

APPENDIX B – ENVIRONMENTAL ASSESSMENT



Energy in
action.



AGL Modification Assessment
Application to modify DA 282-6-2003-i
Date: 18 November 2016

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1. Introduction

AGL seeks the Minister's approval to modify the Consent to remove conditions set out in Section 5 that are replicated in Environment Protection Licence 12003 ('EPL'). This modification seeks to remove the regulatory double up in which the EPA, as lead regulator of petroleum activities (as described in Schedule 2A of the *Protection of the Environment Operations Act 1997* ('POEO Act')), is currently administering two sets of the same conditions: one in the Consent and one in the EPL.

Now that the EPA is the lead regulator of both the Consent and the EPL, it is submitted that any such retention:

- (a) no longer serves a beneficial purpose; and
- (b) imposes an additional administrative burden on AGL as the operator of the Camden Gas Project and the EPA as the lead regulator of petroleum activities; and
- (c) is contrary to the aims of the Memorandum of Understanding on the regulation of gas activities in NSW, between the DP&E, EPA, Department of Resources and Energy ('DRE') and DPI Water ('MoU').

The statutory context, the circumstances leading to the change in regulation and proposed modifications are set out in the following sections.

2. Statutory Context of Stage 2 of the Camden Gas Project

On 16 June 2004, the NSW Land and Environment Court approved Stage 2 of the Camden Gas Project ('CGP'), which initially comprised: 43 wells, a gas treatment plant known as the Rosalind Park Gas Plant, and gas gathering systems.

Pursuant to the following modifications to the Consent, as well as separate development applications under Part 4 of the EP&A Act and project applications under Part 3A of the EP&A Act, Stage 2 of the CGP has since been developed with additional gas wells and gas gathering systems.

Those additional development consents and Part 3A approvals forming part of the Camden Gas Project are:

- DA 183-8-2004
- DA 9-1-2005;
- DA 75-4-2005;
- MP 06_0137;
- MP 06_0138; and
- MP 06_0291.

Further modifications to the Consent occurred at the following times:

- MOD 1 in August 2004
- MOD 2 in February 2005
- MOD 3 in June 2005
- MOD 4 in May 2006
- MOD 5 in October 2006
- MOD 6 in November 2006
- MOD 7 in May 2007
- MOD 8 in July 2007
- MOD 9 in April 2008
- MOD 10 in March 2009
- MOD 11 in September 2009
- MOD 12 in November 2010

The schedule of land covered by the Consent is listed under Appendix 1.

2.1. Statutory Context of Stage 2 of the Camden Gas Project

The Camden Gas Project was declared to be State Significant development on 13 June 2003 by the then Minister for Infrastructure and Planning under section 76A of the EP&A Act.

The Consent, which is a State Significant development consent, was then granted by the Land and Environment Court on 16 June 2004.

As a result of the operation of clause 8J(8) of the Environmental Planning and Assessment Regulation 2000 ('EP&A Regulation'), for the purpose of modification the Consent is taken to be an approval under Part 3A of the EP&A Act and section 75W of that Act applies to effect any such modification.

2.2. Operation of section 75W of the EP&A Act

Under section 75W of the EP&A Act (applicable by virtue of cl 8J(8) of the EP&A Regulation) AGL may request the Minister to modify the Consent by lodging a request with the Director-General.

Section 75W(4) of the EP&A Act provides that the Minister may modify the Consent (with or without conditions), or disapprove of the modification.

The Minister's approval for a modification is not required if the project as modified will be consistent with the existing approval (s75W (2)). While the project (incorporating the proposed modifications to the Consent) will remain consistent with the existing approval, the modification request is made, nevertheless, in order to remove the existing regulatory double up.

3. Circumstances leading to the modification

3.1. Findings of Independent Environmental Audit

The project approvals and development consents applicable to the Camden Gas Project require the proponent to carry out an independent environmental audit every two years.

The 2010-2012 Independent Environmental Audit prepared by Treo Environment and dated 27 August 2013 identified, for the first time, inconsistencies between the Consent and EPL. The two inconsistencies identified in this instance were:

- (a) Section 4.2.6: the requirement to prepare quarterly reports on waste transport and waste disposal facilities; and
- (b) Section 4.2.8: the monitoring and calculation of pollutant loads.

In particular, the IEA identified in section 4.2.8 that:

"Over time, [the EPL] has been modified on a number of occasions to reflect changes to the operations. However, amendments of [the EPL] have not been consistently reflected in [the Consent]. As a result, [the Consent] has retained a requirement to monitor and calculate pollutant loads for a number of water pollutants.

....

It is recommended that AGL seek a modification of [the Consent] to align with the conditions of [the EPL]."

A copy of the IEA is available on AGL's website at <https://www.agl.com.au/-/media/AGL/About-AGL/Documents/How-We-Source-Energy/Camden-Documents/Environmental-Reports/20130827-Independent-Environmental-Audit-2010-12.pdf>.

Inconsistencies between the Consent and the EPL have previously been addressed on an *ad hoc* basis. For example, the s75W application to modify the Consent, which was determined on 25 November 2010, altered the requirements for waste generation and storage on the site. Related modifications were made to the EPL to deal with this same issue.

However, such *ad hoc* modification to both the Consent and the EPL to address existing, and potential, inconsistencies between the two approvals creates an unnecessary administrative burden for the DPE, EPA and AGL.

3.2. Change in regulation of coal seam gas activities

In November 2014, the NSW Gas Plan ('Plan') was released in response to the NSW Chief Scientist and Engineer's Independent Review of Coal Seam Gas Activities in NSW. One of the recommendations of the Plan was that the NSW Government establish an independent regulator to focus on undertaking compliance and enforcement work.

The NSW EPA has stepped into this regulatory position and has enforcement and compliance powers under the EP&A Act (amongst other legislation) by operation of the recently enacted Schedule 2A of the POEO Act.

The Gas Compliance Statement (2016) ('GCS') sets out the EPA's approach to the regulation and compliance of gas activities. At section 3.1, the GCS sets out the EPA's approach to overlapping powers under different legislation.

In this section, the enforcement of the work health and safety ('WHS') conditions of petroleum titles remains within the purview of the DRE. However, in all other circumstances (including overlap between compliance with the EP&A Act and POEO Act), the GCS makes it clear that the Plan, the POEO Act and the MoU clearly assert that the EPA will lead investigations and enforcement actions and liaise appropriately with other relevant agencies as required.

The GCS then states that "the risk of duplicated regulatory actions has been minimised." While this duplication has been minimised, duplications associated with reporting and modification of the Consent and EPL remain in place.

These duplications are, however, considered and addressed by the MoU. Section 6 of the MoU states:

6. Principles for working together

6.1 All parties agree to a whole of government approach to facilitate transparent and efficient regulation of gas activities.

6.2 To support this approach, the Parties will, insofar as permitted by legislation:

...
d) work together to minimise duplication and overlap, including in relation to conditions of instruments and investigations, audits and inspections.

The proposed modifications further this goal and constitute the final removal of duplication and overlap in the regulation of the Camden Gas Project. They ensure that any present (or future) inconsistencies between the conditions of the Consent and the EPL are avoided.

Each of the duplicate conditions in the Consent and EPL, which are identified and considered in sections 4 and 5, regulate the environmental impacts of the Camden Gas Project as a scheduled activity (petroleum exploration, assessment and production) under the POEO Act.

For this reason, AGL requests that the duplicate conditions be contained within the EPL and removed from the Consent.

4. Change in regulation of coal seam gas activities

4.1. Historical EPL Variations

Variation Date	EPL Notice No.	Varying Party and Reason	Relevant EPL Condition/s	Consent Implication
12 September 2007	1076711	<p>EPA:</p> <p><i>"The Protection of the Environment Operations (Waste) Regulation 2005 includes new waste tracking provisions which commenced on 1 March 2006. Waste tracking requirements for licensed premises and transporters are now included in the regulation. As a result, waste tracking conditions are no longer required on licences. This variation notice removes waste tracking conditions from the licence."</i></p> <p><i>"The EPA removed all waste tracking appendices".</i></p>	<p>Within the historical version of the EPL for the period 26 October 2011 to 31 August 2013:</p> <p>O5 Monitoring of waste movements within NSW</p> <p>O6 Monitoring of interstate movements of controlled wastes</p> <p>R4 Regular reporting of transportation of certain wastes within NSW</p>	<p>Schedule 8 in its entirety need no longer apply given the regulation referred to in POEO (Waste) Regulation.</p>
Refer to Appendix 3 - NOTICE OF VARIATION OF LICENCE NO. 12003				

Variation Date	EPL Notice No.	Varying Party and Reason	Relevant EPL Condition/s	Consent Implication
15 December 2010	1122545	EPA: <i>"The variation also removes conditions relating to limits on stored or generated on-site liquid waste. This reflects the DECCW position on Group A waste which includes all liquid waste. Since consent was originally granted AGL has upgraded the oily water separator and has increased capacity for waste management and storage. The removal of these conditions will have no adverse effect on the environment and fit with current DECCW policy. This variation could not be made until the development consent had been modified."</i>	<p>Within the historical version of the EPL commencing 15 December 2010:</p> <p>L5.2 The quantity of hazardous and/or restricted solid and/or liquid waste stored on the premises must not exceed 9000 litres at any one time.</p> <p>L5.3 The quantity of hazardous and/or restricted solid and/or liquid waste generated and/or stored at the premises must not exceed 85,000L per year.</p> <p>L5.4 The quantity of liquid waste generated at the premises must not exceed 3,000,000L per year.</p>	<p>Modification 12 removed duplicated conditions 100, 101 and 102.</p> <p>A precedent was established through this modification to regularise the DA to allow environmental management and regulation of the EPL rather than having multiple instruments regulating the same condition.</p>
Refer to Appendix 4 - NOTICE OF VARIATION OF LICENCE NO. 12003				

4.2. Proposed Variations

4.2.1. Proposed Variation: Predictive Emissions Monitoring System

AGL has worked with the EPA over the past three years to complete two separate six month trials of Predictive Emissions Monitoring Systems ('PEMS') as a viable alternative to the Continuous Emissions Monitoring System ('CEMS'). The trials indicated that there has been a reduction of NOx emissions from the CGP.

The EPA have acknowledged this reduction and suggested that AGL consider seeking a variation to the EPL to replace CEMS with PEMS, where PEMS would be used for the purpose of monitoring compressor performance only, rather than monitoring air emissions.

Condition 58 of the Consent prescribes CEMS as the sampling method. Should AGL vary the EPL to replace CEMS with PEMS, this would lead to an inconsistency between the EPL and Consent. The EPA has stated in its letter dated 28 July 2016 that AGL should seek to consult with DP&E in relation to a modification to the Consent to permit PEMS. (Refer Appendix 6)

4.2.2. Comparative Analysis of the Consent and EPL

Appendix 5 provides a detailed overview of those conditions that are duplicated in both the Consent and the EPL, and which might be subject to the same constraints identified in section 4.2.1 above.

Section 5 provides a list of those duplicated conditions.

5. Proposed Modification

The inconsistencies between the conditions of the Consent and the EPL lead to inefficiencies and uncertainty in the regulation of the CGP.

To rectify this, and to further the aims of the MoU, AGL requests that the Consent be modified to remove each of the conditions in Column 1. The conditions remain in force within the EPL, in the condition shown in Column 3.

Column 1	Column 2	Column 3
Consent condition	Subject matter of condition	Equivalent EPL condition
Sch 4 Cond 48	Air Quality	L3.1 & L3.3
Sch 4 Cond 49	Air Quality	L3.2
Sch 4 Cond 51	Air Quality	O3.1
Sch 4 Cond 54	Air Quality	P1.1
Sch 4 Cond 55	Air Quality	M3.1
Sch 4 Cond 68	Surface Water Management	The equivalent condition was removed from the EPL on 12 September 2007 as it was no longer necessary.
Sch 4 Cond 69	Surface Water Management	M2.7
Sch 4 Cond 72	Surface Water Management	M3.3
Sch 4 Cond 103	Waste	O5.1
Sch 4 Cond 104	Waste	O5.2

Column 1	Column 2	Column 3
Consent condition	Subject matter of condition	Equivalent EPL condition
Sch 5 Cond 12	Assessable Pollutants – Load Limits	L2.2
Sch 5 Cond 13	Monitoring and Recording Conditions	M1.1
Sch 5 Cond 14	Monitoring and Recording Conditions	M1.2
Sch 5 Cond 15	Monitoring and Recording Conditions	M1.3
Schedule 6	Mandatory Conditions for all DECCW Licences	O1.1, O2.1, M5.1, M5.2, M5.3, M6.1, M6.2, M6.3, R1.1, R1.2, R1.3, R1.4, R1.5, R1.7, R1.8, R2.1, R2.2, R3.1, R3.2, R3.3, R3.4, G1.1, G1.2, G1.3
Schedule 8	DECCW Waste Tracking Requirements	The equivalent conditions were removed from the EPL on 12 September 2007 as they were no longer necessary.

An alternative to that proposed above would be to modify the Consent to include new conditions 3A and 3B as follows:

3A. In the event of an inconsistency between the conditions of this consent, or any document listed in conditions 2(a) to 2(o) inclusive, and the conditions of Environment Protection Licence 12003, the conditions of this consent, or any document listed in conditions 2(a) to 2(o), as the case may be, do not apply to the extent of that inconsistency.

3B. Where, at any time after the inclusion of this condition in the condition of this consent, the conditions of Environment Protection Licence 12003 are varied so that a condition within that licence is no longer applicable, then any condition of this consent, or statement contained within the documents listed in conditions 2(a) to 2(o), that has the same effect of the condition removed from the licence, does not apply.

However, while AGL considers that this pathway might have the same effect as the removal of those conditions from the Consent set out in the table above, it is submitted that the scope for ambiguity and uncertainty would remain.

This ambiguity could also lead to a view that the conditions of the Consent are uncertain, despite the certainty of operation of the conditions located within the EPL.

For these reasons, AGL submits that the removal of the conditions of the Consent set out in the table above, and the retention of those conditions within the EPL and their continued regulation by the EPA under the POEO Act, represents the better option.

6. Environmental Impact

As the proposed modification is of an administrative nature only, i.e. it does not include any further works or modifications to existing works, there is no environmental impact resulting from the proposed modification.

7. Conclusion

The duplication of approval conditions imposes additional burdens and uncertainty on both the regulators and AGL. In these circumstances, where a single regulatory authority is now responsible for compliance with conditions of the Consent and the EPL, the removal of duplicate conditions is warranted.

It is in the interests of the Regulators, Community and AGL to have the relevant instruments synchronised to enable efficiencies across regulation, community comprehension and operations.

It is an important aspect of this proposed modification that the Camden Gas Project will be subject to the same regulatory conditions after the grant of a modification, as those to which it was subject beforehand. The conditions are merely housed under the single roof of the EPL.

However, the modification will result in two express benefits:

- (a) the potential for inconsistencies (such as those noted in section 4.1 and 4.2) is removed; and
- (b) the modification furthers the principles contained within the MoU.