



Duralie Open Pit Modification Environmental Assessment

SECTION 6

STATUTORY CONTEXT



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6 STATUTORY CONTEXT

This section outlines the statutory requirements relevant to the assessment of the Modification. It also provides a consideration of the Modification against the objects of the EP&A Act.

6.1 GENERAL STATUTORY CONSIDERATIONS

6.1.1 EP&A Act and Section 75W Modification

A detailed description of the regulatory context of the DCM is provided in the DEP EA.

The EP&A Act and EP&A Regulation set the framework for planning and environmental assessment in NSW.

The DCM is a ‘transitional Part 3A project’ under clause 2 of Schedule 6A of the EP&A Act as it is a project approval granted under section 75J, Part 3A, of the EP&A Act. Therefore, section 75W of the EP&A Act will apply to modifications to Project Approval (08_0203), notwithstanding its repeal¹.

DCPL consulted with the DP&E in May 2014 with regards to seeking the necessary approvals for the Modification (Section 1.5).

Approval for the Modification is sought as a modification to Project Approval (08_0203) under section 75W of the EP&A Act. The decision to seek the Modification is based in part on the outcome of the consultation with DP&E in May 2014 and other factors such as the minor nature of the modifications sought (as discussed in more detail below and in Sections 1 and 3).

Section 75W of the EP&A Act states:

75W Modification of Minister’s approval

(1) *In this section:*

Minister’s approval means an approval to carry out a project under this Part, and includes an approval of a concept plan.

Modification of approval means changing the terms of a Minister’s approval, including:

- (a) *revoking or varying a condition of the approval or imposing an additional condition of the approval, and*
 - (b) *changing the terms of any determination made by the Minister under Division 3 in connection with the approval.*
- (2) *The proponent may request the Minister to modify the Minister’s approval for a project. The Minister’s approval for a modification is not required if the project as modified will be consistent with the existing approval under this Part.*
 - (3) *The request for the Minister’s approval is to be lodged with the Director-General. The Director-General may notify the proponent of environmental assessment requirements with respect to the proposed modification that the proponent must comply with before the matter will be considered by the Minister.*
 - (4) *The Minister may modify the approval (with or without conditions) or disapprove of the modification.*
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Satisfaction of Objects of the EP&A Act

Section 5 of the EP&A Act describes the objects of the EP&A Act as follows:

- (a) *to encourage:*
 - (i) *the proper management, development and conservation of natural and artificial resources, including agricultural land, natural areas, forests, minerals, water, cities, towns and villages for the purpose of promoting the social and economic welfare of the community and a better environment,*
 - (ii) *the promotion and co-ordination of the orderly and economic use and development of land,*
 - (iii) *the protection, provision and co-ordination of communication and utility services,*
 - (iv) *the provision of land for public purposes,*
 - (v) *the provision and co-ordination of community services and facilities, and*
 - (vi) *the protection of the environment, including the protection and conservation of native animals and plants, including threatened species, populations and ecological communities, and their habitats, and*

¹ Part 3A of the EP&A Act (as in force immediately before its repeal) continues to apply for the DCM. The description and quotations of relevant references to clauses of Part 3A in this document are as if Part 3A of the EP&A Act is still in force.

- (vii) *ecologically sustainable development, and*
- (viii) *the provision and maintenance of affordable housing, and*
- (b) *to promote the sharing of the responsibility for environmental planning between the different levels of government in the State, and*
- (c) *to provide increased opportunity for public involvement and participation in environmental planning and assessment.*

The DEP was approved under Part 3A of the EP&A Act and on this basis, was considered by the consent authority to have satisfied the objects of the EP&A Act.

The Modification involves minor changes to the approved DCM to enable the efficient extraction of coal and continuation of waste emplacement, and to improve the geotechnical stability of the open pit low walls (Section 3.2.2).

Without the Modification, waste emplacement at the DCM would be significantly constrained. In addition, a portion of the coal reserves approved to be extracted from the Weismantel and Clareval open pits until 2019 would be foregone, resulting in a truncation of the mine life (Section 1.2).

Therefore, the Modification is considered to be consistent with the objects of the EP&A Act, given:

- the Modification enables:
 - the continued development of the State's mineral resources (i.e. coal resources) approved to be extracted from the DEP in a manner that minimises environmental impacts through the implementation of the DCM Environmental Management Strategy (Section 2.9) and other measures;
 - the continued employment and other socio-economic benefits to the community associated with the operation of the DCM (Section 4.10.7);
- the changes to the DCM associated with the Modification can be implemented with no change to existing Project Approval noise, blasting and air quality limits, which are designed to protect amenity for surrounding landowners (Sections 4.1, 4.2 and 4.10.1);

- where potential impacts cannot be avoided (e.g. the additional surface development to improve geotechnical stability of the open pit), mitigation and/or offset measures are proposed for the Modification (e.g. for the protection of native plants and animals, threatened species, and their habits [Sections 4.5 and 4.6]); and
- the approval process involves public involvement and participation through consultation for the Modification (Section 1.5), which would be ongoing following the public exhibition of this EA document and DP&E assessment of the Modification in accordance with the requirements of the EP&A Act.

6.1.2 Other Legislation

In addition to the EP&A Act, the following Acts are applicable to the DCM:

- *Coal Mine Health and Safety Act, 2002;*
- *Contaminated Land Management Act, 1997;*
- *Crown Lands Act, 1989;*
- *Dams Safety Act, 1978;*
- *Dangerous Goods (Road and Rail Transport) Act, 2008;*
- *Fisheries Management Act, 1994;*
- *Mining Act, 1992;*
- *National Parks and Wildlife Act, 1974 (NPW Act);*
- *Noxious Weeds Act, 1993;*
- *Petroleum (Onshore) Act, 1991;*
- *Protection of the Environment Operations Act, 1997 (PoEO Act);*
- *Roads Act, 1993;*
- *TSC Act;*
- *Water Act, 1912;*
- *Water Management Act, 2000;*
- *Work Health and Safety Act, 2011; and*
- *Work Health and Safety (Mines) Act, 2013.*

Additional detail on the likely requirements under the Acts potentially relevant to the Modification is provided below.

Mining Act, 1992

The Modification would not require any amendment or variation to ML 1646 or ML 1427. Therefore, there is no need for the variation of existing authorities or the issue of new authorities under the *Mining Act, 1992*.

Under the *Mining Act, 1992*, environmental protection and rehabilitation are regulated by conditions of mining leases, including requirements for the submission of a Mining Operations Plan prior to the commencement of operations, and subsequent Annual Environmental Management Reports (or Annual Reviews).

The current Mining Operations Plan would require revision to reflect the revised extent of open cut mining, the relocation of water management infrastructure, the increase in surface development extent, the revised mining sequence and the increased height of the waste emplacement as a result of the Modification (Section 6.3).

Protection of the Environment Operations Act, 1997

The PoEO Act is the primary NSW legislation that regulates pollution control and licensing. One key feature of the Act is the statutory requirement to apply for and obtain an EPL in circumstances where a scheduled activity or activities are being carried out (those activities being defined in schedule 1 of the POEO Act).

The existing DCM has the benefit of existing EPL 11701 to conduct the scheduled activities of “mining for coal”, “coal works” and “extractive activities” as those activities are defined in Schedule 1 of the PoEO Act. It is not anticipated that the Modification would necessitate any variation application to be sought to amend any condition (or scope of scheduled activities).

Water Management Act, 2000 and Water Act, 1912

The *Water Management Act, 2000* and the *Water Act, 1912* contain provisions for the licensing, allocation, capture and use of water resources. Under the *Water Management Act, 2000*, water sharing plans are being introduced (and many of which have commenced) for water sources. Water sharing plans establish rules for sharing water between different users and between the various environmental sources (namely rivers or aquifers).

Licensing under the *Water Management Act, 2000* and *Water Act, 1912* has been addressed as part of the consideration of the NSW Aquifer Interference Policy (Section 6.2 and Attachment 2).

No additional licencing would be required for the Modification (Attachment 2).

National Parks and Wildlife Act, 1974

The NPW Act contains provisions for the protection and management of national parks, historic sites, nature reserves and Aboriginal heritage in NSW. Section 75U(1) of the EP&A Act outlines authorisations that are not required for a transitional Part 3A project, such as the DCM. An Aboriginal heritage impact permit under section 90 of the NPW Act is not required for the DCM incorporating the Modification.

An ACHA for the Modification has been undertaken and is presented as Appendix H.

Threatened Species Conservation Act, 1995

The TSC Act protects threatened species and provides a framework for the assessment of a development’s impacts on threatened species and ecological communities.

The potential impact of the Modification on threatened species, populations and ecological communities has been assessed as part of the Flora Assessment (Appendix E) and the Fauna Assessment (Appendix F).

6.1.3 Commonwealth Legislation

Under the EPBC Act, approval from the Commonwealth Minister for the Environment is required for any action that may have a significant impact on matters of national environmental significance. If an ‘activity’ is likely to have a significant impact on a matter of national environmental significance then it may be a ‘controlled action’ and should be referred to the Commonwealth Minister for consideration.

In June 2013, the EPBC Act was amended to include water resources as a matter of national environmental significance, in relation to coal seam gas and large coal mining development.

The Modification would not have a significant impact on matters of national environment significance as potential impacts of the Modification to water resources (Sections 4.3 and 4.4) are expected to be negligible, and in consideration of direct impacts associated with the additional 2.5 ha of surface distance as well potential indirect impacts, potential impacts to biodiversity (Sections 4.5 and 4.6) are also expected to be negligible.

6.1.4 Environmental Planning Instruments

The DEP EA provided a detailed consideration of the DCM against State environmental planning policies and local environmental plans.

Given the minor changes to the approved DCM associated with the Modification (Section 3), there would be no change or negligible change to the following DCM components, which are relevant to State and local environmental planning instruments:

- mining leases;
- the coal resource approved to be extracted;
- existing land uses or land use trends, or compatibility with surrounding land uses;
- potential impacts to water resources;
- greenhouse gas emissions;
- transportation of ROM coal from the DCM by rail only;
- rehabilitation objectives and strategies (Section 5);
- the previously assessed consequences or likelihoods of a hazardous event occurring at the DCM; and
- the rural landscape character (Appendix G).

Given the above, no further consideration of State and local environmental planning instruments is required for the Modification.

6.2 NSW GOVERNMENT POLICY

6.2.1 Strategic Regional Land Use Plan

The NSW Mining and Petroleum Gateway Panel was established by the NSW Government in October 2013 as part of the Strategic Regional Land Use Policy.

The Strategic Regional Land Use Policy and the 'Gateway Process' only applies to new State Significant Development applications or modifications for mining projects which are located on strategic agricultural land and its associated water resources, or CIC land, located outside of existing mining lease areas (NSW Government, 2012a). As the Modification is proposed to be undertaken within ML 1646 and ML 1427, the 'Gateway Process' does not apply.

6.2.2 Aquifer Interference Policy

The Aquifer Interference Policy (NSW Government, 2012b) has been developed by the NSW Government as a component of the NSW Government's Strategic Regional Land Use Policy. The Aquifer Interference Policy applies State-wide and details water licence and impact assessment requirements for aquifer interference activities.

The stated purpose of the Aquifer Interference Policy is to ensure equitable water sharing between various water users and proper licensing of water taken by aquifer interference activities such that any water taken is accounted for in the water budget and water sharing arrangements.

The *Water Management Act, 2000* defines an aquifer interference activity as that which involves any of the following:

- *the penetration of an aquifer;*
- *the interference with water in an aquifer;*
- *the obstruction of the flow of water in an aquifer;*
- *the taking of water from an aquifer in the course of carrying out mining or any other activity prescribed by the regulations; and*
- *the disposal of water taken from an aquifer in the course of carrying out mining or any other activity prescribed by the regulations.*

A Groundwater Assessment (Appendix C) has been prepared in consideration of the Aquifer Interference Policy and the key conclusions are presented in Attachment 2.

6.3 PLANS, LICENCES AND AGREEMENTS THAT REQUIRE REVISION

6.3.1 Project Approval Conditions

Appendix 3 (Offset Strategy) of Project Approval (08_0203) would require revision to incorporate the Modification offset area.

In addition, the noise management commitments in the Statement of Commitments appended to Project Approval (08_0203) would require revision to reflect the management measures required for the DCM incorporating the Modification (i.e. to achieve compliance with the existing Project Approval noise limits) (Section 4.1.3).

6.3.2 Management/Monitoring Plans

Some management plans (e.g. the BMP, Rehabilitation Management Plan and Noise Management Plan) would require revision to reflect updated environmental management measures or changes to Project Approval conditions resulting from the Modification.

6.3.3 Mining Operations Plan

The current Mining Operations Plan would require revision to reflect the revised extent of open cut mining, the relocation of water management infrastructure, the increase in surface development, the revised mining sequence and increased waste rock emplacement height results from the Modification.