	<p><i>Assessment</i></p> <ul style="list-style-type: none"> The proposed modification is projected to generate an additional 51.6 million tonnes of carbon dioxide equivalent emissions and increase the project's overall GHGEs by approximately 40 percent. The Department has carefully considered the impacts of the proposed modification, having regard to national and State-level commitments made under the Paris Agreement and the NSW Climate Change Policy Framework. Neither the State nor national policy frameworks promote restricting private development in order to meet Australia's commitments under the Paris Agreement, nor do they impose any prescriptive emissions criteria which can be applied to development assessment. The proposed modification would optimise resource recovery at an existing coal mine, with minimal additional environmental impacts, relative to the approved project. On balance, the Department considers that the impacts of the proposed modification are acceptable. <p><i>Recommended Conditions</i></p> <ul style="list-style-type: none"> Preparing an updated Air Quality and Greenhouse Gas Management Plan, including detailed measures to improve energy efficiency and reduce the GHGEs generated by the project.
<p><i>Social impacts</i></p> <ul style="list-style-type: none"> Potential health impacts Loss of amenity 	<p><i>Assessment</i></p> <ul style="list-style-type: none"> The Department has assessed the impacts of the proposed modification with respect to air quality, noise and vibration. The Department considers that the modification is unlikely to significantly increase impacts on health or amenity, relative to the approved project. Mt Owen has committed to provide an additional \$226,000 to the Singleton Community and Economic Development Fund. <p><i>Recommended Conditions</i></p> <ul style="list-style-type: none"> Voluntary acquisition and mitigation rights for 12 privately-owned properties. Finalising an updated Planning Agreement with Council within six months of the determination of Modification 2.
<p><i>Noise</i></p> <ul style="list-style-type: none"> Accuracy of noise assessment Need for monitoring and acquisition and/or mitigation rights for affected landowners 	<p><i>Assessment</i></p> <ul style="list-style-type: none"> The Noise Impact Assessment (NIA) indicates that the modified development can continue to operate in compliance with existing noise criteria, subject to the implementation of Mt Owen Pty Ltd's existing noise management and mitigation strategies. The Department considers that the noise impacts of the proposed modification have been appropriately assessed. The EPA did not raise any concerns regarding the NIA. However, the EPA recommended that noise monitoring be undertaken by a suitably qualified acoustic expert. <p><i>Recommended Conditions</i></p> <ul style="list-style-type: none"> Developing a detailed noise monitoring protocol, in consultation with the EPA. Noise monitoring to be undertaken by a suitably qualified acoustic expert.
<p><i>Biodiversity</i></p> <ul style="list-style-type: none"> Increase in mining footprint Loss of habitat 	<p><i>Assessment</i></p> <ul style="list-style-type: none"> The proposed modification has been assessed in accordance with the <i>NSW Framework for Biodiversity Assessment</i>. The proposed modification would disturb 44.95 hectares of native vegetation, including 7.19 hectares of an endangered ecological community listed under the <i>Biodiversity Conservation Act 2016</i>. These impacts are to be offset in accordance with the <i>NSW Biodiversity Offsets Policy for Major Projects</i>.

- The proposed modification would increase the approved disturbance footprint for the project by less than two percent.
- The Department considers that the proposed modification avoids, to the greatest extent practicable, impacts on threatened species and communities. The Department also considers that residual biodiversity impacts can be appropriately mitigated, managed and offset.
- The Department's Biodiversity and Conservation Division did not raise any concerns regarding the biodiversity impacts of the proposal.

Recommended Conditions

- Developing a detailed Biodiversity Offset Strategy prior to commencing works associated with the proposed modification and making suitable arrangements for the long-term security of biodiversity offsets within 12 months of commencing works.