

Notice of Modification

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

As delegate of the Minister for Planning, I modify the development consent referred to in Schedule 1, as set out in Schedule 2.



Howard Reed
Director Resource Assessments

Sydney 17th October 2017

SCHEDULE 1

The Development Consent (DA 35-2-2004) for the Mandalong Coal Delivery System granted by the Minister Assisting the Minister for Planning and Infrastructure (Planning Administration) on 4 June 2004.

SCHEDULE 2

1. In the list of definitions, delete the following terms and their definitions: "DEC", "Department", "Director-General", "LMCC", "Minister", "RTA", "SEE" and "Site"; and insert the following definitions in alphabetical order:

Conditions of this consent	Conditions contained in Schedules 2 and 3 of this document
Construction	All physical works for the construction of the development
Department	Department of Planning and Environment
Development	The development described in the SEE, as modified by EA (Mod 1)
EA (Mod 1)	Environmental Assessment titled <i>Mandalong Coal Delivery System, Development Consent DA 35-2-2004 Proposed Section 75W Modification</i> , prepared by SLR Consulting Australia Pty Ltd and dated 22 September 2017
Harm to the environment	includes any direct or indirect alteration of the environment that has the effect of degrading the environment and, without limiting the generality of the above, includes any act or omission that results in pollution. Any such harm will be material if it: <ul style="list-style-type: none">• involves actual or potential harm to the health or safety of human beings or to ecosystems that is not trivial, or• results in actual or potential loss or property damage of an amount, or amounts in aggregate, exceeding \$10,000 (such loss or damage includes the reasonable costs and expenses that would be incurred in taking all reasonable and practicable measures to prevent, mitigate or make good harm to the environment)
Incident	An occurrence or a set of circumstances that: <ul style="list-style-type: none">• causes, or threatens material harm to the environment; or• results in non-compliance with this consent
MCDS	Mandalong Coal Delivery System
Minister	NSW Minister for Planning, or delegate
Minimise	Implement all reasonable and feasible mitigation measures to reduce the impacts of the development
Mitigation	Activities associated with reducing the impacts of the development
Reasonable	Means applying judgement in arriving at a decision, taking into account: mitigation benefits, cost of mitigation versus benefits provided, community views and the nature and extent of potential improvements
Secretary	Secretary of the Department, or nominee
SEE	Statement of Environmental Effects titled <i>Delta Link Project</i> , prepared by Umwelt (Australia) Pty Ltd and dated January 2004
Site	All land to which the development application applies, as listed in Schedule 1 and shown in Appendix 1.

2. Delete all references to “shall” and replace with “must”.
3. Delete all references to “Director-General” and replace with “Secretary”.
4. Delete all references to “LMCC” and replace with “Council”.
5. Delete condition 1 to 5 of Schedule 2 and replace with:
 1. In addition to meeting the specific performance measures and criteria established under this consent, the Applicant must implement all reasonable and feasible measures to prevent and/or minimise any material harm to the environment that may result from the construction and operation of the development, and any rehabilitation required under this consent.
 2. The Applicant, in acting on this consent, must carry out the development:
 - (a) generally in accordance with the SEE and EA (Mod 1);
 - (b) in compliance with the conditions of this consent; and
 - (c) in accordance with all written directions of the Secretary.
 3. If there is any inconsistency between the documents identified in condition 2(a), the most recent document shall prevail to the extent of the inconsistency. However, the conditions of this consent shall prevail to the extent of any inconsistency.
 4. The Applicant must comply with any written requirement/s of the Secretary arising from the Department’s assessment of:
 - (a) any strategies, plans, programs, reviews, audits, reports or correspondence that are submitted in accordance with this approval (including any stages of these documents);
 - (b) any reviews, reports or audits undertaken or commissioned by the Department regarding compliance with this consent; and
 - (c) and the implementation of any actions or measures contained in these documents.
 5. The Applicant may construct and use the MCDS on the site until 31 December 2040.

Note: Under this consent, the Applicant is required to decommission and rehabilitate the site and carry out additional requirements. Consequently, this consent will continue to apply in all respects other than to permit construction and operation of the MCDS, until the rehabilitation of the site and those requirements and undertakings have been carried out to the required standard.
6. In condition 8 of Schedule 2, insert the word “must” after the words “the Applicant”.
7. Delete condition 9 of Schedule 2.
8. Delete condition 15 of Schedule 2.
9. After Schedule 2, insert the following:

**SCHEDULE 3
ENVIRONMENTAL MANAGEMENT, REPORTING AND AUDITING**

ENVIRONMENTAL MANAGEMENT

Consolidation of Strategies, Plans or Programs

1. The Applicant may incorporate any plan, audit or Annual Review required by this consent with the plans, audits or Annual Review required for the Mandalong Mine or any other adjoining operation in common ownership or under common management.

REPORTING

Incident Reporting

2. The Department must be notified in writing to compliance@planning.nsw.gov.au immediately after the Applicant becomes aware of an incident.
3. Within 7 days of the date on which the incident occurred, unless otherwise agreed by the Secretary, the Applicant must provide the Secretary and any relevant public authorities (as determined by the Secretary) with a detailed report on the incident, and such further reports as may be requested. This report must include the time and date of the incident, details of the incident, measures implemented to prevent re-occurrence and must identify any non-compliance with this consent.

Annual Review

4. By the end of March each year, or other timing as may be agreed by the Secretary, the Applicant must submit a report to the Department reviewing the environmental performance of the development, to the satisfaction of the Secretary. This review must:
 - (a) provide monthly records of the amount of coal transported on the MCDS;
 - (b) include a comprehensive review of the groundwater monitoring results of the development over the previous calendar year, which includes a comparison of these results against the:
 - relevant statutory requirements, limits or performance measures/criteria;
 - requirements of any plan or program required under this consent;
 - monitoring results of years prior; and
 - relevant predictions in the documents listed in condition 2(a) of Schedule 2;
 - (c) evaluate and report on the compliance with the performance measures, criteria and operating conditions in this consent;
 - (d) detail any non-compliance over the past calendar year, and describe what actions were (or are being) taken to rectify the non-compliance and avoid reoccurrence;
 - (e) identify any trends in the monitoring data over the life of the development;
 - (f) identify any discrepancies between the predicted and actual impacts of the development, and analyse the potential cause of any significant discrepancies;
 - (g) describe the measures to be implemented over the current calendar year to improve the environmental performance of the development; and
 - (h) be prepared in accordance with the Department's *Annual Review Guideline* (2015).

INDEPENDENT ENVIRONMENTAL AUDIT

5. By 31 March 2019, and every 3 years thereafter, unless the Secretary directs otherwise, the Applicant must commission, commence and pay the full cost of an Independent Environmental Audit of the development. This audit must:
 - (a) be conducted by a suitably qualified, experienced and independent team of experts whose appointment has been endorsed by the Secretary;
 - (b) include consultation with the relevant agencies;
 - (c) assess the environmental performance of the development and assess whether it is complying with the requirements in this consent and any relevant EPL or Mining Lease (including any assessment, plan or program required under these approvals);
 - (d) review the adequacy of strategies, plans or programs required under the abovementioned approvals;
 - (e) recommend appropriate measures or actions to improve the environmental performance of the development, and/or any assessment, plan or program required under the abovementioned approvals; and
 - (f) be conducted and reported to the satisfaction of the Secretary.

Note: This audit team must be led by a suitably qualified auditor and include experts in any field specified by the Secretary.

6. Within 12 weeks of commencing this audit, or as otherwise agreed by the Secretary, the Applicant must submit a copy of the audit report to the Secretary, together with its response to any recommendations contained in the audit report, and a timetable for the implementation of any measures proposed to address the recommendations.

ACCESS TO INFORMATION

7. Within 3 months of the approval of Modification 1, until the completion of all works and activities under this consent, including rehabilitation, the Applicant must:
 - (a) make the following information publicly available on its website:
 - the documents listed in condition 2(a) of Schedule 2;
 - current statutory approvals for the project;
 - all approved plans and programs required under the conditions of this consent;
 - a comprehensive summary of the monitoring results of the project, reported in accordance with the specifications in any conditions of this consent, or any approved plans and programs;
 - a complaints register, updated monthly;
 - the annual reviews of the project;
 - any independent environmental audit as described in condition 5 above, and the Applicant's response to the recommendations in any audit; and
 - any other matter required by the Secretary; and
 - (b) keep this information up-to-date, to the satisfaction of the Secretary.

APPENDIX 1
DEVELOPMENT LAYOUT PLAN

